

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-CR-20790-UNGARO/TORRES
15 U.S.C. § 1

UNITED STATES OF AMERICA

v.

GEORGE GONZALEZ,

Defendant.

_____ /

PLEA AGREEMENT

The United States of America and George Gonzalez ("defendant") hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF DEFENDANT

1. The defendant understands his rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) to plead not guilty to any criminal charge brought against him;
 - (d) to have a trial by jury, at which he would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for him to be found guilty;
 - (e) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;

- (f) not to be compelled to incriminate himself;
- (g) to appeal his conviction, if he is found guilty; and
- (h) to appeal the imposition of sentence against him.

AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(c)-(g) above. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or 2255, that challenges the sentence imposed by the Court if that sentence is consistent with or below the recommended sentence in Paragraph 8 of this Plea Agreement, regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b). Nothing in this paragraph, however, shall act as a bar to the defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct. The defendant will plead guilty to the one-count charge outlined in the Indictment, which is attached hereto, filed against the defendant in the United States District Court for the Southern District of Florida on October 28, 2010. The Indictment charges that the defendant, beginning in or around late September 2005 and continuing through at least November 2005, and Luis Soto and Guillermo Cabeza and co-conspirators entered into and participated in a conspiracy to suppress and eliminate competition by agreeing to impose an increase to their fuel surcharges on air cargo shipped from the United States to locations in South and Central America. The combination and conspiracy unreasonably restrained interstate and

foreign trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. §1. The charged conspiracy consisted of a continuing agreement, understanding and concert of action among defendant and co-conspirators, the substantial term of which was to agree to impose an emergency fuel surcharge on air cargo shipments from the United States to South and Central America following hurricanes Katrina and Rita.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

FACTUAL BASIS FOR OFFENSE CHARGED

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

(a) For purposes of this Plea Agreement, the “relevant period” is late September 2005 until at least November 2005. During the relevant period, the defendant was the Chief Commercial Officer of Cielos Airlines (“Cielos”), which was engaged in the sale of air cargo services in the United States and elsewhere. During the relevant period, the sales of air cargo services to Cielos’ customers totaled at least \$1 million.

(b) During the relevant period, the defendant participated in a conspiracy with other persons and entities engaged in the air cargo industry, the primary purpose of which was to suppress and eliminate competition by agreeing to impose the emergency fuel surcharge on air cargo shipped from the United States to locations in South and Central America. In furtherance of the conspiracy, defendant organized a meeting of competing air cargo carriers providing air cargo services from Miami to South and Central America. He personally invited the participants

and drove two of them to the meeting. At the meeting, which took place in an office at the Kendall-Tamiami Executive Airport, the defendant engaged in conversations with the representatives of the air cargo carriers he invited, including Luis Soto and Guillermo Cabeza. As a result of this meeting and through these conversations and communications, an agreement was reached to impose the emergency fuel surcharge on air cargo shipments from the United States to South and Central America.

(c) During the relevant period, defendant, Cabeza, Soto, and other conspirators issued announcements and notifications to customers of the imposition of the emergency fuel surcharge and resulting increases in air cargo rates from the United States to South and Central America in accordance with their agreement. The emergency fuel surcharge was charged to customers in the United States and elsewhere as a component of cargo rates from the United States to South and Central America, and throughout the relevant period defendant's company accepted payment for air cargo shipments from the United States to South and Central America at collusive and noncompetitive surcharges.

(d) During the relevant period, air cargo services sold by the conspirator companies along with equipment and supplies necessary to ship cargo, as well as payments for air cargo services, traveled in interstate and foreign commerce. The business activities of Cielos and its co-conspirators in connection with providing air cargo services that were the subject of the conspiracy were within the flow of, and substantially affected, interstate and foreign commerce.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of Section One of the Sherman Antitrust Act is:

- (a) a term of imprisonment for ten (10) years (15 U.S.C. § 1);
- (b) a fine in an amount equal to the greatest of (1) \$1 million, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d)); and
- (c) a term of supervised release of three (3) years following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be required to serve up to two (2) years in prison (18 U.S.C. § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) §5D1.2(a)(2)).

6. In addition, the defendant understands that:

- (a) pursuant to U.S.S.G. §5E1.1 or 18 U.S.C. § 3663(a)(3) or 3583(d), the Court may order him to pay restitution to the victims of the offense; and
- (b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

7. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth

in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. §1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to the defendant or in determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. §1B1.8(b).

SENTENCING AGREEMENT

8. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States agrees that it will recommend, as the appropriate disposition of this case, that the Court impose a sentence within the applicable Guidelines range (November 1, 2011 edition). The United States and the defendant will recommend that the Guidelines range here is that applicable for an adjusted offense level 14, determined as follows: 12 points (§ 2R1.1(a); plus 2 points (§2R1.1(b)(2)(A) (volume of commerce between \$1,000,000 and \$10,000,000). The parties agree that the defendant falls within criminal history category 1. The United States will recommend as the appropriate disposition in this case that the defendant be sentenced to a period of incarceration at the low end of the total adjusted offense level as determined by the Court. The defendant is free to recommend any sentence, including a sentence outside the Guidelines range. The defendant understands that the United States will oppose any such recommendation. The parties agree that the Guidelines fine range is one to five percent of the volume of commerce attributable to the defendant pursuant to U.S.S.G. §§2R1.1(c)(1) and that a fine in the amount of 1% of the volume of commerce attributable to the defendant as determined by the Court pursuant to §2R1.1(c)(1) is appropriate. The parties agree that there exists no aggravating or mitigating circumstances of a kind or to a degree not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0. In

light of civil cases filed, which potentially provide for a recovery of a multiple of actual damages, the United States agrees that it will not seek a restitution order for the offense charged in the Indictment this case. The defendant understands that the Court will also order him to pay a \$100 special assessment pursuant to 18 U.S.C. §3013(a)(2)(A) in addition to any fine imposed.

