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

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

Plaintiff,

vs.

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

Defendants.

CASE NO. BC439181

CLASS ACTION

**SETTLEMENT AGREEMENT,
RELEASE, AND CONSENT JUDGMENT**

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

[Complaint Filed: June 4, 2010]

1 **SETTLEMENT AGREEMENT, RELEASE, AND CONSENT JUDGMENT**

2 This Settlement Agreement, Release, and Consent Judgment (“Agreement”) is made by
3 and among: (1) Defendant CytoSport Inc., a California Corporation; (2) Plaintiff Farbod Nasserri,
4 an individual; (3) Plaintiff Michael R. Romero, an individual; (4) Plaintiff Kevin G. Peters, an
5 individual; (5) Zachary Hallstrom, an individual; and (6) Plaintiffs Nasserri, Romero and Peters as
6 representatives of the “Settlement Class,” as defined below.

7 **RECITALS**

8 This Agreement is made for the following purposes and with reference to the following
9 facts:

10 A. On June 4, 2010, Plaintiff Farbod Nasserri filed a class action lawsuit on behalf of
11 himself and all similarly situated California consumers who purchased one or more protein
12 beverages manufactured, sold or distributed by CytoSport (“Nasserri Action”). Plaintiff Nasserri’s
13 class action lawsuit alleged that CytoSport’s protein beverages are contaminated with heavy
14 metals such as arsenic, cadmium, mercury and lead, which pose health risks to consumers.
15 Plaintiff Nasserri further alleged that CytoSport has failed to disclose and has concealed the
16 presence of heavy metals and the health risks associated with its protein beverages.

17 B. On June 4, 2010, Plaintiff Nasserri served a 60-day “Notice of Violation” on
18 CytoSport. This notice was served pursuant to California Health & Safety Code section 25249.7
19 and Section 25903 of Title 22 of the California Code of Regulations. The Notice alleged, among
20 other things, that CytoSport was in violation of the Safe Drinking Water and Toxic Enforcement
21 Act of 1986, Health and Safety Code sections 25249.5 *et seq.* (“Proposition 65”) for failing to
22 warn California purchasers of the Products, as that term is defined below, that the Products
23 allegedly expose users to lead, cadmium, and arsenic.

24 C. On August 16, 2010, Plaintiff Nasserri filed a First Amended Complaint. The First
25 Amended Complaint alleges the following causes of action against CytoSport: (1) Negligent
26 Misrepresentation; (2) Fraudulent Concealment; (3) Violation of the Consumers Legal Remedies
27 Act (Cal. Civ. Code §§ 1750 *et seq.*); (4) Violation of California’s Unfair Competition Law (Cal.
28 Bus. & Prof. Code §§ 17200 *et seq.*); and (5) Violation of Proposition 65 (Cal. Health & Safety

1 Code §§ 25249.5 et seq.).

2 D. On June 28, 2010, Plaintiff Hallstrom served a 60-day “Notice of Violation” on
3 CytoSport. This notice was served pursuant to California Health & Safety Code section 25249.7
4 and Section 25903 of Title 22 of the California Code of Regulations. The Notice alleged, among
5 other things, that CytoSport was in violation of the Safe Drinking Water and Toxic Enforcement
6 Act of 1986, Health and Safety Code sections 25249.5 *et seq.* (“Proposition 65”) for failing to
7 warn California purchasers of the Products, as that term is defined below, that the Products
8 allegedly expose users to cadmium and lead.

9 E. On October 27, 2010, Plaintiff Zachary Hallstrom filed a Complaint for Civil
10 Penalty and Injunctive Relief alleging the following cause of action against CytoSport: Violation
11 of Proposition 65 (Cal. Health & Safety Code §§ 25249.5 et seq.).

12 F. After execution of this Agreement, Plaintiff Nasserri will file a Second Amended
13 Complaint adding Mr. Romero and Mr. Peters as Plaintiffs and class representatives, and
14 including similar allegations as in the First Amended Complaint concerning the alleged presence
15 of heavy metals, including arsenic, cadmium, mercury and lead, in CytoSport’s Products (as
16 defined below). Mr. Hallstrom's case shall be related to the Nasserri Action. The parties shall
17 stipulate to relate the Hallstrom case to the Nasserri Action.

18 G. On September 29, 2010, Plaintiffs Nasserri, Romero and Peters and Defendant
19 CytoSport conducted an all day mediation with Justice Edward A. Panelli (Ret.) of JAMS. After
20 the mediation, the parties continued their efforts to negotiate a class-wide settlement with the
21 assistance of Justice Panelli and engaged in substantive settlement discussions. This Agreement is
22 the product of good faith arms-length settlement negotiations aided by Justice Panelli. Plaintiff
23 Hallstrom, through counsel, subsequently decided to join this settlement.

24 H. CytoSport disputes all claims alleged by Plaintiffs and does not by this Agreement
25 admit any liability or wrongdoing whatsoever. CytoSport has agreed to enter into this Agreement
26 to avoid the further expense, inconvenience, and distraction of litigation, and to be completely free
27 of any further claim or controversy by the members of the Settlement Class respecting the
28 Products (identified in Section 1.09) arising from the Dispute (as defined by Section 1.05), and to

1 promote the public interest. This Agreement shall not be construed as an admission by CytoSport
2 as to any of the allegations in the Dispute.

3 I. The Plaintiffs and their counsel believe that the claims asserted in the Litigation
4 possess merit and have examined and considered the benefits to be obtained under the proposed
5 Settlement set forth in this Agreement, the risks associated with the continued prosecution of this
6 complex and potentially time-consuming Litigation, and the likelihood of success on the merits.
7 The Plaintiffs have investigated the facts and law relevant to the merits of the claims, and have
8 concluded that the proposed Settlement is fair and reasonable to the Settlement Class. In
9 consideration of all of these circumstances, Plaintiffs have concluded that the proposed Settlement
10 set forth in this Agreement is fair, adequate, reasonable, in the public interest, and in the best
11 interests of the Settlement Class.

12 J. The Parties intend that this Settlement Agreement will resolve all claims of the
13 Settlement Class arising out of the Dispute, including any claims relating to the alleged presence
14 of lead, cadmium, mercury and arsenic in the Products and any misrepresentation or concealment
15 by CytoSport relating to the presence of lead, mercury, cadmium and arsenic in the Products. The
16 Parties intend this Agreement to bind CytoSport; Farbod Nasseri, Michael R. Romero, Kevin G.
17 Peters, Zachary Hallstrom as individuals; Farbod Nasseri, Michael R. Romero, Kevin G. Peters as
18 Plaintiffs and class representatives; and all members of the Final Settlement Class as defined
19 below.

20 K. The Parties stipulate and agree that, subject to preliminary and final approval by the
21 Court, the Settlement Class described in Section 1.11 should be conditionally certified solely for
22 purposes of the settlement embodied in this Agreement. If, for any reason, the Settlement is not
23 approved by the Court, the stipulation for certification and all of the agreements contained herein
24 shall be considered null and void and may not be referred to or used as evidence or for any other
25 purpose whatsoever in the above entitled litigation, or any other action or proceeding.

26 NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the
27 Parties, and each of them, hereby warrant, represent, acknowledge, covenant, and agree, subject to
28 approval by the Court, as follows:

1 **I. DEFINITIONS**

2 1.01 The term “Agreement” or “Settlement Agreement” means this Settlement
3 Agreement and Release.

4 1.02 The term “Settlement Agreement Date” shall mean April 7, 2011.

5 1.03 The term “Litigation” means *Farbod Nasserri et. al v. CytoSport, Inc.*, Los
6 Angeles Superior Court (Case No. BC439181); *Zachary Hallstrom v. CytoSport, Inc.*, Orange
7 County Superior Court (Case No. 00420087); and any other action arising from or related to either
8 of those actions.

9 1.04 The term “60-Day Notices” means the Notice of Violation of the Safe
10 Drinking Water and Toxic Enforcement Act of 1986 served on Defendant by Plaintiff Farbod
11 Nasserri and dated June 4, 2010; the Notice of Violation of the Safe Drinking Water and Toxic
12 Enforcement Act of 1986 served on Defendant by Plaintiff Zachary Hallstrom and dated June 28,
13 2010; and any other Notice of Violation of the Safe Water and Toxic Enforcement Act of 1986
14 arising from or related to the assertions made in either of those notices.

15 1.05 The term “Dispute” means all claims asserted in the 60-Day Notices and in
16 the Litigation, as well as all potential claims that were considered or could have been brought by
17 Plaintiffs on behalf of themselves, on behalf of the putative Class Members, or on behalf of the
18 public interest and the general public relating in any way to the subject matter of the 60-Day
19 Notices and the Litigation.

20 1.06 The term “Plaintiffs” means Farbod Nasserri, Michael R. Romero, Kevin G.
21 Peters, Zachary Hallstrom, and any and all members of the Class.

22 1.07 The term “Defendant” means CytoSport, Inc.

23 1.08 The term “Parties” means Plaintiffs and Defendant.

24 1.09 The term “Products” means the products set forth in Exhibit A attached
25 hereto.

26 1.10 The term “Naturally Occurring” shall have the meaning set forth in
27 California Code of Regulations Title 27, Section 25501 and subsequent case law, except as
28 otherwise provided in this Agreement. In the event of any conflict, the term “Naturally

1 Occurring” shall be interpreted as provided herein.

2 1.11 For purposes of settlement only, the “Settlement Class” or “Class” shall be
3 defined as:

4 All persons in the United States who purchased any of the Products between June
5 4, 2006 and the Settlement Agreement Date for personal or Household use.
6 Excluded from the Class are Defendant, its parent companies, subsidiaries and
7 affiliates, any alleged co-conspirators, distributors or sellers of the Products or
8 their subsidiaries and affiliates, all governmental entities, and any Judges or
9 Justices assigned to hear any aspect of this action or their families.

8 1.12 The terms “Settlement Class Member” or “Class Member” shall mean any
9 members of the Settlement Class as defined in Section 1.11 above.

10 1.13 “Final Settlement Class” shall mean the Settlement Class as defined in
11 Section 1.11 above, excluding all Settlement Class Members who validly request exclusion or opt-
12 out from the Settlement Class.

13 1.14 The term “Household” shall mean any and all persons living at a given
14 address.

15 1.15 The term “Judgment” means the Judgment approving and incorporating this
16 Agreement, which shall include the following provisions: (1) a finding that the class notice
17 constituted the best practicable notice under the circumstances and met the requirements of all
18 applicable laws; (2) final approval of the Agreement as fair, reasonable, adequate, and binding as
19 to the parties and the Class Members; (3) approval of each of the releases in the Agreement as fair,
20 reasonable, adequate, and binding as to the parties and Class Members; (4) a finding that this
21 settlement is in the public interest and that compliance with this settlement shall constitute
22 compliance with Proposition 65; and (5) a dismissal of the Action with prejudice.

