

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:

**4R's Associates LLC dba  
Arsenault Structural Moving  
Systems and Christopher D.  
Arsenault aka Chris Arsenault,**

Respondents.

Case No. 75-19

**FINDINGS OF FACT  
CONCLUSIONS OF LAW  
OPINION  
ORDER**

#### SYNOPSIS

The Agency established that 4R's Associates LLC dba Arsenault Structural Moving Systems ("4R's") acting through Christopher Arsenault aka Chris Arsenault, its President and Registered Agent, engaged in unlawful employment actions by discriminating against and/or discharging Matthew Long after he requested payment of wages owed to him and advised that he believed the failure to pay him was a violation of state law. The forum awarded Long \$34,920 in lost wages and \$10,000 in emotional, mental, and physical suffering damages. The forum also required Arsenault and 4R's managers and supervisors to undergo approved training on unlawful harassment and discrimination in the workplace.

The above-entitled case came on regularly for hearing before Kari Furnanz, designated as Administrative Law Judge ("ALJ") by Val Hoyle, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on October 6, 2020, via video conference.

The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by Administrative Prosecutor Adam Jeffries, an employee of the Agency.

The Agency called Matthew Long, Senior Investigator Omar Gendarilla, Civil Rights Division, and Richard Ray Kilbury, as witnesses.

The forum received into evidence: (a) Administrative exhibits X1 through X8 and (b) Agency exhibits A1 through A16.

Having fully considered the entire record in this matter, I, Val Hoyle, Commissioner of the Bureau of Labor and Industries, hereby make the following Findings of Fact (Procedural and on the Merits), Conclusions of Law, Opinion, and Order.

## **FINDINGS OF FACT – PROCEDURAL**

1) On July 9, 2018, Long filed a complaint with the Agency's Civil Rights Division alleging unlawful employment practices in that Respondent retaliated against and discharged his employment after Long inquired about Respondent's failure to timely pay him wages earned. (Ex. X1)

2) On November 15, 2018, Long filed an Amended Complaint naming Christopher Arsenault as an aider and abettor pursuant to ORS 659A.030(1)(g). (Ex. A9)

3) On April 1, 2019, the Agency's Civil Rights Division issued a Notice of Substantial Evidence Determination ("SED") in which it found substantial evidence of the following unlawful employment actions:

- Termination of Long's employment because he made a wage claim inquiry in violation of ORS 652.355
- Termination of Long's employment in retaliation for making a wage inquiry in violation of ORS 653.060
- Discrimination against Long for applying for workers' compensation benefits in violation of ORS 659A.040.

(Ex. A14)

1           4) On April 16, 2020, the forum issued a Notice of Hearing to Respondent,  
2 the Agency, and Long stating the time and place of the hearing as October 6, 2020,  
3 beginning at 9:30 a.m., at the Workers Compensation Board, 20310 Empire Avenue  
4 A101, Bend, OR 97703. Together with the Notice of Hearing, the forum sent a copy of  
5 the Agency's Formal Charges, a document entitled "Summary of Contested Case Rights  
6 and Procedures" containing the information required by ORS 183.413, a document  
7 entitled "Servicemembers Civil Relief Act (SCRA) Notification," a multi-language notice  
8 explaining the significance of the Notice of Hearing, and a copy of the forum's contested  
9 case hearings rules, OAR 839-050-000 to 839-050-0445. (Ex. X2a – X2i)

