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1 CLIFFORD H. PEARSON (Bar No. 108523)  
DANIEL L. WARSHAW (Bar No. 185365)  
2 BOBBY POUYA (Bar No. 245527)  
**PEARSON, SIMON, WARSHAW & PENNY, LLP**  
3 15165 Ventura Boulevard, Suite 400  
Sherman Oaks, California 91403  
4 Telephone: (818) 788-8300  
Facsimile: (818) 788-8104

**ORIGINAL FILED**

**JAN 09 2012**

**LOS ANGELES  
SUPERIOR COURT**

5 MATTHEW E. JACKSON (Bar No. 200454)  
6 **JACKSON LAW GROUP**  
5150 East Pacific Coast Highway, Suite 775  
7 Long Beach, CA 90804  
Telephone: (562) 265-1880  
8 Facsimile: (562) 265-1881

**RECEIVED**  
JAN 06 2012  
BY LUIS BARAHONA

9 Attorneys for Plaintiffs Farbod Nasserri, Michael R.  
Romero, and Kevin G. Peters, on behalf of  
10 themselves and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES, CENTRAL CIVIL WEST DISTRICT**

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

CASE NO. BC439181

14 Plaintiff,

**CLASS ACTION**

15 vs.

**STIPULATION & ~~PROPOSED~~ ORDER  
REGARDING THE FILING OF  
PLAINTIFFS' THIRD AMENDED  
COMPLAINT**

16 CYTOSPORT, INC., a California Corporation,  
17 and DOES 1 through 100, inclusive,

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

18 Defendants.

[Complaint Filed: June 4, 2010]

Trial Date: None

22 Plaintiffs Farbod Nasserri, Michael R. Romero, and Kevin G. Peters ("Plaintiffs") and  
23 Defendant Cytosport, Inc. ("Cytosport"), through their respective counsel of record, hereby  
24 stipulate as follows:

25 WHEREAS the parties agree that the filing of Plaintiffs' Third Amended Complaint is  
26 necessary pursuant to the terms of the proposed settlement between the parties.

27 WHEREAS Plaintiffs' proposed Third Amended Complaint is attached hereto at Exhibit  
28 "A."

835903.1

**STIPULATION & ~~PROPOSED~~ ORDER REGARDING THE FILING OF PLAINTIFFS' THIRD AMENDED  
COMPLAINT**

PEARSON, SIMON, WARSHAW & PENNY, LLP  
15165 VENTURA BOULEVARD, SUITE 400  
SHERMAN OAKS, CALIFORNIA 91403

PEARSON, SIMON, WARSHAW & PENNY, LLP  
15165 VENTURA BOULEVARD, SUITE 400  
SHERMAN OAKS, CALIFORNIA 91403

1 The parties stipulate and agree as follows:

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

4 2. CytoSport will be relieved of any duty to answer or otherwise respond to the Third  
5 Amended Complaint until further order of the Court.

6 DATED: January 6, 2012

**PEARSON, SIMON, WARSHAW & PENNY, LLP**  
CLIFFORD H. PEARSON  
DANIEL L. WARSHAW  
BOBBY POUYA

7  
8  
9 By: *Daniel L. Warshaw*

DANIEL L. WARSHAW

10 Attorneys for Plaintiffs Farbod Nasser, Michael R.  
11 Romero, and Kevin G. Peters, on behalf of themselves  
12 and others similarly situated

13 DATED: January 6, 2012

**GIBSON, DUNN & CRUTCHER, LLP**  
G. CHARLES NIERLICH  
VANESSA C. ADRIANCE  
TIMOTHY LOOSE

14  
15  
16 By: *G. Charles Nierlich*

G. CHARLES NIERLICH

17 Attorneys for Defendant CytoSport, Inc.  
18  
19

20 **ORDER**

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

22 1. Plaintiffs' Third Amended Complaint, attached hereto as Exhibit "A," shall be  
23 deemed filed and served upon the date of entry of this Order.

24 2. CytoSport will be relieved of any duty to answer or otherwise respond to the Third  
25 Amended Complaint until further order of the Court.

