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IN THE COURT OF APPEALS OF THE STATE OF OREGON

Bradley Holcom,
Plaintiff-Appellant,

v.

Canby Builders Supply, an Oregon corporation; Holly Rodway; James Rodway;
Kristen Martin; Michael Maxwell; Doug Bishop; Garon Rigsby; Brian Servant; and
Japhr Pine, LLC, an Oregon limited liability company,
Defendants-Respondents.

Clackamas County Circuit Court
24CV32086

A187113

APPELLATE JUDGMENT

On March 30, 2025, appellant filed a notice of appeal from an Order on Defendants' ORCP 21 Motions. That order is not subject to appeal under ORS 19.205. The appeal is dismissed on the ground that the Court of Appeals lacks jurisdiction to hear the appeal.

Appeal dismissed.

May 02, 2025
DATE

/s/ Theresa Kidd
Appellate Commissioner,
Court of Appeals

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondents.

No costs allowed.

Oregon Court of Appeals:

Appellate Judgment Effective Date: March 10, 2026

NOTE: This is the appellate judgment of the Oregon Court of Appeals and should be entered pursuant to ORS 19.450.

APPELLATE JUDGMENT

Appellate Court Administrator, Appellate Court Records Section
1163 State Street, Salem, Oregon 97301-2563
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IN THE COURT OF APPEALS OF THE STATE OF OREGON

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Canby Builders Supply, an Oregon corporation; Holly Rodway; James Rodway; Kristen Martin; Michael Maxwell; Doug Bishop; Garon Rigsby; Brian Servant; and Japhr Pine, LLC, an Oregon limited liability company,
Defendants-Respondents.

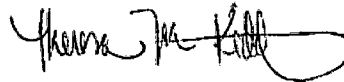
Clackamas County Circuit Court No. 24CV32086

Court of Appeals No. A187113

ORDER OF DISMISSAL

On March 30, 2025, appellant filed a notice of appeal from an Order on Defendants' ORCP 21 Motions. That order is not subject to appeal under ORS 19.205. The appeal is dismissed on the ground that the Court of Appeals lacks jurisdiction to hear the appeal.

Appeal dismissed.



Theresa Kidd
Appellate Commissioner
05/02/2025

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondents

No costs allowed

c: Trevor Robins
Molly Silver
Kellie M Humiston
Clackamas County Transcript Coordinator

ORDER OF DISMISSAL

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IN THE COURT OF APPEALS OF THE STATE OF OREGON

Bradley Holcom,
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v.

Canby Builders Supply, an Oregon corporation; Holly Rodway; James Rodway; Kristen Martin; Michael Maxwell; Doug Bishop; Garon Rigsby; Brian Servant; and Japhr Pine, LLC, an Oregon limited liability company,
Defendants-Respondents.

Clackamas County Circuit Court No. 24CV32086

Court of Appeals No. A187113

ORDER DENYING RECONSIDERATION

Appellant petitions for reconsideration of this court's May 2, 2025, order dismissing the appeal for lack of jurisdiction. The court has considered the argument presented in the petition and orders that the petition is denied. In particular, the court notes that, despite appellant's arguments in the petition, the trial court order from which the appeal is taken does not prevent entry of a judgment in the action.

The petition for reconsideration is denied.



Erin C. Lagesen
Chief Judge
6/3/2025

c: Trevor Robins

Molly Silver

ORDER DENYING RECONSIDERATION

Appellate Court Administrator, Appellate Court Records Section
1163 State Street, Salem, Oregon 97301-2563
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IN THE SUPREME COURT OF THE STATE OF OREGON

Bradley Holcom,
Plaintiff-Appellant,
Petitioner on Review,

v.

Canby Builders Supply, an Oregon corporation; Holly Rodway; James Rodway; Kristen
Martin; Michael Maxwell; Doug Bishop; Garon Rigsby; Brian Servant; and Japhr Pine,
LLC, an Oregon limited liability company,
Defendants-Respondents,
Respondents on Review.

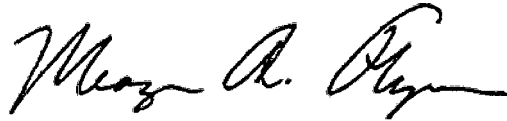
Oregon Court of Appeals
A187113

S072089

ORDER DENYING REVIEW

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.



Meagan A. Flynn
Chief Justice, Supreme Court
December 04, 2025

Bushong, J., not participating.

c: Trevor Robins

Molly Silver

ORDER DENYING REVIEW

Appellate Court Administrator, Appellate Court Records Section
1163 State Street, Salem, Oregon 97301-2563
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IN THE SUPREME COURT OF THE STATE OF OREGON

Bradley Holcom,
Plaintiff-Appellant,
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v.

Canby Builders Supply, an Oregon corporation; Holly Rodway; James Rodway; Kristen Martin; Michael Maxwell; Doug Bishop; Garon Rigsby; Brian Servant; and Japhr Pine, LLC, an Oregon limited liability company,
Defendants-Respondents,
Respondents on Review.

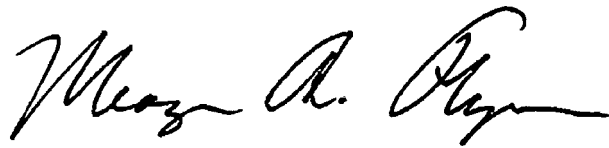
Oregon Court of Appeals
A187113

S072089

ORDER DENYING PETITION FOR RECONSIDERATION

Upon consideration by the court.

The court has considered the petition for reconsideration and orders that it be denied.



Meagan A. Flynn
Chief Justice, Supreme Court
January 29, 2026

Bushong, J., not participating.

c: Trevor Robins

Molly Silver

ORDER DENYING PETITION FOR RECONSIDERATION

Appellate Court Administrator, Appellate Court Records Section
1163 State Street, Salem, Oregon 97301-2563
Page 1 of 1

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

BRADLEY HOLCOM,

Plaintiff,

v.

CANBY BUILDERS SUPPLY AN
OREGON CORPORATION, HOLLY
RODWAY, JAMES RODWAY,
KRISTEN MARTIN, MICHAEL
MAXWELL, DOUG BISHOP,
GARON RIGSBY, BRIAN SERVANT,
JAPHR PINE, LLC AN OREGON
LIMITED LIABILITY COMPANY,

Defendants.

Case No. 24CV32086

**ORDER ON DEFENDANTS' ORCP
21 MOTIONS**

The parties appeared before the Court on January 6, 2025 for oral argument on Defendants' ORCP 21 Motions regarding the initial complaint filed July 3, 2024. The Court, having reviewed the pleadings, arguments, and points and authorities rules as to the initial complaint filed July 3, 2024 as follows:

1. **Motion 1:** Defendants' Motion to Dismiss Defendants Holly Rodway, James Rodway, Kristen Martin, Michael Maxwell, Doug Bishop, Garon Rigsby, Brian Servant, and Japher Pine LLC for failure to state a claim is hereby **GRANTED**. Plaintiff has two weeks from the date of this order to file an amended complaint making the claims against these defendants more definite and certain. Otherwise, the claims against these defendants are dismissed with prejudice.

