



COLORADO

Department of Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 825
Denver, CO 80202

In the Matter of:)
Zachary Bertges,)
COMPLAINANT)
v.)
The Town of Lyons,)
RESPONDENT)

CONCILIATION AGREEMENT

CCRD Complaint No. E2400021172
EOC Complaint No. 32A-2023-00862

I. STATEMENT OF PRINCIPLES:

- A. Whereas the Complainant has filed a complaint with the Colorado Civil Rights Division (hereinafter “CCRD”) in which he alleges that on or about January 2023, the above-named Respondent, an employer under relevant law, engaged in acts or omissions in violation of the Colorado Anti-Discrimination Act;
- B. Whereas although Probable Cause has been found, the Respondent has denied the Complainant’s allegations and has asserted that it has not engaged in any discriminatory practices or violation of law;
- C. Whereas the above-named Respondent and the CCRD desire to assure that the hiring, employment, and dismissal practices of the Respondent fully afford equal employment opportunities in compliance with the Colorado Anti-Discrimination in Employment Law, C.R.S. 24-34-401 *et. seq.*, as re-enacted;
- D. Whereas all recruiting, processing, hiring, employment practices and dismissals shall be maintained and conducted in a manner that does not discriminate, or have the effect of discrimination, on the basis of race, creed, color, marital status, national origin, marital status, sex, ancestry, age, sexual orientation, gender identity, gender expression, disability, religion, or marriage to a co-worker, in violation of the Colorado Anti-Discrimination in Employment Law, C.R.S., 24-34-401 *et. seq.*, as re-enacted;
- E. Whereas the signing of this Conciliation Agreement (hereinafter “Agreement”) is not an admission by the Respondent of any violation of said Law. It does reflect the Respondent’s desire to take the affirmative action agreed upon herein below to

assure that employment opportunities are made available to protected class individuals;

- F. Whereas the specific affirmative actions set forth in this Agreement are appropriate to the objectives of providing equal employment opportunities;
- G. Whereas the CCRD certifies that the execution and implementation of this Agreement are proper under the Colorado Anti-Discrimination in Employment Law, C.R.S., 24-34-401 *et. seq.*, as re-enacted; and
- H. Whereas the Parties agree that there shall be no discrimination or retaliation of any kind against any person because of opposition to any practice declared unlawful, or because of the filing of a charge, giving testimony or assistance, or participation in any manner in an investigation, proceeding or hearing.

II. REMEDY AND RELIEF:

In consideration of the Statement of Principles set forth above, and in exchange for the promises set forth herein, the Parties agree to the following:

- A. Payment: Respondent Town of Lyons agrees to make payment in the sum of Twenty Thousand dollars and Zero cents (\$20,000.00) (“Payment”). Payment shall be made to the order of Madeline Collison Law Firm Coltaf Trust Account, for which Complainant’s attorney shall provide the Respondent with a W-9 form. Respondent shall mail said payment to Complainant’s attorney at Madeline Collison, Benezra & Culver, P.C. at 1801 California Street, Suite 2400, Denver Colorado 80202 no later than thirty (30) days from the effective date of this Agreement. Respondent shall provide proof of said Payment to the CCRD Compliance Team via email to “DORA_CCRDCompliance@state.co.us” within no later than ten (10) days after sending said Payment, including a copy of the Payment and delivery confirmation information.
- B. Policy Review: Respondent agrees to an internal review of its current anti-discrimination policies. Respondent shall complete such policy review and submit such to the CCRD Compliance Team for review via email (DORA_CCRDcompliance@state.co.us), within three (3) months from the effective date of this Agreement for the CCRD Director’s review. Respondent agrees to make additional revisions as recommended by the CCRD Director and will provide a final version of said policies to CCRD upon request.
- C. CCRD Training: Respondent agrees to undergo further Employment Anti-Discrimination training within no later than six (6) months of the effective date of this Agreement. Victoria Simonson, Aaron Caplan, and Delores Vasquez shall participate in this training. The approximately two-hour training session (“Employment 101”) will be facilitated by staff from the CCRD via online webinar, and will encompass an overview of applicable Laws. Respondent is responsible for signing up for this training by visiting <https://ccrd.colorado.gov/training-101-education-division-resources>

Respondent shall provide certificate and/or proof of completing said training to the CCRD Compliance Team by sending an email to “DORA_CCRDcompliance@state.co.us”, within no later than ten (10) days of completing the training.

