

From: Thompson, Julio
Sent: Wednesday, October 30, 2019 5:16 PM
To: Caroline Earle <cse@caroline-law.com>
Cc: Adams, Emily <Emily.Adams@vermont.gov>
Subject: Attached Response to Public Records Act Request for CRU Data

Caroline:

Attached is CRU's response to your October 16 and 21 public records act requests.

Julio

Julio A. Thompson
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October 30, 2019

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VIA REGULAR MAIL AND E-MAIL— cse@caroline-law.com

Re: October 16 and 21, 2019 Public Records Requests

Dear Caroline:

I am following up on my October 21, 2019 response to your public records requests of October 16 and 21 in which you requested 2010-2019 information regarding (1) Title 21 fair employment practices cases filed in court by the Civil Rights Unit (CRU); (2) Title 21 CRU settlements; and (3) CRU “cause” letters identifying at least one apparent fair employment practice violation. As indicated in my October 21 letter, CRU may not disclose the identity of parties absent their consent or a court order. (*See, e.g.*, 9 V.S.A. § 2460, whose confidentiality provisions apply to our enforcement statute, 21 V.S.A. § 495b.).

I. Assurances of Discontinuance.

I noted in my October 21 letter that, during the specified time period, CRU had filed several assurances of discontinuance (AODs) in Superior Court in connection with settled disputes. (Most settlement agreements are not filed with in court.) From a review of our computer data, we identified three AODs:

1. *In re Baker Distribution Corp.* (2017) (Wash. Super. Ct.) (disability discrimination);
2. *In re Three White Birches Dev. Corp.* (2016) (same); and
3. *In re Bromley Ski Resort* (2012) (same).

As indicated in the next section, many more CRU investigations resulted in settlement during the 2010-2019 period.

II. Title 21 Settlements and Cause Findings by Calendar Year (2010-2019).

As my October 21 letter discusses in more detail, many CRU investigations close prior to completion of the investigation. Sometimes the parties settle. Other times, the complainant may elect private litigation or decide to withdraw the complaint. Still other times, the CRU may close an investigation because the complainant has become unavailable or had declined to provide necessary cooperation.

In light of the above, we compiled the following database information regarding cases where a CRU investigation resulted in either (1) a settlement agreement or (2) a CRU “cause” finding— *i.e.*, a letter to the parties describing at least one apparent violation of Title 21.

In considering the settlement data below, please note two limitations we faced in compiling the data. First, some of the reported settlements do not include a settlement amount because the parties reached a private settlement agreement and did not disclose the amount to CRU. When such settlements arise, the complainant typically notifies CRU they will be withdrawing their complaint upon receipt of unspecified benefits from the employer. Second, the settlement amounts reported below do not include any valuation of *non-monetary* benefits or salary changes for still-employed workers. Such benefits may include: (1) reinstating the complainant to their former position; (2) reversing a hiring, promotion, or disciplinary decision; (3) increasing the salary or other compensation for a still-employed complainant; (4) providing reasonable accommodation for a disability or a healthy pregnancy; (5) providing parental or family leave benefits; (6) making requested changes to workplace conditions (*e.g.*, changes in working schedules, assignments, locations, or equipment); (7) changing personnel policies or practices; or (8) providing employee training.

With the above in mind, here is the data we were able to compile.

2010 CRU Title 21 Cases. In calendar year 2010, CRU closed 99 investigations. Of that number, 23 investigations resolved by settlement or withdrawal with benefits to the complainant. The CRU received settlement figures for 17 of those investigations¹, where the benefits to the complainant total \$282,154.50. In addition, 8 investigations resulted in a cause finding. *See Attachment 1* for additional information regarding the state / federal statutes involved in those matters.