23 1.16 The “Effective Date” shall be five court days after the date on which the
24 time for filing a notice of appeal from the entry of the Judgment approving the Settlement
25 Agreement expires without any appeals being taken, or, if one or more appeals, writs, or other
26 requests for review have been taken, five court days after the date on which all such appeals, writs,
27 or other requests for review are finally resolved in favor of the aforementioned Judgment and said
28 Judgment is no longer subject to direct appeal or direct review.

1 receipt). All submitted receipts are subject to verification by the Settlement Administrator, and if
2 the Settlement Administrator is unable to verify any receipt, or if the total value of qualifying
3 Products is less than \$5.00, the claim shall be converted to a claim pursuant to Option 3. Option 1
4 is available to final retail consumers only, and shall not be available to any distributor, retailer, or
5 other purchaser of the Products for any purpose other than personal or Household use. Each
6 Household may make only one claim pursuant to Option 1, 2 or 3. Payment for a claim under
7 Option 1 may not exceed \$20.00.

8 2.03 OPTION 2. Participating Class Members who select Option 2 and submit a
9 proof of purchase of a Product (which purchase took place after June 4, 2006 and on or before
10 October 1, 2010) by submitting original packaging sufficient to show the UPC code and lot
11 number that match a list of qualifying UPC codes and lot numbers, shall be entitled to receive a
12 check for payment in the amounts identified herein for any Product or Products purchased, up to
13 \$20.00 in total. For purposes of this Option 2 only, a Class Member shall receive a credit for each
14 qualifying Product as follows: \$20.00 for any powdered Product of two pounds or more; \$15.00
15 for each powdered Product of less than two pounds; \$3.25 for each ready-to-drink Product of 14
16 ounces or more; \$2.25 for each ready-to-drink Product of less than 14 ounces, \$1.75 for each
17 protein bar; and \$16.00 for each container of 100 or more capsules. In the event that a Class
18 Member submits any packaging for a Product not described herein, Class Counsel and counsel for
19 Defendant shall meet and confer in good faith to determine an appropriate credit for such product.
20 All submitted packaging shall be subject to verification by the Settlement Administrator, and if the
21 Settlement Administrator is unable to verify the validity and applicability of these submissions, or
22 if the value of qualifying Products is less than \$5.00, the claim shall be converted to a claim
23 pursuant to Option 3. Option 2 is available to final retail consumers only, and shall not be
24 available to any distributor, retailer, or other purchaser of the Products for any purpose other than
25 personal or Household use. Each Household may make only one claim pursuant to Option 1, 2, or
26 3. Payment for a claim under Option 2 may not exceed \$20.00

27 2.04 OPTION 3. Participating Class Members who select Option 3 and submit a
28 valid claim form declaring under penalty of perjury that the Participating Class Member purchased

1 any of the Products after June 4, 2006 and on or before the Settlement Agreement Date and would
2 not have purchased the Products if they had known of the allegations in the Dispute shall be
3 entitled to receive a check for payment of \$5 in cash (or, at their sole election, \$10 in Product
4 vouchers). Only one (1) such claim per Household will be honored. In the event of more than
5 200,000 valid claims by Participating Class Members under Option 3, the amount of any payment
6 of monetary relief shall be reduced on a pro rata basis, so that Defendant's liability for claims
7 pursuant to Option 3 may not exceed the value of 200,000 claims.

8 2.05 In lieu of civil penalties, Defendant shall make a charitable donation of
9 \$25,000 to a charitable organization that is mutually agreed to by the Parties.

10 2.06 The cost of reasonable notice and administration of the settlement shall be
11 paid by Defendant.

12 2.07 The Parties have agreed that Defendant may select either Garden City
13 Group or Rust Consulting, or may present other potential administrators for consideration by
14 Plaintiffs and Class Counsel. All funds described in this Section II shall be provided to the
15 Settlement Administrator no later than thirty (30) days after the Effective Date, and the Settlement
16 Administrator shall take reasonable efforts to distribute such funds as soon as practicable and, in
17 any event, within thirty (30) days thereafter.

18 **III. INJUNCTIVE RELIEF**

19 3.01 Subject to verification by Plaintiffs and/or their experts through reasonable
20 confirmatory discovery, to be mutually agreed upon by the Parties, the Parties agree that
21 Defendant has used reasonable commercial efforts to reduce the amount of lead, cadmium,
22 arsenic, and mercury in the Products.

23 3.02 For a period of three years from the Effective Date, Defendant shall not sell
24 or offer for sale any Product containing more than 0.5 micrograms of lead in the recommended
25 daily servings of that specific Product, excluding Naturally Occurring levels of lead as defined in
26 Sections 3.06 and 3.07, unless Defendant provides a warning as required by Proposition 65.

27 3.03 For a period of three years from the Effective Date, Defendant shall not sell
28 or offer for sale any Product containing more than 4.1 micrograms of cadmium in the

1 recommended daily servings of that specific Product, excluding Naturally Occurring levels of
2 cadmium, unless Defendant provides a warning as required by Proposition 65.

3 3.04 For a period of three years from the Effective Date, Defendant shall not sell
4 or offer for sale any Product containing more than 10 micrograms of arsenic in the recommended
5 daily servings of that specific Product, excluding Naturally Occurring levels of arsenic, unless
6 Defendant provides a warning as required by Proposition 65.

7 3.05 For a period of three years from the Effective Date, Defendant shall not sell
8 or offer for sale any Product containing more than 4 micrograms of mercury in the recommended
9 daily servings of that specific Product, excluding Naturally Occurring levels of mercury, unless
10 Defendant provides a warning as required by Proposition 65.

11 3.06 Because vitamins, minerals, and other food ingredients in Defendant's
12 products are harvested or extracted from natural resources, Defendant cannot ensure that the
13 vitamins, minerals, and other food ingredients in its Products will be reasonably available at
14 specific lead levels. Defendants shall follow the procedures outlined below to procure vitamins,
15 minerals, and food ingredients for the Products with the lowest levels of lead feasible, or 0.5
16 micrograms, whichever is higher. The term "feasible" as used in this Agreement means
17 "reasonable" taking into consideration; (1) the availability and reliability of a supply to the
18 Defendant of the ingredient in question; (2) the cost of the ingredient in question; (3) any resulting
19 increase in cost to the Defendant due to the use of a lower lead ingredient; (4) the performance
20 characteristics including, but not limited to, formulation, performance, safety, taste, efficacy and
21 stability of any ingredient in the Products; (5) the lawfulness of the alternative; and (6) other
22 reasonable considerations. Defendant shall use its best efforts to ensure that no lead is contributed
23 during the manufacturing of the Products. Defendant will undertake the following actions to
24 ensure that the levels of lead in the products are reduced to the lowest amounts that are
25 commercially feasible:

26 a. Defendant shall obligate its suppliers to use the highest quality
27 materials feasible in the manufacturing process, as "feasible" is defined in this Agreement.

28 b. To the extent Defendant has not already done so, Defendant shall

1 contact significant suppliers of the ingredients in the Products containing lead in an effort to
2 reduce lead in those constituent ingredients as compared to the Products as manufactured on June
3 1, 2010.

4 c. Within 30 days of the entry of the Judgment, Defendant shall
5 complete a review of the procurement and manufacturing processes of its significant suppliers, to
6 the extent reasonably feasible, of the constituent ingredients in the Products identified as
7 supplying the lead found in the Products, and create a feasible “Lead Reduction Plan.” This plan
8 shall include some or all of the following:

9 (i) Defendant shall identify the five largest contributors of lead
10 (“Targeted Ingredients”) in the Products as of June 1, 2010.

11 (ii) To the extent Defendant has not already done so, Defendant
12 will contact significant suppliers of the Targeted Ingredients in an effort to reduce lead in the
13 Targeted Ingredients through means such as review of supplier manufacturing process, alternative
14 formulation, and product sourcing.

15 (iii) Defendant will determine if any reformulation(s) of the
16 Products may reduce lead and is feasible, and will undertake any such feasible reformulation(s), to
17 the extent not already undertaken by Defendant.

18 d. Within 60 days of the entry of the Judgment, Defendant shall
19 implement the Lead Reduction Plan created pursuant to paragraph 3.06(c).

20 e. Within 75 days of the entry of the Judgment, Defendant will provide
21 Plaintiff’s counsel with a declaration signed by the appropriate employee certifying that the Lead
22 Reduction Plan has been created. Within 150 days of the entry of the Judgment, and following the
23 implementation of the Lead Reduction Plan, Defendant will provide an additional declaration
24 certifying that lead levels have been reduced to the lowest levels currently feasible, as described
25 herein.

26 f. Within 180 days of the entry of the Judgment, Defendant will
27 provide declarations from its significant suppliers of the Targeted Ingredients (or to the extent
28 such declarations are not reasonably available, other relevant evidence) that the lead content of the

1 Targeted Ingredients has been reduced to the lowest levels currently feasible. Defendant may
2 redact the names of the suppliers, provide the materials pursuant to a protective order, or take
3 other reasonable steps to protect its trade secrets and confidential business information.

4 3.07 For purposes of this Agreement and thereafter, the Naturally Occurring
5 level of lead for any of the Products shall be determined as follows: any lead remaining in any
6 Product after the Defendant has undertaken those actions required by paragraph 3.06 above shall
7 be deemed “naturally occurring” within the meaning of Section 25501 of Title 27 of the California
8 Code of Regulations.

9 3.08 Compliance by CytoSport with the terms of this Agreement and Judgment
10 shall be deemed to constitute its full and complete compliance with Proposition 65 with respect to
11 the provision of warnings for chemicals contained in or otherwise associated with the Products.

12 **IV. EFFECTUATION OF SETTLEMENT**

13 4.01 Within thirty (30) court days after the Parties sign this Settlement
14 Agreement, Plaintiffs shall file an amended complaint including Mr. Romero and Mr. Peters as
15 plaintiffs and asserting the claims brought in the Litigation (as well as any related claims arising
16 from the presence of arsenic, cadmium, mercury, or lead in any of CytoSport’s Products) on behalf
17 of the Settlement Class. Mr. Romero and Mr. Peters shall be added as purported class
18 representatives. The proposed Second Amended Complaint is attached as Exhibit B to this
19 Agreement.

20 4.02 Within ten (10) court days after the filing of the amended complaint,
21 Plaintiffs will submit a motion for preliminary approval pursuant to the terms of the Settlement
22 Agreement, preliminarily approving the settlement, provisionally certifying the class, approving
23 the class representatives, appointing and approving the Settlement Administrator, approving the
24 form and content of the notice, setting deadlines for mailing and publishing such notice, setting the
25 deadline for opt-outs and objections, setting a final settlement hearing, and such other matters as
26 may be necessary to effectuate the settlement.

27 4.03 The Parties agree that Plaintiffs may conduct reasonable confirmatory
28 discovery regarding Defendant’s efforts to reduce the amount of lead, cadmium, arsenic and

1 mercury in the Products. Defendant agrees to cooperate reasonably in this discovery, which shall
2 be completed within twenty (20) court days after the Parties sign this Agreement.

