IN THE UNITED STATES COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE DELTA/AIRTRAN BAGGAGE FEE ANTITRUST LITIGATION	)))))	CIVIL ACTION NO. 1:09-md-2089-TCB ALL CASES

SUR-SURREPLY OF AIRTRAN AIRWAYS, INC. IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

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October 30, 2015

Table of Contents

Table of Authorities

Cases

Statutes

Table of AirTran Exhibits Cited in Sur-Surreply Brief

EX 19	November 5, 2008 Email from Matthew Klein to Kevin Healy et al. (AIRTRAN00005253)
EX 24	November 7, 2008 Email from Jason Bewley to Matthew Klein et al. (AT0025821)
EX 26	November 12, 2008 AirTran Airways Press Release (AIRTRAN00006740)
EX 27	Excerpts of Expert Report of Dr. Andrew Dick and Exhibits 3, 4, 5, 6 and 13 (Jan. 7, 2011)
EX 29	Government Accountability Office Report, *Commercial Aviation: Consumers Could Benefit from Better Information about Airline-Imposed Fees and Refundability of Government-Imposed Taxes and Fees* (2010)
EX 83	Hauenstein Deposition of May 10, 2012
EX 87	Klein Deposition of November 17, 2010

Table of Abbreviations

AirTran	AirTran Airways, Inc.
AirTran Reply	Reply of AirTran Airways, Inc. in Support of Its Motion for Summary Judgment (Oct. 2, 2015), ECF No. 604
American	American Airlines, Inc.
Continental	Continental Airlines, Inc.
Crissey Decl.	Declaration of Kevin Crissey (Feb. 6, 2014), Exhibit 131 to Delta's Opposition to Plaintiffs' Motion for Discovery Sanctions (Feb. 7, 2014), ECF No. 434
Delta	Delta Air Lines, Inc.
Delta Reply	Defendant Delta Air Lines, Inc.'s Reply in Support of Its Motion for Summary Judgment (Oct. 2, 2015), ECF No. 603
DX	Delta's Exhibits to Motion for Summary Judgment
EX	AirTran's Exhibits to Motion for Summary Judgment
FBF	First bag fee
FTC	Federal Trade Commission
GAO	Government Accountability Office
Initial R&R	Report & Recommendation of Special Master Bruce B. Brown (Nov. 21, 2014), ECF No. 520
Northwest	Northwest Airlines, Inc.
Opp'n	Plaintiffs' Opposition to Defendants' Motions for Summary Judgment (Sept. 11, 2015), ECF No. 554
PX	Plaintiffs' Exhibits to Opposition to Motions for Summary Judgment
Sanctions Hr'g Tr.	Transcript of Special Master Proceedings Before Bruce P. Brown (Aug. 12, Aug. 13, Aug. 15, Sept. 3, 2014) (Vols. 1-4), ECF Nos. 543-546

Southwest	Southwest Airlines Co.
Surreply	Plaintiffs' Surreply in Opposition to Defendants' Motions for Summary Judgment (Oct. 16, 2015), ECF No. 610
United	United Air Lines, Inc.
US Airways	US Airways, Inc.

With the case law growing stronger against them, and with few facts supporting their case, Plaintiffs' Surreply misstates the well-established standards for summary judgment set forth in *Williamson Oil*. Then, they give short shrift to recent decisions applying that standard, and completely ignore the Third Circuit's decision in *In re Chocolate Antitrust Litigation*. After AirTran and Delta produced 40 million pages of documents, there is still no evidence of a conspiracy, so Plaintiffs created a narrative that stretches the factual record beyond the breaking point, asking the Court to permit the jury to engage in unrestrained speculation about whether there might have been an agreement between AirTran and Delta—even when Plaintiffs' own discovery expert testified he could find no evidence of one. They continue to rely on the same handful of facts, none of which, alone or together, are sufficient to withstand summary judgment. They try to multiply those sparse facts by reformulating them into as many plus factors as they can imagine. And they ignore evidence that refutes their speculative conclusions, most notably that most major airlines had adopted FBFs well before either AirTran or Delta made their decisions. The publicly disclosed profitability of other airlines' FBFs answers Plaintiffs' arguments about the Defendants' motives, independent decision-making, and claims that AirTran and Delta were acting contrary to their

economic self-interest, which no doubt explains why Plaintiffs hope those facts will be forgotten.