///

- 1 2. **Motion 2:** Defendants' Motion to Dismiss the Defamation Claim for failure to state a
2 claim is hereby **GRANTED**. Plaintiff's Defamation Claim is hereby dismissed with
3 prejudice.
- 4 3. **Motion 3:** Defendants' Motion to Dismiss the Elder Abuse Claim (alleged as Third
5 Claim for Relief) for failure to state a claim is hereby **GRANTED IN PART AND**
6 **DENIED IN PART**. Plaintiff's claim for financial elder abuse is dismissed with
7 prejudice. Plaintiff has leave to amend the Complaint to make the elder abuse claim
8 more definite and certain with respect to allegations of emotional and verbal abuse.
9 Should Plaintiff wish to proceed, an amended complaint shall be filed within two weeks
10 of the date of this order.
- 11 4. **Motion 4:** Defendants' Motion to Dismiss the Negligence/NIED/Premises Liability
12 Claim (alleged at Fourth Claim for Relief) for failure to state a claim is hereby
13 GRANTED. Plaintiff's Negligence/NIED/Premises Liability Claim is hereby
14 dismissed with prejudice.
- 15 5. **Motion 5:** Defendants' Motion to Dismiss the Injunctive Relief Claim (alleged at First
16 Claim for Relief) for failure to state a claim is hereby **GRANTED**. Plaintiff's Claim
17 for Injunctive Relief is hereby dismissed with prejudice.
- 18 6. **Motion 6:** Defendants' Motion to Dismiss the Declaratory Relief Claim (alleged at
19 Second Claim for Relief) for failure to state a claim is hereby **GRANTED**. Plaintiff's
20 Claim for Injunctive Relief is hereby dismissed with prejudice.

1 I am happy to answer any questions regarding the more
2 substantive claims here, that is, the elder abuse and the
3 defamatory relief, but, again, I don't want to waste the
4 Court's time since the Court has done so much.

5 The final piece that I think -- final two pieces that
6 are important to note, one, there is a sur-reply that argued
7 regarding the legal standards of pleadings under the federal
8 rules and under the Oregon court rules. It is not a violation
9 of due process to have all of the Oregon Rules of Civil
10 Procedure apply uniformly to that (indiscernible).

11 Second, the other issue, there was a filing of a
12 motion for -- to seal certain documents. I'm not even quite
13 sure what those documents were. My understanding is that
14 there's some sort of medical records. One, that's extrinsic
15 evidence outside the pleadings, so it shouldn't be considered
16 by the Court.

17 We don't have an inherent objection to the plaintiff
18 providing the other document. He may not wish to do so in
19 sort of a HIPAA way, it's his -- it's his medical record, but
20 medical records regarding sort of emotional consequences don't
21 actually implicate his -- whether he has a viable legal claim
22 for relief. It's simply were there -- is there a question of
23 damage.

24 THE COURT: So defendants have no objection to a
25 protective order for medical records?

1 MS. SILVER: I -- I would note that in both the
2 response and the sur-reply, plaintiff did not provide
3 additional facts regarding the potential -- the ultimate facts
4 regarding what each defendant did at what time.

5 Generally speaking, while amendment of a pleading
6 following a successful ORCP 21 motion is fairly routine if --
7 if amendment would be futile as shown by the contents of the
8 prior pleadings and submissions, then the Court in its
9 discretion can deny leave to amend.

10 We would -- we would request denial of leave to amend
11 as to all of the claims. Specifically I think that denial is
12 particularly appropriate in the piercing of the corporate
13 veil, declaratory judgment, injunctive relief, and the elder
14 abuse claim.

15 I also think dismissal of the claims for all persons
16 where it's reassignment of job duties, things like that, we
17 don't really have statements here or -- or any additional
18 conduct by the parties. He could have responded by saying,
19 "Oh, yes, yes. I understand that my pleadings are somewhat
20 thin. I'm pro se." I understand the court gives latitude in
21 those circumstances, but that does not obviate the need to
22 comply with the rules.

23 In many circumstances had pro se plaintiffs come back
24 in their response and say, "Oh, if I was given a chance to
25 amend, I would include these additional ultimate facts," yes,

1 showing that there would be a good reason for continued
2 litigation versus an ORCP 21 is -- cut off litigation at the
3 early stage without that leave to expend substantial
4 resources.

5 Defendant is concerned -- or defendants are concerned
6 there's a huge number of people involved, a huge number of
7 claims. To the extent that pleadings and discovery moves
8 forward, it would be a more efficient use of resources of the
9 court and the parties' time if the claims were -- were
10 narrowed.

11 THE COURT: Counsel, none of the defendants have
12 filed an answer yet, correct?

13 MS. SILVER: Correct.

14 THE COURT: So the rules allow plaintiff to file an
15 amended complaint up until the time that defendants file an
16 answer, and then it's either by leave of the court or approval
17 of defendants. Do you agree?

18 MS. SILVER: No, Your Honor. First, a filing of a
19 responsive -- responsive document, we already have a
20 responsive -- the ORCP 21 response to complaint, and so
21 plaintiff would require leave of the Court to file an
22 amendment, is my understanding of the rules. I can, of
23 course, re-read ORCP 23 more closely, but that's my
24 recollection, Your Honor.

25 THE COURT: Okay. Mr. Holcom, I agree with counsel.

1 You have not pled Claims 1, 2, 4, and 5 correctly. You're
2 making claims for defamation. These are extremely difficult
3 claims to plead and to prove.

4 I am going to give you the opportunity to amend your
5 complaint for those claims. I don't know if adding more words
6 is going to make these claims successful or not. I'm not
7 giving you any legal advice other than I strongly suggest you
8 consult with your attorney on how to plead these claims.

9 You're free to file an Amended Claim Number 3.
10 That's the vulnerable person/elder abuse claim. You probably
11 should clean it up a little bit, although the allegations of
12 emotional and verbal abuse, I think, just cover -- get you
13 over the bar to at least move forward with the pleadings. I'm
14 not telling you you're going to prevail. I'm just telling you
15 that you may be -- you've probably met enough to at least get
16 that into the first stage. If you want to clean that up, it's
17 up to you.

18 How long do you need to file an amended complaint?

19 MR. HOLCOM: Your Honor, four to six weeks.

20 THE COURT: No. No. Why can't you do it in two
21 weeks?

22 MR. HOLCOM: Two weeks. We'll do it.

23 THE COURT: Can you do that in two weeks?

24 MR. HOLCOM: Yes.

25 THE COURT: So, Counsel, if plaintiff does not file

1 an amended complaint within two weeks (pause) --

2 Great.

3 THE CLERK: There's no January.

4 THE COURT: Yeah. There's no January.

5 THE CLERK: January 20th?

6 THE COURT: January 20th.

7 So you have until January 20th to file with the
8 court. And then if the amended complaint is not filed by
9 January 20th, then the defendants' motion on Claims 1, 2, 4,
10 and 5 are granted, but the third claim for the vulnerable
11 person abuse will move forward.

12 MS. SILVER: Clarification as I'm taking notes here,
13 Your Honor. Claims 1, 2, 4, and 5, those are dismissal with
14 prejudice, correct, Your Honor?

