

ORIGINAL

FAXED

JMBM
Jeffer Mangels
Butler & Mitchell LLP

1 JEFFER MANGELS BUTLER & MITCHELL LLP
KERRY SHAPIRO (Bar No. 133912)

2 *kshapiro@jmbm.com*

3 MATTHEW J. SANDERS (Bar No. 222757)

4 *msanders@jmbm.com*

Two Embarcadero Center, 5th Floor
San Francisco, California 94111-3813

Telephone: (415) 398-8080

5 Facsimile: (415) 398-5584

6 JEFFER MANGELS BUTLER & MITCHELL LLP

MATTHEW D. HINKS (Bar No. 200750)

7 *mhinks@jmbm.com*

LARA R. LEITNER (Bar No. 303162)

8 *lleitner@jmbm.com*

1900 Avenue of the Stars, 7th Floor

9 Los Angeles, California 90067-4308

Telephone: (310) 203-8080

10 Facsimile: (310) 203-0567

11 Attorneys for Plaintiff Cemex, Inc.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

14
15 CEMEX, INC. a Louisiana Corporation,

16 Plaintiff,

17 v.

18 CITY OF SANTA CLARITA; and Does 1
through 50, inclusive,

19 Defendants.
20

Case No.

BC688074

COMPLAINT FOR:

1. BREACH OF CONTRACT
2. DECLARATORY RELIEF
3. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
4. CIVIL RIGHTS VIOLATIONS, 42 U.S.C. § 1983

21
22 INTRODUCTION

23 1. Plaintiff CEMEX, Inc. ("Plaintiff" or "CEMEX") brings this action against
24 Defendant City of Santa Clarita ("Defendant" or "City") for breach of contract, declaratory and
25 injunctive relief, breach of the implied covenant of good faith and fair dealing, and for Civil
26 Rights Violations pursuant to 42 U.S.C. § 1983 based upon the City's numerous and deliberate
27 violations of a settlement agreement between CEMEX and the City that resolved prior litigation
28 brought by CEMEX several years ago challenging the City's improper efforts in 2005 to annex

COMPLAINT FOR BREACH OF CONTRACT, DECLARATORY RELIEF, BREACH OF IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING, AND VIOLATIONS OF 42 U.S.C. § 1983

FILED
Superior Court of California
County of Los Angeles

DEC 22 2017

Sherrill B. Carter, Executive Officer/Clerk

By Marlon Gomez Deputy

FEES PAID

DEC 22 2017

8435

BC688074

cc#621759 097

9/4

00000000000000000000

Sharon Gomez
Sharon Gomez
Sharon Gomez

DEC 55 2011

County of Los Angeles
Department of Public Works
Sanitation Division

11/21/2017

1 CEMEX's mining site, in much the same way as the City seeks now in 2017 to improperly annex
2 that same CEMEX mining site, along with other improper actions.

3 2. Two miles outside the City's municipal boundaries, in unincorporated Los Angeles
4 County, lies an unusually high-quality deposit of sand and gravel, or "aggregates." The deposit
5 has been designated by the State of California to be regionally significant, meaning that it is a
6 crucial source of construction-grade aggregates for a region faced with a growing need for
7 aggregates and ever fewer sources to supply them. So it was that nearly 30 years ago, the federal
8 government, which owns much of the mineral estate in this untapped deposit, put up for
9 competitive bid the right to mine and sell sand and gravel from the deposit. The predecessor of
10 CEMEX won the contracts in 1990. Since that time, CEMEX has undertaken extraordinary
11 efforts secure the entitlements required to begin operations. CEMEX secured the primary
12 entitlements for the Soledad Canyon Sand and Gravel Mining Project ("Soledad Canyon Project")
13 nearly 15 years ago, and is currently working to obtain the remaining, ancillary entitlements.

14 3. After the contracts were signed, the City began what would prove to be a multi-
15 million dollar, decades-long campaign to obstruct, interfere with, and otherwise oppose the
16 Soledad Canyon Project. In the ensuing years, the City's NIMBY (not-in-my-backyard) campaign
17 has included multiple unsuccessful lawsuits, some ending with attorney fee sanctions against the
18 City for bad faith litigation actions, failed land-use challenges and changes, untoward public
19 relations campaigns and political efforts, and every other manner of vexatious conduct. In 2005,
20 as part of its overall opposition campaign, the City tried to annex the Soledad Canyon Project Site
21 so as to obtain jurisdiction over the Site in order to shut down the Project. But the City's hasty
22 and pretextual annexation process was unlawful under state law, and when CEMEX sued, the City
23 quickly entered into a settlement agreement that required the City to prepare a full environmental
24 analysis, and notice to CEMEX, of any proposal to annex the Soledad Canyon Project Site. The
25 City abandoned the annexation effort instead.

26 4. Now, twelve years after signing the settlement agreement, the City and its affiliates
27 are acting in total disregard of the settlement agreement's terms, and have breached the agreement
28 in multiple ways. The City has once again proposed to annex the Soledad Canyon Project Site,

once again without the environmental review and notices to CEMEX that are required under the settlement agreement and state law. This latest salvo in the City's relentless campaign against the Soledad Canyon Project, with the City's varying forms of political influence, bad-faith litigation tactics, and public-relations smear campaigns, strikes a chord remarkably similar to the facts in a recent judicial ruling involving unlawful actions taken by public officials and project opponents to block the operations of two surface mining companies. *See Hardesty v. Sacramento Metro. Air Quality Mgmt. Dist.*, Docket Nos. 469, 529-30, Case No. 2:10-cv-2414-KJM-KJN (E.D. Cal. 2017). The jury in *Hardesty* awarded the surface mining companies over \$100 million in damages. The City's illegal actions will fare no better in this case.

PARTIES

5. CEMEX, formerly named Southdown, Inc. d/b/a Transit Mixed Concrete Company, is, and at all times herein mentioned was, a Louisiana corporation qualified to do business in the State of California. CEMEX has entered into two contracts with the United States of America (the "Federal Contracts") to mine and produce 56.1 million tons of federally owned sand and gravel on an approximately 500-acre site located in the unincorporated area of Los Angeles County known as Soledad Canyon, almost two miles from the City's municipal boundary. Pursuant to the Federal Contracts, CEMEX and its predecessors-in-interest have proposed the Soledad Canyon Project.

6. Upon information and belief, Defendant City is an incorporated city within the County of Los Angeles. The City has long opposed the Soledad Canyon Project, and has engaged in a multi-million dollar public relations, political, administrative, legal and land acquisition campaign to oppose the Project for many decades. The City is the "lead agency" for the annexation plan at issue in this case within the meaning of the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 *et seq.*

7. Plaintiff is ignorant of the true names and capacities of the defendants named herein as Does 1 through 50, inclusive. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein each of the Defendants was and is the agent and/or employee of each

1 of the remaining Defendants and, in doing the things herein alleged, was acting within the scope
2 of such agency.

3 JURISDICTION AND VENUE

4 8. State courts of general jurisdiction have concurrent authority to adjudicate actions
5 arising under 42 U.S.C. § 1983.

6 9. Venue is proper in this Court pursuant to California Code of Civil Procedure § 395
7 because the actions complained of in this complaint took place in Los Angeles County; the
8 settlement agreement referred to herein was entered into in Los Angeles County; all parties do
9 business in Los Angeles County.

10 FACTS COMMON TO ALL CAUSES OF ACTION

11 The Soledad Canyon Project

12 10. In 1990, CEMEX's predecessor signed the "Federal Contracts" with the U.S.
13 Bureau of Land Management ("BLM"). The Federal Contracts gave the company the right,
14 subject to federal and state regulatory approvals, to mine and produce 56.1 million tons of
15 federally owned sand and gravel from the approximately 500-acre Soledad Canyon Project Site in
16 unincorporated Los Angeles County, 30 miles north of Los Angeles and near the City of Santa
17 Clarita.

18 11. The Soledad Canyon Project Site is zoned for heavy manufacturing by Los Angeles
19 County and is adjacent to two other longstanding, active aggregate mines currently operating on
20 private land. The California State Geologist has classified the Soledad Canyon site, and the
21 surrounding area, as an MRZ-2 valuable mineral deposit, and designated the site as a Regionally
22 Significant Construction Aggregate Resource Area. The mineral resources in this Resource Area
23 are extremely valuable because the market is located close to the production area, significantly
24 reducing haul costs and emissions of airborne pollutants and greenhouse gases. The California
25 Geological Survey reports that current permitted reserves in the San Fernando Valley-Saugus
26 Newhall Production-Consumption Region, where the State-designated Resource Area is located,
27 are severely depleted, and that absent the development of new permitted reserves, current
28 permitted reserves in Los Angeles County will be depleted by 2021.

12. In May 1990, Plaintiff's predecessor submitted to BLM a proposed mining and reclamation plan to mine the Soledad Canyon Project Site pursuant to the Federal Contracts. BLM prepared an exhaustive environmental review for the Soledad Canyon Project, and, on August 1, 2000, issued a Record of Decision approving the Project.

The City's Opposition to the Soledad Canyon Project

13. The City vociferously opposed any mining at the Site, and immediately challenged the Record of Decision and related federal determinations for the Soledad Canyon Project in administrative tribunals and the federal and state court systems. Over the next seven years (2000-2007), Plaintiff and the federal government successfully defended the Project from multiple challenges brought by the City, thereby protecting and preserving Plaintiff's future right to production at the Soledad Canyon Project Site under appropriate conditions, the public's need for the aggregate at the site, and the United States' interest in the prospective royalties from Plaintiff's mining activities. In a several of these lawsuits, the City, after losing the cases, was sanctioned with attorneys' fee awards based on bad faith litigation. *See, e.g., Sierra Club*, 156 Interior Board of Land Appeals ("IBLA") 144, 168 (2002) (affirming ROD); *City of Santa Clarita v. U.S. Dep't of the Interior*, 249 F. App'x 502, 505 (9th Cir. 2007) (affirming summary judgment against challenges to the ROD and the U.S. Fish and Wildlife Service's biological opinion); *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 450 F.3d 930, 944 (9th Cir. 2006) (affirming biological opinion); *Cemex Inc. v. Los Angeles Cty.*, 166 F. App'x 306, 307-08 (9th Cir. 2006) (affirming rejection of challenge to consent decree between CEMEX, county, and federal government resolving county opposition to Project).

