IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

| | |
|---|---|
| NICOLAS BLUMM and CLAIRE GATES, individually and on behalf of all others similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>NORTHWEST NATURAL GAS COMPANY and NORTHWEST NATURAL HOLDING CO.<br><br>Defendants. | Case No. 24CV48490<br><br>Hon. Benjamin Souede<br><br>**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT NORTHWEST NATURAL GAS'S SPECIAL MOTION TO STRIKE FIRST AMENDED COMPLAINT**<br><br>ORAL ARGUMENT REQUESTED |

**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

## TABLE OF CONTENTS


I. INTRODUCTION ..... 1

II. LEGAL STANDARD ..... 2

III. ARGUMENT ..... 4

A. Plaintiffs' claims arise out of Defendants' misleading commercial advertising and failure to fulfill contractual obligations, not protected speech or petitioning activities. ..... 4

1. Plaintiffs' breach-of-contract claim arises out of Defendants' non-expressive act of failing to fully mitigate their carbon emissions. ..... 5

2. Plaintiff Blumm's UTPA claim arises out of Northwest Natural Gas causing ascertainable loss through misrepresentations and omissions about Smart Energy. ..... 6

B. Defendants' special motion to strike "may not be made" against Plaintiffs' consumer protection claims. ..... 10

1. The anti-SLAPP law was recently amended to exempt the types of claims Plaintiffs allege. ..... 10

2. The exemption applies to Plaintiffs' claims, and Northwest Natural Gas's argument to the contrary should be rejected. ..... 12

3. Authority interpreting similar commercial speech exemptions shows that Oregon's applies in this case. ..... 14

C. Even if the exemption does not apply, this motion must fail because Plaintiffs make a prima facie case. ..... 19

1. Substantial evidence shows Northwest Natural Gas violated the UTPA. 19

2. Substantial evidence shows Northwest Natural Gas breached its contract with Plaintiffs. ..... 29

3. Northwest Natural Gas's arguments to the contrary fail, and Plaintiff Blumm's UTPA claim is not time-barred as a matter of law. ..... 31

D. Plaintiffs should be awarded costs and reasonable attorneys' fees ..... 37

IV. CONCLUSION ..... 39





**SUGERMAN DAHAB**

101 SW Main Street Ste. 910 Portland, OR 97204

Phone 503.228.6474 | Fax 503.228.2556

## TABLE OF AUTHORITIES

**Cases**

*Azalea Meats, Inc. v. Muscat*,
386 F2d 5 (5th Cir 1967) ..... 32, 35, 36

*Bell v. Benjamin*,
232 Or App 481, 222 P3d 741 (2009) ..... 33

*BioCorRx, Inc. v. VDM Biochemicals, Inc.*,
99 Cal App 5th 727 (2024) ..... 17

*Bodin v. B. & L. Furniture Co.*,
42 Or App 731, 601 P2d 848 (1979) ..... 34

*Bryant v. Recall for Lowell's Future Comm.*,
286 Or App 691, 400 P3d 980 (2017) ..... 3

*C.R. v. Eugene Sch. Dist. 4J*,
308 Or App 773, 481 P3d 334 (2021) ..... 3

*Castleman v. Internet Money Limited*,
546 SW3d 684 (Tex 2018) ..... 15

*Cider Riot, LLC v. Patriot Prayer USA, LLC*,
330 Or App 354, 544 P3d 363 (2024) ..... 13

*City of Hillsboro v. Purcell*,
306 Or 547, 761 P2d 510 (1988) ..... 18

*Competitive Enter. Inst. v. Mann*,
150 A3d 1213 (DC 2016) ..... 9

*Connick v. Myers*,
461 US 138, 103 S Ct 1684, 75 L Ed 2d 708 (1983) ..... 9

*Consumer Justice Ctr. v. Trimedica Int'l, Inc.*,
107 Cal App 4th 595 (2003) ..... 9

*Davenport Extreme Pools & Spas, Inc. v. Mulflur*,
698 SW3d 140 (Ky Ct App 2024) ..... 14

*Deep Photonics Corp. v. LaChapelle*,
282 Or App 533, 385 P3d 1126 (2016) ..... 4, 5, 6, 7

*DeHart v. Tofte*,
326 Or App 720, 533 P3d 829 (2023) ..... 7

*Demetriades v. Yelp, Inc.*,
228 Cal App 4th 294 (2014) ..... 14, 16

*Dep't of Hum. Servs. v. Lindsey*,
324 Or App 312, 525 P3d 470 (2023) ..... 4, 5



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

*Doe 1 v. Lake Oswego Sch. Dist.*,
353 Or 321, 297 P3d 1287 (2013) ..... 31

*Fla. Bar v. Went For It, Inc.*,
515 US 618, 115 S Ct 2371, 132 L Ed 2d 541 (1995) ..... 8

*Forest Grove Brick Works, Inc. v. Strickland*,
277 Or 81, 559 P2d 502 (1977) ..... 32, 35, 36

*Grasshopper House, LLC v. Clean & Sober Media, LLC*,
2018 WL 6118440 (CD Cal July 18, 2018) ..... 9, 10

*Guirma v. O'Brien*,
259 Or App 778, 316 P3d 318 (2013) ..... 31

*Handy v. Lane Cnty.*,
274 Or App 644, 362 P3d 867 (2015) ..... 5, 6, 19

*Handy v. Lane Cnty.*,
360 Or 605, 385 P3d 1016 (2016) ..... 2, 3

*Homestyle Direct, LLC v. Dep't of Hum. Servs.*,
354 Or 253, 311 P3d 487 (2013) ..... 29

*Horton v. W. Protector Ins. Co.*,
217 Or App 443, 176 P3d 419 (2008) ..... 2, 14

*Ibanez v. Florida Dep't of Business*,
512 US 136, 114 S Ct 2084, 129 L Ed 2d 118 (1994) ..... 8

*Ibbetson v. Grant*,
No. G059067, 2021 WL 5783174 (Cal Ct App Dec 7, 2021) ..... 38

*JAMS, Inc. v. Superior Ct.*,
1 Cal App 5th 984 (2016) ..... 14, 16

*Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*,
585 US 878, 138 S Ct 2448, 201 L Ed 2d 924 (2018) ..... 8, 9

*Kelly v. Olinger Travel Homes, Inc.*,
200 Or App 635, 117 P3d 282 (2005) ..... 11

*Kolar v. Donahue, McIntosh & Hammerton*,
145 Cal App 4th 1532 (2006) ..... 5

*Kostura v. Judge*,
627 SW 3d 380 (Tex App 2021) ..... 18

*L.A. Taxi Coop., Inc. v. The Indep. Taxi Owners Ass'n of Los Angeles*,
239 Cal App 4th 918 (2015) ..... 9, 37, 38

*Livingston v. Metro. Pediatrics, LLC*,
234 Or App 137, 227 P3d 796 (2010) ..... 11

*Lowell v. Wright*,
369 Or 806, 512 P3d 403 (2022) ..... 3, 8



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

*MacQuaid v. New York Times Co.*,
2023 WL 2633359 (D Or Mar 24, 2023) ..... 33, 34

*Major v. Silna*,
134 Cal App 4th 1485 (2005) ..... 14

*Mathies v. Hoeck*,
284 Or 539, 588 P2d 1 (1978) ..... 31, 32, 34, 35

*McCulloch v. Price Waterhouse LLP*,
157 Or App 237, 971 P2d 414 (1998) ..... 34, 35

*Migis v. Autozone, Inc.*,
282 Or App 774, 396 P3d 309 (2016) ..... 18

*Mohabeer v. Farmers Ins. Exch.*,
318 Or App 313, 508 P3d 37 (2022) ..... 2

*Moore v. Shaw*,
116 Cal App 4th 182 (Mar 26, 2004) ..... 37

*Moradi v. ReconTrust Co., N.A.*,
2017 WL 3259798 (D Or July 31, 2017) ..... 34, 35

*Moyer v. Columbia State Bank*,
316 Or App 393, 405, 505 P3d 26 (2021) ..... 29

*Mullen v. Meredith Corp.*,
271 Or App 698, 353 P3d 598 (2015) ..... 3, 5, 7

*Neumann v. Liles*,
295 Or App 340, 434 P3d 438 (2018) ..... 7, 8

*Neurelis, Inc. v. Aquestive Therapeutics, Inc.*,
71 Cal App 5th 769 (2021) ..... 16

*New York Times Co v. Sullivan*,
376 US 254, 84 S Ct 710, 11 L Ed 2d 686 (1964) ..... 9

*Nirschl v. Schiller*,
91 Cal App 5th 386 (2023) ..... 39

*Pearson v. Philip Morris, Inc.*,
358 Or 88, 361 P3d 3 (2015) ..... 31

*Prime Props., Inc. v. Leahy*,
234 Or App 439, 228 P3d 617 (2010) ..... 11

*Scott v. W. Int'l Surplus Sales, Inc.*,
267 Or 512, 517 P2d 661 (1973) ..... 27

*Seely v. Hanson*,
317 Or 476, 857 P2d 121 (1993) ..... 37

*Simpson Strong-Tie Co. v. Gore*,
49 Cal 4th 12, 230 P3d 1117, 1127 (2010) ..... 14, 15



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

*Slover v. Oregon State Bd. of Clinical Soc. Workers*,
144 Or App 565, 927 P2d 1098 (1996) ..... 29

*State ex rel. Rosenblum v. Living Essentials LLC*,
371 Or 23, 529 P3d 939 (2023) ..... 8

*Staten v. Steel*,
222 Or App 17, 191 P3d 778 (2008) ..... 2, 39

*Taheri L. Group v. Evans*,
160 Cal App 4th 482 (2008) ..... 17

*Tokarski v. Wildfang*,
313 Or App 19, 496 P3d 22 (2021) ..... 4

*Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*,
425 US 748, 96 S Ct 1817, 48 L Ed 2d 346 (1976) ..... 8

*Varian Med. Sys., Inc. v. Delfino*,
35 Cal 4th 180, 106 P3d 958 (2005) ..... 37

*Walker v. Nestle USA, Inc.*,
2020 WL 3317194 (SD Cal June 17, 2020) ..... 10

*Watson v. Hornecker Cowling, LLP*,
2022 WL 3357845 (D Or June 28, 2022) ..... 31

*Westfall v. Rust Int'l*,
314 Or 553, 840 P2d 700 (1992) ..... 37

*Wickenkamp v. Hostetter L. Grp., LLP*,
2016 WL 10677908 (D Or July 14, 2016) ..... 31

*Young v. Davis*,
259 Or App 497, 314 P3d 350 (2013) ..... 3, 4, 29

**Statutes**

Cal Code Civ P § 425.16(e ..... 37

Cal Code Civ P § 425.17(a) ..... 14, 19

Cal Code Civ P § 425.17(c) ..... 15

Ky Rev Stat Ann § 454.462(2)(a)3 ..... 14

ORS 31.150(2) ..... passim

ORS 31.150(3) ..... passim

ORS 31.150(4) ..... 2, 3, 19

ORS 31.152(3) ..... 36, 37

ORS 646.605(10) ..... 20

ORS 646.608 ..... passim

ORS 646.608(1)(b) ..... 19, 20, 27



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

ORS 646.608(1)(e) ..... 20, 27
ORS 646.608(1)(f) ..... 20, 27
ORS 646.608(1)(g) ..... 20, 27
ORS 646.638(1) ..... 6, 20, 27
ORS 646.638(6) ..... 31
ORS 646.638(8) ..... 20, 27
Tex Civ Prac & Rem Code § 27.010 ..... 18

**Other Authorities**

Nat'l Comm'n on Uniform State Laws, Uniform Public Expression Protection Act § 2 (2020) ..... passim
Or Laws 2023, ch 71 (SB 305) ..... 10
Video Recording, House Committee on Judiciary, SB 305, Mar 14, 2023 ..... 11



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

## I. INTRODUCTION

On behalf a class of similarly situated Northwest Natural Gas customers cheated into paying for illusory carbon offsets, two residential customers of Northwest Natural Gas, Plaintiffs Nicolas Blumm and Claire Gates, sued the company for breach of contract and violations of Oregon's Unlawful Trade Practices Act (UTPA) in a 150-paragraph complaint detailing how the company's Smart Energy program tricked them and failed to provide the climate benefits Defendants promised. Not content with a motion to dismiss, Northwest Natural Gas seizes upon a procedural safeguard meant to enable individual Oregonians sued for exercising their First Amendment rights to expeditiously dispose of meritless lawsuits filed by powerful actors bent on silencing citizens. In Defendants' upside-down world, *they* are the regular citizens being sued for their public discourse on the topic of climate change, while Blumm and Gates are the ones using a lawsuit to try to silence the natural gas conglomerate.

The Court should not tolerate Defendants' abuse of Oregon's anti-SLAPP law, which does not apply in this case. As is evident from the face of the complaint, Plaintiffs' breach of contract claim arises from Northwest Natural Gas's *breach*, not its speech, while Plaintiff Blumm's UTPA claim arises from the company's commercial advertising, not its speech on a matter of public concern or acts in furtherance of free speech rights. Even if Plaintiffs' claims did trigger application of the anti-SLAPP law, Northwest Natural Gas's motion would still be barred by an exemption the Oregon legislature recently enacted specifically for claims, like Plaintiffs', arising from commercial advertising. And in all events, Defendants motion would fail because Plaintiffs easily clear the low bar of stating a prima facie case, as the declarations of Plaintiffs Blumm and Gates and greenhouse gas engineering and accounting expert Emily Grubert—together with the reams of evidence cited in Plaintiffs' complaint—establish.[1]

---

[1] Plaintiffs' response is supported by the Declarations of Nicolas Blumm, Claire Gates, Emily Grubert, and Kelsey Eberly, all of which are filed concurrently herewith. Plaintiffs note



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

Defendants tie themselves in knots attempting to evade these obvious conclusions. They should pay a price for its misuse of Oregon's anti-SLAPP law: the Court should deny the motion and award Plaintiffs their costs and attorneys' fees incurred in opposing it.

## II. LEGAL STANDARD

"SLAPP is an acronym for strategic lawsuits against public participation. Anti-SLAPP statutes seek to minimize the effect of strategic suits intended to deter persons from expressing their views." *Handy v. Lane Cnty.*, 360 Or 605, 612 n 4, 385 P3d 1016 (2016) (internal citation omitted). When introducing the bill that would become Oregon's anti-SLAPP law, Representative Schrader explained:

> "This bill is about nothing less than guaranteeing our basic first amendment rights for our citizens without their being afraid of intimidation by powerful interests that sometimes seem to hold sway here in the state of Oregon and in this country at this point in time. * * * It is important that we encourage citizens—that is what this is about—this is encouraging citizens to engage in their state government."