15 THE COURT: Yes, if the -- if the amended complaint
16 is not filed.

17 MS. SILVER: If the amended complaint is not filed.

18 THE COURT: Correct. I'm going to give him the
19 opportunity to fix this.

20 Mr. Holcom, you're getting one opportunity and one
21 opportunity only.

22 MR. HOLCOM: I understand.

23 THE COURT: Okay?

24 MR. HOLCOM: Okay.

25 THE COURT: So, again, I strongly suggest you get

1 legal advice as you prepare your amended complaint.

2 MR. HOLCOM: That's fine, sir.

3 THE COURT: Okay?

4 MS. SILVER: And I apologize, Your Honor. He may
5 file an amended claim for Number 3 with respect to the
6 emotional abuse, but not financial aspects of the --

7 THE COURT: Any aspects --

8 MS. SILVER: Okay.

9 THE COURT: -- of that. If not, if he chooses not to
10 file an amended complaint, Claims 1 -- what did I say, 1, 2,
11 4, and 5 are dismissed with prejudice, but we'll move forward
12 on the third claim.

13 MS. SILVER: Okay. And my recollection -- and I'm
14 pulling up the -- the document now, and this just may be a
15 formatting thing, my understanding is that there were six
16 putative claims.

17 THE COURT: If there is, I -- I didn't have it in
18 front of me.

19 MS. SILVER: And maybe -- maybe my notes are just
20 misnumbered here. So --

21 MR. HOLCOM: I think there's only five.

22 MS. SILVER: There's five, yes. You are correct,
23 Your Honor. Excuse me.

24 THE COURT: Okay. So just five total claims. You
25 can amend any of all five claims. If you don't do it by

1 January 20th, that means it has to be filed and received by
2 the court by the 20th, Claims 1, 2, 4, and 5 are dismissed
3 with prejudice. And you can get legal advice on what that
4 means, but you will move forward on the third claim.

5 MS. SILVER: And, Your Honor, we have -- our motion
6 raised certain individuals were not mentioned or discussed, I
7 want to make sure if we are moving forward with the elder
8 abuse claim, who that claim would potentially be against.
9 It's not quite clear from the pleadings --

10 THE COURT: Agreed.

11 MS. SILVER: -- who's who.

12 THE COURT: Your -- so I'm asking you to fix your
13 pleadings because you're not clear on who's done these
14 wrongful acts, but I'm giving you an opportunity to fix it.
15 And if -- if we don't fix it, we move forward on the -- the
16 third claim as it stands, then maybe it would be subject to
17 summary judgment motion, I don't know. Okay? But I'm giving
18 you the opportunity to go fix this.

19 And you've heard me when I strongly suggest you get
20 legal advice as you fix this?

21 MR. HOLCOM: Yes, sir.

22 THE COURT: Okay. Anything else? And then your --
23 counsel will prepare the protective order.

24 MS. SILVER: Well, would you also like a separate
25 order for -- for this ruling or --

1 THE COURT: Yes.

2 MS. SILVER: Okay.

3 THE COURT: So protective order separate from this
4 ruling, because if we do move forward just on the third claim
5 by itself, I want the protective order there in place as, you
6 know, whatever evidence is going to be, you know, discovered
7 as part of that process.

8 MS. SILVER: Uh-huh.

9 THE COURT: Does that make sense?

10 MS. SILVER: Uh-huh.

11 THE COURT: Okay. Mr. Holcom, do you understand my
12 ruling today?

13 MR. HOLCOM: I do, sir.

14 THE COURT: Okay. Thank you very much.

15 MR. HOLCOM: Thank you, sir.

16 (Proceedings adjourned at 9:39 a.m.)

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25

1 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**
2 **FOR THE COUNTY OF CLACKAMAS**

3
4 BRADLEY HOLCOM,

5 Plaintiff,

6 vs.

7 CANBY BUILDERS SUPPLY AN OREGON
8 CORPORATION, HOLLY RODWAY,
9 JAMES RODWAY, KRISTEN MARTIN,
10 MICHAEL MAXWELL, DOUG BISHOP,
11 GARON RIGSBY, BRIAN SERVANT,
12 JAPHR PINE LLC AN OREGON LIMITED
13 LIABILITY COMPANY,

14 Defendants.

Case No.: 24CV32086

**PLAINTIFF'S SUR-REPLY TO
DEFENDANTS' RULE 21 MOTION**

14 Plaintiff Bradley Holcom respectfully submits this sur-reply in response to *Defendants'*
15 *Reply in Support of their ORCP 21 Motion to Dismiss*. This sur-reply addresses critical
16 mischaracterizations in Defendants' arguments, specifically concerning the interplay between
17 federal and state pleading standards, and demonstrates why Defendants' motion must be denied.
18

19 **INTRODUCTION**

20 Defendants have conceded, through the content of their reply, that Plaintiff's Complaint
21 meets the applicable pleading standards under Oregon law, when considered through the lens of
22 constitutional due process. Defendants' assertion that ORCP 21 imposes standards more
23 stringent than federal pleading standards is untenable and contrary to overriding principles of
24 constitutional law, particularly those rooted in the Fourteenth Amendment. The United States
25 Supreme Court has established that procedural rules must comport with due process, and any
26 deviation by Oregon courts would undermine those constitutional safeguards.
27
28

1 While Oregon's procedural rules may incorporate unique elements of state law, they must
2 ultimately comport with constitutional principles of fairness and access to justice. Defendants'
3 attempt to elevate ORCP 21 beyond federal pleading standards undermines these principles and
4 creates a procedural barrier that the U.S. Supreme Court would plausibly find unconstitutional.
5

6 **STATE PROCEDURAL RULES CANNOT CONFLICT WITH FEDERAL**
7 **CONSTITUTIONAL STANDARDS**
8

9 Defendants' suggestion that ORCP 21 imposes stricter requirements than the federal rules
10 is not only legally untenable but also contrary to overriding constitutional principles:

11 **Uniformity in Procedural Standards:** The U.S. Supreme Court has long held that state
12 procedural rules must operate within the boundaries of federal constitutional law (*Hanna v.*
13 *Plumer*, 380 U.S. 460, 465 (1965)). Allowing state rules to impose an unduly stringent standard
14 would create disparities in access to justice, undermining the uniformity required under the
15 Fourteenth Amendment.
16

17 **Fair Notice and Access to Justice:** The pleading standards articulated in Plaintiff's Complaint
18 provide fair notice to Defendants, enabling them to prepare a defense. Defendants' reliance on
19 heightened specificity ignores the liberal construction afforded to pleadings at the motion-to-
20 dismiss stage, as recognized in *Iqbal* and *Twombly*.
21

22 **Due Process Implications:** By asserting that Plaintiff's Complaint must meet a heightened
23 standard of specificity, Defendants advocate for a procedural framework that denies Plaintiff his
24 constitutional right to be heard. The Fourteenth Amendment safeguards against such inequities,
25 ensuring that procedural rules facilitate, rather than obstruct, the pursuit of justice.
26
27
28

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

BRADLEY HOLCOM,

Plaintiff,

vs.

CANBY BUILDERS SUPPLY AN
OREGON CORPORATION, HOLLY
RODWAY, JAMES RODWAY,
KRISTEN MARTIN, MICHAEL
MAXWELL, DOUG BISHOP,
GARON RIGSBY, BRIAN SERVANT,
JAPHR PINE, LLC AN OREGON
LIMITED LIABILITY COMPANY,

Defendants.

