

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:

Case Nos. 57-22

**YOUR HOUSE LLC,**

FINDINGS OF FACT  
CONCLUSIONS OF LAW  
OPINION  
ORDER

Respondent.

---

#### SYNOPSIS

The forum concluded that Respondent violated ORS 659A.030(1)(f) and OAR 839-006-0125(1), (2), and (3) by retaliating against Complainant for opposing an unlawful practice. The forum further concluded that Respondent violated ORS 659A.199(1) and OAR 839-010-0100(1) by retaliating against Complainant because she had in good faith reported information she believed was evidence of a violation of a state or federal law, rule, or regulation. The forum awarded Complainant \$14,400 in lost wages and \$30,000 in damage for mental and emotional distress.

---

The above-entitled case came on regularly for hearing before Caroline Holien, designated as Administrative Law Judge ("ALJ") by the Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held October 25-26, 2022, via the Zoom video conference application.

The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by Administrative Prosecutor Theofanis Skourtis, an employee of the Agency. Complainant Olivia Maurer ("Maurer") was present throughout the hearing. Respondent

1 Your House LLC (“Your House”) was represented throughout the proceeding by Kent  
2 Hickam, Attorney at Law. Your House Owner Kip Schoning was present throughout the  
3 hearing.

4 The Agency called Maurer and Brittney Boggs, Senior Investigator, Civil Rights  
5 Division (“Boggs”), as witnesses. Respondent was allowed to call only Kip Schoning as  
6 a witness based upon Respondent’s failure to timely file a Case Summary.

7 The forum received into evidence Administrative exhibits X1-X10 and Agency  
8 exhibits A1-A15 and A17-A22. The parties submitted post-hearing briefing on the  
9 admissibility of Agency exhibits A16 and A23. Neither exhibit was admitted into the  
10 record, as explained more fully in Findings of Fact – Procedural ## 10-12.

11 Having fully considered the entire record in this matter, I, Christina Stephenson,  
12 Commissioner of the Bureau of Labor and Industries, hereby make the following  
13 Findings of Fact (Procedural and on the Merits), Conclusions of Law, Opinion, and  
14 Order.<sup>1</sup>

15 **FINDINGS OF FACT – PROCEDURAL**

16 1) On November 30, 2020, Maurer filed a complaint with the Agency’s Civil  
17 Rights Division alleging Your House discharged her after she refused to engage in what  
18 she believed to be illegal conduct and after she filed a complaint with the Federal  
19 Bureau of Investigations (“FBI”) regarding the alleged illegal conduct. (Exs. A1-A3)

20 2) On October 5, 2021, the Agency’s Civil Rights Division issued a Notice of  
21 Substantial Evidence Determination (“SED”) in which it found “substantial evidence of  
22 \_\_\_\_\_

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

1 an unlawful practice based on reporting unlawful conduct and engaging in protected  
2 whistleblowing activities in that Respondent retaliated against Complainant and  
3 terminated her employment.” (Ex. A9)

4 3) On July 12, 2022, the forum issued a Notice of Hearing to the Agency, the  
5 Complainant, and the Respondent that included notice that the hearing would begin at  
6 9:30 a.m. on October 25, 2022, and the hearing would be held at the Offices of the  
7 Bureau of Labor & Industries, 3865 Wolverine Street NE, Bldg. E-1, Salem, OR 97305-  
8 1268. Together with the Notice of Hearing, the forum sent a copy of the Agency's  
9 Formal Charges; a document entitled “Summary of Contested Case Rights and  
10 Procedures” containing the information required by ORS 183.413; a document entitled  
11 “Servicemembers Civil Relief Act (SCRA) Notification,” a multi-language notice  
12 explaining the significance of the Notice of Hearing; and a copy of the forum's contested  
13 case hearings rules, OAR 839-050-000 to 839-050-0445. (Ex. X2)

14 4) The Formal Charges included the following allegations:

15 “Respondent discharged, expelled, subjected Complainant to adverse  
16 treatment, discriminated against and/or retaliated against Complainant  
17 because Complainant opposed an unlawful practice or what Complainant  
reasonably believed to be an unlawful practice in violation of ORS  
659A.030(1)(f) and OAR 839-005-0125(1), (2), and (3).

