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

17
18 **IN RE TRANSPACIFIC PASSENGER**
AIR TRANSPORTATION ANTITRUST
19 **LITIGATION**

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

Honorable Charles R. Breyer

20 **This Document Relates to:**

21 **All Actions**
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SETTLEMENT AGREEMENT BETWEEN
PLAINTIFFS AND EVA AIRWAYS
CORPORATION

28 **SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS AND EVA AIRWAYS CORPORATION;**
CASE NO. 3:07-cv-05634 CRB-DMR

1 This Settlement Agreement (the “Settlement Agreement”), dated February 27, 2018 (the
2 “Settlement Agreement Execution Date”), is made and entered into by and among defendant
3 EVA Airways Corporation (“EVA”) and Meor Adlin, Franklin Ajaye, Andrew Barton, Rachel
4 Diller, Scott Frederick, David Kuo, Dickson Leung, Brendan Maloof, Donald Wortman, Harley
5 Oda, Roy Onomura, Shinsuke Kobayashi, Patricia Lee, Nancy Kajiyama, Della Ewing Chow,
6 James Kawaguchi, and Sharon Christian¹ (collectively, “Plaintiffs”), both individually and as
7 representatives of a class of similarly situated persons who during the class period purchased
8 passenger air transportation originating in the United States that included at least one flight
9 segment to Asia or Oceania from EVA or any of the other defendants in the Action, as defined
10 herein, in the MDL class action In re Transpacific Passenger Air Transportation Antitrust
11 Litigation, 07-cv-5634-CRB, MDL No. 1913, currently pending before the Honorable Charles R.
12 Breyer in the United States District Court for the Northern District of California, San Francisco
13 Division.

14 WHEREAS, Plaintiffs have filed a complaint alleging, among other things, that EVA
15 participated in an unlawful conspiracy or conspiracies to restrain trade, pursuant to which EVA
16 and other Defendants agreed to fix, raise, maintain, and/or stabilize prices for air passenger
17 travel, including associated surcharges, for international passenger air transportation involving
18 at least one flight segment originating in the United States to Asia/Oceania;

19 WHEREAS, EVA denies Plaintiffs’ allegations and has asserted a number of
20 defenses to Plaintiffs’ claims;

21 WHEREAS, the Court partially denied Defendants’ motion for summary judgment,
22 including EVA’s motion, regarding the filed rate doctrine, which was affirmed on appeal
23 and is now subject to a petition for writ of certiorari in the United States Supreme Court;

24 WHEREAS, Settlement Class Counsel have concluded, after an investigation into the
25 facts and the law, and after carefully considering the circumstances of claims made by Plaintiffs
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27 ¹ Settlement Class Counsel intend to request that the Court add Sharon Christian as a plaintiff.
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1 and the Class, and the possible legal and factual defenses thereto, that it is in the best interests of
2 Plaintiffs and the Settlement Class to enter into this Settlement Agreement with EVA to avoid
3 the uncertainties and risks of litigation, and that the settlement set forth herein is fair, reasonable,
4 adequate and in the best interests of the Settlement Class;

5 WHEREAS, EVA, despite its belief that there is no legal or factual basis for its liability in
6 this matter, and that it has good defenses with respect to the claims alleged, has nevertheless
7 agreed to enter into this Settlement Agreement to avoid the expense, inconvenience, and the
8 distraction of potentially burdensome and protracted litigation;

9 WHEREAS, Plaintiffs and EVA agree that neither this Settlement Agreement nor any
10 statement made in the negotiation thereof shall be deemed or construed to be an admission by or
11 evidence against EVA or any of its alleged co-conspirators or evidence of the truth of any of
12 Plaintiffs' allegations; and

13 WHEREAS, Settlement Class Counsel and EVA have engaged in arm's-length settlement
14 negotiations and have reached this Settlement Agreement, which, subject to approval of the
15 Court, embodies all of the terms and conditions of the settlement between Plaintiffs and EVA.