10          5) The Formal Charges alleged that Respondent 4R's engaged in an  
11 unlawful employment practice under ORS 652.355(1)(a), (2) and OAR 839-010-  
12 0100(4)(a) pertaining to discrimination because of wage claim; ORS 659A.199(1) and  
13 OAR 839-010-0100(1) pertaining to discrimination or retaliation for employee  
14 whistleblowing; ORS 659A.030(1)(f) and OAR 839-005-0125(1)-(3) pertaining to  
15 discrimination based on opposition to an unlawful practice; and ORS 659A.030(1)(g)  
16 pertaining to aiders and abettors. The Formal Charges sought damages for physical,  
17 mental, and emotional distress in the amount of "at least \$10,000.00" and "[l]ost wages  
18 in an amount estimated to be at least \$3,328.00." The Formal Charges also asked that  
19 Respondent be trained, at their expense, "on workplace retaliation and whistleblowing".  
20 The Formal Charges state that the forum's order may include such other relief as  
21 appropriate to eliminate the effects of the unlawful practices found as to Long and  
22 others similarly situated. (Ex. X2b)

23

24

1           6)    On September 10, 2020, the Agency moved for an Order of Default  
2 against Respondent 4R's, based on the failure of Respondent to file an answer to the  
3 Formal Charges. In its motion, the Agency represented that Arsenault, as 4R's  
4 representative under OAR 839-050-0030(1)(a), was personally served with the Notice of  
5 Hearing and Formal Charges on August 19, 2020. No response was filed to the  
6 Agency's motion. (Ex. X6)

7           7)    On September 16, 2020, the forum issued an Interim Order Requiring  
8 Case Summaries to be Filed no later than September 22, 2020. (Ex. X7)

9           8)    On September 21, 2020, the forum issued an interim order, which stated,  
10 in pertinent part:

11           **"Ruling on the Agency's Motion**

12           "On September 10, 2020, the Agency filed a Motion for Default. The  
13 motion requests that the forum find that Respondents 4R's Associates LLC dba  
14 Arsenault Structural Moving Systems ('4R') and Christopher D. Arsenault aka  
Chris Arsenault ('Arsenault') were served and are in default. No responses to the  
motion were filed.

15           "OAR 839-050-0130(4) requires that 'a party must file an answer within 20  
16 days after service of the [Formal Charges].' OAR 839-050-0030(1), describes the  
methods of serving Formal Charges and states, in pertinent part:

17           '\* \* \* [T]he charging document [in a BOLI contested case] will be served  
18 on the party or the party's representative by personal service or by  
registered or certified mail. Service of a charging document is complete  
upon the earlier of:

19           "(a) Receipt by the party or the party's representative; or 20

20           "(b) Mailing when sent by registered or certified mail to the correct  
21 address of the party or the party's representative.'

22           "OAR 839-050-0330(1)(a) provides that default may occur when '[a] party  
fails to file a required response, including \* \* \* an answer, within the time  
specified in the [Formal Charges].'

23           **"RESPONDENT ARSENAULT**

1            "The Agency argues that Arsenault is in default because he was  
2 personally served with the Notice of Hearing and Formal Charges on August 19,  
3 2020, and has failed to file an answer. In support of its motion, the Agency  
4 submitted the Deschutes County Sheriff's Office return of service showing that  
the Notice of Hearing and Formal Charges were personally served on Arsenault.  
(Agency Ex. 1) Accordingly, the forum finds Arsenault to be in default for not filing  
an answer within 20 days of service and the Agency's motion is GRANTED.

5            **"RESPONDENT 4R's**

6            "The Agency asserts that 4R's is in default because Arsenault was  
7 identified as the registered agent of 4R's on the website of Oregon's Secretary of  
8 State and the Agency personally served Arsenault. The registered agent of a  
9 limited liability company such as 4R's 'shall be an agent of the limited liability  
10 company upon whom any process, notice or demand required or permitted by  
law to be served upon the limited liability company may be served.' ORS  
11 63.121(1). Accordingly, personal service upon Arsenault on August 19, 2020,  
constituted service upon 4R's 'representative' under OAR 839-050-0030(1)(a).  
(Agency Exs. 1, 2) Because 4R's has not yet filed an answer, it is in default and  
the Agency's motion as to 4R's is GRANTED.

