

VAL HOYLE  
COMMISSIONER



DUKE SHEPARD  
DEPUTY COMMISSIONER

BUREAU OF LABOR AND INDUSTRIES  
BEFORE THE COMMISSIONER  
OF THE BUREAU OF LABOR AND INDUSTRIES  
OF THE STATE OF OREGON

In the Matter of:

Case Nos. 65-18 & 66-18

**HYE I. DICKINSON,**

FINDINGS OF FACT  
CONCLUSIONS OF LAW  
OPINION  
ORDER

Respondent.

**SYNOPSIS**

The forum concluded that Respondent discriminated against Complainant Moore based on disability, familial status and source of income, in violation of ORS 659A.145(2)(a) and OAR 839-005-0205(1)(a), ORS 659A.145(2)(c) and OAR 839-005-0205(1)(c), ORS 659A.145(2)(g) and OAR 839-005-0220(2)(c), ORS 659A.421(2)(a) and OAR 839-005-0205(1)(a), ORS 659A.421(2)(c) and OAR 839-0050205(1)(c). The forum concluded that Respondent violated ORS 659A.145(2)(a) and OAR 839-005-0205(1)(a), ORS 659A.145(2)(c) and OAR 839-0050205(1)(c), ORS 659A.145(2)(g), OAR 839-005-0220(2)(c), ORS 659A.421(2)(a) and OAR 839-005-0205(1)(a), ORS 659A.421(2)(c) and OAR 839-005-0205(1)(c), with respect to Complainant FHCO. The forum awarded Complainant Moore \$300,000.00 in emotional and mental suffering damages. The forum awarded \$7,669.00 in damages to Complainant FHCO. The forum declined to award civil penalties.

The above-entitled case was assigned for hearing to Jennifer Gaddis, designated as Administrative Law Judge ("ALJ") by Val Hoyle, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by Administrative Prosecutor Adam Jeffries, an employee of the Agency. Respondent was represented by Mr. John Ostrander. The contested case hearing was held on November 15, 2018 at BOLI's Salem office, located at 3865 Wolverine St. NE, Suite E-1, in Salem, Oregon. Complainant Valerie Moore

1 and her daughter "I" were present throughout the hearing.<sup>1</sup> Hannah Callaghan was  
2 present throughout the hearing, on behalf of Complainant Fair Housing Council  
3 ("Complainant FHCO"). Respondent was also present throughout the hearing.

4 The Agency called BOLI Civil Rights Investigator Mimi Perdue, Isidro Reyes  
5 Cano, Hannah Callaghan and Complainant Valerie Moore as witnesses. Respondent  
6 called Carol McBee as a witness; Respondent also testified.

7 The forum received into evidence Administrative exhibits X1 through X21.

8 The case participants stipulated to the admission of Agency exhibits A1 through  
9 A29, at the beginning of the hearing. The forum received into evidence A30 through  
10 A33, during the hearing.

11 Having fully considered the entire record in this matter, I, Val Hoyle,  
12 Commissioner of the Bureau of Labor and Industries, hereby make the following  
13 Findings of Fact (Procedural, On the Merits, and Ultimate<sup>2</sup>), Conclusions of Law,  
14 Opinion, and Order.  
15

#### 16 **FINDINGS OF FACT – PROCEDURAL**

17 1) On April 3, 2017, Complainant Moore filed a verified complaint (Case  
18 Number STHODP170403-40396) with BOLI's Civil Rights Division. The complaint  
19 alleged that Respondent violated provisions of ORS 659A.421 and ORS 659A.145. The  
20 complaint named Complainant Moore's five children as aggrieved persons. (Ex. A2)

21 2) On April 3, 2018, the Agency's Civil Rights Division issued a Notice of  
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23 <sup>1</sup> All of Complainant Moore's children are minors and their names are not relevant to this order. All of  
24 Complainant Moore's minor children were identified as aggrieved persons in the Agency's Formal  
Charges.

25 <sup>2</sup> The Ultimate Findings of Fact required by OAR 839-050-0370(1)(b)(B) are subsumed within the  
Findings of Fact – The Merits.

1 Substantial Evidence Determination ("SED") in which it found substantial evidence of (1)  
2 an unlawful practice on the basis of disability, in violation of ORS 659A.145(2)(a), (c),  
3 and (g); (2) an unlawful practice on the basis of familial status, in violation of ORS  
4 659A.421(2)(a) and (c); and (3) an unlawful practice on the basis of source of income –  
5 Section 8, in violation of ORS 659A.421(2)(a) and (c). (Testimony of Perdue; Ex. A28)

6 3) On April 3, 2017, Complainant FHCO filed a verified complaint (Case  
7 Number STHODP170403-40397) with BOLI's Civil Rights Division. The complaint  
8 alleged that Respondent violated provisions of ORS 659A.421 and ORS 659A.145.  
9 (Ex. A1)

10 4) On April 3, 2018, the Agency's Civil Rights Division issued a Notice of  
11 Substantial Evidence Determination ("SED") in which it found substantial evidence of (1)  
12 an unlawful practice on the basis of disability, in violation of ORS 659A.145(2)(a), (c),  
13 and (g); (2) an unlawful practice on the basis of familial status, in violation of ORS  
14 659A.421(2)(a) and (c); and (3) an unlawful practice on the basis of source of income –  
15 Section 8, in violation of ORS 659A.421(2)(a) and (c). (Testimony of Perdue; Ex. A27)

16 5) On June 18, 2018, the forum issued Notices of Hearing for Case Nos. 65-  
17 18 and 66-18 to Respondent, the Agency and Complainants.<sup>3</sup> The Notices of Hearing  
18 stated the time and place of the hearing as September 11, 2018, beginning at 9:30 a.m.,  
19 at BOLI's Salem office, located at 3865 Wolverine St NE, Building E-1, Salem, Oregon.  
20 With the Notices of Hearing, the forum also sent a copy of the Agency's Formal Charges  
21 in each case, a document entitled "Summary of Contested Case Rights and  
22  
23

24 \_\_\_\_\_  
25 <sup>3</sup> The Notice of Hearing for Complaint No. STHODP170403-40396 was assigned contested Case No. 65-  
18. The Notice of Hearing for Complaint No. STHODP170403-40397 was assigned contested Case  
No. 66-18.

1 Procedures” containing the information required by ORS 183.413, a document entitled  
2 “Servicemembers Civil Relief Act (SCRA) Notification,” a multi-language notice  
3 explaining the significance of the Notice of Hearing, and a copy of the forum’s contested  
4 case hearings rules, OAR 839-050-000 to 839-050-0445. (Exs. X2, X2A-2H, X6, X6A-  
5 X6H)

6 6) The Formal Charges in Case No. 65-18 alleged that Respondent refused  
7 to lease, rent or otherwise make available the subject property to Complainant Moore, a  
8 purchaser, because of a disability of an individual residing in or intending to reside in a  
9 dwelling after it was rented or made available or a disability of any individual associated  
10 with Complainant Moore in violation of ORS 659A.145(2)(a) and OAR 839-005-  
11 0205(1)(a); made a distinction, discrimination or restriction against Complainant Moore,  
12 a purchaser, in the price, terms, conditions or privileges relating to the rental, lease or  
13 occupancy of the subject property or in the furnishing of any facilities or services in  
14 connection therewith on the basis of disability, in violation of ORS 659A.145(2)(c) and  
15 OAR 839-005-0205(1)(c); refused to make reasonable accommodations in rules,  
16 policies, practices or services when the accommodations may have been necessary to  
17 afford the individual(s) with a disability equal opportunity to use and enjoy a dwelling in  
18 violation of ORS 659A.145(2)(g) and OAR 839-005-0220(2)(c); refused to lease, rent or  
19 otherwise make available real property to Complainant Moore, a purchaser, because of  
20 familial status in violation of ORS 659A.421(2)(a) and OAR 839-005-0205(1)(a); made a  
21 distinction, discrimination or restriction against Complainant Moore in the price, terms,  
22 conditions or privileges relating to the sale, rental, lease or occupancy of the subject  
23 property or in the furnishing of any facilities or services in connection therewith on the  
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1 basis of familial status in violation of ORS 659A.421(2)(c) and OAR 839-005-0205(1)(c);  
2 refused to lease, rent or otherwise make available real property to Complainant Moore,  
3 a purchaser, because of source of income in violation of ORS 659A.421(2)(a) and OAR  
4 839-005-0205(1)(a); and made a distinction, discrimination or restriction against  
5 Complainant Moore in the price, terms, conditions or privileges relating to the sale,  
6 rental, lease or occupancy of the subject property or in the furnishing of any facilities or  
7 services in connection therewith on the basis of source of income in violation of ORS  
8 659A.421(2)(c) and OAR 839-005-0205(1)(c). The Formal Charges sought damages  
9 for emotional, mental, and physical suffering in the amount of at least \$100,000.00,  
10 economic damages of at least \$9,100.00 and a civil penalty in the amount of  
11 \$11,000.00. The Formal Charges also requested that an appropriate Cease and Desist  
12 Order be entered against Respondent if it engaged in or committed any unlawful  
13 employment practices alleged in the Formal Charges, and that the forum order that it  
14 immediately stop all such unlawful practices. Finally, the Formal Charges requested the  
15 Respondent be ordered to attend training on the correct interpretation and application of  
16 laws pertaining to housing discrimination. The Formal Charges stated that the forum's  
17 order may include such other relief as appropriate to eliminate the effects of the  
18 unlawful practices found as to Complainant and others similarly situated. (Ex. X2A)

