

CHRISTINA E. STEPHENSON
Labor Commissioner



JESSICA N. GIANNETTINO VILLATORO
Deputy Labor 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:

**RAMARJUNDEV, LLC dba DEV'S
BURGERS,**

and

**RAKESH SHARMA, individually
pursuant to ORS 659A.030(1)(f) and
as aider or abettor pursuant to ORS
659A.030(1)(g),**

Respondents.

Case No. **53-21**

FINDINGS OF FACT
CONCLUSIONS OF LAW
OPINION
ORDER

SYNOPSIS

The Agency established by a preponderance of the evidence that Respondent Ramarjundev, LLC dba Dev's Burgers subjected Complainant to unlawful sexual harassment from a non-employee and retaliated against Complainant in violation of ORS 659A.030(1)(b),(f), ORS 659A.199(1), OAR 839-005-0010(1),(4), OAR 839-005-0125(2)(a)(A), OAR 839-005-0030(7) and OAR 839-005-0100(1). The forum also concluded that Respondent Rakesh Sharma aided or abetted the unlawful sexual harassment and retaliation. ORS 659A.030(1)(g). The forum awarded Complainant \$9,693 in lost wages and \$100,000 in compensatory damages for the mental and emotional distress she experienced as a result of the unlawful conduct. The forum also ordered Respondents to undergo training on preventing sexual discrimination in the workplace. ORS 659A.050(2), (4).

1 The above-entitled case came on regularly for hearing before Kari Furnanz,
2 designated as Administrative Law Judge ("ALJ") by the Commissioner of the Bureau of
3 Labor and Industries for the State of Oregon. The hearing was held on June 2-3, 2021,
4 via the GoToMeeting video conference application.

5 The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by
6 Administrative Prosecutor Rachel Diamond-Cuneo, an employee of the Agency.
7 Respondents were represented by their attorney, Christopher Cauble. Complainant
8 Freda Rymer ("Rymer") was present throughout the hearing; Rakesh Sharma
9 ("Sharma") was present throughout the hearing, on behalf of Respondents. Hindi
10 language interpreters were also present throughout the hearing. The interpreters
11 translated the proceedings for the benefit of Sharma and translated Sharma's testimony
12 for the record. In addition, Rymer's attorney, Nicholas Yanchar, was also present
13 throughout the hearing.

14 The Agency called Senior Civil Rights Investigator James Pappas ("Pappas"),
15 Lana Miller ("Miller"), Rymer, Nicole Watson ("Watson") and Jason Morgan ("Morgan")
16 as witnesses. Respondents called Sharma, Tina Burnett ("Burnett") and Jennifer
17 Williams ("Williams") as witnesses.

18 The forum received into evidence: (a) Administrative exhibits X1 through X9,¹ (b)
19 Agency exhibits A1-A14 and (c) Respondents exhibits R1-R5.

20 Having fully considered the entire record in this matter, I, Christina Stephenson,
21 Commissioner of the Bureau of Labor and Industries, hereby make the following
22

23 ¹ Exhibits X8 –X9 (the parties' written closing arguments) were received after the hearing ended.
24

1 Findings of Fact (Procedural and on the Merits), Conclusions of Law, Opinion, and
2 Order.

3 **FINDINGS OF FACT – PROCEDURAL**

4 1) Complainant filed a complaint with the Agency’s Civil Rights Division on
5 August 14, 2019, alleging that Dev’s Burgers & Deli/A-1 Market/A-One Market, LLC and
6 Respondent Ramarjundev, LLC (“DB”) engaged in gender discrimination, sexual
7 harassment and retaliation. The complaint also named Sharma as an aider or abettor.
8 (Ex. A1; Testimony of Pappas)

9 2) On August 14, 2020,² the Agency’s Civil Rights Division issued a Notice of
10 Substantial Evidence Determination (“SED”) in which it found substantial evidence that
11 Respondents committed unlawful employment practices (sexual harassment and
12 retaliation) in violation of ORS 659A.030. The Notice further identified Sharma as an
13 aider/abettor. (Ex. A14)

14 3) On January 21, 2021, the forum issued a Notice of Hearing to
15 Respondents, the Agency, and Complainant stating the time and place of the hearing as
16 June 2, 2021, beginning at 9:30 a.m., at the Oregon Employment Department, 119 N.
17 Oakdale Ave., Medford, Oregon. Together with the Notice of Hearing, the forum sent a
18 copy of the Agency's Formal Charges, a document entitled “Summary of Contested
19 Case Rights and Procedures” containing the information required by ORS 183.413, a
20 document entitled “Servicemembers Civil Relief Act (SCRA) Notification,” a multi-

21 _____
22 ² The first page of the SED states that the filing date is August 14, 2019. Based on other exhibits in
23 evidence, the forum concludes that “2019” was a typographical error, and that the SED was issued on
24 August 19, 2020. See, e.g., Ex. A13 (containing email communications from August 13, 2020, indicating
that the “cause memo” would be issued “tomorrow.”)

1 language notice explaining the significance of the Notice of Hearing, and a copy of the
2 forum's contested case hearings rules, OAR 839-050-0000 to 839-050-0445. (Ex. X2)

3 4) The Formal Charges alleged that DB engaged in unlawful employment
4 practices under ORS 659A.030(1)(a),(b); OAR 839-005-0030(1)-(7); and OAR 839-005-
5 0010(1), (4). Additionally, the Formal Charges alleged that Sharma unlawfully aided
6 and abetted the unlawful employment practices of DB in violation of ORS
7 659A.030(1)(g). The Formal Charges also alleged that Sharma violated ORS
8 659A.030(1)(f); ORS 659A.199(1); OAR 839-005-0125(2)(a)(A) and OAR 839-005-
9 0010(1),(4) by discharging Rymer because she opposed an unlawful practice. The
10 Formal Charges sought damages for lost wages in the amount of "at least \$45,000,"
11 and mental and/or emotional distress in the amount of "at least \$100,000.00." The
12 Formal Charges also asked that Respondents be trained, at their expense, "on unlawful
13 harassment and discrimination in the workplace" and that Respondents be enjoined
14 from violating laws. In addition, the Formal Charges asked that Respondents be
15 required to provide training to its managers, supervisors and human resources
16 personnel on preventing sex discrimination in the workplace. (Ex. X2b)

17 5) On February 5, 2021, Respondents, through counsel Christopher Cauble,
18 filed an answer in which Respondents denied that Respondents had committed the
19 alleged violations. (Ex. X3)

20 6) On March 3, 2021, the forum issued an Interim Order Re Temporary
21 Procedures and Requiring Case Summaries, which included a notice that the parties
22 were to file documents by email, and set May 19, 2021, as the deadline for filing Case
23 Summaries. (Ex. X4)

1 7) The forum issued an interim order on May 4, 2021, stating, in pertinent
2 part: "Due to ongoing COVID-19 requirements for in person gatherings and social
3 distancing, this hearing will be conducted by video conference on the currently
4 scheduled hearing date of June 2, 2021, beginning at 9:30 a.m." Further instructions
5 regarding participation in a video conference hearing were attached to the interim order.