14. In 2004, a consent decree was entered into between the BLM, CEMEX and Los Angeles County ("County") resulting in, among other things, Los Angeles County issuing approval of CEMEX's mining plan. *City of Santa Clarita v. Los Angeles Cty. Bd. of Supervisors*, No. 04-cv-7355 (C.D. Cal. June 17, 2008) (granting summary judgment motions of the United States, CEMEX, and the County of Los Angeles). The County's final mining plan approval, issued after another exhaustive environmental review, spawned an additional round of litigation in state court (removed to federal court) brought by the City. *See Order, City of Santa Clarita v. Los*

1 *Angeles Cty. Bd. of Supervisors*, No. 04-cv-7355 (C.D. Cal. June 17, 2008). The frivolous and
2 lengthy litigation brought by the City against the Soledad Canyon Project did not conclude until
3 2009, when the City dismissed its appeal of one of the district court's awards of attorney's fees
4 against it for bad-faith litigation in attempting to block the Project. *See Order, City of Santa*
5 *Clarita v. Los Angeles Cty. Bd. of Supervisors*, No. 08-56493 (9th Cir. Mar. 3, 2009); *id.*, No.
6 2:04-cv-7355, 2008 WL 4926964, at *5 (C.D. Cal. Nov. 14, 2008).

7 15. As discussed above, the City's relentless campaign against the Soledad Canyon
8 Project is similar to the unlawful actions taken by public officials against two surface mining
9 companies at issue in *Hardesty v. Sacramento Metro. Air Quality Mgmt. Dist.*, Docket Nos. 469,
10 529-30, Case No. 2:10-cv-2414-KJM-KJN (E.D. Cal. 2017), for which the jury awarded the
11 companies over \$100 million in damages.

12 16. Consistent with the City's pattern of persistent and transparent litigation tactics
13 designed to interfere with the Soledad Canyon Project, the City has also previously attempted to
14 establish jurisdiction over the Soledad Canyon Project Site in order to stop or interfere with the
15 Project. After the Federal Contracts were awarded, the City purchased the surface estate of the
16 Soledad Canyon Project Site. In 2000, the City attempted to expand its sphere of influence to
17 include the Soledad Canyon Project Site, which attempt Plaintiff's predecessor successfully
18 opposed. In 2005, the City attempted to annex 1,885 acres of land, including the Soledad Canyon
19 Project Site ("2005 Annexation Project").

20 17. In 2005, the City prepared a Mitigated Negative Declaration/Initial Study, as well
21 as other documents, for the 2005 Annexation Project, which documents failed to mention or
22 discuss the Soledad Canyon Project; the designation of the Soledad Canyon Project Site and
23 surrounding area as a regionally significant source of aggregates; the fact that the United States
24 owned the mineral estate in and around the Soledad Canyon Project Site (notwithstanding the
25 City's purchase of the surface estate); or the effect the 2005 Annexation Project might have on the
26 Soledad Canyon Project. The City's true motivation for the 2005 Annexation Project was to
27 interfere with and stop the Soledad Canyon Project.

The Settlement Agreement

18. On December 14, 2005, Plaintiff filed a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief against the City for its actions associated with the 2005 Annexation Project. Among other deficiencies, Plaintiff challenged the City's decision to prepare a legally inadequate Mitigated Negative Declaration/Initial Study, and in taking various official actions predicated on such inadequate environmental review, *Cemex, Inc. v. City of Santa Clarita, et al.*, No. BS100710 (Superior Court, County of Los Angeles). This CEQA lawsuit resulted in a settlement agreement executed in August 2006 by and between Plaintiff and the City (the "Settlement Agreement"). A true and correct copy of the Settlement Agreement is attached hereto as Exhibit A.

19. Pursuant to Section 1.1 of the Settlement Agreement, "any and all actions taken by the City" prior to the Settlement Agreement and "relating to annexation of the Soledad Canyon Area" were rescinded. Pursuant to Section 1.2 of the Settlement Agreement, the City agreed, and therefore was required, to prepare an Environmental Impact Report ("EIR") for the 2005 Annexation Project, or for "any annexation plans similar thereto."

The 2017 Annexation Project

20. On November 14, 2017, the City issued a proposed Negative Declaration ("ND/IS") for the Sphere of Influence Amendment, Prezone, General Plan Amendment, and Annexation comprising the 2017 Annexation Project, which the City labeled as "Master Case 17-178." The ND/IS evaluated the proposed annexation of 4.21 square miles, or 2694.4 acres, which area includes nearly the entirety of the Soledad Canyon Project Site. The City provided a 21-day public comment period on the ND/IS, but did not provide notice to Plaintiff of the availability of the ND/IS. Plaintiff believes that the City did not provide notice to BLM, the owner of the mineral estate in and around the Soledad Canyon Project Site.

21. On December 5, 2017, on the same day the public comment period on the ND/IS closed, the City's Planning Commission held a hearing on the 2017 Annexation Project. During the hearing, the Planning Commission adopted the recommendation of its staff to adopt Resolution No. P17-17, which resolution recommends that the City Council adopt a resolution to adopt the

1 ND/IS and approve Master Case 17-178; General Plan Amendment 17-002; Prezone 17-001 for
2 the Eastside Open Space Annexation.

3 22. The 2017 Annexation Project constitutes an "annexation plan similar" to the 2005
4 Annexation Project that was the subject of the Settlement Agreement for the following reasons: (1)
5 both annexation projects would annex nearly the entire CEMEX Soledad Canyon Project Site; (2)
6 both projects would annex the same portions of the CEMEX Soledad Canyon Project Site; and (3)
7 both projects require zoning amendments and amendments to the City's General Plan and sphere of
8 influence, as well as prezoning, specifically to permit annexation of the Soledad Canyon Project Site.
9 The Soledad Canyon Project remains unchanged relative to the City's two annexation attempts; it
10 was fully reviewed and entitled in 2005, and it remains fully reviewed and entitled in 2017.

11 23. For the 2005 Annexation Project, the City effectively admitted that it deliberately
12 failed to mention or discuss the Soledad Canyon Project or the fact that the United States owned the
13 mineral estate in and around the Soledad Canyon Project Site. *The City also admitted, in multiple*
14 *public statements, that the true purpose of the annexation was to interfere with and stop the*
15 *Soledad Canyon Project.* With the 2017 Annexation Project the City has done, and is doing,
16 precisely the same things for the same reason.

17 24. With the 2017 Annexation Project, the City has disregarded its legal and contractual
18 obligation to prepare an EIR in connection with such annexation plans. The City has instead
19 predicated its proposals for a General Plan Amendment (General Plan Amendment 17-002) and Zone
20 Change (Prezone 17-001) on its proposed Negative Declaration/Initial Study ("ND/IS"). The City's
21 failure to prepare an EIR and instead prepare an ND/IS for its present annexation plans is a breach of
22 the Settlement Agreement.

23 25. In addition, the City has violated numerous notice requirements under the Settlement
24 Agreement. Section 1.5 of the Settlement Agreement requires, among other things, that the City
25 "provide written notice of any public hearing, public meeting, or public workshop regarding the
26 Project or the EIR to CEMEX and its counsel of record at least ten (10) business days prior to any
27 such public hearing, public meeting, or public workshop, or earlier if required by the applicable
28 provisions of law." Section 1.5 of the Settlement Agreement further requires the City to email

1 Plaintiff and its counsel copies of any other notices required by law, such as the Notice of
2 Preparation and Notice of Completion of the Draft EIR. Section 1.6 of the Settlement agreement
3 requires the City to provide Plaintiff with copies of any agenda item and/or staff report "regarding
4 the Annexation Project" as soon as such items are available to the public.

5 26. Since the City was required to prepare an EIR for the 2017 Annexation Project
6 pursuant to Section 1.2 of the Settlement Agreement, it was also required to provide, prior to any
7 pertinent public hearings, the notices mandated by Settlement Agreement Sections 1.5 and 1.6. the
8 City has failed to comply with these provisions of the Settlement Agreement, and refuses to provide
9 Plaintiff with the requisite documentation. The City's failure to do so constitutes another breach of
10 the Settlement Agreement.

11 27. The City's actions are not taken in good faith. Though the City publicly
12 acknowledged during the August 23, 2006 scoping session that the EIR process was the result of a
13 litigation settlement, the City's actions and representations regarding the 2017 Annexation Project
14 are unresponsive to, and inconsistent with, the underlying substance of Plaintiff's lawsuit and the
15 "spirit" of that settlement. All parties understood and contractually acknowledged that the
16 annexation of the Soledad Canyon site could lead to potentially significant environmental impacts,
17 and that Plaintiff, as the proponent of the Soledad Canyon Project, deserved a meaningful
18 opportunity to be heard in the City's process of considering those impacts. It was for these reasons
19 that the City obligated itself to analyze the potentially significant impacts of the annexation of the
20 Soledad Canyon site in an EIR, and to notify and include Plaintiff in the review and approval
21 process.

22 28. In short, the City's current 2017 Annexation Project and actions taken in connection
23 therewith are required to conform to numerous substantive review and notice requirements of the
24 Settlement Agreement. The City has complied with none of these requirements, and has failed to
25 abide by the intent and spirit of the Settlement Agreement. Upon Plaintiff's information and belief,
26 the City denies that these contentions are true.

27 29. The City's current 2017 Annexation Project and actions taken in connection therewith
28 have caused and will cause Plaintiff irreparable harm and substantial damages. Such damages

1 include but are not limited to the fair market value of the minerals that Plaintiff is entitled to mine
2 under the Federal Contracts, as well as the attorneys' fees and costs Plaintiff has incurred, and
3 continues to incur, in objecting to and commenting on the City's 2017 Annexation Project and in
4 filing and prosecuting this action.

5 **FIRST CAUSE OF ACTION**

6 **(For Breach of Contract)**

7 30. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 29 above as
8 though fully set forth herein.

9 31. Plaintiff, on the one hand, and Defendant City, on the other hand, are parties to the
10 Settlement Agreement executed in August 2006. The Settlement Agreement is a binding and
11 enforceable written agreement between the parties.

12 32. Plaintiff has fully performed each and every material term, condition, and covenant
13 required to be performed under the Settlement Agreement, except insofar as the requirement of
14 full performance was waived and/or excused as a result of, *inter alia*, the repudiation caused by
15 Defendant's breaches of contract, wrongful conduct, and failure to perform as alleged herein.

16 33. Section 1.2 of the Settlement Agreement requires Defendant City to prepare an EIR
17 for the 2005 Annexation Project or "any annexation plans similar thereto." Defendant City has
18 breached this provision of the Settlement Agreement by proposing the adoption of a Negative
19 Declaration in connection with the City's 2017 Annexation Project in lieu of preparing an EIR as
20 required by Section 1.2 of the Settlement Agreement.

21 34. Section 1.5 of the Settlement Agreement requires Defendant City to "provide
22 written notice of any public hearing, public meeting, or public workshop regarding the Project or
23 the EIR to CEMEX and its counsel of record at least ten (10) business days prior to any such
24 public hearing, public meeting, or public workshop," and provide copies of any other notices
25 required by law, including the Notice of Preparation and Notice of Completion of the Draft EIR.
26 Similarly, Section 1.6 of the Settlement Agreement requires Defendant City to "provide a copy of
27 any agenda item and/or staff report regarding the Annexation Project to CEMEX and to CEMEX's
28 counsel of record by e-mail as soon as such agenda item and/or staff report is available to the

1 public.

2 35. Defendant City has failed to comply with all of these provisions of the Settlement
3 Agreement, including through Defendant's refusal to provide Plaintiff with the requisite notice of
4 any public hearing, meeting, or workshop pertinent to Defendant City's annexation plans.