*Horton v. W. Protector Ins. Co.*, 217 Or App 443, 451–52, 176 P3d 419 (2008); *Staten v. Steel*, 222 Or App 17, 32, 191 P3d 778 (2008) (bill's purpose "to expeditiously terminate *unfounded* claims that threaten constitutional free speech rights, not to deprive litigants of the benefit of a jury determination that a claim is *meritorious*" (emphasis in original)).

In service of that aim, Oregon's anti-SLAPP law establishes a multi-phase burden-shifting procedure in which the defendant bears the initial burden to make a prima facie showing that a "special motion to strike may be made under this section." ORS 31.150(2); ORS 31.150(4); *Mohabeer v. Farmers Ins. Exch.*, 318 Or App 313, 316–17, 508 P3d 37 (2022). A motion may be made against a plaintiff's claim "that arises out of" one or more of four categories of protected activities including, as relevant here, one that arises out of "[a]ny oral statement made, or written statement or other document presented, in a place open to the public

---

that, as a result of the software used to electronically sign the declarations, the Blumm and Gates declarations are dated in day/month/year format.



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

or a public forum in connection with an issue of public interest;" ORS 31.150(2)(c), or out of "[a]ny other conduct in furtherance of the exercise of the constitutional right of assembly, petition or association or the constitutional right of free speech or freedom of the press in connection with a public issue or an issue of public interest." ORS 31.150(2)(d).[2] In determining whether the defendant has met that burden, the allegations in the complaint and any "facts described in affidavits or declarations * * * must be viewed in the light most favorable to the plaintiff." *C.R. v. Eugene Sch. Dist. 4J*, 308 Or App 773, 780–81, 481 P3d 334 (2021); *Mullen v. Meredith Corp*., 271 Or App 698, 702, 353 P3d 598 (2015).

Additional statutorily limits prohibit motions to strike in certain circumstances. Thus, "a special motion to strike may *not* be made against a claim * * * against a person primarily engaged in the business of selling or leasing goods or services if the claim arises out of a communication related to the person's sale or lease of the goods or services." ORS 31.150(3) (emphasis added). Such claims are categorically exempt from the anti-SLAPP law.

In circumstances where the motion "may be made"—that is, where ORS 31.150(3) does not apply, and if the defendant meets its burden—"the burden shifts to the plaintiff in the action to establish that there is a probability that the plaintiff will prevail on the claim by presenting substantial evidence to support a prima facie case." ORS 31.150(4). The court's role at that juncture is not to "weig[h] defendant's evidence against plaintiff's," *Young v. Davis*, 259 Or App 497, 507, 314 P3d 350 (2013), but only to determine whether the plaintiff has met its burden, viewing the facts in the light most favorable to the plaintiff and "draw[ing] reasonable inferences

---

[2] Defendants contend that paragraph 123 of the First Amended Complaint ("Compl.") "contains allegations that also fall into ORS 31.150(2)(a)," Motion to Strike at 3, which applies to a plaintiff's claim that arises out of "[a]ny oral statement made, or written statement or other document submitted, in a legislative, executive or judicial proceeding or other proceeding authorized by law." Defendants are wrong, for the reasons explained below and in Plaintiffs' accompanying Appendix A.



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

from" the plaintiff's "evidence in [its] favor," *C.R.*, 308 Or App at 781; *Handy*, 360 Or at 622–23; *Bryant v. Recall for Lowell's Future Comm.*, 286 Or App 691, 692–93, 400 P3d 980 (2017).

At this stage, "the court may consider defendant's evidence only insofar as necessary to determine whether it defeats plaintiff's claim as a matter of law." *Young*, 259 Or App at 509–510. "[W]hether or not it is 'likely' that the plaintiff will prevail is irrelevant" because "the presentation of substantial evidence to support a *prima facie* case is, *in and of itself*, sufficient." *Id.* at 508 (emphasis in original). "That low bar befits the pretrial nature of" the anti-SLAPP procedure, the "goal" of which "is to weed out meritless claims meant to harass or intimidate—not to require that a plaintiff prove its case before being allowed to proceed further." *Id.*

## III. ARGUMENT

### A. Plaintiffs' claims arise out of Defendants' misleading commercial advertising and failure to fulfill contractual obligations, not protected speech or petitioning activities.

In their motion, Defendants catalogue allegations in 40 paragraphs of Plaintiffs' operative complaint, claiming that each describes conduct falling within ORS 31.150(2) and insisting that Plaintiffs' UTPA and breach of contract claims "aris[e] out of" every one of the supposedly protected acts. This is wrong. Plaintiffs' claims arise out of Defendants' unprotected conduct in (1) misleading its customers about a natural gas emissions-cancelling product it advertised to them, and (2) breaching its contract with customers who purchased that product.

Indeed, not every statement or act described in a complaint is necessarily one the plaintiff's claim "arises out of" for purposes of ORS 31.150(2). *Deep Photonics Corp. v. LaChapelle*, 282 Or App 533, 541, 385 P3d 1126 (2016).[3] "To determine whether a claim arises

---

[3] Courts do not apply ORS 31.150(2) by reviewing a complaint paragraph by paragraph to determine whether each act constitutes protected speech activity. *Id.* That puts the cart before the horse, because if the activity isn't what "giv[es] rise to" the plaintiff's claim, then whether it falls under ORS 31.150(2) is irrelevant. *Dep't of Hum. Servs. v. Lindsey*, 324 Or App 312, 319, 525 P3d 470 (2023). Instead, ORS 31.150(2)'s reference to a "'claim' * * * indicates that the legislature intended that such motions would employ a claim-by-claim analysis as to whether a



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

out of conduct described in ORS 31.150(2), [courts] examine the conduct that is targeted by the claims in the complaint." *Lindsey*, 324 Or App at 318. The "inquiry turns on the nature of the claims asserted against a defendant and the alleged actions of the defendant giving rise to those claims," *id.* at 319, not on "a plaintiff's underlying motivation to bring the claim," *Handy v. Lane Cnty.*, 274 Or App 644, 668–69, 362 P3d 867 (2015), *aff'd in part, rev'd in part*, 360 Or 605. This "is an inquiry into 'more generally what sort of claim this is.'" *Deep Photonics*, 282 Or App at 541 (citing *Mullen*, 271 Or App at 705). " 'A cause of action may be triggered by or associated with a protected act, but it does not mean the cause or action *arises* from that act.' " *Id.* at 546–47 (emphasis in original) (quoting *Kolar v. Donahue, McIntosh & Hammerton*, 145 Cal App 4th 1532, 1537 (2006) (internal quotation in *Kolar* omitted)).[4]

**1. Plaintiffs' breach-of-contract claim arises out of Defendants' non-expressive act of failing to fully mitigate their carbon emissions.**

Defendants correctly note that "to succeed on their" breach of contract "claim, Plaintiffs must establish that NW Natural made a contractual offer that was accepted by Plaintiffs." Motion to Strike at 9. But even if Defendants offer for Smart Energy was conduct protected by the anti-SLAPP statute (it is not, as explained *infra* at A.2), it is the *breach* that gives rise to Plaintiffs' claim, not the making of the offer.[5] *See* Compl. ¶¶ 149–50 (alleging breach by failing

---

particular claim should be stricken." *Tokarski v. Wildfang*, 313 Or App 19, 25, 496 P3d 22 (2021). Nevertheless, in the enclosed Plaintiffs' Appendix A, Plaintiffs respond to Defendants' Appendix A to explain why each allegation falls outside the anti-SLAPP law.

[4] Oregon courts look to California precedent in addressing this question, since the relevant "part of [California's] anti-SLAPP statute * * * is identically-worded to ORS 31.150(2)(b)." *Deep Photonics*, 282 Or App at 544.

[5] Defendants claim "[t]he FAC alleges that NW Natural communicated this offer with the many statements identified throughout the FAC, which are cataloged in Appendix A." Motion to Strike at 9. That is false. While some of the statements identified in Defendants' Appendix A illustrate Northwest Natural Gas's offer to enroll in Smart Energy (*see* Compl. ¶¶ 74–75), many others do not and could not be construed as describing Northwest Natural Gas's offer (*see, e.g.*, Compl. ¶¶ 58–60; 115; 123). Plaintiffs' complaint does not claim otherwise. Defendants' attempt to fit the square peg of Plaintiffs' allegations into the round hole of the anti-SLAPP law should be rejected.



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

to deliver carbon offsets guaranteed to mitigate specific quantities of carbon emissions from Plaintiffs' natural gas use, and Plaintiffs' consequent damages).

That Plaintiffs' claim was "triggered by" Northwest Natural Gas's offer "does not mean the cause or action *arises* from" that offer. *Deep Photonics*, 282 Or App at 546–47 (internal quotation omitted). Defendants rely on *Deep Photonics*, but it supports Plaintiffs. There, the court disagreed that the plaintiffs' derivative legal malpractice claims arose out of statements the defendant lawyer made to a client "in anticipation of litigation," which the defendant said constituted an act in furtherance of the right to petition. 282 Or App at 546–47. Instead, the "plaintiffs' claims 'ar[o]se out of' [the lawyer's] *failure* to give competent legal advice"—not a protected act. *Id.* (emphasis in original). "[T]he nature of th[e]se acts [we]re 'garden variety' legal malpractice and not petitioning activity." *Id.* at 547; *see also Handy*, 274 Or App at 668–69 (claim based on board's alleged "failure to comply with the statutory requirements for holding an emergency meeting" fell outside ORS 31.150(2), notwithstanding that plaintiff's complaint sought "to attack the board's decision" and "have the result of [its] emergency meeting voided"). The same goes in this case of "garden variety" breach of contract. *Deep Photonics*, 282 Or App at 547.

**2. Plaintiff Blumm's UTPA claim arises out of Northwest Natural Gas causing ascertainable loss through misrepresentations and omissions about Smart Energy.**

Plaintiff Blumm's UTPA claim arises out of Northwest Natural Gas's use of specified deceptive practices—as Defendants appear to agree. Motion to Strike at 8 ("Plaintiff Blumm must establish that he has 'suffer[ed] an ascertainable loss of money or property, real or personal, as a result of another person's willful use or employment of a method, act or practice declared unlawful under ORS 646.608,' " citing ORS 646.638(1)). That claim does *not* arise out of



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

Northwest Natural Gas's public statements[6] "in connection with an issue of public interest." ORS 31.150(2)(c); *see* Compl. ¶¶ 131, 137–38. That distinguishes this case from *Mullen*, in which a broadcaster aired a story on a shooting and revealed the location of the plaintiff's home. 271 Or App at 702. News reporting on an issue of public safety is quintessential conduct in furtherance of free speech and press rights. *Id.* at 707.

True, courts have broadly construed what constitutes an "issue of public interest" for purposes of ORS 31.150(2)(c), *Neumann v. Liles*, 295 Or App 340, 345–46, 434 P3d 438 (2018), and Plaintiffs do not dispute that some of Northwest Natural Gas's public statements about RNG or Smart Energy may fall within that category. But Plaintiff Blumm's claim does not arise out of most of the cited statements (as explained in Plaintiffs' enclosed Appendix A), and several of the marketing representations the claim *does* target are not "public" at all, but solicitations made to customers who have signed into their personal account pages on Northwest Natural Gas's website. *See* Compl. ¶¶ 80–83; Declaration of Kelsey Eberly ("Eberly Decl.") ¶¶ 8–11, Exs. 7–10; Declaration of Nicolas Blumm ("Blumm Decl.") ¶¶ 5; 9–10. In that respect, the facts here are distinct from *DeHart v. Tofte*, 326 Or App 720, 731, 533 P3d 829 (2023), on which Defendants rely to contend that any statement posted online "satisfie[s] the in-public requirement." Motion to Strike at 4. *DeHart* concerned a Facebook group of 649 members of a school community, 326 Or App at 731, not an individual's personal account page behind the individual's personalized login.

Nor does Plaintiff Blumm's UTPA claim "arise[] out of" Northwest Natural Gas's conduct in furtherance of its free speech rights under ORS 31.150(2)(d). Plaintiff's claim does

---

[6] Indeed, one of Plaintiff Blumm's UTPA claims is based on Northwest Natural Gas's alleged *failure* to provide information. *See* Compl. ¶ 137 (alleging violation of the UTPA, ORS 646.608(1)(e) by "omitting information to consumers regarding the qualities and characteristics of carbon offsets and/or Renewable Natural Gas in the Smart Energy program marketed to Plaintiffs"). Defendants do not explain how an alleged failure to provide information could constitute protected speech activity within ORS 31.150(2). *Deep Photonics*, 282 Or App at 546–47.



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

not target the company's participation in a public debate about "the suitability of Smart Energy and RNG as a tool for addressing carbon emissions," Motion to Strike at 5, or the company's "opinion" on addressing climate change. *Id.* at 6. Instead, Plaintiff Blumm challenges the company's misleading factual statements and omissions in commercial advertising for Smart Energy.