6 (Ex. X5)

7 8) The Agency and Respondents filed their case summaries on May 19,
8 2021. (Exs. X6-X7)

9 9) The Agency and Respondents stipulated to the following facts:

10 a. Rymer is a "person" as defined by 659A.001(9)(a) and OAR 839-005-
11 0003(12);

12 b. Complainant was employed by DB;

13 c. At the time of the events in the Formal Charges, DB was an active
14 domestic limited liability company;

15 d. At the time of the events in the Formal Charges, Sharma was an owner,
16 member and registered agent of DB and the authorized representative of
17 DB;

18 e. DB employs one or more persons in the state of Oregon;

19 f. Complainant identifies as female;

20 g. Complainant was employed by DB beginning on or about June 4, 2018.

21 (Exs. X6-X7; Hearing Record)

22 10) Prior to the hearing, Respondents requested Hindi language interpreter
23 services for the benefit of Sharma. On May 27, 2021, the forum issued an interim order
24 appointing Hindi language interpreters Suman Gupta and Vijaylaxmi Desaram to serve
as interpreters in this matter. On the record at hearing, the ALJ amended the order to

1 also appoint Kalpna Bentler to serve as an interpreter. All of the interpreters were
2 certified or registered interpreters in other states, but not in Oregon. Before each
3 interpreter began translating testimony, the ALJ questioned them about their
4 qualifications and experience, concluded that they were qualified and administered an
5 oath. Before each interpreter began, the ALJ recessed the hearing briefly so that
6 the interpreter and Sharma could communicate. After the recess, each interpreter stated
7 that they could effectively communicate with Sharma. Prior to the cross examination of
8 Sharma, the entire proceedings were interpreted into Hindi for Sharma's benefit, and
9 Sharma's testimony was translated into English for the record.

10 Immediately prior to Sharma's cross examination, Respondents' counsel stated
11 that Respondents were willing to withdraw their request for interpreter services so that
12 the hearing could move more quickly. The proceedings continued for approximately 13
13 minutes in English, without Hindi language interpretation, until the ALJ determined that
14 Hindi language interpreter services should be reinstated. The remainder of the
15 proceedings were interpreted into Hindi for Sharma's benefit, and his testimony was
16 translated into English. (Ex. X8; Hearing Record)

17 11) At the start of hearing, pursuant to ORS 183.415(7), the ALJ orally
18 informed the participants of the issues to be addressed, the matters to be proved, and
19 the procedures governing the conduct of the hearing. (Hearing Record)

20 12) The parties stipulated on the record during the hearing that Raj Kumar
21 ("Kumar") was the name of the individual Rymer accused of sexually harassing her.
22 Kumar is distantly related to Sharma. Sharma's brother also has the first name "Raj"
23 and is involved with the company, but he is not the person whose conduct is at issue in
24

1 this matter. (Hearing Record)

2 13) During the hearing, the parties informed the ALJ that they would like to
3 submit written closing arguments instead of making oral arguments. The ALJ set a 10-
4 page limit and a deadline of June 18, 2021, for the filing of closing arguments. The
5 Agency filed its closing argument on June 18, 2021. Respondents filed their closing
6 arguments by mail on June 17, 2021. (Exs. X9-X11)

7 14) On April 14, 2023, the ALJ issued a proposed order that notified the
8 participants they were entitled to file exceptions to the proposed order within ten days of
9 its issuance. Respondents filed exceptions on April 24, 2023. The Agency filed
10 exceptions on April 27, 2023.

11 **FINDINGS OF FACT – THE MERITS**

12 1) At the time of the events in the Formal Charges, DB was an active
13 domestic limited liability company, and employed one or more persons in the state of
14 Oregon. (Stipulation)

15 2) DB was a convenience store located in Wolf Creek, Oregon, which sold
16 burgers, beer, wine, cigarettes, and gas. DB also had video gambling machines on its
17 premises, and 22 video surveillance cameras were located throughout the store.
18 (Testimony of Sharma, Morgan, Burnett)

19 3) Sharma was an owner, member and registered agent of DB and the
20 authorized representative of DB. Sharma was sometimes called "Rocky." He is from
21 India and moved to the United States in 2003. He originally lived in California and
22 moved to Oregon in 2012. (Stipulation; Hearing Record)

1 4) Rymer is a female who worked for DB beginning on or about June 4,
2 2018. Her responsibilities included serving beer and making sandwiches. (Stipulation;
3 Testimony of Sharma)

4 5) Sharma believed that Rymer was a good worker. (Testimony of Sharma)

5 6) Rymer worked an average of 25 hours per week while employed by DB.
6 She was paid a wage of \$12.50 per hour and averaged another \$1000 per month in
7 tips. (Testimony of Rymer)

8 7) Beginning in the spring of 2018, Watson worked at DB, performing
9 gambling hall and cooking duties. She was discharged just before Christmas in 2018.
10 The business continued to operate after Watson's termination, and she gambled and
11 ate food there. (Testimony of Watson)

12 8) Burnett managed a couple of markets owned by Sharma and was
13 employed by Sharma at the time of her testimony. She had the authority to hire and fire
14 employees. (Testimony of Burnett)

15 9) Kumar is related to Sharma. Kumar used to live in California in a U.S.
16 immigration detention center. Sharma allowed Kumar to live in the apartment located
17 above DB. Kumar did not have a work permit and was not employed by DB. However,
18 Sharma permitted Kumar to be on the premises at DB to cook in the kitchen and watch
19 how the business operated. Kumar also had access to DB's office. (Testimony of
20 Sharma)

21 10) While Rymer was working one evening in August of 2018, Kumar
22 approached her and stood in front of a door. He pointed upstairs to his apartment.
23 While making an up and down hand gesture near his groin with his hand cupped,
24

1 Kumar asked to Rymer to "go like this to me." Rymer believed that Kumar was asking
2 her for a "hand job" and to engage in a sexual act with her. She said, "No, I don't 'go
3 like this' to you." Rymer told Kumar that his conduct was inappropriate, and that she did
4 not appreciate it. Kumar made her feel "cheap" and "gross." She felt "less than" and like
5 she "was nothing." (Testimony of Rymer)