5 36. The timely delivery of such documentation was and is especially important to
6 Plaintiff in that Plaintiff, as the proponent of the Soledad Canyon Project, was (and is) legally
7 entitled to a meaningful opportunity to be heard in Defendant's review of the potentially
8 significant environmental impacts of annexation, and required (and requires) adequate time to
9 review the documents in order to mount an informed opposition, where necessary, to Defendant's
10 actions.

11 37. As a result of Defendant City's breaches of the Settlement Agreement, Plaintiff has
12 been deprived of its right to compel the preparation of an EIR in connection with Defendant City's
13 annexation plans, a right Plaintiff has pursuant to the Settlement Agreement.

14 38. As a further result of Defendant City's material breaches of the Settlement
15 Agreement, Plaintiff has been deprived of an adequate forum in which to respond to Defendant
16 City's annexation plans because Plaintiff has never timely received notification of public hearings,
17 meetings, and workshops pertinent to the 2017 Annexation Project as required by Section 1.5 of
18 the Settlement Agreement.

19 39. In light of Defendant City's material breaches, Plaintiff is entitled to specific
20 performance of the Settlement Agreement, and seeks preliminary and permanent injunctive relief
21 to prevent Defendants from taking any further action in connection with the 2017 Annexation
22 Project, and to rescind all actions taken to date in connection with the 2017 Annexation Project.
23 Furthermore, pending the outcome of Plaintiff's claim for damages under the Government Claims
24 Act, recently filed against the City for Defendant City's material breaches of the Settlement
25 Agreement, which were the legal cause of irreparable harm and substantial damage to Plaintiff,
26 Plaintiff intends to amend this Complaint to allege claims for damages, including, but not limited
27 to, damages for breach of contract, tortious interference with contractual relations, and conversion
28 of personal property. Such damages include but are not limited to the fair market value of the

1 minerals that Plaintiff is entitled to mine under the Federal Contracts, as well as the attorneys' fees
2 and costs Plaintiff has incurred, and continues to incur, in objecting to and commenting on the
3 City's 2017 Annexation Project and in filing and prosecuting this action. A true and correct copy
4 Plaintiff's claim under the Government Claims Act is attached hereto as Exhibit B.

5 40. Plaintiff is also entitled to recover its attorneys' fees and costs from Defendant City
6 pursuant to Section 5.2 of the Settlement Agreement.

7 SECOND CAUSE OF ACTION

8 (For Declaratory Relief)

9 41. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 40 above as
10 though fully set forth herein.

11 42. A real and actual controversy exists between Plaintiff and Defendants relating to
12 their respective rights and duties arising out of the Settlement Agreement. Plaintiff contends, and
13 is informed and believes, that Defendants deny that Defendant City's actions materially breach the
14 Settlement Agreement.

15 43. Among other things, Plaintiff contends that Defendant City must: (1) rescind
16 Planning Commission Resolution No. P17-17 and all accompanying environmental
17 documentation, including the ND/IS; (2) rescind its proposals for a General Plan Amendment
18 (General Plan Amendment 17-002) and Zone Change (Prezone 17-001) to the extent they are
19 predicated on the ND/IS; (3) refrain from approving or taking any further action on Master Case
20 No. 17-178 until and unless the City prepares an EIR; (4) provide Plaintiff with written notices of
21 any public hearing, meeting, or workshop regarding the 2017 Annexation Project or the EIR prior
22 to engaging in any further activities in connection with its annexation plans; and (5) provide
23 copies via e-mail of any agenda items or staff reports regarding the 2017 Annexation Project as
24 soon as those documents are made publicly available.

25 44. A judicial declaration is necessary and appropriate at this time under the
26 circumstances in order that Plaintiff may ascertain its rights, duties and obligations under the
27 Settlement Agreement, and eliminate uncertainties and controversies arising from City Resolution
28 P17-17 recommending the adoption of the ND/IS and the approval of Master Case No. 17-178,

General Plan Amendment 17-002, and Prezone 17-001. If no judicial declaration is made, Defendants will continue to violate the Settlement Agreement by pursuing annexation plans without the preparation of an EIR, and depriving Plaintiff of its right to notice of the pertinent administrative proceedings.

45. Plaintiff is therefore entitled to a declaration pursuant to Code of Civil Procedure § 1060 as alleged above.

THIRD CAUSE OF ACTION

(For Breach of the Covenant of Good Faith and Fair Dealing)

46. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 45 above as though fully set forth herein.

47. Plaintiff, on the one hand, and Defendant City, on the other hand, are parties to the Settlement Agreement, which is a binding and enforceable written agreement.

48. Implied in the Settlement Agreement is a covenant that Defendant City would act in good faith and deal fairly with Plaintiff, and that it would do nothing to interfere with the rights of Plaintiff to receive the benefits of the contract.

49. Plaintiff performed all of the conditions and covenants owed to Defendant City under the Settlement Agreement, except for those obligations that may have been excused by the conduct of Defendants.

50. In the alternative, if it is concluded that Defendant City did not breach a specific provision of the Settlement Agreement, then Defendant City's conduct breached the covenant of good faith and fair dealing as set forth herein, thereby depriving Plaintiff of, and interfering with Plaintiff's ability to receive, the benefits of the Settlement Agreement.

51. Defendant City's breaches of the implied covenant are the legal cause of substantial damage to Plaintiff. Plaintiff's damages include, but are not limited to the loss of its contractual rights, loss of the fair market value of the minerals, and the expenditure of substantial attorneys' fees and costs.

1 **FOURTH CAUSE OF ACTION**

2 **(For Violations of 42 U.S.C. § 1983 and the Due Process Clause of the Fifth and Fourteenth**
3 **Amendments to the United States Constitution)**

4 52. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 51 above as
5 though fully set forth herein.

6 53. Title 42 U.S.C. § 1983 establishes that a person may bring an action for damages
7 and injunctive relief against an individual or local government who deprive a plaintiff of rights,
8 privileges, and immunities secured by the United States Constitution or federal law, including but
9 not limited to the Due Process Clause of the Fifth and Fourteenth Amendments to the United
10 States Constitution.

11 54. California courts have held that "a deliberate flouting of the law that trammels
12 significant personal or property rights" is actionable under the Fourteenth Amendment and 42
13 U.S.C. § 1983. *Gallard v. City of Clovis* (2001) 24 Cal. 4th 1003; *see also Hardesty v.*
14 *Sacramento Metro. Air Quality Mgmt. Dist.*, Docket Nos. 469, 529-30, Case No. 2:10-cv-2414-
15 KJM-KJN (E.D. Cal. 2017) (jury awarding surface mining companies \$100 million in damages
16 under Section 1983 for constitutional violations of public officials).

17 55. A governmental action violates due process if it is clearly arbitrary, irrational, or
18 capricious.

19 56. Governmental interference with property rights constitute a violation of a property
20 owner's substantive due process rights where it can be shown that the applicable regulation serves
21 no legitimate governmental purpose or there is no rational relationship between the
22 regulation/action to a government purpose.

23 57. In 1990, Plaintiff's predecessor entered into the Federal Contracts with BLM. The
24 Federal Contracts, which are now held by Plaintiff, give Plaintiff the right, subject to federal and
25 state regulatory approvals, to mine and produce 56.1 million tons of federally owned sand and
26 gravel from the approximately 500-acre Soledad Canyon Project Site. These Contracts give
27 Plaintiff a protected property interest in the ownership and reasonable use of the sand and gravel to
28 be mined and produced.

58. Consistent with its obligations under the Federal Contracts, Plaintiff has secured the primary entitlements for the Soledad Canyon Project and is currently working to obtain the remaining, ancillary entitlements.

59. Defendants, acting under the color of state law, City ordinances, regulations, customs, and usage of regulations and authority, and in violation of 42 U.S.C. § 1983, have deprived Plaintiff of its significant protected property interest under the Federal Contracts and federal law.

60. Defendants, acting under the color of state law, City ordinances, regulations, customs, and usage of regulations and authority, and in violation of 42 U.S.C. § 1983, have deprived Plaintiff of the rights, privileges, and immunities secured by the Due Process Clause of the Fifth and Fourteenth Amendments, specifically the rights to procedural due process and substantive due process, through their ordinances, resolutions, customs, and usage of regulations and authority and practice by arbitrarily, intentionally, and irrationally undertaking efforts to stop or otherwise interfere with the Soledad Canyon Project. Indeed, Defendant City has gone on record to admit that the true purpose of its 2005 Annexation Effort was to interfere with and stop the Soledad Canyon Project. The same pretextual purpose underlies the 2017 Annexation Project.

61. The City's relentless campaign against the Soledad Canyon Project, of which the 2017 Annexation is part, is similar to the unlawful actions taken by public officials against two surface mining companies in *Hardesty, supra*, for which the jury awarded more than \$100 million in damages to the companies under 42 U.S.C. § 1983 and the Due Process Clause of the Fourteenth Amendment.

62. As a direct and proximate result of Defendants' actions as alleged herein, Plaintiff has been damaged in an amount to be determined at trial. These damages include, but are not limited to, the loss of Plaintiff's contractual rights, loss of the fair market value of the minerals to be mined and produced under the Federal Contracts, and the expenditure of substantial attorneys' fees and costs in connection with Defendants' unlawful actions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them as follows:

1. For specific performance of the Settlement Agreement;
2. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining and restraining Defendants, and those acting in concert with Defendants or at their direction, from undertaking any further activities in connection with its 2017 Annexation Project, and directing Defendant City to (1) rescind Planning Commission Resolution No. P17-17 and all accompanying environmental documentation, including the ND/IS, and either (1) prepare an EIR for the 2017 Annexation Project and provide CEMEX proper notice and opportunity to be heard during the EIR process, pursuant to the Settlement Agreement, or (2) amend the 2017 Annexation Project to exclude the area of designated regionally significant aggregates, including the Soledad Canyon Project Site.

3. For a judicial determination by this Court of the respective rights, duties, and obligations of the parties under the Settlement Agreement to the effect that: (1) Defendant City cannot continue with its current course of conduct, and must refrain from approving or taking any further action on Master Case No. 17-178 unless and until the City prepares and EIR; (2) Defendant City must provide Plaintiff with written notices of any public hearing, meeting, or workshop regarding the 2017 Annexation Project or the EIR prior to engaging in any further activities in connection with their annexation plans; (3) Defendant City must provide copies via e-mail of any agenda items or staff reports regarding the 2017 Annexation Project as soon as those documents are made publicly available; (4) Defendant City must rescind Planning Commission Resolution No. P17-17 and all accompanying environmental documentation, including the ND/IS; and (5) Defendant City must withdraw the City's proposals for a General Plan Amendment (General Plan Amendment 17-002) and Zone Change (Prezone 17-001) to the extent they are predicated on the ND/IS.

