



Issue Date: 05 September 2019

OALJ Case No.: 2019-SOX-00022

In the Matter of:

FRANCISCO PEREZ GUNDIN,
Complainant,

v.

TERRA FORM POWER, ET AL.,
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT AND
DISMISSING WITH PREJUDICE**

This matter arises under the employee protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002¹ (“SOX”), and Section 219 of the Consumer Product Safety Improvement Act of 2008.² On September 4, 2019, Francisco Perez Gundin (“Complainant”) and Terra Form Power, et al., (“Respondents”) filed a Joint Motion for Approval of Settlement and Settlement Agreement (“Joint Motion”). According to the Joint Motion, the parties have mutually resolved Complainant’s SOX claims and have submitted the executed “Settlement Agreement” for the undersigned’s review. The Settlement Agreement is signed by the attorney for the Complainant and by the attorneys of the Respondents. The parties state that they have agreed to keep the specific terms of the Settlement Agreement confidential and request that the agreement be kept under seal.³

¹ P.L. No. 107-204, as codified at 18 U.S.C. § 1514A.

² P.L. No. 110-314, as codified at 15 U.S.C. § 2087.

³ The parties are afforded the right to request that information be treated as confidential commercial information where, as here, they are required to submit information involuntarily. 29 C.F.R. § 70.26(b) (2001). The Department of Labor (“DOL”) is then required to take steps to preserve the confidentiality of that information, and must provide the parties with predisclosure notification if a Freedom of Information Act (“FOIA”) request is received seeking release of that information. Accordingly, the Settlement Agreement in this matter will be placed in an envelope marked “PREDISCLOSURE NOTIFICATION MATERIALS.” Consequently, before any information in this 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. 29 C.F.R. § 70.26 (2001). The Settlement Agreement contains financial information and business information that is privileged or confidential within the meaning of 29 C.F.R. § 70.2(j), and contains personal information relating to the Complainant. Furthermore, the undersigned will refrain from discussing specific terms or dollar amounts contained in the Settlement Agreement.

This Order is limited to whether the terms of the Settlement Agreement are a fair, adequate, and reasonable settlement of the Complainant's allegations that the Respondents violated the SOX. The Settlement Agreement provides that Respondents shall make a payment to Complainant of an agreed upon amount and that Complainant will release any and all claims arising out of his employment with Respondents. In addition, the Settlement Agreement provides that the present action will be dismissed with prejudice.

Having been advised of the settlement terms and having reviewed the Settlement, the undersigned finds the terms of the Settlement Agreement to be fair, adequate, reasonable, and not contrary to public policy and is therefore approved. Upon my approval, the parties shall implement the terms of the settlement as stated in the Settlement Agreement. The Settlement Agreement shall be considered a final order of the Secretary under 29 C.F.R. § 1980.111(e).

Accordingly, it is hereby ORDERED that the Settlement Agreement filed on September 4, 2019 is APPROVED pursuant to 29 C.F.R. § 1980.111(d)(2) and may be enforced pursuant to 29 C.F.R. § 1980.113. It is furthered ORDERED that the above-referenced matter be DISMISSED WITH PREJUDICE and that each party bear its own fees and costs in this matter.

SO ORDERED.

JENNIFER WHANG
Administrative Law Judge