6 11) Rymer told one of her supervisors, Miller, that Kumar made advances
7 towards her and that he was constantly watching her on a camera from the kitchen.
8 Miller did not witness any inappropriate conduct from Kumar towards Rymer. Miller told
9 Rymer to talk to Sharma about Kumar's conduct. (Testimony of Miller, Rymer)

10 12) Watson observed Kumar watching Rymer on a camera in the kitchen and
11 noticed that Kumar's behavior upset Rymer and that she did not want to work with him.
12 (Testimony of Watson)

13 13) On one occasion, Morgan, a gas station attendant for DB, was in the next
14 room and overheard Rymer and Kumar exchange words.³ Morgan could not see them
15 or hear what Kumar said, but observed that Rymer "came flying out of the room" like
16 something had happened and she was extremely upset. He heard Rymer say
17 something to Kumar like "you can't talk to me like that" and "I'm a married woman."
18 (Testimony of Morgan)

19 14) About three days after the first incident with Kumar, Rymer contacted
20 Sharma to make a complaint about Kumar engaging in inappropriate conduct towards
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22 ³ Morgan testified that "Raj" was the person at issue, but that he did not know Raj's last name. The
23 parties stipulated during the hearing that Raj Kumar was the person accused of harassment in this
24 matter. (Stipulation; Finding of Fact – Procedural #12)

1 her. Sharma came to DB and met with Rymer and Kumar in person. (Testimony of
2 Rymer, Sharma)

3 15) Rymer was hoping that Sharma would suspend Kumar from the store or
4 make Kumar avoid being around her. (Testimony of Rymer)

5 16) Kumar admitted to Sharma that he had placed his hand in his groin area in
6 front of Rymer, but said that he did so to scratch an itch due to a medical condition, and
7 that he did not try to make a sexual gesture. Sharma told Rymer that he did not believe
8 her complaint, and that Kumar had an itching problem in his groin area. Sharma did not
9 ask Kumar to stop touching his groin area. (Testimony of Sharma)

10 17) In response, Rymer told Sharma that there was "no way" that she could be
11 mistaken, and that Kumar's hand gesture was not scratching. Rymer showed Sharma
12 "exactly" what Kumar did with his hand. (Testimony of Rymer)

13 18) After the meeting with Sharma, Kumar's behavior towards Rymer
14 worsened. Kumar watched her on the store's surveillance videos, stared at her breasts
15 and touched himself in front of her. Rymer felt gross. She was uncomfortable and did
16 not enjoy her job anymore. (Testimony of Rymer)

17 19) Rymer complained to Sharma about Kumar a second time, and told
18 Sharma that Kumar was watching her on the surveillance cameras. In response,
19 Sharma told Rymer that she should tell Kumar that she "was not that kind of girl."
20 (Testimony of Rymer)

21 20) Sharma discharged Rymer on or about August 22, 2018. Sharma
22 terminated her in front of "five guys," including Kumar, and the men laughed at her. She
23
24

1 felt it was unfair, like she was “zeroed in on” and that she did not matter. (Testimony of
2 Rymer)

3 21) After her termination, Rymer no longer felt comfortable working with men
4 or being alone with men, and became worried that men would take advantage of her if
5 she was too nice. (Testimony of Rymer)

6 22) Sharma did not tell Rymer that he would re-hire her if business at DB
7 increased. If offered a position at another store owned by Sharma, she would not
8 have accepted it because of the way she was treated at DB; she did not want to be
9 harassed again. (Testimony of Rymer)

10 23) Rymer actively sought employment after her termination, but found it
11 difficult to find a job with hours allowing her to accommodate the needs of her family
12 and children. (Testimony of Rymer)

13 24) About one month after her discharge, Rymer worked at the Holiday Inn for
14 two weeks averaging 22.5 hours per week and earned \$12.50 per hour for a total of
15 \$562.50 ($\$12.50/\text{hour} \times 22.5 \text{ hours} \times 2 \text{ weeks}$). (Testimony of Rymer)

16 25) From the beginning of October 2018 until November 23, 2018, Rymer
17 worked at the Wolf Creek Inn averaging 25 hours per week and earned \$14 per hour for
18 a total of \$2800 ($\$14/\text{hour} \times 25 \text{ hours} \times 8 \text{ weeks}$). (Testimony of Rymer)

19 26) From March 2019 until April 30, 2019, Rymer worked as a custodian at
20 Rogue River High School for 40 hours per week and earned \$17.30 per hour for a total
21 of \$5882 ($\$17.30/\text{hour} \times 40 \text{ hours} \times 8.5 \text{ weeks}$).⁴ (Testimony of Rymer)

22
23 ⁴ Rymer worked in this position until “the beginning of COVID” in 2020. (Testimony of Rymer) However,
24 damages are only calculated until the date DB closed on April 30, 2019.

1 27) The DB convenience store closed on April 30, 2019. (Testimony of Miller)

2 28) After DB closed, there were positions available at other businesses owned
3 by Sharma in Southern Oregon. No one who had been discharged from DB spoke to
4 Burnett about other job opportunities to work for Sharma's companies after the business
5 closed. (Testimony of Burnett)

6 *Credibility*

7 29) Rymer testified credibly and consistently about the events at issue in the
8 case. Her testimony was straightforward, and she did not appear to embellish or
9 exaggerate the events at issue in the case. Her testimony was credited in its entirety.

10 30) The forum did not find Sharma's testimony to be credible because there
11 were several instances in which his testimony conflicted with that of other credible
12 witnesses, or simply did not make sense.

13 First, Sharma testified that Rymer was "lying" when describing the sexually
14 harassing conduct of Kumar and that she did not tell him that Kumar was looking at her
15 breasts. In addition to Rymer's own consistent testimony, several witnesses saw Rymer
16 immediately after her interactions with Kumar and described her as visibly upset and
17 "flying out of the room." There was also testimony that they observed Kumar watching
18 Rymer on the video surveillance screens at DB.

19 Second, Sharma's testimony that Kumar was itching his groin due to a medical
20 condition was not credible given that Rymer credibly testified that she demonstrated the
21 hand motion that Kumar made towards her and told Sharma that it did not look like
22 someone scratching an itch. Also, when questioned as to whether he asked Kumar to
23 stop itching his groin area, Sharma mentioned that he had a similar condition and
24

1 responded: "How can I stop him?" This suggested that Sharma did not take Rymer
2 seriously and that he was biased in favor of Kumar, who is his relative.

3 Third, the forum also does not believe Sharma's testimony that he terminated
4 Rymer because the business was closing. Rymer was terminated on or about August
5 22, 2018, but the business did not close until April 30, 2019.

