IN THE SUPREME COURT OF THE STATE OF OREGON

JEANYNE JAMES, *et al*, individually
and on behalf of all others similarly situated,
Plaintiffs-Respondents,
Cross-Appellants,

and

MARY KATHLEEN BECHERER *et al.*,
Plaintiffs,

and

OREGON DEPARTMENT OF JUSTICE,
Creditor-Respondent,

v.

PACIFICORP, an Oregon Corporation, and PACIFIC POWER an Oregon registered electric utility and assumed business name of PacifiCorp,
Defendants-Appellants
Cross-Respondents.

Multnomah County Circuit Court
20CV33885

Oregon Court of Appeals
A1813149
S072933

On Petition for Review of a decision of the Court of Appeals
Opinion filed: April 8, 2026
Opinion by Joyce, J., joined by Ortega and Hellman, JJ.

BRIEF OF *AMICUS CURIAE* OREGON CONSUMER JUSTICE LAW, P.C. IN SUPPORT OF PLAINTIFFS-RESPONDENTS-CROSS APPELLANTS, PETITIONERS ON REVIEW

August 2026

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INTEREST OF *AMICUS CURIAE*

Oregon Consumer Justice Law, P.C. is a private law firm that provides consumer protection to Oregonians through advocacy and litigation.

Oregon Consumer Justice Law, P.C. does not wish to present a private interest of its own; instead, it will present arguments grounded in Oregon law that make clear why class certification was appropriate in this case, the jury instruction at issue was a correct statement of the law of class actions, and there was no prejudice.

ARGUMENT

I. Issue Class Certification Serves Essential Litigation and Public Policy Objectives and Is Particularly Well-Suited for This Case.

This case, and the wildfires that gave rise to it, present a paradigmatic example of how climate change, as well as the ever-expanding footprint of corporate actors, are reshaping tort litigation and creating new challenges for the adjudication of civil claims. As extreme weather events become more frequent, as corporations continue to expand, and as the impacts of corporate decision-making become widespread, courts increasingly confront cases involving thousands of victims harmed by a common course of conduct, each victim suffering their own individualized damages.

In other words, the purportedly "unique and complex circumstances" of this case are rapidly becoming less unique, so it is important the court handle wildfire

cases efficiently and effectively. As the trial court properly recognized, class certification under ORCP 32 G provides the essential judicial tool for managing these cases.

The Court requested the parties discuss how the merits of class certification informed their position on the questions presented. *Amicus* wishes to support the Plaintiffs' position, by addressing how ORCP 32 G, Oregon's civil rule providing for certification of issue classes, is designed—much like its federal analogue—specifically for cases like this.

For all the reasons set forth in the record, the Plaintiffs' briefing, as well as the reasons set forth below, the trial court properly used ORCP 32 G to manage and adjudicate the claims in this case.

A. ORCP 32 G was intended as a flexible tool for effective and efficient adjudication and management of claims.

Oregon's approach to issue class certification reflects both legislative and judicial recognition that modern litigation requires powerful, yet flexible management tools. Thus, ORCP 32 G expressly provides for the "maintenance of class actions regarding particular issues":

> **G Commencement or maintenance of class actions regarding particular issues; subclasses.** When appropriate an action may be brought or ordered maintained as a class action with respect to particular claims or issues or by or against multiple classes or subclasses. Each subclass must separately satisfy all requirements of this rule except for subsection A.(1).

ORCP 32 G.

Shea v. Chicago Pneumatic Tool Co., 164 Or App 198, 990 P2d 912 (1999), is the primary case in Oregon addressing issue class certification. In *Shea*, this Court affirmed certification of a liability issues class under ORCP 32 G after denying full class certification under ORCP 32 C(1). In its analysis, the Court noted that ORCP 32 "does not require predominance as a *sine qua non* of certification of any class," *Shea*, 164 Or App at 207, effectively recognizing that issue classes serve essential case management functions even where full class certification might be inappropriate, or even where the predominance requirement may not independently be satisfied.

Shea correctly applies, and expressly recognizes, Oregon's 1992 elimination of inflexible predominance requirements as part of the development of ORCP 32. As the Council on Court Procedures explained during the drafting process, the prior version's "flat prohibition on the required finding of 'predominance' of common questions of law or fact if any claims of individual class members are likely to require adjudication of any separate issues apart from ascertaining damages" was "unduly rigid." *Shea*, 164 Or App at 207 (quoting Council on Court Procedures, Staff Comment, 1992, *reprinted in* Lisa A. Kloppenberg, *Oregon Rules of Civil Procedure 1997–98 Handbook*, 95 (1997)). After the 1992 revisions,

predominance became merely "one of a number of factors that the trial court must take into account" when determining superiority. *Shea*, 164 Or App at 207. In other words, its presence or absence cannot categorically direct the class certification decision.