12            **"Notice of Default**

13            "Relief from default may be granted if 4R's and Arsenault show good  
14 cause, within ten days after the date of this order, for failing to timely file an  
15 answer. A request for relief must be in writing and accompanied by a written  
16 statement, together with appropriate documentation, setting forth the facts  
supporting the claim of good cause. OAR 839-050-0340. Any document filed by  
4R's should be submitted by an attorney or should be filed together with a  
statement indicating that the person filing the document is an authorized  
representative of the party. See OAR 839-050-0110(1), (2)."

17 (Ex. X8)

18            9)        On September 22, 2020, the Agency filed its case summary. (Ex. X8)

19            10)       At the start of hearing, pursuant to ORS 183.417(5), the ALJ orally  
20 informed the participants of the issues to be addressed, the matters to be proved, and  
21 the procedures governing the conduct of the hearing. (Hearing Record)

22            11)       On December 14, 2021, the forum issued an interim order transferring the  
23 case to ALJ Caroline Holien.

12) On February 10, 2022, the ALJ issued a Proposed Order that notified the participants they were entitled to file exceptions to the Proposed Order within ten days of its issuance. The Agency timely filed its exceptions on February 22, 2022.

## **FINDINGS OF FACT – THE MERITS**

1) Respondent 4R's is an inactive Oregon limited liability company. Its business is primarily focused on moving residential structures. Christopher Arsenault, aka Chris Arsenault, is 4R's registered agent. (Ex. X6, Testimony of Long)<sup>1</sup>

2) On or about June 1, 2013, Long began working as a laborer for 4R's, with an hourly wage of \$16.00. Long's hourly wage during the summer of 2017 was \$20.00.

3) Long reported directly to Arsenault. Long often had issues receiving his wages in a timely fashion during the final several months of his employment. Long frequently reminded Arsenault that he owed him wages and that failing to pay him the wages owed to him violated state laws. Arsenault typically responded angrily when Long inquired about the wages owed to him, which intimidated Long and caused him to be reticent to inquire any further. (Testimony of Long)

4) 4R's did not pay wages owed to Long beginning on about April 14, 2017, and continuing through Long's last day of work on September 20, 2017, despite Long having worked approximately 2,966 hours during that period. (Testimony of Long, Exs. A15, A16)

<sup>1</sup> Factual matters alleged in a charging document that are not denied in the answer are deemed admitted by the answering party. *In the Matter of Charlene Marie Anderson dba Domestic Rescue*, 33 BOLI 253, 258 (2014).

1           5) Long noted the total hours he worked each day on a personal calendar.  
2 Long's hours fluctuated depending on the job, but he generally worked an average of 12  
3 hours each day, five or six days per week. (Testimony of Long; Exs. A15; A16)

4           6) On September 19, 2017, a 4R's customer gave Long a check for \$50,000  
5 for work performed by 4R's, which he turned over to Arsenault. (Testimony of Long)

6           7) On September 20, 2017, Long spoke with Arsenault by telephone.  
7 Richard Ray Kilbury was present for Long's portion of the telephone conversation. Long  
8 told Arsenault that it was embarrassing that he was required to borrow money when  
9 Arsenault owed him so much money in wages that had not been paid. Arsenault then  
10 discharged Long. (Testimony of Long)

11           8) Long reported to Kilbury that Arsenault had discharged him at the  
12 conclusion of the telephone conversation. (Testimony of Long, Kilbury)

13           9) Long liked working for 4R's and was not intending to leave the  
14 employment at the time he was discharged. Long had no reason to suspect his  
15 employment with 4R's was in jeopardy at the time of his discharge. (Testimony of Long)

16           10) On January 20, 2018, Long began working as a laborer for Jeld Wen  
17 Windows and Doors ("Jeld Wen") on a full-time basis after having looked for work during  
18 the four months following his termination from 4R's. Long's hourly wage at Jeld Wen  
19 was approximately \$12.75. Long's hourly wage increased to approximately \$16.00 after  
20 he completed his 90-day probationary period. Long worked for Jeld Wen for  
21 approximately two years, with an ending hourly wage of approximately \$16.00.  
22 (Testimony of Long)