16 NOW, THEREFORE, in consideration of the promises, covenants, agreements and
17 releases set forth herein and for other good and valuable consideration, and incorporating the
18 above recitals herein, it is agreed by the undersigned, on behalf of EVA, Plaintiffs, and the
19 Settlement Class, that the Claims of Plaintiffs and the Settlement Class that have been or could be
20 asserted in the Action be settled, compromised, and dismissed on the merits and with prejudice as
21 to EVA, and, except as hereinafter provided, without costs as to Plaintiffs, the Settlement Class,
22 or EVA, subject to the approval of the Court, on the following terms and conditions:

23 **1. Definitions**

24 1.1. "Action" means the class action captioned In re Transpacific Passenger Air
25 Transportation Antitrust Litigation, 07-cv-5634-CRB, MDL No. 1913 (N.D. Cal.), currently
26 pending before the Honorable Charles R. Breyer in the United States District Court for the
27 Northern District of California, San Francisco Division, and all actions relating to the claims
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1 alleged in “Plaintiffs’ Second Amended Consolidated Class Action Complaint” filed in that
2 litigation that were originally filed in the United States District Court for the Northern District of
3 California, those that have been or are subsequently filed in or transferred for consolidation
4 and/or coordinated pretrial proceedings to the Northern District of California by the Judicial Panel
5 on Multidistrict Litigation as part of MDL No. 1913, all actions pending such transfer (including
6 but not limited to “tag-along” actions), and all actions that may be transferred in the future, or are
7 otherwise based on the conduct alleged in the above-captioned litigation, all actions now or
8 previously pending before the United States Ninth Circuit Court of Appeal, Case Nos. 15-15364,
9 15-15362, and all actions now pending before the Supreme Court of the United States.

10 1.2. “Claims” shall mean any and all actions, suits, claims, rights, demands,
11 assertions, allegations, causes of action, controversies, proceedings, losses, damages, injuries,
12 attorneys’ fees, costs, expenses, debts, liabilities, judgments, or remedies, whether equitable or
13 legal.

14 1.3. “Court” means the United States District Court for the Northern District of
15 California.

16 1.4. “Defendants” means Air France, Air New Zealand, All Nippon Airways
17 Company, Limited, Cathay Pacific Airways Limited, China Airlines, Ltd., EVA, Japan
18 Airlines International Company, Ltd., Malaysian Airline System Berhad, Philippine Airlines,
19 Inc., Qantas Airways Limited, Singapore Airlines Limited, Thai Airways International Public
20 Co., Ltd., and Vietnam Airlines.

21 1.5. “Document” is defined to be synonymous in meaning and equal in scope to the
22 usage of this term in Rule 34(a) of the Federal Rules of Civil Procedure. A draft or non-identical
23 copy is a separate document within the meaning of this term.

24 1.6. “Execution Date” means February __, 2018, the date by which all parties have
25 executed this Settlement Agreement.

26 1.7. “Effective Date” means the earliest date on which all of the events and
27 conditions specified in Paragraph 8 herein have occurred or have been met.
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1 1.8. "Escrow Account" means the Agreement Among Citibank, N.A. as "Escrow
2 Agent", Cotchett, Pitre & McCarthy, LLP & Hausfeld LLP as "Settlement Class Counsel", and
3 Japan Airlines Co., Ltd. as "Settling Defendant," account number 25D078455768, as
4 subsequently amended on September 3, 2013.

5 1.9. "Judgment" means a final order of judgment by the Court dismissing the Action
6 as to any Released Party and approving the Settlement Agreement under Rule 23(e) of the
7 Federal Rules of Civil Procedure, as described in Paragraph 7.1 herein.

8 1.10. "Opt-Out Percentage" means the dollar amount of Opt-Out Sales as defined in
9 Paragraph 1.12 divided by EVA's total revenue from purchases of transpacific passenger air
10 travel originating in the United States during the Class Period if such data is reasonably available
11 or during some other period as agreed by the Parties.