3 4.04 Notice Regarding Exclusions; Right to Void Settlement: Following the final
4 date for Settlement Class Members to exclude themselves from the Settlement Class pursuant to
5 Section 6.05 below, and no less than fourteen (14) days prior to the Final Hearing, the Settlement
6 Administrator shall give written notice to the Parties of the total number of Settlement Class
7 Members who have validly elected to exclude themselves from the Settlement Class. If that
8 number is in excess of 5,000, then at CytoSport's sole discretion, this entire Agreement and the
9 Settlement shall become null and void. Alternatively, CytoSport may elect to waive this condition
10 and proceed with the Settlement set forth in this Agreement. CytoSport shall notify Class Counsel
11 in writing of its election no less than seven (7) days prior to the final approval hearing.

12 4.05 If the Settlement is not preliminarily approved by the Court, if the
13 Settlement is not finally approved by the Court, or if for any other reason the Settlement
14 Agreement does not become effective, the Settlement Agreement will be terminated, null, and
15 void, and the Parties shall be returned to their respective positions as of the Settlement Agreement
16 Date.

17 **V. RESOLUTION AND RELEASE OF CLAIMS**

18 5.01 The Settlement Agreement is intended to resolve the Dispute. The
19 Settlement Agreement will be a final and binding resolution between Plaintiffs, on behalf of
20 themselves and the Final Settlement Class, and Defendant, of the Dispute and any other statutory
21 or common law claims that related in any way to the subject matter of the Litigation that were or
22 could have been asserted by Plaintiffs against Defendant or purchasers or sellers of the Products
23 up through the Settlement Agreement Date, including, but not limited to, any claims for attorneys'
24 fees and costs. It is also a final and binding resolution between the Plaintiffs on behalf of the
25 public interest and the general public regarding any and all alleged violations of Proposition 65
26 arising from the Products. The Plaintiffs and the members of the Final Settlement Class hereby
27 release CytoSport, their affiliates, officers, directors and employees and their suppliers,
28 distributors, wholesales, and retailers from and against the claims described in this paragraph

1 relating to the Products.

2 5.02 Class Member Release. Upon final approval of the settlement, all members
3 of the Class will release generally and specifically CytoSport, Inc, and all of its predecessors,
4 successors, parents and subsidiaries, past and present, as well as their respective partners, officers,
5 directors, and shareholders, servants, employees, attorneys and heirs, past and present, and each of
6 them, from, any and all claims, demands, and causes of action of every kind and nature, whether
7 known or unknown, suspected or unsuspected, arising from any purchases of the Products, at any
8 time up to and including the Settlement Agreement Date, that relate to the subject matter of the
9 Litigation. Claims for personal injuries are specifically excluded from the release, and the
10 Agreement shall not serve as a release or bar of such non-released personal injury claims.

11 5.03 Class Representative Release. Upon final approval of the settlement, all
12 named class representatives on the one hand, and CytoSport, Inc, on the other hand, will mutually
13 release all known or unknown claims against one another. The Plaintiffs waive the protections of
14 Section 1542 of the California Civil Code, which states:

15 Certain Claims Not Affected By General Release: A general release does not
16 extend to claims which the creditor does not know or suspect to exist in his or her
17 favor at the time of executing the release, which if known by him or her must
18 have materially affected his settlement with the debtor.

19 **VI. SETTLEMENT ADMINISTRATION & NOTICE**

20 6.01 Upon Preliminary Approval of the Settlement, as the Court may direct, the
21 Settlement Administrator shall cause the Class Notice to be disseminated to potential Settlement
22 Class Members as provided herein. Notice shall be disseminated on or before the Notice Date.
23 The Notice Date shall be mutually agreed by the Parties and shall be no later than forty-five (45)
24 days following an order of preliminary approval of the settlement, unless additional time is
25 necessary to prepare or place the notices described herein, or as otherwise agreed by the Parties or
26 ordered by the Court. Copies of the proposed forms of Class Notice are attached as Exhibits C
27 and D. The short form notice (exhibit C) shall be published as a quarter-page ad as follows: 1) in
28 a weekday edition of USA Today (or, if USA Today is not available, another national newspaper
of similar distribution); 2) in a weekend edition of the same national newspaper; 3) in a weekday

1 edition of the California distribution of the same national newspaper; 4) in a weekend edition of
2 the California distribution of the same national newspaper; 5) in a monthly edition of Flex
3 magazine; and 6) in a monthly edition of Muscle & Body magazine. In addition, Class Counsel
4 and Defendant will issue a joint press release upon preliminary approval of the settlement. Such
5 press release shall be provided to PR Newswire and shall be posted on the websites of both Class
6 Counsel and Defendant. The short form notice (exhibit C), the long form notice (exhibit D), and
7 the claim form (exhibit E) shall be available on an internet website to be prepared by the
8 Settlement Administrator. The press releases posted on the websites of Class Counsel and
9 Defendant shall include a link to the Settlement Administrator's settlement website. The
10 Settlement Administrator shall also set up a toll-free telephone number that a Class Member may
11 call to obtain a copy of the long-form notice. In addition, Defendant has recently started selling
12 certain Products directly to consumers through an online web store. Defendant shall provide
13 contact information for any online web purchaser who purchased any Product before the
14 Settlement Agreement Date to the Settlement Administrator, and the Settlement Administrator
15 shall e-mail each such customer twice with the short-form notice, which shall include a link to the
16 settlement website (or, if there is no valid e-mail address, the Settlement Administrator shall mail
17 the short-form notice once to the postal address for any such customer). The Class Notice shall
18 provide at least forty-five (45) days for a proposed member of the Class to opt out or object to the
19 settlement, or to submit a claim form.

20 6.02 The Class Notice shall:

- 21 a. contain a short, plain statement of the background of the Action and
22 the proposed Settlement;
- 23 b. describe the proposed Settlement relief as set forth in this
24 Agreement;
- 25 c. inform Settlement Class Members that, if they do not exclude
26 themselves from the Settlement Class, they may be eligible to receive relief;
- 27 d. describe the procedures for participating in the Settlement and
28 advise Settlement Class Members of their rights, including their right to file a Claim to receive an

- 1 Award under the Settlement, to opt out of same, or object thereto;
- 2 e. explain the scope of the Class Member Release, and the impact of
- 3 the proposed Settlement on any existing litigation, arbitration or other proceeding;
- 4 f. state that any Award to Settlement Class Members under the
- 5 Settlement is contingent on the Court’s final approval of the proposed Settlement;
- 6 g. explain that neither Counsel for the Parties, nor the Settlement
- 7 Administrator may advise on the tax consequences of participating or not participating in the
- 8 Settlement;
- 9 h. explain the procedures for opting out of the Settlement and
- 10 specifying that so-called “mass” or “class” opt outs shall not be allowed; and
- 11 i. provide that any objection to the Settlement and any papers
- 12 submitted in support of said objection will be considered only if the Settlement Class Member
- 13 making an objection has filed timely notice of his or her intention to do so, with the grounds for
- 14 the objection, and has filed copies of such papers he or she proposes to submit at the Final
- 15 Approval Hearing with the Clerk of the Court and served copies of such papers on Class Counsel
- 16 and CytoSport’s Counsel on or before the Opt Out and Objection Date, as approved by the Court
- 17 and specified in the Class Notice.

18 6.03 Any Settlement Class Member who intends to object must do so on or

19 before the Opt Out and Objection Date. In order to object, the Settlement Class Member must

20 include in the objection submitted to the Court and served on Class Counsel and CytoSport’s

21 Counsel: (a) the name, address, telephone number of the Person objecting and, if represented by

22 counsel, of his/her counsel; and (b) a receipt or other acceptable proof of purchase of a Product, as

23 set forth herein. An objecting Settlement Class Member must state, specifically and in writing, all

24 objections and the basis for any such objections, and provide a statement of whether he/she

25 intends to appear at the Final Approval Hearing, either with or without counsel. Any Settlement

26 Class Member who fails to file and serve timely a written objection and notice of his or her intent

27 to appear at the Final Approval Hearing pursuant to this Section, as detailed in the Notice, shall

28 not be permitted to object to the approval of the Settlement at the Final Approval Hearing and

1 shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by
2 appeal or other means.

3 6.04 Prior to the Final Approval Hearing, the Settlement Administrator shall
4 provide to the Court documentation that Notice was provided in accordance with the Notice
5 Program.

6 6.05 A Settlement Class Member who wishes to opt out of the Settlement Class
7 must do so on or before the Opt Out and Objection Date. In order to opt out, a Settlement Class
8 Member must complete and send to the Settlement Administrator a Request For Exclusion that is
9 post-marked no later than the Opt Out and Objection Date. The Request for Exclusion must be
10 personally signed by the Settlement Class Member requesting exclusion and contain a statement
11 that indicates a desire to be excluded from the Settlement Class. So-called “mass” or “class” opt-
12 outs shall not be allowed.

13 6.06 Except for those Settlement Class Members who timely and properly file a
14 Request for Exclusion, all other Settlement Class Members will be deemed to be Final Settlement
15 Class Members for all purposes under the Agreement, and upon the Effective Date, will be bound
16 by its terms, regardless of whether they file a Claim or receive any monetary relief.

17 6.07 Any Settlement Class Member who properly opts out of the Settlement
18 Class shall not: (a) be bound by any orders or judgments entered in the Action relating to the
19 Settlement; (b) be entitled to relief under, or be affected by, the Agreement; (c) gain any rights by
20 virtue of the Agreement; or (d) be entitled to object to any aspect of the Settlement.

21 6.08 The Settlement Administrator shall provide Co-Lead Counsel and
22 CytoSport’s Counsel with a list of all timely Requests For Exclusion within five (5) business days
23 after the Opt Out and Objection Date.

24 **VII. ATTORNEYS’ FEES, COSTS & INCENTIVE AWARDS**

25 7.01 Class Counsel agrees to make, and CytoSport agrees not to oppose, an
26 application for an award to Class Counsel of fees in a total amount not to exceed \$2,600,000 and
27 expenses in a total amount not to exceed \$30,000 (“Fees Amount”). The Parties agreed to the
28 Fees Amount after reaching agreement upon all other material terms of this Settlement. Such fees

1 and expenses will be paid by CytoSport subject to the conditions of this Section. An initial
2 payment of \$1,600,000, plus any awarded expenses (up to \$30,000) shall be paid within ten (10)
3 court days after Final Approval. An additional \$250,000 shall be paid every 90 calendar days
4 thereafter, until the total of up \$2,600,000 (plus up to \$30,000 for expenses) has been paid. In the
5 event that the Court approves less than \$2,600,000 in fees, CytoSport shall have no obligation to
6 pay more than the amount ordered by the Court, and shall make payments according to this
7 schedule until the full amount ordered by the Court (up to \$2,600,000) has been paid. If the Final
8 Judgment or order approving settlement is reversed, vacated, modified, and/or remanded for
9 further proceedings or otherwise disposed of in any manner other than one resulting in affirmance
10 of the Final Judgment and Order Approving Settlement as to any matter other than a reduction of
11 the Fees Amount, and if CytoSport or Class Counsel properly or timely terminates this agreement
12 in connection with Section 4.04, of this Agreement, then Class Counsel shall within (10) business
13 days return to CytoSport the Fees Amount in its entirety. If the Fees Amount is reduced after
14 entry of the Final Judgment and order approving settlement, then Class Counsel shall within ten
15 (10) business days return to CytoSport the amount by which the Fees Amount has been reduced.
16 Pearson, Simon, Warshaw & Penny LLP shall be liable to CytoSport for 50% of any return of the
17 Fees Amount. Howard Rubinstein and the Whatley, Drake & Kallas LLP shall be jointly and
18 severally liable for 50% of the return of the Fees Amount. Any return of the Fees Amount under
19 this Section shall be increased by interest accrued at the Federal Funds Rate from the date of
20 payment of the Fees Amount to Class Counsel.

