



Robert S. Rutherford
Christopher M. Mazzia
Daniel E. Post
Catherine J. Banti

Lisa L. Yoshida
Michael Shklovsky
Kenneth R. Cyphers
Rose M. Zoia
Zachary A. Carroll

Michael J. Fish
Ryan F. Thomas
Richard C. O'Hare
Tal Segev

October 19, 2023

[Via email only: blake.hillegas@sonoma-county.org]

Blake Hillegas
Supervising Planner
Permit Sonoma
2550 Ventura Avenue
Santa Rosa CA 95403

Re: Board of Zoning Adjustments Hearing: October 26, 2023
Revocation of Use Permit
File No.: UPE07-0112
Site Address: 3660 Copperhill Lane, Santa Rosa, APN: 059-250-004

Dear Mr. Hillegas:

Please accept this letter in response to the October 16, 2023, email from Michelle V. Zyromski (Staff Report Attachment 8) regarding the referenced matter in which she states she “will be unable to make an October 26 hearing date, [and] Troy Saldana from Farrow Ready Mix, who will be a key witness at the hearing, will be out of state dealing with a family health issue.”

In the first instance, Farrow Ready Mix (“Farrow”) is represented by Ms. Zyromski’s from Zyromski & Konicek LLP, as well as Glenn Smith from Smith Dollar PC, both of whom have been closely involved in the disputes between Farrow and our client, CMS Properties, Inc., the owner of the subject property. Both attorneys fully participated in, and sat at counsel table during, the entire trial in the recent lawsuit filed by Farrow and mentioned in prior correspondence. In fact, Mr. Smith was the attorney who handled negotiations with CMS prior to litigation regarding the CUP violations and communicated with Permit Sonoma on that subject. Mr. Smith is well able to represent Farrow at this hearing and there is no indication Mr. Smith is not available to appear on behalf of Farrow. In addition, according to its website, there are three (3) lawyers in Ms. Zyromski’s law firm and, according to its website, Mr. Smith’s law firm employs eight (8) attorneys. There is no suggestion none of these ten (10) other attorneys are available to speak at the public hearing.

Second, Mr. Saldana’s opportunity to speak at this hearing is limited to 2 or 3 minutes after the Chair opens the public hearing. Thus, Mr. Saldana may submit his comments to the Board prior to the hearing as well as observe the hearing via zoom from his out of state location.

This recent attempt at delay is more of the same tactics Farrow has employed for the duration of his occupation of the Property, as outlined in my letters dated September 8, and 15, 2023. (Staff Report Attachments 9 and 10) In particular, the September 8, 2023, letter was a (then) peremptory request to decline any bid by Farrow to continue this hearing, and is attached hereto and fully incorporated herein.

Finally, contrary to Ms. Zyromski's statement that the owners "refused" to grant authorization to Farrow to submit applications, Farrow has never asked the owners to do so. (*Please see* Staff Report Attachment 10, pp. 3-4)

Our client, and the owner of the subject property, requests the hearing go forward as it has been scheduled for more than two (2) months, and that the conditional use permit be revoked as recommended by staff.

Thank you for your consideration of this matter.

Very truly yours,

Rose M. Zoia

Encl.

cc via email only:

Chair Kevin Deas
Commissioner Lawrence Reed
Commissioner Evan Wiig
Commissioner Eric Koenigshofer
Stacey Ciddio, Managing Member, CMS Properties LLC
Tennis Wick, Director, Planning
Scott Orr, Deputy Director, Planning
Cecily Condon, Planning Manager, Project Review
Michael Shklovsky, Esq.
Christopher M. Mazzia, Esq.



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Ryan F. Thomas
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Tal Segev

September 8, 2023

[Via email only: cecily.condon@sonoma-county.org]

Cecily Condon
Planning Manager, Project Review
Permit Sonoma
2550 Ventura Avenue
Santa Rosa CA 95403

Re: Intent to Revoke Permit
File No.: UPE07-0112
Site Address: 3660 Copperhill Lane, Santa Rosa
APN: 059-250-004

Dear Ms. Condon:

This firm represents CMS Properties LLC. (“CMS”), the owner of the subject property located at 3660 Copperhill Lane, Santa Rosa, California (the “Property”).

CMS supports revocation of UPE07-0112 (the “CUP”), and opposes any extension of the September 15, 2023 deadline for compliance, or of the October 26, 2023 Board of Zoning Adjustments (“BZA”) hearing.

On August 16 and 28, 2023, Permit Sonoma sent Notices of Intent to Revoke Permit to John Farrow, Farrow Commercial Inc. and Farrow Development, LLC (collectively “Farrow”) notifying Farrow that a hearing has been scheduled for October 26, 2023 before the BZA to revoke the CUP or, alternatively, advising that Farrow may bring the Permit into compliance and contact staff for inspection no later than 5:00 p.m. on September 15, 2023.

Please consider this letter a peremptory request to decline any request by Farrow to continue either the September 15th compliance deadline, or the October 26th hearing. No delays should be allowed. Farrow has been presenting CMS with excuses for failing to bring his use into compliance for five (5) years.¹ Despite promising to cure the violations for many years, Farrow has not accomplished any substantive progress (short of abating the water tank violation).

¹ In any request for continuance or other relief from the violations, we expect Farrow to make the same or similar claims he has made over the years including claiming that he is working on it, that he has been prevented from working on it, that others should be or are working on it, that he stopped working on it only after he filed a lawsuit against CMS related to the Lease, and/or that he is again ready to start working on it and needs more time.

There is no reason to believe that, within one week, one year, or ever, Farrow will bring the CUP into full compliance.

In 2018, CMS entered into a lease (the “Lease” with Farrow Commercial, Inc. (“Farrow Commercial”) for Farrow Commercial’s use of a portion of the Property as a concrete processing facility. The Lease provides, among other things, that Farrow Commercial will not use the Property for any “unlawful purpose, violate any government ordinance or building ... rules, or create any nuisance.”

In an email dated October 24, 2018, prior to entering into the lease, Mr. Farrow assured Scott Orr, Deputy Director, Planning, that Farrow would legalize the use, stating he would “jump into this list [of conditions of approval] and work to correct any non-compliant items.” (Exhibit A.) On several occasions, including in November 2018, December 2018, and October 2020, Farrow assured CMS he would bring the use into compliance with the CUP. (*See, e.g.*, Exhibit B.)

In September, 2020, Farrow Commercial applied to Permit Sonoma to legalize the batch plant, commercial coach, and water tank (the water tank has been remedied). As of September 3, 2020, Permit Sonoma was awaiting a response from Farrow Commercial on its building permit application, noting in its records that “Farrow is ready, willing, and able to clear these violations from 2011 so that compliant batch plant operations can continue.” (Exhibit C.)

On May 5, 2021, Mr. Farrow retained Adobe to provide services to assist with bringing the use into compliance with the CUP, and with the Lease. (Exhibit D.) There was no reason why the work to clear the violations could not have commenced immediately upon Farrow Commercial taking possession of the leased portion of the Property back in 2018. (Exhibit E.) In fact, just five (5) months after they were hired, Adobe had plans and applications ready for signatures by Farrow Commercial and submittal to Permit Sonoma in October 2021.

In a letter from Farrow’s attorney, Glenn Smith, dated May 17, 2021, Mr. Smith assures the undersigned that Farrow Commercial “is working diligently and in good faith to abide by the terms of the Lease and correct any outstanding violations” and “remain[ed] optimistic that all operations [would] be legalized and the Property [would] be in full compliance no later than October 15, 2021.” (Exhibit F) In addition, the undersigned engaged in several email communications and telephone calls with Mr. Smith from about August 2020 to September 2021 in which Mr. Smith stated assurances that Farrow was working diligently with Adobe and Permit Sonoma to bring Farrow’s operations into compliance with the CUP. Two and one-half years later, Farrow Commercial has failed to do so.

In November 2021, Farrow Commercial sued CMS regarding Lease issues. During the trial of that case in early 2023, Mr. Farrow admitted Farrow Commercial is operating in violation

of the CUP, and has been promising to correct the violations since at least October 2018. Farrow ultimately hired Adobe Associates, Inc. to assist with remedying the violations. However, Farrow did not have Adobe complete its work. Farrow filed an application with Permit Sonoma to legalize the use, only to later withdraw it.

059-250-004	BLD20-5830	9/3/2020	Withdrawn	Building Permit With Plan Check	Legalize by Permit: For a batch plant structure, commercial coach, and tank exceeding 5,000 gallons. Since 2011, the property was sold in 2015 to the current owner, and in December 2018, Farrow Ready Mix took over the batch plant operations via a lease with the property owner. Farrow is ready, willing, and able to clear these violations from 2011 so that compliant batch plant operations can continue. The plans and specs that we currently have are uploaded to this application. Please advise of what else is needed.
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Despite Farrow Commercial’s vast experience in the construction industry, including building at least one subdivision, and the fact that legalizing violations on a 1.2 acre parcel is well within its capabilities, Farrow Commercial has not taken substantive steps with Permit Sonoma to legalize its use over a five-year span.

Farrow has been promising to cure the violations for many years. Farrow testified in court seven (7) months ago that he would cure the violations. Farrow has taken no action to cure the violations. There is no reason to believe that, within one week, or even within one year or ever, Farrow will bring the CUP into full compliance. CMS requests that no continuances be granted.

Further, the CUP should be revoked as non-compliant with the CUP as well as for being a public nuisance. Every building code violation is automatically a public nuisance.” (Exhibit G.) The evidence supports revocation, and the landowner, CMS, is in support of revocation.

Thank you for your consideration of this matter.

Very truly yours,

Rose M. Zoia

Rose M. Zoia

Encl.

cc via email only:

Stacey Ciddio, Managing Member, CMS Properties LLC
Tennis Wick, Director, Planning
Scott Orr, Deputy Director, Planning
Michael Shklovsky, Esq.
Christopher M. Mazzia, Esq.

EXHIBIT A

Date: Wed, 24 Oct 2018 12:52:18 AM -0800
Subject: Re: Permits for 3660 Copperhill Lane
From: John Farrow <john@farrowcommercial.com>
To: Scott Orr <Scott.Orr@sonoma-county.org>;
CC: Melody Richitelli <Melody.Richitelli@sonoma-county.org>; Tennis Wick <tennis.wick@sonoma-county.org>;
Attachments: image003.png; image005.jpg; image010.jpg; image007.png; image011.jpg; image012.jpg; image004.png; image011.jpg; image001.png

Thank you Scott,
We will jump into this list and work to correct any non-compliant items.

On Wed, Oct 24, 2018, 2:07 PM Scott Orr <Scott.Orr@sonoma-county.org> wrote:

Hi John, as long as you are in line with the conditions of the existing Use Permit (File number UPE07-0112) that is being utilized then operation should be able to continue as the permit runs with the land. I've attached the conditions of approval, which would still apply to a new owner.

Scott Orr, MCRP

Planner II

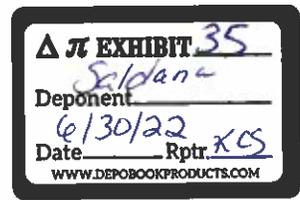
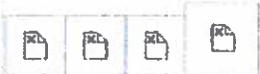
www.PermitsSonoma.org

County of Sonoma

Planning Division | Project Review

2550 Ventura Avenue, Santa Rosa, CA 95403

Direct: 707-565-1754 | Office: 707-565-1900



From: John Farrow [mailto:john@farrowcommercial.com]
Sent: October 23, 2018 1:38 PM
To: Melody Richitelli <Melody.Richitelli@sonoma-county.org >
Cc: Tennis Wick <Tennis.Wick@sonoma-county.org >; Scott Orr <Scott.Orr@sonoma-county.org >; mike@siteprep.net ; Pete Lea <pete@farrowcommercial.com >; max@farrowcommercial.com ;

EXHIBIT B

1 name was Scott Schlad -- I'm sorry, I will probably
2 butcher this -- Schadlick (phonetically spelled) and our
3 real estate agent had told us that the violations needed
4 to be cleared up in order for us to move forward in that
5 escrow.

6 Q Did, to your knowledge, Farrow comply
7 with the demands made in that Notice?

8 A I think that we got an insurance
9 certificate sent to us in the same letter that we
10 received -- or the 2018 letter from the County, and
11 Chuck Jensen sent us the information, and that's when I
12 contacted Rose Zoia.

13 Q In response to that Three-Day Notice, did
14 CMS receive assurances from Farrow or Farrow's attorneys
15 that Farrow will become compliant?

16 MS. ZYROMSKI: Objection. Leading.

17 THE COURT: Overruled.

18 THE WITNESS: Yes. Several times.

19 MR. SHKLOVSKY: Thank you. No further questions.

20 THE COURT: Okay. Anything further for this
21 witness?

22 MS. ZYROMSKI: Not at this time. Subject to
23 recall.

24 THE COURT: All right. You may go back down to
25 counsel table. You are subject to recall at a later date

EXHIBIT C

1 County.

2 BY MR. MAZZIA:

3 Q Okay. And do you know -- so you took a
4 look at that. Is that the application that was submitted
5 with the permit description including, Farrow Ready Mix
6 took over the batch plant operations via a lease with
7 the property owner. Farrow is ready, willing and able to
8 clear these violations from 2011 so that a compliant
9 batch plant operations can continue.

10 Isn't that what it says in the public record?

11 A Yes.

12 Q And you don't know all of the factors
13 that are at operation in this case, correct? What I
14 mean by that, you don't know what damage the landlord is
15 sustaining due to the continued operations, do you?

16 MS. ZYROMSKI: Objection. Assumes facts.

17 THE COURT: Sustained.

18 MR. MAZZIA: Okay.

19 THE COURT: Don't answer.

20 THE WITNESS: Okay.

21 MR. MAZZIA: One second, Your Honor.

22 (Whereupon, pause in proceedings.)

23 MR. MAZZIA: Nothing further, Your Honor.

24 THE COURT: All right. Redirect?

25 MS. ZYROMSKI: Thank you.

EXHIBIT D

1 A Correct.

2 Q Do you remember having conversations with
3 somebody on behalf of John Farrow in March of 2021?

4 A Yes.

5 Q Do you remember what those conversations
6 were about?

7 A Yes. Um, the conversations were with
8 Troy Salalen -- I forget his last name. Sorry.

9 And the conversations were around an existing
10 Use Permit for the site and assisting with bringing
11 their -- the site into compliance with the Use Permit.

12 Q What is the Service Agreement refer to?

13 That's Exhibit 25.

14 A What do you mean "refer to"?

15 Q Well, what is -- what's the nature of the
16 agreement?

17 A So, the nature of the agreement was to
18 provide, you know, specific services to help bring the
19 site into compliance with the Use Permit that was issued
20 by the County.

21 Q And are you aware that that Use Permit
22 was issued first in 2008?

23 A Yes.

24 Q And are you aware it was then updated in
25 2010?

1 about how they determined the fines for violations. So,
2 there is a typically a multiplier for whatever the
3 permit cost is, and that he would work with us because
4 we met with them and we were working to bring the -- you
5 know, bring the site to compliance to help keep that,
6 you know, multiplier factor small, if he could. That is
7 all I really recall.

8 BY MR. MAZZIA:

9 Q Okay. And did Mr. Saldana tell you that
10 they needed to bring the site into compliance to comply
11 with the lease?

12 A Yes.

13 Q Okay. And by the way, I'm using the word
14 "compliance" and you've used the word "compliance" or
15 "violations." Is that a term you used with Mr. Saldana?

16 A Yes.

17 Q And he used with you?

18 A I don't recall.

19 Q Did Mr. Saldana ever indicate to you that
20 he didn't know what you were talking about when you
21 referred to a violation?

22 A I don't believe so.

23 Q Okay. Did Mr. Saldana ever indicate he
24 didn't know what you were talking about when you used
25 the word "compliance"?

1 Q And you refer to it in response to
2 Ms. Zyromski's question, so I will ask you a few
3 questions about it.

4 Do you recognize the first six pages as being
5 the Service Agreement with John Farrow?

6 A (Reviewing.) Yes.

7 Q Okay. And for reference, if you look at
8 the lower right, there's numbers on the lower right
9 page?

10 A I see that, yes.

11 Q I'll be referring to page numbers.

12 A Okay.

13 Q And this is the same -- this is a copy of
14 the same agreement that you went through with
15 Ms. Zyromski earlier, correct?

16 A Correct.

17 Q Was it your understanding that the basic
18 purpose of this agreement was for Adobe to clear the
19 violations?

20 A For us to work to clear the violations on
21 property, correct, yes.

22 Q Which to the best of your understanding,
23 Adobe was ready, willing and able to do?

24 A Yes.

25 Q After -- in the course of your work on

1 this project, did you ever inform Mr. Farrow or
2 Mr. Saldana that Adobe could not live up to the terms of
3 its Service Agreement?

4 A No.

5 Q Now, there is a phone call that you had
6 at the start of this project with Mr. Schram and
7 Mr. Farrow; is that correct?

8 A I do recall a phone call with Mr. Farrow
9 and Tim Schram, yes.

10 Q And do you recall Mr. Farrow telling you
11 you should keep the cost as low as you could?

12 A Yes. I do remember that.

13 Q Okay. And you took that comment to heart,
14 I take it?

15 A Yes.

16 Q Did -- Your main contact at Farrow was
17 Mr. Saldana, correct?

18 A Correct.

19 Q Did Mr. Saldana ever tell you that there
20 was urgency on this project?

21 A Yes.

22 Q Oh, when did he tell you that?

23 A Um, well, I believe there were either
24 calls or emails where he said, hey, you know, we just
25 want to keep this moving forward. Can you provide an

EXHIBIT E

1 be compliant.

2 Q Got it. We'll be coming back to that.

3 If one brings a structure onto a site, he needs
4 to get a building permit?

5 A That's my understanding.

6 Q Okay. We'll be coming back to that.

7 Did you ever ask Troy Saldana or John Farrow if
8 they had bought a noncompliant coach?

9 A I did not.

10 Q Okay. And is it your understanding -- and
11 we can go through an exhibit if it helps -- that the
12 primary issue with the coach is that the state HCD,
13 Housing and Community Development Department, didn't
14 have a registration for that coach and couldn't find the
15 ID number?

16 A I don't recall. I know Troy was tracking
17 down the registration because those are permitted
18 through the state; however, you still need a building
19 permit with the County so you take that permitted, you
20 know, structure and submit a building permit.

21 Q Is there any engineering reason why the
22 commercial coach violation could not have been cleared
23 up starting in 2018?

24 MR. SMITH: Objection to the use of the words
25 "commercial coach violation." What exactly is the

1 violation?

2 THE COURT: Overruled.

3 THE WITNESS: Um, I think -- I think you could
4 have worked to clear it up in 2018. I don't know how
5 long it would have taken, but there is no reason why you
6 couldn't have started to clear that up at any point in
7 time as soon as the violation was issued.

8 BY MR. MAZZIA:

9 Q Sure. And regarding the batch plant --
10 and the batch plant is in violation, is your
11 understanding?

12 A Correct.

13 Q Basically is that it was built without a
14 foundation?

15 A I believe it was built without a permit.

16 Q Okay.

17 A That would tie -- that would also be
18 without a foundation permit or anything of that nature.

19 Q Is there any engineering reason why that
20 batch plant violation could not -- let me rephrase it.

21 Is there any engineering reason why work to
22 clear that batch plant violation did not have started in
23 2018?

24 A I don't believe so.

25 Q And this might be outside your area, so

EXHIBIT F



SmithDollar^{PC}
ATTORNEYS AT LAW

418 B Street, Fourth Floor
Santa Rosa, California 95401

Glenn M. Smith
Licensed to practice in CA

Telephone (707) 522-1100
Facsimile (707) 522-1101
gsmith@smithdollar.com

May 17, 2021

Sent Via Email and U.S. Mail

Rose Zoia
Anderson Zeigler, P.C.
50 Old Courthouse Square, 4th Floor
Santa Rosa, CA 95404
RZoia@andersonzeigler.com

Re: Our Client: Farrow Commercial, Inc.
Subject: 3660 Copper Hill Lane, Santa Rosa, California
Our File No: 81171-22891

Dear Rose:

Please let this letter serve to respond to your correspondence dated April 30, 2021 concerning the premises commonly known as 3660 Copper Hill Lane, Santa Rosa, California ("Property").

Farrow Commercial, Inc. ("Farrow") has spent a considerable amount of time attempting to untangle the Gordian knot of issues concerning the use permit and conditions of approval. From what I have been able to gather, it appears that a summary of the events surrounding the use permit is as follows:

On or about June 29, 2010, the County of Sonoma ("County") issued its Final Conditions of Approval for Use Permit UPE 07-0112 ("Use Permit"). In or about May of 2011, the prior owners (Kolodge Trust) were served with a Notice of Violation concerning this Use Permit. That Notice did not identify any specific issues or outstanding conditions, but simply stated that the conditions of the Use Permit are not in compliance. On or about, December 6, 2011, a Notice of Abatement Proceedings was recorded by the County against the Property.

On November 19, 2018, Farrow entered into a Commercial Lease Agreement ("Lease") with your client CMS Properties, LLC ("CMS"). The Addendum provided that the tenant will obtain the appropriate use permit from the County. Immediately after entering into the Lease, Farrow contacted PRMD to determine the status of the use permit. On December 27, 2018, Brian Keefer, Project Planner with PRMD sent a letter to Farrow advising that they may continue to operate the concrete mixing plant pursuant to the conditions of approval of the Use Permit. At that time, Farrow was not aware of any outstanding issues.

On December 30, 2019, PRMD sent a letter to CMS Properties advising that a code violation exists at the Property and a Notice of Abatement Proceedings had been recorded.

It is my understanding that Farrow was unaware of these alleged violations until August 20, 2020, when your office sent a letter to Farrow advising of the December 30, 2019 Notice from PRMD and the recordation of abatement proceedings. You asked that Farrow correct all violations.

Immediately after receipt of your August 20, 2020 letter, John Farrow reached out to Mark Ciddio with CMS in order to determine the nature and status of the violations. Mr. Ciddio advised Farrow that they received an email from Todd Hoffman which stated in substance that right now PRMD is extremely busy with other cases and that nothing is likely to happen anytime soon. In response, Farrow attempted to contact Mr. Hoffman but received no response, only pre-recorded messages that PRMD is shut down indefinitely due to COVID-19 and only emergency violations were being addressed. Messages were left for Mr. Hoffman.

Without a response from PRMD, Farrow reached out again to CMS. Mark Ciddio advised that Michael Carey at PRMD was involved with the original violations and he may be able to facilitate a solution. In response, Farrow wrote to Michael Carey without any response.

Farrow continued with attempts to reach representatives at PRMD throughout August and September 2020 without success. Based upon PRMD's lack of response, Farrow attempted to determine any outstanding issues or conditions that needed to be addressed at the Property without knowing exactly what the concerns of PRMD were.

Farrow then sought to retain a civil engineering company to assist them with the issues. They reached out to Adobe Associates, Inc. ("Adobe") who also had an extremely difficult time obtaining any information from PRMD. Finally, on May 5, 2021, Brian Keefer with PRMD responded to Casey McDonald of Adobe. Following that conference, Adobe obtained information from the County of Sonoma and was finally in a position to prepare a proposal for remediation of the issues. Please find enclosed a copy of the May 6, 2021 Service Agreement between Farrow and Adobe.

Unfortunately, it has been a long and difficult process in order to get information from PRMD in light of the restrictions at their office due to COVID-19. It appears that Farrow is now in a position to have Adobe work through the remaining issues with the County of Sonoma. I realize that I promised you a working spreadsheet relating to the violations; however, based on a lack of response from PRMD, I was not in a position to determine what issues still existed. Now, with Adobe's assistance, I am hopeful that outstanding issues can now be identified and ultimately addressed.

Please be assured that Farrow is working diligently and in good faith to abide by the terms of the Lease and correct any outstanding violations. We recognize that CMS has grown impatient, but in light of the County's inaction, little, if anything, could have been done. We remain optimistic that all operations will be legalized and the Property will be in full compliance no later than October 15, 2021.

Rose Zoia
Anderson Zeigler, P.C.
May 17, 2021
Page 3

In the event you have any further questions or concerns, please do not hesitate to contact me to discuss. I will keep you updated as to Adobe's progress.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'GMS', with a long horizontal line extending to the right.

Glenn M. Smith

GMS:smf
Enclosure
cc via email: Farrow Commercial, Inc.
1133560

Date: May 6, 2021

Project No. 21161

SERVICE AGREEMENT

Client:	John Farrow	Consultant:	Adobe Associates, Inc.
Name:	John Farrow	Name:	Timothy L. Schram, RCE 67890
Address:	100 Wikiup Drive	Address:	1220 N. Dutton Avenue
City, St. Zip:	Santa Rosa, CA 95403	City, St. Zip:	Santa Rosa, CA 95401
Phone:	707-591-0225	Phone:	(707) 541-2300
Email:	john@farrowcommercial.com	Email:	tschram@adobeinc.com
Site Address:	3660 Copperhill Lane, Santa Rosa		
APN(s):	059-250-004		

Scope of Services

Task 1) Topographic Mapping (Survey)

We will provide the necessary record document research, field measurement collection, office calculations and data interpolation for a "Topographic Map" of the above-mentioned property. This mapping to be at a scale of 1"=20' and a contour interval of 2' vertically. Mapping to be provided in a drawing format using AutoCAD. Map to include the existing structures, trees of 8" in diameter or greater, drainage course top of bank and flow line, utilities evidenced by surface features, edge of pavement, grade breaks, fences, and other significant site features.

Fees: Time and Material (expect \$2,500-\$3,500)

Task 2) Site Compliance and Permit Processing (Civil)

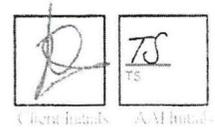
We will work with the client and county to bring the Farrow Ready Mix facility into current compliance with the approved conditions of approval for the concrete batch plant. We will assist in processing the required permits and assist with clearing any violations for project compliance.

Fee: Time and Material (expect \$3,000-\$5,000)

Task 3) Grading and Drainage Plan (Civil)

We will design the site improvements for the facility as needed to satisfy the conditions of approval for the project. We will coordinate with client's consultants for design of the proposed improvements.

Our task will be to prepare and process the grading and drainage plans with the building permit for these improvements in accordance with the regulations and requirements. We will prepare and coordinate the application documents and plans and work closely with staff to facilitate the issuance of a permit in a timely and efficient manner.



Grading plan work includes:

- 1) Meetings and consultation with the Owner and project consultants as required to discuss the project criteria and schedule.
- 2) Prepare Construction Documents including:
 - a. Title Sheet (Required construction notes, overall site plan, location map, sheet index, etc.),
 - b. Grading and Drainage plan (spot elevations, contours, drainage improvements),
 - c. Erosion and Sediment control plan, details, and notes,
 - d. Details and Sections as necessary to fully explain the design intent and create a complete grading permit set of plans.
- 3) Assist client in processing plans for the necessary Building Permit.
 - a. We will coordinate the necessary application documents and submittal package.
 - b. We will summarize, address, and follow up on comments from each department in order to receive clearance, approval and permit issuance as soon as possible.

The above-mentioned services specifically exclude any geotechnical and structural engineering that may be necessary for approval or permit issuance.

Fee: Time and Materials (expect \$4,000-\$6,000)

Task 4) SCWA Sewer Plan (Civil)

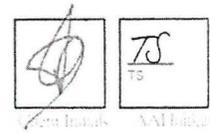
We will prepare and process the design plans for the sewer service necessary to serve the facility. The sewer plans will be processed with the Permit and Resource Management Department (PRMD) of Sonoma County (which will review on behalf of SCWA). Plans will include manhole rim and invert information, sewer slope and material, trench specifications, sewer profile, and plan specifications and details.

Fee: Time and Materials (expect \$3,000-\$5,000)

Task 5) Windsor Water Plan (Civil)

We will prepare and process the design plans for the water service necessary to serve the facility. The water plans will be processed with the Town of Windsor. Plans will include material, trench specifications and plan specifications and details. We will also prepare and process a Water Application with the Town of Windsor for the water use required to serve the facility. We will work with the client on their required water use and process the application through the Town for review and approval.

Fee: Time and Materials (expect \$4,000-\$6,000)



Agreement:

1. It is agreed that the above work is to be performed for my/our account and that I/we will be billed as said work progresses, unless exception is shown in writing on the following line. Fee to provide the stated services will be:

Task 1:	Topographic Mapping (Survey)	Time and Material (expect \$2,500-\$3,500)
Task 2:	Site Compliance and Permit Processing (Civil)	Time and Material (expect \$3,000-\$5,000)
Task 3:	Grading and Drainage Plan (Civil)	Time and Materials (expect \$4,000-\$6,000)
Task 4:	SCWA Sewer Plan (Civil)	Time and Materials (expect \$3,000-\$5,000)
Task 5:	Windsor Water Plan (Civil)	Time and Materials (expect \$4,000-\$6,000)

2. If the scope of services includes Consultant's assistance in applying for governmental permits or approvals, Consultant's assistance shall not constitute a representation, warranty or guarantee that such permits or approvals will be acted upon favorably by any governmental agency.

3. Upon Consultant's request, Client shall execute and deliver, or cause to be executed and delivered, such additional information, documents or money to pay governmental fees and charges, which are necessary for Consultant to perform services pursuant to the terms of this agreement.

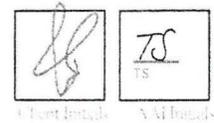
4. Client acknowledges all reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by Consultant are instruments of service, and shall remain the property of Consultant and may be used by Consultant without the consent of Client. Upon request and payment of all cost involved, Client is entitled to a copy of all final plans and specifications for use in connection with the project for which the plans and specifications have been prepared. Client acknowledges that its right to utilize final plans and specifications and the services of Consultant provided pursuant to this agreement will continue only so long as Client is not in default, pursuant to the terms and conditions of this agreement, and Client has performed all its obligations under this agreement.

5. Client agrees not to use or permit any other person to use plans, specifications, drawings, cost estimates, reports or other documents prepared by Consultant which plans, specifications, drawings, cost estimates, reports or other documents are not final and which are not signed and stamped or sealed by Consultant. Client shall be responsible for any such use of non-final plans, specifications, drawings, cost estimates, reports or other documents not signed and stamped or sealed by Consultant. Client hereby waives any claim for liability against Consultant for such use. Client further agrees that final plans, specifications, drawings, cost estimates, reports or other documents are for the exclusive use of Client and may be used by Client only for the project described on page 1 of this agreement. Such final plans, specifications, drawings, cost estimates, reports or other documents may not be changed or used on a different project without written authorization or approval by Consultant. If signed check-prints are required to be submitted with a stamp or seal, they shall not be considered final for purposes of this paragraph.

6. Client acknowledges Consultant has the right to complete all services agreed to be rendered pursuant to this agreement. In the event this agreement is terminated before the completion of all services, unless Consultant is responsible for such early termination, Client agrees to release Consultant from all liability for services performed. In the event all or any portion of the services by Consultant are suspended, abandoned, or otherwise terminated, Client shall pay Consultant all fees and charges for services provided prior to termination, not to exceed the contract limits specified herein, if any. Client acknowledges if the project services are suspended and restarted, there will be additional charges due to suspension of the services which shall be paid for by Client as extra services pursuant to paragraph 14. Client acknowledges if project services are terminated for the convenience of Client, Consultant is entitled to reasonable termination costs and expenses, to be paid by Client as extra services pursuant to paragraph 14.

7. If the scope of services to be provided by Consultant pursuant to the terms of this agreement includes the preparation of grading plans but excludes construction staking services, Client acknowledges that such staking services normally include coordinating civil engineering services and preparation of record drawings based upon information provided by others, and Client will be required to retain such services from another consultant or pay Consultant pursuant to this agreement for such services as extra services in accordance with paragraph 14.

8. If the scope of services contained in this agreement does not include construction-phase services for this project, Client acknowledges such construction-phase services will be provided by Client or by others and Client assumes all



responsibility for interpretation of the contract documents and for construction observation and supervision and waives any claim against Consultant that may in any way be connected thereto. In addition, Client agrees to indemnify and hold Consultant harmless from any loss, claim, or cost, including reasonable attorneys' fees and cost of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from the modification, clarification, interpretation, adjustments or changes made to the contract documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of Consultant.

9. All fees and other charges due Consultant will be billed monthly and shall be due at the time of billing unless specified otherwise in this agreement. If the Client fails to pay Consultant within thirty (30) days after invoices are rendered, Consultant shall have the right in its sole discretion to consider such default in payment a material breach of this entire agreement and, upon written notice, Consultant duties, obligations and responsibilities under this agreement may be suspended or terminated. In such event, Client shall promptly pay Consultant for all outstanding fees and charges due Consultant at the time of suspension or termination. If Consultant elects to suspend or terminate Consultant's services pursuant to this provision, Consultant is entitled to reasonable suspension, or termination costs or expenses.

10. Client agrees that all billing from Consultant to Client are correct and binding on Client unless Client, within ten (10) days from the date of receipt of such billing, notifies Consultant in writing of alleged inaccuracies, discrepancies, or errors in billing.

11. Client agrees to pay Consultant (Adobe Associates, Inc.), on or before 30 days after date of billing, and to pay late charge at $1\frac{1}{2}\%$ per month on billings due over 30 days.

12. Client agrees that client shall be responsible for payment of all costs and expenses incurred by Adobe Associates, Inc., including such monies as they may at their option advance for fees, and other incidental expenses, up to date of completion of the entire work of which this order may be part, or until such time as client gives consultant written notice requesting to cease further work. In the event of such written notice to consultant, all sums due shall be immediately payable.