A. Plaintiffs Misstate the Legal Standard for Summary Judgment

The well-established legal standard for summary judgment in a price fixing case is that an inference of a conspiracy is reasonable (and therefore can survive summary judgment) only if the evidence, "tends to exclude the possibility that the alleged conspirators acted independently." *Williamson Oil Co. v. Philip Morris USA*, 346 F.3d 1287, 1300, 1303-04 (11th Cir. 2003). The foundation of this standard is the distinction between (1) "altogether lawful, independent, consciously parallel decision making within an oligopoly" and (2) "illegal, collusive price fixing." *Id.* at 1298-1300.[1] The standard requires the Court to evaluate the evidence underlying the Plaintiffs' alleged plus factors and to grant summary judgment unless the evidence tends to establish an illegal conspiracy (express collusion) more than it indicates lawful conscious parallelism (sometimes called

[1] Such legal, consciously parallel conduct is also referred to as "tacit collusion" in contrast to "express collusion" which would violate the Sherman Act. *See, e.g., In re Text Messaging Antitrust Litig.*, 782 F.3d 867, 871, 872, 873, 874, 875, 877, 879 (7th Cir. 2015) (Posner, J.). Just as in *Text Messaging*, "plaintiffs' counsel demonstrate a failure to understand the fundamental distinction between express and tacit collusion. Express collusion violates antitrust law; tacit collusion does not." *Id.* at 872. Plaintiffs and their experts misleadingly use the label "collusion" to describe both types of conduct.

tacit collusion). *Id.* at 1300-01, 1304. The Eleventh Circuit held that if the evidence is "in equipoise" between a showing of lawful parallel conduct and the alleged collusion then "summary judgment against the plaintiffs would be in order." *Id.* at 1301. Despite Plaintiffs' protestations to the contrary, that is the law in the Eleventh Circuit.

Plaintiffs argue that doing what *Williamson Oil* requires would mean the Court is improperly "weighing" evidence (Surreply at 3, 5). What Plaintiffs call weighing, however, is nothing more than testing for evidence that tends to "exclude the possibility of conscious parallelism … nothing more, nothing less," as Supreme Court authority requires. *Williamson Oil*, 346 F.3d at 1302. Plaintiffs ask the Court to deny summary judgment if the inference of conspiracy is "*one* reasonable inference in light of competing inferences from the evidence" (Surreply at 3 (emphasis added)), but *Williamson Oil* says that if evidence is ambiguous—in other words, if the evidence supports inferences consistent with *either* illegal collusion or legal parallelism—then that evidence does not tend to exclude parallelism, and would leave the jury to simply guess at whether collusion was shown. 346 F.3d at 1301-02. As the court explained, "if a benign explanation for the action is equally or more plausible than the collusive explanation, the action cannot constitute a plus factor. Equipoise is not enough to take the case to the

jury." *Id.* at 1310. Plaintiffs' standard would preclude the Court from doing what the Eleventh Circuit requires: "evaluat[ing] the evidence" to determine whether it supports a "reasonable inference" of a conspiracy "in light of competing inferences of acceptable conduct." *Id.* at 1301, 1303.

Plaintiffs also fail to address recent case law that applies the same standard as *Williamson Oil*.[2] Notably, Plaintiffs completely ignore the Third Circuit's decision last month in *In re Chocolate* even though it is frequently cited in Defendants' reply briefs. After evaluating the evidence underlying each of seven alleged plus factors, 2015 WL 5332604, at *8-20, the court determined that "considering the evidence *as a whole*, the [p]laintiffs have failed to create a

[2] For example, Plaintiffs do not mention, let alone distinguish, any of the following cases cited by Defendants: *In re Chocolate Confectionary Antitrust Litig.*, No. 14-2790, 2015 WL 5332604 (3d Cir. Sept. 15, 2015) (hereinafter "*In re Chocolate*"); *In re Musical Instruments & Equip. Antitrust Litig.*, No. 12-56674, 2015 WL 5010644 (9th Cir. Aug. 25, 2015) (affirming dismissal of complaint alleging parallel conduct and plus factors); *Mayor of Balt. v. Citigroup, Inc.*, 709 F.3d 129 (2d Cir. 2013) (affirming dismissal for lack of plausible allegations of conspiracy); *Hyland v. HomeServices of Am., Inc.*, 771 F.3d 310 (6th Cir. 2014) (affirming summary judgment because plaintiffs' circumstantial evidence did not show a plausible conspiracy); *In re Commodity Exch., Inc. Silver Futures & Options Trading Litig.*, 560 F. App'x 84 (2d Cir. 2014) (summary order affirming dismissal for lack of a plausible conspiracy); *In re Online Travel Co. (OTC) Hotel Booking Antitrust Litig.*, 997 F. Supp. 2d 526 (N.D. Tex. 2014) (granting dismissal for lack of a plausible conspiracy).

reasonable inference that the Chocolate Manufacturers *more likely than not* conspired to fix prices in the U.S. chocolate market." *Id.* at *20 (emphasis added) .