6 Finally, the forum did not give credit to Sharma's testimony that no one could
7 have watched an employee such as Rymer on DB's video surveillance cameras. This
8 contradicted the credible testimony of Rymer, Miller and Watson.

9 The forum did not give credit to Sharma's testimony when it contradicted
10 testimony from other credible witnesses.

11 31) Miller and Watson are friends of Rymer's and, thus, could potentially have
12 a motive to be biased in favor of Rymer. However, both Miller and Watson appeared
13 straightforward and honest in their testimony, they did not appear to be advancing an
14 agenda on behalf of Rymer, and their testimony was not impeached with credible
15 evidence.

16 32) Morgan was a credible witness.

17 33) Burnett and Williams were credible witnesses, but they lacked personal
18 knowledge of the interactions between Kumar and Rymer, and neither of them had met
19 Rymer.

20 CONCLUSIONS OF LAW

21 1) At all times material herein, DB was an employer as defined in ORS
22 659A.001(4) and employed Complainant.

23 2) The actions, statements and motivations of Sharma are properly imputed
24

1 to DB. *In the Matter of Lioness Holdings, LLC dba Tan Republic and Peter Lamka*, 36
2 BOLI 229, 264 (2018).

3 3) DB subjected Complainant to sexual harassment and sex discrimination in
4 violation of ORS 659A.030(1)(a), (b) and OAR 839-005-0030(7).

5 4) DB's action, taken through Sharma, of discharging Rymer from
6 employment violated ORS 659A.030(1)(f), and OAR 839-050-0125(2)(a)(A) and OAR
7 839-005-0010(1).

8 5) Rymer, acting in good faith and while employed by DB, reported
9 information that she believed was evidence of a violation of a state law (unlawful
10 harassment) to Sharma.

11 6) DB, acting through Sharma, terminated Rymer, because of her good faith
12 reports about Kumar sexually harassing her in the workplace, thereby violating ORS
13 659A.199(1) and OAR 839-010-0100(1).

14 7) At all times herein, Sharma was an individual and a "person" under ORS
15 659A.001(9)(a) and ORS 659A.030(1)(g).

16 8) Sharma aided or abetted DB in its unlawful employment practices in
17 violation of ORS 659A.030(1)(g).

18 9) The Commissioner of the Bureau of Labor and Industries has jurisdiction
19 of the persons and of the subject matter herein. ORS 659A.800 - ORS 659A.865.

20 10) Pursuant to ORS 659A.850(4)(a)(B), the Commissioner of the Bureau of
21 Labor and Industries has the authority under the facts and circumstances of this case to
22 issue an award requiring training, and the award of lost wages and compensatory
23 damages to Complainant, based on Respondents' unlawful practices. The sum of
24

1 money awarded and the other actions required of Respondents in the Order below are
2 an appropriate exercise of that authority.

3 **OPINION**

4 The Agency's Formal Charges include the following four alleged violations:

- 5 1. DB engaged in unlawful discrimination based on sex against Rymer in
6 violation of 659A.030(1)(b) and OAR 839-005-0030(1) - (7). Sharma aided
[or] abetted DB in this unlawful practice, in violation of ORS 659A.030(1)(g).
- 7 2. DB and Sharma discharged Rymer because she opposed an unlawful
8 practice, in violation of 659A.030(1)(f), OAR 839-005-0125(2)(a)(A) and OAR
839-005-0010(1),(4). Sharma aided and abetted DB in this unlawful practice,
9 in violation of ORS 659A.030(1)(g).
- 10 3. DB discharged Rymer because of her sex in violation of 659A.030(1)(a), OAR
839-005-0030(1)-(7) and OAR 839-005-0010(1),(4). Sharma aided [or]
11 abetted DB in this unlawful practice, in violation of ORS 659A.030(1)(g).
- 12 4. DB terminated Rymer, because of her good faith reports about sexual
13 harassment her in the workplace, thereby violating ORS 659A.199(1) and
OAR 839-010-0100(1). Sharma aided [or] abetted DB in this unlawful
practice, in violation of ORS 659A.030(1)(g).

14 The Agency seeks lost wages and emotional distress damages for Rymer and
15 requests an order requiring Respondents to undergo training regarding sexual
16 discrimination laws.

17 **LIABILITY OF DB FOR SEXUAL DISCRIMINATION**

18 **A. Sexual Harassment Analysis**

19 It is an unlawful employment practice for "[a]n employer, because of an
20 individual's * * * sex * * * to discriminate against the individual in compensation or in
21 terms, conditions or privileges of employment." ORS 659A.030(1)(b). Employers are
22 prohibited from using sex as the basis for employment decisions with regard to the
23 "terms conditions or privileges of employment such as benefits and compensation."
24

1 OAR 839-005-0021(1). "Discrimination because of sex includes sexual harassment * *
2 *." OAR 839-005-0021(2).

3 Unlawful sexual harassment may take the form of *quid pro quo* harassment or
4 hostile work environment harassment. The allegations in this case center on hostile
5 work environment harassment. OAR 839-005-0030(1)(b) defines hostile work
6 environment sexual harassment as:

7 "Any unwelcome verbal or physical conduct that is sufficiently severe or
8 pervasive to have the purpose or effect of unreasonably interfering with work
performance or creating a hostile, intimidating or offensive working environment."

9 OAR 839-005-0030(1). The conduct must be based on an individual's sex. *Id.*

10 The Agency's prima facie case in a hostile environment case consists of the
11 following elements: (1) DB was an employer subject to ORS 659A.001 to 659A.030; (2)
12 DB employed Complainant; (3) Rymer is a member of a protected class (sex); (4)
13 Rymer was subjected to unwanted conduct because of her sex; (5) the unwelcome
14 conduct was sufficiently severe or pervasive to have the purpose or effect of
15 unreasonably interfering with Complainant's work performance or creating a hostile,
16 intimidating or offensive work environment for Complainant; and (6) Rymer was harmed
17 by the unwelcome conduct. *In the Matter of Bravo Event Service, Inc.*, 36 BOLI 250,
18 267 (2018). The Agency and Respondents stipulated to facts that establish Elements 1-
19 3. See Finding of Fact – Procedural, # 9. Accordingly, the forum will examine the
20 additional elements below.

21 *Element 4 – Unwelcome Conduct*

22 The Agency contends that Rymer was subjected to unwelcome conduct from
23 Kumar, including Kumar asking Rymer to go upstairs to his apartment to engage in a
24

1 sexual act. DB and Sharma deny that Kumar engaged in the harassing conduct.

