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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:

Romantic River Gardens, LLC and
Sandra L. Hester, individually,

Respondents.

Case Nos. 109-18, 110-18
(Consolidated)

FINDINGS OF FACT
CONCLUSIONS OF LAW
OPINION
ORDER

SYNOPSIS

Respondents Romantic River Gardens, LLC and Sandra Hester refused to book a wedding for two Complainants based on their sexual orientation, in violation of ORS 659A.403(1), (3). However, the Agency did not sustain its burden to prove that Respondents also violated ORS 659A.409 by issuing a discriminatory "notice" or "communication." In addition, Sandra Hester did not violate ORS 659A.406 by aiding and abetting the commission of the discriminatory acts. The Commissioner awards each Complainant \$20,000 and \$10,000, respectively, in damages for emotional and mental suffering resulting from the denial of service.

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 June 11-12, 2019, at BOLI's Eugene office, located at 1400 Executive Parkway, Eugene, Oregon.

1 The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by
2 Chief Prosecutor Cristin Casey, an employee of the Agency. Complainants, William
3 Romo ("Romo") and Dane Zahner ("Zahner"), were present throughout the hearing.
4 Respondents Romantic River Gardens, LLC ("RRG") and Sandra L. Hester ("S. Hester")¹
5 were represented throughout the proceeding by Attorney Micah Fargey. S. Hester and
6 her husband, Charles Hester ("C. Hester"), were also present for the entire hearing.

7 The Agency called Senior Civil Rights Investigator Michael Mohr, Romo and
8 Zahner as its witnesses.

9 RRG called S. Hester and C. Hester as witnesses (in person). RRG called the
10 following individuals as telephone witnesses: Garrett Mattox, Roy Elias, Jennifer Mattox
11 and Tamara Gross.

12 The forum received into evidence: (a) Administrative exhibits X1 through X16; (b)
13 Agency's exhibits A1-A11 and A13-A15; (c) Respondents' exhibits R3-R5; and (d) ALJ
14 exhibit ALJ1 (DVD S. Hester sent to Romo).

15 Having fully considered the entire record in this matter, I, Val Hoyle, Commissioner
16 of the Bureau of Labor and Industries, hereby make the following Findings of Fact
17 (Procedural and on the Merits), Conclusions of Law, Opinion, and Order.²

18 **FINDINGS OF FACT – PROCEDURAL**

19 1) Romo filed a complaint with the Agency's Civil Rights Division on June 7,
20 2017, citing ORS 659A.403, 659A.406 and 659A.406, and alleging that RRG

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¹ When a statement applies to both RRG and S. Hester, they will be referred to collectively as
23 "Respondents" in this Final Order.

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

1 discriminated in a place of public accommodation based on his sexual orientation. The
2 complaint identified S. Hester as an aider/abettor. (Ex. A1)

3 2) Zahner filed a complaint with the Agency's Civil Rights Division on June 7,
4 2017, citing ORS 659A.403, 659A.406 and 659A.406, and alleging that RRG
5 discriminated in a place of public accommodation based on his sexual orientation. The
6 complaint identified S. Hester as an aider/abettor. (Ex. A3)

7 3) On June 7, 2018, the Agency's Civil Rights Division issued a Notice of
8 Substantial Evidence Determination ("SED") for Case Nos. STPASO170607-5062 and
9 STPASO170607-5063 in which it found substantial evidence of unlawful discrimination in
10 a place of public accommodation as follows:

- 11 • RRG refused to book its venue for the wedding of Romo and Zahner because of
12 their sexual orientation, in violation of ORS 659A.403.
- 13 • RRG provided Romo and Zahner with written notice that it would refuse to rent its
14 venue to same-sex couples because of their sexual orientation, in violation of ORS
659A.409.
- 15 • S. Hester aided and abetted RRG's violations of ORS 659A.403 and 659A.409, in
violation of ORS 659A.406.

16 (Ex. A15)

17 4) On October 15, 2018, the forum issued Notices of Hearing in Case Nos.
18 109-18 and 110-18 to Respondents, the Agency, Romo and Zahner, stating the time and
place of the hearing as February 26, 2019, beginning at 9:00 a.m., at BOLI's Eugene
19 office, located at 1400 Executive Pkwy, Suite 200, Eugene, Oregon. Together with the
20 Notice of Hearing, the forum sent a copy of the Agency's Formal Charges, a document
21 entitled "Summary of Contested Case Rights and Procedures" containing the information
22 required by ORS 183.413, a document entitled "Servicemembers Civil Relief Act (SCRA)
23 Notification," a multi-language notice explaining the significance of the Notice of Hearing,
24

1 and a copy of the forum's contested case hearings rules, OAR 839-050-000 to 839-050-
2 0445. (Exs. X2, X6)

3 5) The Formal Charges in Case Nos. 109-18 and 110-18 alleged the following:

- 4 a) At all times material, RRG was a limited liability company doing business in
Oregon. RRG was an outdoor event venue and was a place of public
accommodation as defined in ORS 659A.400(1).
- 5 b) At all times material, S. Hester was a member of RRG.
- 6 c) On or about February 3, Romo contacted RRG and spoke to S. Hester about
reserving RRG for his wedding and informed S. Hester that he was marrying a
man.
- 7 d) S. Hester told Romo that RRG was not hosting weddings because they did not
want the venue to be used for non-heterosexual weddings.
- 8 e) In April of 2017, Romo received a letter at work from S. Hester explaining the
decision "to only do heterosexual weddings" at RRG and discussing her
religious beliefs.
- 9 f) RRG booked three weddings in March and April of 2017 which took place in
July, August and September of 2017, and received payment for hosting those
weddings.
- 10 g) Respondents discriminated against Romo and Zahner based on their sexual
orientation, in violation of ORS 659A.403(1),(3) and ORS 659.409.
- 11 h) Respondents published or issued a communication, notice that its
accommodation, advantages would be refused, withheld from or denied to, or
that discrimination would be made against, Romo and Zahner on account of
their sexual orientation, in violation of ORS 659A.409.
- 12 i) S. Hester aided and abetted RRG's violation of ORS 659A.403(1), (3) and ORS
659.409; thereby violating ORS 659A.406.
- 13 j) Romo and Zahner were injured by the refusal to host their wedding.
- 14 k) Romo and Zahner are each entitled to damages for physical, mental, and
emotional distress in the amount of "at least \$50,000 to be proven at hearing."

17 (Exs. X2b, X6b)

18 6) On November 8, 2018, Respondents timely filed answers to both sets of
19 Formal Charges. They admitted that RRG had declined Romo's request to book the
20 couple's wedding at RRG, but denied that any unlawful discrimination occurred. The
21 answers raised the following affirmative defenses:

- 22 a) The Formal Charges fail to state a claim or claims on which relief can be granted.
- 23 b) The statutes at issue are unconstitutional as applied to Respondents because they

1 do not protect the fundamental rights of RRG, S. Hester and persons similarly
2 situated under the First and Fourteenth Amendments because the statutes:

- 3 o Unlawfully infringe on Respondents' right of free association;
- 4 o Unlawfully infringe on Respondents' right of free speech;
- 5 o Unlawfully infringe on Respondents' right to free exercise of religion;
- 6 o Unlawfully denying Respondents' rights to due process.
- 7 c) The claims for damages are barred, in whole or in part, because Romo and Zahner
8 failed to mitigate their damages, if any.
- 9 d) The damages are barred because of the doctrine of avoidable consequences.
- 10 e) Romo's claims failed because he lacks standing.⁴
- 11 f) Romo's claims fail because he failed to file a claim until more than one year after
12 the alleged violations occurred.

