SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL 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 **<u>CLASS ACTION</u>** **SECOND AMENDED SETTLEMENT AGREEMENT, RELEASE, AND CONSENT JUDGMENT** Assigned to the Honorable Carl J. West (CCW-Dept. 322) [Complaint Filed: June 4, 2010]

AMENDED SETTLEMENT AGREEMENT, RELEASE, AND CONSENT JUDGMENT

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

RECITALS

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

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

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

C. On August 16, 2010, Plaintiff Nasseri filed a First Amended Complaint. The First Amended Complaint alleges the following causes of action against CytoSport: (1) Negligent Misrepresentation; (2) Fraudulent Concealment; (3) Violation of the Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750 et seq.); (4) Violation of California's Unfair Competition Law (Cal.

Bus. & Prof. Code §§ 17200 et seq.); and (5) Violation of Proposition 65 (Cal. Health & Safety Code §§ 25249.5 et seq.).

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

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

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

G. On April 8, 2011, Plaintiff Nasseri filed a Second Amended Complaint adding Mr. Romero and Mr. Peters as Plaintiffs and class representatives, and including similar allegations as in the First Amended Complaint concerning the alleged presence of heavy metals, including arsenic, cadmium, mercury and lead, in CytoSport's Products (as defined below). The parties have stipulated to relate the Hallstrom case to the Nasseri Action.

H. On April 8, 2011, Plaintiffs and Defendant executed a Settlement Agreement, Release, and Consent Judgment.

I. CytoSport disputes all claims alleged by Plaintiffs and does not by this Agreement admit any liability or wrongdoing whatsoever. CytoSport has agreed to enter into this Agreement

to avoid the further expense, inconvenience, and distraction of litigation, and to be completely free of any further claim or controversy by the members of the Settlement Class respecting the Products (identified in Section 1.09) arising from the Dispute (as defined by Section 1.05), and to promote the public interest. This Agreement shall not be construed as an admission by CytoSport as to any of the allegations in the Dispute.

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

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

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

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the Parties, and each of them, hereby agree that the Settlement Agreement, Release, and Consent Judgment executed on April 8, 2011 is null and void and the Parties, and each of them, further warrant, represent, acknowledge, covenant, and agree, subject to approval by the Court, as follows:

I. DEFINITIONS

1.01 The term "Agreement" or "Settlement Agreement" means this Amended Settlement Agreement, Release, and Consent Judgment.

1.02 The term "Settlement Agreement Date" shall mean January 5, 2012.

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

1.04 The term "60-Day Notices" means the Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 served on Defendant by Plaintiff Farbod Nasseri and dated June 4, 2010; and the Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 served on Defendant by Plaintiff Zachary Hallstrom and dated June 28, 2010.

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

1.06 The term "Plaintiffs" means Farbod Nasseri, Michael R. Romero, Kevin G. Peters, Zachary Hallstrom, and any and all members of the Class.

1.07 The term "Defendant" means CytoSport, Inc.

1.08 The term "Parties" means Plaintiffs and Defendant.

1.09 The term "Products" means the products set forth in Exhibit A attached hereto.

1.10 The term "Naturally Occurring" shall have the meaning set forth in California Code of Regulations Title 27, Section 25501, subsequent case law, and Section 3.06 of this Agreement; in the event of any conflict, the term "Naturally Occurring" shall be interpreted as provided in section 3.06 of this Agreement.

1.11 The term "Recommended Daily Servings" with respect to a particular product shall mean the number of servings per day recommended by CytoSport on the label of that product. If the label on a given product does not provide a specific recommendation for the number of servings to consume per day, the term "Recommended Daily Servings" with respect to that product shall mean the number of servings per day specifically recommended by CytoSport on CytoSport's website or, absent such as recommendation on CytoSport's website, in other advertising or marketing provided to customers of that product. If CytoSport does not provide any specific recommended number of servings per day for a particular product on the label or its website, the term "Recommended Daily Servings" for any such product shall be based on the actual usage by a typical consumer, but shall be rebuttably presumed to be one serving per day.

1.12 For purposes of settlement only, the "Settlement Class" or "Class" shall be defined as:

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

1.13 The terms "Settlement Class Member" or "Class Member" shall mean any members of the Settlement Class as defined in Section 1.11 above.

1.14 "Final Settlement Class" shall mean the Settlement Class as defined in Section 1.11 above, excluding all Settlement Class Members who validly request exclusion or opt-out from the Settlement Class.

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

1.16 The term “Judgment” means the Judgment approving and incorporating this Agreement, which shall include the following provisions: (1) a finding that the class notice constituted the best practicable notice under the circumstances and met the requirements of all applicable laws; (2) final approval of the Agreement as fair, reasonable, adequate, and binding as to the parties and the Class Members; (3) approval of each of the releases in the Agreement as fair, reasonable, adequate, and binding as to the parties and Class Members; and (4) a finding that this settlement is in the public interest and that compliance with this settlement shall constitute compliance with Proposition 65 for three years after the Effective Date.

1.17 The terms “Commercially Feasible” or “Feasible” as used in this Agreement means “reasonable” taking into consideration: (1) the availability and reliability of a supply to the Defendant of the ingredient in question; (2) the cost of the ingredient in question; (3) any resulting increase in cost to the Defendant due to the use of a lower lead, cadmium, or arsenic ingredient; (4) the performance characteristics including, but not limited to, formulation, performance, safety, taste, efficacy, and stability of any ingredient in the Products; (5) changes in the law (including, but not limited to, any judicially approved settlement agreement or consent decree) that would allow products that are substantially similar to any of the Products to be sold without a Proposition 65 warning in California with a higher level of lead, arsenic, of cadmium than that provided herein; (6) the lawfulness of the alternative; and (7) other reasonable considerations.