20 7) The Formal Charges in Case No. 66-18 alleged that Complainant FHCO  
21 conducted testing that established Respondent would refuse to sell, lease, rent or  
22 otherwise make the subject property available to a purchaser' because of a disability of  
23 an individual residing in or intending to reside in a dwelling after it was rented or made  
24 available or a disability of any individual associated with Complainant FHCO in violation  
25

1 of ORS 659A.145(2)(a) and OAR 839005-0205(1)(a); Complainant FHCO conducted  
2 testing that established Respondent made distinction or imposed restrictions against  
3 individuals who indicated they had a disability when determining terms, conditions or  
4 privileges relating to the rental, lease or occupancy of real property in violation of ORS  
5 659A.145(2)(c) and OAR 839-005-0205(1)(c); Complainant FHCO conducted testing  
6 that established Respondent would refuse to reasonably accommodate individuals who  
7 indicated they had disabilities by modifying rules, policies, practices or services when  
8 the accommodations may have been necessary to afford disabled purchasers under the  
9 law equal opportunity to use and enjoy a dwelling in violation of ORS 659A.145(2)(g);  
10 OAR 839-0050220(2)(c); Complainant FHCO conducted testing that established  
11 Respondent would refuse to sell, lease, rent or otherwise make the subject property  
12 available to purchasers on the basis of familial status in violation of ORS 659A.421(2)(a)  
13 and OAR 839005-0205(1)(a); and Complainant FHCO conducted testing that  
14 established Respondent made distinction or imposed restrictions against individuals  
15 based on familial status when determining terms, conditions or privileges relating to the  
16 rental, lease or occupancy of real property in violation of ORS 659A.421(2)(c) and OAR  
17 839-005-0205(1)(c). The Formal Charges sought damages for frustration of mission  
18 and the diversion of organizational resources to investigate and remedy the unlawful  
19 housing practices of Respondent, estimated to be at least \$7,669.00 and a civil penalty  
20 in the amount of \$11,000.00. The Formal Charges also requested that an appropriate  
21 Cease and Desist Order be entered against Respondent if it engaged in or committed  
22 any unlawful employment practices alleged in the Formal Charges, and that the forum  
23 order that it immediately stop all such unlawful practices. Finally, the Formal Charges  
24  
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1 requested the Respondent be ordered to create and implement a reasonable  
2 accommodation policy at any and all of Respondent's properties, to be approved by the  
3 Oregon Bureau of Labor and Industries' Civil Rights Division. The Formal Charges  
4 stated that the forum's order may include such other relief as appropriate to eliminate  
5 the effects of the unlawful practices found as to Complainant and others similarly  
6 situated. (Ex. X6A)

7 8) On July 11, 2018, the forum issued its Interim Order Requiring Case  
8 Summaries to be Filed and Setting Prehearing Conference Date, in Case Nos. 65-18  
9 and 66-18. (Exs. X3, X7)

10 9) On July 17, 2018, the forum issued its Interim Order re: Case Deadlines  
11 and Consolidation of Cases. (Exs. X4, X8).

12 10) On August 6, 2018, Respondent filed her Answer and Affirmative  
13 Defenses. (Ex. X9)

14 11) On August 10, 2018, the forum issued its Interim Order Postponing  
15 Contested Case Hearings. (Ex. X10)

16 12) On October 10, 2018, Respondent filed her Motion to Continue Hearing  
17 Date. (Ex. X11)

18 13) On October 19, 2018, the forum issued its Interim Order re: Respondent's  
19 Motion to Continue Hearing Date. (Ex. X12)

20 14) On October 29, 2018, Respondent filed her Amended Answer and Case  
21 Summary. (Ex. X13)

22 15) On October 31, 2018, the Agency filed its Motion to Dismiss Respondent  
23  
24  
25

1 Donald Dickinson from Formal Charges.<sup>4</sup> (Ex. X14)

2 16) On October 31, 2018, the Agency filed its Notice to Forum re: Submission  
3 of Respondent's Amended Answer. (Ex. X15)

4 17) On October 31, 2018, the forum issued its Interim Order Dismissing  
5 Formal Charges against Respondent Donald Dickinson. (Ex. X16)

6 18) On November 1, 2018, the Agency filed its Case Summary and Exhibits.  
7 (Ex. X17)

8 19) On November 2, 2018, the forum issued its Interim Order re:  
9 Respondent's Amended Answer. (Ex. X18)

10 20) On November 7, 2018, the Agency filed Stipulations, reached by the case  
11 participants. The Stipulations resolved all issues of liability against Respondent, leaving  
12 only remedies remaining at issue, for purposes of the hearing. (Ex. X19)

13 21) On November 9, 2018, the Agency filed its Addendum to Agency Case  
14 Summary. The Agency then filed a Second Addendum to Agency Case Summary on  
15 November 13, 2018. (Exs. X20, X21)

16 22) The hearing began on November 15, 2018. At the start of hearing, the  
17 ALJ orally informed the Agency and Respondent of the issues to be addressed, the  
18 matters to be proven, and the procedures governing the conduct of the hearing.  
19 (Hearing Record)

20 23) The hearing concluded and the record closed on November 15, 2018.  
21  
22  
23

24 <sup>4</sup> The Formal Charges in Case Nos. 65-18 and 66-18 originally listed Donald R. Dickinson and Hye I.  
25 Dickinson as named respondents, in this matter. The Agency moved to dismiss Respondent Donald R.  
Dickinson after it learned he was deceased. The hearing on November 15, 2018 resolved the charges  
against the remaining named respondent, Respondent Hye I. Dickinson.



