

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

FILED

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Circuit Court

Case No. 24CV48490 Multnomah County, Oregon

NICHOLAS BLUMM and CLAIRE
GATES,

Plaintiffs,

v.

NORTHWEST NATURAL GAS
COMPANY and NORTHWEST
NATURAL HOLDING COMPANY,

Defendants.

ORDER ON DEFENDANTS' MOTION
TO DISMISS PLAINTIFF'S FIRST
AMENDED CLASS ACTION
COMPLAINT UNDER ORCP 21A(1)(H)

This case came on for hearing on August 7, 2025, on Defendant Northwest Natural Gas Company's ("NW Natural's") and Northwest Natural Holding Company's ("Holding Company's") Motion to Dismiss Plaintiff's First Amended Class Action Complaint Under ORCP 21A(1)(H) (the "Motion"). Plaintiffs appeared through their attorneys, Kelsey Eberly and Nadia Dahab. Defendants appeared through their attorneys, Kent Mayo and Clifford Davidson. Following the oral arguments from counsel and having reviewed the briefs submitted to the court, the court finds as follows:

A. Holding Company's Motion To Dismiss

The First Amended Class Action Complaint (the "FAC") fails to state facts sufficient to state a claim against Holding Company. The FAC does not allege that Holding Company took any act relevant to Plaintiffs' claims. The FAC does allege that Holding Company is the parent company of NW Natural (FAC ¶3). A parent corporation is generally not liable for the acts of its subsidiary. *See Amfac Foods v. Int'l Systems*, 294 Or 94, 102 (1982). The FAC does not state any facts that would satisfy an exception to the general rule, and therefore fails to state any claim against Holding Company. *Id.*

It does not appear to the Court that any attempt to amend by Plaintiffs would necessarily be futile. Therefore, Holding Company's Motion to Dismiss is GRANTED WITHOUT PREJUDICE.

B. NW Natural's Motion To Dismiss

1. The FAC fails to state a claim pursuant to ORS 646.608(1)(f).

The FAC purports to state a claim pursuant to ORS 646.608(1)(f). This portion of Oregon's Uniform Trade Practices Act (the "UPTA") renders it an unlawful practice for a person, in the course of that person's business, vocation or occupation, to

“[r]epresent[] that real estate or goods are original or new if the real estate or goods are deteriorated, altered, reconditioned, reclaimed, used or secondhand.”

Defendants move to dismiss this claim, arguing that the carbon offsets at issue in this case are not “goods” as that term is used in the statute. Plaintiffs argue that the carbon offsets at issue do indeed fall within the definition of “goods.”¹ Defendant’s position is correct.

As alleged in the FAC, the offsets at issue in this case do not represent any actual tangible or intangible items, but instead represent a promise to do something. In exchange for the customer choosing to purchase an offset, NW Natural “tells customers that * * * Northwest Natural [] will completely offset the carbon emissions attributable to their monthly natural gas use.” (FAC ¶ 1). Northwest Natural then “uses customers’ monthly payments to purchase what it describes as ‘offsets’ from manure digesters.” (FAC ¶ 85). Plaintiffs allege that these purchases are not “bona fide” offsets. (*Id.*)

The UPTA does not define “goods,” but there exist sound reasons to conclude that whatever the legislature intended “goods” to mean in ORS 646.608(1)(f), it does not encompass a promise to take a particular action.

In the first place, it is hard to conceive of how such a promise could be alleged to be – in the words of the statute – “deteriorated, altered, reconditioned, reclaimed, used

¹ The carbon offsets are, as the parties agree, plainly not “real estate.”

or secondhand.”

In the second place, the context of the UTPA suggests that a promise to do something is a service, not a good. Other portions of ORS 646.608(1) apply to “goods or services.” For example, the FAC also purports to state a claim pursuant to ORS 646.608(1)(g), which makes it unlawful to represent that “goods or services are of a particular standard, quality, or grade * * * if [they] are of another.”