That such conduct falls within ORS 31.150(2)(d) is doubtful, as Defendants' authority, *Lowell v. Wright*, makes clear. 369 Or 806, 827–28, 512 P3d 403 (2022). In *Lowell*, the Oregon Supreme Court noted that the mere fact that a statement appears on the internet and may interest a member of the public does not necessarily imbue it with constitutional importance. *Id.* The court counseled against reading *Neumann* to find every "negative review of a business posted on the internet * * * categorically speech on a matter of public concern." *Id.* Instead, courts should address the question "by looking to [the] content, form, and context" of the speech, "[t]he touchstone principle" being to assess "whether the speech must be protected to ensure the continuance of vigorous debate on public issues and, by extension, self-governance." *Id.*

It is simply not correct to state that Northwest Natural Gas's statements aimed at persuading customers to enroll in Smart Energy "must be protected" to ensure the continuance of "vigorous debate" and "self-governance." *See id.* Federal courts long have held that "[f]alse, deceptive, or misleading commercial speech may be banned" consistent with the First Amendment. *Ibanez v. Florida Dep't of Business*, 512 US 136, 142, 114 S Ct 2084, 129 L Ed 2d 118 (1994). Thus, through laws like the UTPA, states may "insur[e] that the stream of commercial information flow cleanly as well as freely." *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 US 748, 771–72, 96 S Ct 1817, 48 L Ed 2d 346 (1976); *see also Fla. Bar v. Went For It, Inc.*, 515 US 618, 623–24, 115 S Ct 2371, 132 L Ed 2d 541 (1995) ("[T]he government may freely regulate commercial speech that * * * is misleading."); *State ex rel. Rosenblum v. Living Essentials LLC*, 371 Or 23, 58, 529 P3d 939 (2023) ("Under the First Amendment, states may regulate false or deceptive commercial speech."). While "[d]iscourse on



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

'controversial subjects *such as climate change*' lies squarely within the core protected zone of freedom of speech," Motion to Strike at 6 (citing *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 US 878, 914, 138 S Ct 2448, 201 L Ed 2d 924 (2018) (emphasis Defendants')), Defendants' error lies in equating its commercial advertising with such " '[p]ublic discussion' about climate change." Motion to Strike at 6 (citing *Competitive Enter. Inst. v. Mann*, 150 A3d 1213, 1242 (DC 2016)). It is not the same thing, and it is not subject to the same degree of constitutional protection.[7]

Indeed, Defendants cite no Oregon authority holding commercial advertising falls within ORS 31.150(2)(c) or (d), and California and federal courts considering this question have found it "well established that commercial speech that does nothing but promote a commercial product or service is not speech protected under [California's] anti-SLAPP statute." *L.A. Taxi Coop., Inc. v. The Indep. Taxi Owners Ass'n of Los Angeles*, 239 Cal App 4th 918, 927 (2015) (finding "[internet] advertisements" for "specific taxicab company" not speech made in connection with a matter of public interest when ads were not "about the taxicab industry, the taxicab licensing process, or local taxicab regulations," but the company's services). This is so "even if the product category * * * is a subject of public interest." *Id.* at 928 (describing holding of *Consumer Justice Ctr. v. Trimedica Int'l, Inc.*, 107 Cal App 4th 595, 601 (2003)). "If it were otherwise, 'every defendant in every false advertising case * * * [would be able] to bring a special motion to strike under the anti-SLAPP statute, even though it is obvious that the case was

---

[7] Notably, *none* of the authorities Defendants cite in this argument concerns commercial advertising alleged to be false and misleading. *See Connick v. Myers*, 461 US 138, 144–45, 103 S Ct 1684, 75 L Ed 2d 708 (1983) (concerning First Amendment protection for public employee speech); *New York Times Co v. Sullivan*, 376 US 254, 279–80, 84 S Ct 710, 11 L Ed 2d 686 (1964) (announcing "actual malice" standard in news publisher defamation suit); *Janus*, 585 US at 913–14 (addressing speech of unions with which nonmembers may disagree, "on controversial subjects such as climate change, the Confederacy, sexual orientation and gender identity, evolution, and minority religions," in challenge to nonmembers' compelled union dues); *Mann*, 150 A3d at 1220 (defamation action by climate scientist against institute and magazine over articles critical of scientist's work).



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

not filed for the purpose of chilling participation in matters of public interest.' " *Grasshopper House, LLC v. Clean & Sober Media, LLC*, 2018 WL 6118440, at *10 (CD Cal July 18, 2018) (citing *L.A. Taxi Coop.*, 239 Cal App 4th at 928). Similarly, "[u]nder the anti-SLAPP statute, a party also cannot immunize its misleading commercial speech by linking it to noncommercial speech." *Grasshopper*, 2018 WL 6118440 at *12; *Walker v. Nestle USA, Inc.*, 2020 WL 3317194, at *4 (SD Cal June 17, 2020) (internal quotations and citations omitted) (in false adverting challenge to chocolate product packaging, that "discussion of Defendant's website in the complaint provide[d] extensive context and evidentiary support to Plaintiff's claims * * * d[id] not alter the analysis under the Anti-SLAPP Law," as "[e]ven in the absence of the commercial speech exemption * * *, and even if the website content include[d] discussion of matters of public interest, * * * plaintiff's inclusion of allegations as evidentiary support or context for the claim [wa]s not sufficient to convert defendant's commercial speech into constitutionally protected free speech.").

**B. Defendants' special motion to strike "may not be made" against Plaintiffs' consumer protection claims.**

Even if the Court finds that Plaintiffs' claims arise from Northwest Natural Gas's speech activities under ORS 31.150(2), its motion must fail because pursuant to a recently enacted exemption in the anti-SLAPP law, Northwest Natural Gas's motion "may not be made." ORS 31.150(3). The Court may thus either deny it or strike it.

**1. The anti-SLAPP law was recently amended to exempt the types of claims Plaintiffs allege.**

In 2023, the Oregon legislature amended the anti-SLAPP law to prohibit the filing of motions to strike "against a claim under this section against a person primarily engaged in the business of selling or leasing goods or services if the claim arises out of a communication related to the person's sale or lease of the goods or services." ORS 31.150(3); *see* Or Laws 2023, ch 71



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

(SB 305). Although no Oregon court has yet interpreted the provision, its legislative history makes clear that it was tailor-made for cases such as this.

Oregon's exemption was adapted from section 2(c)(3) of the Uniform Public Expression Protection Act ("UPEPA"), the model anti-SLAPP law drafted by the National Conference of Commissioners on Uniform State Laws in 2020.[8] As the Unform Law Commission there explained, the exemption "carves out from the scope of the Act * * * commercial speech." UPEPA § 2, cmt 13, at 9–10, *available at* https://bit.ly/3R0PGHP. For example, "if a mattress store is sued for false statements made in its advertising of mattresses—whether by an aggrieved consumer or a competitor—the mattress store would not be able to avail itself of the Act." *Id*. The store *could*, if "sued for tortious interference for organizing a petition campaign to oppose the building of a new school," because that "activity would not be related to the sale or lease of goods or services." *Id.* cmt 10, at 9. Under this exemption, "[e]ven if a movant can show the [anti-SLAPP law] applies," the law "may nevertheless *not* apply if the non-movant can show the cause of action is exempt." *Id.* at 9 (emphasis in original). If the non-movant's evidence establishes that the exemption applies, the anti-SLAPP "motion must be denied." *Id.* § 7, cmt 3, at 18.

The Commission's comments are part of the legislative history of ORS 31.150(3), as Oregon courts have recognized and one of the Oregon drafters of the UPEPA made clear. Video Recording, House Committee on Judiciary, SB 305, Mar 14, 2023, at 22:00 (statement of Lane Shetterly), https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID =2023031216 (accessed Mar 9, 2025);[9] *Livingston v. Metro. Pediatrics, LLC*, 234 Or App 137, 144, 227 P3d 796 (2010) (finding "commentary to a uniform act that is enacted by the Oregon

---

[8] Section 2(c) of the UPEPA exemption provides: "This [act] does not apply to a [cause of action] asserted: * * * (3) against a person primarily engaged in the business of selling or leasing goods or services if the [cause of action] arises out of a communication related to the person's sale or lease of the goods or services."

[9] Mr. Shetterly chaired the committee that drafted the UPEPA.



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

legislature * * * a part of the act's legislative history"); *Kelly v. Olinger Travel Homes, Inc.*, 200 Or App 635, 644 n 5, 117 P3d 282 (2005) (comments to the Uniform Commercial Code "are instructive, because the [Oregon] legislature took note of them at the time of adoption"); *Prime Props., Inc. v. Leahy*, 234 Or App 439, 445, 228 P3d 617 (2010) (commentary on Uniform Arbitration Act, model for Oregon statute, "help[ed] to explicate the meaning of the statutory terms" and "provide[d] a useful tool for promoting uniformity of the law," so courts "consider it where appropriate").

**2. The exemption applies to Plaintiffs' claims, and Northwest Natural Gas's argument to the contrary should be rejected.**

Northwest Natural Gas is no different than the UPEPA's mattress store sued for its falsely advertised mattresses; there is no serious argument to the contrary. First, Plaintiffs bring their UTPA and breach of contract claims "against a person primarily engaged in the business of selling or leasing goods or services." ORS 31.150(3). Northwest Natural Gas does not dispute that. Motion to Strike at 10 (identifying company's "primary business" as " 'distribut[ing] natural gas to residential, commercial, and industrial customers in Oregon and southwest Washington'") (quoting Defendants' Request for Judicial Notice, Ex. 2, Northwest Natural Gas Company 2023 Form 10-K at 8). Second, Plaintiff Blumm's UTPA "claim arises out of a communication related to [Northwest Natural Gas]'s sale or lease of the goods or services": the company's representations and promises that, through Smart Energy, Plaintiff Blumm could mitigate the greenhouse gas emissions associated with the natural gas the company provides—"communication[s] related to" Northwest Natural Gas's sale of natural gas. ORS 31.150(3).[10]

---

[10] As noted above, Plaintiffs' breach of contract claim arises out of Northwest Natural Gas's failing to meet its contractual obligations, not its communications, protected or otherwise. To the extent Plaintiffs' claim *could* be said to arise from Northwest Natural Gas's communications—its offer to prospective Smart Energy customers—those, too, would be ones "related to" its sale of natural gas. *Id.*



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

Attempting to evade this obvious conclusion, Northwest Natural Gas posits a fanciful interpretation of the statutory exemption: that the exemption doesn't apply because, while the company is "primarily engaged" in distributing natural gas, Plaintiffs' claims supposedly "arise out of communications related to NW Natural's funding of carbon offsets and purchasing of renewable thermal certificates for RNG," which are not the company's "primar[y] business."[11] Motion to Strike at 10. The Court should reject that argument. Plaintiff's UTPA claim arises from Northwest Natural Gas's communications to him and his fellow *natural gas* customers related to cancelling out emissions *from that gas*. The claim does not arise from the company's unrelated funding of carbon offsets.[12]

Taken to its logical conclusion, Northwest Natural Gas's argument simply cannot withstand scrutiny. By Northwest Natural Gas's reasoning, Foot Locker could use the anti-SLAPP law against a customer who sued the company for falsely advertising baseball caps, but not against the customer who sued over falsely advertised baseball cleats, because Foot Locker is primarily in the business of selling shoes, not hats. Surely the Oregon legislature's inclusion of the word "primarily" was meant not to countenance that outcome, but to distinguish commercial sellers advertising their products and services, like Northwest Natural Gas, from persons *not* "primarily engaged in the business of selling or leasing goods or services." ORS 31.150(3). That makes good sense. Allowing a person who occasionally sells tchotchkes on eBay to use the

---

[11] As Northwest Natural Gas itself points out, its 10-K—the instrument through which public companies like Northwest Natural Gas communicate material financial information to regulators and investors—"identifies the Smart Energy program as one among many measures by which NW Natural seeks to 'take proactive steps in seeking to reduce GHG emissions.' " Motion to Strike at 10–11. Odd that Northwest Natural Gas would go on, at length, to tell investors and regulators about measures it here claims are "not the business that NW Natural is 'primarily engaged in.' " *Id.* at 10.

[12] Even if Northwest Natural Gas were marketing carbon offsets independent of and unrelated to its natural gas service, Plaintiffs are not challenging that marketing, so their claims could not arise out of it and ORS 31.150(2) would not apply anyway.



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

anti-SLAPP law if sued for their protected speech furthers the law's remedial purposes.[13] Allowing Northwest Natural Gas to use it when sued for misleading and cheating customers does not. *Horton*, 217 Or App at 451–52.

**3. Authority interpreting similar commercial speech exemptions shows that Oregon's applies in this case.**

While the ORS 31.150(3) is new, other jurisdictions' authority uniformly favors its application here. For example, Kentucky recently adopted the UPEPA, including a commercial speech exemption nearly identical to Oregon's, Ky Rev Stat Ann § 454.462(2)(a)3. In the only case to interpret it thus far, "[t]he cause of action was the opposite – the business instituted a cause of action against the customer," so the court found that the exemption did not apply, and the customer could use the law's protections. *Davenport Extreme Pools & Spas, Inc. v. Mulflur*, 698 SW3d 140, 154 (Ky Ct App 2024).

While not modeled on the UPEPA, California's exemption also supports Plaintiffs' argument. The California legislature adopted its exemption in 2003 "to curb a disturbing abuse of" the state's anti-SLAPP law, which the legislature found "ha[d] undermined the exercise of the constitutional rights of freedom of speech and petition for the redress of grievances, contrary to" the law's "purpose and intent." Cal Code Civ P § 425.17(a) ("continued participation in matters of public significance" should be encouraged, not "chilled through abuse of" the law); *Simpson Strong-Tie Co. v. Gore*, 49 Cal 4th 12, 27, 230 P3d 1117, 1127 (2010). California's

> "legislation [wa]s aimed squarely at false advertising claims and [wa]s designed to permit them to proceed without having to undergo scrutiny under the anti-SLAPP statute. Proponents of the legislation argued that corporations were improperly using the anti-SLAPP statute to burden plaintiffs who were pursuing

---

[13] Northwest Natural Gas cites *Cider Riot, LLC v. Patriot Prayer USA, LLC*, 330 Or App 354, 359, 544 P3d 363 (2024) (Motion to Strike at 12), to argue that ORS 31.150(3) should be narrowly construed. But that case did not involve a commercial seller or consumer protection claims; it involved claims by a bar and its owner, whose patrons were associated with Antifa, against Patriot Prayer and its members, stemming from "a political protest of plaintiffs' business." *Id.* at 358. *Cider Riot* offers no ground for a crabbed reading of ORS 31.150(3).



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

> unfair competition or false advertising claims. The proponents noted that law seminars were being conducted on the unfair competition law, encouraging corporations to use the SLAPP motions as [a] new litigation weapon to slow down and perhaps even get out of litigation."

*Demetriades v. Yelp, Inc.*, 228 Cal App 4th 294, 309 (2014) (internal quotations and citations omitted); *see also JAMS, Inc. v. Superior Ct.*, 1 Cal App 5th 984, 992–94, (2016) (recounting legislative history); *Major v. Silna*, 134 Cal App 4th 1485, 1496 (2005) (quoting Consumer Attorneys of California testimony that "growing number of large corporations ha[d] invoked the anti-SLAPP statute to delay and discourage litigation against them").[14]

The only California Supreme Court case to have addressed the exemption held that it did not apply where Simpson Strong–Tie sued a law firm for defamation after the firm placed a newspaper ad maligning the company's screws. *Simpson Strong–Tie*, 49 Cal 4th at 16–17. The court so held because Simpson's causes of action arose not from "representations of fact about [the law firm's own] * * * business operations, goods, or services," *id.* at 30 (quoting § 425.17(c)(1)), but from representations about Simpson's goods. *Id.* at 30–31. There is no question that Plaintiffs' cause of action arises from Northwest Natural Gas's representations about its own products, so the company's reliance on *Simpson* is unavailing.[15]

---

[14] California's exemption applies "to any cause of action brought against a person primarily engaged in the business of selling or leasing goods or services, * * * arising from any statement or conduct by that person if both * * * (1) [t]he statement or conduct consists of representations of fact about that person's or a business competitor's business operations, goods, or services, that is made for the purpose of obtaining approval for, promoting, or securing sales or leases of, or commercial transactions in, the person's goods or services, or the statement or conduct was made in the course of delivering the person's goods or services," and "(2) [t]he intended audience is an actual or potential buyer or customer, or a person likely to repeat the statement to, or otherwise influence, an actual or potential buyer or customer * * *" Cal Civ Proc Code § 425.17(c).

