

1 Michael Freund SBN 99687
2 Michael Freund & Associates
3 1919 Addison Street, Suite 105
4 Berkeley, CA 94704
5 Telephone: (510) 540-1992
6 Email: freund1@aol.com

7 Attorney for Plaintiff Environmental Research Center, Inc.

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
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By: Xian-xii Bowie, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ALAMEDA**

11 **ENVIRONMENTAL RESEARCH CENTER,**
12 **INC., a California non-profit corporation**

13 **Plaintiff,**

14 **vs.**

15 **4DH LLC, individually and dba AXE &**
16 **SLEDGE SUPPLEMENTS; AXE and**
17 **SLEDGE SUPPLEMENTS INC; and DOES**
18 **1-100**

19 **Defendants.**

CASE NO. 22CV010207

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF AND
CIVIL PENALTIES

[Toxic Tort/Environmental (30)]
Proposition 65, Health & Safety Code
Section 25249.5 et seq.]

20 Plaintiff Environmental Research Center, Inc. hereby alleges:

21 **I**

22 **INTRODUCTION**

23 1. Plaintiff Environmental Research Center, Inc. (hereinafter "Plaintiff" or "ERC") brings
24 this action as a private attorney general enforcer and in the public interest pursuant to Health &
25 Safety Code section 25249.7, subdivision (d). The Safe Drinking Water and Toxic Enforcement
26 Act of 1986 (Health & Safety Code section 25249.5 *et seq.*) also known as "Proposition 65,"
27 mandates that businesses with ten or more employees must provide a "clear and reasonable
28 warning" prior to exposing any individual to a chemical known to the state to cause cancer or

1 reproductive toxicity. Lead and mercury are chemicals known to the State of California to
2 cause cancer, birth defects, and other reproductive harm. This Complaint seeks injunctive and
3 declaratory relief and civil penalties to remedy the ongoing failure of Defendants 4DH LLC,
4 individually and dba Axe & Sledge Supplements and Axe and Sledge Supplements Inc
5 (collectively “Axe & Sledge Supplements”) and Does 1-100 (hereinafter individually referred to
6 as “Defendant” or collectively as “Defendants”), to warn consumers that they have been
7 exposed to lead and/or mercury from a number of Axe & Sledge Supplements’ nutritional
8 health products as set forth in paragraph 3 at levels exceeding the applicable Maximum
9 Allowable Dose Level (“MADL”) and requiring a warning pursuant to Health & Safety Code
10 section 25249.6.

11
12 **II**
PARTIES

13 2. Plaintiff ERC is a California non-profit corporation dedicated to, among other causes,
14 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
15 and toxic chemicals, facilitating a safe environment for consumers and employees, and
16 encouraging corporate responsibility.

17 3. Defendant Axe & Sledge Supplements is a business that develops, manufactures,
18 markets, distributes, and/or sells nutritional health products that have exposed users to lead
19 and/or mercury in the State of California within the relevant statute of limitations period. These
20 “SUBJECT PRODUCTS” (as identified in the Notices of Violation dated January 25, 2022 and
21 February 1, 2022 attached hereto as *Exhibits A and B*) are: (1) Axe & Sledge Supplements
22 Hydraulic Scorpion Venom (lead), (2) Axe & Sledge Supplements Hydraulic Deadlifts &
23 Gummy Bears (lead), (3) Axe & Sledge Supplements The Grind Deadlifts & Gummy Bears
24 (lead, mercury), (4) Axe & Sledge Supplements The Grind Big Melons (lead, mercury), (5) Axe
25 & Sledge Supplements Hydraulic Unicorn Blood (lead), (6) Axe & Sledge Supplements The
26 Grind Orange Mango Flavored Shark Bite (lead, mercury), (7) Axe & Sledge Supplements
27 Hydraulic Tastes Like America HWMF Feels Like Freedom (lead), (8) Axe & Sledge
28 Supplements The Grind Unicorn Blood (lead), (9) Axe & Sledge Supplements The Grind Mixed

1 Berry Flavored Scorpion Venom (mercury), and (10) Axe & Sledge Supplements EAA +
2 Hydration The Grind Your Mom's Sweet Peach (mercury).

