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CENTER FOR ENVIRONMENTAL HEALTH
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MARIN
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14 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)

15)
16 Plaintiff,)

17 v.)

18 CRYSTAL QUEST MFG.; QUEST)
TECHNOLOGIES, INC.; RESINTECH, INC.;)
19 WATER FILTERS DIRECT LLC; WATER)
FILTERS LLC; WATERFILTERS.NET, LLC;)
20 WATTS PREMIER, INC.; WATTS WATER)
TECHNOLOGIES, INC.; and Defendant DOES)
1 through 500, inclusive,)

21)
22 Defendants.)
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FILED

SEP 28 2011

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: D. Taylor, Deputy

Case No. CV 1104806

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code §25249.5, *et seq.*

(Other)

1 Plaintiff Center for Environmental Health, in the public interest, based on
2 information and belief and investigation of counsel, except for information based on knowledge,
3 hereby makes the following allegations:

4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendants' continuing discharge and
6 release of arsenic, a chemical known to the State of California to cause cancer and birth defects
7 or other reproductive harm, into sources of drinking water. Such discharges and releases have
8 occurred, and continue to occur, through the manufacture, distribution, sale and/or use of
9 Defendants' drinking water filtration systems utilizing activated carbon filters and replacement
10 filters used in such systems. Arsenic is present in the activated carbon used in the filters and
11 replacement filters of Defendants' drinking water filtration systems. These drinking water
12 filtration systems utilizing activated carbon filters and replacement filters used in such systems
13 are referred to herein as the "Products." The Products contain sufficient quantities of arsenic
14 such that arsenic will leach from the Products into water flowing through and emanating from
15 them. People who use the Products, including pregnant women and children, consume water
16 from the Products after arsenic has leached from the Products into the water. Therefore, the
17 Products and the water emanating from these Products are sources of drinking water. These
18 discharges occur in homes, businesses and other places throughout California where the Products
19 are used.

20 2. This Complaint further seeks to remedy Defendants' continuing failure to
21 warn individuals in California that they are being exposed to arsenic, a chemical known to the
22 State of California to cause cancer and birth defects or other reproductive harm. Such exposures
23 have occurred, and continue to occur, through the manufacture, distribution, sale and/or use of
24 the Products. The route of exposure for the violations is ingestion of water containing arsenic
25 that is discharged from the Products. These exposures occur in homes, businesses, and other
26 places throughout California where the Products are used. Clear and reasonable warnings are not
27 provided with the Products regarding the carcinogenic or reproductive hazards of arsenic.
28

1 PARTIES

2 3. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH (“CEH”) is a
3 non-profit corporation dedicated to protecting the public from environmental health hazards and
4 toxic exposures. CEH is based in Oakland, California, and incorporated under the laws of the
5 State of California. CEH is a “person” within the meaning of Health & Safety Code
6 §25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
7 Safety Code §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy
8 group that has prosecuted a large number of Proposition 65 cases in the public interest. These
9 cases have resulted in significant public benefit, including the reformulation of thousands of
10 products to remove toxic chemicals and to make them safer. CEH also provides information to
11 Californians about the health risks associated with exposure to hazardous substances, where
12 manufacturers and other responsible parties fail to do so.

13 4. Defendant CRYSTAL QUEST MFG. is a person in the course of doing
14 business within the meaning of Health & Safety Code §25249.11. Crystal Quest Mfg.
15 manufactures, distributes and/or sells the Products for sale and use in California.

16 5. Defendant QUEST TECHNOLOGIES, INC. is a person in the course of
17 doing business within the meaning of Health & Safety Code §25249.11. Quest Technologies,
18 Inc. manufactures, distributes and/or sells the Products for sale and use in California.

19 6. Defendant RESINTECH, INC. is a person in the course of doing business
20 within the meaning of Health & Safety Code §25249.11. Resintech, Inc. manufactures,
21 distributes and/or sells the Products for sale and use in California.

22 7. Defendant WATER FILTERS DIRECT LLC is a person in the course of
23 doing business within the meaning of Health & Safety Code §25249.11. Water Filters Direct
24 LLC manufactures, distributes and/or sells the Products for sale and use in California.

