

Joseph W. Cotchett (36324; jcotchett@cpmlegal.com)
 Steven N. Williams (175489; swilliams@cpmlegal.com)
 Adam J. Zapala (245748; azapala@cpmlegal.com)
 Elizabeth Tran (280502; ctran@cpmlegal.com)
COTCHETT, PITRE & McCARTHY, LLP
 San Francisco Airport Office Center
 840 Malcolm Road, Suite 200
 Burlingame, CA 94010
 Telephone: 650-697-6000
 Facsimile: 650-697-0577

Michael P. Lehmann (77152; mlehmann@hausfeldllp.com)
 Christopher L. Lebsack (184546; clebsack@hausfeldllp.com)
HAUSFELD LLP
 44 Montgomery Street
 San Francisco, CA 94111
 Telephone: (415) 633-1908
 Facsimile: (415) 358-4980

Michael D. Hausfeld (mhausfeld@hausfeldllp.com)
 Seth R. Gassman (sgassman@hausfeldllp.com)
HAUSFELD LLP
 1700 K Street, Suite 650
 Washington, D.C. 20006
 Telephone: (202) 540-7200
 Facsimile: (202) 540-7201

Interim Co-Lead Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

**IN RE TRANSPACIFIC PASSENGER
 AIR TRANSPORTATION ANTITRUST
 LITIGATION**

**Case No. 3:07-cv-05634-CRB-DMR
 MDL No. 1913**

Honorable Charles R. Breyer

**This Document Relates to:
 ALL ACTIONS**

**SETTLEMENT AGREEMENT
 BETWEEN PLAINTIFFS AND
 CATHAY PACIFIC AIRWAYS, LTD.**

1 This Settlement Agreement, dated July 22, 2014 (the "Settlement Agreement"), is made
 2 and entered into by and among defendant Cathay Pacific Airways Limited ("CX") and Meor
 3 Adlin, Franklin Ajaye, Andrew Barton, Rachel Diller, Scott Frederick, David Kuo, Dickson
 4 Leung, Brendan Maloof, Donald Wortman, Harley Oda, Roy Onomura, Shinsuke Kobayashi,
 5 Patricia Lee, Nancy Kajiyama, Della Ewing Chow, and James Kawaguchi ("Plaintiffs"),
 6 individually and as representatives of the class of similarly situated plaintiffs as more specifically
 7 defined below, in the MDL class action In re Transpacific Passenger Air Transportation Antitrust
 8 Litigation, 07-cv-5634-CRB, MDL No. 1913, currently pending before the Honorable Charles R.
 9 Breyer in the United States District Court for the Northern District of California, San Francisco
 10 Division.

11 WHEREAS, Plaintiffs have filed a complaint alleging, among other things, that CX
 12 participated in an unlawful conspiracy or conspiracies to restrain trade, pursuant to which CX and
 13 other defendants ("Defendants") agreed to fix, raise, maintain, and/or stabilize prices for air
 14 passenger travel, including associated surcharges, for international flights involving at least one
 15 flight segment between the United States and Asia/Oceania.

16 WHEREAS, Interim Class Counsel have concluded, after an investigation into the facts
 17 and the law, and after carefully considering the circumstances of claims made by Plaintiffs and
 18 the Class, and the possible legal and factual defenses thereto, that it is in the best interests of
 19 Plaintiffs and the Settlement Class to enter into this Settlement Agreement with CX to avoid the
 20 uncertainties and risks of litigation, and that the Settlement set forth herein is fair, reasonable,
 21 adequate and in the best interests of the Settlement Class.

22 WHEREAS, CX has concluded, despite its belief that there is no legal or factual basis for
 23 its liability in this matter, and that it has good defenses with respect to Plaintiffs' claims, that it is
 24 in its best interests to enter into this Settlement Agreement to avoid the burden and costs of
 25 litigation.

26
 27
 28 SETTLEMENT AGREEMENT BETWEEN
 PLAINTIFFS AND CATHAY PACIFIC AIRWAYS, LTD.; CASE NO. 3:07-cv-05634 CRB-DMR

1 WHEREAS, Plaintiffs and CX agree that neither this Settlement Agreement nor any
 2 statement made in the negotiation thereof shall be deemed or construed to be an admission by or
 3 evidence against CX or evidence of the truth of any of Plaintiffs' allegations;

4 WHEREAS, Interim Class Counsel and CX have engaged in arm's-length settlement
 5 negotiations and have reached this Settlement Agreement, which embodies all of the terms and
 6 conditions of the Settlement between Plaintiffs and CX, subject to approval of the Court.

7 NOW, THEREFORE, in consideration of the promises, mutual promises, covenants,
 8 agreements and releases set forth herein and for other good and valuable consideration, and
 9 incorporating the above recitals herein, it is agreed by the undersigned, on behalf of CX,
 10 Plaintiffs, and the Settlement Class, that the Actions and all claims of Plaintiffs and the
 11 Settlement Class that have been or could be asserted in the Actions be settled, compromised and
 12 dismissed on the merits and with prejudice as to CX and, except as hereinafter provided, without
 13 costs as to Plaintiffs, the Settlement Class or CX, subject to court approval, on the following
 14 terms and conditions:

15 **1. Definitions**

16 1.1. "Actions" means the class action captioned In re Transpacific Passenger Air
 17 Transportation Antitrust Litigation, 07-cv-5634-CRB, MDL No. 1913, currently pending before
 18 the Honorable Charles R. Breyer in the United States District Court for the Northern District of
 19 California, San Francisco Division, and all actions relating to the claims alleged in "Plaintiffs'
 20 Second Amended Consolidated Class Action Complaint" filed in that litigation that were
 21 originally filed in the United States District Court for the Northern District of California, those
 22 that have been or are subsequently filed in or transferred for coordinated pretrial proceedings to
 23 such court by the Judicial Panel on Multidistrict Litigation as part of MDL No. 1913, and all
 24 actions that are otherwise based on the conduct alleged in the above-captioned litigation.