21 7.02 CytoSport also agrees not to oppose an incentive award in an amount not to
22 exceed \$2,500 to each of the named Plaintiffs Farbod Nasser, Michael R. Romero and Kevin G.
23 Peters, respectively. Incentive awards are based on the contribution by the Plaintiffs to the case as
24 well as the time and expense involved in participating in the litigation. The incentive awards shall
25 be subject to Court approval.

26 7.03 CytoSport shall not be liable for any additional fees or expenses of any
27 named plaintiff or Settlement Class Member in connection with the Dispute. Class counsel agree
28 that they will not seek any additional fees or costs from CytoSport in connection with the

1 settlement of the Dispute. CytoSport agrees that it will not seek to recover its court costs,
2 attorneys' fees, or expenses once the Court enters a dismissal of the Action pursuant to this
3 Agreement.

4 **VIII. MISCELLANEOUS PROVISIONS**

5 8.01 Extensions of Time. Unless otherwise ordered by the Court herein, the
6 Parties may jointly agree to reasonable extensions of time to carry out any of the provisions of this
7 Agreement.

8 8.02 Governing Law. This Agreement shall be construed in accordance with, and
9 be governed by, the laws of the State of California, without regard to the principles thereof
10 regarding choice of law.

11 8.03 Jurisdiction. For purposes of this Agreement and Judgment only, the
12 Parties stipulate that this Court has jurisdiction over the allegations that are the subject of the
13 Dispute, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction to
14 approve this Agreement and enter a Judgment accordingly. No public prosecutor has commenced
15 an action regarding the matters raised in the 60-Day Notices.

16 8.04 Continuing Jurisdiction. Pursuant to section 664.6 of the California Code of
17 Civil Procedure, and notwithstanding the entry of Judgment, the Court shall retain jurisdiction of
18 the Litigation until such time as the Court determines that the Settlement is fully consummated
19 according to the terms and conditions of this Agreement.

20 8.05 Gender and Plurals. As used in this Agreement, the masculine, feminine, or
21 neuter gender, and the singular or plural number, shall each be deemed to include the others
22 whenever the context so indicates.

23 8.06 Survival of Warranties and Representations. The warranties and
24 representations of this Agreement are deemed to survive the date of execution hereof.

25 8.07 Representative Capacity. Each person executing this Agreement in a
26 representative capacity represents and warrants that he or she is empowered to do so.

27 8.08 Counterparts. This Agreement may be executed in any number of
28 counterparts, each of which shall be deemed an original, but all of which together shall constitute

1 one and the same instrument, even though all Parties do not sign the same counterparts.

2 8.09 Cooperation of Parties. The Parties to this Agreement agree to prepare and
3 execute all documents, to seek Court approval, to defend Court approval, and to do all things
4 reasonably necessary to complete the Settlement described in this Agreement.

5 8.10 Entire Agreement. The Parties declare and represent that no promise,
6 inducement or other agreement has been made conferring any benefit upon any party except those
7 contained herein and that this Agreement contains the entire agreement pertaining to the subject
8 matter. This Agreement supersedes any prior or contemporaneous negotiations, representations,
9 agreements and understandings of the Parties with respect to such matters, whether written or oral.
10 Parol evidence shall be inadmissible to show agreement by, between, or among the Parties to any
11 term of condition contrary to or in addition to the terms and conditions contained in this Consent
12 Judgment. The parties acknowledge that each has not relied on any promise, representation or
13 warranty, expressed or implied, not contained in this Agreement.

14 8.11 Execution Voluntary. This Agreement is executed voluntarily by each of
15 the Parties without any duress or undue influence on the part, or on behalf, of any of them. The
16 Parties represent and warrant to each other that they have read and fully understand the provisions
17 of this Agreement and have relied on the advice and representation of legal counsel of their own
18 choosing. Each of the Parties has cooperated in the drafting and preparation of this Agreement
19 and has been advised by counsel regarding the terms, effects, and consequences of this
20 Agreement. Accordingly, in any construction to be made of this Agreement, this Agreement shall
21 not be construed as having been drafted solely by any one or more of the Parties.

22 8.12 Motion for Approval. Following the execution of this Agreement by the
23 Parties, counsel for Plaintiffs shall promptly prepare and submit to the Court a motion seeking the
24 court's approval of this Agreement.

25 8.13 Entry of Stipulation For Entry of Consent Judgment Required. This
26 Agreement and any resulting Judgment shall be null and void, and without any force or effect,
27 unless fully approved as required by law and entered by the Court. If the Court does not approve
28 this Agreement and enter a Judgment accordingly, the execution thereof by CytoSport and

1 Plaintiff shall not be construed as an admission by CytoSport of any fact, issue of law, or violation
2 of law.

3 8.14 Reporting Requirements. Plaintiff shall comply with the reporting form
4 requirements referred to in Health and Safety Code section 25249.7(f) and established in the
5 California Code of Regulations sections 3000-3008.

6 8.15 Non-Interference in Settlement Approval Process. The Parties will
7 cooperate, as well as use their respective best efforts to secure the Attorney General's approval of
8 this Agreement and not to seek her disapproval of any portion of this Agreement.

9
10 Dated: April 8, 2011

CYTOSPORT, INC.

11 By: [Signature]

12 Title: President / CEO

13 Dated: April __, 2011

FARBOD NASSERI

14 _____
15 Farbod Nasser

16 Dated: April __, 2011

MICHAEL R. ROMERO

17 _____
18 Michael R. Romero

19 Dated: April __, 2011

KEVIN G. PETERS

20 _____
21 Kevin G. Peters

22 Dated: April __, 2011

ZACHARY HALLSTROM

23 _____
24 Zachary Hallstrom
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1 Plaintiff shall not be construed as an admission by CytoSport of any fact, issue of law, or violation
2 of law.

3 8.14 Reporting Requirements. Plaintiff shall comply with the reporting form
4 requirements referred to in Health and Safety Code section 25249.7(f) and established in the
5 California Code of Regulations sections 3000-3008.

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8 this Agreement and not to seek her disapproval of any portion of this Agreement.

9
10 Dated: April __, 2011

CYTOSPORT, INC.

11 By: _____

12 Title: _____

13 Dated: April 8, 2011

FARBOD NASSERI

14 Farbod Nasseri

15 Farbod Nasseri

16 Dated: April __, 2011

MICHAEL R. ROMERO

17 _____
18 Michael R. Romero

19 Dated: April __, 2011

KEVIN G. PETERS

20 _____
21 Kevin G. Peters

22 Dated: April __, 2011

ZACHARY HALLSTROM

23 _____
24 Zachary Hallstrom
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9
10 Dated: April __, 2011

CYTOSPORT, INC.

11

By: _____

12

Title: _____

13 Dated: April __, 2011

FARBOD NASSERI

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Farbod Nasser

16 Dated: April 8, 2011

MICHAEL R. ROMERO

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 _____

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Michael R. Romero

19 Dated: April 8th, 2011

KEVIN G. PETERS

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 _____

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Kevin G. Peters

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23 Dated: April __, 2011

ZACHARY HALLSTROM

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Zachary Hallstrom

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1 Plaintiff shall not be construed as an admission by CytoSport of any fact, issue of law, or violation
2 of law.

3 8.14 Reporting Requirements. Plaintiff shall comply with the reporting form
4 requirements referred to in Health and Safety Code section 25249.7(f) and established in the
5 California Code of Regulations sections 3000-3008.

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7 cooperate, as well as use their respective best efforts to secure the Attorney General's approval of
8 this Agreement and not to seek her disapproval of any portion of this Agreement.

9
10 Dated: April __, 2011

CYTOSPORT, INC.

11

By: _____

12

Title: _____

13 Dated: April __, 2011

FARBOD NASSERI

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Farbod Nasserri

16 Dated: April __, 2011

MICHAEL R. ROMERO

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Michael R. Romero

19 Dated: April __, 2011

KEVIN G. PETERS

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Kevin G. Peters

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23 Dated: April 8, 2011

ZACHARY HALLSTROM

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Zachary Hallstrom

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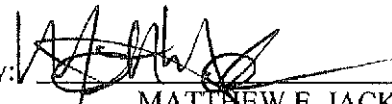
2
3 Dated: April 8, 2011

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

6
7 By: 
8 DANIEL L. WARSHAW
Attorneys for Plaintiff Farbod Nasser, on behalf of
himself and others similarly situated

9 Dated: April 8, 2011

JACKSON LAW GROUP
MATTHEW E. JACKSON

11
12 By: 
13 MATTHEW E. JACKSON
Attorneys for Plaintiff Farbod Nasser, on behalf of
himself and others similarly situated

14 Dated: April __, 2011

WHATLEY, DRAKE & KALLAS, LLP
PATRICK J. SHEEHAN

17 By: _____
18 PATRICK J. SHEEHAN
19 Attorneys for Plaintiffs Michael R. Romero and Kevin
20 G. Peters, on behalf of themselves and others similarly
21 situated

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1 APPROVED AS TO FORM:

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Dated: April __, 2011

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

By: _____
DANIEL L. WARSHAW
Attorneys for Plaintiff Farbod Nasser, on behalf of
himself and others similarly situated

Dated: April __, 2011

JACKSON LAW GROUP
MATTHEW E. JACKSON

By: _____
MATTHEW E. JACKSON
Attorneys for Plaintiff Farbod Nasser, on behalf of
himself and others similarly situated

Dated: April 8, 2011

WHATLEY, DRAKE & KALLAS, LLP
PATRICK J. SHEEHAN

By: _____
PATRICK J. SHEEHAN
Attorneys for Plaintiffs Michael R. Romero and Kevin
G. Peters, on behalf of themselves and others similarly
situated

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Dated: April 8, 2011

LAW OFFICES OF HOWARD RUBINSTEIN
HOWARD RUBINSTEIN

By: Howard Rubinstein
HOWARD RUBINSTEIN
Attorneys for Plaintiffs Michael R. Romero and Kevin G. Peters, on behalf of themselves and others similarly situated

Dated: April __, 2011

NEWPORT TRIAL GROUP
ROGER BORG

By: _____
ROGER BORG
Attorneys for Plaintiff Zachary Hallstrom

Dated: April __, 2011

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

By: _____
G. CHARLES NIERLICH
Attorneys for Defendant CytoSport, Inc.

