BRAD AVAKIAN
COMMISSIONER

CHRISTIE HAMMOND
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: **HEY BEAUTIFUL ENTERPRISES, LTD., and KIMBERLY SCHOENE, individually as aider and abettor under ORS 659A.030(1)(g),** Respondents.	Case No. **41-15** FINDINGS OF FACT ULTIMATE FINDINGS OF FACT CONCLUSIONS OF LAW OPINION ORDER

SYNOPSIS

Complainant, an esthetician, was employed by Respondent Hey Beautiful Enterprises, Ltd. ("HBE"), which paid its employees every week. After three weeks, Complainant had worked 129 hours and earned $1,161 in wages but had been paid nothing. When Complainant told her manager that she had called the Better Business Bureau to ask advice about getting paid, her employment status was reduced from fulltime to on-call. The next day, when Complainant visited BOLI to inquire about filing a wage claim, she was discharged. HBE violated ORS 652.355, OAR 839-010-0100(4), ORS 659A.199, OAR 839-010-0100(4), ORS 659A.030(1)(f), and OAR 839-050-0125(2) in changing Complainant's employment status from fulltime to on-call and discharging Complainant. Respondent Schoene, HBE's president, was responsible for these unlawful employment practice, thereby violating ORS 659A.030(1)(g) by aiding and abetting HBE's actions. The forum awarded Complainant $10,000 in damages for mental and emotional distress stemming from Respondents' unlawful employment practices and $644.00 for lost wages and tips.

The above-entitled case came on regularly for hearing before Alan McCullough, designated as Administrative Law Judge ("ALJ") by Brad Avakian, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on May

19, 2015, in the W. W. Gregg Hearing Room of the Oregon Bureau of Labor and Industries, located at 800 NE Oregon Street, Portland, Oregon.

The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by Administrative Prosecutor Cristin Casey, an employee of the Agency. Amber R. Walker ("Complainant") was present throughout the hearing and was not represented by counsel. Respondent Kimberly Schoene ("Schoene") represented herself and was present throughout the hearing. Respondent HBE was held in default prior to the hearing and was not represented at the hearing.

The Agency called the following witnesses: Amber Walker, Complainant, and Monica Mosley, Senior Investigator, BOLI Civil Rights Division. Respondent Schoene called herself as a witness.

The forum received into evidence:

a) Administrative exhibits X1 through X12;

b) Agency exhibits A1 through A19; and

c) Respondent exhibits R1 through R6.

Having fully considered the entire record in this matter, I, Brad Avakian, Commissioner of the Bureau of Labor and Industries, hereby make the following Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact,[1] Conclusions of Law, Opinion, and Order.

FINDINGS OF FACT – PROCEDURAL

1) On December 27, 2013, Complainant filed a verified complaint with the Agency's Civil Rights Division alleging that she was the victim of the unlawful employment practices of Respondent HBE. On April 28, 2014, the complaint was

[1] The Ultimate Findings of Fact required by ORS 183.470 are subsumed within the Findings of Fact – The Merits.

amended to name Respondent Schoene as an aider and abettor. On August 28, 2014, the complaint was amended a second time to correct Respondents' addresses. After investigation, the Agency issued a Notice of Substantial Evidence Determination on December 12, 2014, in which it found substantial evidence that Respondents had engaged in unlawful employment practices in violation of ORS 652.355, ORS 659A.199, ORS 659A.230, ORS 659A.030(1)(f), and ORS 659A.030(1)(g) by retaliating against Complainant and terminating her for reporting a violation of state law, whistleblowing, filing a wage claim, and aiding and abetting these unlawful employment practices. (Exs. A1, A3, A5, A17)

2) On February 13, 2015, the Forum issued a Notice of Hearing to Respondents, the Agency, and Complainant stating the time and place of the hearing as May 19, 2015, beginning at 9:00 a.m., at the W. W. Gregg Hearing Room of the Oregon Bureau of Labor and Industries, located at 800 NE Oregon Street, 10th floor, Portland, Oregon. Together with the Notice of Hearing, the forum sent a copy of the Agency's Formal Charges, a document entitled "Summary of Contested Case Rights and Procedures" containing the information required by ORS 183.413, a document entitled "Servicemembers Civil Relief Act (SCRA) Notification, a multi-language notice explaining the significance of the Notice of Hearing, and a copy of the forum's contested case hearings rules, OAR 839-050-000 to 839-050-0445. (Ex. X2)

3) Summarized the Agency's Formal Charges alleged the following unlawful employment practices:

a. HBE discriminated against Complainant "because Complainant made a wage claim or discussed, inquired about or consulted an attorney or agency about a wage claim in violation of ORS 652.355 and OAR 839-010-0100(4)."

b. HBE "unlawfully discharged, demoted, suspended, discriminated and/or retaliated against Complainant with regard to promotion, compensation or other terms, conditions or privileges of employment because Complainant, 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 and OAR 839-010-0100(1)."

c. HBE unlawfully discharged, expelled or otherwise discriminated against the Complainant because Complainant opposed Respondents' unlawful practice and/or practices or because Complainant has filed a complaint, testified or assisted in any proceeding under ORS Chapter 659A or has attempted to do so in violation of ORS 659A.030(1)(f) and OAR 839-005-0125."

d. Schoene aided, abetted, incited, compelled or coerced or attempted to aid, abet, incite, compel or coerce HBE's unlawful employment practices in violation of ORS 659A.030(1)(g).

The Formal Charges asked for lost wages estimated to be "at least $18,720" and damages for emotional, mental and physical suffering in the amount of "at least $10,000." The Formal Charges also requested that Respondents be trained, at their expense, "on the correct interpretation and application of the Oregon laws pertaining to retaliation" and enjoined from "violating laws pertaining to retaliation for engaging in protected activity." (Ex. X2)

4) On February 26, 2015, Schoene filed an answer in which she denied engaging in the unlawful employment practices alleged in the Formal Charges. (Ex. X3)

5) On March 3, 2015, the ALJ issued an interim order that stated the following:

> "In reviewing the record to date, it appears that Respondent **HEY BEAUTIFUL ENTERPRISES, LTD.** is a corporation or legal entity separate and distinct from Respondent **KIMBERLY SCHOENE**. If so, OAR 839-050-0110(1) requires that corporations must be represented at all stages of the proceeding either by counsel or by an authorized representative. An authorized representative includes an authorized officer or regular employee of a corporation. OAR 8390-050-0110(2). **Before a person may appear as an authorized representative, the corporation that is a party to the contested case proceeding must file a letter specifically authorizing the person to appear on behalf of the party.** OAR 839-050-0110(3). The answer and request for hearing filed by **KIMBERLY SCHOENE** does not contain that specific authorization.

