

07/28/2026

David W. Slayton, Executive Officer / Clerk of Court

By: M. Lopez Deputy

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Mixed Concrete Co., Inc. (erroneously sued
as National Ready Mix Company, Inc.)*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

GARY SEPANOSSIAN, dba G.S.
CONSTRUCTION, on behalf of himself,
and all others similarly situated,

Plaintiff,

v.

NATIONAL READY MIX COMPANY,
INC., and DOES 1 through 20, inclusive,

Defendants.

Case No. 20STCV13996

Assigned for All Purposes to the Honorable
Lawrence P. Riff, Department 534

**~~PROPOSED~~ JUDGMENT IN FAVOR OF
DEFENDANT NATIONAL READY MIXED
CONCRETE COMPANY, INC.**

CLASS ACTION

JUDGMENT

This matter came before the Court for hearing on June 29, 2026, on a motion for summary judgment in Department 534 of the Los Angeles Superior Court, the Hon. Lawrence P. Riff presiding. Plaintiff Gary Sepanossian (“Plaintiff”) and the Certified Classes appeared through their counsel at Price Armstrong LLC and Kiesel Law LLP. Defendant National Ready Mixed Concrete Company, Inc. (“Defendant”) appeared through its counsel at Covington & Burling LLP.

Plaintiff filed a class action complaint against Defendant on April 9, 2020, asserting claims against Defendant for violations of the “fraudulent” and “unfair” prongs of California’s Unfair Competition Law (the “UCL Claims”), for breach of contract, and for unjust enrichment.

On July 28, 2021, prior to any class notice, the Court granted Plaintiff’s motion to certify the UCL claims for class treatment. (Order of July 28, 2021.) Plaintiff did not seek certification of his claims for breach of contract and unjust enrichment. (*Id.* at 10 n.1.) On September 24, 2024, the Court established that the Class Period in this case runs from April 9, 2016, to August 1, 2024. (Order of September 24, 2024.)

The Certified Classes, as so amended, are defined as: (1) the Energy Fee Class: “A class of all persons or entities who reside in California who, from April 9, 2016 through August 1, 2024, paid defendant energy fees (also known as ‘fuel fees’ or ‘fuel surcharges’)”; and (2) the Environmental Fee Class: “A class of all persons or entities who reside in California who, from April 9, 2016 through August 1, 2024, paid defendant environmental fees.” (See Order of September 24, 2024.) Excluded from the Certified Classes are: (1) the forty-four putative class members who elected to opt out of the class, who are listed in Exhibit A hereto, (2) members of the judiciary who preside over this case or related litigation, (3) entities currently in bankruptcy, (4) entities whose obligations have been discharged in bankruptcy, (5) governmental entities, and (6) any persons or entities which entered into non-form contracts which specifically set or contemplate “energy” or “environmental” fees in a manner different to the standard contracts and practices at issue in this case. (See Order of May 5, 2025, ¶ 4; Complaint ¶ 12 (April 9, 2020).)

Plaintiff’s individual claim for breach of contract was dismissed voluntarily on December 29, 2021. (Order of December 29, 2021.) The Court granted judgment on the pleadings on

1 Plaintiff's individual unjust enrichment claim on October 5, 2021. (Order of October 5, 2021.)
2 This judgment was affirmed by the Court of Appeal on November 15, 2023 (*Sepanossian v. Nat'l*
3 *Ready Mixed Concrete Co.* (2023) 97 Cal. App. 5th 192, 206–08), and that judgment was
4 confirmed by the Court on remand on February 6, 2024. (Order of February 6, 2024.) Also on
5 November 15, 2023, the Court of Appeal reversed judgment on the pleadings as to the UCL Claims
6 of Plaintiff and the Certified Classes and remanded for further proceedings with respect to those
7 claims. (*Sepanossian, supra*, 97 Cal. App. 5th at 201–206.) After the Court of Appeal's decision,
8 Plaintiff, through his retained notice administrator (Angeion Group), issued class notice. (Order
9 of December 5, 2025.)

