



Issue Date: 20 March 2019

CASE NO.: 2018-SOX-00049

In the Matter of:

MARTIN RAMIREZ,
Complainant,

v.

UNITED FINANCIAL CAPITAL ADVISERS, LLC,
Respondent.

DECISION AND ORDER
APPROVING SETTLEMENT

This matter arises under the employee protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002 (“SOX”) and the regulations published at 29 C.F.R. Part 1980 and Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“CFPA”) and the regulations published at 29 C.F.R. Part 1985. Martin Ramirez (“Complainant”) is a self-represented litigant. Attorney Benjamin Kim represents Respondent. The matter is set for hearing on August 21, 2019, in Long Beach, California. On March 18, 2019, the parties submitted a Confidential Settlement Agreement and General Release (“Settlement Agreement”) that resolved all issues pending for hearing in this matter.

At any time after the filing of objections to the Assistant Secretary’s findings, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge (“ALJ”). 29 C.F.R. §§ 1980.111(d)(2), 1985.111(d)(2). A copy of the settlement will be filed with the ALJ. *Id.* Any settlement approved by the ALJ will constitute the final order of the Secretary and may be enforced pursuant to 29 C.F.R. §§ 1980.113 or 1985.113. 29 C.F.R. §§ 1980.111(e), 1985.111(e).

The Settlement Agreement includes a general release of liability which resolves matters and potential matters under a multitude of state and federal laws other than SOX and CFPA. My authority over settlement agreements is limited to the statutes that are within my jurisdiction, and I have restricted my review of the Settlement Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this SOX and CFPA case. *Mann v. Schwan’s Food Company*, ARB No. 09-017, ALJ No. 2008-STA-00027, slip op. at 3 (ARB Dec. 31, 2008). Accordingly, my approval extends only to the terms of the Settlement Agreement pertaining to Complainant’s SOX and CFPA cases.

The Settlement Agreement also included a confidentiality provision agreed to by the parties. The files maintained by this Office, including this Settlement Agreement, are subject to disclosure under the provisions of the Freedom of Information Act (“FOIA”), unless an exemption applies. 5 U.S.C. § 552; *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 3 (ARB July 22, 2013). The Department of Labor has implemented regulations that govern the FOIA process, and exemptions are determined at the time of the request, not at the time of the filing of the agreement. 29 C.F.R. Part 70; *McDowell v. Doyon Drilling Servs., Ltd.*, ARB No. 97-053, ALJ NO. 96-TSC-00008, slip op. at 2 (ARB May 19, 1997). The parties agree that the Settlement Agreement is confidential, which I construe to mean they object to any disclosure under FOIA. The parties included a redacted version of the Settlement Agreement indicating which parts they believe should be confidential. I order that the Settlement Agreement, as well as the redacted version of the Settlement Agreement, be placed in a sealed and separate envelope, clearly marked with notice that the parties object to disclosure and seek the procedures of 29 C.F.R. Part 70 prior to any release of information.

Paragraph 23 contains a choice of law provision stating that the Settlement Agreement “shall be governed by and interpreted under the laws of the State of California applicable to contracts made and to be performed entirely within such State.” The choice of law provision shall be construed as not limiting the authority of the Secretary of Labor or any federal court. *See Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7, slip op. at 4 (ARB Jan. 31, 2011).

As construed, and after carefully considering the terms of the Settlement Agreement, I find that the terms and conditions appear to be fair, adequate, and reasonable. I further find that the Settlement Agreement is not contrary to the public interest. *See Carciero v. Sodexho Alliance, S.A.*, ARB No. 09-067, ALJ No. 2008-SOX-012, slip op. at 3 (ARB Sept. 30, 2010).

The terms and conditions of the Settlement Agreement are incorporated by reference into this Decision and Order and are hereby adopted and approved. The parties are ordered to carry out the provisions of the Settlement Agreement.

The parties having resolved all the issues pending for hearing, the matter is now fully concluded. All pending motions are withdrawn as moot. All dates are vacated. The matter is closed.

SO ORDERED.

RICHARD M. CLARK
Administrative Law Judge