[15] For the same reason, so is its reliance (Motion to Strike at 11) on *Castleman v. Internet Money Limited*, 546 SW3d 684, 688 (Tex 2018), in which the Texas Supreme Court held that a former business partner of a company could not invoke the exemption to evade liability in a defamation suit. The business partner's "allegedly defamatory statements did not arise out of *his* sale of goods or services or *his* status as a seller of those goods and services," *id.* at 690 (emphasis added), but out of his statements about the *company's* services, "the intended audience



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

Numerous lower California courts have found the exemption applies in matters just like this one. For instance, after a consumer sued Yelp for false advertising, one court reasoned that although Yelp was "a public forum" discussing "matters of public concern," the claims targeting "Yelp's statements about its review filter * * * [we]re commercial speech about the quality of its product (the reliability of its review filter) intended to reach third parties to induce them to engage in a commercial transaction (patronizing Yelp's Web site, which patronage induces businesses on Yelp to purchase advertising)." *Demetriades*, 228 Cal App 4th at 310. The same is true here. Plaintiff Blumm's UTPA claim arises from Northwest Natural Gas's "commercial speech about the [emissions-cancellability] of its product," natural gas—speech "intended to reach third parties to induce them to engage in a commercial transaction ([enrolling in Smart Energy in exchange for a fee])." *Id.*

Similarly, in *JAMS*, the court applied the exemption to a false advertising complaint against JAMS and an arbitrator, notwithstanding their contention that the action arose from statements "made in connection with an issue under consideration by a judicial body." 1 Cal App 5th at 990, 993. Because the defendants were "engaged in the business of selling ADR services" and JAMS's statements were "representations of fact about the neutrals it employs and how it conducts its business, * * * published on a Web site to induce litigants to engage in [its] ADR services, * * * whether or not the statements may be used for other purposes d[id] not change the analysis." *Id.* at 996–98. The plaintiff's "claims [we]re the kind the Legislature intended to exempt." *Id.* at 997. So too here. Even if Northwest Natural Gas's advertisements for Smart Energy could be construed as part of the public debate around climate change, this secondary "purpose" is irrelevant. *Id.* at 998. The anti-SLAPP law "may nevertheless not

---

of [which] was not an actual or potential buyer or customer of the goods *he* sells," but *the company's* customers. *Id.* at 691 (emphasis added). That is what the court meant by "the statement or conduct at issue" needing to "ar[i]se out of a commercial transaction involving the kind of goods or services the defendant provides." Motion to Strike at 11 (citing *Castleman*, 546 SW3d at 688).



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

apply," UPEPA § 2, cmt 10, at 9, because the challenged communications are "related to" the company's sale of natural gas and Plaintiff's claim "arise[s] out of" them. ORS 31.150(3).

California courts have similarly found the exemption applies where, as Northwest Natural Gas does here, the defendant claims it is "primarily engaged" in some business other than what gave rise to the plaintiff's claims. *Neurelis, Inc. v. Aquestive Therapeutics, Inc.*, 71 Cal App 5th 769, 789–90 (2021). In *Neurelis*, after a pharmaceutical company sued a competitor over statements to investors, the competitor contended its "true business" was selling pharmaceuticals, not selling securities, so the exemption shouldn't apply. *Id.* at 70. The court disagreed, finding, "This is not the type of case for which the anti-SLAPP statute was intended. Instead, it is the type of case to be covered by the commercial speech exception." *Id.* at 790–91 (internal quotation and citation omitted); *see also BioCorRx, Inc. v. VDM Biochemicals, Inc.*, 99 Cal App 5th 727, 736–37 (2024) (applying exemption in dispute between competitors, rejecting defendant's "narrow interpretation of the word 'primarily'"). Northwest Natural Gas's hairsplitting over the business it is "primarily engaged" (ORS 31.150(3)) in is irrelevant, because protecting utility corporations from a customer's false advertising complaint is "not the type of case for which the anti-SLAPP statute was intended"; "instead, it is the type of case to be covered by the commercial speech exception." *Neurelis*, 71 Cal App 5th at 790–91.

For similar reasons, Defendants' reliance on *Taheri L. Group v. Evans* (Motion to Strike at 11) is misplaced. 160 Cal App 4th 482, 491 (2008). The *Taheri* court contrasted the case before it, which involved a lawyer "advising a prospective client on pending litigation," *id.* at 492, with "circumstances—such as a massive advertising campaign divorced from individualized legal advice—under which the commercial speech exemption to the anti-SLAPP statute conceivably might apply," such as if the lawyer had "sent out a bunch of mailers" and engaged in "solicitation by mail or telephone or other media." *Id.* (internal quotations omitted). Of course, a "massive marketing campaign" for Smart Energy that includes "sen[ding] out a bunch of mailers" and engaging in "solicitation by * * * other media" is exactly what Plaintiffs allege



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

Northwest Natural Gas did. That is not conduct which merely "include[d] an element of commerce or commercial speech." Motion to Strike at 11 (citing *id.* at 491). It is conduct that falls squarely within the anti-SLAPP exemption.

Finally, also futile is Northwest Natural Gas's insistence that ORS 31.150(3) must be narrowly construed for the sake of constitutional protections of commercial speech. Motion to Strike at 11–12. Even if Plaintiffs were challenging Northwest Natural Gas's speech beyond its proposal of a commercial transaction (they are not), that would be irrelevant, as *Kostura v. Judge* illustrates. 627 SW 3d 380, 387–89 (Tex App 2021). There, a Texas court applied that state's exemption[16] to attorney advertising because, as here, the plain text "evince[d] legislative intent for [it] to apply to communications that are broader than advertisements or proposed transactions." *Id.* Even if "the Legislature intended to track First Amendment jurisprudence when enacting the exemption," the court reasoned, "the question * * * [wa]s not whether public policy should limit the commercial-speech exemption * * * but whether the statute's text" did. *Id.* at 389–90. By its plain text, ORS 31.150(3), too, applies to claims arising out of any and all commercial actors' communications "related to" the products and services they sell. *Kostura*, 627 SW3d at 389. Defendants' retreat to constitutional avoidance falls flat.

Indeed, there are no "constitutional problems" to avoid. Motion to Strike at 12 (quoting *Migis v. Autozone, Inc.*, 282 Or App 774, 803, 396 P3d 309 (2016)). Even if ORS 31.150(3) applies to communications beyond commercial speech, narrowly defined, it does not *burden* them. To the contrary, the exemption merely evinces the legislature's judgment about which claims arising from corporate communications should be subject to heightened procedural

---

[16] Texas Civil Practice & Remedies Code section 27.010 states that the Texas Citizens Participation Act (that state's anti-SLAPP law) "does not apply to a legal action brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct arises out of the sale or lease of goods, services, or an insurance product, insurance services, or a commercial transaction in which the intended audience is an actual or potential buyer or customer." *Id.*



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

protections for defendants, and which should instead be addressed in the same manner as other litigation. That is not a "regulati[on]" of commercial speech. Motion to Strike at 12 (citing *City of Hillsboro v. Purcell*, 306 Or 547, 551, 761 P2d 510 (1988)). Northwest Natural Gas's inability to take advantage of the anti-SLAPP law bears no relation to a legislative prohibition on door-to-door solicitation. *See id.*

This is not a close call. ORS 31.150(3) was adopted to prohibit precisely this corporate misuse of the anti-SLAPP law. UPEPA § 2, cmt 13, 9–10. ORS 31.150(3) is more capacious than California's and Texas's exemptions; it requires no inquiry into the purpose of the communication or its intended audience.[17] Yet as the above authority makes clear, Plaintiffs' claims would easily fall within either of those exemptions. Defendants' motion must be denied.

### C. Even if the exemption does not apply, this motion must fail because Plaintiffs make a prima facie case.

Even if Plaintiffs' breach of contract and UTPA claims did not clearly fall outside the anti-SLAPP statute because they do not arise from protected conduct and because the commercial speech exemption applies, Plaintiffs would still easily "clear th[e] low bar * * * of presenting substantial evidence to support a prima facie case against" Northwest Natural Gas under ORS 31.150(4). *Handy*, 274 Or App at 652. As the attached declarations and exhibits show, Plaintiffs "meet the[ir] burden of production" through "direct evidence," from which the Court must draw all "reasonable inferences" in Plaintiffs' favor. *Id.*

#### 1. Substantial evidence shows Northwest Natural Gas violated the UTPA.

Under ORS 646.608(1)(b), (e), (f), and (g)—the four UTPA provisions on which Plaintiff Blumm's claim is based—a person engages in an unlawful trade practice if, in the course of the person's business, vocation, or occupation, the person

---

[17] *Compare* ORS 31.150(3) *with* Cal Civ Proc Code § 425.17; Tex Civ Prac & Rem Code Ann § 27.010.



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

> (b) "[c]auses likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of * * * goods or services";
>
> (e) "[r]epresents that * * * goods or services have * * * characteristics, ingredients, uses, benefits, quantities or qualities that the * * * goods or services do not have * * *";
>
> (f) "[r]epresents that * * * goods are original or new if the[y] are * * * used or secondhand"; and
>
> (g) "[r]epresents that * * * goods or services are of a particular standard, quality, or grade * * * if the[y] * * * are of another."

ORS 646.608(1)(b), (e), (f), (g). A person who suffers an "ascertainable loss of money or property, real or personal, as a result of another person's willful" use of a trade practice declared unlawful may file an action to recover "actual damages or statutory damages of $200, whichever is greater." ORS 646.638(1). Under the UTPA, "willful" is a negligence standard: "A willful violation occurs when the person committing the violation knew or should have known that the conduct of the person was a violation." ORS 646.605(10). In a class action, "Statutory damages * * * may be recovered on behalf of class members only if the plaintiffs in the action establish" that the defendant's use of the trade practice declared unlawful was "reckless or knowing." ORS 646.638(8)(a).

*Defendants' Representations*

Northwest Natural Gas made (and continues to make) numerous representations to its customers, including Plaintiff Blumm, concerning the Smart Energy program's offsetting customers' greenhouse gas emissions. Eberly Decl. ¶¶ 2–11, Exs. 1–10; Blumm Decl. ¶¶ 4–5, 9–10. Specifically, Northwest Natural Gas:

- Invited and invites customers to "Address your environmental impact with Smart Energy" through representations on its website. Eberly Decl. ¶ 2, Ex. 1; Blumm Decl. ¶ 4–5.
- Mailed promotional bill inserts inviting recipients to "Join over 84,000 NW Natural customers who mitigate the carbon emissions from their natural gas use through Smart Energy!" Eberly Decl. ¶ 3, Ex. 2. The insert states, "Smart Energy mitigations are like taking


**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

about 424,000 cars off the road every year." *Id.* It prompts customers to provide their contact information and check one of two boxes under the heading, "Yes! I want to mitigate the carbon emissions from my natural gas use through a mix of carbon offsets and renewable natural gas projects. Please enroll me in one of the options below." *Id.*

- Made several posts on its social media pages advertising Smart Energy, including: (1) a video posted on Northwest Natural Gas's Facebook page on January 7, 2021, stating, "Our Smart Energy program offers customers a voluntary opportunity to offset some or all of the $CO_2$ produced from their natural gas use. The program's mantra, 'Use Less. Offset the Rest,' makes clear that offsets are a valuable tool to help lower emissions," Eberly Decl. ¶ 4, Ex. 3; (2) a May 20, 2024, Facebook post stating, "Thank you to our 92,000+ Smart Energy customers! Together, you've addressed over two million tons of carbon emissions from your natural gas use," and "You're making a difference!" Eberly Decl. ¶ 5, Ex. 4; and (3) an August 21, 2024, Facebook post stating, "Join 92,000 NW Natural customers who are already enrolled in our Smart Energy program and addressing carbon emissions from their natural gas use. When you enroll in Smart Energy, the carbon emissions from your natural gas use will be addressed through projects that reduce, or prevent the release of, greenhouse gases." Eberly Decl. ¶ 6, Ex. 5.
- Advertises Smart Energy in its Customer Newsletter, Comfort Zone, describing the program as a way for customers to "offset the carbon emissions from their natural gas use" and claiming, "When you enroll in Smart Energy, the carbon emissions from your natural gas use will be 1) offset through projects that reduce, or prevent the release of, greenhouse gases, or 2) mitigated through a mix of carbon offsets and renewable natural gas projects." Eberly Decl. ¶ 7, Ex. 6.
- Advertises Smart Energy to its customers on customers' personal account overview webpages, showing customers the percent "offset" of "the carbon emissions from your natural gas use," and inviting customers to "fight climate change" by joining Smart Energy. Eberly Decl. ¶ 8, Ex. 7.



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

- Throughout the Smart Energy online enrollment process, continues to advertise that the product would fully address customers' "carbon emissions from your home's natural gas use." Eberly Decl. ¶ 9, Ex. 8; Blumm Decl. ¶ 5.
- After a customer enrolls in Smart Energy, reinforces the representations by providing, on the customer's account page, the specific "percentage of your carbon emissions from natural gas use" that have been "addressed by Smart Energy," on a month-by-month basis, Eberly Decl. ¶ 10, Ex. 9; Blumm Decl. ¶ 9, and showing cows grazing above a specific number of "$CO_2$ offset each month in lbs." Eberly Decl. ¶ 11, Ex. 10. Northwest Natural Gas told customers, "Keep up the good work! You're addressing the carbon emissions from your natural gas use, and supporting projects that reduce, or prevent the release of, greenhouse gases." Eberly Decl. ¶ 11, Ex. 10; Blumm Decl. ¶ 9.

Defendants' representations are false and misleading because the carbon offsets and RNG that Northwest Natural Gas purchases do not "offset" or "mitigate" the "carbon emissions" from Plaintiff Blumm's and other customers' fossil natural gas use. Thus, Defendants' representation of Smart Energy as effectively neutralizing customers' contributions to climate change from their natural gas use is almost certainly false, Declaration of Emily Grubert ("Grubert Decl.") ¶ 5, for the reasons stated below.

As a preliminary matter, a "carbon offset" or other product represented as "addressing the carbon emissions" from an activity is generally understood to address *all* contributions to climate change from the activity for which the person is buying the offset. Grubert Decl. ¶¶ 31–32. Here, that means *all* emissions over the natural gas system life cycle attributable to the natural gas the customer uses. *Id.* To the extent Defendants' offsets and RNG address *only* customers' emissions from combusting natural gas in their homes, then customers' natural gas use is *still* contributing to climate change, just to a lesser extent. Grubert Decl. ¶ 32.

*Smart Energy Carbon Offsets*



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

Defendants directed Plaintiffs' payments towards "carbon offsets" from anaerobic digesters that purport to "capture" methane from manure on large dairies. The quality of these Smart Energy offsets is dubious for several reasons. Grubert Decl. ¶ 33.