25 8. Defendant WATER FILTERS LLC is a person in the course of doing
26 business within the meaning of Health & Safety Code §25249.11. Water Filters LLC
27 manufactures, distributes and/or sells the Products for sale and use in California.

28 9. Defendant WATERFILTERS.NET, LLC is a person in the course of doing

1 business within the meaning of Health & Safety Code §25249.11. WaterFilters.NET, LLC
2 manufactures, distributes and/or sells the Products for sale and use in California.

3 10. Defendant WATTS PREMIER, INC. is a person in the course of doing
4 business within the meaning of Health & Safety Code §25249.11. Watts Premier, Inc.
5 manufactures, distributes and/or sells the Products for sale and use in California.

6 11. Defendant WATTS WATER TECHNOLOGIES, INC. is a person in the
7 course of doing business within the meaning of Health & Safety Code §25249.11. Watts Water
8 Technologies, Inc. manufactures, distributes and/or sells the Products for sale and use in
9 California.

10 12. DOES 1-500 are each a person in the course of doing business within the
11 meaning of Health & Safety Code §25249.11 and a person within the meaning of Business &
12 Professions Code §17201. DOES 1 through 500 manufacture, distribute and/or sell the Products
13 for sale or use in California.

14 13. The true names of DOES 1 through 500 are unknown to CEH at this time.
15 When their identities are ascertained, the complaint shall be amended to reflect their true names.

16 14. The defendants identified in paragraphs 4 through 11 and DOES 1 through
17 500 are collectively referred to herein as "Defendants."

18 **JURISDICTION AND VENUE**

19 15. The Court has jurisdiction over this action pursuant to Health & Safety
20 Code §25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant
21 to California Constitution Article VI, Section 10, because this case is a cause not given by statute
22 to other trial courts.

23 16. This Court has jurisdiction over the Defendants because each is a business
24 entity that does sufficient business, has sufficient minimum contacts in California or otherwise
25 intentionally avails itself of the California market through the sale, marketing or use of the
26 Products in California and/or by having such other contacts with California so as to render the
27 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
28 play and substantial justice.

1 22. The Products contain sufficient quantities of Arsenic such that Arsenic
2 will leach from the Products into water flowing through and emanating from them.

3 23. In *People ex rel. Lungren v. Superior Court of San Francisco (American*
4 *Standard)* (1996) 14 Cal.4th 294, the California Supreme Court determined that faucet water is a
5 “source of drinking water.” In *American Standard*, the Supreme Court adopted the view that the
6 phrase a “source of drinking water” includes “the point of procurement or emanation of drinking
7 water.” *Id.* at 303. The Products are a point of procurement or emanation of drinking water.
8 Therefore, the Products and the water which flows through them are sources of drinking water
9 under Health & Safety Code §25249.5.

10 24. The People of the State of California have also declared by referendum
11 under Proposition 65 their right “[t]o be informed about exposures to chemicals that cause
12 cancer, birth defects and other reproductive harm.” Proposition 65, §1(b).

13 25. To effectuate this goal, Proposition 65 prohibits exposing people to
14 chemicals listed by the State of California as known to cause cancer, birth defects or other
15 reproductive harm without a “clear and reasonable warning” unless the business responsible for
16 the exposure can prove that it fits within a statutory exemption. Health & Safety Code §25249.6
17 states, in pertinent part:

18 No person in the course of doing business shall knowingly and
19 intentionally expose any individual to a chemical known to the
20 state to cause cancer or reproductive toxicity without first giving
 clear and reasonable warning to such individual

21 26. On February 27, 1988, one year after it was listed as a chemical known to
22 cause cancer, arsenic (inorganic arsenic compounds) became subject to the clear and reasonable
23 warning requirement regarding carcinogens under Proposition 65. 27 C.C.R. §27001(c); Health
24 & Safety Code §25249.10(b).

25 27. On May 1, 1998, one year after it was listed as a chemical known to cause
26 reproductive toxicity, arsenic (inorganic oxides) became subject to the clear and reasonable
27 warning requirement regarding reproductive toxins under Proposition 65. 27 C.C.R. §27001(c);
28 Health & Safety Code §25249.10(b).

