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6 Attorneys for Plaintiff  
7 AS YOU SOW

ELECTRONICALLY

**FILED**

*Superior Court of California,  
County of San Francisco*

**FEB 26 2015**

Clerk of the Court  
BY: EDNALEEN JAVIER  
Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN FRANCISCO**

11 AS YOU SOW, a California Non-Profit  
Public Benefit Corporation,

12 Plaintiff,

13 v.

14 **HORMEL FOODS CORPORATION,**  
15 **MEGAMEX FOODS, LLC, and DOES 1**  
16 through 10, inclusive,

17 Defendants.

Case No. CGC-14-542879

**NOTICE OF ENTRY OF ORDER  
GRANTING MOTION TO APPROVE  
AND ENTER CONSENT JUDGMENT**

Action Filed: November 24, 2014

1 PLEASE TAKE NOTICE that on February 25, 2015, the Court in the above-referenced  
2 matter signed and filed an order granting motion to approve and enter consent judgment. A copy  
3 of this order is attached hereto as Exhibit A.

4 DATED: February 26, 2015

SHUTE, MIHALY & WEINBERGER LLP

5  
6 By: 

7 ELLISON FOLK  
8 LAURA D. BEATON

9 Attorneys for Plaintiff  
10 AS YOU SOW

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**EXHIBIT A**

FEB 25 2015

CLERK OF THE COURT  
BY: FELICIA M. GREEN  
Deputy Clerk

1 ELLISON FOLK (State Bar No. 149232)  
2 LAURA D. BEATON (State Bar No. 294466)  
3 SHUTE, MIHALY & WEINBERGER LLP  
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6 Attorneys for Plaintiff AS YOU SOW

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN FRANCISCO**

11 AS YOU SOW, a California Non-Profit  
12 Public Benefit Corporation,

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14 v.

15 HORMEL FOODS CORPORATION,  
16 MEGAMEX FOODS, LLC, and DOES 1  
through 10, inclusive,

17 Defendants.

Case No. CGC-14-542879

~~PROPOSED~~ ORDER APPROVING  
CONSENT JUDGMENT

Action Filed: November 24, 2014

**Hearing**

**Date: February 25, 2015**

**Time: 9:30a.m.**

**Dept. 302**

**Judge: Hon. Ernest H. Goldsmith**

**Reservation Number: 010515-10**

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The motion of Plaintiff As You Sow came on for hearing on February 25, 2015.

Having considered the moving papers filed by As You Sow and finding that the Consent Judgment meets the requirements of Health & Safety Code § 25249.7(f)(4),

IT IS HEREBY ORDERED that the Consent Judgment, <sup>copy of which is</sup> attached hereto as Exhibit <sup>EHC</sup> ~~A is hereby~~ <sup>may be</sup> entered <sup>as</sup> and approved by the Court.

DATED: Feb. 25, 2015

ERNEST H. GOLDSMITH

Hon.  
Judge of the Superior Court

650082.1

**EXHIBIT A**  
**TO PROPOSED ORDER APPROVING CONSENT JUDGMENT**

1 ELLISON FOLK (State Bar No. 149232)  
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9 Beaton@smwlaw.com

10 Attorneys for Plaintiff  
11 AS YOU SOW

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF SAN FRANCISCO**

14 AS YOU SOW, a California Non-Profit  
15 Public Benefit Corporation,

16 Plaintiff,

17 v.

18 HORMEL FOODS CORPORATION,  
19 MEGAMEX FOODS, LLC, and DOES 1  
20 through 10, inclusive,

21 Defendants.

Case No. CGC-14-542879

**[PROPOSED] CONSENT JUDGMENT**

California Health and Safety Code §  
25249.5 et seq.

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**CONSENT JUDGMENT**

This Consent Judgment is entered into by and between AS YOU SOW (“AYS”), on behalf of AYS and the general public, and HORMEL FOODS CORPORATION and MEGAMEX FOODS, LLC (collectively “MEGAMEX”), to resolve all claims raised in AYS’s August 30, 2013, Notice of Violation letter to MEGAMEX (“Notice”). This Consent Judgment shall be effective upon entry.

**1. INTRODUCTION**

1.1 AYS is a non-profit corporation dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer rights, environmental education, and corporate accountability. AYS is based in Oakland, California and is incorporated under the laws of the State of California.