Shea makes clear that issue class certification is appropriate in cases like this. Where common corporate conduct (here, by PacifiCorp) creates identical liability questions across thousands of victims—but individual damages vary significantly—issue class certification provides the essential tool for efficient, fair, and effective case management. The trial court properly used Oregon's issue class mechanism to manage the adjudication of the claims in this case.

B. Federal courts have adopted a similar approach.

A majority of federal circuits have also endorsed broad use of issue class certification, particularly in complex cases involving common corporate conduct and varying individual damages. At the federal level, and under Federal Rule of Civil Procedure 23, courts consistently have held that the predominance requirement is issue-specific; that is, issue class certification is appropriate "[e]ven if the common questions do not predominate over the individual questions so that class certification of the entire action is warranted." *Valentino v. Carter-Wallace, Inc.*, 97 F3d 1227, 1234 (9th Cir 1996).

Valentino has long been precedent in the Ninth Circuit and is especially clear in that respect. There, the Ninth Circuit explained that certification may be warranted as to individual issues, rather than as to "the entire action." *Id.* Where that is true, a district court may "isolate the common issues under Rule 23(c)(4)(A) and proceed with class treatment of th[o]se particular issues." *Id.* That is precisely the approach that *amicus* urges here under Oregon's issue class analogue.

Other federal circuits are in accord. In *Mejdrech v. Met-Coil Systems Corp.*, 319 F3d 910 (7th Cir 2003), the Seventh Circuit affirmed issue class certification in an environmental contamination case, emphasizing the efficiency of resolving "issues identical across all the claimants * * * in one fell swoop while leaving the remaining, claimant-specific issues to individual follow-on proceedings." This reasoning parallels the wildfire context presented here, where corporate wildfire preparation and response create identical questions across all affected properties.

The Sixth Circuit, in *Martin v. Behr Dayton Thermal Products LLC*, 896 F3d 405, 412 (6th Cir 2018), termed this the "broad view" of issue class certification, emphasizing that, under that view, courts should focus on whether common questions predominate regarding the specific issues certified, not the entire case. *See id.* at 411–12 (citing *In re Nassau Cty. Strip Search Cases*, 461 F3d 219, 227 (2d Cir 2006) (permitting issue class certification "regardless of whether the claim as a whole satisfied Rule 23(b)(3)'s predominance requirement"); *Valentino*, 97

F3d at 1234; *McReynolds v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 672 F3d 482, 491 (7th Cir 2012) ("Rule 23(c)(4) provides that 'when appropriate, an action may be brought or maintained as a class action with respect to particular issues.' The practices challenged in this case present a pair of issues that can most efficiently be determined on a class-wide basis, consistent with the rule just quoted."), *abrogated on other grounds by Phillips v. Sheriff of Cook Cty.*, 828 F3d 541, 559 (7th Cir 2016); *Pella Corp. v. Saltzman*, 606 F3d 391, 394 (7th Cir 2010) ("A district court has the discretion to split a case by certifying a class for some issues, but not others, or by certifying a class for liability alone where damages or causation may require individualized assessments."); *Gunnells v. Healthplan Servs., Inc.*, 348 F3d 417, 439–45 (4th Cir 2003) (Rule 23(c)(4) allows certification of a class even though plaintiffs' claims, taken together, do not satisfy predominance)).

Most recently, the Seventh Circuit adopted the approach of the Second, Third, Fourth, Sixth, and Ninth Circuits, holding that "as part of satisfying its burden under Rule 23, a party seeking certification of an issue class under Rule 23(c)(4) must show that common questions predominate in the resolution of the specific issue or issues that are the subject of the certification motion and not as to "the cause of action, taken as a whole." *Jacks v. DirectSatUSA, LLC*, 118 F4th 888, 897 (2024).

The consensus on issue class certification under the Rule 23 is clear. Federal courts across the board recognize the essential case management tool that issue class certification provides, and the different framework that applies when deciding whether to certify an issue for class-wide resolution. And in Oregon, under *Shea*, that framework is made even more straightforward by the elimination of any bright-line predominance element that Rule 23 otherwise commands.