10 On April 8, 2026, Defendant filed a Motion for Summary Judgment or, in the Alternative,
11 for Summary Adjudication, which sought dismissal of the UCL Claims of Plaintiff and the
12 Certified Classes (the "Motion for Summary Judgment"). Defendant also filed a Motion to
13 Decertify Classes (the "Motion to Decertify").

14 On June 29, 2026, this Court held a hearing on Defendant's Motion for Summary Judgment
15 and Motion to Decertify. After considering the papers submitted by the parties and the argument
16 of counsel, the Court issued a Minute Order on June 29, 2026, GRANTING Defendant's Motion
17 for Summary Judgment, awarding summary judgment in favor of Defendant as to the UCL claims
18 of both Plaintiff and the Certified Classes, and deeming the Motion to Decertify MOOT. A copy
19 of the Court's June 29, 2026 Minute Order is attached as Exhibit B.

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

21 1. Judgment is entered in favor of Defendant and results in a final disposition of all
22 remaining causes of action asserted against Defendant. This Judgment is binding against
23 (1) Plaintiff as to all of his individual claims, and (2) all members of the Certified Classes (as
24 defined above) as to the UCL Claims. Plaintiff and the Certified Classes shall take nothing by way
25 of this action from Defendant.

26 2. This Court shall retain jurisdiction to determine whether and to what extent
27 Defendant may be entitled to costs, pursuant to Code of Civil Procedure section 1032 or any other
28 applicable statute or rule.

1 3. Following the entry of judgment, in accordance with California Rule of Court
2 3.771(b), Defendant shall give notice of the judgment to the class by publishing a copy of this
3 judgment on its website (nrmcc.com) for a period of 90 days.

4
5 **IT IS SO ORDERED.**

6 07/28/2026
7 DATED: _____



A handwritten signature in black ink, appearing to read "Lawrence P. Riff".

Lawrence P. Riff / Judge
Hon. Lawrence P. Riff
Judge of the Superior Court

EXHIBIT A

In re Ready Mix Class Certification

Exclusion List

5/7/2026

Count: 44

Notice ID	Company Name
RMX1001601	Ollson Construction Inc
RMX1000053	ADW Communications Svc's Inc
RMX1000057	De Sigio J Construction, Inc
RMX1000148	Cornerstone Masonry
RMX1000211	KV Structures, INC
RMX1000213	First Choice Landscape Corp
RMX1000250	Mathis Construction
RMX1000322	Sanders Construction Services
RMX1000335	Moore electric, Inc
RMX1000352	M P South, Inc
RMX1000389	Kent Electric, Inc
RMX1000420	Fleming Environmental, Inc
RMX1000422	LSI Construction(Closed)
RMX1000462	Comfort Construction
RMX1000638	SZ Development Inc
RMX1000695	Kendrick Construction
RMX1000928	Monet Construction, Inc
RMX1000934	Amburgey Carich Const, Inc
RMX1000949	Tech Gypsum, INC
RMX1000956	Mintz Concrete, Inc
RMX1001060	Southland Floor Systems, Inc
RMX1001068	JB Builders
RMX1001204	First National Contractors
RMX1001210	Wellbrock Builders
RMX1001211	West Coast Shotcrete
RMX1001245	Robert Alan Construction, Inc
RMX1001315	Los Angeles Eng, Inc
RMX1001382	Beverson Const & Masonry, Inc
RMX1001449	Judge Netting, Inc
RMX1001516	Calex Engineering Co
RMX1001623	Bakersfeield Well and Pump
RMX1001643	SJD & B, Inc
RMX1001665	Papich Construction Co, Inc
RMX1001691	T D Construction Co
RMX1001718	JA Framing System
RMX1001733	New Creation Builders
RMX1001841	Pool and Spa Builders, Inc
RMX1001913	Fico Construction
RMX1001917	Carlisi Barry
RMX1001974	Sunpeak Construction Inc
RMX1001995	PJE Construction Co
RMX1002036	The Bedrock Co (JT CK/Prelim)
RMX1002055	Eastlake Pools & Landscape
RMX1002092	Hartfield Construction Corp