"If Respondent **HEY BEAUTIFUL ENTERPRISES, LTD.** is in fact a corporation, it is hereby notified that: (1) **HEY BEAUTIFUL ENTERPRISES, LTD.** MUST be represented either by an attorney or by an 'authorized representative' at all stages of this proceeding, including the filing of an answer; (2) At this point in the contested case proceeding, **HEY BEAUTIFUL ENTERPRISES, LTD.** has not yet filed an answer; (3) Except for a letter authorizing a person to appear on behalf of Respondent **HEY BEAUTIFUL ENTERPRISES, LTD.** as an authorized representative, the forum will disregard any motions, filings, or other communications from Respondent **HEY BEAUTIFUL ENTERPRISES, LTD.** unless they are through an attorney or authorized representative; and (4) If Respondent **HEY BEAUTIFUL ENTERPRISES, LTD.** is not represented in this contested case proceeding by an attorney or authorized representative, Respondent **HEY BEAUTIFUL ENTERPRISES, LTD.** will be found in default and will not be allowed to participate in the hearing. OAR 839-050-0330.

"To resolve this potential problem, Respondent **HEY BEAUTIFUL ENTERPRISES, LTD.** must file a letter specifically authorizing an authorized officer or regular employee of **HEY BEAUTIFUL ENTERPRISES, LTD.** to appear as its authorized representative. If Ms. Schoene desires to act as **HEY BEAUTIFUL ENTERPRISES, LTD.**'s authorized representative and is eligible to do so, she can meet this requirement by simply filing a letter authorizing her to appear as **HEY BEAUTIFUL ENTERPRISES, LTD.**'s authorized representative and asking the forum to accept the answer she has already filed as the answer for **HEY BEAUTIFUL ENTERPRISES, LTD**."

(Ex. X6)

6) On March 19, 2015, the Agency filed a motion for default against HBE based on HBE's failure to file a timely answer through an authorized representative. (Ex. X8)

7) On March 23, 2015, the ALJ issued an interim order granting the Agency's motion for default against HBE. The order read as follows:

"**INTRODUCTION**

"On March 19, 2015, the Agency moved for an Order of Default based on the failure of Respondent Hey Beautiful Enterprises, Ltd. ("HBE") to file an answer to the Formal Charges. This order rules on the Agency's motion.

"**ANALYSIS**

"On February 13, 2015, the Agency issued Formal Charges ("Charges") in which it alleged that HBE was an active business corporation that was Complainant's employer and terminated Complainant in violation of ORS 652.355 and OAR 839-010-0100(4). The Charges further alleged that Respondent Kimberly Schoene was HBE's president and secretary and that Schoene terminated Complainant, thereby aiding and abetting HBE in violation of ORS 659A.030(1)(g).

"The forum takes official notice that the Notice of Hearing affixed as a cover page to the Formal Charges conspicuously stated the following two requirements that are directly relevant to this Notice of Default:

> (1) '**Respondent's Answer is due 20 days from service of this Notice. If Respondent does not file an answer within 20 days, it may be held in DEFAULT**. If held in default, Respondent will not be allowed to participate in the contested case hearing, examine witnesses, or introduce evidence.' (emphasis in original).
>
> (2) 'All partnerships, corporations, unincorporated associations, including limited liability companies * * * MUST be represented by an attorney or by an "authorized representative" at all stages of the hearing, including the filing of an answer. * * *'

"On March 2, 2015, Respondent Schoene filed an answer to the Charges in which she denied the majority of the allegations in the Charges and asked that the Charges be dismissed. On March 3, 2015, I issued an interim order setting out the requirement in OAR 839-050-0110(1) for HBE to be represented by an attorney or an authorized representative. In pertinent part, my order read:

> [The order referred to is quoted verbatim in Proposed Finding of Fact #5 – Procedural, *supra*.]

"On March 5, 2015, the Agency filed a Notice of Intent to File a Motion for Default if HBE did not file an answer to the Formal Charges on or before March 16, 2015, then filed the present motion on March 19, 2015. As of today, neither Respondent HBE nor Schoene have complied with the terms of my March 3, 2015, interim order

"OAR 839-050-0130(4) requires that 'a party must file an answer within 20 days after service of the [Formal Charges].' OAR 839-050-0030(1) provides that service of Formal Charges is complete 'upon * * * (a) Receipt by the party or the party's representative; or (b) Mailing when sent by registered or certified mail to the correct address of the party or the party's representative.' OAR 839-050-0330(1) provides that default may occur when '[a] party fails to file a required

response, including * * * an answer, within the time specified in the [Formal Charges].'

"In support of its motion, the Agency attached a receipt showing that the Formal Charges were mailed on February 13, 2015, by certified mail, return receipt requested, to Michael Redden, HBE's registered agent, and delivered and signed for on February 18, 2015. Respondent Schoene raised no argument in her answer that Redden was not HBE's agent or that the Charges were not mailed to Redden's correct address. Accordingly, HBE's answer was due no later than March 5, 2015. 38 days have elapsed since February 13, 2015, and HBE has yet to file an answer, despite two written reminders, one from the forum and one from the Agency, that it would be held in default if it did not do so.

"Based on Respondent HBE's failure to file an answer in the time set out in the Notice of Hearing, this forum **GRANTS** the Agency's motion and finds HBE in default. If HBE is not granted relief from default, HBE will not be allowed to participate in any manner in the hearing, including, but not limited to, presentation of witnesses or evidence on HBE's behalf, examination of Agency witnesses, objection to evidence presented by the Agency, making of motions or argument, and filing exceptions to the Proposed Order. OAR 839-050-0330(4).

"Relief from default may be granted if HBE shows good cause, within ten days after the date of this order, for failing to timely file an answer. HBE's request for relief must be in writing and accompanied by a written statement, together with appropriate documentation, setting forth the facts supporting the claim of good cause. OAR 839-050-0340. Any request for relief from default must be made by an attorney or authorized representative or the forum will not consider it."

