

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

FILED

OCT 06 2025

Circuit Court

Multnomah County, Oregon

NICHOLAS BLUMM and CLAIRE
GATES,

Plaintiffs,

v.

NORTHWEST NATURAL GAS
COMPANY and NORTHWEST
NATURAL HOLDING COMPANY,

Defendants.

Case No. 24CV48490
ORDER ON DEFENDANT NW
NATURAL'S SPECIAL MOTION TO
STRIKE THE FIRST AMENDED
COMPLAINT

This case came on for hearing on August 7, 2025, on Defendant NW Natural's Special Motion To Strike The First Amended Complaint (the "Motion"). Plaintiffs appeared through their attorneys, Kelsey Eberly and Nadia Dahab. Defendant appeared through its attorneys, Kent Mayo and Clifford Davidson. Having considered the arguments presented by the parties and the evidentiary record, and for the reasons explained below, Defendant's Motion is DENIED.¹

Defendant moves pursuant to ORS 31.150 to strike the First Amended Complaint ("FAC") in its entirety. Defendant argues on the first statutory prong that the FAC is

¹Defendant's Request for Judicial Notice in support of the Motion is GRANTED.

subject to the present motion pursuant to ORS 31.150(2)(c) because there exists a prima facie showing that the FAC is largely predicated upon Defendant's public statements on issues of public interest. Moving to the second prong, Defendant argues that the FAC should be struck pursuant to ORS 31.150(4) because Plaintiffs have failed to establish that there is a probability that they will prevail on their claims by failing to present substantial evidence to support a prima facie case.

Plaintiffs respond by denying that the FAC is directed entirely or primarily to Defendant's speech on issues of public interest, and by pointing to the evidence they have adduced and which they aver comprises substantial evidence to support their prima facie case.

Plaintiffs also argue that the FAC is not subject to this Motion because of the effect of ORS 31.150(3), which reads in its entirety:

A special motion to strike may not be made 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.

The parties agree that Defendant is "primarily engaged" in the business of selling natural gas. The parties disagree whether the FAC's claims "relate" to Defendant's business of selling natural gas. In the Court's view this is not a difficult question. Plaintiffs are correct.

Each of the FAC's claims centers on a program through which Defendant offered an option to its customers to purchase "carbon offsets" to mitigate the impact of that customer's use of natural gas. The FAC's claims allege in essence that these offered "carbon offsets" were less than Defendant advertised and held them out to be. That is, the FAC's core theory of relief is that in the course of selling its natural gas, Defendant committed deceptive practices by offering for sale ride-along less-than-advertised carbon offsets. It is plain, then, that the FAC's claims "relate" to the business in which Defendant is "primarily engaged" – the selling of natural gas. The FAC thus falls squarely within the proscription of ORS 31.150(3) and is therefore not subject to a motion to strike pursuant to ORS 31.150.²

For the sake of a complete record, the Court makes the following additional and alternative determinations. First, the Court finds that if the FAC is subject to the present Motion, then Defendant has satisfied its initial burden under ORS 31.150, and has established that the FAC is directed against public statements on issues of public

² Defendant argues separately that the FAC's claims are barred by Article I, Section 8 of the Oregon Constitution, and by the First Amendment to the United States Constitution. These arguments are dealt with substantively in the Court's Order on Defendants' Motion To Dismiss Plaintiffs' Amended Class Action Complaint Pursuant To ORCP 21A(1)(H) Or, In The Alternative, To Abate Pursuant To The Primary Jurisdiction Doctrine. On this Motion, the Court observes that this argument falls outside the parameters of a special motion to strike brought pursuant to ORS 31.150, and that it also fails on the merits for the reasons identified in the Court's Order on the Motion to Dismiss, which is incorporated herein.

interest. Second, the Court finds that in that scenario that Plaintiffs have satisfied their burden and have presented substantial evidence to support a prima facie case.³ Therefore, even if the Motion were not barred by ORS 31.150(3), the Court would reach the same substantive conclusion, which is that the Motion must be denied.

CONCLUSION

Defendant's Special Motion To Strike is DENIED. Plaintiffs' request for reasonable costs and attorneys' fees on the Motion is DENIED.

³ In making this finding, the Court has not considered those portions of the declarations submitted by Plaintiff Nicholas Blumm relating to: (1) how he enrolled in the Smart Energy program; and (2) what if anything he was told by Defendant about the program at the time that he enrolled.

Plaintiff Blumm has submitted both a Declaration and a Supplemental Declaration in support of Plaintiff's Response to In Opposition to the Motion. He directly contradicts himself on these subjects between his two Declarations.

Notably, Plaintiff Blumm appears to have sworn to and filed his Supplemental Declaration in response to evidence adduced by Defendant that suggested that his original Declaration contained significant inaccuracies on these topics. For reasons discernible only to them, Plaintiffs explicitly decline to withdraw or amend any of the contradictory evidence Plaintiff Blumm has presented under oath. To the contrary, they have merely "supplemented" Plaintiff Blumm's initial sworn statements on these topics with his additional, later, and contradictory sworn statements. Plaintiffs thus insist on presenting a Schrödinger's cat-style evidentiary record where both of Mr. Blumm's sworn declarations remain as evidence, including on those points as to which Plaintiff Blumm directly contradicts himself.

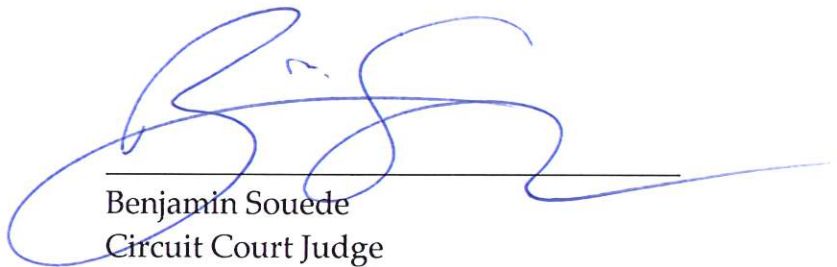
The Court finds that these contradictions result in an evidentiary nullity. It has therefore disregarded all of Plaintiff Blumm's evidence on these subjects.

This evidentiary jumble does not disturb the Court's conclusion, because the Court finds that Plaintiffs have met their evidentiary burden even when the self-contradicting evidence is disregarded.

Pursuant to ORS 31.150(1), the Court will enter a limited judgment denying the Motion. Plaintiffs are directed to prepare and submit a form of limited judgment consistent with this Order.

IT IS SO ORDERED.

Dated this 6th day of October, 2025.



Benjamin Souede
Circuit Court Judge