

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 07 September 2017

ALJ NO.: 2017-SOX-00026

In the Matter of:

JOHN JIANG,
Complainant,

v.

WELLS FARGO BANK,
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT; DISMISSING
COMPLAINT WITH PREJUDICE; & CANCELLING HEARING**

This proceeding arises from a complaint of discrimination filed under section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of The Sarbanes-Oxley Act of 2002, 18 U.S.C.A. § 1514A (West 2004) (hereinafter “SOX”) and the procedural regulations found at 29 C.F.R. Part 1980 (2015). By letter dated February 13 2017, the Assistant Regional Administrator for the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”), acting as agent for the Secretary of Labor (“Secretary”), issued an order dismissing the complaint. On March 7, 2017, the Complainant, by letter, objected to the Secretary’s preliminary order dismissing his complaint, and requested a hearing pursuant to 29 C.F.R. § 1980.106. The trial is currently set for October 24, 2017 in Boston, Massachusetts. During the discovery phase, the parties requested that the case be referred to the Settlement Judge Program, and with the assistance of Judge Timothy J. McGrath, the parties reached a full and final settlement of all pending disputes.

On September 5, 2017, the parties filed a document entitled “Settlement Application” which included a “Confidential Settlement Agreement and Release” (hereinafter collectively the

“Stipulation”). The parties are seeking to file the settlement agreement under seal and keep its contents confidential.

In reviewing the Stipulation, I must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainants’ allegations that the Respondent violated the SOX whistleblower provisions. *See* 29 C.F.R. § 1980.111(d)(2). I find that the Stipulation complies with the standard required and it is APPROVED pursuant to 29 C.F.R. § 1980.111(d)(2), subject to my comments below.

Considering the request to seal and keep confidential, the Respondent asserted its pre-disclosure notification rights in accordance with 29 C.F.R. § 70.26, and the copy of the Stipulation therefore is being maintained in a separate envelope and identified as being confidential commercial information pursuant to the parties’ request. *See Duffy v. United Commercial Bank*, 2007-SOX-00063 (Oct. 23, 2007). In this regard, I find that the Stipulation contains financial information and business information that is privileged or confidential within the meaning of 29 C.F.R. §70.2(j), as well as personal information relating to the Complainant.

With regard to confidentiality of the Stipulation, the parties are advised that notwithstanding the confidential nature of the Stipulation, all of their filings, including the Stipulation, 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., USDOL/OALJ Reporter (PDF), ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB March 27, 1997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

The parties have also requested that access to the Stipulation be restricted by the undersigned under 29 C.F.R. § 18.85 (Restricted Access). I find good cause for such restricted access, and the Stipulation will be so maintained under that authority in the sealed envelope. *See* 29 C.F.R. §§ 18.85 & 70.26. *See Sharp v. The Home Depot, Inc.*, ALJ No. 2006-SOX-00129, 2008 DOLSOX LEXIS 4, at *3 (ALJ Jan. 16, 2008).

In reviewing the Stipulation, I also note that my authority over settlement agreements is limited to the statutes that are within my jurisdiction as defined by the applicable statute. Therefore, I approve only the terms of the Agreement pertaining to Jiang's current SOX case, 2017-SOX-00026. *Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

Finally, I note that the Stipulation contains a choice of law provision naming the State of California as the law which shall govern interpretation of the settlement agreement, without regard to the conflict of law provisions thereof. The choice of law provision shall be construed as not limiting the authority of the Secretary of Labor or any federal court. *See Phillips v. Citizens Ass'n for Sound Energy*, Case No. 1991-ERA-00025, slip op. at 2 (Sec'y Nov. 4, 1991).

Upon consideration of the Stipulation and the record in this proceeding, I find that the terms and conditions are fair, adequate, and reasonable under the SOX. The terms adequately protect the Complainant, and it is in the public interest to approve the Stipulation as a basis for administrative disposition of this case. Accordingly, it is **ORDERED** that:

- (1) The request to seal and keep the Stipulation confidential is **GRANTED**;
- (2) The request to approve the Stipulation is **GRANTED**;
- (3) The Stipulation is **APPROVED**;
- (4) The Stipulation shall be designated as confidential subject to the procedures requiring disclosure under FOIA; and
- (5) The Complaint of John Jiang is **DISMISSED WITH PREJUDICE**; and
- (6) The hearing scheduled for October 24, 2017 in Boston, Massachusetts is **CANCELLED**.

SO ORDERED.

JONATHAN C. CALIANOS
Administrative Law Judge

Boston, Massachusetts