"IT IS SO ORDERED"

(Ex. X9)

8) HBE did not file a request for relief from default. (Entire Record)

9) On March 30, 2015, Schoene filed a letter with the forum that stated the following: "HEY BEAUTIFUL ent [sic] authorizes Kimberly Schoene to represent on the business behalf. All documents that have been submitted where [sic] in the behalf of HEY BEAUTIFUL Ent with Kimberly Schoene as the reprehensive [sic]." (Ex. X10)

10) At the start of the hearing, the ALJ orally advised Casey and Schoene of the issues to be addressed, the matters to be proved, and the procedures governing the conduct of the hearing. (Statement of ALJ)

11) On June 16, 2015, the ALJ issued a proposed order that notified the participants they were entitled to file exceptions to the proposed order within ten days of its issuance. Respondents filed no exceptions. On June 26, 2015, the Agency timely filed exceptions to the ALJ's conclusions that HBE did not violate ORS 659A.030(1)(f) and that Complainant was not entitled to any back pay. Those exceptions are addressed in the Opinion section of this Final Order.

FINDINGS OF FACT – THE MERITS

1) At all times material herein, HBE was a corporation doing business in Oregon and engaged or utilized the personal services of one or more employees, including Complainant. (Testimony of Complainant; Ex. A8)

2) At all times material herein, Schoene was HBE's president, secretary, and manager. (Testimony of Schoene, Mosley; Ex. A8)

3) Complainant worked for HBE from December 6 through December 27, 2012, as a licensed esthetician and nail technician. She was hired as a full-time employee at the agreed wage rate of $9 per hour. During her short tenure of employment with HBE, she was scheduled to work approximately 40 hours per week. When she was not working with a client, she was expected to remain in HBE's salon. She was trained by Schoene, whom she looked up to as a boss and mentor. (Testimony of Complainant; Exs. A7, A19)

4) Before Complainant started work, HBE required her to sign a document entitled "Contracting Statement agreement for employees of Kalista salon"[2] that included the following language:

> "The employee Amber acknowledges that he/she will only be compensated for services performed by the employee on an hourly and commission scale of services paid by client[.] If the technician has a client she will be paid for that client within the time she is given to perform the service, unless otherwise agreed in writing. Hourly rate 9 commissions of service 15% commissions of retail 10%"[3]

(Ex. A19)

5) Complainant was trained by Schoene. Complainant's immediate supervisor was Aida Magana, HBE's spa manager. (Testimony of Complainant, Schoene; Ex. R1)

6) On December 20, 2012, Complainant received a written evaluation that concluded with the words "everything is great." While she worked for HBE, her work ethic and her work was "really good." (Testimony of Complainant, Mosley; Exs. A13, A14)

7) HBE paid its employees once a week during Complainant's employment. Complainant was not paid after her first week of employment because of HBE's policy that new employees are not paid until "the second payroll." (Testimony of Complainant, Mosley; Ex. A14)

8) HBE's regular payday was December 22, 2012. Complainant did not receive a paycheck on that date. At lunchtime, she asked Schoene for her paycheck. Schoene told Complainant there could have been "problems with the payroll" and by the next payroll "it would be taken care of." (Testimony of Complainant)

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[2] "Kalista Hair Salon" was an assumed business name that HBE registered with the Sec. of State Corporation Division on August 27, 2008.

[3] Underlined text is handwritten on the original document.

9) HBE's next payday was December 27, 2012. By this time, Complainant had worked 129 hours and earned $1,161 in wages.[4] When Complainant did not get a paycheck, she telephoned the Better Business Bureau ("BBB") in the afternoon to ask for assistance in getting paid. A BBB representative told Complainant that she should demand her pay, ask for a pay stub, and contact BOLI if she was not given both. (Testimony of Complainant)

10) In the afternoon after she called the BBB, Complainant called Magana and left a voicemail message saying that she had contacted the BBB and that the BBB had advised her to demand her pay and ask for a pay stub. Complainant also talked to her coworkers about not being paid. Some of them also said that they had not been paid and Complainant advised them to call BOLI. Complainant followed up her voicemail by sending a text message to Magana at 4:54 p.m. Between 4:54 p.m. and 10:15 p.m. that night, Complainant and Magana exchanged the following text messages, reprinted verbatim below. Complainant's messages are bolded; Magana's are in italics.

- **"Hey I need a print out of my pay for the 7th so I know how to budget for next month. Are you coming back tonight?"**
- *Who is this new phone?*
- **Amber:-)**
- **??**
- *I'm not commit back I'm doing a few things at the moment.*
- *There is a tip from today FYI.*
- **Can Ashley get that?? I need that tonight before I leave**
- *No she can't. And we just print that out. <u>its</u> done when payroll goes.*
- *I can see what we can do but it won't happen until tomorrow*
- **I hope you have that ready for me tomorrow morning**

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[4] The forum applies the doctrine of issue preclusion to determine this fact. In a Final Order issued on May 9, 2014, in which Complainant's subsequent wage claim against HBE was litigated, including the number of hours she worked, her rate of pay, and her total wages earned, BOLI's Commissioner found that Complainant had worked 129 hours and earned $1,161 in wages for the work she performed for HBE between December 6 and December 27, 2012. *See In the Matter of Catalogfinder, Inc.*, 18 BOLI 242, 257 (1999)(issue preclusion bars future litigation on an issue of fact or law when that issue has been actually litigated and determined in a setting when its determination was essential to the final decision reached).

- *I'll talk to you about it tomorrow. It's not a click away... and any questions you have are done at it one on one. Not when I'm not at the salon. Any print outs have clients information and I can't just print out.*
- **It would be awesome if I could talk to tonight. I don't think ur understanding the seriousness of this situation.**
- *Please come tomorrow so I can give you a copy of your contract and your final check. Thanks.*
- **Final check?**
- **I never quit, so am I fired?? What's going on?**
- *Based on your actions and your involving the whole staff. You quite. I'm so confused!?*
- **Don't be confused, I just want a copy of my pay like I was advised to do.**
- **I am not quitting.**
- *You never had to be there, it is a matter of you building your clientele and getting walk-ins. By not having several ppl waiting for Walk ins we focus on you and having the front desk giving you the walk ins while my other staff is fully licensed. We will be having you on call and you come in when we a client.*
- **I am just told that I needed to make sure I get a copy of my pay roll information. That is fine, will I see u tomorrow the scheduled time?**
- *You're on call. If you have a client we'll call you.*
- **I'm coming in for my copy of contract and my pay roll info what time will be convenient for you?**
- *Ur going to need to talk to Kim from here on out! Your on call and at this point I'm no longer managing u if u have an address we will send u your copy of the contract and we will have your numbers for you! We will not give u the print out but will let u see your numbers and show you them to compare them! I feel u are hostile and I don't feel comfortable around u any longer! You will have to schedule time with Kim*
- **Her # please?**
- *If we need you for clients will contact u! If we call u for a client and u don't show it will be job abandonment! You will need to be in dress store and ready for your client when called. U will not need to stay in the salon after u are done with your client. As a matter of fact it's best your not! U will be written up tomorrow for upsetting the entire staff with your outburst tomorrow! Kim*
- *58353099372*
- *5035309382*
- **Okay thank you**