18 “Respondent discharged, demoted, suspended and/or in any manner  
19 discriminated and/or retaliated against Complainant for the reason that  
20 Complainant had in good faith, reported information that Complainant  
believed was evidence of a violation of a state or federal law, rule or  
regulation in violation of ORS 659A.199(1) and OAR 839-010-0100(1).  
21 This is an unlawful employment practice.”

22 (Ex. X2b)

23 5) On July 26, 2022, the forum issued an Interim Order Requiring Case  
24 Summaries to be Filed and Setting Case Deadlines setting October 4, 2022, as the

1 deadline for filing Case Summaries. The interim order also noted that counsel had  
2 agreed to accept filings via email. (Exs. X3, X5-X7)

3 6) On August 1, 2022, Your House filed Respondent's Answer denying the  
4 allegations set forth in the Formal Charges. (Ex. X4)

5 7) On September 8, 2022, the Agency filed the Agency's Motion to Change  
6 Place of Hearing requesting the hearing be held via video conference due to safety  
7 concerns due to the ongoing COVID-19 pandemic, as well as for the convenience of the  
8 parties. (Ex. X8)

9 8) On September 19, 2022, the forum issued an Interim Order Regarding the  
10 Agency's Motion to Change Location of Hearing granting the agency's motion after  
11 receiving no objection or response from Respondent. (Ex. X9)

12 9) On October 11, 2022, the Agency filed its Case Summary. Respondent  
13 failed to file a Case Summary. (Ex. X10, Forum File)

14 10) At hearing, the Agency offered Exhibits A16 and A23. Respondent  
15 objected to the admission Exhibit A16 due to illegibility of several documents included in  
16 the exhibit. Respondent also objected to the admission of Exhibit A23, which included  
17 articles detailing landlord/tenant issues involving Kip Schoning and previous  
18 corporations operated by Kip Schoning. The ALJ reserved ruling on the admissibility of  
19 the exhibits until issuance of the Proposed Order. The parties agreed to submit briefing  
20 on the admissibility of each exhibit.

21 11) On October 26, 2022, the forum issued an Interim Order Re Post Hearing  
22 Briefing Schedule in which the parties were directed to simultaneously file and serve  
23 briefs on the admissibility of Exhibits A16 and A23. The parties timely filed their final  
24

1 briefs on November 16, 2022. (Forum File)

2           12) Pages 1-4 of Exhibit A16 included emails between Boggs and Maurer that  
3 Boggs relied upon during the course of her investigation. Pages 1-4 of Exhibit A16 are  
4 **ADMITTED**. However, the remaining pages of Exhibit A16, pages 5-8, are illegible.  
5 Those pages were difficult to read even after they were enlarged during the course of  
6 the hearing. The hard copies of pages 5-8 are nearly impossible to read. Given the  
7 illegibility of pages 5-8, the forum finds the documents are inadmissible. Therefore,  
8 pages 5-8 of Exhibit A16 are **EXCLUDED** from the record.

9           13) Exhibit A23 includes newspaper articles referencing a history of  
10 landlord/tenant disputes involving Kip Schoning's properties. The Agency argues that  
11 the articles are evidence of pattern and practice by the Respondent that can be used by  
12 the forum in making a credibility determination. Respondent argues the allegations are  
13 remote in time and the retaliation alleged in the article involved a tenant and not an  
14 employee. Respondent further argues the articles are not relevant to the issue before  
15 the forum. Respondent's arguments are well taken. The articles detail business  
16 dealings that occurred in 2015 and 2017, and involve allegations regarding Kip  
17 Schoning's business dealings with tenants. The articles do not reference Your House,  
18 which is the current corporate identity of Kip Schoning's rental property management  
19 business. The information contained in the articles is not relevant to the issue before  
20 the forum. Therefore, Exhibit A23 is hereby **EXCLUDED** from the record. The  
21 Agency's request to make an offer of proof pursuant to OAR 839-050-0260(11) is  
22 **DENIED**.