1 Dated: April __, 2011

LAW OFFICES OF HOWARD RUBINSTEIN
HOWARD RUBINSTEIN

2

3

4

By: _____

HOWARD RUBINSTEIN

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

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6

7

Dated: April 8, 2011

NEWPORT TRIAL GROUP
ROGER BORG

8

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10

By:  _____

ROGER BORG

Attorneys for Plaintiff Zachary Hallstrom

11

12

Dated: April __, 2011

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

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By: _____

G. CHARLES NIERLICH

Attorneys for Defendant CytoSport, Inc.

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1 Dated: April __, 2011

LAW OFFICES OF HOWARD RUBINSTEIN
HOWARD RUBINSTEIN

2

3

4

By: _____
HOWARD RUBINSTEIN
Attorneys for Plaintiffs Michael R. Romero and Kevin
G. Peters, on behalf of themselves and others similarly
situated

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7

Dated: April __, 2011

NEWPORT TRIAL GROUP
ROGER BORG

8

9

10

By: _____
ROGER BORG
Attorneys for Plaintiff Zachary Hallstrom

11

12

Dated: April 6, 2011

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

13

14

15

By: G. Charles Nierlich
G. CHARLES NIERLICH
Attorneys for Defendant CytoSport, Inc.

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EXHIBIT “A”

Exhibit A

Product(s)	Flavor/Version*
100% Whey	Chocolate, Vanilla
Complete Casein	Banana, Chocolate, Cookies N Cream, Strawberry, Vanilla
Complete Whey	Banana, ButNut, Chocolate, Chocolate Mint Chip, Cocoa, Cookies N Cream, Peanut Butter Chocolate, Strawberry, Strawberry Banana, Vanilla
Cytogainer	Banana, Chocolate, Chocolate Carmel Swirl, Chocolate Mint, Cookies N Cream, Peanut Butter Chocolate, Rocky Road, Strawberry, Vanilla, Vanilla Carmel Swirl
Cytomax (powder)	Apple Berry, Cool Citrus, Cranberry Grapefruit, Fresh Apple, Go Grape, Orange, Peachy Keen, Pink Lemonade, Pomegranate Berry, Tropical Fruit, Collegiate Citrus, Collegiate Orange, Collegiate Pomegranate Berry, Lite Lemon Tea, Lite Raspberry Tea, Natural Citrus, Natural Cranberry Grapefruit, Natural Orange
Cytomax (liquid, ready-to-drink)	Citrus, Orange, Tropical
Diet Muscle Milk	Chocolate, Vanilla
EvoPro	Berry Delicious, Chocolate, Cookies, Tropical Blitz, Vanilla
Fast Twitch (powder)	Grape, Knock-Out Orange, Lemonade, Power Punch, Sour Berry Blast, Tropical Punch
Fast Twitch (liquid, ready-to-drink)	Blue, Purple, Red
Joint Matrix	N/A
Mighty Milk	Choc-a-shake
Monster Amino	Blue Raspberry, Fruit Punch, Fruit Sour, Sour Grape
Monster Maize	Blue Raspberry, Fruit Punch, Sour Grape, Tangy Orange
Monster Mass	Banana Crème, Cake Batter, Chocolate, Cookies, Strawberries N Crème, Vanilla

**Exhibit A
(continued)**

Product(s)	Flavor/Version*
Monster Milk (powder)	Banana Crème, Brownie Butter, Cake Batter, Chocolate, Cookie Dough, Cookies N Cream, Mocha Latte, Peanut Butter Chocolate, Strawberries N Crème, Vanilla
Monster Milk (liquid, ready-to-drink)	Banana, Brownie Batter, Chocolate, Cookies, Peanut Butter Chocolate, Vanilla
Monster Pump	Blue Raspberry, Fruit Punch, Sour Grape, Tangy Orange
Muscle Milk (powder)	Banana Crème, Blueberry N Crème, Brownie Batter, Cake Batter, Chocolate Carmel Swirl, Chocolate, Chocolate Banana Crunch, Chocolate Mint Chip, Cinnamon Bun, Cookie Dough, Cookies, Crème Brulee, Dark Chocolate, Dulce De Leche, Egg Nog, Horchata, Malt Chocolate, Mocha Latte, Orange Creme, Peach Mango, Peanut Butter Chocolate, Pina Colada, Rocky Road, Root Beer, Strawberry Banana, Strawberries N Creme, Vanilla, Vanilla Toffee Crunch, White Chocolate Mousse, Collegiate Banana, Collegiate Chocolate, Collegiate Chocolate Mint, Collegiate Cookies N Cream, Collegiate Peanut Butter Chocolate, Collegiate Strawberry, Collegiate Vanilla, Natural Chocolate, Natural Real Chocolate, Natural Strawberry, Natural Vanilla
Muscle Milk (liquid, ready-to-drink)	Banana Crème, Cake Batter, Chocolate, Chocolate Malt, Chocolate Milk, Cookies, Cookies N Cream, Cookies N Crème, Mocha Latte, Strawberries N Crème, Vanilla, Collegiate Chocolate, Collegiate Vanilla Crème, Natural Chocolate, Natural Strawberry, Natural Vanilla
Muscle Milk (bars)	Vanilla Toffee Crunch, Chocolate Peanut Caramel, Collegiate Vanilla Toffee Crunch, Collegiate Chocolate Peanut Caramel
Muscle Milk Light (bars)	Vanilla Toffee Crunch, Chocolate Peanut Caramel
Muscle Milk Light (powder)	Banana, Cake Batter, Chocolate, Chocolate Carmel Swirl, Chocolate Mint, Chocolate Peanut Crunch, Cookies, Crème Brulee, Dark Chocolate, Peanut Butter Chocolate, Strawberry, Strawberry Banana, Vanilla, Vanilla Toffee Crunch
Muscle Milk Light (liquid, ready-to-drink)	Café Latte, Chocolate, Chocolate Milk, Vanilla
Muscle Milk'n Oats	Apple Cinnamon, Banana Walnut, Maple & Brown Sugar, Vanilla Bean

**Exhibit A
(continued)**

Product(s)	Flavor/Version*
Muscle Milk Protein Plus	Chocolate, Vanilla
Protein H2O	Grape, Orange, Grapefruit, Raspberry
Pure Protein	Tangerine, Tropical, Watermelon
Vasostat N.O.	Fruit Punch
Whey Isolate	Blue Raspberry, Chocolate, Pineapple Banana, Sour Apple, Strawberry, Tangy Orange, Vanilla

* All flavors and/or versions of each listed product group are included among the “Products” pursuant to the terms of the Settlement Agreement. The list of flavors and versions herein is provided for illustrative purposes only and is not intended to be an exhaustive list of every flavor or version of the covered Products.

EXHIBIT “B”

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 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

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' 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

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

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

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,
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27 ² See Behind Our Product, available at <http://www.cytosport.com/about/history>.
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1 exceeding lead limits, and 11.2 µg of arsenic. A fourth product, Muscle
2 Milk Nutritional Shake Chocolate (liquid), provided an average of 14.3 µg
3 of arsenic per day from three servings, approaching the proposed USP
4 limit.

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

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

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

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

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;

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

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

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

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.

1 54. There is no other adequate remedy at law and if an injunction is not
2 ordered, Plaintiffs and the Class will suffer irreparable harm unless Defendants' conduct is
3 enjoined.

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

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

12 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

28 60. Defendants' conduct constitutes an "unfair" business practice within the

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

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 Warsaw

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EXHIBIT “C”

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

IF YOU PURCHASED CERTAIN CYTOSPORT PRODUCTS, YOU MAY BE ELIGIBLE TO RECEIVE BENEFITS UNDER A PROPOSED CLASS ACTION SETTLEMENT

A settlement has been proposed in a class action lawsuit against CytoSport, Inc. (“CytoSport”) regarding certain products, including Muscle Milk® and Monster Milk®.

What Is This Notice About?

A lawsuit is pending in the Los Angeles Superior Court that may affect your rights. The plaintiffs in this lawsuit claim that CytoSport did not adequately inform consumers that certain products, including Muscle Milk® and Monster Milk®, allegedly contained lead, cadmium, arsenic, and/or mercury. CytoSport vigorously denies these claims, responding that trace amounts of metals are found in the environment and in many agricultural products, and that the products are safe, as confirmed by independent testing. The Court did not rule in favor of plaintiffs or CytoSport. Instead, the parties agreed to a settlement to avoid the expense and risks of continuing the lawsuits.

Am I A Member Of The Class?

You are a member if you purchased a CytoSport product, including any Muscle Milk® or Monster Milk® CytoMax®, and Mighty Milk® varieties in any form, including powder beverages, ready-to-drink beverages, bars or capsules, between June 4, 2006 and April 7, 2011. A list of qualifying products and other details of the proposed settlement are available by calling [telephone] or online at www.cytosportclassactionsettlement.com.

What Does The Settlement Provide?

Qualifying households may submit an original receipt or product packaging for products purchased between June 4, 2006 and October 1, 2010 to receive a reimbursement of the retail price paid, up to \$20. Qualifying households without a receipt or product packaging may file a claim to receive one product voucher of up to \$10, or one cash payment of up to \$5 if they purchased products between June 4, 2006 and April 7, 2011. The settlement also requires CytoSport to implement a program to ensure that the ingredients in various products, including Muscle Milk® and Monster Milk®, have the lowest levels of lead reasonably feasible and that the levels of lead, cadmium, arsenic, and mercury are below certain levels. In addition, CytoSport will donate \$25,000 to charity.

Class Counsel also will ask that the Court award up to \$2,630,000 in attorney’s fees and expenses they incurred on behalf of the Class, and for incentive payments of \$2,500 per class representative.

What Are My Rights?

You have four options: (1) file a claim for a payment; (2) object; (3) do nothing; or (4) exclude yourself.

If you are a member of the Settlement Class and do not exclude yourself, you will be bound by any judgment in the case and will release certain claims you may have against CytoSport as set forth in the full Notice of Settlement whether or not you file a claim. You may obtain a copy of the full Notice of Settlement and/or the Claim Form by calling [telephone] or online at www.cytosportclassactionsettlement.com. Please read the release language carefully as it affects your rights.

1. To claim a payment, you must complete a claim form and comply with the requirements stated in the claim form by [date].
2. To object, you must file a written objection with the Clerk of the Court by [date] and serve copies of your objection on the parties. The Court will decide whether to approve the Settlement at the Fairness Hearing on [date.] For specific procedures for objecting, see the full Notice of Settlement.
3. If you do nothing, you will not receive any payment and you will be bound by the terms of the Settlement and will release certain claims against CytoSport as explained in the full Notice of Settlement.
4. To exclude yourself from the settlement (“opt out”), by [date] you must send to the Settlement Administrator by [methods], a signed letter that includes your name, address, and telephone number and a statement that you wish to be excluded from the Settlement. If you submit a timely and valid request for exclusion, you will no longer be a member of the Class and will receive no benefits under the Settlement, but you will retain whatever claims you may have against CytoSport.