2011 CRU Title 21 Cases. In calendar year 2011, CRU closed 100 investigations. Of that number, 23 investigations resolved by settlement or withdrawal with benefits to the complainant. We have data for settlement figures for 19 of those cases, where the benefits to the complainant total \$187,799.00. In addition, 10 investigations resulted in a cause finding. *See Attachment 1* for additional information regarding the state / federal statutes involved in those matters.

¹ As noted above, on some occasions the parties to a CRU investigation decide to settle their dispute but do not disclose the settlement terms to CRU.

2012 CRU Title 21 Cases. In calendar year 2012, CRU closed 101 investigations. Of that number, 24 investigations resolved by settlement or withdrawal with benefits to the complainant. We have data for settlement figures for 18 of those cases, where the benefits to the complainant total \$188,243.47. In addition, 4 investigations resulted in a cause finding. *See Attachment 1* for additional information regarding the state / federal statutes involved in those matters.

2013 CRU Title 21 Cases. In calendar year 2013, CRU closed 87 investigations. Of that number, 24 investigations resolved by settlement or withdrawal with benefits to the complainant. We have data for settlement figures for 17 of those cases, where the benefits to the complainant total \$177,385.00. In addition, 1 investigation resulted in a cause finding. *See Attachment 1* for additional information regarding the state / federal statutes involved in those matters.

2014 CRU Title 21 Cases. In calendar year 2014, CRU closed 117 investigations. Of that number, 25 investigations resolved by settlement or withdrawal with benefits to the complainant. We have data for settlement figures for 16 of those cases, where the benefits to the complainant total \$182,350.00. In addition, 2 investigations resulted in a cause finding. *See Attachment 1* for additional information regarding the state / federal statutes involved in those matters.

2015 CRU Title 21 Cases. In calendar year 2015, CRU closed 62 investigations. Of that number, 12 investigations resolved by settlement or withdrawal with benefits to the complainant. We have data for settlement figures for 9 of those cases, where the benefits to the complainant total \$81,304.00. In addition, 0 investigations resulted in a cause finding. *See Attachment 1* for additional information regarding the state / federal statutes involved in those matters.

2016 CRU Title 21 Cases. In calendar year 2016, CRU closed 76 investigations. Of that number, 16 investigations resolved by settlement or withdrawal with benefits to the complainant. We have data for settlement figures for 11 of those cases, where the benefits to the complainant total \$144,351.00. In addition, 3 investigations resulted in a cause finding. *See Attachment 1* for additional information regarding the state / federal statutes involved in those matters.

2017 CRU Title 21 Cases. In calendar year 2017, CRU closed 66 investigations. Of that number, 13 investigations resolved by settlement or withdrawal with benefits to the complainant. We have data for settlement figures for 11 of those cases, where the benefits to the complainant total \$211,093.00. In addition, 1 investigation resulted in a cause finding. *See Attachment 1* for additional information regarding the state / federal statutes involved in those matters.

2018 CRU Title 21 Cases. In calendar year 2018, CRU closed 46 investigations. Of that number, 13 investigations resolved by settlement or withdrawal with benefits to the complainant. We have data for settlement figures for 9 of those cases, where the benefits to the complainant total \$194,300.00. In addition, 0 investigations resulted in a cause finding. *See*

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Attachment 1 for additional information regarding the state / federal statutes involved in those matters.

2019 CRU Title 21 Cases. In calendar year 2019 (through October 28, 2019), CRU has closed 64 investigations. Of that number, 20 investigations resolved by settlement or withdrawal with benefits to the complainant. We have data for settlement figures for 14 of those cases, where the benefits to the complainant total \$347,255.00. In addition, to date, 4 investigations have resulted in a cause finding. *See Attachment 1* for additional information regarding the state / federal statutes involved in those matters.

If you have any questions, please give me a call.

