

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA	)	
	)	
and	)	
	)	
ANTHONY FOXX,	)	
United States Secretary of Transportation,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case 4:16-cv-884
	)	
JUSTIN SMITH,	)	
	)	
ASI AVIATION, LLC,	)	
	)	
and	)	
	)	
AIRCRAFT CHARTER MANAGEMENT	)	
SERVICES, LLC,	)	
	)	
Defendants.	)	

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the United States of America and U.S. Secretary of Transportation Anthony Foxx (collectively, "United States") and Justin Smith, ASI Aviation, LLC ("ASI"), and Aircraft Charter Management Services, LLC ("ACMS") (collectively, "Defendants"), for the purpose of fully resolving all claims raised in the Complaint filed on April 1, 2016, in the above-captioned action. The United States and Defendants shall be referred to herein as the "Parties."

The Parties hereby state as follows:

1. This is a civil action brought by the United States for an injunction under Section 1007(a) of the Federal Aviation Act of 1958, Pub. L. 85-726, 72 Stat. 737 (49 U.S.C. § 46107(b)(1)(A)), hereinafter referred to as the "FAA Act."



2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, because this action arises under the laws of the United States, and pursuant to 28 U.S.C. § 1345, because this action has been commenced by the United States. In addition, section 1007 of the FAA Act empowers the Attorney General of the United States to seek judicial enforcement of an order of the Secretary by filing suit in a district where a defendant conducts business or where a violation occurred. 49 U.S.C. § 46107(b).

3. Defendants ASI and ACMS are corporate entities located in Houston, Texas, and Defendant Smith is an individual residing in the Southern District of Texas. All Defendants were served with the Complaint in this matter through counsel.

4. On May 20, 2015, the Federal Aviation Administration ("FAA") issued an emergency cease and desist order to Defendants. *See* FAA, Emergency Cease and Desist Order, Dkt. No. 2015FS000019 (May 20, 2015) ("Cease and Desist Order") (attached as Exhibit A). The Cease and Desist Order required Defendants "and/or any other associated individuals or entities . . . to immediately cease and desist operating as an air carrier or offering to provide air transportation . . . until [Defendants] obtain[] a valid, effective, and properly issued air carrier operating certificate issued to [them] by the FAA." Ex. A at 8. The FAA gave the Cease and Desist Order immediate effect. *Id.*

5. On June 3, 2015, Defendants filed a petition for review of the Cease and Desist Order in the U.S. Court of Appeals for the District of Columbia Circuit. *See* Petition for Review, Doc. #1556395, *ASI Aviation, LLC v. FAA*, 15-1159 (D.C. Cir. June 3, 2015). As of the date of this Settlement Agreement, the D.C. Circuit has not yet ruled on Defendants' petition. Oral argument is set for September 22, 2016.

6. The United States contends that, following the issuance of the Cease and Desist Order, Defendants continued to operate flights without an air carrier operating certificate and in violation of the Order. *See* Complaint, *United States v. Smith*, 4:16-cv-884 (S.D. Tex. Apr. 1, 2016) (ECF No. 1). Defendants deny that their continued operations constituted a violation of the Cease and Desist Order and particularly that their separate business operations collectively constituted aircraft charter flights requiring an air carrier operating certificate. *See* Answer, *United States v. Smith*, 4:16-cv-884 (S.D. Tex. Apr. 25, 2016) (ECF No. 16).

7. In March 2016, the United States sent a letter notifying Defendants that the Department of Justice had been authorized to file this action and inquiring whether Defendants would consent to the relief sought without litigation. The Parties were unable to resolve the matter at that time. Nevertheless, the Defendants voluntarily agreed to cease and desist from conducting any and all flight operations until this matter is resolved.

8. The United States filed its Complaint in this action on April 1, 2016, seeking judicial enforcement of the Cease and Desist Order. Complaint, *United States v. Smith*, 4:16-cv-884 (S.D. Tex. Apr. 1, 2016) (ECF No. 1).

9. In conjunction with the Complaint, the United States filed an unopposed motion for a preliminary injunction prohibiting Defendants from violating the Cease and Desist Order pending the outcome of the litigation. Pl.'s Unopposed Mot. for a Preliminary Injunction, *United States v. Smith*, 4:16-cv-884 (S.D. Tex. Apr. 1, 2016) (ECF No. 5). Defendants consented to this motion. *See id.*

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10. The United States District Court issued a temporary restraining order enjoining Defendants from violating the Cease and Desist Order and disposing of Plaintiff's Unopposed Motion for a Preliminary Injunction. Order, *United States v. Smith*, 4:16-cv-884 (S.D. Tex. Apr. 1, 2016) (ECF No. 7).