26 **IT IS SO ORDERED:**

27 1/9, 2012

**CARL J. WEST**

Hon. Carl J. West

28 Los Angeles Superior Court Judge

PEARSON, SIMON, WARSHAW & PENNY, LLP  
15165 VENTURA BOULEVARD, SUITE 400  
SHERMAN OAKS, CALIFORNIA 91403

1 CLIFFORD H. PEARSON (Bar No. 108523)  
DANIEL L. WARSHAW (Bar No. 185365)  
2 BOBBY POUYA (Bar No. 245527)  
**PEARSON, SIMON, WARSHAW & PENNY, LLP**  
3 15165 Ventura Boulevard, Suite 400  
Sherman Oaks, California 91403  
4 Telephone: (818) 788-8300  
Facsimile: (818) 788-8104

5  
6 MATTHEW E. JACKSON (Bar No. 200454)  
**JACKSON LAW GROUP**  
5150 East Pacific Coast Highway, Suite 775  
7 Long Beach, CA 90804  
Telephone: (562) 265-1880  
8 Facsimile: (562) 265-1881

9 Attorneys for Plaintiffs Farbod Nasser, Michael  
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' THIRD 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)

PEAKSON, SIMON, WARSHAW & PENNY, LLP  
15165 VENTURA BOULEVARD, SUITE 400  
SHERMAN OAKS, CALIFORNIA 91403

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

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 **III. FACTUAL ALLEGATIONS**

27 16. CYTOSPORT is a multi-million dollar corporation that specializes in the  
28 sale of Products, protein bars and other Products to consumers. CYTOSPORT'S Products

1 are marketed to California consumers under highly recognizable brand names such as  
2 “Muscle Milk,” “Monster Milk” and “Cytomax,” and are readily available at supermarkets,  
3 convenience stores, nutritional stores and other retailers throughout the State of California.

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

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

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

18  
19 “YOU ARE WHAT YOU EAT. AND OUR PRODUCTS PROVIDE A  
20 FUNCTIONAL BLEND OF SCIENCE AND SATISFACTION THAT  
21 KEEP YOUR BODY IN MOTION AND YOUR LIFE IN BALANCE.  
22 HEALTHY SHOULD TASTE GOOD.”<sup>1</sup>

23  
24 20. CYTOSPORT also makes representations concerning the safety and  
25 quality of its Products and offers consumers, “peace of mind knowing the safety, efficacy,  
26

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

1 and authenticity of the CytoSport brands is a given.” CYTOSPORT further represents  
2 that:

3  
4 “CytoSport products are a completely safe, effective, and legal alternative  
5 trusted by athletes worldwide who demand the highest level of  
6 performance from themselves and from the nutritional support products  
7 they use.”<sup>2</sup>

8  
9 21. Contrary to these representations, CYTOSPORT’S Products are  
10 contaminated with hazardous heavy metals which pose serious health and safety risks to  
11 consumers. According to a recent expose published in the July 2010 issue of Consumer  
12 Reports entitled “*Alert: Protein Drinks*,” CYTOSPORT’S Muscle Milk brand Products  
13 contain elevated levels of arsenic, cadmium, and lead that pose the threat of serious health  
14 problems. The Consumer Reports article states in relevant part:

15  
16 “The samples of Muscle Milk Chocolate powder we tested contained all  
17 four heavy metals, and levels of three metals in the product were among  
18 the highest of all in our tests. Average cadmium levels of 5.6 µg in three  
19 daily servings slightly exceeded the [U.S. Pharmacopeia] USP limit of 5  
20 µg per day, and the average lead level of 13.5 µg also topped the USP  
21 limit of 10 µg per day. The average arsenic level of 12.2 µg was  
22 approaching the USP limit of 15 µg per day, and the average for mercury  
23 was 0.7 µg, well below the USP’s 15 µg-per-day limit. Three daily  
24 servings of Muscle Milk Vanilla Crème contained 12.2 µg of lead,  
25 exceeding lead limits, and 11.2 µg of arsenic. A fourth product, Muscle  
26

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



PEARSON, SIMON, WARSHAW & PENNY, LLP  
15165 VENTURA BOULEVARD, SUITE 400  
SHERMAN OAKS, CALIFORNIA 91403

1 Milk Nutritional Shake Chocolate (liquid), provided an average of 14.3 µg  
2 of arsenic per day from three servings, approaching the proposed USP  
3 limit.

4  
5 Cadmium raises special concern because it accumulates in and can  
6 damage the kidneys, the same organs that can be damaged by excessive  
7 protein consumption. And it can take 20 years for the body to eliminate  
8 even half the cadmium absorbed today.