13 (Exs. X3, X7)

14 7) On November 14, 2018, ALJ Jennifer Gaddis issued an interim order stating
15 that she reviewed the Formal Charges in Case Nos. 109-18 and 110-18. The interim
16 order stated that both matters contained common questions of law or fact, and that
17 consolidation would avoid additional costs or delay. The interim order stated that the
18 Agency and Respondents had ten days in which to file any objections to consolidation.
19 If an objection was not received by November 26, 2018, the cases would remain
20 consolidated, as of the date of the order. No parties filed objections to consolidating the
21 cases. (Ex. X8)

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23 8) On November 11, 2018, the ALJ issued an interim order requiring case

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⁴ The Fifth and Sixth Affirmative Defenses were asserted only in the Answer to the Formal Charges against
Romo, not in Zahner's Answer. (Exs. X3, X7)

1 summaries to be filed no later than February 12, 2019, and set out the requirements for
2 what each participant must include in their case summary. The interim order also set a
3 date for a prehearing telephone conference. (Ex. X9)

4 9) A brief prehearing conference ("PHC") was originally scheduled for
5 December 10, 2018. On December 3, 2018, Chief Administrative Prosecutor Casey
6 contacted the forum, copying Respondent, and indicated she was unavailable on that
7 date. The PHC was postponed, by mutual agreement of the case participants, to
8 December 20, 2018, at 10:30 a.m. During the PHC, Chief Administrative Prosecutor
9 Casey appeared telephonically, on behalf of the Agency; Respondent did not appear.⁵
10 The forum contacted Respondent's counsel, Mr. Fargey, by telephone and left a voicemail
11 message, indicating steps by which to reset the PHC.

12 The ALJ set case deadlines during the conference which were reflected in an
13 interim order dated December 20, 2018. The interim order informed the parties that if
14 they wished to alter the deadlines, they could file a motion to do so. (Exs. X10-X11)

15 10) On February 7, 2019, the forum postponed the contested case hearing due
16 to a conflict with the docket. The case participants were directed to confer about mutually
17 agreeable dates and email the forum with the suggested dates no later than March 1,
18 2019. On February 25, 2019, the Agency emailed the forum, as directed, and suggested
19 the mutually agreeable date of June 11, 2019, to begin the hearing. Based on the mutual
20 agreement of the case participants, the hearing was rescheduled to begin on June 11,
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23 ⁵ During the conference, Casey told the ALJ that she had emailed Mr. Fargey about the PHC. She indicated
24 that she received a message back, stating that Mr. Fargey was out of the office due to illness.

1 2019, and the case summary deadline was extended to May 28, 2019. The Agency and
2 Respondents timely filed their case summaries on May 28, 2019. (Exs. X12-X13)

3 11) On April 9, 2019, ALJ Gaddis issued an interim order transferring the case
4 to ALJ Kari Furnanz. (Ex. X14)

5 12) The Agency and Respondents timely filed their case summaries on May 28,
6 2019. (Exs. X15-X16)

7 13) At the start of hearing, the ALJ orally informed the participants of the issues
8 to be addressed, the matters to be proved, and the procedures governing the conduct of
9 the hearing. (Hearing Record)

10 14) After the presentation of evidence, the ALJ requested a copy of the DVD
11 with the video S. Hester provided to Romo with her letter on or about April 12, 2017. The
12 ALJ marked the DVD as Ex. ALJ1. (Hearing Record: Ex. ALJ1)

13 15) In emails sent December 23 and 28, 2020, the Agency and RRG's counsel
14 informed the forum that the Agency and RRG agreed to receive filings (including the
15 Proposed Order, exceptions to the Proposed Order and the Final Order) from the parties,
16 the Contested Case Coordinator and the ALJ by email, because of challenges associated
17 with the COVID-19 virus. (Forum File)

18 16) On December 14, 2021, the ALJ issued a Proposed Order that notified the
19 participants they were entitled to file exceptions to the Proposed Order within ten days of
20 its issuance.

21 17) On December 22, 2021, Attorney Ray D. Hacke informed the forum that
22 Respondent's previous counsel, Micah Fargey, was suspended from the practice of law
23 and Hacke now represented Respondents. (Forum File)

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18) After obtaining an extension of time from the forum, Respondents timely filed exceptions to the Proposed Order on January 21, 2022. (Forum File)

FINDINGS OF FACT – THE MERITS

1) At all times material herein, RRG was an active limited liability company doing business in Oregon. RRG registered as a business with Oregon's Secretary of State in 1999. Its annual renewal payment was submitted to the Oregon Secretary of State on March 14, 2017, and it was an active business as of May 19, 2017. S. Hester is a member of RRG. Respondents operate an outdoor event venue on the Umpqua River in Umpqua, Oregon. (Exs. X2b, X3, X6b, X7, A5)

2) A man who attended church with S. Hester contacted her in late December of 2016 or early January of 2017, and inquired about booking RRG for his daughter's wedding on March 11, 2017. S. Hester told him that RRG was no longer hosting weddings and March was too early weatherwise. (Testimony of Elias; Ex. A7)

3) Romo and Zahner are men who became engaged to be married on February 14, 2016. Romo took on the primary responsibility for planning the wedding and was excited to start the process. The couple envisioned having their wedding take place on the Umpqua River, which was a special place for them. In particular, Zahner spent a lot of time on the river camping and playing with his dogs; he felt "spiritually" connected to it. It was important to Romo that he find a location on the river due to his fiancé's connection with it. During their search for wedding venues, the couple viewed RRG's website. The website advertised that RRG hosted weddings and displayed photographs of weddings that had taken place there. Romo and Zahner noted that RRG had the facilities they needed. They thought the setting of the property was beautiful and

1 found the location on the river to be ideal. (Testimony of Romo, Zahner; Exs. X2b, X3,
2 X6b, X7)

3 4) On or about February 3, 2017, Romo contacted RRG by telephone and
4 spoke to S. Hester about hosting a wedding at RRG. S. Hester told Romo that
5 Respondents were no longer taking wedding bookings because of a change in the law
6 and that her religious beliefs conflicted with same-sex marriages. S. Hester began to
7 explain her justification to Romo. He told her not to go any further because "we are the
8 people you want to keep off" of the property. (Testimony of Mohr, Romo, S. Hester; Exs.
9 X2b, X3, X6b, X7, A7)