12 1.11. "Opt-Out Plaintiff" means a person, otherwise qualifying as a member of the
13 Settlement Class, that has validly elected to be excluded from the Settlement Class pursuant to
14 Paragraph 6.1 herein.

15 1.12. "Opt-Out Sales" means the dollar amount of purchases of transpacific passenger
16 air travel originating in the United States by Opt-Out Plaintiffs during the Class Period if such
17 data is reasonably available or during some other period as agreed by the Parties.

18 1.13. "Parties" means Plaintiffs, Settlement Class Members, and EVA.

19 1.14. "Person" means an individual or an entity.

20 1.15. "Plaintiffs" means Meor Adlin, Franklin Ajaye, Andrew Barton, Rachel Diller,
21 Scott Frederick, David Kuo, Dickson Leung, Brendan Maloof, Donald Wortman, Harley Oda,
22 Roy Onomura, Shinsuke Kobayashi, Patricia Lee, Nancy Kajiyama, Della Ewing Chow, James
23 Kawaguchi, and Sharon Christian.

24 1.16. "Preliminary Approval Order" means an order preliminarily approving the
25 settlement, to be rendered by the Court.

26 1.17. "Released Claims" means any and all Claims, demands, actions, suits, and causes
27 of action, damages, and liabilities of any nature, including without limitation claims for costs,
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1 expenses, penalties, and attorneys' fees, whether class, individual or otherwise, that the Releasing
2 Parties, or any of them, ever had, now has, or hereafter can, shall, or may have, directly,
3 representatively, derivatively, or in any other capacity, against the Released Parties or any of them,
4 whether such claims are based on federal, state, local, statutory, or common law, or any other law,
5 code, rule, or regulation of any country or other jurisdiction worldwide, whether such claims are
6 known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen,
7 actual or contingent, liquidated or unliquidated, regardless of legal theory, and regardless of the
8 type or amount of relief or damages claimed, or Claims that have been, could have been, or in the
9 future might have been, claimed in law or in equity, on account of, arising out of, resulting from,
10 or in any way related to any conduct regardless of where it occurred at any time prior to the
11 Execution Date, concerning the purchase of passenger air transportation between the United States
12 and Asia/Oceania, whether originating in the U.S. or Asia, including but not limited to the pricing,
13 selling, discounting, or marketing of one-way and round-trip passenger air transportation between
14 the United States and Asia/Oceania by EVA or Defendants, including, without limitation, pricing
15 of fares or fuel or insurance surcharges or any other element of, component of, or surcharge upon
16 such pricing, or claims brought or that could have been brought based in whole or in part on the
17 facts, occurrences, transactions or other matters that were alleged or could have been alleged in
18 the Second Amended Consolidated Class Action Complaint in the above-captioned matter or
19 otherwise related to the subject of that litigation, or in the complaints in the Action.

20 1.18. "Released Parties" means, jointly and severally, individually and collectively:
21 EVA, its present and former parents, subsidiaries, divisions, affiliates, and departments, its
22 respective past and present officers, directors, employees, agents, attorneys, servants,
23 representatives of each of the aforesaid entities, and the predecessors, successors, heirs, executors,
24 administrators, and assigns of each of the foregoing. As used in this definition, "affiliates" means
25 entities controlling, controlled by, or under common control with any of the Released Parties.

26 1.19. "Releasing Parties" means, jointly and severally, and individually and
27 collectively: Plaintiffs and all Settlement Class Members, their predecessors, successors, present
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1 and former parents, subsidiaries, divisions, affiliates, and departments, each of their respective
2 past and present officers, directors, employees, agents, attorneys, servants, and representatives,
3 and the predecessors, successors, heirs, executors, administrators, and assigns of each of the
4 foregoing. As used in this definition, “affiliates” means entities controlling, controlled by, or
5 under common control with any of the Releasing Parties.