(Testimony of Complainant; Ex. A11)

11) While Magana and Complainant were exchanging text messages, Magana told Schoene that Complainant had caused a scene with other staff members and that Complainant had contacted the BBB and was demanding a meeting. Schoene and Magana discussed the situation. Schoene told Magana that she thought "we're being

set up" and told Magana to stop texting Complainant and arrange a meeting for the next morning. (Testimony of Mosley; Ex. A14)

12) From Magana's text messages, Complainant concluded that her employment status had been changed from fulltime work to on-call status. Complainant wanted to be a fulltime employee, not an on-call employee, and Magana's text messages made her "initially" feel angry and "emotionally distraught." (Testimony of Complainant)

13) On the morning of December 28, 2012, Complainant met with Schoene and Magana at HBE before HBE opened for business. Complainant's purpose in meeting with them was to get paid and obtain a copy of documents that showed how she was being paid. The meeting soon became a confrontation, with Schoene screaming at Complainant. Schoene was furious with Complainant for contacting the BBB. Schoene told Complainant she had not done anything wrong, that Complainant was "stupid and naive," was "being a bitch," and added "that is how this business works." Schoene offered to give Complainant a copy of her employment contract and told Complainant that she would be called when a client arrived. Schoene also asked Complainant how long it would take her to get to HBE if she had a client; Complainant responded that it would take an hour. At the end of the meeting, Schoene "pushed" Complainant as Complainant attempted to walk around her to leave HBE's salon. (Testimony of Complainant, Schoene)

14) Complainant then waited downstairs for 30 minutes before Schoene gave her a paycheck for $200 and a handwritten note of days Complainant had worked and the different services Complainant had performed. Schoene did not give Complainant a paystub. In response, Complainant told Schoene that she was going to BOLI because

Schoene "had not given her what she came in for." (Testimony of Complainant, Mosley; Ex. A14)

15) Later on the morning of December 28, Complainant visited BOLI's Portland office, where she was given information on how to file a wage claim and a civil rights complaint. While at BOLI's office, Magana sent Complainant a text message that read: "so we have a brow wax. Can you be here right now?" Complainant responded that she could not because she was "at BOLI." Magana told Schoene that Complainant was "down at the labor board, turning us in." Schoene responded by saying "I guess she quit. I guess she made her decision." Three minutes after her first text message, Magana sent Complainant a second text message that read: "Never mind she left." (Testimony of Complainant, Schoene; Exs. A10, R2)

16) Before December 27, Complainant had been scheduled to work on December 28-31, 2012. (Testimony of Complainant; Ex. A11)

17) After December 28, HBE did not call Complainant again for work. (Testimony of Complainant)

18) On January 5, 2013, Complainant received a letter from HBE that stated HBE was going to bill her for training and sue her. This letter made Complainant feel depressed and angry and certain that she was not going to be paid for her work and that she had been fired. Prior to receiving the letter, Complainant had not been told that she had been fired. (Testimony of Complainant; Exhibit A11)

19) Complainant received an average of $20 a day in tips during her employment with HBE. (Testimony of Complainant)

20) If Complainant had not been fired, she would have worked an additional seven days between December 28 and January 5, 2013, earning $504 in wages ($9 per hour x 56 hours) and $140 in tips. (Entire record; Calculation of ALJ)

21) On January 30, 2013, Complainant filed a wage claim with BOLI alleging that HBE had employed her and failed to pay all wages earned and due to her. (Testimony of Complainant)

22) During Complainant's employment, HBE had two fulltime estheticians, including Complainant. The other esthetician was an "on-call" employee. In December 2013, HBE shut its doors and closed for business. Up to that time, HBE continued to employ the other esthetician. (Testimony of Schoene)

23) Complainant loved working at HBE and would have continued working there, had she been allowed to do so. She particularly liked the decor of HBE's salon and the opportunity to be trained by Schoene, who had been in the cosmetology business a long time and whom Complainant regarded as a mentor. She also liked her co-workers and felt she had "found her permanent home as a stylist." (Testimony of Complainant)

24) Complainant felt depressed because HBE never called her back to work. She was evicted from her apartment, her car was repossessed, and had to move in with her mom as a result of being unemployed. She filed for and received minimal unemployment benefits that did not cover her expenses. She had difficulty finding another apartment because of her eviction. As a result of "all this stuff happening," her face was completely broken out. She did not start work at a job equivalent to her job with HBE until on or about her birthday on November 24, 2013, when she started work as a hairdresser at Supercuts. (Testimony of Complainant)

25) On March 25, 2014, a contested case hearing was held regarding Complainant's wage claim and the wage claims of three other persons who had been employed by HBE. On May 9, 2014, BOLI's Commissioner issued a Final Order that concluded, among other things, that Complainant was owed $800.15 in unpaid, due,

and owing wages for the work she performed for HBE between December 6 and December 27, 2012. In the same Final Order, BOLI's Commissioner concluded that three of Complainant's coworkers were owed unpaid wages, including one coworker who was paid nothing at all for 53 hours of work. The Commissioner also held that HBE's practice of requiring HBE's employees to sign employment contracts in which they agreed not to be paid for "non-client" work was invalid as a matter of law.[5] (Ex. A19; Judicial Notice)

26) Mosley was a credible witness and the forum has credited her testimony in its entirety. (Testimony of Mosley)

27) Although Complainant's memory was not completely reliable and had to be refreshed on two important points -- the date she began work for HBE and her rate of pay, which she initially testified was $10 per hour before the Agency's administrative prosecutor referred her to the Final Order deciding her wage claim -- her testimony was consistent with her prior statements and the documents offered in evidence and the forum finds that she was a credible witness. In particular, the forum has credited Complainant's testimony whenever it conflicted with Schoene's testimony. (Testimony of Complainant)

28) Schoene's testimony was disingenuous and self-serving. She blamed her ultimate business failure in December 2013 on Complainant's rousing her staff to quit because of Complainant's demand for her pay, records of her hours worked, and itemized deductions. A prime example of this was her testimony that she did not do HBE's payroll because "I didn't want anyone to think I would cheat them." In contrast, the Final Order issued on May 9, 2014, based on the wage claims of Complainant and

[5] *See In the Matter of Hey Beautiful Enterprises, Ltd.*, 33 BOLI 189 (2014).

three of her coworkers, concluded that that is exactly what Schoene was doing through HBE's payroll scheme. The forum has only credited Schoene's testimony when it was adverse to herself or HBE. (Testimony of Schoene)

CONCLUSIONS OF LAW

1) At all times material herein, HBE was a corporation doing business in Oregon and engaged or utilized the personal services of one or more employees, including Complainant.

