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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 1-100, inclusive,

Defendant.

CASE NO. BC439181

CLASS ACTION

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

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

[Complaint Filed: June 4, 2010]

1 purchase order is issued by CytoSport in exchange for Ingredients.

2 1.25 The term “Manufacturer” means a person or business that manufactures goods
3 or owns a factory.

4 Sections 3.02, 3.03, and 3.04 shall be amended to delete the words “For a period of three
5 years from the Effective Date.”

6 The portion of the First Amendment to Second Amended Settlement Agreement, Release, and
7 Consent Decree concerning Section 3.06 of the Agreement is null and void.

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

9 3.06 NATURALLY OCCURRING LEVELS OF LEAD. For purposes of this
10 Agreement, the “Naturally Occurring” level of lead for the Recommended Daily Servings of each
11 Product shall be determined by multiplying the amount of the Ingredient in the Recommended Daily
12 Servings of the Product times the Naturally Occurring concentration of lead for the Ingredient, as set
13 out in the chart below. The sum of all of the Naturally Occurring levels of lead for each Ingredient in
14 the Recommended Daily Servings of the Product shall constitute the Naturally Occurring level of
15 lead for the Recommended Daily Servings of the Product. For example, if the Recommended Daily
16 Servings of a specific product contained 2 grams of cocoa powder with an allowance of 0.400 parts
17 per million (ppm), 2 grams of amino acids with an allowance of 0.020 ppm, and 1 gram of elemental
18 calcium with an allowance of 0.800 ppm, that specific product would be deemed to have a Naturally
19 Occurring allowance of 1.64 micrograms of lead for the Recommended Daily Servings of the Product
20 ((2 g * 0.400 ppm) + (2 g * 0.020 ppm) + (1 g * 0.800 ppm)); provided, however, that the Naturally
21 Occurring level of lead shall not exceed 3.5 micrograms for the Recommended Daily Servings for
22 any specific Product that does not contain cocoa, and that the Naturally Occurring level of lead shall
23 not exceed 4.5 micrograms for the Recommended Daily Servings for any specific Product that
24 contains cocoa:

Ingredient(s)	Naturally Occurring Concentration (ppm)
Amino Acids	0.020

Ingredient(s)	Naturally Occurring Concentration (ppm)
Maltodextrin	0.005
Cocoa Powder	0.400
Cellulose Gum and Gel	0.010
Carrageenan	0.200
Magnesium phosphates	0.015
Potassium phosphates	0.050
Sodium Hexametaphosphates	0.050
Potassium Bicarbonate	0.010
Sodium Citrate	0.025
Casein / Caseinate (Na, Ca, K)	0.050
Milk Protein (Isolate, Concentrate)	0.030
Whey Proteins (Concentrate, Isolate, Hydrolysate)	0.020
Flavorings	0.020
Potassium Chloride*	1.100
Magnesium Oxide*	0.400
Calcium (Elemental)* (The calcium naturally occurring allowance shall not exceed 1.2 micrograms for the Recommended Daily Servings of any Product.)	0.800
Ferrous Fumarate*	0.400
Zinc Oxide*	8.000
Magnesium Carbonate*	0.332
Magnesium Hydroxide*	0.400
Zinc Gluconate*	0.800

The Naturally Occurring concentrations for the Ingredients marked with an asterisk (*) are based on the consent judgment entered in the case *People v. Warner Lambert Co. et al.*, San Francisco

1 Superior Court Case No. 984503 (“*Warner Lambert*”), as amended on July 18, 2011. The Parties
2 agree that, if the Attorney General obtains a modification of the naturally occurring concentrations set
3 forth in the *Warner Lambert* consent judgment, the Parties shall deem this agreement amended to
4 incorporate those modified naturally occurring concentrations. The Attorney General shall provide
5 CytoSport with written notice of any judicially approved modifications to the *Warner Lambert*
6 consent judgment by providing Defendant with a copy of any such modification via certified mail at
7 CytoSport, Inc., Attn: VP – Legal and Regulatory, 4795 Industrial Way, Benicia, CA 94510, or such
8 other address as CytoSport shall designate. No such modifications shall apply to this Agreement
9 until at least 60 days after Defendant receives such notification.

10 Section 3.07 shall be deleted and replaced with the following:

11 3.07 MODIFICATIONS TO INJUNCTIVE RELIEF

12 (a) Should any of the Plaintiffs or the Attorney General reach a judicially approved settlement
13 or obtain a binding judicial disposition with or concerning any other defendant, person, or entity in
14 any threatened, pending or future lawsuits involving claims of Proposition 65 violations based on
15 exposures to lead, cadmium, and/or arsenic, in products that are competitors to Defendants’ products
16 covered by the Agreement, including but not limited to protein products, that permits injunctive relief
17 that is different from the injunctive relief provided by the Agreement, Defendant shall, at its
18 discretion, notify Plaintiffs that it intends to comply with this Agreement by complying with the
19 injunctive relief provided in such other judicially approved settlement or binding judicial disposition.
20 In that event, the Parties shall stipulate that this Settlement will be modified to allow Defendant to
21 comply with the injunctive relief requirements of the Agreement in the manner prescribed in such
22 other judicially approved settlement or binding judicial disposition.

