

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

RACHEL CENTARICZKI, *an individual*
and on behalf of all other similarly situated,

Plaintiff

Case No. 3:24-cv-00127-AR

**FINDINGS AND
RECOMMENDATION**

v.

GLEIBERMAN PROPERTIES, INC.,
KEELER PINE RUSSELLVILLE LLC,
CASTELLANO PINE RUSSELLVILLE
LLC, J MELLANO PINE RUSSELLVILLE
LLC, S&M MELLANO PINE
RUSSELLVILLE LLC, MG
RUSSELLVILLE COMMONS
APARTMENTS HS LP, MG
RUSSELLVILLE COMMONS
APARTMENTS MS LP, *and* MG
RUSSELLVILLE COMMONS
APARTMENTS 235 LLC,

Defendants.

ARMISTEAD, United States Magistrate Judge

Rachel Centariczki brings this putative class action against defendants—owners and managers of residential properties in Oregon—alleging a single claim that defendants violated

ORS § 90.315(4) by untimely billing tenants for utility charges. The court considers in this Findings and Recommendation defendants’ Rule 12(b)(6) motion to dismiss Centariczki’s Second Amended Complaint (SAC). (Defs.’ Mot., ECF No. 13.) Also considered is defendants’ related motion requesting that the court take judicial notice of (1) a copy of 2015 Or. Laws, ch. 388 and (2) a summary of SB 309A—a bill that amended ORS § 90.315. (Mot. for Judicial Notice, ECF No. 15.)

The court GRANTS defendants’ motion for judicial notice of legislative materials. Defendants, however, have not established that Centariczki has failed to state a claim on which relief can be granted. The court therefore recommends that their motion to dismiss be DENIED.

BACKGROUND

Centariczki rents her Portland home from defendants, which own or manage residential rental properties in Oregon. The parties have a rental agreement that requires Centariczki to pay a monthly variable utility charge for water, sewer, and trash utilities. Defendants timely received from those utility providers all the relevant 2022 utility bills. In early 2023, defendants wrote to Centariczki and other putative class members explaining that they had mistakenly underbilled the tenants in 2022 and that their plan to recover that underbilling was to charge the tenants the remaining amount over the next four months. In February, March, April, and May 2023, defendants imposed utility charges on Centariczki and the other putative class members more than 30 days after defendants received the utility providers’ bill for those utility service charges. (SAC ¶¶ 1-8, ECF No. 3.)

That, plaintiff alleges, violates ORS § 90.315, which is the part of the Oregon Residential Landlord and Tenant Act (ORTLA) that governs the obligations of landlords when rental

agreements hold tenants responsible for paying utility or service charges (e.g., electricity, natural gas, water, cable television, or Internet (ORS § 90.315(1)(d))). One of those obligations is imposed under ORS § 90.315(4)(b)(A), which provides:

If a rental agreement provides that a landlord may require a tenant to pay a utility or service charge, the landlord must bill the tenant in writing for the utility or service charge within 30 days after receipt of the provider's bill.¹

Centariczki's claim is that billing for the underbilled utility charges after 30 days had elapsed violates that provision. She seeks an injunction ordering defendants to stop collecting utility charges in this manner, a declaratory judgment holding that such charges are unlawful, and, as permitted by ORS § 90.315(4)(f), recovery from defendants in an amount equal to one's month rent or twice the amount wrongfully charged. *See Shepard Inv. Grp. LLC v. Ormandy*, 371 Or. 285, 297 (2023) (holding "that damages under that provision are calculated by aggregating the value of the utilities wrongfully billed, doubling that figure ('twice the amount'), and then comparing it against the tenant's monthly periodic rent").