C. Class certification was particularly appropriate in this case.

Modern climate science demonstrates that extreme weather events—including the type of wind-driven wildfire conditions that occurred on Labor Day 2020—are becoming more frequent and severe due to climate change. This is further supported by the fact that, as *amicus* drafts this brief in Summer 2026, over a million acres across central and eastern Oregon have already burned and Oregon is on track for a record wildfire season.[1]

The sheer number of people that can be suddenly and dramatically impacted by a wildfire makes these cases well-suited for issue class certification.

Despite having occurred over vast geographic areas, and despite certain factual differences involving the Santiam Canyon Fire, the four wildfires at issue in

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[1] *Oregon is on track for its worst wildfire season yet*, Siegler, K. (07/29/2026 National Public Radio – Oregon Public Broadcasting) (available at https://www.npr.org/2026/07/29/nx-s1-5910624/oregon-is-on-track-for-its-worst-wildfire-season-yet) (last accessed 8/11/2026).

this case were caused by uniform corporate disregard for wildfire safety. PacifiCorp's wildfire preparation, infrastructure maintenance, and emergency response involved company-wide policies applied uniformly across a particular geographic area. Corporate actions, decision-making, and notice were all relevant class wide. This creates precisely the type of common evidence that courts have consistently found appropriate for issue class treatment. To do otherwise would either deny injured individual plaintiffs a remedy due by allowing PacifiCorp to overwhelm them with expense and difficulty of proving it liable, on the one hand, or inundate the courts with these cases and all-but-guarantee uneven and inconsistent individual trial results, on the other.

Also, despite the large geographic areas impacted by the fires (and the factual difference respecting the Santiam Canyon Fire) PacificCorp's defenses are the same—blame the wind.

The trial court's certification of this issue class aligns with established precedent from both Oregon and other jurisdictions facing similar mass disaster-related litigation—in large part because the claims and defenses of the representative parties with respect to those issues are typical of the claims and defenses of the whole class.

This allows the court to resolve the issues common to both the Plaintiffs' claims and PacificCorp's defenses in one efficient case, as opposed to being forced

to re-litigate the same issues with the same defenses thousands of times, at a much higher cost to all parties as well as the courts.

It also serves important rule-of-law and access-to-justice ends—ensuring that Oregonians can fully access the remedies the law affords, and that Oregon courts can effectively and efficiently adjudicate those claims. And the alternative—thousands of individual trials to re-establish identical corporate conduct—would create exactly the type of wasteful duplication of resources that issue class certification is designed to prevent.

II. The Challenged Instruction Was Correct.

Claims of instructional error require, first, a "review [of] a trial court's decision to give a particular instruction primarily to determine whether the instruction, when read together with the other instructions given, completely and accurately stated the law applicable to the case * * *." *Sherertz v. Brownstein Rask*, 288 Or App 719, 722, 407 P3d 914 (2017) (citing *Wallach v. Allstate Ins. Co.,* 344 Or 314, 318–22, 180 P3d 19 (2008)); *State v. Woodman*, 341 Or 105, 118, 138 P3d 1 (2006). Here, the Court of Appeals erred because the challenged instruction that the jury could "assume that the evidence at the trial applies to all class members" correctly reflects the defining aspect of class cases: Representative evidence establishing absent class members' claims. And, for the reasons above and in the Brief on the Merits of Petitioners on Review ("Plaintiffs' Brief"), an

issue class certification was proper in this case. The Court of Appeals' proposed limitation on giving such an instruction only "where every important issue is truly capable of proof through common evidence" (Opinion, p. 8, ln.15–16) highlights the impropriety of an appellate court second guessing a trial court's conduct of a class action trial. *See Newman v. Tualatin Development Co.*, 287 Or 47, 51, 597 P2d 800 (1978) ("In reviewing the trial court's determination that a proceeding shall or shall not be conducted as a class action, it must be remembered that this is largely a decision of judicial administration; that is, how the trial shall proceed. In making such decisions the trial court is customarily granted wide latitude"). Ignoring the Court of Appeals' implausible fear of jurors misconstruing the instruction as an invitation to engage in magical causation thinking, further discussed below in Part III, the trial court is best positioned to gauge what issues are important, which are truly capable of proof through common evidence, and how best to assess the evidence and the parties' arguments in deciding how to instruct the jury and how to structure the verdict form to frame the questions it must answer.