1 at Your House's Corvallis office, and the other employee performs maintenance for  
2 properties managed by Your House. (Testimony of Kip Schoning)

3 3) Your House does not hold an ownership interest in any of the roughly 100  
4 properties it manages. The majority of properties managed by Your House are owned  
5 by Kip Schoning and his wife, Michelle Schoning, either individually or through  
6 corporations controlled by each of them. Your House did not have any mortgages at  
7 any time relevant to the matter; nor did it seek any mortgage modifications during the  
8 relevant period. (Testimony of Kip Schoning)

9 4) In March 2020, Your House hired Maurer to perform administrative work at  
10 the Corvallis office including filing, answering phones, interacting with tenants, making  
11 deposits, and drafting correspondence. (Testimony of Maurer, Kip Schoning)

12 5) Maurer was often the only person in the office. However, Maurer took  
13 direction from Michelle Schoning when she was in the office working with Maurer.  
14 Michelle Schoning assigned Maurer tasks to perform during the workday and had the  
15 apparent and actual authority to direct Maurer's performance. (Testimony of Maurer;  
16 Ex. A8)

17 6) Maurer did not receive a job description or any training for the position.  
18 Your House did not provide Maurer with an employee handbook or any type of policy  
19 manual. (Testimony of Maurer, Kip Schoning)

20 7) Maurer worked approximately 40 hours per week, with an hourly wage of  
21 \$15. Maurer was paid on a weekly basis. Kip Schoning's signature was the only  
22 signature on Maurer's payroll check. (Testimony of Maurer, Kip Schoning; Ex. A18)

1           8)     At least one of the three computers in the Corvallis office had personal  
2 information pertaining to Kip Schoning, as well as letterhead used by Michelle Schoning  
3 in her business(es). (Testimony of Maurer, Kip Schoning)

4           9)     Kip Schoning had concerns about Maurer's job performance and did not  
5 feel Maurer was well suited for the position. However, Kip Schoning did not issue any  
6 discipline to Maurer regarding her performance or otherwise bring his concerns to  
7 Maurer's attention at any time during her employment. (Testimony of Maurer, Kip  
8 Schoning)

9           10)    On or about April 6, 2020, Michelle Schoning directed Maurer to alter  
10 rental agreements to reflect a lower monthly rental amount than the one listed in the  
11 rental agreement signed by the tenant. Maurer understood Michelle Schoning intended  
12 to submit the altered rental agreements as part of a mortgage application. (Testimony  
13 of Maurer; Ex. A16)

14          11)    Maurer felt uncomfortable with Michelle Schoning's direction that she alter  
15 rental agreements without the tenant's knowledge or permission. Maurer initially agreed  
16 to make the changes on at least two occasions, as directed by Michelle Schoning, but  
17 Maurer later refused to do so out of concern that she was participating in mortgage  
18 fraud, which Maurer understood to be in violation of the law. (Testimony of Maurer)

19          12)    Maurer did not tell Kip Schoning that she had refused to continue altering  
20 rental agreements or that she was concerned that Michelle Schoning was directing her  
21 to engage in illegal activities. (Testimony of Maurer)

22          13)    On or about April 10, 2020, Maurer reported her concerns to the Federal  
23 Bureau of Investigations ("FBI") because she felt Michelle Schoning was directing her to  
24



1 act illegally. Maurer did not advise either Kip Schoning or Michelle Schoning that she  
2 had contacted the FBI to report her concerns.<sup>2</sup> (Testimony of Maurer)

3 14) On April 13, 2020, at approximately 10:12 a.m., Maurer texted her mother,  
4 "Lol Michelle hasn't spoken to me today about the mortgage modifications." Maurer's  
5 text message exchange with her mother also included:

6 "Maurer: And I haven't said anything to [K]ip yet  
7 Maurer's mother: Have you spoken to [K]ip at all yet?  
8 Maurer: Yeah, he's been civil"

8 (Ex. A21, p. 22)