Case No.: 24CV32086

AMENDED VERIFIED COMPLAINT FOR:

- 1) SLANDER AND DEFAMATION WITH
INJUNCTIVE RELIEF**
- 2) SLANDER AND DEFAMATION WITH
DECLARATORY RELIEF**
- 3) RELIEF UNDER VULNERABLE
PERSONS ACT {ORS § 124}**
- 4) PREMISES LIABILITY AND NEGLIGENT
INFLECTION OF EMOTIONAL DISTRESS**
- 5) PIERCING THE CORPORATE VEIL**

JURY TRIAL DEMANDED

Subject to Fee Under ORS 21.135(1)

Not Subject to Mandatory Arbitration

INTRODUCTION

Comes now, BRADLEY HOLCOM (hereinafter referred to as the "Plaintiff"), and hereby files his Amended Complaint seeking injunctive relief, declaratory relief, and both economic and non-economic damages. This action arises from egregious and injurious instances of slander, defamation, and abusive conduct committed by the Defendants (hereinafter collectively referred to as the "Defendants"). The Defendants acted both individually and in concert, abusing their positions of authority to target the Plaintiff with harmful and unjustified accusations, public

1 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**
2 **FOR THE COUNTY OF CLACKAMAS**

3
4 BRADLEY HOLCOM,

5 Plaintiff,

6 vs.

7 CANBY BUILDERS SUPPLY AN OREGON
8 CORPORATION, HOLLY RODWAY,
9 JAMES RODWAY, KRISTEN MARTIN,
10 MICHAEL MAXWELL, DOUG BISHOP,
11 GARON RIGSBY, BRIAN SERVANT,
JAPHR PINE LLC AN OREGON LIMITED
LIABILITY COMPANY,

12 Defendants.
13

Case No.: 24CV32086

**PLAINTIFF'S MOTION FOR
CLARIFICATION AND REQUEST FOR
INSTRUCTIONS REGARDING ORDERS**

14
15 Plaintiff, Bradley Holcom, respectfully requests clarification and instructions from the
16 Court regarding the status of orders that the Defendants' counsel, Molly Silver, was instructed
17 to prepare pursuant to the Court's ruling from the bench on January 6, 2025.

18
19 In support of this motion, Plaintiff states as follows:

- 20 1) On January 6, 2025, a hearing was held before the Honorable William Knox regarding
21 Defendants' ORCP 21 motion to dismiss Plaintiff's complaint. Defendants' counsel,
22 Molly Silver, appeared at the hearing and argued the motion on behalf of Defendants.
23
24 2) At the conclusion of the hearing, the Court ruled from the bench, granting Plaintiff
25 leave to file an amended complaint by January 20, 2025. Plaintiff filed his amended
26 complaint on January 17, 2025.
27
28

1 3) At the same hearing, the Court instructed Defendants' counsel, Molly Silver, to
2 prepare two specific orders:

3 a) An order memorializing the Court's ruling allowing Plaintiff to file an amended
4 complaint by January 20, 2025.

5 b) An order allowing Plaintiff to file documents under seal, in response to Plaintiff's
6 motion to file under seal; Plaintiff filed said motion on November 4, 2024.
7

8
9 It has now been three weeks since the hearing on January 6, 2025, and Defendants'
10 counsel has not provided any proposed orders to Plaintiff for review, nor have any such orders
11 been filed with the Court. Plaintiff is attaching as **Exhibit 1** the Court's hearing disposition sheet
12 that confirms the instructions given to Defendants' counsel during the hearing.
13

14 Plaintiff respectfully requests clarification from the Court regarding what actions, if any,
15 should be taken at this time due to Defendants' counsel's failure to prepare and submit the
16 required orders. Plaintiff seeks guidance on ensuring compliance with the Court's instructions,
17 avoiding delays or prejudice to his case, and requests the Court clarify the status of the orders,
18 and provide further instructions to ensure their prompt submission in accordance with the Court's
19 directions from the January 6, 2025, hearing.
20

21 Respectfully submitted this 27th day of January 2025.
22

23 
24

25 Bradley Holcom, Plaintiff
26 301 S. Knott Court
27 Canby, Oregon 97013
28

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

BRADLEY HOLCOM,

Plaintiff,

vs.

CANBY BUILDERS SUPPLY AN OREGON
CORPORATION, HOLLY RODWAY,
JAMES RODWAY, KRISTEN MARTIN,
MICHAEL MAXWELL, DOUG BISHOP,
GARON RIGSBY, BRIAN SERVANT,
JAPHR PINE LLC AN OREGON LIMITED
LIABILITY COMPANY,

Defendants.

Case No.: 24CV32086

**PLAINTIFF'S OBJECTION TO
DEFENDANTS' PROPOSED ORDER ON
ORCP 21 MOTIONS**

COMES NOW Plaintiff, Bradley Holcom, and hereby submits this objection to the
Defendants' Proposed Order on ORCP 21 Motions dated February 6, 2025. A copy of the
proposed order is attached hereto as **Exhibit 1**. The proposed order is demonstrably inconsistent
with the Court's oral ruling from the bench on January 6, 2025, as reflected in the attached
verified Partial Hearing Transcript (**Exhibit 2**). Plaintiff respectfully requests that this Court
reject the proposed order in its entirety and direct Defendants' counsel to submit an order that
accurately reflects the Court's express findings and directives.

I. THE PROPOSED ORDER MISREPRESENTS THE COURT'S ORAL RULING

A trial court's oral ruling from the bench is the operative decision unless and until a
written order is entered that conforms to that ruling. Under Oregon legal principles and
procedural practice, an oral ruling remains controlling unless it is expressly modified by a

1 subsequent written order. The court's statements during a hearing reflect its intent and directive
2 to the parties, and any written order must accurately memorialize that ruling without altering its
3 substance. The Partial Hearing Transcript unequivocally establishes that the Court granted the
4 Plaintiff until January 20, 2025, to file an amended complaint as to all claims.
5

6 The Court explicitly stated:

7 "You can amend any of all five claims. If you don't do it by January 20th—that
8 means it has to be filed or received by the court by the 20th—claims one, two,
9 four, and five are dismissed with prejudice. You can get legal advice on what that
10 means, but you will move forward on the third claim." (See Partial Hearing
11 Transcript, p. 2, lines 33-36).

12 The Court never imposed any additional restrictions on Plaintiff's ability to amend the
13 claims beyond the January 20th deadline; and the Court never dismissed any claims with
14 prejudice at the time of the hearing; rather, the Court conditioned dismissal only upon Plaintiff's
15 failure to amend by January 20, 2025. (Id.)
16

17 However, the Defendants' Proposed Order contradicts this clear directive by suggesting
18 that certain claims were already dismissed with prejudice at the time of the hearing and that
19 Plaintiff was only permitted to amend certain aspects of the complaint. This is a material
20 misrepresentation of the Court's ruling and should be summarily rejected.
21

22 II. PLAINTIFF TIMELY FILED HIS AMENDED COMPLAINT IN FULL COMPLIANCE
23 WITH THE COURT'S ORDER
24

25 The Court's ruling granted Plaintiff until January 20, 2025, to file the amended complaint.
26 Plaintiff complied in good faith and filed the amended complaint on January 17, 2025, within the
27 time permitted by the Court.
28

1 The Defendants' Proposed Order, dated February 6, 2025, is untimely and legally
2 irrelevant, as the Plaintiff has already fully complied with the Court's directive prior to
3 Defendants' belated submission of an order.