JUDICIAL NOTICE & INCORPORATION BY REFERENCE

"Generally, district courts may not consider material outside the pleadings when assessing the sufficiency of a complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure." *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018). That rule has two exceptions: the incorporation-by-reference doctrine and judicial notice under Federal Rule of Evidence 201. *Id.* Defendants rely on both those exceptions to ask the court to consider

¹ ORS § 90.315(4)(b)(A) also requires that, "[i]f the landlord includes in the bill to the tenant a statement of the rent due, the landlord must separately and distinctly state the amount of the rent and the amount of the utility or service charge." That requirement is not at issue in this case.

the following materials not in Centariczki's SAC: (1) the rental agreement between Centariczki and defendants, which defendants contend is incorporated by reference into Centariczki's Complaint, and (2) the legislative materials included in their motion requesting judicial notice.

As to the rental agreement, "incorporation-by-reference is a judicially created doctrine that treats certain documents as though they are part of the complaint itself." *Khoja*, 899 F.3d at 1002. A court may consider documents on which the complaint "necessarily relies" if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the copy attached to the 12(b)(6) motion. *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006); *see also Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010) (documents evidencing an agreement were considered "integral to the Amended Complaint" where resolution of plaintiff's claim "depend[ed] in large part on" what the agreement between the parties said). It is within the district court's discretion to decide whether to incorporate by reference a document outside the complaint. *Khoja*, 899 F.3d at 998 ("the decision to take judicial notice and/or incorporate documents by reference is reviewed for an abuse of discretion").

Here, the SAC refers to the rental agreement, which required Centariczki to pay monthly variable utility charges for her rental unit, and she does not question its authenticity. Yet the court questions whether the rental agreement is "central" to resolution of Centariczki's claim on this motion to dismiss or whether her claim "depends" on what was said in the provision of the rental agreement that required Centariczki to pay for her rental unit's utility charges. Certainly, the *existence* of the provision is a necessary condition for the claim because the 30-day billing requirement set out in ORS § 90.315(4)(b)(A) ("If a rental agreement provides that a landlord

may require a tenant to pay a utility or service charge...” requires a rental agreement where the tenant has agreed to pay utility or service charges. Both parties agree that there is such a provision in the rental agreement. The resolution of this motion to dismiss, however, turns on interpreting ORS § 90.315(4)(b)(A) to determine whether billing to make up defendants’ underbilling mistake 30 days after defendants received the utility providers’ bills violated that statute’s requirement. The obligation defendants refer to—Centariczki’s responsibility for paying the utility bills—would logically occur in all agreements subject to ORS § 90.315(4)(b)(A), in which “a rental agreement provides that a landlord may require a tenant to pay a utility or service charge.” The court does not need this particular language to conduct its statutory construction task as instructed by *State v. Gaines*, 346 Or. 160, 171-72 (2009). Because resolving this motion to dismiss does not depend on what the particular provision said (other than that such a provision exists), and both parties agree to its existence, the court declines to exercise its discretion to incorporate the rental agreement by reference.

Defendants also ask the court to judicially notice two documents. The first is a copy of 2015 Or. Laws, ch. 388, which has bolded text identifying changes to ORS § 90.315 enacted by the Oregon legislature. The second is an exhibit to John VanLandingham’s testimony before the House Committee on Human Services and Housing. Testimony, House Committee on Human Services and Housing, SB 390, May 11, 2015, Ex. 1 (summary by John VanLandingham). The summary explains that a coalition of landlord and tenant representatives negotiated SB 390A, the bill enacted to amend ORS § 90.315, and, as to utility or service charges, the changes were “focused on transparency of the utility provider’s bill regarding how it assessed and giving a tenant access to that bill.” VanLandingham Summary, Ex. 1, at 3.

Federal Rule of Evidence 201 permits judicial notice of legislative history of state statutes. *See Territory of Alaska v. Am. Can Co.*, 358 U.S. 224, 226-27 (1959) (court took judicial notice of a state statute's legislative history); *Chaker v. Crogan*, 428 F.3d 1215, 1223 n.8 (9th Cir. 2005) (court took judicial notice of Cal. Penal Code § 148.6's legislative history). 2015 Or. Laws, ch. 388, is not, as defendants acknowledge, legislative history. It is enacted legislation. Even so, because the enacted legislation is a matter of public record and its authenticity is not challenged by Centariczki, the court accepts it. *See* FED. R. EVID. 201 (a court may judicially notice a fact that is not subject to reasonable dispute because it generally known within the court's district, and it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned). As to the VanLandingham summary, it too is a matter of public record, and its authenticity is not challenged by Centariczki. The court judicially notices a copy of 2015 Or. Laws, ch. 388 and VanLandingham's summary; defendants' motion for judicial notice is GRANTED.