13. In the event consultant assigns client's account for collection of the amount due, Client agrees to pay the additional cost for collection in the amount of 35% of the amount owed and assigned.

14. Client agrees that if Client requests services not specified in the scope of services described in this agreement, Client will pay for all such additional services as extra services, in accordance with Consultant's billing rates utilized for this agreement.

15. In the event that any construction staking or record monuments are destroyed, damaged or disturbed by an act of God or parties other than the Consultant, the cost of re-staking, re-monumentation and filing of necessary documentation (Corner Record or Record of Survey) shall be paid for by Client as extra services in accordance with paragraph 14.

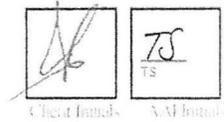
16. Client acknowledges that the design services performed pursuant to this agreement are based upon field and other conditions existing at the time these services were performed. Client further acknowledges that field and other conditions may change by the time project construction occurs and clarification, adjustments, modifications and other changes may be necessary to reflect changed field or other conditions. Such clarifications, adjustments, modifications and other changes shall be paid for by the Client as extra services in accordance with paragraph 14.

17. Client shall pay the costs of all checking and inspection fees, zoning and annexation application fees, assessment fees, soils or geotechnical engineering fees, soils or geotechnical testing fees, aerial topography fees, and all other fees, permits, bond premiums, applicable taxes on professional services, title company charges, blueprints and reproductions, and all other similar charges not specifically covered by the terms of this agreement.

18. Consultant shall not be liable for damages resulting from the actions or inactions of governmental agencies including, but not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, project or plan approvals, and building permits. Client agrees that responsibility of Client to maintain in good standing all governmental approvals or permits and to timely apply for any necessary extensions thereof.

19. Client acknowledges that Consultant is not responsible for the performance of work by third parties including, but not limited to, the construction contractor and its subcontractors.

20. Consultant makes no warranty, either express or implied, as to its findings, recommendations, plans, specifications, or professional advice except that the services were performed pursuant to generally accepted standards of professional practice in effect at the time of performance.



21. In the event (1) Client agrees to, authorizes, or permits changes in the plans, specifications or documents prepared by Consultant, which changes are not consented to in writing by Consultant, or (2) Client agrees to, authorizes or permits construction of unauthorized changes in the plans, specifications or documents prepared by Consultant, which changes are not consented to in writing by Consultant, or (3) Client does not follow recommendations prepared by Consultant pursuant to this agreement, which changed recommendations are not consented to in writing by Consultant: Client acknowledge that the unauthorized changes and their effects are not the responsibility of Consultant and Client agrees to release Consultant from all liability arising from the use of such changes, and further agrees to defend, indemnify and hold harmless Consultant, its officers, directors, agents, employees, and sub consultants from and against all claims, demands, damages, or costs, including attorneys' fees, arising from the unauthorized changes.

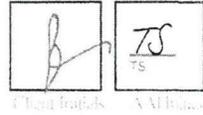
22. Client agrees that in accordance with generally accepted construction practices, the construction contractor and construction subcontractors will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property, and that this requirement shall apply continuously and not be limited to normal working hours. Neither the professional activities of Consultant nor the presence of Consultant or his or her employees or sub consultants at a construction site shall relieve the contractor and its subcontractors of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and applicable health or safety requirements of any regulatory agency or of state law.

23. Client agrees to limit the liability of Consultant, its principals, employees and sub consultants, to Client and to all contractors and subcontractors on the project, for any claim or action arising in tort, contract, or strict liability, to the Sum of \$50,000 or Consultant's fee, whichever is greater. Client and Consultant acknowledge that this provision was expressly negotiated and agreed upon.

24. Termination of this agreement by Client or Consultant shall be in writing. In the event the agreement is terminated before completion of all services, client shall pay consultant all fees and charges for services provided prior to termination, not to exceed the contract limits specified herein.

Additional Services: Additional services may be provided, if authorized by Client; shall be charged at the rates in effect at the time of the work (see attached current fee schedule) and paid for by Client as provided in this agreement. Additional services may include: services not outlined in Scope of Services, project representation at site meetings or public hearings, additional design and plan preparation; revisions to design and plans necessitated by conditions beyond our control.

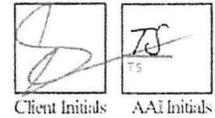
Reimbursable Expenses: Reimbursable expenses shall consist of actual expenditures made by Consultant in the interest of the project for: blueprinting, maps and document copies obtained from others, reproduction, postage and handling of drawings, sub-consultant services, specifications and other documents; expense of overtime work requiring higher than regular rates (see Fee Schedule), if authorized by Client; expense for additional insurance coverage or limits, including professional liability insurance, requested and authorized by Client in excess of that normally carried by the Consultant; expense for transportation and living expenses in connection with out-of-town travel, authorized by Client; long distance communication; fees paid for approval of authorities having jurisdiction over the project. Compensation shall be computed based upon cost of expenses to Consultant multiplied by 1.15.



Accepted and Agreed to by Client:

Client:	John Farrow	Consultant:	Adobe Associates, Inc.
Signature:		Principal Signature:	 <small>Tim Schram (May 12, 2021 15:44 PDT)</small>
Authorized Signer Name:		Principal Name:	Timothy L. Schram
Title:	Client	Title:	Principal Engineer
Date Signed:	5/13/21	Date Signed:	May 13, 2021

This proposal is valid for 60 days.



"A Service You Can Count On!"

FEE SCHEDULE FOR 2021

SERVICES

- **Civil Engineering**
- **Land Surveying**
- **Wastewater**
- **Land Planning**
- **Regulatory**

As a dedicated provider in a professional service industry we recognize the success of our business revolves around accessibility to our clients and understanding and responding to their needs.

Professional Witness	\$350/hour
Principal	\$225/hour
Licensed Staff/Associate Principal	\$145-195/hour
Project Manager	\$145-185/hour
Civil Engineer/Surveyor Designer/Technician	\$125-165/hour
CAD Draftsperson	\$110-145/hour
Field Crew (one person crew)	\$155-\$170/hour
Field Crew (two person crew)	\$250-300/hour
Field Crew (three person crew)	\$375-445/hour
Field Crew (GPS)	\$250/hour
Storm Water Tech (in-house)	\$95/hour
Clerical/Bookkeeping (in-house)	\$75-125/hour
Permit Processor	\$95-\$125/hour
Notary Public	\$15/signature
ATV Charge	\$45/hour
Drone Equipment Charge	\$250
Mileage	Federal Standard Rate
Travel	Hourly Rate
Reproduction (in-house)	30" x 42" \$3.50/sheet
	24" x 36" \$2.50/sheet
	18" x 26" \$1.50/sheet
Photocopies	\$0.25/sheet
Coordination/Handling Fee	15% of fee
(Sub-Consultants, Agency fees paid by us, printing/reproduction by others, lab tests, postage and shipping, travel expenses, etc.)	
Authorized Overtime: Hourly Rate Multiplier	1.25
Payment by Visa/Master Card convenience fee	3%

EXHIBIT G

1 obtain necessary permits for ranking of priority.

2 Q Were you involved in bringing that
3 methodology to the Board of Supervisors?

4 A Yes.

5 Q Was it formally adopted by the Board of
6 Supervisors?

7 A Yes.

8 Q If you could take a look, please, at
9 Exhibit 59, second page?

10 A (Complies.)

11 Q Do you see where there are three items of
12 construction that are referred to in the Notice?

13 A Yes.

14 Q And then there's a paragraph that begins
15 pursuant to Sonoma County Code Section 7-5. Do you see
16 that?

17 A Yes.

18 Q Do you see down towards the bottom of
19 that paragraph the words "public nuisance"?

20 A Yes.

21 Q Okay. And your time working at the County
22 have you heard the term "public nuisance"?

23 A Yes.

24 Q Okay. And from your experience at PRMD,
25 what is the relationship between a stated violation of

1 Sonoma County code and a public nuisance?

2 A It's under state law that any building
3 code violation is automatically a public nuisance.

4 Q Does the County define these violations
5 as public nuisances on a regular basis?

6 A Yes.

7 Q Is that boilerplate language in the
8 Notice and Order Construction without Permit?

9 MR. MAZZIA: Objection, Your Honor. That is
10 irrelevant.

11 THE COURT: Sustained.

12 BY MS. ZYROMSKI:

13 Q What kind of things does the County view
14 as a public nuisance?

15 A Technically, any building code violation
16 or septic violation or grading or land use, are -- all
17 fall under the category of public nuisances.

18 Q Are there minimal nuisances versus more
19 egregious nuisances?

20 A Yes.

21 Q And do you have an opinion about what the
22 level of nuisance for this particular batch plant is?

23 MR. MAZZIA: Objection. Incomplete. Foundation.
24 Legal opinion.

25 THE COURT: Overruled.

Zyromski Konicek LLP
Attorneys at Law
613 Fourth Street, Suite 203
Santa Rosa, CA 95404
(707) 542-1393 telephone
(707) 542-7697 facsimile
michelle@zklegal.com

Via E-mail and U.S. Mail

October 19, 2023

Tennis Wick, Director
Cecily Condon, Project Review Manager
Blake Hillegas, Supervising Planner
Permit Sonoma, Code Enforcement Division
2550 Ventura Avenue
Santa Rosa, CA 95403

Re: Notice of Intent to Revoke Permit
File No.: UPE-07-0112
APN: 059-250-004

Dear Mr. Wick, Ms. Condon, and Mr. Hillegas:

As you are aware, this office represents Farrow Commercial, Inc. and Farrow Ready Mix, Inc. (collectively "Farrow") regarding the above-referenced matter. This correspondence is to reiterate our request to rescind your notice of intent to revoke the subject use permit, or at least to continue the public hearing to a date when both Farrow's representative and me can personally be present. (I have received your acknowledgment that both the representative and I will be unable to appear next Thursday afternoon).

In further support of that request, enclosed please find a copy of the October 17, 2023 Judgment Following Statement of Decision After Court Trial in Sonoma County Superior Court Case No. SCV-269684, with which we were served electronically yesterday, October 18, 2023. Please recall that the Court heard testimony for ten days in this case, and note that the Court made specific findings in the June 15, 2023 Statement of Decision After Court Trial ("Statement of Decision") regarding the Court's interpretation of the subject lease agreement and the Farrow tenants' efforts with respect to addressing the conditions of the 2007 use permit.

In that regard, your attention is directed to the following portions of the Statement of Decision:

Page 5:12-20 – "Casey McDonald, of Adobe and Associates, was credible and informative of the efforts made by the parties to achieve progress to meet the terms and conditions of the use permit. Both parties at one time or another had hired Adobe to conduct analysis and land planning regarding the Property. Ms. McDonald also provide

evidence of timelines and communications with Sonoma County personnel regarding the use permit and other matters involving the property. Her testimony was helpful in resolving conflicting assertions by the parties as to when efforts were made to comply with County requirements including confusion caused by defendants as they submitted an application for permits to install water and sewer on the Property as Plaintiff was attempting to do the same.”

Page 14:23-24 – “Also, ... Farrow invested significant sums into the Property in reliance on the extended lease term”. Enclosed herewith is a copy of Trial Exhibit 67a, which details the amounts my clients spent on satisfying the conditions of the use permit.

Page 23:23 – Page 24:3 – “The evidence shows that Farrow is currently, and has been at all times during the tenancy, operating under a valid use permit as evidenced by a letter from the County of Sonoma dated December 27, 2018, that clarifies operation at the site is allowed pending satisfaction of the conditions of the existing use permit. **Farrow has exercised reasonable and diligent efforts to satisfy the conditions of the use permit under the circumstances and has expended substantial sums of money attempting to satisfy the final conditions of the use permit.** The express language of the Lease clearly does not include any temporal deadlines as CMS claims.” [Emphasis added].

Page 25:10-19 – “**Testimony showed that from the beginning of its tenancy at the property, Farrow undertook efforts to satisfy the conditions of the use permit.** Farrow’s expert, the former PRMD Code Enforcement Manager from 2002-2011 and PRMD Building and Safety Division Manager from 2011-2015, testified at trial that the use permit is a valid use permit for Farrow’s operations of the property and that the use permit has vested. During Farrow’s tenancy, in December 2019, CMS received a letter from the County stating that violations of the use permit existed at the property. CMS forwarded a copy of this letter to Farrow, and **Farrow continued its efforts to communicate with the County and to satisfy the conditions of the use permit.** However, there were months during 2020 when the PRMD office was closed, and Farrow experienced delays beyond their control.”

It is undisputed that the Court has made explicit findings of fact vis-à-vis Farrow’s diligence in attempting to satisfy the conditions of the use permit.

As stated in my prior correspondence to you, the evidence at trial also demonstrated that Casey McDonald from Adobe Associates, Inc. had met onsite with Michael Carey in this endeavor, as well as worked on all of the various aspects of what it would take to satisfy the myriad conditions of this particular use permit. On October 15, 2021, she communicated with Farrow via e-mail that almost all of the items were lined up and ready to submit to the County. (This communication was received as a trial exhibit by the Court).

October 19, 2023

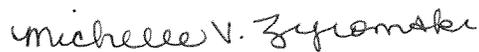
However, three days later, on October 18, 2021, attorneys for CMS notified Farrow that CMS claimed that the lease would expire on November 18, 2021; and this litigation ensued in November 2021. Due to the pendency of the litigation, in which its landlord was seeking to oust it from the property, Farrow was excused, prevented, and frustrated from further efforts to satisfy the conditions of the use permit.

Moreover, when Farrow recently resumed its efforts in light of the June 15, 2023 Statement of Decision – which was not yet a final Judgment – Farrow was thwarted. Its engineering firm, Adobe Associates, submitted an application for a building permit (BLD23-5978), which is a ministerial permit, yet Permit Sonoma denied the permit.

On behalf of Farrow, and in light of the language of the Judgment in the court case, we again respectfully request that Permit Sonoma take the October 26, 2023 public hearing off calendar, and rescind any notices of intent to revoke the use permit. Please respond to me at your earliest convenience by e-mail at michelle@zklegal.com or by telephone at (707) 542-1393 x 101.

I look forward to hearing from you in the near future.

Very truly yours,



Michelle V. Zyromski

Enclosures

cc: Clients
Jennifer Klein, Esq.

ZYROMSKI KONICEK
ATTORNEYS AT LAW

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Rachel M. Dollar (SBN 199977)
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Santa Rosa, California 95401
4 Telephone: (707) 522-1100
Facsimile: (707) 522-1101
5 gsmith@smithdollar.com
rdollar@smithdollar.com

6
7 Michelle V. Zyromski (SBN 191606)
ZYROMSKI KONICEK LLP
613 Fourth Street, Suite 203
8 Santa Rosa, CA 95404
Telephone: (707) 542-1393
9 Facsimile: (707) 542-7697
michelle@zklegal.com

10 Attorneys for Plaintiff FARROW COMMERCIAL, INC. and for
11 Cross-Defendants FARROW COMMERCIAL, INC. and
12 FARROW READY MIX, INC.

13 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

14 FARROW COMMERCIAL, INC., a California
corporation,

15 Plaintiff,

16 v.

17 CMS PROPERTIES LLC, a Montana limited
18 liability company doing business in California as
CMS AIRPORT PROPERTIES, LLC, aka CMS
19 PROPERTIES, LLC; and DOES 1 through 30,
inclusive,

20 Defendants.

21 CMS PROPERTIES LLC, a Montana limited
22 liability company doing business in California as
CMS AIRPORT PROPERTIES, LLC, aka CMS
23 PROPERTIES, LLC; and DOES 1 through 30,
inclusive,

24 Cross-Complainant,

25 v.

26 FARROW COMMERCIAL, INC., a California
corporation; FARROW READY MIX, INC. and
27 ROES 1 through 25, inclusive,

28 Cross-Defendants.

ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
10/17/2023 9:16 AM
Robert Oliver, Clerk of the Court
By: Jennifer Ellis, Deputy Clerk

CASE NO.: SCV-269684
(Unlimited Civil Case)

~~PROPOSED~~ JUDGMENT
FOLLOWING STATEMENT OF
DECISION AFTER COURT TRIAL

Dept.: 17
Judge: : Honorable Bradford DeMeo
Complaint Filed: November 15, 2021
Trial Date: October 7, 2022
Resumed March 2, 2023

1 This action came on regularly for a court trial on October 7, 2022 in Department 17 of the
2 Sonoma County Superior Court, the Honorable Bradford DeMeo presiding. Plaintiff Farrow
3 Commercial, Inc., a California corporation and Cross-Defendants Farrow Commercial, Inc., a
4 California corporation and Farrow Ready Mix, Inc., a California corporation (“Farrow”) appeared
5 by attorneys Michelle V. Zyromski and Glenn M. Smith. Defendant and Cross-Complainant CMS
6 Properties LLC, a Montana limited liability company doing business in California as CMS Airport
7 Properties LLC aka CMS Properties, LLC (“CMS”) appeared by attorneys Daniel E. Post and
8 Michael Shklovsky. Evidence via testimony of sworn witness John Farrow was presented to the
9 Court for two days on October 12 and 13, 2022. The trial then was continued pursuant to
10 California Rule of Court 3.1332(c)(3) & (4) and (d)(2), (3), (5) & (10).

11 The action resumed on March 2, 2023 in Department 17 of the Sonoma County Superior
12 Court, the Honorable Bradford DeMeo presiding. Farrow appeared by attorneys Michelle V.
13 Zyromski and Glenn M. Smith. CMS appeared by attorneys Christopher M. Mazzia and Michael
14 Shklovsky. Evidence via testimony of sworn witnesses was presented to the Court for seven days
15 on March 2, 3, 7, 8, 9, 10, and 14.

16 After hearing the evidence of the witnesses and arguments of counsel, the case was submitted
17 to the Court for decision and judgment. On May 16, 2023, the Honorable Bradford DeMeo issued
18 a Tentative Statement of Decision; the Tentative Statement of Decision was filed and served that
19 same day. On May 31, 2023, CMS filed and served a document captioned, “CMS’ Request for
20 Specific Findings and Amendments Regarding the Court’s May 16, 2023 Tentative Statement of
21 Decision After Court Trial”. On June 12, 2023, Farrow filed and served a document captioned,
22 “Farrow Commercial, Inc. and Farrow Ready Mix, Inc.’s Responses to CMS’ Request for Specific
23 Findings and Amendments Regarding the Court’s May 16, 2023 Tentative Statement of Decision
24 After Court Trial; and Proposals Regarding Same.” On June 15, 2023, the Honorable Bradford
25 DeMeo issued a Statement of Decision After Court Trial; the Statement of Decision was filed on
26 June 15, 2023 and served on June 16, 2023. In the “Decision” portion of the June 15, 2023
27 Statement of Decision After Court Trial, at pages 27:15-28:2, the Court ruled as follows:

28 Verdict shall be entered in favor of Plaintiff Farrow on plaintiff’s first and second causes of

1 action for breach of contract and declaratory relief. Verdict shall be entered in favor of Defendant
2 CMS on plaintiff's third and fourth causes of action. The Court further finds that any monetary
3 damages caused by the breach of contract are nominal as much of the expenditures incurred by
4 Farrow, according to the evidence presented, would most likely have been incurred without a
5 breach in pursuit of satisfying terms and conditions of the use permit. Farrow will not be awarded
6 monetary damages on its successful claims. However, the Court finds the exercise of the Option
7 was valid.

8 Based on the foregoing, Verdict shall be entered against CMS and in favor of Farrow on all of
9 CMS's causes of action alleged in their First Amended Cross-Complaint. CMS will not be awarded
10 damages on its claims. Plaintiff shall prepare a Judgment for filing and entry according to the
11 findings and decision contained in this Statement of Decision.

12 The Court reserves jurisdiction on attorney fees and costs.

13 A filed copy of the June 15, 2023 Statement of Decision After Court Trial is attached as
14 Exhibit "A" and is incorporated by reference.

15 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:**

16 Judgment shall be entered in favor of Plaintiff Farrow Commercial, Inc., a California
17 corporation and against Defendant CMS Properties LLC, a Montana limited liability company
18 doing business in California as CMS Airport Properties LLC aka CMS Properties, LLC on
19 Plaintiff's first and second causes of action for breach of contract and declaratory relief. No
20 monetary damages are awarded. The exercise of the Option was valid. The Option is in full force
21 and effect and the tenants are entitled to lawful possession of the leasehold interest at 3660
22 Copperhill Lane, Santa Rosa, California 95403 pursuant to the terms of the November 19, 2018
23 Commercial Lease Agreement and the Lease Agreement's three attached addenda, including the
24 Option to Renew/Extend Lease, until at least November 18, 2025. The Option is self-executing
25 and entitles the tenants to lawful possession of the leasehold interest until November 18, 2029,
26 unless the tenants notify CMS 180 days prior to the first option period expiring of their intent not to
27 exercise their option to renew.

28 Judgment shall be entered in favor of Defendant CMS Properties LLC, a Montana limited

ZYROMSKI KONICEK
ATTORNEYS AT LAW

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liability company doing business in California as CMS Airport Properties LLC aka CMS Properties, LLC and against Plaintiff Farrow Commercial, Inc., a California corporation on Plaintiff's third and fourth causes of action for fraud (concealment) and unfair business practices.

Judgment shall be entered against Cross-Complainant CMS Properties LLC, a Montana limited liability company doing business in California as CMS Airport Properties LLC aka CMS Properties, LLC and in favor of Cross-Defendants Farrow Commercial, Inc., a California corporation and Farrow Ready Mix, Inc., a California corporation on all of CMS's causes of action alleged in its First Amended Cross-Complaint. CMS will not be awarded damages on its claims. CMS will take nothing by way of its First Amended Cross-Complaint.

The Court reserves jurisdiction on attorney fees and costs.

DATED: 10/17/2023

By 
HONORABLE BRADFORD DEMEO
Judge of the Superior Court

APPROVED AS TO FORM:

Christopher M. Mazzia, Esq.
Michael Shklovsky, Esq.

EXHIBIT A

FILED

JUN 15 2023

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA
BY DEPUTY CLERK

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7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

8 FARROW COMMERCIAL, INC., a
9 California corporation,

10 Plaintiff,

11 vs.

12 CMS PROPERTIES, LLC, a Montana
13 limited liability company doing business in
14 California as CMS AIRPORT
15 PROPERTIES, LLC; and DOES 1 through
16 30, inclusive,

17 Defendants.

Case No. SCV-269684

18 STATEMENT OF
19 DECISION AFTER COURT TRIAL

20 CMS PROPERTIES, LLC, a Montana
21 limited liability company doing business in
22 California as CMS AIRPORT
23 PROPERTIES, LLC,

24 Cross-Complainant,

25 vs.

26 FARROW COMMERCIAL, INC., a
27 California corporation; FARROW
28 READY MIX, INC. and ROES 1 through
29 25, inclusive,

30 Cross-Defendants.

31 In this document the Court announces its Tentative Decision on the issues presented to
32 the Court. The Tentative Decision will be the Statement of Decision unless within ten (10) days
33 either party files and serves a document on the Court that specifies objections to the findings and

1 rulings contained herein, or makes proposals not covered in this document. Pending further
2 order(s) or entry of Judgment, this Tentative Decision constitutes the temporary orders of the
3 Court.

4 BACKGROUND

5 Farrow is a residential and commercial developer that was heavily involved in rebuilding
6 many homes in Sonoma County following the Tubbs Fire of October 2017. In late 2018, to
7 address difficulties in sourcing and supplying concrete to its fire rebuilds, John Farrow, President
8 and CEO of Farrow Commercial, Inc. (hereinafter collectively referred to as "Farrow"), started
9 negotiating with Carl Davis, owner of Carl's Ready Mix, to purchase the assets of Carl's Ready
10 Mix, a concrete processing plant operating since 2007 at the Property.

11 The current owner of the property located at 3660 Copperhill Lane, Santa Rosa,
12 California (hereinafter "Property") is the defendant CMS Properties, LLC. (hereinafter "CMS").
13 The Property was purchased by CMS in 2015.

14 Carl Davis (hereinafter "Carl") leased the Property in 2007 from the then owners. His
15 goal was to operate a concrete business there. He applied for and obtained from the County of
16 Sonoma (hereinafter "County") a Use Permit allowing him to operate his concrete business at the
17 Property. He did business as "Carl's Ready Mix." Final Conditions of Approval were issued by
18 the County in April of 2008. There is no dispute between the parties that Carl never complied
19 with all of the County's Use Permit terms.

20 On May 11, 2011, the County issued to the prior Property owners a Notice of Violation
21 of Use Conditions and a Notice and Order of Construction Without a Permit (noting construction
22 of an unpermitted batch plant, commercial coach, and a tank exceeding 5,000 gallons without
23 permits were all a public nuisance). In December 2011, the County recorded a Notice of
24 Abatement Proceedings demanding the owners comply with the conditions of the existing use
25 permit, including obtaining all required permits and inspections for the unpermitted batch plant
26 or remove it. Pursuant to the County's Notices, penalties began accruing against the Property
27 owners.

28 In 2015, Defendant CMS (through its principals Mark Ciddio and Stacey Ciddio)

1 purchased the Property and continued the lease with Carl's Ready Mix. According to testimony
2 at trial, CMS was aware that Carl's Ready Mix was operating the concrete processing business
3 under a use permit issued by Sonoma County in April 2008 that came as a document called
4 "Final Conditions of Approval," listing 56 pre-operational and operational conditions for
5 operation of the business. Mr. Davis made attempts, but never satisfied, all 56 conditions of the
6 use permit during the more than a decade that he operated Carl's Ready Mix at the Property.
7 CMS never insisted that Mr. Davis satisfy all 56 conditions of the use permit to continue his
8 tenancy at the property.

9 In late 2018, Farrow purchased Carl's Ready Mix assets and negotiated a new lease with
10 CMS. The CMS attorneys drafted a standard form Commercial Lease Agreement ("Lease") with
11 the proposed terms. The Lease was thereafter circulated/reviewed by all parties, discussed, and
12 agreed upon, signed by Farrow on December 7, 2018, and signed by CMS on February 27, 2019.
13 The Lease has three attached addenda, each of which is expressly incorporated into the Lease by
14 reference.

15 Plaintiff claims that the Option to Renew/Extend Lease ("Option") allows Plaintiff to
16 occupy the Property for two additional four-year time periods, and by its terms, was self-
17 executing – meaning that the tenant was not required to take any action to formally exercise it.

18 The Option states, "6. Other Tenant shall notify Landlord at least one hundred eighty
19 days (180) of its intent NOT to exercise the Tenant's option to renew." Farrow claims it
20 exercised the Option to extend the Lease by remaining in possession of the Property and, despite
21 no obligation, by timely giving written notice to CMS on or about November 9, 2021.

22 During Farrow's tenancy on the Property, the world fell into a pandemic in proportions
23 not experienced since 1918. Governments continued to run, but it is self-evident that they
24 moved at a much slower pace due to staffing issues as a result of shelter in place emergency
25 orders and return to work safety measures. Local zoning and permit approvals, among other
26 governmental actions, were continuing but universally delayed to some extent during the
27 pandemic.

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CLAIMS OF THE PARTIES

Farrow claims it is entitled to occupy the Property for an extended term according to the Option to Renew/Extend Lease. Farrow further argues that the option was self-executing, and that Farrow was in substantial compliance with the Lease terms and conditions, including the use permit terms and conditions, when the option self-executed in late Spring of 2021. The legal theories upon which Plaintiff's claims rest are alleged as breach of contract, declaratory relief, fraud and concealment, and unfair business practices.

In its cross-complaint CMS claims it is entitled to possession of the Property, ejectment, and damages for trespass. The legal theories upon which the claims rest are breach of contract, ejectment, trespass, nuisance, and injunctive relief.

CMS argues that the Option is and was never valid because no one on behalf of CMS signed it. To this claim the court disagrees and finds that a signature on the option page addendum was not required to make the option valid as it was incorporated by reference in express language on page 1, section 1.3 of the lease document. See Defendant's Exhibit 26 in evidence. CMS further argues that the Option was not effectively exercised by Farrow. To this claim the court disagrees and finds that the option was self-executing unless the tenant notified landlord 180 days prior to the term expiring, which the tenant did not send such notice. Finally, CMS argues the Option to extend the lease term cannot be exercised because Farrow breached the lease by not satisfying all 56 conditions of the use permit and/or by other environmental violations pertaining to the Property. The Court will address this issue in further detail hereinafter as in the view of the Court this is the key issue in this case.

LAW AND ANALYSIS

A. Credibility of Witnesses

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The credibility of witnesses is one of the important and crucial parts of this trial. The Court listened to all testimony presented. Pursuant to California Evidence Code section 780, the Court will make findings based on the credibility of witnesses and how much weight to be given to their testimony and opinions.

Notwithstanding conflicting versions of certain details, the parties themselves appeared to

1 be genuine in their recount of the facts as they believe occurred. Much of the conflict in this case
2 appears to be perception and perspective.

3 **Haven Holm**, called to testify for the defense, was not a credible witness. With very
4 little reliable independent memory of events, other than his clear disdain for plaintiff for being
5 fired in December of 2018, Mr. Holm had very little reliable information unless he was prompted
6 with a leading question. This occurred several times during his testimony under oath. As his
7 testimony progressed this Court allowed several leading questions and it became clear that unless
8 a leading question was asked, or he was prompted with visual cues and documents, he had very
9 weak independent recall of events, dates, names, and other details important to the case. His
10 testimony was general, conclusory, and was inconsistent with documentary evidence, dated
11 emails, and testimony of other witnesses.

12 **Casey McDonald**, of Adobe and Associates, was credible and informative of the efforts
13 made by the parties to achieve progress to meet the terms and conditions of the use permit. Both
14 parties at one time or another had hired Adobe to conduct analysis and land planning regarding
15 the Property. Ms. McDonald also provided evidence of timelines and communications with
16 Sonoma County personnel regarding the use permit and other matters involving the property.
17 Her testimony was helpful in resolving conflicting assertions by the parties as to when efforts
18 were made to comply with County requirements including confusion caused by defendants as
19 they submitted an application for permits to install water and sewer on the Property as Plaintiff
20 was attempting to do the same.

21 **Brian Keefer**, a Permit Sonoma planner in 2018, was also credible and helpful in
22 describing the requirements for Farrow to operate under the use permit. He testified that code
23 enforcement in Sonoma County is passive – it is a complaint bases system of enforcement.
24 Therefore, the conditions of the use permit are not monitored by the County enforcement agency
25 unless prompted by a complaint. He testified that the County continued to review planning
26 applications, but indicated things were somewhat slow during the pandemic.

27 **Troy Saldana**, a Farrow employee, was also credible. He performed a very thorough
28 gathering of documents, with little to no information directly from CMS, and was a percipient

1 witness to a walk-through of the Property in early December of 2018 involving John Farrow,
2 Mark Ciddio, and others. Saldana was the only witness to that event called to testify at trial. He
3 prepared a punch list of things needing attention, among other information, from that site visit.

4 Plaintiff's expert, Benjamin Neuman, presented with impressive background and
5 experience as an inspector, plan reviewer and code enforcement officer for the County of
6 Sonoma Permit and Resource Management Department (now Permit Sonoma), and at one point
7 in his career was the head of that agency. His years of experience, education, and breadth of
8 knowledge is impressive and helpful to this Court. He testified that there is no time deadline in
9 which use permit conditions must be satisfied unless expressly stated in the use permit, which
10 there was no such deadline for any of the conditions. His testimony corroborated the testimony
11 of Brian Keefer regarding enforcement. He testified that numerical limits such as trips per day
12 of heavy trucks is a fluid condition and may be considered as an average over a period of time.
13 He testified that the use permit in question is valid today even though some of the conditions are
14 still not met. This is critical to Plaintiff's case. There was no counter expert testimony offered
15 by the defendants.

16 **B. The Option Is Valid Without Separate Signature**

17 1. The Lease Includes the Commercial Lease Agreement (Form 552-3) and Its Three
18 Addenda, Including the Option Addendum (Form 565) as Expressly Incorporated
19 by Reference.

20 There is no dispute here that a valid written contract exists. The Lease was negotiated
21 between the parties, and the formal memorandum of its terms was thereafter circulated/reviewed
22 by all parties, and signed by Farrow on December 7, 2018, and by CMS on February 27, 2019.
23 The Lease has three attached addenda, each of which is expressly incorporated into the Lease by
24 paragraph 1.3 that provides: "The following checked addenda are part of this agreement:"
25 followed by check marks in front of "Addendum Lease/Rental [See RPI Form 550-1]," "Option
26 to Renew/Extend Lease [See RPI Form 565]," and "Addendum 3: Aerial Photo with leased area
27 designated." Thus, the operative terms of the Lease include those set forth in the standard form
28 Commercial Lease Agreement (Form 552-3) as well as those included in the attached addenda:

1 Form 550-1, Form 565, and the aerial photograph. CMS admits the Lease is valid but claims the
2 Option (Form 565) is not valid simply because CMS did not execute this Form separately from
3 the standard Form Commercial Lease Agreement (Form 552-3). This assertion is unsupported by
4 the law and by the facts.

