

**BRAD AVAKIAN**  
COMMISSIONER



**DOUG MCKEAN**  
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:

Case No. 34-12

**CRYSTAL SPRINGS LANDSCAPES,  
INC., and PAUL LINIGER**  
individually as an Aider and Abettor,

FINDINGS OF FACT  
ULTIMATE FINDINGS OF FACT  
CONCLUSIONS OF LAW  
OPINION  
ORDER

Respondents.

---

**SYNOPSIS**

In a default case, the Agency proved that Respondent Crystal Springs Landscapes, Inc. ("Crystal"), acting through Paul Liniger, its president, and Mark Skaggs, its general manager, subjected Complainant, a female, to unlawful sexual harassment. The Agency also proved that Crystal, acting through its president Paul Liniger, fired Complainant in retaliation for her complaint about the unlawful sexual harassment. The forum held that Liniger was Crystal's proxy because of Liniger's officer status in Crystal, making Crystal strictly liable for Complainant's harassment and discharge. The forum held that Crystal was liable for Skaggs's harassment because he was Complainant's immediate supervisor and Crystal knew or should have known of the harassment. The forum held that Liniger actively participated in the unlawful harassment and participated in the decision to fire Complainant, making him jointly and severally liable as an aider and abettor for the harassment and discharge. The forum awarded Complainant \$13,880 in back pay, \$3,200 in out-of-pocket expenses, and \$150,000 in emotional, mental, and physical suffering damages. ORS 659A.030(1)(a) & (b), ORS 659A.030(1)(f), ORS 659A.030(1)(g); OAR 839-005-0021, OAR 839-005-0030.

---

The above-entitled case came on regularly for hearing before Alan McCullough, designated as Administrative Law Judge ("ALJ") by Brad Avakian, Commissioner of the

1 Bureau of Labor and Industries for the State of Oregon. The hearing was held on  
2 November 6, 2012, at the W. W. Gregg Hearing Room of the Oregon Bureau of Labor  
3 and Industries, located at 800 NE Oregon Street, 10th floor, Portland, Oregon.

4 The Bureau of Labor and Industries (“BOLI” or “the Agency”) was represented by  
5 case presenter Chet Nakada, an employee of the Agency. Complainant Elisa Apa was  
6 present throughout the hearing and was not represented by counsel. Respondents  
7 were held in default prior to the hearing and did not appear at the hearing.

8 The Agency called the following witnesses: Complainant; Donna Meredith,  
9 senior investigator, BOLI Civil Rights Division (telephonic); and Julie Daniel,  
10 Complainant’s sister.

11 The forum received into evidence:

12 a) Administrative exhibits X-1 through X-9 (submitted or generated prior to  
13 hearing);

14 b) Agency exhibits A-1 through A-17 (submitted prior to hearing), and A-18  
15 (submitted at hearing).

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

#### 20 **FINDINGS OF FACT – PROCEDURAL**

21 1) On November 8, 2010, Complainant filed a verified complaint with the  
22 Agency’s Civil Rights Division alleging that she was the victim of the unlawful  
23 employment practices of Respondent Crystal Springs Landscapes, Inc. (“Crystal”). On  
24 October 27, 2011, the Agency amended the complaint to name Paul Liniger (“P.  
25 Liniger”) as a Respondent, alleging that he was an aider and abettor to Crystal’s alleged  
unlawful acts. After investigation, the Agency issued a Notice of Substantial Evidence

1 Determination on November 8, 2011, in which it found substantial evidence that Crystal  
2 had engaged in unlawful employment practices in violation of ORS 659A.030(1)(b)&(f)  
3 based on sex harassment and opposition to an unlawful employment practice and that  
4 Respondent Liniger had aided and abetted Crystal in the commission of the unlawful  
5 employment practices in violation of ORS 659A.030(1)(g). (Exhibits A-1, A-13)

6       2) On August 28, 2012, the Hearings Unit issued a Notice of Hearing to  
7 Respondents, the Agency, and Complainant stating the time and place of the hearing as  
8 November 5, 2012, beginning at 1:00 p.m., at the W. W. Gregg Hearing Room of the  
9 Oregon Bureau of Labor and Industries, located at 800 NE Oregon Street, 10th floor,  
10 Portland, Oregon. Together with the Notice of Hearing, the forum sent a copy of the  
11 Agency's Formal Charges, a document entitled "Summary of Contested Case Rights  
12 and Procedures" containing the information required by ORS 183.413, a document  
13 entitled "Servicemembers Civil Relief Act (SCRA) Notification, a multi-language notice  
14 explaining the significance of the Notice of Hearing, and a copy of the forum's contested  
15 case hearings rules, OAR 839-050-000 to 839-050-0445. (Exhibit X-2)

16       3) The Agency's Formal Charges alleged, among other things, that:

17       (a) Crystal employed Complainant and subjected her to unlawful sex  
18 harassment in violation of ORS 659A.030(1)(b), OAR 839-005-0030(1)(a) and  
19 OAR 839-005-0030(1)(b);

20       (b) Crystal terminated Complainant based on her sex, thereby violating ORS  
21 659A.030(1)(a);

22       (c) Crystal terminated Complainant because she complained of sexual  
23 harassment by her supervisor, Mark Skaggs, thereby violating of OAR 839-005-  
24 0030(4);

25       (d) Crystal terminated Complainant because she complained of sexual  
harassment by Mark Skaggs and P. Liniger, thereby violating ORS  
659A.030(1)(f);

      (e) Crystal is strictly liable for the harassment under OAR 839-005-0030(3)  
because P. Liniger, as Crystal's corporate president, is Crystal's proxy;

1 (f) P. Liniger aided, abetted, incited, compelled or coerced Crystal's unlawful  
2 employment actions in violation of ORS 659A.030(1)(g) and is individually liable  
3 for those actions.

4 The Formal Charges "at least \$14,000" in lost wages, out-of-pocket expenses of "at  
5 least \$1,200," and damages for emotional, mental and physical suffering in the amount  
6 of "at least \$100,000." The Formal Charges also asked that Respondents and its  
7 managers, professional staff and employees be required to participate "in training on  
8 understanding and avoiding workplace harassment and discrimination based on  
9 protected class." (Exhibit X-2)

10 4) On October 1, 2012, the ALJ issued an interim order resetting the hearing  
11 to begin at 9:00 a.m. on November 6, 2012. (Exhibit X-5)

12 5) On October 10, 2012, the Agency filed a motion for default based on  
13 Respondents' failure to file a timely answer. (Exhibit X-6)

14 6) On October 11, 2012, the ALJ issued an interim order granting the  
15 Agency's motion for default against both Respondents. The order read as follows:

16 "On October 10, 2012, the Agency filed a motion for default against both  
17 Respondents in this case based on their failure to file an answer to the Formal  
18 Charges. By affidavit and supporting documentation, the Agency made the  
19 following representations:

20 "1. Respondent Liniger's correct address is 2348 SW Dillow Drive,  
21 West Linn, OR 97068. He also has a mailing address of PO Box 820142,  
22 West Linn, OR 97282. The Formal Charges and Notice of Hearing were  
23 mailed to both addresses by regular and certified mail on August 28 and  
24 August 30, 2012. The mail sent certified was returned by the USPS  
25 stamped 'Unclaimed.' The mail sent regular first class has not been  
returned. Respondent Liniger has not filed an answer as of October 10,  
2012.

"2. The Formal Charges and Hearing were mailed to Respondent  
Crystal Springs Landscapes, Inc. ('Crystal') by regular and certified mail  
on August 28, 2012, to 9318 SE Church Street, Clackamas, OR 97015,  
and 2348 SW Dillow Drive, West Linn, OR 97068. 9318 SE Church  
Street, Clackamas, OR 97015 is Crystal's correct address. The latter  
address is the address of Paul Liniger, Crystal's registered agent. The  
Formal Charges and Hearing were mailed again to Crystal by regular and  
certified mail on August 28, 2012, at 9318 SE Church Street, Clackamas,

1 OR 97015, as well as PO Box 820142, Portland, OR 97282. The mail  
2 sent certified to 9318 SE Church Street, Clackamas, OR 97015, was  
3 returned by the USPS stamped 'Not Deliverable as Addressed, Unable to  
4 Forward.' On September 19, 2012, the Agency accomplished alternative  
5 service on Crystal by serving the Secretary of State. Respondent Crystal  
6 has not filed an answer as of October 10, 2012.

7 "OAR 839-050-0330 provides that default may occur 'when \* \* \* a party fails to  
8 file a required response, including \* \* \* an answer, within the time specified in the  
9 charging document[.]' On the first page of the Notice of Hearing, immediately  
10 under the language setting out the date, time, and place of the hearing, the  
11 following language appears:

12 "Respondent's Answer is due 20 days from service of this Notice. If  
13 Respondent does not file an answer within 20 days, it may be held in  
14 **DEFAULT**. If held in default, Respondent will not be allowed to participate  
15 in the contested case hearing, examine witnesses, or introduce evidence."

16 "This language accurately reflects the Agency's administrative rules establishing  
17 the timeline for filing an answer and criteria for determining when default occurs.  
18 OAR 839-050-0120(3) and OAR 839-050-0330(1)(a).