Sincerely,

/s/

Julio A. Thompson
Director, Civil Rights Unit

Attachment

ATTACHMENT 1
CRU Settlements and Cause Findings
By Year and Applicable Statutes

<u>2010</u>		<u>2011</u>	
Settlements (including Withdrawal with Benefits)	Applicable Statutes	Settlements (including Withdrawal with Benefits)	Applicable Statutes
7	Title VII/VFEPA	7	Title VII/VFEPA
5	ADA/VFEPA	7	ADA/VFEPA
3	ADEA/VFEPA	1	ADEA/VFEPA
3	ADA/VFEPA; PFLA	2	Title VII, ADEA/VFEPA
1	VFEPA only (race, sex)	1	Title VII, ADA, ADEA/VFEPA
1	VFEPA only (disability)	1	VFEPA only (disability)
1	PFLA (state only)	1	PFLA (state only)
2	VFEPA only (sex)	1	VFEPA only (sex)
<u>23</u>	Total	2	VFEPA only (unspecified)
		<u>23</u>	Total
Cause Findings	Applicable Statutes	Cause Findings	Applicable Statutes
4	Title VII/VFEPA	6	Title VII/VFEPA
2	ADA/VFEPA	1	Title VII, ADEA/VFEPA
1	VFEPA only (sexual orientation)	1	PFLA (state only)
1	VFEPA only (sex)	1	ADA/VFEPA; WC Retal
<u>8</u>	Total	1	VFEPA only (age)
		<u>10</u>	Total

***STATUTES KEY**

ADA	Americans with Disabilities Act, 42 U.S.C. §§ 12101 <i>et. seq.</i>
ADEA	Age Discrimination in Employment Act, 29 U.S.C. §§ 621 <i>et. seq.</i>
Drug Testing	Vermont's Employee Drug Testing Laws, 21 V.S.A. §§ 511 <i>et. seq.</i>
EPA	Federal Equal Pay Act, 29 U.S.C. § 206(d)
Nursing Mothers	Vermont's Nursing Mothers in the Workplace Law, 21 V.S.A. § 305
Title VII	Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e <i>et. seq.</i>
PFLA	Vermont's Parental and Family Leave Act, 21 V.S.A. §§ 470, <i>et. seq.</i>
VFEPA	Vermont's Fair Employment Practices Act. 21 V.S.A. §§ 495 <i>et. seq.</i>
WC Retal	Vermont Workers' Compensation Anti-Retaliation Law, 21 V.S.A. § 710

ATTACHMENT 1
CRU Settlements and Cause Findings
By Year and Applicable Statutes

<u>2012</u>		<u>2013</u>	
Settlements (including Withdrawal with Benefits)	Applicable Statutes	Settlements (including Withdrawal with Benefits)	Applicable Statutes
3	Title VII/VFEPA	8	Title VII/VFEPA
9	ADA/VFEPA	6	ADA/VFEPA
2	ADEA/VFEPA	1	ADEA/VFEPA
1	Title VII, ADA/VFEPA	1	Title VII, ADEA/VFEPA
1	ADEA, ADA/VFEPA; PFLA	1	Title VII, ADA/VFEPA; PFLA
2	ADA/VFEPA; PFLA	2	ADA/VFEPA; PFLA
1	ADEA, ADA/VFEPA; PFLA	1	ADEA, ADA/VFEPA
1	Title VII, ADA/VFEPA; PFLA	1	Title VII/VFEPA; WC Retal
2	PFLA (state only)	1	PFLA (state only)
1	Nursing Mothers (state only)	1	VFEPA only (unspecified)
1	WC Retal (state only)	1	WC Retal, PFLA (state only)
<u>24</u>	Total	<u>24</u>	Total
Cause Findings	Applicable Statutes	Cause Findings	Applicable Statutes
2	ADA/VFEPA	1	WC Retal (state only)
1	Title VII/VFEPA; PFLA	<u>1</u>	Total
1	PFLA (state only)		
<u>4</u>	Total		