11. It is the mutual desire of the United States and Defendants to resolve all matters between them related to, or in any way arising out of, the facts alleged in the Complaint without the need for further litigation. The Parties voluntarily enter into this agreement.

NOW THEREFORE, the Parties agree as follows:

12. In accordance with 49 U.S.C. § 46107, Defendants are hereby permanently enjoined from violating the Cease and Desist Order. Defendants further recognize that nothing in this Settlement Agreement shall be construed to alter the terms of the Cease and Desist Order.

13. Defendants shall dismiss their petition for review of the Cease and Desist Order currently pending in *ASI Aviation, LLC v. FAA*, 15-1159 (D.C. Cir.) within one (1) day of the entry of this Settlement Agreement.

14. Nothing in this Settlement Agreement serves as or supports any inference or constitutes an admission of wrongdoing by any Defendant, either individually or collectively, including any violation of any federal regulation(s), local and state statute(s), or federal statute(s), whether civil or criminal. Further, this Settlement Agreement may not be used to establish any such wrongdoing in any legal proceeding.

15. The United States shall not seek civil penalties from any Defendant pursuant to 49 U.S.C. § 46301(a)(1)(B) for any violations of the Cease and Desist Order

predating the entry of this Settlement Agreement. However, nothing herein shall preclude the United States from seeking any and all remedies for violations of this Settlement Agreement.

16. The FAA shall work in good faith with Defendants or their representatives to obtain information regarding any flight operations conducted under Part 91 of the Federal Aviation Regulations (Title 14 Code of Federal Regulations Part 91) from Defendants before seeking such information from third parties. Further, the FAA shall not use non-FAA personnel (*e.g.*, law enforcement officers) to conduct a ramp inspection of any Defendant, unless no FAA personnel are available to conduct the ramp inspection.

17. This Settlement Agreement shall not be construed to limit the United States' rights or remedies against Defendants for any future violations of federal laws or regulations other than violations of the Cease and Desist Order that predate the Settlement Agreement.

18. This Agreement shall become binding upon its acceptance by the United States District Court for the Southern District of Texas (the "Court"). Upon acceptance, the Court shall have jurisdiction to enforce this Agreement for so long as the Cease and Desist Order remains in effect.

19. The Parties agree that neither Party is liable to the other for any attorney's fees, litigation costs, or other expenses of any kind with respect to any of the judicial or administrative proceedings that are subject to dismissal or closure under this Agreement. Each Party will also bear its own costs in connection with the preparation and performance of this Agreement.

20. The persons signing this Agreement warrant and represent that they possess full authority to bind the persons on whose behalf they are signing the terms of the Agreement. The Parties agree that this Agreement provides or reserves certain rights to Defendants' parents, subsidiaries, affiliates, successors, officers, directors, employees, agents, and assigns, and to the United States of America and its agencies, but to no other third parties.

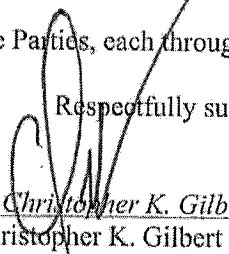
21. This Agreement and its attachments constitute the entire agreement and understanding among the Parties with respect to the matters referred to herein. Any statement, representation, remark, agreement, or understanding, whether oral or written, that is not contained in this Agreement shall not be enforced, recognized, or used to interpret this Agreement or its attachments. Each Party acknowledges and agrees: that no promise or representation not contained in this Agreement has been made; that it has not executed this Agreement in reliance on any such promise or representation; and that this Agreement contains the entire understanding between the Parties.

22. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either of the Parties. Any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Agreement. If any provision of this Agreement or any portion of any provision of this Agreement is declared null and void or unenforceable by any court or tribunal having jurisdiction, the remainder of this Agreement shall remain in full force and effect.

23. It is contemplated that this Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together constitute one and the same document. Facsimiles, hard copies, and scanned electronic copies of signatures, including scanned electronic copies sent by email, shall constitute acceptable, binding signatures for purposes of this Agreement.

24. This Agreement may not be amended, modified, supplemented, withdrawn, waived, rescinded, or canceled except by a written instrument executed by the Parties, each through a person fully authorized to bind the Party.

Respectfully submitted this 15<sup>th</sup> day of September, 2016,

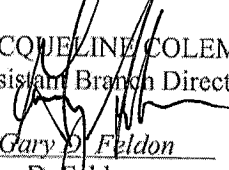
  
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