4
5 At no point did the Court suggest that the claims were dismissed before the expiration of
6 the deadline. Rather, the Court's ruling was conditional upon Plaintiff's failure to amend, which
7 never occurred. The Defendants' attempt to now obtain a retroactive dismissal despite Plaintiff's
8 full compliance is improper and unsupported by the record.

9
10 **III. DEFENDANTS' COUNSEL'S FAILURE TO TIMELY SUBMIT AN ORDER**

11 Defendants' counsel has failed to act in a timely manner and now attempts to circumvent
12 the Court's ruling by submitting an order that mischaracterizes the procedural posture of the
13 case. The Court did not authorize or order Defendants to prepare an order beyond the deadline
14 for Plaintiff's amendment. Indeed, the Court's directive and Plaintiff's compliance was clear:

- 15
16 i.) Plaintiff was granted until January 20, 2025, to amend.
17
18 ii.) The Court's ruling only authorized dismissals if Plaintiff failed to amend.
19
20 iii.) Plaintiff did amend on January 17, 2025, rendering Defendants' belated proposed
21 order legally and procedurally improper.

22 Defendants' failure to have timely submitted an order before the expiration of Plaintiff's
23 amendment deadline does not grant them license to rewrite the record. Their proposed order
24 seeks to override the Court's ruling by creating an inaccurate post hoc judicial determination that
25 was never made. The Ninth Circuit has cautioned against such distortions: "A court's ruling must
26 be reflected in its final judgment and may not be rewritten through post hoc advocacy." United
27 States v. Rivera, 527 F.3d 891, 898 (9th Cir. 2008). This principle applies equally here.
28

IN THE COURT OF APPEALS OF THE STATE OF OREGON

Bradley Holcom,
Plaintiff-Appellant,

v.

Canby Builders Supply, an Oregon corporation; Holly Rodway; James Rodway;
Kristen Martin; Michael Maxwell; Doug Bishop; Garon Rigsby; Brian Servant;
and Japhr Pine, LLC, an Oregon limited liability company,
Defendants-Respondents.

Clackamas County Circuit Court No. 24CV32086
Court of Appeals No. A187113

PETITION FOR RECONSIDERATION OF ORDER OF DISMISSAL

I. Introduction

Plaintiff-Appellant, Bradley Holcom, respectfully petitions this Court for reconsideration of its May 2, 2025 Order dismissing the appeal for lack of jurisdiction. The Court dismissed the appeal on the grounds that the underlying order was not appealable under ORS 19.205. However, Appellant contends that the order (**Exhibit A**) entered by the trial court on March 27, 2025, constitutes an appealable order under ORS 19.205(2) because it “affects a substantial right” and “effectively prevents a judgment” favorable to the Plaintiff.

II. The Order Is Appealable Under ORS 19.205(2)

ORS 19.205(2) provides:

“An order that affects a substantial right, and that effectively determines the action so as to prevent a judgment in the action, is appealable.”

The order signed by Judge Tran, based on Defendants’ improperly submitted language, purported to dismiss all of Plaintiff’s claims with prejudice, despite the trial court’s clear oral ruling on January 6, 2025, that no claims would be dismissed with prejudice if Plaintiff amended by January 20, 2025. The Plaintiff complied, filing his amended complaint on January 17, 2025. This fact is irrefutable based on the transcript, where the Court explicitly stated:

“THE COURT: January 20th. So you have until January 20th to file with the court. And then if the amended complaint is not filed by January 20th, then the defendants’ motion on Claims 1, 2, 4, and 5 are granted, but the third claim for the vulnerable person abuse will move forward.”

(**Exhibit B**, Hearing Transcript, Jan. 6, 2025, at 14:6–11)

As evidenced by the Trial Court Register (**Exhibit C**), Appellant filed his amended complaint on January 17, 2025. Accordingly, Appellant complied with the court’s ruling, and none of his five claims were subject to dismissal—certainly not dismissal with prejudice. The March 27, 2025 order, which states that all of his claims were dismissed with prejudice, is directly contradicted by the record.

The order thus misrepresents the court’s ruling and creates a procedural and legal barrier to Plaintiff’s claims moving forward—even though that was never the intention of the trial court. The use of “with prejudice” language, contrary to both the transcript and the procedural posture, not only unfairly characterizes the claims

but also prevents Plaintiff's ability to obtain judgment and imposes preclusive consequences.

Thus, although the case may facially appear to remain active, the effect of the March 27, 2025 order is anything but benign. By declaring that all claims were dismissed with prejudice, the order carries preclusive weight, creates a serious risk of claim and issue preclusion, and casts doubt on the legal viability of Plaintiff's amended complaint moving forward. It distorts the trial court record and creates an artificial barrier that affects the outcome. In that sense, it "effectively determines the action so as to prevent a judgment," within the meaning of ORS 19.205(2).

III. Oregon Courts Interpret "Prevent" According to Practical Effect

Under ORS 19.205(2), the term "prevent" has been interpreted by this Court to account not only for whether a case has been formally concluded, but whether an order functionally blocks a party from obtaining relief.

In Gillespie v. Kononen, 310 Or 272, 277 (1990), the Oregon Supreme Court held that appellate jurisdiction existed under ORS 19.205(2) where a trial court refused to enter judgment, stating:

"The trial judge intends never to enter a judgment. That intention effectively determines the action so as to prevent a judgment in the action."

The Court emphasized the effect of the trial court's refusal — not its formal structure — as the critical standard. The same principle applies where an order

IV. The March 27 Order Misrepresents and Contradicts the Court's Actual Ruling

The March 27, 2025 order was procedurally and substantively flawed in multiple respects:

- It was entered after Plaintiff filed a timely objection on February 7, 2025, accompanied by a transcript clearly reflecting the trial court's actual oral ruling and intent.
- It entirely misrepresented the Court's January 6, 2025 oral ruling, which expressly conditioned any dismissal with prejudice on Plaintiff's failure to amend by January 20, 2025. That condition was met — the Plaintiff filed his amended complaint on January 17, 2025.
- The order was drafted unilaterally by Defendants, using language that had never been authorized by the court, and was ultimately signed by a substitute judge (Judge Thanh Tran) rather than the judge who issued the original ruling (Judge William Knox).
- After the appeal had already been filed, the Defendants' counsel sent an email (**Exhibit D**) on May 7, 2025, along with a proposed amended order, acknowledging that the original March 27, 2025 order (the subject of this appeal) was inaccurate and did not reflect the ruling made at the hearing.

This sequence confirms that the March 27 order was not only procedurally improper but substantively incorrect — and precisely the type of erroneous judicial action contemplated by ORS 19.205(2): one that distorts the record, prejudices a party's rights, and requires appellate review to prevent unjust consequences.