***STATUTES KEY**

ADA	Americans with Disabilities Act, 42 U.S.C. §§ 12101 <i>et. seq.</i>
ADEA	Age Discrimination in Employment Act, 29 U.S.C. §§ 621 <i>et. seq.</i>
Drug Testing	Vermont’s Employee Drug Testing Laws, 21 V.S.A. §§ 511 <i>et. seq.</i>
EPA	Federal Equal Pay Act, 29 U.S.C. § 206(d)
Nursing Mothers	Vermont’s Nursing Mothers in the Workplace Law, 21 V.S.A. § 305
Title VII	Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e <i>et. seq.</i>
PFLA	Vermont’s Parental and Family Leave Act, 21 V.S.A. §§ 470, <i>et. seq.</i>
VFEPA	Vermont’s Fair Employment Practices Act. 21 V.S.A. §§ 495 <i>et. seq.</i>
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ATTACHMENT 1
CRU Settlements and Cause Findings
By Year and Applicable Statutes

<u>2014</u>		<u>2015</u>	
Settlements (including Withdrawal with Benefits)	Applicable Statutes	Settlements (including Withdrawal with Benefits)	Applicable Statutes
4	Title VII/VFEPA	5	Title VII/VFEPA
7	ADA/VFEPA	3	ADA/VFEPA
1	Title VII, ADA/VFEPA	1	Title VII, ADA/VFEPA
2	Title VII, ADEA/VFEPA	1	ADEA/VFEPA
4	ADA/VFEPA; PFLA	1	ADA, ADEA/VFEPA
1	EPA, Title VII, ADEA/VFEPA	1	FEPA only (unspecified) (state only)
1	ADEA/VFEPA	<u>12</u>	Total
1	ADA, ADEA/VFEPA		
1	Title VII, ADEA/VFEPA; Drug Testing		
2	PFLA (state only)		
1	VFEPA only (unspecified) (state only)		
<u>25</u>	Total		
Cause Findings	Applicable Statutes	Cause Findings	Applicable Statutes
1	ADA/VFEPA	<u>0</u>	Total
1	VFEPA only (unspecified)		
<u>2</u>	Total		

***STATUTES KEY**

ADA	Americans with Disabilities Act, 42 U.S.C. §§ 12101 <i>et. seq.</i>
ADEA	Age Discrimination in Employment Act, 29 U.S.C. §§ 621 <i>et. seq.</i>
Drug Testing	Vermont’s Employee Drug Testing Laws, 21 V.S.A. §§ 511 <i>et. seq.</i>
EPA	Federal Equal Pay Act, 29 U.S.C. § 206(d)
Nursing Mothers	Vermont’s Nursing Mothers in the Workplace Law, 21 V.S.A. § 305
Title VII	Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e <i>et. seq.</i>
PFLA	Vermont’s Parental and Family Leave Act, 21 V.S.A. §§ 470, <i>et. seq.</i>
VFEPA	Vermont’s Fair Employment Practices Act. 21 V.S.A. §§ 495 <i>et. seq.</i>
WC Retal	Vermont Workers’ Compensation Anti-Retaliation Law, 21 V.S.A. § 710

ATTACHMENT 1
CRU Settlements and Cause Findings
By Year and Applicable Statutes

<u>2016</u>		<u>2017</u>	
Settlements (including Withdrawal with Benefits)	Applicable Statutes	Settlements (including Withdrawal with Benefits)	Applicable Statutes
3	Title VII/VFEPA	4	Title VII/VFEPA
3	ADA/VFEPA	4	ADA/VFEPA
1	ADEA/VFEPA	1	ADEA/VFEPA
1	Title VII, ADA/VFEPA; PFLA	1	ADA/VFEPA; WC Retal, PFLA
1	Title VII/VFEPA; WC Retal	1	ADA/VFEPA; WC Retal
1	PFLA (state only); VFEPA (unspecified)	1	ADA/VFEPA; PFLA
4	WC Retal (state only)	1	WC Retal (state only)
1	WC Retal, PFLA (state only)	<u>13</u>	Total
1	Drug testing (state only)		
<u>16</u>	Total		
Cause Findings	Applicable Statutes	Cause Findings	Applicable Statutes
1	ADA/VFEPA	1	ADA/VFEPA
1	Title VII, ADA/VFEPA	<u>1</u>	Total
1	WC Retal, PFLA (state only)		
<u>3</u>	Total		

