

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
BOSTON, MASSACHUSETTS

Issue Date: 18 July 2017

CASE NO.: 2016-FDA-00010

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*In the Matter of:*

ROBERT BROWN III,  
*Claimant,*

v.

CLOVER FAST FOOD, INC.,  
*Respondent.*

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**ORDER GRANTING PARTIES' JOINT MOTION TO APPROVE SETTLEMENT  
AND DISMISSING CLAIM**

This proceeding arises from a complaint of discrimination filed under FDA Food and Safety Modernization Act, 21 U.S.C. § 399d (2011) ("FSMA") and the procedural regulations found at 29 C.F.R. § 1987.100 *et. seq.* (2015).

On July 18, 2017, the parties filed a Joint Motion to Approve Settlement, along with a copy of the Settlement Agreement (hereinafter the "Settlement,") pursuant to 29 C.F.R. § 1987.111(c) & (d)(2). The Settlement resolves all issues raised in the complaint, has been signed by the Complainant and Respondent, and is incorporated herein by reference.

Based on the record as a whole and upon review of the Settlement Agreement, I find that the terms of the Settlement Agreement are fair, adequate, and reasonable, and it is hereby APPROVED pursuant to 29 C.F.R. § 1986.111(d)(2), subject to the below comments.

With regard to confidentiality of the Settlement Agreement, the parties are advised that notwithstanding the confidential nature of the Settlement Agreement, all of their filings, including the Settlement Agreement, are part of the record in this case and may be subject to disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C.A. § 552 *et seq.* The Administrative Review Board has noted that:

If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine *at the time a request is made* whether to exercise its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would have to be disclosed.

*Seater v. S. Cal. Edison Co.*, ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB March 27, 1997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

The parties have also requested that access to the Settlement Agreement be restricted by the undersigned under 29 C.F.R. § 18.85 (Restricted Access). I find good cause for such restricted access and the Settlement Agreement will be so maintained under that authority in a sealed envelope. *See* 29 C.F.R. § 18.85.

Finally, I note that my authority over settlement agreements is limited to the statutes that are within my jurisdiction as defined by the applicable statute. Therefore, I approve only the terms of the Settlement Agreement pertaining to Complainant's FDA claim, Case No. 2016-FDA-00010.<sup>1</sup> *See Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

Accordingly, it is **ORDERED** that:

- (1) The parties' Joint Motion is **GRANTED**;
- (2) The Settlement Agreement is **APPROVED** and constitutes the final order of the Secretary of Labor and may be enforced under 29 C.F.R. § 1986.111(e);
- (3) The Settlement Agreement shall be designated as confidential and maintained in a separate sealed envelope, subject to the procedures requiring disclosure under FOIA; and
- (4) The Complaint of Robert Brown III is **DISMISSED WITH PREJUDICE**.

**SO ORDERED.**

**COLLEEN A. GERAGHTY**  
Administrative Law Judge

Boston, Massachusetts

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<sup>1</sup> Brown and others had filed several claims against Clover in federal district court. The parties participated in mediation with a federal magistrate judge, and reached a global settlement of all of Brown's claims, including his FDA claim, as well as claims of additional plaintiffs.