V. No Express Procedure Exists for Stipulated Amendment of Such an Order

While Defendants' counsel proposed in their email (id.) submitting a corrected order via stipulation, Appellant is unaware of any specific authority in ORCP or ORS that permits stipulated correction of a trial court order once appellate jurisdiction has vested. Under ORS 19.270(1), jurisdiction over matters “embraced within or affected by the appeal” transfers to the appellate court upon the filing of a notice of appeal. At that point, it is the Court of Appeals — not the trial court — that has authority to review or vacate the order.

If Defendants now agree that the order was erroneous, the proper mechanism is a confession of error under ORAP 6.05(4), which expressly permits a respondent to acknowledge that the judgment should be reversed or modified. What is not permitted is a retroactive rewrite of the record through off-the-record stipulations after jurisdiction has transferred.

VI. This Case Presents a Procedurally Exceptional Circumstance

This is not a routine appeal from a pretrial motion. It is a procedurally unique situation in which the trial court entered an order that materially mischaracterizes its own ruling, uses prejudicial and outcome-altering language, and contradicts both the record and the court’s express directive.

Specifically, the March 27, 2025 order states that all of Plaintiff’s claims were dismissed with prejudice, despite the fact that Plaintiff had fully complied

with the trial court's instruction to amend by January 20. The transcript (**Exhibit B**) confirms that dismissal with prejudice was conditioned upon failure to amend—and that condition was never triggered. Nonetheless, the written order misstates the effect of the hearing and introduces language that imposes legal finality where none was adjudicated.

This is an extraordinary procedural breakdown.

The order was:

- Drafted by Defendants with language never authorized by the court;
- Signed by a substitute judge who did not preside over the hearing;
- Entered despite Plaintiff's timely objection and contrary transcript evidence;
- Later acknowledged by Defendants themselves as incorrect (**Exhibit D**).

The result is a facially active case that is functionally dismissed and legally prejudiced, as the order carries preclusive consequences and distorts the procedural record. This is precisely the type of situation contemplated by ORS 19.205(2), where appellate review is necessary to correct an order that effectively determines the action by preventing judgment on the merits.

Appellate review here is not premature — it is essential to restore the integrity of the trial court's own ruling and to ensure that the Plaintiff's right to pursue his claims is not effectively extinguished by a legally erroneous order.

IN THE SUPREME COURT OF THE STATE OF OREGON

Bradley Holcom,
Plaintiff-Appellant-Petitioner,

v.

Canby Builders Supply, an Oregon corporation; Holly Rodway; James Rodway;
Kristen Martin; Michael Maxwell; Doug Bishop; Garon Rigsby; Brian Servant;
and Japhr Pine, LLC, an Oregon limited liability company,
Defendants-Respondents.

Clackamas County Case No. 24CV32086
Court of Appeals Case No. A187113
Oregon Supreme Court Case No. S072089

APPELLANT'S PETITION FOR RECONSIDERATION (ORAP 9.25)

Appeal from the Oregon Court of Appeals'
Order of Dismissal, entered May 2, 2025
by Appellate Commissioner Theresa Kidd

Reconsideration Denied June 3, 2025
by Chief Judge Erin Lagesen

Court of Appeals Case No. A187113
Clackamas County Circuit Court Case No. 24CV32086

Trevor Robins, OSB# 041011
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Date Submitted: December 18, 2025

in which the court explicitly allowed Plaintiff to amend his complaint by January 20, 2025, to avoid dismissal with prejudice. Plaintiff fully complied with this directive, filing his amended complaint on January 17, 2025, well within the stipulated time frame. The court's failure to acknowledge this compliance and its subsequent misapplication of dismissal with prejudice not only misrepresents the procedural posture but also introduces an erroneous finality to the case.

By declaring dismissal with prejudice in the March 27 order, the trial court imposed a legal barrier that precludes Plaintiff's ability to pursue his claims further, despite having followed the court's explicit instructions. This mistaken finality creates a significant risk of legal prejudice, as it effectively blocks any potential judgment in favor of the Plaintiff, undermining the fundamental principles of justice and due process.

ORS 19.205(2) permits the appeal of an order that "affects a substantial right" and "effectively determines the action so as to prevent a judgment." In this case, the March 27 order satisfies both elements. The order directly affects Plaintiff's substantial right to continue his litigation and seek a judgment on the merits of his claims. By dismissing the claims with prejudice despite Plaintiff's timely amendment, the trial court's order has effectively prevented a judgment that would otherwise be in the Plaintiff's favor, had the procedural requirements been properly followed. This misapplication of ORS 19.205(2) not only constitutes an

error but also warrants the Oregon Supreme Court's intervention to correct the trial court's misstep and restore Plaintiff's right to pursue his claims.

II. Apparent Error Justifying Review

The trial court's March 27, 2025 order, which dismissed Plaintiff's claims with prejudice, constitutes an apparent error that justifies review by the Oregon Supreme Court. An apparent error is one that is clearly identifiable on the face of the record, and in this case, the contradiction between the trial court's oral ruling and the written order is undeniable. The trial court's oral ruling on January 6, 2025, clearly stated that the claims would not be dismissed with prejudice if Plaintiff amended his complaint by January 20, 2025, which Plaintiff did. The court's later written order, however, dismissed all of the claims with prejudice, despite the Plaintiff's timely compliance with the court's directive.

This inconsistency between the oral ruling and the final written order is not merely a procedural misstep but a substantial legal error that materially affects the rights of the Plaintiff. The written order imposes an erroneous finality on the case that was never intended by the trial court. This is an "apparent error" under ORAP 9.07(14) because the discrepancy is visible on the face of the record and reflects a clear misapprehension of the procedural facts and the court's own instructions.

Such an error, if left unaddressed, would have a significant and unjust impact on Plaintiff's ability to pursue a fair and timely judgment. The misrepresentation of the court's oral ruling in the final written order creates an unwarranted barrier to Plaintiff's legal rights, preventing a judgment in the Plaintiff's favor and introducing preclusive consequences that were never intended by the trial court. This apparent error warrants the Oregon Supreme Court's intervention to correct the record, preserve the integrity of the judicial process, and ensure that Plaintiff is not unfairly deprived of the opportunity to fully litigate his claims.

III. Conflict with Precedent

The trial court's March 27, 2025 order dismissing Plaintiff's claims with prejudice conflicts with established precedent concerning the appealability of orders under ORS 19.205(2) and the standard for recognizing finality in litigation. Oregon appellate courts have long held that an order may be appealable even if it does not bear the formal label of a final judgment, provided that the order has the practical effect of terminating the case or preventing the possibility of a judgment. In Gillespie v. Kononen, 310 Or 272, 277 (1990), the Oregon Supreme Court held that appellate jurisdiction exists when a trial court action "effectively determines the action so as to prevent a judgment." The Court emphasized that the practical effect of a decision, not its formal structure, dictates its appealability. Similarly, in

intervene to correct this misapplication and ensure that appellate courts continue to follow established legal standards regarding appealability and finality.

Relief Requested and Conclusion

For the reasons stated above, Petitioner respectfully requests that the Oregon Supreme Court grant reconsideration of the Court of Appeals' dismissal of the appeal and reverse the May 2, 2025, order. Additionally, Petitioner seeks the reinstatement of the appeal for adjudication on the merits. In the alternative, Petitioner requests that the case be remanded to the trial court with instructions to correct or clarify the March 27, 2025 order to accurately reflect the trial court's oral ruling and Plaintiff's compliance.