9 15) Maurer spoke to Kip Schoning by telephone late in the morning on April 13,  
10 regarding an issue with a tenant questioning a utility bill. Their conversation escalated  
11 and ended with Maurer telling Kip Schoning that she thought he was being rude and  
12 disrespectful toward her. (Testimony of Maurer, Kip Schoning)

13 16) Maurer sent a text message to her mother at approximately 12:09 p.m., on  
14 April 13, 2020, that read, "I TOLD HIM." Maurer did not intend her text message to  
15 communicate that she had voluntarily quit her employment with Your House but to  
16 inform her mother that she had stood up to Kip Schoning regarding his behavior toward  
17 her. (Testimony of Maurer; Ex. A21, p. 7 (emphasis in original))

18 17) A short time after Maurer's phone call with Kip Schoning ended, Michelle  
19 Schoning called Maurer and informed her that she was being terminated because she  
20 was not a good fit. Michelle Schoning directed Maurer to leave her office key in the  
21

22 \_\_\_\_\_  
23 <sup>2</sup> Kip Schoning testified at hearing that he was not aware of Maurer's report to the FBI as of April 13,  
24 2020.

1 deposit box used by tenants who dropped off their rent checks. (Testimony of Maurer;  
2 Ex. A21)

3 18) Maurer did not quit her employment with Your House as contended by Kip  
4 Schoning at hearing. Maurer's termination from her employment with Your House was  
5 communicated to her by Michelle Schoning on April 13, 2020. (Testimony of Maurer)

6 19) Maurer was upset at the loss of her employment and the security it  
7 provided while she completed her college education. Maurer relied upon the wages she  
8 earned at Your House to pay for her housing and other living expenses. Maurer was  
9 anxious and depressed following her termination, which adversely affected her  
10 relationships with her family and friends. Maurer was forced to seek financial  
11 assistance from her parents, which caused her additional distress. (Testimony of  
12 Maurer)

13 20) Maurer made reasonable and diligent efforts to seek other employment  
14 after her termination. Maurer's job search was affected by the impact of the COVID-19  
15 pandemic. Maurer ultimately obtained subsequent employment in early October 2020.  
16 Maurer was unemployed and without income for approximately 24 weeks following her  
17 termination from Your House. Maurer lost \$14,400 in wages as a consequence of her  
18 termination from Your House (\$15 x 40 hours x 24 weeks). (Testimony of Maurer)

19 21) The forum found Boggs credible as a witness. Boggs made repeated  
20 efforts to gather information from Schoning during the investigative process. Schoning  
21 evaded Boggs' efforts and provided only vague information and general denials when  
22 he did provide a response. When given the opportunity to provide documentation that  
23 may challenge the information submitted by Maurer, Schoning avoided doing so even  
24

1 after being served with a subpoena. Boggs' testimony was clear and direct, and she  
2 showed no vested interest in the outcome of the case. (Testimony of Boggs; Exs. A2,  
3 A11-A14)

4 22) The forum generally found Maurer credible as a witness. There were  
5 discrepancies between the information Maurer presented to the Agency and her sworn  
6 testimony. For example, Maurer reported that "her employer ask [she] commit  
7 mortgage fraud and I refused" in her online complaint with the Agency. Maurer later  
8 reported to Boggs during an investigative interview that she had made the requested  
9 changes but was nervous doing so. At hearing, Maurer testified she made the  
10 requested changes but then refused to continue doing so. Despite these discrepancies,  
11 Maurer's testimony was straightforward and appeared sincere. (Testimony of Maurer;  
12 Exs. A3, A15)

13 23) The forum found Kip Schoning generally less credible than Maurer.  
14 Schoning's testimony was often evasive and non-responsive. Kip Schoning frequently  
15 claimed a lack of memory or lack of knowledge during cross examination, which he did  
16 not claim during direct examination by his attorney. (Testimony of Kip Schoning)

17 24) The forum did not give credit to Kip Schoning's testimony when it  
18 contradicted testimony from other credible witnesses.

#### 19 **CONCLUSIONS OF LAW**

20 1) At all times material herein, Respondent Your House LLC was an  
21 "employer" within the meaning of ORS 659A.001(4) and OAR 839-005-0003(5). Your  
22 House LLC employs one or more persons in the state of Oregon. Your House LLC  
23 employed Complainant Olivia Maurer.