Courts in class actions regularly allow juries to consider representative evidence in reaching verdicts in class action cases, and instruct them that absent class members need not appear at trial. *See e.g. Pearson v. Philip Morris, Inc.*, 358 Or 88, 114, 361 P3d 3 (2015); *Strawn v. Farmers Ins. Co.*, 350 Or 336, 361 P3d 3

(2011); *Tyson Foods, Inc. v. Bouphakeo*, 577 US 442, 460–61, 136 S Ct 1036 (2016). In *Bah. Surgery Ctr. v. Kimberly-Clark Corp.*, No. CV 14-8390-DMG (PLAx), 2018 U.S. Dist. LEXIS 242677, at *28-29 (C.D. Cal. Apr. 11, 2018), the court applied these principles to the same instruction challenged here:

> Because in a class action trial, Plaintiff need only prove its claims through the class representative (and need not prove what every individual class member would have done), [the class representative's] testimony serves as a legally sufficient evidentiary basis for a jury's finding that there was a plausible mechanism of disclosure and that class members would have been aware of any disclosure through the third party intermediaries and through the labeling or packaging of the gowns themselves. *See* Judicial Council of California Civil Jury Instructions 115 ("You may assume that the evidence at . . . trial applies to all class members"); *see also* Newberg on Class Actions § 1:5 (5th ed.) (a "primary purpose of the class suit is to promote efficiency by *enabling representatives to litigate*") (emphasis added); *Cooper*, 390 F.3d at 713 ("fortunes of the class members . . . rise or fall with the fortunes of the class representatives") (internal quotation marks and citation omitted).

The challenged instruction correctly instructed the jury that the evidence presented at trial "applied to" all class members, so jurors could consider such evidence to the extent it was relevant to the claims of class members who did not appear at trial. Accordingly, this Court should reverse the Court of Appeals' decision to the contrary.

III. Prejudice Is Unlikely.

If the reviewing court finds instructional error, it must then determine whether "giving the instruction was prejudicial to the party opposing the

instruction." *Sherertz*, 288 Or App at 722. "A jury instruction does not constitute reversible error unless it prejudiced the defendant when the instructions are considered as a whole." *Purdy v. Deere & Co.,* 355 Or 204, 227, 324 P3d 455 (2014).

Here, the Court of Appeals erred because, even if the single sentence from the uniform California instruction were erroneous (which it was not for all of the reasons discussed above and in Plaintiffs' and other *amici*'s briefs), the evidence and argument at trial, the trial court's instructions considered as a whole, the verdict form, and the jurors' common sense make any purported prejudice speculative and unlikely.

The vast majority of the Court of Appeals' perceived prejudice is implausible, if not impossible. No juror was likely to have misunderstood the challenged instruction to mean, as the Court of Appeals repeatedly speculated (Op., p. 29, ln. 8–21, p. 30, ln. 1–7, p. 32, ln. 15–19, p. 33, ln. 16–23), that they could assume evidence that a PacifiCorp-caused fire burned one class member's home in one part of the state meant that PacifiCorp also caused another class member's home to burn hundreds of miles away. To the contrary, as detailed in Plaintiffs' Brief, different evidence established that different fires burning in four different parts of the state burned those class members' homes located in the paths of the respective fires (pp. 54-57), the special verdict form foreclosed any finding

of cross-fire causation (pp. 57-58), and the verdict confirmed that the jury followed the law (p. 59). The fact that different jurors answered these questions differently for different fires confirms that they carefully considered causation separately as to each fire, as both common sense and the verdict form required. *See also* TR 306 ("You may draw any reasonable inferences from the evidence, but you must not guess or speculate.").

While the Court of Appeals cited *Pearson,* 385 Or 88, in an apparent effort to undermine the trial court's determination that class certification was appropriate in this case, this case is very different from *Pearson* because it involved whether each plaintiff's ascertainable loss (an element under the Unlawful Trade Practices Act "UTPA") was a result of an alleged unlawful representation about Marlboro light cigarettes as opposed to regular cigarettes. *Id.* at 103. In other words, the court required evidence as to the reason each individual plaintiff purchased light cigarettes as opposed to regular in order to conclude that the cigarettes were purchased because of the representations at issue in the case. Here, reliance is not required in order to determine whether PacifiCorp-caused fires burned class members' homes.

As a factual matter, causation in a wildfire case is very different from causation in a cigarette case. In this case, because the representative Plaintiffs proved to a jury that what caused wildfire damage on their property was

PacificCorp, then it naturally follows that other properties damaged by that particular wildfire were also caused by PacificCorp.

