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CENTER FOR ENVIRONMENTAL HEALTH

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA

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13 CENTER FOR ENVIRONMENTAL HEALTH, )  
a non-profit corporation, )

14 Plaintiff, )

15 v. )

16 KATADYN NORTH AMERICA, INC.; )  
17 CASCADE DESIGNS, INC.; ECO SYSTEMS )  
INTERNATIONAL, LLC; RECREATIONAL )  
18 EQUIPMENT, INC.; and Defendant DOES 1 )  
through 500, inclusive, )

19 Defendants. )  
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ENDORSED  
FILED  
ALAMEDA COUNTY

SEP 10 2013

CLERK OF THE SUPERIOR COURT  
By PILIPINO TUNGOLIAN Deputy

Case No. RG13695014

**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 drinking water filtration systems utilizing activated carbon filters and the replacement filters used  
10 in such systems (collectively referred to herein as the "Products"). Arsenic is present in the  
11 activated carbon used in the Products. Defendants manufacture, distribute and/or sell the  
12 Products, the activated carbon used in the Products. The Products contain sufficient quantities of  
13 arsenic such that arsenic will leach from the Products into water flowing through and emanating  
14 from them. People who use the Products, including pregnant women and children, consume  
15 water from the Products after arsenic has leached from the Products into the water. Therefore,  
16 the Products and the water emanating from these Products are sources of drinking water. These  
17 discharges occur in homes, businesses and other places throughout California where the Products  
18 are used.

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

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 KATADYN NORTH AMERICA, INC. is a person in the  
14 course of doing business within the meaning of Health & Safety Code §25249.11. Katadyn  
15 North America, Inc. manufactures, distributes and/or sells the Products for sale and use in  
16 California.

17 5. Defendant CASCADE DESIGNS, INC. is a person in the course of doing  
18 business within the meaning of Health & Safety Code §25249.11. Cascade Designs, Inc.  
19 manufactures, distributes and/or sells the Products for sale and use in California.

20 6. Defendant ECO SYSTEMS INTERNATIONAL, LLC is a person in the  
21 course of doing business within the meaning of Health & Safety Code §25249.11. Eco Systems  
22 International, LLC manufactures, distributes and/or sells the Products for sale and use in  
23 California.

24 7. Defendant RECREATIONAL EQUIPMENT, INC. is a person in the  
25 course of doing business within the meaning of Health & Safety Code §25249.11. Recreational  
26 Equipment, Inc. manufactures, distributes and/or sells the Products for sale and use in California.

27 8. DOES 1-500 are each a person in the course of doing business within the  
28 meaning of Health & Safety Code §25249.11 and a person within the meaning of Business &

1 Professions Code §17201. DOES 1 through 500 manufacture, distribute and/or sell the Products  
2 for sale or use in California.

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

5 10. The defendants identified in paragraphs 4 through 8 and DOES 1 through  
6 500 are collectively referred to herein as "Defendants."

7 **JURISDICTION AND VENUE**

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

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

18 13. Venue is proper in the Marin Superior Court because one or more of the  
19 violations arise in the County of Marin.

20 **BACKGROUND FACTS**

21 14. The People of the State of California have declared by referendum under  
22 Proposition 65 their right "[t]o protect themselves and the water they drink against chemicals that  
23 cause cancer, birth defects, or other reproductive harm." Proposition 65, §1(a).

24 15. To effectuate this goal, California's Health & Safety Code §25249.5, *et*  
25 *seq.* ("Proposition 65") prohibits businesses from discharging or releasing into drinking water  
26 chemicals listed by the State of California as known to cause cancer, birth defects or other  
27 reproductive harm unless the business responsible for the discharge or release can prove that it  
28 fits within a statutory exemption. Health & Safety Code §25249.5 states, in pertinent part:

1  
2 No person in the course of doing business shall knowingly  
3 discharge or release a chemical known to the state to cause cancer  
4 or reproductive toxicity into water or onto or into land where such  
5 chemical passes or probably will pass into any source of drinking  
6 water . . . .

7 16. On February 27, 1987, the State of California officially listed arsenic  
8 (inorganic arsenic compounds) as a chemical known to cause cancer. On October 27, 1988,  
9 twenty months later, arsenic (inorganic arsenic compounds) became subject to the Proposition 65  
10 prohibition on “discharge or release” of carcinogens into drinking water. 27 Cal. Code Regs.  
11 (“C.C.R.”) §27001(c); Health & Safety Code §25249.9(a).

12 17. On May 1, 1997, the State of California officially listed arsenic (inorganic  
13 oxides) as a chemical known to cause reproductive toxicity. Arsenic (inorganic oxides) are  
14 specifically identified as reproductive toxicants under the “developmental reproductive toxicity”  
15 category, which means they tend to harm the developing fetus. On January 1, 1999, twenty  
16 months later, arsenic (inorganic oxides) became subject to the Proposition 65 prohibition on  
17 “discharge or release” of reproductive toxins into drinking water. 27 C.C.R. §27001(c); Health  
18 & Safety Code §25249.9(a). Arsenic (inorganic arsenic compounds) and arsenic (inorganic  
19 oxides) are referred to interchangeably herein as “Arsenic.”

20 18. Arsenic is present in the activated carbon used in the Products. The  
21 Products contain sufficient quantities of Arsenic such that Arsenic will leach from the Products  
22 into water flowing through and emanating from them.

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

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

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

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

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

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

20           24.     The Products contain sufficient quantities of Arsenic such that users of  
21 the Products, including pregnant women and children, are exposed to Arsenic through the  
22 reasonably foreseeable use of the Products.