9. The United States does not oppose a two-level reduction in the defendant's adjusted offense level under U.S.S.G. §3E1.1(a) based upon the defendant's affirmative acceptance of personal responsibility for his criminal conduct. The United States may oppose any adjustment for acceptance of responsibility if the defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice after the date of this agreement and prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty.

10. If the United States determines that the defendant has provided substantial assistance in an investigation or prosecution of others, and has fully complied with all of his obligations under this agreement, the United States will make a motion pursuant to U.S.S.G. §5K1.1, requesting the Court to sentence the defendant in light of the advisory factors set forth in §5K1.1(a)(1)-(5) and requesting a downward departure of any amount to be determined by the Court below the low end of the applicable period of incarceration under the Guidelines range set forth in Paragraph 8 of this Plea Agreement and a fine of \$20,000. The United States shall have sole discretion in determining whether the defendant has provided such substantial assistance and, therefore, whether any motion pursuant to §5K1.1 should be made. The United States' determination of whether the defendant has provided substantial assistance will not depend in

any way on the outcome of any trial or other proceeding at which the defendant testifies. If the United States makes such a motion, the defendant is bound by the departure determined by the Court. It is understood that should the United States determine that the defendant has not provided substantial assistance in an investigation or prosecution, such a determination will release the United States from any obligation to make a motion pursuant to §5K1.1, but will not entitle the defendant to withdraw his guilty plea once it has been entered. It is understood that, even if such a motion is made, the sentence imposed on the defendant remains within the sole discretion of the Court.

11. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 13 of this Plea Agreement, and prior to sentencing in this case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's cooperation and his commitment to prospective cooperation with the United States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offense, and all other relevant conduct. To enable the Court to have the benefit of all relevant sentencing information, the United States may request, and the defendant will not oppose, that sentencing be postponed until his cooperation is complete.

12. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea Agreement. The defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence consistent with the recommended sentence contained in this Agreement, he nevertheless has no right to withdraw his plea of guilty.

DEFENDANT'S COOPERATION

13. The defendant will cooperate fully and truthfully with the United

States in the prosecution of this case, the conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving price fixing in the air cargo industry in the United States and elsewhere, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). The full, truthful, and continuing cooperation of the defendant shall include, but not be limited to:

(a) producing all non-privileged documents, including claimed personal documents, and other materials, wherever located (and with translations into English), in the possession, custody, or control of the defendant, requested by attorneys and agents of the United States;

(b) making himself available for interviews, not at the expense of the United States, upon the request of attorneys and agents of the United States;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

(d) otherwise voluntarily providing the United States with any non-privileged material or information, not requested in (a) - (c) of this paragraph, that he may have that is related to any Federal Proceeding; and

(e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court

proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401 - 402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*).

GOVERNMENT'S AGREEMENT

14. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 13 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence, the United States will not bring further criminal charges against the defendant for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy involving the air cargo industry in the United States and elsewhere. ("Relevant Offense"). The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

15. The defendant understands that he may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, and extent of the cooperation of the defendant as a matter for that agency to consider before determining what administrative action, if any, to take.

REPRESENTATION BY COUNSEL

16. The defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. The defendant has thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory

explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives available to the defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

17. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

18. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant has failed to provide full, truthful, and continuing cooperation, as defined in Paragraph 13 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify the defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and may also notify his counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement.

19. The defendant understands and agrees that in any further prosecution

of him resulting from the release of the United States from its obligations under this Plea Agreement based on the defendant's violation of this Plea Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him in any such further prosecution. In addition, the defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

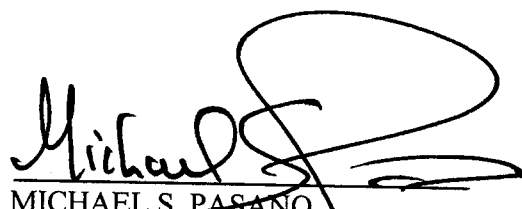
ENTIRETY OF AGREEMENT

20. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charges in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

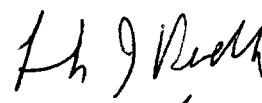
21. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

DATED: 11/30/11

BY: 
GEORGE GONZALEZ
Defendant


MICHAEL S. PASANO
Counsel for George Gonzalez

Respectfully submitted,


BY: 
FRANK J. VONDRAK (A55015147)
MARK L. KROTOSKI (A5501681)
NANCY H. MCMILLEN (A5501548)
CARSTEN M. REICHEL (A5501549)
nancy.mcmillen@usdoj.gov
Attorneys
U.S. Department of Justice
Antitrust Division
450 5th Street, N.W., Suite 11300
Washington, D.C. 20530
Tel: (202) 307-6694