19 "OAR 839-050-0030(1) provides:

20 "Except as otherwise provided in ORS 652.332(1)[inapplicable in this  
21 case] the charging document will be served on the party or the party's  
22 representative by personal service or by registered or certified mail.  
23 Service of the charging document is complete upon the earlier of:

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

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

### 26 "**Respondent Liniger**

27 "In this case, Respondent Liniger was served on August 28, 2012, when the  
28 Agency mailed the Notice of Hearing and Formal Charges to his correct address  
29 by certified mail. Respondent Liniger's failure to claim his certified mail does not  
30 negate service. Furthermore, OEC 40.135(1)(q) ['a letter directed and mailed  
31 was received in the regular course of the mail.'] creates a presumption that  
32 Respondent Liniger received actual notice of the Notice of Hearing and Formal  
33 Charges. Based on Respondent Liniger's failure to file an answer than 20 days  
34 of service, the forum **GRANTS** the Agency's motion with respect to Respondent  
35 Liniger and finds him in default. OAR 839-050-0330(1)(a).

### 36 "**Respondent Crystal Springs Landscapes, Inc.**

37 "Respondent Crystal was served on August 28 and 30, 2012, when the Agency  
38 mailed the Notice of Hearing and Formal Charges to the correct address of  
39 Respondent Liniger, Crystal's registered agent, by certified mail. Liniger's failure  
40 to claim that certified mail does not negate service. Again, OEC 40.135(1)(q)  
41 creates a presumption that Liniger received actual notice of the Notice of Hearing

1 and Formal Charges on behalf of Crystal. Finally, the Agency again  
2 accomplished effective service on Respondent Crystal on September 19, 2012,  
3 when it made alternative service on the Secretary of State. Based on  
4 Respondent Crystal's failure to file an answer than 20 days of service, the forum  
5 **GRANTS** the Agency's motion with respect to Respondent Crystal and finds  
6 Respondent Crystal in default. OAR 839-050-0330(1)(a).

7 **"Relief From Default**

8 "Relief from default may be granted where good cause is established within 10  
9 days after the date of this order. The request for relief shall be in writing and  
10 shall be accompanied by a written statement, together with appropriate  
11 documentation, setting forth the facts supporting the claim of good cause. OAR  
12 839-050-0340. As Respondent Crystal is a corporation, any request made by  
13 Respondent Crystal must be made by an attorney or an authorized  
14 representative who meets the requirements of OAR 839-050-0110.

15 "If Respondents are not granted relief from default, Respondents will not be  
16 allowed to participate in any manner in the hearing, including, but not limited to,  
17 presentation of witnesses or evidence on Respondents' behalf, examination of  
18 Agency witnesses, objection to evidence presented by the Agency, making of  
19 motions or argument, and filing exceptions to the Proposed Order. OAR 839-  
20 050-0330(3)."

21 (Exhibit X-7)

22 7) With its case summary, the Agency submitted a "Non-Military Affidavit"  
23 that was signed and sworn to by Chet Nakada, the Agency case presenter. In the  
24 affidavit, Nakada stated:

25 "On October 26, 2012, I searched the United States Department of Defense  
Manpower Data Center data base to determine whether Respondent Paul Liniger  
is a member of the military service. The attached Military Status report shows  
that Respondent Paul Liniger is not a member of the military service of the United  
States at this time."

Attached to the affidavit was a status report from the Department of Defense Manpower  
Data Center indicating that Respondent Liniger is not on "Active Duty Status" and has  
not received "early notification to report for active duty." (Exhibit A-14)

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



1 she earned at Express. Complainant accepted and started work for Crystal on or about  
2 May 3, 2012. (Testimony of Complainant; Exhibits A-7, A-9)

3 6) Throughout her employment, Complainant worked in Crystal's business  
4 office in Clackamas with Skaggs, Paul Liniger (hereafter "Liniger"), Liniger's mother, and  
5 another employee. Crystal's office was located in a house that had been converted to  
6 office space with a large rectangular open space and three offices. Complainant sat at  
7 a desk in the open space. Liniger's desk was located in an office approximately 10-15  
8 feet away from Complainant so that he directly faced Complainant when his door was  
9 open and he sat at his desk. Skaggs's office was located farther away at the other end  
10 of the open space. (Testimony of Complainant; Exhibits A-7, A-18)

11 7) On May 7, 2010, in Liniger's presence, Skaggs asked Complainant if she  
12 was single or married. Complainant told him she was divorced. Skaggs said her  
13 husband probably cheated on her, that Complainant "probably didn't do her homework"  
14 and "wasn't having sex with her husband, and that's why her husband went somewhere  
15 else." Skaggs's comment was "really embarrassing" to Complainant. She felt it was  
16 inappropriate and told him she didn't want to talk about it. (Testimony of Complainant;  
17 Exhibits A-1, A-2)

18 8) Complainant has a Facebook account. During her employment with  
19 Crystal, Complainant "friended" Skaggs and Liniger on Facebook. One day in the  
20 office, Skaggs started talking about relationships and recommended that Complainant  
21 watch the movie "9½ Weeks." Skaggs described the movie and Complainant replied  
22 that it was the not the kind of movie she would watch. Skaggs then told Complainant to  
23 "take tips" from the movie and that she should "watch it" and "apply it to her life."  
24 Complainant did not watch the movie. Later, on June 1, 2010, Skaggs posted the  
25 following comment on Complainant's Facebook wallpost:

1 "bffs.....hahaahaha O>>>>M>>>G just remember...1983..... 9 ½ weeks  
2 came out when you where [sic] 3.... good luck with the insite [sic]....."

3 Complainant found this "super embarrassing" because she would not want her "friends  
4 or family to think I would watch a movie like that" and would "never [have] brought up  
5 that movie on a public forum." At that time, Complainant had approximately 200 friends  
6 on her Facebook, all of whom could see Skaggs's comment when they accessed  
7 Complainant's Facebook page. (Testimony of Complainant; Exhibit A-10)

8 9) A synopsis of "9 ½ Weeks" follows:

9 "The title refers to the duration of the relationship between self-absorbed Wall  
10 Street Shark Mickey Rourke and divorced art gallery owner Kim Basinger. Kim is  
11 looking for true love, while Mickey is searching for...gosh knows what. His  
12 notions of lovemaking include blindfolds, ice cubes, chocolate syrup, and rolling  
13 around on spent peanut shells. When the allotted 9 ½ weeks are up, Kim has  
14 finally come to realize that Rourke has been using her. We could have told her  
15 that twenty minutes into the film. One of the definitive works in the Mickey  
16 Rourke *oeuvre*, 9 ½ Weeks is deliciously awful, and as such will probably endure  
17 as a Camp Classic for the next hundred years. The film is available in both R-  
18 rated and unrated versions; either way, it's a hoot.

19 **"Characteristics**

20 -Self-Destructive Romance

21 -Seduction

22 -Seductress

23 -Carnal Knowledge

24 -Sexual-awakening

25 -Sadomasochist

-Sadomasochism

-Masochist

-Dangerous Attraction

-Masochism

-Erotica

-Eroticism"

(Testimony of Meredith; Exhibit A-11)

1           10) On or about June 1, 2010, Liniger gave Complainant a book entitled "The  
2 Five Love Languages (singles edition)" by Gary Chapman. The same day, he sent an  
3 e-mail to her home e-mail address with the subject heading "the 5 love languages."

4 The e-mail read as follows:

5       • **"Words of Affirmation**

6           "Actions don't always speak louder than words. If this is your language,  
7           unsolicited compliments mean the world to you. Hearing the words, 'I love you,'  
8           are important -- hearing the reasons behind that love sends your spirits skyward.  
9           Insults can leave you shattered and are not easily forgotten.

10       • **"Quality Time**

11           "In the vernacular of Quality Time, nothing says, 'I love you,' like full, undivided  
12           attention. Being there for this type of person is critical, but really being there --  
13           with the TV off, fork and knife down and all chores and tasks on standby --  
14           makes your significant other feel truly special and loved. Distractions, postponed  
15           dates, or the failure to listen can be especially hurtful.

16       • **"Receiving Gifts**

17           "Don't mistake this love language for materialism; the receiver of gifts thrives on  
18           the love, helpfulness, and effort behind the gift. If you speak this language, the  
19           perfect gift or gesture shows that you are cared for, and you are prized above  
20           whatever was sacrificed to bring the gift to you. A missed birthday, anniversary,  
21           or a hasty, thoughtless gift would be disastrous -- so would the absence of  
22           everyday gestures.

23       • **"Acts of Service**

24           "Can vacuuming the floors really be an expression of love? Absolutely! Anything  
25           you do to ease the burden of responsibilities weighing on an 'Acts of Service'  
          person will speak volumes. The words he or she most want to hear: 'Let me do  
          that for you.' Laziness, broken commitments, and making more work for them  
          tell speakers of this language their feelings don't matter.

          • **"Physical Touch**

          "This language isn't all about the bedroom. A person whose primary language is  
          Physical Touch is, not surprisingly, very touchy. Hugs, pats on the back, holding  
          hands, and thoughtful touches on the arm, shoulder, or face -- they can all be  
          ways to show excitement, concern, care, and love. Physical presence and  
          accessibility are crucial, while neglect or abuse can be unforgivable and  
          instructive.

          "Paul Liniger - Crystal Springs Landscapes, Inc."