5 California law establishes the validity of the entire Lease (the standard form 552-3 with
6 all three of its attached addenda) regardless of the lack of Defendant's execution of the Option.
7 Addenda incorporated into a contract need not be separately executed. "A contract may validly
8 include the provisions of a document not physically a part of the basic contract 'It is, of
9 course, the law that the parties may incorporate by reference into their contract the terms of some
10 other document. [Citations.] But each case must turn on its facts. [Citation.] For the terms of
11 another document to be incorporated into the document executed by the parties the reference
12 must be clear and unequivocal, the reference must be called to the attention of the other party,
13 and he must consent thereto, and the terms of the incorporated document must be known or
14 easily available to the contracting parties.'" (*Williams Constr. Co. v. Standard-Pacific Cmp.*
15 (1967) 254 Cal.App.2d 442, 454.) "The contract need not recite that it 'incorporates' another
16 document, so long as it 'guide[s] the reader to the incorporated document.' [Citations.] (*Shaw v.*
17 *Regents of University of California* (1997) 58 Cal.App.4th 44, 54, 67 Cal.Rptr.2d 850.)"
18 [*Troykv. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1331; *Dipito LLC v. Manhelm*
19 *Investments, Inc.* (S.D. Cal., Dec. 14, 2021, No. 3:21-CV-01205-HJLB) 2021WL5908994, at
20 *11; 14A Cal. Jur. 3d Contracts § 238.]

21 Here, Lease paragraph 1.3 is clear and unequivocal in its reference to Form 565.
22 Defendant knew of the Option as it was initially provided by its own counsel, was reviewed by
23 Defendant, and was discussed at negotiation sessions. The Option was attached to each of the
24 three drafts of the Lease during negotiations. Defendant expressly consented to inclusion of the
25 Option and all its terms, and never withdrew such consent at the time of signing or during the
26 tenancy until, at or near the time they attempted eviction, when they claimed that the Option is
27 not valid. The Option was available to all parties as it was physically attached to the Lease as the
28 second addendum.

1 An option is a unilateral irrevocable offer; on the exercise of an option, there is a bilateral
2 contract between the parties that obligates both the optionor and the optionee to perform
3 according to the terms of the option. Here, CMS, by their execution of the Lease made the
4 Option irrevocable. Upon exercise of the Option by Farrow, both parties became obligated to
5 perform per the terms of the Option as agreed.

6 2. The Lease is an Integrated Contract with no Ambiguity as to Its Terms Including
7 the Option.

8 The Lease is expressly integrated as set forth in paragraph 23.5 which states, “This lease
9 agreement reflects the entire agreement between the parties”. This clause indicates the parties’
10 intent that the Lease reflects the final, complete, and exclusive statement of their agreement. The
11 parol/extrinsic evidence rule prohibits the introduction of extrinsic evidence to vary or contradict
12 the express terms of an integrated written instrument. The terms of a writing that the parties
13 intend as a final expression of their agreement cannot be contradicted by evidence of a prior
14 agreement or a contemporaneous oral agreement. A court is to rely strictly on the plain language
15 of a contract and should not revise a contract in the guise of construing it. When the language of
16 an instrument is clear and explicit and does not lead to an absurd result, the language of the
17 contract is controlling. Also, when several writings are taken as one transaction, they must be so
18 construed as to give effect, as far as practicable, to every part of each. “A contract and a
19 document incorporated by reference into the contract are read together as a single document. ...”
20 [*Id.* citing *Poublon v. C.H Robinson Company* (9th Cir. 2017) 846 F.3d 1251.] Civil Code §
21 1642, providing that multiple contracts are to be taken together, also applies to instruments or
22 writings that are not, on their own, contracts. [Cal. Civ. Code§ 1642. *City of Brentwood v.*
23 *Department of Finance* (2020) 54 Cal. App. 5th 418, 434; 14A Cal. Jur. 3d Contracts§ 236.]

24 “The decision whether to admit parol [or extrinsic] evidence involves a two-step process.
25 First, the court provisionally receives (without actually admitting) all credible evidence
26 concerning the parties’ intentions to determine ‘ambiguity,’ i.e., whether the language is
27 ‘reasonably susceptible’ to the interpretation urged by a party. If in light of the extrinsic
28 evidence the court decides the language is ‘reasonably susceptible’ to the interpretation urged,

1 the extrinsic evidence is then admitted to aid in the second step-interpreting the contract.” [ASP
2 *Properties Group LP v. Fard Inc.* (2005) 133 Cal.App.4th 1257, 1267.] The threshold
3 determination of whether there is “ambiguity” is a question of law. [(CCP § 1856(d).] Here, the
4 plain meaning of the integrated Lease, when construed to give effect to all portions of the
5 contract (including the Option Addendum), is unambiguous as it demonstrates that the parties
6 mutually agreed that Plaintiff had the option to extend the lease per the terms expressly set forth
7 in the Option. Mark and Stacey Ciddio both admitted that they “agreed” to the Option and
8 understood that Farrow would sign the Option at a later time. “The purpose of the law of
9 contracts is to protect the reasonable expectations of the parties” and “the mutual intention of the
10 parties at the time the contract is formed governs interpretation.” [ASP *Properties, supra* at
11 1268-1269.] Here, the language of the Lease is not reasonably susceptible to Defendant’s
12 allegation that the parties did not so mutually agree; extrinsic evidence is not necessary on this
13 point. Perhaps more importantly, merger clauses (such as Paragraph 23.5 here) have been held
14 conclusive on the issue of integration, so that parol evidence to show that the parties did not
15 intend the writing to constitute the sole agreement will be excluded.” [2 Witkin, Cal. Evid. 5th
16 (2002) Documentary Evidence § 71(2).]

17 3. Extrinsic Evidence, if Considered, Supports Mutual Intent to be Bound by the
18 Option.

19 Even if a document is a complete integration of the parties’ agreement, extrinsic evidence
20 may be held admissible to prove an interpretation for which it is reasonably susceptible. If the
21 terms of a contract are ambiguous, reference may be made to extrinsic evidence and surrounding
22 circumstances to resolve the ambiguity. Such interpretation based on consideration of the
23 extrinsic evidence is an issue of fact. [CACI 318 Interpretation- Construction by Conduct.]

24 Whether a document is incorporated into the contract is a question of fact and depends on
25 the parties’ intent as it existed at the time of contracting. [*Versaci v. Superior Court* (2005) 127
26 Cal. App. 4th 805; *Shaw v. Regents of University of California* (1997) 58 Cal. App. 4th 44.] If, in
27 taking the several writings together, an ambiguity arises, extrinsic evidence may be resorted to
28 for the purpose of explaining their meaning.

1 Here, the extrinsic evidence and surrounding circumstances demonstrate both Farrow and
2 CMS intended to be bound by all the terms of the Lease, including all three of its explicitly
3 incorporated addenda, thus including the Option at issue. In November 2018, the CMS attorneys
4 Borba Frizzell Kerns, P.C. drafted the standard form Commercial Lease Agreement and
5 circulated it to the parties for review. The initial version, as well as all subsequent versions,
6 included the second addendum, the Option (Form 565). This Option was included because
7 Farrow (through principal John Farrow) previously told CMS (through principal Mark Ciddio)
8 that Farrow intended to occupy the property on a long-term basis to allow establishment and
9 eventual expansion of the business. Ciddio stated he could give Farrow a three-year term plus
10 two four-year extensions. CMS' attorneys then filled out Form 565 with specific lease extension
11 terms offering the option to extend the lease, initially by four years at a 2% rent increase, and
12 then for another four years at a 4% rent increase; the Option was presented to Farrow along with
13 the other contract documents. The parties orally agreed upon all the terms and conditions set
14 forth in the Lease and each form was dated November 19, 2018, with the mutual intention that
15 formal execution by the parties would follow.

16 Shortly after these oral discussions, plus a December 3, 2018, meeting at the property
17 (the site visit referred to hereinabove), in reliance on the parties' mutual agreement on the lease
18 terms, Farrow moved onto the property, began tenant improvements, and began operations.
19 CMS did not object to Farrow moving forward. Farrow signed the Lease on December 7, 2018;
20 he signed the fifth page of the standard form contract (Form 552-3) and signed Addendum
21 Lease/Rental Agreement (Form 550-1). He did not sign the Option to Renew/Extend Lease
22 (Form 565) only because he understood it to be an option to be exercised and executed closer to
23 the end of the initial three-year rental term.

24 CMS (through its principal Stacey Ciddio) signed the Lease on February 27, 2019. CMS
25 signed the fifth page of the standard form contract (Form 552-3) and signed Addendum
26 Lease/Rental Agreement (Form 550-1) and the aerial photo but neglected to sign the Option to
27 Renew/Extend Lease (Form 565). Stacey Ciddio testified that CMS agreed to the Option terms
28 and did not intend to withdraw the Option at the time of signing. She testified she did not

1 communicate to Farrow any withdrawal of the Option and that she was aware that Farrow had
2 not signed it only because he intended to sign it later if and when he chose to exercise the option.
3 Mark Ciddio also testified that "we agreed [to two four-year options], but never signed the
4 page." Based on this evidence CMS cannot argue revocation of their Option offer. [See CACI
5 308 Contract Formation - Revocation of Offer: CMS did not withdraw the offer; Farrow
6 accepted the offer of an option before CMS attempted to withdraw it; no withdrawal was
7 communicated to Farrow.] Stacey Ciddio, on behalf of CMS, signed the Commercial Lease
8 Agreement with the attached Option and with the express language of Paragraph 1.3
9 incorporating the Option, and a signed copy was provided to Farrow. The first time CMS
10 indicated any objection to the Option was at or near the time of their attempted eviction of
11 Farrow after attorneys had become involved. The Option cannot be viewed in isolation or a
12 vacuum; it must be taken together with the other documents in the transaction, including the
13 express incorporation by paragraph 1.3, and considering the actions of the parties. CMS' act of
14 signing the Lease was the functional equivalent of signing the Option both because the Option
15 was expressly incorporated in the Lease and because CMS' signature demonstrated their
16 confirmation of the terms fully negotiated and orally agreed upon on November 19, 2018. This
17 evidence is persuasive of a mutual understanding notwithstanding the missing signature on the
18 Option.

19 Further extrinsic evidence of CMS' intent to include the Option in the Lease may be
20 found in the subsequent conduct of their attorneys Borba Frizzell Kerns, P.C. who represented
21 CMS throughout the lease negotiations; such conduct is imputed to CMS under the laws of
22 agency. On December 28, 2018, CMS' attorney Kristen Frizzell Kerns e-mailed John Farrow
23 regarding certain items:

24 *John,*
25 *I understand there are still some outstanding items.*
26 *With the lease, the Option page is not signed. Is that because you do not want the Option,*
27 *or were you expecting to sign it only if you exercise the Option?*
28 *Could you initial the map attachment and send it back?*
CMS has not received the Deposit, documentation from the court, and certificate of
insurance. Time is of the essence on these items since Farrow has been operating on the
site.

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2 In response to that e-mail, Farrow communicated to Ms. Kerns not “we do not want the
3 Option,” but rather, that Farrow planned to sign the Option around the time of the expiration of
4 the initial lease term:

5 *Hello Kristen,*
6 *My name is Lydia and I am John Farrow's assistant. Please see attached the use permit*
7 *from the County of Sonoma for 3 660 Copperhill Lane.*
John expected to execute the extension at the time the original lease expires.

8 Thereafter, Kerns apparently received Farrow’s initials on the aerial photo that is dated
9 January 14, 2019, as she had requested, and made no further mention of the Option. Kern’s
10 acquiescence to Farrow’s signature near expiration of the initial term is evidence that the term
11 was intended to be binding and such conduct is imputed to CMS as Kern was clearly acting in
12 her agency capacity.

13 On the agency issues, *Columbia Pictures Corp. v. De Toth* (1948) 87 Cal.App.2d 620 is
14 instructive. Plaintiff (motion picture producing company) and defendant (director) entered into
15 an oral agreement of employment at a specific salary and options according to plaintiff’s
16 standard form of contract for directors, under which each intended to be bound with agreement to
17 sign the standard form contract at a future time. Defendant claimed he did not know the detailed
18 and elaborate provisions of the standard form contract; nevertheless, he was held to the acts and
19 expressions of his attorney as his agent. The court recognized defendant was represented in the
20 making of the contract by attorney Allenberg; after attending a meeting with Columbia,
21 defendant left the details to Allenberg. The court cited Civil Code sections 2330 and 2332,
22 which provide: “An agent represents his principal for all purposes within the scope of his actual
23 or ostensible authority, and all the rights and liabilities which would accrue to the agent from
24 transactions within such limit, if they had been entered into on his own account, accrue to the
25 principal.’ ... [and] ... ‘as against a principal, both principal and agent are deemed to have notice
26 of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and
27 diligence, to communicate to the other.’” [*Columbia Pictures, supra.* at 630.] Further, “a
28 principal is chargeable with and is bound by the knowledge of, or notice to, his agent received

1 while the agent is acting within the scope of his authority, and which is with reference to a matter
2 over which his authority extends.” [Id.]

3 Thus, the court imputed Allenberg’s acts and words to the principal contracting party
4 (defendant director) and held the oral contract evidenced by the terms set forth in the written
5 contract, was valid. Likewise, here Kerns’ indication that the Option remained viable to be
6 executed and exercised at a later date is imputed to CMS.

7 C. The Option Addendum was Timely and Validly Exercised

8 The Option Addendum states, “6. Other Tenant shall notify Landlord at least one hundred
9 eighty days (180) of its intent NOT to exercise the Tenant’s option to renew.” Thus, the
10 language creates an automatic renewal that requires Farrow to do nothing to exercise the option;
11 the terms require Farrow to notify defendant only if Farrow’s intent was NOT to exercise the
12 Option. The standard form Option to Renew/Extend Lease (Form 565) has a provision for
13 written notice: “4. A written notice of Exercise of Option to Renew/Extend Lease needs to be
14 delivered prior to expiration of the option exercised and no sooner than _ months before
15 expiration of the option exercised,” which paragraph was stricken by CMS prior to execution.
16 Nevertheless, Farrow did take the affirmative step, on November 9, 2021, prior to expiration of
17 the original lease term, of executing the Option and notifying CMS of its intention to exercise the
18 option and extend the lease term. Farrow then attempted to pay full rent for November 2021, but
19 Defendant returned the rent and this litigation ensued. Payments in the amount of the agreed rent
20 were later timely resumed under the terms of the Preliminary Injunction ordering payments to
21 continue pending the action.

22 Here, *ADV Cmp. v. Wilanan* (1986) 178 Cal.App.3d 61 is instructive. In that case, tenant
23 ADV Corp. leased premises in Santa Ana from Wilanan to operate a used car business. The
24 written lease agreement provided for a term of five years and included an option to renew for an
25 additional five years. (*Id.* at 63.) Similar to the instant case, the ADV lease did not require the
26 tenant to take any affirmative act to notify the landlord of its intent to exercise the option: “The
27 [trial] court’s minute order provides: ‘There was no prescribed manner by which [ADV] was
28 required to exercise its option to extend the lease.’” (*Id.* fn. 3).

1 Wikman initiated eviction proceedings and ADV filed a complaint seeking “a judicial
2 determination that it exercised its option to renew the lease and was entitled to possession for an
3 additional term of five years.” (*Id.* at 64). The trial court found in favor of tenant ADV Corp.
4 for three reasons: (1) the prior relationship between the parties, (2) ADV’s conduct in expanding
5 the tenant improvements (purchase of a new office trailer and storage shed, resurfacing the
6 parking lot three times during its tenancy, and spending tens of thousands of dollars annually on
7 advertising), and (3) the specific language in the lease. The court of appeal affirmed the
8 judgment in favor of the tenant based on the language of the lease that did not require the tenant
9 to notify the landlord of its intent to exercise the option, combined with the tenant’s remaining in
10 possession and tendering rent:

11 [If] the lease ... [provides] merely for an extension, [the tenant’s] remaining in
12 possession (no specific form of notice having been required) [is] sufficient notification
13 of [the tenant’s] decision. [*ADV, supra*, 178 Cal.App. 3d at 66 (citations omitted;
brackets and parentheses in original).]

14 The *ADV* court further explained:

15 In other words, “if the lessor gives the lessee the right to an extension of the term, and
16 does not specifically require him to give notice of his election to avail himself of such
17 right, his mere continuance in possession after the original term is to be regarded as
18 showing his election to that effect.” [*Id.* (citation omitted).]

19 Here, Paragraph 6 of the Option does not require Farrow to do anything to exercise its
20 option. In fact, the opposite is true - the language specifically states that the tenant is only to
21 notify the landlord if the tenant does NOT intend to exercise the option. Moreover, consistent
22 with his representation to CMS in December 2018, Mr. Farrow signed the Option on November
23 9, 2021, prior to expiration of the initial lease term. Also, like ADV, Farrow invested significant
24 sums into the Property in reliance on the extended lease term. Thus, in compliance with all
25 terms of the Lease, Farrow validly exercised the Option resulting in an extension of the Lease for
26 the first option term of four years.

27 **D. The Breaches Alleged Do Not Invalidate the Option to Extend the Lease**

28 Defendant argues breaches based on (1) failure to satisfy each and every one of the 56

1 conditions of the use permit within a certain time period, and (2) alleged violations at the leased
2 property pertaining to the Environmental Protection Agency, the North Coast Quality Control
3 Board, or other governmental agencies. The Court finds the alleged breaches are not material
4 breaches that would preclude exercise of the Option to extend the lease. Moreover, any such
5 breaches were waived by CMS.

6 1. Farrow Was Not Required to Satisfy All 56 Conditions of the Use Permit Within
7 a Specific Time Period.

8 The Addendum does not state that Farrow had to satisfy all of the conditions of the use
9 permit within a specified time period.

10 The case *ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257 is
11 instructive. The underlying case was an unlawful detainer action filed by landlord ASP
12 Properties Group, L.P. against its tenant Fard, Inc., who executed a 10-year lease of commercial
13 property in La Mesa, California, with ASP's predecessor-in-interest to use for auto sales, repair,
14 and auto related business. ASP sent Fard a letter in June 2003 demanding that Fard complete
15 eleven specific items of "modifications, maintenance or repairs" within 60 days. (*ASP, supra*,
16 133 Cal.App.4th at 1264). ASP then served Fard with a three-day notice to perform covenants or
17 quit on or about November 10, demanding that Fard completed the modifications, maintenance,
18 or repairs within three days or quit its possession of the premises. (*Id.*) On November 26, ASP
19 filed an unlawful detainer action, alleging Fard did not cure the three-day notice. (*Id.*) At the
20 unlawful detainer trial, among other findings, the trial court interpreted the lease and its
21 amendment as not requiring the tenant to install new roofs to replace the existing roofs. The
22 landlord appealed, contending (1) the trial court erred in interpreting the lease and amendment
23 not to require tenant to install new roofs and (2) the tenant breached the lease by not replacing
24 the roofs of the premises. (*Id.* at 1268). The court of appeal affirmed the trial court's judgment
25 in favor of the tenant. (*Id.* at 1265, 1274, 1276).

26 The term of the lease in *ASP Properties* was from April 1, 1997, to March 31, 2007. The
27 lease contained a standard "Repairs and Maintenance" provision, which required the tenant to
28 "maintain at his sole expense and without contribution from Landlord, the [P]remises in good

1 and safe condition, including, but not limited to[,] plate glass, electrical wiring, plumbing and
2 heating installation.” (*ASP, supra*, 133 Cal.App.4th at 1262). On July 15, 2000, the parties
3 executed an Amendment, which contained a \$500 monthly reduction in rent for the remainder of
4 the lease term, and added the following language to Paragraph 3 of the lease (regarding use of
5 the premises): Tenant agrees to comply with any and all requirements, laws, ordinances, or other
6 mandates of the City of La Mesa and at Tenant’s expense to cure any condition, use or perform
7 any necessary modification, maintenance or repairs as may from time to time be required by the
8 City of La Mesa, or Landlord, within sixty (60) days of receipt of written notice that such a
9 defect, violation or other conditions exists which is unacceptable to the City of La Mesa or
10 Landlord. Tenant’s failure to make any improvement, correct any condition, or otherwise comply
11 with any written notice shall constitute a breach of this Lease if Tenant permits such conditions,
12 violation or use to continue on or after the sixty-first (61st) day after receipt of such notice. (*Id.*
13 at 1262-1263).

14 The Amendment also replaced Paragraph 4 of the Lease as follows: Repairs and
15 Maintenance. Tenant shall maintain at his sole expense and without contribution from Landlord,
16 the Premises in good and safe condition, including, but not limited to, the roof, plate glass,
17 electrical wiring, plumbing and heating installation. (a) Tenant shall comply with any and all
18 zoning regulations, laws, ordinances and other requests of the City of Law Mesa concerning the
19 use, repair and maintenance of [Premises] as set forth in the correspondence received from the
20 City of La Mesa and any future correspondence which concern[s] the use and/or maintenance
21 and repair of the [P]remises. In addition to correcting the existing violation as of the date of [the
22 Amendment], Tenant agrees to submit a plan (“Plan”) as requested by the City of La Mesa for
23 the remodel of the building to include, but not [be limited to,] the installation of handicap access
24 and other changes as may be required by the City of La Mesa. Such Plan shall be submitted to
25 Landlord for Landlord’s consent prior to Tenancy submitting the Plan for approval by the City of
26 La Mesa. After the Plan is approved by the City of La Mesa, Tenant agrees that it shall
27 implement the Plan at Tenant’s sole cost and expense, except [that] Landlord agrees that upon
28 approval of the Plan by the City of La Mesa, he shall ... pay Tenant the sum of \$1000.00 as

1 Landlord's contribution [toward] the actual cost of construction required under the approved
2 Plan ... Any additional cost or expense in order to implement the Plan, complete the construction
3 or otherwise comply with the Plan or to cure any existing or future violations as noted by the
4 City of La Mesa or Landlord shall be at the sole cost and expense of the Tenant. (*Id.* at 1263).

5 In ruling in favor of the tenant, the trial court made several findings, including: From the
6 [A]mendment the court gathers that there were some issues with the City of La Mesa, some code
7 violations that were likely cited and that the [L]andlord was concerned that [T]enant should take
8 care of those issues and that an Amendment was crafted and signed. (*Id.* at 1264).

9 The court does not find that the language in Paragraph 4 of the Amendment requiring the
10 [T]enant to maintain in a good and safe condition, the roof, among other things, had the same
11 meaning as the [T]enant must replace a roof that had already exceeded its life expectancy at the
12 time [Tenant] took [possession]. (*Id.* at 1264-1265).

13 ... The Court does not find that 'maintain' means to replace or to install initially. Thus,
14 the Court finds [Tenant] had no obligation to install a new roof or to install heating and
15 air conditioning ... The Court does not find that the [L]ease and [the Amendment]
16 required [Tenant] to improve or modify anything and everything the Landlord requested.
17 The bargained-for exchange between the parties was that [Tenant] brought the property
18 into compliance with the City of La Mesa's codes and expended \$30,000 - \$40,000
19 maintaining the leasehold ... *The language of the Amendment is less than clear and must
20 be construed against the drafter - [Landlord]. The Court will not read into the
21 [A]mendment any more than it states. It does not say that [Tenant] must replace the roof.*
22 When the [A]mendment was drafted, the testimony of the witnesses was that replacing
23 the roof was not discussed. (*Id.* at 1265) (bold in original; italics added for emphasis).)

24 The court of appeal began its analysis of the trial court's interpretation of the lease and
25 amendment by summarizing the basic tenants of contract interpretation. These include the
26 principle that, "Interpretation of a contract 'must be fair and reasonable, not leading to absurd
27 conclusions.' [Citations]. 'The court must avoid an interpretation which will make a contract
28 extraordinary, harsh, unjust, or inequitable. [Citation].'" (*Id.* at 1269). Moreover, Section 1643
provides: "A contract must receive such interpretation as will make it lawful, operative, definite,
reasonable, and capable of being carried into effect, if it can be done without violating the intent
of the parties." In the event other rules of interpretation do not resolve an apparent ambiguity or

1 uncertainty, “the language of a contract should be interpreted most strongly against the party
2 who caused the uncertainty to exist.” (§ 1654.) (*Id.*) (Emphasis added.)

3 The court proceeded to focus on the primary purpose of the Amendment as it pertained to
4 the parties’ expectations vis-a-vis correcting various code violations. (*Id.* at 1271). The court
5 found that the tenant’s duty of maintenance could *only* be reasonably construed to require the
6 tenant to *maintain* – not replace – the roofs in their conditions as of the time the lease was signed
7 in 1997 and the amendment in 2000 (“i.e., in their then-dilapidated conditions”). (*Id.*) Had the
8 parties intended Tenant to assume the obligation to replace the roofs, one would reasonably
9 expect the Lease and/or Amendment to expressly so state rather than merely stating Tenant was
10 required to maintain the roofs (and other parts of the Premises). (*Id.* at 1272.) (Emphasis
11 added).

12 The court expounded: Case law supports a conclusion that, absent an express provision
13 (or undisputed extrinsic evidence) showing a tenant has an obligation to replace a roof, a tenant’s
14 obligation to maintain or repair the premises (including a roof) does not include an obligation to
15 replace an old, dilapidated roof with a new roof at tenant’s expense. In *Iverson v. Spang*
16 *Industries, Inc.* (1975) 45 Cal.App.3d 303 [119 Cal. Rptr. 399], a lease required the tenant to
17 leave the premises in good order, condition, and repair except for reasonable use and wear. (*Id.*
18 at p. 310.) *Iverson* stated:

19 Such covenants are generally reasonably interpreted to avoid placing any unwarranted
20 burden of improvement on the [tenant]. [Citation.] ... ‘... The tenant is certainly not
21 obligated to restore the premises to his landlord in a better condition than they were at the
22 inception of the tenancy. [Citations.]

23 In *Haupt v. La Brea Heating etc. Co.* (1955) 133 Cal.App.2d Supp. 784 [284 P.3d 985], a
24 lease required the tenant to “‘make whatever repairs are necessary to the floor’ and ‘to repair the
25 floor to a usable state.’” (*Id.* at p. Supp. 788). *Haupt* concluded neither the lease nor statutory
26 provisions (i.e., §§ 1928, 1929) obligated the tenant to restore the premises to a better condition
27 than existed at the inception of the lease. (*Haupt, supra*, at pp. Supp. 788-789.) *Haupt* stated:
28 “If, at the time of the letting, the roof was old and worn, *certainly [the tenant was] not required*
to repair the same and should not be held liable for the cost of a new roof nor for damages

1 occasioned by rainwater finding its way into the premises. [Citation:]” (*Haupt, supra*, 133
2 Cal.App.2d at p. Supp. 789, italics added.) (*Id.* at 1272.)

3 The *ASP* court also surveyed cases from other jurisdictions, and quoted applicable
4 language supporting its rationale:

5 “... We cannot believe that the parties ever intended at the time of the execution of the
6 lease here that the [tenant] would be burdened with an immediate \$60,000.00 obligation
7 for a roof and related structure by himself, let alone the other items, to substantially
8 restore the [landlord’s] building ...” ... [Landlord’s] position is obviously unfair because it
9 would give [landlord] a better, fully reconstructed building than he leased, the life of
10 which improvements would extend far beyond the [tenant’s] remaining term of less than
11 eight years. It would become far superior to its condition at the date of the lease. By the
12 express terms of the agreement, [the tenant’s] obligation was only to keep it in its lease
13 date condition. It had taken over 30 years for the building to reach its dilapidated state ...
14 (*Id.*, citing *Scott v. Prasma*, (Wyo. 1976) 555 P.2d 571, 576-579).

15 The *ASP* court held that the landlord’s attempted insinuation of language into the lease
16 must fail:

17 We conclude that although there is evidence supporting a finding both Landlord and
18 Tenant knew, when the Lease and Amendment were executed in 1997 and 2000, the
19 roofs needed to be replaced, that knowledge does not support a reasonable inference they
20 intended, absent express language in the Lease or Amendment, Tenant be required to
21 replace the already dilapidated roofs. (*Id.* at 1274).

22 Because the tenant was not required to replace the roofs, it was not in breach of the lease
23 for not doing so:

24 Accordingly, we conclude, as a matter of law, Tenant was not required to replace the
25 roofs of the Premises pursuant to either the Lease or the Amendment. Therefore, we reject
26 Landlord’s assertion Tenant breached the Lease and Amendment by not replacing the
27 roofs. (*Id.* at 1274).

28 In the instant case, CMS is attempting to do what the *ASP* landlord did – insert language
into the lease that the lease did not contain; namely here, a requirement that Farrow satisfy all 56
conditions of the use permit within a particular time period. The lease, drafted as it was by the
landlord, does not say that. The *ASP* trial court properly stated that it would “not read into the
Amendment any more than it states.” (*ASP, supra*, 133 Cal.App.4111 at 1265.) The court of

1 appeal referred to the absence of “express language in the lease” vis-a-vis the tenant’s
2 obligations. CMS had ample opportunity to draft the lease language to expressly state that the
3 conditions of the use permit had to be satisfied within a certain period of time. For example, the
4 lease addendum could have stated, “Tenant has 36 months to apply for, obtain, and/or satisfy all
5 pre-operational conditions of the use permit.” It did not; rather, the lease merely states, “Tenant
6 will obtain the appropriate Use Permit for its use from the County of Sonoma within 12 months.”
7 The lease is utterly silent as to any time period required for the *satisfaction of the conditions* of
8 that use permit.

9 2. The Alleged Breaches Were Non-Material and Do Not Affect Farrow's Ability to
10 Remain in Possession of the Leased Premises

11 Commercial leases with options to renew/extend sometimes make it an express condition
12 that the tenant keep all or certain covenants on his part; in such cases, nonperformance or breach
13 of the covenants will defeat the tenant’s right to renew the lease. [*Behrman v. Barto* (1880) 54
14 Cal.131, 132.] The Option at issue here has no such language.

15 Moreover, some cases have held a tenant was not entitled to exercise an option to
16 renew/extend when it was in default on rent payments even absent an express written clause
17 requiring such payment as a condition. This is because payment of rent is an implied condition.
18 [*Nork v. Pacific Coast Medical Enterprises, Inc.* (1977) 73 Cal.App.3d 410, 416.] Farrow was
19 current on rental payments when the option automatically executed and later when Farrow
20 signed the option to extend on November 9, 2021. The evidence at trial shows Farrow timely
21 tendered rent thereafter, initially returned by Defendant, but eventually accepted under the terms
22 of the Preliminary Injunction. The alleged breaches argued by CMS here (permit use issues and
23 environmental “violations”) are not the kinds of breaches implied by law and are not the kinds of
24 breaches that will nullify an option to renew/extend.

25 When the notice of exercise has been given in a timely manner, the tenant in default can
26 exercise the option effectively if it has a substantial investment in the property and the defaults
27 by the tenant are minor, or the landlord has waived the defaults, or the landlord's conduct renders
28

1 strict compliance with the lease or the renewal provisions futile. In some cases, a court may
2 exercise its equitable jurisdiction and permit a lessee to renew a lease even though he or she is in
3 violation of material terms of the lease. In this case the evidence shows Farrow has a substantial
4 investment in the Property and was allowed to continue to operate on the premises under the use
5 permit by the County of Sonoma by letter if Mr. Keefer long after any notice of abatement was
6 issued (2011) or served.

7
8 *Kaliterna v. Wright* (1949) 94 Cal.App.2d 926, 935-936, disapproved on a different
9 ground by *State Farm Mut. Auto. Ins. Co. v. Superior Court, In and For City and County of San*
10 *Francisco* (1956) 47 Cal.2d 428, is applicable to this case. The court held where a lease renewal
11 option was not made expressly conditional upon the full performance of the terms of the lease,
12 the lessee was entitled to renew the lease despite certain alleged breaches of the lease which had,
13 in the court's view, been waived by the landlord. The court rejected the landlord's argument
14 that, to be entitled to renewal, a tenant must prove full compliance with all terms of the lease.
15 The court pointed out that under any reasonable standard the tenant had fully complied in that
16 she had paid her rent and made improvements to the property, such that forfeiture of the tenant's
17 right to renew would be inequitable. [*Id.* at 935-936.]
18

19
20 The facts in *Kaliterna* are particularly on point here. Defendant/Lessor contended
21 multiple breaches, *but only after the dispute arose* and defendant denied plaintiff's right to
22 renew. "This was apparently the first intimation to plaintiff that the lessors thought the lease had
23 been breached in any way." [*Id.* at 931.] During the litigation, defendants alleged failure to pay
24 rent during an earlier term of the lease, failure to continually occupy the premises, failure to pay
25 taxes on improvements, failure to keep the premises covered by fire insurance, unauthorized
26 residential use of the premises, and structural changes without lessor approval. The court found:

27 In the present case there was no breach by plaintiff which would justify a court in holding
28 that plaintiff had lost the right to renew. Under any reasonable standard, plaintiff here had
fully Performed, entitling her to renew by exercising the option. The evidence here shows

1 that the lessor agreed to accept, and did accept, the reduced rental over the largest portion
2 of the leased term; also, that the only proved breaches of the lease were waived.
3 Moreover, the lease contained a grant of an option to renew, which was not made
4 conditional upon the full Performance of the terms of the lease. [*Id.* At 936.]

5 Thus, as in the case at bar, the right to refuse to renew or extend the lease was waived by
6 defendant who had acquiesced in the tenants' breaches of the terms and conditions of the lease.