D. *Quarterly Reporting:* Respondent agrees to provide the CCRD with quarterly reports for a period of one (1) year from the effective date of this Agreement, outlining any reasonable discrimination complaints the Respondent has received, the Respondent’s actions to address these complaints, and the end result. Respondent shall provide said quarterly reports to the CCRD Compliance Team via email (DORA_CCRDcompliance@state.co.us).

E. *Poster:* Respondent agrees to post a copy of the most recent Colorado Anti-Discrimination Laws posters in its facility, in a visible location most frequented by its employees, for example, near its time clock, break room, or other common areas. Copies of said poster may be downloaded via the following web link: <https://ccrd.colorado.gov/anti-discrimination-notices>

Respondent shall post such within no later than ten (10) days of the effective date of this Agreement and shall provide proof of said posting to the CCRD Compliance Team via email to “DORA_CCRDCompliance@state.co.us” within no later than ten (10) days of completing this requirement.

F. *Non-Disparagement:* The Parties mutually and further agree that neither Party, specifically including the Respondent’s employees, Victoria Simonson, Aaron Caplan, and Delores Vasquez, shall disparage the other, their employees or agents with respect to the charges filed herewith or in regard to the terms of this agreement. It is understood that the discussion of alleged discriminatory or unfair employment practices within the following parameters does not constitute disparagement under this instant Agreement: This provision does not restrain the Complainant from disclosing the underlying facts of any alleged discriminatory or unfair employment practice. Moreover, private disclosures about alleged workplace discrimination or the existence and terms of this Agreement to the Complainant’s immediate family members, religious advisor, medical or mental health provider, mental or behavioral health therapeutic support group, legal counsel, financial advisor, or tax preparer are also expressly exempted from this instant provision. The Complainant may moreover disclose such allegation and the existence and terms of this instant Agreement to any local, state, or federal government agency, and in response to legal process or subpoena, without first notifying the Respondent. Finally, the Complainant may disclose or discuss any alleged discriminatory or unfair employment practice for all other purposes as required by law. Without effect to the validity of any other provision in this Agreement, in the event that the Respondent disparages the Complainant, the Respondent may not seek legal enforcement of any term of this instant non-disparagement provision or seek to recover damages from the Complainant for any purported violation thereof. Without effect to the validity of any other provision in this Agreement, in the event that the Complainant disparages the Respondent, the Complainant may not seek legal enforcement of any term of this instant non-disparagement provision or seek to recover damages from the Respondent for any purported violation thereof. Nothing in this provision prevents the Complainant from discussing or disclosing information about alleged

unlawful acts in the workplace, such as harassment or discrimination or any other conduct which the Complainant has reason to believe is unlawful, or from otherwise engaging in activity protected by Section 7 of the National Labor Relations Act or Colo. Rev. Stat. § 24-34-407(1). Nothing in this provision prevents the Respondent from discussing or disclosing this Agreement to the Board of Trustees of the Town of Lyons, which must approve this Agreement pursuant to the requirements of the Colorado Open Meetings Laws, C.R.S. § 24-6-401, *et seq.* Nothing in this provision prevents the Respondent from disclosing this Agreement pursuant to a request made pursuant to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*

G. *Neutral Reference:* Respondent agrees that a neutral reference, which shall include only the Complainant's job title, dates of employment, and confirmation that the Complainant is eligible for rehire, shall be provided in response to any third-party inquiry regarding Complainant's previous employment with Respondent.

III. ENFORCEMENT:

A. The Complainant hereby waives, releases and covenants not to sue the undersigned Respondent with respect to any matters that are alleged as charges or which could have been alleged in the charges filed with the CCRD (Complaint Number E240001172) and the United States Equal Employment Opportunity Commission (hereinafter "EEOC") (Complaint Number 32A-2023-00862) subject to performance by the Respondent of the promises and representations contained herein. The CCRD shall determine whether the Respondent has complied with the terms of this Agreement. The CCRD has the authority to conduct compliance reviews of all settlement or other orders issued to resolve the discriminatory practice(s) set forth by the Complainant.

B. By their signatures below, the Parties to this Agreement affirm that they have read and fully understand all the terms of this Agreement. The Parties further affirm that they are entering into this Agreement voluntarily and have not been threatened, coerced, intimidated or in any way pressured into the signing of this Agreement and that they have been advised that they have the right to consult with or be advised by an attorney in good standing before signing this Agreement.