1 services in connection therewith on the basis of disability in violation of ORS  
2 659A.145(2)(c) and OAR 839-005-0205(1)(c);

3 c. In 2017, Respondent failed to make reasonable accommodations in  
4 rules, policies, practices or services when the accommodations may have been  
5 necessary to afford the Complainant in Case No. 65-18, Valerie Moore and/or her  
6 children with a disability equal opportunity to use and enjoy the dwelling in  
7 violation of ORS 659A.145(2)(g) and OAR 839-005-0220(2)(c);

8 d. In 2017, Respondent failed to lease, rent or otherwise make  
9 available real property to the Complainant in Case No. 65-18, Valerie Moore, a  
10 purchaser, because of familial status in violation of ORS 659A.421(2)(a) and  
11 OAR 839-005-0205(1)(a);

12 e. In 2017, Respondent made a distinction, discrimination or  
13 restriction against the Complainant in Case No. 65-18, Valerie Moore, in the  
14 price, terms, conditions or privileges relating to the sale, rental, lease or  
15 occupancy of the subject property or in the furnishing of any facilities or services  
16 in connection therewith on the basis of familial status in violation of ORS  
17 659A.421(2)(c) and OAR 839-005-0205(1)(c);

18 f. In 2017, Respondent failed to lease, rent or otherwise make  
19 available real property to the Complainant in Case No. 65-18, Valerie Moore, a  
20 purchaser, because of source of income in violation of ORS 659A.421(2)(a) and  
21 OAR 839-005-0205(1)(a);

22 g. In 2017, Respondent made a distinction, discrimination or  
23 restriction against the Complainant in Case No. 65-18, Valerie Moore, in the  
24  
25

1 price, terms, conditions or privileges relating to the sale, rental, lease or  
2 occupancy of the subject property or in the furnishing of any facilities or services  
3 in connection therewith on the basis of source of income in violation of ORS  
4 659A.421(2)(c) and OAR 839-005-0205(1)(c);

5 h. In 2017, the Complainant in Case No. 66-18, the Fair Housing  
6 Council of Oregon, conducted testing that established Respondent would refuse  
7 to sell, lease, rent or otherwise make the subject property available to a  
8 purchaser because of a disability of an individual residing in or intending to reside  
9 in a dwelling after it was rented or made available or a disability of any individual  
10 associated with Complainant in violation of ORS 659A.145(2)(a) and OAR 839-  
11 005-0205(1)(a);

12 i. In 2017, the Complainant in Case No. 66-18, the Fair Housing  
13 Council of Oregon, conducted testing that established Respondent made  
14 distinction or imposed restrictions against individuals who indicated they had a  
15 disability when determining terms, conditions or privileges relating to the rental,  
16 lease or occupancy of real property in violation of ORS 659A.145(2)(c) and OAR  
17 839-0050205(1)(c);

18 j. In 2017, the Complainant in Case No. 66-18, the Fair Housing  
19 Council of Oregon, conducted testing that established Respondent would refuse  
20 to reasonably accommodate individuals who indicated they had disabilities by  
21 modifying rules, policies, practices or services when the accommodations may  
22 be necessary to afford disabled purchasers under the law equal opportunity to  
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24  
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1 use and enjoy a dwelling in violation of ORS 659A.145(2)(g); OAR 839-005-  
2 0220(2)(c);

3 k. In 2017, the Complainant in Case No. 66-18, the Fair Housing  
4 Council of Oregon, conducted testing that established Respondent would refuse  
5 to sell, lease, rent or otherwise make the subject property available to purchasers  
6 on the basis of familial status in violation of ORS 659A.421(2)(a) and OAR 839-  
7 005-0205(1)(a); and

8 l. In 2017, the Complainant in Case No. 66-18, the Fair Housing  
9 Council of Oregon, conducted testing that established Respondent made  
10 distinction or imposed restrictions against individuals based on familial status  
11 when determining terms, conditions or privileges relating to the rental, lease or  
12 occupancy of real property in violation of ORS 659A.421(2)(c) and OAR 839-005-  
13 0205(1)(c).

14  
15 (Ex. X19)

16 3) On or around December 25, 2016, Complainant Moore's ex-husband  
17 broke into her residence and held Complainant Moore and three of her children, "R" age  
18 2, "M" age 11 and "I" age 15, hostage in their home. Her other two children, "D" age 3  
19 and "A" age 13, escaped out of a bedroom window to call local law enforcement.  
20 Complainant Moore's ex-husband was arrested for his actions. (Testimony of  
21 Complainant Moore)

22 4) Through her involvement with the criminal proceeding against her ex-  
23 husband, Complainant Moore was informed that he would be held in county jail until  
24 April 15, 2017. Department of Human Services ("DHS") was involved with the family  
25

1 and told Complainant Moore that she needed to begin to look for new housing, in order  
2 to be out of the residence before her ex-husband was released from jail. The family's  
3 DHS caseworker helped Complainant Moore obtain a monetary grant for domestic  
4 violence victims and obtain assistance with the costs associated with the move.

5 (Testimony of Complainant Moore)

6 5) All five of Complainant Moore's children live with disabilities and  
7 Complainant Moore was advised by her children's' therapists to avoid changing the  
8 children's schools, in order to disrupt their lives as little as possible and provide them  
9 with a sense of stability during the transition. (Testimony of Complainant Moore; Ex.  
10 A10)

11 6) Sometime in January 2017, Complaint Moore saw an ad for Respondent's  
12 triplex on Craigslist. The ad indicated that the unit for rent was "five minutes to schools"  
13 attended by her children and stated that the unit was "available now." Complainant  
14 Moore chose to contact Respondent about the unit for this reason. A map of the area  
15 confirmed the unit was close to her then-residence. (Testimony of Complainant Moore;  
16 Exs. A30 through A33)

17 7) Complainant Moore was very interested in the unit because it would  
18 enable her children to stay in their respective schools. She also liked that the unit had a  
19 fireplace and a backyard, for the children and the family's service dog to play in.  
20  
21 (Testimony of Complainant Moore)

22 8) Complainant Moore called Respondent about the unit. Since Complainant  
23 Moore received financial assistance with housing, she had a number of questions she  
24 was required to ask a prospective landlord, in order to make sure the housing fell within  
25

1 her voucher range. During the course of Complainant Moore's questions, Respondent  
2 asked Complainant Moore if she could pay the security deposit and Complainant Moore  
3 responded that she could because her caseworker would assist her with that.  
4 Respondent also asked Complainant Moore how many children she had; Complainant  
5 Moore responded that she had five children. Respondent replied, "No. I don't rent to  
6 people with children." Respondent listed several reasons she would not rent to  
7 Complainant Moore, including that Respondent experienced migraines and couldn't  
8 handle the loud noises made by children, that children would damage the unit, that  
9 service animals would damage the unit, that she didn't want people living there with  
10 special needs because they would damage the unit and that she did not want to rent to  
11 individuals who received assistance from the State of Oregon. This made Complainant  
12 Moore feel "like the lowest person on the Earth." (Testimony of Complainant Moore)

13  
14 9) On March 3, 2017, after unsuccessfully looking both inside and outside  
15 the area, Complainant Moore tried to speak with Respondent about the unit again. For  
16 the second call, Complainant Moore called from her daughter's phone and did not  
17 immediately mention her children or service animal. Respondent recognized  
18 Complainant Moore's voice and, again, refused to rent to her. Respondent stated  
19 something to the effect of "I recognize you. You're the one with the retards." This made  
20 Complainant Moore very angry. Complainant Moore told Respondent that  
21 Respondent's conduct was illegal and that she intended to contact Complainant FHCO.  
22 Respondent stated that she did not care. Complainant Moore contacted FHCO that  
23 same day. (Testimony of Complainant Moore, Reyes Cano; Ex. A18)  
24  
25

1           10) On March 7, 2018 Mr. Reyes Cano, a representative with Complainant  
2 FHCO, called Respondent to speak with her about Complainant Moore's allegations.  
3 After speaking with Mr. Reyes Cano, Respondent agreed to accept a housing  
4 application from Complainant Moore. Mr. Reyes Cano emailed Complainant Moore the  
5 same day to inform her of his conversation with Respondent. Complainant Moore  
6 immediately called Respondent to try and rent the unit. Respondent, again, refused to  
7 rent to Complainant Moore, based on family status, the disabilities of Complainant  
8 Moore's children and Complainant Moore's source of income. Complainant Moore was  
9 shocked; she did not understand why Respondent would tell Complainant FHCO that  
10 she would accept Complainant Moore's application, only to refuse her again.

11 (Testimony of Reyes Cano, Complainant Moore; Ex. A18)

12           11) Complainant Moore subsequently learned through the Victim Information  
13 and Notification Everyday ("VINE") hotline that her ex-husband would be released from  
14 jail early, due to overcrowding. Complainant Moore immediately packed some bags  
15 with personal items and took her family to her sister's house. During this time, she still  
16 actively looked for housing online and drove around neighborhoods looking for housing.