2 The forum concludes that Rymer credibly testified that one evening Kumar (a
3 resident of the apartment located above DB) stood in front of a door, pointed upstairs to
4 his apartment and, while making a hand gesture, asked to Rymer to “go like this to me.”
5 Rymer believed that Kumar was asking her for a “hand job” and to engage in a sexual
6 act with her. Rymer told Kumar that his conduct was inappropriate and that she did not
7 appreciate it. After the initial incident, Kumar’s behavior worsened. Rymer and other
8 employees observed Kumar watching her on the store’s video cameras. Kumar also
9 stared at Rymer’s breasts and continued to touch his genital area in front of her.

10 The forum did not believe Sharma’s testimony that Rymer was “lying.”
11 Furthermore, the forum discredited Sharma’s contention that Kumar was not simulating
12 a “hand job” but instead was “scratching” his genital area due to a medical condition.

13 Accordingly, the Agency established Element 4 (Unwelcome Conduct).

14 *Element 5 – Sufficiently Severe and Pervasive*

15 The standard for determining whether harassment based on an individual's sex is
16 sufficiently severe or pervasive to create a hostile, intimidating or offensive working
17 environment is “whether a reasonable person in the circumstances of the complaining
18 individual would so perceive it.” OAR 839-005-0030(2); *Vision International*, at 198. In
19 making that determination, the forum looks at the totality of the circumstances, *i.e.*, the
20 nature of the conduct and its context, the frequency of the conduct, its severity or
21 pervasiveness, whether it is physically threatening or humiliating, and whether it
22 unreasonably interferes with an employee’s work performance. *In the Matter of Andrew*
23 *W. Engel, DMD, PC*, 32 BOLI 94, 120 (2012).

1 The evidence in this case established that a reasonable person in Rymer's
2 circumstances (a woman) would have perceived Kumar's conduct towards her as
3 creating a hostile environment. Although there are no allegations that Kumar physically
4 touched Rymer, his conduct was severe in that he stood in front of a door, pointed to his
5 upstairs apartment and simulated a sexual act with his hand. Even after Rymer
6 complained to Sharma, Kumar stared at Rymer's breasts and watched her on the
7 store's video cameras. Accordingly, the Agency established that Kumar's conduct was
8 sufficiently severe or pervasive to create a hostile, intimidating or offensive working
9 environment.

10 *Element 6 – Harm to Rymer*

11 Rymer credibly testified that Kumar made her feel uncomfortable and "gross."
12 She felt "less than" and like she "was nothing." Other witnesses also described Rymer
13 being upset after her encounters with Kumar. See Findings of Fact ## 12, 13.
14 Accordingly, the Agency established all five elements of a hostile work environment.

15 **B. DB's Responsibility for the Harassment**

16 OAR 839-005-0030(3)-(7) sets forth the standards for analyzing whether an
17 employer is liable for sexual harassment based on whether the harasser is a proxy,
18 supervisor, co-worker or non-employee.

19 The Formal Charges included an allegation of harassment by proxy, which is
20 addressed in 839-005-0030(3). If Kumar was a proxy for Respondents, then his sexual
21 harassment of Rymer should be imputed to DB. OAR 839-005-0030(3) provides that
22 "[a]n employer is liable for harassment when the harasser's rank is sufficiently high that
23 the harasser is the employer's proxy, for example, the respondent's president, owner,
24 partner or corporate officer." See, e.g. *In the Matter of Dr. Andrew Engel, DMD, PC*, 32

1 BOLI 94, 122 (2012) (respondent's sole owner was proxy); *In the Matter of Crystal*
2 *Springs Landscapes, Inc.*, 32 BOLI 144, 167 (2012) (respondent's owner, who was also
3 a corporate officer, was respondent's proxy); *In the Matter of From the Wilderness, Inc.*,
4 30 BOLI 227, 286 (2009) (corporation liable for harassment by respondent's sole
5 shareholder); *In the Matter of Spud Cellar Deli, Inc.*, 31 BOLI 106, 133 (2010)
6 (respondent was held strictly liable for sexual harassment committed by respondent's
7 owner, president, and manager).

8 Kumar was Sharma's relative and lived in the apartment above the DB business.
9 He did not have a work permit and could not be legally employed. However, because of
10 his familial relationship with Sharma, Kumar was permitted to spend time in the store
11 while it was open. He cooked meals there and watched how the business operated.
12 However, there was insufficient evidence showing that he was employed by
13 Respondents or had any kind of role in the business. Accordingly, the Agency did not
14 sustain its burden to prove that Kumar held a rank that is "sufficiently high" so as to be
15 deemed the proxy of DB. Therefore, DB is not strictly liable for Kumar's harassment of
16 Complainant.

17 Similarly, the Agency did not establish that Kumar was a supervisor, employee or
18 an agent of DB. Accordingly, DB is not liable under the theories set forth in 839-005-
19 0030(4)-(6).

20 Therefore, DB's liability is to be examined under 839-005-0030(7) which
21 addresses harassment by non-employees. DB is liable for the sexual harassment
22 committed by Kumar if DB or one of its agents "knew or should have known of the
23 conduct unless [DB] took immediate and appropriate corrective action. In reviewing
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1 such cases, the [forum] will consider the extent of the employer's control and any legal
2 responsibility the employer may have with respect to the conduct of such non-
3 employees." OAR 839-005-0030(7).

4 In this case, it is undisputed that DB became aware of Kumar's conduct when
5 Rymer reported it to Sharma. However, instead of taking immediate and appropriate
6 corrective action, Sharma told Rymer that he did not believe her. Sharma allowed
7 Kumar to remain in the workplace and Kumar continued to harass Rymer. Therefore,
8 the forum concludes that DB is responsible for Kumar's sexual harassment of Rymer.

9 **LIABILITY OF DB AND SHARMA – TERMINATION FOR OPPOSING UNLAWFUL** 10 **PRACTICE**

11 The Agency alleges in its Formal Charges that DB and Sharma violated ORS
12 659A.030(1)(f) by terminating Rymer's employment, because she opposed what she
13 reasonably believed to be an unlawful practice (Kumar's sexual harassment). The
14 Agency's prima facie case consists of the following elements: (1) DB and Sharma were
15 an employer as defined by statute; (2) DB and Sharma employed Rymer; (3) Rymer
16 explicitly or implicitly opposed an unlawful practice or what she reasonably believed to
17 be an unlawful practice; (4) DB and Sharma subjected Rymer to adverse treatment and
18 (5) there is a causal connection between the protected activity and the adverse
19 treatment. OAR 839-005-0125(2)(a),(b),(c). See also *In the Matter of Sis-Q Cellular,*
20 *LLC, 38 BOLI _ (2022); In the Matter of Andrew W. Engel, DMD, PC, 32 BOLI 94, 132*
21 *(2012); In the Matter of From the Wilderness, 30 BOLI 227, 288 (2009).*

22 Elements 1 and 2 are not in dispute as to DB. With respect to Sharma, the
23 record does not establish that he was an employer, and the Agency did not address this
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1 allegation in its Closing Argument brief. Accordingly, the forum will proceed to analyze
2 this alleged violation as to DB only.