First, they appear to be "avoidance-based" offsets, which are fundamentally incapable of delivering climate neutrality even when they are otherwise high quality. Grubert Decl. ¶ 34; Eberly Decl. ¶¶ 25–26, Exs. 24–25 (listing, as Smart Energy offset project types: dairy – methane; landfill gas (LFG) – methane; integrated forest management (IFM) – carbon dioxide; and organic waste composting (OWC) – methane). Unlike offset projects that physically capture carbon dioxide that is already in the atmosphere and store it in such a way to prevent its future release ("removal-based" offsets), "avoidance-based" offsets like those purchased for Smart Energy merely pay a polluter to *not* emit (*i.e.*, to avoid) some level of emissions, while the offset purchaser still emits GHGs. Grubert Decl. ¶¶ 15–17. The net effect is still to make climate change worse, but not as bad as it would have otherwise been, based on (often complex) claims about what the future would have looked like without the offset purchase. Grubert Decl. ¶ 15. Thus, even if they possessed the hallmarks of trustworthiness—which they do not, as explained below—Defendants' "avoidance-based" offsets could only *reduce* emissions relative to a counterfactual; they could never result in climate neutrality, a 1-1 mitigation of $CO_2$. Grubert Decl. ¶¶ 16–17.

Moreover, the manure digester offsets Smart Energy purchases lack the core attributes that make carbon offsets trustworthy, particularly "additionality." *See* Grubert Decl. ¶ 35 (noting major additionality concerns). Additionality is the concept that a carbon offset project, and any emissions reductions flowing from the project, would not have occurred absent the crediting mechanism's incentive, and that the emissions reduction is not otherwise required by law or regulation. Grubert Decl. ¶¶ 19–20; Eberly Decl. ¶ 16, Ex. 15. A project or offset lacks additionality if the emissions would have been avoided anyway, without the purchase of the



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

offset, or if the emissions purportedly "reduced" by the project didn't need to be created or wouldn't have existed in the first place. Grubert Decl. ¶¶ 35–36.

Smart Energy offsets flunk this test. Grubert Decl. ¶¶ 35–36. Taking advantage of financial incentives, most digesters receiving Smart Energy funding were constructed long ago and maintained through private capital and government grants and subsidies, and have long generated credits for other offsetting programs, belying any notion that Northwest Natural Gas's investment in these digesters created any "additional" emissions reductions that would not have occurred without Smart Energy. Grubert Decl. ¶¶ 35–36; Eberly Decl. ¶¶ 21–22; Exs. 20–21.

Relatedly, two other factors undercut the notion that Smart Energy offsets create "additional" emissions reductions. The first is the fact that landfills and industrial dairies, like Threemile Canyon Farms, can and do design their waste management systems to *maximize* production of methane to "capture" and sell offsets to buyers like Northwest Natural Gas, because of financial incentives (e.g., from offset sales) to increase methane production. Grubert Decl. ¶ 36. This means that some or all of the methane "captured" by these projects need not have existed in the first place, so they lack additionality. Grubert Decl. ¶¶ 35–36.

The second factor undercutting Smart Energy offset additionality is that there are already legal requirements to flare (burn) capturable methane for safety reasons, because methane can spontaneously combust. Grubert Decl. ¶ 37. Thus, it is often not the case that, without the offset purchase, methane would have otherwise reached the atmosphere. And even where flaring is not currently required, to count these "avoided" methane emissions as an offset requires assuming a future in which their capture won't be required by law. Grubert Decl. ¶ 37. That is unrealistic; jurisdictions pursuing strong climate policy could be reasonably expected to require the destruction of capturable methane for climate and safety reasons, especially given the relative ease of its destruction. Grubert Decl. ¶ 37.

Accordingly, the Smart Energy "projects" are not avoiding any emissions nor providing climate benefits relative to what would have happened anyway. Grubert Decl. ¶ 38.



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

Even if the Smart Energy offsets did create "additional" emissions avoidance, Defendants have not shown that emissions avoidance will not be reversed (*i.e.*, that the emissions will not simply be deferred or shifted). Grubert Decl. ¶ 39. For example, if a digester flare is installed to burn excess methane to prevent it from venting into the atmosphere, but then the flare is later turned off or malfunctions—as Smart Energy offset Farm Power's digesters were cited for, twice—the digester will cease to "avoid" emissions. Grubert Decl. ¶ 39; Eberly Decl. ¶¶ 18–19, Exs. 17–18 (identifying flare malfunction at one Farm Power digester "during 13 percent of [its] total operating time between July 3, 2019 and May 4, 2021," which allowed methane to be "emitted at uncontrolled rates" for the equivalent of 87 days; identifying flare malfunction at other Farm Power digester between January 1, 2019, and November 9, 2021, which "translate[d] to approximately 13.5 percent of the Facility's total operating time or a total of 141 equivalent days" in which methane was emitted at uncontrolled rates).

Further suggestive of the Smart Energy offsets' lack of trustworthiness is their low price, which is far below that of a high-quality removal-based offset that would provide climate neutrality. *See* Grubert Decl. ¶¶ 27, 40 (comparing Smart Energy customers paying about $28 per tonne of $CO_2$ equivalent to around *$1,500* per tonne, the market price for removal-based offsets).

On top of this, estimates of emissions reductions from anaerobic manure digesters are significantly overstated due to: (1) flawed business-as-usual emissions baselines (that, for instance, fail to account for the cows' enormous enteric emissions), Grubert Decl. ¶ 20; Eberly Decl. ¶ 17, Ex. 16; and (2) methane leakage and emissions from stages of the RNG supply chain. Grubert Decl. ¶ 43. Equally problematic is the lack of comprehensive emissions monitoring and measurement from digester projects. Eberly Decl. ¶¶ 18–19, Exs. 17–18 (Oregon regulators citing Smart Energy-funded Farm Power digesters for "fail[ing] to accurately report flare malfunctions to DEQ in your annual reports, * * * fail[ing] to keep records of flare



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

malfunctions," yet reporting to regulators that digesters had "no flare malfunctions" in 2019 and 2020).

Finally, undercutting Smart Energy offsets' reliability is that the lion's share appear to be "cross-gas" offsets, meaning they claim to mitigate emissions from *one* GHG, like carbon dioxide, by reducing or avoiding emissions of *another* GHG, like methane. Grubert Decl. ¶¶ 22, 31, 35. Such claims are made by using a factor known as the "global warming potential," to compare the relative warming impacts of the two GHGs. Grubert Decl. ¶ 23. The larger the global warming potential, the more that a given gas warms the Earth compared to carbon dioxide over that same period. *Id.* Methane is shorter-lived than carbon dioxide, but far more potent, so it causes large near-term warming that stops once the gas oxidizes. Grubert Decl. ¶ 25. However, global warming potential is uncertain and depends on considerations like the length of time a given gas persists in the atmosphere impacting the climate. Grubert Decl. ¶ 24. Given this uncertainty, estimates of emissions reductions made possible by cross-gas offsets are ripe for error, making cross-gas offsets problematic in situations like this, where Defendants guarantee carbon neutrality and other specific climate outcomes. Grubert Decl. ¶¶ 23–25.

*Smart Energy Renewable Natural Gas*

The RNG in the Smart Energy program also fails to provide the advertised climate benefits. Grubert Decl. ¶ 5. RNG is essentially pure methane derived from biological sources like cow manure or food waste. Grubert Decl. ¶ 28. It is created when biogas, typically a blend of methane (CH4) and carbon dioxide ($CO_2$), is upgraded in purity to be compatible with fossil natural gas infrastructure. Grubert Decl. ¶ 29. Northwest Natural Gas identifies the Wasatch Resource Recovery RNG project as a part of Smart Energy, but does not appear to be physically delivering RNG to any end-use customer. Grubert Decl. ¶ 41. Thus, Smart Energy customers are paying for the *environmental credits* associated with RNG production (*i.e.*, the right to claim avoided emissions), not RNG itself. Grubert Decl. ¶ 41.



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

Like with Smart Energy "carbon offsets," Defendants' purchase of these RNG credits cannot mitigate Plaintiffs' and other customers' carbon emissions. *See* Grubert Decl. ¶¶ 41–44. Indeed, the RNG credits essentially function like "avoidance-based" offsets, Grubert Decl. ¶ 42, which can *never* zero out customers' carbon emissions for the reasons stated above, and which suffer from the same problems identified above—chiefly a lack of "additionality." Grubert Decl. ¶¶ 30, 42–43 (ability of RNG to offset customers' natural gas emissions rests on false proposition that RNG comes from waste methane that would otherwise have been created and vented to the atmosphere). To the extent the RNG credits Defendants purchase are not even retained on behalf of Northwest Natural Gas customers—meaning that Defendants are merely buying a paper certificate claiming the use of RNG as a commodity whose climate attributes have been stripped and sold off in other offsetting markets, such as California's Low Carbon Fuel Standard program—this would constitute "double counting," which trustworthy emissions offsets should never do. Grubert Decl. ¶ 44.

*The Smart Energy advertisements violate the UTPA.*

The above conduct, and the evidence to support it, shows that Defendants violate the UTPA in the ways that Plaintiff Blumm alleges. In violation of ORS 646.608(1)(b), based on the misleading representations set forth above, Defendants cause likelihood of confusion or misunderstanding regarding the "source" and "certification" of the emissions offsetting "goods" (carbon offsets and RNG environmental credits) in their Smart Energy program. Defendants likewise represent that those emissions offsetting products have "qualities" they do not have (*i.e.*, trustworthiness, legitimacy), and are "of a particular * * * standard [or] quality" they are not (*i.e.*, offsets capable of providing climate neutrality), thus violating ORS 646.608(1)(e) and (1)(g), respectively. Finally, in violation of ORS 646.608(1)(f), the emissions offsetting products that Defendants hold out as "new" (*i.e.*, applicable and corresponding to only one unit of carbon dioxide abated or removed from the atmosphere) are actually "used" (*i.e.*, double-issued) and thus are not what Defendants market them to be.



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

Plaintiff Blumm suffered an ascertainable loss as a result of each and every one of those violations—he enrolled in Smart Energy, Blumm Decl. ¶ 4, and paid Defendants a monthly fee for the emissions-offsetting benefits that Defendants told him he would receive. Blumm Decl. ¶¶ 4–7; *see Scott v. W. Int'l Surplus Sales, Inc.*, 267 Or 512, 515, 517 P2d 661 (1973) (an ascertainable loss is simply a loss that is "capable of being discovered, observed or established.").

Finally, these violations were willful, reckless, and knowing. ORS 646.638(1) (civil recovery available for "willful" use of a trade practice declared unlawful); ORS 646.638(8)(a) (allowing recovery of class-wide damages when plaintiffs establish that the defendant's use of the trade practice declared unlawful was "reckless or knowing"). Defendants knew their Oregon customers were concerned about climate change—their own surveys indicated that as of 2018, over 70 percent reported being "extremely" or "very" concerned about it. Eberly Decl. ¶ 12, Ex. 11. Defendants also knew, from their own surveys, that Oregonians lacked familiarity with RNG. *Id*. Defendants used that ignorance to their advantage, embarking on a marketing blitz to shore up customers' affinity for natural gas, capitalizing on customers' lack of understanding of RNG. Eberly Decl. ¶ 12, Ex. 11 (Northwest Natural Gas representative describing "Less We Can" initiative as "support[ing] * * * (a) [w]ays customers can reduce energy use and associated emissions," including "by offsetting their emissions through the Smart Energy program," and (c) "[t]he role natural gas and RNG can play to lower [] emissions," and claiming company saw "multi-channel advertising efforts making an impact," as customer "awareness for RNG has risen each quarter" and reached nearly half of surveyed customers). Defendants claimed RNG was "sustainably reducing emissions and closing the loop on waste," with "over 80% carbon reduction," Eberly Decl. ¶ 13, Ex. 12. Yet Defendants did not disclose the baseline from which that reduction was measured, nor that, as they knew, there is no universal standard to measure how much (if at all) an RNG project actually helps the climate. Eberly Decl. ¶ 15, Ex. 14.



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

Northwest Natural Gas knew the truthfulness of its Smart Energy marketing claims depended upon its ability to determine, with precise specificity, the quantities of carbon emissions mitigated through the methane avoidance offsets and RNG it was procuring on customers' behalf. The information Plaintiffs cited in their complaint (at Compl. ¶¶ 19, 32, 34–36)—studies from 2017, 2018, and 2021 detailing the unreliability of industrial dairy digesters and RNG to do what Defendants claimed—was publicly available. Northwest Natural Gas "could have reviewed this publicly available information to identify any concerns purportedly associated with" the dairy methane offsets it was procuring. Motion to Strike 21. But the company apparently ignored it, and continued making the misleading representations. Defendants' violations of the UTPA were willful, reckless, and knowing.

In sum, substantial evidence supports Plaintiff Blumm's UTPA claim against Northwest Natural Gas.

**2. Substantial evidence shows Northwest Natural Gas breached its contract with Plaintiffs.**

Plaintiffs have also tendered substantial evidence to support a prima facie case of breach of contract, which consists of four elements: (1) a contract, formed through an offer, acceptance of that offer, and a mutual exchange of consideration, (2) the plaintiff's full performance, (3) the defendant's breach, and (4) damages incurred as a result of the breach. *See Homestyle Direct, LLC v. Dep't of Hum. Servs*., 354 Or 253, 263, 311 P3d 487 (2013) (holding that enrollment in a program created a binding contract where contractor executed an enrollment form to participate in government agency's paid meal delivery program); *Slover v. Oregon State Bd. of Clinical Soc. Workers*, 144 Or App 565, 570, 927 P2d 1098 (1996); *Moyer v. Columbia State Bank*, 316 Or App 393, 403, 405, 505 P3d 26 (2021).[18]

---

[18] The inquiry is whether *Plaintiffs'* evidence establishes a prima facie case of breach of contract. "[T]he court may consider *defendant's* evidence only insofar as necessary to determine



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

Plaintiffs formed contracts with Northwest Natural Gas.[19] On Northwest Natural Gas's website, the company offered to Plaintiff Blumm the option to offset or mitigate the greenhouse gas emissions from his natural gas in exchange for a monthly fee. Blumm Decl. ¶ 4. During the enrollment process, Plaintiff Blumm was told that by signing up for Smart Energy, he would be offsetting 100% of the greenhouse gas emissions from his natural gas. Blumm Decl. ¶ 5. Plaintiff Gates was made the same offer by Northwest Natural Gas. Gates Decl. ¶ 3.

Plaintiffs accepted Northwest Natural Gas's offer: each selecting the "climate neutral" subscription option, in which the company promised to offset 100% of their monthly natural gas emissions in exchange for a variable monthly fee. Gates Decl. ¶ 3; Blumm Decl. ¶ 5. Plaintiffs completed the Smart Energy enrollment process, which stated the terms of the parties' bargain. Blumm Decl. ¶¶ 4–5; Gates Decl. ¶ 3. Consideration supported the parties' contracts: Plaintiffs agreed to pay a monthly fee in exchange for the company's delivery of the promised offset. *Id.* And Plaintiffs performed: they paid the surcharge every month to participate in Smart Energy. Blumm Decl. ¶ 7, Gates Decl. ¶ 7.