1 Complainant speculated that Liniger gave her the book so he could figure out which  
2 love language she was “so he could get me to like him” or because one of the  
3 languages of love was receiving gifts like the book Liniger had just given her.  
4 (Testimony of Complainant; Exhibit A-10)

5 11) Skaggs sometimes used Complainant’s computer. When Complainant  
6 arrived at work on June 11, 2010, she found that her computer had been turned on and  
7 that Skaggs had left the following e-mail exchange between himself and Liniger  
8 displayed on her monitor:

9 “On 6/7/2010 10:19 AM, Mark Skaggs wrote:

10 “she’s needy.....do one good dickin...and you would never get rid of”

11 “On 6/7/2010 10:19 AM, Paul Liniger wrote:

12 “Yup...exactly! LMFAO”

13 “Subject Re: STAGE 1 CLINGER

14 “Sender Mark Skaggs

15 “Recipient [paul@crystalscapes.com](mailto:paul@crystalscapes.com)

16 “Date Mon 19:21

17 “Dude, please tell me she is not this DITZZZY please tell me we have not  
18 pinned our hopes and dreams on a clinger, LOL the Jack Nicholson < few  
19 good men > line . . . woman we live in world where there are men who’s  
20 gonna do those men you elisa? Your friends??? Why however grotesque  
21 the mens looks are you want them you need them . . I would rather you  
22 just came in and said Thank you . . . ether [sic] way I dont [sic] give a dam  
23 [sic] what you think your in tittle d [sic] to.”

24 “Sender Mark Skaggs

25 “Recipient [paul@crystalscapes.com](mailto:paul@crystalscapes.com)

“Date Wed 18:11

“Dude I am fuckin rollin.....haahahhaahh.... was funny when I told her  
she was’nt [sic] doing her home work and her old man sought out lickin  
the cat elsewhere..... Dude sad part is make’s you wonder if the problem  
is she is strickly [sic] missionary.... hahahhaha”

26 Finding these emails left displayed on her computer “really upset” Complainant. She  
27 printed them, then took a break, went out to her car, and called a good friend for advice.

1 Her friend advised her not to say anything since she had just started work for Crystal  
2 and might be fired. Complainant returned to work and continued "the best that I could."  
3 She followed her friend's advice and did not complain to Liniger or Skaggs at that time.  
4 (Testimony of Complainant; Exhibit A-10)

5 12) On June 11, 2010, Liniger emailed the following message to  
6 Complainant's Facebook page:

7 "Re: Rose Parade

8 "I emailed you info - I think I'm going to plan on going down there so you should  
9 stop by if you don't have anything else going. I think my brother will have  
mimosas and bloody marry's [sic] as well..YUM!:"

10 This made Complainant feel awkward and uncomfortable because she did not care to  
11 mingle with her boss on a social basis. She did not go to Liniger's party. (Testimony of  
12 Complainant; Exhibit A-10)

13 13) On June 14, 2010, Liniger came into the office talking about "He's Just Not  
14 That Into You," a movie he had watched over the weekend, and how he had thought  
15 about Complainant. Liniger said he wondered which girl Complainant was "vs. the  
16 characters in the movie." Liniger added that Complainant was "probably the main  
17 character and he was like the main character guy in the movie and funny how those two  
18 ended up together in the end." Complainant felt these were inappropriate remarks.  
19 (Testimony of Complainant; Exhibit A-10)

20 14) On one occasion, Complainant commented that she was meeting a friend  
21 in Sellwood on a Friday night. Liniger responded that he was going to be in that  
22 neighborhood and would text her so they could meet up. Complainant decided not to  
23 visit her friend because she was afraid Liniger would show up. (Testimony of  
24 Complainant)

25 15) In late June or early July 2010, Skaggs told Complainant that "it's a very  
common thing for husbands to bail after their wives have a baby because then the

1 woman becomes responsible and can no longer be a whore. It's called the Madonna  
2 theory." Liniger, nearby, added that "all guys want their cake and eat it too."  
3 (Testimony of Complainant; Exhibit A-10)

4 16) In early July 2010, in Complainant's and Skaggs's presence, Liniger  
5 began talking about his new girlfriend, describing her as a stripper he had met at a strip  
6 club. Skaggs commented that Complainant would have to work as a stripper if she did  
7 not have a job. (Testimony of Complainant; Exhibit A-10)

8 17) On July 10, a new female employee started work in Crystal's office. In  
9 Complainant's presence, when the new employee was out of the room, Skaggs stated  
10 that she was "cooler" than Complainant, that Complainant was "really uptight and she  
11 [the new employee] will be okay with [our] loose talk." Liniger called the new employee  
12 "sizzle chest" and Skaggs and Liniger began laughing. (Testimony of Complainant;  
13 Exhibit A-10)

14 18) On July 26, 2010, Liniger was joking in the office about dating.  
15 Complainant said she would never date anyone she "worked with or for." In a  
16 "creep[y]"<sup>1</sup> voice, Liniger remarked "never say never." (Testimony of Complainant;  
17 Exhibit A-10)

18 19) All of Liniger's and Skaggs's many comments related to sex, dating, and  
19 male/female relationships were offensive to Complainant and she objected to them on  
20 multiple occasions. Liniger and Skaggs responded by telling Complainant things like  
21 "loosen up," "we're just joking," "we're just messing with you," and "calm down."  
22 (Testimony of Complainant)

23 20) By July, Liniger's and Skaggs's comments had begun "to escalate" and it  
24 was becoming more apparent that Liniger wanted to date Complainant, something she  
25

---

<sup>1</sup> At hearing, this was Complainant's description of Liniger's voice.

1 did not want. Complainant stopped wearing makeup and began wearing different  
2 clothes to work. Complainant had been frequently talking to Becky, one of her sisters,  
3 about Liniger and Skaggs's behavior. In late July, Becky convinced Complainant to  
4 confront Liniger and Skaggs about their behavior, saying Complainant could not  
5 continue to work in that environment and that she was concerned about Complainant.

6 (Testimony of Complainant)

7 21) On July 28, 2010, at 8:30 a.m., Complainant "worked up the nerve" and  
8 sent an e-mail to Liniger stating: "Hey Paul - I know you're extremely busy but I would  
9 like to have a meeting with you this morning when you get in if you have time[.] Thank  
10 you[.] Elisa." Complainant's intention in sending the e-mail was to talk with Liniger  
11 about the e-mails he and Skaggs had left on her monitor on June 11, 2010, and about  
12 their offensive sexual conduct in the office. At 8:48 a.m., Liniger responded via e-mail:  
13 "I'll be in later around 1030. If you want you can also meet with Mark. Thanks[.]"

14 (Testimony of Complainant; Exhibit A-10)

15 22) Complainant did not meet with Liniger on July 28. At 8 a.m. on July 29,  
16 2010, Complainant sent another e-mail to Liniger in which she stated:

17 "Paul,

18 "This is embarrassing for me but I would like to have a meeting with you in  
19 regards to the e-mails that you and mark were sending back and fourth [sic]  
about me. They were completely inappropriate, disturbing and hurtful. Please  
set aside some time today to meet with me to discuss this situation.

20 "Thank you

21 "Elisa"

22 (Testimony of Complainant; Exhibit A-10)

23 23) Liniger did not respond to Complainant's e-mail, instead avoiding her. The  
24 next day, Skaggs took Complainant aside and handed her a final paycheck, saying  
25 "there we go." Complainant began crying. Skaggs grinned as he told Complainant she

1 was being let go because "we just don't have the money to pay you." Complainant left  
2 the office in tears. (Testimony of Complainant; Exhibit A-2)

3 24) Complainant had never received any warnings about her job performance<sup>2</sup>  
4 and had just heard Liniger and Skaggs "bragging" about how much money Crystal  
5 would be making in the following month. (Testimony of Complainant; Exhibit A-2)

6 25) By July 2010, Complainant had stopped seeing her friends because of the  
7 stress Skaggs's and Liniger's behavior was causing her. (Testimony of Complainant)

8 26) Working at Crystal while being subjected to Liniger's and Skaggs's sexual  
9 comments was a "horrible" experience for Complainant, and she found it "incredibly  
10 difficult emotionally" to do the work that comprised her job. She went home each day  
11 "just feeling completely emotionally exhausted." At other jobs in the past, she has been  
12 able to work from 9 a.m. to 6 or 7 p.m. and "still have a lot of energy" and "keep up with  
13 friends." Her daughter, McKenna, was six years old and living with Complainant while  
14 she worked for Crystal. Because of Complainant's fatigue, she had less energy to  
15 spend quality time with McKenna. She became "super sensitive" after she found the  
16 emails on her computer, was more easily offended, and was unsure if it was because  
17 Liniger's and Skaggs's behaviors were something that should actually have offended  
18 her or if it was because she had become overly sensitized. (Testimony of Complainant)

19 27) After Complainant was fired, she talked extensively to her sister, Julie  
20 Daniel, about how she had been unfairly fired, repeatedly questioning whether she  
21 should have sent the July 28 and 29 emails to Liniger. (Testimony of Daniel)

---

22  
23  
24 <sup>2</sup> Exhibit A-5 is a November 30, 2010, position statement, with attachments, submitted by Respondent  
25 after receiving notification of Complainant's initial complaint. Two of the attachments, dated June 8 and  
June 22, 2010, purport to be written warnings issued to and discussed with Complainant. Based on  
Complainant's otherwise uncontroverted testimony that she never received any warnings or oral  
counseling, the forum concludes that these warnings are fabrications and gives them no weight  
whatsoever.