Even assuming *arguendo* that Plaintiffs are correct that the UTPA contemplates intangible goods, the promise alleged in the FAC is not such a good. This is true even when the Court assumes, as it must, the truth of all the FAC’s well-pleaded facts and draws all inferences in Plaintiffs’ favor. *See Pritchard v. Regence Bluecross Blueshield of Oregon*, 225 Or App 455, 457 (2009) (noting that in “assessing the sufficiency” of a plaintiff’s claims, a court “assume[s] the truth of all well-pleaded facts alleged in the complaint, and liberally construe[s] the pleadings and draw[s] all inferences in the plaintiff’s favor.” (citations omitted).

NW Natural’s Motion to Dismiss the FAC’s claim for relief predicated on an alleged violation of ORS 646.608(1)(b) is GRANTED. The FAC’s claim for relief predicated on ORS 646.608(1)(f) is DISMISSED WITH PREJUDICE.

2. The FAC states a claim pursuant to ORS 646.608(1)(b), but must be made more definite and certain.

The FAC purports to state a claim pursuant to ORS 646.608(1)(b). This portion of

the UPTA renders it an unlawful practice for a person, in the course of that person's business, vocation or occupation, to "[c]ause [a] likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services."

NW Natural observes correctly that the FAC is replete with references to NW Natural as the source of the carbon offsets at issue in this case and that the FAC does not allege anywhere that anyone other than NW Natural is the source of those offsets. NW Natural therefore reasons that the FAC does not allege any ultimate facts that would support an allegation that it caused a likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or certification of the offsets.

Plaintiffs respond by arguing that it is NW Natural's representations about the original source of the offsets NW Natural was acquiring that are at issue, not whether NW Natural itself was the "source" of those offsets.

The Court agrees that the theory articulated in Plaintiffs' Response fall within the ambit of ORS 646.608(1)(b). The actual allegations contained in the FAC, however, are far less clear. The FAC alleges that NW Natural caused a "likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services, including carbon offsets and/or Renewable Natural Gas in the Smart Energy program, in violation of * * * ORS 646.608(1)(b)." This contention may be plausibly read as applying to the carbon offsets being offered by NW Natural, or as applying to

the initial origination of those offsets, or as applying to both. Plaintiffs have now clarified that the allegation is directed only as to origination of the offsets. That clarification should be made part of the operative complaint.

NW Natural's Motion to Dismiss the FAC's claim for relief predicated on an alleged violation of ORS 646.608(1)(b) is DENIED. Pursuant to ORCP 21 D, the Court on its own initiative orders Plaintiffs to MAKE MORE DEFINITE AND CERTAIN the FAC's allegations on this point, consistent with this Order.

3. Neither the First Amendment to the United States Constitution nor Article I Section 8 of the Oregon Constitution require dismissal of the FAC's UTPA claims.

Each of the FAC's UTPA claims centers on a program through which NW Natural offered an option to its customers to purchase "carbon offsets" to mitigate the impact of that customer's use of natural gas. The FAC alleges that NW Natural misrepresented what those offsets were, and misrepresented the quality of those offsets. The FAC's UTPA claims, then, are directed at NW Natural's allegedly fraudulent commercial speech.

The Oregon Supreme Court has explained that state regulation of such speech does not offend Article I, Section 8 of the Oregon Constitution because the speech falls wholly within an historical exception to constitutional protection. *See State v. Robertson*, 293 Or 402 (1982). The Oregon Supreme Court has explained, further, that portions of

the UTPA directed at such allegedly fraudulent commercial speech do not run afoul of the protections of Article I, Section 8:

ORS 646.608(1)(e) is a restriction on speech that serves a purpose—avoidance of economic harm based on deceptive commercial practices—that was recognized when Article I, section 8, was drafted and is consistent with how the framers would have conceived of fraud. The statute has at its core the prevention of an underlying actual harm to an individual or group, above and beyond any supposed harm that the message itself might be presumed to cause to the hearer or to society, which makes it unlikely that the framers would have viewed it as incompatible with the free speech guarantee that they enshrined in the constitution.

State ex rel Rosenblum v. Living Essentials, LLC, 371 Or 23, 51 (2023) (internal quotations omitted) (quoting *State v. Ciancanelli*, 339 Or 282, 318 (2005)).