7 Also instructive is *Title Ins. & Guaranty Co. v. Hart* (9th Cir. 1947) 160 F.2d 961, cited
8 by and relied upon by the *Kaliterna* court, which involved a mining operation conducted by
9 tenant on the premises. In *Hart, supra*, the lease was actually conditioned on faithful compliance
10 with the covenants of the lease; but nevertheless, the court held the lessee *not* precluded from
11 exercising the option since "[i]t is not reasonable in human experience to expect that there could
12 have been full, exact, strict, complete and perfect compliance with all of the covenants." [*Id.* at
13 970.] The breaches alleged in attempt to justify defendant's refusal to renew the lease were:
14 failure to pay royalties, violations of California law (21 violations of Mine Safety and
15 Mechanical Power Transmission orders of the California Industrial Accident Commission) and
16 failure to keep complete records. [*Id.* at 968-970.] Particularly applicable here is the court's
17 discussion of the legal violations of safety orders. The court noted:

18 The record shows that the Commission allows a reasonable time for correction of any
19 infraction of its numerous regulations, and it further shows that all matters testified to as
20 violations were settled, and the case closed as far as the Accident Commission was
21 concerned. All of these alleged violations appear to be relatively minor infractions and
22 while it was necessary for the Commission to call the attention of lessees to certain
23 violations more than once, it nevertheless is undisputed that appellee was not proceeded
24 against, the mine was not closed and lessors were not injured by any of the violations of
25 these safety orders. [*Id.* at 969.]

26 The court reached a similar conclusion in *Kern Sunset Oil Co. v. Good Roads Oil, Co*
27 (1931) 214 Cal. 435 where the lease provided for the drilling and placing upon production of two
28 wells each year until sixteen wells had been drilled and brought into production, during a period
of over thirteen years the lessees had only completed thirteen wells. The court held that
landlord's acceptance of rent for almost five years with knowledge of all the facts, without any
complaints, constituted a waiver of the breach. [*Id.* at 440.]

1 Here, as in *Kaliterna v. Wright, supra, Title Ins. & Guaranty Co. v. Hart, supra,* and
2 *Kern v. Good Roads*, the evidence shows that the breaches claimed are not material terms that
3 would nullify the option to extend the lease. As to the alleged 56 conditions of the use permit,
4 the evidence supports due diligence throughout as well as waiver and acquiescence by CMS. As
5 to the alleged governmental “violations,” the issues have been dealt with and cured and have had
6 no adverse effect on CMS. (See argument below in D.2.)

7 As in *Hart, supra*, and in the case at bar, exact, strict, and perfect compliance with the use
8 permit issues is not practicable and was apparently not a concern of CMS during the tenancy of
9 Carl’s Ready Mix or for most of the tenancy of Farrow leading up to this dispute; this supports
10 waiver and acquiescence by CMS. Also, as in *Kaliterna, supra*, complaints of breach were only
11 raised after the parties became adversarial. This timing suggests waiver and acquiescence by
12 CMS of the breaches now alleged. As in *Kaliterna, supra*, the Option here was not made
13 expressly conditional upon the full performance of the terms of the lease, and we have the
14 ambiguous and seemingly unlimited word “legalize” that defendants rely on in their argument.
15 Thus, equity precludes removal of Farrow from the premises as Farrow has invested substantial
16 sums in the Property in reliance on their option to renew for a total of eight years.

17
18 **E. Defendant Has Not Proven Breaches**

19 1. Failure to Fully Address all 56 Conditions Noted in the Use Permit Was Not a Breach of
20 the Lease.

21 CMS claims Farrow is in breach of the Lease because it failed to satisfy all 56 conditions of the
22 use permit within one year of the lease inception date, (November 19, 2018) or alternatively, within
23 three years of its inception when the initial lease term expired (November 18, 2021). The evidence
24 shows that Farrow is currently, and has been at all times during the tenancy, operating under a valid
25 use permit as evidenced by a letter from the County of Sonoma dated December 27, 2018, that clarifies
26 operation at the site is allowed pending satisfaction of the conditions of the existing use permit. Farrow
27 has exercised reasonable and diligent efforts to satisfy the conditions of the use permit under the
28

1 circumstances and has expended substantial sums of money attempting to satisfy the final conditions of
2 the use permit. The express language of the Lease clearly does not include any temporal deadlines as
3 CMS claims.

4 Another addendum to the Lease at issue here is the "Addendum" Form 550-1 which includes
5 the following terms drafted by CMS: "Agreement: 2. The following terms and conditions are made
6 part of the above referenced lease or rental agreement; ... Other: Tenant will obtain the appropriate Use
7 Permit for its use from the County of Sonoma within 12 months. Within thirty days, Tenant will
8 provide a letter or otherwritten evidence that the County of Sonoma Permit and Resource Department
9 (PRMD) will allow Tenant to legalize the existing use, and that the County will not prohibit the
10 issuance of other permits (for example, to other tenants or to Landlord) while Tenant is in the process of
11 legalizing Tenant's use." Tenant agrees that other permits may be issued for other uses on the property,
12 independent of Tenant's use, and will cooperate with landlord if necessary to obtain such permits.

13
14 In 2008, Carl's Ready Mix obtained a conditional use permit from the County of Sonoma to
15 operate a concrete batch plant at the property. On or about April 22, 2008, the County issued a lengthy
16 document entitled "Final Conditions of Approval" for UPE07-0112. On or about June 29, 2010, the
17 County issued a similar document entitled "Final Conditions of Approval" for UPE07-0112. The "Final
18 Conditions of Approval" advised Carl's Ready Mix of the non-operational and the operational
19 conditions that it had to meet.
20

21 When Farrow purchased the assets of Carl's Ready Mix and commenced its tenancy at the
22 property, despite Carl's Ready Mix's efforts, it had not met all of the Final Conditions of Approval.
23 From the time CMS purchased the property in 2015 until Carl Davis moved out in late 2018, CMS
24 never told Carl Davis that he had to satisfy all 56 conditions of the use permit or he would be evicted;
25 never served Carl Davis with any warning notices regarding the final conditions of approval; never
26 served him with any three-day notices to perform or quit regarding the final conditions of approval;
27 and never served him with any three-day notices to perform or quit. After John Farrow executed the
28

1 lease with CMS on December 7, 2018, Mr. Farrow obtained the requisite letter from Sonoma County
2 PRMD called for by the lease. On December 27, 2018, Brian Keefer, a Project Planner at the County of
3 Sonoma Permit and Resource Management Department, sent a letter to Mr. Farrow which stated:
4 *Hello Mr. Farrow, You may continue to operate the concrete mixing plant at 3660 Copperhill Lane*
5 *pursuant to the Conditions of Approval of UPE07-0112. If you have any questions, please feel free to*
6 *contact me at 707-565-1908, or via email at brian.keeper@sonoma-county.org.* Farrow provided a
7 copy of this letter to CMS pursuant to the language in the Addendum. Stacey Ciddio signed the lease in
8 February 2019 without questions or comment regarding Mr. Keefer's letter.
9

10 Testimony showed that from the beginning of its tenancy at the property, Farrow undertook
11 efforts to satisfy the conditions of the use permit. Farrow's expert, the former PRMD Code
12 Enforcement Manager from 2002-2011 and PRMD Building and Safety Division Manager from 2011-
13 2015, testified at trial that the use permit is a valid use permit for Farrow's operations at the property
14 and that the use permit has vested. During Farrow's tenancy, in December 2019, CMS received a letter
15 from the County stating that violations of the use permit existed at the property. CMS forwarded a
16 copy of this letter to Farrow, and Farrow continued its efforts to communicate with the County and to
17 satisfy the conditions of the use permit. However, there were months during 2020 when the PRMD
18 office was closed, and Farrow experienced delays beyond their control. At one point in August 2020,
19 CMS hired an attorney to issue a three-day notice to perform covenants or quit. On August 6, 2020,
20 CMS caused to be served on Farrow a "3-Day Notice to Perform Covenant or Quit" which stated that
21 "Per the ADDENDUM of your lease at #2 'Tenant will obtain the appropriate Use Permit from the
22 County of Sonoma"; "You have failed to obtain that Use Permit", and "Within three (3) working days
23 from the service of this notice you must obtain that necessary use permit from the County of Sonoma,
24 or you must quit and deliver up possession of the premises." In response, Farrow's attorneys sent a
25 copy of the Brian Keefer December 2018 letter to CMS, who took no further action at that time to try
26 to evict Farrow.
27
28

1 CMS' First Amended Cross-Complaint alleges in the First Cause of Action for Breach of
2 Contract at Paragraph 20: "FARROW breached the lease during its occupation by not obtaining a Use
3 Permit for operation of its business within twelve (12) months of its lease. While FARROW obtained
4 consent from the County to operate under the CUP provided to Carl's, it never applied for a Use Permit
5 in its own name. In addition, FARROW is in breach of the lease and operating in violation of
6 governmental ordinance in not obtaining its own use permit as agreed, and in failing to meet all the
7 conditions of the CUP provided to Carl's. It is still in breach of even the conditions imposed by that use
8 permit."

9
10 These claims ignore the fact that the Lease does not set any time limit for satisfaction of the
11 conditions of the use permit and that CMS never claimed with Carl Davis, or with Farrow (until after
12 relations became adversarial), that failure to resolve all 56 conditions constitutes a breach of the Lease.

13 2. Alleged Environmental Violations Are Not a Breach of the Lease

14 CMS further alleges "violations" at the leased property pertaining to the Environmental
15 Protection Agency, the North Coast Water Quality Control Board, the Bay Area Air Quality
16 Management District, or other governmental agencies.

17 The evidence shows that the issues were cured to the extent Farrow was responsible.

18
19 Testimony and evidence showed Farrow worked with the NCWQCB for over a year to obtain a
20 WDID ("Waste Discharge Identification) number, including hiring a consultant, George Goobanoff, to
21 submit all necessary information to NCWQCB in order to be assigned a WDID. In the process, the
22 NCWQCB issued several letters to Farrow, including one dated February 18, 2021, which stated that
23 NCWQCB was fining Farrow due to the delay in obtaining the WDID number. Farrow paid a penalty
24 of \$7,049.85 on February 12, 2021, and the matter was resolved. Farrow has obtained its WDID
25 (1491029104), has uploaded its Storm Water Pollution Prevention Plan ("SWPPP") and site map as
26 requested by the NCWQCB to its database, and resolved the issues noted in an April 2021 site visit.
27
28 There are no issues with Farrow's business operations at the Property currently pending involving the

1 NCQWCB.

2 Farrow is currently working under a valid Annual Permit obtained from the Bay Area Air
3 Quality Management District. There was a lapse at one point during the pandemic, but Farrow was not
4 fined, and no adverse action was taken against Farrow. The permit was renewed.

5 With respect to the Environmental Protection Agency ("EPA"), an inspection of the property
6 occurred on November 17, 2020, and testimony regarding this incident demonstrates that it has been
7 resolved. There are no issues with Farrow's business operations at the Property currently pending
8 involving the EPA.
9

10 **E. Claims for Fraud/Concealment and Unfair Business Practices**

11 There is no substantial testimony that CMS purposefully withheld information with the
12 intent to conceal it from Farrow. Therefore, the Court finds in favor of Defendants on Farrow's
13 third cause of action for Fraud/Concealment, and its fourth cause of action for unfair
14 business practices pursuant to California Business and Professions Code section 17200 et seq.

15 **DECISION**

16 Based on the foregoing, Verdict shall be entered in favor of Plaintiff Farrow on plaintiff's
17 first and second causes of action for breach of contract and declaratory relief. Verdict shall be
18 entered in favor of Defendant CMS on plaintiff's third and fourth causes of action. The Court
19 further finds that any monetary damages caused by the breach of contract are nominal as much of
20 the expenditures incurred by Farrow, according to the evidence presented, would most likely
21 have been incurred without a breach in pursuit of satisfying terms and conditions of the use
22 permit. Farrow will not be awarded monetary damages on its successful claims. However, the
23 Court finds the exercise of the Option was valid.

24 Based on the foregoing, Verdict shall be entered against CMS and in favor of Farrow on
25 all of CMS's causes of action alleged in their First Amended Cross-Complaint. CMS will not be
26 awarded damages on its claims. Plaintiff shall prepare a Judgment for filing and entry according
27 to the findings and decision contained in this Statement of Decision.

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The Court reserves jurisdiction on attorney fees and costs.

IT IS SO ORDERED.

Dated: June 15, 2023



BRADFORD DEMEO
Superior Court Judge

PROOF OF SERVICE BY MAIL

I certify that I am an employee of the Superior Court of California, County of Sonoma, and that my business address is 600 Administration Dr., Room 107-J, Santa Rosa, California, 95403; that I am not a party to this case; that I am over the age of 18; that I am readily familiar with this office's practice for collection and processing of correspondence for mailing with the United States Postal Service; and that on the date shown below I placed a true copy of *STATEMENT OF DECISION AFTER COURT TRIAL* in an envelope, sealed and addressed as shown below, for collection and mailing at Santa Rosa, California, first class, postage fully prepaid, following ordinary business practices.

Date: June 16, 2023

Robert Oliver
Clerk of the Court

By: Sarah Helstrom
Sarah Helstrom, Deputy Clerk

-ADDRESSEES-

RACHEL MARY DOLLAR
SMITH DOLLAR PC
418 B ST 4TH FLR
SANTA ROSA CA 95401

MICHELLE V ZYROMSKI
ZYROMSKI KONICEK LLP
613 FOURTH STREET SUITE 203
SANTA ROSA CA 95404

DANIEL EVANS POST
MICHAEL SHKLOVSKY
CHRISTOPHER MITCHELL MAZZIA
ANDERSON ZEIGLER APC
50 OLD COURTHOUSE SQ 5TH FL
SANTA ROSA CA 95404

EXHIBIT 67A

4					
5					
6	Employee OSHA Station - Compliance				
		Goldenstate Lumber		Materials Cost & Labor	Golden State Lumber
		Goldenstate Lumber		Materials Cost & Labor	Golden State Lumber
		Goldenstate Lumber		Materials Cost & Labor	Golden State Lumber
		Goldenstate Lumber		Materials Cost & Labor	Golden State Lumber
7	SWPPP's Implementation and Maintenance				
	Side of the Lease requirements			Labor ONLY	
	Plastic Coverings and PIG Material			Materials Cost & Labor	
		PIG Material		Labor ONLY	
		PIG Material		Materials Cost & Labor	PIG Materials
		Plastic 5 Mill Covering 7 Staples		Materials Cost & Labor	
		Mesh Staples		Materials Cost & Labor	White Cap
		Gravel Bags		Materials Cost & Labor	White Cap
		Waddles		Materials Cost & Labor	Harmony Ag Supply
		Silt Fencing		Materials Cost & Labor	
		Spill Kits		Materials Cost & Labor	
		Ph Testing Gun		Materials Cost & Labor	
		Manual Ph Strips		Materials	Johnson Pools
		Pig Emergency Chemical Containment		Materials	
	SWPPP's program			Contract Cost	Scott Environmental
	Chemicals Containment Walls			Materials Cost & Labor	
				Materials Cost & Labor	Golden State Lumber
				Materials Cost & Labor	Golden State Lumber
		Tony Doiron's	6/4/2021	Pump & Labor	Tony Doiron's
8					
9					
10					

From: [Rose M. Zoia](#)
To: [Blake Hillegas](#)
Cc: [Kevin Deas](#); [Larry Reed](#); [Evan Wiig](#); [Eric Koenigshofer](#); [Eric Koenigshofer \(ejklaw@yahoo.com\)](#); [Stacey Ciddio](#); [Tennis Wick](#); [Scott Orr](#); [Cecily Condon](#); [Michael Shklovsky](#); [Chris Mazzia](#)
Subject: RE: BZA hearing 10/26/23 / Farrow Ready Mix Revocation of Use Permit / Farrow's request for continuance
Date: Friday, October 20, 2023 10:50:18 AM
Attachments: [image001.png](#)

EXTERNAL

Good morning, Blake,

I neglected to mention in my October 19, 2023, letter sent to you and the cc'd individuals yesterday that, in addition, to Farrow's other lawyer, Glenn Smith, and the other attorneys in both law firms retained by Farrow, Michelle Zyromski's October 16, 2023 email does not state Mr. Farrow himself is not available to attend the October 26, 2023, hearing. Thus, there are many applicant representatives besides Ms. Zyromski, who is one of its attorneys, and Troy Saldana, who is one of its employees, who can attend the hearing, which has been scheduled for about two months.

Thank you for your attention to this matter.

Regards,

~Rose Zoia

Rose M. Zoia

signature_544096126



50 Old Courthouse Square, 5th Floor
Santa Rosa, CA 95404
(707)545-4910 Tel
(707)544-0260 Fax
rzoia@andersonzeigler.com
www.andersonzeigler.com

From: Rose M. Zoia

Sent: Thursday, October 19, 2023 12:01 PM

To: Blake Hillegas <Blake.Hillegas@sonoma-county.org>

Cc: 'kevin.deas@sonoma-county.org' <kevin.deas@sonoma-county.org>; 'lawrence.reed@sonoma-county.org' <lawrence.reed@sonoma-county.org>; 'evan.wiig@sonoma-county.org' <evan.wiig@sonoma-county.org>; 'eric.koenigshofer@sonoma-county.org' <eric.koenigshofer@sonoma-county.org>; Eric Koenigshofer (ejklaw@yahoo.com) <ejklaw@yahoo.com>; Stacey Ciddio <sltinker12@gmail.com>; tennis.wick@sonoma-county.org; Scott Orr <Scott.Orr@sonoma-county.org>; Cecily.Condon@sonoma-county.org; Michael Shklovsky

<mshklovsky@andersonzeigler.com>; Chris Mazzia <cmazzia@andersonzeigler.com>

Subject: BZA hearing 10/26/23 / Farrow Ready Mix Revocation of Use Permit / Farrow's request for continuance

Dear Blake,

Please see attached letter regarding the subject matter. Thank you.

Regards,

~Rose Zoia

Rose M. Zoia

signature_544096126



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From: [toni.pimentel](#)
To: [Blake Hillegas](#)
Subject: Farrow Ready Mix Use Permit
Date: Sunday, October 22, 2023 10:06:42 AM

EXTERNAL

I, Antoinette Pimentel, having lived and worked in Sonoma County my entire life, have recently become aware of the misuse of permits by Farrow Ready Mix and the impact it is having on local concrete companies.

I support the revocation of the Conditional Use Permit and support staff's recommendation that the Board of Zoning Adjustments revoke Farrow Ready Mix's use permit.

While Farrow has been allowed to operate in violation of its permit other local concrete companies and other businesses work to comply with county regulations, even if it means more expense and less profit. They are all disadvantaged when a local business violates permit

conditions and is allowed to do so for many years without repercussions. The unequal playing field creates unfair business practices in our County.

Further, conditional use permits contain conditions concrete companies must follow. A concrete producing business that operates outside of its permit can cause damage to the environment (by, for example, creating dust, noise, traffic, water contamination, etc.), to property (by, for example, flooding on adjacent parcels), and to persons (by, for example, operating out of unsafe structures).

It is time to revoke Farrow's permit. Thank you for your attention to this matter.

Sincerely,
Antoinette Pimentel

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Robert S. Rutherford

Christopher M. Mazzia

Daniel E. Post

Catherine J. Banti

Lisa L. Yoshida

Michael Shklovsky

Kenneth R. Cyphers

Rose M. Zoia

Zachary A. Carroll

Michael J. Fish

Ryan F. Thomas

Richard C. O'Hare

Tal Segev

October 19, 2023

[Via email only: blake.hillegas@sonoma-county.org]

Blake Hillegas
Supervising Planner
Permit Sonoma
2550 Ventura Avenue
Santa Rosa CA 95403

Re: Board of Zoning Adjustments Hearing: October 26, 2023
Revocation of Use Permit
File No.: UPE07-0112
Site Address: 3660 Copperhill Lane, Santa Rosa, APN: 059-250-004

Dear Mr. Hillegas:

Please accept this letter in response to the October 16, 2023, email from Michelle V. Zyromski (Staff Report Attachment 8) regarding the referenced matter in which she states she “will be unable to make an October 26 hearing date, [and] Troy Saldana from Farrow Ready Mix, who will be a key witness at the hearing, will be out of state dealing with a family health issue.”

In the first instance, Farrow Ready Mix (“Farrow”) is represented by Ms. Zyromski’s from Zyromski & Konicek LLP, as well as Glenn Smith from Smith Dollar PC, both of whom have been closely involved in the disputes between Farrow and our client, CMS Properties, Inc., the owner of the subject property. Both attorneys fully participated in, and sat at counsel table during, the entire trial in the recent lawsuit filed by Farrow and mentioned in prior correspondence. In fact, Mr. Smith was the attorney who handled negotiations with CMS prior to litigation regarding the CUP violations and communicated with Permit Sonoma on that subject. Mr. Smith is well able to represent Farrow at this hearing and there is no indication Mr. Smith is not available to appear on behalf of Farrow. In addition, according to its website, there are three (3) lawyers in Ms. Zyromski’s law firm and, according to its website, Mr. Smith’s law firm employs eight (8) attorneys. There is no suggestion none of these ten (10) other attorneys are available to speak at the public hearing.

Second, Mr. Saldana’s opportunity to speak at this hearing is limited to 2 or 3 minutes after the Chair opens the public hearing. Thus, Mr. Saldana may submit his comments to the Board prior to the hearing as well as observe the hearing via zoom from his out of state location.

This recent attempt at delay is more of the same tactics Farrow has employed for the duration of his occupation of the Property, as outlined in my letters dated September 8, and 15, 2023. (Staff Report Attachments 9 and 10) In particular, the September 8, 2023, letter was a (then) peremptory request to decline any bid by Farrow to continue this hearing, and is attached hereto and fully incorporated herein.

Finally, contrary to Ms. Zyromski's statement that the owners "refused" to grant authorization to Farrow to submit applications, Farrow has never asked the owners to do so. (*Please see* Staff Report Attachment 10, pp. 3-4)

Our client, and the owner of the subject property, requests the hearing go forward as it has been scheduled for more than two (2) months, and that the conditional use permit be revoked as recommended by staff.

Thank you for your consideration of this matter.

Very truly yours,

Rose M. Zoia

Rose M. Zoia

Encl.

cc via email only:

Chair Kevin Deas
Commissioner Lawrence Reed
Commissioner Evan Wiig
Commissioner Eric Koenigshofer
Stacey Ciddio, Managing Member, CMS Properties LLC
Tennis Wick, Director, Planning
Scott Orr, Deputy Director, Planning
Cecily Condon, Planning Manager, Project Review
Michael Shklovsky, Esq.
Christopher M. Mazzia, Esq.



Robert S. Rutherford
Christopher M. Mazzia
Daniel E. Post
Catherine J. Banti

Lisa L. Yoshida
Michael Shklovsky
Kenneth R. Cyphers
Rose M. Zoia
Zachary A. Carroll

Michael J. Fish
Ryan F. Thomas
Richard C. O'Hare
Tal Segev

September 8, 2023

[Via email only: cecily.condon@sonoma-county.org]

Cecily Condon
Planning Manager, Project Review
Permit Sonoma
2550 Ventura Avenue
Santa Rosa CA 95403

Re: Intent to Revoke Permit
File No.: UPE07-0112
Site Address: 3660 Copperhill Lane, Santa Rosa
APN: 059-250-004

Dear Ms. Condon:

This firm represents CMS Properties LLC. (“CMS”), the owner of the subject property located at 3660 Copperhill Lane, Santa Rosa, California (the “Property”).

CMS supports revocation of UPE07-0112 (the “CUP”), and opposes any extension of the September 15, 2023 deadline for compliance, or of the October 26, 2023 Board of Zoning Adjustments (“BZA”) hearing.

On August 16 and 28, 2023, Permit Sonoma sent Notices of Intent to Revoke Permit to John Farrow, Farrow Commercial Inc. and Farrow Development, LLC (collectively “Farrow”) notifying Farrow that a hearing has been scheduled for October 26, 2023 before the BZA to revoke the CUP or, alternatively, advising that Farrow may bring the Permit into compliance and contact staff for inspection no later than 5:00 p.m. on September 15, 2023.

Please consider this letter a peremptory request to decline any request by Farrow to continue either the September 15th compliance deadline, or the October 26th hearing. No delays should be allowed. Farrow has been presenting CMS with excuses for failing to bring his use into compliance for five (5) years.¹ Despite promising to cure the violations for many years, Farrow has not accomplished any substantive progress (short of abating the water tank violation).

¹ In any request for continuance or other relief from the violations, we expect Farrow to make the same or similar claims he has made over the years including claiming that he is working on it, that he has been prevented from working on it, that others should be or are working on it, that he stopped working on it only after he filed a lawsuit against CMS related to the Lease, and/or that he is again ready to start working on it and needs more time.

There is no reason to believe that, within one week, one year, or ever, Farrow will bring the CUP into full compliance.

In 2018, CMS entered into a lease (the “Lease” with Farrow Commercial, Inc. (“Farrow Commercial”) for Farrow Commercial’s use of a portion of the Property as a concrete processing facility. The Lease provides, among other things, that Farrow Commercial will not use the Property for any “unlawful purpose, violate any government ordinance or building ... rules, or create any nuisance.”

In an email dated October 24, 2018, prior to entering into the lease, Mr. Farrow assured Scott Orr, Deputy Director, Planning, that Farrow would legalize the use, stating he would “jump into this list [of conditions of approval] and work to correct any non-compliant items.” (Exhibit A.) On several occasions, including in November 2018, December 2018, and October 2020, Farrow assured CMS he would bring the use into compliance with the CUP. (*See, e.g.*, Exhibit B.)

In September, 2020, Farrow Commercial applied to Permit Sonoma to legalize the batch plant, commercial coach, and water tank (the water tank has been remedied). As of September 3, 2020, Permit Sonoma was awaiting a response from Farrow Commercial on its building permit application, noting in its records that “Farrow is ready, willing, and able to clear these violations from 2011 so that compliant batch plant operations can continue.” (Exhibit C.)

On May 5, 2021, Mr. Farrow retained Adobe to provide services to assist with bringing the use into compliance with the CUP, and with the Lease. (Exhibit D.) There was no reason why the work to clear the violations could not have commenced immediately upon Farrow Commercial taking possession of the leased portion of the Property back in 2018. (Exhibit E.) In fact, just five (5) months after they were hired, Adobe had plans and applications ready for signatures by Farrow Commercial and submittal to Permit Sonoma in October 2021.

In a letter from Farrow’s attorney, Glenn Smith, dated May 17, 2021, Mr. Smith assures the undersigned that Farrow Commercial “is working diligently and in good faith to abide by the terms of the Lease and correct any outstanding violations” and “remain[ed] optimistic that all operations [would] be legalized and the Property [would] be in full compliance no later than October 15, 2021.” (Exhibit F) In addition, the undersigned engaged in several email communications and telephone calls with Mr. Smith from about August 2020 to September 2021 in which Mr. Smith stated assurances that Farrow was working diligently with Adobe and Permit Sonoma to bring Farrow’s operations into compliance with the CUP. Two and one-half years later, Farrow Commercial has failed to do so.

In November 2021, Farrow Commercial sued CMS regarding Lease issues. During the trial of that case in early 2023, Mr. Farrow admitted Farrow Commercial is operating in violation

of the CUP, and has been promising to correct the violations since at least October 2018. Farrow ultimately hired Adobe Associates, Inc. to assist with remedying the violations. However, Farrow did not have Adobe complete its work. Farrow filed an application with Permit Sonoma to legalize the use, only to later withdraw it.

059-250-004	BLD20-5830	9/3/2020	Withdrawn	Building Permit With Plan Check	Legalize by Permit: For a batch plant structure, commercial coach, and tank exceeding 5,000 gallons. Since 2011, the property was sold in 2015 to the current owner, and in December 2018, Farrow Ready Mix took over the batch plant operations via a lease with the property owner. Farrow is ready, willing, and able to clear these violations from 2011 so that compliant batch plant operations can continue. The plans and specs that we currently have are uploaded to this application. Please advise of what else is needed.
-----------------------------	----------------------------	----------	-----------	------------------------------------	--

Despite Farrow Commercial’s vast experience in the construction industry, including building at least one subdivision, and the fact that legalizing violations on a 1.2 acre parcel is well within its capabilities, Farrow Commercial has not taken substantive steps with Permit Sonoma to legalize its use over a five-year span.

Farrow has been promising to cure the violations for many years. Farrow testified in court seven (7) months ago that he would cure the violations. Farrow has taken no action to cure the violations. There is no reason to believe that, within one week, or even within one year or ever, Farrow will bring the CUP into full compliance. CMS requests that no continuances be granted.

Further, the CUP should be revoked as non-compliant with the CUP as well as for being a public nuisance. Every building code violation is automatically a public nuisance.” (Exhibit G.) The evidence supports revocation, and the landowner, CMS, is in support of revocation.

Thank you for your consideration of this matter.

Very truly yours,

Rose M. Zoia

Rose M. Zoia

Encl.

cc via email only:

Stacey Ciddio, Managing Member, CMS Properties LLC
Tennis Wick, Director, Planning
Scott Orr, Deputy Director, Planning
Michael Shklovsky, Esq.
Christopher M. Mazzia, Esq.

EXHIBIT A

Date: Wed, 24 Oct 2018 12:52:18 AM -0800
Subject: Re: Permits for 3660 Copperhill Lane
From: John Farrow <john@farrowcommercial.com>
To: Scott Orr <Scott.Orr@sonoma-county.org>;
CC: Melody Richitelli <Melody.Richitelli@sonoma-county.org>; Tennis Wick <tennis.wick@sonoma-county.org>;
Attachments: image003.png; image005.jpg; image010.jpg; image007.png; image011.jpg; image012.jpg; image004.png; image011.jpg; image001.png

Thank you Scott,
We will jump into this list and work to correct any non-compliant items.

On Wed, Oct 24, 2018, 2:07 PM Scott Orr <Scott.Orr@sonoma-county.org> wrote:

Hi John, as long as you are in line with the conditions of the existing Use Permit (File number UPE07-0112) that is being utilized then operation should be able to continue as the permit runs with the land. I've attached the conditions of approval, which would still apply to a new owner.

Scott Orr, MCRP

Planner II

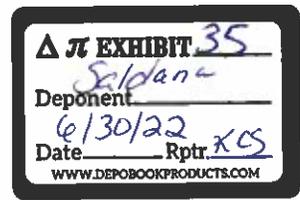
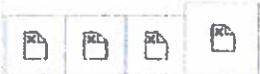
www.PermitsSonoma.org

County of Sonoma

Planning Division | Project Review

2550 Ventura Avenue, Santa Rosa, CA 95403

Direct: 707-565-1754 | Office: 707-565-1900



From: John Farrow [mailto:john@farrowcommercial.com]
Sent: October 23, 2018 1:38 PM
To: Melody Richitelli <Melody.Richitelli@sonoma-county.org >
Cc: Tennis Wick <Tennis.Wick@sonoma-county.org >; Scott Orr <Scott.Orr@sonoma-county.org >; mike@siteprep.net ; Pete Lea <pete@farrowcommercial.com >; max@farrowcommercial.com ;

EXHIBIT B

1 name was Scott Schlad -- I'm sorry, I will probably
2 butcher this -- Schadlick (phonetically spelled) and our
3 real estate agent had told us that the violations needed
4 to be cleared up in order for us to move forward in that
5 escrow.

6 Q Did, to your knowledge, Farrow comply
7 with the demands made in that Notice?

8 A I think that we got an insurance
9 certificate sent to us in the same letter that we
10 received -- or the 2018 letter from the County, and
11 Chuck Jensen sent us the information, and that's when I
12 contacted Rose Zoia.

13 Q In response to that Three-Day Notice, did
14 CMS receive assurances from Farrow or Farrow's attorneys
15 that Farrow will become compliant?

16 MS. ZYROMSKI: Objection. Leading.

17 THE COURT: Overruled.

18 THE WITNESS: Yes. Several times.

19 MR. SHKLOVSKY: Thank you. No further questions.

20 THE COURT: Okay. Anything further for this
21 witness?

22 MS. ZYROMSKI: Not at this time. Subject to
23 recall.

24 THE COURT: All right. You may go back down to
25 counsel table. You are subject to recall at a later date

EXHIBIT C

1 County.

2 BY MR. MAZZIA:

3 Q Okay. And do you know -- so you took a
4 look at that. Is that the application that was submitted
5 with the permit description including, Farrow Ready Mix
6 took over the batch plant operations via a lease with
7 the property owner. Farrow is ready, willing and able to
8 clear these violations from 2011 so that a compliant
9 batch plant operations can continue.

10 Isn't that what it says in the public record?

11 A Yes.

12 Q And you don't know all of the factors
13 that are at operation in this case, correct? What I
14 mean by that, you don't know what damage the landlord is
15 sustaining due to the continued operations, do you?

16 MS. ZYROMSKI: Objection. Assumes facts.

17 THE COURT: Sustained.

18 MR. MAZZIA: Okay.

19 THE COURT: Don't answer.

20 THE WITNESS: Okay.

21 MR. MAZZIA: One second, Your Honor.

22 (Whereupon, pause in proceedings.)

23 MR. MAZZIA: Nothing further, Your Honor.

24 THE COURT: All right. Redirect?

25 MS. ZYROMSKI: Thank you.

EXHIBIT D

1 A Correct.

2 Q Do you remember having conversations with
3 somebody on behalf of John Farrow in March of 2021?

4 A Yes.

5 Q Do you remember what those conversations
6 were about?

7 A Yes. Um, the conversations were with
8 Troy Salalen -- I forget his last name. Sorry.

9 And the conversations were around an existing
10 Use Permit for the site and assisting with bringing
11 their -- the site into compliance with the Use Permit.

12 Q What is the Service Agreement refer to?

13 That's Exhibit 25.

14 A What do you mean "refer to"?

15 Q Well, what is -- what's the nature of the
16 agreement?

17 A So, the nature of the agreement was to
18 provide, you know, specific services to help bring the
19 site into compliance with the Use Permit that was issued
20 by the County.