9  
10 ‘This is a highly toxic metal, and while there are some cases where  
11 decisions have to be weighed against relative risks, accepting that you  
12 have to be exposed to any cadmium at all in your protein drink after your  
13 workout is definitely not one of them,’ says Michael Harbut, M.D.,  
14 director of the Environmental Cancer Initiative at the Karmanos Cancer  
15 Institute in Royal Oak, Mich. When these toxic heavy metals are  
16 combined in a product that is marketed for daily use, that raises serious  
17 public health concerns, especially for pregnant women, children, and  
18 young adults,’ says [Kathy] Burns, who has been a toxicology consultant  
19 to state and federal government agencies.”

20  
21 22. During the class period, CYTOSPORT knowingly and purposely  
22 concealed the material fact that its Products contain dangerous toxic chemicals that pose  
23 serious health risks to Plaintiffs and similarly situated consumers. Furthermore,  
24 CYTOSPORT has failed and refused to disclose or warn consumers that its Products  
25 contain heavy metals and can be dangerous.

26 23. Despite actual knowledge that its Products contained dangerous toxic  
27 contaminants and pose serious health risks to consumers, CYTOSPORT marketed and sold  
28 its Products as being a safe, effective and healthy part of a daily diet.



1 All individuals in the United States who purchased one or more products  
2 manufactured by or on behalf of Defendant, including but not limited to all  
3 Muscle Milk®, Monster Milk®, CytoMax®, and Mighty Milk® varieties  
4 in any form, including powder beverages, ready-to-drink beverages, bars or  
5 capsules between June 4, 2006 and January 5, 2012. Excluded from the  
6 Class are Defendant, its parent companies, subsidiaries and affiliates, any  
7 alleged co-conspirators, distributors or sellers of the Products or their  
8 subsidiaries and affiliates, all governmental entities, and any Judges or  
9 Justices assigned to hear any aspect of this action or their families.

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

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

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

22 a. Whether Defendants misrepresented the safety, efficacy and dangers  
23 of their Products;

24 b. Whether Defendants' Products are contaminated with heavy metals  
25 and other toxins;

26 c. Whether Defendants have engaged in conduct which constitutes  
27 negligent misrepresentation;

28 d. Whether Defendants have engaged in conduct which constitutes

1 fraudulent concealment;

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **FIRST CAUSE OF ACTION**

17 **NEGLIGENT MISREPRESENTATION**

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

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

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

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

27 41. Defendants' misrepresentations regarding the characteristics of their  
28 Products were material because a reasonable consumer would attach importance to them in

1 determining whether to purchase and consume Defendants' Products.

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

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

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

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

13 **SECOND CAUSE OF ACTION**

14 **FRAUDULENT CONCEALMENT**

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

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

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

26 48. Plaintiffs and the Class purchased Defendants' Products in reliance on  
27 Defendants' failure to warn or apprise consumers of the extent of Defendants' conduct and  
28 the toxic nature of their Products, and based on the reasonable belief that it was safe to

1 consume Defendants' Products.

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

5 **THIRD CAUSE OF ACTION**

6 **VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT**

7 **(CAL. CIV. CODE §§ 1750 ET SEQ.)**

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

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

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

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

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

28 54. There is no other adequate remedy at law and if an injunction is not

1 ordered, Plaintiffs and the Class will suffer irreparable harm unless Defendants' conduct is  
2 enjoined.

3 55. Pursuant to California Civil Code §§ 1780(a)(2)-(5) and 1780(d) Plaintiffs  
4 and members of the Class seek an order for: (1) an injunction against Defendants' illegal  
5 conduct as alleged herein; (2) restitution; (3) ancillary relief; and (4) attorneys' fees and  
6 costs to the full extent allowed by law.

7 56. On June 4, 2010 counsel for Plaintiffs and the Class provided Defendants  
8 with written notice that their conduct is in violation of the Consumers Legal Remedies Act.  
9 Pursuant to California Civil Code § 1782(d), Plaintiffs is seeking damages under the  
10 Consumer Legal Remedies Act.