LEGAL STANDARD

Rule 12(b)(6) allows for motions to dismiss for "failure to state a claim upon which relief can be granted." FED. R. CIV. P. 12(b)(6). When considering a Rule 12(b)(6) motion to dismiss, the court accepts the complaint's factual allegations as true and construes the pleadings in the light most favorable to the plaintiff. *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001). A court will grant a Rule 12(b)(6) motion to dismiss for failure to state a claim when a claim is unsupported by a cognizable legal theory or when the complaint is without sufficient factual allegations to state a facially plausible claim for relief. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010). Here, the sufficiency of the factual allegations

is not disputed. What is disputed is whether Centariczki's claim is supported by a cognizable legal theory. Or, put differently, whether ORS § 90.315(4)(b)(A) prohibits what is alleged by Centariczki. That presents a question of statutory interpretation, which may be conducted at the motion to dismiss stage because it is a legal question. *E.g., Hooks ex rel. NLRB v. Kitsap Tenant Support Servs.*, 816 F.3d 550, 554-55 (9th Cir. 2016).

DISCUSSION

Defendants argue that ORS § 90.315(4)(b)(A) does not apply to the circumstances alleged by Centariczki because what they were doing was *correcting* a utility bill that was timely billed to her, which is not something that ORS § 90.315(4)(b)(A) addresses. Because in their view they were not billing for utility charges but correcting a billing mistake, defendants assert that reading ORS § 90.315(4)(b)(A) to prohibit that practice would require inserting something into the statute that is not in it. *See* ORS § 174.010 (courts in construing Oregon statutes are not to “insert what has been omitted, or to omit what has been inserted”). The question presented to the court is whether ORS § 90.315(4)(b)(A)'s requirement that the landlord “bill the tenant in writing for the utility or service charge within 30 days after receipt of the provider's bill” applies to the circumstances alleged by Centariczki. That question requires statutory interpretation using Oregon's usual methodology of considering text, context, and any helpful legislative history. *Gaines*, 346 Or. at 171-72.

But first, a brief description of the ORLTA and ORS § 90.315(4). “The ORLTA imposes obligations on, and creates remedies for, both landlords and tenants” and “ORS 90.315 imposes obligations on landlords relative to utility or service charges.” *Shepard Inv.*, 371 Or. at 290, 291. Subsection (4) was added to ORS § 90.315 in 1997 to permit a “landlord to pass

utility or service charges on to tenants without treating such charges as rent (pass-through billing), but only if the landlord conforms to the specific requirements set out in subsection (4) when doing so.” *Shepard Inv.*, 371 Or. at 290 (citing Or. Laws 1997, ch. 577, § 16). And in 2015 the legislature enacted, as “the product of a coalition of landlord and tenant advocate groups seeking to draft legislation in unison,” what is now paragraph (4)(b) to provide monthly billing procedural requirements. Or. Laws 2015, ch. 388, § 8; *Shepard Inv.*, 371 Or. at 290.

Because “there is no more persuasive evidence” of the legislature’s intent than the words used in the statute, *Gaines*, 346 Or. at 171, the court turns to the text of ORS § 90.315(4)(b)(A), which provides:

If a rental agreement provides that a landlord may require a tenant to pay a utility or service charge, the landlord must bill the tenant in writing for the utility or service charge within 30 days after receipt of the provider’s bill.