1           28) Complainant had never been subjected to unwelcome sexual conduct in  
2 any other previous employment, despite working mainly in environments where most of  
3 the employees were men. (Testimony of Complainant)

4           29) Complainant diligently sought work after she was fired. During some of  
5 her job interviews, she was uncomfortable when she had to describe why she left  
6 Crystal after working such a short period of time. (Testimony of Complainant; Exhibit A-  
7 15)

8           30) Complainant, who had never been fired before, could not pay all her bills  
9 after she was fired. As an adult, she had always been employed at a good paying job,  
10 and it was very hard for her to transition from earning a good salary to being “very poor”  
11 and “not having any money.” She lost weight and her “face broke out” after she was  
12 fired; she believed this made her look unhealthy. Complainant’s only income between  
13 July 30 and October 30 was \$200 a week in unemployment benefits. She had to call  
14 her ex-husband and ask to borrow \$900 to pay for her rent and another \$300 for  
15 daycare and soccer expenses for McKenna. It was “really embarrassing” for her to  
16 have to borrow money from her ex-husband, and she had to pay the money back. She  
17 also had to borrow \$200 from her parents. All these things made her lose self-esteem.  
18 (Testimony of Complainant)

19           31) Before Complainant was fired, she had slept 8-9 hours per night. After  
20 she was fired, she couldn’t sleep at first, then began sleeping 11-12 hours per night. At  
21 Crystal, Skaggs had talked about keeping a gun in his car, and Complainant began  
22 having nightmares that Skaggs was shooting her with his gun. She experienced fear  
23 and anxiety and had several “panic attacks” after those nightmares. During those  
24 attacks, she experienced shortness of breath, “feeling like she [couldn’t] breathe,” and  
25 “a very nervous feeling.” Complainant also had a “sudden onset of nerves where she

1 had a shortness of breath” several times during her job search when she was  
2 concerned about obtaining employment. Most recently, she had a panic attack in  
3 September 2012 at the Pendleton Roundup when she was standing in line to get her  
4 ticket and mistakenly thought she saw Liniger standing next to her. Complainant had to  
5 walk away and sit down until she was able to collect herself. Complainant had never  
6 had a panic attack before her employment with Crystal. (Testimony of Complainant)

7 32) At the recommendation of her sister Becky, Complainant considered  
8 seeking counseling, but had no insurance and could not afford it. (Testimony of  
9 Complainant)

10 33) Complainant has always been socially outgoing. After her discharge, she  
11 stopped going to social events because she could no longer afford it and she felt that  
12 she just didn't want to see anyone. She did not attend a good friend's wedding because  
13 she could not afford to buy an appropriate dress. She did not do “play dates” with her  
14 daughter because she could no longer afford them. Her friends, many of whom had  
15 been friends with since her early teen years, did not understand. (Testimony of  
16 Complainant)

17 34) As a result of being fired, Complainant was unable to make timely monthly  
18 payments on several credit accounts. She had to pay \$200 in late fees and extra  
19 interest, and her credit rating dropped from 700+ to “500 something” as a direct result of  
20 her inability to make timely payments on those accounts. At one point while she was  
21 unemployed, she overdrew her checking account by \$189 and the bank closed her  
22 account. As a result, she had to get the money to pay her bills from a cash machine  
23 until she was able to open another checking account. (Testimony of Complainant;  
24 Exhibit A-17)

1           35) Complainant purchased a car for \$11,000 in September 2012. She had  
2 financed her previous two cars, both Volkswagens, through Volkswagen Credit.  
3 Volkswagen Credit would not finance her September 2012 purchase because of the  
4 marked decline in her credit score, which her salesperson said was a direct result of her  
5 late payments on her credit accounts after July 30, 2010. As a result, Complainant had  
6 to find a different lender who charged a higher interest rate and will pay at least \$3,000  
7 more in interest payments over the life of her loan than if she had financed the vehicle  
8 through Volkswagen Credit. (Testimony of Complainant)

9           36) Complainant got a new job at Oregon Athletic Clubs ("OAC") on  
10 November 1, 2010, that started at \$30,000 a year. After one month, she was given a  
11 raise to \$35,000 a year. She was paid an additional \$450 in commissions in December  
12 2010. Beginning January 1, 2011, she has earned the equivalent of \$45,000 a year.  
13 (Testimony of Complainant)

14           37) At OAC, Complainant wondered what the male employees were saying  
15 about her behind her back. After her experience at Crystal, she decided not to "friend"  
16 any of her co-workers on Facebook. Many of her co-workers found this strange  
17 because Facebook is a very common social thing among Complainant's age group.  
18 When a male co-worker wanted to be friends with her, her immediate reaction was to  
19 decide she would not be friends with him, feeling "terrified that he was going to like me  
20 or fall in love with me or start to give me things" because of her experience with Liniger.  
21 Complainant's first supervisor was a woman. When that woman was replaced by a  
22 male, Complainant found the transition difficult because of her recent experience with  
23 Liniger and Skaggs. (Testimony of Complainant)

24           38) Complainant's testimony demonstrated a specific recollection of  
25 objectionable remarks made by Liniger and Skaggs. From memory, she was able to

1 describe with particularity each remark, as well as the location in Crystal's office where  
2 she, Liniger, and Skaggs were at the time each remark was made. Her testimony  
3 regarding the different aspects of emotional, physical, and mental suffering she  
4 experienced as a result of Respondent's unlawful employment practices was succinct  
5 and not exaggerated. (Testimony of Complainant; Observation of ALJ)

#### 6 **ULTIMATE FINDINGS OF FACT**

7 1) At all times material herein, Respondent Crystal was an Oregon domestic  
8 business corporation that engaged or utilized the personal services of one or more  
9 persons, including Complainant, and conducted business out of an office in Clackamas,  
10 Oregon.

11 2) At all times material herein, Paul Liniger was Crystal's owner and  
12 corporate president and Mark Skaggs was Crystal's general manager.

13 3) Complainant is a female who was hired by Crystal on or about May 3,  
14 2012.

15 4) During Complainant's employment with Crystal, Skaggs engaged in the  
16 following activities in Crystal's office:

- 17 • In Liniger's presence, asking Complainant if she was single or married,  
18 then advising her, when she said she was divorced, that her husband  
19 probably cheated on her, that she "probably didn't do her homework" and  
20 "wasn't having sex with her husband, and that's why her husband went  
21 somewhere else."
- 22 • In the context of talking about relationship, recommending that  
23 Complainant watch a sexually explicit, erotic movie entitled "9½ Weeks"  
24 and advising her to "take tips" from it and "apply it to her life."
- 25 • Subsequently posting a comment on Complainant's Facebook referring to  
"9½ Weeks" and wishing her luck with the insight.
- Using Complainant's computer to view his email and leaving a series of e-  
mails between himself and Liniger displayed on Complainant's computer  
when she arrived at work. In the e-mails, Skaggs and Liniger discussed  
what they thought Complainant's sexual habits might be, Skaggs's earlier  
comment to Complainant that her husband had left her because she  
wasn't having sex with him, that Complainant needed men, no matter

1 "how grotesque," and that she was a "clinger" a man "would never get rid  
2 of" after "one good dickin."

3 5) During Complainant's employment with Crystal, Skaggs and Liniger  
4 together engaged in the following activities in Crystal's office in Complainant's  
5 presence:

- 6 • Skaggs told Complainant that "it's a very common thing for husbands to  
7 bail after their wives have a baby because then the woman becomes  
8 responsible and can no longer be a whore. It's called the Madonna  
9 theory." Liniger, nearby, added that "all guys want their cake and eat it  
10 too."
- 11 • Skaggs stated that a new female employee was "cooler" than  
12 Complainant, that Complainant was "really uptight" and the new employee  
13 would "be okay with [our] loose talk." Liniger called the new employee a  
14 "sizzle chest" and Skaggs and Liniger laughed about it.
- 15 • Liniger talked about his new girlfriend, a stripper he had met at a strip  
16 club, and Skaggs commented that Complainant would have to work as a  
17 stripper if she did not have a job.

18 6) During Complainant's employment with Crystal, Liniger engaged in the  
19 following activities in Crystal's office:

- 20 • Giving Complainant a book entitled "The Five Love Languages (singles  
21 edition)," and sending her an e-mail that summarized the five love  
22 languages and was signed "Paul Liniger - Crystal Springs Landscapes,  
23 Inc."
- 24 • E-mailing a message to Complainant's Facebook that invited Complainant  
25 to a Rose Parade picnic to have drinks with him and his brother.
- Telling Complainant about "He's Just Not That Into You," a movie he had  
watched over the weekend, and speculating that he and Complainant  
were like the two main characters who ended up together in the end.
- When Complainant said that she was meeting a friend in Sellwood on a  
Friday night, telling her he was going to be in that neighborhood and  
would text her so they could meet up.
- Joking in the office about dating and telling Complainant, in a "creep[y]"  
voice "never say never" when Complainant said she would never date  
anyone she "worked with or for."

1           7) All of Liniger's and Skaggs's activities described in Ultimate Findings of  
2 Fact #4-6 were offensive and unwelcome to Complainant and she objected to them on  
3 multiple occasions.

4           8) On July 28, 2010, at 8:30 a.m., Complainant sent an e-mail to Liniger  
5 requesting a meeting with him. Her intention in sending the e-mail was to talk with  
6 Liniger about the e-mails he and Skaggs had exchanged discussing her and about their  
7 offensive sexual conduct in the office.

8           9) Complainant did not meet with Liniger on July 28, and at 8 a.m. on July  
9 29, 2010, Complainant sent a second e-mail to Liniger in which she stated:

10           "Paul,

11           "This is embarrassing for me but I would like to have a meeting with you in  
12 regards to the e-mails that you and mark were sending back and fourth [sic]  
13 about me. They were completely inappropriate, disturbing and hurtful. Please  
14 set aside some time today to meet with me to discuss this situation.

15           "Thank you

16           "Elisa"

17           10) Liniger did not respond to Complainant's e-mail, instead avoiding her. The  
18 next day, Skaggs gave Complainant her final paycheck and told her she was being let  
19 go because "we just don't have the money to pay you."

