

George W. Goodman, OSB #794984
gwg@cumminsgoodman.com
James S. Anderson, OSB #051885
jsa@cumminsgoodman.com
Cummins, Goodman, Denley & Vickers, P.C.
P.O. Box 609
Newberg, OR 97132-0609
Telephone: (503) 476-8200
Attorneys for Plaintiffs.

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

MEDFORD DIVISION

**OREGON MANUFACTURERS AND
COMMERCE**, an Oregon non-profit
association, **ASSOCIATED OREGON
LOGGERS, INC.**, an Oregon non-profit
association, **and OREGON FOREST &
INDUSTRIES COUNCIL**, an Oregon
non-profit association,

Plaintiffs,

v.

**OREGON OCCUPATIONAL SAFETY
AND HEALTH DIVISION**, a division of the
Oregon Department of Consumer and Business
Services, **RENEE STAPLETON**, in her official
capacity as acting administrator for the Oregon
Occupational Safety and Health Division,
**OREGON DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES**, an Agency of the
State of Oregon, **and ANDREW STOLFI**, in his
official capacity as the Director of the Oregon
Department of Consumer and Business Services,

Defendants.

CASE NO. 1:22-cv-00875

COMPLAINT

NOW COMES OREGON MANUFACTURERS AND COMMERCE, ASSOCIATED

OREGON LOGGERS, INC., AND OREGON FOREST & INDUSTRIES COUNCIL,

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(collectively Plaintiffs), and file this Complaint for declaratory and injunctive relief stating as follows:

PARTIES

1.

Plaintiff Oregon Manufacturers and Commerce (“OMC”) is an Oregon non-profit corporation. It is an association of approximately 16 Oregon companies employing thousands of Oregonians which is dedicated to promoting, protecting, and advancing Oregon manufacturers and their allied partners in commerce.

2.

Plaintiff Associated Oregon Loggers, Inc. (“AOL”) is an Oregon non-profit corporation. It is a statewide trade association representing some 1,000 member companies engaged in the harvest and sustainable forest management of Oregon’s 30 million acres of forestland.

3.

Plaintiff Oregon Forest & Industries Council (“OFIC”) is an Oregon non-profit corporation. It is a trade association representing more than 50 Oregon forestland owners and forest products manufacturers. OFIC members protect and manage more than five million acres of Oregon forestlands, employ nearly 60,000 Oregonians, and make Oregon the nation’s largest state producer of softwood lumber and plywood.

4.

Defendant Oregon Occupational Safety and Health Division (“OR-OSHA”) is a Division of the Oregon Department of Consumer and Business Services.

5.

Defendant Renee Stapleton is the Acting Administrator of OR-OSHA.

6.

Defendant Oregon Department of Consumer and Business Services (“DCBS”) is an Oregon State Agency.

7.

Defendant Andrew Stolfi is the Director of the Oregon DCBS.

JURISDICTION AND VENUE

8.

This action arises under federal law, including the 14th Amendment to the United States Constitution, 42 U.S.C. §1983 and §1988, to redress the deprivation, under the color of state law, of rights, privileges, and immunities secured to Plaintiffs by the Constitution of the United States.

9.

Subject matter jurisdiction is appropriate in this Court under 28 U.S.C. §1331 and 28 U.S.C. §1343.

10.

Supplemental jurisdiction over the state law claims stated herein is appropriate under 28 U.S.C. §1367, as the claims are so related to the claims over which the Court has original jurisdiction that they form part of the same case or controversy between the parties.

11.

This Court has personal jurisdiction over Defendants because they have committed acts in this District that violate the rights of Plaintiffs’ members which are protected by the Constitution of the United States.

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12.

Venue is appropriate under 28 U.S.C. §1391 as the events giving rise to these claims occurred in this judicial district and will affect Plaintiffs' members' activities within the judicial district.

13.

Divisional venue pursuant to LR 3-2 is appropriate as the challenged rules will have a substantial impact upon the activities of Plaintiffs' members within this District.

14.

Plaintiffs request a declaration of their rights under the Constitution of the United States. The Court may declare the rights of Plaintiffs and grant further necessary and proper relief based thereon, including injunctive relief under to Fed. Civ. P. 65. 28 U.S.C. §§ 2201-2202.

FACTUAL ALLEGATIONS

15.

Plaintiffs' members are substantially comprised of Oregon employers who will be subject to regulations recently adopted by Defendant OR-OSHA related to regulation of employee exposure to wildfire smoke and apparent temperatures (heat index) in excess of 80 degrees Fahrenheit.

16.

As employers subject to enforcement of OR-OSHA's recently adopted regulations, Plaintiffs' members have standing to bring this action in their own right and, in consideration of judicial economy and efficiency, have requested that Plaintiffs bring the action to the court on behalf of their respective members.

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17.

The interests Plaintiffs seek to protect are germane to Plaintiffs' purposes as trade associations.

A. The Wildfire Smoke Rules

18.

On May 10, 2022, Defendant Oregon Occupational Safety and Health Division ("OR-OSHA") adopted Oregon Administrative Rules ("OAR") 437-002-1081 and 437-004-9791. (Ex. 1.).

19.

Both rules are entitled "Protection from Wildfire Smoke" and have an effective date of July 1, 2022.

20.

While the text of the rules is identical in relevant manner for purposes of this Complaint, OAR 437-002-1081 applies to general industry, while OAR 437-004-9791 applies to places of employment subject to the rules for agriculture in Division 2 of Chapter 437.

21.

Defendant OR-OSHA's "Rulemaking Summary" makes clear that employers covered under Division 3 (Construction) and Division 7 (Forest Activities) of Chapter 437, must also comply with OAR 437-002-1081.

22.

The Scope and Application sections of both OAR 437-002-1080 and OAR 437-004-9791 are identical and provide in part that: "This standard applies to public and private sector employers whose employees **are or will be exposed to wildfire smoke** where the ambient air

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