10 5) S. Hester's statements during the telephone call made Romo feel angry,
11 hurt, disgusted and disappointed. Romo considers himself to be a compassionate and
12 loving person. It bothered him when he felt hurt and disdain towards S. Hester, and he
13 considered these feelings to be unhealthy. He spoke to a close friend to try to get help
14 and to not be so upset. During his testimony, Romo became emotional and appeared to
15 be on the verge of crying. (Testimony of Romo)

16 6) Romo told Zahner about his conversation with S. Hester. Zahner felt that
17 RRG's denial was wrong. He felt like he was not treated as a human, and was angry,
18 "pissed" and upset. It "rocked" him to his "core." Zahner believed that S. Hester had lied
19 to Romo because Zahner knew that RRG's website contained advertisements for
20 weddings. (Testimony of Zahner)

21 7) Around March of 2017, S. Hester and her husband decided to book three
22 weddings to help pay for their taxes and upkeep of the property. They booked the first
23 three couples who contacted RRG after they made their decision. S. Hester did not
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1 consider contacting Romo and did not consider hosting a wedding for Romo and Zahner
2 at RRG. (Testimony of S. Hester)

3 8) On or about March 25, 2017, Respondents booked a wedding for a
4 heterosexual couple that took place at RRG on or about July 22, 2017. Respondents
5 were paid for hosting the wedding. (Testimony of S. Hester; Exs. X2b, X3, X6b, X7)

6 9) On or about April 11, 2017, Respondents booked a wedding for a
7 heterosexual couple that took place at RRG on or about August 26, 2017. Respondents
8 were paid to host the wedding. (Testimony of S. Hester; Exs. X2b, X3, X6b, X7)

9 10) On or about April 11, 2017, Respondents booked a wedding for a
10 heterosexual couple that took place at RRG on or about September 2, 2017.
11 Respondents were paid for hosting the wedding. RRG received a total of \$9,927 for the
12 weddings booked in March and April of 2017. (Testimony of S. Hester; Exs. X2b, X3,
13 X6b, X7, A11)

14 11) On April 12, 2017, C. Hester dropped off a letter addressed to Romo at
15 Romo's place of employment. The letter stated:

16 "Dear Bill,

17 "After talking with you on the phone, I feel compelled to explain more fully why we
18 made the decision to do only heterosexual weddings at [RRG]. (Though at this
time we are not doing weddings at all).

19 "I know what is going on in our world right now in regard to same-sex marriage is
20 accepted by many. But we feel that based on Genesis chapter 2 and Romans
21 chapter 1 in the Bible, this is not God's plan for marriage. Therefore to host these
weddings was not based on prejudice as this decision would only apply to
weddings, not other types of events.

22 "I am truly sorry if I came across in our conversation as self-righteous or judgmental
23 as this was not my intent. God only knows the many sins I have committed in my
life that He has forgiven me for! I am so glad that the Bible teaches that God's
love extends to all mankind equally! (John 3:16) But He does ask us to repent of
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1 any disobedience and receive His Son, Jesus, whose sacrifice on the cross covers
2 all our sin. This is what he asks of all of us in order to receive His gift of salvation
3 and eternal life with Him. (See enclosed dvd).

4 "Please accept my feeble attempt to explain more fully our decision and please
5 forgive any offense I may have cause you in explaining our policy in an incomplete
6 or insensitive way.

7 "Sincerely,
8 Sandy Hester
9 Romantic River Gardens, LLC
10 Owner/operator"

11 (Exs. X2b, X3, X6b, X7, A2)

12 12) S. Hester's letter included a DVD titled "Genius." "Genius" is a religious
13 DVD produced by Living Waters, a religious organization. S. Hester gave the DVD to
14 Romo because she was concerned about his spiritual life. (Exs. X2b, X3, X6b, X7, A2)

15 13) Romo shared S. Hester's letter with Zahner. Zahner interpreted the letter
16 as a message to both Romo and Zahner because they were a couple. He felt more "hate"
17 after reading it. He had grown up as a Methodist and had walked away from the church
18 because of people like S. Hester. He did not interpret the letter as an apology, but rather
19 as S. Hester's attempt to justify her beliefs. (Testimony of Zahner)

20 14) Later that month, Romo's co-worker approached him and showed him a
21 Facebook post with pictures of a wedding that took place at RRG on the previous
22 Saturday. When Romo saw the pictures, he felt that S. Hester had lied to him when she
23 told him that RRG was not hosting weddings and it made him angry. He felt that S. Hester
24 manipulated her religion to make it acceptable to lie and to discriminate. (Testimony of
Romo; Ex. A2)

25 15) The wedding in the Facebook posting took place at RRG on April 22, 2017.
26 S. Hester and RRG hosted the wedding as a favor for friends who attended church with
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1 S. Hester and her husband, and did not receive compensation to host the event.
2 (Testimony of S. Hester)

3 16) In addition to displaying wedding photographs, RRG's website also
4 advertised that RRG hosted events such as business meetings, luncheons,
5 anniversaries, birthday parties, bridal showers and reunions. As of the date of the
6 hearing, Respondents had not booked any weddings since September of 2017.

7 (Testimony of Mohr, S. Hester; Ex. R5)

8 17) In January of 2018, Romo and Zahner watched the DVD that S. Hester sent
9 with the letter. Zahner became angry and upset after hearing the host of the program on
10 the DVD talk about "sinful" behavior. He perceived the video to be sending a message
11 that if a person did not believe what the people in the DVD believed, then they would be
12 going to hell. Zahner felt that S. Hester intended to hurt them by sending Romo the video.

13 (Testimony of Zahner)

14 18) At the time of the couple's wedding, Zahner was a person recovering from
15 alcoholism; he had been sober for approximately 16 years. The setting the couple
16 ultimately chose for their wedding (a winery) was a challenge for him due to the presence
17 of alcohol and wine. However, he did consider the wedding to be a "joyful" occasion. The
18 conduct of S. Hester and RRG made Zahner feel like he was not a human and was not
19 provided with the basic human rights that everyone deserves. Zahner became emotional
20 and cried when describing his feelings. (Testimony of Zahner)

21 19) The forum found all of the witnesses to be credible with the exception of the
22 testimony of S. Hester and C. Hester in two respects.

23 First, their testimony on their decision to host or not host weddings on the property

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1 conflicted with other credible evidence. S. Hester communicated to Romo on February 3,
2 2017, and in the letter of April 12, 2017, that RRG was not hosting any weddings.
3 However, at least three paid wedding bookings were made between those two dates.

4 Second, S. Hester and C. Hester testified that the website was out of date because
5 their webmaster had been ill since 2015. While that may explain a slight delay in updating
6 the site, the forum does not find this to be a credible explanation as to why the website
7 continued to advertise weddings two years later in 2017, if RRG no longer intended to
8 host them.

9 **CONCLUSIONS OF LAW**

10 1) At all times material herein, Respondents owned and operated an outdoor
11 event venue in Umpqua, Oregon called "Romantic River Gardens."

12 2) At all times material herein, RRG was a "place of public accommodation" as
13 defined in ORS 659A.400.