20           11) Respondent had never warned Complainant about her job performance  
21 and she had just heard Liniger and Skaggs been talking about how much money Crystal  
22 would be making in the following month.

23           12) Complainant diligently sought work after she was fired, but did not find  
24 another job until November 1, 2010. As of January 1, 2011, she began earning the  
25 same amount of money that she had earned while employed at Crystal. In total, she  
lost \$13,880 in back pay, calculated as follows:

- \$45,000 per year ÷ 12 = \$3,750 per month. \$3,750 x 3 months = **\$11,250**
- \$30,000 per year ÷ 12 = \$2,500 per month. \$3,750 - \$2,500 = **\$1,250**

1 • \$35,000 per year ÷ 12 = \$2,920 per month. \$3,750 – (\$2,920 + \$450) =  
2 **\$380**

3 • \$11,250 + \$1,250 + \$380 = **\$13,880**

4 13) As a result of her discharge, Complainant suffered and will suffer the  
5 following out-of-pocket expenses:

6 • \$200 in late fees and extra interest on credit accounts that she was unable  
7 to pay in a timely manner after her discharge because of temporary lack of  
8 income

9 • \$3,000 more in interest payments over the life of an auto loan because of  
10 her lower credit rating caused by her inability to pay her credit accounts in  
11 a timely manner in 2010 after her discharge

12 14) Complainant experienced substantial emotional, mental, and physical  
13 suffering as a direct result of Skaggs's and Liniger's unwelcome sexual conduct and her  
14 discharge, continuing until September 2012.

#### 15 **CONCLUSIONS OF LAW**

16 1) At all times material herein, Crystal was an "employer" as defined in ORS  
17 659A.001(4).

18 2) At all times material herein, Paul Liniger was an individual and a "person"  
19 under ORS 659A.001(9)(a) and ORS 659A.030(1)(g).

20 3) The actions, statements and motivations of Liniger and Skaggs are  
21 properly imputed to Crystal.

22 4) The Commissioner of the Bureau of Labor and Industries has jurisdiction  
23 of the persons and of the subject matter herein. ORS 659A.800 to ORS 659A.865.

24 5) Crystal, acting through its president Liniger and general manager Skaggs,  
25 subjected Complainant to sexual harassment in violation of ORS 659A.030(1)(b), OAR  
839-005-0021, OAR 839-005-0030(1)(a)(B), and OAR 839-005-0030(1)(b). Liniger  
aided and abetted Crystal in this unlawful employment practice in violation of ORS  
659A.030(1)(g).



1 aiding and abetting Crystal in the commission of all unlawful employment practices  
2 found herein. As for liability, the Agency alleges that Crystal is strictly liable for the  
3 harassment because Liniger is its proxy under OAR 839-005-0030(3), and that Liniger  
4 and Crystal should be held jointly and severally liable for all damages awarded.

5 Because Respondents defaulted by not filing an answer, the forum's task is to  
6 determine if the Agency presented a prima facie case on the record to support these  
7 allegations.<sup>3</sup>

## 8 **SEXUAL HARASSMENT**

9 The Agency's Formal Charges allege that Crystal, through the actions of Liniger  
10 and Skaggs, subjected Complainant to "hostile environment"<sup>4</sup> and "quid pro quo"<sup>5</sup>  
11 sexual harassment during her employment.

### 12 **A. Sexual Harassment – Hostile Environment**

13 OAR 839-005-0030(1)(b) defines this form of sexual harassment as:

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

16 The conduct must be sex-based. OAR 839-005-0030(1). The standard for determining  
17 whether harassment based on an individual's sex is sufficiently severe or pervasive to  
18 create a hostile, intimidating or offensive working environment is "whether a reasonable  
19 person in the circumstances of the complaining individual would so perceive it." OAR  
20 839-005-0030(2).

---

23 <sup>3</sup> See, e.g., *In the Matter of Horizon Technologies, LLC*, 31 BOLI 229, 239 (2011) (When a respondent  
24 defaults, the agency must present a prima facie case on the record to support the allegations of its  
charging document in order to prevail).

25 <sup>4</sup> See OAR 839-005-0030(1)(b).

<sup>5</sup> See OAR 839-005-0030(1)(a).

1 Based on the above, the Agency's prima facie case in a hostile environment case  
2 consists of the following elements: (1) Crystal was an employer subject to ORS  
3 659A.001 to 659A.030; (2) Crystal employed Complainant; (3) Complainant is a  
4 member of a protected class (sex); (4) Liniger and Skaggs engaged in unwelcome  
5 conduct (verbal or physical) directed at Complainant because of her sex; (5) the  
6 unwelcome conduct was sufficiently severe or pervasive to have the purpose or effect of  
7 unreasonably interfering with Complainant's work performance or creating a hostile,  
8 intimidating or offensive work environment for Complainant; and (6) Complainant was  
9 harmed by the unwelcome conduct. *See, e.g., In the Matter of Charles Edward Minor,*  
10 *31 BOLI 88, 100 (2010).*

11 1. Crystal was an employer and employed Complainant, a female.

12 There is no dispute that Crystal is an Oregon corporation subject to ORS  
13 659A.001 to 659A.030 that employed Complainant, a female, during all times material.

14 2. Liniger and Skaggs, Crystal's owner/president and general manager,  
15 engaged in unwelcome verbal conduct directed at Complainant because of  
16 her sex.

17 Complainant credibly testified that Liniger and Skaggs engaged in numerous  
18 instances of unwelcome verbal conduct, both oral and written, that was directed at her  
19 because of her sex. Their specific conduct is set out in detail in Findings of Fact ##7-18  
20 – The Merits. The forum concludes that the conduct was unwelcome to Complainant  
21 based on her convincing testimony that it offended and embarrassed her; her multiple  
22 objections to it; her complaints to her sister about it; and her change in apparel and  
23 cessation of using makeup at work in an attempt to deter the behavior. The forum  
24 concludes that the unwelcome conduct was due to Complainant's sex because of  
25 Liniger and Skagg's direct references to: (1) their perception of Complainant's sexual  
behavior and needs; (2) a movie with erotic sex as its main theme; (3) the breasts of

1 another female employee; (4) strippers; along with Liniger's attempt to date  
2 Complainant.

- 3 3. Liniger's and Skaggs's unwelcome conduct was sufficiently severe or  
4 pervasive to have the purpose or effect of unreasonably interfering with  
5 Complainant's work performance or creating a hostile, intimidating or  
6 offensive working environment.

7 The standard for determining whether conduct is sufficiently severe or pervasive  
8 to have created a hostile, intimidating or offensive working environment is from the  
9 objective standpoint of a reasonable person in Complainant's particular circumstances.  
10 See, e.g., *In the Matter of Spud Cellar Deli, Inc.*, 31 BOLI 106, 133 (2010).

11 In making that determination, the forum looks at the totality of the circumstances,  
12 i.e., the nature of the conduct and its context, the frequency of the conduct, its severity  
13 or pervasiveness, whether it is physically threatening or humiliating, and whether it  
14 unreasonably interferes with an employee's work performance. *In the Matter of Gordy's  
Truck Stop, LLC*, 28 BOLI 200, 211 (2007).

15 *Nature of the conduct and its context* – The unwelcome conduct involved verbal  
16 comments of a distinctly sexual nature made to or directed at Complainant in her work  
17 environment. Complainant was 27 years old and a single mother during her  
18 employment with Crystal. She quit her previous job to work for Crystal after being  
19 solicited to do so by Liniger. Crystal's president and general manager, both males who  
20 supervised Complainant, engaged in the conduct, sometimes as a repartee to each  
21 other's remarks.

22 *Frequency* – All of the unwelcome conduct occurred over a period of three  
23 months, from May 3 to July 30, 2010. There were at least 12 separate incidents.<sup>6</sup>

24  
25  

---

<sup>6</sup> See Ultimate Findings of Fact ##4-6.

1           *Severity or Pervasiveness* – The unwelcome conduct included the behavior set  
2 out in Ultimate Findings of Fact ##4-6 and focused on Liniger’s and Skaggs’s inquiries  
3 and comments about, as well as perceptions of Complainant’s sex life and Liniger’s  
4 attempts to date her. The severity and pervasiveness of this conduct was intensified  
5 because it began during Complainant’s first week of employment, Complainant objected  
6 to it on multiple occasions, and Liniger and Skaggs laughed off her objections and  
7 continued to engage in similar conduct.

8           *Physically threatening or humiliating* – Complainant credibly testified that working  
9 for Crystal was a “horrible” experience for her due to Liniger’s and Skaggs’s sexual  
10 conduct, and that their conduct made her feel upset, awkward, uncomfortable, and  
11 embarrassing.

12           *Unreasonable interference with Complainant’s work performance* – Complainant  
13 credibly testified that Liniger’s and Skaggs’s sexual conduct made it “incredibly difficult  
14 emotionally to do the work” that comprised her job, and that she went home each day  
15 “just feeling completely emotionally exhausted.” She credibly testified that this was in  
16 marked contrast to previous jobs where she worked longer hours and still had “a lot of  
17 energy” at the end of the day. This demonstrates that Liniger’s and Skaggs’s sexual  
18 conduct unreasonably interfered with Complainant’s job performance.

19           Based on the above, the forum concludes that Liniger’s and Skaggs’s  
20 unwelcome sexual conduct was sufficiently severe or pervasive to have unreasonably  
21 interfered with Complainant’s work performance and that it created a hostile,  
22 intimidating or offensive work environment for Complainant from the objective  
23 standpoint of a reasonable person in Complainant’s particular circumstances.