Plaintiffs also disregard the stronger evidence in *Williamson Oil* and *In re Chocolate* as compared to the absence of such evidence here. The evidence considered insufficient to raise an inference of conspiracy in *Williamson Oil* included: at least eleven parallel price increases and multiple alleged "invitations to collude" in close proximity to those price increases; economic analysis submitted by plaintiffs' experts that deemed those price increases to be "against the economic self-interest" of the alleged conspirators; and the use of a common pricing and sales consultant. 346 F.3d at 1305-15. In *In re Chocolate*, the insufficient plus factor evidence included: documents indicating private information exchanges of competitively sensitive information among pricing decision-makers; opportunities to conspire as a result of merger discussions between two of the alleged co-conspirators; expert testimony opining that defendants acted against their individual interests; defendants' inaccurate statements that cost increases had caused the price increases; and a price-fixing investigation by Canadian authorities that resulted in a guilty plea by one of the defendants and multiple indictments against others (some of which are still pending). 2015 WL 5332604, at *2-4, *8-20. If Plaintiffs' articulation of the standard was correct, summary judgment

would have been denied in *Williamson Oil* and *In re Chocolate*. But it was not. Plaintiffs are asking the court to depart from the summary judgment standard in this circuit and around the country.

B. Plaintiffs' Alleged Plus Factors Do Not Tend To Establish a Conspiracy

The evidence underlying the Plaintiffs' alleged plus factors does not tend to establish a conspiracy more than it indicates permissible conduct. While Plaintiffs try to transform their evidence into as many plus factors as they can imagine, most of the evidence they cite is irrelevant and almost all of it is focused on the same handful of "events": (1) Air Tran Employee Scott Fasano's late July-early August 2008 attempted communications; (2) Mr. Fornaro's October 23, 2008 earning's call response to an analyst question; (3) Delta's value proposition analyses in late October 2008; and (4) AirTran's and Delta's respective decisions to implement bag fees starting early December 2008. Yet none of this, alone or combined, supports a reasonable inference of a conspiracy, and all of it is at least as consistent with independent decision making. Missing, is any communication among relevant executives on a subject that mattered.[3]

[3] In contrast, see cases in Delta Reply at n.34 and AirTran Reply at nn.16, 17, 21.

1. Plaintiffs' Alleged "Invitation to Collude" Does Not Support an Inference of a Conspiracy.

This alleged plus factor is based on the October 23, 2008 response by Mr. Fornaro to a an analyst's questions during an investor earnings call. But Plaintiffs still have not cited a single Sherman Act section 1 case where a defendant's unilateral public statement has been the basis for liability or denial of summary judgment. All cases cited by Plaintiffs (1) involve *private* invitations to collude (*see* Delta Reply at 12 n.7); and/or (2) relate to FTC enforcement actions under Section 5 of the FTC Act which, unlike section 1 of the Sherman Act, does *not* require evidence of an agreement (*id.* at 11-12 & n.6; AirTran Reply at 15 & n.17). Acting consistently with a competitor's unilateral invitation to collude is not enough to show agreement under the Sherman Act. (*see* AirTran Reply at 15-16.)

Moreover, to bolster the "invitation to collude" allegation, Plaintiffs ask the Court to ignore key facts and engage in speculation. Plaintiffs ignore that in the six months before the October 23rd AirTran earnings call, most of the other major airlines had implemented FBFs, and analysts asked similar questions about FBF plans of the other airlines.[4] At the same time, Plaintiffs ask the Court to speculate that Delta "planted" the analyst's question based solely on testimony by Delta

[4] *See* Delta Reply at 19 n.33.

personnel describing the exchange as "odd" (and despite the fact the analyst submitted an affidavit swearing that the question was not planted).[5]

2. There Were No "Collusive Communications."

The primary "collusive communications" alleged by Plaintiffs consist of (1) the October 23, 2008 AirTran public earnings call (which, as discussed above, does not tend to prove collusion); and (2) the late July/early August 2008 attempted communications by Scott Fasano.[6] However, Plaintiffs still offer no evidence that Delta's decision-makers were ever aware of Mr. Fasano's attempts and do not dispute that Mr. Fasano's attempted communications ended months before either airline made its bag fee decision.[7] Plaintiffs' alleged evidence of communications, therefore, does not create a reasonable inference of a conspiracy.[8]

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[5] Crissey Decl. ¶¶ 6-7.