3 As to Element 3 (report), the evidence is undisputed that Rymer reported to
4 Sharma, and others, that Kumar was sexually harassing her. As the forum concluded
5 above, Kumar sexually harassed her and, thus, she had a “reasonable belief” that she
6 was harassed in the workplace.

7 With respect to Element 4 (adverse action), Rymer was terminated following her
8 report of harassment and, thus, there was an adverse action.

9 Finally, as to Element 5 (causation), there is evidence that Sharma did not like
10 Rymer’s complaint of harassment and thought she was lying. As well, he terminated
11 her in August of 2018, the same month in which she began complaining of Kumar’s
12 sexual harassment. The manner in which Rymer was terminated also supports an
13 inference of causation in that Sharma discharged Rymer in front of Kumar and four
14 other men, and they all laughed at her. Respondents claim that Rymer was terminated
15 because the business closed and all employees were discharged. However, Rymer
16 was terminated on August 22, 2018, but the business did not close until April 30, 2019.
17 Therefore, the Agency established the element of causation and met its burden of proof
18 to show that DB violated ORS 659A.030(1)(f).

19 **LIABILITY OF DB FOR TERMINATION BECAUSE OF SEX**

20 The Formal Charges allege that DB discharged Rymer because of her sex in
21 violation of ORS 659A.030(1)(a). It is an unlawful employment practice for “[a]n
22 employer, because of an individual’s * * * sex * * * to * * * discharge the individual from
23 employment.” ORS 659A.030(1)(a). To prove that DB violated ORS 659A.030(1)(a) by
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1 discriminating against and terminating Rymer's employment because of her sex, the
2 Agency must establish a prima facie case consisting of the following five elements: (1)
3 DB was an employer; (2) DB employed Rymer; (3) Rymer was in a protected class
4 (sex); (4) DB discharged Rymer and (5) DB terminated Rymer because of her sex. *In*
5 *the Matter of Next Step Carpet, LLC*, 38 BOLI _ (2022); *In the Matter of Cyber Center,*
6 *Inc.*, 32 BOLI 11, 32 (2012).

7 The first four elements are not in dispute. Therefore, the forum must determine if
8 there is causation and that Rymer was terminated because of her sex. As set forth
9 above, the forum concludes that she was terminated for her opposition to unlawful
10 activity. As well, there is evidence that other female employees continued to work at DB
11 after Rymer was terminated. Finally, the Agency's closing argument brief does not
12 address this claim to explain what evidence may be in support of the alleged violation.
13 Accordingly, the forum concludes that the Agency did not sustain its burden of proof to
14 establish a violation of ORS 659A.030(1)(a) for the termination of Rymer.

15 **LIABILITY OF DB FOR TERMINATION DUE TO REPORT OF UNLAWFUL PRACTICE**

16 The Agency also alleges that DB violated ORS 659A.199 when it terminated
17 Rymer. The analysis used in determining that DB violated ORS 659A.030(1)(f) applies
18 equally to the Agency's ORS 659A.199 claim. The forum also notes that the Agency
19 established that Rymer made a good faith report of information she believed was
20 evidence of a violation of state law (unlawful sexual harassment). Accordingly, the
21 forum's conclusion that DB violated 659A.030(1)(f) also leads to the conclusion that DB
22 also violated ORS 659A.199(1) when it terminated her employment after her report of
23 harassment. *See Vision International*, 37 BOLI at 199; *In the Matter of Grand*
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1 *Management Services, Inc.*, 38 BOLI _ (2022).

2 **LIABILITY OF SHARMA FOR AIDING AND ABETTING**

3 ORS 659A.030(1)(g) provides that it is an unlawful employment practice “[f]or
4 any person, whether an employer or employee, to aid, abet, incite, compel or coerce the
5 doing of any of the acts of this chapter or to attempt to do so.” A corporate officer and
6 owner who commits acts rendering the corporation liable for an unlawful employment
7 practice may be found to have aided or abetted the corporation's unlawful employment
8 practice. *In the Matter of Hey Beautiful Enterprises, Ltd., and Kimberly Schoene*, 34
9 BOLI 80, 97 (2015). *See also In the Matter of Crystal Springs Landscapes, Inc.*, 32
10 BOLI 144, 166-67 (2012); *In the Matter of Dr. Andrew Engel, DMD, PC*, 32 BOLI 94,
11 137 (2012); *In the Matter of Cyber Center, Inc.*, 32 BOLI 11, 35 (2012).

12 As set forth above, the parties stipulated that Sharma was an owner, member
13 and registered agent of DB. “[P]ersons directing the business-entity employer’s
14 unlawful conduct can be held individually liable under ORS 659A.030(1)(g).” *Allison v.*
15 *Dolich*, 321 Or App 721, 726, 518 P3d 591 (2022). Accordingly, in his role for DB,
16 Sharma aided both the harassment of Rymer that violated ORS 659A.030 and the
17 retaliation that violated ORS 659A.030 and ORS 659A.199 and he is in violation of ORS
18 659A.030(1)(g). As an aider/abettor, Sharma is jointly and severally liable with DB for
19 all of DB’s unlawful employment practices.

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1 **DAMAGES**

2 *Lost Wages*

3 The Formal Charges sought lost wages of "at least \$45,000." In its closing brief,
4 the Agency revised that figure to a total of \$12,387.50 in lost wages and tips.⁵ The
5 purpose of a back pay award in an employment discrimination case is to compensate a
6 complainant for the lost wages she would have received but for the unlawful
7 employment practice. *Vision International*, 37 BOLI at 200. Back pay awards are
8 calculated to make a complainant whole for injuries suffered as a result of the unlawful
9 termination. *Id.*

10 "In order to recover damages for lost wages, the aggrieved person will generally
11 be required to mitigate damages by seeking employment." OAR 839-003-0090(3).
12 "Earned income from employment may be deducted from lost wage damages." OAR
13 839-003-0090(3)(a). A complainant who is seeking damages for back pay is required to
14 mitigate damages by using reasonable diligence in finding other suitable employment.
15 *In the Matter of Blue Gryphon, LLC, and Flora Turnbull*, 34 BOLI 216, 238 (2015). The
16 burden of proof of showing the failure to mitigate damages lies with Respondents. *In*
17 *the Matter of Wal-Mart Stores, Inc.*, 24 BOLI 37, 65 (2003).