25 1.2. "Court" means the United States District Court for the Northern District of
 26 California.

27
 28 SETTLEMENT AGREEMENT BETWEEN
 PLAINTIFFS AND CATHAY PACIFIC AIRWAYS, LTD.; CASE NO. 3:07-cv-05634 CRB-DMR

1 1.3. “Effective Date” means the earliest date on which all of the events and conditions
2 specified in paragraph 8 herein have occurred or have been met.

3 1.4. “Judgment” means a final order of judgment, dismissal, and approval of the
4 Settlement, to be rendered by the Court.

5 1.5. “Parties” means Plaintiffs, Settlement Class Members, and CX.

6 1.6. “Defendants” means Air France, Air New Zealand, All Nippon Airways Company,
7 Limited, CX, China Airlines Limited, EVA Airways Corporation, Japan Airlines International
8 Company, Ltd. ; Malaysian Airline System Berhad, Philippine Airlines, Inc., Qantas Airways
9 Limited, Singapore Airlines Limited, Thai Airways International Public Co., Ltd., and Vietnam
10 Airlines Company Limited.

11 1.7. “Person” means an individual or an entity.

12 1.8. “Plaintiffs” means Meor Adlin, Franklin Ajaye, Andrew Barton, Rachel Diller,
13 Scott Frederick, David Kuo, Dickson Leung, Brendan Maloof, Donald Wortman, Harley Oda,
14 Roy Onomura, Shinsuke Kobayashi, Patricia Lee, Nancy Kajiyama, Della Ewing Chow, and
15 James Kawaguchi, and any other plaintiffs designated by the Court as class representatives,
16 individually and on behalf of the Settlement Class.

17 1.9. “Preliminary Approval Order” means an order preliminarily approving the
18 Settlement, to be rendered by the Court.

19 1.10. “Released Claims” means any and all claims, demands, actions, suits, and causes
20 of action, whether class, individual, or otherwise, damages, and liabilities of any nature, including
21 without limitation claims for costs, expenses, penalties, and attorneys’ fees, that the Releasing
22 Parties, or any one of them, ever had, now has, or hereafter can, shall, or may have, directly,
23 representatively, derivatively, or in any other capacity, against the Released Parties or any of
24 them, whether such claims are based on federal, state, local, statutory, or common law, or any
25 other law, code, rule, or regulation of any country or other jurisdiction worldwide, regardless of
26 whether such claims are known or unknown, suspected or unsuspected, asserted or unasserted,
27

1 foreseen or unforeseen, actual or contingent, liquidated or unliquidated, regardless of legal theory,
 2 and regardless of the type or amount of relief or damages claimed, or claims that have been, could
 3 have been, or in the future might have in law or in equity, on account of, arising out of, resulting
 4 from, or in any way related to any conduct regardless of where it occurred at any time prior to the
 5 Effective Date, concerning the pricing of one-way and round-trip passenger air transportation
 6 between the United States and Asia/Oceania (but only to the extent such transportation originated
 7 in the United States) by CX or Defendants, including, without limitation, pricing of fares or fuel
 8 surcharges or any other element of, component of, or surcharge upon such pricing, or with respect
 9 to the facts, occurrences, transactions or other matters that were alleged or could have been
 10 alleged in the Second Amended Consolidated Class Action Complaint in the above-captioned
 11 matter or in the complaints in any of the Actions.

12 1.11. "Released Parties" means, jointly and severally, individually and collectively: CX,
 13 its present and former parents, subsidiaries, divisions and affiliates, each of their respective past
 14 and present officers, directors, employees and agents, attorneys, representatives and the
 15 predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.
 16 As used in this definition, "affiliates" means entities controlling, controlled by or under common
 17 control with any of the other Released Parties.

18 1.12. "Releasing Parties" means, jointly and severally, and individually and collectively:
 19 Plaintiffs and all Settlement Class Members who do not exclude themselves from the Settlement
 20 Class in the manner directed by the Court in its order preliminarily approving this Settlement,
 21 their present and former parents, subsidiaries, divisions and affiliates, each of their respective past
 22 and present officers, directors, employees and agents, attorneys, representatives and the
 23 predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

24 1.13. "Settlement Class Counsel" means the law firms of Cotchett Pitre & McCarthy,
 25 LLP, San Francisco Airport Center, 840 Malcolm Road, Suite 200, Burlingame, CA 94010 and
 26
 27

1 Hausfeld, LLP, 44 Montgomery Street, San Francisco, CA, 94104 and 1700 K Street, Suite 650,
2 Washington, DC 20006.

3 1.14. "Settlement Class Members" means, collectively, all members of the Settlement
4 Class as defined in paragraph 3 herein.