11) Long began working in construction in July 2020. Long is currently earning approximately \$20.00 per hour. (Testimony of Long)

12) Long suffered lost wages in the amount of \$34,920 as a result of the termination of his employment at 4R's, which was calculated as follows:

- 2,966 actual hours worked from January 1, through September 20, 2017
- Average hours worked per week from January 1 to September 23, 2017<sup>2</sup> = 78.05 (2,966 hours ÷ 38 weeks = 78.05 hours)
- 18 weeks from September 20, 2017, through January 20, 2018
- 40 hours x \$20 x 18 weeks = \$14,400
- 38 overtime hours x \$30 x 18 weeks = \$20,520
- \$14,400 in regular wages + \$20,520 in overtime wages = \$34,920

13) Respondent's failure to timely pay Long the wages he had earned caused him distress and frustration that was still apparent at the time of hearing. Long continued working without pay with the expectation that Respondent would pay him when it received its next big payment. Long frequently had to contend with Arsenault's angry response when he inquired about the wages owed.

14) Long was devastated and depressed after being discharged for requesting payment of the wages owed to him by 4R's. Long continued to be disturbed and depressed during the four months he was unemployed because of Arsenault's decision to discharge him. (Testimony of Long).

## **CONCLUSIONS OF LAW**

1) At all times material herein, 4R's was an employer as defined in ORS 659A.001(4) and employed Long as a laborer.

2) The actions, statements, and motivations of Arsenault (Long's supervisor)

<sup>2</sup> Long was discharged on Wednesday, September 20, 2017.

1 and the Registered Agent of 4R's) are properly imputed to Respondent. *In the Matter of*  
2 *Leo Thomas Ryder dba Leo's BBQ Bar & Grill*, 34 BOLI 67, 73 (2015).

3 3) 4R's retaliated against Long after he, in good faith, reported information he  
4 believed was evidence of a violation of a state or federal law in violation of ORS  
5 659A.199(1) and OAR 839-010-0100(1).

6 4) 4R's discharged and/or discriminated against Long because of his inquiry  
7 regarding about a wage claim in violation of ORS 652.355(1)(a), (2) and OAR 839-010-  
8 0100(4)(a).

9 5) At all times herein, Arsenault was an individual and a "person" under ORS  
10 659A.001(9)(a) and ORS 659A.030(1)(g).

11 6) Arsenault aided and abetted 4R's in these unlawful employment practices  
12 in violation of ORS 659A.030(1)(g).

13 7) The Commissioner of the Bureau of Labor and Industries has jurisdiction  
14 of the persons and of the subject matter herein. ORS 659A.800 - ORS 659A.865.

15 8) Pursuant to ORS 659A.850(4)(a)(B), the Commissioner of the Bureau of  
16 Labor and Industries has the authority under the facts and circumstances of this case to  
17 award Long back pay resulting from Respondents' unlawful employment actions and  
18 Arsenault's aiding and abetting of those practices, as well as to award damages for  
19 emotional suffering sustained and to issue a cease-and-desist order. The sum of money  
20 awarded, and the other actions required of Respondents in the Order below are an  
21 appropriate exercise of that authority.

## 22 OPINION

23 The Agency alleges 4R's discriminated against Long because he opposed 4R's  
24

1 unlawful employment practice of failing to timely pay him the wages he had earned.  
2 The Agency further alleges that Arsenault, as 4R's Registered Agent, aided and abetted  
3 the unlawful employment practice and ultimately discharged Long for his demand for  
4 wages owed to him. The Agency did not seek wages that 4R's owed to Arsenault for  
5 work performed from January 1, through September 20, 2017.