- 1 • "Your House 'discharged, demoted, suspended and/or in any manner  
2 discriminated and/or retaliated against Complainant for the reason that  
3 Complainant had in good faith reported information that Complainant  
believed was evidence of a violation of a state or federal law, rule or  
regulation in violation of ORS 659A.199(1) and OAR 839-010-0100(1)."

4 (Findings of Fact – Procedural #4)

5 ORS 659A.199(1) provides that "[i]t is an unlawful employment practice for an  
6 employer to discharge \* \* \* or in any manner discriminate or retaliate against an  
7 employee \* \* \* for the reason that the employee has in good faith reported information  
8 that the employee believes is evidence of a violation of a state or federal law, rule or  
9 regulation." OAR 839-010-0100(1) interprets ORS 659A.199 as follows:

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

13 The Agency's prima facie case consists of the following elements: (1) Your  
14 House was an employer as defined by statute; (2) Your House employed Maurer; (3)  
15 Maurer reported what she believed to be evidence of a violation of a law rule or  
16 regulation; (4) Your House subjected Maurer to adverse treatment and (5) there is a  
17 causal connection between the protected activity and the adverse treatment. *See In the*  
18 *Matter of Reynolds Consultation, Inc., dba Senior Helpers of Salem*, 38 BOLI \_\_\_\_  
19 (2023); *In the Matter of 4R's*, 38 BOLI \_\_\_\_ (2022); *In the Matter of Grand Management*  
20 *Service, Inc.*, 38 BOLI \_ (2021);

21 The forum set forth the burden of proof the Agency must satisfy *In the Matter of*  
22 *Horizontal Motorsports, Inc.*, 37 BOLI 205, 215 (2020):

23 "The Agency has the burden of proof to establish the causal link in a civil  
24 rights case and the standard of proof is a preponderance of the evidence."

1        *In the Matter of Kenneth Wallstrom*, 32 BOLI 63, 82-83 (2012).  
2        'Preponderance of evidence means 'more probably true than false.' *Id.*  
3        quoting *In the Matter of Sunnyside Inn*, 11 BOLI 151, 165 (1993) (quoting  
4        from *State v. Jackson*, 313 Or 189, 832 P2d 443 (1992) and *Cook v.*  
5        *Marshall*, 214 Or 513, 527, 330 P2d 1026 (1958)."

6        ***Elements 1 and 2***

7        There is no dispute that Your House was an employer, as defined by statute, that  
8        employed Maurer from March 2020 through April 13, 2020. The evidence shows  
9        Michelle Schoning was frequently in the office with Maurer when Kip Schoning was not  
10        physically present in the office often directed Maurer to perform certain duties, including  
11        altering rental agreements. The issue that must therefore be addressed is whether  
12        Michelle Schoning served as an agent of Your House.

13        Despite Kip Schoning being the only Registered Agent and Manager listed for  
14        Your House, the evidence shows Michelle Schoning had the authority to assign work to  
15        Maurer and to direct and to control Maurer's work performance on a regular basis, as  
16        evidenced by Michelle Schoning directing Maurer to alter rental agreements on more  
17        than one occasion. The evidence further shows that Michelle Schoning had at least  
18        some involvement in the decision to terminate Maurer's employment with Your House  
19        given that she was the person who notified Maurer of her termination on April 13, 2020.

20        The forum therefore concludes Michelle Schoning served as an agent of Your  
21        House based upon her exercise of authority in directing and controlling Maurer's  
22        performance as an employee of Your House and to act on behalf of Your House as  
23        Maurer's employer when she informed Maurer of her termination. See *Ossanna v.*  
24        *Nike, Inc.*, 365 Or 196, 210, 445 P3d 281, 291 (2019)("employment setting often  
consists of multiple layers of networks and relationships; organizational models often do

1 not reflect a simple vertical chain of command; and bias can enter the decision-making  
2 process through formal or less formal channels.”)