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

1.19 The term "Class Counsel" shall refer to the attorneys representing Plaintiffs from Pearson, Simon, Warshaw & Penny, LLP; the Jackson Law Group; Whatley Drake & Kallas, LLC; and the Law Offices of Howard Rubinstein.

1.20 The term "Settlement Administrator" means Garden City Group, Inc., which has been identified by the Parties, subject to Court approval, to administer the Notice Program, to respond to inquiries from Settlement Class members, and to oversee the processing and payment of Claims as set forth in the Agreement.

1.21 The term "Opt Out and Objection Date" means the date, to be set by the Court, by which a request for exclusion must be filed with the Settlement Administrator in order for a Settlement Class Member to be excluded from the Final Settlement Class, and the date by which Settlement Class Members must file objections, if any, to the Settlement in accordance with Section VI herein.

1.22 The term "Request For Exclusion" means the written communication that must be filed with the Settlement Administrator and postmarked on or before the opt-out and objection date by a Settlement Class Member who wishes to be excluded from the Settlement Class.

SETTLEMENT CONSIDERATION

II. MONETARY RELIEF

Defendant agrees to provide monetary relief to Class members who timely submit valid claim forms and do not opt out as set forth below.

2.01 MONETARY RELIEF FOR PARTICIPATING CLASS MEMBERS. 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.

2.02 OPTION 1. Participating Class Members who select Option 1 and submit an original, valid receipt dated on or after June 4, 2006 and on or before April 8, 2011, 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 for any

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

2.03 OPTION 2. Participating Class Members who select Option 2 and submit a proof of purchase of a Product (which purchase took place on or after June 4, 2006 and on or before April, 8, 2011) 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 2 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; $4.00 for any container of fewer than 100 capsules; and $16.00 for each container of 100 or more capsules. In the event that a Class Member submits any packaging for a Product not described herein, Class Counsel and counsel for Defendant shall meet and confer in good faith to determine an appropriate credit for such product. All submitted packaging shall be subject to verification by the Settlement Administrator, and if the Settlement Administrator is unable to verify the validity and applicability of these submissions, or if the value of qualifying Products is less than $5.00, the claim shall be converted to a claim pursuant to Option 3. Option 2 is available to final retail consumers only, and shall not be available to any distributor, retailer, or other purchaser of the Products for any purpose other than personal or Household use. Each Household may make only one claim pursuant to Option 1, 2, or 3. Payment for a claim under Option 2 may

not exceed $20.00.

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

2.05 CHARITABLE DONATION. In lieu of civil penalties, Defendant shall make a charitable donation of $25,000 to a charitable organization mutually agreed by the Parties.

2.06 COST OF REASONABLE NOTICE AND SETTLEMENT ADMINISTRATION. The cost of reasonable notice and administration of the settlement shall be paid by Defendant.

2.07 SETTLEMENT ADMINISTRATOR. The Parties have agreed that Garden City Group shall serve as Settlement Administrator. If Garden City Group is not reasonably available, Rust Consulting may serve as the Settlement Administrator. All funds described in this Section II shall be provided to the Settlement Administrator no later than thirty (30) days after the Effective Date, and the Settlement Administrator shall take reasonable efforts to distribute such funds as soon as practicable and, in any event, within thirty (30) days thereafter.

III. INJUNCTIVE RELIEF

3.01 DEFENDANT'S EFFORTS TO DATE. The Parties agree that Defendant has used reasonable commercial efforts to reduce the amount of lead, cadmium, and arsenic in the Products.

3.02 FUTURE SALES—LABELING REQUIREMENTS—LEAD. For a period of three years from the Effective Date, Defendant shall not sell or offer for sale any Product

containing more than 0.5 micrograms of lead in the Recommended Daily Servings of that specific Product, excluding Naturally Occurring levels of lead as defined in Sections 3.05 and 3.06, unless Defendant provides a warning as follows:

a. If any Product contains more than 0.5 micrograms of lead but less than 15 micrograms of lead in the Recommended Daily Servings of that specific Product, excluding Naturally Occurring levels of lead as defined in Sections 3.05 and 3.06, that Product shall contain the following statement on the product package: "WARNING: This product contains lead, a chemical known to the State of California to cause birth defects or other reproductive harm" unless the place in which such Product is sold or otherwise provided to the public complies with California Code of Regulations, Title 27, Article 6, §§ 25601 and 25603.1(b) by identifying the product and providing a clear and reasonable warning, through shelf labeling, signs, menus, or a combination thereof, which communicates the presence of a chemical known to the State of California to cause birth defects or other reproductive harm, in which case no additional warning on the Product packaging shall be required. However, if the product is sold in a food facility, as defined in California Health & Safety Code § 27521(a), so long as the food facility provides a warning that complies with California Code of Regulations, Title 27, § 25603.3(a), nor such warning shall be required.

b. If any Product contains 15 micrograms or more of lead in the Recommended Daily Servings of that specific Product, excluding Naturally Occurring levels of lead as defined in Sections 3.05 and 3.06, that Product shall contain the following statement on the product package: "WARNING: This product contains lead, a chemical known to the State of California to cause birth defects or other reproductive harm, and to cause cancer" unless the place in which such Product is sold or otherwise provided to the public complies with California Code of Regulations, Title 27, Article 6, §§ 25601 and 25603.1(b) by identifying the product and providing a clear and reasonable warning, through shelf labeling, signs, menus, or a combination thereof, which communicates the presence of a chemical known to the State of California to cause cancer and birth defects or other reproductive harm, in which case no additional warning on the

Product packaging shall be required. However, if the product is sold in a food facility, as defined in California Health & Safety Code § 27521(a), so long as the food facility provides a warning that complies with California Code of Regulations, Title 27, § 25603.3(a), no such warning shall be required.