[6] Plaintiffs' remaining points on "collusive communications" focus on Delta's unilateral internal deliberations about whether or not to implement a FBF and its decision to do so. These do not constitute "communications" between Delta and AirTran at all. (Surreply at 24-27)

[7] In contrast, in *United States v. Foley* (upon which Plaintiffs rely), the court refused to overturn jury felony convictions of competitor decision-makers who adopted an identical price increase after a private dinner during which the host announced the price increase which was then discussed multiple times among these decision-makers in efforts to persuade each to adopt it. 598 F.2d 1323, 1327 (4th Cir. 1979); and in *In re SRAM Antitrust Litig.* (which Plaintiffs also cite), pricing and production information was exchanged among "high level managers' who "exercised direct influence over the prices." No. 07-md-01819, 2010 WL513859, at *6 (N.D. Cal. Dec. 10, 2010); *see also In re Chocolate*, 2015 WL 5332604, at

3. Defendants' First Bag Fee Decisions Reflected Pro-Competitive and Lawful Awareness of Competitors.

The only AirTran communication that could have been considered by Delta in adopting a FBF is Mr. Fornaro's October 23, 2008 public response to an analyst's question during AirTran's October 23, 2008 earnings call.[9] There is no evidence, however, that any Delta executive changed his or her mind because of Mr. Fornaro's public answer.[10] Even if there were evidence that some at Delta considered Mr. Fornaro's public statement in determining their views on Delta's

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*18 ("[S]poradic communications among individuals without pricing authority are insufficient to create a reasonable inference of conspiracy.").

[8] *Williamson Oil Co.*, 346 F.3d at 1302 (no plus factor if it would require jury to "engage in speculation and conjecture to such a degree as to render its finding a guess or mere possibility"); *S. Pilot Ins. Co. v. CECS, Inc.*, 52 F. Supp. 3d 1240, 1254 (N.D. Ga. 2014) ("Speculation does not create a *genuine* issue of fact.").

[9] Plaintiffs also state that in September 2008 Delta was considering unbundling FBFs more seriously than two months earlier and argue this "is only explained by private collusive communications, and Defendants have no alternative explanation for the change." (Surreply at 22) But Plaintiffs ignore the obvious reason for this change: major competitors including US Airways, Northwest, Continental, and United had adopted FBFs in the interim and stated they were profitable. (EX27, Dick Report at Ex. 6) The evidence shows Delta observed and circulated press and public comments on how bag fees were not prompting customer defections. (DX 45 at DLTAPE-272; DX 56; DX 72; DX 73)

[10] Plaintiffs' own account of Delta's decision supports this. (*See* Delta Reply at 25 (quoting Opp'n at 26)) Even Mr. Hauenstein, the executive responsible for changing the AirTran probability from 50 to 90 percent on one scenario in the Delta Value Proposition, did not change his mind—he remained opposed to Delta unbundling bag fees. (EX83, Hauenstein 5/10/12 Dep. at 22:8-13)

own FBF decision, that would be lawful—and exactly what one would expect a competitor to do in a concentrated industry. Furthermore, there is *no* evidence of communication from Delta to AirTran about bag fees in advance of Delta's FBF decision, or in advance of AirTran's decision to match, or at any time thereafter.[11] And, evidence that some at AirTran considered Delta's public bag fee announcement in advocating for doing the same at AirTran is also consistent with independent decision making.[12]

4. AirTran and Delta Each Acted In Its Independent Self-Interest.

While the Eleventh Circuit recognizes that parallel actions that are against their defendants' independent economic self-interest may be a "plus factor." *Williamson Oil*, 346 F.3d at 1310, it cautions that courts

> must exercise prudence in labeling a given action as being contrary to the actor's economic interest, lest we be too quick to second-guess well-intentioned business judgments of all kinds.

