



Issue Date: 23 October 2019

CASE NO.: 2018-FDA-00004

*In the Matter of:*

CHANTAL BEAUREGARD,  
*Complainant,*

*v.*

WAL-MART STORES EAST, LP,  
*Respondent.*

### **ORDER APPROVING SETTLEMENT**

This matter arises under the employee-protection provisions of the FDA Food Safety Modernization Act, 21 U.S.C. § 399d and its implementing regulations at 29 C.F.R. Part 1987. It was scheduled for hearing on September 16, 2019 in Orlando, Florida, but when the hearing was called to order both parties and their counsel were absent. I subsequently learned that the case had settled the previous week, and issued an order directing the parties to submit their settlement agreement for review. On October 16, 2019, the parties submitted their executed settlement agreement, with attachments, by facsimile.

Under 29 C.F.R. § 1987.111(d)(2), after a complaint is referred to the Office of Administrative Law Judges for a hearing, the parties may settle with the approval of the administrative law judge. Settlements under the FDA Food Safety Modernization Act, like settlements in other whistleblower cases, cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable, and in the public interest. *Tankersly v. Triple Crown Services, Inc.*, 1992-STA-8 (Sec'y Feb. 18, 1993). I have carefully reviewed the parties' settlement agreement and have determined that it constitutes a fair, adequate and reasonable settlement of the complaint and is in the public interest.

The settlement agreement purports to dispose of claims that Complainant may raise under a wide variety of state and federal laws. My authority over settlement agreements, however, is limited to the statutes that are within the jurisdiction of the Office of Administrative Law Judges as defined by the applicable statute. My approval should not be construed as approval of the resolution of any claims brought under any other federal statute or under state law. Accordingly, I approve only the terms of the agreement pertaining to Complainant's FDA Case,

and whether the “General Release” is effective is matter for a future court to determine.

Additionally, the settlement agreement provides that the parties shall keep the terms of the settlement confidential. I note that the parties’ submissions, including the Agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (West 2007). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act. *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005 and -006, slip op. at p. 2 (ARB June 24, 1996). Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals related to such requests. 29 C.F.R. § 70 *et seq.* In the event the settlement agreement is disclosed under FOIA, such disclosure is not a violation of the agreement and will not result in a violation of the agreement.

Finally, the settlement agreement provides that it be “governed and conformed in accordance with the laws of the state in which [Complainant] was employed at the time of her last day of employment with [Respondent]...” I interpret this section as not limiting the authority of the Secretary of Labor or any Federal court, which shall be governed in all respects by the laws and regulations of the United States. *Phillips v. Citizens' Ass'n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec'y Nov. 4, 1991).

Accordingly, with the reservations noted above and limiting my approval to the complaint that is before me, IT IS ORDERED:

1. The Confidential Settlement Agreement and Release is APPROVED; and
2. The complaint is DISMISSED.

**SO ORDERED.**

PAUL C. JOHNSON, JR.  
District Chief Administrative Law Judge

PCJ, Jr./ksw  
Newport News, Virginia