***STATUTES KEY**

ADA	Americans with Disabilities Act, 42 U.S.C. §§ 12101 <i>et. seq.</i>
ADEA	Age Discrimination in Employment Act, 29 U.S.C. §§ 621 <i>et. seq.</i>
Drug Testing	Vermont’s Employee Drug Testing Laws, 21 V.S.A. §§ 511 <i>et. seq.</i>
EPA	Federal Equal Pay Act, 29 U.S.C. § 206(d)
Nursing Mothers	Vermont’s Nursing Mothers in the Workplace Law, 21 V.S.A. § 305
Title VII	Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e <i>et. seq.</i>
PFLA	Vermont’s Parental and Family Leave Act, 21 V.S.A. §§ 470, <i>et. seq.</i>
VFEPA	Vermont’s Fair Employment Practices Act. 21 V.S.A. §§ 495 <i>et. seq.</i>
WC Retal	Vermont Workers’ Compensation Anti-Retaliation Law, 21 V.S.A. § 710

ATTACHMENT 1
CRU Settlements and Cause Findings
By Year and Applicable Statutes

<u>2018</u>		<u>2019</u> (Jan. 1 – Oct. 28)	
Settlements (including Withdrawal with Benefits)	Applicable Statutes	Settlements (including Withdrawal with Benefits)	Applicable Statutes
6	Title VII/VFEPA	6	Title VII/VFEPA
2	ADA/VFEPA	3	ADA/VFEPA
1	Title VII, ADEA/VFEPA; drug testing	3	Title VII, ADA/VFEPA
1	ADA/VFEPA; PFLA	3	ADA/VFEPA; PFLA
1	ADA/VFEPA; WC Retal	1	Title VII, EPA/VFEPA
1	EPA/VFEPA	1	ADEA, ADA/VFEPA
1	ADEA/VFEPA	1	ADEA, ADA/VFEPA; PFLA
1	PFLA (state only)	1	PFLA (state only)
1	WC retal; VFEPA only (unspecified)	1	VFEPA only (unspecified) (state only)
2	WC Retal (state only)	<u>20</u>	Total
2	VFEPA only (unspecified) (state only)		
<u>19</u>	Total		
Cause Findings	Applicable Statutes	Cause Findings	Applicable Statutes
<u>0</u>	Total	1	ADA/VFEPA
		1	ADA/VFEPA; PFLA
		1	Title VII, ADA/VFEPA
		1	WC Retal, PFLA (state only)
		<u>4</u>	Total

***STATUTES KEY**

ADA	Americans with Disabilities Act, 42 U.S.C. §§ 12101 <i>et. seq.</i>
ADEA	Age Discrimination in Employment Act, 29 U.S.C. §§ 621 <i>et. seq.</i>
Drug Testing	Vermont’s Employee Drug Testing Laws, 21 V.S.A. §§ 511 <i>et. seq.</i>
EPA	Federal Equal Pay Act, 29 U.S.C. § 206(d)
Nursing Mothers	Vermont’s Nursing Mothers in the Workplace Law, 21 V.S.A. § 305
Title VII	Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e <i>et. seq.</i>
PFLA	Vermont’s Parental and Family Leave Act, 21 V.S.A. §§ 470, <i>et. seq.</i>
VFEPA	Vermont’s Fair Employment Practices Act. 21 V.S.A. §§ 495 <i>et. seq.</i>
WC Retal	Vermont Workers’ Compensation Anti-Retaliation Law, 21 V.S.A. § 710