14 3) At all times material herein, S. Hester was an individual and a "person[s]"
15 under ORS 659A.001(9)(a), ORS 659A.403, ORS 659A.406, and ORS 659A.409. RRG
16 is also a person for purposes of 659A.403 and 406.

17 4) At all times material herein, Complainants' sexual orientation was
18 homosexual.

19 5) Respondents denied the full and equal accommodations, advantages,
20 facilities and privileges of Romantic River Gardens to Complainants based on their sexual
21 orientation, thereby violating ORS 659A.403.

22 6) Respondents did not violate ORS 659A.409.

23 7) S. Hester did not violate ORS 659A.406.

8) Complainants suffered emotional and mental suffering as a result of Respondents' violations of ORS 659A.403.

9) The Commissioner of the Bureau of Labor and Industries has jurisdiction over the persons and of the subject matter herein and the authority to eliminate the effects of any unlawful practices found. ORS 659A.800 to ORS 659A.865.

6 10) Pursuant to ORS 659A.850 and ORS 659A.855, the Commissioner of the
7 Bureau of Labor and Industries has the authority under the facts and circumstances of
8 this case to issue an appropriate cease and desist order. The sum of money awarded to
9 Complainants and the orders to cease and desist violating ORS 659A.403 and ORS
10 659A.409 are an appropriate exercise of that authority.

OPINION

THE AGENCY'S ALLEGED VIOLATIONS

ORS 659A.403(1), (3)

In each set of Formal Charges, the Agency alleged that RRG was a place of public accommodation, and that RRG and S. Hester "denied full and equal accommodations, advantages, facilities and privileges" to Romo and Zahner, in violation of ORS 659A.403(1), (3). ORS 659A.403 provides, in pertinent part:

“(1) Except as provided in subsection (2) of this section, all persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodation, without any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older.

"(2) Subsection (1) of this section does not prohibit:

"(a) The enforcement of laws governing the consumption of alcoholic beverages by minors and the frequenting by minors of places of public accommodation where alcoholic beverages are served; or

1 "(b) The offering of special rates or services to persons 50 years of age or
2 older.

3 "(3) It is an unlawful practice for any person to deny full and equal
4 accommodations, advantages, facilities and privileges of any place of public
5 accommodation in violation of this section."

6 The prima facie elements of the Agency's 659A.403 case are: 1) Complainants
7 were a homosexual couple and were perceived as such by S. Hester; 2) RRG was a place
8 of public accommodation; 3) S. Hester, a person acting on behalf of RRG, denied full and
9 equal accommodations to Complainants; and 4) the denials were on account of
10 Complainants' sexual orientation.⁶

11 The requirements of Element 1 are not in dispute. Romo and Zahner credibly
12 testified about their relationship, and S. Hester understood that they were a homosexual
13 couple as indicated by both her testimony and the letter she sent to Romo.

14 With respect to Element 2, Respondents assert that RRG was not a place of public
15 accommodation on February 3, 2017, the date when Romo contacted Hester and told her
16 he was interested in booking the couple's wedding, and contend that RRG was not
17 booking any weddings on that date. In response, the Agency pointed to evidence of
18 heterosexual weddings booked and held in 2017, arguing that a business cannot pick
19 individual dates as to when it will comply with the law.

20 ORS 659A.400(1)(a) defines "place of public accommodation" as "[a]ny place or

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22 ⁶ See *In the Matter of Melissa and Aaron Klein dba Sweetcakes by Melissa*, 34 BOLI 102, 166 (2015), aff'd
23 *Klein v. Or. Bureau of Labor & Indus.*, 289 Or App 507, 410 P3d 1051 (2017), rev den 363 Or 121, 224
24 (2018), cert granted, judgment vacated and remanded on other grounds 139 S Ct 2713 (2019), remanded
 on other grounds 317 Or App 138, 140-41, 506 P3d 1108 (2022), rev den 369 Or 705, 509 P3d 119 (2022).

1 service offering to the public accommodations, advantages, facilities or privileges whether
2 in the nature of goods, services, lodgings, amusements, transportation or otherwise." The
3 Oregon Supreme Court declared that the definition of a place of public accommodation
4 "is intended to be a broad one and to apply to all types of businesses which offer goods
5 and/or services to the public." *Schwenk v. Boy Scouts of Am.*, 275 Or 327, 335, 551 P2d
6 465 (1976) (emphasis omitted). Oregon courts define "a place of public accommodation"
7 as "a business or commercial enterprise that offers privileges or advantages to the public."
8 *Lahmann v. Grand Aerie of Fraternal Order of Eagles*, 180 Or App 420, 429, 43 P3d 1130
9 (2002).

10 The forum finds the following facts pertinent to whether RRG was a place of public
11 accommodation for purposes of this case:

- 12 • RRG registered as a business with Oregon's Secretary of State in 1999. Its annual
13 renewal payment was submitted to the Oregon Secretary of State on March 14,
2017, and it was an active business as of May 19, 2017. (Finding of Fact # 1)
- 14 • In February of 2017, the RRG's website advertised for wedding services.⁷ The
15 website displayed wedding photos at time of the Agency's investigation in 2017.
(Finding of Fact # 3)
- 16 • In addition to weddings, RRG's website also advertised other events including
17 business meetings, luncheons, anniversaries, birthday parties, bridal showers and
reunions. There is no evidence that bookings for these events stopped. (Finding
of Fact # 16)
- 18 • S. Hester told Roy Elias in December of 2016 or early January of 2017 that he
19 could not help with his wedding because RRG was not doing weddings and March
would be too early weatherwise. (Finding of Fact # 2)
- 20 • RRG received \$9,927 as compensation for hosting three weddings in 2017.
(Finding of Fact # 10)

23 ⁷ As stated above, Respondents asserted that the website was out of date because their webmaster was
24 ill since 2015, but the forum does not find this to be a credible explanation for why this information was still
displayed on the website in 2017.

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- 2 S. Hester communicated with Romo by letter on April of 2017 as the
owner/operator of RRG, and referenced their telephone conversation of February
3, 2017. (Finding of Fact # 11)

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4 Taken together, all of this evidence demonstrates that RRG was a place of public
5 accommodation at the time of the events in this case.

6 Element 3 (denial of full and equal accommodations) is not in dispute. S. Hester
7 admitted that she told Romo she would not book his wedding on February 3, 2017, and
8 in the letter delivered to him on April 12, 2017, yet RRG booked heterosexual weddings
9 in between those two dates.

10 The forum also finds that the Agency established Element 4 and proved that the
11 denial was due to Complainants' sexual orientation. S. Hester admitted that she held a
12 sincere religious belief that weddings were limited to a man and a woman, and that
13 homosexuality was a sin. Although she initially may have decided not to book any
14 weddings at RRG, this decision changed at some point when RRG accepted bookings
15 for heterosexual weddings. Indeed, at the time S. Hester sent the letter to Romo on April
16 12, 2017, RRG had already accepted bookings for a heterosexual wedding on March 26,
17 2017, and two heterosexual weddings on April 11, 2017. The evidence is clear that during
18 the same time period S. Hester told Romo that RRG could not book his wedding, RRG
19 was taking bookings for heterosexual weddings. Accordingly, the forum finds that the
20 Agency established all four elements of its *prima facie* case and proved that Respondents
21 discriminated against Complainants because of their sexual orientation and violated ORS
22 659A.403 (1),(3).