23           25.     No clear and reasonable warning is provided with the Products regarding  
24 the carcinogenic or reproductive hazards of Arsenic.

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

27                   knowledge of the fact that a discharge of, release of, or exposure to  
28                   a chemical listed pursuant to [Health & Safety Code §25249.8(a)]

1 is occurring. No knowledge that the discharge, release or exposure  
2 is unlawful is required.

3 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
4 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
5 §12201).

6 27. Defendants know or should know that the Products discharge Arsenic into  
7 sources of drinking water.

8 28. Defendants know or should know that the Products expose people to  
9 Arsenic.

10 29. There has been extensive discussion within the water filtration system  
11 industry about the discharge of Arsenic from drinking water filtration systems using activated  
12 carbon filters. The Water Quality Association, an international trade association representing the  
13 water treatment industry, has even formed an "Arsenic-Activated Carbon Task Group." Several  
14 Defendants or their suppliers are members of the Water Quality Association.

15 30. The discharge of Arsenic from activated carbon water filters was  
16 specifically discussed at an August 8, 2000 meeting of the Water Quality Association. At that  
17 meeting, a report was presented of a multi-year study conducted by KX Industries, L.P. The KX  
18 Industries, L.P. study concluded that, "arsenic and antimony contamination occurs broadly in  
19 activated carbons," and that "[t]his contamination leads to extractable levels of arsenic and  
20 antimony that can often exceed the current arsenic and antimony standards and pervasively  
21 exceed the proposed future arsenic standard." The proposed future arsenic standard referred to is  
22 now the federal drinking water standard of 10 parts per billion ("ppb"), which is twice the level  
23 that has been determined to pose a significant risk of cancer under Proposition 65's  
24 implementing regulations.

25 31. On August 28, 2000, just a few weeks after the Water Quality Association  
26 meeting described above, one of its members submitted a report to the United States  
27 Environmental Protection Agency ("EPA") concerning the leaching of Arsenic from activated  
28 carbon water filters. The author of that report later wrote in the June 2003 issue of *Water*

1 *Conditioning & Purification* magazine, an industry publication, that, “This filing [with EPA]  
2 served to shield the point-of-use/point-of-entry (POU/POE) water treatment industry from  
3 liability and prosecution under the Toxic Substances Control Act for distribution of products  
4 known to expose users to a hazardous chemical. As a result of this filing, the most severe  
5 potential penalties for use of contaminated activated carbons have been mitigated for the entire  
6 industry; but this filing does not provide a shield against legal prosecution under state statutes  
7 such as Proposition 65.”

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

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

21           34.     More than sixty days before naming each Defendant in this suit, CEH  
22 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,  
23 the District Attorneys of every county in California, the City Attorneys of every California city  
24 with a population greater than 750,000, and to each named Defendant. In compliance with  
25 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each of the Notices included the  
26 following information: (1) the name and address of the violators; (2) the statute violated; (3) the  
27 time period during which violations occurred; (4) specific descriptions of the violations,  
28 including (a) the source of drinking water at issue, (b) the routes of exposure to Arsenic from the

1 Products, and (c) the specific type of Products sold and used in violation of Proposition 65; and  
2 (5) the name of the specific Proposition 65-listed chemical (Arsenic) that is the subject of the  
3 violations described in each of the Notices.

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

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

20           37. None of the public prosecutors with the authority to prosecute violations  
21 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action under Health  
22 & Safety Code §25249.5, *et seq.*, against Defendants based on the claims asserted in CEH's  
23 Notice and herein. Nor has the Attorney General contacted CEH or its counsel regarding the  
24 Certificate or any of the confidential supporting information provided to the Attorney General.

25           38. CEH has engaged in good-faith efforts to resolve the claims alleged herein  
26 prior to filing this Complaint.

27           39. Any person "violating or threatening to violate" Proposition 65 may be  
28 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. "Threaten to

1 violate” is defined to mean “to create a condition in which there is a substantial probability that a  
2 violation will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil  
3 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

4 **FIRST CAUSE OF ACTION**  
5 **(Violations of Health & Safety Code §25249.5)**

6 40. CEH realleges and incorporates by reference as if specifically set forth  
7 herein Paragraphs 1 through 39, inclusive.

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

10 42. Defendants know that through the reasonably foreseeable use of the  
11 Products, Arsenic is discharged or released into sources of drinking water in California.

12 43. Arsenic is a chemical listed by the State of California as known to cause  
13 cancer and birth defects or other reproductive harm.

14 44. By committing the acts alleged above, Defendants have at all times  
15 relevant to this Complaint engaged in conduct which violates Proposition 65 by placing into  
16 commerce Products which are known to discharge Arsenic into sources of drinking water.

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

19 45. CEH realleges and incorporates by reference as if specifically set forth  
20 herein Paragraphs 1 through 44 inclusive.

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

23 47. Defendants know that through the reasonably foreseeable use of the  
24 Products, users of the Products are exposed to Arsenic. Defendants intend that the Products be  
25 used in a manner that results in users of the Products being exposed to Arsenic from the  
26 Products.

27 48. Defendants have failed, and continue to fail, to provide clear and  
28 reasonable warning regarding the carcinogenicity and reproductive toxicity of Arsenic to users of  
the Products.



1 other applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

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5 Dated: September 10, 2013

Respectfully submitted,

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LEXINGTON LAW GROUP

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Eric S. Somers

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Attorneys for Plaintiff

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CENTER FOR ENVIRONMENTAL HEALTH

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