2) At all times material, Respondent Schoene was HBE's corporate president and HBE's manager.

3) At all times material, Aida Magana was Complainant's immediate supervisor.

4) The actions, statements, and motivations of Schoene and Magana are properly imputed to HBE.

5) HBE's action, taken through Schoene, of changing Complainant's employment status from fulltime to on-call, violated ORS 652.355, OAR 839-010-0100(4), ORS 659A.199, and OAR 839-010-0100(4).

6) HBE's action, taken through Schoene, of discharging Complainant from HBE's employment, violated ORS 652.355, OAR 839-010-0100(4), ORS 659A.199, OAR 839-010-0100(4), ORS 659A.030(1)(f), and OAR 839-050-0125(2).

7) Schoene aided and abetted HBE's change of Complainant's employment status from fulltime to on-call and discharge of Complainant, thereby violating ORS 659A.030(1)(g).

8) BOLI's Commissioner has jurisdiction over the subject matter and Respondents herein. ORS 652.330, 652.332.

9) The Commissioner of the Bureau of Labor and Industries has jurisdiction of the persons and of the subject matter herein and the authority to eliminate the effects of any unlawful practices found. The sums of money awarded and the other actions required of Respondents HBE and Schoene in the Order below are an appropriate exercise of that authority. ORS 659A.800 to ORS 659A.865

OPINION

Introduction

This is an employment discrimination case in which the Agency alleges that HBE violated three different statutes – ORS 652.355, ORS 659A.030(1)(f), and ORS 659A.199 – and BOLI's administrative rules interpreting those statutes by reducing Complainant's employment status from fulltime to on-call, then discharging her. The Agency further alleges that Schoene, HBE's corporate president, secretary, and manager, aided and abetted HBE in all three violations, thereby violating ORS 659A.030(1)(g). To compensate Complainant for these unlawful employment practices, the Agency seeks "at least $18,720" in back pay and "at least $10,000" in damages for Complainant's emotional and mental suffering.

The Facts

The relevant facts in this case follow. Complainant was hired by HBE as an esthetician and nail technician and as a fulltime employee on December 6, 2012. Schoene, HBE's president, managed HBE and trained Complainant, and Magana was Complainant's immediate supervisor. HBE paid its employees once a week, but Complainant was not paid after her first or second weeks of employment. When Complainant did not receive a paycheck on December 22, 2012, she asked Schoene for her paycheck. Schoene told Complainant there could have been a problem with payroll, but that the problem would be taken care of by HBE's next payday. When Complainant

did not get a paycheck on December 27, 2012, HBE's next payday, she called the BBB for advice and was told she should demand her pay, ask for a pay stub, and contact BOLI if she was not given both. Complainant then called Magana and left a voice mail message stating that she had contacted the BBB and repeating the advice given to her by the BBB. She also talked to her coworkers and learned that some of them had not been paid. Over the next five hours, she exchanged a series of text messages with Magana that concluded when Magana told Complainant that she was now an "on call" employee who would only be called for work when she had a client, and that Schoene was now her immediate supervisor. During this text message exchange, Magana told Schoene that Complainant had contacted the BBB and was demanding her wages.

The next morning, Complainant met with Magana and Schoene. Schoene was furious at Complainant for contacting the BBB and screamed at Complainant, telling her that she had done nothing wrong and that Complainant was "stupid and naive." She also told Complainant that she was "being a bitch" and "that is how this business works." At the end of the meeting, Schoene told Complainant that HBE would call her when a client arrived. Schoene also gave Complainant a $200 paycheck, a small portion of the wages earned, due, and owing to Complainant. Complainant left, telling Schoene that she was going to BOLI because Schoene "had not given her what she came in for."

Later that morning, Complainant visited BOLI's Portland office and was given information on how to file a wage claim and a civil rights complaint. While at BOLI's office, Magana sent Complainant a text message that read: "so we have a brow wax. Can you be here right now?" Complainant texted back that she could not because she was "at BOLI." Magana told Schoene that Complainant was "down at the labor board,

turning us in." Schoene's response was "I guess she quit. I guess she made her decision." Complainant was never again called for work.

ORS 652.355 & OAR 839-010-0100(4)

ORS 652.355 provides, in pertinent part:

> "(1) An employer may not discharge or in any other manner discriminate against an employee because:
>
> > "(a) The employee has made a wage claim or discussed, inquired about or consulted an attorney or agency about a wage claim.
> >
> > "* * * * *
>
> "(2) A violation of this section is an unlawful employment practice under ORS chapter 659A. A person unlawfully discriminated against under this section may file a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries."

OAR 839-010-0100(4) interprets this statute as follows:

> "(4) ORS 652.355 prohibits any employer with one or more employees in Oregon from discriminating or retaliating against a current, former, or any other employer's employee because:
>
> "(a) The employee has made a wage claim or has discussed with anyone, inquired of anyone, or consulted an attorney or agency about a wage claim[.]"

In the context of this statute, the words "wage claim" means either (1) having made a formal wage claim with BOLI or (2) having discussed or inquired about unpaid wages with anyone or consulted an attorney or agency about unpaid wages. Complainant's call to the BBB and her discussions with her coworkers on December 27 about not being paid the wages due and owing to her both satisfy the latter definition.