Northwest Natural Gas, on the other hand, breached its contract with Plaintiffs by failing to provide Plaintiffs with the promised 100% offset of their monthly natural gas emissions. As explained herein (*see supra* section C.1), the carbon offsets and RNG credits Defendants procured on Plaintiffs' behalf failed to guarantee them climate neutrality and failed to mitigate

---

whether it defeats plaintiff's claim as a matter of law." *Young*, 259 Or App at 509–510 (emphasis added). As explained in Plaintiffs' concurrently filed response to Defendants' Request for Judicial Notice, Defendants' evidence is not relevant to whether Plaintiffs stated the elements of breach of contract. Defendants' exhibits 2 and 3 concern their argument related to the anti-SLAPP exemption in ORS 31.150(3), while 1 and 4 relate to their primary jurisdiction argument. Because that evidence does not "defea[t] [P]laintiff[s'] claim as a matter of law," *id.*, the Court should not "consider [it] as evidence supporting" this motion.

[19] Plaintiffs do not here address Defendants' argument that the Smart Energy tariff precludes the parties from forming a separate contract, Motion to Dismiss at 18–21, because Defendants' legal arguments for why the Court should abate Plaintiffs' claims are not "*evidence* * * * defeat[ing]" those "claim[s] as a matter of law." *Young*, 259 Or App at 509–510 (emphasis added).



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

the greenhouse gas emissions attributable to their natural gas use. Because Plaintiffs did not receive the product they bargained for, they incurred actual damages as a result of Northwest Natural Gas's breach. Blumm Decl. ¶¶ 13–17; Gates Decl. ¶¶ 6–8.

Substantial evidence supports Plaintiffs' breach of contract claim.

**3. Northwest Natural Gas's arguments to the contrary fail, and Plaintiff Blumm's UTPA claim is not time-barred as a matter of law.**

Northwest Natural Gas asserts the statute of limitations as an independent basis on which to find Plaintiff Blumm's UTPA claim legally insufficient. Motion to Strike at 13.[20] That argument must fail because Defendants cannot show, as a matter of law, that as of October 9, 2023,[21] Plaintiff Blumm "actually knew or should have known that the representation * * * was not true." *Pearson v. Philip Morris, Inc.*, 358 Or 88, 137, 361 P3d 3 (2015).

First, Defendants cannot show that Plaintiff Blumm "had sufficient knowledge to excite attention and put [him] upon his guard or call for an inquiry." *Mathies v. Hoeck*, 284 Or 539, 542–43, 588 P2d 1 (1978) (internal quotation marks omitted). Given this, the Court need not move on to the second step—whether "a reasonably diligent inquiry would [have] disclose[d] the fraud." *Id.* at 543. But even if the Court did, it would find Defendants' fraud well concealed, and that Plaintiff Blumm had no reason to discover it.

Generally, the merits of the statute of limitations issue is a substantive question to be determined in the course of the litigation, not a threshold question to be answered at the pleading stage. *Guirma v. O'Brien*, 259 Or App 778, 787, 316 P3d 318 (2013) ("[W]hether [plaintiff] should have investigated further and, if she had, when that investigation would have yielded

---

[20] Plaintiffs' claims are legally sufficient for the reasons stated in Plaintiffs' concurrently-filed opposition to Defendants' Motion to Dismiss. Plaintiffs here incorporate those arguments by reference.

[21] Plaintiffs filed their Class Action Complaint on October 10, 2024. For a consumer plaintiff, the statute of limitations for UTPA claims is "one year after the discovery of the unlawful method, act or practice." ORS 646.638(6).



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

information from which [to discover the claim], are questions of fact" that "cannot be resolved on a motion to dismiss."); *Doe 1 v. Lake Oswego Sch. Dist*., 353 Or 321, 335–36, 297 P3d 1287 (2013) (whether plaintiffs should have reasonably discovered claim was fact issue that could not be resolved solely from plaintiffs' complaint allegations, truth of which could be challenged "at many remaining junctures"). This holds true even in the context of a "special motion to strike." *Watson v. Hornecker Cowling, LLP*, 2022 WL 3357845, at *4 (D Or June 28, 2022), *report and recommendation adopted*, 2022 WL 4599263 (D Or Sept 30, 2022) (dismissing timeliness argument raised in anti-SLAPP motion, which "ignore[d]" the evidence "establishing the prima facie facts, and * * * overstate[d] the burden on Plaintiff at this stage of litigation."); *Wickenkamp v. Hostetter L. Grp., LLP*, 2016 WL 10677908, at *18 (D Or July 14, 2016), *report and recommendation adopted*, 2016 WL 10677905 (D Or Aug 17, 2016) (refusing to find plaintiff's "false light claim * * * time-barred as a matter of law" for purposes of anti-SLAPP motion).

Indeed, "[w]hether or not the plaintiff should have known of the fraud at a particular point in time is normally a question for the jury except where only one conclusion can reasonably be drawn from the evidence." *Mathies*, 284 Or at 543. "The concept of due diligence is" varied in its "application," not "rigid." *Forest Grove Brick Works, Inc. v. Strickland*, 277 Or 81, 86, 559 P2d 502 (1977) (quoting *Azalea Meats, Inc. v. Muscat*, 386 F2d 5, 9 (5th Cir 1967)). A fraud that is "flagrant and widely publicized may require the defrauded party to make immediate inquiry," while "one artfully concealed or convincingly practiced upon its victim may justify much greater inactivity." *Id.* "[E]vidence of fraudulent concealment bears heavily on the issue * * *." *Id.*

**a. Even if Plaintiff Blumm knew about Smart Energy's use of dairy digesters, that knowledge would not have put him on guard of the UTPA violations.**

Northwest Natural Gas fails to show that Plaintiff Blumm "had sufficient knowledge to excite attention and put [him] upon his guard" as to the company's UTPA violation. *Mathies*,



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

284 Or at 543 (internal quotation marks omitted). Plaintiff Blumm visited Northwest Natural Gas's website and saw the Smart Energy program was offering to offset or mitigate the carbon emissions from his natural gas. Blumm Decl. ¶¶ 4–5. Defendants assured him that if he enrolled in the program, he would be offsetting 100% of the carbon emissions associated with his natural gas use. Blumm Decl. ¶¶ 4–6. Plaintiff Blumm reasonably enrolled without further inquiry into technicalities of the program, expecting Northwest Natural Gas to deliver the emissions offset it promised. Blumm Decl. ¶ 6.

Contrary to Defendants' characterization (Motion to Strike at 16), the complaint does not say that, prior to October 2023, Plaintiff Blumm saw various statements about methane capture at dairy digesters. *Compare* Motion to Strike at 16 *with* Compl. ¶¶ 125–26. Between the time he enrolled in Smart Energy in Fall 2021 and when he received further information about the program in June 2024, in fact, Plaintiff Blumm was *not* familiar with dairy manure methane digesters or with the various Smart Energy offset project types. Blumm Decl. ¶¶ 6, 11–12. His account with Northwest Natural Gas was on autopay, so he was not paying bills manually after reviewing information (about Smart Energy or otherwise). *Id.* ¶ 7.

These facts make this case readily distinguishable from those on which Northwest Natural Gas relies. In *MacQuaid v. New York Times Company*, the plaintiff sued the New York Times for an alleged violation of ORS 646.608(1)(ttt), which makes it unlawful for those who make automatic renewal offers to "[f]ail to present the automatic renewal offer terms * * * in a clear and conspicuous manner before a subscription or purchasing agreement is fulfilled and in visual proximity * * * to the request for consent to the offer," ORS 646A.295(1)(a), or to "[c]harge the consume[r] * * * for an automatic renewal * * * without first obtaining the consumer's affirmative consent to the agreement containing the automatic renewal offer terms * * *." ORS 646A.295(1)(b). *MacQuaid*, 2023 WL 2633359, at *1 (D Or Mar 24, 2023). The plaintiff's complaint included an image of "the checkout page contain[ing] a section titled 'AUTOMATIC RENEWAL TERMS' with information on the payment schedule and



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

cancellation options." *Id.* The court held that prominent message put the plaintiff on "notice that she was being charged for an automatic renewal plan" and therefore, on "notice of the UTPA violation at the time of checkout * * *." *Id.* at *2.

Similarly, in *Bell v. Benjamin*, a plaintiff claimed in 2006 that the "defendants fraudulently negotiated with his creditors, thereby depriving him in 1997 of the proceeds of the sale of his residence * * *." 232 Or App 481, 486, 222 P3d 741 (2009). But the court found the plaintiff's never having "received all of the monies that he was promised," even though "the title company, his credit report, or * * * public records" would have revealed that information, "certainly would have been sufficient to * * * call for an inquiry * * *." *Id.* (internal quotation marks omitted). "[O]nly one conclusion c[ould] be drawn from th[at] evidence." *Id*.

*MacQuaid* and *Bell* might be analogous if Plaintiff Blumm had encountered, on the Smart Energy enrollment page, "FUNDS DAIRY DIGESTERS WHICH MAY NOT REDUCE EMISSIONS," with links to some of the studies the complaint cites. But he was given no such information—nothing close to what the *MacQuaid* and *Bell* plaintiffs had, that might have "put [him] upon his guard" about the truthfulness of Northwest Natural Gas's representations. *Mathies*, 284 Or at 543. Even if Plaintiff Blumm had notice that the program funded dairy digesters, Northwest Natural Gas does not explain why *that* information should have put him on notice that the program *could be fraudulent* and might not actually cancel out carbon emissions as promised.

Oregon courts have rejected similar attempts to impute knowledge of fraud on plaintiffs. *See, e.g.*, *Moradi v. ReconTrust Co., N.A.*, 2017 WL 3259798, at *3 (D Or July 31, 2017) (finding plaintiffs' knowledge of foreclosure and stipulation to their eviction "would not necessarily place them on actual or inquiry notice that Defendants' [unlawful foreclosure on plaintiffs' home] was deceptive or fraudulent," and accepting that, "[b]ut for an extensive and costly investigation," plaintiffs "would never have known or have had reason to suspect" the fraud); *Bodin v. B. & L. Furniture Co.*, 42 Or App 731, 735–36, 601 P2d 848 (1979) (finding red



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

tags on mattresses and boxsprings delivered to plaintiff not sufficient, as a matter of law, to put plaintiff upon his guard "that they were second-hand goods" when "plaintiff had absolutely no reason to believe" they were, and when "there was no reason to read the tags").

**b. A reasonably diligent inquiry would not have alerted Plaintiff Blumm to Northwest Natural Gas's well-concealed fraud.**

Because Northwest Natural Gas cannot show that Plaintiff Blumm had information that would have "call[ed] for an inquiry" as to whether Smart Energy was, in fact, offsetting the carbon emissions associated with his natural gas, the Court need not assess whether a reasonably diligent inquiry would have alerted him to his UTPA claim. *McCulloch v. Price Waterhouse LLP*, 157 Or App 237, 248, 971 P2d 414 (1998). But if the Court did, it would find that only "an extensive and costly investigation" would have revealed the fraud, *Moradi*, 2017 WL 3259798, at *3, which was "artfully concealed [and] convincingly practiced upon" Northwest Natural Gas's customers, including Plaintiff Blumm. *Forest Grove Brick Works*, 277 Or at 86 (quoting *Azalea Meats*, 386 F2d at 9).

Northwest Natural Gas argues that, before October 2023, Plaintiff Blumm not only should have known that the Smart Energy program relied on dairy manure methane digesters that might not provide the carbon offset Northwest Natural Gas claimed he was receiving, but also that "reasonabl[e] diligen[ce]" required him to review scientific research about anaerobic digestion to investigate the extent to which digesters can offset natural gas carbon emissions. Motion to Strike at 21. That is not the law, as Defendants' own authority shows.

In *McCulloch*, the court assessed whether a letter from the IRS warning the plaintiff that his tax returns had not been filed timely should have alerted him to the defendant tax preparers' "misrepresentations and the true state of affairs * * *." 157 Or App at 248. The court held that the trial court had erred in deeming plaintiff's UTPA claim time-barred: there was "a genuine issue of material fact" about whether plaintiff acted with reasonable diligence, as "[a] trier of fact could conclude * * * that" he was entitled to rely "on defendants' representations" that the



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

assessment of penalties or interest reflecting a late filing was a mistake by IRS. *Id.* at 249–50; *see also Mathies*, 284 Or at 543–44 (question whether fraud could have been discovered by "exercise of reasonable diligence" properly submitted to the jury in case alleging fraudulent remodeling estimate, where "plaintiff's knowledge of the high cost of the job and his knowledge that defendant had overstated his costs would not necessarily have led him to conclude that defendant's initial estimate was intentionally low."); *Forest Grove Brick Works*, 277 Or at 86 (holding, in alleged fraud in sale of vacuum pump, "[i]t may be that here the failure of the pump over a long period of time called for such an inquiry. But the issue is not free from doubt."). If the plaintiff's diligence could not be decided on summary judgment in *those* cases, surely untimeliness is not the "only * * * conclusion [that] can reasonably be drawn from th[is] evidence." *Mathies*, 284 Or at 543.

That is even clearer given what Plaintiff Blumm in fact alleged (as opposed to what Northwest Natural Gas claims he did). Once his suspicion was raised, in May 2024, Plaintiff Blumm visited his online account dashboard on Northwest Natural Gas's website, where he was congratulated for "making a difference" by being enrolled in Smart Energy, and told that he was "addressing approximately 100 percent of the carbon emissions from [his] natural gas use." Blumm Decl. ¶¶ 8–10. If Plaintiff Blumm—or any Smart Energy customer, for that matter—had looked further at the website for more information about the program, they would have encountered further obfuscation—been invited to "[s]ee projects that address greenhouse gas emissions," including Smart Energy "carbon offset projects" at TMF Biofuels in Boardman, Oregon, the Van Warmerdam Dairy in Galt, California, and the B6 Dairy in Gooding, Idaho. Motion to Strike at 17–18; Declaration of Cory Beck ¶ 7, Ex. 3. Northwest Natural Gas's customers, including Plaintiff Blumm, had no reason to discover what was "artfully concealed [and] convincingly practiced upon" them. *Forest Grove Brick Works*, 277 Or at 86 (quoting *Azalea Meats*, 386 F2d at 9).



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

**D. Plaintiffs should be awarded costs and reasonable attorneys' fees.**

"If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay," it "shall award costs and reasonable attorney fees to" the prevailing plaintiff. ORS 31.152(3). Plaintiffs should be awarded costs and fees for having to respond to Defendants' frivolous anti-SLAPP motion filed to delay these proceedings.