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 534

20STCV13996

**GARY SEPAOSSIAN vs NATIONAL READY MIX
COMPANY, INC.**

June 29, 2026

9:00 AM

Judge: Honorable Lawrence P. Riff
Judicial Assistant: Cecilia Guerrero
Courtroom Assistant: Rosalie M. Cruz

CSR: Miranda Perez, CSR #14352
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Graham Cotten

For Defendant(s): Ali Mojibi and Ashley M. Simonsen (LA CourtConnect); Alexander L.
Schultz

NATURE OF PROCEEDINGS: Hearing on Motion for Summary Judgment /summary adjudication by defendant National Concrete Company, Inc.; Hearing on Motion for Order by defendant, National Ready Mix Concrete Company, Inc., to decertify classes; Hearing on Motion to Seal by defendant National Ready Mixed Concrete Company, Inc.

Pursuant to Government Code sections 68086, 70044, California Rules of Court, rule 2.956, and the stipulation of appearing parties, Miranda Perez, CSR #14352, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The matter is called for hearing.

Having heard argument from counsel, the Court adopts its tentative ruling as the Order of the Court as follows:

Background

On April 9, 2020, Gary Sepanossian filed this class action against National Ready Mixed Concrete Company arising out of allegations that Defendant charged separate, arbitrary energy and environmental fees to its customers that bore no nexus to the costs incurred by Defendant. The initial complaint asserted causes of action for: (1) unlawful, unfair and fraudulent business practices (B&P Code section 17200, et seq.); (2) breach of contract; and (3) unjust enrichment. The complaint alleges Defendant engaged in “unfair and fraudulent business acts and practices” by misrepresenting the fees and failing to disclose they were purely profit-enhancing. (Compl. ¶¶ 34-36.)

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ERM: None
Deputy Sheriff: None

On July 28, 2021, the court granted Plaintiff's motion for class certification adopting the following class definitions:

Energy fee class: A class of all persons or entities who reside in California who, from a date four years before the filing of this complaint through the date of class certification, paid defendant energy fees (also known as "fuel fees" or "fuel surcharges").

Environmental fee class: A class of all persons or entities who reside in California who, from a date four years before the filing of this complaint through the date of class certification, paid defendant environmental fees.

On October 5, 2021, the court issued an order granted Defendant's motion for judgment on the pleadings as to the UCL and unjust enrichment claims. On December 22, 2021, Plaintiff dismissed the breach of contract cause of action.

On November 15, 2023, the Court of Appeal issued its opinion in *Sepanossian v. National Ready Mixed Concrete Co.* (2023) 97 Cal.App.5th 192, directing the court to enter a new order denying Defendant's motion for judgment on the pleadings as to the UCL cause of action and granting the motion as to the unjust enrichment cause of action.

On September 24, 2024, the court granted a motion to modify the July 28, 2021 order and define the class period as April 9, 2016 through August 1, 2024.

Motion

On April 8, 2026, Defendant filed the instant motion seeking summary judgment, or in the alternative summary adjudication, arguing "(a) the challenged labels given to National's energy and environmental fees would not mislead a reasonable consumer and (b) they were not material to consumers' purchasing decisions" and Plaintiff individually lacks standing because he did not personally rely on the alleged misrepresentations or omissions.

Defendant's separate statement failed to follow the format required by California Rules of Court, rule 3.1350(h) when seeking summary adjudication. However, this procedural defect does not hinder the Court's ability to address the merits of the motion.

Opposition

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ERM: None
Deputy Sheriff: None

In opposition, Plaintiff contends there are triable issues of fact regarding whether the fees charged are fraudulent and unfair within the meaning of the UCL and Plaintiff has standing for his individual claims.

Reply

In reply, Defendant contends Plaintiff failed to raise a triable issue of fact as there is no evidence supporting the class claims or Plaintiff's standing.