3.03 FUTURE SALES—LABELING REQUIREMENTS—CADMIUM. For a period of three years from the Effective Date, Defendant shall not sell or offer for sale any Product containing more than 4.1 micrograms of cadmium in the recommended daily servings of that specific Product unless Defendant provides a warning as follows:

a. If any Product contains more than 4.1 micrograms of cadmium in the Recommended Daily Servings of that specific Product that Product shall contain the following statement on the product package: "WARNING: This product contains cadmium, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm" unless the place in which such Product is sold or otherwise provided to the public complies with California Code of Regulations, Title 27, Article 6, §§ 25601 and 25603.1(b) by identifying the product and providing a clear and reasonable warning, through shelf labeling, signs, menus, or a combination thereof, which communicates the presence of a chemical known to the State of California to cause cancer and birth defects or other reproductive harm, in which case no additional warning on the Product packaging shall be required. However, if the product is sold in a food facility, as defined in California Health & Safety Code § 27521(a), so long as the food facility provides a warning that complies with California Code of Regulations, Title 27, § 25603.3(a), no such warning shall be required.

3.04 FUTURE SALES—LABELING REQUIREMENTS—ARSENIC. For a period of three years from the Effective Date, Defendant shall not sell or offer for sale any Product containing more than 10 micrograms of arsenic in the Recommended Daily Servings of that specific Product unless Defendant provides a warning as follows:

a. If any Product contains more than 10 micrograms of arsenic in the Recommended Daily Servings of that specific Product that Product shall contain the following

statement on the product package: "WARNING: This product contains arsenic, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm" unless the place in which such Product is sold or otherwise provided to the public complies with California Code of Regulations, Title 27, Article 6, §§ 25601 and 25603.1(b) by identifying the product and providing a clear and reasonable warning, through shelf labeling, signs, menus, or a combination thereof, which communicates the presence of a chemical known to the State of California to cause cancer, birth defects or other reproductive harm, in which case no additional warning on the Product packaging shall be required. However, if the product is sold in a food facility, as defined in California Health & Safety Code § 27521(a), so long as the food facility provides a warning that complies with California Code of Regulations, Title 27, § 25603.3(a), no such warning shall be required.

3.05 REDUCTION PLAN FOR LEAD, CADMIUM, AND ARSENIC. Because vitamins, minerals, and other food ingredients in Defendant's products are harvested or extracted from natural resources, Defendant cannot ensure that the vitamins, minerals, and other food ingredients in its Products will be reasonably available at specific lead, cadmium, or arsenic levels. Defendant shall follow the procedures outlined below to procure vitamins, minerals, and food ingredients for the Products with the lowest levels of lead, cadmium, or arsenic Feasible (although nothing in this Agreement shall require Defendant to take any efforts to reduce lead below 0.5 micrograms per each Product's Recommended Daily Servings, to reduce cadmium below 4.1 micrograms per each Product's Recommended Daily Servings, or to reduce arsenic below 10 micrograms per each Product's Recommended Daily Servings). Defendant shall use its best efforts to ensure that no lead, cadmium, or arsenic is contributed during the manufacturing of the Products. Defendant will undertake the following actions in an effort to ensure that the levels of lead, cadmium, or arsenic in the products are reduced to the lowest amounts that are Feasible; provided, however, that Defendant need take no action if the total amount (including any amount that is Naturally Occurring) of lead is below 0.5 micrograms per each Product's Recommended Daily Servings, the total amount of cadmium is below 4.1 micrograms per each Product's

Recommended Daily Servings, and/or the total amount of arsenic is below 10 micrograms per each Product's Recommended Daily Servings).:

a. Defendant shall obligate its suppliers to use the highest quality materials (with respect to lead, cadmium, and arsenic content) that are Feasible in the manufacturing process.

b. To the extent Defendant has not already done so, Defendant shall contact significant suppliers of the ingredients in the Products containing lead, cadmium, or arsenic in an effort to reduce lead in those constituent ingredients as compared to the Products as manufactured on June 1, 2010.

c. Within 30 days of the entry of the Judgment, Defendant shall complete a review of the procurement and manufacturing processes of its significant suppliers, to the extent Feasible, of the constituent ingredients in the Products identified as supplying the lead, cadmium, or arsenic found in the Products, and create a Feasible "Lead, Cadmium, and Arsenic Reduction Plan" (the "Plan"). This Plan shall include some or all of the following:

(i) Defendant shall identify the five largest contributors of lead, cadmium, or arsenic ("Targeted Ingredients") in the Products as of June 1, 2010.

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

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

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

e. Within 75 days of the entry of the Judgment, Defendant will provide Plaintiff's counsel with a declaration signed by the appropriate employee certifying that the Plan

has been created. Within 150 days of the entry of the Judgment, and following the implementation of the Plan, Defendant will provide an additional declaration certifying that lead, cadmium, or arsenic levels have been reduced to the lowest levels currently Feasible, as described herein.

f. Within 180 days of the entry of the Judgment, Defendant will provide declarations from its significant suppliers of the Targeted Ingredients (or to the extent such declarations are not reasonably available, other relevant evidence) that the lead, cadmium, or arsenic content of the Targeted Ingredients has been reduced to the lowest levels currently Feasible, as defined in this Agreement. Defendant may redact the names of the suppliers, provide the materials pursuant to a protective order, or take other reasonable steps to protect its trade secrets and confidential business information.

3.06 NATURALLY OCCURRING LEVELS OF LEAD. For purposes of this Agreement and thereafter, the "Naturally Occurring" level of lead for any of the Products shall be determined as follows: any lead remaining in any Product after the Defendant has undertaken those actions required by paragraph 3.05 above shall be deemed "Naturally Occurring" within the meaning of Section 25501 of Title 27 of the California Code of Regulations and for purposes of this Agreement; provided, however, that the Naturally Occurring level of lead shall not exceed 5.5 micrograms for the Recommended Daily Servings for any specific Product that does not contain cocoa, and that the Naturally Occurring level of lead shall not exceed 6.5 micrograms for the Recommended Daily Servings for any specific Product that contains cocoa.