6 1.20. “Settlement Amount” means Twenty-One Million dollars (\$21,000,000.00), plus
7 Two Hundred Fifty Thousand dollar (\$250,000.00) for costs of notice and administration, totaling
8 Twenty-One Million Two Hundred Fifty Thousand dollars (\$21,250,000.00) in United States
9 currency. The Settlement Amount shall be paid over time, without interest, in the following
10 installments: (1) Six Million Seven Hundred Fifty Thousand dollars (\$6,750,000.00), which
11 includes Two Hundred Fifty Thousand dollars (\$250,000.00) for costs of notice and
12 administration, payable within 5 business days following preliminary approval of the settlement;
13 (2) Five Million dollars (\$5,000,000.00) on or before December 31, 2018; (3) Five Million dollars
14 (\$5,000,000.00) on or before December 31, 2019; and (4) Four Million Five Hundred Thousand
15 dollars (\$4,500,000.00) on or before June 30, 2020. EVA shall be entitled to a reduction in the
16 Settlement Amount described herein that equals the difference between the Settlement Amount
17 and the lower of any settlement amount that All Nippon Airways Company, Limited (“ANA”)
18 might in the future agree to pay as a result of some or all of the conduct alleged by Plaintiffs in
19 this Action, but only in connection with a settlement for which both of the following conditions
20 occur: (1) ANA settles its potential liability in this Action for less than the Settlement Amount,
21 and (2) at the time of ANA’s settlement in this Action no Triggering Event has occurred.

22 Triggering Events shall mean: (1) the issuance of an order in this Action denying class
23 certification of a putative class in which ANA is defined as a defendant (or issuance of an order in
24 this Action decertifying any class previously certified against ANA); (2) issuance of an order
25 granting summary judgment and/or summary adjudication in favor of ANA in this Action; (3)
26 commencement of trial on the merits of this Action (or any subset of the claims made in this
27 Action); and (4) enactment of a federal class action reform bill that (a) requires, in order to certify
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1 a class, a showing (i) that each proposed class member suffered or suffers the same type and
2 scope of injury as the named class representatives, and (ii) that there is a reliable and
3 administratively feasible mechanism for the Court to determine whether putative class members
4 fall within the class definition and for the distribution of any monetary relief directly to a
5 substantial majority of class members; and (b) applies to civil cases that are pending at the time of
6 its enactment.

7 1.21. "Settlement Class Counsel" means the law firms of Cotchett Pitre & McCarthy,
8 LLP, San Francisco Airport Office Center, 840 Malcolm Road, Suite 200, Burlingame, CA 94010
9 and Hausfeld, LLP, 600 Montgomery Street, San Francisco, CA, 94111 and 1700 K Street, Suite
10 650, Washington, DC 20006.

11 1.22. "Settlement Class Member" means each member of the Settlement Class as
12 defined in Paragraph 3 herein, who does not timely and validly elect to be excluded from the
13 Settlement Class.

14 1.23. "Settlement Fund" shall mean those monies representing the consideration to be
15 paid by EVA in settlement of the Action pursuant to Paragraph 11.1 of this Settlement
16 Agreement and income earned on those amounts.

17 **2. Cooperation and Effectuation of this Settlement Agreement**

18 Plaintiffs and EVA shall use all reasonable efforts to effectuate this Settlement
19 Agreement, including cooperating in Plaintiffs' efforts to obtain the Court's approval of
20 procedures (including the giving of class notice under Rules 23(c) and 23(e) of the Federal Rules
21 of Civil Procedure), and to secure certification of the Settlement Class for settlement purposes
22 only and the complete and final dismissal with prejudice of the Action as to EVA. Prior to the
23 filing of any motions or other papers in connection with the settlement, including without
24 limitation, the motions for preliminary approval of the settlement (as contemplated in Paragraph
25 4.1 of this Settlement Agreement) and for final approval of the settlement (as contemplated in
26 Paragraph 7.1 of this Settlement Agreement), Plaintiffs will send these papers to EVA. The text
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1 of any proposed form of order approving this Settlement Agreement shall be agreed upon by
2 Plaintiffs and EVA before it is submitted to the Court.

