



**Issue Date: 06 June 2016**

CASE NO.: 2015-FDA-00003

*In the Matter of:*

**DEREK BURROUGHS,**  
Complainant,

v.

**ALBERTSONS-SAFEWAY,**  
Respondent.

**ORDER APPROVING REVISED  
SETTLEMENT AGREEMENT**

The parties have settled this matter under the whistleblower protection provisions of the Food Safety Modernization Act (the Act), 21 U.S.C. § 399d. A settlement requires the administrative law judge's approval. *See* 29 C.F.R. § 1987.111(d)(2).

On February 9, 2016, the parties submitted a proposed settlement agreement for review and approval. I disapproved the proposal without prejudice because the release Complainant was required to provide was so broad that he could not reasonably be expected to know who he was releasing. The parties submitted revisions, most recently on May 31, 2016. I will approve the agreement as revised on May 31, 2016, with some caveats.

First, some of the provisions in the settlement agreement extend to claims beyond the scope of the Act. I limit my review to the Food Safety Modernization Act claim only; anything beyond that exceeds this Office's jurisdiction and the scope of my review. For example, some language in the agreement purports to settle, release, or otherwise address claims or potential claims that go beyond the scope of the Food Safety Modernization Act. This order does not extend to any scope of release beyond claims for violations of the Food Safety Modernization Act based on conduct through the date of the agreement.

Second, whatever the parties might agree concerning confidentiality, the records of this Office are subject to the Freedom of Information Act. If a request is received for access to the settlement agreement under FOIA, the Department of Labor will provide the litigants with pre-disclosure notification and an opportunity to respond before any disclosure is made. *See* 29 C.F.R. § 70.26. I will affix a statement to the settlement agreement to notify the FOIA office of

this requirement. Nothing about this is a finding that the settlement agreement or any portion of it is exempt from disclosure under the Freedom of Information Act, nor does it indicate that the Department of Labor ultimately will decline disclosure of the settlement agreement to any person requesting it under FOIA.

Third, the parties choose Colorado law to control any dispute between them concerning the Agreement. *See* ¶17. As I construe this provision, it is not intended to and does not limit the authority of any federal court or the Secretary of Labor. It is an agreement between the parties, limited in its application to themselves. For the federal courts and the Secretary, the law and regulations of the United States control.<sup>1</sup>

That said, the proposed settlement agreement is fair and reasonable as to the claim under the Food Safety Modernization Act. It adequately protects Complainant, and none of its terms is against public policy. The proposed settlement is therefore APPROVED, and the parties are ORDERED to comply with its terms. *See* 29 C.F.R. § 1980.111(d)(2). This matter is DISMISSED.

SO ORDERED.

STEVEN B. BERLIN  
ADMINISTRATIVE LAW JUDGE

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<sup>1</sup> *See Hildebrand v. H. H. Williams Trucking, LLC*, ARB No. 11-030, ALJ No. 2010-STA-056, slip op. at 3 (ARB Sept. 26, 2011).