11 **FOURTH CAUSE OF ACTION**

12 **UNLAWFUL, FRAUDULENT & UNFAIR BUSINESS PRACTICES**

13 **(CAL. BUS. & PROF. §§ 17200 ET SEQ.)**

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

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

17 58. Plaintiffs are informed and believe, and thereon allege that Defendants'  
18 actions as described herein constitute unfair competition within the meaning of  
19 California's Unfair Competition Law ("UCL"), insofar as the UCL prohibits "any  
20 unlawful, unfair or fraudulent business act or practice" or "unfair, deceptive, untrue or  
21 misleading advertising."

22 59. Defendants have unfairly and fraudulently made false and unsubstantiated  
23 representations concerning the safety, effectiveness and quality of their Products without  
24 having any reasonable basis for doing so. Furthermore, Defendants have failed to provide  
25 material and legally required disclosures regarding the presence of dangerous and toxic  
26 contaminants contained in their Products.

27 60. Defendants' conduct constitutes an "unfair" business practice within the  
28 meaning of the UCL insofar as Defendants' business practices alleged herein are immoral,



1 unethical, oppressive, unscrupulous and/or substantially injurious to consumers.

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

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

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

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

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

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

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

PEARSON, SIMON, WARSHAW & PENNY, LLP  
15165 VENTURA BOULEVARD, SUITE 400  
SHERMAN OAKS, CALIFORNIA 91403

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**FIFTH CAUSE OF ACTION**

**VIOLATION OF PROPOSITION 65**

**(CAL. HEALTH & SAFETY CODE §§ 25249.5 ET SEQ.)**

**(Plaintiff Farbod Nasserri 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

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: JAN. 6, 2012

By: *Daniel Warshaw*  
DANIEL L. WARSHAW

Clifford H. Pearson (Bar No. 108523)  
Daniel L. Warshaw (Bar No. 185365)  
Bobby Pouya (Bar No. 245527)  
PEARSON, SIMON, WARSHAW & PENNY,  
LLP  
15165 Ventura Boulevard, Suite 400  
Sherman Oaks, CA 91403  
Telephone: (818) 788-8300  
Facsimile: (818) 788-8104

MATTHEW E. JACKSON (Bar No. 200454)  
JACKSON LAW GROUP  
5150 East Pacific Coast Highway, Suite 775  
Long Beach, CA 90804  
Telephone: (562) 265-1880  
Facsimile: (562) 265-1881

Patrick J. Sheehan (admitted pro hac vice)  
WHATLEY DRAKE & KALLAS, LLC  
1540 Broadway, 37th Floor  
New York, NY 10036  
Telephone: (212) 447-7070  
Facsimile: (212) 447-7077

Howard W. Rubinstein, Esq. (pro hac vice pending)  
LAW OFFICES OF HOWARD W. RUBINSTEIN  
1615 Forum Place, Suite 4C  
West Palm Beach, FL 33401

Attorneys for Plaintiffs Farbod Nasser, Michael R.  
Romero, and Kevin G. Peters, on behalf of  
themselves and others similarly situated

PEARSON, SIMON, WARSHAW & PENNY, LLP  
15165 VENTURA BOULEVARD, SUITE 400  
SHERMAN OAKS, CALIFORNIA 91403

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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: JAN 6, 2012

By: Daniel L. Warshaw

DANIEL L. WARSHAW  
Clifford H. Pearson (Bar No. 108523)  
Daniel L. Warshaw (Bar No. 185365)  
Bobby Pouya (Bar No. 245527)  
PEARSON, SIMON, WARSHAW & PENNY,  
LLP  
15165 Ventura Boulevard, Suite 400  
Sherman Oaks, CA 91403  
Telephone: (818) 788-8300  
Facsimile: (818) 788-8104

MATTHEW E. JACKSON (Bar No. 200454)  
JACKSON LAW GROUP  
5150 East Pacific Coast Highway, Suite 775  
Long Beach, CA 90804  
Telephone: (562) 265-1880  
Facsimile: (562) 265-1881

Patrick J. Sheehan (admitted pro hac vice)  
WHATLEY DRAKE & KALLAS, LLC  
1540 Broadway, 37th Floor  
New York, NY 10036  
Telephone: (212) 447-7070  
Facsimile: (212) 447-7077

Howard W. Rubinstein, Esq.(pro hac vice pending)  
LAW OFFICES OF HOWARD W. RUBINSTEIN  
1615 Forum Place, Suite 4C  
West Palm Beach, FL 33401

Attorneys for Plaintiffs Farbod Nasser, Michael R. Romero, and Kevin G. Peters, on behalf of themselves and others similarly situated