Improper Reply Documents

In connection with its reply, Defendant filed documents entitled “. . . Objections to Plaintiff's Response to Separate Statement of Undisputed Facts . . .” and “Response to Plaintiff's Separate Statement of Additional Undisputed and Disputed Material Facts in Opposition.”

The Court does not consider either of these documents. (*See* Code Civ. Proc. § 437c(b)(4) (“The reply shall not include any new evidentiary matter, additional material facts, or separate statement submitted with the reply and not presented in the moving papers or opposing papers.”); *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252 (“The deficiencies carried over to the reply papers, which included a 297–page reply separate statement. There is no provision in the statute for this.”); *San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308, 313 (“While the code provides for reply papers, it makes no allowance for . . . filing a supplemental separate statement. (§ 437c, subd. (b).) This is consistent with the requirement supporting papers and the separate statement be served with the original motion. (§ 437c, subd. (a).).”)).

Similarly, the Court shall not consider Defendant's objections within either reply statement. (Cal. R. Ct., rule 3.1354(b) (“[a]ll written objections to evidence must be served and filed separately from the other papers in support of or in opposition to the motion . . . objections must not be restated or reargued in the separate statement” and must follow a specified format.); *Hodjat v. State Farm Mut. Auto. Ins. Co.* (2012) 211 Cal.App.4th 1, 9 (upholding the trial court's refusal to rule on objections contained solely in the separate statement).)

Both Parties Violated California Rules of Court, rule 3.1116(c)

Pursuant to California Rules of Court, rule 3.1116(c) entitled “Highlighting of testimony,” “[t]he

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relevant portion of any testimony in the deposition must be marked in a manner that calls attention to the testimony.” Neither party highlighted the relevant testimony with the deposition pages submitted. However, this procedural defect does not hinder the Court’s ability to address the merits of the motion.

Discussion

Standard

A party may move for summary judgment “if it is contended that the action has no merit or that there is no defense to the action or proceeding.” (Code Civ. Proc. § 437c(a).) A party may also move for summary adjudication of a single cause of action, affirmative defense, claim for damages, or issue of duty. (Code Civ. Proc. § 437c(f)(1).) A cause of action has no merit if: (1) one or more elements of the cause of action cannot be separately established, even if that element is separately pleaded; or (2) a defendant establishes an affirmative defense to that cause of action. (Code Civ. Proc. § 437c(o); *Union Bank v. Super. Ct.* (1995) 31 Cal.App.4th 573, 583.)

“[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

Until the movant meets this evidentiary burden, the opponent has no burden to present evidence showing a triable issue of fact. (*Hawkins v. Wilton* (2006) 144 Cal.App.4th 936, 940.) However, if the opponent does not present sufficient evidence when required, then summary judgment in favor of the movant is appropriate. (*Aguilar, supra*, 25 Cal.4th at 849.) “A party opposing summary judgment may be able to demonstrate the existence of a triable issue of material fact through the moving party’s own evidence or witnesses.” *Fisher v. Gibson* (2001) 90 Cal.App.4th 275, 286).

Law Governing UCL Claims

“To state a cause of action under consumer protection statutes designed to protect the public from fraudulent or deceptive representations, the plaintiff must demonstrate that members of the public are likely to be deceived. . . . whether a business practice is deceptive under the fraudulent prong of the UCL is based on the likely effect such practice would have on a reasonable consumer.” (*Sepanossian supra*, 97 Cal.App.5th at 200 (quotations and citations omitted).)

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“‘Likely to deceive’ for purposes of the UCL indicates it is probable that a significant portion of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled. A claim under the UCL may be based on representations to the public which are untrue, and also those which may be accurate on some level, but will nonetheless tend to mislead or deceive. A perfectly true statement couched in such a manner that it is likely to mislead or deceive the consumer, such as by failure to disclose other relevant information, is actionable under the UCL.” (*Ibid.*)

With regard to the ‘unfair’ prong of the UCL, a business practice is ‘unfair’ if (1) the consumer injury is substantial; (2) the injury is not outweighed by any countervailing benefits to consumers or competition; and (3) the injury could not reasonably have been avoided by consumers themselves.” (*Id.* at 201 (quotations omitted).)