21 Q And are you aware that that Use Permit
22 was issued first in 2008?

23 A Yes.

24 Q And are you aware it was then updated in
25 2010?

1 about how they determined the fines for violations. So,
2 there is a typically a multiplier for whatever the
3 permit cost is, and that he would work with us because
4 we met with them and we were working to bring the -- you
5 know, bring the site to compliance to help keep that,
6 you know, multiplier factor small, if he could. That is
7 all I really recall.

8 BY MR. MAZZIA:

9 Q Okay. And did Mr. Saldana tell you that
10 they needed to bring the site into compliance to comply
11 with the lease?

12 A Yes.

13 Q Okay. And by the way, I'm using the word
14 "compliance" and you've used the word "compliance" or
15 "violations." Is that a term you used with Mr. Saldana?

16 A Yes.

17 Q And he used with you?

18 A I don't recall.

19 Q Did Mr. Saldana ever indicate to you that
20 he didn't know what you were talking about when you
21 referred to a violation?

22 A I don't believe so.

23 Q Okay. Did Mr. Saldana ever indicate he
24 didn't know what you were talking about when you used
25 the word "compliance"?

1 Q And you refer to it in response to
2 Ms. Zyromski's question, so I will ask you a few
3 questions about it.

4 Do you recognize the first six pages as being
5 the Service Agreement with John Farrow?

6 A (Reviewing.) Yes.

7 Q Okay. And for reference, if you look at
8 the lower right, there's numbers on the lower right
9 page?

10 A I see that, yes.

11 Q I'll be referring to page numbers.

12 A Okay.

13 Q And this is the same -- this is a copy of
14 the same agreement that you went through with
15 Ms. Zyromski earlier, correct?

16 A Correct.

17 Q Was it your understanding that the basic
18 purpose of this agreement was for Adobe to clear the
19 violations?

20 A For us to work to clear the violations on
21 property, correct, yes.

22 Q Which to the best of your understanding,
23 Adobe was ready, willing and able to do?

24 A Yes.

25 Q After -- in the course of your work on

1 this project, did you ever inform Mr. Farrow or
2 Mr. Saldana that Adobe could not live up to the terms of
3 its Service Agreement?

4 A No.

5 Q Now, there is a phone call that you had
6 at the start of this project with Mr. Schram and
7 Mr. Farrow; is that correct?

8 A I do recall a phone call with Mr. Farrow
9 and Tim Schram, yes.

10 Q And do you recall Mr. Farrow telling you
11 you should keep the cost as low as you could?

12 A Yes. I do remember that.

13 Q Okay. And you took that comment to heart,
14 I take it?

15 A Yes.

16 Q Did -- Your main contact at Farrow was
17 Mr. Saldana, correct?

18 A Correct.

19 Q Did Mr. Saldana ever tell you that there
20 was urgency on this project?

21 A Yes.

22 Q Oh, when did he tell you that?

23 A Um, well, I believe there were either
24 calls or emails where he said, hey, you know, we just
25 want to keep this moving forward. Can you provide an

EXHIBIT E

1 be compliant.

2 Q Got it. We'll be coming back to that.

3 If one brings a structure onto a site, he needs
4 to get a building permit?

5 A That's my understanding.

6 Q Okay. We'll be coming back to that.

7 Did you ever ask Troy Saldana or John Farrow if
8 they had bought a noncompliant coach?

9 A I did not.

10 Q Okay. And is it your understanding -- and
11 we can go through an exhibit if it helps -- that the
12 primary issue with the coach is that the state HCD,
13 Housing and Community Development Department, didn't
14 have a registration for that coach and couldn't find the
15 ID number?

16 A I don't recall. I know Troy was tracking
17 down the registration because those are permitted
18 through the state; however, you still need a building
19 permit with the County so you take that permitted, you
20 know, structure and submit a building permit.

21 Q Is there any engineering reason why the
22 commercial coach violation could not have been cleared
23 up starting in 2018?

24 MR. SMITH: Objection to the use of the words
25 "commercial coach violation." What exactly is the

1 violation?

2 THE COURT: Overruled.

3 THE WITNESS: Um, I think -- I think you could
4 have worked to clear it up in 2018. I don't know how
5 long it would have taken, but there is no reason why you
6 couldn't have started to clear that up at any point in
7 time as soon as the violation was issued.

8 BY MR. MAZZIA:

9 Q Sure. And regarding the batch plant --
10 and the batch plant is in violation, is your
11 understanding?

12 A Correct.

13 Q Basically is that it was built without a
14 foundation?

15 A I believe it was built without a permit.

16 Q Okay.

17 A That would tie -- that would also be
18 without a foundation permit or anything of that nature.

19 Q Is there any engineering reason why that
20 batch plant violation could not -- let me rephrase it.

21 Is there any engineering reason why work to
22 clear that batch plant violation did not have started in
23 2018?

24 A I don't believe so.

25 Q And this might be outside your area, so

EXHIBIT F



SmithDollar^{PC}
ATTORNEYS AT LAW

418 B Street, Fourth Floor
Santa Rosa, California 95401

Glenn M. Smith
Licensed to practice in CA

Telephone (707) 522-1100
Facsimile (707) 522-1101
gsmith@smithdollar.com

May 17, 2021

Sent Via Email and U.S. Mail

Rose Zoia
Anderson Zeigler, P.C.
50 Old Courthouse Square, 4th Floor
Santa Rosa, CA 95404
RZoia@andersonzeigler.com

Re: Our Client: Farrow Commercial, Inc.
Subject: 3660 Copper Hill Lane, Santa Rosa, California
Our File No: 81171-22891

Dear Rose:

Please let this letter serve to respond to your correspondence dated April 30, 2021 concerning the premises commonly known as 3660 Copper Hill Lane, Santa Rosa, California (“Property”).

Farrow Commercial, Inc. (“Farrow”) has spent a considerable amount of time attempting to untangle the Gordian knot of issues concerning the use permit and conditions of approval. From what I have been able to gather, it appears that a summary of the events surrounding the use permit is as follows:

On or about June 29, 2010, the County of Sonoma (“County”) issued its Final Conditions of Approval for Use Permit UPE 07-0112 (“Use Permit”). In or about May of 2011, the prior owners (Kolodge Trust) were served with a Notice of Violation concerning this Use Permit. That Notice did not identify any specific issues or outstanding conditions, but simply stated that the conditions of the Use Permit are not in compliance. On or about, December 6, 2011, a Notice of Abatement Proceedings was recorded by the County against the Property.

On November 19, 2018, Farrow entered into a Commercial Lease Agreement (“Lease”) with your client CMS Properties, LLC (“CMS”). The Addendum provided that the tenant will obtain the appropriate use permit from the County. Immediately after entering into the Lease, Farrow contacted PRMD to determine the status of the use permit. On December 27, 2018, Brian Keefer, Project Planner with PRMD sent a letter to Farrow advising that they may continue to operate the concrete mixing plant pursuant to the conditions of approval of the Use Permit. At that time, Farrow was not aware of any outstanding issues.

On December 30, 2019, PRMD sent a letter to CMS Properties advising that a code violation exists at the Property and a Notice of Abatement Proceedings had been recorded.

It is my understanding that Farrow was unaware of these alleged violations until August 20, 2020, when your office sent a letter to Farrow advising of the December 30, 2019 Notice from PRMD and the recordation of abatement proceedings. You asked that Farrow correct all violations.

Immediately after receipt of your August 20, 2020 letter, John Farrow reached out to Mark Ciddio with CMS in order to determine the nature and status of the violations. Mr. Ciddio advised Farrow that they received an email from Todd Hoffman which stated in substance that right now PRMD is extremely busy with other cases and that nothing is likely to happen anytime soon. In response, Farrow attempted to contact Mr. Hoffman but received no response, only pre-recorded messages that PRMD is shut down indefinitely due to COVID-19 and only emergency violations were being addressed. Messages were left for Mr. Hoffman.

Without a response from PRMD, Farrow reached out again to CMS. Mark Ciddio advised that Michael Carey at PRMD was involved with the original violations and he may be able to facilitate a solution. In response, Farrow wrote to Michael Carey without any response.

Farrow continued with attempts to reach representatives at PRMD throughout August and September 2020 without success. Based upon PRMD's lack of response, Farrow attempted to determine any outstanding issues or conditions that needed to be addressed at the Property without knowing exactly what the concerns of PRMD were.

Farrow then sought to retain a civil engineering company to assist them with the issues. They reached out to Adobe Associates, Inc. ("Adobe") who also had an extremely difficult time obtaining any information from PRMD. Finally, on May 5, 2021, Brian Keefer with PRMD responded to Casey McDonald of Adobe. Following that conference, Adobe obtained information from the County of Sonoma and was finally in a position to prepare a proposal for remediation of the issues. Please find enclosed a copy of the May 6, 2021 Service Agreement between Farrow and Adobe.

Unfortunately, it has been a long and difficult process in order to get information from PRMD in light of the restrictions at their office due to COVID-19. It appears that Farrow is now in a position to have Adobe work through the remaining issues with the County of Sonoma. I realize that I promised you a working spreadsheet relating to the violations; however, based on a lack of response from PRMD, I was not in a position to determine what issues still existed. Now, with Adobe's assistance, I am hopeful that outstanding issues can now be identified and ultimately addressed.

Please be assured that Farrow is working diligently and in good faith to abide by the terms of the Lease and correct any outstanding violations. We recognize that CMS has grown impatient, but in light of the County's inaction, little, if anything, could have been done. We remain optimistic that all operations will be legalized and the Property will be in full compliance no later than October 15, 2021.

Rose Zoia
Anderson Zeigler, P.C.
May 17, 2021
Page 3

In the event you have any further questions or concerns, please do not hesitate to contact me to discuss. I will keep you updated as to Adobe's progress.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'GMS', with a long horizontal flourish extending to the right.

Glenn M. Smith

GMS:smf
Enclosure
cc via email: Farrow Commercial, Inc.
1133560

Date: May 6, 2021

Project No. 21161

SERVICE AGREEMENT

Client:	John Farrow	Consultant:	Adobe Associates, Inc.
Name:	John Farrow	Name:	Timothy L. Schram, RCE 67890
Address:	100 Wikiup Drive	Address:	1220 N. Dutton Avenue
City, St. Zip:	Santa Rosa, CA 95403	City, St. Zip:	Santa Rosa, CA 95401
Phone:	707-591-0225	Phone:	(707) 541-2300
Email:	john@farrowcommercial.com	Email:	tschram@adobeinc.com
Site Address:	3660 Copperhill Lane, Santa Rosa		
APN(s):	059-250-004		

Scope of Services

Task 1) Topographic Mapping (Survey)

We will provide the necessary record document research, field measurement collection, office calculations and data interpolation for a "Topographic Map" of the above-mentioned property. This mapping to be at a scale of 1"=20' and a contour interval of 2' vertically. Mapping to be provided in a drawing format using AutoCAD. Map to include the existing structures, trees of 8" in diameter or greater, drainage course top of bank and flow line, utilities evidenced by surface features, edge of pavement, grade breaks, fences, and other significant site features.

Fees: Time and Material (expect \$2,500-\$3,500)

Task 2) Site Compliance and Permit Processing (Civil)

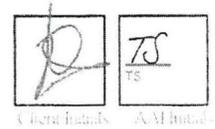
We will work with the client and county to bring the Farrow Ready Mix facility into current compliance with the approved conditions of approval for the concrete batch plant. We will assist in processing the required permits and assist with clearing any violations for project compliance.

Fee: Time and Material (expect \$3,000-\$5,000)

Task 3) Grading and Drainage Plan (Civil)

We will design the site improvements for the facility as needed to satisfy the conditions of approval for the project. We will coordinate with client's consultants for design of the proposed improvements.

Our task will be to prepare and process the grading and drainage plans with the building permit for these improvements in accordance with the regulations and requirements. We will prepare and coordinate the application documents and plans and work closely with staff to facilitate the issuance of a permit in a timely and efficient manner.



Grading plan work includes:

- 1) Meetings and consultation with the Owner and project consultants as required to discuss the project criteria and schedule.
- 2) Prepare Construction Documents including:
 - a. Title Sheet (Required construction notes, overall site plan, location map, sheet index, etc.),
 - b. Grading and Drainage plan (spot elevations, contours, drainage improvements),
 - c. Erosion and Sediment control plan, details, and notes,
 - d. Details and Sections as necessary to fully explain the design intent and create a complete grading permit set of plans.
- 3) Assist client in processing plans for the necessary Building Permit.
 - a. We will coordinate the necessary application documents and submittal package.
 - b. We will summarize, address, and follow up on comments from each department in order to receive clearance, approval and permit issuance as soon as possible.

The above-mentioned services specifically exclude any geotechnical and structural engineering that may be necessary for approval or permit issuance.

Fee: Time and Materials (expect \$4,000-\$6,000)

Task 4) SCWA Sewer Plan (Civil)

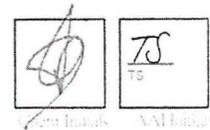
We will prepare and process the design plans for the sewer service necessary to serve the facility. The sewer plans will be processed with the Permit and Resource Management Department (PRMD) of Sonoma County (which will review on behalf of SCWA). Plans will include manhole rim and invert information, sewer slope and material, trench specifications, sewer profile, and plan specifications and details.

Fee: Time and Materials (expect \$3,000-\$5,000)

Task 5) Windsor Water Plan (Civil)

We will prepare and process the design plans for the water service necessary to serve the facility. The water plans will be processed with the Town of Windsor. Plans will include material, trench specifications and plan specifications and details. We will also prepare and process a Water Application with the Town of Windsor for the water use required to serve the facility. We will work with the client on their required water use and process the application through the Town for review and approval.

Fee: Time and Materials (expect \$4,000-\$6,000)



Agreement:

1. It is agreed that the above work is to be performed for my/our account and that I/we will be billed as said work progresses, unless exception is shown in writing on the following line. Fee to provide the stated services will be:

Task 1:	Topographic Mapping (Survey)	Time and Material (expect \$2,500-\$3,500)
Task 2:	Site Compliance and Permit Processing (Civil)	Time and Material (expect \$3,000-\$5,000)
Task 3:	Grading and Drainage Plan (Civil)	Time and Materials (expect \$4,000-\$6,000)
Task 4:	SCWA Sewer Plan (Civil)	Time and Materials (expect \$3,000-\$5,000)
Task 5:	Windsor Water Plan (Civil)	Time and Materials (expect \$4,000-\$6,000)

2. If the scope of services includes Consultant's assistance in applying for governmental permits or approvals, Consultant's assistance shall not constitute a representation, warranty or guarantee that such permits or approvals will be acted upon favorably by any governmental agency.

3. Upon Consultant's request, Client shall execute and deliver, or cause to be executed and delivered, such additional information, documents or money to pay governmental fees and charges, which are necessary for Consultant to perform services pursuant to the terms of this agreement.

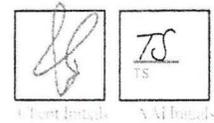
4. Client acknowledges all reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by Consultant are instruments of service, and shall remain the property of Consultant and may be used by Consultant without the consent of Client. Upon request and payment of all cost involved, Client is entitled to a copy of all final plans and specifications for use in connection with the project for which the plans and specifications have been prepared. Client acknowledges that its right to utilize final plans and specifications and the services of Consultant provided pursuant to this agreement will continue only so long as Client is not in default, pursuant to the terms and conditions of this agreement, and Client has performed all its obligations under this agreement.

5. Client agrees not to use or permit any other person to use plans, specifications, drawings, cost estimates, reports or other documents prepared by Consultant which plans, specifications, drawings, cost estimates, reports or other documents are not final and which are not signed and stamped or sealed by Consultant. Client shall be responsible for any such use of non-final plans, specifications, drawings, cost estimates, reports or other documents not signed and stamped or sealed by Consultant. Client hereby waives any claim for liability against Consultant for such use. Client further agrees that final plans, specifications, drawings, cost estimates, reports or other documents are for the exclusive use of Client and may be used by Client only for the project described on page 1 of this agreement. Such final plans, specifications, drawings, cost estimates, reports or other documents may not be changed or used on a different project without written authorization or approval by Consultant. If signed check-prints are required to be submitted with a stamp or seal, they shall not be considered final for purposes of this paragraph.

6. Client acknowledges Consultant has the right to complete all services agreed to be rendered pursuant to this agreement. In the event this agreement is terminated before the completion of all services, unless Consultant is responsible for such early termination, Client agrees to release Consultant from all liability for services performed. In the event all or any portion of the services by Consultant are suspended, abandoned, or otherwise terminated, Client shall pay Consultant all fees and charges for services provided prior to termination, not to exceed the contract limits specified herein, if any. Client acknowledges if the project services are suspended and restarted, there will be additional charges due to suspension of the services which shall be paid for by Client as extra services pursuant to paragraph 14. Client acknowledges if project services are terminated for the convenience of Client, Consultant is entitled to reasonable termination costs and expenses, to be paid by Client as extra services pursuant to paragraph 14.

7. If the scope of services to be provided by Consultant pursuant to the terms of this agreement includes the preparation of grading plans but excludes construction staking services, Client acknowledges that such staking services normally include coordinating civil engineering services and preparation of record drawings based upon information provided by others, and Client will be required to retain such services from another consultant or pay Consultant pursuant to this agreement for such services as extra services in accordance with paragraph 14.

8. If the scope of services contained in this agreement does not include construction-phase services for this project, Client acknowledges such construction-phase services will be provided by Client or by others and Client assumes all



responsibility for interpretation of the contract documents and for construction observation and supervision and waives any claim against Consultant that may in any way be connected thereto. In addition, Client agrees to indemnify and hold Consultant harmless from any loss, claim, or cost, including reasonable attorneys' fees and cost of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from the modification, clarification, interpretation, adjustments or changes made to the contract documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of Consultant.

9. All fees and other charges due Consultant will be billed monthly and shall be due at the time of billing unless specified otherwise in this agreement. If the Client fails to pay Consultant within thirty (30) days after invoices are rendered, Consultant shall have the right in its sole discretion to consider such default in payment a material breach of this entire agreement and, upon written notice, Consultant duties, obligations and responsibilities under this agreement may be suspended or terminated. In such event, Client shall promptly pay Consultant for all outstanding fees and charges due Consultant at the time of suspension or termination. If Consultant elects to suspend or terminate Consultant's services pursuant to this provision, Consultant is entitled to reasonable suspension, or termination costs or expenses.

10. Client agrees that all billing from Consultant to Client are correct and binding on Client unless Client, within ten (10) days from the date of receipt of such billing, notifies Consultant in writing of alleged inaccuracies, discrepancies, or errors in billing.

11. Client agrees to pay Consultant (Adobe Associates, Inc.), on or before 30 days after date of billing, and to pay late charge at $1\frac{1}{2}\%$ per month on billings due over 30 days.

12. Client agrees that client shall be responsible for payment of all costs and expenses incurred by Adobe Associates, Inc., including such monies as they may at their option advance for fees, and other incidental expenses, up to date of completion of the entire work of which this order may be part, or until such time as client gives consultant written notice requesting to cease further work. In the event of such written notice to consultant, all sums due shall be immediately payable.

13. In the event consultant assigns client's account for collection of the amount due, Client agrees to pay the additional cost for collection in the amount of 35% of the amount owed and assigned.

14. Client agrees that if Client requests services not specified in the scope of services described in this agreement, Client will pay for all such additional services as extra services, in accordance with Consultant's billing rates utilized for this agreement.

15. In the event that any construction staking or record monuments are destroyed, damaged or disturbed by an act of God or parties other than the Consultant, the cost of re-staking, re-monumentation and filing of necessary documentation (Corner Record or Record of Survey) shall be paid for by Client as extra services in accordance with paragraph 14.

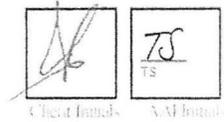
16. Client acknowledges that the design services performed pursuant to this agreement are based upon field and other conditions existing at the time these services were performed. Client further acknowledges that field and other conditions may change by the time project construction occurs and clarification, adjustments, modifications and other changes may be necessary to reflect changed field or other conditions. Such clarifications, adjustments, modifications and other changes shall be paid for by the Client as extra services in accordance with paragraph 14.

17. Client shall pay the costs of all checking and inspection fees, zoning and annexation application fees, assessment fees, soils or geotechnical engineering fees, soils or geotechnical testing fees, aerial topography fees, and all other fees, permits, bond premiums, applicable taxes on professional services, title company charges, blueprints and reproductions, and all other similar charges not specifically covered by the terms of this agreement.

18. Consultant shall not be liable for damages resulting from the actions or inactions of governmental agencies including, but not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, project or plan approvals, and building permits. Client agrees that responsibility of Client to maintain in good standing all governmental approvals or permits and to timely apply for any necessary extensions thereof.

19. Client acknowledges that Consultant is not responsible for the performance of work by third parties including, but not limited to, the construction contractor and its subcontractors.

20. Consultant makes no warranty, either express or implied, as to its findings, recommendations, plans, specifications, or professional advice except that the services were performed pursuant to generally accepted standards of professional practice in effect at the time of performance.



21. In the event (1) Client agrees to, authorizes, or permits changes in the plans, specifications or documents prepared by Consultant, which changes are not consented to in writing by Consultant, or (2) Client agrees to, authorizes or permits construction of unauthorized changes in the plans, specifications or documents prepared by Consultant, which changes are not consented to in writing by Consultant, or (3) Client does not follow recommendations prepared by Consultant pursuant to this agreement, which changed recommendations are not consented to in writing by Consultant: Client acknowledge that the unauthorized changes and their effects are not the responsibility of Consultant and Client agrees to release Consultant from all liability arising from the use of such changes, and further agrees to defend, indemnify and hold harmless Consultant, its officers, directors, agents, employees, and sub consultants from and against all claims, demands, damages, or costs, including attorneys' fees, arising from the unauthorized changes.

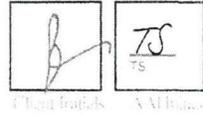
22. Client agrees that in accordance with generally accepted construction practices, the construction contractor and construction subcontractors will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property, and that this requirement shall apply continuously and not be limited to normal working hours. Neither the professional activities of Consultant nor the presence of Consultant or his or her employees or sub consultants at a construction site shall relieve the contractor and its subcontractors of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and applicable health or safety requirements of any regulatory agency or of state law.

23. Client agrees to limit the liability of Consultant, its principals, employees and sub consultants, to Client and to all contractors and subcontractors on the project, for any claim or action arising in tort, contract, or strict liability, to the Sum of \$50,000 or Consultant's fee, whichever is greater. Client and Consultant acknowledge that this provision was expressly negotiated and agreed upon.

24. Termination of this agreement by Client or Consultant shall be in writing. In the event the agreement is terminated before completion of all services, client shall pay consultant all fees and charges for services provided prior to termination, not to exceed the contract limits specified herein.

Additional Services: Additional services may be provided, if authorized by Client; shall be charged at the rates in effect at the time of the work (see attached current fee schedule) and paid for by Client as provided in this agreement. Additional services may include: services not outlined in Scope of Services, project representation at site meetings or public hearings, additional design and plan preparation; revisions to design and plans necessitated by conditions beyond our control.

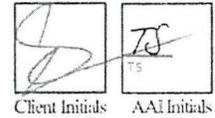
Reimbursable Expenses: Reimbursable expenses shall consist of actual expenditures made by Consultant in the interest of the project for: blueprinting, maps and document copies obtained from others, reproduction, postage and handling of drawings, sub-consultant services, specifications and other documents; expense of overtime work requiring higher than regular rates (see Fee Schedule), if authorized by Client; expense for additional insurance coverage or limits, including professional liability insurance, requested and authorized by Client in excess of that normally carried by the Consultant; expense for transportation and living expenses in connection with out-of-town travel, authorized by Client; long distance communication; fees paid for approval of authorities having jurisdiction over the project. Compensation shall be computed based upon cost of expenses to Consultant multiplied by 1.15.



Accepted and Agreed to by Client:

Client:	<u>John Farrow</u>	Consultant:	Adobe Associates, Inc.
Signature:	<u></u>	Principal Signature:	<u> <small>Tim Schram (May 12, 2021 15:44 PDT)</small></u>
Authorized Signer Name:	<u>John C Farrow</u>	Principal Name:	<u>Timothy L. Schram</u>
Title:	<u>Client</u>	Title:	<u>Principal Engineer</u>
Date Signed:	<u>5/13/21</u>	Date Signed:	<u>May 13, 2021</u>

This proposal is valid for 60 days.



"A Service You Can Count On!"

FEE SCHEDULE FOR 2021

SERVICES

- **Civil Engineering**
- **Land Surveying**
- **Wastewater**
- **Land Planning**
- **Regulatory**

As a dedicated provider in a professional service industry we recognize the success of our business revolves around accessibility to our clients and understanding and responding to their needs.

Professional Witness	\$350/hour
Principal	\$225/hour
Licensed Staff/Associate Principal	\$145-195/hour
Project Manager	\$145-185/hour
Civil Engineer/Surveyor Designer/Technician	\$125-165/hour
CAD Draftsperson	\$110-145/hour
Field Crew (one person crew)	\$155-\$170/hour
Field Crew (two person crew)	\$250-300/hour
Field Crew (three person crew)	\$375-445/hour
Field Crew (GPS)	\$250/hour
Storm Water Tech (in-house)	\$95/hour
Clerical/Bookkeeping (in-house)	\$75-125/hour
Permit Processor	\$95-\$125/hour
Notary Public	\$15/signature
ATV Charge	\$45/hour
Drone Equipment Charge	\$250
Mileage	Federal Standard Rate
Travel	Hourly Rate
Reproduction (in-house)	30" x 42" \$3.50/sheet
	24" x 36" \$2.50/sheet
	18" x 26" \$1.50/sheet
Photocopies	\$0.25/sheet
Coordination/Handling Fee	15% of fee
(Sub-Consultants, Agency fees paid by us, printing/reproduction by others, lab tests, postage and shipping, travel expenses, etc.)	
Authorized Overtime: Hourly Rate Multiplier	1.25
Payment by Visa/Master Card convenience fee	3%

EXHIBIT G

1 obtain necessary permits for ranking of priority.

2 Q Were you involved in bringing that
3 methodology to the Board of Supervisors?

4 A Yes.

5 Q Was it formally adopted by the Board of
6 Supervisors?

7 A Yes.

8 Q If you could take a look, please, at
9 Exhibit 59, second page?

10 A (Complies.)

11 Q Do you see where there are three items of
12 construction that are referred to in the Notice?

13 A Yes.

14 Q And then there's a paragraph that begins
15 pursuant to Sonoma County Code Section 7-5. Do you see
16 that?

17 A Yes.

18 Q Do you see down towards the bottom of
19 that paragraph the words "public nuisance"?

20 A Yes.

21 Q Okay. And your time working at the County
22 have you heard the term "public nuisance"?

23 A Yes.

24 Q Okay. And from your experience at PRMD,
25 what is the relationship between a stated violation of

1 Sonoma County code and a public nuisance?

2 A It's under state law that any building
3 code violation is automatically a public nuisance.

4 Q Does the County define these violations
5 as public nuisances on a regular basis?

6 A Yes.

7 Q Is that boilerplate language in the
8 Notice and Order Construction without Permit?

9 MR. MAZZIA: Objection, Your Honor. That is
10 irrelevant.

11 THE COURT: Sustained.

12 BY MS. ZYROMSKI:

13 Q What kind of things does the County view
14 as a public nuisance?

15 A Technically, any building code violation
16 or septic violation or grading or land use, are -- all
17 fall under the category of public nuisances.

18 Q Are there minimal nuisances versus more
19 egregious nuisances?

20 A Yes.

21 Q And do you have an opinion about what the
22 level of nuisance for this particular batch plant is?

23 MR. MAZZIA: Objection. Incomplete. Foundation.
24 Legal opinion.

25 THE COURT: Overruled.

Zyromski Konicek LLP
Attorneys at Law
613 Fourth Street, Suite 203
Santa Rosa, CA 95404
(707) 542-1393 telephone
(707) 542-7697 facsimile
michelle@zklegal.com

Via E-mail and U.S. Mail

October 19, 2023

Tennis Wick, Director
Cecily Condon, Project Review Manager
Blake Hillegas, Supervising Planner
Permit Sonoma, Code Enforcement Division
2550 Ventura Avenue
Santa Rosa, CA 95403

Re: Notice of Intent to Revoke Permit
File No.: UPE-07-0112
APN: 059-250-004

Dear Mr. Wick, Ms. Condon, and Mr. Hillegas:

As you are aware, this office represents Farrow Commercial, Inc. and Farrow Ready Mix, Inc. (collectively "Farrow") regarding the above-referenced matter. This correspondence is to reiterate our request to rescind your notice of intent to revoke the subject use permit, or at least to continue the public hearing to a date when both Farrow's representative and me can personally be present. (I have received your acknowledgment that both the representative and I will be unable to appear next Thursday afternoon).

In further support of that request, enclosed please find a copy of the October 17, 2023 Judgment Following Statement of Decision After Court Trial in Sonoma County Superior Court Case No. SCV-269684, with which we were served electronically yesterday, October 18, 2023. Please recall that the Court heard testimony for ten days in this case, and note that the Court made specific findings in the June 15, 2023 Statement of Decision After Court Trial ("Statement of Decision") regarding the Court's interpretation of the subject lease agreement and the Farrow tenants' efforts with respect to addressing the conditions of the 2007 use permit.

In that regard, your attention is directed to the following portions of the Statement of Decision:

Page 5:12-20 – "Casey McDonald, of Adobe and Associates, was credible and informative of the efforts made by the parties to achieve progress to meet the terms and conditions of the use permit. Both parties at one time or another had hired Adobe to conduct analysis and land planning regarding the Property. Ms. McDonald also provide

evidence of timelines and communications with Sonoma County personnel regarding the use permit and other matters involving the property. Her testimony was helpful in resolving conflicting assertions by the parties as to when efforts were made to comply with County requirements including confusion caused by defendants as they submitted an application for permits to install water and sewer on the Property as Plaintiff was attempting to do the same.”

Page 14:23-24 – “Also, ... Farrow invested significant sums into the Property in reliance on the extended lease term”. Enclosed herewith is a copy of Trial Exhibit 67a, which details the amounts my clients spent on satisfying the conditions of the use permit.

Page 23:23 – Page 24:3 – “The evidence shows that Farrow is currently, and has been at all times during the tenancy, operating under a valid use permit as evidenced by a letter from the County of Sonoma dated December 27, 2018, that clarifies operation at the site is allowed pending satisfaction of the conditions of the existing use permit. **Farrow has exercised reasonable and diligent efforts to satisfy the conditions of the use permit under the circumstances and has expended substantial sums of money attempting to satisfy the final conditions of the use permit.** The express language of the Lease clearly does not include any temporal deadlines as CMS claims.” [Emphasis added].

Page 25:10-19 – “**Testimony showed that from the beginning of its tenancy at the property, Farrow undertook efforts to satisfy the conditions of the use permit.** Farrow’s expert, the former PRMD Code Enforcement Manager from 2002-2011 and PRMD Building and Safety Division Manager from 2011-2015, testified at trial that the use permit is a valid use permit for Farrow’s operations of the property and that the use permit has vested. During Farrow’s tenancy, in December 2019, CMS received a letter from the County stating that violations of the use permit existed at the property. CMS forwarded a copy of this letter to Farrow, and **Farrow continued its efforts to communicate with the County and to satisfy the conditions of the use permit.** However, there were months during 2020 when the PRMD office was closed, and Farrow experienced delays beyond their control.”

It is undisputed that the Court has made explicit findings of fact vis-à-vis Farrow’s diligence in attempting to satisfy the conditions of the use permit.

As stated in my prior correspondence to you, the evidence at trial also demonstrated that Casey McDonald from Adobe Associates, Inc. had met onsite with Michael Carey in this endeavor, as well as worked on all of the various aspects of what it would take to satisfy the myriad conditions of this particular use permit. On October 15, 2021, she communicated with Farrow via e-mail that almost all of the items were lined up and ready to submit to the County. (This communication was received as a trial exhibit by the Court).

October 19, 2023

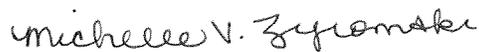
However, three days later, on October 18, 2021, attorneys for CMS notified Farrow that CMS claimed that the lease would expire on November 18, 2021; and this litigation ensued in November 2021. Due to the pendency of the litigation, in which its landlord was seeking to oust it from the property, Farrow was excused, prevented, and frustrated from further efforts to satisfy the conditions of the use permit.

Moreover, when Farrow recently resumed its efforts in light of the June 15, 2023 Statement of Decision – which was not yet a final Judgment – Farrow was thwarted. Its engineering firm, Adobe Associates, submitted an application for a building permit (BLD23-5978), which is a ministerial permit, yet Permit Sonoma denied the permit.

On behalf of Farrow, and in light of the language of the Judgment in the court case, we again respectfully request that Permit Sonoma take the October 26, 2023 public hearing off calendar, and rescind any notices of intent to revoke the use permit. Please respond to me at your earliest convenience by e-mail at michelle@zklegal.com or by telephone at (707) 542-1393 x 101.

I look forward to hearing from you in the near future.

Very truly yours,



Michelle V. Zyromski

Enclosures

cc: Clients
Jennifer Klein, Esq.

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10 Attorneys for Plaintiff FARROW COMMERCIAL, INC. and for
11 Cross-Defendants FARROW COMMERCIAL, INC. and
12 FARROW READY MIX, INC.

13 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

14 FARROW COMMERCIAL, INC., a California
corporation,

15 Plaintiff,

16 v.