4. For compensatory damages in an amount to be determined at trial pursuant to 42 U.S.C. § 1983;

1 5. For the costs of suit and reasonable attorney's fees pursuant to 42 U.S.C. § 1983
2 and Section 5.2 of the Settlement Agreement; and

3 6. For such other and further relief as the Court deems just and proper.
4

5 DATED: December 22, 2017

JEFFER MANGELS BUTLER & MITCHELL LLP
KERRY SHAPIRO
MATTHEW D. HINKS
MATTHEW J. SANDERS
LARA R. LEITNER

6
7
8
9 By:



MATTHEW D. HINKS
Attorneys for Plaintiff CEMEX, INC.

12/22/2017

EXHIBIT A

17727017

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of this ____ day of July, 2006, by and between CEMEX, Inc., a Louisiana Corporation ("CEMEX"), and the City of Santa Clarita (the "City") (CEMEX and the City are referred to collectively herein as the "Parties").

This Settlement Agreement is made with reference to the following facts:

WHEREAS, in 2005, the City initiated a project (Master Case 05-270) to amend the City's General Plan (GPA 05-007), prezone approximately 1,885-acres east of the City in the Soledad Canyon area of Los Angeles County ("Soledad Canyon Area"), expand its sphere of influence, and annex the area into the City (the "Annexation Project");

WHEREAS, the City prepared an Initial Study/Negative Declaration, Master Case 05-270 pursuant to the California Environmental Quality Act, Public Resources Code Section 2710, *et seq.* ("CEQA");

WHEREAS, CEMEX submitted a September 29, 2005 comment letter on the Initial Study/Negative Declaration, claiming that the City was required to prepare a full Environmental Impact Report under CEQA for the Annexation Project;

WHEREAS, the Bureau of Land Management and C.A. Rasmussen (a property owner in the vicinity of the Annexation Project area) also submitted comments claiming that the City was required to prepare an EIR for the Annexation Project;

WHEREAS, on October 4, 2005, the City's Planning Commission conducted a public hearing and adopted Resolution No. P05-042 recommending that the City Council: (a) approve General Plan Amendment 05-007 and Prezone 05-001; (b) adopt the Negative Declaration prepared for the Annexation Plan; and (c) adopt a Resolution of Application to submit to LAFCO an application to annex the East Santa Clarita Annexation Area to the City of Santa Clarita;

WHEREAS, in an October 11, 2005 letter to the City, CEMEX requested that the City deny the Annexation Project;

WHEREAS, the City Council subsequently:

(1) Adopted Resolution No. 05-130, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CLARITA, CALIFORNIA, APPROVING GENERAL PLAN AMENDMENT 05-007 [MASTER CASE 05-270] AND ADOPTING A NEGATIVE DECLARATION FOR THE EAST SANTA CLARITA ANNEXATION AREA, LOCATED EAST OF CITY BOUNDARIES IN CANYON COUNTRY NEAR THE INTERSECTION OF SOLEDAD CANYON ROAD AND SR 14 IN THE COUNTY OF LOS ANGELES;

(2) Adopted Resolution No. 05-131, "A RESOLUTION OF APPLICATION BY THE CITY COUNCIL OF THE CITY OF SANTA CLARITA, CALIFORNIA, REQUESTING THAT THE LOCAL AGENCY FORMATION COMMISSION OF LOS

ANGELES COUNTY INITIATE PROCEEDINGS FOR THE PROPOSED
ANNEXATION OF CERTAIN UNINHABITED TERRITORY TO THE CITY OF
SANTA CLARITA EAST SANTA CLARITA ANNEXATION [MASTER CASE NO.
05-270]");

(3) Approved General Plan Amendment 05-007; and

(4) Adopted Ordinance No. 05-17, entitled "AN ORDINANCE OF THE CITY
COUNCIL OF THE CITY OF SANTA CLARITA, CALIFORNIA, TO APPROVE
PREZONE NO. 05-001 (MASTER CASE 05-270) FOR THE EAST SANTA CLARITA
ANNEXATION AREA GENERALLY LOCATED EAST OF CITY BOUNDARIES IN
CANYON COUNTRY NEAR THE INTERSECTION OF SOLEDAD CANYON ROAD
AND SR 14 IN THE COUNTY OF LOS ANGELES"(collectively "the Resolutions)

WHEREAS on November 28, 2005, the City submitted application number 2005-36 to
the Los Angeles County Local Agency Formation Commission ('LAFCO'), to seek permission
to annex the proposed area in the Soledad Canyon Area ('LAFCO Application');

WHEREAS on December 14, 2005, CEMEX filed a writ of mandate and complaint for
declaratory and injunctive relief against the City, entitled *CEMEX, Inc. v. The City of Santa
Clarita*, Superior Court for the State of California, County of Los Angeles, Case No. BS100710
(the "CEQA Lawsuit"), alleging that the City's adoption of the Negative Declaration and the
accompanying Resolutions were in violation of CEQA and that a full-blown EIR was required
for the Annexation Project, and seeking to set aside the City's adoption of the Negative
Declaration and the accompanying resolutions on that basis, among other claims;

WHEREAS, the Parties desire to compromise and settle and resolve all controversies,
relating to the Negative Declaration and the Resolutions, to bring these matters to a conclusion
and to avoid incurring costs and expenses which would be incident to the prosecution and
defense of the CEQA lawsuit arising from these disputed matters.

NOW, THEREFORE, the Parties, for good and adequate consideration, receipt of
which is hereby acknowledged, agree as follows:

**1. PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT;
WITHDRAWAL OF THE RESOLUTIONS**

1.1 Any and all actions taken by the City prior to the effective date of
this Agreement relating to annexation of the Soledad Canyon Area, which includes Master Case
05-270, shall hereby be rescinded, and shall not constitute an approval of the Annexation Project
under any applicable statutes, rules and regulations, including CEQA;

1.2 The Annexation Project, as defined above, or any annexation plans
similar thereto, shall require the preparation of an Environmental Impact Report ("EIR")
pursuant to CEQA;

1.3 Until such time as the City has rescinded its decisions to adopt the
Resolutions, decertified the Initial Study/Mitigated Negative Declaration for the Annexation

17777777

Project, and has prepared and certified an EIR for the Annexation Project, the City shall refrain from taking any action relative to the Annexation Project, including any continued prosecution of the LAFCO Application, or taking any other action that constitutes an "approval" of the Annexation Project as defined in California Code of Regulations, Title 14, Section 15352;

1.4 A representative of CEMEX shall attend and meaningfully participate in any scoping meetings, required by CEQA, conducted on behalf of the City that facilitate the preparation of the EIR. The City shall provide CEMEX and its attorneys of record notice of each scoping meeting at least ten (10) business days prior to that meeting, or earlier if required by law. Although CEMEX will meaningfully participate in the scoping meetings, CEMEX will retain the same rights as any other member of the public to comment on the draft EIR and object to the sufficiency of any EIR that the City may ultimately adopt. Furthermore, by participating in the CEQA scoping process, CEMEX in no way waives its rights to object to any proposed City annexation that includes the Soledad Canyon Area, or any specific parcel(s) of land within the Soledad Canyon Area.

1.5 The City shall provide written notice of any public hearing, public meeting, or public workshop regarding the Project or the EIR to CEMEX and its counsel of record at least ten (10) business days prior to any such public hearing, public meeting, or public workshop, or earlier if required by the applicable provisions of law. Additionally, copies of any other notices required by law relative to the Annexation Project, including but not limited to the Notice of Preparation and Notice of Completion of the Draft EIR, shall be mailed to CEMEX and its legal representative upon issuance.

1.6 The City shall provide a copy of any agenda item and/or staff report regarding the Annexation Project to CEMEX and to CEMEX's counsel of record by e-mail as soon as such agenda item and/or staff report is available to the public.

1.7 Upon issuance of the Draft EIR for the Project, the City shall make available a copy of the Draft EIR and all appendices thereto to CEMEX's counsel of record. CEMEX shall be responsible for picking up these documents from the City and shall be responsible for payment of all costs associated with reproduction of the Draft EIR that exceed \$50.00.

1.8 All notices and documents that are required to be provided to CEMEX and/or CEMEX's counsel of record shall be e-mailed to CEMEX and/or its counsel of record as follows:

Leslie S. White
Executive Vice President and General Counsel
CEMEX, Inc.
840 Gessner, Suite 1400
Houston, Texas 77024
Facsimile: (713) 722-5110
E-Mail: lwhite@cemexusa.com

Brian Mastin
Environmental Affairs Director
CEMEX, Inc.
430 N. Vineyard Avenue
Suite 500
Ontario, CA 91764-4463
Facsimile: (909) 974-5525
E-Mail: brian.mastin@cemexusa.com

Kerry Shapiro, Esq.
JEFFER, MANGELS, BUTLER & MARMARO LLP
Two Embarcadero Center, 5th Floor
San Francisco, CA 94111
Facsimile: (415) 398-5584
E-mail: kshapiro@jmbm.com

2. **THE CEQA LAWSUIT**

2.1 Within five (5) days of the effective date of this Agreement, CEMEX shall file a Request for Dismissal of the CEQA Lawsuit. The dismissal shall be without prejudice.

2.2 The Parties shall bear their own attorneys' fees and costs incurred in the CEQA Lawsuit.

3. **THE LAFCO APPLICATION**

3.1 Within five (5) days of the effective date of this Agreement, the City shall instruct LAFCO, in writing, to cease all further processing of the LAFCO Application until such time as the City certifies an EIR for the Annexation Project, as defined above, or any annexation plans similar thereto, pursuant to CEQA. The City shall copy CEMEX on this written communication to LAFCO. The parties listed in Paragraph 1.8 of this Agreement shall receive a copy of the letter by e-mail on the same date that it is sent.

3.2 The Parties recognize that CEMEX believes withdrawal of the LAFCO Application is required by California law and the City believes that such a withdrawal is unnecessary. Therefore, the Parties agree that CEMEX reserves any and all rights it has to challenge the LAFCO Application in any future proceeding on the basis that it should have been withdrawn once the Resolutions were rescinded.

4. **REPRESENTATIONS AND WARRANTIES:**

4.1 **Knowledge and Consent of Parties:** The Parties to this Agreement mutually warrant and represent that they have read and understand this Agreement and that this Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any Party hereto. The Parties hereby acknowledge that they have been represented in negotiations and for the preparation of this Agreement by counsel of their own choice, that they have read this Agreement and have had it fully explained to them by such counsel, and that they

are fully aware of the contents of this Agreement and of the legal effect of each and every provision thereof.

4.2 Authority: Each Party who signs this Agreement warrants that it has full authority to enter into the Agreement and will defend, indemnify, and hold harmless all other Parties if that authority is later challenged.

4.3 Capacity: Each Party who signs this Agreement specifically represents that it has the capacity to enter into this Agreement.

5. MISCELLANEOUS:

5.1 Construction, Jurisdiction, Etc.: This Agreement shall be construed in accordance with and governed by the laws of the State of California. The Parties and their counsel have participated in the preparation of this Agreement and this Agreement is the result of the joint efforts of the Parties. Any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement.

