



**Issue Date: 22 April 2014**

Case No.: 2012-SOX-00040

In the Matter of:

EVA MARIE KUPEC,  
Complainant,

v.

DANA HOLDING CORPORATION,  
Respondent.

**ORDER APPROVING SETTLEMENT AGREEMENT AND  
DISMISSING COMPLAINT WITH PREJUDICE**

The parties requested a telephone conference with me concerning a settlement agreement. The conference was held on April 16, 2014. Eva Marie Kupec, Complainant, who is not represented, and Margaret J. Lockhart, counsel for Respondent, indicated that they had reached settlement on all issues in the case. Complainant had been previously represented, but counsel for Complainant withdrew last year.<sup>1</sup> An administrative issue was clarified and resolved during the conference. I questioned Complainant and determined that she wished to enter into the settlement agreement willingly and was not entering into the agreement under duress. The parties indicated that a request for approval of a confidential settlement agreement would be submitted for my review shortly.

On April 18, 2014, the parties submitted their “Motion to Approve Confidential Settlement Agreement and Dismiss Complaint with Prejudice,” with “Confidential Settlement Agreement and Mutual Release (“Agreement”), (and a proposed order for my approval), which resolves all issues raised in the Complaint. They also request that the Agreement be filed under seal, as it contains commercial and financial information that is privileged and confidential, and, further, that the parties be provided timely notice and an opportunity to object in the event that a request is made under the Freedom of Information Act to disclose the Agreement. This Order Approving Settlement Agreement and Dismissing Complaint with Prejudice will be substituted for the proposed order submitted.

My review of the settlement agreement is limited to a determination of whether its terms are fair, adequate and reasonable.<sup>2</sup> The settlement terms must adequately protect the whistleblower and must not be contrary to the public interest. To the extent the Agreement settles

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<sup>1</sup> Order Allowing Withdrawal of Representation, filed December 3, 2013.

<sup>2</sup> *Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7, slip op. at 3 & n. 8 (Jan. 31, 2011).

claims brought or that could have been brought under other statutes, I approve only the terms that pertain to the SOX claim.<sup>3</sup>

Paragraph 11 provides that the Agreement shall be governed and construed under the laws of the state of Ohio and exclusive venue for interpretation and/or enforcement of this Agreement “shall be in a court of competent jurisdiction located in Lucas County, Ohio.” I construe this choice of law and venue provision not to limit the authority of the Secretary of Labor, or of any federal court that must construe the Agreement, to do so in all respects under the statutes and regulations of the United States.<sup>4</sup>

After careful consideration of the Agreement, I find that none of the terms or conditions is unacceptable. Moreover, I find the terms of the Agreement to be fair and reasonable and to adequately protect Complainant. Furthermore, I believe it is in the public interest to approve the Agreement as a basis for administrative disposition of this case and I therefore approve the Agreement.

Paragraph 9 of the Agreement provides that both parties will keep the existence and terms of the Agreement confidential, with certain specified exceptions and the parties request that the Agreement, together with all underlying communications and negotiations, be filed under seal. Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties’ submissions in the case, including the Agreement, become a part of the record in this case and are subject to the Freedom of Information Act (“FOIA”), 5 U.S.C. §552 (1988). FOIA requires agencies to disclose requested records unless they are exempt from disclosure under FOIA. *Gerald Fish v. H and R Transfer*, ARB No. 01-071; ALJ Case No. 00-STA-56 (ARB April 30, 2003).

The parties in this matter have indicated that the Agreement comprises and includes confidential information which may be exempt from disclosure under FOIA. The Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of requests and for protecting the interests of submitters of confidential commercial information. See 29 C.F.R. §70.26. The Agreement and the transcript of the telephone conference held April 16, 2014, in this case will be placed in a separate envelope and identified as being confidential commercial information pursuant to the parties’ request, will be kept strictly confidential, and will not be subject to disclosure by the Department of Labor to the maximum extent permitted by law. The parties are to be promptly notified of any Freedom of Information Act request or other request seeking disclosure of the Agreement or any other documents or materials in whatever form stating or describing any of the terms or conditions of the Agreement. The parties are to be provided with a reasonable opportunity to review, comment upon, and/or oppose any such request prior to disclosure by the Department of Labor.

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<sup>3</sup> *Anderson, supra*, slip op. at 3 & n. 10; *Fish v. H. & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (Apr. 30, 2002).

<sup>4</sup> *Anderson, supra*, slip op. at 3 & n.17; *Son v. Interstate Foundation of Ardmore*, ARB No. 10-124, ALJ No. 2010-STA-038 slip op. at 2 & n.9 (April 27, 2011); *Trucker v. St. Cloud Meat & Provisions Inc.*, ARB No. 08-080 ALJ No. 2008-STA-023, slip op. at 3 (May 30, 2008).

Accordingly, **IT IS ORDERED** that this case is **DISMISSED WITH PREJUDICE**, each party to bear its own costs, expenses, and attorneys' fees.

**IT IS FURTHER ORDERED** that the parties' request to file the settlement agreement and attached documents and the transcript of the April 16, 2014 telephone conference with the parties under seal pursuant to 29 C.F.R. § 70.26 is hereby **GRANTED**.

SO ORDERED.

JOSEPH E. KANE  
Administrative Law Judge