1           4. Complainant was harmed by the unwelcome conduct.

2           Liniger's and Skaggs's conduct effectively poisoned Complainant's work  
3 environment, causing her substantial emotional and mental distress as detailed above.  
4 This satisfies the harm element of the Agency's prima facie case.

5           5. Conclusion.

6           Crystal, acting through Liniger and Skaggs, committed an unlawful employment  
7 practice by subjecting Complainant to sexual harassment in violation of ORS  
8 659A.030(1)(b) and OAR 839-005-0030(1)(b). Crystal is liable for this harassment  
9 under OAR 839-005-0030(1)(c) and (e), as discussed in more detail later in this Opinion  
10 in the section titled "Liability."

11 **B. Sexual Harassment – Quid Pro Quo**

12           OAR 839-005-0030(1)(a) defines *quid pro quo* sexual harassment as:

13           “(a) Unwelcome sexual advances, requests for sexual favors, or other conduct  
14 of a sexual nature when such conduct is directed toward an individual because of  
15 that individual's sex and:

16           “(A) Submission to such conduct is made either explicitly or implicitly a term or  
17 condition of employment; or

18           “(B) Submission to or rejection of such conduct is used as the basis for  
19 employment decisions affecting that individual.”

20           1. OAR 839-005-0030(1)(a)(A) – Explicit or implicit term or condition of  
21 employment.

22           The Agency's prima facie case in an OAR 839-005-0030(1)(a)(A) case consists  
23 of the following elements: (1) Crystal was an employer subject to ORS 659A.001 to  
24 659A.030; (2) Crystal employed Complainant; (3) Complainant is a member of a  
25 protected class (sex); (4) Liniger and Skaggs engaged in unwelcome conduct (verbal or  
physical) directed at Complainant because of her sex; (5) Complainant's submission to  
this conduct was made an explicit or implicit term or condition of Complainant's  
employment. *Cf. In the Matter of Spud Cellar Deli, Inc.*, 31 BOLI 106, 132, 140 (2010).

1 The first four elements are identical to those in a "hostile environment" case and  
2 require no further discussion, leaving the forum with the task of determining whether  
3 Complainant's submission to Liniger's and Skaggs's unwelcome sexual conduct was  
4 made an "explicit or implicit term or condition" of her employment. Reframed in the  
5 context of this case, the issue is whether Complainant was required to submit to that  
6 conduct in order to avoid any negative action being taken against her by Liniger or  
7 Skaggs with respect to her terms and conditions of employment.

8 The forum has already concluded that Liniger and Skaggs engaged in numerous  
9 acts that, in their totality, constituted unlawful "hostile environment" sexual harassment.  
10 The forum has also found that Complainant objected to that conduct on multiple  
11 occasions, and Liniger and Skaggs made light of her objections.<sup>7</sup> However, despite the  
12 offensiveness of Liniger and Skaggs's behavior, including Liniger's attempts to date her,  
13 there is no evidence that either Liniger or Skaggs made any explicit or implicit threats  
14 about what might happen to Complainant if she did not go along with their behavior.  
15 Complainant testified that a friend initially advised her not to complain about the e-  
16 mails<sup>8</sup> because she was a new employee, but did not testify that she was afraid her job  
17 might be at risk if she complained. In addition, she complained about the other  
18 offensive conduct on multiple other occasions without any adverse consequences. In  
19 conclusion, the forum concludes that Complainant's submission to Liniger's and  
20 Skaggs's unwelcome sexual conduct was not made either explicitly or implicitly a term  
21 or condition of employment and that Crystal did not violate OAR 839-005-0030(1)(a)(A).

22  
23  
24  
25 <sup>7</sup> See Finding of Fact #19 – The Merits.

<sup>8</sup> See Finding of Fact #16 –The Merits.

1           2. OAR 839-005-0030(1)(a)(B) -- Rejection of unwelcome conduct used as  
2           basis for employment decision.

3           The Agency's prima facie case under OAR 839-005-0030(1)(a)(B) has the same  
4 first four elements as an OAR 839-005-0030(1)(a)(A) case. Accordingly, those  
5 elements require no further discussion. The fifth element is that Complainant's rejection  
6 of Liniger's and Skaggs's unwelcome sexual conduct must have been used as a basis  
7 for an employment decision affecting Complainant. Here, the alleged decision is  
8 Complainant's discharge.

9           A quick review of the facts shows that Complainant had objected to Liniger's and  
10 Skaggs's unwelcome sexual conduct on multiple occasions before July 28 with no  
11 repercussions. However, she had never voiced an objection to the e-mails that she  
12 found displayed on her computer monitor on June 11, 2010. At 8 a.m. on July 29, 2010,  
13 Complainant sent another e-mail to Liniger in which she objected to those e-mails in the  
14 following language:

15           "Paul,

16           "This is embarrassing for me but I would like to have a meeting with you in  
17 regards to the e-mails that you and mark were sending back and fourth [sic]  
18 about me. They were completely inappropriate, disturbing and hurtful. Please  
19 set aside some time today to meet with me to discuss this situation.

20           "Thank you

21           "Elisa"

22           By this e-mail, she effectively voiced her "rejection" to Liniger's and Skaggs's sexual  
23 conduct in their e-mail exchange. Liniger did not respond to the e-mail and avoided  
24 Complainant the remaining day and a half of her employment. On July 30, Skaggs  
25 gave Complainant her final paycheck and told her she was being let go because Crystal  
did not have the money to pay her.

          For several reasons, the forum concludes that Complainant's July 29 e-mail to  
Liniger was the catalyst for her discharge. First, shortly before her discharge,

1 Complainant had just heard Liniger and Skaggs bragging about how much money  
2 Crystal would be making the next month. Second, she received no warnings about her  
3 job performance prior to discharge. Third, there was no reliable evidence in the record  
4 that Liniger and Skaggs had any other e-mail exchanges about Complainant other than  
5 the ones left for her to view on her computer monitor.<sup>9</sup> Given the explicit nature of e-  
6 mail messages and their relative proximity in time, the forum finds it extremely unlikely  
7 that Liniger or Skaggs were unaware of the specific e-mails Complainant was referring  
8 to in her July 29 e-mail to Liniger. During Civil Rights Division senior investigator  
9 Meredith's investigation, Skaggs admitted that "Mr. Liniger, one of the owners did tell  
10 me that [Complainant] requested a meeting about e-mails[.]"<sup>10</sup> During Liniger's  
11 interview with Meredith, Liniger stated, when confronted by the e-mails, that "[s]he had  
12 to go looking for the email. I think she was plotting against me."<sup>11</sup> Finally, Complainant  
13 was fired the day after she voiced her "rejection" to Liniger's and Skaggs's sexual  
14 conduct in their e-mail exchange.<sup>12</sup> Taken together, these facts satisfy the fifth element  
15 of the Agency's prima facie case and the forum concludes that Crystal violated ORS  
16 659A.030(1)(a) and OAR 839-005-0030(1)(a)(B) by discharging Complainant based on  
17 her rejection of Liniger's and Skaggs's unwelcome sexual conduct. Crystal is liable for

18  
19

---

20 <sup>9</sup> During her investigation, Meredith requested that Liniger provide "[e]mail correspondence referencing  
21 [Complainant], including any email about her time management, use of the Internet, or conducting  
22 personal business during work[.]" Liniger's response, which was not supported by any evidence at  
23 hearing, was that he had told his "brother who works on my computer stuff to go ahead and delete all  
24 email accounts" and he could not find any e-mails responsive to Meredith's request. This request and  
25 response are contained in Exhibits A-6 and A-7.

23 <sup>10</sup> Skaggs's written statement is contained in Exhibit A-5.

24 <sup>11</sup> Meredith's interview notes are contained in Exhibit A-8.

25 <sup>12</sup> Cf. Barbara Lindeman and Paul Grossman, *Employment Discrimination Law, Fourth Edition*, volume I,  
pp. 1030-1034 (4<sup>th</sup> Ed. 2007)(citing Title VII retaliation cases in which a brief gap in time of hours or days  
between a plaintiff's opposition to unlawful behavior and employer's adverse action was held sufficient to  
establish a prima facie case).

1 this harassment under OAR 839-005-0030(1)(c), as discussed in more detail later in this  
2 Opinion in the section titled "Liability."

### 3 **RETALIATION – DISCHARGE**

4 The Agency's prima facie case in an ORS 659A.030(1)(f) retaliatory discharge  
5 case consists of the following elements: (1) Complainant opposed an unlawful  
6 employment practice; (2) Crystal discharged Complainant; and (3) there is a causal  
7 connection between Complainant's opposition and her discharge. The same facts that  
8 prove Complainant was discharged because she rejected Liniger's and Skaggs's sexual  
9 conduct also prove that she was discharged in retaliation for opposing an unlawful  
10 employment practice by sending her July 29 e-mail to Liniger.

### 11 **RESPONDENT LINIGER AIDED & ABETTED RESPONDENT CRYSTAL IN** 12 **DISCHARGING COMPLAINANT**

13 ORS 659A.030(1)(g) provides that it is an unlawful employment practice "[f]or  
14 any person, whether an employer or employee, aid, abet, incite, compel or coerce the  
15 doing of any of the acts of this chapter or to attempt to do so." This forum has  
16 previously held that aiding and abetting, in the context of an unlawful employment  
17 practice, means "to help, assist, or facilitate the commission of an unlawful employment  
18 practice, promote the accomplishment thereof, help in advancing or bring it about, or  
19 encourage, counsel or incite as to its commission." *In the Matter of Cyber Center, Inc.*,  
20 32 BOLI 11, 37 (2012), citing *In the Matter of Sapp's Realty, Inc.*, 4 BOLI 232, 277  
21 (1985).