It is undisputed that Complainant was a fulltime employee with a regular work schedule until she called the BBB and talked to employer coworkers about her pay on December 27, 2012. Complainant's testimony and Mosley's interview notes with

Schoene show that Magana and Schoene were both aware that Complainant had contacted the BBB before they decided to make Complainant an on-call employee. The following portions of the December 27, 2012, text message exchange between Complainant and Magana, reprinted verbatim, together with Magana and Schoene's knowledge that Complainant had complained to the BBB[6] and complained to her coworkers about her pay, proves that Complainant was made an on-call employee because of those complaints:

> **Complainant**: "I never quit, so am I fired?? What's going on?"
>
> **Magana**: "Based on your actions and your involving the whole staff. You quite."
>
> **Complainant**: "Don't be confused, I just want a copy of my pay like I was advised to do. I am not quitting."
>
> **Magana**: "You never had to be there, it is a matter of you building your clientele and getting walk-ins. By not having several ppl waiting for Walk ins we focus on you and having the front desk giving you the walk ins while my other staff is fully licensed. We will be having you on call and you come in when we a client."
>
> **Complainant**: "I am just told that I needed to make sure I get a copy of my pay roll information. That is fine, will I see u tomorrow the scheduled time?"
>
> **Magana**: "You're on call. If you have a client we'll call you."

Based on the foregoing, the forum concludes that Complainant's job status was changed from fulltime to on-call in violation of ORS 652.355 and OAR 839-010-0100(4).

Regarding Complainant's alleged discharge, Respondents argue that Complainant voluntarily quit by declining to come to HBE's salon on December 28, 2012, to perform a brow wax on a client. Earlier that morning, Complainant had told Schoene, in response to Schoene's question, that it would take her an hour to get to HBE if called in for work. Complainant was at BOLI's Portland office getting information

[6] *See* Finding of Fact #10 – The Merits, for context.

about filing a wage claim when Magana texted her to come to HBE to do a brow wax. Complainant told Magana she was at BOLI, and Magana told Schoene that Complainant was "down at the labor board, turning us in." Schoene responded by saying "I guess she quit. I guess she made her decision." In contrast, Complainant credibly testified that she never quit, and in fact wanted to continue working for HBE, even though her hours had been cut.

Based mainly on Schoene's testimony, the forum finds that Schoene's excuse for deciding Complainant had quit was pretextual, and the real reason Complainant was never called again for work was in retaliation for her complaints about not being paid. To begin, Schoene was not a credible witness. As alluded to earlier, she testified "I didn't take care of payroll specifically because I didn't want anybody to think that I would ever cheat them. I had a payroll person, a bookkeeper, and ADP wrote the checks. * * * So they just told me how much to transfer into the * * * payroll checking account." Notably, she did not testify about how she kept track of the hours worked by HBE's employees, how ADP determined the amount of the checks, and why Complainant was not paid anything on her first three scheduled paydays. Second, Schoene's testimony that she "was shocked at [Complainant's] behavior," made in reference to Complainant's complaints about her wages, vividly demonstrates her attitude to Complainant's complaints about her wages. Third, Schoene's reference to "when the whole Amber thing happened" and her testimony that the paperwork from the wage claims caused a "constant infection" in her shop is a further indicator of Schoene's attitude towards Complainant's demand for wage accountability. Fourth, Schoene's testimony that had Complainant not "abandoned" her job "I would have let her work because I would have tried to get her to drop the case" confirms her opposition to Complainant's wage claim. Based on the above, the forum concludes that HBE, acting

through Schoene, discharged Complainant in violation of ORS 652.355 and OAR 839-010-0100(4).

ORS 659A.199 & OAR 839-010-0100(4)

ORS 659A.199 provides:

> (1) It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported information that the employee believes is evidence of a violation of a state or federal law, rule or regulation.

OAR 839-010-0100(1) interprets this statute as follows:

> (1) ORS 659A.199 prohibits any employer with one or more employees in Oregon from discharging, demoting, suspending, or in any manner discriminating or retaliating against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment 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.

The "good faith" requirement in ORS 659A.199 is met when the whistleblower has a reasonable belief that the information reported has occurred and that the information, if proven, constitutes evidence of a violation of a state or federal law, rule or regulation. *Cf. In the Matter of Logan International Ltd.,* 26 BOLI 254, 279-80 (2005); *In the Matter of Cleopatra's, Inc.,* 26 BOLI 125, 134 (2005); *In the Matter of Hermiston Assisted Living,*23 BOLI 96, 124-25 (2002) (all three cases defining "good faith" in the context of Oregon's laws prohibiting retaliation against whistleblowers of criminal activity). Here, the information reported by Complainant consisted of her complaints that she had not been paid for her work. At the time of her complaint, Complainant had worked through three of HBE's weekly payday cycles, was told by the BBB that she was legally entitled to a paycheck and paystub for her work, and the forum itself has previously concluded that HBE violated Oregon state law by failing to pay Complainant

her earned, due, and owing wages.[7] This satisfies the "good faith" requirement in ORS 659A.199.

Under ORS 659A.199, an employee "report[s]" information when the employee communicates information to "anyone" that the employee believes is evidence of a violation of state law. *Cf. In the Matter of Logan International Ltd.,* 26 BOLI 254, 279-80 (2005) (when complainant told his supervisors that employees in respondent's shipping department were using drugs, this constituted an oral "report" that satisfied the reporting element of the agency's prima facie case); *In the Matter of Cleopatra's, Inc.,* 26 BOLI 125, 134 (2005) (complainant's oral communication to respondent's manager that her payroll deductions constituted theft satisfied the reporting element of the agency's prima facie case). Complainant's complaints to the BBB, Magana, Schoene, and BOLI that she was not being paid for her work all satisfy the reporting requirement of ORS 659A.199.

In the earlier section of this Opinion discussing Complainant's ORS 652.355 allegations, the forum concluded that Complainant was made an on-call employee because she complained to the BBB and to her coworkers about her pay, and that she was fired because she went to BOLI to make a wage claim. Those complaints were good faith reports containing evidence of a violation of state law. As such, HBE's reduction of Complainant's hours and discharge of Complainant also violated ORS 659A.199 and OAR 839-010-0100(1).

ORS 659A.030(1)(f) & OAR 839-005-0125(2)

The Agency excepted to the ALJ's conclusion in the Proposed Order that HBE did not violate ORS 659A.030(1)(f) and OAR 839-005-0125(2). The forum **GRANTS**

[7] *See* Finding of Fact #23 – The Merits.

the Agency's exception. The forum has already concluded that HBE's ORS 652.355 violation establishes an unlawful practice under ORS chapter 659A. The analysis used in determining that HBE violated ORS 659A.199 applies equally to the Agency's ORS 659A.030(1)(f) claim. Accordingly, the forum's conclusion that HBE violated ORS 659A.199 necessarily leads to the conclusion that HBE also violated ORS 659.030(1)(f).

Respondent Schoene Aided and Abetted HBE's Violations

ORS 659A.030(1)(g) provides:

> "(1) It is an unlawful employment practice:
>
> "(g) For any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter or to attempt to do so."