6 The Agency has the burden of proof to establish the causal link in a civil rights  
7 case and the standard of proof is a preponderance of the evidence. *In the Matter of*  
8 *Kenneth Wallstrom*, 32 BOLI 63, 82-83 (2012). "Preponderance of evidence means  
9 'more probably true than false.'" *In the matter of Horizontal Motorsports, Inc., and*  
10 *Robert S. Duggar, Jr.*, 37 BOLI 205, 215 (2020) (internal citations omitted).

## 11 **LIABILITY OF 4R'S FOR VIOLATION OF ORS 659A.199**

12 The Agency alleges that 4R's violated ORS 659A.199 & OAR 839-010-0100(1)  
13 by terminating Long because he made a good faith report of information that he  
14 believed to be evidence of a violation of state or federal law.

15 ORS 659A.199(1) states, in pertinent part:

16 "It is an unlawful employment practice for an employer to discharge \* \* \*  
17 an employee \* \* \* for the reason that the employee has in good faith  
reported information that the employee believes is evidence of a violation  
of a state or federal law, rule or regulation."

18 OAR 839-010-0100(1) interprets ORS 659A.199 as:

19 "ORS 659A.199 prohibits any employer with one or more employees in  
Oregon from discharging \* \* \* an employee \* \* \* for the reason that the  
employee has in good faith reported information to anyone that the  
employee believes is evidence of a violation of any state or federal law,  
rule or regulation."

20 The "good faith" requirement in ORS 659A.199 is met when the whistleblower  
21 has a reasonable belief that the information reported has occurred and that the  
22

1 information, if proven, constitutes evidence of a violation of a state or federal law, rule or  
2 regulation. *Vision International Petroleum LLC & Hai Chheng Gov*, 37 BOLI 187, 199  
3 (2019).

4 The Agency's *prima facie* case consists of the following elements: (1) 4R's was  
5 an employer as defined by statute; (2) 4R's employed Long; (3) Long, in good faith,  
6 reported information to someone that he believed was evidence of a violation of a state  
7 rule; (4) 4R's discharged Long; (5) 4R's discharged Long because of his report(s).  
8 *Oregon Truck Painting, LLC, On Time Painting, Inc., Richard Bowman, and Amanda M.*  
9 *Marin*, 37 BOLI 87, 113 (2018).

10 It is undisputed that Long repeatedly advised Arsenault, as his supervisor and as  
11 the Registered Agent for 4R's, that he believed the withholding of his wages was in  
12 violation of Oregon law. Long asked for payment of his wages several times from April  
13 14, 2017, and continuing to September 20, 2017, when he was discharged after making  
14 a final inquiry about his unpaid wages.

15 The forum concludes 4R's violated ORS 659A.199(1) and OAR 839-010-0100(1)  
16 by terminating Long after he requested payment of his wages and advised Arsenault  
17 that failure to pay his wages violated state law.

18 **LIABILITY OF 4R'S FOR VIOLATION ORS 652.355**

19 It is an unlawful employment action for an employer to "discharge or in any other  
20 manner discriminate against an employee because [t]he employee has made a wage  
21 claim or discussed, inquired about or consulted an attorney or agency about a wage  
22 claim." ORS 652.355(1)(a), (2) and OAR 839-010-0100(4)(a).

23 It is undisputed that Long made a final demand for wages owed to him on  
24

1 September 20, 2017, before being discharged by Arsenault. There is no evidence  
2 showing Long's employment was in jeopardy prior to his final conversation with  
3 Arsenault or that he otherwise intended to leave the employment. Therefore, the forum  
4 concludes that 4R's violated ORS 652.355(1)(a)(2) and OAR 839-010-0100(4)(a) when  
5 it discharged Long after he made a demand for payment of wages owed to him for work  
6 performed between April 14, 2017, and September 20, 2017.