3 **3. Class Certification**

4 The parties to this Settlement Agreement hereby stipulate for purposes of this settlement
5 only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are
6 satisfied, and, subject to Court approval, the following class shall be certified for settlement
7 purposes as to EVA:

8 Settlement Class: All persons and entities that purchased passenger air
9 transportation originating in the United States that included at least one flight
10 segment to Asia or Oceania, from Defendants, or any predecessor, subsidiary, or
11 affiliate thereof, at any time between January 1, 2000 and December 1, 2016.

12 Excluded from the class are governmental entities, Defendants, former
13 Defendants in the Action, any parent, subsidiary or affiliate thereof, and
14 Defendants' officers, directors, employees and immediate families.

15 **4. Motion for Preliminary Approval**

16 4.1. At an appropriate time after the Execution Date of this Settlement Agreement,
17 and after consultation and agreement as to timing with counsel for EVA, Plaintiffs shall file
18 with the Court a motion requesting entry of a Preliminary Approval Order, *inter alia*:

- 19 (a) finding the settlement proposed in the Settlement Agreement has been
20 negotiated at arm's length, and preliminarily approving the settlement as fair,
21 reasonable, and adequate, and in the best interests of the Settlement Class;
22 scheduling a hearing to consider (i) whether the proposed settlement should be
23 approved as fair, reasonable, and adequate to Settlement Class Members, and
24 whether the Judgment should be entered dismissing the claims of Plaintiffs and all
25 Settlement Class Members against EVA on the merits and with prejudice; and (ii)
26 whether to approve any application by Settlement Class Counsel for an award of
27 attorneys' fees and payment of costs and expenses (the "Fairness Hearing");
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- 1 (b) certifying the Settlement Class for settlement purposes only, designating Class
2 representatives and Settlement Class Counsel as defined herein, and finding that
3 each element for certification of the Settlement Class pursuant to Rule 23 of the
4 Federal Rules of Civil Procedure is met; and
- 5 (c) enjoining initiation, commencement, or prosecution of any action or proceeding
6 asserting any Claims released in Paragraph 9 by any Releasing Party.

7 4.2. Plaintiffs shall seek, and EVA shall not oppose, certification solely for purposes
8 of this settlement of the Settlement Class as defined herein, and appointment of Settlement
9 Class Counsel as lead counsel for purposes of this Settlement Agreement.

10 **5. Notice to Settlement Class Members**

11 5.1. After preliminary approval of this Settlement Agreement and submission to the
12 Court and approval of a program to provide notice to the Class in accordance with the
13 requirements of Federal Rule of Civil Procedure 23 and due process, Settlement Class Counsel
14 shall provide those Settlement Class Members identified with notice of the settlement and the
15 date of the Fairness Hearing in a manner to be approved by the Court. EVA has determined that
16 individual contact information for Settlement Class Members is not reasonably available and/or
17 that any such personal information of Settlement Class Members that might conceivably be
18 found in the business records of EVA could not be released without violating laws of the
19 Republic of China and/or the laws of other countries with jurisdiction over EVA's business
20 operations.

21 5.2. Upon approval by the Court of a program to provide notice to the Class,
22 Settlement Class Counsel shall cause a summary notice of the settlement to be published in such
23 manner and scope as is reasonable and consistent with the requirements of Federal Rule of Civil
24 Procedure 23. Plaintiffs shall develop, with the cooperation of EVA and any other settling
25 defendant, the details of the publication notice program. Plaintiffs shall submit a publication
26 notice program, the text of which shall be provided to EVA by Plaintiffs before submission to
27 the Court.

1 5.3. The parties to this Settlement Agreement agree that the notice program to be
2 implemented pursuant to this Settlement Agreement may be combined with notice of such other
3 class(es) as may be certified by the Court. The parties to this Settlement Agreement agree that to
4 the extent that any notice program approved by the Court differs from any description of the
5 program to give notice to the class described in this Settlement Agreement, the orders of the
6 Court shall govern and no variation between such Court order and the terms of this Settlement
7 Agreement shall be deemed a breach of this Settlement Agreement, nor give rise to any right of
8 any party to void or withdraw from this Settlement Agreement.

