

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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U.S. DISTRICT COURT
SAN JUAN, PR

2009 FEB -2 PM 2: 34

UNITED STATES OF AMERICA,

Plaintiff,

v.

[13] JOSE GONZALEZ FREYRE,

Defendant.

Criminal No.08-36(PJB)

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(A) and (C) FRCP

TO THE HONORABLE COURT:

COMES NOW the United States of America, by and through its attorneys, Rosa Emilia Rodríguez-Vélez, United States Attorney for the District of Puerto Rico, María A. Domínguez, First Assistant United States Attorney, and Ernesto López Soltero, Assistant United States Attorney for said District, together with William Welch, Chief of the Public Integrity Section of the Department of Justice, Peter Koski, Ethan Levisohn, and Daniel Schwager, Trial Attorneys for said Section, and the defendant, [13] JOSE GONZALEZ FREYRE, and the defendant's counsel, Joaquín Monserrate Matienzo, Esq., Antonio Moreda, Esquire, and Irma Valldejuli, Esquire, pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, and state to this Honorable Court, that they have reached an agreement, the terms and conditions of which are as follows:

1. **COUNT TO WHICH DEFENDANT PLEADS GUILTY**

The defendant, [13] JOSE GONZALEZ FREYRE, agrees to plead guilty to COUNT TWENTY-THREE of the Superseding Indictment (hereinafter referred to as the 'indictment'), charging the defendant with making a false statement to federal law enforcement agents, in violation of Title 18, *United States Code*, Section 374.



TRX

2. PENALTIES

The maximum penalty for the offense charged in COUNT TWENTY-THREE of the indictment is a term of imprisonment of not more than five (5) years and/or a fine of not more than Two Hundred and Fifty Thousand Dollars (\$250,000.00), and a term of supervised release of not more than three (3) years, in addition to any term of incarceration.


3. SPECIAL MONETARY ASSESSMENT

At the time of the signing of this Plea Agreement the defendant will pay a special assessment of one hundred dollars (\$100.00) for COUNT TWENTY-THREE, as required by Title 18, *United States Code*, Section 3013(a).

4. FINES AND/OR RESTITUTION

The Court may, pursuant to Section 5E1.2(l) of the *Sentencing Guidelines, Policy Statements, Application, and Background Notes*, order the defendant to pay a fine sufficient to reimburse the government for the costs of any imprisonment and/or supervised release ordered and also the Court may impose restitution. As part of this Plea Agreement, the defendant agrees to execute a financial statement to the United States (OBD Form 500). The United States will not recommend the imposition of a fine.

5. RULE 11(c)(1)(~~B~~) WARNINGS

 The defendant is aware that under Rule 11(c)(1)(C), the Court may accept or reject the plea agreement, or may defer its decision as to its acceptance or rejection until it has considered the presentence report. If the Court rejects the plea agreement, the Court shall, on the record, inform the parties of this fact, and afford the defendant an opportunity to

withdraw the guilty plea, and advise the defendant that if he persists in a guilty plea, the disposition of the case may be less favorable to him than that contemplated in the plea agreement. In addition, as part of the terms and conditions of this plea agreement, the parties agree that should the Court reject the plea agreement, the United States reserves its right to withdraw from its obligations under the same.

6. ADVISORY NATURE OF THE SENTENCING GUIDELINES

The defendant is aware that pursuant to the decisions issued on January 12, 2005, by the Supreme Court of the United States in the cases of *United States v. Booker* and *United States v. Fanfan*, 125 S.Ct. 738 , 2005 WL 50108 (January 12, 2005), the Sentencing Guidelines are no longer mandatory and must be considered effectively advisory.