23 (b) In the event of an act of God, natural disaster, change in law, modification of the naturally
24 occurring concentrations set forth in the *Warner Lambert* consent judgment, or other intervening
25 event that results in a substantial change in circumstances, such that it is not Feasible for CytoSport to
26 manufacture products with less than the amounts of lead, arsenic, or cadmium provided by this
27 Agreement, CytoSport may file a Motion for Revision of Injunctive Relief Due to Changed
28 Circumstances. Any Motion made pursuant to this subparagraph (b) must be supported by all

1 necessary documentation and specify the reasons that it is no longer Feasible for CytoSport to comply
2 with the terms of the Injunctive Relief under this Agreement. In the event that such motion is made
3 on the basis of an act of God or natural disaster, CytoSport shall not be deemed to be in violation of
4 this Agreement as to the subject matter of any such Motion for the period such Motion in pending,
5 provided that the Motion for Revision of Injunctive Relief Due to Changed Circumstances was made
6 in good faith, and CytoSport makes reasonable efforts to have the Motion determined without undue
7 delay.

8 (c) CytoSport may also file a Motion for Revision of Injunctive Relief Due to Changed
9 Circumstances if any court approves a settlement or consent judgment or issues a binding judgment
10 involving claims of Proposition 65 violations with respect to lead, cadmium, and/or arsenic in any
11 products that are competitors to any of Defendants' Products covered by the Agreement (including
12 but not limited to protein products). CytoSport may also file a Motion for Revision of Injunctive
13 Relief due to Changed Circumstances if the Attorney General enters into a binding agreement
14 involving claims of Proposition 65 violations with respect to lead, cadmium and/or arsenic in any
15 products that are competitors to any of Defendants Products covered by the Agreement, including but
16 not limited to protein products. Among other things, CytoSport may request as relief in any Motion
17 brought pursuant to this subparagraph (c) that the injunctive relief provided in the Agreement be
18 modified to be consistent with the injunctive relief provided in the other judicially approved
19 settlement, consent judgment, other binding judicial disposition, or binding agreement entered into by
20 the Attorney General.

21 (d) CytoSport's Motion for Revision of Injunctive Relief Due to Changed Circumstances may
22 be made pursuant to a normally noticed motion or by *ex parte application* to shorten time for the
23 hearing on the motion, and Plaintiffs agree not to oppose any such *ex parte* application to shorten
24 time, provided that it is reasonable. The Motion and all supporting documents shall be served on
25 Class Counsel and the California Attorney General, or their designees, who shall be provided with an
26 opportunity to oppose the Motion. The California Attorney General's office shall be provided at least
27 45 calendar days' notice of any such Motion. Nothing in this provision shall prevent the Plaintiffs or
28 the Attorney General from opposing such a Motion for Revision of Injunctive Relief.

1 (e) Nothing in this Agreement shall prevent or limit CytoSport's rights to bring a motion at
2 any time to seek to modify the terms of this Agreement for good cause, to the extent otherwise
3 permitted by law. Nothing in this Agreement shall prevent the Plaintiffs or the Attorney General
4 from opposing a motion to modify the terms of this Agreement.

5 Section 3.08 shall be amended as follows: Defendant shall conduct confirmatory testing on
6 the top product by sales revenue for the preceding calendar year for each of the following categories
7 of products for that calendar year: (1) ready-to-drink protein drinks containing cocoa; (2) ready-to-
8 drink protein drinks not containing cocoa; (3) powdered protein drinks containing cocoa; (4)
9 powdered protein drinks not containing cocoa; (5) protein bars; and (6) capsules. The confirmatory
10 testing must be completed within six months of the Effective Date and completed by the same date
11 for each following year during the period in which this Agreement is effective, to determine that the
12 Products have been sold in compliance with this Agreement. The results of such confirmatory testing
13 shall be reported to Class Counsel for a period of three years after the Effective Date. If Defendant
14 does not conduct confirmatory testing as required by this paragraph, Class Counsel may demand in
15 writing to Defendant that such confirmatory testing be completed within thirty days, and if Defendant
16 does not complete the confirmatory testing within the subsequent thirty-day period, Class Counsel
17 may seek an order from the Court ordering such confirmatory testing and may seek reasonable
18 attorneys' fees (on an hourly basis) for obtaining such an order. After expiration of the three-year
19 reporting period, CytoSport shall still be required to conduct such confirmatory testing, shall retain
20 test results for a period of three years from the date of testing, and shall make such confirmatory
21 testing available to Class Counsel or the Office of the Attorney General upon request, with thirty days
22 written notice of such request.

23 Section 3.10 shall be deleted and replaced with the following:

24 3.10 COMPLIANCE WITH PROPOSITION 65.