3.07 MODIFICATIONS TO INJUNCTIVE RELIEF. In the event of an act of God, natural disaster, change in law or other intervening event that results in a substantial change in circumstances, such that it is not Feasible for CytoSport to manufacture products with less than the amounts of lead, arsenic, or cadmium provided by this Agreement, CytoSport may file a Motion for Revision of Injunctive Relief Due to Changed Circumstances. CytoSport's Motion for Revision of Injunctive Relief Due to Changed Circumstances may be made pursuant to a noticed motion or by *ex parte application* to shorten time for the hearing on the motion, and Plaintiffs

agree not to oppose any such *ex parte* application to shorten time, provided that it is reasonable. The Motion must be supported by all necessary documentation and specify the reasons that it is no longer Feasible for CytoSport to comply with the terms of the Injunctive Relief under this Agreement. The Motion and all supporting documents shall be personally served on Class Counsel and the California Attorney General, or their designees, who shall be provided with an opportunity to oppose the Motion. The California Attorney General's office shall be provided at least 45 calendar days' notice of any such Motion. CytoSport shall not be deemed to be in violation of this Agreement as to the subject matter of any such Motion for the period such Motion in pending, provided that the Motion for Revision of Injunctive Relief Due to Changed Circumstances was made in good faith and supported by good cause, and CytoSport makes reasonable efforts to have the Motion determined as quickly as possible after the time period for review by the California Attorney General's office expires. Nothing in this Agreement shall prevent or limit CytoSport's rights to bring a motion at any time to seek to modify the terms of this Agreement for good cause, to the extent otherwise permitted by law.

3.08 CONFIRMATORY TESTING. Defendant shall conduct confirmatory testing on the top product by sales revenue for the preceding calendar year for each of the following categories of products for that calendar year: (1) ready-to-drink protein drinks containing cocoa; (2) ready-to-drink protein drinks not containing cocoa; (3) powdered protein drinks containing cocoa; (4) powdered protein drinks not containing cocoa; (5) protein bars; and (6) capsules. The confirmatory testing must be performed within six months of the Effective Date and repeated on the same date for each following year during the period which this Agreement is effective, to determine that the Products have been sold in compliance with this Agreement. The results of such confirmatory testing shall be reported to Class Counsel. If Defendant does not conduct confirmatory testing as required by this paragraph, Class Counsel may demand in writing to Defendant that such confirmatory testing be completed within sixty days, and if Defendant does not complete the confirmatory testing within the subsequent sixty-day period, Class Counsel may seek an order from the Court ordering such confirmatory testing and may seek reasonable

attorneys' fees (on an hourly basis) for obtaining such an order.

3.09 METHODOLOGY FOR TESTING AND COMPLIANCE. Any testing or review of any Product for conformance with his Agreement or with the requirements of Proposition 65 with respect to lead, arsenic, or cadmium, including but not limited to the confirmatory testing provided in Section 3.08, shall be done by testing a minimum of seven randomly selected lots of an individual Product. The number of servings per day to be used for any testing or review of any Product for conformance with this Agreement or with the requirements of Proposition 65 and shall be the Recommended Daily Servings as defined in this Agreement.

3.10 COMPLIANCE WITH PROPOSITION 65. Compliance by CytoSport for three years with the terms of this Agreement shall be deemed to constitute its full and complete compliance with Proposition 65 with respect to the provision of warnings for chemicals contained in or otherwise associated with the Products.

IV. EFFECTUATION OF SETTLEMENT

4.01 AMENDED COMPLAINT. The operative Third Amended Complaint is attached as Exhibit B to this Agreement.

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

4.03 CONFIRMATORY DISCOVERY. The Parties agree that Plaintiffs have conducted reasonable discovery regarding Defendant's efforts to reduce the amount of lead, cadmium, and arsenic in the Products. The parties agree that the testing and production

requirements set forth in this Agreement shall constitute reasonable continuing confirmatory discovery.

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

4.05 SETTLEMENT AGREEMENT VOID IF NOT APPROVED BY COURT OR IF OTHERWISE NOT EFFECTIVE. If the Settlement is not preliminarily approved by the Court, if the Settlement is not finally approved by the Court, or if for any other reason the Settlement Agreement does not become effective, the Settlement Agreement will be terminated, null, and void, and the Parties shall be returned to their respective positions as of the Settlement Agreement Date.

V. RESOLUTION AND RELEASE OF CLAIMS

5.01 RESOLUTION OF DISPUTE. The Settlement Agreement is intended to resolve the Dispute. The Settlement Agreement will be a final and binding resolution between Plaintiffs, on behalf of themselves and the Final Settlement Class, and Defendant, of the Dispute and any other statutory or common law claims that related in any way to the subject matter of the Litigation that were or could have been asserted by Plaintiffs against Defendant or purchasers or sellers of the Products up through the Settlement Agreement Date, 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 based on the 60-Day Notices. The Plaintiffs and the members of the Final Settlement Class hereby release CytoSport, their affiliates, officers, directors and employees and their suppliers, distributors, wholesales, and retailers from and against the claims described in this paragraph relating to the Products.

5.02 CLASS MEMBER RELEASE. Upon final approval of the settlement, all members of the 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 up to and including the Settlement Agreement Date, that relate to the subject matter of the Litigation. 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. The allegations under Proposition 65 relate to the chemicals cadmium, arsenic and lead, and do not extend to the presence of any other chemicals or substances that are not the subject matter of the Litigation.