3 4. 4DH LLC, individually and dba Axe & Sledge Supplements and Axe and Sledge
4 Supplements Inc are companies subject to Proposition 65 as they employ ten or more persons
5 and have employed ten or more persons at all times relevant to this action.

6 5. Defendants Does 1-100, are named herein under fictitious names, as their true names
7 and capacities are unknown to ERC. ERC is informed and believes, and thereon alleges, that
8 each of said Does is responsible, in some actionable manner, for the events and happenings
9 hereinafter referred to, either through said Does' conduct, or through the conduct of its agents,
10 servants or employees, or in some other manner, causing the harms alleged by ERC in this
11 Complaint. When said true names and capacities of Does are ascertained, ERC will seek leave
12 to amend this Complaint to set forth the same.

13 III

14 JURISDICTION AND VENUE

15 5. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10,
16 which grants the Superior Court original jurisdiction in all causes except those given by statute
17 to other trial courts. The statute under which this action is brought does not specify any other
18 basis for jurisdiction.

19 6. This Court has jurisdiction over Axe & Sledge Supplements because Axe & Sledge
20 Supplements has sufficient minimum contacts with California, and otherwise intentionally
21 avails itself of the California market through the marketing, distribution, and/or sale of the
22 SUBJECT PRODUCTS in the State of California so as to render the exercise of jurisdiction
23 over it by the California courts consistent with traditional notions of fair play and substantial
24 justice.

25 7. The Complaint is based on allegations contained in the Notices of Violation dated
26 January 25, 2022 and February 1, 2022 served on the California Attorney General, other public
27 enforcers, and Axe & Sledge Supplements. The Notices of Violation constitute adequate notice
28 to Axe & Sledge Supplements because it provided adequate information to allow Axe & Sledge

1 Supplements to assess the nature of the alleged violations, consistent with Proposition 65 and its
2 implementing regulations. A certificate of merit and a certificate of service accompanied each
3 copy of the Notices of Violation, and both certificates comply with Proposition 65 and its
4 implementing regulations. The Notices of Violation served on Axe & Sledge Supplements also
5 included a copy of “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition
6 65): A Summary.” Service of the Notices of Violation and accompanying documents complied
7 with Proposition 65 and its implementing regulations. Attached hereto as *Exhibits A and*
8 *Exhibit B* are true and correct copies of the Notices of Violation and associated documents.
9 More than 60 days have passed since ERC mailed the Notices of Violation and no public
10 enforcement entity has filed a Complaint in this case.

11 8. This Court is the proper venue for the action because the causes of action have arisen in
12 the County of Alameda where some of the violations of law have occurred, and will continue to
13 occur, due to the ongoing sale of Axe & Sledge Supplements’ products. Furthermore, venue is
14 proper in this Court under Code of Civil Procedure section 395.5 and Health & Safety Code
15 section 25249.7.

16 IV

17 STATUTORY BACKGROUND

18 9. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
19 passed as “Proposition 65” by an overwhelming majority vote of the people in November of
20 1986.

21 10. The warning requirement of Proposition 65 is contained in Health & Safety Code
22 section 25249.6, which provides:

23 No person in the course of doing business shall knowingly and
24 intentionally expose any individual to a chemical known to the state to
25 cause cancer or reproductive toxicity without first giving clear and
26 reasonable warning to such individual, except as provided in Section
27 25249.10.

28 11. The Office of Environmental Health Hazard Assessment (“OEHHA”), a division of Cal
EPA, is the lead agency in charge of the implementation of Proposition 65. OEHHA

1 administers the Proposition 65 program and administers regulations that govern Proposition 65
2 in general, including warnings to comply with the statute. The warning regulations are found at
3 Title 27 of the California Code of Regulations, Article 6. The regulations define expose as “to
4 cause to ingest, inhale, contact via body surfaces or otherwise come into contact with a listed
5 chemical. An individual may come into contact with a listed chemical through water, air, food,
6 consumer products and any other environmental exposure as well as occupational exposures.”
7 (Cal. Code Regs., tit. 27, § 25102, subd. (i).)