5 1.15. "Settlement Fund" shall mean those monies representing the consideration to be
6 paid by CX pursuant to paragraph 11.1 of this Agreement and any interest or earnings relating to
7 such consideration as provided for herein.

8 **2. Cooperation and Effectuation of this Agreement**

9 Plaintiffs and CX shall use all reasonable efforts to effectuate this Agreement, including
10 cooperating in Plaintiffs' efforts to obtain the Court's approval of procedures (including the
11 giving of class notice under Rules 23(c) and 23(e) of the Federal Rules of Civil Procedure) and to
12 secure certification of the Settlement Class for settlement purposes only and the prompt,
13 complete, and final dismissal with prejudice of the Actions as to CX. At least five (5) court days
14 prior to the filing of any motions or other papers in connection with the Settlement, including
15 without limitation, the motions for preliminary approval of the Settlement (as contemplated in
16 paragraph 4.1 of this Agreement) and for final approval of the Settlement (as contemplated in
17 paragraph 7.1 of this Agreement), Plaintiffs will send these papers to CX.

18 **3. Class Certification**

19 In connection with Plaintiffs' motion for preliminary approval of the Settlement,
20 pursuant to paragraph 4.1 herein, Plaintiffs shall seek certification of the following Settlement
21 Class:

22 **Settlement Class:** All persons and entities that purchased passenger air transportation that
23 included at least one flight segment between the United States and Asia or Oceania from
24 Defendants, or any predecessor, subsidiary or affiliate thereof, at any time between
25 January 1, 2000 and the Effective Date. Excluded from the class are purchases of
26 passenger air transportation between the United States and the Republic of South Korea
27

1 purchased from Korean Air Lines, Ltd. and/or Asiana Airlines, Inc. Also excluded from
 2 the class are governmental entities, Defendants, former defendants in the Actions, any
 3 parent, subsidiary or affiliate thereof, and Defendants' officers, directors, employees and
 4 immediate families.

5 **4. Motion for Preliminary Approval**

6 4.1. Plaintiffs, with the cooperation of CX, shall file with the Court a motion requesting
 7 entry of a Preliminary Approval Order, *inter alia*:

- 8 (a) preliminarily approving the Settlement;
- 9 (b) scheduling a hearing (the "Fairness Hearing") to consider (i) whether the
 10 Settlement should be approved as fair, reasonable, and adequate to Settlement
 11 Class Members, and whether the Judgment should be entered dismissing the
 12 claims of Plaintiffs and all Settlement Class Members on the merits and with
 13 prejudice; and (ii) whether to approve any application by Settlement Class Counsel
 14 for an award of attorneys' fees and payment of costs and expenses;
- 15 (c) certifying the Settlement Class for settlement purposes only, and finding
 16 that each element for certification of the Settlement Class pursuant to Rule 23 of
 17 the Federal Rules of Civil Procedure is met;
- 18 (d) approving the Parties' proposed methods for giving notice of the
 19 Settlement and the Fairness Hearing to Settlement Class Members;
- 20 (e) approving the Parties' proposed forms of notice;
- 21 (f) setting the date by which any Settlement Class Member who seeks
 22 exclusion from a Settlement Class must submit a Request for Exclusion, which
 23 shall, subject to the Court's approval, be a date no earlier than forty-five (45) days
 24 after notice is given to Settlement Class Members, and no later than fourteen (14)
 25 days prior to the Fairness Hearing;

(g) setting the date by which any Settlement Class Member may serve written objections to the Settlement or to any application by Settlement Class Counsel for attorneys' fees and expenses, which shall, subject to the Court's approval, be fourteen (14) days prior to the Fairness Hearing; and

(h) enjoining initiation, commencement, or prosecution of any action or claim that is subject to the release and dismissal contemplated by this Settlement, by any Releasing Party.

4.2. Plaintiffs shall seek, and CX shall support, certification solely for purposes of this Settlement of the Settlement Class as defined herein, and appointment of Settlement Class Counsel as lead counsel for purposes of this Settlement Agreement.

5. Notice to Settlement Class Members

5.1. In accordance with the requirements of Federal Rule of Civil Procedure 23 and due process, individual notice shall be given to Settlement Class Members for whom CX currently has email or physical addresses, such Settlement Class Members having been determined by the Parties to be those whom the Parties can identify with reasonable effort, in accordance with Federal Rule of Civil Procedure 23 and to the extent not prohibited by law. In addition, in order to provide notice of the settlement to those Settlement Class Members who do not receive individual notice pursuant to paragraph 5.1 herein, notice shall be given by publication in such manner and scope as is reasonable, and consistent with the requirements of Federal Rule of Civil Procedure 23.

5.2. If any other settlement class is certified by the Court in these Actions, the parties to this Settlement Agreement agree that the notice program to be implemented pursuant to this Settlement Agreement will be combined with notice of such other settlement class(es) as may be certified by the Court. Specially, Plaintiffs, with the explicit permission of CX, shall include notice of this Settlement Agreement, pending approval from the Court of the notice program and the inclusion of CX therein.

1 5.3. The costs and expenses associated with providing notice of the settlement to
2 members of the Settlement Class pursuant to the Court-approved notification plan shall be paid
3 from the Settlement Fund, and CX shall have no further obligation to pay for the costs and
4 expenses of providing notice of the Settlement to members of the Settlement Class.