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[11] Mr. Pixley's 10 hour search of the entire Delta database using "forensic software" confirmed there was no such evidence. Documents found by Mr. Pixley "shed little light on Delta's actual decision-making process." (Initial R&R at 81) Plaintiffs' contention that this "spot check" was "extraordinarily limited [in] nature" (Surreply at 9) is contradicted by Mr. Pixley's testimony. (Sanctions Hr'g Tr. 186:23-190:15, 251:5-253:3, 275:4-277:6)

[12] *See also In re Text Messaging*, 782 F.3d at 875 ("Competitors in concentrated markets watch each other like hawks."). Similarly, GAO reported "[l]ike prices for other products and services sold in a competitive market, fees for these [unbundled airline] services are also influenced by what competitors charge." (EX29 at 14)

Id.[13] Plaintiffs again ignore the obvious and benign explanations for AirTran and Delta's adoption of FBFs—the desire for earnings supported by the profitable adoption of FBFs by other airlines (including Delta's merger partner Northwest and other carriers with more route overlap with Delta than AirTran).[14] AirTran and Delta legitimately considered the other airlines' success in implementing FBFs.[15]

In addition, Plaintiffs' emphasis on the Delta Value Proposition is misplaced. Even the bag-fee opponents who drafted the Value Proposition slides concluded (both before and after AirTran's October 23rd earnings call) that unbundling FBFs could be highly profitable depending on market conditions. For example, one of the three scenarios modeled on October 22, 2008 (a day before the AirTran earnings call) contemplated that Delta would earn $125M from FBFs. (PX213 at 16)[16] More generally, these presentations highlight that within Delta, before and after the AirTran earnings call, a number of different views existed, and

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[13] *See also In re Chocolate*, 2015 WL 5332604, at *9-11.

[14] GAO's 2010 report explains how unbundling benefits airlines and confirms that such fees "are also influenced by what competitors charge." (EX29 at 4-5, 11-14)

[15] Contrary to Plaintiffs' assertions (Surreply at 27), low cost carriers (in addition to legacy carriers) unbundled FBFs in 2008 before the Delta and AirTran decisions: Spirit (Feb. '08), Frontier (Oct. '08), and Republic (Oct. '08).

[16] Plaintiffs misleadingly change the labels in the Value Proposition documents from "Worst Case," "Mid-Range," and "Best Case" to "unilateral action; conscious parallelism; and collusion." (Surreply at 28 n.65)

different, uncertain, scenarios were being analyzed.[17] Such analysis is exactly what would be expected from a company making an independent judgment about a significant pricing decision. And, the Value Proposition did not include substantial Northwest revenue that the merged airline would lose if it terminated FBFs.

Furthermore, the Value Proposition slides are internal Delta documents (it is undisputed that they were not shared with anyone at AirTran) and, therefore, they do not provide any information about AirTran's decision-making or AirTran's own understanding of its self-interest. Plaintiffs do not dispute that AirTran had robust internal discussions and conducted its own detailed financial analyses about whether or not to unbundle FBFs *after* Delta publicly announced its FBFs on November 5, 2008.[18] Only once these analyses showed the "staggering" revenue potential of unbundling the fees did AirTran make its own decision.[19] Even Plaintiffs' expert estimated AirTran would gain up to twice the revenue from bag fees than it could gain in market share by foregoing fees. (*See* PX398 ¶ 73)

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[17] In the October 24 Value Proposition, a day after the AirTran earnings call, two out of the three scenarios contemplate significant uncertainty about whether AirTran would unbundle the FBF. In the "Worst Case" AirTran was not expected to unbundle the fee at all and the "Mid-Range" case model contemplates a 10% probability that AirTran would not unbundle the fee. (PX234 at 16)

[18] To support this allegation Plaintiffs cite no evidence from the period when AirTran made its decision. (Surreply at 32 n.77)

[19] EX19; EX87, Klein Dep. 208:11-17; EX24.

5. Motive to Conspire Is Not a Plus Factor.

The motive to conspire asserted by Plaintiffs is *exactly* the type that this Court and many others have rejected as a plus factor because it simply restates the fact that the companies are part of an oligopoly.[20] Plaintiffs argue that Delta and AirTran's monitoring of and reacting to each other's pricing decisions constitutes a plus factor. (Surreply at 32-33) Such interdependence, however, is consistent with independent decision-making in a concentrated industry.[21] In addition, Plaintiffs ignore that AirTran and Delta decision-makers were also motivated by the successful adoption of bag fees by competing airlines.[22]

6. Intent to Conspire Is Not a Plus Factor.

Plaintiffs do not cite a single case where "anticompetitive intent" is a plus factor[23] nor any evidence that either AirTran or Delta had such intent. Plaintiffs

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[20] *Holiday Wholesale Grocery Co. v. Philip Morris, Inc.*, 231 F. Supp. 2d 1253, 1306 (N.D. Ga. 2002) ("[Conspiratorial] [m]otivation is . . . synonymous with interdependence and adds nothing to it."), *aff'd by Williamson Oil*, 346 F.3d 1287; *see also In re Chocolate*, 2015 WL 5332604, at *8 (for an oligopoly conspiratorial motivation is "neither necessary nor sufficient to preclude summary judgment").