8 12. In this case, the exposures are caused by consumer products. A consumer product is
9 defined as “any article, or component part thereof, including food, that is produced, distributed,
10 or sold for the personal use, consumption or enjoyment of a consumer.” (Cal. Code Regs., tit.
11 27, § 25600.1, subd. (d).) Food “includes ‘dietary supplements’ as defined in California Code
12 of Regulations, title 17, section 10200.” (*Id.* at subd. (g).) A consumer product exposure is “an
13 exposure that results from a person’s acquisition, purchase, storage, consumption, or any
14 reasonably foreseeable use of a consumer product, including consumption of a food.” (*Id.* at
15 subd. (e).)

16 13. On August 30, 2016, the Office of Administrative Law approved the adoption of
17 OEHHA’s amendments to Article 6, Clear and Reasonable Warnings of the California Code of
18 Regulations. This action repealed virtually all of the regulatory provisions of Title 27 of the
19 California Code of Regulations, Article 6 (sections 25601 *et seq.*) and replaced the repealed
20 sections with new regulations set forth in two new Subarticles to Article 6 that became
21 operative on August 30, 2018 (the “New Warning Regulations”). The New Warning
22 Regulations provide, among other things, methods of transmission and content of warnings
23 deemed to comply with Proposition 65. Axe & Sledge Supplements is subject to the warning
24 requirements set forth in the New Warning Regulations that became operative on August 30,
25 2018.

26 14. Health & Safety Code section 25249.6 provides that “No person in the course of doing
27 business shall knowingly and intentionally expose any individual to a chemical known to the
28 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning

1 to such individual” The New Warning Regulations apply when clear and reasonable
2 warnings are required under Section 25249.6. Pursuant to the New Warning Regulations,
3 consumer product warnings “must be prominently displayed on a label, labeling, or sign, and
4 must be displayed with such conspicuousness as compared with other words, statements,
5 designs or devices on the label, labeling, or sign, as to render the warning likely to be seen,
6 read, and understood by an ordinary individual under customary conditions of purchase or use.”
7 (*Id.* at § 25601, subd. (c).)

8 15. Proposition 65 establishes a procedure by which the State is to develop a list of
9 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code,
10 § 25249.8.) There is no duty to provide a clear and reasonable warning until 12-months after
11 the chemical is published on the State list. (Health & Safety Code, § 25249.10, subd. (b).)

12 16. Lead was listed as a chemical known to the State of California to cause developmental
13 toxicity in the fetus and male and female reproductive toxicity on February 27, 1987. Lead was
14 listed as a chemical known to the State of California to cause cancer on October 1, 1992. (State
15 of California EPA OEHHA Safe Drinking Water and Toxic Enforcement Act of 1986
16 Chemicals Known to the State to Cause Cancer and Reproductive Toxicity.) The MADL for
17 lead as a chemical known to cause reproductive toxicity is 0.5 micrograms per day. (Cal. Code
18 Regs., tit. 27, §25805, subd. (b).) The No Significant Risk Level for lead as a carcinogen is 15
19 micrograms per day. (Cal. Code Regs., tit. 27, §25705, subd. (b).)

20 17. Mercury and mercury compounds were listed as chemicals known to the State of
21 California to cause developmental toxicity in the fetus and male and female reproductive
22 toxicity on July 1, 1990 (State of California EPA OEHHA Safe Drinking Water and Toxic
23 Enforcement Act of 1986 Chemicals Known to the State to Cause Cancer and Reproductive
24 Toxicity).

25 18. Proposition 65 provides that any person “violating or threatening to violate” Proposition
26 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, §25249.7,
27 subd. (a).) To “threaten to violate” means “to create a condition in which there is a substantial
28 probability that a violation will occur.” (Health & Safety Code, § 25249.11, subd. (e).)

1 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.
2 (Health & Safety Code, § 25249.7, subd. (b)(1).)

3 19. Proposition 65 may be enforced by any person in the public interest who provides notice
4 sixty days before filing suit to both the violator and designated law enforcement officials. The
5 failure of law enforcement officials to file a timely Complaint enables a citizen suit to be filed
6 pursuant to Health & Safety Code section 25249.7, subdivisions (c) and (d).