As to the First Amendment, a very similar analysis yields the same conclusion. In *Central Hudson Gas & Electric Corp v. Public Service Commission*, 447 US 557, 566, 100 S Ct 2343, 65 L Ed 2d 341 (1980), the United States Supreme Court announced a four-prong test for determining whether a regulation of commercial speech violates the First Amendment to the United States Constitution. The first prong of that test queries whether “the speech at issue is protected by the First Amendment: that is, whether it concerns lawful activity and is not misleading. If, under that prong, the speech concerns unlawful activity or is more likely to deceive the public than to inform it, the government can prohibit it as unprotected speech.” *Living Essentials*, 371 Or at 58 (citing *Central Hudson*, 447 US at 563, 100 S Ct at 2343).

Here, the FAC seeks relief pursuant to various portions of the UTPA. Each of those portions is directed at regulating commercial speech that is alleged to have been fraudulent. The portions of the UTPA the FAC therefore pass the *Central Hudson* test, and do not run afoul of the First Amendment's protections.

4. The Motion's remaining argued bases for dismissal must be rejected.

The Motion presents several other bases that NW Natural argues require dismissal of various portions of the FAC. Each of these arguments fail as a matter of law, and therefore except as granted above, the Motion is otherwise DENIED.

Specifically, NW Natural's argument that the FAC fails to state ultimate facts sufficient to constitute a claim for breach of contract is rejected, because when all inferences from the FAC are drawn in Plaintiffs' favor, the FAC does indeed state sufficient facts to support a claim for breach of contract.

NW Natural's argument that the FAC fails to state ultimate facts that would support a conclusion that the alleged UTPA violations were the result of either willful or "reckless or knowing" conduct by NW Natural is rejected, because when all inferences from the FAC are drawn in Plaintiffs' favor, the FAC does indeed state sufficient facts that would support that conclusion.

5. Abatement of this action is not appropriate.

NW Natural urges in the alternative that if the FAC is not dismissed in its

entirety, that the Court abate this action “in recognition of the Public Utility Commission’s primary jurisdiction over the core issues” involved in this case. NW Natural observes that the Smart Energy program – the program by which the carbon offsets at issue were offered and sold – was conducted during the relevant time period pursuant to the regulation of Schedule 400 of NW Natural’s Tariff, which was approved by the Oregon Public Utilities Commission (the “PUC”). NW Natural reasons that it is this tariff that provided the terms of the offsets that were offered and sold. Thus, NW Natural concludes, if there are problems with the offsets, then it is the PUC that should address them.

Plaintiffs respond in part by noting that the FAC does not allege any infirmity or problem with Schedule 400 itself, nor does it seek to modify Schedule 400. Rather, the FAC alleges that NW Natural misrepresented the nature of the offsets, and thus violated the terms of the UTPA and breached the terms of the contracts it formed with Plaintiffs, which (per Plaintiffs) included terms via NW Natural’s representations that went beyond what Schedule 400 covers.

The Court agrees with Plaintiffs. Nothing in this litigation seeks to undo, undermine, or affect the terms of Schedule 400. Plaintiffs' claims relate to actions NW Natural allegedly undertook in the way that it marketed, sold, and entered into contracts relating to the offsets authorized by Schedule 400. Nothing the PUC might do or could do with respect to Schedule 400 would substantively affect the claims in this case. Those claims, therefore, are properly before this Court, and abatement would be inappropriate.

CONCLUSION

Holding Company's Motion to Dismiss is GRANTED WITHOUT PREJUDICE.

NW Natural's Motion to Dismiss is GRANTED IN PART AND DENIED IN PART. The FAC's claim for relief predicated on an alleged violation of ORS 646.608(1)(f) is DISMISSED WITH PREJUDICE. The FAC's claim for relief predicated on a violation of ORS 646.608(1)(b) is ordered to be MADE MORE DEFINITE AND CERTAIN. NW Natural's Motion to Dismiss is otherwise DENIED.

NW Natural's alternative motion to abate is DENIED.

IT IS SO ORDERED.

Dated this 6th day of October, 2025.



Judge Benjamin Souede
Circuit Court Judge