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6 CENTER FOR ENVIRONMENTAL HEALTH

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF MARIN**

10
11 CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation,

12 Plaintiff,

13 v.

14 MULTI-PURE INTERNATIONAL;
15 OMNIPURE FILTER COMPANY, INC.;
PUR WATER PURIFICATION PRODUCTS,
16 INC.; THE PROCTER & GAMBLE
COMPANY; THE PROCTER & GAMBLE
17 DISTRIBUTING LLC; THE PROCTER &
GAMBLE MANUFACTURING
18 COMPANY; and Defendant DOES 1 through
500, inclusive,

19 Defendants.
20

CASE No. CV-093704

**[PROPOSED] CONSENT JUDGMENT
AS TO MULTI-PURE DRINKING
WATER SYSTEMS**

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23 **1. INTRODUCTION**

24 1.1 On July 24, 2009, plaintiff the Center for Environmental Health (hereinafter
25 “CEH”), a non-profit corporation, filed a complaint in Marin County Superior Court entitled
26 *Center for Environmental Health v. Multi-Pure International, et al.*, for civil penalties and
27 injunctive relief pursuant to the provisions of Cal. Health & Safety Code (“Health & Safety
28 Code”) § 25249.5, *et seq.* (“Proposition 65”) (the “Action”). On September 30, 2009, CEH

1 amended its complaint in the Action to name Multi-Pure Drinking Water Systems (“Defendant”)
2 as a party. CEH subsequently dismissed Multi-Pure International from the Action. CEH and
3 Defendant are referred to collectively as the “Parties.”

4 1.2 Defendant is a corporation that employs more than 10 persons and that
5 manufactured, distributed and/or sold residential and commercial point of entry and point of use
6 drinking water filtration systems utilizing activated carbon filters. Arsenic is alleged to be present
7 in the activated carbon used in the filters and replacement filters of Defendant’s drinking water
8 filtration systems. This Consent Judgment resolves CEH’s claims against Defendant, as
9 described further herein, with respect to drinking water filtration systems utilizing activated
10 carbon filters and replacement filters used in such systems (excluding any industrial filters),
11 which are referred to herein as the “Products.”

12 1.3 More than sixty days prior to filing the Action, CEH served Defendant and the
13 appropriate public enforcement agencies with the requisite 60-day notice that Defendant is in
14 violation of Proposition 65. CEH’s Notice and its Complaint allege that Defendant discharges
15 and releases arsenic (inorganic arsenic compounds) and arsenic (inorganic oxides) (referred to
16 collectively herein as “Arsenic”), chemicals known to the State of California to cause cancer and
17 birth defects or other reproductive harm, into sources of drinking water through the sale and use
18 of the Products, in violation of Cal. Health & Safety Code § 25249.5. Defendant contends that
19 there has been no violation of Proposition 65 or Health & Safety Code § 25249.5.

20 1.4 CEH’s Notice and its Complaint also allege that Defendant did not provide a clear
21 and reasonable warning to purchasers of the Products regarding the carcinogenicity and
22 reproductive toxicity of Arsenic, in violation of Health & Safety Code § 25249.6. Defendant
23 contends that there has been no violation of Health & Safety Code § 25249.6.

24 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
25 has jurisdiction over the allegations of violations contained in CEH’s Complaint and personal
26 jurisdiction over Defendant as to the acts alleged in CEH’s Complaint, that venue is proper in the
27 County of Marin, and that this Court has jurisdiction to enter this Consent Judgment as a full and
28 final resolution of all claims which were or could have been raised in the Complaint against