17 CMS PROPERTIES LLC, a Montana limited
18 liability company doing business in California as
CMS AIRPORT PROPERTIES, LLC, aka CMS
19 PROPERTIES, LLC; and DOES 1 through 30,
inclusive,

20 Defendants.

21 CMS PROPERTIES LLC, a Montana limited
22 liability company doing business in California as
CMS AIRPORT PROPERTIES, LLC, aka CMS
23 PROPERTIES, LLC; and DOES 1 through 30,
inclusive,

24 Cross-Complainant,

25 v.

26 FARROW COMMERCIAL, INC., a California
corporation; FARROW READY MIX, INC. and
27 ROES 1 through 25, inclusive,

28 Cross-Defendants.

ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
10/17/2023 9:16 AM
Robert Oliver, Clerk of the Court
By: Jennifer Ellis, Deputy Clerk

CASE NO.: SCV-269684
(Unlimited Civil Case)

~~PROPOSED~~ JUDGMENT
FOLLOWING STATEMENT OF
DECISION AFTER COURT TRIAL

Dept.: 17
Judge: : Honorable Bradford DeMeo
Complaint Filed: November 15, 2021
Trial Date: October 7, 2022
Resumed March 2, 2023

1 This action came on regularly for a court trial on October 7, 2022 in Department 17 of the
2 Sonoma County Superior Court, the Honorable Bradford DeMeo presiding. Plaintiff Farrow
3 Commercial, Inc., a California corporation and Cross-Defendants Farrow Commercial, Inc., a
4 California corporation and Farrow Ready Mix, Inc., a California corporation (“Farrow”) appeared
5 by attorneys Michelle V. Zyromski and Glenn M. Smith. Defendant and Cross-Complainant CMS
6 Properties LLC, a Montana limited liability company doing business in California as CMS Airport
7 Properties LLC aka CMS Properties, LLC (“CMS”) appeared by attorneys Daniel E. Post and
8 Michael Shklovsky. Evidence via testimony of sworn witness John Farrow was presented to the
9 Court for two days on October 12 and 13, 2022. The trial then was continued pursuant to
10 California Rule of Court 3.1332(c)(3) & (4) and (d)(2), (3), (5) & (10).

11 The action resumed on March 2, 2023 in Department 17 of the Sonoma County Superior
12 Court, the Honorable Bradford DeMeo presiding. Farrow appeared by attorneys Michelle V.
13 Zyromski and Glenn M. Smith. CMS appeared by attorneys Christopher M. Mazzia and Michael
14 Shklovsky. Evidence via testimony of sworn witnesses was presented to the Court for seven days
15 on March 2, 3, 7, 8, 9, 10, and 14.

16 After hearing the evidence of the witnesses and arguments of counsel, the case was submitted
17 to the Court for decision and judgment. On May 16, 2023, the Honorable Bradford DeMeo issued
18 a Tentative Statement of Decision; the Tentative Statement of Decision was filed and served that
19 same day. On May 31, 2023, CMS filed and served a document captioned, “CMS’ Request for
20 Specific Findings and Amendments Regarding the Court’s May 16, 2023 Tentative Statement of
21 Decision After Court Trial”. On June 12, 2023, Farrow filed and served a document captioned,
22 “Farrow Commercial, Inc. and Farrow Ready Mix, Inc.’s Responses to CMS’ Request for Specific
23 Findings and Amendments Regarding the Court’s May 16, 2023 Tentative Statement of Decision
24 After Court Trial; and Proposals Regarding Same.” On June 15, 2023, the Honorable Bradford
25 DeMeo issued a Statement of Decision After Court Trial; the Statement of Decision was filed on
26 June 15, 2023 and served on June 16, 2023. In the “Decision” portion of the June 15, 2023
27 Statement of Decision After Court Trial, at pages 27:15-28:2, the Court ruled as follows:

28 Verdict shall be entered in favor of Plaintiff Farrow on plaintiff’s first and second causes of

1 action for breach of contract and declaratory relief. Verdict shall be entered in favor of Defendant
2 CMS on plaintiff's third and fourth causes of action. The Court further finds that any monetary
3 damages caused by the breach of contract are nominal as much of the expenditures incurred by
4 Farrow, according to the evidence presented, would most likely have been incurred without a
5 breach in pursuit of satisfying terms and conditions of the use permit. Farrow will not be awarded
6 monetary damages on its successful claims. However, the Court finds the exercise of the Option
7 was valid.

8 Based on the foregoing, Verdict shall be entered against CMS and in favor of Farrow on all of
9 CMS's causes of action alleged in their First Amended Cross-Complaint. CMS will not be awarded
10 damages on its claims. Plaintiff shall prepare a Judgment for filing and entry according to the
11 findings and decision contained in this Statement of Decision.

12 The Court reserves jurisdiction on attorney fees and costs.

13 A filed copy of the June 15, 2023 Statement of Decision After Court Trial is attached as
14 Exhibit "A" and is incorporated by reference.

15 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:**

16 Judgment shall be entered in favor of Plaintiff Farrow Commercial, Inc., a California
17 corporation and against Defendant CMS Properties LLC, a Montana limited liability company
18 doing business in California as CMS Airport Properties LLC aka CMS Properties, LLC on
19 Plaintiff's first and second causes of action for breach of contract and declaratory relief. No
20 monetary damages are awarded. The exercise of the Option was valid. The Option is in full force
21 and effect and the tenants are entitled to lawful possession of the leasehold interest at 3660
22 Copperhill Lane, Santa Rosa, California 95403 pursuant to the terms of the November 19, 2018
23 Commercial Lease Agreement and the Lease Agreement's three attached addenda, including the
24 Option to Renew/Extend Lease, until at least November 18, 2025. The Option is self-executing
25 and entitles the tenants to lawful possession of the leasehold interest until November 18, 2029,
26 unless the tenants notify CMS 180 days prior to the first option period expiring of their intent not to
27 exercise their option to renew.

28 Judgment shall be entered in favor of Defendant CMS Properties LLC, a Montana limited

ZYROMSKI KONICEK
ATTORNEYS AT LAW

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liability company doing business in California as CMS Airport Properties LLC aka CMS Properties, LLC and against Plaintiff Farrow Commercial, Inc., a California corporation on Plaintiff's third and fourth causes of action for fraud (concealment) and unfair business practices.

Judgment shall be entered against Cross-Complainant CMS Properties LLC, a Montana limited liability company doing business in California as CMS Airport Properties LLC aka CMS Properties, LLC and in favor of Cross-Defendants Farrow Commercial, Inc., a California corporation and Farrow Ready Mix, Inc., a California corporation on all of CMS's causes of action alleged in its First Amended Cross-Complaint. CMS will not be awarded damages on its claims. CMS will take nothing by way of its First Amended Cross-Complaint.

The Court reserves jurisdiction on attorney fees and costs.

DATED: 10/17/2023

By 
HONORABLE BRADFORD DEMEO
Judge of the Superior Court

APPROVED AS TO FORM:

Christopher M. Mazzia, Esq.
Michael Shklovsky, Esq.

EXHIBIT A

FILED

JUN 15 2023

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA
BY DEPUTY CLERK

1 THE HONORABLE BRADFORD DEMEO
2 SUPERIOR COURT OF CALIFORNIA
3 COUNTY OF SONOMA
4 3035 Cleveland Avenue
5 Santa Rosa, CA 95403
6 Telephone: (707) 521-6725

7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

8 FARROW COMMERCIAL, INC., a
9 California corporation,

10 Plaintiff,

11 vs.

12 CMS PROPERTIES, LLC, a Montana
13 limited liability company doing business in
14 California as CMS AIRPORT
15 PROPERTIES, LLC; and DOES 1 through
16 30, inclusive,

17 Defendants.

Case No. SCV-269684

STATEMENT OF
DECISION AFTER COURT TRIAL

18 CMS PROPERTIES, LLC, a Montana
19 limited liability company doing business in
20 California as CMS AIRPORT
21 PROPERTIES, LLC,

22 Cross-Complainant,

23 vs.

24 FARROW COMMERCIAL, INC., a
25 California corporation; FARROW
26 READY MIX, INC. and ROES 1 through
27 25, inclusive,

28 Cross-Defendants.

In this document the Court announces its Tentative Decision on the issues presented to the Court. The Tentative Decision will be the Statement of Decision unless within ten (10) days either party files and serves a document on the Court that specifies objections to the findings and

1 rulings contained herein, or makes proposals not covered in this document. Pending further
2 order(s) or entry of Judgment, this Tentative Decision constitutes the temporary orders of the
3 Court.

4 BACKGROUND

5 Farrow is a residential and commercial developer that was heavily involved in rebuilding
6 many homes in Sonoma County following the Tubbs Fire of October 2017. In late 2018, to
7 address difficulties in sourcing and supplying concrete to its fire rebuilds, John Farrow, President
8 and CEO of Farrow Commercial, Inc. (hereinafter collectively referred to as "Farrow"), started
9 negotiating with Carl Davis, owner of Carl's Ready Mix, to purchase the assets of Carl's Ready
10 Mix, a concrete processing plant operating since 2007 at the Property.

11 The current owner of the property located at 3660 Copperhill Lane, Santa Rosa,
12 California (hereinafter "Property") is the defendant CMS Properties, LLC. (hereinafter "CMS").
13 The Property was purchased by CMS in 2015.

14 Carl Davis (hereinafter "Carl") leased the Property in 2007 from the then owners. His
15 goal was to operate a concrete business there. He applied for and obtained from the County of
16 Sonoma (hereinafter "County") a Use Permit allowing him to operate his concrete business at the
17 Property. He did business as "Carl's Ready Mix." Final Conditions of Approval were issued by
18 the County in April of 2008. There is no dispute between the parties that Carl never complied
19 with all of the County's Use Permit terms.

20 On May 11, 2011, the County issued to the prior Property owners a Notice of Violation
21 of Use Conditions and a Notice and Order of Construction Without a Permit (noting construction
22 of an unpermitted batch plant, commercial coach, and a tank exceeding 5,000 gallons without
23 permits were all a public nuisance). In December 2011, the County recorded a Notice of
24 Abatement Proceedings demanding the owners comply with the conditions of the existing use
25 permit, including obtaining all required permits and inspections for the unpermitted batch plant
26 or remove it. Pursuant to the County's Notices, penalties began accruing against the Property
27 owners.

28 In 2015, Defendant CMS (through its principals Mark Ciddio and Stacey Ciddio)

1 purchased the Property and continued the lease with Carl's Ready Mix. According to testimony
2 at trial, CMS was aware that Carl's Ready Mix was operating the concrete processing business
3 under a use permit issued by Sonoma County in April 2008 that came as a document called
4 "Final Conditions of Approval," listing 56 pre-operational and operational conditions for
5 operation of the business. Mr. Davis made attempts, but never satisfied, all 56 conditions of the
6 use permit during the more than a decade that he operated Carl's Ready Mix at the Property.
7 CMS never insisted that Mr. Davis satisfy all 56 conditions of the use permit to continue his
8 tenancy at the property.

9 In late 2018, Farrow purchased Carl's Ready Mix assets and negotiated a new lease with
10 CMS. The CMS attorneys drafted a standard form Commercial Lease Agreement ("Lease") with
11 the proposed terms. The Lease was thereafter circulated/reviewed by all parties, discussed, and
12 agreed upon, signed by Farrow on December 7, 2018, and signed by CMS on February 27, 2019.
13 The Lease has three attached addenda, each of which is expressly incorporated into the Lease by
14 reference.

15 Plaintiff claims that the Option to Renew/Extend Lease ("Option") allows Plaintiff to
16 occupy the Property for two additional four-year time periods, and by its terms, was self-
17 executing – meaning that the tenant was not required to take any action to formally exercise it.

18 The Option states, "6. Other Tenant shall notify Landlord at least one hundred eighty
19 days (180) of its intent NOT to exercise the Tenant's option to renew." Farrow claims it
20 exercised the Option to extend the Lease by remaining in possession of the Property and, despite
21 no obligation, by timely giving written notice to CMS on or about November 9, 2021.

22 During Farrow's tenancy on the Property, the world fell into a pandemic in proportions
23 not experienced since 1918. Governments continued to run, but it is self-evident that they
24 moved at a much slower pace due to staffing issues as a result of shelter in place emergency
25 orders and return to work safety measures. Local zoning and permit approvals, among other
26 governmental actions, were continuing but universally delayed to some extent during the
27 pandemic.

28 ///

1 be genuine in their recount of the facts as they believe occurred. Much of the conflict in this case
2 appears to be perception and perspective.

3 **Haven Holm**, called to testify for the defense, was not a credible witness. With very
4 little reliable independent memory of events, other than his clear disdain for plaintiff for being
5 fired in December of 2018, Mr. Holm had very little reliable information unless he was prompted
6 with a leading question. This occurred several times during his testimony under oath. As his
7 testimony progressed this Court allowed several leading questions and it became clear that unless
8 a leading question was asked, or he was prompted with visual cues and documents, he had very
9 weak independent recall of events, dates, names, and other details important to the case. His
10 testimony was general, conclusory, and was inconsistent with documentary evidence, dated
11 emails, and testimony of other witnesses.

12 **Casey McDonald**, of Adobe and Associates, was credible and informative of the efforts
13 made by the parties to achieve progress to meet the terms and conditions of the use permit. Both
14 parties at one time or another had hired Adobe to conduct analysis and land planning regarding
15 the Property. Ms. McDonald also provided evidence of timelines and communications with
16 Sonoma County personnel regarding the use permit and other matters involving the property.
17 Her testimony was helpful in resolving conflicting assertions by the parties as to when efforts
18 were made to comply with County requirements including confusion caused by defendants as
19 they submitted an application for permits to install water and sewer on the Property as Plaintiff
20 was attempting to do the same.

21 **Brian Keefer**, a Permit Sonoma planner in 2018, was also credible and helpful in
22 describing the requirements for Farrow to operate under the use permit. He testified that code
23 enforcement in Sonoma County is passive – it is a complaint bases system of enforcement.
24 Therefore, the conditions of the use permit are not monitored by the County enforcement agency
25 unless prompted by a complaint. He testified that the County continued to review planning
26 applications, but indicated things were somewhat slow during the pandemic.

27 **Troy Saldana**, a Farrow employee, was also credible. He performed a very thorough
28 gathering of documents, with little to no information directly from CMS, and was a percipient

1 witness to a walk-through of the Property in early December of 2018 involving John Farrow,
2 Mark Ciddio, and others. Saldana was the only witness to that event called to testify at trial. He
3 prepared a punch list of things needing attention, among other information, from that site visit.

4 Plaintiff's expert, Benjamin Neuman, presented with impressive background and
5 experience as an inspector, plan reviewer and code enforcement officer for the County of
6 Sonoma Permit and Resource Management Department (now Permit Sonoma), and at one point
7 in his career was the head of that agency. His years of experience, education, and breadth of
8 knowledge is impressive and helpful to this Court. He testified that there is no time deadline in
9 which use permit conditions must be satisfied unless expressly stated in the use permit, which
10 there was no such deadline for any of the conditions. His testimony corroborated the testimony
11 of Brian Keefer regarding enforcement. He testified that numerical limits such as trips per day
12 of heavy trucks is a fluid condition and may be considered as an average over a period of time.
13 He testified that the use permit in question is valid today even though some of the conditions are
14 still not met. This is critical to Plaintiff's case. There was no counter expert testimony offered
15 by the defendants.

16 **B. The Option Is Valid Without Separate Signature**

17 1. The Lease Includes the Commercial Lease Agreement (Form 552-3) and Its Three
18 Addenda, Including the Option Addendum (Form 565) as Expressly Incorporated
19 by Reference.

20 There is no dispute here that a valid written contract exists. The Lease was negotiated
21 between the parties, and the formal memorandum of its terms was thereafter circulated/reviewed
22 by all parties, and signed by Farrow on December 7, 2018, and by CMS on February 27, 2019.
23 The Lease has three attached addenda, each of which is expressly incorporated into the Lease by
24 paragraph 1.3 that provides: "The following checked addenda are part of this agreement:"
25 followed by check marks in front of "Addendum Lease/Rental [See RPI Form 550-1]," "Option
26 to Renew/Extend Lease [See RPI Form 565]," and "Addendum 3: Aerial Photo with leased area
27 designated." Thus, the operative terms of the Lease include those set forth in the standard form
28 Commercial Lease Agreement (Form 552-3) as well as those included in the attached addenda:

1 Form 550-1, Form 565, and the aerial photograph. CMS admits the Lease is valid but claims the
2 Option (Form 565) is not valid simply because CMS did not execute this Form separately from
3 the standard Form Commercial Lease Agreement (Form 552-3). This assertion is unsupported by
4 the law and by the facts.

5 California law establishes the validity of the entire Lease (the standard form 552-3 with
6 all three of its attached addenda) regardless of the lack of Defendant's execution of the Option.
7 Addenda incorporated into a contract need not be separately executed. "A contract may validly
8 include the provisions of a document not physically a part of the basic contract 'It is, of
9 course, the law that the parties may incorporate by reference into their contract the terms of some
10 other document. [Citations.] But each case must turn on its facts. [Citation.] For the terms of
11 another document to be incorporated into the document executed by the parties the reference
12 must be clear and unequivocal, the reference must be called to the attention of the other party,
13 and he must consent thereto, and the terms of the incorporated document must be known or
14 easily available to the contracting parties.'" (*Williams Constr. Co. v. Standard-Pacific Cmp.*
15 (1967) 254 Cal.App.2d 442, 454.) "The contract need not recite that it 'incorporates' another
16 document, so long as it 'guide[s] the reader to the incorporated document.' [Citations.] (*Shaw v.*
17 *Regents of University of California* (1997) 58 Cal.App.4th 44, 54, 67 Cal.Rptr.2d 850.)"
18 [*Troykv. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1331; *Dipito LLC v. Manhelm*
19 *Investments, Inc.* (S.D. Cal., Dec. 14, 2021, No. 3:21-CV-01205-HJLB) 2021WL5908994, at
20 *11; 14A Cal. Jur. 3d Contracts § 238.]

21 Here, Lease paragraph 1.3 is clear and unequivocal in its reference to Form 565.
22 Defendant knew of the Option as it was initially provided by its own counsel, was reviewed by
23 Defendant, and was discussed at negotiation sessions. The Option was attached to each of the
24 three drafts of the Lease during negotiations. Defendant expressly consented to inclusion of the
25 Option and all its terms, and never withdrew such consent at the time of signing or during the
26 tenancy until, at or near the time they attempted eviction, when they claimed that the Option is
27 not valid. The Option was available to all parties as it was physically attached to the Lease as the
28 second addendum.

1 An option is a unilateral irrevocable offer; on the exercise of an option, there is a bilateral
2 contract between the parties that obligates both the optionor and the optionee to perform
3 according to the terms of the option. Here, CMS, by their execution of the Lease made the
4 Option irrevocable. Upon exercise of the Option by Farrow, both parties became obligated to
5 perform per the terms of the Option as agreed.

6 2. The Lease is an Integrated Contract with no Ambiguity as to Its Terms Including
7 the Option.

8 The Lease is expressly integrated as set forth in paragraph 23.5 which states, “This lease
9 agreement reflects the entire agreement between the parties”. This clause indicates the parties’
10 intent that the Lease reflects the final, complete, and exclusive statement of their agreement. The
11 parol/extrinsic evidence rule prohibits the introduction of extrinsic evidence to vary or contradict
12 the express terms of an integrated written instrument. The terms of a writing that the parties
13 intend as a final expression of their agreement cannot be contradicted by evidence of a prior
14 agreement or a contemporaneous oral agreement. A court is to rely strictly on the plain language
15 of a contract and should not revise a contract in the guise of construing it. When the language of
16 an instrument is clear and explicit and does not lead to an absurd result, the language of the
17 contract is controlling. Also, when several writings are taken as one transaction, they must be so
18 construed as to give effect, as far as practicable, to every part of each. “A contract and a
19 document incorporated by reference into the contract are read together as a single document. ...”
20 [*Id.* citing *Poublon v. C.H Robinson Company* (9th Cir. 2017) 846 F.3d 1251.] Civil Code §
21 1642, providing that multiple contracts are to be taken together, also applies to instruments or
22 writings that are not, on their own, contracts. [Cal. Civ. Code § 1642. *City of Brentwood v.*
23 *Department of Finance* (2020) 54 Cal. App. 5th 418, 434; 14A Cal. Jur. 3d Contracts § 236.]

24 “The decision whether to admit parol [or extrinsic] evidence involves a two-step process.
25 First, the court provisionally receives (without actually admitting) all credible evidence
26 concerning the parties’ intentions to determine ‘ambiguity,’ i.e., whether the language is
27 ‘reasonably susceptible’ to the interpretation urged by a party. If in light of the extrinsic
28 evidence the court decides the language is ‘reasonably susceptible’ to the interpretation urged,

1 the extrinsic evidence is then admitted to aid in the second step-interpreting the contract.” [ASP
2 *Properties Group LP v. Fard Inc.* (2005) 133 Cal.App.4th 1257, 1267.] The threshold
3 determination of whether there is “ambiguity” is a question of law. [(CCP § 1856(d).] Here, the
4 plain meaning of the integrated Lease, when construed to give effect to all portions of the
5 contract (including the Option Addendum), is unambiguous as it demonstrates that the parties
6 mutually agreed that Plaintiff had the option to extend the lease per the terms expressly set forth
7 in the Option. Mark and Stacey Ciddio both admitted that they “agreed” to the Option and
8 understood that Farrow would sign the Option at a later time. “The purpose of the law of
9 contracts is to protect the reasonable expectations of the parties” and “the mutual intention of the
10 parties at the time the contract is formed governs interpretation.” [ASP *Properties, supra* at
11 1268-1269.] Here, the language of the Lease is not reasonably susceptible to Defendant’s
12 allegation that the parties did not so mutually agree; extrinsic evidence is not necessary on this
13 point. Perhaps more importantly, merger clauses (such as Paragraph 23.5 here) have been held
14 conclusive on the issue of integration, so that parol evidence to show that the parties did not
15 intend the writing to constitute the sole agreement will be excluded.” [2 Witkin, Cal. Evid. 5th
16 (2002) Documentary Evidence § 71(2).]

17 3. Extrinsic Evidence, if Considered, Supports Mutual Intent to be Bound by the
18 Option.

19 Even if a document is a complete integration of the parties’ agreement, extrinsic evidence
20 may be held admissible to prove an interpretation for which it is reasonably susceptible. If the
21 terms of a contract are ambiguous, reference may be made to extrinsic evidence and surrounding
22 circumstances to resolve the ambiguity. Such interpretation based on consideration of the
23 extrinsic evidence is an issue of fact. [CACI 318 Interpretation- Construction by Conduct.]

24 Whether a document is incorporated into the contract is a question of fact and depends on
25 the parties’ intent as it existed at the time of contracting. [*Versaci v. Superior Court* (2005) 127
26 Cal. App. 4th 805; *Shaw v. Regents of University of California* (1997) 58 Cal. App. 4th 44.] If, in
27 taking the several writings together, an ambiguity arises, extrinsic evidence may be resorted to
28 for the purpose of explaining their meaning.

1 Here, the extrinsic evidence and surrounding circumstances demonstrate both Farrow and
2 CMS intended to be bound by all the terms of the Lease, including all three of its explicitly
3 incorporated addenda, thus including the Option at issue. In November 2018, the CMS attorneys
4 Borba Frizzell Kerns, P.C. drafted the standard form Commercial Lease Agreement and
5 circulated it to the parties for review. The initial version, as well as all subsequent versions,
6 included the second addendum, the Option (Form 565). This Option was included because
7 Farrow (through principal John Farrow) previously told CMS (through principal Mark Ciddio)
8 that Farrow intended to occupy the property on a long-term basis to allow establishment and
9 eventual expansion of the business. Ciddio stated he could give Farrow a three-year term plus
10 two four-year extensions. CMS' attorneys then filled out Form 565 with specific lease extension
11 terms offering the option to extend the lease, initially by four years at a 2% rent increase, and
12 then for another four years at a 4% rent increase; the Option was presented to Farrow along with
13 the other contract documents. The parties orally agreed upon all the terms and conditions set
14 forth in the Lease and each form was dated November 19, 2018, with the mutual intention that
15 formal execution by the parties would follow.

16 Shortly after these oral discussions, plus a December 3, 2018, meeting at the property
17 (the site visit referred to hereinabove), in reliance on the parties' mutual agreement on the lease
18 terms, Farrow moved onto the property, began tenant improvements, and began operations.
19 CMS did not object to Farrow moving forward. Farrow signed the Lease on December 7, 2018;
20 he signed the fifth page of the standard form contract (Form 552-3) and signed Addendum
21 Lease/Rental Agreement (Form 550-1). He did not sign the Option to Renew/Extend Lease
22 (Form 565) only because he understood it to be an option to be exercised and executed closer to
23 the end of the initial three-year rental term.

24 CMS (through its principal Stacey Ciddio) signed the Lease on February 27, 2019. CMS
25 signed the fifth page of the standard form contract (Form 552-3) and signed Addendum
26 Lease/Rental Agreement (Form 550-1) and the aerial photo but neglected to sign the Option to
27 Renew/Extend Lease (Form 565). Stacey Ciddio testified that CMS agreed to the Option terms
28 and did not intend to withdraw the Option at the time of signing. She testified she did not

1 communicate to Farrow any withdrawal of the Option and that she was aware that Farrow had
2 not signed it only because he intended to sign it later if and when he chose to exercise the option.
3 Mark Ciddio also testified that “we agreed [to two four-year options], but never signed the
4 page.” Based on this evidence CMS cannot argue revocation of their Option offer. [See CACI
5 308 Contract Formation - Revocation of Offer: CMS did not withdraw the offer; Farrow
6 accepted the offer of an option before CMS attempted to withdraw it; no withdrawal was
7 communicated to Farrow.] Stacey Ciddio, on behalf of CMS, signed the Commercial Lease
8 Agreement with the attached Option and with the express language of Paragraph 1.3
9 incorporating the Option, and a signed copy was provided to Farrow. The first time CMS
10 indicated any objection to the Option was at or near the time of their attempted eviction of
11 Farrow after attorneys had become involved. The Option cannot be viewed in isolation or a
12 vacuum; it must be taken together with the other documents in the transaction, including the
13 express incorporation by paragraph 1.3, and considering the actions of the parties. CMS’ act of
14 signing the Lease was the functional equivalent of signing the Option both because the Option
15 was expressly incorporated in the Lease and because CMS’ signature demonstrated their
16 confirmation of the terms fully negotiated and orally agreed upon on November 19, 2018. This
17 evidence is persuasive of a mutual understanding notwithstanding the missing signature on the
18 Option.

19 Further extrinsic evidence of CMS’ intent to include the Option in the Lease may be
20 found in the subsequent conduct of their attorneys Borba Frizzell Kerns, P.C. who represented
21 CMS throughout the lease negotiations; such conduct is imputed to CMS under the laws of
22 agency. On December 28, 2018, CMS’ attorney Kristen Frizzell Kerns e-mailed John Farrow
23 regarding certain items:

24 *John,*
25 *I understand there are still some outstanding items.*
26 *With the lease, the Option page is not signed. Is that because you do not want the Option,*
27 *or were you expecting to sign it only if you exercise the Option?*
28 *Could you initial the map attachment and send it back?*
CMS has not received the Deposit, documentation from the court, and certificate of
insurance. Time is of the essence on these items since Farrow has been operating on the
site.

1
2 In response to that e-mail, Farrow communicated to Ms. Kerns not “we do not want the
3 Option,” but rather, that Farrow planned to sign the Option around the time of the expiration of
4 the initial lease term:

5 *Hello Kristen,*
6 *My name is Lydia and I am John Farrow's assistant. Please see attached the use permit*
7 *from the County of Sonoma for 3 660 Copperhill Lane.*
John expected to execute the extension at the time the original lease expires.

8 Thereafter, Kerns apparently received Farrow’s initials on the aerial photo that is dated
9 January 14, 2019, as she had requested, and made no further mention of the Option. Kern’s
10 acquiescence to Farrow’s signature near expiration of the initial term is evidence that the term
11 was intended to be binding and such conduct is imputed to CMS as Kern was clearly acting in
12 her agency capacity.

13 On the agency issues, *Columbia Pictures Corp. v. De Toth* (1948) 87 Cal.App.2d 620 is
14 instructive. Plaintiff (motion picture producing company) and defendant (director) entered into
15 an oral agreement of employment at a specific salary and options according to plaintiff’s
16 standard form of contract for directors, under which each intended to be bound with agreement to
17 sign the standard form contract at a future time. Defendant claimed he did not know the detailed
18 and elaborate provisions of the standard form contract; nevertheless, he was held to the acts and
19 expressions of his attorney as his agent. The court recognized defendant was represented in the
20 making of the contract by attorney Allenberg; after attending a meeting with Columbia,
21 defendant left the details to Allenberg. The court cited Civil Code sections 2330 and 2332,
22 which provide: “An agent represents his principal for all purposes within the scope of his actual
23 or ostensible authority, and all the rights and liabilities which would accrue to the agent from
24 transactions within such limit, if they had been entered into on his own account, accrue to the
25 principal.’ ... [and] ... ‘as against a principal, both principal and agent are deemed to have notice
26 of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and
27 diligence, to communicate to the other.’” [*Columbia Pictures, supra.* at 630.] Further, “a
28 principal is chargeable with and is bound by the knowledge of, or notice to, his agent received

1 while the agent is acting within the scope of his authority, and which is with reference to a matter
2 over which his authority extends.” [Id.]

3 Thus, the court imputed Allenberg’s acts and words to the principal contracting party
4 (defendant director) and held the oral contract evidenced by the terms set forth in the written
5 contract, was valid. Likewise, here Kerns’ indication that the Option remained viable to be
6 executed and exercised at a later date is imputed to CMS.

7 C. The Option Addendum was Timely and Validly Exercised

8 The Option Addendum states, “6. Other Tenant shall notify Landlord at least one hundred
9 eighty days (180) of its intent NOT to exercise the Tenant’s option to renew.” Thus, the
10 language creates an automatic renewal that requires Farrow to do nothing to exercise the option;
11 the terms require Farrow to notify defendant only if Farrow’s intent was NOT to exercise the
12 Option. The standard form Option to Renew/Extend Lease (Form 565) has a provision for
13 written notice: “4. A written notice of Exercise of Option to Renew/Extend Lease needs to be
14 delivered prior to expiration of the option exercised and no sooner than _ months before
15 expiration of the option exercised,” which paragraph was stricken by CMS prior to execution.
16 Nevertheless, Farrow did take the affirmative step, on November 9, 2021, prior to expiration of
17 the original lease term, of executing the Option and notifying CMS of its intention to exercise the
18 option and extend the lease term. Farrow then attempted to pay full rent for November 2021, but
19 Defendant returned the rent and this litigation ensued. Payments in the amount of the agreed rent
20 were later timely resumed under the terms of the Preliminary Injunction ordering payments to
21 continue pending the action.

22 Here, *ADV Corp. v. Wilanan* (1986) 178 Cal.App.3d 61 is instructive. In that case, tenant
23 ADV Corp. leased premises in Santa Ana from Wilanan to operate a used car business. The
24 written lease agreement provided for a term of five years and included an option to renew for an
25 additional five years. (*Id.* at 63.) Similar to the instant case, the ADV lease did not require the
26 tenant to take any affirmative act to notify the landlord of its intent to exercise the option: “The
27 [trial] court’s minute order provides: ‘There was no prescribed manner by which [ADV] was
28 required to exercise its option to extend the lease.’” (*Id.* fn. 3).

1 Wikman initiated eviction proceedings and ADV filed a complaint seeking “a judicial
2 determination that it exercised its option to renew the lease and was entitled to possession for an
3 additional term of five years.” (*Id.* at 64). The trial court found in favor of tenant ADV Corp.
4 for three reasons: (1) the prior relationship between the parties, (2) ADV’s conduct in expanding
5 the tenant improvements (purchase of a new office trailer and storage shed, resurfacing the
6 parking lot three times during its tenancy, and spending tens of thousands of dollars annually on
7 advertising), and (3) the specific language in the lease. The court of appeal affirmed the
8 judgment in favor of the tenant based on the language of the lease that did not require the tenant
9 to notify the landlord of its intent to exercise the option, combined with the tenant’s remaining in
10 possession and tendering rent:

11 [If] the lease ... [provides] merely for an extension, [the tenant’s] remaining in
12 possession (no specific form of notice having been required) [is] sufficient notification
13 of [the tenant’s] decision. [*ADV, supra*, 178 Cal.App. 3d at 66 (citations omitted;
brackets and parentheses in original).]

14 The *ADV* court further explained:

15 In other words, “if the lessor gives the lessee the right to an extension of the term, and
16 does not specifically require him to give notice of his election to avail himself of such
17 right, his mere continuance in possession after the original term is to be regarded as
18 showing his election to that effect.” [*Id.* (citation omitted).]

19 Here, Paragraph 6 of the Option does not require Farrow to do anything to exercise its
20 option. In fact, the opposite is true - the language specifically states that the tenant is only to
21 notify the landlord if the tenant does NOT intend to exercise the option. Moreover, consistent
22 with his representation to CMS in December 2018, Mr. Farrow signed the Option on November
23 9, 2021, prior to expiration of the initial lease term. Also, like ADV, Farrow invested significant
24 sums into the Property in reliance on the extended lease term. Thus, in compliance with all
25 terms of the Lease, Farrow validly exercised the Option resulting in an extension of the Lease for
26 the first option term of four years.