1.2 MEGAMEX manufactures, distributes, markets and/or sells Búfalo® hot sauce and salsa products including, but not limited to, Búfalo® brand Picante Búfalo® – Salsa Picante Clasica; Búfalo® brand Picante Bufalo – Salsa Chipotle; and Búfalo® Jalapeño Rojo (collectively, the Búfalo® hot sauce and salsa products manufactured, distributed, marketed and/or sold by MEGAMEX are the “Covered Products”), each of which are alleged to contain lead, a chemical regulated by the State of California as known to cause cancer and reproductive harm pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), California Health and Safety Code section 25249.5 *et seq.*

1.3 On August 30, 2013, AYS sent a 60-day Notice of Violation to MEGAMEX and to public enforcers as required by Health and Safety Code section 25249.7, alleging that it violated Proposition 65 by failing to provide clear and reasonable warning before exposing users to lead in the Covered Products.

1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over MEGAMEX as to the allegations contained in the Complaint, that venue is proper in San Francisco County, that this Court has jurisdiction to enter this Consent Judgment

1 as a resolution of all claims that were alleged in the Complaint and that the Court shall retain  
2 jurisdiction to implement the Consent Judgment.

3 1.5 For the purpose of avoiding prolonged and costly litigation, the Parties enter into  
4 this Consent Judgment as a full settlement of the claims alleged in the Notice and the claims that  
5 were raised in the Complaint based on the facts alleged therein. By executing and complying  
6 with this agreement, neither Party admits any facts or conclusions of law including, but not  
7 limited to, any facts or conclusions of law regarding any alleged violations of Proposition 65 or  
8 any other statutory, common law, or equitable claim or requirement relating to or arising from  
9 the sale of Covered Products in California. Nothing in this Consent Judgment shall prejudice,  
10 waive, or impair any right, remedy, or defense that Parties may have in any other or in future  
11 legal proceedings unrelated to these proceedings. However, this paragraph shall not diminish or  
12 otherwise affect the obligation, responsibilities, and duties of the Parties under this Consent  
13 Judgment.

14 1.6 The term "Effective Date" means the date of entry of this Consent Judgment.

15 **2. INJUNCTIVE RELIEF**

16 2.1 MEGAMEX agrees that it will:

17 (1) change the serving size on the Covered Products' labels from 1 tablespoon to 1  
18 teaspoon, to the extent it has not done so already; and

19 (2) source chilies only from suppliers that (a) use good agricultural and manufacturing  
20 practices and (b) employ quality control measures, as those terms are used in Title 21, Code of  
21 Federal Regulations, section 110.110, subdivision (c) and section 110.80, to reduce  
22 contamination by lead to the lowest level currently feasible;

23 2.2 MEGAMEX further agrees that it will not market, sell, or distribute any Covered  
24 Product in California that has a lead concentration in excess of 0.06 parts per million  
25 ("Maximum Lead Level"), unless such Covered Product carries the warning set forth below in  
26 this paragraph 2.2. This concentration is dependent upon the serving size set forth in paragraph  
27 2.1(1) above; unless required by applicable federal or state law, the serving size may not be  
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1 changed without agreement by the parties. Should any product sold in California contain  
2 concentrations of lead above this level, the product shall carry the following warning:

3 "WARNING: This product contains chemicals known to the State of California to  
4 cause birth defects or other reproductive harm."

5 If the level of lead in the product sold in California will result in an exposure in excess of the  
6 "no significant risk level" established under Proposition 65 for lead, MEGAMEX shall use  
7 the following warning:

8 "WARNING: This product contains chemicals known to the State of California to  
9 cause cancer, birth defects, or other reproductive harm."

10 **3. NON-ADMISSION OF LIABILITY**

11 3.1 It is understood and agreed between the Parties that this Consent Judgment is a  
12 compromise of a disputed claim and that it will not be construed as an admission by any of the  
13 Parties that any of them has acted wrongfully or has violated the law.

14 **4. MONETARY PAYMENTS**

15 4.1 Within 15 days of the Effective Date, MEGAMEX shall pay \$ \$48,000 (forty-  
16 eight thousand dollars) in the form of a check made payable to the Shute, Mihaly & Weinberger  
17 LLP trust account as reimbursement for AYS's attorneys' fees, investigative costs, and other  
18 reasonable litigation costs and expenses.

19 4.2 Within 15 days of the Effective Date, MEGAMEX shall pay \$26,000 (twenty-six  
20 thousand dollars) in the form of a check made payable to As You Sow as a civil penalty  
21 pursuant to Health and Safety Code section 25249.7(b). AYS shall remit 75% of this amount to  
22 the State of California pursuant to Health and Safety Code section 25249.12(b).