In this case, HBE was[8] an Oregon corporation and Schoene was HBE's president and secretary. A corporate officer and owner who commits acts rendering the corporation liable for an unlawful employment practice may be found to have aided and abetted the corporation's unlawful employment practice. *In the Matter of Crystal Springs Landscapes, Inc.,* 32 BOLI 144, 166-67 (2012). *See also In the Matter of Dr. Andrew Engel, DMD, PC,* 32 BOLI 94, 137 (2012); *In the Matter of Cyber Center, Inc.,* 32 BOLI 11, 35 (2012). Aiding and abetting, in the context of an unlawful employment practice, means "to help, assist, or facilitate the commission of an unlawful employment practice, promote the accomplishment thereof, help in advancing or bring it about, or encourage, counsel or incite as to its commission." *Id.* Accordingly, the forum examines Schoene's role in HBE's alteration of Complainant's work schedule from fulltime to on-call and Complainant's discharge to determine the extent, if any, of Schoene's liability as an aider and abettor.

[8] The forum uses the past tense because HBE was an inactive corporation at the time of the hearing.

Fulltime to On-Call

Complainant's work schedule was changed to on-call on December 27, 2012, during her exchange of text messages with Magana, her immediate supervisor, concerning her unpaid wages. Although Complainant did not speak directly with Schoene about her complaints on December 27 and there is no direct evidence that Schoene made the decision on December 27 to change Complainant's employment status to on-call, the following circumstantial evidence provides ample grounds for the forum to conclude that Schoene made that decision. First, there is no evidence that Magana had the unilateral authority to change Complainant's employment status, whereas Schoene, as HBE's president and manager, clearly had the ultimate authority to make employment decisions. Second, Magana discussed Complainant's complaints with Schoene before Magana texted Complainant with the message that her job status was changed to on-call. Third, Schoene's attitude towards Complainant's complaints about her wages was decidedly hostile. Based on the above, the forum finds that Schoene aided and abetted HBE by making the decision to change Complainant's status to on-call, thereby violating ORS 659A.030(1)(g).[9]

Complainant's Termination

In her Answer and at hearing, Schoene argued that Complainant voluntarily quit by declining to come to HBE's salon on December 28, 2012, to perform a brow wax on a client. When Magana told Schoene that Complainant was "down at the labor board,

[9] *See, e.g., In the Matter of Dr. Andrew Engel, DMD, PC,* 32 BOLI 94, 137 (2012)(an individual respondent who was a professional corporation's sole owner and president and complainant's immediate supervisor and the primary actor in three distinct unlawful employment actions against complainant was held jointly and severally liable as an aider and abettor for all three actions); *In the Matter of Cyber Center, Inc.,* 32 BOLI 11, 35 (2012)(an individual respondent who was the vice president, one third share owner, and CEO of the respondent corporation that employed complainant throughout complainant's employment was found to have aided and abetted the respondent corporation in discharging complainant when he participated in making the joint decision to discharge complainant).

turning us in," Schoene concluded "I guess she quit. I guess she made her decision." Through Complainant's credible testimony, the Agency proved that she had no intention of quitting and wanted to continue working for HBE, even though her hours had been cut. The forum views Schoene's conclusion on December 28 that Complainant had "quit" because Complainant could not come in to do a brow wax, made shortly after Complainant had told Schoene it would take her an hour to get to HBE to see a client and at the very time Complainant told Magana she was at BOLI's office, as transparently pretextual. In fact, Schoene's conclusion that Complainant had "quit" was Schoene's conclusion to discharge Complainant from HBE's employment. This decision makes Schoene liable as an aider and abettor to Complainant's discharge.[10]

Conclusion

As an aider and abettor, Schoene is jointly and severally liable with HBE for all of HBE's unlawful employment practices.

Damages

A. Back Pay

The Agency excepted to the Proposed Order's conclusion that Complainant was not entitled to any back pay. The forum addresses the Agency's exception at the end of this section and grants it in part.

The Agency's Formal Charges asked that Complainant be awarded "an amount to be proven at hearing and estimate to be at least $18,720.00." At hearing, the Agency specifically requested that Complainant be awarded back pay from the date of her termination until she obtained equivalent employment, on or around Thanksgiving 2013.

[10] *Id.*

The purpose of back pay awards in employment discrimination cases is to compensate a complainant for the loss of wages and benefits that complainant would have received but for the respondent's unlawful employment practices. *In the Matter of Oak Harbor Freight Lines, Inc.*, 2014 BOLI Orders 1, 37 (2014). Back pay awards are calculated to make a complainant whole for injuries suffered as a result of discrimination. *In the Matter of Maltby Biocontrol, Inc.*, 33 BOLI Orders 121, 157-58 (2014). A complainant who seeks back pay is required to mitigate damages by using reasonable diligence in finding other suitable employment. *Maltby at* 157. Typically, the Agency proves that a complainant exercised reasonable diligence through complainant's testimony, often coupled with documentation, about jobs for which the complainant applied or inquired about.[11] At a minimum, there must be some credible evidence that the complainant actively sought work.[12]

This is an unusual case, in that Complainant's testimony about her job search after being discharged by HBE on December 28 was sparse to an extreme, consisting of her statement that she found an equivalent job at Supercuts that started on or about November 24, 2013. Relative to that job, she testified that it took her until the Supercuts job to find employment because she did not want to work at a "chain salon," adding:

> "I'm sure interviews did not go well, being stressed out and all of the stuff that was happening. My face was completely broken out * * * from all this stuff

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[11] *See, e.g., In the Matter of Crystal Springs Landscapes, Inc.*, 32 BOLI 144, 169 (2012)(through complainant's credible testimony and documentation of her job search, the agency established that she diligently sought other suitable employment after her discharge, eventually finding another job that started on November 1, 2010).

[12] *See, e.g., In the Matter of Cyber Center, Inc.*, 32 BOLI 11, 37 (2012)(when complainant testified that she actively sought work but her testimony "was not overly specific as to specific jobs that she applied for," her testimony that she actively sought work was unimpeached, and respondents offered no evidence of any other job openings for which complainant was qualified and did not apply, the forum rejected respondent's argument that complainant did not mitigate her damages).

> happening. You know, when you're going in looking for job where you're an esthetician * * * people look at your skin. So I have a feeling that hindered me."

On cross examination, she also testified that she could not have found a job at Supercuts right after her employment with HBE ended because "[e]motionally, I couldn't. I was pretty much focused on finding a place to live and had to take care of that first."

