

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

AMBER M. ISHMAEL,  Plaintiff,  v.  BIOFUSION HEALTH PRODUCTS, INC.,  Defendant.	CIV. 16-5079-JLV  <b>SETTLEMENT AGREEMENT</b>
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This matter is before the Court in conjunction with a Stipulation and Proposed Order (“Stipulation and Order”) by consent of the United States of America, Amber M. Ishmael, and BioFusion Health Products, Inc. (collectively, the “Settling Parties”), with the purpose of effectuating a compromise and settlement of all claims in the above-captioned case.

1. Plaintiff Amber M. Ishmael (“Ishmael”) commenced this action in the United States District Court for the District of South Dakota, alleging, *inter alia*, that the Defendant violated the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”) by failing to promptly reemploy Ishmael when she returned from her military service in February 2015, and by failing or refusing to properly reemploy Ishmael in an appropriate reemployment position. Defendant denies that it violated USERRA or any other provision of law with respect to Ishmael, or that it is liable on any of the claims that were or could have been asserted in this action. Plaintiff alleges that all conditions precedent to the institution of this lawsuit have been fulfilled.

2. The Settling Parties have agreed that this action should be resolved, in accordance

with the Stipulation and Order, by dismissal of this action upon the satisfaction of the obligations set forth in Paragraphs 6 through 8 of this Settlement Agreement (“Agreement”). It is the intent of the Settling Parties that this Agreement be a final and binding settlement of any and all claims that were or could have been asserted in the Complaint filed in this case as well as any claims arising from the same facts brought by the United States Department of Labor against the Defendant in Case No. SD-2015-00001-10-G.

3. Defendant’s entry into this Agreement does not constitute an adjudication or finding on the merits of the case, and should not be construed as an admission by the Defendant of any violation of USERRA, or any other provision of law. Plaintiff agrees that the relief provided in this Agreement is a satisfactory resolution of all of claims in the Complaint and of the issues raised in United States Department of Labor Case No. SD-2015-00001-10-G. By her signature to the accompanying release, attached hereto as Appendix A, Plaintiff agrees that the relief provided in this Agreement is a satisfactory resolution of any and all claims described in such release.

#### **STIPULATIONS**

4. Pursuant to USERRA, the Settling Parties acknowledge the jurisdiction of the United States District Court for the District of South Dakota over the subject matter of this action and of the Settling Parties to this action for the purpose of enforcing this Agreement, if necessary. Orders will be entered with respect to the Settling Parties respectively only to the extent necessary for complete relief pursuant to the provisions of this Agreement under Federal Rule of Civil Procedure 19.

5. Venue is proper in this judicial district for the purpose of conducting any proceedings related to this Agreement, and entering any related orders.

## REMEDIAL REQUIREMENTS

6. For and in consideration of the settlement and dismissal with prejudice of all Plaintiff's claims as described in Paragraph 1 above, and the release of claims by Plaintiff as reflected by Appendix A, the Settling Parties shall provide the relief set forth in Paragraphs 7 through 8 herein.

7. Defendant shall pay Ishmael THREE THOUSAND DOLLARS (\$3,000.00) in full and final satisfaction of any and all claims described in Paragraph 1 above and in the accompanying release by Ishmael within thirty (30) days of the Effective Date of this Agreement. This amount constitutes the Settling Parties' determination of the back pay due and owing to Ishmael. Defendant shall assume all responsibility for tax liabilities applicable to payors (including issuing appropriate tax forms) incurred as a result of the payments made pursuant to this Agreement, and Ishmael shall assume all responsibility for tax liabilities applicable to payees incurred as a result of acceptance of payments pursuant to this Agreement. At the conclusion of tax year 2017, the Defendant shall issue Ishmael a W-2 reflecting this payment.

8. Defendant shall direct the payment of the settlement amount by First Class Mail (signature required) to Amber M. Ishmael at the following address: 309 Mace Circle, Whiteman Air Force Base, Missouri 65305. The Defendant shall also provide proof of payment to counsel for the United States at or about the same time it sends payment to Ishmael.

9. The Parties agree not to disparage one another, directly or indirectly, in connection with any matters set forth in this Settlement Agreement or Ishmael's employment with and separation from BioFusion Health Products, Inc. Nothing in this paragraph shall be construed as imposing a confidentiality or nondisparagement provision on the United States.

10. Plaintiff agrees and understands that she will not seek employment or re-employment with BioFusion Health Products, Inc. or any related entity at any time now or in the future. In the event Plaintiff seeks re-employment with BioFusion Health Products, Inc. or any related entity, this provision shall be deemed to be a basis for BioFusion Health Products, Inc. and/or the related entity refusing to re-employ Plaintiff without liability.

**RETENTION OF JURISDICTION, DISPUTE RESOLUTION, AND COMPLIANCE**

11. Upon Defendant's satisfaction of the obligations set forth in Paragraphs 6 through 8 above, the Settling Parties shall promptly file notice of such satisfaction with the Court, and upon the filing of such notice, all claims against Defendant shall be dismissed with prejudice and final judgment entered as set forth in the Stipulation and Order.

12. Until the Defendant satisfies the obligations in Paragraphs 6 through 8 above, the Court retains jurisdiction over this action for the purpose of interpreting or enforcing this Agreement. The Court's jurisdiction shall terminate upon the dismissal of Defendant and all claims against it from this action and entry of final judgment in accordance with the Stipulation and Order.

13. The Settling Parties shall engage in good faith efforts to resolve any dispute concerning compliance with this Agreement prior to seeking review by the Court. If such dispute cannot be resolved by the Settling Parties, the Settling Parties shall give written notice to each other no less than ten (10) business days before moving for review by the Court.

**MISCELLANEOUS**

14. The Settling Parties shall bear their own costs and expenses, including attorneys' fees.

15. If any provision of this Agreement is found to be unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

16. The terms of this Agreement are and shall be binding upon present and future officers, directors, employees, agents, representatives, successors, and/or assigns of the Settling Parties.

17. This Agreement constitutes the entire agreement and commitments of the Settling Parties. Any modifications to this Agreement must be mutually agreed upon and memorialized in writing signed by the Settling Parties.

18. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

**EFFECTIVE DATE**

19. The effective date of this Agreement shall be the date upon which the Stipulation and Order is entered by the Court.

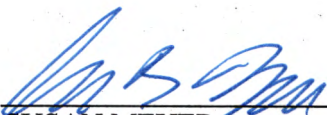
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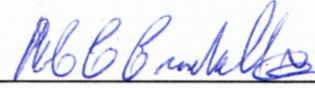
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BIOFUSION HEALTH PRODUCTS, INC.  
ROBERT CRANDALL, CEO  
Defendant