25 (a) Compliance by CytoSport with the terms of this Agreement shall be deemed to
26 constitute its full and complete compliance with Proposition 65 with respect to the provisions of
27 warnings for lead, cadmium, and arsenic contained in or otherwise associated with the Products for a
28 period of three years after the Effective Date.

1 (b) Compliance by CytoSport with the terms of this Agreement shall also be deemed its
2 full and complete compliance with Proposition 65 with respect to the provisions of warnings for lead,
3 cadmium, and arsenic contained in or otherwise associated with the Products after three years after
4 the Effective Date, provided that CytoSport ensures that the Naturally Occurring levels of lead in its
5 Products continue to be reduced to the lowest levels currently feasible, as that term is used in Title 27
6 of the California Code of Regulations, section 25501. In the event of any challenge as to whether the
7 Naturally Occurring levels of lead set forth in section 3.06 (or any such lower levels as CytoSport
8 may unilaterally adopt) are the lowest levels currently feasible after three years after the Effective
9 Date, CytoSport shall be entitled to rely on its compliance with this Agreement (or any such lower
10 levels as CytoSport may unilaterally adopt) as some evidence that the Naturally Occurring lead levels
11 in its Product have been reduced to the lowest levels currently feasible, but CytoSport shall continue
12 to have the same burden of proof as set forth in Title 27 of the California Code of Regulations,
13 section 25501, to demonstrate that the lead levels in its products are naturally occurring and reduced
14 to the lowest level currently feasible, and nothing in this Agreement shall prevent the challenging
15 party from arguing that CytoSport's compliance with the Agreement does not satisfy its burden of
16 demonstrating that the lead levels in its products are naturally occurring and reduced to the lowest
17 level currently feasible.

18 (c) In any event, CytoSport need take no action to reduce lead below 0.5 micrograms per
19 each Product's Recommended Daily Servings.

20 (d) Nothing in this Agreement shall prevent CytoSport from asserting compliance with the
21 terms set forth herein as a defense in any future Proposition 65 action with respect to the provisions
22 of warnings for lead, cadmium, and arsenic contained in or otherwise associated with the Products.

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Section 3.11 shall be added to the Agreement:

3.11 LABELING REQUIREMENTS – SALES IN CALIFORNIA. The labeling requirements of sections 3.02 through 3.04 apply only to Products sold in the State of California. Nothing in this Agreement shall require CytoSport to comply with the labeling requirements of sections 3.02 through 3.04 with respect to sales to consumers outside the State of California.

Dated: February 7, 2013

CYTOSPORT, INC.

By: [Signature]

Title: CHAIRMAN

Dated: February ____, 2013

FARBOD NASSERI

Farbod Nasser

Dated: February ____, 2013

MICHAEL R. ROMERO

Michael R. Romero

Dated: February ____, 2013

KEVIN G. PETERS

Kevin G. Peters

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Dated: February ____, 2013

CYTOSPORT, INC.

By: _____

Title: _____

Dated: February 7, 2013

FARBOD NASSERI

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Dated: February ____, 2013

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Michael R. Romero

Dated: February ____, 2013

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Dated: February ____, 2013

CYTOSPORT, INC.

By: _____

Title: _____

Dated: February ____, 2013

FARBOD NASSERI

Farbod Nasseri

Dated: February 6, 2013

MICHAEL R. ROMERO



Michael R. Romero

Dated: February 6th, 2013

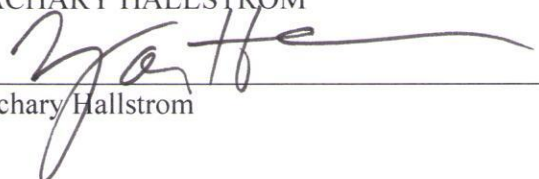
KEVIN G. PETERS



Kevin G. Peters

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Dated: February 6, 2013

ZACHARY HALLSTROM


Zachary Hallstrom

APPROVED AS TO FORM:

Dated: February ____, 2013

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

Dated: February ____, 2013

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

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WHATLEY DRAKE & KALLAS, LLC
PATRICK J. SHEEHAN

By: _____
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LAW OFFICES OF HOWARD RUBINSTEIN
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ZACHARY HALLSTROM

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Zachary Hallstrom

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10 Romero, and Kevin G. Peters, on behalf of themselves
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24 Dated: February 6, 2013


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HOWARD RUBINSTEIN

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HOWARD RUBINSTEIN
27 Attorneys for Plaintiffs Farbod Nasser, Michael R.
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Dated: February 7, 2013

NEWPORT TRIAL GROUP
SCOTT J. FERRELL
ROGER BORG

By: 
SCOTT J. FERRELL
Attorneys for Plaintiff Zachary Hallstrom

Dated: February _____, 2013

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

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

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Dated: February ____, 2013

NEWPORT TRIAL GROUP
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ROGER BORG

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

Dated: February 7, 2013

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

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

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