Plaintiff’s Complaint Alleges Two Violations of the UCL

“The pleadings define the issues to be considered on a motion for summary judgment.” (*Ferrari v. Grand Canyon Dories* (1995) 32 Cal.App.4th 248, 252.)

Plaintiff summarized Defendant’s alleged improper conduct as “Ready Mix’s charges for ‘energy’ and ‘environmental’ fees were not designed to cover anything related to additional ‘energy’ costs or any ‘environmental’ fee. The amount of these charges are arbitrary and are simply designed to increase the agreed base price that Ready Mix charges for its cement deliveries to its client. Ready Mix uses these charges simply to generate extra profit at its customer’s expense, all the while deceiving customers into believing that these fees are legitimately charged and directly related to the subject implied by their title.” (Compl. ¶ 4.)

Plaintiff further identified Defendant’s alleged fraudulent acts in paragraph 35 and Defendant’s alleged unfair acts in paragraph 36. Each paragraph contains the same two allegations in subsections (a) and (b).

First, Plaintiff alleged Defendant misrepresented “that the ‘energy’ and ‘environmental’ fees [charged to Plaintiff and the class] were implemented, calculated, charged, and collected to offset Ready Mix’s actual or increased fuel costs,” when in fact the charges were “not related to or used to offset Ready Mix’s actual or increased costs of fuel.” (Compl. ¶¶ 35(a); 36(a).) The complaint alleged Plaintiff and the class would not have paid these fees “had they known it was simply a profit-enhancement tool.” (*Ibid.*)

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Second, Plaintiff alleged Defendant failed to disclose the ‘energy’ and ‘environmental’ fees [were] not related to Ready Mix’s increased or actual fuel costs, that Ready Mix’s increased fuel costs are not a factor in the amount of the ‘energy’ and ‘environmental’ fees, that the amount of the ‘energy’ and ‘environmental’ fees is not tied to any legitimate government index, and that the ‘energy’ and ‘environmental’ fees is recognized as profit.” (Compl. ¶¶ 35(b); 36(b).)

National Met its Initial Burden as Plaintiff’s Claims under the Fraud Prong of the UCL

As stated by the Court of Appeal in these proceedings, “the fees are presented to a consumer in such a way that it is probable a consumer would be misled or deceived into believing it was being charged bona fide fees for energy or environmental costs borne by Ready Mix. In other words, a reasonable consumer would likely be surprised to learn that a charge expressly identified as an ‘energy’ or ‘environmental’ fee, added on top of the set rate for a concrete purchase, had no actual relationship of any kind to Ready Mix’s energy or environmental costs and was pure profit.” (*Sepanossian, supra*, 97 Cal.App.5th at 202.) Additionally, “[r]easonable consumers are entitled to infer that the descriptive name attached to a particular fee they are being charged has some connection to the fee unless otherwise indicated.” (*Id.* at 204.)

National contends there is no genuine dispute that there is a relationship between the fees and actual energy and environmental costs and the fees were not charged solely for profit. (Mot. at 8:17-11:11.)

National provides evidence that it “has routinely set the energy and environmental fees that it charges its customers in standardized amounts in an attempt to recoup some of National’s substantial non-project-specific, company-wide energy and environmental related costs, while remaining competitive in the marketplace.” (Lode Decl. ¶ 9.) Lode enumerated numerous energy and environmental cost categories incurred by National. (*Ibid.*) Therefore, National met its initial burden to establish “some connection” between the descriptor and the fee charged.