7 **LIABILITY OF 4R'S FOR VIOLATION OF ORS 659A.030**

8 It is an unlawful employment practice "[f]or any person to discharge, expel or  
9 otherwise discriminate against any other person because that other person has  
10 opposed any unlawful practice, or because that other person has filed a complaint,  
11 testified or assisted in any proceeding under this chapter or has attempted to do so."

12 ORS 659A.030(1)(f) and OAR 839-005-0125(2)(a)(A). See also OAR 839-005-0010(1).  
13 The analysis used in determining that GMS violated ORS 659A.199 applies equally to  
14 the Agency's ORS 659A.030(1)(f) claim. See *In the Matter of Vision International*  
15 *Petroleum LLC.*, 37 BOLI 187, 199 (2020).

16 Long offered uncontroverted testimony that he explicitly told Arsenault that he  
17 believed he was owed unpaid wages and that 4R's failure to pay those wages violated  
18 state law. Therefore, the forum concludes that 4R's violated ORS 659A.030(1)(f) and  
19 OAR 839-005-0125(2)(a)(A) by discharging Long after he opposed 4R's unlawful  
20 employment practice of failing to timely pay him the wages he earned for work  
21 performed from April 14, 2017, through September 20, 2017.

1 **LIABILITY OF ARSENAULT FOR AIDING AND ABETTING**

2 ORS 659A.030(1)(g) provides that it is an unlawful employment practice “[f]or  
3 any person, whether an employer or employee, to aid, abet, incite, compel or coerce the  
4 doing of any of the acts of this chapter or to attempt to do so.” Aiding and abetting, in  
5 the context of an unlawful employment practice, means “to help, assist, or facilitate the  
6 commission of an unlawful employment practice, promote the accomplishment thereof,  
7 help in advancing or bring it about, or encourage, counsel or incite as to its  
8 commission.” *In the Matter of Oregon Truck Painting, LLC*, 37 BOLI 87, 113 (2020). A  
9 corporate officer and owner who commits acts rendering the corporation liable for an  
10 unlawful employment practice may be found to have aided and abetted the corporation's  
11 unlawful employment practice. *In the Matter of Vision International*, 37 BOLI at 218.  
12 See also *In the Matter of Hey Beautiful Enterprises, Ltd., and Kimberly Schoene*, 34  
13 BOLI 80, 97 (2015); *In the Matter of Crystal Springs Landscapes, Inc.*, 32 BOLI 144,  
14 166-67 (2012); *In the Matter of Dr. Andrew Engel, DMD, PC*, 32 BOLI 94, 137 (2012); *In*  
15 *the Matter of Cyber Center, Inc.*, 32 BOLI 11, 35 (2012).

16 As set forth above, Arsenault, as Long's direct supervisor and the Registered  
17 Agent of 4R's, engaged in an unlawful employment practice by failing to timely pay Long  
18 wages earned, as well as ultimately discharging Long when he made a final demand for  
19 those wages on September 20, 2017. Accordingly, Arsenault aided and abetted the  
20 unlawful employment practices identified above and is in violation of ORS  
21 659A.030(1)(g). As an aider and abettor, Arsenault is jointly and severally liable with  
22 4R's for all unlawful employment practices at issue in this case.

1 **DAMAGES**

2       The Agency seeks damages on behalf of Long in the amount of "at least  
3 \$10,000" for physical, mental, and emotional suffering and "[l]ost wages in an amount  
4 estimated to be at least \$3,328.00 to be proven at hearing." (Ex. X2) Pursuant to ORS  
5 659A.850, the Commissioner of the Bureau of Labor and Industries has the authority to  
6 award money damages for emotional, mental, and physical suffering sustained. *In the*  
7 *Matter of Atlas Bolt & Screw Co., LLC*, 37 BOLI 57, 80 (2018).