5.2 Enforcement Costs: If any Party brings an action to enforce the terms of this Agreement or to declare rights hereunder, the prevailing party in any such action, trial and appeal, shall be entitled to her or his reasonable attorneys' fees and costs to be paid by the losing Party or Parties.

5.3 Successors: This Agreement and each and all of the representations, warranties and covenants of the Parties made herein are binding upon the Parties and each and all of their respective successors, assigns, heirs and representatives.

5.4 Entire Agreement: This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments or understandings related thereto, if any, are hereby merged herein and therein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

5.5 No Reliance: Each Party hereby represents and acknowledges that in executing this Agreement, such Party does not rely and has not relied upon any representation or statement made by any of the Parties or their agents or representatives with regard to the subject matter, basis or effect of this Agreement except as those specifically stated in this written Agreement.

5.6 Severability: If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement, which can be given effect without the invalid provisions or application and to this end the provisions of this Agreement are declared to be severable.

11/22/2017

5.7 Waiver, Modification and Amendment: No provision hereof may be waived unless in writing signed by all Parties hereto. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein. This Agreement may be amended or modified only by a written agreement executed by all of the Parties hereto.

5.8 Binding Effect: This Agreement is binding upon and shall inure to the benefit of the Parties hereto, and their respective agents, employees, representatives, attorneys, assigns, beneficiaries, heirs, and successors.

5.9 Titles and Captions: Paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

5.10 Execution: CEMEX and the City hereby execute this Agreement by their authorized representatives. An executed faxed signature page of this Agreement will have the same force and effect as an executed original. The Agreement may be signed in counterparts.

The undersigned Parties have read the foregoing Agreement and accept and agree to the provisions it contains and hereby execute it voluntarily with full understanding of its consequences.

CONFIRMED AND AGREED TO ON BEHALF OF:

CEMEX, INC.

NAME: _____ DATED: _____
[Print Name]

NAME: _____
[Signature]

TITLE: _____

THE CITY OF SANTA CLARITA

NAME: _____ DATED: 8/3/06
[Print Name]

NAME: [Signature]
[Signature]

TITLE: _____

5.7 Waiver, Modification and Amendment: No provision hereof may be waived unless in writing signed by all Parties hereto. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein. This Agreement may be amended or modified only by a written agreement executed by all of the Parties hereto.

5.8 Binding Effect: This Agreement is binding upon and shall inure to the benefit of the Parties hereto, and their respective agents, employees, representatives, attorneys, assigns, beneficiaries, heirs, and successors.

5.9 Titles and Captions: Paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

5.10 Execution: CEMEX and the City hereby execute this Agreement by their authorized representatives. An executed faxed signature page of this Agreement will have the same force and effect as an executed original. The Agreement may be signed in counterparts.

The undersigned Parties have read the foregoing Agreement and accept and agree to the provisions it contains and hereby execute it voluntarily with full understanding of its consequences.

CONFIRMED AND AGREED TO ON BEHALF OF:

CEMEX, INC.

NAME: Leslie S. White DATED: _____
(Print Name)

NAME: [Signature]
(Signature)

TITLE: EVP and General Counsel

THE CITY OF SANTA CLARITA

NAME: _____ DATED: _____
(Print Name)

NAME: _____
(Signature)

TITLE: _____

APPROVED AS TO FORM BY:

JEFFER, MANGELS, BUTLER & MARMARO LLP.

BY: 
JOEL D. DEUTSCH
ATTORNEY FOR CEMEX, INC.

DATED: July 25, 2006

BURKE, WILLIAMS & SORENSSEN, LLP.

DATED: July 26, 2006

BY: 
GERALYN L. SKAPIK
ATTORNEY FOR THE CITY OF SANTA CLARITA

11071771

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Joel D. Deutsch; Paul A. Kroeger Jeffer, Mangels, Butler & Marmaro LLP. 1500 Avenue of the Stars, 7 th Floor Los Angeles, California 90067 ATTORNEY FOR (Name): Petitioner and Plaintiff CEMEX, Inc. Insert name of court and name of judicial district and branch court, if any: Los Angeles Superior Court, Central District 111 North Hill Street, Los Angeles, CA 90012 PLAINTIFF/PETITIONER: CEMEX, Inc. DEFENDANT/RESPONDENT: City of Santa Clarita	TELEPHONE NO.: (310) 203-8080 FOR COURT USE ONLY <div style="text-align: center; font-weight: bold; font-size: 1.2em;">REC'D</div> <div style="text-align: center;"> CASE NUMBER: BS100710 AUG 15 2006 FILING WINDOW </div>
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Petition for Writ of Mandate and Complaint for Declaratory Relief	

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. TO THE CLERK: Please dismiss this action as follows:
- a. (1) ☐ With prejudice (2) ☒ Without prejudice
- b. (1) ☒ Complaint (2) ☒ Petition
 (3) ☐ Cross-complaint filed by (name):
 (4) ☐ Cross-complaint filed by (name):
 (5) ☐ Entire action of all parties and all causes of action
 (6) ☐ Other (specify):*

on (date):
on (date):

Date: August 15, 2006

Joel D. Deutsch

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)
 * If dismissal requested is of specified parties only, of specified causes of action only specified cross-complaints so state and identify the parties, causes of action, or cross-complaints to be dismissed.

(SIGNATURE)

 Attorney Or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)
 ** If a cross-complaint—or Response (Family Law) seeking affirmative relief—is on file, the attorney for cross-complaint (respondent) must sign this consent if required by Code of Civil Procedure section 581(f) or (j).

(SIGNATURE)

 Attorney Or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

(To be completed by clerk)

3. ☐ Dismissal entered as requested on (date):
 4. ☐ Dismissal entered on (date): as to only (name):
 5. ☐ Dismissal not entered as requested for the following reasons (specify):

 6. ☐ a. Attorney or party without attorney notified on (date):
 b. Attorney or party without attorney not notified. Filing party failed to provide
 ☐ a copy to conform ☐ means to return conformed copy

Date: _____ Clerk, by _____, Deputy

Form Adopted by the
 Judicial Council of California
 992(a)(6) [Rev. January 1, 1997]

REQUEST FOR DISMISSAL

Code of Civil Procedure, § 581 et seq.
 Cal. Rules of Court, rules 383, 432
 American LegalNet, Inc.
www.USCourtForms.com

PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF LOS ANGELES

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1900 Avenue of the Stars, 7th Floor, Los Angeles, California 90067.

On August 15, 2006 I served the document(s) described as **REQUEST FOR DISMISSAL** in this action by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED LIST

- ☒ (BY MAIL) I am "readily familiar" with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ (BY FAX) At _____, I transmitted, pursuant to Rules 2001 et seq., the above-described document by facsimile machine (which complied with Rule 2003(3)), to the above-listed fax number(s). The transmission originated from facsimile phone number (310) 203-0567 and was reported as complete and without error. The facsimile machine properly issued a transmission report, a copy of which is attached hereto.
- ☐ (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.
- ☐ (BY OVERNIGHT DELIVERY) I caused said envelope(s) to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee(s).

Executed on August 15, 2006 at Los Angeles, California.

- ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ☐ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


SHEILA EDWARDS

SERVICE LIST

Geralyn L. Skapik, Esq.
Burke, Williams & Sorenson, LLP
3403 Tenth Street, Suite 300
Riverside, CA 92501-3659

1107171717

1107277

EXHIBIT B

11077771



Jeffer Mangels
Butler & Mitchell LLP

jmbm.com

Matthew D. Hinks
mhinks@jmbm.com

1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308
(310) 203-8080 (310) 203-0567 Fax
www.jmbm.com

Ref: 63702-0004

December 22, 2017

VIA E-MAIL AND HAND DELIVERY

Mary Cusick, City Clerk
City of Santa Clarita
23920 Valencia Blvd., Suite 120
Santa Clarita, CA 91355
mcusick@santa-clarita.com

Re: CEMEX, Inc.'s Claim for (1) Breach of Contract; (2) Tortious Interference with Contractual Relations; and (3) Conversion, pursuant to the California Government Claims Act, Cal. Gov't Code § 900 *et seq.*

Dear Ms. Cusick:

As attorneys for and on behalf of our client CEMEX, Inc. ("CEMEX"), we hereby submit to the City of Santa Clarita ("City") this claim for damages for (1) breach of contract; (2) tortious interference with contractual relations; and (3) conversion, pursuant to the California Government Claims Act, Cal. Gov't Code § 900 *et seq.* and Santa Clarita Municipal Code § 3.16.010.

I. Introduction and summary

As the City is aware, CEMEX has two contracts ("Federal Contracts") with the U.S. Bureau of Land Management ("BLM") to mine and sell 56.1 million tons of sand and gravel in the unincorporated area of Los Angeles County known as Soledad Canyon, near but outside the City limits. The sand and gravel are owned by the United States and managed by BLM. The Federal Contracts give CEMEX the exclusive right to extract, process, and sell the sand and gravel, subject to royalties to be paid by CEMEX to BLM, along with the accompanying right to use the surface for such mining operations. BLM has issued a Record of Decision approving of CEMEX's mining plan, and Los Angeles County has issued a Surface Mining Permit, for the mining project, which is formally known as the Soledad Canyon Sand and Gravel Mining Project ("Soledad Canyon Project"). CEMEX is currently pursuing the remaining ancillary permits required to begin mining operations, as discussed in more detail below.

As the City is also aware, the City has a long history of interfering with and opposing the Soledad Canyon Project. The City has brought multiple lawsuits concerning the Project's

entitlements, all of which have failed and a number of which resulted in significant awards of attorneys' fees against the City as sanctions for bad faith litigation. The City has also tried multiple times to assert jurisdiction over the Soledad Canyon Project site, including by extending the City's sphere of influence in 2000 and attempting to annex the site and surrounding area in 2005 ("2005 Annexation Project"). All of these efforts have also failed. As the City is aware, the City's 2005 Annexation Project resulted in a settlement agreement between CEMEX and the City, entered into in 2006 after CEMEX sued the City for failing to comply with the California Environmental Quality Act ("CEQA"), Cal. Pub. Res. Code § 21000 *et seq.* Among the provisions contained in the Settlement Agreement is an express mandate that the City prepare an Environmental Impact Report ("EIR") for the 2005 Annexation Project or for "any annexation plans similar thereto." See Settlement Agreement, § 1.2. The City is also required to provide CEMEX notice of hearing, meetings, documents, and other matters in connection with any such annexation plans. *Id.*, §§ 1.5-1.6. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit A.