1 Defendant based on the facts alleged therein.

2 1.6 For the purposes of resolving this dispute by compromise and avoiding prolonged
3 litigation, CEH and Defendant enter into this Consent Judgment as a full and final settlement of
4 all claims that were raised in the Complaint, or which could have been raised in the Complaint,
5 arising out of the facts or conduct alleged therein. By execution of this Consent Judgment and
6 agreeing to provide the relief and remedies specified herein, Defendant does not admit any issue
7 of fact or law, including but not limited to any violations of Proposition 65 or any other law or
8 legal duty, and in fact denies that any violations whatsoever have occurred. By execution of this
9 Consent Judgment and agreeing to the injunctive relief set forth herein, CEH does not admit any
10 issue of fact or law. Nothing in this Consent Judgment shall prejudice, waive or impair any right,
11 remedy, argument or defense the Parties may have in this or any other or future legal proceedings.
12 This Consent Judgment is the product of negotiation and is accepted by the Parties for purposes
13 of settling and resolving issues disputed in this Action, including future compliance by Defendant
14 with Section 2 of this Consent Judgment, and shall not be used for any other purpose, or in any
15 other matter. Nothing in this Consent Judgment shall prohibit CEH from seeking, or the Court
16 from ordering, different injunctive or other relief from entities that are not party to this Consent
17 Judgment.

18 **2. COMPLIANCE**

19 2.1 **Arsenic Reformulation.** As of January 1, 2011 (the “Final Compliance Date”),
20 Defendant shall not manufacture, distribute, ship or sell, or cause to be manufactured, distributed,
21 shipped or sold, any Products that leach Arsenic in concentrations greater than 5 parts per billion
22 (“ppb”) using NSF Standard 42, 53 or the appropriate NSF Standard applicable to the Product
23 being tested (in any case, using the latest edition) (the “Test Protocol”). However, Defendant
24 shall use its best efforts to comply with this reformulation requirement as soon as possible. The
25 reformulation requirement of this Section does not require Defendant to recall or otherwise
26 address any inventory of Product that was distributed, shipped or sold prior to January 1, 2011.

27 2.1.1 **Validation Testing.** After the Final Compliance Date, to ensure
28 compliance with Section 2.1, and to validate the reliability of the Raw Material Testing conducted

1 pursuant to Section 2.1.2, Defendant shall select two of its Products (the “Validation Products”)
2 to be tested using the Test Protocol according to the criteria set forth below.

3 2.1.1.1 Products To Be Tested: The Validation Products shall be
4 selected according to the following criteria:

5 (a) Water To Carbon Ratio: The first Validation Product for
6 Validation Testing shall be selected based on the void volume (*i.e.* amount of water that fills the
7 end product) to carbon content ratio. Defendant shall select the Product with the lowest water to
8 carbon ratio that it sold in the United States during the prior year. The void volume shall be
9 determined by the difference in the weight of the dry (unused) Product and the fully wetted out
10 (flushed) Product using the conversion factor of 1 gram of water = 1 mL.

11 (b) Sales: The second Validation Product for Validation Testing
12 shall be selected based on the unit sales volume of the Product in the United States. Defendant
13 shall select the Product that it sold and that: (1) had the highest sales in the United States in the
14 year prior to the testing; and (2) Defendant still offers for sale in the United States.

15 2.1.1.2 Frequency Of Testing: Following the Final Compliance Date,
16 Defendant shall conduct Validation Testing on a representative unit or units of each Validation
17 Product in accordance with the Test Protocol and Section 2.1.1.1 at least one time per calendar
18 quarter. In the event that the Validation Testing demonstrates one year of continuous compliance
19 with the 5 ppb reformulation standard for both Validation Products, Defendant may reduce the
20 frequency of testing thereafter for both Validation Products to one time every six months. In the
21 event that the Validation Testing demonstrates six years of continuous compliance with the 5 ppb
22 reformulation standard for both Validation Products, Defendant shall no longer be required to
23 conduct the Validation Testing pursuant to Section 2.1.1. Each Validation Product shall contain
24 carbon from a lot that has already passed the Raw Material Testing conducted pursuant to
25 Section 2.1.2.