23 4.3 Additionally, within 15 days of the Effective Date, MEGAMEX shall pay  
24 \$26,000 (twenty-six thousand dollars) in the form of a check made payable to As You Sow as a  
25 payment in lieu of additional civil penalties, with this amount to be used by AYS for grants to  
26 California non-profit organizations and by the AYS Environmental Enforcement Fund. These  
27 funds shall be used to reduce or remediate exposures to toxic chemicals and to increase  
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1 consumer, worker, and community awareness of the health hazards posed by toxic chemicals in  
2 California via AYS's program work. In deciding among grantee proposals, the AYS Board of  
3 Directors ("Board") takes into consideration a number of important factors, including: (1) the  
4 nexus between the harm done in the underlying case and the grant program work; (2) the  
5 potential for toxics reduction, prevention, remediation, or education benefits to California  
6 citizens from the proposal; (3) the budget requirements of the proposed grantee and the alternate  
7 funding sources available to it for its project; and (4) the Board's assessment of the grantee's  
8 chances for success in its program work. AYS shall ensure that all funds will be disbursed and  
9 used in accordance with AYS's mission statement, articles of incorporation, and bylaws and  
10 applicable state and federal laws and regulations.

11 4.4 Except as provided in Section 5.1 below, the payments made pursuant to Section  
12 4.1 through 4.3 shall be the only monetary obligation of MEGAMEX with respect to this  
13 Consent Judgment, including as to any fees, costs, or expenses AYS has incurred.

14 **5. ENFORCEMENT OF CONSENT JUDGMENT**

15 5.1 The Parties may, by motion or order to show cause before the Superior Court of  
16 the County of San Francisco, enforce the terms and conditions of this Consent Judgment. In the  
17 event that a dispute arises with respect to any of the provisions of this Consent Judgment, the  
18 Parties shall meet and confer within 10 days after either Party receives written notice of an  
19 alleged violation of this Consent Judgment. The prevailing Party in any dispute regarding  
20 compliance with the terms of this Consent Judgment shall be awarded any fines, costs, penalties,  
21 or remedies provided by law for any failure to comply with California Health and Safety Code  
22 25249.5 *et seq.* Additionally, the prevailing Party shall be awarded its reasonable attorneys'  
23 fees and costs consistent with the provisions of California Code of Civil Procedure section  
24 1021.5.

25 5.2 So long as MEGAMEX complies and remains in compliance with the  
26 requirements of Sections 2.1 and 2.2 for each of its Covered Products, the Parties agree that each  
27 such Covered Product shall be deemed to comply with Proposition 65 with respect to lead  
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1 beginning immediately upon entry of the Consent Judgment.

2 **6. CLAIMS COVERED AND RELEASE**

3 6.1 As to the Covered Products manufactured and distributed by MEGAMEX, this  
4 Consent Judgment is a full, final, and binding resolution between AYS, on its behalf and in the  
5 public interest, and MEGAMEX and its parents, shareholders, divisions, subdivisions,  
6 subsidiaries, partners, sister companies, and their successors and assigns for any alleged failure  
7 to warn, within the meaning of Proposition 65, for exposures to lead in the Covered Products on  
8 or before the Effective Date of this Consent Judgment.

9  
10 6.2 In further consideration of the promises and agreements herein contained, and for  
11 the payment to be made pursuant to Section 4, AYS, on behalf of itself and in the public interest,  
12 its past and current agents, representatives, attorneys, successors and/or assignees, hereby  
13 waives all rights to institute or participate in, directly or indirectly, any form of legal action  
14 addressing all claims occurring on or before the entry of this Consent Judgment, and releases all  
15 claims arising under Proposition 65 occurring on or before the entry of this Consent Judgment,  
16 including, without limitation, all liabilities, demands, obligations, damages, costs, fines,  
17 penalties, losses or expenses, including, but not limited to, investigation fees, expert fees  
18 and attorneys' fees of any nature whatsoever, whether known or unknown, fixed or contingent  
19 against MEGAMEX and its past, present and future owners, direct and indirect parent  
20 companies, corporate affiliates, joint-venturers (including, but not limited to, Hormel Foods  
21 Corporation and its subsidiaries), subsidiaries, upstream and downstream suppliers, distributors,  
22 manufacturers or customers, direct and indirect retailers (including, but not limited to Renwood  
23 Andronico Lending 1, LLC, dba Andronico's Community Markets), clients, and each of their  
24 respective officers, directors, attorneys, representatives, shareholders, agents, insurers,  
25 employees successors and assigns arising under Proposition 65 related to the alleged  
26 failure to warn about exposures to or identification of lead contained in the Covered Products  
27 manufactured, packaged, distributed, marketed, or sold by MEGAMEX.