Although Oregon appellate courts have not ruled on what makes an anti-SLAPP motion "frivolous," elsewhere the Oregon Supreme Court has held that "an appeal is 'frivolous' (without merit) 'if every argument on appeal is one that a reasonable lawyer would know is not well grounded in fact, or that a reasonable lawyer would know is not warranted either by existing law or by a reasonable argument for the extension, modification, or reversal of existing law." *Seely v. Hanson*, 317 Or 476, 482–83, 857 P2d 121 (1993) (citing *Westfall v. Rust Int'l*, 314 Or 553, 559, 840 P2d 700 (1992)). California courts interpreting a provision identical to ORS 31.152(3) have similarly stated that a frivolous anti-SLAPP motion is one "that any reasonable attorney would agree * * * is totally devoid of merit." *Moore v. Shaw*, 116 Cal App 4th 182, 199, *as modified* (Mar 26, 2004) (internal quotation and citation omitted). The word "shall" in the provision makes "the imposition of sanctions for a frivolous anti-SLAPP motion * * * mandatory." *Id.* at 198–99. To "reduce the risk of abuse" of the anti-SLAPP law, "trial courts should not hesitate to award attorney's fees and costs to prevailing plaintiffs" in cases of frivolous or dilatory motions. *Varian Med. Sys., Inc. v. Delfino*, 35 Cal 4th 180, 196, 106 P3d 958 (2005).

Indeed, courts have awarded plaintiffs costs and fees in cases identical to this. For example, a California appellate court awarded a plaintiff fees after a taxi company filed an anti-SLAPP motion to shield its alleged misleading advertising. *L.A. Taxi Coop.*, 239 Cal App 4th at 932–33. Reversing a trial court decision finding the defendants' motion "not 'clearly frivolous' because courts have broadly construed the phrase 'in connection with a public issue or an issue of public interest,'" *id.* (citing Cal Code Civ P § 425.16(e)), the court found it



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

> "well-established when defendants filed their motion that purely commercial speech is not protected under the anti-SLAPP statute. Defendants cited no case—and we are aware of none—finding advertisements designed solely to promote a party's goods or services to be protected speech 'in connection with a public issue or an issue of public interest.' * * * Nor did [defendants] provide any reasonable basis for arguing that their search advertisements were not purely commercial speech."

*Id.* at 933. Where the challenged ads "did not comment on public transportation, taxicab licensing and regulation or taxicab franchising" as "public issues," moreover, "no reasonable attorney could have concluded that the anti-SLAPP motion was well taken." *Id.*

*L.A. Taxi Coop* is spot on, and this Court should follow suit. Northwest Natural Gas fails to cite a single case in which a company's commercial advertising was deemed protected conduct under ORS 31.150(2). *Cf. L.A. Taxi Coop.*, 239 Cal App 4th at 932–33. Throughout their motion to strike, Defendants misread Plaintiffs' allegations and ignore binding Oregon caselaw on what claims "arise out of" under ORS 31.150(2), trying to cast their commercial Smart Energy advertising as the company's public speech about addressing climate change, and Plaintiffs' breach of contract and UTPA claims as an effort to silence that speech. No reasonable attorney would believe that a breach of contract claim related to the purchase of an emissions-offsetting product "arises out of" protected speech activities. *Ibbetson v. Grant*, No. G059067, 2021 WL 5783174, at *5 (Cal Ct App Dec 7, 2021) (unpublished) ("Given the continuous flow of unambiguous case law in the past decade[s], any reasonable attorney should be aware that a [complaint] that simply mentions incidental protected activity is not subject to the anti-SLAPP statute," thus trial "court's conclusion that Defendants' anti-SLAPP motion was frivolous was not an abuse of discretion.") (internal quotation marks omitted).

Defendants likewise failed to cite a single case in which a company's advertising for its product did not trigger the applicable commercial speech exemption. *L.A. Taxi Coop.*, 239 Cal App 4th at 932–33. No reasonable attorney would believe that an exemption for claims arising from a commercial seller's communications related to its products, ORS 31.150(3), would



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

somehow not apply to UTPA claims arising from Northwest Natural Gas's advertisements for its natural gas emissions-cancelling product. *Id.* This is precisely what the exemption is for.

The circumstances of Northwest Natural Gas's motion further suggest its lack of seriousness. In December 2024, the parties *jointly* moved to designate the case as complex, averring that this matter meets "the criteria for complex case designation set forth in UTCR 7.030(2)" because "[t]he legal issues to be resolved on a motion to dismiss, a motion for summary judgment, or at trial are complex," discovery is likely to take longer than usual, and "there is a high likelihood that more than two weeks will be required" for trial. *See* Joint Motion to Designate Case as Complex Pursuant to UTCR 7.030. On January 8, 2025, the Court entered the joint motion so designating the case. The very next day, however, Defendants filed the present motion accusing Plaintiffs of filing a SLAPP—a frivolous lawsuit filed solely to harass, *Staten*, 222 Or App at 32. That position cannot be squared with Defendants' concurrent representation that this is a matter of significant legal and factual complexity meriting extra time and stewardship by one judge. Yet Defendants' motion has now halted discovery and will give them an appealable order with which to run the clock on Plaintiffs' claims. *Nirschl v. Schiller*, 91 Cal App 5th 386, 409–10 (2023) (finding it "particularly appropriate for [the plaintiff] to obtain appellate fees" where defendants "were able to obtain an unwarranted tactical advantage by pursuing a frivolous appeal" of anti-SLAPP motion denial "on [non speech-related] causes of action" and thereby stay discovery on all claims).

The Court should recognize Northwest Natural Gas's misuse of the anti-SLAPP statute as the litigation brinksmanship it is. Plaintiffs should recover their costs and attorneys' fees.

## IV. CONCLUSION

For the reasons stated herein, Plaintiffs respectfully request that the Court deny Defendants' Special Motion to Strike and award Plaintiffs' reasonable costs and attorneys' fees for the motion.



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

DATED this 10th day of March, 2025.

By: /s/ Nadia H. Dahab

**David F. Sugerman**, OSB No. 862984
**Nadia H. Dahab,** OSB No. 125630
SUGERMAN DAHAB
101 SW Main Street Ste. 910
Portland, OR 97205
Tel: (503) 228-6474
nadia@sugermandahab.com
david@sugermandahab.com

**Kelsey R. Eberly**, VT No. 6126 (admitted *pro hac vice*)
**Skye M. Walker**, OSB No. 230953
FarmSTAND
712 H Street NE Ste. 2534
Washington, DC 20002
Tel: (202) 630-3095
kelsey@farmstand.org
skye@farmstand.org

***Counsel for Plaintiffs and the Proposed Class***

**PLAINTIFFS' APPENDIX A:**

**FAC Paragraphs Cited and Inapplicability of Anti-SLAPP Statute**

| *FAC Allegation ¶* | | *Why the Anti-SLAPP Statute Does Not Apply* |
|---|---|---|
| *35* | "In a recent interview, a Northwest Natural Gas executive stated there is no universal standard to measure how much a renewable natural gas project actually helps the climate, and admitted that claimed emissions reductions vary based on the accounting method used." | Plaintiffs' claims do not "arise out of" the Northwest Natural Gas executive's statements to a news reporter. ORS 31.150(2). The cited statement provides context and evidence of Defendants' knowledge (undercutting Defendants' promise that Smart Energy-funded RNG projects mitigate specific amounts of climate pollution), but does not itself give rise to the company's UTPA or contract liability, so ORS 31.150(2) does not apply. |
| *51* | "Northwest Natural Gas's survey followed a successful, decades-long campaign by the natural gas industry to use terminology meant to downplay the climate harms and fossil origins of its product." | Plaintiffs are not suing Northwest Natural Gas over its "participation, through public marketing efforts, in a debate of public interest" over "the extent of the 'harms' of natural gas and other fossil-fuel products." Motion to Strike at 23. They are suing over its commercial advertisements and breach of contract. This allegation bears on the company's knowledge of consumer perception and its intent in developing the Smart Energy advertisements, which are relevant to whether Northwest Natural Gas's misleading representations were made willfully, recklessly or knowingly for purposes of the UTPA. But its consumer survey and the cited natural gas industry campaign are not acts that give rise to Defendants' UTPA or contract liability for purposes of ORS 31.150(2). |



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

| | | |
|---|---|---|
| *56* | "Northwest Natural Gas thus embarked on a marketing blitz to shore up customer affinity for natural gas—dampening the growing trend of electrification and new gas hookup bans starting to gain traction Oregon communities [sic]—while capitalizing on customers' widespread concern about lack of knowledge about RNG." | Again, Plaintiffs' claims do not "arise out of" Northwest Natural Gas's "participation, through public marketing efforts, in a debate of public interest" on "the desirability of 'electrification and new gas hookup bans.'" Motion to Strike at 23; ORS 31.150(2). As above, the cited allegation bears on the company's knowledge of customer awareness and its intent in developing the Smart Energy advertisements, which are relevant to whether Northwest Natural Gas's misleading Smart Energy representations were made willfully, recklessly or knowingly, for purposes of the UTPA. But Plaintiffs' claims "arise out of" only Defendants' breach of the Smart Energy contract and out of the company's misleading representations and omissions related to Smart Energy which caused Plaintiff Blumm ascertainable loss. *See* Compl. ¶¶ 131, 137–38, 149–50.<br><br>Defendants' breach of the contract is not a protected speech activity under ORS 31.150(2), as explained above, at A.1. Even if Northwest Natural Gas's misleading Smart Energy representations and omissions constituted protected activities within ORS 31.150(2)(c) or (d) (which they do not, for the reasons explained at A.2), Plaintiff Blumm's UTPA claim against commercial seller Northwest Natural Gas is one against which "[a] special motion to strike may not be made" under ORS 31.150(3), because the claim "arises out of a communication related to the person's sale or lease of the |



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

| | | |
|---|---|---|
| | | goods or services." |
| *58* | "As an advertising agency that Northwest Natural Gas engaged for this work explained, the 'challenge' was that, 'While [the Company] wanted to convey their commitment to sustainability and clean energy, they needed an effective way to communicate how natural gas could be a clean, efficient, and reliable source of energy." | Same response as previous. |
| *59* | "The 'solution' was a 'a [sic] comprehensive campaign that highlighted both individual and [Northwest Natural Gas's] corporate efforts to combat climate change and promote sustainability,' which 'positioned natural gas as a clean and reliable energy source.'" | Same response as for paragraph 56. |
| *60* | "'By educating their customers about the benefits of natural gas and their own commitment to sustainability,' the ad agency explained, Northwest Natural Gas 'empowered individuals and communities to take action against climate change.'" | Same response as for paragraph 56. |
| *61* | "The tagline for this campaign: Less We Can." | Same response as for paragraph 56. |



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

| | | |
|---|---|---|
| *62* | "Northwest Natural Gas trumpeted about RNG in Less We Can flyers, ads, and mailers, through a new campaign website, and through commercials, equating RNG with solar, wind, and hydroelectric energy. Northwest Natural Gas promised that RNG was 'on its way' to customers' homes, and suggested customers wouldn't have to 'chang[e] a thing' (*i.e.*, switch their natural gas appliances to electric) to have 'renewable' energy." This paragraph also includes images exemplifying the marketing campaign alleged here. | Same response as for paragraph 56. |
| *63* | "In a video posted on the Company's YouTube channel on June 7, 2021, and currently featured on the 'Renewable Natural Gas' page of its Less We Can website, Northwest Natural Gas states that it has 'begun to convert waste into Renewable Natural Gas to help reduce emissions from the air and provide a net zero carbon energy for the future.'" This paragraph also links to the video. | Same response as for paragraph 56. |
| *64* | "Another video advertisement shows cows grazing in a green field and claims RNG is 'Sustainably reducing emissions and closing the loop on waste,' with 'over 80% carbon reduction' (from what baseline is unclear)." | Same response as for paragraph 56. |
| *65* | "Northwest Natural Gas spread its gospel about RNG everywhere—in customer newsletters and prerecorded messages while customers waited on hold to talk with a Northwest Natural Gas representative." | Same response as for paragraph 56. |



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

| | | |
|---|---|---|
| *66* | "Northwest Natural Gas even tried to influence its future customers—Oregon schoolchildren—with its message of 'clean' natural gas and RNG. In an activity book marketed to educators, Northwest Natural Gas told kids, 'Today, natural gas can be made from waste materials. This is known as renewable natural gas.'" | Same response as for paragraph 56. |
| *67* | This paragraph further describes the "marketing blitz" described in more detail elsewhere. | Same response as for paragraph 56. |
| *69* | Northwest Natural Gas "continu[ed] to fight electrification" and "asked customers to fund its controversial investment in methane 'capture' and processing at two large Tyson Foods cattle slaughterhouses in Nebraska." | Same response as for paragraph 56. |
| *70* | "Northwest Natural Gas promoted its Smart Energy program as the way customers could do *their* part to combat climate change—to 'Use less' and 'Offset the rest.' | Plaintiffs' claims do not "arise out of" Northwest Natural Gas's "public speech about the extent to which carbon-offset programs like Smart Energy are an effective tool against climate change" or "to the importance of causing fewer emissions and offsetting any remaining emissions," Motion to Strike at 28; ORS 31.150(2). They arise out of Northwest Natural Gas's commercial advertising for Smart Energy and its breach of contract. The cited allegation describes one instance of Northwest Natural Gas's commercial promotion, which falls outside ORS 31.150(2), as explained above, in argument section A.<br><br>Even if that conduct fell within ORS 31.150(2), the claim against commercial seller Northwest Natural Gas "arises out of a communication related to the person's sale or lease of the goods or services," so it is one against which "[a] special motion to |



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

| | | |
|---|---|---|
| | | strike may not be made." ORS 31.150(3). |
| *73* | "Northwest Natural Gas heavily courts its customers to join Smart Energy—to pay a voluntary fee each month to 'offset the carbon emissions' from their natural gas use—with images like the below." This paragraph also contains the referenced image. | Same response as previous. |
| *74* | "Northwest Natural Gas advertises the Smart Energy program across many platforms. It sends customers promotional inserts in their utility bills, calling on them to 'mitigate the carbon emissions from their natural gas use through a mix of carbon offsets and renewable natural gas." | Same response as for paragraph 70.<br><br>Plaintiffs further dispute Defendants' characterization of "the Smart Energy program" as "an issue of public interest." Motion to Strike at 29. Smart Energy is a commercial product, not an "issue" subject to ORS 31.150(2). |
| *75* | "On its website, Northwest Natural Gas invites customers to work with the Company to 'address climate change' and the customer's 'environmental impact.' It boasts, 'Smart Energy has purchased carbon offsets from 19 projects across Oregon, Washington, Idaho, California, Utah, Alaska, and British Columbia. Some of these projects use captured methane, a potent greenhouse gas, as a renewable energy source—now that's smart!" | Same response as for paragraph 70.<br><br>Plaintiffs further dispute Northwest Natural Gas's characterization, as "issue[s] of public interest," its "invitation * * * to address carbon emissions by joining the Smart Energy program, * * * the projects involved in the Smart Energy program," and "the environmental benefits of the program as sufficient to call the program 'smart.'" Motion to Strike 29. These are instances of commercial advertising, not "issues." Northwest Natural Gas does not explain how they could be considered "issues" under ORS 31.150(2), and offers no evidence of "public interest" in them. |
| *76* | "Northwest Natural Gas displays a map of these 'projects' and claims that Smart Energy offsets save as much greenhouse gas | Same response as for paragraphs 70 and 75. |