27 **D. The Breaches Alleged Do Not Invalidate the Option to Extend the Lease**

28 Defendant argues breaches based on (1) failure to satisfy each and every one of the 56

1 conditions of the use permit within a certain time period, and (2) alleged violations at the leased
2 property pertaining to the Environmental Protection Agency, the North Coast Quality Control
3 Board, or other governmental agencies. The Court finds the alleged breaches are not material
4 breaches that would preclude exercise of the Option to extend the lease. Moreover, any such
5 breaches were waived by CMS.

6 1. Farrow Was Not Required to Satisfy All 56 Conditions of the Use Permit Within
7 a Specific Time Period.

8 The Addendum does not state that Farrow had to satisfy all of the conditions of the use
9 permit within a specified time period.

10 The case *ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257 is
11 instructive. The underlying case was an unlawful detainer action filed by landlord ASP
12 Properties Group, L.P. against its tenant Fard, Inc., who executed a 10-year lease of commercial
13 property in La Mesa, California, with ASP's predecessor-in-interest to use for auto sales, repair,
14 and auto related business. ASP sent Fard a letter in June 2003 demanding that Fard complete
15 eleven specific items of "modifications, maintenance or repairs" within 60 days. (*ASP, supra*,
16 133 Cal.App.4th at 1264). ASP then served Fard with a three-day notice to perform covenants or
17 quit on or about November 10, demanding that Fard completed the modifications, maintenance,
18 or repairs within three days or quit its possession of the premises. (*Id.*) On November 26, ASP
19 filed an unlawful detainer action, alleging Fard did not cure the three-day notice. (*Id.*) At the
20 unlawful detainer trial, among other findings, the trial court interpreted the lease and its
21 amendment as not requiring the tenant to install new roofs to replace the existing roofs. The
22 landlord appealed, contending (1) the trial court erred in interpreting the lease and amendment
23 not to require tenant to install new roofs and (2) the tenant breached the lease by not replacing
24 the roofs of the premises. (*Id.* at 1268). The court of appeal affirmed the trial court's judgment
25 in favor of the tenant. (*Id.* at 1265, 1274, 1276).

26 The term of the lease in *ASP Properties* was from April 1, 1997, to March 31, 2007. The
27 lease contained a standard "Repairs and Maintenance" provision, which required the tenant to
28 "maintain at his sole expense and without contribution from Landlord, the [P]remises in good

1 and safe condition, including, but not limited to[,] plate glass, electrical wiring, plumbing and
2 heating installation.” (*ASP, supra*, 133 Cal.App.4th at 1262). On July 15, 2000, the parties
3 executed an Amendment, which contained a \$500 monthly reduction in rent for the remainder of
4 the lease term, and added the following language to Paragraph 3 of the lease (regarding use of
5 the premises): Tenant agrees to comply with any and all requirements, laws, ordinances, or other
6 mandates of the City of La Mesa and at Tenant’s expense to cure any condition, use or perform
7 any necessary modification, maintenance or repairs as may from time to time be required by the
8 City of La Mesa, or Landlord, within sixty (60) days of receipt of written notice that such a
9 defect, violation or other conditions exists which is unacceptable to the City of La Mesa or
10 Landlord. Tenant’s failure to make any improvement, correct any condition, or otherwise comply
11 with any written notice shall constitute a breach of this Lease if Tenant permits such conditions,
12 violation or use to continue on or after the sixty-first (61st) day after receipt of such notice. (*Id.*
13 at 1262-1263).

14 The Amendment also replaced Paragraph 4 of the Lease as follows: Repairs and
15 Maintenance. Tenant shall maintain at his sole expense and without contribution from Landlord,
16 the Premises in good and safe condition, including, but not limited to, the roof, plate glass,
17 electrical wiring, plumbing and heating installation. (a) Tenant shall comply with any and all
18 zoning regulations, laws, ordinances and other requests of the City of Law Mesa concerning the
19 use, repair and maintenance of [Premises] as set forth in the correspondence received from the
20 City of La Mesa and any future correspondence which concern[s] the use and/or maintenance
21 and repair of the [P]remises. In addition to correcting the existing violation as of the date of [the
22 Amendment], Tenant agrees to submit a plan (“Plan”) as requested by the City of La Mesa for
23 the remodel of the building to include, but not [be limited to,] the installation of handicap access
24 and other changes as may be required by the City of La Mesa. Such Plan shall be submitted to
25 Landlord for Landlord’s consent prior to Tenancy submitting the Plan for approval by the City of
26 La Mesa. After the Plan is approved by the City of La Mesa, Tenant agrees that it shall
27 implement the Plan at Tenant’s sole cost and expense, except [that] Landlord agrees that upon
28 approval of the Plan by the City of La Mesa, he shall ... pay Tenant the sum of \$1000.00 as

1 Landlord's contribution [toward] the actual cost of construction required under the approved
2 Plan ... Any additional cost or expense in order to implement the Plan, complete the construction
3 or otherwise comply with the Plan or to cure any existing or future violations as noted by the
4 City of La Mesa or Landlord shall be at the sole cost and expense of the Tenant. (*Id.* at 1263).

5 In ruling in favor of the tenant, the trial court made several findings, including: From the
6 [A]mendment the court gathers that there were some issues with the City of La Mesa, some code
7 violations that were likely cited and that the [L]andlord was concerned that [T]enant should take
8 care of those issues and that an Amendment was crafted and signed. (*Id.* at 1264).

9 The court does not find that the language in Paragraph 4 of the Amendment requiring the
10 [T]enant to maintain in a good and safe condition, the roof, among other things, had the same
11 meaning as the [T]enant must replace a roof that had already exceeded its life expectancy at the
12 time [Tenant] took [possession]. (*Id.* at 1264-1265).

13 ... The Court does not find that 'maintain' means to replace or to install initially. Thus,
14 the Court finds [Tenant] had no obligation to install a new roof or to install heating and
15 air conditioning ... The Court does not find that the [L]ease and [the Amendment]
16 required [Tenant] to improve or modify anything and everything the Landlord requested.
17 The bargained-for exchange between the parties was that [Tenant] brought the property
18 into compliance with the City of La Mesa's codes and expended \$30,000 - \$40,000
19 maintaining the leasehold ... *The language of the Amendment is less than clear and must
20 be construed against the drafter - [Landlord]. The Court will not read into the
21 [A]mendment any more than it states. It does not say that [Tenant] must replace the roof.
22 When the [A]mendment was drafted, the testimony of the witnesses was that replacing
23 the roof was not discussed. ((Id. at 1265) (bold in original; italics added for emphasis).)*

24 The court of appeal began its analysis of the trial court's interpretation of the lease and
25 amendment by summarizing the basic tenants of contract interpretation. These include the
26 principle that, "Interpretation of a contract 'must be fair and reasonable, not leading to absurd
27 conclusions.' [Citations]. 'The court must avoid an interpretation which will make a contract
28 extraordinary, harsh, unjust, or inequitable. [Citation].'" (*Id.* at 1269). Moreover, Section 1643
provides: "A contract must receive such interpretation as will make it lawful, operative, definite,
reasonable, and capable of being carried into effect, if it can be done without violating the intent
of the parties." In the event other rules of interpretation do not resolve an apparent ambiguity or

1 uncertainty, “the language of a contract should be interpreted most strongly against the party
2 who caused the uncertainty to exist.” (§ 1654.) (*Id.*) (Emphasis added.)

3 The court proceeded to focus on the primary purpose of the Amendment as it pertained to
4 the parties’ expectations vis-a-vis correcting various code violations. (*Id.* at 1271). The court
5 found that the tenant’s duty of maintenance could *only* be reasonably construed to require the
6 tenant to *maintain* – not replace – the roofs in their conditions as of the time the lease was signed
7 in 1997 and the amendment in 2000 (“i.e., in their then-dilapidated conditions”). (*Id.*) Had the
8 parties intended Tenant to assume the obligation to replace the roofs, one would reasonably
9 expect the Lease and/or Amendment to expressly so state rather than merely stating Tenant was
10 required to maintain the roofs (and other parts of the Premises). (*Id.* at 1272.) (Emphasis
11 added).

12 The court expounded: Case law supports a conclusion that, absent an express provision
13 (or undisputed extrinsic evidence) showing a tenant has an obligation to replace a roof, a tenant’s
14 obligation to maintain or repair the premises (including a roof) does not include an obligation to
15 replace an old, dilapidated roof with a new roof at tenant’s expense. In *Iverson v. Spang*
16 *Industries, Inc.* (1975) 45 Cal.App.3d 303 [119 Cal. Rptr. 399], a lease required the tenant to
17 leave the premises in good order, condition, and repair except for reasonable use and wear. (*Id.*
18 at p. 310.) *Iverson* stated:

19 Such covenants are generally reasonably interpreted to avoid placing any unwarranted
20 burden of improvement on the [tenant]. [Citation.] ... ‘... The tenant is certainly not
21 obligated to restore the premises to his landlord in a better condition than they were at the
22 inception of the tenancy. [Citations.]

23 In *Haupt v. La Brea Heating etc. Co.* (1955) 133 Cal.App.2d Supp. 784 [284 P.3d 985], a
24 lease required the tenant to “‘make whatever repairs are necessary to the floor’ and ‘to repair the
25 floor to a usable state.’” (*Id.* at p. Supp. 788). *Haupt* concluded neither the lease nor statutory
26 provisions (i.e., §§ 1928, 1929) obligated the tenant to restore the premises to a better condition
27 than existed at the inception of the lease. (*Haupt, supra*, at pp. Supp. 788-789.) *Haupt* stated:
28 “If, at the time of the letting, the roof was old and worn, *certainly [the tenant was] not required*
to repair the same and should not be held liable for the cost of a new roof nor for damages

1 occasioned by rainwater finding its way into the premises. [Citation:]” (*Haupt, supra*, 133
2 Cal.App.2d at p. Supp. 789, italics added.) (*Id.* at 1272.)

3 The *ASP* court also surveyed cases from other jurisdictions, and quoted applicable
4 language supporting its rationale:

5 “... We cannot believe that the parties ever intended at the time of the execution of the
6 lease here that the [tenant] would be burdened with an immediate \$60,000.00 obligation
7 for a roof and related structure by himself, let alone the other items, to substantially
8 restore the [landlord’s] building ...” ... [Landlord’s] position is obviously unfair because it
9 would give [landlord] a better, fully reconstructed building than he leased, the life of
10 which improvements would extend far beyond the [tenant’s] remaining term of less than
11 eight years. It would become far superior to its condition at the date of the lease. By the
12 express terms of the agreement, [the tenant’s] obligation was only to keep it in its lease
13 date condition. It had taken over 30 years for the building to reach its dilapidated state ...
14 (*Id.*, citing *Scott v. Prasma*, (Wyo. 1976) 555 P.2d 571, 576-579).

15 The *ASP* court held that the landlord’s attempted insinuation of language into the lease
16 must fail:

17 We conclude that although there is evidence supporting a finding both Landlord and
18 Tenant knew, when the Lease and Amendment were executed in 1997 and 2000, the
19 roofs needed to be replaced, that knowledge does not support a reasonable inference they
20 intended, absent express language in the Lease or Amendment, Tenant be required to
21 replace the already dilapidated roofs. (*Id.* at 1274).

22 Because the tenant was not required to replace the roofs, it was not in breach of the lease
23 for not doing so:

24 Accordingly, we conclude, as a matter of law, Tenant was not required to replace the
25 roofs of the Premises pursuant to either the Lease or the Amendment. Therefore, we reject
26 Landlord’s assertion Tenant breached the Lease and Amendment by not replacing the
27 roofs. (*Id.* at 1274).

28 In the instant case, CMS is attempting to do what the *ASP* landlord did – insert language
into the lease that the lease did not contain; namely here, a requirement that Farrow satisfy all 56
conditions of the use permit within a particular time period. The lease, drafted as it was by the
landlord, does not say that. The *ASP* trial court properly stated that it would “not read into the
Amendment any more than it states.” (*ASP, supra*, 133 Cal.App.4111 at 1265.) The court of

1 appeal referred to the absence of “express language in the lease” vis-a-vis the tenant’s
2 obligations. CMS had ample opportunity to draft the lease language to expressly state that the
3 conditions of the use permit had to be satisfied within a certain period of time. For example, the
4 lease addendum could have stated, “Tenant has 36 months to apply for, obtain, and/or satisfy all
5 pre-operational conditions of the use permit.” It did not; rather, the lease merely states, “Tenant
6 will obtain the appropriate Use Permit for its use from the County of Sonoma within 12 months.”
7 The lease is utterly silent as to any time period required for the *satisfaction of the conditions* of
8 that use permit.

9 2. The Alleged Breaches Were Non-Material and Do Not Affect Farrow's Ability to
10 Remain in Possession of the Leased Premises

11 Commercial leases with options to renew/extend sometimes make it an express condition
12 that the tenant keep all or certain covenants on his part; in such cases, nonperformance or breach
13 of the covenants will defeat the tenant’s right to renew the lease. [*Behrman v. Barto* (1880) 54
14 Cal.131, 132.] The Option at issue here has no such language.

15 Moreover, some cases have held a tenant was not entitled to exercise an option to
16 renew/extend when it was in default on rent payments even absent an express written clause
17 requiring such payment as a condition. This is because payment of rent is an implied condition.
18 [*Nork v. Pacific Coast Medical Enterprises, Inc.* (1977) 73 Cal.App.3d 410, 416.] Farrow was
19 current on rental payments when the option automatically executed and later when Farrow
20 signed the option to extend on November 9, 2021. The evidence at trial shows Farrow timely
21 tendered rent thereafter, initially returned by Defendant, but eventually accepted under the terms
22 of the Preliminary Injunction. The alleged breaches argued by CMS here (permit use issues and
23 environmental “violations”) are not the kinds of breaches implied by law and are not the kinds of
24 breaches that will nullify an option to renew/extend.

25 When the notice of exercise has been given in a timely manner, the tenant in default can
26 exercise the option effectively if it has a substantial investment in the property and the defaults
27 by the tenant are minor, or the landlord has waived the defaults, or the landlord's conduct renders
28

1 strict compliance with the lease or the renewal provisions futile. In some cases, a court may
2 exercise its equitable jurisdiction and permit a lessee to renew a lease even though he or she is in
3 violation of material terms of the lease. In this case the evidence shows Farrow has a substantial
4 investment in the Property and was allowed to continue to operate on the premises under the use
5 permit by the County of Sonoma by letter if Mr. Keefer long after any notice of abatement was
6 issued (2011) or served.

7
8 *Kaliterna v. Wright* (1949) 94 Cal.App.2d 926, 935-936, disapproved on a different
9 ground by *State Farm Mut. Auto. Ins. Co. v. Superior Court, In and For City and County of San*
10 *Francisco* (1956) 47 Cal.2d 428, is applicable to this case. The court held where a lease renewal
11 option was not made expressly conditional upon the full performance of the terms of the lease,
12 the lessee was entitled to renew the lease despite certain alleged breaches of the lease which had,
13 in the court's view, been waived by the landlord. The court rejected the landlord's argument
14 that, to be entitled to renewal, a tenant must prove full compliance with all terms of the lease.
15 The court pointed out that under any reasonable standard the tenant had fully complied in that
16 she had paid her rent and made improvements to the property, such that forfeiture of the tenant's
17 right to renew would be inequitable. [*Id.* at 935-936.]
18

19
20 The facts in *Kaliterna* are particularly on point here. Defendant/Lessor contended
21 multiple breaches, *but only after the dispute arose* and defendant denied plaintiff's right to
22 renew. "This was apparently the first intimation to plaintiff that the lessors thought the lease had
23 been breached in any way." [*Id.* at 931.] During the litigation, defendants alleged failure to pay
24 rent during an earlier term of the lease, failure to continually occupy the premises, failure to pay
25 taxes on improvements, failure to keep the premises covered by fire insurance, unauthorized
26 residential use of the premises, and structural changes without lessor approval. The court found:

27 In the present case there was no breach by plaintiff which would justify a court in holding
28 that plaintiff had lost the right to renew. Under any reasonable standard, plaintiff here had
fully Performed, entitling her to renew by exercising the option. The evidence here shows

1 that the lessor agreed to accept, and did accept, the reduced rental over the largest portion
2 of the leased term; also, that the only proved breaches of the lease were waived.
3 Moreover, the lease contained a grant of an option to renew, which was not made
4 conditional upon the full Performance of the terms of the lease. [*Id.* At 936.]

5 Thus, as in the case at bar, the right to refuse to renew or extend the lease was waived by
6 defendant who had acquiesced in the tenants' breaches of the terms and conditions of the lease.

7 Also instructive is *Title Ins. & Guaranty Co. v. Hart* (9th Cir. 1947) 160 F.2d 961, cited
8 by and relied upon by the *Kaliterna* court, which involved a mining operation conducted by
9 tenant on the premises. In *Hart, supra*, the lease was actually conditioned on faithful compliance
10 with the covenants of the lease; but nevertheless, the court held the lessee *not* precluded from
11 exercising the option since "[i]t is not reasonable in human experience to expect that there could
12 have been full, exact, strict, complete and perfect compliance with all of the covenants." [*Id.* at
13 970.] The breaches alleged in attempt to justify defendant's refusal to renew the lease were:
14 failure to pay royalties, violations of California law (21 violations of Mine Safety and
15 Mechanical Power Transmission orders of the California Industrial Accident Commission) and
16 failure to keep complete records. [*Id.* at 968-970.] Particularly applicable here is the court's
17 discussion of the legal violations of safety orders. The court noted:

18 The record shows that the Commission allows a reasonable time for correction of any
19 infraction of its numerous regulations, and it further shows that all matters testified to as
20 violations were settled, and the case closed as far as the Accident Commission was
21 concerned. All of these alleged violations appear to be relatively minor infractions and
22 while it was necessary for the Commission to call the attention of lessees to certain
23 violations more than once, it nevertheless is undisputed that appellee was not proceeded
24 against, the mine was not closed and lessors were not injured by any of the violations of
25 these safety orders. [*Id.* at 969.]

26 The court reached a similar conclusion in *Kern Sunset Oil Co. v. Good Roads Oil, Co*
27 (1931) 214 Cal. 435 where the lease provided for the drilling and placing upon production of two
28 wells each year until sixteen wells had been drilled and brought into production, during a period
of over thirteen years the lessees had only completed thirteen wells. The court held that
landlord's acceptance of rent for almost five years with knowledge of all the facts, without any
complaints, constituted a waiver of the breach. [*Id.* at 440.]

1 Here, as in *Kaliterna v. Wright, supra, Title Ins. & Guaranty Co. v. Hart, supra,* and
2 *Kern v. Good Roads*, the evidence shows that the breaches claimed are not material terms that
3 would nullify the option to extend the lease. As to the alleged 56 conditions of the use permit,
4 the evidence supports due diligence throughout as well as waiver and acquiescence by CMS. As
5 to the alleged governmental “violations,” the issues have been dealt with and cured and have had
6 no adverse effect on CMS. (See argument below in D.2.)

7 As in *Hart, supra*, and in the case at bar, exact, strict, and perfect compliance with the use
8 permit issues is not practicable and was apparently not a concern of CMS during the tenancy of
9 Carl’s Ready Mix or for most of the tenancy of Farrow leading up to this dispute; this supports
10 waiver and acquiescence by CMS. Also, as in *Kaliterna, supra*, complaints of breach were only
11 raised after the parties became adversarial. This timing suggests waiver and acquiescence by
12 CMS of the breaches now alleged. As in *Kaliterna, supra*, the Option here was not made
13 expressly conditional upon the full performance of the terms of the lease, and we have the
14 ambiguous and seemingly unlimited word “legalize” that defendants rely on in their argument.
15 Thus, equity precludes removal of Farrow from the premises as Farrow has invested substantial
16 sums in the Property in reliance on their option to renew for a total of eight years.

17
18 **E. Defendant Has Not Proven Breaches**

19 1. Failure to Fully Address all 56 Conditions Noted in the Use Permit Was Not a Breach of
20 the Lease.

21 CMS claims Farrow is in breach of the Lease because it failed to satisfy all 56 conditions of the
22 use permit within one year of the lease inception date, (November 19, 2018) or alternatively, within
23 three years of its inception when the initial lease term expired (November 18, 2021). The evidence
24 shows that Farrow is currently, and has been at all times during the tenancy, operating under a valid
25 use permit as evidenced by a letter from the County of Sonoma dated December 27, 2018, that clarifies
26 operation at the site is allowed pending satisfaction of the conditions of the existing use permit. Farrow
27 has exercised reasonable and diligent efforts to satisfy the conditions of the use permit under the
28

1 circumstances and has expended substantial sums of money attempting to satisfy the final conditions of
2 the use permit. The express language of the Lease clearly does not include any temporal deadlines as
3 CMS claims.

4 Another addendum to the Lease at issue here is the "Addendum" Form 550-1 which includes
5 the following terms drafted by CMS: "Agreement: 2. The following terms and conditions are made
6 part of the above referenced lease or rental agreement; ... Other: Tenant will obtain the appropriate Use
7 Permit for its use from the County of Sonoma within 12 months. Within thirty days, Tenant will
8 provide a letter or otherwritten evidence that the County of Sonoma Permit and Resource Department
9 (PRMD) will allow Tenant to legalize the existing use, and that the County will not prohibit the
10 issuance of other permits (for example, to other tenants or to Landlord) while Tenant is in the process of
11 legalizing Tenant's use." Tenant agrees that other permits may be issued for other uses on the property,
12 independent of Tenant's use, and will cooperate with landlord if necessary to obtain such permits.

13
14 In 2008, Carl's Ready Mix obtained a conditional use permit from the County of Sonoma to
15 operate a concrete batch plant at the property. On or about April 22, 2008, the County issued a lengthy
16 document entitled "Final Conditions of Approval" for UPE07-0112. On or about June 29, 2010, the
17 County issued a similar document entitled "Final Conditions of Approval" for UPE07-0112. The "Final
18 Conditions of Approval" advised Carl's Ready Mix of the non-operational and the operational
19 conditions that it had to meet.
20

21 When Farrow purchased the assets of Carl's Ready Mix and commenced its tenancy at the
22 property, despite Carl's Ready Mix's efforts, it had not met all of the Final Conditions of Approval.
23 From the time CMS purchased the property in 2015 until Carl Davis moved out in late 2018, CMS
24 never told Carl Davis that he had to satisfy all 56 conditions of the use permit or he would be evicted;
25 never served Carl Davis with any warning notices regarding the final conditions of approval; never
26 served him with any three-day notices to perform or quit regarding the final conditions of approval;
27 and never served him with any three-day notices to perform or quit. After John Farrow executed the
28

1 lease with CMS on December 7, 2018, Mr. Farrow obtained the requisite letter from Sonoma County
2 PRMD called for by the lease. On December 27, 2018, Brian Keefer, a Project Planner at the County of
3 Sonoma Permit and Resource Management Department, sent a letter to Mr. Farrow which stated:
4 *Hello Mr. Farrow, You may continue to operate the concrete mixing plant at 3660 Copperhill Lane*
5 *pursuant to the Conditions of Approval of UPE07-0112. If you have any questions, please feel free to*
6 *contact me at 707-565-1908, or via email at brian.keeper@sonoma-county.org.* Farrow provided a
7 copy of this letter to CMS pursuant to the language in the Addendum. Stacey Ciddio signed the lease in
8 February 2019 without questions or comment regarding Mr. Keefer's letter.
9

10 Testimony showed that from the beginning of its tenancy at the property, Farrow undertook
11 efforts to satisfy the conditions of the use permit. Farrow's expert, the former PRMD Code
12 Enforcement Manager from 2002-2011 and PRMD Building and Safety Division Manager from 2011-
13 2015, testified at trial that the use permit is a valid use permit for Farrow's operations at the property
14 and that the use permit has vested. During Farrow's tenancy, in December 2019, CMS received a letter
15 from the County stating that violations of the use permit existed at the property. CMS forwarded a
16 copy of this letter to Farrow, and Farrow continued its efforts to communicate with the County and to
17 satisfy the conditions of the use permit. However, there were months during 2020 when the PRMD
18 office was closed, and Farrow experienced delays beyond their control. At one point in August 2020,
19 CMS hired an attorney to issue a three-day notice to perform covenants or quit. On August 6, 2020,
20 CMS caused to be served on Farrow a "3-Day Notice to Perform Covenant or Quit" which stated that
21 "Per the ADDENDUM of your lease at #2 'Tenant will obtain the appropriate Use Permit from the
22 County of Sonoma"; "You have failed to obtain that Use Permit", and "Within three (3) working days
23 from the service of this notice you must obtain that necessary use permit from the County of Sonoma,
24 or you must quit and deliver up possession of the premises." In response, Farrow's attorneys sent a
25 copy of the Brian Keefer December 2018 letter to CMS, who took no further action at that time to try
26 to evict Farrow.
27
28

1 CMS' First Amended Cross-Complaint alleges in the First Cause of Action for Breach of
2 Contract at Paragraph 20: "FARROW breached the lease during its occupation by not obtaining a Use
3 Permit for operation of its business within twelve (12) months of its lease. While FARROW obtained
4 consent from the County to operate under the CUP provided to Carl's, it never applied for a Use Permit
5 in its own name. In addition, FARROW is in breach of the lease and operating in violation of
6 governmental ordinance in not obtaining its own use permit as agreed, and in failing to meet all the
7 conditions of the CUP provided to Carl's. It is still in breach of even the conditions imposed by that use
8 permit."

9
10 These claims ignore the fact that the Lease does not set any time limit for satisfaction of the
11 conditions of the use permit and that CMS never claimed with Carl Davis, or with Farrow (until after
12 relations became adversarial), that failure to resolve all 56 conditions constitutes a breach of the Lease.

13 2. Alleged Environmental Violations Are Not a Breach of the Lease

14 CMS further alleges "violations" at the leased property pertaining to the Environmental
15 Protection Agency, the North Coast Water Quality Control Board, the Bay Area Air Quality
16 Management District, or other governmental agencies.

17 The evidence shows that the issues were cured to the extent Farrow was responsible.

18
19 Testimony and evidence showed Farrow worked with the NCWQCB for over a year to obtain a
20 WDID ("Waste Discharge Identification) number, including hiring a consultant, George Goobanoff, to
21 submit all necessary information to NCWQCB in order to be assigned a WDID. In the process, the
22 NCWQCB issued several letters to Farrow, including one dated February 18, 2021, which stated that
23 NCWQCB was fining Farrow due to the delay in obtaining the WDID number. Farrow paid a penalty
24 of \$7,049.85 on February 12, 2021, and the matter was resolved. Farrow has obtained its WDID
25 (1491029104), has uploaded its Storm Water Pollution Prevention Plan ("SWPPP") and site map as
26 requested by the NCWQCB to its database, and resolved the issues noted in an April 2021 site visit.
27
28 There are no issues with Farrow's business operations at the Property currently pending involving the

1 NCQWCB.

2 Farrow is currently working under a valid Annual Permit obtained from the Bay Area Air
3 Quality Management District. There was a lapse at one point during the pandemic, but Farrow was not
4 fined, and no adverse action was taken against Farrow. The permit was renewed.

5 With respect to the Environmental Protection Agency ("EPA"), an inspection of the property
6 occurred on November 17, 2020, and testimony regarding this incident demonstrates that it has been
7 resolved. There are no issues with Farrow's business operations at the Property currently pending
8 involving the EPA.
9

10 **E. Claims for Fraud/Concealment and Unfair Business Practices**

11 There is no substantial testimony that CMS purposefully withheld information with the
12 intent to conceal it from Farrow. Therefore, the Court finds in favor of Defendants on Farrow's
13 third cause of action for Fraud/Concealment, and its fourth cause of action for unfair
14 business practices pursuant to California Business and Professions Code section 17200 et seq.

15 **DECISION**

16 Based on the foregoing, Verdict shall be entered in favor of Plaintiff Farrow on plaintiff's
17 first and second causes of action for breach of contract and declaratory relief. Verdict shall be
18 entered in favor of Defendant CMS on plaintiff's third and fourth causes of action. The Court
19 further finds that any monetary damages caused by the breach of contract are nominal as much of
20 the expenditures incurred by Farrow, according to the evidence presented, would most likely
21 have been incurred without a breach in pursuit of satisfying terms and conditions of the use
22 permit. Farrow will not be awarded monetary damages on its successful claims. However, the
23 Court finds the exercise of the Option was valid.

24 Based on the foregoing, Verdict shall be entered against CMS and in favor of Farrow on
25 all of CMS's causes of action alleged in their First Amended Cross-Complaint. CMS will not be
26 awarded damages on its claims. Plaintiff shall prepare a Judgment for filing and entry according
27 to the findings and decision contained in this Statement of Decision.

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The Court reserves jurisdiction on attorney fees and costs.

IT IS SO ORDERED.

Dated: June 15, 2023



BRADFORD DEMEO
Superior Court Judge

PROOF OF SERVICE BY MAIL

I certify that I am an employee of the Superior Court of California, County of Sonoma, and that my business address is 600 Administration Dr., Room 107-J, Santa Rosa, California, 95403; that I am not a party to this case; that I am over the age of 18; that I am readily familiar with this office's practice for collection and processing of correspondence for mailing with the United States Postal Service; and that on the date shown below I placed a true copy of *STATEMENT OF DECISION AFTER COURT TRIAL* in an envelope, sealed and addressed as shown below, for collection and mailing at Santa Rosa, California, first class, postage fully prepaid, following ordinary business practices.

Date: June 16, 2023

Robert Oliver
Clerk of the Court

By: Sarah Helstrom
Sarah Helstrom, Deputy Clerk

-ADDRESSEES-

RACHEL MARY DOLLAR
SMITH DOLLAR PC
418 B ST 4TH FLR
SANTA ROSA CA 95401

MICHELLE V ZYROMSKI
ZYROMSKI KONICEK LLP
613 FOURTH STREET SUITE 203
SANTA ROSA CA 95404

DANIEL EVANS POST
MICHAEL SHKLOVSKY
CHRISTOPHER MITCHELL MAZZIA
ANDERSON ZEIGLER APC
50 OLD COURTHOUSE SQ 5TH FL
SANTA ROSA CA 95404

EXHIBIT 67A

4					
5					
6	Employee OSHA Station - Compliance				
		Goldenstate Lumber		Materials Cost & Labor	Golden State Lumber
		Goldenstate Lumber		Materials Cost & Labor	Golden State Lumber
		Goldenstate Lumber		Materials Cost & Labor	Golden State Lumber
		Goldenstate Lumber		Materials Cost & Labor	Golden State Lumber
7	SWPPP's Implementation and Maintenance				
	Side of the Lease requirements			Labor ONLY	
	Plastic Coverings and PIG Material			Materials Cost & Labor	
		PIG Material		Labor ONLY	
		PIG Material		Materials Cost & Labor	PIG Materials
		Plastic 5 Mill Covering 7 Staples		Materials Cost & Labor	
		Mesh Staples		Materials Cost & Labor	White Cap
		Gravel Bags		Materials Cost & Labor	White Cap
		Waddles		Materials Cost & Labor	Harmony Ag Supply
		Silt Fencing		Materials Cost & Labor	
		Spill Kits		Materials Cost & Labor	
		Ph Testing Gun		Materials Cost & Labor	
		Manual Ph Strips		Materials	Johnson Pools
		Pig Emergency Chemical Containment		Materials	
	SWPPP's program			Contract Cost	Scott Environmental
	Chemicals Containment Walls			Materials Cost & Labor	
				Materials Cost & Labor	Golden State Lumber
				Materials Cost & Labor	Golden State Lumber
		Tony Doiron's	6/4/2021	Pump & Labor	Tony Doiron's
8					
9					
10					

From: [Rose M. Zoia](#)
To: [Blake Hillegas](#)
Cc: [Kevin Deas](#); [Larry Reed](#); [Evan Wiig](#); [Eric Koenigshofer](#); [Eric Koenigshofer \(ejklaw@yahoo.com\)](#); [Stacey Ciddio](#); [Tennis Wick](#); [Scott Orr](#); [Cecily Condon](#); [Michael Shklovsky](#); [Chris Mazzia](#)
Subject: RE: BZA hearing 10/26/23 / Farrow Ready Mix Revocation of Use Permit / Farrow's request for continuance
Date: Friday, October 20, 2023 10:50:18 AM
Attachments: [image001.png](#)

EXTERNAL

Good morning, Blake,

I neglected to mention in my October 19, 2023, letter sent to you and the cc'd individuals yesterday that, in addition, to Farrow's other lawyer, Glenn Smith, and the other attorneys in both law firms retained by Farrow, Michelle Zyromski's October 16, 2023 email does not state Mr. Farrow himself is not available to attend the October 26, 2023, hearing. Thus, there are many applicant representatives besides Ms. Zyromski, who is one of its attorneys, and Troy Saldana, who is one of its employees, who can attend the hearing, which has been scheduled for about two months.

Thank you for your attention to this matter.

Regards,

~Rose Zoia

Rose M. Zoia

signature_544096126



50 Old Courthouse Square, 5th Floor
Santa Rosa, CA 95404
(707)545-4910 Tel
(707)544-0260 Fax
rzoia@andersonzeigler.com
www.andersonzeigler.com

From: Rose M. Zoia

Sent: Thursday, October 19, 2023 12:01 PM

To: Blake Hillegas <Blake.Hillegas@sonoma-county.org>

Cc: 'kevin.deas@sonoma-county.org' <kevin.deas@sonoma-county.org>; 'lawrence.reed@sonoma-county.org' <lawrence.reed@sonoma-county.org>; 'evan.wiig@sonoma-county.org' <evan.wiig@sonoma-county.org>; 'eric.koenigshofer@sonoma-county.org' <eric.koenigshofer@sonoma-county.org>; Eric Koenigshofer (ejklaw@yahoo.com) <ejklaw@yahoo.com>; Stacey Ciddio <sltinker12@gmail.com>; tennis.wick@sonoma-county.org; Scott Orr <Scott.Orr@sonoma-county.org>; Cecily.Condon@sonoma-county.org; Michael Shklovsky

<mshklovsky@andersonzeigler.com>; Chris Mazzia <cmazzia@andersonzeigler.com>

Subject: BZA hearing 10/26/23 / Farrow Ready Mix Revocation of Use Permit / Farrow's request for continuance

Dear Blake,

Please see attached letter regarding the subject matter. Thank you.

