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**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

**FIRST AMENDMENT TO SECOND
AMENDED SETTLEMENT
AGREEMENT, RELEASE, AND
CONSENT JUDGMENT**

Assigned to the Honorable Kenneth Freeman
(CCW-Dept. 322)

[Complaint Filed: June 4, 2010]

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**FIRST AMENDMENT TO AMENDED SETTLEMENT AGREEMENT,
RELEASE, AND CONSENT JUDGMENT**

The following parties to the Second Amended Settlement Agreement, Release, and Consent Judgment (“Agreement”) hereby agree to this First Amendment to the Agreement (“Amendment”): (1) Defendant CytoSport Inc., a California Corporation; (2) Plaintiff Farbod Nasser, an individual; (3) Plaintiff Michael R. Romero, an individual; (4) Plaintiff Kevin G. Peters, an individual; (5) Zachary Hallstrom, an individual; and (6) Plaintiffs Nasser, Romero and Peters as representatives of the “Settlement Class,” as defined in the Agreement. All definitions in the Agreement shall apply to this Amendment.

RECITALS

This Amendment is made for the following purposes and with reference to the following facts, in addition to those set forth in the Agreement:

A. On January 6, 2012, Plaintiffs and Defendant executed an Amended Settlement Agreement, Release, and Consent Judgment.

B. On January 25, 2012, Plaintiffs and Defendant executed a Second Amended Settlement Agreement, Release and Consent Judgment;

C. On January 27, 2012, the Court issued an Order Granting Conditional Certification of the Settlement Class, Approval of Forms and Methods of Notice, and Preliminary Approval of Class Settlement.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the Parties, and each of them, hereby agree that the Second Amended Settlement Agreement, Release, and Consent Judgment executed on January 25, 2012 shall be amended as follows, subject to approval by the Court:

1 Section 2.05 of the Agreement shall be deleted and replaced with the following:

2 2.05 CHARITABLE DONATION. In lieu of civil penalties, Defendant shall
3 make a charitable donation of \$25,000 to Public Health Law & Policy. In addition, if the total
4 amount paid to Participating Class Members in the aggregate (combining payments made pursuant
5 to Paragraphs 2.02, 2.03, and 2.04) is less than \$75,000, Defendant shall make a further charitable
6 donation to Public Health Law & Policy in the amount of \$75,000 minus the total amount paid to
7 Participating Class Members in the aggregate (combining payments made pursuant to Paragraphs
8 2.02, 2.03, and 2.04) (e.g., if the total aggregate payments to Participating Class Members are
9 \$65,000, Public Health Law & Policy shall receive an additional \$10,000).

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Section 3.06 of the Agreement shall be deleted and replaced with the following:

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:

(a) For the period from the Effective Date until the end of 18 months after the Effective Date, the following amounts of lead 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, in each of the following ingredients; 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:

| 1 2 3 | Ingredient(s) | Naturally Occurring Allowance (ppm) First 18 Months |
|-------------|----------------------------|--|
| 4 | Citric Acid | 0.010 |
| 5 | Malic Acid | 0.010 |
| 6 | Amino Acids | 0.040 |
| 7 | Dextrose | 0.010 |
| 8 | Fructose | 0.015 |
| 9 | Food Starch | 0.030 |
| 10 | Waxy Maize Starch | 0.020 |
| 11 | Chicory Inulin | 0.020 |
| 12 | Maltodextrin | 0.025 |
| 13 | Canola Oil | 0.020 |
| 14 | Medium Chain Triglycerides | 0.015 |
| 15 | Sunflower Oil | 0.015 |
| 16 | Soy Lecithin Oil | 0.025 |
| 17 | Soy Lecithin Powder | 0.025 |
| 18 | Cocoa Powder | 0.460 |
| 19 | Flavors | 0.030 |
| 20 | Guar Gum | 0.300 |
| 21 | Cellulose Gum and Gel | 0.060 |
| 22 | Carrageenan | 0.800 |
| 23 | Xanthan Gum | 0.500 |
| 24 | Magnesium phosphates | 0.065 |
| 25 | Sodium phosphates | 0.030 |
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| Ingredient(s) | Naturally Occurring Allowance (ppm) First 18 Months |
|---|---|
| Potassium phosphates | 0.200 |
| Potassium Citrate | 0.030 |
| Salt | 0.020 |
| Sodium Bicarbonate | 0.020 |
| Sodium Hexametaphosphates | 0.190 |
| Potassium Bicarbonate | 0.060 |
| Sodium Citrate | 0.030 |
| Natural Colors From Fruits and Veg. Powders/Juice | 0.110 |
| Silica Dioxide | 0.500 |
| Casein / Caseinate (Na, Ca, K) | 0.060 |
| Micellar Casein | 0.060 |
| Milk Protein (Isolate, Concentrate) | 0.060 |
| Whey Proteins (Concentrate, Isolate, Hydrolysate) | 0.060 |

