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

6 JACK DOE 1, an individual proceeding under a )  
fictitious name; JACK DOE 2, an individual )  
7 proceeding under a fictitious name; JACK DOE )  
3, an individual proceeding under a fictitious )  
8 name; JACK DOE 4, an individual proceeding )  
under a fictitious name; JACK DOE 5, an )  
9 individual proceeding under a fictitious name; )  
and JACK DOE 6, an individual proceeding )  
10 under a fictitious name, )

11 Plaintiffs, )

12 v. )

13 CORPORATION OF THE PRESIDING )  
BISHOP OF THE CHURCH OF JESUS )  
14 CHRIST OF LATTER-DAY SAINTS, a foreign )  
corporation sole registered to do business in the )  
15 State of Oregon; CORPORATION OF THE )  
PRESIDENT OF THE CHURCH OF JESUS )  
16 CHRIST OF LATTER-DAY SAINTS AND )  
SUCCESSORS, a foreign corporation sole )  
17 registered to do business in the State of Oregon; )  
THE BOY SCOUTS OF AMERICA, a )  
18 congressionally chartered corporation, )  
authorized to do business in Oregon; and )  
19 CASCADE PACIFIC COUNCIL, BOY )  
SCOUTS OF AMERICA, an Oregon non-profit )  
20 corporation, )

21 Defendants. )

Case No. 0710-11294

PLAINTIFFS' REQUESTED JURY  
INSTRUCTIONS AND VERDICT  
FORM, PHASE II

22  
23 **I. Request for Uniform Civil Jury Instructions: Phase II**

24 Plaintiff requests that the Court give the following approved Oregon Uniform Civil Jury  
25 Instructions:

26	UCJI	75.02	Punitive Damages – General (as modified – Measure)
	UCJI	75.02A	Punitive Damages – Out of State Conduct
	UCJI	75.02B	Punitive Damages – Harm to Others
	UCJI	90.01	Verdict (For Use with Special Verdict Forms) (as modified)

1 **II. Requested Verdict Form: Phase II**

2 Plaintiff requests that the Court use Plaintiff's proposed verdict form, attached.

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5 DATED this \_\_\_\_ day of April, 2010.

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O'DONNELL CLARK & CREW LLP.

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Gilion C. Dumas  
Gilion Dumas, OSB #922932  
*Of Attorneys for Plaintiff*

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Paul Mones, OSB No. 091342  
*Associated Trial Counsel*

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1 UCJI No. 75.02 (as modified)

2 **PUNITIVE DAMAGES – GENERAL**

3 A jury may award punitive damages to punish misconduct and deter similar misconduct  
4 from occurring in the future.

5 There is no fixed standard for determining the amount of punitive damages and you are not  
6 required to award punitive damages. You should consider all of the following separately in  
7 determining the amount:  
8

9 (a) How reprehensible was that Defendant’s conduct, considering the nature of that  
10 conduct and the Defendant’s motive?

11 (b) In view of that Defendant’s financial condition, what amount is necessary to punish  
12 it and discourage future wrongful conduct? You may not punish a Defendant merely because a  
13 Defendant has substantial financial resources.

14 The amount of punitive damages you award may not exceed \$25,000,000 which is the  
15 amount requested by the plaintiff.  
16  
17

18 CAVEAT: UCJI No. 75.02 instructs the jury on the state-law standards for awarding  
19 punitive damages and the constitutional limitations on those awards. *See State Farm Mut. Auto. Ins.*  
20 *Co. v. Campbell*, 538 US 408, 123 S Ct 1513, 155 L Ed2d 585 (2003); *BMW of N. Am. v. Gore*, 517  
21 US 559, 116 S Ct 1589, 134 L Ed2d 809 (1996). It may be necessary to instruct the jury on certain  
22 other federal constitutional limitations on punitive damages. *See* UCJI Nos. 75.02A (jury may not  
23 punish for out-of-state harm), 75.02B (jury may not punish for harm to others).

COMMENT: Paragraph (b) above is bracketed because the law is not clear on whether the  
reasonable-relationship element is a question for the jury, or for the court on postverdict review.