3 ***Element 3 (report)***

4 Under ORS 659A.199, an employee “report[s]” information when the employee  
5 communicates information to “anyone” that the employee believes is evidence of a  
6 violation of state law. *In the Matter of Vision International Petroleum LLC.*, 37 BOLI  
7 187, 199 (2019). The “good faith” requirement of ORS 659A.199 is met when the  
8 whistleblower has a reasonable belief that the information reported has occurred and  
9 that the information, if proven, constitutes evidence of a violation of a state or federal  
10 law, rule or regulation. *Id.*

11 The evidence shows Maurer had a reasonable belief that altering the rental  
12 agreements was a violation of a state or federal law, rule or regulation when she  
13 informed Michelle Schoning that she would not continue altering the rental agreements  
14 and when she reported her concerns to the FBI. The Agency has therefore established  
15 the first three elements of its prima facie case.

16 ***Element 4 (adverse action)***

17 The fourth element of the Agency’s prima facie case requires the Agency to show  
18 that Your House subjected Maurer to an adverse employment action. The forum finds  
19 that it is more likely than not that Michelle Schoning informed Maurer of Schoning’s  
20 decision to terminate Maurer’s employment as Maurer testified at hearing. (Findings of  
21 Fact – the Merits, #19). Maurer’s testimony as to the sequence of events leading up to  
22 her telephone confrontation with Schoning regarding his behavior toward her and the  
23 steps she took following Michelle Schoning’s phone call describes a more likely series  
24

1 of events than Schoning's contention at hearing that Maurer simply stopped reporting  
2 for work without explanation. The Agency has therefore established the fourth element  
3 of its prima facie case by showing that Your House subjected Maurer to an adverse  
4 employment action by terminating her employment on April 13, 2020.

5 ***Element 5 (causation)***

6 The Agency contends that Your House discharged Maurer because of her  
7 opposition to Michelle Schoning's directive to alter the rental agreements and her  
8 subsequent report to the FBI. To show causation, the Agency "must prove that [a  
9 respondent's] unlawful motive was a substantial factor in his termination, or, in other  
10 words, that [Maurer] would have been treated differently in the absence of the unlawful  
11 motive." *Harper v. Mt. Hood Cmty. Coll.*, 283 Or App 207, 214, 388 P3d 1170, 1174  
12 (2016) (citing *LaCasse v. Owen*, 278 Or App. 24, 32-33, 373 P3d 1178 (2016)). See  
13 also *Ossanna*, 365 Or at 214, 445 P3d 281, 292 (recognizing that the causation  
14 standard for assessing violations of ORS 659A.199(1) is "the substantial-factor standard  
15 of causation" and approving jury instruction describing that "a substantial factor is a  
16 factor that made a difference."). See also *In the Matter of Atlas Bolt & Screw Company*  
17 *LLC*, 37 BOLI 57, 74 (2018) (using the "substantial factor" analysis when examining  
18 allegations of retaliation).

19 Proof of a causal connection may be established through circumstantial  
20 evidence. See *In the Matter of Trees*, 28 BOLI 218, 249 (2007), citing *In the Matter of*  
21 *Wal-Mart Stores, Inc.*, 24, BOLI 37, 61 (2002). "Evidence includes inferences. There  
22 may be more than one inference to be drawn from the basic fact found; it is the forum's  
23 task to decide which inference to draw." *In the Matter of Income Property Management*,



1 31 BOLI 18, 39 (2010). “[T]he absence of direct evidence of [respondent’s] specific  
2 intent is not determinative because such intent may be shown by the circumstantial  
3 evidence referred to herein.” *In the Matter of Sierra Vista Care Center*, 9 BOLI 281,  
4 296-97 (1991) (citations omitted). See also *Boynton-Burns v. University of Oregon*,  
5 197 Or App 373, 380-381, 105 P3d 893, 897-898 (2005), quoting *DeCintio v.*  
6 *Westchester County Medical Center*, 821 F2d 111, 115 (2d Cir), cert. den. 484 U.S.  
7 965, 108 S.Ct. 455, (1987) (“Proof of a causal connection can be established [1]  
8 indirectly, by showing that the protected activity was followed closely by discriminatory  
9 treatment or through other evidence such as disparate treatment of fellow employees  
10 who engaged in similar conduct, or [2] directly, through evidence of retaliatory animus  
11 directed against a [complainant] by the [respondent]”).