23 ///

24 ///

1 ORS 659A.409 - Discriminatory Communication, Notice, Advertisement or Sign

2 The Agency also alleges that Respondents violated ORS 659A.409 when C.
3 Hester delivered S. Hester's letter to Romo on April 3, 2017. ORS 659A.409 provides, in
4 pertinent part:

5 " * * * it is an unlawful practice for any person acting on behalf of any place of public
6 accommodation as defined in ORS 659A.400 to publish, circulate, issue or display,
7 or cause to be published, circulated, issued or displayed, any communication,
8 notice, advertisement or sign of any kind to the effect that any of the
9 accommodations, advantages, facilities, services or privileges of the place of
10 public accommodation will be refused, withheld from or denied to, or that any
11 discrimination will be made against, any person on account of * * * sexual
12 orientation * * *."

13 S. Hester told Romo on two occasions that she would not host Complainants'
14 wedding because RRG only hosted heterosexual weddings. First, in Romo's initial
15 conversation with S. Hester on February 3, 2017, she told him that RRG was not hosting
16 any weddings because of the change in the law requiring businesses to serve same sex
17 couples.⁸ Second, on April 12, 2017, C. Hester delivered S. Hester's letter to Romo at
18 his workplace. In the letter, S. Hester told him that RRG was hosting "only heterosexual
19 weddings."⁹

20 The forum previously adopted the definitions in *Webster's Third New International*
21 *Dictionary* (unabridged ed. 2002) to interpret several terms in ORS 659A.409. See *In the*
22 *Matter of Blachana, LLC*, 32 BOLI 220, 246-48 (2013), aff'd *Blachana, LLC v. Or. Bureau*
23 *of Labor & Indus.*, 273 Or App 806, 808, 359 P3d 574 (2015), *opinion adhered to as*

24 ⁸ As previously stated, this statement may not have been true. However, even if inaccurate, S. Hester said
25 that *no* weddings were being booked, not that *only* heterosexual weddings were being booked.

26 ⁹ In the letter of April 12, 2017, S. Hester also said, "[A]t this time we are not doing weddings at all." (Finding
27 of Fact # 11) However, as stated above, the forum finds this statement to be untrue in that RRG made one
28 heterosexual wedding booking on March 26, 2017, and two bookings on April 11, 2017.

1 *modified on reconsideration*, 275 Or App 46, 362 P3d 1210 (2015). Briefly, “notice” is
2 defined as “formal or informal warning or intimation of something” and “communication”
3 includes “facts or information communicated” and/or “a letter, note, or other instance of
4 written communication.” *Id.* For purposes of this case, the forum recognizes that “issue”
5 includes “to cause or appear to become available by officially putting forth or distributing
6 or granting or proclaiming or promulgating” and to “publish” includes “to impart or
7 acknowledge to one or more persons.”

8 For purposes of this statute, the forum will analyze each communication
9 separately. In the first statement (the telephone call), S. Hester stated that RRG was not
10 hosting *any* weddings and, thus, her statement in the telephone call did not communicate
11 an intent to discriminate in the future. The second communication (the April letter) is a
12 closer call because it stated that “we made the decision to do only heterosexual
13 weddings.” However, the letter then communicates that “at this time we are not doing
14 weddings at all.” Looking at the language of the letter alone without the surrounding
15 circumstances, as the forum must do under this statute, there is insufficient evidence that
16 respondents communicated an intent to discriminate in the future. Accordingly, the
17 Agency did not establish that Respondents violated ORS 659A.409.

18 ORS 659A.406 - Aiding and Abetting RRG’s Violations

19 The Agency seeks to hold S. Hester liable as an aider and abettor under ORS
20 659A.406 for RRG’s violations of ORS 659A.403(1), (3). ORS 659A.406 provides, in
21 pertinent part:

22 “Except as otherwise authorized by ORS 659A.403, it is an unlawful practice for
23 any person to aid or abet any place of public accommodation, as defined in ORS
24 659A.400, or any employee or person acting on behalf of the place of public
accommodation to make any distinction, discrimination or restriction on account of

1 * * * sexual orientation * * *.*

2 "Person" includes "[o]ne or more individuals." ORS 659A.001(9)(a). In this case, S.
3 Hester was an individual and the person acting on behalf RRG. "Aid" commonly means:
4 "to give help or support to." *Webster's Third New International Dictionary*, 44 (unabridged
5 ed. 2002). And "abet" means "to incite, encourage, instigate, or countenance." *Id.* at 3.
6 Because the forum already concluded that S. Hester individually violated ORS
7 659A.403(1),(3), the forum declines to also find that she aided and abetted that violation.

8 **RESPONDENTS' COUNTERCLAIMS**

9 Before addressing Respondents' affirmative defenses, the forum addresses
10 Respondents' counterclaims. First, Respondents assert that they are entitled to an award
11 of attorney fees pursuant to ORS 659A.885(9). Second, Respondents allege that a claim
12 under 42 USC § 1983, claiming that ORS 659A.003 *et seq* deprives them of fundamental
13 rights and protections guaranteed by the First and Fourteenth Amendments to the United
14 States Constitution. Respondents' counterclaims include a prayer requesting that the
15 charges against them be dismissed and that the forum award damages, attorney fees
16 and costs to them.

17 The authority of state agencies is limited to that granted to them by the legislature.
18 See *SAIF Corp. v. Shipley*, 326 Or 557, 561, 955 P2d 244 (1998) ("an agency has only
19 those powers that the legislature grants and cannot exercise authority that it does not
20 have"). ORS 659A.850(4) gives the Commissioner the authority to award compensatory
21 damages to complainants as an element of a cease and desist order within a contested
22 case proceeding. There is no corresponding statute that authorizes the Commissioner to
23 award the damages sought by Respondents in their counterclaims. With regard to
24

1 attorney fees or court costs, the legislature has only granted authority to the
2 Commissioner to award these in contested case proceedings to intervenors in a real
3 property case brought under ORS 659A.145 or ORS 659A.421.¹⁰

4 In conclusion, the forum lacks jurisdiction to adjudicate Respondents'
5 counterclaims and may neither grant nor deny them. Under ORS 659A.850(3), the only
6 relief available to Respondents through this forum is dismissal of any charges not proven
7 by the Agency.¹¹

8 **RESPONDENTS' AFFIRMATIVE DEFENSES**

9 Respondents' affirmative defenses in both sets of Formal Charges include (1)
10 failure to state a claim, (2) violation of U.S. Constitutional rights, (3) failure to mitigate
11 damages and (4) avoidable consequences. The Answer to the Formal Charges against
12 Romo include two additional affirmative defenses, asserting that Romo lacks standing
13 and that the violations asserted on behalf of Romo are untimely based on the statute of
14 limitations. As an initial matter, the forum notes that the Oregon Court of Appeals has
15 held that an agency has the authority to decide the constitutionality of statutes. See
16 *Eppler v. Board of Tax Service Examiners*, 189 Or App 216, 75 P3d 900 (2003), citing
17 *Cooper v. Eugene Sch. Dist. No. 4J*, 301 Or 358, 362-65, 723 P2d 298 (1986) and
18 *Nutbrown v. Munn*, 311 Or 328, 346, 811 P2d 131 (1991).