7. SENTENCING GUIDELINE CALCULATIONS

The United States and the defendant agree that the following Sentencing Guidelines calculations apply to the defendant's conduct with regard to COUNT TWENTY-THREE of the indictment:

SENTENCING GUIDELINES CALCULATION TABLE	
BASE OFFENSE LEVEL [U.S.S.G. §2B1.1]	6
ACCEPTANCE OF RESPONSIBILITY [§ 3E1.1(a)]	2
TOTAL OFFENSE LEVEL (Imprisonment range)	4 (0-6)
The parties make no stipulation as to defendant's Criminal History Category.	--

8. SENTENCE RECOMMENDATION

The United States agrees to recommend that the defendant be sentenced to the low end of the applicable guideline range and will not oppose the defendant's request for a sentence of probation.

9. NO FURTHER ADJUSTMENTS OR DEPARTURES

The United States and the defendant agree that no further adjustments or departures to the defendant's total offense level shall be sought by the parties.

10. NO STIPULATION AS TO CRIMINAL HISTORY CATEGORY

The parties do not stipulate any assessment as to the defendant's Criminal History Category.

11. UNITED STATES' RESERVATION OF RIGHTS

The United States reserves the right to carry out its responsibilities under guidelines sentencing. Specifically, the United States reserves the right: (a) to bring its version of the facts of this case including its file and any investigative files to the attention of the probation office in connection with that office's preparation of a presentence report, in conjunction with the guideline calculations contained in paragraph 7 of this agreement; (b) to dispute sentencing factors or facts material to sentencing; and, (c) to seek resolution of such factors or facts in conference with opposing counsel and the probation office.

12. SATISFACTION WITH COUNSEL

The defendant represents to the Court to be satisfied with counsel, Joaquín Monserrate Matienzo, Esq., Antonio Moreda, Esq., and Irma Valldejuli, Esq., and indicates

that counsel have rendered effective legal assistance.

13. RIGHTS SURRENDERED BY DEFENDANT THROUGH GUILTY PLEA

Defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. Defendant understands that the right of criminal defendants include the following:

- (a) If the defendant had persisted in a plea of not guilty to the charges, defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if the defendant, the United States and the judge agree;
- (b) If a jury trial is conducted, the jury would be composed of twelve lay persons selected at random. The defendant and defendant's attorney would assist in selecting the jurors by removing prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges. The jury would have to agree, unanimously, before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, that it could not convict the defendant unless, after hearing all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt, and that it was to consider each charge separately;
- (c) If a trial is held by the judge without a jury, the judge would find the facts and, after hearing all the evidence and considering each count separately, determine whether or not the evidence established the defendant's guilt beyond a reasonable doubt;
- (d) At a trial, the United States would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those witnesses and defendant's attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence in defendant's own behalf. If the witnesses for the defendant would not appear voluntarily, defendant could require their attendance through the subpoena power of the Court;
- (e) At a trial, the defendant could rely on the privilege against self-incrimination to decline to testify, and no inference of guilty could be drawn from his refusal to testify. If the defendant desired to do so, the

defendant could testify in his own behalf.

14. STATEMENT OF FACTS

The accompanying Statement of Facts signed by the defendant is hereby incorporated into this plea agreement. Defendant adopts the Statement of Facts and agrees that the facts therein are accurate in every respect and, had the matter proceeded to trial, that the United States would have proven those facts beyond a reasonable doubt.

15. LIMITATIONS OF PLEA AGREEMENT

This Plea Agreement binds only the United States Attorney's Office for the District of Puerto Rico, the Public Integrity Section of the Department of Justice, and the defendant; it does not bind any other federal district, state or local authorities. Furthermore, the defendant is fully aware that the Court is not bound by this plea agreement, including but not limited as to: advisory sentencing guidelines calculations, stipulations, and/or sentence recommendations.

16. ENTIRETY OF PLEA AGREEMENT

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The United States has made no promises or representations except as set forth in writing in this plea agreement and deny the existence of any other term and conditions not stated herein.

17. AMENDMENTS TO PLEA AGREEMENT

No other promises, terms or conditions will be entered unless in writing and signed by all parties.

18. FUTURE PROSECUTIONS

If the Court accepts the defendant's plea of guilty the United States agrees that it will not further prosecute the defendant nor his corporation for any crimes related to the factual basis or for any conduct of the defendant now known to the United States Attorneys office for the District of Puerto Rico and the U.S. Department of Justice, Public Integrity Section, and to the law enforcement agents working on those matters.

