



ISSUE DATE: 03 AUGUST 2012

CASE No: 2012-SOX-00002

In the Matter of:

ERIC SCHICK,

Complainant,

**BOND LABORATORIES, INC., and
SCOTT LANDOW,**

Respondents.

**Order Approving Settlement Agreement and
Dismissing Complaint with Prejudice**

The parties, who are represented by counsel, moved on August 1, 2012 that I approve¹ a Confidential Settlement Agreement and Mutual Release of All Claims (“Agreement”). The Agreement resolves all issues raised in the Complaint, and requests that the Agreement be filed under seal. The motion for approval asserts that the Agreement includes commercial and financial information that is privileged and confidential, and asks that the parties be provided notice and an opportunity to object in the event that a request is made under the Freedom of Information Act² (“FOIA”) to disclose the Agreement.

My review of the settlement agreement is limited to a determination of whether its terms are fair, adequate and reasonable.³ The settlement terms must adequately protect the whistleblower, and must not be contrary to the public interest. To the extent the Agreement settles claims brought or that could have been brought under other statutes, I approve only the terms that pertain to the SOX claim.⁴

¹ Settlement approval is required by 29 C.F.R. § 1980.111(d)(2) & (e).

² 5 U.S.C. §552.

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

⁴ *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, 2003).

Section 12 provides that the Agreement shall be governed and construed under the laws of the state of California and venue will be proper “in any court or other appropriate forum located in the state of California, County of Los Angeles.” 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.⁵

After consideration of Agreement, I find none of the terms or conditions unacceptable. The Agreement is fair, reasonable, and adequately protects Mr. Schick. The public interest is served by approval of the agreement as the basis for administrative disposition of this case.

Under Section 8 of the Agreement, both parties must keep the existence and terms of the settlement agreement confidential, with certain exceptions. Because this is a public proceeding before a government agency, all submissions in the case, including the Agreement, become public records that FOIA requires agencies to disclose unless they fall within a specific FOIA exemption.⁶

The parties contend that the Agreement comprises and includes confidential information that qualifies for FOIA exemption 4. Department of Labor regulations provide specific procedures for responding to FOIA requests, for handling appeals when requests for disclosure are denied, and for protecting the interests of those who submit confidential commercial information.⁷ The Agreement will be placed in a separate envelope and identified as data the parties claim is protected from disclosure as confidential commercial information. A determination whether their Agreement qualifies for protection can be made only in the context of an actual FOIA request for disclosure of the Agreement.

⁵ *Anderson, supra*, slip op. at 3 & n. 17; *Son v. Interstate Foundation of Ardmore*, ARB No. 10-124, OALJ 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).

⁶ *Gerald Fish v. H and R Transfer*, ARB No. 01-071; ALJ Case No. 00-STA-56 (April 30, 2003).

⁷ See 29 C.F.R. §70.26.

Accordingly, this case is **DISMISSED** with prejudice.

So Ordered.

A

William Dorsey

ADMINISTRATIVE LAW JUDGE

San Francisco, California