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1 In addition, AYS, on behalf of itself, its attorneys and its agents, waives all rights to  
2 institute or participate in, directly or indirectly, any form of legal action addressing all claims  
3 occurring on or before the entry of this Consent Judgment, and releases all claims occurring on  
4 or before the entry of this Consent Judgment against MEGAMEX, arising under Proposition 65,  
5 related to MEGAMEX'S alleged failure to warn about exposures to or identification of lead  
6 contained in the Covered Products and for all actions or statements regarding the alleged failures  
7 to warn about exposures to or identification of lead contained in the Covered Products  
8 made by MEGAMEX or its attorneys or representatives in the course of responding to  
9 those alleged violations of Proposition 65 as alleged in the Complaint.

10 6.3 Defendant hereby releases Plaintiff from and waives any claims against Plaintiff,  
11 its officers, directors, attorneys, representatives, agents, insurers, employees, successors and  
12 assigns for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including  
13 fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed or  
14 which could have been claimed for matters related to the Action or the Notice.

15 6.4 Upon entry of the Consent Judgment, the Parties waive their respective rights to a  
16 hearing or trial on the allegations of the Complaint.

17 6.5 This Consent Judgment shall apply to and be binding upon the Parties hereto and,  
18 to the extent allowable by law, on the general public.

19 **7. GOVERNING LAW AND CONSTRUCTION**

20 7.1 This agreement shall be governed by, and construed in accordance with, the laws  
21 of the State of California.

22 7.2 The Parties, including their counsel, have participated in the preparation of this  
23 Consent Judgment, and this Consent Judgment is the result of the joint efforts of the Parties.  
24 This Consent Judgment was subject to revision and modification by the Parties and has been  
25 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any  
26 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any  
27 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
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1 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are  
2 to be resolved against the drafting Party should not be employed in the interpretation of this  
3 Consent Judgment and, in this regard, the Parties hereby waive California Civil Code section  
4 1654.

5 **8. MODIFICATION OF CONSENT JUDGMENT**

6 This Consent Judgment may be modified only upon written agreement of the Parties,  
7 with approval of the Court, or pursuant to court order issued upon noticed motion of a Party for  
8 good cause shown, and upon entry of a modified Consent Judgment by this Court. Any Party  
9 seeking to modify this Consent Judgment shall meet and confer with all affected Parties prior to  
10 filing a motion to modify the Consent Judgment in a good faith to attempt to resolve any  
11 differences. The Attorney General shall be served with notice of any proposed modification to  
12 this Consent Judgment at least 15 days in advance of its consideration by the Court.

13 **9. COURT APPROVAL**

14 9.1 The Court shall either approve or disapprove of this Consent Judgment in its  
15 entirety, without alteration, deletion or amendment, unless otherwise so stipulated by the Parties  
16 and their counsel. Defendant agrees not to oppose this Consent Judgment.

17 9.2 In the event that the Court fails to approve and order entry of the Consent  
18 Judgment without any change whatsoever (unless otherwise so stipulated by the Parties), this  
19 Consent Judgment shall become null and void upon the election of either Party and upon written  
20 notice to all of the Parties to the Action pursuant to the notice provisions herein, and shall not be  
21 introduced into evidence or otherwise used in any proceeding for any purpose.

22 **10. NO RELIANCE**

23 In negotiating this Consent Judgment, each Party has made various statements and  
24 representations to the other Party. Nevertheless, except as expressly stated in this Consent  
25 Judgment, the Parties represent and acknowledge that in executing this Consent Judgment, they  
26 do not rely upon any representation or statement not set forth herein that may have been made  
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1 by the Parties' agents, representatives, or attorneys with regard to the subject matter, basis, or  
2 effect of this Consent Judgment, or otherwise.

3 **11. ENTIRE AGREEMENT**

4 The Parties declare and represent that no promise, inducement, or other agreement has  
5 been made conferring any benefit upon any Party except those contained herein and that this  
6 agreement contains the entire agreement pertaining to the subject matter hereof.

7 **12. APPLICATION OF CONSENT JUDGMENT**

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

10 **13. ATTORNEYS' FEES**

11 Except as specifically provided in this Consent Judgment, each Party shall bear its own  
12 attorneys' fees and costs incurred in connection with the 60-day Notice.