22 In this case, Liniger was Crystal's owner and president throughout Complainant's  
23 employment. A corporate officer and owner who commits acts rendering the  
24 corporation liable for an unlawful employment practice may be found to have aided and  
25 abetted the corporation's unlawful employment practice. *Cyber Center, Inc.*, at 37  
(citing numerous other cases supporting this proposition). Ultimate Findings of Fact

1 ##4-6 set out a number of unlawful acts of sexual harassment directed at Complainant  
2 that Liniger initiated, participated in, or acquiesced to. These acts make Liniger jointly  
3 liable as an aider and abettor for the sexual harassment Complainant was subjected  
4 prior to her discharge that he initiated, participated in, or acquiesced to. While there is  
5 no direct evidence that Liniger participated in the decision to discharge Complainant,  
6 the forum infers<sup>13</sup> his participation based on three facts. First, Complainant sent the e-  
7 mail that resulted in her discharge to Liniger and he received it and told Skaggs about it.  
8 Second, as Crystal's president he had the unquestionable authority to make that  
9 decision, as reinforced by his December 23, 2010, statement to Meredith that he had  
10 "decided to let [Complainant] go about a month before he did." Third, in the position  
11 statements submitted by Liniger and in his interview with Meredith, Liniger said nothing  
12 to indicate that anyone other than himself was responsible for the decision to discharge  
13 Complainant.

14 Respondent Liniger's active role in sexual harassing and discharging  
15 Complainant makes him an aider and abettor under ORS 659A.030(1)(g). His liability  
16 for his actions is discussed in the following section.

## 17 **LIABILITY**

### 18 **A. Proxy – Crystal's Liability For Liniger's Actions**

19 As Crystal's owner and corporate officer, Liniger's conduct is properly imputed to  
20 Crystal. OAR 839-005-0030(3) provides that "[a]n employer is liable for harassment  
21 when the harasser's rank is sufficiently high that the harasser is the employer's proxy,  
22 for example, the respondent's president, owner, partner or corporate officer." Liniger's  
23

24 \_\_\_\_\_  
25 <sup>13</sup> See *In the Matter of Income Property Management*, 31 BOLI 18, 39 (2010) (Evidence includes inferences. There may be more than one inference to be drawn from the basic fact found; it is the forum's task to decide which inference to draw).

1 owner/corporate officer status makes Crystal strictly liable for Liniger's sexual  
2 harassment and discharge of Complainant.

3 **B. Crystal's Liability for Skaggs's Actions**

4 The standard for determining whether Crystal is responsible for Skaggs's on-the-  
5 job sexual harassment of Complainant is set out in OAR 839-005-0030(5):

6 "(5) Harassment by Supervisor, No Tangible Employment Action: When sexual  
7 harassment by a supervisor with immediate or successively higher authority over  
8 an individual is found to have occurred, but no tangible employment action was  
9 taken, the employer is liable if:

10 "(a) The employer knew of the harassment, unless the employer took immediate  
11 and appropriate corrective action.

12 "(b) The employer should have known of the harassment. The division will find  
13 that the employer should have known of the harassment unless the employer can  
14 demonstrate:

15 "(A) That the employer exercised reasonable care to prevent and promptly  
16 correct any sexually harassing behavior; and

17 "(B) That the complaining individual unreasonably failed to take advantage of any  
18 preventive or corrective opportunities provided by the employer or to otherwise  
19 avoid harm."

20 Skaggs was a supervisor with immediate authority over Complainant. Liniger,  
21 Crystal's owner and president, was aware of much of Skaggs's sexual harassment of  
22 Complainant and was an active participant in some of it. Based on OAR 839-005-  
23 0030(5)(b), the forum concludes that Liniger should have known of the rest of Skaggs's  
24 sexual harassment and imputes this knowledge to Crystal, making Crystal liable for all  
25 of Skaggs's sexual harassment. The forum does not consider the affirmative defenses  
set out in OAR 839-005-0030(5)(b) because Respondents failed to plead them in an  
answer.<sup>14</sup>

---

<sup>14</sup> See OAR 839-050-0130(3) ("The failure of the party to raise an affirmative defense in the answer is a waiver of such defense.")

1 **C. Liniger's Liability as an Aider and Abettor**

2 As an aider and abettor to Crystal's sexual harassment and discharge of  
3 Complainant, Respondent Liniger is jointly and severally liable with Crystal for all  
4 damages awarded by this forum.<sup>15</sup>

5 **DAMAGES**

6 The Agency seeks back pay, reimbursement of out-of-pocket expenses, and  
7 damages for mental, emotional, and physical suffering.

8 **A. Back Pay**

9 The commissioner has the authority to fashion a remedy adequate to eliminate  
10 the effects of unlawful employment practices. *In the Matter of From the Wilderness*, 30  
11 BOLI 227, 290 (2009). The purpose of back pay awards in an employment  
12 discrimination case is to compensate a complainant for the loss of wages and benefits  
13 the he or she would have received but for the respondent's unlawful employment  
14 practices. Awards are calculated to make a complainant whole for injuries suffered as a  
15 result of the discrimination. *In the Matter of Trees, Inc.*, 28 BOLI 218, 251 (2007). A  
16 complainant who seeks back pay is required to mitigate damages by using reasonable  
17 diligence to find other suitable employment. *In the Matter of Rogue Valley Fire*  
18 *Protection*, 26 BOLI 172, 184 (2005).

19 Through Complainant's credible testimony and documentation of her job search,  
20 the Agency established that she diligently sought other suitable employment after her  
21 discharge, eventually finding another job that started on November 1, 2010. While  
22  
23  
24  
25

---

<sup>15</sup> See, e.g., *In the Matter of Dr. Andrew Engel, DMD, PC*, 32 BOLI 100, 148-49 (2012), appeal pending.

1 employed by Crystal, Complainant was paid a salary of \$45,000 a year, or \$3,750 a  
2 month. She had no earnings between her discharge and starting her new job. During  
3 that period of time, she would have earned \$11,250 (\$3,750 x 3 months), had she not  
4 been discharged. Her starting salary at her new job was \$30,000 a year, or \$2,500 a  
5 month. She received a raise to \$35,000 a year beginning December 1, 2010, or \$2,920  
6 a month, and also received \$450 in commissions in December 2010. Since January 1,  
7 2011, she has been paid at least \$45,000 a year. In total, she is entitled to \$13,880 in  
8 back pay, as summarized in Ultimate Finding of Fact #12. Although the Agency  
9 amended its Formal Charges at hearing to substitute the sum "\$11,250" in lost wages  
10 for the sum "\$14,000," the forum is not limited in its award because the amendment did  
11 not delete the nonrestrictive phrase "at least" that prefaced the sum "\$14,000" in the  
12 Formal Charges. Had the Agency done so, the forum would only be able to award  
13 \$11,250 in back pay.

14 **B. Out-of-Pocket Expenses**

15 This forum has consistently held that out-of-pocket expenses that are directly  
16 attributable to an unlawful practice are recoverable from a respondent as a means to  
17 eliminate the effects of any unlawful practice found. *From the Wilderness*, at 290. See  
18 also *In the Matter of Dr. Andrew Engel, DMD, PC*, 32 BOLI 100, 150 (2012), *appeal*  
19 *pending*; *In the Matter of Trees, Inc.*, 28 BOLI 218, 251 (2007); *In the Matter of*  
20 *Southern Oregon Subway, Inc.*, 25 BOLI 218, 242 (2004). In the past, the forum has  
21 awarded damages for expenses such as travel expenses incurred in obtaining  
22 alternative employment,<sup>16</sup> medical expenses that would have been covered by a  
23

24 \_\_\_\_\_

25 <sup>16</sup> *In the Matter of Barrett Business Services, Inc.*, 20 BOLI 189, 215, *aff'd Barrett Business Services, Inc. v. Bureau of Labor and Industries*, 173 Or App 444 (2001); *In the Matter of Day Trucking, Inc.*, 2 BOLI 83, 87-88 (1981).

1 respondent's insurance policy, had the complainant not been fired,<sup>17</sup> added costs  
2 incurred because of loss of use of an employee discount card,<sup>18</sup> and moving costs  
3 attributable to an unlawful act involving real property.<sup>19</sup> In this case, Complainant  
4 credibly testified that she had to pay out to \$200 in late fees to credit card companies in  
5 2010 because of her inability to make timely payments in the months following her  
6 discharge. She also credibly testified that her credit rating took a major beating as a  
7 direct result of those late payments. As a result, she will have to pay an extra \$3,000 in  
8 interest over the life of a car loan that she obtained in September 2012.<sup>20</sup> The forum  
9 finds that both of these expenses are a direct result of Respondents' unlawful practices  
10 and awards Complainant \$3,200 in reimbursement for out-of-pocket expenses.

11 **C. Emotional, Mental, and Physical Suffering Damages**

12 In determining an award for emotional and mental suffering, the forum considers  
13 the type of discriminatory conduct, and the duration, frequency, and severity of the  
14 conduct. It also considers the type and duration of the mental distress and the  
15 vulnerability of the complainant. The actual amount depends on the facts presented by  
16 each complainant. A complainant's testimony, if believed, is sufficient to support a  
17 claim for mental suffering damages. *From the Wilderness*, at 291-92.

18 In this case, the primary evidence of Complainant's emotional and mental  
19 suffering was her own compelling testimony.