A hearing is currently scheduled on [DATE] before the Los Angeles Superior Court to consider final approval of this Settlement.

This Notice is a summary only. To get additional information, including a copy of the Stipulation of Settlement and full Notice of Settlement, contact [methods]. **The deadlines in this Notice may be**

**moved, cancelled or otherwise modified, so please
check the website regularly for updates.**

BY ORDER OF THE SUPERIOR COURT OF
CALIFORNIA

[101038132_3.DOC](#)

EXHIBIT “D”

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

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

Plaintiff,

v.

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

Defendants.

CASE NO. BC439181—CLASS ACTION

[Deemed Complex and Assigned for All Purposes to the Honorable Carl J. West, Department 322]

NOTICE OF CLASS ACTION, PROPOSED SETTLEMENT, AND FINAL SETTLEMENT HEARING

IF YOU PURCHASED CERTAIN CYTOSPORT PRODUCTS, YOU MAY BE ELIGIBLE TO RECEIVE BENEFITS UNDER A PROPOSED CLASS ACTION SETTLEMENT.

The court has authorized this Notice. This is not a solicitation from a lawyer. You are not being sued.

The purpose of this Notice is to inform you that a proposed settlement in the lawsuit of *Farbod Nasserri v. CytoSport, Inc.* has been reached, and to advise you of the essential terms of the settlement, as well as your rights and options. This Notice does not express the Court’s opinion regarding the truth of the claims in the lawsuit or the merits of the claims or defenses asserted by the parties.

You should read this notice carefully. It explains decisions you must make and actions you must take now.

The Court still has to decide whether to finally approve the settlement. Benefits will be distributed if the Court gives final approval and after any appeals are resolved. Please be patient.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	This is the only way to get a payment. All claim forms must be postmarked by [DATE] , 2011.
EXCLUDE YOURSELF	If you exclude yourself from the proposed settlement, you will not receive any of the settlement benefits and you will maintain the right to file another lawsuit about the legal claims in this case. All exclusion requests must be postmarked by [DATE] , 2011.
OBJECT	You may write to the Court about why you don’t like this settlement. All objections must be delivered to Class Counsel and CytoSport’s Counsel identified in this Notice, and filed with the Court, by [DATE] , 2011. Even if you object to the settlement, you still must submit a valid claim form by [DATE] , 2011 in order to get a payment.
GO TO A HEARING	If you wish to speak at the Final Settlement Hearing, you must deliver a written notice to Class Counsel and CytoSport’s Counsel identified in this Notice, and file the notice with the Court, by [DATE] , 2011. The Final Settlement Hearing will be held on [DATE] , 2011 at [TIME] at the Los Angeles Superior Court, 600 Commonwealth Avenue, Los Angeles, California in the Courtroom of the Honorable Carl J. West, Department 322. Even if you speak at the hearing, you must still submit a valid claim form by [DATE] , 2011 in order to get a payment. The hearing date may be changed by order of the Court without notice to members of the Class.
DO NOTHING	If you do nothing, you will give up your rights to file a lawsuit about the legal claims in this case and you will not receive a payment.

I. WHY DID I RECEIVE THIS NOTICE?

You have received this Notice because you may be eligible for certain benefits through the proposed settlement of a class action lawsuit.

This Notice summarizes what the lawsuit is about and the terms of the proposed settlement. This Notice describes what you need to do to receive certain benefits under the settlement, how you can obtain more information about the settlement, which persons would be covered and what legal claims would be resolved by final approval of the settlement by the Court, how to exclude yourself from the settlement if you do not wish to participate, and how to object to the settlement or intervene in the lawsuit if you wish to do so. This Notice also explains the procedures that the Court will follow regarding the settlement, including holding a hearing to consider the fairness, reasonableness, and adequacy of the proposed settlement and to consider the plaintiffs’ application for attorneys’ fees and costs.

This Notice has been approved by the Court. It contains only a summary of the terms of the proposed settlement. If you wish to obtain a copy of the complete Settlement Agreement, you may do so by contacting the Clerk’s Office at the Court at the address listed below or by writing to the Settlement Administrator at the address listed below, in section VI (D) of this Notice. If there is any conflict between this Notice and the Settlement Agreement, the Settlement Agreement governs.

II. WHAT IS THIS LAWSUIT ABOUT?

The plaintiffs in this lawsuit purchased CytoSport products, including Muscle Milk® and Monster Milk® products, between June 4, 2006 and April 7 2011. They claimed that CytoSport, Inc., did not adequately inform consumers that its products including but not limited to all Muscle Milk®, Monster Milk®, CytoMax®, and Mighty Milk® products in any form, including powder beverages, ready-to-drink beverages, bars or capsules allegedly contained lead, cadmium, arsenic, and/or mercury, purportedly violating Proposition 65 (California Health and Safety Code § 25249.5 *et seq.*), the Consumers Legal Remedies Act (California Civil Code § 1750 *et seq.*), the Unfair Competition Law (California Business and Professions Code § 17200 *et seq.*), and various state statutes and the common law.

The defendant in the case is CytoSport, Inc. Defendant denies all claims of wrongdoing, asserts that trace amounts of metals are found in the environment and in many agricultural products, that its products (including Muscle Milk® Monster Milk® CytoMax®, and/or Mighty Milk®) are safe, comply with all applicable laws and requirements, and maintains that consumers have not suffered any injury from purchasing or drinking its products (including Muscle Milk® Monster Milk® CytoMax®, and/or Mighty Milk®). CytoSport states that it tests its products, including submitting certain products to NSF International, an independent, non-profit organization that is a world leader in the development of standards for supplements used in the athletic industry and has been selected as the national supplement certifying body by the NFL, Major League Baseball, the PGA, the LPGA, and others. CytoSport further states that NSF International has certified that the products submitted to it by CytoSport, including Muscle Milk® Chocolate and Vanilla Crème powders, do not contain unacceptable quantities of any heavy metals pursuant to the current standards for dietary supplements, and NSF has stated that it is “very confident” that the levels that it has set for heavy metals are “conservative and appropriate to protect the public health.” The Court has not expressed any opinion on the strengths or weaknesses of the plaintiffs’ case or the defendant’s contentions in this lawsuit.

Nevertheless, defendant has agreed to the proposed settlement to avoid the threat and expense of further litigation. Plaintiffs believe that their claims have merit, but that that the proposed settlement is fair, reasonable, and in the best interest of the members of the Settlement Class given the risk and expense of further litigation.

III. AM I A MEMBER OF THE SETTLEMENT CLASS?

As part of the settlement, the parties have agreed to the certification of a Settlement Class for purposes of this settlement only. The Settlement Class includes all individuals who purchased the following CytoSport products during the period from June 4, 2006 to April 7 2011:

Product(s)	Flavor/Version ⁱ
100% Whey	Chocolate, Vanilla

Product(s)	Flavor/Versionⁱ
Complete Casein	Banana, Chocolate, Cookies N Cream, Strawberry, Vanilla
Complete Whey	Banana, ButNut, Chocolate, Chocolate Mint Chip, Cocoa, Cookies N Cream, Peanut Butter Chocolate, Strawberry, Strawberry Banana, Vanilla
Cytogainer	Banana, Chocolate, Chocolate Carmel Swirl, Chocolate Mint, Cookies N Cream, Peanut Butter Chocolate, Rocky Road, Strawberry, Vanilla, Vanilla Carmel Swirl
Cytomax (powder)	Apple Berry, Cool Citrus, Cranberry Grapefruit, Fresh Apple, Go Grape, Orange, Peachy Keen, Pink Lemonade, Pomegranate Berry, Tropical Fruit, Collegiate Citrus, Collegiate Orange, Collegiate Pomegranate Berry, Lite Lemon Tea, Lite Raspberry Tea, Natural Citrus, Natural Cranberry Grapefruit, Natural Orange
Cytomax (liquid, ready-to-drink)	Citrus, Orange, Tropical
Diet Muscle Milk	Chocolate, Vanilla
EvoPro	Berry Delicious, Chocolate, Cookies, Tropical Blitz, Vanilla
Fast Twitch (powder)	Grape, Knock-Out Orange, Lemonade, Power Punch, Sour Berry Blast, Tropical Punch
Fast Twitch (liquid, ready-to-drink)	Blue, Purple, Red
Joint Matrix	N/A
Mighty Milk	Choc-a-shake
Monster Amino	Blue Raspberry, Fruit Punch, Fruit Sour, Sour Grape
Monster Maize	Blue Raspberry, Fruit Punch, Sour Grape, Tangy Orange
Monster Mass	Banana Crème, Cake Batter, Chocolate, Cookies, Strawberries N Crème, Vanilla
Monster Milk (powder)	Banana Crème, Brownie Butter, Cake Batter, Chocolate, Cookie Dough, Cookies N Cream, Mocha Latte, Peanut Butter Chocolate, Strawberries N Crème, Vanilla
Monster Milk (liquid, ready-to-drink)	Banana, Brownie Butter, Chocolate, Cookies, Peanut Butter Chocolate, Vanilla
Monster Pump	Blue Raspberry, Fruit Punch, Sour Grape, Tangy Orange

Product(s)	Flavor/Version ⁱ
Muscle Milk (powder)	Banana Crème, Blueberry N Crème, Brownie Batter, Cake Batter, Chocolate Carmel Swirl, Chocolate, Chocolate Banana Crunch, Chocolate Mint Chip, Cinnamon Bun, Cookie Dough, Cookies, Crème Brulee, Dark Chocolate, Dulce De Leche, Egg Nog, Horchata, Malt Chocolate, Mocha Latte, Orange Creme, Peach Mango, Peanut Butter Chocolate, Pina Colada, Rocky Road, Root Beer, Strawberry Banana, Strawberries N Creme, Vanilla, Vanilla Toffee Crunch, White Chocolate Mousse, Collegiate Banana, Collegiate Chocolate, Collegiate Chocolate Mint, Collegiate Cookies N Cream, Collegiate Peanut Butter Chocolate, Collegiate Strawberry, Collegiate Vanilla, Natural Chocolate, Natural Real Chocolate, Natural Strawberry, Natural Vanilla
Muscle Milk (liquid, ready-to-drink)	Banana Crème, Cake Batter, Chocolate, Chocolate Malt, Chocolate Milk, Cookies, Cookies N Cream, Cookies N Crème, Mocha Latte, Strawberries N Crème, Vanilla, Collegiate Chocolate, Collegiate Vanilla Crème, Natural Chocolate, Natural Strawberry, Natural Vanilla
Muscle Milk (bars)	Vanilla Toffee Crunch, Chocolate Peanut Caramel, Collegiate Vanilla Toffee Crunch, Collegiate Chocolate Peanut Caramel
Muscle Milk Light (bars)	Vanilla Toffee Crunch, Chocolate Peanut Caramel
Muscle Milk Light (powder)	Banana, Cake Batter, Chocolate, Chocolate Carmel Swirl, Chocolate Mint, Chocolate Peanut Crunch, Cookies, Crème Brulee, Dark Chocolate, Peanut Butter Chocolate, Strawberry, Strawberry Banana, Vanilla, Vanilla Toffee Crunch
Muscle Milk Light (liquid, ready-to-drink)	Café Latte, Chocolate, Chocolate Milk, Vanilla
Muscle Milk'n Oats	Apple Cinnamon, Banana Walnut, Maple & Brown Sugar, Vanilla Bean
Muscle Milk Protein Plus	Chocolate, Vanilla
Protein H2O	Grape, Orange, Grapefruit, Raspberry
Pure Protein	Tangerine, Tropical, Watermelon
Vasostat N.O.	Fruit Punch
Whey Isolate	Blue Raspberry, Chocolate, Pineapple Banana, Sour Apple, Strawberry, Tangy Orange, Vanilla

If this describes you, **you are automatically a member of the Settlement Class unless you exclude yourself by following the steps for exclusion described below.** Persons who are members of the Settlement Class and do not exclude themselves will be eligible for the compensation offered by the settlement if they meet the specified criteria, submit a valid Claim Form, and the Court gives final approval to the settlement. Class Members will be bound by the settlement, if approved by the Court, whether or not they submit a Claim Form and will be prevented from bringing other claims covered by the settlement. Those who exclude themselves from the Settlement Class will not be bound by the settlement and will not receive any payments from the settlement.