7 **V**

8 **STATEMENT OF FACTS**

9 20. Axe & Sledge Supplements has developed, manufactured, marketed, distributed, and/or
10 sold the SUBJECT PRODUCTS containing lead and/or mercury into the State of California.
11 Consumption of the SUBJECT PRODUCTS according to the directions and/or
12 recommendations provided for said products causes consumers to be exposed to lead at levels
13 exceeding the 0.5 micrograms per day MADL and/or to be exposed to mercury and requiring a
14 warning. Consumers have been ingesting these products for many years, without any
15 knowledge of their exposure to these very dangerous chemicals.

16 21. For many years, Axe & Sledge Supplements has knowingly and intentionally exposed
17 numerous persons to lead and/or mercury without providing any type of Proposition 65
18 warning. Prior to ERC's Notices of Violation and this Complaint, Axe & Sledge Supplements
19 failed to provide a warning on the labels of the SUBJECT PRODUCTS or provide any other
20 legally acceptable warning. Axe & Sledge Supplements has, at all times relevant hereto, been
21 aware that the SUBJECT PRODUCTS contained lead and/or mercury and that persons using
22 these products have been exposed to these chemicals. Axe & Sledge Supplements has been
23 aware of the presence of lead and/or mercury in the SUBJECT PRODUCTS and has failed to
24 disclose the presence of these chemicals to the public, who undoubtedly believe they have been
25 ingesting totally healthy and pure products pursuant to the company's statements.

26 22. Both prior and subsequent to ERC's Notices of Violation, Axe & Sledge Supplements
27 failed to provide consumers of the SUBJECT PRODUCTS with a clear and reasonable warning
28 that they have been exposed to chemicals known to the State of California to cause cancer

1 and/or birth defects and/or other reproductive harm. This failure to warn is ongoing.

2 **FIRST CAUSE OF ACTION**
3 **(Violation of Section 25249.6 of the Health and Safety Code, Failure to Provide Clear and**
4 **Reasonable Warning under Proposition 65)**

5 23. ERC refers to paragraphs 1-22, inclusive, and incorporates them herein by this
6 reference.

7 24. By committing the acts alleged above, Axe & Sledge Supplements has, in the course of
8 doing business, knowingly and intentionally exposed users of the SUBJECT PRODUCTS to
9 lead and/or mercury, chemicals known to the State of California to cause cancer and/or birth
10 defects and/or other reproductive harm, without first giving clear and reasonable warning to
11 such individuals within the meaning of Health & Safety Code section 25249.6. In doing so,
12 Axe & Sledge Supplements has violated Health & Safety Code section 25249.6 and continues
13 to violate the statute with each successive sale of the SUBJECT PRODUCTS.

14 25. Said violations render Axe & Sledge Supplements liable for civil penalties, up to \$2,500
15 per day for each violation, and subject Axe & Sledge Supplements to injunction.

16 **SECOND CAUSE OF ACTION**
17 **(Declaratory Relief)**

18 26. ERC refers to paragraphs 1-25, inclusive, and incorporates them herein by this
19 reference.

20 27. There exists an actual controversy relating to the legal rights and duties of the Parties,
21 within the meaning of Code of Civil Procedure section 1060, between ERC and Axe & Sledge
22 Supplements, concerning whether Axe & Sledge Supplements has exposed individuals to
23 chemicals known to the State of California to cause cancer and/or birth defects and/or other
24 reproductive harm without providing clear and reasonable warning.

25 **VI**

26 **PRAYER**

27 WHEREFORE ERC prays for relief as follows:

- 28 1. On the First Cause of Action, for civil penalties for each and every violation according

1 to proof;

2 2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7,
3 subdivision (a), for such temporary restraining orders, preliminary and permanent injunctive
4 orders, or other orders as are necessary to prevent Axe & Sledge Supplements from exposing
5 persons to lead and/or mercury without providing clear and reasonable warning;

6 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil
7 Procedure section 1060 declaring that Axe & Sledge Supplements has exposed individuals to
8 lead and/or mercury without providing clear and reasonable warning; and

9 4. On all Causes of Action, for reasonable attorneys' fees pursuant to Code of Civil
10 Procedure section 1021.5 or the substantial benefit theory;

11 5. For costs of suit herein; and

12 6. For such other relief as the Court may deem just and proper.

13
14 DATED: April 13, 2022

MICHAEL FREUND & ASSOCIATES

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17 _____
18 Michael Freund
19 Attorney for Plaintiff Environmental Research Center, Inc.
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EXHIBIT A

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.371.0885

Michael Freund, Esq.