8       The commissioner has the authority to fashion a remedy adequate to eliminate  
9 the effects of unlawful employment practices. *Id.* Among other things, that may include  
10 requiring a respondent to:

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

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

14       "(B) Eliminate the effects of the unlawful practice that the respondent is found to  
15 have engaged in, including but not limited to paying an award of actual damages  
16 suffered by the Long and complying with injunctive or other equitable relief; and  
17       "(C) Protect the rights of the Long and other persons similarly situated[.]"

18       ORS 659A.850(a)(A)(B)(C)

19       **Emotional Distress Damages**

20       In determining an award for emotional and physical suffering, the forum  
21 considers the type of discriminatory conduct, and the duration, frequency, and severity  
22 of the conduct. It also considers the type and duration of the mental distress and the  
23 vulnerability of the aggrieved persons. A complainant's testimony, if believed, is  
24 sufficient to support a claim for mental suffering damages. *Id.*, citing *In the Matter of Dr.*  
*Andrew Engel, DMD, PC*, 32 BOLI 94, 141 (2012).

1           Long credibly testified that he experienced distress and frustration as he  
2 continued to work without pay during the period of April 14, 2017, to September 20,  
3 2017. Long was often met with an angry response when he questioned Arsenault about  
4 being paid and when he advised him that he believed 4R's failure to pay him violated  
5 state law. Long felt devastated after being fired and depressed that he was fired  
6 because his employer owed him wages for work he had performed. Those feelings  
7 persisted as he looked for work and after he obtained employment paying significantly  
8 less than what he had been paid while working for 4R's.

9           The discriminatory conduct of 4R's and Arsenault negatively impacted Long  
10 during the final months of his employment and was still ongoing on the date of the  
11 hearing. The Formal Charges seek "at least \$10,000" in damages for emotional, mental,  
12 and physical suffering. Based on the record, the forum concludes that \$10,000 is an  
13 appropriate award. *See In the Matter of Insight Global, LLC*, 37 BOLI 229, 242 (2020)  
14 (awarding complainant \$15,000 in emotional distress damages); *In the Matter of Blue*  
15 *Gryphon, LLC, and Flora Turnbull*, 34 BOLI 216, 239 (2015) (awarding \$20,000 for  
16 mental and emotional suffering); *In the Matter of Hey Beautiful Enterprises, Ltd.*, 34  
17 BOLI 80, 101 (2015) (awarding complainant \$10,000 in emotional distress damages).

18           **Lost Wages**

19           Long is eligible for an award for lost wages because he was discharged in  
20 violation of ORS 652.355(1)(a), (2); ORS 659A.199(1); ORS 659A.030(1)(f), (g); OAR  
21 839-005-0125(2)(a)(A), (b) and (c); and OAR 839-010-0100(1), (4)(a). The purpose of a  
22 back pay award in an employment discrimination case is to compensate a complainant  
23 for the lost wages he would have received but for the unlawful employment practices.

1       *In the Matter of Insight Global, LLC*, 37 BOLI 229, 240 (2020). Back pay awards are  
2 calculated to make a complainant whole for injuries suffered as a result of the  
3 discrimination. *Id.* A complainant who seeks back pay is required to mitigate damages  
4 by using reasonable diligence to find other suitable employment. *Id.*

5           Long enjoyed his job at 4R's and would have continued in the employment but  
6 for 4R's discriminatory conduct. Long used reasonable diligence looking for work  
7 following his termination and has been consistently employed since he obtained  
8 employment approximately 18 weeks after he was discharged by 4R's. Therefore, Long  
9 is entitled to the wages he lost as a result of 4R's discriminatory conduct. ORS  
10 659A.850.