The March 27, 2025 order dismissing Plaintiff's claims with prejudice constitutes a significant misstatement of both fact and law. This error warrants reconsideration by the Oregon Supreme Court to preserve the integrity of the judicial process and ensure that the Plaintiff's right to seek justice is not unduly obstructed. Petitioner requests that the Court take the necessary action to correct the record and allow this case to rightfully proceed on its merits.

Respectfully submitted this 18th day of December 2025.

/s/ Trevor Robins

TREVOR ROBINS, OSB No. 041011

Attorney for Plaintiff-Petitioner, Bradley Holcom

trevor@law-oregon.com / Tel: (503) 341-7072

200 NW Division Street, Gresham, Oregon 97030

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

JUDGE Knox, William C - Courtroom 3A
June 16, 2025 - Monday

ENTERED

JUN 17 2025

By: TLR

Verified Correct Copy of Original 6/20/2025

Time Case #	Case Title Matter / Charge / Case Type	Relationship Attorney	Room Judge	Disposition
9:00 AM 24CV32086 923 59 07/03/2024	Bradley Holcom ✓ vs Canby Builders Supply, Holly Rodway, James Rodway, Kristen Martin, Michael Maxwell et al.	P: ROBINS, TREVOR <i>via webex</i> D: Barhoum, John R; Barhoum, John R; Barhoum, John R; Barhoum, John R; Barhoum, John R; Barhoum, John R; Barhoum, John R; Barhoum, John R; Barhoum, John R <i>Silver, Molly</i> ✓		
	Appeal Judge Conflict Hearing - Motion Def's ORCP 21 Motions Against Amended Complaint; Plt's Motion for Sanctions & Def's Objections	No Judge Wise or Boutin Injunctive Relief <i>Case pending appeal status continued to 7/21/25 or later depending on appeal</i>		
9:00 AM 24CV61421 921 12/30/2024 923	William Prickard <i>FTA</i> vs Day N' Nite Towing, LLC, John Doe 1, John Doe 2, John Nite Wells	P: Pro Se D: Diesko, Mitchell B; Diesko, Mitchell B ✓ <i>Def's proposed order signed</i>		
	Hearing Form of Order from 4/14/25 Hearing; Set per WCK *Atty Diesko Rdy 6/13	Tort - General		
9:00 AM 23CV01939 909 921 01/16/2023	Mona Nicholson ✓ vs Tacee Dewitt-Webb, Bantam Holdings LLC	P: SEYMOUR, JEFFREY S ✓ D: Boyd, Hilary A; Boyd, Hilary A ✓ <i>m/Granted</i> <i>Atty Seymour to prepare order</i>		
	Hearing - Motion Plt's Motion to Compel *Atty Seymour rdy 6/12	Tort - General		

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

BRADLEY HOLCOM,

Plaintiff,

vs.

CANBY BUILDERS SUPPLY AN OREGON
CORPORATION, HOLLY RODWAY,
JAMES RODWAY, KRISTEN MARTIN,
MICHAEL MAXWELL, DOUG BISHOP,
GARON RIGSBY, BRIAN SERVANT,
JAPHR PINE LLC AN OREGON LIMITED
LIABILITY COMPANY,

Defendants.

Case No.: 24CV32086

**PLAINTIFF'S MOTION TO CONTINUE
HEARING SET FOR JUNE 16, 2025
ON GROUNDS OF PENDING APPEAL
AND LACK OF TRIAL COURT
JURISDICTION**

Plaintiff Bradley Holcom, through counsel, respectfully moves this Court to continue the hearing currently scheduled for June 16, 2025, on the grounds that the matter is presently within the jurisdiction of the Oregon Court of Appeals under Case No. A187113, and that further review by the Oregon Supreme Court is being sought. This motion is supported by ORS 19.270 and established case law holding that an appeal divests the trial court of jurisdiction over all matters embraced within or affected by the appeal.

I. Procedural Background

1. On or about May 14, 2025, Defendants filed a renewed ORCP 21 motion implicating this Court's prior rulings, the court set a hearing for that motion on June 16, 2025.
2. Plaintiff has already filed a notice of appeal on those rulings, which was timely docketed with the Oregon Court of Appeals, triggering appellate jurisdiction under ORS 19.270(1).
3. The matters raised in the Defendant's renewed motion are substantively identical to those previously filed and are directly embraced within the appeal.

1 4. Plaintiff is presently preparing a Petition for Review with the Oregon Supreme Court
2 relating to the same core procedural, jurisdictional and substantive issues.

3 **II. The Trial Court Lacks Jurisdiction Under ORS 19.270**

4 Under ORS 19.270(1) and (6), once an appeal is filed and jurisdiction vests in the Court of
5 Appeals, the trial court is divested of jurisdiction over any matters “embraced within or affected
6 by the appeal.” As the Oregon Supreme Court held in State ex rel Gattman v. Abraham, 302 Or
7 301, 311 (1986):

8 “The appellate court has jurisdiction of the issue or subject matter of the appeal to the
9 exclusion of the lower court.”

10 This statutory and precedential mandate renders the trial court without authority to proceed
11 on matters intertwined with the subject of the appeal. The hearing currently set for June 16,
12 2025, directly implicates rulings and legal claims under appellate review and therefore must be
13 continued pending resolution of the appeal and any subsequent review.

14 **III. Conclusion**

15 For the reasons stated above, Plaintiff respectfully requests that the Court:

- 16
- 17 1. Continue the hearing currently set for June 16, 2025, until the Court of Appeals renders a
 - 18 decision and jurisdiction is properly returned to this Court under ORS 19.270(6);
 - 19 2. Take judicial notice of the pending appeal under Case No. A187113, and forthcoming
 - 20 Petition for Review with the Oregon Supreme Court;
 - 21 3. Grant any further relief the Court deems just and necessary under the circumstances.
- 22

23 Respectfully submitted this 9th day of June 2025.

24 /s/ Trevor Robins

25 TREVOR ROBINS, OSB No. 041011
26 Attorney for Plaintiff, Bradley Holcom
27
28

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

BRADLEY HOLCOM,

Plaintiff,

v.

CANBY BUILDERS SUPPLY AN
OREGON CORPORATION, HOLLY
RODWAY, JAMES RODWAY,
KRISTEN MARTIN, MICHAEL
MAXWELL, DOUG BISHOP,
GARON RIGSBY, BRIAN SERVANT,
JAPHR PINE, LLC AN OREGON
LIMITED LIABILITY COMPANY,

Defendants.

Case No. 24CV32086

**DEFENDANTS' AMENDED ORCP
21 MOTIONS AGAINST AMENDED
COMPLAINT**

Fee Authority: ORS 21.135(1)

Not subject to Mandatory Arbitration

JURY TRIAL DEMANDED

Oral Argument Requested – 6/16/25

Amended ORCP 21 Motions filed herein are substantively unchanged from the motions filed on April 18, other than (1) an updated UTCR statement, (2) an updated discussion of the procedural posture, and (3) clarification that the Court's ruling in January 2025 was ordering dismissal *without* prejudice.