17 (Testimony of Complainant Moore)

18           12) On or about March 16, 2017, Complainant Moore secured housing in a  
19 four-bedroom unit outside the children's school district.<sup>5</sup> Her new residence has no  
20 washer and dryer attachments in the unit, and she had to sell her washer and dryer to  
21  
22

23 \_\_\_\_\_  
24 <sup>5</sup> At hearing, Complainant testified that she received the VINE notification and immediately moved to her  
25 sister's residence. Given that she testified that her husband was released early from jail, his original  
release date was scheduled for April 15, 2017 and she testified that she was moved out of her sister's  
residence and into her new residence on "the 16<sup>th</sup>," a reasonable inference can be made that she was  
moved into her new residence on or about March 16, 2017.

1 help her afford laundry, for a family of six, at the local laundromat. By contrast,  
2 Respondent's unit had a washer and dryer attachments. There is also not a lot of  
3 storage in the new unit, which means Complainant Moore's room is occupied by most of  
4 the other family members' personal items. Complainant Moore is extremely stressed by  
5 her current living situation and it makes her very anxious. Respondent's unit offered an  
6 oversized single car garage, which could be used for storage. Most distressing for  
7 Complainant Moore is the effect moving to the new residence has placed on her  
8 children. (Testimony of Complainant Moore)

9 13) The family's new residence is outside of her children's school district,  
10 which causes her children significant unhappiness. Since her children's therapists  
11 advised Complainant Moore not to uproot them from their respective schools,  
12 Complainant Moore began spending hours in her vehicle, driving them back and forth.  
13 Complainant Moore's children were affected by Respondent's conduct in the following  
14 ways:  
15

- 16 a. "R" was largely unaffected, given her young age of 2 years old.<sup>6</sup>
- 17 b. "D," then-age 4, had to be removed from his pre-Kindergarten  
18 program in the family's old school district. "D" lives with Autism and experiences  
19 Sensory Processing Disorder. As a result of his abrupt removal from his pre-  
20 Kindergarten program, "D" lost his friends and connections at the program; he  
21 became unstable and had to be put in occupational therapy.

22  
23  
24 <sup>6</sup> Complainant Moore testified that "R" suffers from a heart condition that makes living in the new  
25 residence challenging, given the age of the building. Complainant Moore testified that "R" is greatly  
affected by extreme temperatures, because of her condition, and the new residence is poorly insulated.  
There was not sufficient evidence, however, that Respondent's unit would have better addressed this  
health condition.

1 c. "M," age 11, was allowed to remain at his middle school but now  
2 has to take a two hour, roundtrip, bus ride to get there. "M" gets up at 5:00 a.m.  
3 in order to catch his bus.

4 d. "A," age 13, was able to finish middle school but had to begin high  
5 school in her new school district. "A" lost contact with her middle school friends  
6 and became extremely depressed. She was placed on medication and ultimately  
7 had to be homeschooled.

8 e. "I," age 15, experienced significant stress after the December 2016  
9 incident involving Complainant's ex-husband. The stress regarding the family's  
10 lack of housing aggravated this stress and "I" harmed herself. "I" had to be  
11 removed from school and also lost access to her friends and connections there.  
12 Complainant Moore was visibly shaken and crying during her testimony about "I."

13  
14 (Testimony of Complainant; Ex. A30)

15 14) During the course of BOLI's investigation, Respondent's husband wrote a  
16 letter to BOLI Civil Rights Investigator Perdue, stating:

17 "The reason for refusal to rent to Ms. Moore was indeed the five disabled children  
18 and her obvious mental disability.

18 \* \* \* \* \*

19 "Ms. Moore obviously has mental problems. If a rational person had one  
20 disabled child, he or she would consider that one enough – why bring four more  
unfortunate lives into this world?"

21 Respondent joined her husband in the letter, signing it as true "under penalty of perjury."  
22 This excerpt of Respondent's statement was included within the Notice of Substantial  
23 Evidence which was later provided to Complainant Moore. The statement "really stood  
24 out in [Complainant Moore's] mind" and "bothered [her] for quite a while." Complainant  
25

1 Moore was "derailed" by the statement and had to go on medication for anxiety.  
2 (Testimony of Perdue, Complainant Moore; Ex. A7, A28)

3 15) On March 7, 2017 at 3:20 p.m., a tester for Complainant FHCO called  
4 Respondent seeking information about the rental unit. The tester told Respondent that  
5 she had an assistance animal. Respondent told the tester that she did not allow pets,  
6 despite Complainant FHCO's tester explaining that she had a doctor's note for the  
7 animal. (Testimony of Callaghan; Ex. A11)

8 16) On March 7, 2017 at 3:50 p.m., a second tester for Complainant FHCO  
9 called Respondent seeking information about the rental unit. The second tester told  
10 Respondent that she had five young male children and was looking for a place as soon  
11 as possible. Respondent told the second tester that the rental unit was not suitable for  
12 her because Respondent and her husband lived next door and her husband needed a  
13 quiet atmosphere. (Testimony of Callaghan; Ex. A11)

14 17) On March 7, 2017 at 4:30 p.m., a third tester for Complainant FHCO  
15 called Respondent seeking information about the rental unit. The third tester told  
16 Respondent that she and her husband were interested in the unit. Respondent told the  
17 third tester that she would take her application. (Testimony of Callaghan; Ex. A11)

18 18) Complainant FHCO diverted a total of \$7,669.00 in resources to this case.  
19 Specifically, it's costs consisted of \$4,376.00 in case management resources, \$1,500.00  
20 in testing costs and \$1,794 in business costs over and above staff resources.<sup>7</sup>  
21 (Testimony of Callaghan; Ex. A29)

22 *Credibility Findings*  
23

24  
25 <sup>7</sup> Ms. Callaghan testified that this amount consisted of "indirect costs, such as rent, utilities, the Xerox machine, paper supplies \*\*\*"

1           19) BOLI Civil Rights Investigator Mimi Perdue's testimony was credible and  
2 the forum credited her testimony in its entirety. (Testimony of Perdue)

3           20) Isidro Reyes Cano's testimony was credible and the forum credited his  
4 testimony in its entirety. (Testimony of Reyes Cano)

5           21) Hannah Callaghan's testimony was credible and the forum credited her  
6 testimony in its entirety. (Testimony of Callaghan)

7           22) Complainant Valerie Moore's testimony was credible and the forum  
8 credited her testimony in its entirety. (Testimony of Complainant Moore)

9           23) Carol McBee testified about her personal opinion of Respondent's  
10 character. Such evidence is not relevant to damages or the mitigation of damages, as  
11 discussed more fully in the opinion that follows. The forum did not give any weight to  
12 Ms. McBee's testimony. (Testimony of McBee)

13           24) Respondent's testimony was also primarily focused on offering evidence  
14 of her character and was, therefore, largely irrelevant to the issue before the forum.  
15 Respondent also testified that she did not make derogatory remarks about Complainant  
16 Moore's children. This testimony was inconsistent with a letter, discussed in Proposed  
17 Findings of Fact – The Merits #14, in which Respondent joined her husband in making  
18 derogatory comments about both Complainant Moore and her children. Respondent's  
19 testimony on these issues was irrelevant and not credible; the forum gave it no weight.  
20 Respondent also gave some testimony regarding her limited financial resources. This  
21 was relevant to the forum's consideration of civil penalties and the forum gave it due  
22 weight for that purpose. (Testimony of Respondent; Ex. A7)

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**CONCLUSIONS OF LAW**

1           1)     At all times material herein, Complainant Moore and her children were  
2 "purchasers" and the subject property was a "dwelling" as defined in ORS  
3 659A.145(1)(a) and (b) and ORS 659A.421(a) and (b). At all times material herein,  
4 Complainant Moore and her children were "aggrieved persons" as defined in ORS  
5 659A.820(1) and OAR 839-005-0200(1).

6           2)     At all times material herein, Complainant FHCO was an "aggrieved  
7 person" as defined in ORS 659A.820(1), OAR 839-005-0003(1) and OAR 839-005-  
8 0200(1).

9           3)     At all times material herein, Respondent was a "person" as defined in  
10 ORS 659A.001(9).