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

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

VI. SETTLEMENT ADMINISTRATION & NOTICE

6.01 NOTICE. Upon Preliminary Approval of the Settlement, as the Court may direct, the Settlement Administrator shall cause the Class Notice to be disseminated to potential Settlement Class Members as provided herein. Notice shall be disseminated on or before the Notice Date. The Notice Date shall be mutually agreed by the Parties and shall be no later than

seventy-five (75) days following an order of preliminary approval of the settlement, unless additional time is necessary to prepare or place the notices described herein, or as otherwise agreed by the Parties or ordered by the Court. Copies of the proposed forms of Class Notice are attached as Exhibits C and D. The short form notice (Exhibit C) shall be published as a quarter-page ad as follows: 1) in 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 edition of the California distribution of the same national newspaper; 4) in a weekend edition of the California distribution of the same national newspaper; 5) in a monthly edition of Flex magazine (as a quarter-page ad or an attached insert card); and 6) in a monthly edition of Muscle & Body magazine (as a quarter-page ad or an attached insert card). In addition, Class Counsel and Defendant will issue a joint press release upon preliminary approval of the settlement. Such press release shall be provided to PR Newswire and shall be posted on the websites of both Class Counsel and Defendant. The short form notice (Exhibit C), the long form notice (Exhibit D), and the claim form (Exhibit E) shall be available on an internet website to be prepared by the Settlement Administrator. The press releases posted on the websites of Class Counsel and Defendant shall include a link to the Settlement Administrator's settlement website. The Settlement Administrator shall also set up a toll-free telephone number that a Class Member may call to obtain a copy of the long-form notice. In addition, Defendant has recently started selling certain Products directly to consumers through an online web store. Defendant shall provide contact information for any online web purchaser who purchased any Product before the Settlement Agreement Date to the Settlement Administrator, and the Settlement Administrator shall e-mail each such customer twice with the short-form notice, which shall include a link to the settlement website (or, if there is no valid e-mail address, the Settlement Administrator shall mail the short-form notice once to the postal address for any such customer). The Class Notice shall provide at least forty-five (45) days for a proposed member of the Class to opt out or object to the settlement, or to submit a claim form.

6.02 CONTENTS OF NOTICE. The Class Notice shall:

a. contain a short, plain statement of the background of the Action and the proposed Settlement;

b. describe the proposed Settlement relief as set forth in this Agreement;

c. inform Settlement Class Members that, if they do not exclude themselves from the Settlement Class, they may be eligible to receive relief;

d. describe the procedures for participating in the Settlement and advise Settlement Class Members of their rights, including their right to file a Claim to receive an Award under the Settlement, to opt out of same, or object thereto;

e. explain the scope of the Class Member Release, and the impact of the proposed Settlement on any existing litigation, arbitration or other proceeding;

f. state that any Award to Settlement Class Members under the Settlement is contingent on the Court's final approval of the proposed Settlement;

g. explain that neither Counsel for the Parties, nor the Settlement Administrator may advise on the tax consequences of participating or not participating in the Settlement;

h. explain the procedures for opting out of the Settlement and specifying that so-called "mass" or "class" opt outs shall not be allowed; and

i. provide that any objection to the Settlement and any papers submitted in support of said objection will be considered only if the Settlement Class Member making an objection has filed timely notice of his or her intention to do so, with the grounds for the objection, and has filed copies of such papers he or she proposes to submit at the Final Approval Hearing with the Clerk of the Court and served copies of such papers on Class Counsel and CytoSport's Counsel on or before the Opt Out and Objection Date, as approved by the Court and specified in the Class Notice.

6.03 OBJECTING TO SETTLEMENT. Any Settlement Class Member who intends to object must do so on or before the Opt Out and Objection Date. In order to object, the

Settlement Class Member must include in the objection filed with the Court and served on Class Counsel and CytoSport's Counsel: (a) the name, address, telephone number of the Person objecting and, if represented by counsel, of his/her counsel; and (b) a receipt or other acceptable proof of purchase of a Product, as set forth herein. An objecting Settlement Class Member must state, specifically and in writing, all objections and the basis for any such objections, and provide a statement of whether he/she intends to appear at the Final Approval Hearing, either with or without counsel. Any Settlement Class Member who fails to file and serve timely a written objection and notice of his or her intent to appear at the Final Approval Hearing pursuant to this Section, as detailed in the Notice, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

6.04 DOCUMENTATION OF NOTICE GIVEN. Prior to the Final Approval Hearing, the Settlement Administrator shall provide to the Court documentation that Notice was provided in accordance with the Notice Program.

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

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

/ / /

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

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

VII. ATTORNEYS' FEES, COSTS & INCENTIVE AWARDS

7.01 AMOUNT OF ATTORNEYS' FEES AND EXPENSES. Class Counsel agrees to make, and CytoSport agrees not to oppose, an application for an award to Class Counsel of fees in a total amount not to exceed $2,600,000 and expenses in a total amount not to exceed $30,000 ("Fees Amount"). The Parties agreed to the Fees Amount after reaching agreement upon all other material terms of this Settlement. Such fees and expenses will be paid by CytoSport subject to the conditions of this Section. An initial payment of $1,600,000, plus any awarded expenses (up to $30,000) shall be paid within ten (10) court days after Final Approval. An additional $250,000 shall be paid every 90 calendar days thereafter, until the total of up $2,600,000 (plus up to $30,000 for expenses) has been paid. In the event that the Court approves less than $2,600,000 in fees, CytoSport shall have no obligation to pay more than the amount ordered by the Court, and shall make payments according to this schedule until the full amount ordered by the Court (up to $2,600,000) has been paid. If the Final Judgment or order approving settlement is reversed, vacated, modified, and/or remanded for further proceedings or otherwise disposed of in any manner other than one resulting in affirmance of the Final Judgment and Order Approving Settlement as to any matter other than a reduction of the Fees Amount, or if CytoSport or Class Counsel properly or timely terminates this agreement in connection with Section 4.04, of this Agreement, then Class Counsel shall within (10) business days return to CytoSport the Fees Amount in its entirety. If the Fees Amount is reduced after entry of the Final Judgment and order

approving settlement, then Class Counsel shall within ten (10) business days return to CytoSport the amount by which the Fees Amount has been reduced.