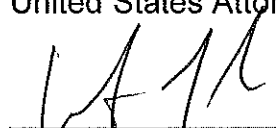
19. WAIVER OF APPEAL

The defendant hereby agrees that if this Honorable Court accepts this Plea Agreement and sentences him/her according to its terms, conditions, and recommendations, the defendant waives and surrenders his right to appeal the judgment and sentence in this case.


20. VOLUNTARINESS OF GUILTY PLEA

The defendant acknowledges that no threats have been made against the defendant and that the defendant is pleading guilty freely and voluntarily because the defendant is guilty.

ROSA EMILIA RODRIGUEZ-VELEZ
United States Attorney



María A. Domínguez
First Assistant U.S. Attorney
Chief, Criminal Division
Date: 2/2/09



Ernesto López Soltero
Assistant U.S. Attorney
Date: 2/2/09



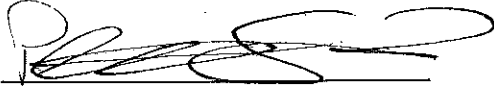
JOSE GONZALEZ FREYRE
Defendant

Date: Feb 02 09

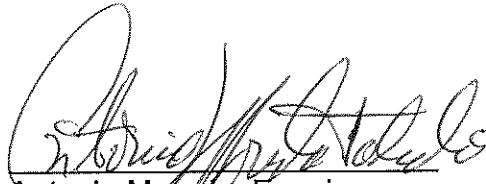


Joaquín/Monserrate M., Esq.
Counsel for the Defendant

Date: Feb. 2/09



Peter Koski
Ethan Levisohn
Trial Attorneys
Public Integrity Section
U.S. Department of Justice
Date: 2/2/09



Antonio Moreda, Esquire
Counsel for Defendant

Date: Feb. 2, 2009.

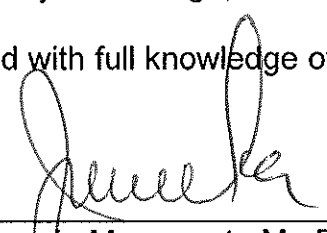
Irma Valdejuli, Esquire
Counsel for Defendant
Date: _____

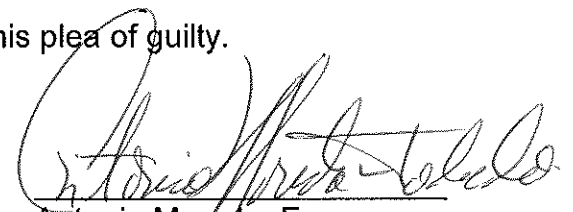
I have consulted with my counsel and fully understand all my rights with respect to the Indictment pending against me. Further, I have consulted with my attorney and fully understand my rights with respect to the provision of the Sentencing Guidelines, Policy Statements, Application, and Background Notes which may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorneys. I fully understand this agreement and I voluntarily agree to it.

Date: Feb 02, 09


JOSE GONZALEZ FREYRE
Defendant

I am the attorney for the defendant. I have fully explained to the defendant his rights with respect to the pending Indictment. Further, I have reviewed the provisions of the *Sentencing Guidelines, Policy Statements, Application, and Background Notes*, and have fully explained to the defendant the provisions of those guidelines which may apply in this case. I have also explained to the defendant the advisory nature of the *Sentencing Guidelines*. I have carefully reviewed every part this Plea Agreement with the defendant. To my knowledge, the defendant is entering into this agreement is voluntarily, intelligently and with full knowledge of all the consequences of his plea of guilty.


Joaquin Monserrate M., Esq.
Counsel for the Defendant
Date: Feb 2, 2009


Antonio Moreda, Esq.
Counsel for the Defendant
Date: Feb 3, 2009

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Irma Valdejuli, Esq.
Counsel for the Defendant
Date: _____