19 Respondents' First Affirmative Defense in each answer is for failure to state a
20 claim. This defense is typically raised by motion pursuant to OAR 839-050-0150(1)(c) to
21

22 ¹⁰ See ORS 659A.850(1)(b)(B).

23 ¹¹ See, e.g., *Wallace v. PERB*, 245 Or App 16, 30, 263 P3d 1010 (2011) (holding that, since the court had
24 no authority under ORS 183.486(1)(b) to award compensatory damages to the plaintiff, the plaintiff was
also unable to recover those damages in the contested case proceeding).

1 eliminate a claim prior to hearing. Because this case proceeded to hearing, the merits of
2 the case are addressed above and the affirmative defense is rejected.

3 Respondents' Second Affirmative Defense is for violation of U.S. Constitutional
4 rights and asserts that the "statutes underlying the Complaint," are unconstitutional under
5 the First and Fourteenth Amendments to the United States Constitution, as applied.
6 Specifically, Respondents assert that the statutes unlawfully infringement upon
7 Respondents' right of free association, free speech, free exercise of religion and rights to
8 due process.

9 Respondents contend that the First Amendment to the U.S. Constitution, as
10 applied to the State of Oregon under the Fourteenth Amendment, prohibits BOLI from
11 enforcing the provisions of the applicable statutes, and unlawfully infringes on
12 Respondents' right of conscience and right to free exercise of religion. In pertinent part,
13 the First Amendment provides: "Congress shall make no law respecting an establishment
14 of religion, or prohibiting the free exercise thereof * * *."

15 The U.S. Supreme Court recently recognized:

16 "Our society has come to the recognition that gay persons and gay couples
17 cannot be treated as social outcasts or as inferior in dignity and worth. For that
18 reason the laws and the Constitution can, and in some instances must, protect
19 them in the exercise of their civil rights. The exercise of their freedom on terms
equal to others must be given great weight and respect by the courts. At the same
time, the religious and philosophical objections to gay marriage are protected
views and in some instances protected forms of expression."

20 *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Com'n*, ___ U.S. __, 138 S Ct 1719, 1727,
21 201 L Ed 2d 35 (2018). Importantly, religious or conscientious objections do not
22 supersede the basic obligation to comply with generally applicable civil rights laws
23 provided those laws are applied neutrally. *Id.* at 1727. The violation is the denial of
24

1 service. Any statements in the record disparaging S. Hester's religious beliefs as she
2 expressed them in her telephone call with Romo on February 3, 2017, and in the letter
3 and DVD delivered to Romo on April 12, 2017, are disavowed. As well, as stated above,
4 the Commissioner has considered this Final Order in light of the decisions in a similar
5 case: *Klein v. Oregon Bureau of Labor and Industries*, 289 Or App 507, 410 P3d 1051 (2017)
6 *rev. den.*, 363 Or 224, 434 P3d 25 (2018) (*Klein I*); *Klein v. Oregon Bureau of Labor and*
7 *Industries*, ___ US __, 139 S Ct 2713 (2019) (*Klein II*); *Klein v. Oregon Bureau of Labor and*
8 *Industries*, 317 Or App, 138, 140-41, 506 P3d 1108 (*Klein III*), *rev. den.* 369 Or 705, 509
9 P3d 119 (2022). Moreover, S. Hester admitted to the conduct that forms the basis of
10 the violation in that she did not dispute that on February 3, 2017, and April 12, 2017, she
11 told Romo that RRG would not host his wedding, but RRG took bookings for three
12 heterosexual weddings in between those two dates. Given this undisputed evidence in
13 the record, the forum rejects this affirmative defense.

14 Respondents' Third Affirmative Defense (failure to mitigate damages) is addressed
15 in the damages discussion in the Opinion section of this Final Order. Accordingly, it is
16 rejected.

17 With its Fourth Affirmative Defense, Respondents assert that the claims for
18 damages are barred by "the doctrine of avoidable consequences." This doctrine is
19 generally treated the same as the allegation of a failure to mitigate damages. See, e.g.
20 *In the Matter of Civil Service Board of the City of Portland*, 6 BOLI 203, 210 (1987).
21 Accordingly, this defense is denied for the same reasons as discussed with respect to the
22 Third Affirmative Defense.

23

24

1 In Respondents' Answer to the Formal Charges in Case No. 109-18 ("Romo
2 Answer"), Respondents assert a Fifth Affirmative Defense, which states that Romo lacks
3 standing to pursue his claims against Respondents. No further explanation or argument
4 is provided in support of this defense. Accordingly, this defense is denied.

5 Respondents assert a Sixth Affirmative Defense in the Romo Answer, arguing that
6 Romo "failed to file a claim in court or any relevant agency regarding the allegations above
7 until more than one year after the alleged violations occurred." ORS 659A.820(2)
8 provides "[e]xcept as provided in ORS 654.062, a complaint under this section must be
9 filed no later than one year after the alleged unlawful practice."¹² Romo's interactions
10 with RRG and S. Hester first occurred on February 3, 2017, and he filed his civil rights
11 complaint approximately four months later on June 7, 2017. Accordingly, the Sixth
12 Affirmative Defense in the Romo Answer lacks merit and is denied.

13 **DAMAGES**

14 *Emotional Distress Damages*

15 The Agency's Formal Charges requested damages on behalf of Romo and Zahner
16 in the amount of at least \$50,000 each for emotional, mental and physical suffering.
17 Pursuant to ORS 659A.850, the Commissioner of the Bureau of Labor and Industries has
18 the authority to award money damages for emotional, mental, and physical suffering
19 sustained. *In the Matter of Oregon Truck Painting, LLC*, 37 BOLI 87, 114-15 (2018). The
20 commissioner has the authority to fashion a remedy adequate to eliminate the effects of
21

22 _____
23 ¹² OAR 839-003-0025(3) further interprets ORS 659A.820(2), stating that "the right to file a complaint exists
24 so long as the person files the complaint within one year of the most recent date the unlawful practice
occurred."

1 unlawful employment practices. *Id.*

2 In determining an award for emotional and physical suffering, the forum considers
3 the type of discriminatory conduct, and the duration, frequency, and severity of the
4 conduct. It also considers the type and duration of the mental distress and the
5 vulnerability of the aggrieved persons. A complainant's testimony, if believed, is sufficient
6 to support a claim for mental suffering damages. *Id.* In determining an award for
7 emotional and physical suffering, the forum considers the type of discriminatory conduct,
8 and the duration, frequency, and severity of the conduct. In determining the appropriate
9 amount of mental and physical suffering damages, "this forum has long held that
10 Respondents must take Complainants 'as they find them.'" *In the Matter of Kara Johnson*
11 *dba Duck Stop Market*, 34 BOLI 2, 37 (2014). An analysis of emotional distress damages
12 is very factually intensive as demonstrated in the cases described below.

