

## NOTICE OF VIOLATION

### California Safe Drinking Water And Toxic Enforcement Act

### Cadmium and Lead in the CytoSport Muscle Milk product

June 28, 2010

This Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice of Violation is provided by Zachary Hallstrom, c/o Newport Trial Group, 610 Newport Center Drive, Suite 700 Newport Beach, California 92660. Mr. Hallstrom is a consumer who has purchased and ingested the CytoSport Muscle Milk product that is the subject of this Notice of Violation.

#### **Description of Violation:**

- Violator: The name and address of the violator known to Mr. Hallstrom is:
  - CytoSport, Inc., 4795 Industrial Way, Benicia, CA 94510
  - Ralphs Grocery Company, P.O. Box 54143, Los Angeles, CA 90054
  - GNC, 300 6th Ave., Pittsburgh, PA 15222
  - The Vons Companies, Inc., 618 Michillinda Ave., Arcadia, CA 91007-6300
- Time Period of Exposure: The violations have been occurring since at least June 28, 2009, and are ongoing.

- Provision of Proposition 65: This Notice of Violation covers the “warning provision” of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemicals Involved: The listed chemicals involved in these violations are cadmium and lead.
- Type of Product: The product at issue in this Notice of Violation is the CytoSport Muscle Milk Powder chocolate flavored product manufactured and distributed by the Violator identified above. The product contains average cadmium levels of 5.6 micrograms in three daily servings, which exceeds the USP limit of 5 micrograms per day, and the product contains an average lead level of 13.5 micrograms in three daily servings, which exceeds the USP limit of 10 micrograms per day.
- Description of Exposure: Use of the CytoSport Muscle Milk Powder chocolate flavored product, which is ingested by drinking the product, results in human exposures to cadmium and lead. These exposures occur in homes, workplaces and everywhere else throughout California where the product is ingested or used. No clear and reasonable warning is provided with the product regarding the hazards of cadmium and lead.

**Resolution of Noticed Claims:**

- Based on the allegations set forth in this Notice, Mr. Hallstrom intends to file a citizen enforcement lawsuit against each of the alleged violators unless such alleged violator enters in to a binding written agreement to remedy the violations alleged herein by: (1) recalling products already sold; (2) reformulating such products to eliminate the cadmium exposure and the lead exposure or taking appropriate measures otherwise to comply with Proposition 65; and (3) paying an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If the alleged violator is interested in resolving this dispute without resort to litigation, please contact Mr. Hallstrom through his counsel, Scott J. Ferrell, Newport Trial Group, 610 Newport Center Drive, Suite 700, Newport Beach, CA 92660, (949) 706-6464, [sferrell@trialnewport.com](mailto:sferrell@trialnewport.com). It should be noted that Mr. Hallstrom cannot: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received Mr. Hallstrom’s 60-day Notice. Therefore, while reaching any agreement with Mr. Hallstrom will resolve his claims, such an agreement may not satisfy the public prosecutors.

**CERTIFICATE OF MERIT  
(Health & Safety Code § 25249.7(d))**

**California Safe Drinking Water  
And Toxic Enforcement Act**

**Cadmium and Lead in the  
CytoSport Muscle Milk product**

**June 28, 2010**

I, Scott J. Ferrell, declare as follows:

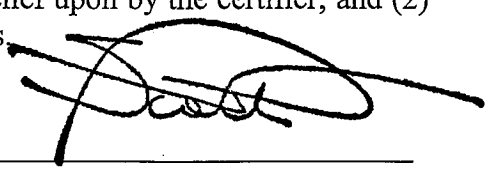
1. This Certificate of Merit accompanies the attached 60-day Notice in which it is alleged that the parties identified in the Notice have violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the principal attorney of Newport Trial Group. Newport Trial Group represents the noticing party, Mr. Zachary Hallstrom.

3. Attorneys with my firm and I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the exposures to the listed chemicals that are the subject of the action.

4. Based on the information obtained through these consultations, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the Plaintiff's case can be established and the information did not prove that the alleged violators will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of the Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this Certificate, including the information identified in Health and Safety Code Section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relief upon by the certifier; and (2) the facts, studies or other data reviewed by those persons.

  
\_\_\_\_\_  
Scott J. Ferrell  
Attorney for Zachary Hallstrom

**PROOF OF SERVICE BY MAIL**

I declare that:

I am employed in Orange County, California; my business address is 610 Newport Center Drive, Suite 700, Newport Beach, CA 92660. I am over the age of 18 years and not a party to the within cause.

On June 30, 2010, I served true copies of the following documents:

**NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT;**

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY (only sent to those on service list marked with an asterisk).**

**CERTIFICATE OF MERIT; and**

**FACTUAL STATEMENT**

On this date, I deposited fully prepaid and sealed envelopes containing the above-mentioned documents with the United States Postal Service, addressed to the following individuals:

*Please see attached service list.*

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on June 30, 2010, at Newport Beach, California.