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24 The items that may be considered by the jury when fixing the amount of punitive damages  
25 depend on the statutory and common-law factors permitted to be considered for the specific kind  
26 of claim at issue. *Oberg v. Honda Motor Co.*, 320 Or 544, 549, 888 P2d 8 (1995). Additional or  
different items beyond items (a)–(c) should be included in this instruction when supported by the  
evidence and permitted for the specific kind of claim at issue. *See Williams v. Philip Morris, Inc.*,  
340 Or 35, 55–56, 127 P3d 1165 (2006), *vacated on other grounds in Philip Morris USA v.*

1 *Williams*, 549 US 346, 127 S Ct 1057, 166 L Ed2d 940 (2007) (discussion of the considerations  
2 when evaluating the reprehensibility of a defendant's conduct). The writ of certiorari granted on  
3 June 9, 2008, *Philip Morris USA, Inc. v. Williams*, 128 S Ct 2904, 171 L Ed2d 840, was dismissed  
4 as improvidently granted by *Philip Morris USA, Inc. v. Williams*, 556 US \_\_\_, 129 S Ct 1436  
5 (2009).

6 ORS 31.730; *McElwain v. Georgia-Pacific Corp.*, 245 Or 247, 249, 421 P2d 957 (1966).

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8 ORS 31.730(1) provides for a clear and convincing standard of proof. For drug product  
9 cases, see ORS 30.927 and UCJI No. 75.04.

10 For health care practitioner cases, see ORS 31.740 (*former* ORS 18.550) and UCJI No.  
11 75.03.

12 For products liability cases, see ORS 30.925 and UCJI No. 75.06.  
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1 UCJI No. 90.01 (as modified)

2 VERDICT – FOR USE WITH SPECIAL VERDICT FORM

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4 When you return to the jury room, you will have the following verdict form with you.  
5 [*Read verdict form.*]

6 Answer the question according to the directions on the form and all the instructions of the  
7 court.

8 At least the same nine jurors who agreed to every answer on the verdict form used in the  
9 first phase of the trial must agree on the answer in this phase. When you have answered the  
10 question you are required to answer, your presiding juror should enter the answer on the verdict  
11 form, sign and date the verdict form, and then signal the bailiff.

12 Court with then reconvene and receive your verdict.  
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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF MULTNOMAH

6 KERRY LEWIS,

7 Plaintiff,

8 v.

9 CORPORATION OF THE PRESIDING  
10 BISHOP OF THE CHURCH OF JESUS  
11 CHRIST OF LATTER-DAY SAINTS, a  
12 foreign corporation sole registered to do  
13 business in the State of Oregon;  
14 CORPORATION OF THE PRESIDENT OF  
15 THE CHURCH OF JESUS CHRIST OF  
16 LATTER-DAY SAINTS AND SUCCESSORS,  
17 a foreign corporation sole registered to do  
18 business in the State of Oregon; THE BOY  
19 SCOUTS OF AMERICA, a congressionally  
20 chartered corporation, authorized to do business  
21 in Oregon; and CASCADE PACIFIC  
22 COUNCIL, BOY SCOUTS OF AMERICA, an  
23 Oregon non-profit corporation,

24 Defendants.

Case No. 0710-11294

**SPECIAL VERDICT**

**(Punitive Damages)**

25  
26  
*At least the same 9 of you who agreed to all the answers on the verdict form used in the first phase of this case must agree to the answer to the following question.*

**Punitive Damages**

27 We, the Jury, do find our verdict as follows:



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a true copy of the foregoing:

3 **PLAINTIFF'S REQUESTED JURY INSTRUCTIONS AND VERDICT FORM,**  
4 **PHASE II**

5 **SPECIAL VERDICT (Punitive Damages)**

6 upon:

7 Charles Smith  
8 Christie Moilanen  
9 MITCHELL LANG & SMITH  
10 101 SW Main St., Suite 2000  
Portland, OR 97204-3230  
503-248-0732 Fax

Paul Xochihua  
Nicole Rhoades  
Matthew Wiese  
DAVIS ROTHWELL, ET AL.  
111 SW 5<sup>th</sup> Ave., Suite 2700  
Portland, Oregon 97204-3650  
503-222-4428 Fax

11 *Attorneys for Defendant The Boy Scouts of*  
12 *America*

*Attorneys for Defendant Cascade Pacific*  
*Council, Boy Scouts of America*

13 VIA:

- 14  Facsimile (*printed confirmation of receipt attached, per ORCP 9C*)
- 15  Federal Express Overnight Mail
- 16  Hand Delivery

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