Even in the case of the Santiam Canyon Fire, where the Plaintiffs alleged that the class members' damage was caused by a number of PacifiCorp-caused fires or by a lightning-caused wildfire that spread because the area was rendered defenseless by PacifiCorp's actions, the causation analysis is still different from the individualized analysis in a cigarette case under the UTPA. Particularly in light of the substantial-factor jury instruction that was given with respect to the Santiam Canyon Fire. This case is not so different from the hypothetical given in *Haas v. Estate of Carter*, 370 Or 742, 749 (2023), in which the Supreme Court contemplated two converging fires as an example of a proper use of the substantial factor instruction: "The substantial factor test was developed primarily for that circumstance—the situation in which concurrent conduct of two or more causes combine to create an injury, and either one of those causes, operating alone, would have been sufficient to produce the same result."

While PacificCorp made much ado about the Santiam Canyon Fire as opposed to the other fires because it did not begin as a single fire, the substantial factor jury instruction was appropriately given and the jury determined that PacificCorp's conduct was a substantial factor in causing the Santiam Canyon Fire. Thus, it follows that the losses caused by the Santiam Canyon Fire were caused by

PacificCorp—both in the instance of the representative Plaintiffs and, as the jury separately found, of the other class members.

The closest the Court of Appeals' opinion gets to identifying an issue as to which the jury might have used the challenged instruction to overcome a lack of proof relates to Plaintiff's argument that "we'll never know just how many fires PacifiCorp started in the canyon that night" as opposed to embers from the pre-existing Beachie Creek Fire starting them. Op., p. 15, ln. 13–16. But that argument was premised, not on the challenged instruction but, as the Court of Appeals noted, on the trial court's spoliation instruction—given because PacifiCorp destroyed evidence regarding the number and scope of PacifiCorp-caused fires in the Santiam Canyon that night—an instruction PacifiCorp did not challenge on appeal. "[I]t is insufficient to speculate that the error might have changed the outcome in the case" (*Purdy,* 355 Or at 225), let alone to reverse despite identifying two unobjectionable instructions (substantial factor and spoliation) that likely *did* lead to the jury's verdict on fire causation in the Santiam Canyon.

The Court of Appeals cannot assume prejudicial error by imputing magical thinking to reasonable jurors. There is no evidence that anyone at the trial, not the parties, their attorneys, the Judge, or the jurors, were confused in the way the Court of Appeals posited. A reviewing court cannot, on such slender reeds, second guess

a trial court's class management decisions, reverse a case of massive importance to thousands of Oregonians, cause their individual cases to inundate the courts for years if not decades to come (or deny them justice entirely), and unsettle the foundations of the class action mechanism in Oregon.

IV. PacifiCorp Invited Any Prejudicial Error.

Oregon law is clear that a party cannot prevail on appeal when its acquiescence invited the error. *E.g.*, *State v. Hardesty*, 238 Or App 146, 151, 241 P3d 741 (2010) (citing cases). In *Hardesty*, the defendant argued that "his statement at trial that his [motorcycle] helmet was 'legal' sufficiently preserved" his argument on appeal that "it *need not comply* with the federal standards." *Id.* at 150-51 (emphasis in original). The court disagreed: "in context, it [was] an argument that his helmet was legal because it *complied* with the federal standards[.]" *Id.* at 151 (emphasis in original). Because "defendant cannot now complain that the trial court erred because it failed to view the statute differently than presented by the parties", the court concluded that defendant had failed to preserve the error. *Id.* Here, much worse than the *Hardesty* defendant, PacifiCorp not only acquiesced in, but caused the trial court to commit the only potentially prejudicial error related to the challenged instruction.

As the Court of Appeals' opinion repeatedly emphasized, a trial court has the ongoing ability, if not obligation, "of monitoring its class decisions in light of

the evidentiary development of the case." Op. at p. 4, ln. 18 to p. 5, ln. 16, p. 40, ln. 13–14 (quoting ORCP 32 C(1)). As it also noted, however, after the close of evidence but before closing arguments, Plaintiffs asked the trial court to exercise those powers in order to limit the scope of the class. Op., p. 21, ln. 17 to p. 23, ln. 4. Based on the evidence at trial, Plaintiffs proposed to adjust the class area to exclude the eastern portions of Santiam Canyon because the evidence suggested that the new boundary would reflect the "eastern most predominant boundary indicated during trial." Op., p. 22, ln. 2 to p. 23, ln. 1.