1 28. The Products contain sufficient quantities of Arsenic such that users of
2 the Products, including pregnant women and children, are exposed to Arsenic through the
3 reasonably foreseeable use of the Products.

4 29. No clear and reasonable warning is provided with the Products regarding
5 the carcinogenic or reproductive hazards of Arsenic.

6 30. Under Proposition 65, a discharge or exposure is “knowing” where the
7 party responsible for such discharge or exposure has:

8 knowledge of the fact that a discharge of, release of, or exposure to
9 a chemical listed pursuant to [Health & Safety Code §25249.8(a)]
10 is occurring. No knowledge that the discharge, release or exposure
 is unlawful is required.

11 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.,* Final
12 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
13 §12201).

14 31. Defendants know or should know that the Products discharge Arsenic into
15 sources of drinking water.

16 32. Defendants know or should know that the Products expose people to
17 Arsenic.

18 33. There has been extensive discussion within the water filtration system
19 industry about the discharge of Arsenic from drinking water filtration systems using activated
20 carbon filters. The Water Quality Association, an international trade association representing the
21 water treatment industry, has even formed an “Arsenic-Activated Carbon Task Group.” Several
22 Defendants or their suppliers are members of the Water Quality Association.

23 34. The discharge of Arsenic from activated carbon water filters was
24 specifically discussed at an August 8, 2000 meeting of the Water Quality Association. At that
25 meeting, a report was presented of a multi-year study conducted by KX Industries, L.P. The KX
26 Industries, L.P. study concluded that, “arsenic and antimony contamination occurs broadly in
27 activated carbons,” and that “[t]his contamination leads to extractable levels of arsenic and
28 antimony that can often exceed the current arsenic and antimony standards and pervasively

1 exceed the proposed future arsenic standard.” The proposed future arsenic standard referred to is
2 now the federal drinking water standard of 10 parts per billion (“ppb”), which is twice the level
3 that has been determined to pose a significant risk of cancer under Proposition 65’s
4 implementing regulations.

5 35. On August 28, 2000, just a few weeks after the Water Quality Association
6 meeting described above, one of its members submitted a report to the United States
7 Environmental Protection Agency (“EPA”) concerning the leaching of Arsenic from activated
8 carbon water filters. The author of that report later wrote in the June 2003 issue of *Water*
9 *Conditioning & Purification* magazine, an industry publication, that, “This filing [with EPA]
10 served to shield the point-of-use/point-of-entry (POU/POE) water treatment industry from
11 liability and prosecution under the Toxic Substances Control Act for distribution of products
12 known to expose users to a hazardous chemical. As a result of this filing, the most severe
13 potential penalties for use of contaminated activated carbons have been mitigated for the entire
14 industry; but this filing does not provide a shield against legal prosecution under state statutes
15 such as Proposition 65.”

16 36. That same June 2003 article also reported the results of testing of Arsenic
17 leaching from activated carbon filters. Even though the samples tested by the authors were
18 “selected by the manufacturer to represent the lowest possible extractables,” thirteen of the
19 nineteen manufacturers’ activated carbon samples leached sufficient quantities of Arsenic such
20 that water exposed to those samples contained arsenic levels in excess of the federal drinking
21 water standard of 10 ppb. Moreover, the authors of the study admitted that current quality
22 assurance procedures were not “likely to provide accurate guidance on product quality and
23 sustainable control of arsenic and antimony extractables from POU/POE [point-of-use/point-of-
24 entry] activated carbons, even with the best manufacturers and their best available grades.”

25 37. Any person acting in the public interest has standing to enforce violations
26 of Proposition 65 provided that such person has supplied the requisite public enforcers with a
27 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
28 action within such time. Health & Safety Code §25249.7(d).

1 38. More than sixty days before naming each Defendant in this suit, CEH
2 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,
3 the District Attorneys of every county in California, the City Attorneys of every California city
4 with a population greater than 750,000, and to each named Defendant. In compliance with
5 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each of the Notices included the
6 following information: (1) the name and address of the violators; (2) the statute violated; (3) the
7 time period during which violations occurred; (4) specific descriptions of the violations,
8 including (a) the source of drinking water at issue, (b) the routes of exposure to Arsenic from the
9 Products, and (c) the specific type of Products sold and used in violation of Proposition 65; and
10 (5) the name of the specific Proposition 65-listed chemical (Arsenic) that is the subject of the
11 violations described in each of the Notices.

