



Issue Date: 03 January 2018

Case No.: 2017-FDA-00002

In the Matter of

ISABELA PERDOMO

Complainant

v.

NEW MEADOWLANDS RACETRACK, LLC

d/b/a MEADOWLANDS RACING ENTERTAINMENT

Respondent

**ORDER APPROVING PARTIES' PROPOSED
AGREEMENT AND GENERAL RELEASE, DISMISSING
COMPLAINT AND PARTIALLY SEALING THE RECORD**

This proceeding arises from a complaint of discrimination filed under the 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 December 21, 2017, the parties filed a Joint Motion for an Order to Approve the Proposed Agreement and General Release, Dismiss the Complaint, and Partially Seal the Record, along with a redacted copy of Proposed Agreement and General Release (hereinafter the "Agreement"), annexed as Exhibit "A" and unredacted original Proposed Agreement and General Release submitted under seal for *in camera* review. This Agreement resolves all issues raised in the complaint, has been signed by the Complainant and Respondent and is incorporated herein by reference.

I have carefully reviewed the parties' Agreement and all its provisions. I have determined that the Agreement is fair, adequate, reasonable, and is in the public interest. Therefore, it will be approved pursuant to 29 C.F.R. § 1987.111(d)(2), subject to the below comments.

With regard to confidentiality of the Agreement, the parties are advised that, notwithstanding the confidential nature of the Agreement, all of their filings, including the 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). However, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26, giving Respondent the opportunity to challenge any such potential disclosure. The Agreement itself is not appended and will be separately maintained and marked:

“PREDISCLOSURE NOTIFICATION MATERIALS”

Accordingly, it is **HEREBY ORDERED** that:

1. The parties’ Joint Motion to Approve Proposed Agreement is **GRANTED**;
2. The Agreement is **APPROVED** and constitutes the final order of the Secretary of Labor and may be enforced under 29 C.F.R. § 1987.111(e);
3. The 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 Isabela Perdomo is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

THERESA C. TIMLIN
Administrative Law Judge

Cherry Hill, New Jersey