The City has now undertaken additional actions to try to stop and otherwise interfere with the Soledad Canyon Project. Specifically, the City has prepared and proposed the Eastside Open Space Annexation project, Master Case No. 17-178, for the annexation of approximately 2,694 acres of land, which area includes nearly the entirety of the Soledad Canyon Project site. Master Case No. 17-178, which the City initiated on September 12, 2017, consists of Annexation 17-001, Prezone 17-001, General Plan Amendment 17-002 and Negative Declaration/Initial Study ("ND/IS") 17-009 (collectively, "2017 Annexation Project"). The City's Planning Commission issued the ND/IS on November 14, 2017, closed the public comment period on December 5, 2017, and issued Resolution No. P17-17 on December 5, 2017. Resolution No. P17-17 recommends that the City Council adopt the ND/IS and approve the proposed rezoning and General Plan amendments. The City provided no notice to CEMEX of the 2017 Annexation Project, including the availability of the ND/IS, and has not prepared an EIR for that Project. These actions violate the Settlement Agreement, CEQA, the City's General Plan, and the California Surface Mining and Reclamation Act ("SMARA"), Cal. Pub. Res. Code § 2710 *et seq.*

With the 2017 Annexation Project, the City is attempting to do again what it tried to do, and was prevented from doing, before: use an unlawful process to annex the Soledad Canyon Project site in an effort to stop and otherwise interfere with the Soledad Canyon Project and CEMEX's valuable Federal Contracts. By its actions, the City has breached the Settlement Agreement, tortiously interfered with CEMEX's contractual relations, and has caused or will cause the conversion of CEMEX's personal property. In connection with these harms, CEMEX has incurred, and continues to incur, damages for which it is entitled to full compensation under the Government Claims Act (also called the Government Tort Claims Act), Cal. Gov't Code § 900 *et seq.*, and Santa Clarita Municipal Code § 3.16.010.

//
//
//

II. CEMEX is entitled to monetary damages for breach of contract.

Section 1.2 of the Settlement Agreement obligates the City to prepare an EIR for the 2005 Annexation Project and for "any annexation plans similar thereto." See Exhibit A, § 1.2. The City's 2017 Annexation Project constitutes an "annexation similar thereto" to the 2005 Annexation Project for the following reasons: (1) both annexation projects would annex nearly the entire CEMEX Soledad Canyon Project site; (2) both projects would annex the same portions of the CEMEX Soledad Canyon Project site; and (3) both projects require zoning amendments and amendments to the City's General Plan and sphere of influence, as well as rezoning, to permit annexation of the Soledad Canyon Project site. The Soledad Canyon Project remains unchanged relative to the City's two annexation attempts; it was fully reviewed and entitled in 2005, and remains fully reviewed and entitled in 2017. The City breached the specific terms and implied covenant of good faith and fair dealing embodied in the Settlement Agreement when it prepared an ND/IS in lieu of an EIR as required by Section 1.2 of the Settlement Agreement.

The City has also violated the notice requirements of Sections 1.5 and 1.6 of the Settlement Agreement. Section 1.5 requires the City to "provide written notice of any public hearing, public meeting, or public workshop regarding the Project or the EIR to CEMEX and its counsel of record at least ten (10) business days prior to any such" hearing, meeting, or workshop, public hearing, and copies of any other notices required by law, including the Notice of Preparation and Notice of Completion of the Draft EIR. Further, Section 1.6 requires the City to email CEMEX copies of any agenda item and/or staff report "regarding the Annexation Project" as soon as such items are available to the public. Since the City was required to prepare an EIR for the 2017 Annexation Project pursuant to Section 1.2 of the Settlement Agreement, it was also required to provide the notices mandated by Sections 1.5 and 1.6 prior to any pertinent public hearings. The City has failed to comply with these provisions of the Settlement Agreement, and refuses to provide Plaintiff with the requisite documentation. The City's failure to do so is a breach of the Settlement Agreement. The timely delivery of such notices was and is especially important to CEMEX in that CEMEX, as the proponent of the Soledad Canyon Project, is legally and contractually entitled to a meaningful opportunity to be heard in the annexation process, particularly the CEQA review of the 2017 Annexation Project.

The City's actions are not taken in good faith. Though the City publicly acknowledged during the August 23, 2006, scoping session that the EIR process was the result of a litigation settlement, the City's actions and representations regarding the 2017 Annexation Project are unresponsive to, and inconsistent with, the underlying substance of CEMEX's lawsuit and the "spirit" of that settlement. All parties understood and contractually acknowledged that the annexation of the Soledad Canyon site could lead to potentially significant environmental impacts, and that CEMEX, as the proponent of the Soledad Canyon Project, deserved a meaningful opportunity to be heard in the City's process of considering those impacts. It was for these reasons that the City obligated itself to analyze the potentially significant impacts of the annexation of the Soledad Canyon site in an EIR, and to notify and include CEMEX in the review and approval process.

As a result of the City's material breaches of the Settlement Agreement, CEMEX may be deprived of its right to the preparation of an EIR in connection with the City's 2017 Annexation Project, a right provided, *inter alia*, in the Settlement Agreement. As a further result of the City's breaches of the Settlement Agreement, CEMEX may be deprived of an adequate forum to respond to the City's annexation plans because CEMEX has never timely received notification of public hearings and meetings pertinent to the 2017 Annexation Project as required by Sections 1.5 and 1.6 of the Settlement Agreement.

The City's material breaches of the Settlement Agreement are the legal cause of significant harm to CEMEX, resulting in significant damages. CEMEX is currently in the process of objecting to, commenting on, appealing, and challenging the 2017 Annexation Project and the City's actions taken in connection therewith, in order to try to mitigate the damages the City has caused and will continue to cause in the future as a result of its breach of contract. Accordingly, CEMEX's damages include, but are not limited to, the significant fees and costs that CEMEX has incurred in undertaking these actions, including the preparation by CEMEX and its attorneys and consultants of administrative letters, appeals, protests, comments, and court filings, and other related or anticipated actions. These actions, and the resulting damages, are ongoing and increasing, and continue to increase as long as the City continues its wrongful conduct. In addition, these breaches of contract, if unremedied, will result in the City being responsible for all damages caused by the City's interference, including potentially the amount of profit CEMEX could anticipate if the Federal Contracts were performed.

III. CEMEX is entitled to monetary damages for tortious interference with contractual relations.

The City's 2017 Annexation Project also constitutes tortious interference with CEMEX's contractual relations. The City is well aware of CEMEX's contractual relationship with BLM for the extraction and sale of minerals. The City has undertaken every effort to interfere with that relationship, including (but not limited to) the City's prior unsuccessful 2005 Annexation Project. Indeed, the City all but admitted that the 2005 Annexation Project was designed to stop or otherwise interfere with the Soledad Canyon Project. The 2017 Annexation Project, which as described above is the same as the 2005 Annexation Project relative to the Settlement Agreement and the Soledad Canyon Project, is designed to serve the same unlawful purpose.

The City's intentional and unjustified interference with CEMEX's contractual relationship with BLM, by and through the 2017 Annexation Project, is making performance of the Federal Contracts substantially more expensive and difficult. Among other things, the 2017 Annexation Project would, if approved, make the City the lead agency under SMARA and change the zoning for the Soledad Canyon Project site, which changes the City might try to use to stop or otherwise interfere with the Project. Even without those changes, the documents associated with the 2017 Annexation Project, including the ND/IS, fail to mention or discuss the Soledad Canyon Project; the designation of the Soledad Canyon Project site and surrounding area as a regionally

significant source of aggregates; the fact that the United States owned the mineral estate in and around the Soledad Canyon Project site; or the effect the 2017 Annexation Project might have on the Soledad Canyon Project. These unlawful omissions may complicate CEMEX's efforts to perform under the Federal Contracts, including its efforts to obtain the required ancillary permits from various federal, state, and local agencies, including, but not limited to, a Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers; a Lake and Streambed Alteration Agreement from the California Department of Fish & Wildlife; a permit to appropriate water from the State Water Resources Control Board; permits to construct and operate from the Air Pollution Control District; and traffic and building permits from the County of Los Angeles.

The City's conduct has subjected, and continues to subject, CEMEX to violations of its contractual, statutory, and common-law rights, thereby depriving CEMEX of its right to use the Contract Area for mineral extraction. The City's actions have forced and continue to force CEMEX to engage in a costly and time-consuming effort to oppose the City's improper annexation actions. CEMEX is currently in the process of objecting to, commenting on, appealing, and challenging the 2017 Annexation Project and the City's actions taken in connection therewith. Accordingly, the City is liable for monetary damages, which include the amount of money CEMEX would have made under the Federal Contracts, had it not been delayed or otherwise prevented by the City from exercising its rights pursuant to those Federal Contracts. The City is also liable for the significant fees and costs that CEMEX has incurred, and will continue to incur, in commenting on and opposing the 2017 Annexation Project, including the preparation by CEMEX and its attorneys and consultants of letters and court filings and other anticipated actions. These actions, and the resulting damages, are ongoing and increasing, and continue to increase as long as the City continues its wrongful conduct. In addition, this tortious interference, if unremedied, will result in the City being responsible for all damages caused by the City's interference, including potentially the amount of profit CEMEX could anticipate if the Federal Contracts were fully performed.

IV. CEMEX is entitled to monetary damages for conversion of CEMEX's personal property.

The City is also liable for conversion of CEMEX's personal property as a result of its 2017 Annexation Project. The City has intentionally interfered with CEMEX's personal property—the minerals that CEMEX is legally entitled to mine and sell as part of the Soledad Canyon Project—with the only apparent goal being to prevent CEMEX from accessing those minerals.

CEMEX has never consented to this conversion, and has in fact, vigorously opposed the City's wrongful and actionable conduct. As a direct and proximate result of the City's conduct, CEMEX is entitled to the fair market value of the minerals converted, as well as reasonable compensation for the time and money spent by CEMEX to gain and maintain access to its personal property.

Mary Cusick, City Clerk
December 22, 2017
Page 6


V. Conclusion

CEMEX has incurred, and will continue to incur, significant damages as a result of the City's breach of contract, tortious interference with contractual relations, and conversion of personal property. CEMEX has also incurred, and will continue to incur, significant fees and costs associated with commenting on and opposing the 2017 Annexation Project, including the preparation by CEMEX and its attorneys and consultants of letters and court filings and other anticipated actions. As the party solely responsible for these damages, the City is liable for all such fees and costs. Although not yet fully quantified, these damages substantially exceed the jurisdictional limitation for unlimited civil cases.

The Government Claims Act provides that the City "shall act on a claim . . . within 45 days after the claim has been presented." Cal. Gov't Code § 912.4. Should the City fail to respond within this time, CEMEX will deem the claim rejected, and will amend its complaint for injunctive and declaratory relief to demand monetary damages, filed today in Superior Court for the County of Los Angeles (*Cemex, Inc. v. City of Santa Clarita*, case number not yet assigned), for the significant damages, fees, and costs that CEMEX has incurred as a result of the City's unlawful actions. This letter is provided by CEMEX with a full reservation of all rights and defenses, and nothing contained in or omitted from this letter or the enclosures hereto shall be deemed an admission or waiver of any kind. All rights are reserved.