11           Long worked a total of 2,966 hours for 4R's from January 1 to September 20,  
12 2017. (Exs. A15, A16). Long worked an average of 78.05 hours each week. Long  
13 was unemployed for a total of 18 weeks after 4R's discharged him in violation of ORS  
14 652.355(1)(a), (2); ORS 659A.199(1); ORS 659A.030(1)(f), (g); OAR 839-005-  
15 0125(2)(a)(A), (b) and (c); and OAR 839-010-0100(1), (4)(a). As such, Long is entitled  
16 to lost wages in the amount of \$34,920, which accounts for his regular hourly wage of  
17 \$20.00 and his overtime wage of \$30.00. See ORS 635.261(1)(a) (overtime may be  
18 paid after 40 hours of work in one work week at a rate of one and one-half times the  
19 regular rate); see also *In the Matter of Cyber Center, Inc.*, 32 BOLI 11, 38 (2012)  
20 (Complainant's average weekly wage used to calculate back pay award).

21 **OTHER REQUESTED RELIEF**

22           The Agency asked in its Formal Charges that Respondents and Respondents'  
23 managers and supervisors be trained, at Respondents' expense, "on unlawful  
24

1 harassment and discrimination in the workplace" by "the Bureau of Labor and Industries  
2 Technical Assistance for Employers Unit or other trainer agreeable to and approved by  
3 the Agency." BOLI's Commissioner is authorized to issue an appropriate cease and  
4 desist order reasonably calculated to eliminate the effects of any unlawful practice  
5 found. ORS 659A.850(4). This statute gives the Commissioner the authority to require  
6 Respondents and Respondents' managers and supervisors to undergo training of the  
7 type sought in the Formal Charges. The forum finds that this requirement is appropriate  
8 in this case.

## 9 EXCEPTIONS TO THE PROPOSED ORDER

10 On February 22, 2022, the Agency filed eight exceptions to the Proposed Order.  
11 With these exceptions, the Agency requested that the forum make corrections to  
12 scrivener's errors and add citations. These exceptions are well taken, and the  
13 Exceptions are GRANTED as reflected above.

## 14 ORDER

15 A. NOW, THEREFORE, as authorized by ORS 659A.850(2) and (4), and to  
16 eliminate the effects of the violations of ORS 652.355(1)(a), (2); ORS 659A.199(1);  
17 ORS 659A.030(1)(f), (g); OAR 839-005-0125(2)(a)(A), (b) and (c); and OAR 839-010-  
18 0100(1), (4)(a) by Respondents **4R's Associates LLC, d/b/a Arsenault Structural**  
19 **Moving Systems and Christopher D. Arsenault, a/k/a Chris Arsenault**, to deliver to  
20 the Administrative Prosecution Unit of the Bureau of Labor and Industries, 1045 State  
21 Office Building, 800 NE Oregon Street, Portland, Oregon 97232-2180, a certified check  
22 payable to the Bureau of Labor and Industries in trust for **Matthew Long** in the amount  
23 of:

- 1) TEN THOUSAND DOLLARS (\$10,000), representing compensatory damages for emotional and physical suffering experienced by Long because of Respondents' unlawful employment practices found herein; plus,
- 2) THIRTY FOUR THOUSAND NINE HUNDRED TWENTY DOLLARS (\$34,920), wages lost by Matthew Long between September 21, 2017, and January 23, 2018, as a result of Respondents' unlawful employment practices found herein; plus,
- 3) Interest at the legal rate on the sum of FORTY FOUR THOUSAND NINE HUNDRED TWENTY DOLLARS (\$44,920), until paid.

B. NOW, THEREFORE, as authorized by ORS 659A.850(2) and 659A.850(4), and to eliminate the effects of Respondents' unlawful employment practices found herein, the Commissioner of the Bureau of Labor and Industries hereby orders Respondents **4R's Associates LLC, d/b/a Arsenault Structural Moving Systems and Christopher D. Arsenault, a/k/a Chris Arsenault** to participate in training, at Respondents' expense, on workplace retaliation and whistleblowing to be conducted by the Bureau of Labor and Industries' Technical Assistance Unit, or another trainer agreeable to and approved by the Agency.

Val J. Hoyk

Val Hoyle, Commissioner  
Bureau of Labor and Industries

ISSUED ON: March 24, 2022