[21] *In re Baby Food Antitrust Litig.*, 166 F.3d 112, 135 (3d Cir. 1999) (motivation "to merely to meet rival prices . . . constitute[s] only interdependence").

[22] In contrast, in *In re Currency Conversion Fee Antitrust Litigation*, the fee had not been widely increased in advance of numerous high-level private meetings and information exchanges. 773 F. Supp. 2d 351, 368-71 (S.D.N.Y. 2011).

[23] Opp'n at 73; Surreply at 33-34. *Poller v. CBS, Inc.* 368 U.S. 464, 468 (U.S. 1962) does not involve plus factors and includes a Sherman Act § 2 claim where

instead make exaggerated, unsupported claims. For AirTran, they cite (1) attempted communications by Mr. Fasano in July and early August 2008; (2) July and August 2008 emails suggesting AirTran is unlikely to adopt FBFs unless Delta does; (3) July 2008 emails about AirTran's technical preparations for possibly charging a FBF; (4) July 2008 documents and testimony suggesting AirTran was interested in the public reaction to possible unbundling; (5) and evidence showing that AirTran typically prepared for its earnings calls and did so for possible FBF question for its July 2008 call. (Surreply at 33-34) Separately, Plaintiffs accuse Delta of "proposing . . . that AirTran 'jump' first and Delta would follow" (*id.* at 34) based only on *Mr. Fasano's* unconfirmed meeting with a Northwest vendor in late July or early August 2008. (*See id.* (citing PX126)) None of this shows an intent to conspire, and all of it is consistent with independent decision-making.

7. AirTran's Public Statements About Its First Bag Fee Decision Were Not Pretextual.

Plaintiffs do not dispute that AirTran's press release acknowledged its interdependence with Delta and did not mention fuel costs,[24] but have now zeroed

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intent is considered. Also, summary judgment is no longer disfavored in antitrust cases. *See Matsushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

[24] Plaintiffs' Opposition cited an *internal* draft. Opp'n at 30-31 (citing PX285 (draft)); *compare* PX285, *with* EX26 (final).

in on a trade press article to argue AirTran used fuel prices as a pretext for unbundling FBFs. Surreply at 34 (citing PX311) But the article shows the opposite. It details how each major U.S. carrier unbundled FBFs in 2008 and includes a quotation from Mr. Fornaro acknowledging AirTran's interdependence with Delta ("we were waiting for Delta") and then stating that "*at first* fuel costs" and "*now* . . . declining demand" are reasons that no "carrier has much choice" but to adopt FBFs. (PX311 at 5 (emphasis added)) Mr. Fornaro's statement is consistent with reality—in the summer of 2008 fuel prices were at their highest and in the fall of 2008 the U.S. economy fell into a deep recession. There is nothing pretextual or inaccurate about Mr. Fornaro's statement that both economic events contributed to the widespread adoption of FBFs by U.S. airlines.[25]

C. Conclusion

For foregoing reasons, and those previously stated, Defendant AirTran Airways, Inc. respectfully requests that its motion for summary judgment be granted.

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[25] Even if there were a factual basis for Plaintiffs' "pretext" argument (there is not), pretext is insufficient to create a genuine issue of fact without other evidence pointing to a price-fixing agreement. *See* AirTran Reply at 30-31 & n.54; *see also In re Chocolate*, 2015 WL 5332604, at *20 ("That rising costs may not have been the full or even real reason for increasing prices does not show whether the real reason was interdependence or a conspiracy.").

Respectfully submitted,

October 30, 2015

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L.R. 7.1D CERTIFICATION AS TO FONT AND POINT SELECTION

The undersigned counsel hereby certifies that this Sur-Surreply Memorandum of AirTran Airways, Inc. in Support of Its Motion for Summary Judgment has been prepared with Times New Roman, 14 point, which is one of the font and point selections approved by the Court in L.R. 5.1C.

/s/ Alden L. Atkins
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CERTIFICATE OF SERVICE

I hereby certify that on this the 30th day of October, 2015, I filed the foregoing Sur-Surreply Memorandum of AirTran Airways, Inc. in Support of Its Motion for Summary Judgment with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to counsel of record in this matter.

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