National also argues a reasonable consumer would not expect the fees to be calculated on an individualized basis. (Mot. at 11:12-12:23.) Plaintiff expressly does not dispute that it is impractical to calculate environmental and energy costs for each order or customer and customers do not expect National to do so when charging the environmental and energy fees. (Opp. Sep. Stmt. of Undisputed Facts Nos. 12, 25.) National further provides evidence that customers and class members interpret the inclusion of energy and environmental fees as covering company-wide expenses. (Simonsen Decl. Ex. 11, Sorrentino Depo. at 52:20–21, 54:7–17, 64:18-65:2; Simonsen Decl. Ex. 12, Butorovich Depo. at 56:17-57:8; Simonsen Decl. Ex. 13,

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Wiechmann Decl. ¶ 7 (“I never believed that the energy and environmental fees charged by National were direct pass-through charges.”); Simonsen Decl. Ex. 14, Butrovich Decl. ¶ 5 (“I understood the energy and environmental fees charged by National . . . were to address indirect companywide costs.”).)

Thus, National met its burden to provide evidence negating Plaintiff’s claims that National’s energy and environmental fees are fraudulent under the UCL because they have no connection to energy and environmental costs and that a reasonable consumer would be misled by the names given to the fees considering their true nature.

Plaintiff Failed to Raise a Triable Issue of Fact Regarding Whether the Fees are Fraudulent Within the Meaning of the UCL

In opposition, Plaintiff failed to raise a triable issue of fact. “Sepanossian alleged facts which, if true, may reveal that members of the public believed the fees Ready Mix charged them had some nexus to energy or environmental costs, when in fact the listed fees had no such relationship and were solely added to increase profits to Ready Mix.” (*Sepanossian, supra*, 97 Cal.App.5th at 201–202.) While sufficient at the pleading stage, Plaintiff failed to provide any evidence supporting Plaintiff’s claims.

Plaintiff does not provide any evidence from class members regarding their interpretation or expectations regarding the energy and environmental fees. Plaintiff did not cite any evidence to dispute Defendant’s Undisputed Fact No. 26, supported by class-member depositions, that “National’s customers, including class members, understand its energy and environmental fees to generally defray related costs.”

Plaintiff cites Lode’s deposition testimony that no calculations were performed in deciding the fee amount. (Lode Depo. at 39:19-40:3 (“Q And why did you increase that fee? A It's a matter of business and what we could do to remain competitive, yet try and recoup some of our energy and environmental fees. Q Did you do a calculation at that time in the first part of 2018 when this fee increase was recommended by you and implemented by National - - did you do a calculation as to what your actual costs were for the company, either energy or environmental? A No, sir.”); 45:19-22 (“Is there any document that writes down all the things that are included the in the energy fee or fuel fee? A No, sir.”); 71:11-13 (“There was not a hard calculation done on the energy fee. Again it’s a business decision. There were not any calculations performed.”).) Plaintiff also notes an “incongruence” between National’s expert’s accounting of its costs with the fees charged.

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However, Plaintiff does not cite any authority or evidence to establish a specific calculation or proportionality is required, or that consumers reasonably expect the same. As noted by National, (Reply at 5:11-16), Plaintiff's argument that National charges fees due to industry custom is not supported by evidence. The fact that others charge the energy and environmental fees, without more, does not raise a triable issue of material fact regarding National's fees charged to its customers.

To the extent Plaintiff's claims are based upon a failure to disclose any further information, the claims fail. as Plaintiff failed to raise a triable issue of fact that the fee labels are misleading. (*Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342 ("A perfectly true statement couched in such a manner that it is likely to mislead or deceive the consumer, such as by failure to disclose other relevant information, is actionable.")) However, "[a]bsent a duty to disclose, the failure to do so does not support a claim under the fraudulent prong of the UCL." (*Berryman v. Merit Property Management, Inc.* (2007) 152 Cal.App.4th 1544, 1557, 62 Cal.Rptr.3d 177 [failure to disclose detailed listings or breakdowns of specific escrow charges comprising transfer or document fees did not violate the UCL].) This is because a consumer is not 'likely to be deceived' by the omission of a fact that was not required to be disclosed in the first place." (*Buller v. Sutter Health* (2008) 160 Cal.App.4th 981, 987.)

Defendant's motion for summary adjudication of Plaintiff's claim under the fraudulent prong on the UCL is GRANTED.