IV. WHAT ARE THE PROPOSED SETTLEMENT TERMS?

The proposed settlement was negotiated between the plaintiffs and defendant, through their attorneys, and has been preliminarily approved by the Court. The proposed terms are:

A. Reimbursement

Class members may be eligible to receive reimbursement under one of three options:

Option One: Class Members who submit an original, valid sales receipt showing that a qualifying CytoSport product (including Muscle Milk® Monster Milk® CytoMax®, and/or Mighty Milk®) was purchased between June 4, 2006 and October 1, 2010 are entitled to a check for reimbursement of the full retail purchase price paid for the products purchased by the Class Member, up to a total of \$20.00.

Option Two: Class Members who submit original product packaging sufficient to show that the qualifying CytoSport product (including Muscle Milk® Monster Milk® CytoMax®, and/or Mighty Milk®) was purchased between June 4, 2006 and October 1, 2010 are entitled to receive a check for reimbursement of the redeemable value for each product or products purchased by the Class Member, up to a total of \$20.00. The redeemable value for the products may be found by going to the settlement website (www.cytosportsettlement.com) or contacting the Settlement Administrator.

Option Three: Class Members who do not submit original sales receipts or original product packaging may make a claim by solemnly swearing, under penalty of perjury, that the Class Member purchased a qualifying CytoSport product (including Muscle Milk® Monster Milk® CytoMax®, and/or Mighty Milk®) between June 4, 2006 and April 7, 2011 and would not have made that purchase if the Class Member had known about the allegations in this lawsuit. Class Members choosing to make a claim under option three may choose to receive either a check for \$5 cash or a voucher for \$10 worth of any Muscle Milk® or Monster Milk® products. Under option three, Defendant is liable for the value of up to 200,000 claims. If more than 200,000 claims are made under option three, the amount of reimbursement to Class Members who choose option three will be reduced proportionately, so that the total amount paid equals the value of 200,000 claims.

Class Members may choose only one of these three options, and only one claim for reimbursement may be made per household. Additional details concerning reimbursement may be found in section II of the Settlement Agreement.

You must complete and return the Claim Form, and the supporting documents that apply to the option you choose to be eligible to receive any reimbursement. All Claim Forms must be postmarked no later than [DATE], 2011. No more than one Claim Form per household will be honored. Claim Forms must be mailed to:

CytoSport Class Action Settlement
[ADDRESS]

B. Payment To Charity

The have agreed that Defendant will make a charitable donation of \$25,000 to a charitable organization mutually agreed upon by Plaintiffs and Defendant.

C. Prospective Relief

In addition to steps previously taken, Defendant has also agreed that for a period of three years from the date the settlement is made final, it will not sell the covered products if they contain more than 0.5 micrograms of lead, 4.1 micrograms of cadmium, 10 micrograms of arsenic, or 4 micrograms of mercury in the recommended daily servings of each product, excluding Naturally Occurring levels of those elements, as defined and explained in the Settlement Agreement, unless Defendant provides a warning as required by Proposition 65.

Defendant also has agreed to implement a Lead Reduction Plan to ensure that the vitamins, minerals, and other food ingredients in various CytoSport products, including Muscle Milk® and Monster Milk®, have the lowest levels of lead reasonably feasible.

D. Incentive Awards to Representative Plaintiffs

In addition to any reimbursement and other relief they may receive as Settlement Class members, each of the named class representatives shall also receive an incentive award of \$2,500.

E. Attorneys' Fees and Costs

Defendant has agreed that if the settlement is approved, plaintiffs will be entitled to an award of reasonable attorney's fees, costs, and expenses in this lawsuit. At the Final Approval hearing on [DATE], Class Counsel will apply to the Court to determine the appropriate amount of the award. Class Counsel will seek an award of attorneys' fees, costs, and expenses in this Action, including work to be performed in connection with this settlement, in an amount not to exceed \$2.63 million. Defendants have not agreed to this or any particular amount, but have agreed not to oppose a request up to \$2.63 million.

F. Releases

In return for the compensation and benefits under the Settlement Agreement, the proposed settlement will release the Defendant from all claims (known or unknown) arising in any way out of the alleged presence of metals in CytoSport products (including Muscle Milk® and/or Monster Milk®), which arise at any time up to and including the effective date of the Settlement Agreement. Claims for personal bodily injury are specifically excluded from this release.

If you do not exclude yourself from the Settlement Class following the procedures set forth in this Notice and the Court approves the proposed settlement, you will be deemed to have entered into the release in the Settlement Agreement, whether or not you receive any compensation.

V. WHO REPRESENTS THE CLASS?

The Court has designated Plaintiffs Farbod Nasser, Michael R. Romero, and Kevin G. Peters to serve as class representatives in this lawsuit. The attorneys that serve as Class Counsel are Clifford H. Pearson, Daniel L. Warshaw, and Bobby Pouya of Person, Simon, Warshaw & Penny, LLP; Matthew E. Jackson of Jackson Law Group; Patrick J. Sheehan of Whatley, Drake & Kallas LLC; and Howard Rubinstein.

VI. WHAT ARE MY RIGHTS AND OPTIONS?

You have a number of rights and options that you should consider carefully.

A. Remain a Member of the Class

First, you may remain a member of the Class, represented by Class Counsel.

As a member of the Settlement Class, you will be represented by Class Counsel and will have rights to participate in the Settlement. **If you do nothing, you will be a Member of the Class, and will be bound by the terms of the Settlement.** If the Settlement is approved by the Court, the Settlement will result in a dismissal of any claims regarding the alleged presence of metals in CytoSport products, including Muscle Milk® and/or Monster Milk®, (except for claims for personal bodily injury). As a member of the Class, you will not be charged for the services of Class Counsel.

In order to receive compensation from the settlement fund, you must complete and submit a Claim Form, which must be postmarked by [DATE], 2011, and be determined to be eligible for compensation. If you do not timely submit a Claim Form, you will not receive any funds, and your claims will still be dismissed. Please note that you may be eligible to receive compensation under this Settlement Agreement, so you should consider returning a Claim Form by the time required.

B. Remain a Member of the Class and Elect to Hire Separate Counsel

Second, you may remain a member of the Class but elect to hire your own attorney to represent you.

If you do not wish to be represented by Class Counsel, you may hire your own attorney. Your attorney must file an Appearance, no later than [DATE], 2011, with the Clerk of the Court, Los Angeles County Superior Court, 600 Commonwealth Avenue, Los Angeles, California 90005, and must send a copy to the parties in care of the Settlement Administrator (listed in paragraph D below), postmarked no later than [DATE], 2011. Even though you are represented by your own attorney, you will continue to be a Class member. You will be responsible for any fees and costs charged by your attorney.

C. Remain a Member of the Class and Object

Third, you may remain a member of the Class, and on your own behalf, or through your own attorney, object to the certification of the Class, to the Settlement and/or to the Application for Attorney's Fees.

If you do not exclude yourself from the Class, you may object to the certification of the Class, to the terms of the proposed Settlement, or to the application for attorney's fees. To do so, you or your own attorney must file a written objection, which must contain: (1) the name of this lawsuit, *Nasseri, et al. v. CytoSport, Inc., et al.*; (2) your full name, current address, and telephone number, and if represented by an attorney, the full name, address, and telephone number of your attorney; (3) a copy of a receipt or proof of purchase of a qualifying CytoSport product (including Muscle Milk® or Monster Milk®) sufficient to show the purchase was made between June 4, 2006 and April 7, 2011 or a declaration solemnly swearing (or affirming), under penalty of perjury, that you purchased a qualifying CytoSport product (including Muscle Milk® or Monster Milk®) between June 4, 2006 and April 7, 2011; (4) the specific reason(s) for your objection; and (5) any and all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) that you would like the Court to consider. If you wish to appear at the Settlement Hearing and speak in support of, or in opposition to, the Settlement, you may do so if you indicate your desire to appear personally in your written objection. Objections, along with any supporting papers and briefs, must be filed with the Clerk of the Court by [DATE], 2011 and received by the parties no later than [DATE], 2011, at the addresses listed below:

Clerk of the Court
Los Angeles County Superior Court
600 Commonwealth Avenue
Los Angeles, California 90005

Timothy Loose
Gibson, Dunn & Crutcher LLP
333 S. Grand Ave., 47th Floor
Los Angeles, California 90071

Daniel L. Warshaw
Pearson, Simon, Warshaw & Penny, LLP
15165 Ventura Boulevard, Suite 400
Sherman Oaks, California 91403

If you do not comply with these procedures and the deadline for objections, you will lose any opportunity to have your objection considered at the Settlement Hearing or otherwise to contest the approval of the Settlement or to appeal from any orders or judgments entered by the Court in connection with the proposed Settlement. In addition, even if you object, you must submit a Claim Form to preserve your right to obtain compensation under this Settlement Agreement.

D. Opt-Out of the Class

Fourth, you may exclude yourself ("opt out") from the Class.