13 For example, in a past public accommodation discrimination case, the forum
14 awarded damages to a complainant who was denied access to a convenience store
15 because she was accompanied by a service dog. *Id.* Thereafter, "Respondent, or
16 someone driving Respondent's vehicle, followed" Complainant home to her apartment
17 complex and complainant "received an eviction notice" because "Respondent, or
18 someone working in conjunction with Respondent, drove to her apartment complex and
19 took photographs of her neighbor's car and Complainant's apartment)." *Id.* These
20 incidents cause the complainant to feel invaded upon and unsafe in her home. In that
21 case, the forum determined that \$60,000 was an appropriate award for the complainant's
22 physical, emotional, and mental suffering.

23 In another public accommodation discrimination case, the forum examined the
24

1 damages that should be awarded to a bar patron with Parkinson's disease who was
2 accused of being drunk because of the way he walked and was told to leave the
3 respondent's club on two occasions. *In the Matter of C. C. Slaughter's, Ltd.*, 26 BOLI
4 186, 196-97 (2005). The respondent's refusal to let complainant remain in its club made
5 complainant very apprehensive about shopping in new places, and particularly about
6 visiting new bars, in that he was afraid he would be stopped again and accused of being
7 drunk because of his disability. *Id.* In that matter, the commissioner awarded the
8 complainant \$25,000 in damages for emotional distress. *Id.*

9 Another public accommodation discrimination case involved a respondent who
10 denied access to a bar to 11 members of a social group for transgendered persons based
11 on the sexual orientation of the group's members. See *In the Matter of Blachana, LLC*, 32
12 BOLI at 220. The forum awarded damages to each of the 11 complainants in varying
13 amounts ranging from \$20,000 to \$50,000 based on the evidence in the record of the
14 emotional harm each complainant suffered as a result of the denial of access. *Id.* at 249-
15 53. For example, one complainant was awarded \$20,000 when she had feelings lasting
16 for about a month that included "some upset and disappointment," and feeling
17 "unwelcome" and "mildly dismayed and discouraged." *Id.* at 251. By contrast, the forum
18 awarded \$50,000 to a complainant who had emotional distress lasting for around three
19 months. *Id.* at 251.

20 The forum notes that following the issuance of the Proposed Order in this matter,
21 the Oregon Court of Appeals issued its decision in *Klein III* and the Commissioner issued
22 an Amended Final Order in *In the Matter of Melissa and Aaron Klein dba Sweetcakes by*
23 *Melissa, amended final order on remand*, 38 BOLI (2022) (awarding two complainants

1 \$20,000 and \$10,000, respectively, when respondents refused to make their wedding
2 cake because of their sexual orientation). The record in this matter shows two causes of
3 complainants' emotional suffering: 1) the denial of services by RRG and S. Hester, and 2) S.
4 Hester's explanation concerning the denial of services. As noted above, the Commissioner
5 expressly disavows any disparaging comments in the record concerning 1) S. Hester's
6 mention of her religious beliefs in her telephone call with Romo on February 3, 2017, and 2)
7 S. Hester's quotes and citations to the Bible in the letter and DVD delivered to Romo on April
8 12, 2017. Damages are awarded based on consideration of the harm resulting from the
9 denial of service alone, as described below, and consistent with the forum's prior damages
10 awards in public accommodations case, as described above.

11 Romo

12 Romo had been excited when he started planning the couple's wedding. It was
13 important to him the wedding take place on the Umpqua River because it had a "spiritual
14 connection" with his fiancé. When he looked at the RRG website, he thought the location
15 on the river and the property looked beautiful, and it had the facilities they needed.

16 After S. Hester told him that RRG was not hosting weddings for homosexual
17 couples, Romo was angry, hurt, disgusted and disappointed. Romo considers himself to
18 be a compassionate and loving person. He felt hurt and disdain towards S. Hester, and
19 believed that was unhealthy. He spoke to a close friend about his feelings to try to get
20 help and not be so upset. During his testimony, Romo was emotional and appeared to
21 be on the verge of crying. Based on the record in this case and the forum's previous
22 awards in public accommodations cases, the forum concludes that \$20,000 is an
23 appropriate award of emotional distress damages for Romo, given that S. Hester
24 communicated RRG's refusal to host his wedding to him directly.

1 Zahner

2 After Romo told Zahner about his conversation with S. Hester on February 3, 2017,
3 Zahner felt that RRG's denial was wrong. He felt like he was not treated as a human,
4 and was angry, "pissed," and upset. It "rocked" him to his "core." Zahner believed that
5 S. Hester was lying when she said that RRG was not hosting any weddings because he
6 knew that RRG's website contained advertisements for weddings.

7 After Romo shared S. Hester's letter with Zahner, Zahner interpreted the letter as
8 a message to both Romo and Zahner because they were a couple.

9 At the time of the wedding, Zahner was a person recovering from alcoholism and
10 he had been sober for approximately 16 years. The setting the couple ultimately chose
11 for their wedding (a winery) was a challenge for him due to the presence of alcohol and
12 wine. However, he did consider the wedding to be a "joyful" occasion.

13 The conduct of S. Hester and RRG made Zahner feel like he was not a human and
14 was not provided with the basic human rights that everyone deserves. At times, during
15 his testimony, Zahner was shaking. He became emotional and cried when describing his
16 feelings. Based on the record in this case and the authority cited above, the forum
17 concludes that \$10,000 is an appropriate award of emotional distress damages for Zahner
18 because he was not present during the telephone call of February 3, 2017, and was not
19 the recipient of the letter Romo received on April 12, 2017.

20 **OTHER REQUESTED RELIEF**

21 In each set of Formal Charges, the Agency sought a cease and desist order
22 against Respondents that enjoins them from violating laws pertaining to unlawful
23 discrimination in a place of public accommodation. BOLI's Commissioner is authorized
24

1 to issue an appropriate cease and desist order reasonably calculated to eliminate the
2 effects of any unlawful practice found. ORS 659A.850(4). Among other things, that may
3 include requiring a respondent to:

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

6 " (A) Carry out the purposes of this chapter;
7 " (B) Eliminate the effects of the unlawful practice that the respondent is
8 found to have engaged in, including but not limited to paying an award of
9 actual damages suffered by the complainant and complying with injunctive
10 or other equitable relief; and
11 " (C) Protect the rights of the complainant and other persons similarly
12 situated[.]"