January 25, 2022

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

**4DH LLC, individually and dba Axe & Sledge Supplements
Axe and Sledge Supplements Inc**

Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

**Axe & Sledge Supplements Hydraulic Scorpion Venom - Lead
Axe & Sledge Supplements Hydraulic Deadlifts & Gummy Bears - Lead
Axe & Sledge Supplements The Grind Deadlifts & Gummy Bears - Lead, Mercury
Axe & Sledge Supplements The Grind Big Melons - Lead, Mercury
Axe & Sledge Supplements Hydraulic Unicorn Blood - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause developmental toxicity and male and female reproductive toxicity.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 25, 2019, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at freund1@aol.com.**

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to 4DH LLC, individually and dba Axe & Sledge Supplements, Axe and Sledge Supplements Inc, and their Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by 4DH LLC, individually and dba Axe & Sledge Supplements and Axe and Sledge Supplements Inc

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.



Dated: January 25, 2022

Michael Freund

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On January 25, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
4DH LLC, individually and dba Axe & Sledge
Supplements & Axe and Sledge Supplements Inc
1909 New Texas Rd
Pittsburgh, PA 15239

Current President or CEO
4DH LLC, individually and dba Axe & Sledge Supplements
& Axe and Sledge Supplements Inc
2652 Norma Drive
Lower Burrell, PA 15068

Current President or CEO
4DH LLC, individually and dba Axe & Sledge
Supplements & Axe and Sledge Supplements Inc
160 Plum Industrial Court
Pittsburgh, PA 15239

On January 25, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On January 25, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Barbara Yook, District Attorney
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

January 25, 2022

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Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Lisa A. Smittcamp, District Attorney
Fresno County
2100 Tulare Street
Fresno, CA 93721
consumerprotection@fresnocountyca.gov

Thomas L. Hardy, District Attorney
Inyo County
168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Walter W. Wall, District Attorney
Mariposa County
P.O. Box 730
Mariposa, CA 95338
mcda@mariposacounty.org

Kimberly Lewis, District Attorney
Merced County
550 West Main St
Merced, CA 95340
Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Allison Haley, District Attorney
Napa County
1127 First Street, Ste C
Napa, CA 94559
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Clifford H. Newell, District Attorney
Nevada County
201 Commercial St
Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

Morgan Briggs Gire, District Attorney
Placer County
10810 Justice Center Drive
Roseville, CA 95678
Prop65@placer.ca.gov

David Hollister, District Attorney
Plumas County
520 Main St
Quincy, CA 95971
davidhollister@countyofplumas.com

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Summer Stephan, District Attorney
San Diego County
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdcca.org

Mark Ankcorn, Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov

Alexandra Grayner, Assistant District Attorney
San Francisco District Attorney's Office
350 Rhode Island Street
San Francisco, CA 94103
Alexandra.grayner@sfgov.org

Valerie Lopez, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Valerie.Lopez@sfcityatty.org

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

January 25, 2022

Page 6

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Christopher Dalbey, Deputy District Attorney
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

Bud Porter, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Nora V. Frimann, City Attorney
San Jose City Attorney
200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

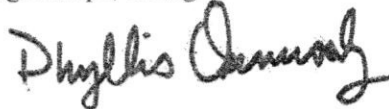
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

On January 25, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on January 25, 2022, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

District Attorney, Alpine
County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador
County
708 Court Street, Suite 202
Jackson, CA 95642

District Attorney, Butte
County
25 County Center Drive, Suite
245
Oroville, CA 95965

District Attorney, Colusa
County
310 6th St
Colusa, CA 95932

District Attorney, Del Norte
County
450 H Street, Room 171
Crescent City, CA 95531

District Attorney, El Dorado
County
778 Pacific St
Placerville, CA 95667

District Attorney, Glenn
County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt
County
825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Imperial
County
940 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings
County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Los Angeles
County
Hall of Justice
211 West Temple St., Ste 1200
Los Angeles, CA 90012

District Attorney, Madera
County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin
County
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney, Mendocino
County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Modoc
County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono
County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Orange
County
300 N Flower St
Santa Ana, CA 92703

District Attorney, San Benito
County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San
Bernardino County
303 West Third Street
San Bernadino, CA 92415

District Attorney, San Mateo
County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Shasta
County
1355 West Street
Redding, CA 96001

District Attorney, Sierra
County
Post Office Box 457
100 Courthouse Square, 2nd
Floor
Downieville, CA 95936

District Attorney, Siskiyou
County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano
County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter
County
463 2nd Street
Yuba City, CA 95991

District Attorney, Tehama
County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity
County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tuolumne
County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Yuba
County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's
Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

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EXHIBIT B

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.371.0885

Michael Freund, Esq.