A good place to start in determining the ordinary meaning of those words is the common understanding of “bill,” which is not defined in ORS § 90.315. “Bill” is commonly understood as a statement of an amount expended or owed. To “bill” is to submit a bill to someone, which is to say, to “bill” is to provide a statement of what is owed, with an expectation of payment.²

² In considering statutory text, Oregon courts give words of common usage their ordinary meaning. *Gaines*, 346 Or. at 175. And to determine the “plain, natural, and ordinary” meaning of an undefined term, courts will frequently consider how the term is defined in the dictionary, operating on the assumption that, “if the legislature did not give the term a specialized definition, the dictionary definition reflects the meaning that the legislature would have intended.” *DCBS v. Muliro*, 359 Or. 736, 746 (2016).

Merriam-Webster’s online dictionary defines “bill” as “an itemized account of the separate cost of goods sold, services performed, or work done : INVOICE” and “an amount expended or owed; e.g., “paid the electricity bill” or a “bill of charges.” Used as verb, as is the case in ORS 90.315(4)(b)(A), to “bill” is “to submit a bill ... of charges to”; e.g., “They *bill* their

Subparagraph (4)(b)(A) says that the bill must be in writing and the landlord must send it to the tenant within 30 days after receiving the utility or service provider's bill. So, with this arrangement, described as pass-through billing, a landlord receives a bill from the utility or service provider and must send to the tenant a statement of the amount owed for the utility or service charge within 30 days.

Here, defendants billed only a portion of the utility charges Centariczki was responsible for within 30 days. Yes, that portion of the utility charges was timely billed. But the remaining portion of the utility charges was *billed*—as that word is commonly understood—by defendants over the course of four months after 30 days had elapsed from when defendants received the providers' utility bills. That is, defendants sent statements in early 2023 for unpaid, owed, and not previously billed 2022 utility charges—but not within the 30 days the landlord needed to pass through the utility charges to Centariczki. Considering the text of ORS § 90.315(4)(b)(A) and its ordinary meaning, Centariczki is correct that what defendants are alleged to have done violates ORS § 90.315(4)(b)(A)'s requirement that landlords bill tenants utility charges no later than 30 days after receiving the utility provider's bill. Defendants approach of describing the 2023 utility charges as “correcting timely bills” fails to grapple with what the words of subparagraph (4)(b)(A) say.

customers every month.” <https://www.merriam-webster.com/dictionary/bill>. *Collins'* online dictionary defines a “bill” as “a written statement of money that you owe for goods or services”; e.g., “*They couldn't afford to pay the bills*” and “*He paid his bill for the newspapers promptly*.” Used as a verb, *Collins* defines “bill” as, “If you bill someone for goods or services you have provided them with, you give or send them a bill stating how much money they owe you for these goods or services.” <https://www.collinsdictionary.com/us/dictionary/english/bill>.

The context and legislative history do not change the court’s understanding of subparagraph (4)(b)(A)’s ordinary meaning. Defendants—pointing to the other provisions of subsection (4) and VanLandingham’s summary in which he stated that the changes to ORS § 90.315 “focused on transparency of the utility provider’s bill”—contend that, because the legislature’s primary intent was to ensure transparency in the pass-through billing of utility or service charges, there was no legislative intent to prohibit landlords from correcting “a minor accounting error.”³ (Defs.’ Reply at 4, ECF No. 18). The court is unpersuaded by that argument.

To be sure, the court agrees that parts of subsection (4) are intended to provide transparency to tenants. For example, subparagraph (4)(b)(C) requires, if there is pass-through utility or service charge billing, a landlord to include in the bill to the tenant a copy of the utility or service provider’s bill, or if the provider’s bill is not included, to state that the tenant may inspect the bill and receive a copy of it. ORS § 90.315(4)(b)(C). Yet it cannot be ignored that included in subsection (4) is subparagraph (4)(b)(A), which imposes the 30-day billing requirement at issue here. When the Oregon Supreme Court construed ORS § 90.315(4)(f), it observed that “paragraph (4)(b) conditions pass-through billing upon a number of *procedural requirements, such as billing the tenant within 30 days*, setting out the utility or service charge separately from rent, and providing copies of the service provider’s bill or an opportunity to