26 2.1.1.3 Products That Exceed Reformulation Standard: After the Final
27 Compliance Date, if Defendant obtains test results indicating that a Validation Product leaches
28 Arsenic in concentrations greater than 5 ppb, Defendant shall, within 45 days of receiving such

1 results, provide to CEH: (a) a copy of the test results and any related QA/QC or other
2 documentation regarding the testing; (b) an itemization of all Products, if any, that Defendant
3 offered for direct sale in California and that contain carbon from the same lot as the Validation
4 Product that failed the Validation Test, including the model name and number, number of units
5 affected, and distribution status of those units; (c) with respect to Products, if any, that were
6 offered for direct sale in California by Defendant and that contain carbon from the same lot as the
7 Validation Product that failed the Validation Test, a plan of correction to remedy the violation,
8 including a detailed description of the specific corrective actions to be taken, the dates such
9 actions will be completed, and the scope of such actions (including, but not limited to, which
10 Products will be addressed by the action); and (d) a description of what changes, if any,
11 Defendant proposes to make to the Raw Material Testing procedure set forth in Exhibit A to
12 ensure that the procedure is adequately screening Arsenic levels in the Products' activated carbon.
13 If Defendant knows or has reason to know that there were material indirect sales in California of
14 Products that contain carbon from the same lot as the Validation Product that failed the Validation
15 Test, Defendant shall include all such Products sold nationally in its itemization of affected
16 Products. The Parties shall meet and confer regarding the scope of any corrective action,
17 including but not limited to corrective action to remedy violations regarding material indirect
18 sales to California. If CEH disagrees with the sufficiency or timing of Defendant's proposed
19 corrective action, or if the Parties are unable to agree as to what changes, if any, need to be made
20 to the Raw Material Testing procedure, CEH may seek enforcement of this Consent Judgment in
21 accordance with Section 5.

22 **2.1.2 Raw Material Arsenic Level And Testing.** Beginning on the Final
23 Compliance Date, and to further ensure compliance with Section 2.1, Defendant shall not use
24 activated carbon that leaches Arsenic in concentrations greater than 5 ppb using the Raw Material
25 Testing procedure set forth in Exhibit A in any Products or Components (as that term is defined in
26 Section 7.1). Defendant shall test or cause to be tested each lot (as that term is defined in the Raw
27 Material Testing procedure) of raw activated carbon used in the Products or Components using
28 the Raw Material Testing procedure set forth in Exhibit A.

1 2.2 **Certification Of Level From Suppliers.** To the extent Defendant relies upon its
2 suppliers to conduct any of the testing required by this Consent Judgment, Defendant shall obtain
3 written certification with corresponding test results from its suppliers.

4 2.3 **Documentation.** The certifications and results of all testing performed pursuant to
5 this Consent Judgment shall be retained by Defendant for a period of five years from the date of
6 the certification or testing and shall be made available to CEH upon request.

7 2.4 **Confirmatory Testing By CEH.** CEH intends to conduct periodic testing of the
8 Products sold in California. Any such testing will be conducted in accordance with the Test
9 Protocol.

10 2.5 **Product Flushing Instructions.** As of the Final Compliance Date, for Products
11 that Defendant manufactures, distributes, ships or sells, Defendant shall transmit initial flushing
12 instructions to its customers by installation manuals, owner's manuals, labels, packaging or other
13 methods, as follows: (1) for point of entry Products having bed volumes of 0.5 cubic feet or less,
14 and for all point of use Products, initial flushing of no less than ten (10) bed volumes; and (2) for
15 point of entry Products having bed volumes of greater than 0.5 cubic feet, initial flushing of no
16 less than ten (10) gallons.

17 3. **SETTLEMENT PAYMENT**

18 3.1 Within 20 days after the entry of this Consent Judgment by the Court, Defendant
19 shall pay \$120,000 as a settlement payment. The payment required under this section shall be
20 delivered to the offices of Lexington Law Group. Any failure by Defendant to comply with the
21 payment terms herein shall be subject to a stipulated late fee in the amount of \$100 for each day
22 after the delivery date the payment is received. The late fees required under this section shall be
23 recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought
24 pursuant to Section 5 of this Consent Judgment. The funds paid by Defendant shall be made
25 payable and distributed as follows:

26 3.1.1 **Penalty:** \$5,000 of Defendant's payment shall be made by check payable
27 to the Center For Environmental Health as a penalty pursuant to Health & Safety Code
28 § 25249.7(b). CEH shall apportion the penalties in accordance with Health & Safety Code

1 § 25249.12.