Pearson, Simon, Warshaw & Penny LLP shall be liable to CytoSport for 50% of any return of the Fees Amount. Howard Rubinstein and the Whatley Drake & Kallas, LLC shall be jointly and severally liable for 50% of the return of the Fees Amount. Any return of the Fees Amount under this Section shall be increased by interest accrued at the Federal Funds Rate from the date of payment of the Fees Amount to Class Counsel.

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

7.03 DEFENDANT NOT LIABLE FOR ADDITIONAL FEES OR EXPENSES. CytoSport shall not be liable for any additional fees or expenses of any named plaintiff or Settlement Class Member in connection with the Dispute. Class counsel agree that they will not seek any additional fees or costs from CytoSport in connection with the settlement of the Dispute. CytoSport agrees that it will not seek to recover its court costs, attorneys' fees, or expenses once the Court enters a dismissal of the Action pursuant to this Agreement.

VIII. MISCELLANEOUS PROVISIONS

8.01 EXTENSIONS OF TIME. Unless otherwise ordered by the Court herein, the Parties may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement.

8.02 GOVERNING LAW. This Agreement shall be construed in accordance with, and be governed by, the laws of the State of California, without regard to the principles thereof regarding choice of law.

8.03 JURISDICTION. For purposes of this Agreement and Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations that are the subject of the

Dispute, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction to approve this Agreement and enter a Judgment accordingly. No public prosecutor has commenced an action regarding the matters raised in the 60-Day Notices.

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

8.05 GENDER AND PLURALS. As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

8.06 HEADINGS. The headings in this Agreement are for convenience or reference only, and shall not limit or otherwise affect the meaning of this Agreement.

8.07 SURVIVAL OF WARRANTIES AND REPRESENTATIONS. The warranties and representations of this Agreement are deemed to survive the date of execution hereof.

8.08 REPRESENTATIVE CAPACITY. Each person executing this Agreement in a representative capacity represents and warrants that he or she is empowered to do so.

8.09 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts.

8.10 COOPERATION OF PARTIES. The Parties to this Agreement agree to prepare and execute all documents, to seek Court approval, to defend Court approval, and to do all things reasonably necessary to complete the Settlement described in this Agreement.

8.11 ENTIRE AGREEMENT. The Parties declare and represent that no promise, inducement or other agreement has been made conferring any benefit upon any party except those contained herein and that this Agreement contains the entire agreement pertaining to the subject matter. This Agreement supersedes any prior or contemporaneous negotiations, representations,

agreements and understandings of the Parties with respect to such matters, whether written or oral. Parol evidence shall be inadmissible to show agreement by, between, or among the Parties to any term of condition contrary to or in addition to the terms and conditions contained in this Consent Judgment. The parties acknowledge that each has not relied on any promise, representation or warranty, expressed or implied, not contained in this Agreement.

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

8.13 MOTION FOR APPROVAL. Following the execution of this Agreement by the Parties, counsel for Plaintiffs shall promptly prepare and submit to the Court a motion seeking the court's approval of this Agreement.

8.14 ENTRY OF STIPULATION FOR ENTRY OF CONSENT JUDGMENT REQUIRED. This Agreement and any resulting Judgment shall be null and void, and without any force or effect, unless fully approved as required by law and entered by the Court. If the Court does not approve this Agreement and enter a Judgment accordingly, the execution thereof by CytoSport and Plaintiff shall not be construed as an admission by CytoSport of any fact, issue of law, or violation of law.

8.15 REPORTING REQUIREMENTS. Plaintiff shall comply with the reporting form requirements referred to in Health and Safety Code section 25249.7(f) and established in the California Code of Regulations sections 3000-3008.

8.16 NON-INTERFERENCE IN SETTLEMENT APPROVAL PROCESS. The Parties will cooperate, as well as use their respective best efforts to secure the Attorney General's

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

Dated: January 25, 2012

CYTOSPORT, INC.

By: Bobbie White

Title: VP Legal

Dated: January___, 2012

FARBOD NASSERI

_____

Farbod Nasseri

Dated: January___, 2012

MICHAEL R. ROMERO

_____

Michael R. Romero

Dated: January___, 2012

KEVIN G. PETERS

_____

Kevin G. Peters

Dated: January___, 2012

ZACHARY HALLSTROM

_____

Zachary Hallstrom

APPROVED AS TO FORM:

Dated: January___, 2012

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

By: _____
DANIEL L. WARSHAW
Attorneys for Plaintiffs Farbod Nasseri, Michael R. Romero, and Kevin G. Peters, on behalf of themselves and others similarly situated

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

Dated: January___, 2012

CYTOSPORT, INC.

By: _____

Title: _____

Dated: January 25, 2012

FARBOD NASSERI

Farbod Nasseri

Farbod Nasseri

Dated: January___, 2012

MICHAEL R. ROMERO

_____

Michael R. Romero

Dated: January___, 2012

KEVIN G. PETERS

_____

Kevin G. Peters

Dated: January___, 2012

ZACHARY HALLSTROM

_____

Zachary Hallstrom

APPROVED AS TO FORM:

Dated: January 25, 2012

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

By: Daniel L. Warshaw
DANIEL L. WARSHAW
Attorneys for Plaintiffs Farbod Nasseri, Michael R. Romero, and Kevin G. Peters, on behalf of themselves and others similarly situated

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

Dated: January___, 2012

CYTOSPORT, INC.

By: _____

Title: _____

Dated: January___, 2012

FARBOD NASSERI

_____

Farbod Nasseri

Dated: January 25, 2012

MICHAEL R. ROMERO

_____

Michael R. Romero

Dated: January 25th, 2012

KEVIN G. PETERS

_____

Kevin G. Peters

Dated: January___, 2012

ZACHARY HALLSTROM

_____

Zachary Hallstrom

APPROVED AS TO FORM:

Dated: January___, 2012

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CLIFFORD H. PEARSON
DANIEL L. WARSHAW
BOBBY POUYA

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

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Dated: January___, 2012

CYTOSPORT, INC.