³ Even if the amount sought to be corrected by defendants was “minor,” their argument that there is nothing in ORS § 90.315 that prohibits correcting accounting errors made in pass-through utility bills would necessarily mean that there are no limits on either the amount that the landlord could seek to claim for an accounting error or when that amount could be claimed by the landlord. Say, for example, a landlord—because of an accounting error—bills a tenant for 10% of the utility provider’s bill. The upshot of defendants’ argument would permit a landlord to bill a tenant the remaining 90% at any time, possibly years later.

inspect it.” *Shepard Inv.*, 371 Or. at 775 (emphasis added). Even if paragraph (4)(b) “focuses” on transparency, all its subparagraphs are important and cannot be overlooked or minimized.⁴ See ORS § 174.010 (courts are “not to insert what has been omitted, or to omit what has been inserted”).⁵

⁴ The landlord-tenant coalition that drafted these provisions and brought them to the legislature could have chosen to not include a timeliness requirement for ORS § 90.315(4)(b). Rather, any deadline for providing the bill to the tenant could have been left to the rental agreement, to be agreed to by each landlord and tenant. But the coalition apparently believed a 30-day time requirement in which to pass through the utility or service charge was important enough to include it in the proposed amendments to ORS § 90.315(4).

⁵ Defendants also argue that Centariczki’s position, were it countenanced by the court, would lead to an absurd result. That is because, they contend, it would prevent a landlord from providing a tenant with a refund if the tenant had been overbilled for utilities. The court will not apply the absurd-result maxim of statutory construction because the legislative intent is clear from the text and context of ORS § 90.315(4)(b)(A). As the Oregon Supreme Court has explained, the absurd-result “‘maxim is best suited for helping the court to determine which of two or more plausible meanings the legislature intended’ when one meaning ‘would lead to an absurd result that is inconsistent with the apparent policy of the legislation as a whole.’” *Comcast Corp. & Subsidiaries v. Dep’t of Revenue*, 363 Or. 537, 550 (2018) (quoting *State v. Vasquez-Rubio*, 323 Or. 275, 282-83 (1996)). That court has cautioned that, “[w]hen the legislative intent is clear from an inquiry into text and context, or from resort to legislative history, ... it would be inappropriate to apply the absurd-result maxim’ because ‘we would be rewriting a clear statute based solely on our conjecture that the legislature could not have intended a particular result.’” *Comcast Corp.* 363 Or. at 550 (quoting *Vasquez-Rubio*, 323 at 283).

Even if the court did apply the maxim, however, it disagrees with defendants that any resulting absurdity would occur. ORS § 90.315(4)(b)(A) requires billing the utility service charge within 30 days, and as explained, billing is providing a statement for what is owed by the recipient of the bill. That is different from the circumstance where, if a tenant were overbilled and a landlord corrected that error, the landlord would provide a tenant with a refund. Because sending an accounting of a refund has no expectation of payment from the recipient, no “billing” (as the word is commonly understood) would be involved.

In sum, the ordinary meaning of ORS § 90.315(4)(b)(A)'s text applies to any portion of a service or utility charge that is billed to a tenant more than 30 days after a landlord has received the utility service charge from the provider, and the context and legislative history do not suggest otherwise. The circumstances alleged by Centariczki—billing a portion of utility charges more than 30 days after receiving utility providers' bills to correct timely but underbilled utility charges—is therefore conduct that violates ORS § 90.315(4)(b)(A). Defendants' motion to dismiss should therefore be DENIED.

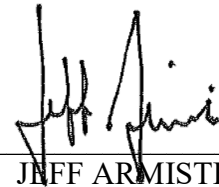
CONCLUSION

For the above reasons, the motion for judicial notice (ECF No. 15) is GRANTED and the motion to dismiss (ECF No. 13) should be DENIED.

SCHEDULING ORDER

The Findings and Recommendation will be referred to a district judge. Objections, if any, are due within 14 days. If no objections are filed, the Findings and Recommendation will go under advisement on that date. If objections are filed, a response is due within 14 days. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

DATED: January 8, 2025



JEFF ARMISTEAD
United States Magistrate Judge