5 **6. Requests for Exclusion**

6 6.1. Any Person who wishes to seek exclusion from the Settlement Class must timely
7 submit a written request for exclusion as provided in this paragraph (a "Request for Exclusion").
8 Any Person who timely submits a Request for Exclusion shall be excluded from the Settlement
9 Class, shall have no rights with respect to this Settlement Agreement, and shall receive no
10 benefits as provided in this Settlement Agreement. A Request for Exclusion must be in writing
11 and state the name, address, and telephone number of the Person(s) seeking exclusion. A Request
12 for Exclusion must be mailed to Settlement Class Counsel at the address provided in the notices
13 to Settlement Class Members and postmarked (or mailed by overnight delivery) no later than
14 fourteen (14) days prior to the date set for the Fairness Hearing or any other date set by the Court.

15 6.2. Settlement Class Counsel shall forward a list of all Requests for Exclusion to CX's
16 counsel within three (3) business days of the expiration of the time for requesting exclusion from
17 the Class.

18 **7. Fairness Hearing**

19 7.1. At the Fairness Hearing, Plaintiffs shall seek entry of a Judgment *inter alia*:

- 20 (a) finally approving the Settlement and its terms as being fair, reasonable, and
- 21 adequate, within the meaning of Rule 23 of the Federal Rules of Civil Procedure,
- 22 and directing its consummation according to its terms;
- 23 (b) determining that the notices to Settlement Class Members constituted,
- 24 under the circumstances, the best practicable notice of this Settlement Agreement
- 25 and the Fairness Hearing, and constituted due and sufficient notice for all other
- 26 purposes to all Persons entitled to receive notice;

(c) directing that, as to CX, the Actions be dismissed with prejudice and, except as provided for in this Settlement Agreement, without costs;

(d) permanently barring and enjoining the institution, commencement, or prosecution, by any of the Releasing Parties, of any action asserting any Released Claim against any Released Party, in any local, state, federal, or other court of any nation, or in any agency or other authority or arbitral or other forum wherever located;

(e) providing that any Settlement Class Member who fails to object in the manner prescribed in the Settlement Agreement shall be deemed to have waived any objections to the settlement and the Settlement Agreement and will forever be barred from making any such objections to the Settlement or the Settlement Agreement;

(f) retaining exclusive jurisdiction over the settlement and this Settlement Agreement, including the administration and consummation of the settlement; and

(g) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to CX shall be final and entered forthwith.

7.2. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who objects to the Settlement may appear at the Fairness Hearing in person or through counsel, at their own expense, to present any evidence or argument with respect to the settlement, to the extent permitted by the Court. Written objections must be filed with the Court no later than fourteen (14) days prior to the date set for the Fairness Hearing, and mailed to Settlement Class Counsel and CX's counsel, postmarked no later than fourteen (14) days prior to the date of the Fairness Hearing. Any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived any objections to the Settlement and this

1 Settlement Agreement and will forever be barred from making any such objections to the
 2 Settlement or this Settlement Agreement.

3 **8. Effective Date of Agreement**

4 This Settlement Agreement shall become final and effective on the earliest date on which
 5 all of the following events and conditions have occurred or have been met (the "Effective Date"):

6 (a) the Court has entered the Judgment, following notice to the Settlement Class and
 7 the Fairness Hearing, approving this Settlement Agreement under Rule 23(c) of the
 8 Federal Rules of Civil Procedure and dismissing the Actions against CX with prejudice as
 9 to all Settlement Class Members, and without costs except as specified herein; and

10 (b) the time for appeal or to seek permission to appeal from the Judgment has expired
 11 or, if appealed, approval of this Settlement Agreement and the Judgment has been
 12 affirmed in its entirety by the court of last resort to which such appeal has been taken and
 13 such affirmance has become no longer subject to further appeal or review. It is agreed
 14 that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All
 15 Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated
 16 times.

17 **9. Release and Covenant not to Sue**

18 9.1. Upon the Effective Date, and in consideration of the good and valuable
 19 consideration set forth in this Settlement Agreement, the sufficiency and receipt of which is
 20 hereby acknowledged, each of the Releasing Parties shall be deemed to have, and by operation of
 21 the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all
 22 Released Claims against the Released Parties, shall have covenanted not to sue any of the
 23 Released Parties with respect to any such Released Claims, and shall be permanently barred and
 24 enjoined from instituting, commencing, prosecuting or asserting any such Released Claim against
 25 any of the Released Parties.