Regards,

~Rose Zoia

Rose M. Zoia

signature_544096126



50 Old Courthouse Square, 5th Floor
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From: [toni.pimentel](#)
To: [Blake Hillegas](#)
Subject: Farrow Ready Mix Use Permit
Date: Sunday, October 22, 2023 10:06:42 AM

EXTERNAL

I, Antoinette Pimentel, having lived and worked in Sonoma County my entire life, have recently become aware of the misuse of permits by Farrow Ready Mix and the impact it is having on local concrete companies.

I support the revocation of the Conditional Use Permit and support staff's recommendation that the Board of Zoning Adjustments revoke Farrow Ready Mix's use permit.

While Farrow has been allowed to operate in violation of its permit other local concrete companies and other businesses work to comply with county regulations, even if it means more expense and less profit. They are all disadvantaged when a local business violates permit

conditions and is allowed to do so for many years without repercussions. The unequal playing field creates unfair business practices in our County.

Further, conditional use permits contain conditions concrete companies must follow. A concrete producing business that operates outside of its permit can cause damage to the environment (by, for example, creating dust, noise, traffic, water contamination, etc.), to property (by, for example, flooding on adjacent parcels), and to persons (by, for example, operating out of unsafe structures).

It is time to revoke Farrow's permit. Thank you for your attention to this matter.

Sincerely,
Antoinette Pimentel

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Robert S. Rutherford
Christopher M. Mazzia
Daniel E. Post
Catherine J. Banti

Lisa L. Yoshida
Michael Shklovsky
Kenneth R. Cyphers
Rose M. Zoia
Zachary A. Carroll

Michael J. Fish
Ryan F. Thomas
Richard C. O'Hare
Tal Segev

October 25, 2023

[Via email only: blake.hillegas@sonoma-county.org]

Blake Hillegas
Supervising Planner
Permit Sonoma
2550 Ventura Avenue
Santa Rosa CA 95403

Re: Board of Zoning Adjustments Hearing: October 26, 2023, 1:20 p.m.
Revocation of Use Permit
File No.: UPE07-0112
Site Address: 3660 Copperhill Lane, Santa Rosa, APN: 059-250-004

Dear Mr. Hillegas:

Please accept this letter regarding the referenced matter. My prior related letters dated September 8, 2023, and September 14, 2023 (Staff Report Attachments 9 & 10) are incorporated herein.

CMS Properties LLC. ("CMS"), the owner of the subject property located at 3660 Copperhill Lane, Santa Rosa, California (the "Property"), supports staff's request that the Board of Zoning Adjustments ("BZA") revoke the subject Conditional Use Permit ("CUP") for noncompliance with the Conditions of Approval and violations of the Sonoma County Code. CMS appreciates staff's attention to this issue and thoughtful report, and thanks code enforcement for its work on this matter.

As stated in my prior letters, Farrow Commercial, Inc. (along with Farrow Ready Mix and other Farrow related entities, "Farrow") has been in violation of the CUP since November 2018 when it purchased the assets of Carl's Ready Mix, the prior tenant on the Property, and immediately occupied a portion of the Property and commenced operations of a concrete batch plant. When Farrow took possession, there were outstanding CUP and Sonoma County Code violations, of which he was aware. As stated in the Staff Report, Permit Sonoma authorized Farrow to operate pursuant to the CUP subject to the conditions of approval in order "to improve local construction efforts resulting from the 2017 Sonoma Complex Fire." (P. 2)

For the past five (5) years, Farrow has failed to satisfy many pre-operational and operational conditions of approval, including, but not limited to, fundamental health and safety necessities such as:

- Obtaining building permits (Condition of Approval (“COA”) # 1)
- Connection to public sewer and water (COA # 6)
- Provision of toilet facilities (COA # 7)
- Provision of a safe, potable water supply meaning, as read with COA # 6, through connection with public water. (COA # 8)
- Construction of sanitary sewer mains (COA # 12; *see* fn 1)
- Obtaining a Sewer Completion Final prior to occupancy (COA # 15)
- Obtaining a permit for construction of sewer facilities prior to obtaining a building permit (COA # 17)
- Construction of water mains and appurtenances in accordance with Town of Windsor Water System Standards or as shown on plans (COA # 20)

Recently, Permit Sonoma Fire Prevention Division reported Farrow has failed to enroll in the California Environmental Reporting System (CERS) and is “storing reportable quantities of hazardous material as well as generating hazardous waste” and, after five (5) years of operation, has yet to complete a Hazardous Materials Business Plan, a Chemical Inventory, a Site Plan, and a Contingency Plan and Training Plan. (Exhibit A hereto)

Since his occupation of the Property, Farrow has continuously operated in noncompliance with the law and regulations in one way or another, all the while pledging to legalize its use. Farrow’s broken promises and feigned efforts to bring the property into compliance include, but are not limited to:

- In 2018, Farrow assured Permit Sonoma that Farrow would legalize the use and work to correct non-compliance with the CUP. (Exhibit A to Staff Report Attachment 9) It has not done so.

- Farrow promised CMS that Farrow would legalize the use many times since he took possession of the Property.¹ (E.g., Exhibits B & F to Staff Report Attachment 9) From about August 2020 to September 2021 Glen Smith, Farrow’s attorney, made assurances that Farrow was working diligently with Adobe Associates, Inc. (“Adobe”) and Permit Sonoma to legalize its operations. Farrow has failed to do so.
- In 2020, Farrow applied to Permit Sonoma to legalize the use and failed to follow through but, instead, withdrew the application. (Exhibit C to Staff Report Attachment 9)
- In 2021, Farrow again retained Adobe to assist with bringing his use into compliance and again failed to follow through. (Exhibits D & E to Staff Report Attachment 9)
- Most recently, and only when faced with the threat of revocation of its permit, Farrow submitted applications for a sewer permit and a building permit three (3) days prior to the deadline imposed by Permit Sonoma, with expired building plans and without obtaining the required owner authorization.

After enduring three (3) years of Farrow operating outside of the law and in violation of the lease between the parties, CMS sent Farrow a notice of eviction in October 2021. Farrow responded by filing a lawsuit against CMS which resulted in 12 days of trial ending in March 2023. After Farrow filed its lawsuit, CMS filed an unlawful detainer (eviction) action against Farrow. Unlawful detainer actions are a summary process that would have resolved the lease dispute issues between the parties expeditiously. The court, however, stayed the unlawful detainer action so the first-filed lawsuit, initiated by Farrow, proceeded.

In an email to the County dated September 1, 2023, Mr. Farrow claims that:

- (1) It has worked to get the property into compliance “over the last three years since [it] took possession” of the property.

In fact, Farrow has been in possession for five years.

- (2) It was a week away from submitting the complete package to satisfy all 56-conditions, [sic] “when the landlord filed legal action to get us off the property so they could sell it.”

¹ In reliance, CMS, at its expense, caused water and sewer lines to be brought to the property line and installed a water meter and sewer lateral lines onto the property so Farrow could hook up to them for that aspect of compliance.

In fact, Farrow filed the first lawsuit which led to a longer judicial process. Further, CMS did not serve Farrow with a notice of eviction so it could sell the property, it did so because Farrow had occupied and used the property in violation of the lease and the CUP for three years at that point. In any event, a sale of property does not, in and of itself, terminate a lease.²

Contrary to Farrow's complaints, neither the notice of eviction nor the fact that it filed a lawsuit against CMS prevented Farrow from coming into compliance with the CUP. (*Please see Staff Report Attachment 10, pp. 3-4*) In fact, during the trial, Farrow admitted that it is operating in violation of the CUP and that it has been promising to correct the violations since at least October 2018.

On August 16 and 28, 2023, Permit Sonoma sent Notices of Intent to Revoke Permit to Farrow notifying it of the scheduling of this hearing to revoke the CUP or, alternatively, advising that it may bring the CUP into compliance and contact staff for inspection no later than 5:00 p.m. on September 15, 2023. Farrow waited until the eleventh hour, September 12, 2023, nearly a month after the first Notice and three days prior to the September 15th deadline, to submit applications for the required permits, which were incomplete and rejected. On September 13, 2023, Permit Sonoma advised Farrow that the applications were not accepted for failure to obtain owner authorization. (Exhibits A and B to Staff Report Attachment 10.) In addition, they included outdated plans. Contrary to Farrow's claim that CMS "refused" to provide authorization (Staff Report Attachment 8), Farrow has never asked CMS to do so.³

Without any evidence to support its hyperbolic statement, Farrow claims CMS made "a special trip to the Permit Sonoma office to clearly state that they will not sign the necessary authorization forms." (Staff Report Attachment 12, p. 2) In fact, on September 13, 2023, Stacey Ciddio, Managing Member of CMS, visited Permit Sonoma simply to obtain copies of the applications submitted by Farrow on September 12, 2023, since CMS had no notice of their submission. When asked by staff if she authorized the applications, she responded no. Farrow had not presented them to CMS prior to submission.

² Also contrary to Mr. Farrow's statements in that email, CMS did not "appeal" the court's tentative statement of decision three (3) times but only followed the statutory procedure of objecting to certain points in the statement of decision.

³ This was not the first time Farrow failed to obtain owner authorization. In 2021 (4th bullet point on page 3), Adobe informed Permit Sonoma that it completed sewer plans which were awaiting owner authorization. Farrow never requested CMS provide authorization. (Exhibit B hereto)

As explained in prior correspondence and herein, Farrow’s repeated lack of diligence and failed efforts for five (5) years belie any promises or apparent attempts to comply with the CUP.⁴ Its words and actions have resulted in virtually no progress towards legalizing its use of the Property. CMS is at its wits end, has no faith in Farrow’s intentions to bring its use into compliance. It does not authorize the applications.

CMS requests this hearing go forward on October 26, 2023, and the CUP be revoked as non-compliant with the CUP as well as for being a public nuisance. As the Staff Report concludes, “Building violations leading to potentially dangerous conditions and non compliance with the Use Permit have been well documented and the failure to comply constitutes a nuisance.” (P. 4) Short of revocation of the permit, there is nothing to stop the continuance of Farrow’s pattern of operating illegally, empty promises, and incomplete applications in last minute efforts at purported compliance.

Thank you for your consideration of this matter.

Very truly yours,

Rose M. Zoia

Rose M. Zoia

Encl.

cc via email only:

Chair Kevin Deas
Commissioner Lawrence Reed
Commissioner Evan Wiig
Commissioner Eric Koenigshofer
Stacey Ciddio, Managing Member, CMS Properties LLC
Tennis Wick, Director, Planning
Scott Orr, Deputy Director, Planning
Cecily Condon, Planning Manager, Project Review
Michael Shklovsky, Esq.
Christopher M. Mazzia, Esq.

⁴ In an email from Mr. Farrow to Permit Sonoma staff dated August 30, 2023, Mr. Farrow characterizes his occupancy of the site as “the short time we have leased the property from the landlords.” (Document received in response to CMS’s public records act request to the County.) Five years is not a “short time” by the measure of time required to comply with conditions of approval and cure the violations.

EXHIBIT A

From: [Dan Patalano](#)
To: [Karen Brown](#)
Subject: Fw: Inspection
Date: Tuesday, September 26, 2023 2:10:35 PM

Here are the other ones

From: Troy Saldana <troy@farrowreadymix.com>
Sent: Friday, August 18, 2023 4:23 PM
To: Dan Patalano <Dan.Patalano@sonoma-county.org>
Subject: Re: Inspection

Good afternoon Dan,

I have already set up our account and will reach out to Diana Shinn early next week for help completing the technical questions so that our account gets set up correctly the first time.
The account is set up under Farrow Ready Mix, Inc. 3660 Copperhill Lane, Santa Rosa, CA 95403. I've got a CERS ID number if that will be of help.

Thank you again and we will get this done as promptly as we can.

Respectfully,

Troy Saldana

Senior Operations Manager

Farrow Ready Mix Inc.

3660 Copperhill Lane
Santa Rosa, CA 95403

707-919-0272 Main
707-919-0261 Direct
707-890-0210 Mobile

www.farrowreadymix.com

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On Fri, Aug 18, 2023 at 3:08 PM Dan Patalano <Dan.Patalano@sonoma-county.org> wrote:

Troy

Thanks to you and Justin for your time during the inspection of your facility. Per our discussion you are required by the state to be enrolled with the California Environmental Reporting System or CERS. I have included the links below. Once your are in the county records system I will send you a copy of the inspections we completed today. Please let me know when your CERS account has been opened so I can input the data. You are storing reportable quantities of hazardous material as well as generating hazardous waste. You will need to complete a Hazardous Materials Business Plan, Chemical Inventory, Site Plan, Contingency Plan and Training Plan. I noted no safety violations during the inspection. All violations are administrative.

I have included a list of consultants if you need help getting your account up and running. I recommend Diana Shinn

<https://permitsonoma.org/divisions/firepreventionandhazmat/servicesandfees/hazardousmaterialsunitandcupaprogram/hazardousmaterialsbusinessplan>

Dan Patalano
Fire Hazardous Materials Inspector II
Hazardous Materials Specialist
Permit Sonoma Fire Prevention Division
2300 County Center Dr. Ste. 220 Bldg B
Santa Rosa, CA. 95403
Phone: 707-565-2024
Fax: 707-565-1172
Cell: 707-696-2913

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EXHIBIT B



From: Casey McDonald <CMcDonald@adobeinc.com>
Sent: Friday, August 13, 2021 11:15 AM
To: Brian Keefer <Brian.Keefer@sonoma-county.org>; 'shawn@farrowcommercial.com' <shawn@farrowcommercial.com>
Cc: 'Troy Saldana' <troy@farrowcommercial.com>
Subject: 21161 RE: Farrow Ready Mix, UPE07-0112

EXTERNAL

Hi Brian,

I wanted to touch base again on this project and provide you a quick update on where things are at and pick your brain on how we clear up these violations.

1. We just completed the sewer plans and should be submitting those once they are reviewed and approved by the landlord.
2. We have submitted a water permit to the Town of Windsor for water to serve the site. Meters were already installed and water brought to the site a few years ago, so we just need the water permit from the Town.
3. We are working on the ADA upgrades as required by the Use Permit and plan to submit a plan to the building department.

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3. I have the concrete batch plant plans. Do we just submit the plans with a site plan to clear the violation?

Thanks for your help!

Casey McDonald, P.E.
Project Manager

 **adobe associates, inc.**
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Zyromski Konicek LLP
Attorneys at Law
613 Fourth Street, Suite 203
Santa Rosa, CA 95404
(707) 542-1393 telephone
(707) 542-7697 facsimile
michelle@zklegal.com

Via E-mail and U.S. Mail

October 24, 2023

Blake Hillegas, Supervising Planner
Permit Sonoma, Code Enforcement Division
2550 Ventura Avenue
Santa Rosa, CA 95403

Re: Notice of Intent to Revoke Permit
File No.: UPE-07-0112
APN: 059-250-004

Dear Mr. Hillegas:

This follows our telephone call this morning regarding the above-referenced matter.

As we discussed in that call, please allow this correspondence to request a continuance of the Permit Sonoma Board of Zoning Adjustments public hearing currently scheduled for October 26, 2023 to a date in April 2024 or thereafter, to allow the efforts on behalf of Farrow Commercial, Inc. and Farrow Ready Mix, Inc. toward Code compliance to continue. The Sonoma County Superior Court's October 17, 2023 Judgment in case number SCV-269684, captioned *Farrow Commercial, Inc., a California Corporation v. CMS Properties LLC, a California limited liability company*, a copy of which I provided you in my October 19, 2023 letter, made findings of fact as to those efforts. In addition, as I previously have indicated several times to Permit Sonoma, Farrow's project manager will be out of state on Thursday dealing with a personal family matter and will be unable to appear at the hearing.

Thank you for your consideration of this request.

Very truly yours,

A handwritten signature in blue ink that reads 'Michelle V. Zyromski'.

Michelle V. Zyromski

cc: Clients
Jennifer Klein, Esq.



Robert S. Rutherford
Christopher M. Mazzia
Daniel E. Post
Catherine J. Banti

Lisa L. Yoshida
Michael Shklovsky
Kenneth R. Cyphers
Rose M. Zoia
Zachary A. Carroll

Michael J. Fish
Ryan F. Thomas
Richard C. O'Hare
Tal Segev

October 25, 2023

[Via email only: blake.hillegas@sonoma-county.org]

Blake Hillegas
Supervising Planner
Permit Sonoma
2550 Ventura Avenue
Santa Rosa CA 95403

Re: Board of Zoning Adjustments Hearing: October 26, 2023, 1:20 p.m.
Revocation of Use Permit
File No.: UPE07-0112
Site Address: 3660 Copperhill Lane, Santa Rosa, APN: 059-250-004

Dear Mr. Hillegas:

Please accept this letter regarding the referenced matter. My prior related letters dated September 8, 2023, and September 14, 2023 (Staff Report Attachments 9 & 10) are incorporated herein.

CMS Properties LLC. ("CMS"), the owner of the subject property located at 3660 Copperhill Lane, Santa Rosa, California (the "Property"), supports staff's request that the Board of Zoning Adjustments ("BZA") revoke the subject Conditional Use Permit ("CUP") for noncompliance with the Conditions of Approval and violations of the Sonoma County Code. CMS appreciates staff's attention to this issue and thoughtful report, and thanks code enforcement for its work on this matter.

As stated in my prior letters, Farrow Commercial, Inc. (along with Farrow Ready Mix and other Farrow related entities, "Farrow") has been in violation of the CUP since November 2018 when it purchased the assets of Carl's Ready Mix, the prior tenant on the Property, and immediately occupied a portion of the Property and commenced operations of a concrete batch plant. When Farrow took possession, there were outstanding CUP and Sonoma County Code violations, of which he was aware. As stated in the Staff Report, Permit Sonoma authorized Farrow to operate pursuant to the CUP subject to the conditions of approval in order "to improve local construction efforts resulting from the 2017 Sonoma Complex Fire." (P. 2)

For the past five (5) years, Farrow has failed to satisfy many pre-operational and operational conditions of approval, including, but not limited to, fundamental health and safety necessities such as:

- Obtaining building permits (Condition of Approval (“COA”) # 1)
- Connection to public sewer and water (COA # 6)
- Provision of toilet facilities (COA # 7)
- Provision of a safe, potable water supply meaning, as read with COA # 6, through connection with public water. (COA # 8)
- Construction of sanitary sewer mains (COA # 12; *see* fn 1)
- Obtaining a Sewer Completion Final prior to occupancy (COA # 15)
- Obtaining a permit for construction of sewer facilities prior to obtaining a building permit (COA # 17)
- Construction of water mains and appurtenances in accordance with Town of Windsor Water System Standards or as shown on plans (COA # 20)

Recently, Permit Sonoma Fire Prevention Division reported Farrow has failed to enroll in the California Environmental Reporting System (CERS) and is “storing reportable quantities of hazardous material as well as generating hazardous waste” and, after five (5) years of operation, has yet to complete a Hazardous Materials Business Plan, a Chemical Inventory, a Site Plan, and a Contingency Plan and Training Plan. (Exhibit A hereto)

Since his occupation of the Property, Farrow has continuously operated in noncompliance with the law and regulations in one way or another, all the while pledging to legalize its use. Farrow’s broken promises and feigned efforts to bring the property into compliance include, but are not limited to:

- In 2018, Farrow assured Permit Sonoma that Farrow would legalize the use and work to correct non-compliance with the CUP. (Exhibit A to Staff Report Attachment 9) It has not done so.

- Farrow promised CMS that Farrow would legalize the use many times since he took possession of the Property.¹ (E.g., Exhibits B & F to Staff Report Attachment 9) From about August 2020 to September 2021 Glen Smith, Farrow’s attorney, made assurances that Farrow was working diligently with Adobe Associates, Inc. (“Adobe”) and Permit Sonoma to legalize its operations. Farrow has failed to do so.
- In 2020, Farrow applied to Permit Sonoma to legalize the use and failed to follow through but, instead, withdrew the application. (Exhibit C to Staff Report Attachment 9)
- In 2021, Farrow again retained Adobe to assist with bringing his use into compliance and again failed to follow through. (Exhibits D & E to Staff Report Attachment 9)
- Most recently, and only when faced with the threat of revocation of its permit, Farrow submitted applications for a sewer permit and a building permit three (3) days prior to the deadline imposed by Permit Sonoma, with expired building plans and without obtaining the required owner authorization.

After enduring three (3) years of Farrow operating outside of the law and in violation of the lease between the parties, CMS sent Farrow a notice of eviction in October 2021. Farrow responded by filing a lawsuit against CMS which resulted in 12 days of trial ending in March 2023. After Farrow filed its lawsuit, CMS filed an unlawful detainer (eviction) action against Farrow. Unlawful detainer actions are a summary process that would have resolved the lease dispute issues between the parties expeditiously. The court, however, stayed the unlawful detainer action so the first-filed lawsuit, initiated by Farrow, proceeded.

In an email to the County dated September 1, 2023, Mr. Farrow claims that:

- (1) It has worked to get the property into compliance “over the last three years since [it] took possession” of the property.

In fact, Farrow has been in possession for five years.

- (2) It was a week away from submitting the complete package to satisfy all 56-conditions, [sic] “when the landlord filed legal action to get us off the property so they could sell it.”

¹ In reliance, CMS, at its expense, caused water and sewer lines to be brought to the property line and installed a water meter and sewer lateral lines onto the property so Farrow could hook up to them for that aspect of compliance.

In fact, Farrow filed the first lawsuit which led to a longer judicial process. Further, CMS did not serve Farrow with a notice of eviction so it could sell the property, it did so because Farrow had occupied and used the property in violation of the lease and the CUP for three years at that point. In any event, a sale of property does not, in and of itself, terminate a lease.²

Contrary to Farrow's complaints, neither the notice of eviction nor the fact that it filed a lawsuit against CMS prevented Farrow from coming into compliance with the CUP. (*Please see Staff Report Attachment 10, pp. 3-4*) In fact, during the trial, Farrow admitted that it is operating in violation of the CUP and that it has been promising to correct the violations since at least October 2018.

On August 16 and 28, 2023, Permit Sonoma sent Notices of Intent to Revoke Permit to Farrow notifying it of the scheduling of this hearing to revoke the CUP or, alternatively, advising that it may bring the CUP into compliance and contact staff for inspection no later than 5:00 p.m. on September 15, 2023. Farrow waited until the eleventh hour, September 12, 2023, nearly a month after the first Notice and three days prior to the September 15th deadline, to submit applications for the required permits, which were incomplete and rejected. On September 13, 2023, Permit Sonoma advised Farrow that the applications were not accepted for failure to obtain owner authorization. (Exhibits A and B to Staff Report Attachment 10.) In addition, they included outdated plans. Contrary to Farrow's claim that CMS "refused" to provide authorization (Staff Report Attachment 8), Farrow has never asked CMS to do so.³

Without any evidence to support its hyperbolic statement, Farrow claims CMS made "a special trip to the Permit Sonoma office to clearly state that they will not sign the necessary authorization forms." (Staff Report Attachment 12, p. 2) In fact, on September 13, 2023, Stacey Ciddio, Managing Member of CMS, visited Permit Sonoma simply to obtain copies of the applications submitted by Farrow on September 12, 2023, since CMS had no notice of their submission. When asked by staff if she authorized the applications, she responded no. Farrow had not presented them to CMS prior to submission.

² Also contrary to Mr. Farrow's statements in that email, CMS did not "appeal" the court's tentative statement of decision three (3) times but only followed the statutory procedure of objecting to certain points in the statement of decision.

³ This was not the first time Farrow failed to obtain owner authorization. In 2021 (4th bullet point on page 3), Adobe informed Permit Sonoma that it completed sewer plans which were awaiting owner authorization. Farrow never requested CMS provide authorization. (Exhibit B hereto)

As explained in prior correspondence and herein, Farrow’s repeated lack of diligence and failed efforts for five (5) years belie any promises or apparent attempts to comply with the CUP.⁴ Its words and actions have resulted in virtually no progress towards legalizing its use of the Property. CMS is at its wits end, has no faith in Farrow’s intentions to bring its use into compliance. It does not authorize the applications.

CMS requests this hearing go forward on October 26, 2023, and the CUP be revoked as non-compliant with the CUP as well as for being a public nuisance. As the Staff Report concludes, “Building violations leading to potentially dangerous conditions and non compliance with the Use Permit have been well documented and the failure to comply constitutes a nuisance.” (P. 4) Short of revocation of the permit, there is nothing to stop the continuance of Farrow’s pattern of operating illegally, empty promises, and incomplete applications in last minute efforts at purported compliance.

Thank you for your consideration of this matter.

Very truly yours,

Rose M. Zoia

Rose M. Zoia

Encl.

cc via email only:

Chair Kevin Deas
Commissioner Lawrence Reed
Commissioner Evan Wiig
Commissioner Eric Koenigshofer
Stacey Ciddio, Managing Member, CMS Properties LLC
Tennis Wick, Director, Planning
Scott Orr, Deputy Director, Planning
Cecily Condon, Planning Manager, Project Review
Michael Shklovsky, Esq.
Christopher M. Mazzia, Esq.

⁴ In an email from Mr. Farrow to Permit Sonoma staff dated August 30, 2023, Mr. Farrow characterizes his occupancy of the site as “the short time we have leased the property from the landlords.” (Document received in response to CMS’s public records act request to the County.) Five years is not a “short time” by the measure of time required to comply with conditions of approval and cure the violations.

EXHIBIT A

From: [Dan Patalano](#)
To: [Karen Brown](#)
Subject: Fw: Inspection
Date: Tuesday, September 26, 2023 2:10:35 PM

Here are the other ones

From: Troy Saldana <troy@farrowreadymix.com>
Sent: Friday, August 18, 2023 4:23 PM
To: Dan Patalano <Dan.Patalano@sonoma-county.org>
Subject: Re: Inspection

EXTERNAL

Good afternoon Dan,

I have already set up our account and will reach out to Diana Shinn early next week for help completing the technical questions so that our account gets set up correctly the first time.
The account is set up under Farrow Ready Mix, Inc. 3660 Copperhill Lane, Santa Rosa, CA 95403. I've got a CERS ID number if that will be of help.

Thank you again and we will get this done as promptly as we can.

Respectfully,

Troy Saldana

Senior Operations Manager

Farrow Ready Mix Inc.

3660 Copperhill Lane
Santa Rosa, CA 95403

707-919-0272 Main
707-919-0261 Direct
707-890-0210 Mobile

www.farrowreadymix.com

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On Fri, Aug 18, 2023 at 3:08 PM Dan Patalano <Dan.Patalano@sonoma-county.org> wrote:

Troy

Thanks to you and Justin for your time during the inspection of your facility. Per our discussion you are required by the state to be enrolled with the California Environmental Reporting System or CERS. I have included the links below. Once your are in the county records system I will send you a copy of the inspections we completed today. Please let me know when your CERS account has been opened so I can input the data. You are storing reportable quantities of hazardous material as well as generating hazardous waste. You will need to complete a Hazardous Materials Business Plan, Chemical Inventory, Site Plan, Contingency Plan and Training Plan. I noted no safety violations during the inspection. All violations are administrative.

I have included a list of consultants if you need help getting your account up and running. I recommend Diana Shinn

<https://permitsonoma.org/divisions/firepreventionandhazmat/servicesandfees/hazardousmaterialsunitandcupaprogram/hazardousmaterialsbusinessplan>

Dan Patalano
Fire Hazardous Materials Inspector II
Hazardous Materials Specialist
Permit Sonoma Fire Prevention Division
2300 County Center Dr. Ste. 220 Bldg B
Santa Rosa, CA. 95403
Phone: 707-565-2024
Fax: 707-565-1172
Cell: 707-696-2913

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EXHIBIT B



From: Casey McDonald <CMcDonald@adobeinc.com>
Sent: Friday, August 13, 2021 11:15 AM
To: Brian Keefer <Brian.Keefer@sonoma-county.org>; 'shawn@farrowcommercial.com' <shawn@farrowcommercial.com>
Cc: 'Troy Saldana' <troy@farrowcommercial.com>
Subject: 21161 RE: Farrow Ready Mix, UPE07-0112

EXTERNAL

Hi Brian,

I wanted to touch base again on this project and provide you a quick update on where things are at and pick your brain on how we clear up these violations.

1. We just completed the sewer plans and should be submitting those once they are reviewed and approved by the landlord.
2. We have submitted a water permit to the Town of Windsor for water to serve the site. Meters were already installed and water brought to the site a few years ago, so we just need the water permit from the Town.
3. We are working on the ADA upgrades as required by the Use Permit and plan to submit a plan to the building department.

My understanding is that we have 3 violations: Water Tank, Batch Plant and Commercial Coach.

1. The water tank requiring a building permit is not longer there and there are several 5,000 gallon tanks on-site, which do not require a permit. Do we need to do anything to clear up the tank violation?
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Thanks for your help!

Casey McDonald, P.E.
Project Manager



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michelle@zklegal.com

Via E-mail and U.S. Mail

October 24, 2023

Blake Hillegas, Supervising Planner
Permit Sonoma, Code Enforcement Division
2550 Ventura Avenue
Santa Rosa, CA 95403

Re: Notice of Intent to Revoke Permit
File No.: UPE-07-0112
APN: 059-250-004

Dear Mr. Hillegas:

This follows our telephone call this morning regarding the above-referenced matter.

As we discussed in that call, please allow this correspondence to request a continuance of the Permit Sonoma Board of Zoning Adjustments public hearing currently scheduled for October 26, 2023 to a date in April 2024 or thereafter, to allow the efforts on behalf of Farrow Commercial, Inc. and Farrow Ready Mix, Inc. toward Code compliance to continue. The Sonoma County Superior Court's October 17, 2023 Judgment in case number SCV-269684, captioned *Farrow Commercial, Inc., a California Corporation v. CMS Properties LLC, a California limited liability company*, a copy of which I provided you in my October 19, 2023 letter, made findings of fact as to those efforts. In addition, as I previously have indicated several times to Permit Sonoma, Farrow's project manager will be out of state on Thursday dealing with a personal family matter and will be unable to appear at the hearing.

Thank you for your consideration of this request.

Very truly yours,

A handwritten signature in blue ink that reads 'Michelle V. Zyromski'.

Michelle V. Zyromski

cc: Clients
Jennifer Klein, Esq.

From: [Rose M. Zoia](#)
To: [Blake Hillegas](#)
Cc: [Kevin Deas](#); [Larry Reed](#); [Evan Wiig](#); [Eric Koenigshofer](#); [Eric Koenigshofer \(ejklaw@yahoo.com\)](#); [Stacey Ciddio](#); [Tennis Wick](#); [Scott Orr](#); [Cecily Condon](#); [Michael Shklovsky](#); [Chris Mazzia](#)
Subject: RE: BZA hearing 10/26/23 / Farrow Ready Mix Revocation of Use Permit / Farrow's request for continuance
Date: Friday, October 20, 2023 10:50:18 AM
Attachments: [image001.png](#)

EXTERNAL

Good morning, Blake,

I neglected to mention in my October 19, 2023, letter sent to you and the cc'd individuals yesterday that, in addition, to Farrow's other lawyer, Glenn Smith, and the other attorneys in both law firms retained by Farrow, Michelle Zyromski's October 16, 2023 email does not state Mr. Farrow himself is not available to attend the October 26, 2023, hearing. Thus, there are many applicant representatives besides Ms. Zyromski, who is one of its attorneys, and Troy Saldana, who is one of its employees, who can attend the hearing, which has been scheduled for about two months.

Thank you for your attention to this matter.

Regards,

~Rose Zoia

Rose M. Zoia

signature_544096126



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Santa Rosa, CA 95404
(707)545-4910 Tel
(707)544-0260 Fax
rzoia@andersonzeigler.com
www.andersonzeigler.com

From: Rose M. Zoia

Sent: Thursday, October 19, 2023 12:01 PM

To: Blake Hillegas <Blake.Hillegas@sonoma-county.org>

Cc: 'kevin.deas@sonoma-county.org' <kevin.deas@sonoma-county.org>; 'lawrence.reed@sonoma-county.org' <lawrence.reed@sonoma-county.org>; 'evan.wiig@sonoma-county.org' <evan.wiig@sonoma-county.org>; 'eric.koenigshofer@sonoma-county.org' <eric.koenigshofer@sonoma-county.org>; Eric Koenigshofer (ejklaw@yahoo.com) <ejklaw@yahoo.com>; Stacey Ciddio <sltinker12@gmail.com>; tennis.wick@sonoma-county.org; Scott Orr <Scott.Orr@sonoma-county.org>; Cecily.Condon@sonoma-county.org; Michael Shklovsky

<mshklovsky@andersonzeigler.com>; Chris Mazzia <cmazzia@andersonzeigler.com>

Subject: BZA hearing 10/26/23 / Farrow Ready Mix Revocation of Use Permit / Farrow's request for continuance

Dear Blake,

Please see attached letter regarding the subject matter. Thank you.

Regards,

~Rose Zoia

Rose M. Zoia

signature_544096126



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(707)544-0260 Fax
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