18 In this case, it would be appropriate to award Rymer lost wages from the date of
19 her termination (August 22, 2018) until the DB business closed on April 30, 2019. Had
20 she continued to remain employed during this time, she would have earned \$10,937.50
21 in wages (\$12.50/hour x 25 hours/week x 35 weeks). In addition, she would have

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23 ⁵ The forum has previously included tip money when calculating lost wages. See, e.g. *In the Matter of*
24 *Leo Thomas Ryder dba Leo's BBQ Bar & Grill*, 34 BOLI 67, 76 (2015).

1 earned tips in the amount of \$8000 (\$1000/month x 8 months), for a total of \$18,937.50
2 in lost wages and tips.

3 Rymer earned income from employment after her termination in the amount of
4 \$9,244.50. See Findings of Fact – Procedural ##24-26.

5 Accordingly, her total lost income minus the income she earned from other work
6 is \$9,693.

7 *Emotional Distress Damages*

8 The Agency seeks damages on behalf of Rymer in the amount of “at least
9 \$100,000” for physical, mental and emotional suffering. Pursuant to ORS 659A.850, the
10 Commissioner of the Bureau of Labor and Industries has the authority to award money
11 damages for emotional, mental, and physical suffering sustained. *In the Matter of*
12 *Oregon Truck Painting, LLC, On Time Painting, Inc., Richard Bowman, and Amanda M.*
13 *Marin*, 37 BOLI 87, 114-15 (2018). The Commissioner has the authority to fashion a
14 remedy adequate to eliminate the effects of unlawful employment practices. *Id.* at 115.

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

21 Rymer credibly testified that Kumar sexually harassed her by simulating a “hand
22 job,” and asking her to go upstairs to his apartment and engage in a sexual act with him.
23 Rymer told Kumar that his conduct was inappropriate, and that she did not appreciate it.

1 Kumar made her feel “cheap” and “gross.” She felt “less than” and like she “was
2 nothing.”

3 After Rymer’s complaint to Sharma, Rymer was subjected to worse conduct from
4 Kumar, including watching her on video, staring at her breasts and touching his groin
5 area in front of her. This made her feel gross and uncomfortable. She did not enjoy her
6 job anymore. When Sharma terminated her in front of Kumar and four other men, they
7 laughed at her. She felt that her termination was unfair, like she was “zeroed in on” and
8 that she did not matter. Rymer no longer felt comfortable working with men or being
9 alone with men, and became worried that men would take advantage of her if she was
10 too nice.

11 The forum looks to similar BOLI contested cases when considering an
12 appropriate damage award. For example, the forum awarded \$100,000 to a woman
13 sexually harassed by her supervisor when she credibly explained how the harassment
14 impacted her feelings of safety, and made her change how she dressed and acted
15 when working around men. *In the Matter of Bravo Event Service, Inc.*, 36 BOLI at 268-
16 69. The forum also recently awarded \$125,000 to a complainant that was subjected to
17 sex discrimination based on her gender identity. *In the Matter of Sunstone Organics,*
18 *LLC*, 38 BOLI _ (2023). As well, the forum recently awarded \$120,000 to a woman
19 subjected to pregnancy discrimination and discharge. *In the Matter of Next Step*
20 *Carpet, LLC*, 38 BOLI _ (2022). See also *In the Matter of Oregon Truck Painting, LLC*,
21 37 BOLI at 115 (awarding \$75,000 to a complainant terminated for complaining about
22 unsafe working conditions).

23 In this case, the forum finds \$100,000 to be an appropriate amount of emotional
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1 distress damages for the harm that Rymer suffered due to the sexual harassment,
2 retaliation and termination of her employment.

3 **OTHER REQUESTED RELIEF**

4 In its Formal Charges, the Agency asked that Respondents and Respondents'
5 managers and supervisors be trained, at Respondents' expense, "on unlawful
6 harassment and discrimination in the workplace" by "the Bureau of Labor and Industries
7 Technical Assistance for Employers Unit or other trainer agreeable to and approved by
8 the Agency." BOLI's Commissioner is authorized to issue an appropriate cease and
9 desist order reasonably calculated to eliminate the effects of any unlawful practice
10 found. ORS 659A.850(4). Among other things, that may include requiring a respondent
11 to:

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

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

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

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

21 This statute gives the Commissioner the authority to require Respondents and
22 Respondents' managers and supervisors to undergo training of the type sought in the
23 Formal Charges. The forum finds that this requirement is appropriate in this case.

24 **Exceptions to the Proposed Order**

The Proposed Order was issued on April 14, 2023. Any exceptions to the
Proposed Order were due 10 days later on April 24, 2023. See OAR 839-050-0380(4)
(stating that exceptions "must" be filed "within ten days of the date of issuance of the

1 Proposed Order” unless a party seeks an extension of time “as provided in OAR 839-
2 050-0050.”)

3 The Agency filed its Exceptions on April 27, 2023 (13 days after the Proposed
4 Order was issued), and did not file a request seeking an extension of time. The
5 Agency’s Exceptions state that the Proposed Order was issued on April 18, 2023, but
6 the Proposed Order clearly contains an issue date and service date of April 14, 2023.
7 Accordingly, the forum rejects the Agency’s Exceptions because they were not timely
8 filed.⁶ See *In the Matter of Green Thumb Landscape and Maintenance, Inc.*, 32 BOLI
9 185, 189 (2013) (failure to follow written directions in the Proposed Order’s “Exception
10 Notice” did not constitute “good cause” for granting an extension); see also *In the Matter*
11 *of Stahler*, 34 BOLI 56, 65 (2015).

12 Respondents timely filed their Exceptions on April 24, 2023. Respondents’
13 Exceptions 1 and 2 request that the forum make corrections of scrivener’s errors. The
14 forum concludes that those exceptions are well taken and those exceptions are granted,
15 as reflected in revisions to the sections above.

16 Respondents’ Exception 3 states that “the ALJ has erred in failing to exclude” the
17 witness testimony of Burnett when that testimony conflicted with the testimony of
18 Sharma. Notably, Burnett was a witness called by Respondents, not the Agency. The
19 forum credited Burnett’s testimony on matters on which she had personal knowledge.
20 When Burnett’s testimony conflicted with Sharma, the forum credited Burnett’s version
21 because of credibility concerns with the testimony of Sharma, as explained in greater

22 ⁶ Most of the Agency’s Exceptions refer to scrivener’s errors and do not take exception to the conclusions
23 in the Proposed Order. When appropriate, revisions were made in this Final Order to correct citations
24 and typographical errors.