13 **14. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7**

14 AYS shall comply with the reporting requirements referred to in Health and Safety Code  
15 section 25249.7(f) (and established in Title 11 of the California Code of Regulations sections  
16 3000-3008), and shall move for approval of this Consent Judgment pursuant to the terms  
17 thereof.

18 **15. PROVISION OF NOTICE**

19 All correspondence and notices required by this Consent Judgment to the Parties shall be  
20 sent:

21 To: As You Sow  
22 As You Sow Foundation  
23 Attn: Danielle Fugere  
24 1611 Telegraph Ave., Suite 1450  
25 Oakland, CA 94612

With a copy to:  
Ellison Folk  
Shute, Mihaly & Weinberger LLP  
396 Hayes St.  
San Francisco, CA 94102  
Tel: (415) 552-7272  
E-mail: folk@smwlaw.com

26  
27 To: MegaMex  
28 MegaMex Foods, LLC  
333 S. Anita Dr., Ste. 1000

With a copy to:  
Steven Tekosky

1 **17. AUTHORIZATION**

2 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the  
3 Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the  
4 Consent Judgment on behalf of the Party represented and legally bind that Party. The  
5 undersigned have read, understand, and agree to all of the terms and conditions of this Consent  
6 Judgment.

7 **18. SEVERABILITY**

8 Except as otherwise provided in Section 18, in the event that any of the provisions of this  
9 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
10 provisions shall not be adversely affected.

11 **IT IS SO STIPULATED:**

12 Dated:

**AS YOU SOW**

13

By: 

14

Andrew Behar  
Chief Executive Officer

15

16 Dated:

**HORMEL FOODS CORPORATION**

17

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

18

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20 Dated:

**MEGAMEX FOODS, LLC**

21

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

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1 **17. AUTHORIZATION**

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3 Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the  
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6 Judgment.

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9 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
10 provisions shall not be adversely affected.

11 **IT IS SO STIPULATED:**

12 Dated: **AS YOU SOW**

13  
14 By: \_\_\_\_\_  
15 Andrew Behar  
16 Chief Executive Officer

16 Dated: **HORMEL FOODS CORPORATION**

17  
18 By: \_\_\_\_\_  
19 Name Larry J. Marco  
20 Title VP & GC



20 Dated: **MEGAMEX FOODS, LLC**

21  
22 By: \_\_\_\_\_  
23 Name Jeffrey R. Frank  
24 Title PRESIDENT & CEO

25 641823.1

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1 **PROOF OF SERVICE**

2 *As You Sow v. Hormel Foods Corporation, et al.*  
3 *Case No. CGC-14-542879*  
4 *San Francisco County Superior Court*

5 At the time of service, I was over 18 years of age and **not a party to this action**. I am  
6 employed in the City and County of San Francisco, State of California. My business address is  
7 396 Hayes Street, San Francisco, CA 94102.

8 On February 26, 2015, I served true copies of the following document(s) described as:

9 **NOTICE OF ENTRY OF ORDER GRANTING MOTION TO APPROVE  
10 AND ENTER CONSENT JUDGMENT**

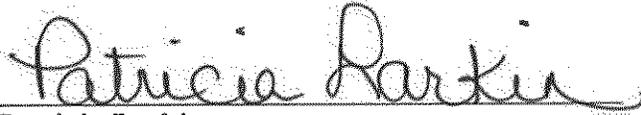
11 on the parties in this action as follows:

12 **SEE ATTACHED SERVICE LIST**

13 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the  
14 persons at the addresses listed in the Service List and placed the envelope for collection and  
15 mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly &  
16 Weinberger LLP's practice for collecting and processing correspondence for mailing. On the  
17 same day that the correspondence is placed for collection and mailing, it is deposited in the  
18 ordinary course of business with the United States Postal Service, in a sealed envelope with  
19 postage fully prepaid.

20 I declare under penalty of perjury under the laws of the State of California that the  
21 foregoing is true and correct.

22 Executed on February 26, 2015, at San Francisco, California.

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Patricia Larkin

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**SERVICE LIST**  
**As You Sow v. Hormel Foods Corporation, et al.**  
**CGC-14-542879**  
**San Francisco County Superior Court**

Steven R. Tekosky, Esq.  
Tatro Tekosky Sadwick LLP  
333 South Grand Avenue, Suite 4270  
Los Angeles, California 90071  
Phone: 213-225-7171  
Fax: 213-225-7151

Proposition 65 Enforcement Reporting  
Attention: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, California 94612-0550

**Attorneys for Defendant Hormel Foods  
Corporation & MegaMex Foods. LLC**

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