12         Additionally, the Oregon Court of Appeals held that when relying on “mere  
13 temporal proximity” between the protected action and the allegedly retaliatory  
14 employment decision to indirectly establish a causal connection, the “events must be  
15 ‘very close’ in time.” *Id.* at 381, citing *Clark County School District v Breeden*, 532 US  
16 268, 273 (2001).

17         The preponderance of the evidence shows that Michelle Schoning notified  
18 Maurer of her termination by Your House approximately three days after Maurer  
19 informed Michelle Schoning that she would no longer alter rental agreements out of  
20 concern that what she was being asked to do violated state and/or federal law. While  
21 the confrontation with Kip Schoning may have been the final event just prior to Maurer’s  
22 termination, the termination following so closely after Maurer’s refusal to continue  
23 altering rental agreements and Michelle Schoning being the person who informed  
24

1 Maurer that she was being terminated from her employment with Your House is  
2 sufficient to establish a causal connection between Maurer's refusal to continue altering  
3 rental agreements as directed by Michelle Schoning and Maurer's termination from Your  
4 House. In other words, it is more likely than not that Maurer's refusal was a factor that  
5 made a difference in the decision by Your House to terminate her employment.

6 Further support for finding that Maurer's refusal to continue altering rental  
7 agreements at Michelle Schoning's direction made a difference in the decision lies in  
8 the fact that Respondent offered *no evidence* in support of Kip Schoning's contention  
9 that Maurer was ill suited for the position or that Maurer voluntarily left the employment -  
10 - despite having several opportunities to do so - prior to and at the time of hearing.  
11 Further, the performance concerns Kip Schoning pointed to in his testimony were  
12 apparently so insignificant that he admitted he never addressed them with Maurer at  
13 any time during her employment. The forum concludes that the Agency has shown by a  
14 preponderance of the evidence that Maurer's refusal to continue altering rental  
15 agreements at Michelle Schoning's direction was a substantial factor in the decision to  
16 terminate Maurer's employment with Your House. Accordingly, the Agency established  
17 a prima facie case of a violation of ORS 659A.199.

18 The Agency also alleges that Your House violated ORS 659A.030(1)(f) when it  
19 terminated Maurer because she opposed Michelle Schoning's directive to engage in  
20 what Maurer reasonably believed to be a violation of a state or federal law, rule or  
21 regulation. The analysis used in determining that Your House violated ORS 659A.199  
22 applies equally to the Agency's ORS 659A.030(1)(f) claim. Accordingly, the forum's  
23 conclusion that Your House violated ORS 659A.199 necessarily leads to the conclusion  
24

1 that Your House also violated ORS 659A.030(1)(f) when it terminated Maurer. See  
2 *Vision*, 37 BOLI at 199.

3 **DAMAGES**

4 Lost Wages

5 Maurer is eligible for a back pay award because she was discharged in violation  
6 of ORS 659A.030(1)(f) and ORS 659A.199. ORS 659A.850. The purpose of a back pay  
7 ward in an employment discrimination case is to compensate a complainant for the lost  
8 wages he would have received but for the unlawful employment practice. *In the Matter*  
9 *of Oregon Truck Painting, LLC, On Time Painting, Inc., Richard Bowman, Individually,*  
10 *and Amanda M. Marin, Individually*, 37 BOLI 87, 114 (2018). Back pay awards are  
11 calculated to make a complainant whole for injuries suffered as a result of the unlawful  
12 termination. *Id.*

13 Maurer earned approximately \$600 per week based upon working approximately  
14 40 hours per week with an hourly wage of \$15. Maurer was unemployed for  
15 approximately 24 weeks until she was able to obtain subsequent employment. The  
16 forum concludes that Complainant is entitled to \$14,400 in lost wages (\$600 x 24  
17 weeks).