11           4)     In Case No. 65-18, Respondent violated: ORS 659A.145(2)(a) and OAR  
12 839-005-0205(1)(a); ORS 659A.145(2)(c) and OAR 839-005-0205(1)(c); ORS  
13 659A.145(2)(g) and OAR 839-005-0220(2)(c); ORS 659A.421(2)(a) and OAR 839-005-  
14 0205(1)(a); ORS 659A.421(2)(c) and OAR 839-005-0205(1)(c).

15           5)     In Case No. 66-18, Respondent violated: ORS 659A.145(2)(a) and OAR  
16 839-005-0205(1)(a); ORS 659A.145(2)(c) and OAR 839-0050205(1)(c); ORS  
17 659A.145(2)(g); OAR 839-005-0220(2)(c); ORS 659A.421(2)(a) and OAR 839-005-  
18 0205(1)(a); ORS 659A.421(2)(c) and OAR 839-005-0205(1)(c).

19           6)     The Commissioner of the Bureau of Labor and Industries has jurisdiction  
20 of the persons and of the subject matter herein and the authority to eliminate the effects  
21 of unlawful discrimination in real property transactions. ORS 659A.800 to ORS  
22 659A.865.  
23  
24  
25



1 federal housing laws. In its Formal Charges, filed on behalf of Complainant FHCO, the  
2 Agency sought \$7,669.00 in economic damages for the diversion of resources and  
3 \$11,000.00 in civil penalties. The Agency also sought injunctive relief, in the form of a  
4 requirement that Respondent create and implement a reasonable accommodation  
5 policy at any and all of her rental properties.

## 6 DAMAGES

### 7 *Complainant Moore – Emotional Distress Damages*

8 Pursuant to ORS 659A.850, the Commissioner of the Bureau of Labor and  
9 Industries has the authority to award money damages for emotional, mental, and  
10 physical suffering, and fashion a remedy adequate to eliminate the effects of unlawful  
11 employment practices. *In the Matter of Frehoo Inc.*, 36 BOLI 42, 71 (2017).<sup>8</sup>  
12

13 “In determining an award for emotional and mental suffering, the forum considers  
14 the type of discriminatory conduct, and the duration, frequency, and severity of  
15 the conduct. It also considers the type and duration of the mental distress and  
16 the vulnerability of the complainant. The actual amount depends on the facts  
17 presented by each complainant. A complainant’s testimony, if believed, is  
18 sufficient to support a claim for mental suffering damages.”

19 *In the Matter of Blue Gryphon, LLC, and Flora Turnbull*, 34 BOLI 216, 238-39 (2015).

20 The statutory authority and forum precedent firmly root the amount of damages in the  
21 harm experienced by an individual complainant. Although the amount of damages may  
22 arguably be mitigated by some unaffiliated variable causing unrelated harm to the  
23 complainant, the awarded amount and any mitigation thereto is tied exclusively to the  
24 complainant’s harm. A respondent’s *intent* to cause a particular level of harm is  
25 irrelevant. Further, “[t]his forum has long held that respondents must take complainants

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<sup>8</sup> Although *In the Matter of Frehoo, Inc.* was a case involving sexual harassment in the workplace, the same statutory remedies apply to cases involving housing discrimination.

1 'as they find them,'" meaning a respondent's unlawful conduct may cause more harm to  
2 a particular complainant than to others. *In the Matter of Kara Johnson dba Duck Stop*  
3 *Market*, 34 BOLI 2, 37 (2014), *aff'd Johnson v. Or. Bureau of Labor & Indus.*, 290  
4 Or.App. 335, 415 P.3d 1071 (Or. App., 2018).

5 In this case, Complainant Moore and her children experienced a terrifying and life  
6 changing event when her ex-husband broke into her residence and held her and her  
7 family hostage. (Finding of Fact – The Merits #3) For Complainant Moore's safety and  
8 the safety of her children, DHS helped her obtain a domestic violence grant and  
9 monetary relief, for costs associated with moving the family to a new home prior to her  
10 ex-husband's release from jail. (Finding of Fact – The Merits #4) This was a vital step  
11 for the safety of the family. Given the particular needs of her children, Complainant  
12 Moore's search was, at first, limited to areas within the children's school district.  
13 (Finding of Fact – The Merits #5) Respondent's rental unit specifically advertised itself  
14 as within close proximity to her children's schools. Complainant Moore was also  
15 attracted to the listing because it had a yard for the children and the family's service dog  
16 to play in. (Finding of Fact – The Merits #6, #7)

17  
18 Knowing that her ex-husband would soon be released from jail, Complainant  
19 Moore called Respondent to ask about the application process for the unit. Respondent  
20 refused to even accept Complainant Moore's application, based on Complainant  
21 Moore's family status, her source of income and because Complainant Moore's children  
22 live with disabilities. Complainant Moore was degraded by Respondent's comments.  
23 (Finding of Fact – The Merits #8) She kept looking, both inside and outside the  
24 children's school district, but she was unsuccessful. With her ex-husband's release  
25

1 drawing closer, Complainant Moore called Respondent again, this time from her  
2 daughter's phone in the hope that Respondent would not recognize her. Respondent,  
3 again, refused her. Respondent stated that she recognized Complainant Moore as "the  
4 one with the retards," referring to Complainant Moore's children, during the call. This  
5 made Complainant Moore very angry. Complainant Moore told Respondent that she  
6 would contact Complainant FHCO. Respondent told Complainant Moore that she did  
7 not care. (Finding of Fact – The Merits #9)

8 Complainant FHCO contacted Respondent shortly thereafter and Respondent  
9 ultimately agreed to accept Complainant Moore's application for the unit. Complainant  
10 Moore's response was immediate; she contacted Respondent the same day she was  
11 notified of Respondent's decision to accept it. During this third contact, however,  
12 Respondent again refused Complainant Moore on the basis of family status, source of  
13 income and the disabilities of Complainant Moore's children. Complainant Moore was  
14 shocked. She did not understand why Respondent would agree to accept her  
15 application, when speaking with Complainant FHCO, only to refuse her for a third time  
16 once in contact with her. Complainant Moore also knew that Respondent's unit had  
17 been advertised from January 2017 to when she saw the ad again, in March 2017.  
18 (Finding of Fact – The Merits #6, #10)

19 Complainant Moore learned soon after Respondent's final refusal that her ex-  
20 husband was going to be released from jail early. While she was able to temporarily  
21 stay with her sister, the pressure to find suitable housing was now building at a fevered  
22 pitch. Complainant Moore found housing on or about March 16, 2017; unfortunately, it  
23 was outside of her children's school district. While inconvenient for any family, this had  
24  
25

1 particularly stressful effects on Complainant Moore. Not only was the new residence,  
2 less than ideal for the family's needs, Complainant Moore began spending hours in her  
3 vehicle driving her children to their respective schools in their old school district.

4 (Finding of Fact – The Merits #12, #13)

5 Complainant Moore suffered extreme distress, as she watched the toll this move  
6 took on her children. Complainant Moore's 4 year-old son had to be removed from his  
7 pre-Kindergarten program, since Complainant Moore could not keep up with getting all  
8 her children to the schools in the old district. As a result of his removal, her son became  
9 unstable and had to be placed in occupational therapy. Complainant Moore's 11 year-  
10 old son remained at his middle school but, based on the move, now had to take a two  
11 hour roundtrip bus ride to get there. At the time of hearing, he was still commuting to  
12 the school, which meant he had to get up at 5:00 a.m., in order to make his bus.  
13 Complainant Moore's 13 year-old daughter finished middle school in the old district, but  
14 had to start in a new district for high school. She lost contact with friends and became  
15 extremely depressed. She had to be placed on medication and homeschooled. The  
16 effects on Complainant Moore's 15 year-old daughter were the most distressing for  
17 Complainant Moore. Complainant Moore's daughter experienced significant stress, as  
18 a result of the incident in their home during December 2016. The pressure regarding  
19 the family's lack of housing aggravated this stress and Complainant cried as she talked  
20 about the fact that "I" ultimately harmed herself, as a result. (Finding of Fact – The  
21 Merits #13) The effects of Respondent's discriminatory conduct on Complainant  
22 Moore's children weighed extremely heavily on Complainant Moore, causing her  
23 significant distress.  
24  
25