1 detail in Finding of Fact #30. In a situation such as this where Respondents are asking
2 the forum to disregard the testimony of their own witness, the forum declines to reject
3 the credibility findings of the ALJ. See *In the Matter of Horizontal Motorsports, Inc.*, 37
4 BOLI 205, 219-20 (2020) (overruling an exception when the Agency did not
5 demonstrate convincing reasons for rejecting the ALJ's credibility findings), citing *In the*
6 *Matter of Kenneth Wallstrom*, 32 BOLI 63, 92-93 (2012) and *In the Matter of Gordy's*
7 *Truck Stop, LLC.*, 28 BOLI 200, 216 (2007).

8 Respondents' Exceptions 4, 7 and 8 take exception to the conclusions that DB
9 and Sharma engaged in unlawful practices. The bulk of these exceptions ask the forum
10 to adopt the testimony of Sharma over that of other witnesses and also argue that there
11 can be no violations when no one witnessed Kumar's alleged harassment of Rymer,
12 except for Rymer herself. As explained above, the forum declines to overturn the
13 credibility findings. As well, it is important to note that a complainant's credible
14 testimony can be sufficient to support the elements of a violation. See, e.g., *In the*
15 *Matter of Maltby Biocontrol, Inc., Howard Maltby, James Bassett, and Louis Bassett*, 33
16 BOLI 121, 146 (2014); *In the Matter of Dr. Andrew Engel, DMD, PC*, 32 BOLI 94, 123
17 (2012). In addition, there was testimony from other witnesses to support Rymer's
18 version of events in that people observed Kumar watching Rymer on DB's security
19 cameras. Also, Morgan testified that he overheard a heated exchange between Kumar
20 and Rymer, and then saw her come flying out of the room. Moreover, with respect to
21 the retaliation violation, the record included evidence which supported an inference that
22 Respondents terminated Rymer because of her complaints of harassment and not
23 because the business was closing. That evidence included the fact that Sharma
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1 admitted that he thought Rymer was lying when she complained of harassment,
2 Respondents terminated Rymer not long after her complaint and the business remained
3 open for several months after her termination. All of this evidence supports an
4 inference that Respondents terminated Rymer because of her complaints of
5 harassment. See *In the Matter of Moho Enterprises, LLC*, 38 BOLI _ (2022) (noting that
6 “the forum has long held that evidence includes inferences”); see also *In the Matter of*
7 *Income Property Management*, 31 BOLI 18, 39 (2010)(evidence includes inferences
8 and it is up to the form to decide which inference to draw).

9 Respondents’ Exception 5 asserts that the award of economic damages (lost
10 wages) is erroneous and not supported by the evidence in the record. This Exception
11 first raises arguments about the violations found, which have already been addressed
12 above. Respondents also argue that Rymer is not entitled to economic damages
13 because she could have accepted employment at one of the other businesses owned
14 by Respondents. This argument is not supported by credible evidence in the record, in
15 particular where it is Respondents’ burden of proof to show a lack of mitigation. See *In*
16 *the Matter of Wal-Mart Stores, Inc.*, 24 BOLI at 65. Therefore, Exception 5 is denied.

17 Respondents’ Exception 6 argues that the award of noneconomic or emotional
18 distress damages is erroneous and not supported by the evidence in the record. This
19 Exception first raises arguments about the violations found, which have already been
20 addressed above. Respondents also take issue with the fact that most of the testimony
21 regarding mental and emotional distress damages came from Rymer herself. However,
22 a complainant’s testimony, if believed, is sufficient to support a claim for mental
23 suffering damages. See also *Oregon Truck Painting, LLC*, 37 BOLI at 115.

1 Respondents also argue that this case differs from those cited in support of the
2 noneconomic damages. However, Respondents do not point out what those
3 differences are and do not offer any explanation for why those cases do not support the
4 award in this case. Accordingly, the forum also denies Exception 6.

5 **ORDER**

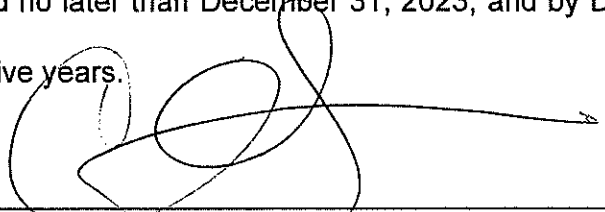
6 A. NOW, THEREFORE, as authorized by ORS 659A.850(2) and ORS
7 659A.850(4), and to eliminate the effects of the violations of ORS 659A.030(1)(b), (f),
8 (g), ORS 659A.199(1), OAR 839-005-0030(7), and OAR 839-005-0010(1),(4) and OAR
9 839-005-0125(2)(a)(A) by Respondents **Ramarjundev, LLC dba Dev's Burgers and**
10 **Rakesh Sharma**, and as payment of the damages awarded, the Commissioner of the
11 Bureau of Labor and Industries hereby orders Respondents **Ramarjundev, LLC dba**
12 **Dev's Burgers and Rakesh Sharma** to deliver to the Administrative Prosecution Unit
13 of the Bureau of Labor and Industries, 1045 State Office Building, 800 NE Oregon
14 Street, Portland, Oregon 97232-2180, a certified check payable to the Bureau of Labor
15 and Industries in trust for **Freda Rymer** in the amount of:

16 1) NINE THOUSAND SIX HUNDRED AND NINETY-THREE
17 DOLLARS (\$9,693.00), less lawful deductions, representing wages lost by Freda
18 Rymer as a result of Respondents' unlawful employment practices found herein;
plus,

19 2) ONE HUNDRED THOUSAND DOLLARS (\$100,000.00),
representing compensatory damages for emotional and physical suffering
20 experienced by Freda Rymer as a result of Respondents' unlawful employment
practices found herein; plus,

21 3) Interest at the legal rate on the sum of ONE HUNDRED NINE
22 THOUSAND SIX HUNDRED AND NINETY-THREE DOLLARS (\$109,693.00),
until paid.

1 B. NOW, THEREFORE, as authorized by ORS 659A.850(2) and
2 659A.850(4), and to eliminate the effects of Respondents' unlawful employment
3 practices found herein, the Commissioner of the Bureau of Labor and Industries hereby
4 orders Respondents **Ramarjundev, LLC dba Dev's Burgers and Rakesh Sharma** to
5 participate in training on the correct interpretation and application of the Oregon laws
6 pertaining to sexual harassment in the workplace by the Bureau of Labor and Industries
7 Technical Assistance for Employers Unit or other trainer agreeable to the Agency. This
8 training shall be completed no later than December 31, 2023, and by December 31, for
9 each successive year for five years.



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11 _____
Christina Stephenson, Commissioner
Bureau of Labor and Industries

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13 ISSUED ON: 5/11/23
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