2 3.1.2 Monetary Payment In Lieu Of Penalty: \$37,200 of Defendant's payment
3 shall be made by check payable to the Center For Environmental Health as payment to CEH in
4 lieu of civil penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of
5 Regulations, Title 11, § 3202(b). CEH will use such funds to continue its work educating and
6 protecting people from exposures to toxic chemicals, including heavy metals. In addition, as part
7 of its Community Environmental Action and Justice Fund, CEH will use four percent of such
8 funds to award grants to grassroots environmental justice groups working to educate and protect
9 people from exposures to toxic chemicals. The method of selection of such groups can be found
10 at the CEH web site at www.ceh.org/justicefund.

11 3.1.3 Attorneys' Fees And Costs: \$77,800 of Defendant's payment shall be
12 made by check payable to the Lexington Law Group as reimbursement of a portion of CEH's
13 reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
14 investigating, bringing this matter to Defendant's attention, litigating and negotiating a settlement
15 in the public interest.

16 **4. MODIFICATION OF CONSENT JUDGMENT**

17 4.1 This Consent Judgment may be modified by written agreement of CEH and
18 Defendant, after noticed motion, and upon entry of an amended consent judgment by the Court
19 thereon, or upon motion of CEH or Defendant and upon entry of an amended consent judgment
20 by the Court.

21 **5. ENFORCEMENT OF CONSENT JUDGMENT**

22 5.1 CEH may, by motion or application for an order to show cause before the Superior
23 Court of the County of Marin, enforce the terms and conditions contained in this Consent
24 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 2
25 above, CEH shall provide Defendant with a Notice of Violation and a copy of any test results
26 which purportedly support CEH's Notice of Violation. The Parties shall then meet and confer
27 regarding the basis for CEH's anticipated motion or application in an attempt to resolve it
28 informally. Should such attempts at meeting and conferring fail, CEH may file its enforcement

1 motion or application. Should CEH prevail on any motion or application to enforce a material
2 violation of this Consent Judgment under this section, CEH shall be entitled to its reasonable
3 attorneys' fees and costs incurred as a result of such motion or application. Should Defendant
4 prevail on any motion or application under this section, Defendant may be awarded its reasonable
5 attorneys' fees and costs as a result of such motion or application upon a finding by the court that
6 CEH's prosecution of the motion or application was not in good faith. This Consent Judgment
7 may only be enforced by CEH or the California Attorney General.

8 **6. APPLICATION OF CONSENT JUDGMENT**

9 6.1 This Consent Judgment shall apply to and be binding upon the Parties hereto, their
10 divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

11 **7. RELEASE**

12 7.1 This Consent Judgment is a full, final and binding resolution among

- 13 • CEH, acting in the public interest pursuant to Health & Safety Code § 25249.7(d);
- 14 • Defendant;
- 15 • Defendant's parents, subsidiaries, affiliates, directors, officers, employees, agents,
16 shareholders and their successors and assigns ("Defendant Releasees"); and
- 17 • Defendant's customers, distributors, wholesalers or retailers, or any other person
18 within Defendant's downstream chain of distribution which may in the course of
19 doing business use, maintain, distribute or sell Products and Components which
are manufactured, distributed or sold by Defendant (including Products and
Components which are privately labeled by persons other than Defendant)
(hereinafter "Downstream Entity," and collectively "Downstream Entities"),

20 of any violation of Proposition 65 or any other statutory or common law claim that was or could
21 have been asserted in the Complaint against Defendant, Defendant Releasees or Downstream
22 Entities based on alleged failure to warn about exposure to Arsenic contained in the Products and
23 Components, as well as any alleged discharge of Arsenic into a source of drinking water from the
24 Products and Components, with respect to any Products and Components manufactured,
25 distributed or sold by Defendant on or prior to the Final Compliance Date (hereinafter "Released
26 Products"). For purposes of this Section 7, "Components" means activated carbon-containing
27 elements incorporated into Products with water to carbon ratios greater than or equal to the
28 Validation Product selected pursuant to Section 2.1.1.1(a) with the lowest water to carbon ratio.