1 Complainant Moore was further damaged by Respondent's joint statement with  
2 her husband, to BOLI, about Complainant Moore's family. During the course of BOLI's  
3 investigation, Respondent and her husband submitted a letter to BOLI Civil Rights  
4 Investigator Perdue. In the letter Respondent and her husband stated, "Ms. Moore  
5 obviously has mental problems. If a rational person had one disabled child, he or she  
6 would consider that one enough – why bring four more unfortunate lives into this  
7 world?" This statement "really stood out in [Complainant Moore's] mind" and "bothered  
8 [her] for quite a while." Complainant Moore was "derailed" by it and had to go on  
9 medication for anxiety. (Finding of Fact – The Merits #14)

10 Unfortunately, the concept of individuals living with disabilities being seen as  
11 "less than" is not new. For this reason, both the federal government and individual  
12 states have taken the important step of ensuring that those individuals who fall within a  
13 particular "protected class" are guaranteed the same basic rights and opportunities, as  
14 those outside that particular protected class. Pursuant to Oregon's laws regarding  
15 equal access to housing, "[p]rotected class' means a group of persons distinguished by  
16 race, color, religion, sex, sexual orientation, national origin, marital status, familial  
17 status, source of income or disability."<sup>9</sup> ORS 659A.425(1)(b). In regard to individuals  
18 living with disabilities, the State of Oregon has specifically made it a policy to "guarantee  
19 [those] individuals the fullest possible participation in the social and economic life of the  
20 state, \* \* \* to participate in and receive the benefits of the services, programs and  
21 activities of state government and to secure housing accommodations of their choice,  
22 without discrimination on the basis of disability." ORS 659A.103(1). Oregon law,  
23  
24

25 \_\_\_\_\_  
<sup>9</sup> It is worth noting that *all* individuals fall into several of these protected classes.

1 therefore, expressly acknowledges that the societal acceptance of those that fall within  
2 these protected classes is lacking in some important areas. That is to say, mere  
3 *participation* in social and economic life requires protection.

4 In this case, a mother and her five children were denied the ability to participate  
5 in a process that many Oregonians take for granted. There was no dispute as to the  
6 reasons why her application was refused. Respondent believed that Complainant  
7 Moore should not participate in this basic act because of Complainant Moore's family  
8 status, her source of income and her children's disabilities. The cumulative effect of the  
9 different ways in which Respondent discriminated against Complainant Moore  
10 magnified the impact of the violations, as well as the hopelessness of finding housing  
11 when there were so many things "wrong" with Complainant Moore and her family.  
12 While there is no evidence that Respondent could have foreseen the damage her  
13 discriminatory conduct would have on Complainant Moore, it ultimately did affect her in  
14 a very significant way. As previously stated, the forum "has consistently held in prior  
15 final orders when calculating mental suffering damage awards that respondents must  
16 take complainants 'as they find them.'" *In the Matter of Kenneth Wallstrom*, 32 BOLI 63,  
17 90 (2012). Respondent offered no evidence of any other sources of harm that arguably  
18 mitigated Complainant Moore's damages.

19  
20 Complainant Moore repeatedly attempted to apply to rent Respondent's  
21 townhouse, and was refused on three separate occasions by Respondent. As a result,  
22 Complainant Moore experienced significant emotional distress, from a period of  
23 sometime in January 2017 up and until the time of hearing. Her significant harm was  
24 the direct result of Respondent's conduct. A review of prior Final Orders indicates that,  
25

1 based on the level of harm experienced by Complainant Moore, the damages sought by  
2 the Agency are not commensurate with her suffering and should be increased. *In the*  
3 *Matter of Leo Thomas Ryder dba Leo's BBQ Bar & Grill*, 34 BOLI 67, 77 (2015).

4 In *Crystal Springs*, a complainant was subjected to sexual harassment by her  
5 employer for approximately three months, ultimately leading to her constructive  
6 discharge. Aside from the blatant discrimination she endured during the course of  
7 employment, the complainant also endured monetary struggles, due to her discharge,  
8 humiliation and embarrassment and a strain on her relationships. The complainant was  
9 awarded \$150,000.00 in emotional distress damages. *In the Matter of Crystal Springs*  
10 *Landscapes, Inc. et al*, 32 BOLI 144, 170-172 (2012).

11 In *Navex Global, Inc.*, a complainant was awarded \$120,000.00 in emotional  
12 distress damages, after her employer terminated her for complying with a mandatory  
13 jury summons. The complainant's preexisting anxiety condition was aggravated and  
14 she was forced to increase her medication. The complainant also cared for her teenage  
15 brother and experienced anxiety when considering her role as primary breadwinner for  
16 the family. *In the Matter of Navex Global, Inc.*, 36 BOLI 200, 236 (2018).

17 Finally, in *Andrew W. Engel, DMD, PC, et al*, a complainant was awarded  
18 \$325,000.00 in emotional distress damages, based on the harm she suffered after her  
19 employer constructively discharged her due to her religious beliefs. The complainant  
20 received medication for anxiety, had significant concerns about her monetary security  
21 and was forced to move out-of-state, and away from her teenage daughter, for her new  
22 job. While the complainant was able to see her daughter on school breaks, the lengthy  
23 separation of parent and child weighed heavily on the forum's decision to award  
24  
25

1 \$325,000.00 in emotional distress damages.<sup>10</sup> *In the Matter of Andrew W. Engel, DMD,*  
2 *PC, et al*, 32 BOLI 94, 140-141 (2012). While Complainant Moore was not separated  
3 from her children, she certainly experienced unusual and significant stress due to the  
4 effects Respondent's unlawful conduct had on them, in addition to her own anxiety  
5 about the situation. The forum finds that, given the particular facts of this case and the  
6 significant distress Complainant Moore experienced as a result of Respondent's  
7 conduct, \$300,000.00 is an appropriate award of damages.

8 *Complainant FHCO – Economic Damages*

9 During the course of Complainant FHCO's involvement with the case, the  
10 organization made three different test calls to Respondent, contacted Respondent  
11 directly about Complainant Moore's allegations and incurred \$7,669.00 in business  
12 costs, over and above staff resources. (Findings of Fact – The Merits #15-#17) "This  
13 forum has consistently held that out-of-pocket expenses that are directly attributable to  
14 an unlawful practice are recoverable from a respondent as a means to eliminate the  
15 effects of any unlawful practice found." *In the Matter of Crystal Springs Landscapes,*  
16 *Inc.*, 32 BOLI 144, 169 (2012). Ms. Callaghan credibly testified about the expenses  
17 incurred by Complainant FHCO. The forum awards \$7,669.00 in out-of-pocket  
18 expenses to Complainant FHCO.  
19

20 *Civil Penalties to the Agency*

21 The Agency sought a total of \$22,000.00 in civil penalties against Respondent.  
22 Pursuant to ORS 659A.855(2)(a), in cases involving housing discrimination, the  
23 Commissioner may assess a civil penalty, in an amount not to exceed \$11,000.00, in  
24

25 <sup>10</sup> The complainant began working in Texas in November of 2009 and the hearing took place in  
December 2011.

1 addition to other equitable relief. Since Oregon housing law is modeled after federal  
2 housing law, the forum looks to federal authority to assist in its interpretation of Oregon  
3 Law.

4 “[T]he Code of Federal Regulations sets out specific guidelines for an ALJ to use  
5 when evaluating the appropriate amount of civil penalty. 24 CFR §180.671. In  
6 pertinent part, it states:

7 ‘(c) Factors for consideration by ALJ. (1) In determining the amount of the civil  
8 penalty to be assessed against any respondent for each separate and distinct  
9 discriminatory housing practice the respondent committed, the ALJ shall consider  
10 the following six (6) factors:

11 ‘(i) Whether that respondent has previously been adjudged to have committed  
12 unlawful housing discrimination;

13 ‘(ii) That respondent's financial resources;

14 ‘(iii) The nature and circumstances of the violation;

15 ‘(iv) The degree of that respondent's culpability;

16 ‘(v) The goal of deterrence; and

17 ‘(vi) Other matters as justice may require.’