C. The Respondent named herein will comply with the Colorado Civil Rights Commission Rules and Regulations which specify:

GENERAL REGULATION NUMBER ONE: Every employer, employment agency, labor organization and place of public accommodation, amusement, and resort shall post and maintain at its establishment a notice furnished by the Colorado Civil Rights Commission. Said notice shall contain the substantive provisions of the Colorado Anti-discrimination Act of 1957 relating to employment practices, and the Civil Rights Anti-discrimination Act relating to services by places of public accommodation and advertising in connection therewith, and such other information as the Commission deem proper.

With respect to employers and employment agencies, such notices must be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment, and at or near each location where employers' services are performed.

- D. The Parties hereby agree, if acceptable to the CCRD, that this Agreement may be executed in counterparts, including, but not limited to, separate and distinct signature pages and will be effective when all Parties and the CCRD have executed a counterpart thereof. Each counterpart shall be considered an original and all of which shall constitute one and the same document.
- E. The Parties expressly agree that in the event that any dispute or conflict arises under this or any related matter, they hereby submit to the jurisdiction of the State of Colorado. Furthermore, the Parties hereby expressly agree that in a conflict of laws situation arising herein, the laws of the State of Colorado shall govern.
- F. This Agreement becomes effective on the date the CCRD Director's signature or that of her designee is affixed hereto.

I CONCUR with the above Agreement:

On Behalf of Respondent, The Town of Lyons:

Signature – Respondent Representative

Name: _____

Title: _____

Respondent

Date

Complainant, Zachary Bertges:



Signature – Zachary Bertges

Complainant

10-17-2024

Date

On Behalf of the Colorado Civil Rights Division:

Signature – Aubrey Sullivan, Esq. (or Designee)

Date

Director, Colorado Civil Rights Division

ADDENDUM A

ATTESTATION OF COMPLIANCE WITH C.R.S. § 24-34-407(1)

The Complainant, Zachary Bertges, and the Respondent, The Town of Lyons, hereby state that it is their express intention in executing this Agreement to be in compliance with the provisions C.R.S. § 24-34-407(1), which requires:

A provision in an agreement entered into or renewed on or after August 7, 2023, between an employer and an employee or a prospective employee which limits the ability of the employee or prospective employee to disclose or discuss, either orally or in writing, any alleged discriminatory or unfair employment practice, which provision is referred to in this section as a “nondisclosure provision,” is void unless:

- (a) The nondisclosure provision applies equally to all parties to the agreement;
- (b) The nondisclosure provision expressly states that it does not restrain the employee or prospective employee from disclosing the underlying facts of any alleged discriminatory or unfair employment practice:
 - (I) Including disclosing the existence and terms of a settlement agreement, to the employee's or prospective employee's immediate family members, religious advisor, medical or mental health provider, mental or behavioral health therapeutic support group, legal counsel, financial advisor, or tax preparer;
 - (II) To any local, state, or federal government agency for any reason, including disclosing the existence and terms of a settlement agreement, without first notifying the employer;
 - (III) In response to legal process, such as a subpoena to testify at a deposition or in a court, including disclosing the existence and terms of a settlement agreement, without first notifying the employer; and
 - (IV) For all other purposes as required by law;
- (c) The nondisclosure provision expressly states that disclosure of the underlying facts of any alleged discriminatory or unfair employment practice within the parameters specified in subsection (1)(b) of this section does not constitute disparagement;
- (d) The agreement includes a condition that if a nondisparagement provision is included in the agreement and if either party disparages the other party, the party who engaged in disparagement may not seek to enforce the nondisparagement or nondisclosure provisions of the agreement or seek damages against the other party to the agreement for violating those provisions, but all other remaining terms of the agreement remain enforceable;
- (e) Any liquidated damages provision in the agreement does not constitute a penalty or punishment, and, to be enforced, a liquidated damages provision must provide for an amount of liquidated damages that is:
 - (I) Reasonable and proportionate in light of the anticipated actual economic loss that a breach of the agreement would cause;

(II) Varied based on the nature or severity of the breach; and
(III) Not punitive; and

(f) An addendum, signed by all parties to the agreement and attesting to compliance with this subsection (1), is attached to the agreement.

By our signatures below, we affirm and attest to compliance with the foregoing.



John Smith
Complainant

Dated: 10-17-2024

_____, Respondent

Dated: _____