18 Emotional Distress Damages

19 The Agency seeks damages on behalf of Maurer in the amount of "at least"  
20 \$60,000 for emotional, mental and physical suffering. Pursuant to ORS 659A.850, the  
21 Commissioner of the Bureau of Labor and Industries has the authority to award money  
22 damages for emotional, mental, and physical suffering sustained. *Oregon Truck*  
23 *Painting, LLC*, 37 BOLI at 115. The commissioner has the authority to fashion a remedy  
24

1 adequate to eliminate the effects of unlawful employment practices. *Id.*

2 In determining an award for emotional and physical suffering, the forum  
3 considers the type of discriminatory conduct, and the duration, frequency, and severity  
4 of the 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  
6 sufficient to support a claim for mental suffering damages. *Id.*

7 The record included evidence that the termination from her employment with  
8 Your House negatively impacted Maurer, who testified that her relationships with family  
9 and friends were adversely affected by her feelings of anxiety and depression caused  
10 by her termination. Maurer experienced difficulties finding other employment and had to  
11 rely upon her savings and her parents for financial support. Accordingly, based on the  
12 record in this case, the forum concludes that \$30,000 is an appropriate award of  
13 emotional distress damages.

14 **OTHER REQUESTED RELIEF**

15 In its Formal Charges, the Agency asked the forum to issue a cease and desist  
16 order against Respondents, requiring them to immediately stop all of the unlawful  
17 employment practices alleged in the Amended Formal Charges. BOLI's Commissioner  
18 is authorized to issue an appropriate cease and desist order reasonably calculated to  
19 eliminate the effects of any unlawful practice found. ORS 659A.850(4). Among other  
20 things, that may include requiring a respondent to:

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

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

24 "(B) Eliminate the effects of the unlawful practice that the respondent is  
found to have engaged in, including but not limited to paying an award of

1 actual damages suffered by the complainant and complying with injunctive  
2 or other equitable relief; and  
3 "(C) Protect the rights of the complainant and other persons similarly  
4 situated[.]"

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

#### 7 **EXCEPTIONS TO THE PROPOSED ORDER**

8 The Agency timely filed exceptions to the proposed order on February 6, 2023.  
9 Respondent did not file any exceptions. See Findings of Fact– Procedural ## 14-15

10 The Agency's exceptions pertaining to scrivener's errors and citation corrections  
11 have been well taken and have been incorporated into the final order. The Agency's  
12 exceptions 9, 11, 14, 15, 17-21 generally take issue with the forum's conclusion that it  
13 had failed to prove by a preponderance of the evidence the final element of its prima  
14 facie case, which required the Agency to show that Maurer's termination from her  
15 employment with Your House was because of her opposition to what she reasonably  
16 believed to an unlawful practice and because she had in good faith reported information  
17 she had believed was evidence of a violation of a state or federal law, rule or regulation.  
18 Upon consideration of the Agency's arguments, the forum has made additional findings  
19 of fact and engaged in additional analysis. The forum has concluded that the  
20 preponderance of the evidence presented at hearing supports a conclusion that  
21 Respondent Your House LLC retaliated against Maurer because of her opposition to  
22 what she reasonably believed to be an unlawful practice and because Maurer reported  
23 information that she believed was evidence of a violation of a state or federal law, rule,  
24 or regulation in violation of ORS 659A.030(1)(f), ORS 659A.199(1), OAR 839-005-  
0125(1),(2),(3), and OAR 839-010-0100(1).



1 C. NOW, THEREFORE, as authorized by ORS 659A.850(2) and  
2 659A.850(4), and to eliminate the effects of **Respondent Your House LLC's** unlawful  
3 employment practices found herein, the Commissioner of the Bureau of Labor and  
4 Industries hereby orders **Respondent Your House LLC** to participate in training on the  
5 correct interpretation and application of the Oregon laws pertaining to retaliation by the  
6 Bureau of Labor and Industries Technical Assistance for Employers Unit or other trainer  
7 agreeable to the Agency no later than ninety (90) days from the day of this order.

8  
9 

10 \_\_\_\_\_  
Christina Stephenson, Commissioner  
Bureau of Labor and Industries

11  
12 ISSUED ON: \_\_\_\_\_

6/20/23