Plaintiff Failed to Raise a Triable Issue of Fact Regarding Whether the Fees are Unfair Within the Meaning of the UCL

As noted herein, Plaintiff's claims under the unfair prong are identical to those made under the fraudulent prong. As argued by Defendant, (Mot. at 15:23-16:2; Reply at 7:25-8:5), Plaintiff's claim therefore fails for the same reasons described herein. Defendant met its burden to negate the factual allegations underlying Plaintiff's claims and Plaintiff failed to raise a triable issue of fact.

The Materiality of the Fee Labels Does Not Provide a Separate Basis for Summary Judgment

National also argues fee labels are not material and therefore it is entitled to summary judgment on this separate basis. (Mot. at 14:11-15:21; Reply at 7:1-23.)

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“It is not necessary that the plaintiff’s reliance upon the truth of the fraudulent misrepresentation be the sole or even the predominant or decisive factor influencing his conduct. It is enough that the representation has played a substantial part, and so had been a substantial factor, in influencing his decision. Moreover, a presumption, or at least an inference, of reliance arises wherever there is a showing that a misrepresentation was material. A misrepresentation is judged to be material if a reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question, and as such materiality is generally a question of fact unless the fact misrepresented is so obviously unimportant that the jury could not reasonably find that a reasonable man would have been influenced by it.” (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 326–327 quoting *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 976–977.)

National’s focus on the method of calculation is misplaced. Here, Plaintiff alleged the names given to the energy and environmental fees, not their specific calculation, were misleading because the fees were unrelated to those items. The Court finds materiality does not separately support summary judgment. National’s expert’s deposition testimony indicates any line-item increasing the total cost to the customer is a substantial factor in their purchasing decision. (Cotten Decl. Ex. C, Glaser Depo. at 58:7-10 (“I think that anything that they do that increases the total cost of concrete to the buyer is going to be resisted.”).) Defendant’s witnesses Philip Arciero and William Boyd averred that they would negotiate “every aspect of the order, including, for example, . . . fees, including fuel and energy fees, environmental fees.” (Arciero Decl. ¶ 6; Boyd Decl. ¶ 7.) Their negotiation of these enumerated fees similarly supports their materiality.

Summary Judgment is Warranted

Ultimately, Defendant met its initial burden through the production of evidence negating Plaintiff’s claims and Plaintiff’s opposition is not supported by responsive evidence demonstrating a triable issue of material fact. Plaintiff’s failure to meet his evidentiary burden warrants summary judgment and the motion is GRANTED.

Plaintiff Also Failed to Raise a Triable Issue of Fact Regarding His Standing

Finally, National contends Plaintiff’s individual claims fail for a separate reason that Plaintiff did not actually rely upon the alleged misrepresentation. (Mot. at 16:23-19:12; Reply at 8:22-10-26.)

“[A] plaintiff has standing to sue under the unfair competition law . . . only if [h]e actually relied

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 534

20STCV13996

June 29, 2026

**GARY SEPAOSSIAN vs NATIONAL READY MIX
COMPANY, INC.**

9:00 AM

Judge: Honorable Lawrence P. Riff
Judicial Assistant: Cecilia Guerrero
Courtroom Assistant: Rosalie M. Cruz

CSR: Miranda Perez, CSR #14352
ERM: None
Deputy Sheriff: None

on whatever defect in a product label allegedly makes it actionable when making her decision to buy the product. To satisfy this requirement, she must [demonstrate] that “[h]e would not have bought the product but for the allegedly actionable misrepresentation or omission.” (*Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1143 (quotations and citations omitted). See also *In re Tobacco II Cases* (2009) 46 Cal.4th 298, 328 (“plaintiff must . . . prove actual reliance to satisfy the standing requirement of section 17204 . . .”).)