26
 27
 28 SETTLEMENT AGREEMENT BETWEEN
 PLAINTIFFS AND CATHAY PACIFIC AIRWAYS, LTD.; CASE NO. 3:07-cv-05634 CRB-DMR

1 9.2. With respect to any and all Released Claims, the Parties stipulate and agree that,
 2 upon the Effective Date, Plaintiffs shall expressly waive, and, upon the Effective Date, each of
 3 the Releasing Parties shall be deemed to have waived, and by operation of the Judgment shall
 4 have waived, the provisions, rights, and benefits of California Civil Code Section 1542 and
 5 South Dakota Codified Laws Section 20-7-11 (to the extent either or both of them apply to the
 6 Actions), each of which provides that “[a] general release does not extend to claims which the
 7 creditor does not know or suspect to exist in his favor at the time of executing the release, which
 8 if known by him must have materially affected his settlement with the debtor,” and of any
 9 similar provision, statute, regulation, rule, or principle of law or equity of any other state or
 10 territory of the United States or any other applicable jurisdiction. Plaintiffs and Releasing
 11 Parties expressly acknowledge that they may hereafter discover facts in addition to or different
 12 from those that any of them or their counsel now knows or believes to be true with respect the
 13 subject matter of the Released Claims or otherwise, but upon the Effective Date each Plaintiff
 14 shall expressly have, and, upon the Effective Date, each Releasing Party shall be deemed to
 15 have, and by operation of the Judgment shall have, fully, finally, and forever settled and released
 16 any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-
 17 contingent, whether or not concealed or hidden, that now exist or heretofore have existed, upon
 18 any theory of law or equity now existing or coming into existence in the future, including, but
 19 not limited to, conduct that is negligent, reckless, intentional, with or without malice, or a breach
 20 of any duty, law, or rule, without regard to the subsequent discovery of existence of such
 21 different or additional facts. Plaintiffs acknowledge, and the Releasing Parties shall be deemed
 22 to have acknowledged, and by operation of the Judgment shall have acknowledged, that the
 23 foregoing waiver was separately bargained for and a key element of the Settlement of which this
 24 release is a part.

25 9.3. Upon the Effective Date, and as part of the Judgment, CX will waive any claim for
 26 indemnity or contribution, however denominated, against any of the Defendants in the Actions
 27

1 other than CX, arising out of or related to the claims or allegations asserted by Plaintiffs in the
2 Actions, whether arising under state, federal, or foreign law as claims, cross-claims,
3 counterclaims, or third-party claims, and whether asserted in the Actions, in this Court, in any
4 federal or state court, or in any other court, arbitration proceeding, administrative agency, or other
5 forum in the United States, or elsewhere, and all such claims shall be deemed extinguished,
6 discharged, satisfied and unenforceable.

7 **10. Reservation of Settlement Class Members' Rights**

8 All rights of any Settlement Class Member against any Person other than the Released
9 Parties are specifically reserved by Plaintiffs and the Settlement Class Members. Sales of
10 passenger air transportation by CX shall to the extent permitted and/or authorized by U.S. law,
11 remain in the case against any other future defendants in the Actions as a potential basis for
12 damage claims and shall be part of any joint and several liability claims against future defendants
13 in the Actions or other persons or entities other than the Released Parties, to the extent permitted
14 and/or authorized by U.S. law.

1 **11. Settlement Consideration**

2 11.1. The total monetary amount payable by CX (comprising payment to the class, costs
3 of class notice and administration, and attorneys' fees and costs) in settlement of all claims
4 relating to the Actions, whether purchased in the United States or outside the United States, is
5 U.S.D. \$7,500,000.00. Within thirty (30) calendar days after the execution of this Agreement,
6 CX will deposit the sum identified in paragraph 11.1 into an escrow account (the "Escrow
7 Account") established by Plaintiffs. The deposited sum shall be held in the Escrow Account until
8 there is an order from the District Court concerning distribution or use of the sum identified in
9 paragraph 11.1. The Escrow Account will be established and maintained, at no cost to CX, at a
10 bank located within the Northern District of California, with such Bank serving as escrow agent
11 ("Escrow Agent") subject to escrow instructions mutually acceptable to Settlement Class Counsel
12 and CX, such escrow to be administered under the Court's continuing supervision and control.

13 11.2. The Escrow Agent shall cause the funds deposited in the Escrow Account to be
14 invested in instruments backed by the full faith and credit of the United States Government or
15 fully insured by the United States Government or an agency thereof, or money market funds
16 invested substantially in such instruments, and shall reinvest any income from these instruments
17 and the proceeds of these instruments as they mature in similar instruments at their then-current
18 market rates.

19 11.3. All funds held in the Escrow Account shall be deemed and considered to be in
20 custodia legis of the Court, and shall remain subject to the jurisdiction of the Court, until such
21 time as such funds shall be distributed pursuant to this Settlement Agreement and/or further
22 order(s) of the Court.

23 11.4. Plaintiffs and CX intend for the Settlement Fund to be treated as being at all times
24 a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. In addition, the
25 Escrow Agent shall timely make such elections as necessary or advisable to carry out the
26 provisions of paragraph 11.6, including the "relation-back election" (as defined in Treas. Reg.
27

28 SETTLEMENT AGREEMENT BETWEEN
PLAINTIFFS AND CATHAY PACIFIC AIRWAYS, LTD.; CASE NO. 3:07-cv-05634 CRB-DMR

1 1.4681(j)(2)(ii) back to the earliest permitted date. Such elections shall be made in compliance
 2 with the procedures and requirements contained in such regulations. It shall be the responsibility
 3 of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for
 4 signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

5 11.5. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and
 6 the regulations promulgated thereunder the "administrator" shall be the Escrow Agent. The
 7 Escrow Agent shall timely and properly file all informational and other tax returns necessary or
 8 advisable with respect to the Settlement Fund (including without limitation the returns described
 9 in Treas. Reg. § 1.468B-2(k)(1)). Such returns (as well as the election described in paragraph 11.
 10 4) shall be consistent with paragraph 11. 6 and in all events shall reflect that all Taxes, as defined
 11 below (including any estimated Taxes, interest or penalties), on the income earned by the
 12 Settlement Fund shall be paid out of the Settlement Fund as provided in paragraph 11.8 hereof.