Given that the very class definition depends on "the boundary of the maximum extent of burn for [one of the four fires]" (Op., p. 11, ln. 8-11 (quoting class definition)), Plaintiffs' request effectively asked the trial court to exercise its class management powers to ensure the class definition matched the parties' theories and the evidence presented, just as case law and the Court of Appeals said it could (and should).

However, rather than eliminate the only potential area as to which a juror could even possibly have misapplied causation evidence,[2] PacifiCorp objected and

[2] Although (1) the Court of Appeals did not find potential prejudice related to this area and (2) the jury likely found that PacifiCorp-caused fires were a substantial factor in causing the homes in this area to burn because, at a minimum, they forced the hundreds of firefighters stationed in Santiam County to evacuate.

convinced the trial court *not to correct* the class definition to conform to the evidence at trial. Op., p. 23, ln. 2–4.[3]

Although, as discussed, the evidence is that jurors did not apply the challenged instruction to improperly find causation as to the homes in the easterly half of the Santiam Canyon (or anywhere else), it is the only area as to which a reasonable juror even *could* have plausibly done so. But, even if there were

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[3] PacifiCorp argued that "it had built its 'whole case' and 'closing' around the 'evidence that has come in.'" Op., p. 23, ln. 3-4. In fact, PacifiCorp chose to gamble on securing a defense verdict by arguing in closing that Plaintiffs had failed to prove that PacifiCorp caused a handful of homes within the unadjusted eastern class boundary to burn. Tr. 8363, ln. 13-24 ("proving causation for the entire class within each fire area doesn't mean that plaintiffs can just prove causation for only some of the class members, but not others and declare a victory. No. To obtain a verdict for all class members, they have to prove causation for each and every single one. * * * * I would say [that's] impossible with respect to the plaintiffs in the Santiam Canyon."), Tr. 8367, ln. 23 to 8368, ln. 9 (focusing jury on Beachie Creek Fire's purported spread into east Santiam Canyon), Tr. 8370, ln. 11 to 8372, ln. 15 (focusing jury on Potato Hill fire at what would have been eastern edge of adjusted class boundary); *cf.* Op., p. 22 (discussing Plaintiffs' request for "the new boundary on the eastern end, [to be] 'adjacent to Potato Hill'"); Tr. 8376, ln. 20-21 ("Pacific Power doesn't have any equipment in that area in the easternmost portion."), Tr. 8390, ln. 2-18 ("why am I going through this class boundary exercise? * * * In order to succeed on their claims, plaintiffs must show that Pacific Power caused harm to * * * the entire class within the boundaries of the fire areas. * * * That means finding damage to people all the way east of Gates where we have no equipment whatsoever"), Tr. 8401 ("No one has been here to explain how a fire at Railroad Avenue, that is the easternmost fire in the Santiam Canyon, could have traveled against this historic wind event and made its way all the way to Niagara and then continued on all the way to Detroit. Just couldn't happen."). Having invited any error based on its strategic decision to gamble in closing on convincing the jury that it was not a substantial cause of damage to the homes in the east Santiam Canyon, PacifiCorp cannot complain of the verdict that resulted from that invitation.

evidence that the jury did so, such that the purported instructional error could have been prejudicial, PacifiCorp invited any such error and therefore cannot prevail on appeal on that basis. *Hardesty*, 238 Or App at 151.

CONCLUSION

The Court of Appeals' opinion jeopardizes ORCP 32's irreplaceable vehicle for vindicating consumer rights and preserving judicial resources based on an incorrect finding of instructional error and a speculative finding of prejudice. For the reasons set forth above and in Plaintiffs' and other *amici*'s briefs, *amicus* Oregon Consumer Justice Law, P.C. respectfully urges the Court to affirm class certification, reverse the Court of Appeals' decision, and remand this case for consideration of the parties' other assignments of error.

Respectfully submitted this 13th day of August 2026.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the word-count limitation in ORAP 5.05(1)(b)(i)(A) because the word count on this brief (as described in ORAP 5.05(1)(d)(i)) is 4,581.

I certify that the size of the type in this brief is not smaller than fourteen points for both the text of the brief and footnotes, as required under ORAP 5.05(3)(b)(ii).

DATED this 13th day of August 2026.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on August 13, 2026, I directed the original **BRIEF OF *AMICUS CURIAE* OREGON CONSUMER JUSTICE LAW, P.C. IN SUPPORT OF PLAINTIFFS-RESPONDENTS-CROSS APPELLANTS** to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and electronically served upon the following:

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