Please send all notices, determinations, and related correspondence to CEMEX's counsel, Kerry Shapiro, at Jeffer Mangels Butler & Mitchell, Two Embarcadero Center, 5th Floor, San Francisco, CA 94111-3813.

Very truly yours,


MATTHEW D. HINKS of
Jeffer Mangels Butler & Mitchell LLP

cc: Kerry Shapiro

Enclosure

EXHIBIT A

11072217

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of this ____ day of July, 2006, by and between CEMEX, Inc., a Louisiana Corporation ("CEMEX"), and the City of Santa Clarita (the "City") (CEMEX and the City are referred to collectively herein as the "Parties").

This Settlement Agreement is made with reference to the following facts:

WHEREAS, in 2005, the City initiated a project (Master Case 05-270) to amend the City's General Plan (GPA 05-007), prezone approximately 1,885-acres east of the City in the Soledad Canyon area of Los Angeles County ("Soledad Canyon Area"), expand its sphere of influence, and annex the area into the City (the "Annexation Project");

WHEREAS, the City prepared an Initial Study/Negative Declaration, Master Case 05-270 pursuant to the California Environmental Quality Act, Public Resources Code Section 2710, *et seq.* ("CEQA");

WHEREAS, CEMEX submitted a September 29, 2005 comment letter on the Initial Study/Negative Declaration, claiming that the City was required to prepare a full Environmental Impact Report under CEQA for the Annexation Project;

WHEREAS, the Bureau of Land Management and C.A. Rasmussen (a property owner in the vicinity of the Annexation Project area) also submitted comments claiming that the City was required to prepare an EIR for the Annexation Project;

WHEREAS, on October 4, 2005, the City's Planning Commission conducted a public hearing and adopted Resolution No. P05-042 recommending that the City Council: (a) approve General Plan Amendment 05-007 and Prezone 05-001; (b) adopt the Negative Declaration prepared for the Annexation Plan; and (c) adopt a Resolution of Application to submit to LAFCO an application to annex the East Santa Clarita Annexation Area to the City of Santa Clarita;

WHEREAS, in an October 11, 2005 letter to the City, CEMEX requested that the City deny the Annexation Project;

WHEREAS, the City Council subsequently:

(1) Adopted Resolution No. 05-130, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CLARITA, CALIFORNIA, APPROVING GENERAL PLAN AMENDMENT 05-007 [MASTER CASE 05-270] AND ADOPTING A NEGATIVE DECLARATION FOR THE EAST SANTA CLARITA ANNEXATION AREA, LOCATED EAST OF CITY BOUNDARIES IN CANYON COUNTRY NEAR THE INTERSECTION OF SOLEDAD CANYON ROAD AND SR 14 IN THE COUNTY OF LOS ANGELES;

(2) Adopted Resolution No. 05-131, "A RESOLUTION OF APPLICATION BY THE CITY COUNCIL OF THE CITY OF SANTA CLARITA, CALIFORNIA, REQUESTING THAT THE LOCAL AGENCY FORMATION COMMISSION OF LOS

11077777

ANGELES COUNTY INITIATE PROCEEDINGS FOR THE PROPOSED ANNEXATION OF CERTAIN UNINHABITED TERRITORY TO THE CITY OF SANTA CLARITA EAST SANTA CLARITA ANNEXATION [MASTER CASE NO. 05-270]");

(3) Approved General Plan Amendment 05-007; and

(4) Adopted Ordinance No. 05-17, entitled "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA CLARITA, CALIFORNIA, TO APPROVE PREZONE NO. 05-001 (MASTER CASE 05-270) FOR THE EAST SANTA CLARITA ANNEXATION AREA GENERALLY LOCATED EAST OF CITY BOUNDARIES IN CANYON COUNTRY NEAR THE INTERSECTION OF SOLEDAD CANYON ROAD AND SR 14 IN THE COUNTY OF LOS ANGELES"(collectively "the Resolutions)

WHEREAS on November 28, 2005, the City submitted application number 2005-36 to the Los Angeles County Local Agency Formation Commission ("LAFCO"), to seek permission to annex the proposed area in the Soledad Canyon Area ("LAFCO Application");

WHEREAS on December 14, 2005, CEMEX filed a writ of mandate and complaint for declaratory and injunctive relief against the City, entitled *CEMEX, Inc. v. The City of Santa Clarita*, Superior Court for the State of California, County of Los Angeles, Case No. BS100710 (the "CEQA Lawsuit"), alleging that the City's adoption of the Negative Declaration and the accompanying Resolutions were in violation of CEQA and that a full-blown EIR was required for the Annexation Project, and seeking to set aside the City's adoption of the Negative Declaration and the accompanying resolutions on that basis, among other claims;

WHEREAS, the Parties desire to compromise and settle and resolve all controversies, relating to the Negative Declaration and the Resolutions, to bring these matters to a conclusion and to avoid incurring costs and expenses which would be incident to the prosecution and defense of the CEQA lawsuit arising from these disputed matters.

NOW, THEREFORE, the Parties, for good and adequate consideration, receipt of which is hereby acknowledged, agree as follows:

1. PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT; WITHDRAWAL OF THE RESOLUTIONS

1.1 Any and all actions taken by the City prior to the effective date of this Agreement relating to annexation of the Soledad Canyon Area, which includes Master Case 05-270, shall hereby be rescinded, and shall not constitute an approval of the Annexation Project under any applicable statutes, rules and regulations, including CEQA;

1.2 The Annexation Project, as defined above, or any annexation plans similar thereto, shall require the preparation of an Environmental Impact Report ("EIR") pursuant to CEQA;

1.3 Until such time as the City has rescinded its decisions to adopt the Resolutions, decertified the Initial Study/Mitigated Negative Declaration for the Annexation

Project, and has prepared and certified an EIR for the Annexation Project, the City shall refrain from taking any action relative to the Annexation Project, including any continued prosecution of the LAFCO Application, or taking any other action that constitutes an "approval" of the Annexation Project as defined in California Code of Regulations, Title 14, Section 15352;

1.4 A representative of CEMEX shall attend and meaningfully participate in any scoping meetings, required by CEQA, conducted on behalf of the City that facilitate the preparation of the EIR. The City shall provide CEMEX and its attorneys of record notice of each scoping meeting at least ten (10) business days prior to that meeting, or earlier if required by law. Although CEMEX will meaningfully participate in the scoping meetings, CEMEX will retain the same rights as any other member of the public to comment on the draft EIR and object to the sufficiency of any EIR that the City may ultimately adopt. Furthermore, by participating in the CEQA scoping process, CEMEX in no way waives its rights to object to any proposed City annexation that includes the Soledad Canyon Area, or any specific parcel(s) of land within the Soledad Canyon Area.

1.5 The City shall provide written notice of any public hearing, public meeting, or public workshop regarding the Project or the EIR to CEMEX and its counsel of record at least ten (10) business days prior to any such public hearing, public meeting, or public workshop, or earlier if required by the applicable provisions of law. Additionally, copies of any other notices required by law relative to the Annexation Project, including but not limited to the Notice of Preparation and Notice of Completion of the Draft EIR, shall be mailed to CEMEX and its legal representative upon issuance.

1.6 The City shall provide a copy of any agenda item and/or staff report regarding the Annexation Project to CEMEX and to CEMEX's counsel of record by e-mail as soon as such agenda item and/or staff report is available to the public.

1.7 Upon issuance of the Draft EIR for the Project, the City shall make available a copy of the Draft EIR and all appendices thereto to CEMEX's counsel of record. CEMEX shall be responsible for picking up these documents from the City and shall be responsible for payment of all costs associated with reproduction of the Draft EIR that exceed \$50.00.

1.8 All notices and documents that are required to be provided to CEMEX and/or CEMEX's counsel of record shall be e-mailed to CEMEX and/or its counsel of record as follows:

Leslie S. White
Executive Vice President and General Counsel
CEMEX, Inc.
840 Gessner, Suite 1400
Houston, Texas 77024
Facsimile: (713) 722-5110
E-Mail: lwhite@cemexusa.com

Brian Mastin
Environmental Affairs Director
CEMEX, Inc.
430 N. Vineyard Avenue
Suite 500
Ontario, CA 91764-4463
Facsimile: (909) 974-5525
E-Mail: brian.mastin@cemexusa.com

Kerry Shapiro, Esq.
JEFFER, MANGELS, BUTLER & MARMARO LLP
Two Embarcadero Center, 5th Floor
San Francisco, CA 94111
Facsimile: (415) 398-5584
E-mail: kshapiro@jmbm.com

2. **THE CEQA LAWSUIT**

2.1 Within five (5) days of the effective date of this Agreement, CEMEX shall file a Request for Dismissal of the CEQA Lawsuit. The dismissal shall be without prejudice.

2.2 The Parties shall bear their own attorneys' fees and costs incurred in the CEQA Lawsuit.

3. **THE LAFCO APPLICATION**

3.1 Within five (5) days of the effective date of this Agreement, the City shall instruct LAFCO, in writing, to cease all further processing of the LAFCO Application until such time as the City certifies an EIR for the Annexation Project, as defined above, or any annexation plans similar thereto, pursuant to CEQA. The City shall copy CEMEX on this written communication to LAFCO. The parties listed in Paragraph 1.8 of this Agreement shall receive a copy of the letter by e-mail on the same date that it is sent.

3.2 The Parties recognize that CEMEX believes withdrawal of the LAFCO Application is required by California law and the City believes that such a withdrawal is unnecessary. Therefore, the Parties agree that CEMEX reserves any and all rights it has to challenge the LAFCO Application in any future proceeding on the basis that it should have been withdrawn once the Resolutions were rescinded.

4. **REPRESENTATIONS AND WARRANTIES:**

4.1 **Knowledge and Consent of Parties:** The Parties to this Agreement mutually warrant and represent that they have read and understand this Agreement and that this Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any Party hereto. The Parties hereby acknowledge that they have been represented in negotiations and for the preparation of this Agreement by counsel of their own choice, that they have read this Agreement and have had it fully explained to them by such counsel, and that they

are fully aware of the contents of this Agreement and of the legal effect of each and every provision thereof.

4.2 Authority: Each Party who signs this Agreement warrants that it has full authority to enter into the Agreement and will defend, indemnify, and hold harmless all other Parties if that authority is later challenged.

4.3 Capacity: Each Party who signs this Agreement specifically represents that it has the capacity to enter into this Agreement.

5. MISCELLANEOUS:

5.1 Construction, Jurisdiction, Etc.: This Agreement shall be construed in accordance with and governed by the laws of the State of California. The Parties and their counsel have participated in the preparation of this Agreement and this Agreement is the result of the joint efforts of the Parties. Any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement.

5.2 Enforcement Costs: If any Party brings an action to enforce the terms of this Agreement or to declare rights hereunder, the prevailing party in any such action, trial and appeal, shall be entitled to her or his reasonable attorneys' fees and costs to be paid by the losing Party or Parties.

5.3 Successors: This Agreement and each and all of the representations, warranties and covenants of the Parties made herein are binding upon the Parties and each and all of their respective successors, assigns, heirs and representatives.