13 11.6. All (i) taxes (including any estimated taxes, interest or penalties) arising with
 14 respect to the income earned by the Settlement Fund, including any taxes or tax detriments that
 15 may be imposed upon CX or any other Released Party with respect to any income earned by the
 16 Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified
 17 settlement fund" for federal or state income tax purposes ("Taxes"); and (ii) expenses and costs
 18 incurred in connection with the operation and implementation of paragraphs 11. 6 through 11. 8
 19 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and
 20 distribution costs and expenses relating to filing (or failing to file) the returns described in
 21 paragraph 11.7 ("Tax Expenses")), shall be paid out of the Settlement Fund.

22 11.7. Neither CX nor any other Released Party nor their respective counsel shall have
 23 any liability or responsibility for the Taxes or the Tax Expenses. Further, Taxes and Tax
 24 Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund
 25 and shall be timely paid, subject to Court approval, by the Escrow Agent out of the Settlement
 26 Fund. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to
 27

1 withhold from distribution to any claimants authorized by the Court any funds necessary to pay
 2 such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses
 3 (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2 (1)(2)).
 4 Neither CX nor any other Released Party is responsible nor shall they have any liability therefor.
 5 CX shall provide the Escrow Agent with the statement described in Treasury Regulation
 6 §1.468B-3(c) on or before February 15th of the calendar year following the calendar year in
 7 which the Settlement Consideration is deposited in the Escrow Account. Plaintiff and CX agree
 8 to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the
 9 extent reasonably necessary to carry out the provisions of paragraphs 11.3 through 11.8.

10 11.8. If this Agreement does not receive final Court approval, or if the Actions are not
 11 certified as a class action for settlement purposes, or if this Agreement is terminated or voided for
 12 any reason, then all amounts paid by CX into the Settlement Fund (other than costs that may
 13 already have reasonably been incurred or expended in accordance with paragraphs 5.3 and 11)
 14 shall be returned to CX from the Escrow Account by the Escrow Agent, along with any interest
 15 accrued thereon, within ten (10) business days after such order becomes final and non-appealable.

16 11.9. If, after all costs (including notice costs), attorneys' fees, and any other expenses
 17 have been paid from the Settlement Fund, there are any remaining funds, they shall be distributed
 18 pro-rata to the Settlement Class in a manner consistent with a plan of allocation prepared by
 19 Settlement Class Counsel, or in Settlement Class Counsel's reasonable judgment, be made the
 20 subject of an application to the Court by Plaintiffs for *cypres* distribution in accordance with
 21 governing standards in the Ninth Circuit.

22 **12. Administration of the Settlement**

23 The costs and expenses of administration of the settlement pursuant to the terms of this
 24 Settlement Agreement shall be paid out of the Settlement Fund. The Claims Administrator(s)
 25 shall, on a monthly basis, submit invoices, with appropriate supporting documentation, to
 26 Settlement Class Counsel for payment from the Escrow Account. To the extent practicable, the
 27

28 SETTLEMENT AGREEMENT BETWEEN
 PLAINTIFFS AND CATHAY PACIFIC AIRWAYS, LTD.; CASE NO. 3:07-cv-05634 CRB-DMR

1 administration of this Settlement shall be coordinated with the administration of other aspects of
 2 these Actions, including, but not limited to, any other settlement(s) entered into between Plaintiffs
 3 and any other settling defendant(s) and/or the administration of any recovery obtained on behalf
 4 of the class by summary judgment or trial.

5 **13. Withdrawal From or Modification of the Settlement**

6 If the Court declines to approve this Settlement Agreement or any material part hereof, or
 7 if such approval is materially modified or set aside on appeal, or if the Court does not enter the
 8 Judgment, or if the Court enters the Judgment and appellate review is sought and, on such review,
 9 such Judgment is not affirmed or is materially modified, then CX and Plaintiffs shall each, in
 10 their respective sole discretion, have the option to rescind this Settlement Agreement in its
 11 entirety. If for any reason (including a party's exercise of a valid right to rescind this Settlement
 12 Agreement), the Settlement Agreement does not receive final Court approval, then the
 13 certification of the Settlement Class shall become null and void without further Court action, and
 14 shall not be used or referred to for any further purpose in the Action or in any other action or
 15 proceeding, and shall not prejudice any party in arguing for or against contested class certification
 16 in this Action or in any other proceeding.

17 **14. Cooperation**

18 14.1. CX agrees to perform the following acts following execution of this Agreement:

19 (a) respond in good faith to reasonable questions posed by Settlement Class Counsel
 20 concerning the transactional data previously produced by CX.

21 (b) Provide assistance reasonably necessary to establish the admissibility of all documents
 22 it has produced, including, as reasonably necessary, producing at trial in person, by
 23 deposition or by affidavit, whichever is legally required, representatives to testify as to
 24 the genuineness, status as business records, and authenticity of documents.

25 (c) Making available no more than two (2) current employees as declarant(s) and/or
 26 deponents with knowledge of the factual matters asserted by any Defendant(s) seeking
 27

1 summary disposition of these Actions before trial and with the ability to authenticate
2 documents relevant to the motion(s) for summary disposition. This paragraph is not
3 intended to create any obligation on the part of CX if CX lacks knowledge concerning
4 the factual basis of the Defendants' motion(s).