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

| | | |
|---|---|---|
| | emissions as taking nearly half a million gas-powered cars off the road for a year." | |
| *77* | "Northwest Natural Gas makes similar claims in videos on its social media pages. It recently thanked its Smart Energy customers for 'making a difference,' claimed customers have 'addressed over two million tons of carbon emissions from your natural gas use,' and invited newcomers to sign up for Smart Energy." This paragraph also includes a photograph of an example of one of the social media posts referenced in this paragraph. | Same response as for paragraphs 70 and 75. |
| *78* | "Similarly, a video posted to its Facebook page in 2021 describes Smart Energy as a voluntary program in which customers can 'offset some or all of the CO2 produced from their natural gas use,' and portraying 'renewable natural gas' as a clean, climate-friendly fuel that comes from animal waste," and accompanying picture. | Same response as for paragraphs 70 and 75. |
| *79* | "Northwest Natural Gas makes very similar representations in its customer newsletter, Comfort Zone." This paragraph also includes an accompanying picture. | Same response as for paragraph 70.<br><br>Plaintiffs further dispute Defendants' characterization of "the Smart Energy program" as "an issue of public interest." Motion to Strike at 29. Smart Energy is a commercial product, not an "issue" subject to ORS 31.150(2). |
| *80* | "Northwest Natural Gas customers are prompted to join Smart Energy *every time they sign into their accounts*, as they're shown a prominent graphic reminding that they have 'offset' zero percent of their natural gas use, and invited to 'fight climate change' by joining Smart Energy." This paragraph also includes an accompanying picture. | Contrary to Northwest Natural Gas's suggestion that "[t]he fact that these statements are made only to NW Natural customers is immaterial" to whether they are "public statements" or "statements * * * of public interest," Motion to Strike at 31, the fact that these commercial solicitations are available to customers who have logged into their |



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

| | | |
|---|---|---|
| | | personal account pages defies the notion of their being "public statements" of general interest. ORS 31.150(2)(c).<br><br>Similarly, Plaintiffs dispute that solicitations for a commercial product made via customers' account page constitute Defendants' "expressing opinions about the importance of fighting climate change" for purposes of ORS 31.150(2)(d).<br><br>Plaintiffs' breach of contract claim does not "arise out of" any speech activity under ORS 31.150(2). Plaintiff Blumm's UTPA claim arises out of Northwest Natural Gas's misrepresentations and omissions related to its Smart Energy product mitigating or cancelling out emissions associated with customers' natural gas.<br><br>Even if those misrepresentations and omissions fell within ORS 31.150(2), the UTPA claim against commercial seller Northwest Natural Gas "arises out of a communication related to the person's sale or lease of the goods or services," so it is one against which "[a] special motion to strike may not be made." ORS 31.150(3). |
| *81* | "The sign-up process for Smart Energy continues to emphasize these same messages. Customers are prompted to 'address the carbon emissions from your natural gas use through (1) carbon offsets from projects that reduce, or prevent, the release of greenhouse gases, or (2) a mix of carbon offsets and renewable natural gas projects." | Same response as previous. |



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

| | | |
|---|---|---|
| *82* | "Customers can select 'Average Home' for a fixed $8 per month, or the 'Climate Neutral' option, 'to address 100% of the carbon emissions from your home's natural gas use," for a cost based on the customer's actual natural gas use." | Same response as for paragraph 80. |
| *83* | "Once enrolled, Northwest Natural Gas continues to personalize the 'offset' representation, providing customers with the specific amount of carbon dioxide emissions they have supposedly offset each month as a result of the customer's enrollment in Smart Energy, and encouraging customers to 'Keep up the good work!' and to 'Stay Enrolled and keep making a difference!" This paragraph contains an accompanying image. | Same response as for paragraph 80. |
| *84* | "Like the video advertisement shown above, the dairy cows grazing under an open sky in the graphic associate the Smart Energy offset projects with pasture-based dairies." This paragraph also includes an example of the photographs described here. | Same response as for paragraph 80. |
| *107* | "Northwest Natural Gas claims that five dairies in Tillamook County 'pipe manure from about 2,500 cows to' one of these Farm Power digesters." | Plaintiffs' claims do not "arise out of" the cited allegation, ORS 31.150(2), which describes how Northwest Natural Gas refers to a specific manure digester within the Smart Energy program but is not itself an advertisement.<br><br>Plaintiffs further dispute Defendants' characterization of "the Smart Energy program" as "an issue of public interest." Motion to Strike at 32; ORS 31.150(2)(c). Smart Energy is a commercial product, not an "issue."<br><br>Plaintiff's UTPA claim arises from Northwest Natural Gas's misrepresentations and omissions |



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

| | | |
|---|---|---|
| | | related to Smart Energy mitigating or cancelling out emissions associated with customers' natural gas. Even if that conduct falls within ORS 31.150(2), Plaintiff's claim against commercial seller Northwest Natural Gas "arises out of a communication related to the person's sale or lease of the goods or services," so it is one against which "[a] special motion to strike may not be made." ORS 31.150(3). |
| *115* | "Despite Northwest Natural Gas representing to Smart Energy customers that they are funding the Van Warmerdam Dairy methane capture 'project,' the Sacramento Municipal Utility District (SMUD) made the same representation about the very same digester, in its 2019 application for LCFS credits." | Plaintiffs dispute Defendants' characterization of "public statements identifying a dairy that Smart Energy funds go to" as constituting "an issue of public interest." Motion to Strike at 32; ORS 31.150(2)(c). Defendant offers no explanation as to how its identification of a dairy could fall within the statue.<br><br>Plaintiff Blumm's UTPA claim arises from Northwest Natural Gas's misrepresentations and omissions related to Smart Energy mitigating or cancelling out emissions associated with his natural gas. The allegation cited here describes one such misrepresentation: that Smart Energy customers are funding new "projects" to reduce methane emissions. Misleading marketing representations fall outside ORS 31.150(2), but even if that were not the case, Plaintiff Blumm's claim against commercial seller Northwest Natural Gas "arises out of a communication related to the person's sale or lease of the goods or services," so it is one against which "[a] special motion to strike may not be made." ORS 31.150(3). |



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

| | | |
|---|---|---|
| *118* | "Northwest Natural Gas promises customers an offset of their *carbon dioxide* emissions from the avoided release of *methane*." | Same response as for paragraphs 70 and 74. |
| *119* | Northwest Natural Gas allegedly "promises customers are zeroing out their monthly natural gas emissions," "marketed [Smart Energy] as funding precise monthly greenhouse gas reductions for customers," and "represents" offsets to customers "as new greenhouse gas emissions reductions, personalized and specific to the customer's natural gas use." | Same response as for paragraphs 70 and 74. |
| *122* | "In a response to a Frequently Asked Question on its website, until recently Northwest Natural Gas said, 'Only participating customers will benefit from carbon offsets purchased by Smart Energy. These carbon offsets will not count against any emissions Northwest Natural gas is responsible for as a natural gas utility." | Plaintiffs' claims do not "arise out of" this allegation. ORS 31.150(2). Instead, Plaintiff Blumm alleges that the quoted statements serve as evidence of a material omission that violates the UTPA, and evidence that the offsets Northwest Natural Gas represents as "original or new" are in fact "used or secondhand," in violation of ORS 646.608(1)(f).<br><br>Further, Plaintiffs dispute Defendants' characterization of "the functioning of the Smart Energy program" as "an issue of public interest" for purposes of ORS 31.150(2)(c). Motion to Strike at 33. Smart Energy is a commercial offering, not an "issue."<br><br>Even if the cited statement on the Smart Energy FAQ page fell within ORS 31.150(2), Plaintiff Blumm's UTPA claim against commercial seller Northwest Natural Gas "arises out of a communication related to the person's sale or lease of the goods or services," so it is one against which "[a] special motion to strike may not be made." ORS 31.150(3). |



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

| | | |
|---|---|---|
| *123* | "Now, the Company says that it 'currently' isn't using 'Smart Energy carbon offsets or renewable thermal certificates for compliance requirements in Oregon or Washington.' But last year, Northwest Natural Gas told regulators it wanted to do exactly that, writing that "[a]dding RNG sources that are eligible for [Climate Protection Program] compliance to the Smart Energy program is an obvious choice for Northwest Natural Gas and our customers." | Same response as previous. Plaintiffs' claims do not "arise out of" any alleged statement a Northwest Natural Gas representative made "in an executive proceeding or other proceeding authorized by law" under ORS 31.150(2)(a). Motion to Strike at 33. |
| *124* | Northwest Natural Gas "claims in ubiquitous marketing to prospective customers" that the Smart Energy program "deliver[s] 'offset[s]' that 'mitigate' the carbon emissions from customers' fossil natural gas, and its 'offsets' are . . . equivalent to taking hundreds of thousands of gasoline-powered cars off the road every year." | Plaintiffs' claims do not arise out of Northwest Natural Gas's "offering a position on the environmental benefits of the Smart Energy program," Motion to Strike at 33. The cited allegations describe the company's promotion of its commercial product through specific factual claims, not its opinions on a program's environmental benefits.<br><br>Plaintiff's UTPA claim arises from Northwest Natural Gas's misrepresentations and omissions related to Smart Energy mitigating or cancelling out emissions associated with customers' natural gas, conduct that does not fall within ORS 31.150(2), as explained above, at A.2. Even if it did, Plaintiff's claim against commercial seller Northwest Natural Gas "arises out of a communication related to the person's sale or lease of the goods or services," so it would still be one against which "[a] special motion to strike may not be made." ORS 31.150(3). |
| *125* | Northwest Natural Gas represents on its website that "Smart Energy 'offsets' or 'mitigates' customers' fossil natural gas emissions." The paragraph also alleges that | Same response as previous. Moreover, statements presented to Plaintiff Blumm on his personal account page on Northwest Natural |



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

| | | |
|---|---|---|
| | Plaintiff Blumm was "presented with two subscription options: 'Average Home' or 'Climate Neutral,'" and that "Northwest Natural Gas represented to Mr. Blumm that by selecting the 'Climate Neutral' option, he would pay a variable amount each month ($0.15246 per them) to offset all (100 percent) of the carbon emissions associated with his fossil natural gas use." | Gas's website are not "public statements" or statements "of public interest" within the meaning of ORS 31.150(2). |
| *126* | Northwest Natural Gas "congratulated Mr. Blumm, urging him to 'keep up the good work' and continue 'making a difference' for the climate by staying enrolled in Smart Energy. Northwest Natural Gas again reiterated that by participating in the program, Mr. Blumm was addressing 100 percent of the carbon emissions from his natural gas use, and 'supporting projects that reduce, or prevent the release of, greenhouse gases." | Same response as previous. |
| *127* | "Northwest Natural Gas represented and promised Ms. Gates that it intended to zero out the carbon emissions associated with her natural gas use." | Same response as previous paragraph, as to Northwest Natural Gas's communications to Plaintiff Gates. |
| *137* | Northwest Natural Gas is allegedly making misrepresentations about various aspects of the Smart Energy program | The cited paragraph states, "Northwest Natural Gas willfully violated the Unlawful Trade Practices Act, ORS 646.605 *et seq.* in one or more of the following ways that caused ascertainable losses to Plaintiff Blumm and the Class," and describes those ways.<br><br>Violations of the UTPA do not constitute protected conduct under ORS 31.150(2)(c). Even if they did, the claim against commercial seller Northwest Natural Gas "arises out of a communication related to the person's sale or lease of the goods or services," so it is one against which "[a] special motion to strike may not |



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

| | | |
|---|---|---|
| | | be made." ORS 31.150(3). |
| *143* | Northwest Natural Gas allegedly "offered, and continues to offer, to 'mitigate the carbon emissions' from a customer's natural gas use 'through a mix of carbon offsets and renewable natural gas." | This paragraph describes the contractual offer Northwest Natural Gas made to natural gas customers like Plaintiffs. As noted above, at A.1, Plaintiffs' breach of contract claim does not arise from the company's making of the offer, but from its failure to fulfill its contractual obligation to mitigate greenhouse gas emissions from Plaintiffs' natural gas.<br><br>To the extent the breach of contract claim does arise from the offer, that claim against commercial seller Northwest Natural Gas "arises out of a communication related to the person's sale or lease of the goods or services," so it is one against which "[a] special motion to strike may not be made." ORS 31.150(3). |
| *144* | Northwest Natural Gas "offered, and continues to offer, customers a 'Climate Neutral' option, for a variable fee of $0.15246 per therm, for which it says it will 'offset 100 percent of the carbon emissions from your home's natural gas use.'" | Same response as previous paragraph. |



**SUGERMAN DAHAB**
101 SW Main Street Ste. 910 Portland, OR 97204
Phone 503.228.6474 | Fax 503.228.2556

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be served the foregoing **PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT NORTHWEST NATURAL GAS'S SPECIAL MOTION TO STRIKE FIRST AMENDED COMPLAINT** on the following named person(s) on the date indicated below:

Clifford Scott Davidson, OSB No. 125378
Drew L. Eyman, OSB No. 163762
SNELL & WILMER LLP
601 SW 2nd Ave. Ste. 2000
Portland, OR 97204
Tel: (503) 624-6800

Megan H. Berge
Brent Cooper (admitted *pro hac vice*)
Kent Mayo (admitted *pro hac vice*)
BAKER BOTTS LLP
700 K Street N.W.
Washington, D.C, 20001-5692
Tel: (202) 639-7700

*Attorneys for Defendants Northwest Natural Gas Company and Northwest Natural Holding Co.*

☐ by Overnight Delivery
☐ by Facsimile
☐ by U.S. Mail with postage prepaid
☒ By OJD File & Serve
☒ by Email
csdavidson@swlaw.com
deyman@swlaw.com
megan.berge@bakerbotts.com
brent.cooper@bakerbotts.com
kent.mayo@bakerbotts.com

DATED this 10th day of March, 2025.

By: /s/ Nadia H. Dahab
**David F. Sugerman,** OSB No. 862984
**Nadia H. Dahab,** OSB No. 125630
SUGERMAN DAHAB
101 SW Main Street Ste. 910
Portland, OR 97204
Tele: (503) 228-6474
david@sugermandahab.com
nadia@sugermandahab.com

*Attorneys for Plaintiffs and the Proposed Class*