1 7.2 CEH, acting for itself and on behalf of the public interest pursuant to Health &
2 Safety Code § 25249.7(d), hereby releases, waives and forever discharges any and all claims
3 against Defendant, Defendant Releasees and Downstream Entities based on alleged failure to
4 warn about exposure to Arsenic contained in any Released Products, as well as any alleged
5 discharge of Arsenic into a source of drinking water from any Released Products.

6 7.3 Compliance with the terms of this Consent Judgment by Defendant shall constitute
7 compliance with Proposition 65 by Defendant, Defendant Releasees and Downstream Entities
8 with respect to any alleged failure to warn about exposure to Arsenic contained in the Products
9 and Components as well as any alleged discharge of Arsenic into a source of drinking water from
10 such Products and Components, with respect to any Products and Components manufactured,
11 distributed or sold by Defendant (including such Products and Components privately labeled by
12 Downstream Entities). Nothing in this Section 7 shall be deemed to limit or affect the obligations
13 of any Party created under this Consent Judgment.

14 **8. GOVERNING LAW**

15 8.1 The terms of this Consent Judgment shall be governed by the laws of the State of
16 California.

17 **9. RETENTION OF JURISDICTION**

18 9.1 This Court shall retain jurisdiction of this matter to implement this Consent
19 Judgment.

20 **10. PROVISION OF NOTICE**

21 10.1 All notices required pursuant to this Consent Judgment and correspondence shall
22 be sent to the person identified for each party in the attached Exhibit B.

23 **11. COURT APPROVAL**

24 11.1 If this Consent Judgment is not approved by the Court, it shall be of no further
25 force or effect and shall not be introduced as evidence or otherwise used in any proceeding for
26 any purpose. The Parties agree to mutually employ their best efforts to seek approval of the
27 Consent Judgment by the Court in a timely manner.

28

1 12. EXECUTION AND COUNTERPARTS

2 12.1 The stipulations to this Consent Judgment may be executed in counterparts and by
3 means of facsimile, which taken together shall be deemed to constitute one document.

4 13. AUTHORIZATION

5 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
6 by the party he or she represents to stipulate to this Consent Judgment and to enter into and
7 execute the Consent Judgment on behalf of the party represented and legally bind that party. The
8 undersigned have read, understand and agree to all of the terms and conditions of this Consent
9 Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

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11 AGREED TO:

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13 CENTER FOR ENVIRONMENTAL HEALTH

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Dated: _____

1/6/11 ^{ccp}

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CHARLIE PIZARRO

Printed Name

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ASSOCIATE DIRECTOR

Title

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MULTI-PURE DRINKING WATER SYSTEMS

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Dated: _____

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Printed Name

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Dated: _____

Printed Name

Title

MULTI-PURE DRINKING WATER SYSTEMS

Dated: 12/29/10

Alvin E. Rice

Alvin E. Rice
Printed Name

President

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Title

JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Multi-Pure Drinking Water Systems, the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: _____

JUDGE
Superior Court of the State of California

EXHIBIT A

RAW MATERIAL SAMPLING AND MONITORING PROTOCOL

1.1 Definitions

1.1.1 A “continuous sample” is defined as a spot sample obtained from a pipeline conveying the product in such a manner as to give a representative average of the stream throughout the period of transit.

1.1.2 A “lot” is defined as a discrete quantity of material from one manufacturing batch and must be identified as such by the manufacturer.

1.1.3 A “thief sample” is a sample taken at a specific time and location using a sampling tube or special thief, either as a core sample or spot sample from a specific point in a container.

1.2 Sample Collection and Sampling Frequency

1.2.1 In the case where carbon from a single lot is received in multiple discrete packages, such as bags or drums, a single thief sample shall be taken from a random location within each package. If the number of samples required pursuant to step 1.2.2 below exceeds the number of discrete packages received, then multiple thief samples shall be taken from random locations in the packages being sampled. If the number of samples required pursuant to step 1.2.2 below is less than the number of discrete packages received, then a single thief sample shall be taken from a random location from a sufficient number of randomly selected packages to satisfy step 1.2.2 below.