If you are a member of the Class, but do not want to remain in the Class, you may exclude yourself ("opt out"). If you exclude yourself from the Class, you will lose any right to participate in the Settlement. You will also lose the right to have objections you might have to the Settlement considered by the Court before it rules on the Settlement. You will be free to pursue any claims you may have against Defendant on your own behalf, but you will not be represented by Class Counsel. In order to exclude yourself from the Class, you must execute a request for exclusion, which must contain: (1) the name of this lawsuit, *Nasseri, et al. v. CytoSport, Inc., et al.*; (2) your full name and current address; (3) your signature; (4) a copy of a receipt or proof of purchase of a Muscle Milk® product sufficient to show the purchase was made between June 4, 2006 and April 7, 2011 or a declaration solemnly swearing (or affirming), under penalty of perjury, that you purchased a qualifying CytoSport product (including Muscle Milk® or Monster Milk®) between June 4, 2006 and April 7, 2011; and (5) a specific statement of your intention to exclude yourself from this lawsuit (for example, "Please exclude me from the Class in the *Nasseri, et al. v. CytoSport, Inc., et al.* litigation."). Requests for exclusion must be postmarked no later than [DATE], 2011, and sent to the parties in care of the Settlement Administrator at the address listed below:

CytoSport Class Action Settlement
[ADDRESS]

If you do not comply with these procedures and the deadline for exclusions, you will lose any opportunity to exclude yourself from the Class, and your rights will be determined in this lawsuit by the Settlement Agreement if it is approved by the Court.

VII. WHAT IF I HAVE ALREADY BROUGHT A CLAIM?

If you have a pending claim against Defendant regarding the alleged presence of metals in a covered CytoSport product, **your claim will be terminated by the terms of this settlement unless you opt out.**

Even if you have a pending claim against Defendant, you have the right to participate in this settlement. (See section VI (A) of this Notice.) However, if your claim has already been resolved and no further review by or appeal to a court or administrative body is possible, the settlement will not affect that resolution. Finally, if your claim has nothing to do with the alleged presence of metals in CytoSport products (including Muscle Milk® or Monster Milk®), it will not be affected by this settlement. If you have any questions about this, you may directly communicate with Class Counsel as set forth in section IX of this Notice.

VIII. WHEN IS THE COURT HEARING AND WHAT IS IT FOR?

On [DATE], 2011 at [TIME], the Court will hold a public hearing in Department 322 of the Superior Court of the State of California for the County of Los Angeles, 600 Commonwealth Avenue, Los Angeles, California 90005, for the purposes of determining whether the Class is properly certified for settlement purposes, whether the proposed Settlement is fair, adequate and reasonable and should be approved, and whether to approve Class Counsel's application for attorney's fees and expenses. This hearing may be postponed or rescheduled by the Court without further notice. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Settlement Hearing. If you want to speak in opposition to the Settlement, either personally or through counsel, you must indicate your intention to appear at the Settlement Hearing in your written objection.

IX. WHERE CAN I GET MORE INFORMATION?

If you have questions about this Notice or the Settlement, or if you believe that you are or may be a member of the Class, you should write to Daniel Warshaw of Pearson, Simon, Warshaw & Penny, LLP, 15165 Ventura Boulevard, Suite 400, Sherman Oaks, California 91403 or Patrick J. Sheehan of Whatley Drake & Kallas, LLC, 1540 Broadway, 37th Floor, New York, New York 10036, for more information or to request that a copy of this Notice be sent to you in the mail. You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed settlement, which is on file with the Court and available to be inspected at any time during regular business hours at the Clerk's Office, Superior Court of the State of California for the County of Los Angeles, 600 Commonwealth Avenue, Los Angeles, California 90005. You may also review the pleadings, records and other papers on file in this lawsuit at the Clerk's Office.

PLEASE DO NOT WRITE OR TELEPHONE THE COURT FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

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ⁱ All flavors and/or versions of each listed product group are included among the "Products" pursuant to the terms of the Settlement Agreement. The list of flavors and versions herein is provided for illustrative purposes only and is not intended to be an exhaustive list of every flavor or version of the covered Products.

EXHIBIT “E”

CytoSport Settlement Claim Form

(Including Instructions, Claim Form and Release)

INSTRUCTIONS

READ THESE INSTRUCTIONS CAREFULLY. IF YOU FAIL TO FOLLOW THESE INSTRUCTIONS, YOU MAY LOSE CERTAIN BENEFITS TO WHICH YOU MIGHT OTHERWISE BE ENTITLED.

1. Summary of Key Provisions

To receive a cash payment under the settlement, you must fill out and return the attached Claim Form (“Claim Form”) postmarked on or before [date]. Late or incomplete Claim Forms will be rejected.

Unless you request exclusion from the class as explained in the Class Notice, you will be bound by the Settlement Agreement and Release and the Final Judgment even if you do not return the Claim Form.

2. Who Is Eligible to Make a Claim Under the Settlement?

To be eligible to claim a cash payment or voucher under the settlement, you must have purchased in the United States one or more products manufactured by or on behalf of Defendant, including but not limited to any Muscle Milk®, Monster Milk®, and CytoMax® varieties in any form, including powders, ready-to-drink beverages, bars or capsules (the “Products”) between June 4, 2006 and April 7, 2011 for personal or household use.

To determine if the protein products you purchased is covered by the settlement, go to www.cytosportsettlement.com and refer to the list of covered products.

3. What Payments Are Provided for Under the Settlement?

Class members who timely submit valid claim forms and do not opt out (“Participating Class Members”) may select one and only one of the following three options for monetary relief.

RECEIPT. Participating Class Members who select this option and submit an original, valid receipt dated after June 4, 2006 and on or before October 1, 2010, showing the date and location of purchase and showing purchase of one or more of the products, shall be entitled to receive a check for payment of the full amount of the retail purchase price paid (not to exceed the amount as shown on the receipt) up to a total of \$20.

PRODUCT PACKAGING. Participating Class Members who select this option and submit a proof of purchase of a product (which purchase took place after June 4, 2006 and on or before October 1, 2010) by submitting original packaging sufficient to show the UPC code and lot number that match a list of qualifying UPC codes and lot numbers, shall be entitled to receive a check for payment in the amounts identified herein for any Product or Products purchased, up to \$20.00 in total. For purposes of this option only, a Class Member shall receive a credit for each

qualifying Product as follows: \$20.00 for any powdered Product of two pounds or more; \$15.00 for each powdered Product of less than two pounds; \$3.25 for each ready-to-drink Product of 14 ounces or more; \$2.25 for each ready-to-drink Product of less than 14 ounces, \$1.75 for each protein bar; and \$16.00 for each container of 100 or more capsules. Any product not included in these categories may be subject to reimbursement in the amount of a redeemable value based on the approximate retail price, up to \$20.00 in total.

NO RECEIPT OR PRODUCT PACKAGING REQUIRED. Participating Class Members who select this option and submit a valid claim form declaring under penalty of perjury that the Participating Class Member purchased any of the Products after June 4, 2006 and on or before April 7, 2011 shall be entitled to receive a check for payment of \$5 in cash (or, at their sole election, \$10 in Product vouchers). In the event of more than 200,000 valid claims by Participating Class Members under this option, the amount of any payment of monetary relief shall be reduced on a pro rata basis.

All submitted receipts and packaging are subject to verification by the Settlement Administrator, and if the Settlement Administrator is unable to verify any receipt or packaging, the claim may be converted to a claim pursuant to the option for no receipt or product packaging required. **Each Household may make only one claim under the Settlement Agreement.**

4. How To Make A Claim

To make a claim, you must complete and submit this Claim Form in compliance with the instructions below.

You may send the original of the signed Claim Form to:
[CLAIMS ADMINISTRATOR MAILING ADDRESS].

For the first two options described above, you must enclose any supporting materials (such as the original, valid receipt or original packaging sufficient to show the UPC code and lot number) with the Claim Form when you mail it in.

For the third option only, you may submit the Claim Form by mail, or you may sign the Claim Form, scan it in the pdf or tiff formats, and submit the Claim Form via the internet if you prefer. Please visit the settlement website at (www.cytosportsettlement.com) for additional information about submitting a Claim Form electronically.

Please keep a copy of any Claim Form and supporting materials for your records.

5. Claims Deadlines

You must fill out and return a completed Claim Form postmarked on or before [REDACTED], 2011.

Remember: To be valid, your Claim Form must be completely and accurately filled out, signed and dated, and must include all requested information. If your Claim Form is incomplete, untimely, or contains false information, it may be rejected by the Claims Administrator.

CLAIM FORM
(Please Print or Type)

A. STEP 1: Verify Your Contact Information

Please provide the following information, which will be treated as confidential. Any compensation that is provided in response to your claim will be issued to the name and street address you provide. Please print clearly in blue or black ink.

Name (Full first and last name required): (First) _____ (Last) _____

Address: _____

City: _____

State: _____

Zip Code: _____

E-mail (if available): _____

B. STEP 2: List and describe your claimed purchases (see Instructions)

SKU/Description:

Quantity: _____

C. STEP 3: If Eligible, Choose Your Settlement Benefit (please carefully review Instructions and check only one)

I am eligible for and want to receive the benefit I have indicated below:

Payment of \$5 in cash (no receipt or product packaging required); **OR**

Payment of \$10 in Product vouchers (no receipt or product packaging required); **OR**

Refund pursuant to the first option 1 up to a total of \$20 (requires submitting original, valid receipt dated after June 4, 2006 and on or before October 1, 2010, showing the date and location of purchase and showing purchase of one or more of the Products); **OR**

__ Refund pursuant to the second option up to a total of \$20 (requires submitting proof of purchase of a Product (which purchase took place after June 4, 2006 and on or before October 1, 2010) comprised of packaging sufficient to show the UPC code and lot number that match a list of qualifying UPC codes and lot numbers.

If you are submitting a claim with no receipt or product packaging required please also check either “Yes” or “No” where indicated below.

Do you declare under penalty of perjury that you purchased one or more CytoSport Products after June 4, 2006 and on or before April 7, 2011? __ Yes. __ No.

D. STEP 4: Certify Information Provided and Mail Claim Form.

By signing below, I acknowledge that I have read the Release attached to this Claim Form, and understand that the Settlement Agreement and Release and the Final Judgment entered in this action will be binding on me, and any other person with authority to act on my behalf. I state under penalty of perjury that the information provided above is true and correct to the best of my knowledge and belief.

Date

Signature

Please complete and submit your claim form to:

CytoSport Settlement Claims Administrator
[address]
toll free number: 1-XXX-XXX-XXXX)

REMINDER

Please note that you must fill out and return your Claim Form postmarked on or before _____, 20__.

RELEASE

The Settlement Agreement is intended to resolve the Litigation. Upon final approval of the Settlement Agreement, the Final Settlement Class, will release generally and specifically CytoSport, Inc, and all of its predecessors, successors, parents and subsidiaries, past and present, as well as their respective partners, officers, directors, and shareholders, servants, employees, attorneys and heirs, past and present, and each of them, from, any and all claims, demands, and causes of action of every kind and nature, whether known or unknown, suspected or unsuspected, arising from any purchases of the Products, at any time between June 4, 2006 and April 7, 2011, including, but not limited to, any claims for attorneys' fees and costs. It is also a final and binding resolution between the Plaintiffs on behalf of the public interest and the general public regarding any and all alleged violations of Proposition 65 arising from the Products. Claims for personal injuries are specifically excluded from the release, and the Agreement shall not serve as a release or bar of such non-released personal injury claims.