In its exceptions, the Agency argues that Complainant's testimony quoted above constituted credible testimony that Complainant went on "at least two or more interviews for employment." The forum disagrees and declines to infer from this testimony that Complainant actively sought work or had any actual job interviews. There is no evidence in the record as to any memory issues or other problems on Complainant's part that prevented her from giving any specific testimony as to her job search, and the facts lend equal credence to an inference that Complainant did not actively seek work. Finally, her testimony that she started work at another job 11 months later, absent any specific testimony about her intervening job search, does not demonstrate reasonable diligence in finding other suitable employment.[13]

In its exceptions, the Agency also argues that OAR 839-003-0090(3) gives the forum the discretion to award damages for back wages "even if there was no evidence that Complainant sought employment." That rule provides: "In order to recover damages for lost wages, the aggrieved person will generally be required to mitigate

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[13] *See, e.g., In the Matter of Loyal Order of Moose,* 13 BOLI 1, 8, 13 (1994)(when complainant was constructively discharged and did not actively seek work until a month later, and nine weeks later removed herself from the job market when she began work as a volunteer caregiver, the commissioner awarded back pay for the nine week period that complainant actively sought work); *In the Matter of Casa Toltec,* 8 BOLI 149, 174 (1989)(commissioner did not award back pay in an AIDS disability case when the evidence showed that complainant applied for only one job between her termination date of May 19, 1987, and October 27, 1987, when she was no longer employable because of her disease); *In the Matter of Lee's Cafe,* 8 BOLI 1, 20-21 (1989)(a complainant who did not seek alternative employment for two months after she was discharged from respondents' café was not entitled to back pay for that period because she voluntarily excluded herself from the job market, thus failing to mitigate her damages).

damages by seeking employment." The Agency argues that the inclusion of the word "generally" gives the forum the unfettered discretion to award back pay, regardless of whether a discharged complainant seeks work. The forum has never adopted this absolute position in evaluating a back pay claim and declines to do so now.

Alternately, the Agency asks that Complainant be awarded back pay and tips for seven days of work between December 27 and January 5, 2013, based on the fact that Complainant did not know she had been fired until January 5, 2013, and therefore had no obligation to look for replacement work during that time period. This circumstance was not considered in the Proposed Order. The forum agrees with the Agency that Complainant had no obligation to look for work when she was unaware that she had been fired and grants the Agency's alternate request. Complainant is entitled to back pay and tips for the 56 hours she would have worked in this time period. Computed at $9 per hour and $20 a day in tips, the forum awards Complainant $504 in back pay and $140 in lost tips.

Mental and Emotional Distress Damages

This forum has long held that in determining an award for emotional and mental suffering, the forum considers the type of discriminatory conduct, and the duration, frequency, and severity of the conduct. It also considers the type and duration of the mental distress and the vulnerability of the complainant. The actual award amount depends on the facts presented by each complainant. A complainant's testimony, if believed, is sufficient to support a claim for mental suffering damages. *See, e.g., Maltby Biocontrol* at 159.

In this case, Complainant testified that she loved working at HBE and would have continued working there, had she been allowed to do so. She particularly liked the decor of HBE's salon and the opportunity to be trained by Schoene, whom Complainant

regarded as a mentor. She felt angry and "emotionally distraught" on December 27 after her employment status was changed to on-call. Later, she felt depressed because she was never called back to work. She was evicted from her apartment, had to move in with her mom as a result of being unemployed, and had difficulty finding another apartment because of her eviction. Her car was repossessed. She filed for and received minimal unemployment benefits that did not cover her expenses, and she did not start work at a job equivalent to her job with HBE until almost a year later.

Based on the above, the forum concludes that $10,000, the amount sought by the Agency to compensate Complainant for her mental and emotional distress, is an appropriate award.

ORDER

A. NOW, THEREFORE, as authorized by ORS 659A.850(2) and ORS 659A.850(4), and to eliminate the effects of Respondent **Hey Beautiful Enterprises, Ltd.'s** violations of ORS 652.355, OAR 839-010-0100(4), ORS 659A.199, OAR 839-010-0100(4), ORS 659A.030(1)(f), and OAR 839-050-0125(2) and Respondent **Kimberly Schoene's** violation of ORS 659A.030(1)(g), and as payment of the damages awarded, the Commissioner of the Bureau of Labor and Industries hereby orders Respondents **Hey Beautiful Enterprises, Ltd.** and **Kimberly Schoene** to deliver to the Administrative Prosecution Unit of the Bureau of Labor and Industries, 1045 State Office Building, 800 NE Oregon Street, Portland, Oregon 97232-2180, a certified check payable to the Bureau of Labor and Industries in trust for Complainant **Amber Walker** in the amount of:

1) TEN THOUSAND DOLLARS ($10,000.00), representing compensatory damages for emotional and mental distress experienced by Amber Walker as a result of Respondents' unlawful employment practices found herein; plus,

2) SIX HUNDRED AND FORTY-FOUR DOLLARS ($644.00), representing wages and tips lost by Amber Walker between December 28, 2012, and January 5, 2013, as a result of Respondents' unlawful employment practices found herein; plus,

3) Interest at the legal rate on the sum of TEN THOUSAND SIX HUDNRED AND FORTY-FOUR DOLLARS ($10,644.00) until paid.

B. NOW, THEREFORE, as authorized by ORS 659A.850(2) and ORS 659A.850(4), and to eliminate the effects of Respondent's unlawful employment practice found herein, the Commissioner of the Bureau of Labor and Industries hereby orders Respondent **Kimberly Schoene** to participate in training on the correct interpretation and application of the Oregon laws pertaining to whistleblowing and retaliation by the Bureau of Labor and Industries Technical Assistance for Employers Unit or other trainer agreeable to the Agency.

C. NOW, THEREFORE, as authorized by ORS 659A.850(2) and ORS 659A.850(4), and to eliminate the effects of Respondents' unlawful employment practices found herein, the Commissioner of the Bureau of Labor and Industries hereby orders Respondents **Hey Beautiful Enterprises, Ltd.** and **Kimberly Schoene** to cease and desist from violating the provisions of ORS 652.355, OAR 839-010-0100(4), ORS 659A.199, OAR 839-010-0100(4), ORS 659A.030(1)(f), OAR 839-050-0125(2), and ORS 659A.030(1)(g).

DATED this 21 day of July, 2015.

Brad Avakian, Commissioner
Bureau of Labor and Industries

Issued ON: July 21, 2015