5 (d) For a period up to and including twelve (12) months from the execution date of this
6 Agreement, making CX's lead counsel available for up to a total of three (3) meetings
7 for reasonable consultation, including but not limited to consultation regarding the
8 involvement of other airlines in the alleged conspiracy and the interpretation of
9 documents. A meeting for the purposes of this paragraph shall last no longer than four
10 hours.

11 (e) Making available upon reasonable notice and at mutually agreed dates and locations,
12 for interview at a location or locations of CX's choice up to three (3) current employee
13 witnesses, to be agreed upon by Settlement Class Counsel and counsel for CX, to
14 provide information about Plaintiffs' substantive allegations. Upon request of CX,
15 Plaintiffs shall provide a translator for interviews at Plaintiffs' expense. A meeting for
16 the purposes of this paragraph shall last no longer than four hours. In the event that
17 Plaintiffs believe more time is necessary for any interview conducted pursuant to this
18 paragraph, they may request additional time from CX and CX shall consider such
19 request in good faith. Witnesses under this section, provided they are still employees
20 of CX at the time of trial, shall also be made available, with Plaintiffs' responsible for
21 the reasonable costs for food and lodging for these witnesses, to testify at trial as
22 needed.

23 (f) Providing assistance reasonably necessary to notify the class of this Settlement
24 Agreement and the fairness hearing contemplated in Paragraph 7, above.

25 (g) The cooperation obligations of CX under this section are to be carried out in good
26 faith for the benefit of the Plaintiffs and the class they purport to represent.
27

1 14.2. All documents and information provided pursuant to paragraph 14.1 shall be
 2 confidential and shall be used only in connection with the Actions and only as provided under
 3 the terms of the Protective Order. The confidentiality requirements of this paragraph shall
 4 continue to bind Plaintiffs and Settlement Class counsel even in the event that the Settlement
 5 Agreement is terminated or rescinded, rejected by the Court, or otherwise fails to take or remain
 6 in effect.

7 14.3. The cooperation set forth in paragraph 14.1 shall constitute the exclusive means by
 8 which Plaintiffs and Settlement Class counsel may obtain discovery from CX or its current or
 9 former officers, directors, or employees, whether under the Federal Rules of Civil Procedure or
 10 the laws or rules of any other jurisdiction.

11 **15. No Admissions**

12 15.1. The Parties intend the Settlement as described herein to be a final and complete
 13 resolution of all disputes between them with respect to the Actions and to compromise claims
 14 that are contested, and it shall not be deemed an admission by any party as to the merits of any
 15 claim or defense or any allegation made in the Actions.

16 15.2. The Parties acknowledge that CX is entering into this Settlement solely to
 17 eliminate the burden and expense of protracted litigation. Neither the Settlement nor this
 18 Settlement Agreement, nor any act performed or document executed pursuant to or in
 19 furtherance of the Settlement or this Settlement Agreement is or may be deemed to be or may be
 20 used as an admission of, or evidence of, CX's conduct having violated the laws of any state,
 21 country, or other jurisdiction or of having caused any harm to any Person. Neither the
 22 Settlement nor this Settlement Agreement, nor any act performed or document executed pursuant
 23 to or in furtherance of the Settlement or this Settlement Agreement, shall be admissible in any
 24 proceeding for any purpose, except to consummate or enforce the terms of the Settlement, and
 25 except that the Released Parties may file this Settlement Agreement or the Judgment in any
 26 action for any purpose, including, but not limited to, in support of a defense or counterclaim
 27

1 based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment
 2 bar, reduction, or any other theory of claim preclusion or issue preclusion or similar defense or
 3 counterclaim.

4 **16. Settlement Class Counsel's Attorneys' Fees and Expenses**

5 16.1. The procedure for, and the allowance or disallowance by the Court of, any
 6 application by Settlement Class Counsel for attorneys' fees and expenses are not part of the
 7 Settlement, and are to be considered by the Court separately from the Court's consideration of the
 8 fairness, reasonableness and adequacy of the Settlement. Any order or proceeding relating to any
 9 application for, or approval of, attorneys' fees and expenses, the pendency of any such
 10 application, or any appeal or review of an order relating thereto or reversal or modification
 11 thereof, shall not operate to terminate or cancel this Settlement Agreement, or affect or delay the
 12 finality of the Judgment. CX agrees that Settlement Class Counsel may withdraw from the
 13 Settlement Fund any amount awarded by the Court for attorneys' fees and costs five (5) days
 14 following the Court's award, subject to an appropriate financial undertaking required by the Court
 15 in the event of an appeal of the Court's award of attorneys' fees and expenses.

16 16.2. CX shall have no responsibility for, and no liability whatsoever with respect to, the
 17 division of attorneys' fees, costs, and/or expenses among Settlement Class Counsel, and any
 18 negotiation or dispute among Settlement Class Counsel in that regard shall not operate to
 19 terminate or cancel this Settlement Agreement, or affect or delay the finality of the Judgment.

20 16.3. Except as otherwise provided herein, Plaintiffs and CX shall each be responsible
 21 for bearing their own costs and fees incurred in this Action.