February 1, 2022

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. (“ERC”), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**4DH LLC, individually and dba Axe & Sledge Supplements
Axe and Sledge Supplements Inc**

Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- **Axe & Sledge Supplements The Grind Orange Mango Flavored Shark Bite – Lead, Mercury**
- **Axe & Sledge Supplements Hydraulic Tastes Like America HWMF Feels Like Freedom - Lead**
- **Axe & Sledge Supplements The Grind Unicorn Blood – Lead**
- **Axe & Sledge Supplements The Grind Mixed Berry Flavored Scorpion Venom - Mercury**
- **Axe & Sledge Supplements EAA + Hydration The Grind Your Mom's Sweet Peach – Mercury**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause developmental toxicity and male and female reproductive toxicity.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least February 1, 2019, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at freund1@aol.com.**

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to 4DH LLC, individually and dba Axe & Sledge Supplements, Axe and Sledge Supplements Inc, and their Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by 4DH LLC, individually and dba Axe & Sledge Supplements and Axe and Sledge Supplements Inc

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.



Dated: February 1, 2022

Michael Freund

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On February 1, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
4DH LLC, individually and dba Axe & Sledge
Supplements & Axe and Sledge Supplements Inc
1909 New Texas Rd
Pittsburgh, PA 15239

Current President or CEO
4DH LLC, individually and dba Axe & Sledge Supplements
& Axe and Sledge Supplements Inc
2652 Norma Drive
Lower Burrell, PA 15068

Current President or CEO
4DH LLC, individually and dba Axe & Sledge
Supplements & Axe and Sledge Supplements Inc
160 Plum Industrial Court
Pittsburgh, PA 15239

On February 1, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On February 1, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Barbara Yook, District Attorney
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Lisa A. Smittcamp, District Attorney
Fresno County
2100 Tulare Street
Fresno, CA 93721
consumerprotection@fresnocountyca.gov

Thomas L. Hardy, District Attorney
Inyo County
168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Walter W. Wall, District Attorney
Mariposa County
P.O. Box 730
Mariposa, CA 95338
mcda@mariposacounty.org

Kimberly Lewis, District Attorney
Merced County
550 West Main St
Merced, CA 95340
Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Allison Haley, District Attorney
Napa County
1127 First Street, Ste C
Napa, CA 94559
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Clifford H. Newell, District Attorney
Nevada County
201 Commercial St
Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

Morgan Briggs Gire, District Attorney
Placer County
10810 Justice Center Drive
Roseville, CA 95678
Prop65@placer.ca.gov

David Hollister, District Attorney
Plumas County
520 Main St
Quincy, CA 95971
davidhollister@countyofplumas.com

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Summer Stephan, District Attorney
San Diego County
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdca.org

Mark Ankom, Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov

Alexandra Grayner, Assistant District Attorney
San Francisco District Attorney's Office
350 Rhode Island Street
San Francisco, CA 94103
Alexandra.grayner@sfgov.org

Valerie Lopez, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Valerie.Lopez@sfcityattorney.org

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

February 1, 2022

Page 7

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Christopher Dalbey, Deputy District Attorney
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

Bud Porter, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Nora V. Frimann, City Attorney
San Jose City Attorney
200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
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800 S Victoria Ave
Ventura, CA 93009
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Executed on February 1, 2022, in Fort Oglethorpe, Georgia.

Phyllis Dunwoody

Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Colusa County 310 6 th St Colusa, CA 95932	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, Orange County 300 N Flower St Santa Ana, CA 92703	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, San Bernardino County 303 West Third Street San Bernadino, CA 92415	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sierra County Post Office Box 457 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.