



**Issue Date: 10 July 2015**

Case No.: 2014-SOX-00043

In the Matter of:

ERNESTO ANAYA,

Complainant,

v.

SUNGARD AVAILABILITY SERVICES L.P.,

Respondent.

**ORDER APPROVING SETTLEMENT**

This matter arises under the employee protection provisions of the Sarbanes-Oxley Act of 2002, (The Act or SOX) 18 U.S.C. Section 1514A, *et. seq.* This matter will be held in a manner consistent with the procedural rules set forth in federal regulations at 29 C.F.R. Part 18, Subpart A (29 C.F.R. §18.1 to §18.59).

Complainant filed a Complaint on February 1, 2013, with the Occupational Safety and Health Administration (OSHA) regarding a January 2013 termination. Complainant filed an Amended Complaint with OSHA on February 6, 2013, which was essentially a more detailed version of the original Complaint. According to Respondent, it filed an Answer to these Complaints with OSHA in May of 2013. On June 17, 2014, OSHA's Regional Administrator issued its Findings and Preliminary Order, finding that there was "no reasonable cause to believe that Respondent violated SOX."

Complainant's July 25, 2014, Notice of Appeal and Objection to OSHA's findings was received by the Office of Administrative Law Judges (OALJ) on August 1, 2014. On August 22, 2014, Respondent filed its Response to Complainant's Notice of Appeal and Objection.

Formal hearing in this case was deferred for settlement judge proceedings pursuant to 29 CFR §18.9(e). On June 29, 2015, the Parties advised that they reached a settlement agreement during mediation on June 11, 2015. On June 29, 2015, the Parties filed their "Confidential Settlement Agreement & Release of Claims" with supporting documents to the undersigned. Upon review of the settlement agreement, I find that its terms are fair, adequate, and reasonable, and do not contravene the public interest.

As part of the "Settlement Application," paragraph 5, the Parties agreed that the settlement agreement should be confidential, and have requested that I order it sealed and remain confidential. The Freedom of Information Act, 5 U.S.C. § 552, *et seq.* (1988) (FOIA), requires federal agencies to disclose requested documents unless they are exempt from disclosure. Faust v. Chemical Leaman Tank Lines, Inc., Case Nos. 92-SWD-2 and 93-STA-15, ARB Final Order Approving Settlement and Dismissing Complaint, March 31, 1998. The records in this case are agency records which must be made available for public inspection and copying under the Freedom of Information Act. However, the parties will be provided a pre-disclosure notification giving them the opportunity to challenge any such potential disclosure. In the event the Agreement is disclosed, pursuant to 5 U.S.C. Section 552, *et seq.*, such disclosure is not a violation of the agreement and will not result in a violation of the agreement.

After review of the Settlement Agreement and the administrative record, this Administrative Law Judge finds that the Settlement Agreement complies with the standard required under the SOX and is approved.

### **ORDER**

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

1. The Settlement Agreement is **APPROVED**.
2. This matter is **DISMISSED WITH PREJUDICE**.

**SO ORDERED.**

DANA ROSEN  
Administrative Law Judge

DR/ard  
Newport News, Virginia