20 The type of discriminatory conduct experienced by Complainant was verbal  
21 sexual harassment from Crystal's president/owner and general manager that focused  
22

---

23 <sup>17</sup> *In the Matter of Body Imaging, P.C.*, 17 BOLI 162, 175, 191 (1998), *affirmed in part, reversed in part*,  
24 *Body Imaging, P.C. and Paul Meunier, M.D. v. Bureau of Labor and Industries*, 166 Or App 54 (2000).

25 <sup>18</sup> *In the Matter of Wal-Mart Stores, Inc.*, 24 BOLI 37, 65 (2003).

<sup>19</sup> *In the Matter of Strategic Investments of Oregon, Inc.*, 8 BOLI 227, 250 (1990).

<sup>20</sup> See Finding of Fact #35 -- The Merits.

1 on their graphic inquiries and speculations about Complainant's sex life and included  
2 Liniger's attempts to date her. The conduct took place over a three-month period,  
3 beginning in the first week of her employment and ending on the last day of her  
4 employment, with at least 12 specific incidents. Although there was no physical abuse,  
5 the toll on Complainant's psyche was severe and compounded by the fact that her  
6 harassers refused to take her complaints seriously.

7 Complainant testified at length and in considerable detail about the type and  
8 duration of her emotional, mental, and physical distress. Although her testimony is  
9 noted in detail in the Findings of Fact -- The Merits, the forum recapitulates it below to  
10 emphasize the reasons for its large award.

11 To add perspective to the effect that Respondents' discriminatory conduct had on  
12 Complainant, the forum briefly reviews Complainant's life before she started work at  
13 Crystal. She was 27 years old, a single mother with a six year old daughter, and had  
14 worked at good paying jobs her entire adult life. Most of her jobs had been in  
15 environments where most of the employees were men, and she had never before been  
16 subjected to unwelcome sexual conduct. She had never before been fired. She quit a  
17 good job to come to work for Crystal after being solicited to do so by Liniger.

18 Complainant found working for Crystal to be a "horrible" experience because of  
19 Liniger's and Skaggs's unwelcome sexual conduct that upset her and made her feel  
20 awkward, uncomfortable, and embarrassed during her employment. The  
21 embarrassment was magnified by Skaggs's post about "9½ Weeks" on her Facebook  
22 that could have been viewed by as many as 200 of Complainant's friends.<sup>21</sup> Liniger's  
23 attempts to date her caused her additional discomfiture because she did not want to  
24

25 \_\_\_\_\_  
<sup>21</sup> See Finding of Fact #8 -- The Merits.

1 mingle with her boss on a social basis. Complainant often talked to her sister Becky<sup>22</sup>  
2 about Liniger and Skaggs's behavior. As Liniger's and Skaggs's comments began "to  
3 escalate" and it became more apparent that Liniger wanted to date Complainant, she  
4 stopped wearing makeup and began wearing different clothes to work. Compared to  
5 previous jobs where she had energy at the end of each day, she went home after each  
6 day at Crystal "just feeling completely emotionally exhausted." Because of her fatigue,  
7 she had less energy to spend quality time with her daughter after work. She became  
8 "super sensitive" after she found the emails on her computer, was more easily offended,  
9 and lost the ability to distinguish whether Liniger's and Skaggs's behaviors should  
10 actually have offended her or if she felt offended because she had become overly  
11 sensitized.

12 Complainant cried when she was fired, leaving Respondents' office in tears.  
13 Subsequently, she often talked to her sister Julie about her unfair discharge, repeatedly  
14 questioning her judgment in sending the July 28 and 29 e-mails to Liniger.

15 As mentioned earlier, Complainant could no longer pay all her bills after she was  
16 fired. She was accustomed to earning a good salary, and it was very hard for her to  
17 transition from earning a good salary to being "very poor" and "not having any money."  
18 Her only income between July 30 and October 30 was \$200 a week in unemployment  
19 benefits. She suffered the humiliation and embarrassment of having to call her ex-  
20 husband and asking to borrow \$1200 to help pay living expenses. She also had to  
21 borrow \$200 from her parents. She lost weight and her "face broke out," making her  
22 believe she looked unhealthy.

23

24

25

---

<sup>22</sup> Complainant testified that Becky was unavailable to testify at the hearing because she is currently working in China.

1 Her credit rating took a major beating as a direct result of the late payments she  
2 made on her credit accounts as a direct result of being fired. The bank closed her  
3 checking account when she overdrew her checking account and she had to go to an  
4 ATM cash machine to get money to pay her bills until she could open another checking  
5 account. The drop in her credit rating was still impacting life in a major way at the time  
6 of the hearing, as shown by the high interest rate on her September 2012 car loan.

7 Before Complainant was fired, she slept 8-9 hours per night. After she was fired,  
8 she found herself awake at nights at first, then began sleeping 11-12 hours per night.  
9 She began having nightmares that Skaggs was shooting her, based on Skaggs's  
10 discussion at Crystal about keeping a gun in his car. Before working for Crystal, she  
11 had never had a panic attack. After her discharge, she experienced fear and anxiety  
12 and had several "panic attacks" after her nightmares, experiencing shortness of breath,  
13 a "feeling like she [couldn't] breathe," and "a very nervous feeling." She also  
14 experienced the "sudden onset of nerves where she had a shortness of breath" several  
15 times during her job search, as she worried about getting another job. As recently as  
16 September 2012, she had a panic attack at the Pendleton Roundup when she stood in  
17 line to get her ticket and mistakenly thought she saw Liniger standing next to her.

18 Complainant has always been socially outgoing, but stopped going to social  
19 events after her discharge because she could no longer afford it and just did not want to  
20 see anyone. She did not attend a good friend's wedding because she could not afford  
21 to buy an appropriate dress. She no longer scheduled "play dates" with her daughter  
22 because she could not afford them. Her aloofness brought her additional grief because  
23 her friends, many of whom she had been friends with since her early teen years, did not  
24 understand.

1 At her new job, she found herself wondering what OAC's male employees were  
2 saying about her behind her back. After her experience at Crystal, she decided not to  
3 "friend" any of her co-workers on Facebook, something many of her co-workers found  
4 strange. When a male co-worker wanted to be friends with her, her immediate reaction  
5 was to decide she would not be friends with him, feeling "terrified that he was going to  
6 like me or fall in love with me or start to give me things" because of her experience with  
7 Liniger. At OAC, her first supervisor was a woman. When that woman was replaced by  
8 a male, Complainant found the transition difficult because of her recent experience with  
9 Liniger and Skaggs.

10 Finally, Complainant considered seeking counseling, but had no insurance and  
11 could not afford it.

12 In conclusion, Respondents' discriminatory conduct had a profoundly negative  
13 impact in many areas of Complainant's life over a substantial period of time. The  
14 Formal Charges seek "at least \$100,000" in damages for emotional, mental, and  
15 physical suffering. Based on the record, the forum concludes that \$150,000 is a more  
16 appropriate award.

17 **MANDATORY TRAINING ON RECOGNIZING AND PREVENTING DISCRIMINATION IN**  
18 **THE WORKPLACE BASED ON SEX AND RETALIATION**

19 In its Formal Charges, the Agency asked that Respondents be required to have  
20 "its managers, professional staff and employees participate in training on understanding  
21 and avoiding workplace harassment and other discrimination based on protected class,  
22 provided by the Bureau of Labor and Industries Technical Assistance for Employers  
23 Unit or other trainer agreeable to the Agency."

24 The Commissioner of BOLI is authorized to issue an appropriate cease and  
25 desist order reasonably calculated to eliminate the effects of any unlawful practice

1 found. ORS 659A.850(4). Among other things, that may include requiring the  
2 respondent to:

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

5 “(A) Carry out the purposes of this chapter;

6 “(B) Eliminate the effects of the unlawful practice that the respondent is found to  
7 have engaged in, including but not limited to paying an award of actual damages  
8 suffered by the complainant and complying with injunctive or other equitable  
9 relief; and

10 “(C) Protect the rights of the complainant and other persons similarly situated[.]”

11 This statute gives the Commissioner the authority to require Respondents to undergo  
12 training of the type sought in the Formal Charges. However, since the unlawful  
13 employment practices only relate to the protected classes of sex and retaliation,  
14 requiring training related to all protected classes cuts an overly broad swath.  
15 Consequently, the forum has tailored the required training to sex and retaliation.<sup>23</sup>

### 16 ORDER

17 A. NOW, THEREFORE, as authorized by ORS 659A.850(2) and ORS  
18 659A.850(4), and to eliminate the effects of Respondent Crystal Springs Landscapes,  
19 Inc.'s violations of ORS 659A.030(1)(b) and ORS 659A.030(1)(f) and Respondent Paul  
20 Liniger's violation of ORS 659A.030(1)(g), and as payment of the damages awarded,  
21 the Commissioner of the Bureau of Labor and Industries hereby orders **Crystal Springs  
22 Landscapes, Inc.** and **Paul Liniger** to deliver to the Fiscal Services Office of the  
23 Bureau of Labor and Industries, 1045 State Office Building, 800 NE Oregon Street,  
24 Portland, Oregon 97232-2180, a certified check payable to the Bureau of Labor and  
25 Industries **in trust for Complainant Elisa Apa** in the amount of:

<sup>23</sup> Cf. *Dr. Andrew Engel* at 154 (required training limited to discrimination based on religion); *In the Matter of Cyber Center, Inc.*, 32 BOLI 11, 44-45 (2012) (required training limited to discrimination based on sex/pregnancy).