12 39. With respect to the exposure violations alleged herein, CEH sent a
13 Certificate of Merit (the "Certificate") relating to each Notice of Violation to the California
14 Attorney General, the District Attorneys of every county in California, the City Attorneys of
15 every California city with a population greater than 750,000, and to each named Defendant. In
16 compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each Certificate
17 certified that CEH's counsel: (1) has consulted with one or more persons with relevant and
18 appropriate experience or expertise who reviewed facts, studies or other data regarding the
19 exposures to Arsenic alleged in the Notice; and (2) based on the information obtained through
20 such consultations, believes that there is a reasonable and meritorious case for a citizen
21 enforcement action based on the facts alleged in the attached Notice. In compliance with Health
22 & Safety Code §25249.7(d) and 11 C.C.R. §3102, each of the Certificates served on the Attorney
23 General included factual information – provided on a confidential basis – sufficient to establish
24 the basis for the Certificate, including the identity of the person(s) consulted by CEH's counsel
25 and the facts, studies or other data reviewed by such persons.

26 40. Defendants have been informed of the Arsenic in their Products by the 60-
27 Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

28 41. None of the public prosecutors with the authority to prosecute violations

1 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action under Health
2 & Safety Code §25249.5, *et seq.*, against Defendants based on the claims asserted in CEH's
3 Notice and herein. Nor has the Attorney General contacted CEH or its counsel regarding the
4 Certificate or any of the confidential supporting information provided to the Attorney General.

5 42. CEH has engaged in good-faith efforts to resolve the claims alleged herein
6 prior to filing this Complaint.

7 43. Any person "violating or threatening to violate" Proposition 65 may be
8 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. "Threaten to
9 violate" is defined to mean "to create a condition in which there is a substantial probability that a
10 violation will occur." Health & Safety Code §25249.11(e). Proposition 65 provides for civil
11 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

12 **FIRST CAUSE OF ACTION**
13 **(Violations of Health & Safety Code §25249.5)**

14 44. CEH realleges and incorporates by reference as if specifically set forth
15 herein Paragraphs 1 through 43, inclusive.

16 45. By placing the Products into the stream of commerce, each Defendant is a
17 person in the course of doing business within the meaning of Health & Safety Code §25249.11.

18 46. Defendants know that through the reasonably foreseeable use of the
19 Products, Arsenic is discharged or released into sources of drinking water in California.

20 47. Arsenic is a chemical listed by the State of California as known to cause
21 cancer and birth defects or other reproductive harm.

22 48. Since at least four years prior to the filing of this complaint, and
23 continuing through the present, Defendants have engaged in conduct which violates Proposition
24 65 by placing into commerce Products which are known to discharge Arsenic into sources of
25 drinking water.

26 Wherefore, CEH prays for judgment against Defendants, as set forth hereafter.

27 **SECOND CAUSE OF ACTION**
28 **(Violations of the Health & Safety Code §25249.6)**

49. CEH realleges and incorporates by reference as if specifically set forth

1 California without providing clear and reasonable warnings, as CEH shall specify in further
2 application to the Court;

3 4. That the Court, pursuant to Health & Safety Code §25249.7(a), order
4 Defendants to take action to stop ongoing discharges of Arsenic into sources of drinking water
5 from use of Products sold by Defendants, as CEH shall specify in further application to the
6 Court;

7 5. That the Court, pursuant to Health & Safety Code §25249.7(a), order
8 Defendants to take action to stop ongoing unwarned exposures to Arsenic resulting from use of
9 Products sold by Defendants, as CEH shall specify in further application to the Court;

10 6. That the Court, pursuant to Code of Civil Procedure §1021.5 and/or any
11 other applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

12 7. That the Court grant such other and further relief as may be just and
13 proper.

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15 Dated: September 28, 2011

Respectfully submitted,

16 LEXINGTON LAW GROUP

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20 Eric S. Somers

Attorneys for Plaintiff

21 CENTER FOR ENVIRONMENTAL HEALTH