18 “In the absence of any direction from the Oregon legislature or the Agency  
19 through promulgation of an administrative rule, the forum takes guidance from  
20 the criteria above to determine the appropriate civil penalty, if any, to be  
21 assessed against Respondent for its violation of [Oregon’s housing discrimination  
22 laws].”

23 *In the Matter of Kenneth Walstrom*, 32 BOLI 63, 91 (2012). There was no evidence that  
24 Respondent has previously been adjudged to have committed unlawful housing  
25 discrimination. While Respondent’s testimony regarding her limited financial resources  
was not relevant for the forum’s consideration of emotional distress damages, it is  
relevant for consideration of the forum’s award of civil penalties in this matter. (Finding  
of Fact – The Merits #24) The nature and circumstances of the violation in this case  
resulted in significant harm, however, Respondent was not the sole actor in the

1 discriminatory conduct. For instance, Respondent's late husband wrote the letter  
2 referring to Complainant Moore's children as "unfortunate lives." (Finding of Fact – The  
3 Merits #14) Given Respondent's limited financial resources and the damage awards she  
4 is already facing, the forum finds no practical deterrent effect will be gained by the  
5 award of civil penalties. The forum declines to award civil penalties in this matter.

6 **ADDITIONAL RELIEF REQUESTED BY THE AGENCY**

7 The Agency sought a cease and desist order against Respondent requiring her  
8 to stop committing any unlawful practices the forum concludes occurred. BOLI's  
9 Commissioner is authorized to issue an appropriate cease and desist order reasonably  
10 calculated to eliminate the effects of any unlawful practice found. ORS 659A.850(4).  
11 Among other things, that may include requiring a respondent to:  
12

13 "(a) Perform an act or series of acts designated in the order that are reasonably  
14 calculated to:

15 "(A) Carry out the purposes of this chapter;

16 "(B) Eliminate the effects of the unlawful practice that the respondent is  
17 found to have engaged in, including but not limited to paying an  
18 award of actual damages suffered by the complainant and complying  
19 with injunctive or other equitable relief; and

20 "(C) Protect the rights of the complainant and other persons similarly  
21 situated[.]"

22 *Id.* The forum finds the Agency's requested cease and desist order to be appropriate  
23 relief in this case.

24 The Agency also requested that Respondent be trained on the correct application  
25 of state and federal housing laws and be required to create and implement a reasonable  
accommodation policy at any and all of her rental properties. If Respondent continues  
to rent or lease real property, this remedy is appropriate.

1 **AGENCY'S EXCEPTIONS**

2 The Agency submitted two exceptions to the Proposed Order:

3 *"Exception # 1: The Proposed Order states that 'Respondent offered no evidence*  
4 *of any other sources of harm that arguably mitigated Complainant Moore's*  
*damages.' (Proposed Order 'PO', Page 27, Lines 8-9)."*

5 (Emphasis in original) The Agency suggested the above sentence be deleted in the  
6 Final Order as it "appears to be at odds with the holding that respondents must take  
7 complainants 'as they find them'" and "appears to invite Respondent(s) to have free  
8 reign to inquire about alternate stressors that may be affecting, or have affected, a  
9 Complainant who alleges mental or emotional distress damages \* \* \*". (Agency's  
10 Exceptions, p. 1-2)

11  
12 When the Agency is seeking emotional distress damages in its Formal Charges,  
13 it bears the burden of proof on the issue of harm to the complainant or aggrieved  
14 person. *See In the Matter of Melissa and Aaron Klein dba Sweetcakes by Melissa*, 34  
15 BOLI 102 (2015), *aff'd Klein v. Or. Bureau of Labor & Indus.*, 289 Or App 507, 410 P.3d  
16 1051 (2017), *rev den* 363 Or 121, 224 (2018), *petition for cert. filed* (U.S. October 26,  
17 2018) (No. 18-547). A respondent may choose to then rebut that evidence by  
18 demonstrating that harm to the complainant was mitigated by another source of harm,  
19 or deny that there was any harm to the complainant at all. The forum's precedent that a  
20 respondent must "take a complainant as they find them" is not at odds with this  
21 concept.

22  
23 For instance, there are situations in which a complainant may have experienced  
24 significant harm from a source other than the respondent. *See In the Matter of Frehoo,*  
25 *Inc., dba Stars Cabaret & Steakhouse*, 36 BOLI 42, 113-114 (2017), *appeal*

1 pending. However, if the Agency can prove that the harm caused by a respondent's  
2 conduct was separate and distinct from that unrelated harm or, perhaps, that a  
3 respondent's conduct caused *more* harm to the complainant than would be typical, due  
4 to a complainant's particular vulnerability caused by the other harm, a respondent must  
5 take the complainant "as they find them." That is to say, a respondent does not get a  
6 pass for the severity of their own conduct simply because a complainant experienced  
7 harm from another source, as long as the Agency can prove that respondent's conduct,  
8 in particular, caused a specific amount of harm to the complainant.

9 Although not the case here, when the Agency cannot demonstrate the particular  
10 harm caused by a respondent, the respondent may choose to argue that the harm is  
11 mitigated by another source or that there was no harm at all. Such argument is  
12 consistent with the forum's precedent. See *In the Matter of Emerald Steel Fabricators,*  
13 *Inc.*, 27 BOLI 242, 278 (2006), *aff'd* 220 Or App 423, 186 P3d 300 (2008), *reversed*  
14 *other grounds* 348 Or 159, 230 P3d 518 (2010) (the forum considered that complainant  
15 already suffered from the same symptoms, at a reduced level, prior to the harm caused  
16 by respondent, in the calculation of its damage award); See *In the Matter of Oregon*  
17 *Truck Painting et al*, 37 BOLI \_\_\_, \_\_ (2018) (the forum noted that the complainant  
18 testified about a separate harm that was caused by matters not at issue in the case; the  
19 separate harm was not used in the calculation of the forum's award). The Agency's  
20 concern about a respondent having "free reign" to inquire about alternate sources of  
21 harm is not well taken. Guidance regarding what is considered relevant evidence on  
22 the issue of harm is well established through the forum's precedent. Further, both the  
23 Agency and respondents are given the opportunity to argue the point, as it is routinely  
24  
25

1 the subject of motions to compel discovery filed in cases involving emotional distress  
2 damages, as well as objections at hearing. The Agency's Exception # 1 is DENIED.

3 *"Exception # 2: The Proposed Order states in relevant part the following: 'the*  
4 *Commissioner of the Bureau of Labor and Industries hereby orders Respondent*  
5 *Hye. I. Dickinson, as long as she rents or leases real property, to be trained on*  
6 *the correct application of state and federal housing laws by the Bureau of Labor*  
7 *and Industries Technical Assistance Program or an alternate training program*  
8 *agreeable to the Agency, at her own expense, and to create and implement a*  
9 *reasonable accommodation policy, approved by the Agency, at any and all of her*  
10 *lease or rental properties.'* (PO, Page 33, Lines 7-14).

11 (Emphasis in original) (Agency's Exceptions, p. 2) The Agency requested that the  
12 language be amended to: (1) specify the time by which the training and policy shall be  
13 completed, (2) specify that the training be conducted by an agency or entity acceptable  
14 to the Agency and (3) provide the Agency with a copy of the policy. The Agency  
15 requested that Respondent be ordered to complete the training within 180 days of the  
16 date of issuance of the Final Order, and that Respondent be ordered to implement and  
17 post a policy within 120 days of the date of issuance of the Final Order.

18 Since the language as written already states that the training shall be conducted  
19 by either the Agency's Technical Assistance Program "or an alternate training program  
20 agreeable to the Agency \* \* \*" and that Respondent must "create and implement a  
21 reasonable accommodation policy, approved by the Agency \* \* \*", the Agency's second  
22 and third amendments are unnecessary. (Emphasis added) The Agency's suggested  
23 time requirements, however, are necessary and reasonable. The Agency's Exception #  
24 2 is GRANTED in part and DENIED in part.

## 25 **RESPONDENT'S EXCEPTIONS**

Respondent also submitted two exceptions to the Proposed Order:

1 "1. The ALJ erred in failing to make any findings related to culpability of  
Respondent, vis-à-vis culpability of her deceased husband."