5.4 Entire Agreement: This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments or understandings related thereto, if any, are hereby merged herein and therein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

5.5 No Reliance: Each Party hereby represents and acknowledges that in executing this Agreement, such Party does not rely and has not relied upon any representation or statement made by any of the Parties or their agents or representatives with regard to the subject matter, basis or effect of this Agreement except as those specifically stated in this written Agreement.

5.6 Severability: If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement, which can be given effect without the invalid provisions or application and to this end the provisions of this Agreement are declared to be severable.

5.7 Waiver, Modification and Amendment: No provision hereof may be waived unless in writing signed by all Parties hereto. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein. This Agreement may be amended or modified only by a written agreement executed by all of the Parties hereto.

5.8 Binding Effect: This Agreement is binding upon and shall inure to the benefit of the Parties hereto, and their respective agents, employees, representatives, attorneys, assigns, beneficiaries, heirs, and successors.

5.9 Titles and Captions: Paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

5.10 Execution: CEMEX and the City hereby execute this Agreement by their authorized representatives. An executed faxed signature page of this Agreement will have the same force and effect as an executed original. The Agreement may be signed in counterparts.

The undersigned Parties have read the foregoing Agreement and accept and agree to the provisions it contains and hereby execute it voluntarily with full understanding of its consequences.

CONFIRMED AND AGREED TO ON BEHALF OF:

CEMEX, INC.

NAME: _____ DATED: _____
[Print Name]

NAME: _____
[Signature]

TITLE: _____

THE CITY OF SANTA CLARITA

NAME: _____ DATED: 8/3/06
[Print Name]

NAME: _____
[Signature]

TITLE: _____

110777777

5.7 Waiver, Modification and Amendment: No provision hereof may be waived unless in writing signed by all Parties hereto. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein. This Agreement may be amended or modified only by a written agreement executed by all of the Parties hereto.

5.8 Binding Effect: This Agreement is binding upon and shall inure to the benefit of the Parties hereto, and their respective agents, employees, representatives, attorneys, assigns, beneficiaries, heirs, and successors.

5.9 Titles and Captions: Paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

5.10 Execution: CEMEX and the City hereby execute this Agreement by their authorized representatives. An executed faxed signature page of this Agreement will have the same force and effect as an executed original. The Agreement may be signed in counterparts.

The undersigned Parties have read the foregoing Agreement and accept and agree to the provisions it contains and hereby execute it voluntarily with full understanding of its consequences.

CONFIRMED AND AGREED TO ON BEHALF OF:

CEMEX, INC.

NAME: Leslie S. White DATED: _____
[Print Name]

NAME: [Signature]
[Signature]

TITLE: EVP and General Counsel

THE CITY OF SANTA CLARITA


NAME: _____ DATED: _____
[Print Name]

NAME: _____
[Signature]

TITLE: _____

APPROVED AS TO FORM BY:

JEFFER, MANGELS, BUTLER & MARMARO LLP.

BY: 
JOEL D. DEUTSCH
ATTORNEY FOR CEMEX, INC.

DATED: July 25, 2006

BURKE, WILLIAMS & SORENSSEN, LLP. DATED: July 26, 2006

BY: 
GERALYN L. SKAPIK
ATTORNEY FOR THE CITY OF SANTA CLARITA

11077777

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Joel D. Deutsch; Paul A. Kroeger Jeffer, Mangels, Butler & Marmaro LLP. 1900 Avenue of the Stars, 7 th Floor Los Angeles, California 90067	TELEPHONE NO.: (310) 203-8080	FOR COURT USE ONLY
ATTORNEY FOR (Name): Petitioner and Plaintiff CEMEX, Inc. Insert name of court and name of judicial district and branch court, if any: Los Angeles Superior Court, Central District 111 North Hill Street, Los Angeles, CA 90012		REC'D AUG 15 2006 FILING WINDOW
PLAINTIFF/PETITIONER: CEMEX, Inc.		
DEFENDANT/RESPONDENT: City of Santa Clarita		
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Petition for Writ of Mandate and Complaint for Declaratory Relief		CASE NUMBER: BS100710

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. TO THE CLERK: Please dismiss this action as follows:
- a- (1) ☐ With prejudice (2) ☒ Without prejudice
- b. (1) ☒ Complaint (2) ☒ Petition
- (3) ☐ Cross-complaint filed by (name):
- (4) ☐ Cross-complaint filed by (name):
- (5) ☐ Entire action of all parties and all causes of action
- (6) ☐ Other (specify):*

on (date):
on (date):

Date: August 15, 2006

Joel D. Deutsch

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)
 * If dismissal requested is of specified parties only, of specified causes of action only specified cross-complaints so state and identify the parties, causes of action, or cross-complaints to be dismissed.



(SIGNATURE)

Attorney Or party without attorney for:

- ☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)
 ** If a cross-complaint—or Response (Family Law) seeking affirmative relief—is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(SIGNATURE)
 Attorney Or party without attorney for:

- ☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

(To be completed by clerk)

3. ☐ Dismissal entered as requested on (date):
4. ☐ Dismissal entered on (date): as to only (name):
5. ☐ Dismissal not entered as requested for the following reasons (specify):
6. ☐ a. Attorney or party without attorney notified on (date):
 b. Attorney or party without attorney not notified. Filing party failed to provide
 ☐ a copy to conform ☐ means to return conformed copy

Date:

Clerk, by _____, Deputy

PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF LOS ANGELES

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1900 Avenue of the Stars, 7th Floor, Los Angeles, California 90067.

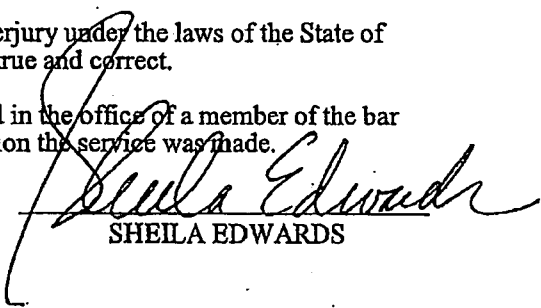
On August 15, 2006 I served the document(s) described as **REQUEST FOR DISMISSAL** in this action by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED LIST

- ☒ (BY MAIL) I am "readily familiar" with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ (BY FAX) At _____, I transmitted, pursuant to Rules 2001 et seq., the above-described document by facsimile machine (which complied with Rule 2003(3)), to the above-listed fax number(s). The transmission originated from facsimile phone number (310) 203-0567 and was reported as complete and without error. The facsimile machine properly issued a transmission report, a copy of which is attached hereto.
- ☐ (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.
- ☐ (BY OVERNIGHT DELIVERY) I caused said envelope(s) to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee(s).

Executed on August 15, 2006 at Los Angeles, California.

- ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ☐ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


SHEILA EDWARDS

SERVICE LIST

Geralyn L. Skapik, Esq.
Burke, Williams & Sorenson, LLP
3403 Tenth Street, Suite 300
Riverside, CA 92501-3659

11/17/2017

ORIGINAL

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number, and Address) Jeffer Mangels Butler & Mitchell LLP Matthew D. Hinks (Bar No. 200750); Lara R. Leitner (Bar No. 303162) 1900 Avenue of the Stars, 7th Floor, Los Angeles, CA 90067 TELEPHONE NO.: (310) 203-8080 FAX NO.: (310) 203-0567 ATTORNEY FOR (Name): Plaintiff Cemex, Inc.		FOR COURT USE ONLY FILED Superior Court of California County of Los Angeles DEC 22 2017 Sherri R. Lantieri, Executive Officer/Clerk By <u>Marion Gomez</u> Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central District		
CASE NAME: Cemex, Inc. v. City of Santa Clarita; and Does 1 through 50, inclusive		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: BC688074 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/W/D (23) Non-PI/PD/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	---	---

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 8
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 22, 2017

Matthew D. Hinks

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties In Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)
Employment
Wrongful Termination (36) Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

ORIGINAL

BC688074

SHORT TITLE:
Cemex, Inc. v. City of Santa Clarita

CASE NUMBER

**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

FILED

Step 1: After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

Step 2: In Column B, check the box for the type of action that best describes the nature of the case.

Step 3: In Column C, circle the number which explains the reason for the court filing location you have chosen.

Applicable Reasons for Choosing Court Filing Location (Column C)

1. Class actions must be filed in the Stanley Mosk Courthouse, Central District.
2. Permissive filing in central district.
3. Location where cause of action arose.
4. Mandatory personal injury filing in North District.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.
11. Mandatory filing location (Hub Cases – unlawful detainer, limited non-collection, limited collection, or personal injury).

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons – See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 4, 11
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death - Uninsured Motorist	1, 4, 11
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	1, 11 1, 11
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1, 4, 11
		<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 4, 11
	Other Personal Injury Property Damage/Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1, 4, 11
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1, 4, 11
		<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1, 4, 11
		<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 4, 11



SHORT TITLE:
Cemex, Inc. v. City of Santa Clarita.

CASE NUMBER

Non-Personal Injury/Property
Damage/ Wrongful Death Tort

Employment

Contract

Real Property

Unlawful Detainer

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3 1, 2, 3
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1, 2, 3 10
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input checked="" type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2, 5 2, 5 1, 2, 5 1, 2, 5
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case <input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	5, 6, 11 5, 11 5, 6, 11
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 5 1, 2, 3, 5 1, 2, 3, 8, 9
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2, 6
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6 2, 6 2, 6
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	6, 11
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	6, 11
Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6, 11



SHORT TITLE:
Cemex, Inc. v. City of Santa Clarita.

CASE NUMBER

Judicial Review

Provisionally Complex Litigation

Enforcement of Judgment

Miscellaneous Civil Complaints

Miscellaneous Civil Petitions

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2, 3, 6
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2, 8 2 2
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2, 8
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1, 2, 8
Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1, 2, 3
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1, 2, 8
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1, 2, 8
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1, 2, 3, 8
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2, 5, 11 2, 6 2, 9 2, 8 2, 8 2, 8, 9
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1, 2, 8
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1, 2, 8 2, 8 1, 2, 8 1, 2, 8
Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2, 8
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name/Change of Gender <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2, 3, 9 2, 3, 9 2, 3, 9 2 2, 7 2, 3, 8 2, 9



SHORT TITLE:
Cemex, Inc. v. City of Santa Clarita

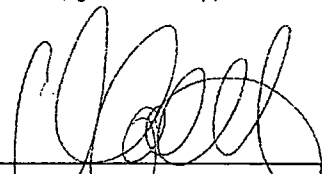
CASE NUMBER

Step 4: Statement of Reason and Address: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

REASON: <input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.		ADDRESS: 12000 Soledad Canyon Road
CITY: Soledad Canyon Road	STATE: CA	ZIP CODE: 93190

Step 5: Certification of Assignment: I certify that this case is properly filed in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: December 22, 2017


(SIGNATURE OF ATTORNEY/FILING PARTY)
Matthew D. Hinks

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/16).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