By: _____

Title: _____

Dated: January___, 2012

FARBOD NASSERI

_____

Farbod Nasseri

Dated: January___, 2012

MICHAEL R. ROMERO

_____

Michael R. Romero

Dated: January___, 2012

KEVIN G. PETERS

_____

Kevin G. Peters

Dated: January 25, 2012

ZACHARY HALLSTROM

_____

Zachary Hallstrom

APPROVED AS TO FORM:

Dated: January___, 2012

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

By: _____
DANIEL L. WARSHAW
Attorneys for Plaintiffs Farbod Nasseri, Michael R. Romero, and Kevin G. Peters, on behalf of themselves and others similarly situated

Dated: January 25, 2012

JACKSON LAW GROUP
MATTHEW E. JACKSON

By: _____
MATTHEW E. JACKSON
Attorneys for Plaintiffs Farbod Nasseri, Michael R. Romero, and Kevin G. Peters, on behalf of themselves and others similarly situated

Dated: January___, 2012

WHATLEY DRAKE & KALLAS, LLC
PATRICK J. SHEEHAN

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

Dated: January___, 2012

LAW OFFICES OF HOWARD RUBINSTEIN
HOWARD RUBINSTEIN

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

Dated: January___, 2012

NEWPORT TRIAL GROUP
ROGER BORG

By: _____
ROGER BORG
Attorneys for Plaintiff Zachary Hallstrom

Dated: January___, 2012

JACKSON LAW GROUP
MATTHEW E. JACKSON

By: _____
MATTHEW E. JACKSON
Attorneys for Plaintiffs Farbod Nasseri, Michael R. Romero, and Kevin G. Peters, on behalf of themselves and others similarly situated

Dated: January 25, 2012

WHATLEY DRAKE & KALLAS, LLC
PATRICK J. SHEEHAN

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

Dated: January___, 2012

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

Dated: January___, 2012

NEWPORT TRIAL GROUP
ROGER BORG

By: _____
ROGER BORG
Attorneys for Plaintiff Zachary Hallstrom

Dated: January___, 2012

JACKSON LAW GROUP
MATTHEW E. JACKSON

By: _____
MATTHEW E. JACKSON
Attorneys for Plaintiffs Farbod Nasseri, Michael R. Romero, and Kevin G. Peters, on behalf of themselves and others similarly situated

Dated: January___, 2012

WHATLEY DRAKE & KALLAS, LLC
PATRICK J. SHEEHAN

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

Dated: January 25, 2012

LAW OFFICES OF HOWARD RUBINSTEIN
HOWARD RUBINSTEIN

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

Dated: January___, 2012

NEWPORT TRIAL GROUP
ROGER BORG

By: _____
ROGER BORG
Attorneys for Plaintiff Zachary Hallstrom

Dated: January___, 2012

JACKSON LAW GROUP
MATTHEW E. JACKSON

By: _____
MATTHEW E. JACKSON
Attorneys for Plaintiffs Farbod Nasseri, Michael R. Romero, and Kevin G. Peters, on behalf of themselves and others similarly situated

Dated: January___, 2012

WHATLEY DRAKE & KALLAS, LLC
PATRICK J. SHEEHAN

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

Dated: January___, 2012

LAW OFFICES OF HOWARD RUBINSTEIN
HOWARD RUBINSTEIN

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

Dated: January 25, 2012

NEWPORT TRIAL GROUP
ROGER BORG

By: Roger Borg
ROGER BORG
Attorneys for Plaintiff Zachary Hallstrom

Dated: January 25, 2012

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

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

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 Rasperry 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

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

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

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

(Additional Counsel Listed on Signature Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL 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** **PLAINTIFFS' THIRD AMENDED COMPLAINT FOR:** **1. NEGLIGENT MISREPRESENTATION;** **2. FRAUDULENT CONCEALMENT;** **3. VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT (CAL. CIVIL CODE §§ 1750 *ET SEQ.*);** **4. UNLAWFUL, FRAUDULENT & UNFAIR BUSINESS PRACTICES (CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.*); and** **5. VIOLATION OF PROPOSITION 65 (CAL. HEALTH & SAFETY CODE §§ 25249.5 *ET SEQ.*)** **DEMAND FOR JURY TRIAL** Assigned to the Honorable Carl J. West (CCW-Dept. 322)

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

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

INTRODUCTION

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

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

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

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

THE PARTIES

A. The Plaintiffs:

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

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

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

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

B. The Defendants:

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

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

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

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

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

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

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

II. JURISDICTION AND VENUE

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

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

III. FACTUAL ALLEGATIONS

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

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

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

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

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

> "YOU ARE WHAT YOU EAT. AND OUR PRODUCTS PROVIDE A FUNCTIONAL BLEND OF SCIENCE AND SATISFACTION THAT KEEP YOUR BODY IN MOTION AND YOUR LIFE IN BALANCE. HEALTHY SHOULD TASTE GOOD."[1]

20. CYTOSPORT also makes representations concerning the safety and quality of its Products and offers consumers, "peace of mind knowing the safety, efficacy,

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[1] *See* Healthier, *available at* http://www.cytosport.com/goals/healthier.

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and authenticity of the CytoSport brands is a given." CYTOSPORT further represents that:

> "CytoSport products are a completely safe, effective, and legal alternative trusted by athletes worldwide who demand the highest level of performance from themselves and from the nutritional support products they use."[2]

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

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

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[2] *See* Behind Our Product, *available at* http://www.cytosport.com/about/history.