2 Respondent argued that the forum "erred in imputing the actions of Mr. Dickinson to  
3 Respondent, who the evidence showed did not bear any discriminatory feelings, and  
4 who at most merely demurely stood by her husband in his final days." (Respondent's  
5 Exceptions, p. 1-2)

6 Respondent argued that the letter sent to BOLI Civil Rights Investigator Perdue,  
7 and referenced in the Proposed Order as a source of Complainant Moore's distress,  
8 was authored by the deceased Mr. Dickinson, not Respondent. However, the forum  
9 noted this fact in Finding of Fact – The Merits #14. Respondent joined in her husband's  
10 letter, signing it as true "under penalty of perjury." Her participation in the letter was at  
11 odds with her subsequent denial of making extremely derogatory remarks about  
12 Complainant Moore's children. As such, the forum did not find her testimony credible  
13 on that issue. Complainant Moore's interactions about the rental unit occurred with  
14 Respondent, and the denials of Complainant Moore's application, based on  
15 discriminatory bases, came from Respondent. Respondent's first Exception is DENIED.  
16

17 "2. The ALJ fundamentally erred in ignoring Oregon policy on homelessness, and  
18 making an excessive award under the circumstances."

19 In support of her second exception, Respondent argued:

20 "Respondent is a person of color, which was not addressed in the ALJ's  
21 findings. Most troubling, in her findings, the ALJ effectively renders Respondent  
22 homeless. As evident during the hearing, Respondent is of limited means,  
23 represented by *pro bono* counsel, and whose livelihood depends upon the rental  
income from the property at issue – her only source of income. This evidence  
was uncontested. \* \* \*

24 "The espoused public policy of the State of Oregon is to protect communities of  
25 color, low-income families, and other vulnerable populations with reasonable  
protections to help people keep their homes, and keep communities intact. \* \* \*

1 "Here the ALJ's remedy is excessive, and runs contrary to existing governmental  
policy in that it effectively renders Respondent homeless. \* \* \*

2 (Respondent's Exceptions, p. 2-3)

3 Respondent did not contest liability in this case, nor did she object to the exhibits  
4 offered at hearing. In consideration of the amount of damages awarded, the forum  
5 relied upon the testimony it found to be credible, the documentary evidence taken into  
6 the record and the forum's precedent of comparable awards. As stated above, statutory  
7 authority and forum precedent firmly root the amount of damages in the harm  
8 experienced by an individual complainant. Circumstances or particular facts about a  
9 respondent are not relevant to the forum's calculation of an award. However, the forum  
10 did consider Respondent's limited financial resources when determining that no civil  
11 penalties should be awarded in this matter. Respondent's second Exception is  
12 DENIED.  
13

14 **ORDER**

15 A. NOW, THEREFORE, as authorized by ORS 659A.850(2) and ORS  
16 659A.850(4), and to eliminate the effects of **Respondent's** violations of ORS  
17 659A.145(2)(a) and OAR 839-005-0205(1)(a), ORS 659A.145(2)(c) and OAR 839-005-  
18 0205(1)(c), ORS 659A.145(2)(g) and OAR 839-005-0220(2)(c), ORS 659A.421(2)(a)  
19 and OAR 839-005-0205(1)(a), ORS 659A.421(2)(c) and OAR 839-0050205( 1)(c), and  
20 as payment of the damages awarded, the Commissioner of the Bureau of Labor and  
21 Industries hereby orders **Respondent Hye I. Dickinson**, to deliver to the Administrative  
22 Prosecution Unit of the Bureau of Labor and Industries, 1045 State Office Building, 800  
23 NE Oregon Street, Portland, Oregon 97232-2180, a certified check payable to the  
24 Bureau of Labor and Industries in trust for Complainant **Valerie Moore** in the amount of  
25

1           1)     THREE HUNDRED THOUSAND DOLLARS and ZERO CENTS  
2     (\$300,000.00) representing emotional distress damages Valerie Moore incurred  
3     as a result of Respondent's unlawful practices; plus,

4           2)     Interest at the legal rate on the sum of THREE HUNDRED  
5     THOUSAND DOLLARS and ZERO CENTS (\$300,000.00) from the date the  
6     Final Order is issued until paid.

7     B.     NOW, THEREFORE, as authorized by ORS 659A.850(2) and ORS  
8     659A.850(4), and to eliminate the effects of **Respondent's** violations of ORS  
9     659A.145(2)(a) and OAR 839-005-0205(1)(a), ORS 659A.145(2)(c) and OAR 839-005-  
10    0205(1)(c), ORS 659A.145(2)(g) and OAR 839-005-0220(2)(c), ORS 659A.421(2)(a)  
11    and OAR 839-005-0205(1)(a), ORS 659A.421(2)(c) and OAR 839-0050205( 1)(c), and  
12    as payment of the damages awarded, the Commissioner of the Bureau of Labor and  
13    Industries hereby orders **Respondent Hye I. Dickinson**, to deliver to the Administrative  
14    Prosecution Unit of the Bureau of Labor and Industries, 1045 State Office Building, 800  
15    NE Oregon Street, Portland, Oregon 97232-2180, a certified check payable to the  
16    Bureau of Labor and Industries in trust for Complainant **Fair Housing Council of  
17    Oregon** in the amount of:

18           1)     SEVEN THOUSAND SIX HUNDRED AND SIXTY-NINE DOLLARS  
19     and ZERO CENTS (\$7,669.00), representing damages for out-of-pocket  
20     expenses incurred by Fair Housing Council of Oregon as a result of  
21     Respondent's unlawful practices; plus,

22           2)     Interest at the legal rate on the sum of SEVEN THOUSAND SIX  
23     HUNDRED AND SIXTY-NINE DOLLARS and ZERO CENTS (\$7,669.00) from  
24     the date the Final Order is issued until paid.

25     C.     NOW, THEREFORE, as authorized by ORS 659A.850(2) and ORS  
26     659A.850(4), the Commissioner of the Bureau of Labor and Industries hereby orders  
27     **Respondent Hye I. Dickinson** to cease and desist from unlawfully discrimination,  
28     pursuant to ORS 659A.145 and ORS 659A.421.

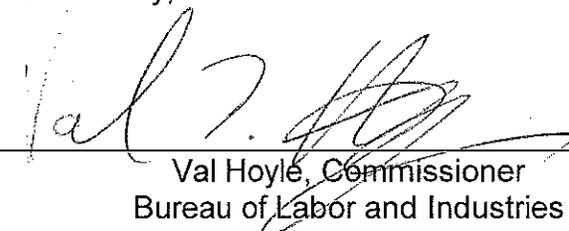
1 D. NOW, THEREFORE, as authorized by ORS 659A.850(2) and ORS  
2 659A.850(4), the Commissioner of the Bureau of Labor and Industries hereby orders  
3 **Respondent Hye I. Dickinson**, as long as she rents or leases real property, to be  
4 trained on the correct application of state and federal housing laws by the Bureau of  
5 Labor and Industries Technical Assistance Program or an alternate training program  
6 agreeable to the Agency, at her own expense, and to create and implement a  
7 reasonable accommodation policy, approved by the Agency, at any and all of her lease  
8 or rental properties.

9 1) Respondent shall provide proof of completion of the training to the  
10 Agency's Administrative Prosecution Unit no later than 180 days from the date of  
11 issuance of this Final Order.

12 2) Respondent shall implement and post a reasonable  
13 accommodation policy, approved by the Agency's Administrative Prosecution  
14 Unit, at any and all of her lease rental properties no later than 120 days from the  
15 date of issuance of this Final Order.

16 3) Respondent shall provide an initial draft of said policy to the  
17 Agency's Administrative Prosecution Unit no later than 45 days from the date of  
18 issuance of this Final Order, unless a later date within 120 days from the  
19 issuance of this Final Order is agreed upon by the Agency and Respondent.

20 DATED this 12<sup>th</sup> of February, 2019.

21   
22 \_\_\_\_\_  
23 Val Hoyle, Commissioner  
24 Bureau of Labor and Industries

25 ISSUED ON: February 12, 2019