UTCR 5.050 INFORMATION

Time requested for argument: 20 Minutes

Telephone attendance requested: Yes

Counsel located more than 25 miles from court: No

1 Kiesha or Garon. *Id.* at ¶ 24. Plaintiff believes that this reinforced the false implication that the
2 Plaintiff was responsible for the cash discrepancies. *Id.* Plaintiff was ultimately terminated on
3 September 16, 2024. *Id.* at ¶ 26.

4 **Procedural History**

5 Plaintiff's original Complaint was filed on July 3, 2024. The factual allegations regarding
6 the allegedly tortious conduct by Defendants were contained within paragraphs 18-26 of the
7 original Complaint. The Complaint asserted five putative claims for relief – (1) a claim for
8 injunctive relief based on allegations of slander/defamation, (2) a claim for declaratory relief based
9 on allegations of slander/defamation, (3) an elder abuse claim, (4) a negligence/premises liability
10 claim, (5) and a claim for piercing the corporate veil.

11 In October 2024, Defendants filed ORCP 21 motions challenging the sufficiency of the
12 factual allegations against them, and challenging the legal sufficiency of the claims asserted.

13 On January 6, 2025, oral argument was heard on the ORCP 21 challenges. The Court
14 granted Defendants' Motion to Dismiss Defendants Holly Rodway, James Rodway, Kristen
15 Martin, Michael Maxwell, Doug Bishop, Garon Rigsby, Brian Servant, and Japher Pine LLC for
16 failure to state a claim, agreeing with Defendants that none of the allegations regarding these
17 Defendants describe tortious conduct that is civilly actionable.

18 The Court also granted Defendants' Motion to Dismiss the Defamation Claim for failure
19 to state a claim, dismissing the claim without prejudice agreeing that none of the conduct alleged
20 rose to civilly actionable defamation.

21 The Court denied Defendants' Motion to Dismiss the Elder Abuse Claim (alleged as Third
22 Claim for Relief) for failure to state a claim.

23 The Court dismissed the premises liability/negligence claim without prejudice, reasoning
24 that the lack of physical injury was fatal to his negligence claim.

25 The Court also dismissed without prejudice the claims for injunctive relief, declaratory
26 relief, and piercing the corporate veil, reasoning that none of the allegations arose to substantiate

1 a legally actionable claim.

2 On January 17, 2025, Plaintiff filed an amended complaint. The paragraphs containing the
3 description of the parties and the factual allegations (§§1-30) were identical to the original
4 complaint. The Amended Complaint asserts the same putative claims as the original complaint
5 (although relabeled): (1) a claim for injunctive relief based on allegations of slander/defamation,
6 (2) a claim for declaratory relief based on allegations of slander/defamation, (3) an elder abuse
7 claim, (4) a negligence/premises liability claim, (5) and a claim for piercing the corporate veil.

8 On March 27, 2025, the Court signed an order counsel memorializing the Court’s ruling
9 on the ORCP 21 motions. The order had been prepared by Defendant and indicated that dismissal
10 of several claims was with prejudice. Plaintiff filed a notice of appeal of that order shortly
11 thereafter.

12 Given that a general judgment had not been entered, it was Defendants’ understanding that
13 the Circuit Court retained jurisdiction. *Propp v. Long*, 313 Or 218 (1992) (a party may appeal only
14 “final” judgments); *Zacker v. N. Tillamook Cty. Hosp. Dist.*, 312 Or 330 (1991) (an order of
15 dismissal pursuant an ORCP 21 motion is not appealable, and the appellate courts do not have
16 jurisdiction under ORS Chapter 19). Therefore, on April 18, 2025 Defendant filed the pending
17 Motion to Dismiss the Amended Complaint.

18 On April 30, Plaintiff filed a Motion for Sanctions, arguing that the Defendant’s motion to
19 dismiss was improper due to the pending appeal, among other arguments.

20 On May 2, an order dismissing the Plaintiff’s appeal was entered by the appellate
21 commissioner, stating “On March 30, 2025, appellant filed a notice of appeal from an Order on
22 Defendants’ ORCP 21 Motions. That order is not subject to appeal under ORS 19.205. The appeal
23 is dismissed on the ground that the Court of Appeals lacks jurisdiction to hear the appeal.”

24 On May 7, Defense counsel learned for the first time that Plaintiff was not pro se. She
25 contacted Plaintiff’s attorney regarding the motion for sanctions and pending ORCP 21 motions,
26 having reviewed the transcript of the January ORCP 21 hearing. Defense counsel proposed

1 amending the written order to comport with the hearing transcript. The attorneys conferred on the
2 ORCP 21 motions, and Defendant agreed to amend their motion to clarify the UTCR conferral and
3 clarify that the court’s dismissal of the prior claims was *without* prejudice.

4 Conferral between counsel did not resolve the pleading dispute. As a result, the parties
5 respectfully request the Court’s assistance in resolving the ORCP 21 motions.

6 **PLEADING / ORCP 21 STANDARD**

7 Under ORCP 18A, Plaintiff has the burden of pleading factual allegations to support each
8 legal element of her claims for relief, and failure to do so is grounds for dismissal; ORCP
9 21A(1)(h); *Huang v. Claussen*, 147 Or App 330, 333-34 (1997) (explaining that failure to allege
10 ultimate facts as to even one element of a claim is grounds for dismissal). On review of a motion
11 to dismiss filed under ORCP 21A(1)(h), the court accepts “factual allegations in the complaint and
12 all reasonable inference arising from those allegations.” *Sternberg v. Lechman-Su*, 271 Or App
13 401, 401 (2015). “An ultimate fact is a fact from which legal conclusions are drawn. A conclusion
14 of law, by contrast, is merely a judgment about a particular set of circumstances and assumes facts
15 that may or may not have been pleaded.” *Fearing v. Bucher*, 328 Or 367, 375 n5 (1999). Legal
16 conclusions improperly characterized as factual allegations are not entitled to belief. *Heusser v.*
17 *Jackson Cty. Health Dep’t*, 92 Or App 156, 162 (1988).

18 **POINTS AND AUTHORITIES**

19 **Motion One: Dismissal of Defendants Absent Ultimate Facts Regarding Tortious**
20 **Conduct**

21 Pursuant to ORCP 21 A(1)(h), this Court should dismiss all claims against Defendants
22 Holly Rodway, James Rodway, Kristen Martin, Michael Maxwell, Doug Bishop, Garon Rigsby,
23 Brian Servant, and Japher Pine LLC. The Court previously ordered the claims against these
24 Defendants dismissed because none of the allegations regarding these Defendants describe tortious
25 conduct that is civilly actionable. Because the factual allegations against these Defendants have
26 not changed, they remain deficient and the claims against these defendants fail.

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

March 17, 2026

**Scott S. Harris
Clerk of the Court
(202) 479-3011**

**Clerk
Court of Appeals of Oregon
State Court Admn Records Sec
Supreme Court, 1163 State St
Salem, OR 97310**

**RECEIVED
State Court Administrator**

MAR 23 2026

**— Supreme Court
— Court of Appeals**

**Re: Bradley Holcom
v Canby Builders Supply, an Oregon Corporation, et al.
Application No 25A1018
(Your No. A187113)**

Dear Clerk.

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kagan, who on March 17, 2026, extended the time to and including June 28, 2026.

This letter has been sent to those designated on the attached notification list

Sincerely,

Scott S. Harris, Clerk

by


**Angela Jimenez
Case Analyst**