1.2.2 A minimum of one random thief sample shall be taken for each 5,000 lbs of carbon in each lot.

1.2.3 The thief samples may be tested individually or made into a representative composite sample.

1.2.4 If the carbon from a lot is not already in discrete packages or containers, refer to step 1.2.2 above for the number of random thief samples to be taken within the lot.

1.2.5 Samples will be collected and analyzed for testing in accordance with Sections 1.4 or 1.5 below as applicable.

1.2.6 No portion of any lot of carbon shall be further processed or changed in a way that could increase the arsenic leaching characteristics of the carbon, including but not limited to grinding to change the particle size distribution, after the sample from that lot of carbon passes the raw material test unless the carbon is retested after such processing or change.

1.3 Selection of Raw Material Extraction Test Method

1.3.1 Raw material extraction testing shall be conducted on each sample collected in accordance with Section 1.2 above. The entity undertaking the raw material extraction testing shall use one of the two methods described below, provided that the beaker test described in Section 1.5 may only be used as an option for carbon used in block filters.

1.4 Beaker Test Method

1.4.1 Place 125 mL of deionized water meeting the specifications for Type II water set forth in Section 1.1 of ASTM D1193-91 Standard Specification for Reagent Water (@ 20 ± 5°C) (hereinafter “Deionized Water”) in a container.

1.4.2 Add a 50 cc sample of carbon to the container of Deionized Water. Using a glass rod gently stir the carbon/water mixture until any trapped air bubbles have been released. Cover the sample and soak for 6 hours.

1.4.3 Decant or vacuum filter sample using a filter appropriate for carbon particle size.

1.4.4 Transfer filtered extract into sample bottle. Preserve the sample by adding concentrated nitric acid to achieve a 1 % (v/v) acid solution.

1.4.5 Analyze samples in accordance with those EPA Analytical Methods referenced in NSF Standard 53 (latest edition).

1.5 Beaker Test Method – Option for Carbon Used in Block Filters Only

1.5.1 The version of the Beaker Test Method described in this Section 1.5 is an optional test method for carbon to be used in block filters. While each test method set forth in the protocol may be used to test carbon used in block filters, the test set forth in Section 1.6 may not be used unless the carbon to be tested is to be used in block filters.

1.5.2 Place a 50 cc sample of carbon in 125 mL of Deionized Water (as defined in Section 1.4.1 above) in a container. Cover the container and let soak for three hours.

1.5.3 After the soak, decant or vacuum filter the sample. If vacuum filtration is used, transfer carbon to the original container. Add 125 ml of Deionized Water to the carbon. Using a glass rod gently stir the carbon/water mixture until any trapped air bubbles have been released. Cover the sample and soak for 24 hours.

1.5.4 Decant or vacuum filter sample using a filter appropriate for carbon particle size.

1.5.5 Transfer filtered extract into sample bottle. Preserve the sample by adding concentrated nitric acid to achieve a 1 % (v/v) acid solution.

1.5.6 Analyze samples in accordance with those EPA Analytical Methods referenced in NSF Standard 53 (latest edition).

1.6 Test Results

1.6.1 Irrespective of the method used, the arsenic limit shall be 5 parts per billion (“ppb”).

1.6.2 Should a lot of raw material exceed 5 ppb, the entity undertaking the raw material testing and/or the manufacturer shall be entitled to undertake further processing of the lot so as to reduce the levels of extractable arsenic. If the entity undertaking the raw material testing and/or the manufacturer choose to undertake any such further processing, it shall assign a new lot number to the lot, and, following such further processing, shall subject the lot to raw

material testing in accordance with the applicable testing procedure described above. The entity undertaking any such further processing shall document steps taken to further process the raw material and shall make any such documentation available to CEH upon request.

EXHIBIT B

Persons To Receive Notice

| | |
|--------------------|---|
| PLAINTIFF: | Center for Environmental Health |
| <i>Notice to :</i> | Eric S. Somers, Esq. Lexington Law Group 1627 Irving Street San Francisco, CA 94122 |
| DEFENDANT: | Multi-Pure Drinking Water Systems |
| <i>Notice to :</i> | R. Raymond Rothman Bingham McCutchen LLP 355 South Grand Avenue Suite 4400 Los Angeles, CA 90071-3106 |