22 **17. Miscellaneous Provisions**

23 17.1. CX expressly represents that it has obtained all required approvals from its Board
 24 of Directors for this Settlement Agreement.

25 17.2. This Settlement Agreement shall constitute the entire agreement between the
 26 Parties pertaining to the Settlement of the Actions against CX and supersedes any and all prior
 27

28 SETTLEMENT AGREEMENT BETWEEN
 PLAINTIFFS AND CATHAY PACIFIC AIRWAYS, LTD.; CASE NO. 3:07-cv-05634 CRB-DMR

1 and contemporaneous undertakings of the Parties in connection therewith. The terms of the
2 Settlement Agreement are and shall be binding upon each of the Parties hereto, their heirs,
3 executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-
4 interest, and assigns, and upon all other Persons claiming any interest in the subject matter hereto
5 through any of the parties hereto including any Settlement Class Members.

6 17.3. This Settlement Agreement may be modified or amended only by a writing
7 executed by Plaintiffs and CX, subject (if after preliminary or final approval by any court) to
8 approval by the Court. Amendments and modifications may be made without notice to the
9 Settlement Class unless notice is required by law or by the Court.

10 17.4. None of the Parties hereto shall be considered to be the drafter of this Settlement
11 Agreement or any provision hereof for the purpose of any statute, case law or rule of
12 interpretation or construction that would or might cause any provision to be construed against the
13 drafters hereof.

14 17.5. Plaintiffs and CX acknowledge that they have been represented by counsel, and
15 have made their own investigations of the matters covered by this Settlement Agreement to the
16 extent they have deemed it necessary to do so. Therefore, Plaintiffs and CX and their respective
17 counsel agree that they will not seek to set aside any part of the Settlement Agreement on the
18 grounds of mistake. Moreover, Plaintiffs and CX and their respective counsel understand, agree,
19 and expressly assume the risk that any fact may turn out hereinafter to be other than, different
20 from, or contrary to the facts now known to them or believed by them to be true, and further agree
21 that the Settlement Agreement shall be effective in all respects and shall not be subject to
22 termination, modification, or rescission by reason of any such difference in facts.

23 17.6. All terms of this Settlement Agreement shall be governed by and interpreted
24 according to the substantive laws of the State of California, without regard to its choice of law or
25 conflicts of laws principles.

26
27
28 SETTLEMENT AGREEMENT BETWEEN
PLAINTIFFS AND CATHAY PACIFIC AIRWAYS, LTD.; CASE NO. 3:07-cv-05634 CRB-DMR

1 17.7. CX, Plaintiffs and all Settlement Class Members hereby irrevocably submit to the
2 exclusive jurisdiction of the United States District Court for the Northern District of California
3 for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement
4 or the applicability of this Settlement Agreement, including, without limitation, any suit, action,
5 proceeding or dispute relating to the release provisions herein.

6 17.8. This Settlement Agreement may be executed in counterparts. Facsimile or pdf
7 signatures shall be considered as valid signatures for purposes of execution of this Settlement
8 Agreement, but original signature pages shall thereafter be collated for filing of this Settlement
9 Agreement with the Court.

10 17.9. Each of the undersigned attorneys represents that he or she is fully authorized to
11 enter into the terms and conditions of, and execute, this Settlement Agreement, subject to Court
12 approval, and the undersigned Settlement Class Counsel represent that they are authorized to
13 execute this Settlement Agreement on behalf of Plaintiffs and the proposed Settlement Class.

14
15
16
17 * * *
18
19
20
21
22
23
24
25
26
27

28 SETTLEMENT AGREEMENT BETWEEN
PLAINTIFFS AND CATHAY PACIFIC AIRWAYS, LTD.; CASE NO. 3:07-cv-05634 CRB-DMR

1 IN WITNESS HEREOF, the Parties hereto through their fully authorized representatives
2 have agreed to this Settlement Agreement as of the date first written above.

3 Dated: July 22, 2014

4 By: 
5

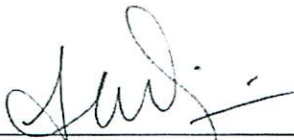
6 Christopher L. Lebsock
7 **Hausfeld LLP**
8 44 Montgomery Street
9 San Francisco, CA 94111
10 (415) 633-1908 (telephone)
11 (415) 358-4980 (facsimile)

12 *Co-Counsel for Plaintiffs and Settlement*
13 *Class Counsel*

14 By: 
15

16 Steven N. Williams
17 **Cotchett, Pitre & McCarthy, LLP**
18 San Francisco Airport Office Center
19 840 Malcolm Road, Suite 200
20 Burlingame, CA 94010
21 (650) 697-6000 (telephone)
22 (650) 697-0577 (facsimile)

23 *Co-Counsel for Plaintiffs and Settlement*
24 *Class Counsel*

By: 
25

26 David H. Bamberger
27 F. Martin Dajani
28 Deana L. Cairo
DLA Piper LLP
500 Eighth Street, NW
Washington, DC 20004
(202) 799-4500 (telephone)
(202) 799-5500 (facsimile)

Counsel for Cathay Pacific Airways,
Ltd.

28 SETTLEMENT AGREEMENT BETWEEN
PLAINTIFFS AND CATHAY PACIFIC AIRWAYS, LTD.; CASE NO. 3:07-cv-05634 CRB-DMR