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Carla Wise

## SERVICE LIST

District Attorney of Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612

District Attorney of Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney of Amador County  
708 Court Street, Suite 202  
Jackson, CA 95642

District Attorney of Butte County  
Administration Building  
25 County Center Drive  
Oroville, CA 95965

District Attorney of Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney of Colusa County  
547 Market Street, Suite 102  
Colusa, CA 95932

District Attorney of Contra Costa  
County  
900 Ward Street  
Martinez, CA 94553

District Attorney of Del Norte County  
450 H Street, Suite 171  
Crescent City, CA 95531

District Attorney of El Dorado County  
515 Main Street  
Placerville, CA 95667

District Attorney of Fresno County  
2220 Tulare Street, Suite 1000  
Fresno, CA 93721

District Attorney of Glenn County  
P.O. Box 430  
Willows, CA 95988

District Attorney of Humboldt County  
825 5<sup>th</sup> Street  
Eureka, CA 95501

District Attorney of Imperial County  
939 Main Street, Suite 102  
El Centro, CA 92243

District Attorney of Inyo County  
P.O. Drawer D  
Independence, CA 93526

District Attorney of Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney of Kings County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney of Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney of Lassen County  
220 S. Lassen Street, Suite 8  
Susanville, CA 96130

District Attorney of Los Angeles  
County  
210 W. Temple Street, Suite 1800  
Los Angeles, CA 90012-3210

District Attorney of Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney of Marin County  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

District Attorney of Mariposa County  
P.O. Box 730  
Mariposa, CA 95338

District Attorney of Mendocino County  
P.O. Box 1000  
Ukiah, CA 95482

District Attorney of Merced County  
2222 "M" Street  
Merced, CA 95340

District Attorney of Modoc County  
204 S. Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney of Mono County  
P.O. Box 617  
Bridgeport, CA 93546

District Attorney of Monterey County  
230 Church Street, Building 2  
Salinas, CA 93901

District Attorney of Napa County  
931 Parkway Mall  
Napa, CA 94559

District Attorney of Nevada County  
110 Union Street  
Nevada City, CA 95959

District Attorney of Orange County  
401 Civic Center Drive West  
Santa Ana, CA 92701

District Attorney of Placer County  
10810 Justice Center Drive, Suite 240  
Roseville, CA 95678

District Attorney of Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney of Riverside County  
4075 Main Street  
Riverside, CA 92501

District Attorney of Sacramento  
County  
901 "G" Street  
Sacramento, CA 95814

District Attorney of San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney of San Bernardino  
County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415

District Attorney of San Diego County  
330 West Broadway, Suite 1300  
San Diego, CA 92101

District Attorney of San Francisco  
County  
850 Bryant Street, Room 325  
San Francisco, CA 94103

District Attorney of San Joaquin  
County  
P.O. Box 990  
Stockton, CA 95202

District Attorney of San Luis Obispo  
County  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408

District Attorney of San Mateo County  
400 County Center, 3<sup>rd</sup> Floor  
Redwood City, CA 94063

## SERVICE LIST

District Attorney of Santa Clara County  
70 West Hedding Street, West Wing  
San Jose, CA 95110

District Attorney of Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney of Santa Barbara  
County  
Attn: Jerry Lule-Jian  
312-D E. Cook Street  
Santa Maria, CA 93454

District Attorney of Shasta County  
1525 Court Street, 3<sup>rd</sup> Floor  
Redding, CA 96001-1632

District Attorney of Sierra County  
Courthouse  
100 Courthouse Square, 2<sup>nd</sup> Floor  
Downieville, CA 95936

District Attorney of Siskiyou County  
P.O. Box 986  
Yreka, CA 96097

District Attorney of Solano County  
675 Texas Street, Suite 4500  
Fairfield, CA 94533

District Attorney of Sonoma County  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403

District Attorney of Stanislaus County  
832 12<sup>th</sup> Street, Suite 300  
Modesto, CA 95354

District Attorney of Sutter County  
446 Second Street  
Yuba City, CA 95991

District Attorney of Tehama County  
P.O. Box 519  
Red Bluff, CA 96080

District Attorney of Trinity County  
P.O. Box 310  
11 Court Street  
Weaverville, CA 96093

District Attorney of Tulare County  
221 S. Mooney Avenue, Room 224  
Visalia, CA 93291

District Attorney of Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney of Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009

District Attorney of Yolo County  
301 Second Street  
Woodland, CA 95695

District Attorney of Yuba County  
215 Fifth Street  
Marysville, CA 95901

Los Angeles City Attorney's Office  
City Hall East  
200 N. Main Street, Room 800  
Los Angeles, CA 90012

San Diego City Attorney's Office  
1200 Third Avenue, Suite 1620  
San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113

California Attorney General's Office  
Attention: Proposition 65 Coordinator  
and Robert Thomas  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, CA 94612-0550

CytoSport, Inc. \*  
4795 Industrial Way  
Benicia, CA 94510

Ralphs Grocery Company \*  
P.O. Box 54143  
Los Angeles, CA 90054

GNC \*  
300 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222

The Vons Companies, Inc. \*  
618 Michillinda Avenue  
Arcadia, CA 91007-6300