(b) For the period following 18 months after the Effective Date, the following amounts of lead 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, in each of the following ingredients; provided, however, that the Naturally Occurring level of lead shall not exceed 5.0 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 6.0 micrograms for the Recommended Daily Servings for any specific Product that contains cocoa:

| 1 2 3 | Ingredient(s) | Naturally Occurring Allowance (ppm) After 18 Months |
|-------------|----------------------------|--|
| 4 | Citric Acid | 0.005 |
| 5 | Malic Acid | 0.005 |
| 6 | Amino Acids | 0.030 |
| 7 | Dextrose | 0.005 |
| 8 | Fructose | 0.010 |
| 9 | Food Starch | 0.030 |
| 10 | Waxy Maize Starch | 0.010 |
| 11 | Chicory Inulin | 0.010 |
| 12 | Maltodextrin | 0.020 |
| 13 | Canola Oil | 0.010 |
| 14 | Medium Chain Triglycerides | 0.010 |
| 15 | Sunflower Oil | 0.010 |
| 16 | Soy Lecithin Oil | 0.010 |
| 17 | Soy Lecithin Powder | 0.015 |
| 18 | Cocoa Powder | 0.400 |
| 19 | Flavors | 0.020 |
| 20 | Guar Gum | 0.200 |
| 21 | Cellulose Gum and Gel | 0.040 |
| 22 | Carrageenan | 0.500 |
| 23 | Xanthan Gum | 0.200 |
| 24 | Magnesium phosphates | 0.050 |
| 25 | Sodium phosphates | 0.020 |
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| Ingredient(s) | Naturally Occurring Allowance (ppm) After 18 Months |
|---|---|
| Potassium phosphates | 0.150 |
| Potassium Citrate | 0.025 |
| Salt | 0.015 |
| Sodium Bicarbonate | 0.020 |
| Sodium Hexametaphosphates | 0.150 |
| Potassium Bicarbonate | 0.040 |
| Sodium Citrate | 0.025 |
| Natural Colors From Fruits and Veg. Powders/Juice | 0.100 |
| Silica Dioxide | 0.500 |
| Casein / Caseinate (Na, Ca, K) | 0.050 |
| Micellar Casein | 0.050 |
| Milk Protein (Isolate, Concentrate) | 0.050 |
| Whey Proteins (Concentrate, Isolate, Hydrolysate) | 0.050 |

Dated: June 1, 2012

CYTOSPORT, INC.

By: *Robert White*

Title: *VP Legal*

1 Dated: June 1, 2012

FARBOD NASSERI

Farbod Nasser
Farbod Nasser

5 Dated: June __, 2012

MICHAEL R. ROMERO

Michael R. Romero
Michael R. Romero

9 Dated: June __, 2012

KEVIN G. PETERS

Kevin G. Peters
Kevin G. Peters

13 Dated: June __, 2012

ZACHARY HALLSTROM

Zachary Hallstrom
Zachary Hallstrom

18 APPROVED AS TO FORM:

19 Dated: June __, 2012

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

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

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1 Dated: June ___, 2012

FARBOD NASSERI

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Farbod Nasseri

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5 Dated: June 1, 2012

MICHAEL R. ROMERO

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Michael R. Romero

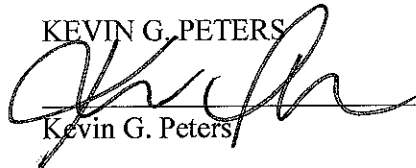
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9 Dated: June 1st, 2012

KEVIN G. PETERS

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Kevin G. Peters

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14 Dated: June ___, 2012

ZACHARY HALLSTROM

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Zachary Hallstrom

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Dated: June ___, 2012

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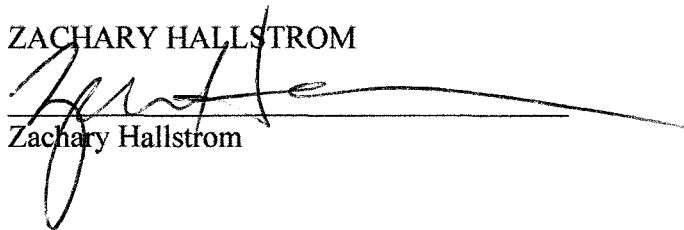
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Dated: June 1, 2012

JACKSON LAW GROUP
MATTHEW E. JACKSON

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

Dated: June ____, 2012

WHATLEY DRAKE & KALLAS, LLC
PATRICK J. SHEEHAN

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

Dated: June ____, 2012

LAW OFFICES OF HOWARD RUBINSTEIN
HOWARD RUBINSTEIN

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

Dated: June ____, 2012

NEWPORT TRIAL GROUP
SCOTT J. FERRELL
ROGER BORG

By: _____
SCOTT J. FERRELL
Attorneys for Plaintiff Zachary Hallstrom

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Dated: June __, 2012

JACKSON LAW GROUP
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Dated: June 1, 2012

WHATLEY DRAKE & KALLAS, LLC
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By:  _____
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Dated: June __, 2012

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Dated: June __, 2012

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Attorneys for Plaintiff Zachary Hallstrom

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Dated: June __, 2012

WHATLEY DRAKE & KALLAS, LLC
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Dated: June 4, 2012

LAW OFFICES OF HOWARD RUBINSTEIN
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Dated: June __, 2012

NEWPORT TRIAL GROUP
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By: _____
SCOTT J. FERRELL
Attorneys for Plaintiff Zachary Hallstrom

1 Dated: June ___, 2012

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By: _____
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Romero, and Kevin G. Peters, on behalf of themselves
and others similarly situated

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7 Dated: June ___, 2012

WHATLEY DRAKE & KALLAS, LLC
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Romero, and Kevin G. Peters, on behalf of themselves
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14 Dated: June ___, 2012

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By:  _____
SCOTT J. FERRELL
Attorneys for Plaintiff Zachary Hallstrom

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1 Dated: June 1, 2012

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

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

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