



Issue Date: 16 November 2018

OALJ No. 2018-SOX-00040
OSHA No. 2-4173-18-122

In the Matter of:

DANIEL FLEISCHER,
Complainant,

v.

**VIVOPOWER USA, LLC &
VIVOPOWER INTERNATIONAL PLC,**
Respondents.

**ORDER APPROVING SETTLEMENT AGREEMENT
AND DISMISSING COMPLAINT**

This proceeding arises 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. §1514A, (“SOX”), and the applicable regulations issued thereunder at 29 C.F.R. Part 1980. It is not yet scheduled for hearing. The parties have informed the undersigned that the matter has settled,¹ submitting an executed Settlement Agreement, General Release and Waiver (Settlement) for my review and requesting the case be dismissed.²

SOX, and its implementing regulations, provide that proceedings may be terminated on the basis of a settlement if either the Secretary or the Administrative Law Judge approves the settlement. Under the Act, a settlement agreement cannot become effective until its terms have

¹ 29 C.F.R. § 1980.111(d)(2) states that at any time after the filing of objections to the Assistant Secretary’s findings and preliminary order, the case may be settled, and, if the case is before an administrative law judge, the settlement is contingent upon the approval of the administrative law judge.

² The parties have asked that the financial terms of the settlement will be treated as confidential commercial and financial information within the meaning of 5 U.S.C. § 552(b)(4). The parties are afforded the right to request that information be treated as confidential commercial and financial information where, as here, they are required to submit information involuntarily. 20 C.F.R. § 70.26(b) (2016). The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with predisclosure notification if a FOIA request is received seeking release of that information. Accordingly, an unredacted copy of the Settlement in this matter will be placed in an envelope marked “PREDISCLURE NOTIFICATION MATERIALS.” Consequently, before any information in the unredacted file is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure. *See* 29 C.F.R. § 70.26 (2016). Furthermore, the undersigned will refrain from discussing specific terms or dollar amounts contained in the Settlement.

been reviewed and determined to be fair, adequate, and reasonable, and in the public interest. Consistent with this required review, the regulations direct the parties to file a copy of the settlement “with the ALJ or the Administrative Review Board, [United States Department of Labor], as the case may be.” 29 C.F.R. § 1980.111(d)(2). Any settlement approved by the Assistant Secretary, the ALJ or the ARB constitutes the final order of the Secretary and may be enforced pursuant to § 1980.113. 29 C.F.R. § 1980.111(e).

Having reviewed the settlement agreement and its provisions, which includes dismissal of the complaint with prejudice, I find the terms, obligations, and conditions fair, adequate and reasonable, and in the public interest.³ Accordingly, I approve the parties’ settlement and dismissal of the complaint with prejudice. The parties shall implement the terms of the approved settlement as specifically stated in their agreement.

Accordingly, it is hereby ORDERED that the *Settlement Agreement, General Release and Waiver* filed on November 9, 2018 is APPROVED, and thereby becomes the final order of the Secretary and may be enforced pursuant to 29 C.F.R. §§ 1980.113 and 1980.111(e). It is further ORDERED that the complaint filed in this matter is DISMISSED with prejudice.

SO ORDERED.

STEPHEN R. HENLEY
Chief Administrative Law Judge

³ Some of the provisions in the settlement agreement appear to extend to claims beyond the scope of the Act. Consequently, I limit my review to the Sarbanes-Oxley Act claim only; anything beyond that exceeds this Office’s jurisdiction and the scope of my review. To the extent that the agreement could be construed as a waiver by Complainant of any causes of action he may have which arise in the future, I interpret such provision as limited to the right to sue in the future on claims or causes of action for a violation of SOX arising out of facts or any set of facts occurring through the date of the agreement. *See McCoy v. Utah Power*, 1994-CAA-1 and 6 (Sec’y Aug. 1, 1994); *Armijo v Wackenhut Services, Inc.*, 1994-ERA-7 (Sec’y Aug. 22, 1994).