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

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

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

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

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

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

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

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

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

CLASS ACTION ALLEGATIONS

28. Plaintiff brings this action individually and as a class action on behalf of the following Class:

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All individuals in the United States who purchased one or more products manufactured by or on behalf of Defendant, including but not limited to all Muscle Milk®, 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 January 5, 2012. Excluded from the Class are Defendant, its parent companies, subsidiaries and affiliates, any alleged co-conspirators, distributors or sellers of the Products or their subsidiaries and affiliates, all governmental entities, and any Judges or Justices assigned to hear any aspect of this action or their families.

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

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

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

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

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

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

d. Whether Defendants have engaged in conduct which constitutes

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fraudulent concealment;

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION

(Plaintiffs and the Class Against All Defendants)

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

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

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

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

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determining whether to purchase and consume Defendants' Products.

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

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

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

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

SECOND CAUSE OF ACTION

FRAUDULENT CONCEALMENT

(Plaintiffs and the Class Against All Defendants)

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

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

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

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consume Defendants' Products.

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

THIRD CAUSE OF ACTION

VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT

(CAL. CIV. CODE §§ 1750 *ET SEQ.*)

(Plaintiffs and the Class Against All Defendants)

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

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

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

UNLAWFUL, FRAUDULENT & UNFAIR BUSINESS PRACTICES

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

(Plaintiffs and the Class Against All Defendants)

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

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

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

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

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

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

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

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

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

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

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

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

method of exposure is through ingestion.

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

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

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

PRAYER FOR RELIEF

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

1. For an order certifying the Class, and appointing Plaintiffs and his counsel to represent the Class;

2. For damages suffered by Plaintiffs and the Class;

3. For restitution to Plaintiffs and the Class of all monies wrongfully obtained by the Defendants;

4. For preliminary and injunctive relief requiring Defendants to accurately represent the qualities of their Products;

5. For reasonable attorneys' fees as permitted under California Code of Civil Procedure § 1021.5, California Civil Code § 1780 (e) or other applicable statutes;

6. For punitive damages (second cause of action only);

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7. For Plaintiffs' costs incurred;

8. For prejudgment interest; and

9. For such other and further relief which the court deems just and proper.

DATED: JAN. 6, 2012

By: Daniel Warshaw
DANIEL L. WARSHAW

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DEMAND FOR JURY TRIAL

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

DATED: JAN 6, 2012

By: Daniel Warshaw
DANIEL L. WARSHAW

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

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 that CytoSport did not adequately inform consumers that certain products, including Muscle Milk® and Monster Milk®, allegedly contained lead, cadmium, and/or arsenic. 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 by accredited third parties. Plaintiffs' Complaint does not allege that CytoSport violated the Food, Drug and Cosmetics Act. 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 January 5, 2012. A list of qualifying products and other details of the proposed settlement are available by calling [**telephone**] or online at www.[**website**].com.

What Does The Settlement Provide?

Qualifying households may submit an original receipt or product packaging for products purchased between June 4, 2006 and April 8, 2011 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 January 5, 2012. 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, and arsenic 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.[**website**].com. Although you are not required to do so, you may retain your own attorney if you stay in the Class and so desire. 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, call [**telephone**] or visit www.[**website**].com. **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.

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 Nasseri 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]**, 2012.
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]**, 2012.
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]**, 2012. Even if you object to the settlement, you still must submit a valid claim form by **[DATE]**, 2012 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]**, 2012. The Final Settlement Hearing will be held on **[DATE]**, 2012 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]**, 2012 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 January 5, 2012. 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, and/or arsenic 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 January 5, 2012:

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

Product(s)	Flavor/Version[i]
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 Batter, 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 April 8, 2011 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 April 8, 2011 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.[**website**].com) or contacting the Settlement Administrator at [**number**].

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 January 5, 2012 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], 2012. 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 parties have agreed that Defendant will make a charitable donation of $25,000 to the California Public Health Trust, which shall establish a fund to educate and inform the public on the benefits and dangers of dietary supplements.

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 4.1 micrograms of cadmium, 10 micrograms of arsenic, in the recommended daily servings of each product, unless Defendant provides a warning as required by Proposition 65. Defendant has further 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 6 micrograms of lead if the product does not contain cocoa and 7 micrograms of lead if the product contains cocoa the recommended daily servings of each product unless a warning is provided pursuant to Proposition 65.

Defendant also has agreed to implement a Lead, Cadmium of Arsenic Reduction Plans 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 Nasseri, 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], 2012, 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. You will be responsible for any fees and costs charged by your attorney. Your attorney must file an Appearance, no later than [DATE], 2012, 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], 2012. Even though you are represented by your own attorney, you will continue to be a Class member.

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 January 5, 2012 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 January 5, 2012; (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], 2012 and received by the parties no later than [DATE], 2012, 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 January 5, 2012 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 January 5, 2012; 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], 2012, 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 lead, arsenic and/or cadmium 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 lead, arsenic and/or cadmium 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], 2012 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 January 5, 2012 for personal or household use.

To determine if the protein products you purchased is covered by the settlement, go to wwwcytosportsettlement.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 April 8, 2011, 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 April 8, 2011) 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 under the laws of the State of California that the Participating Class Member purchased any of the Products after June 4, 2006 and on or before January 5, 2012 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 _____, 2012.

> **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 April 8, 2011, 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 April 8, 2011) 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 no receipt or product packaging required **Please also check either "Yes" or "No" where indicated below.**

Do you declare under penalty of perjury under the laws of the State of California that you purchased one or more CytoSport Products after June 4, 2006 and on or before January 5, 2012?
__ 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 declare under penalty of perjury under the laws of the State of California 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 January 5, 2012, including, but not limited to, any claims for attorneys' fees and costs that relate to the subject matter of the litigation. 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. The allegations under Proposition 65 relate to the chemicals cadmium, arsenic and lead, and do not extend to the presence of any other chemicals or substances that are not the subject matter of the Litigation.