13 The forum finds the Agency's requested cease and desist order to be appropriate
14 relief in this case.

15 **Exceptions to the Proposed Order**

16 Respondents filed exceptions to the Proposed Order on January 21, 2022.

17 *Specific Exceptions: Proposed Findings of Fact – Procedural*

18 Respondents concurred Proposed Findings of Fact – Procedural and submitted no
19 exceptions to them.

20 *Specific Exceptions: Proposed Findings of Fact – The Merits*

21 Respondents took exception to three of the credibility findings in the Proposed
22 order.

23 First, Respondents took exception to the statement in Proposed Finding of Fact #
24 19, which stated "although S. Hester communicated to Romo that RRG was not hosting
any weddings, at least three paid wedding bookings were made during the same time
period." Respondents' three reasons for taking exception to that statement and the
forum's responses to those reasons are as follows:

- 1 1. Respondents first asserted that the Proposed Order was unclear as to "what
2 'period' the [f]orum was referring to" in this statement. To address Respondents'
3 concern, Finding of Fact # 19 has been revised in this Final Order to clarify that at
4 least three paid wedding bookings were made between the two dates that S.
5 Hester communicated RRG's denial of service to Romo (the February 3, 2017,
6 telephone call and the letter delivered on April 12, 2017).
- 7 2. Next, Respondents argue that the "fact that RRG started booking weddings again
8 also does not mean Respondents discriminated against Complainants." The forum
9 disagrees with this statement because the evidence is undisputed that after RRG
10 made three heterosexual wedding bookings in March and April of 2017, S. Hester
11 sent Romo the letter on April 12, 2017, informing him that RRG would not book his
12 wedding.
- 13 3. Finally, Respondents contend that the "fact that the three couples who requested
14 wedding bookings" in March and April of 2017 "happened to be heterosexual is
15 purely coincidental." The evidence does not support the assertion that it was
16 "coincidental" that RRG booked heterosexual weddings because S. Hester told
17 Romo on two occasions that RRG would not book his wedding. Additionally, S.
18 Hester testified that when she made wedding bookings on March 25 and April 11,
19 2017, she did not consider contacting Romo and did not consider hosting a
20 wedding for Romo and Zahner at RRG. (Finding of Fact # 7) The day after she
21 made two bookings for heterosexual couples on April 11, 2017, C. Hester delivered
22 the letter to Romo.

12 Second, Respondents disagreed with the finding that "S.Hester's testimony that
13 she wrote the letter to Romo because she 'felt bad' and that she did not want to harm him
14 was not believable." This sentence has been removed.

15 Third, Respondents take exception with the finding that the testimony of S. Hester
16 and C. Hester regarding the advertising of weddings on their website lacked credibility.
17 This pertained to testimony that RRG's webmaster had been ill and could not update the
18 website. As explained in Finding of Fact # 19, there was testimony that the webmaster
19 had been ill beginning in 2015. That is not an adequate explanation as to why the website
20 continued to advertise weddings two years later in 2017, if RRG no longer intended to
21 host them. Accordingly, the forum disagrees with this portion of Respondents'
22 exceptions.

1 In summary, Respondents' Exceptions to the Proposed Findings of Fact – The
2 Merits are GRANTED IN PART AND OVERRULED IN PART, as reflected above.

3 *Specific Exceptions: Proposed Conclusions of Law*

4 Respondents raised Exceptions to several of the Proposed Conclusions of Law.
5 All Exceptions were considered and, when well taken, were incorporated into this Final
6 Order. The remainder of the Exceptions either raise new facts or issues not previously
7 before the forum, or were not well taken.

8 *Specific Exceptions: Proposed Opinion Re Alleged Violations*

9 In this section, Respondents included one sentence incorporating their Exceptions
10 to Conclusions of Law Nos. 5-7. The rulings with respect to those Conclusions of Law
11 are, therefore, incorporated herein.

12 *Specific Exceptions: Proposed Opinion Re Counterclaims*

13 Respondents state that they concur with the portion of the Proposed Opinion
14 addressing Respondents' counterclaims. Accordingly, no further ruling is necessary on
15 this issue.

16 *Specific Exceptions: Proposed Opinion Re Affirmative Defenses*

17 Respondents filed Exceptions in regard to the rulings in the Proposed Order
18 regarding Respondents' First and Second Affirmative Defenses.

19 With respect to the First Affirmative Defense (failure to state a claim), Respondents
20 incorporate their Exceptions to the Proposed Conclusions of Law. The rulings with
21 respect to those Conclusions of Law are, therefore, incorporated herein.

22 Respondents Exceptions regarding their Second Affirmative Defense addressed
23 alleged constitutional issues. All of these issues were discussed above when addressing
24

1 the Exceptions to the Proposed Conclusions of Law and, therefore, are incorporated
2 herein.

3 *Specific Exceptions: Proposed Opinion Re Damages*

4 This Exception pertains to the damages awarded in the Proposed Order. As set
5 forth above, the Commissioner has reviewed the damages in light of the *Klein III* opinion
6 and reduced the damages awarded consistent with the facts of this case and prior BOLI
7 Orders in public accommodations.

8 *Specific Exceptions: Proposed Order*

9 These Exceptions duplicate exceptions addressing the damages award and the
10 Cease and Desist Order. The rulings previously made with respect to those issues are,
11 therefore, incorporated herein.

12 **ORDER**

13 A. NOW, THEREFORE, as authorized by ORS 659A.850(2), and to
14 eliminate the effects of Respondent **Romantic River Gardens, LLC and Sandra L.**
15 **Hester's** violations of ORS 659A.403(1),(3) and as payment of the damages awarded,
16 the Commissioner of the Bureau of Labor and Industries hereby orders Respondent
17 **Romantic River Gardens, LLC and Sandra L. Hester** to deliver to the Administrative
18 Prosecution Unit of the Bureau of Labor and Industries, 1045 State Office Building, 800
19 NE Oregon Street, Portland, Oregon 97232-2180, a certified check payable to the Bureau
20 of Labor and Industries in trust for Complainants **William Romo and Dane Zahner** in the
21 amount of:

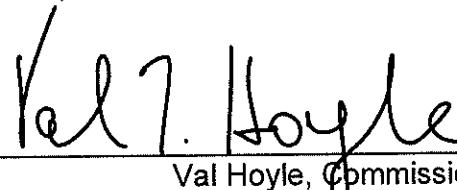
22 1) THIRTY THOUSAND DOLLARS (\$30,000), representing
23 compensatory damages for emotional and mental suffering William Romo and
24 Dane Zahner experienced as a result of Respondents Romantic River Gardens,
 LLC and Sandra L. Hester's unlawful practices to be apportioned as follows:

1
2 William Romo: \$20,000
Dane Zahner: \$10,000

3 plus,

4 2) Interest at the legal rate THIRTY THOUSAND DOLLARS (\$30,000),
from the date the Final Order is issued until paid.

5
6 B. NOW, THEREFORE, as authorized by ORS 659A.850(2) and ORS
659A.850(4), the Commissioner of the Bureau of Labor and Industries hereby orders
7 Respondents Romantic River Gardens, LLC and Sandra L. Hester to cease and desist
from violating laws pertaining to unlawful discrimination in a place of public
accommodation.

8
9 
10 Val Hoyle, Commissioner
11 Bureau of Labor and Industries

12 ISSUED ON: 9/29/22