National provides Plaintiff’s deposition in which he testified he always questioned the validity of the energy and environmental fees, but continued to buy product from National. (Simonsen Decl. Ex. 9, Sepanossian Depo. at 34:25-35:9, 37:17-38:10.) Plaintiff also attempted to purchase from National after filing this action, despite his allegations in the complaint that the environmental and energy fees are mandatory, fraudulent, unfair, and material to his purchasing decision. (Id. at 113:11-18; 130:3–133:7.) Plaintiff expressly testified the alleged fraudulent fees had no effect on his decision to purchase from National. (Id. at 52:25-23:4 (“Q And you wanted to give your business to National even though you believed that they were charging your fraudulent and deceptive, and unfair charges for energy and environmental; correct? A Correct.”).)

Thus, the evidence indicates Plaintiff would have, and in fact did, purchase product from National without regard to the allegedly actionable misrepresentations or omissions. (*Princess Cruise Lines, Ltd. v. Superior Court* (2009) 179 Cal.App.4th 36, 43–44 (“The problem, from a pragmatic perspective, with the Wangs’ contentions about reliance is that it made no difference to them how much the excursions cost. . . . therefore, it must be said that there was *no reliance*, i.e., the Wangs would have gone on the excursions whatever the price was and without reference to anything petitioner said or did in connection with the excursions.”); *Shaeffer, supra*, 44 Cal.App.5th at 1144 (“plaintiff’s decision to buy Cuties Juice over other tangerine juices seems to have had nothing to do with calorie content at all. Because plaintiff has not truthfully alleged that she would not have bought the product but for the omission of a statement about its calorie content, she lacks standing to pursue a claim based on the omission of that statement.”).)

Plaintiff does not raise any triable issues of fact regarding his actual reliance. Plaintiff contends he was satisfied with a sales representative’s response regarding one of the fees and therefore continued to pay it. (Opp. at 13:9-18.) However, Plaintiff’s claims in this action are not based on verbal representations by National and Plaintiff’s testimony indicates he continued to doubt the fees and make purchases after his contact with the sales representative. (Simonsen Decl. Ex. 9, Sepanossian Depo. at 34:25-35:9, 37:17-38:10; 52:25-53:4; 113:11-18; 130:3–133:7.) Plaintiff’s attempts to distinguish cases as involving “ridiculous claims,” (Opp. at 15:16-17), does not alter the fact, undisputed here, that Plaintiff continued to purchase concrete from National despite his

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belief that the fees were misleading. Plaintiff therefore failed to raise a triable issue of fact that “he would not have bought the product but for the allegedly actionable misrepresentation or omission.” (*Shaeffer, supra*, 44 Cal.App.5th at 1143.)

Accordingly, summary judgment is warranted as to Plaintiff’s individual claims on the separate basis that he did not actually rely on National’s alleged misleading labels for its energy and environmental fees.

Defendant’s Motion to Decertify is MOOT

Defendant also filed a motion to decertify the class set to be heard this date. Given the Court’s ruling granting summary judgment, the motion to decertify the class is MOOT.

Conclusion

The Defendant National Ready Mixed Concrete Company, Inc.'s Notice of Motion and Motion for Summary Judgment or, in the alternative, for Summary Adjudication; Memorandum of Points and Authorities filed by National Ready Mix Company, Inc. on 04/08/2026 is Granted.

The Amended National Concrete Company, Inc.'s Motion to Decertify Classes filed by National Ready Mix Company, Inc. on 04/13/2026 is Off Calendar. The motion is moot.

Defendant is ordered to submit a proposed judgment and give notice of entry of judgment.

On the Court's own motion, the Non-Jury Trial scheduled for 08/03/2026, Final Status Conference scheduled for 07/20/2026, Non-Appearance Case Review Re Payment of Pro Hac Vice Renewal Fee for Oscar M. Price, IV scheduled for 03/15/2027, Non-Appearance Case Review Re Payment of Pro Hac Vice Renewal Fee for Samuel J. Greeley scheduled for 06/07/2027, and Non-Appearance Case Review Re: Status of Payment of a Pro Hac Vice Renewal Fee for T. Graham Cotten scheduled for 06/04/2027 are advanced to this date and vacated.

Notice is waived.

Later, the Court grants the Applications and Motions to Seal.

The clerk is to give notice.

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Certificate of Service is attached.