9 5.4. Except as provided herein, the costs and expenses associated with providing notice
10 of the settlement to members of the Settlement Class pursuant to the Court-approved notification
11 plan shall be paid from the Settlement Fund, and EVA shall have no obligation to pay for the costs
12 and expenses of providing notice of the settlement to members of the Settlement Class. EVA agrees
13 that Settlement Class Counsel may withdraw funds as necessary from the Settlement Fund for the
14 purpose of providing notice to the class of the settlement as described herein, which shall be non-
15 refundable. In the event that the settlement is not finally approved, EVA shall not be entitled to any
16 sums spent or owing for purposes of disseminating notice and/or administering the notice program
17 as approved by the Court.

18 **6. Requests for Exclusion**

19 6.1. Any Person that wishes to seek exclusion from the Settlement Class must timely
20 submit a written request for exclusion as provided in this Paragraph ("Request for Exclusion").
21 Any Person who timely submits a Request for Exclusion shall be excluded from the Settlement
22 Class, shall have no rights with respect to this Settlement Agreement, and shall receive no
23 benefits as provided in this Settlement Agreement. A Request for Exclusion must be in writing
24 and state the name, address, and telephone number of the Person(s) seeking exclusion. Each
25 request must also contain a signed statement that "I/we hereby request that I/we be excluded
26 from the proposed Settlement Class in the *In re Transpacific Passenger Air Transportation*
27 *Antitrust Litigation*." Settlement Class Counsel and EVA's counsel shall jointly request that the
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1 deadline for submitting exclusions from this Action be set thirty-five (35) days prior to the
2 Fairness Hearing in connection with final approval of this settlement. A Request for Exclusion
3 that does not include all of the foregoing information, that does not contain a proper signature,
4 that is sent to an address other than the one designated in the Class Notice, or that is not sent
5 within the time specified, shall be invalid, and the Person(s) serving such an invalid request
6 shall be Settlement Class members and shall be bound by this Settlement Agreement, if
7 approved. Any Person that has properly excluded itself from the Settlement Class shall be
8 permitted to apply to the Court for good cause shown to re-enter the Settlement Class, with the
9 same rights and obligations under this Settlement Agreement as the Settlement Class Members.

10 6.2. Settlement Class Counsel shall promptly forward copies of all Requests for
11 Exclusions, as they are received, to EVA's counsel. Settlement Class Counsel shall also forward
12 a list of all Requests for Exclusion to EVA's counsel no later than thirty (30) days prior to the
13 Fairness Hearing.

14 **7. Fairness Hearing**

15 7.1. At the Fairness Hearing, Plaintiffs shall seek entry of a Judgment, the text of
16 which shall be agreed upon by Plaintiffs and EVA before submission to the Court, *inter alia*:

- 17 (a) approving the Settlement Agreement and its terms as being fair, reasonable,
18 and adequate as to the Settlement Class, within the meaning of Rule 23 of
19 the Federal Rules of Civil Procedure, and directing its consummation
20 according to its terms;
- 21 (b) determining that the notices to Settlement Class Members constituted, under the
22 circumstances, the best practicable notice of this Settlement Agreement and the
23 Fairness Hearing, and constituted due and sufficient notice for all other purposes
24 to all Persons entitled to receive notice;
- 25 (c) dismissing the Action with prejudice as to the Released Parties, without costs;
- 26 (d) permanently barring and enjoining the institution, commencement, or prosecution,
27 by any of the Releasing Parties, of any action asserting any Released Claim
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1 against any Released Party, in any local, state, federal, or other court of any
2 nation, or in any agency or other authority or arbitral or other forum wherever
3 located;

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

9 (f) requiring Settlement Class Counsel to file with the Clerk of the Court a record of
10 potential members of the Settlement Class who timely and validly excluded
11 themselves from the Settlement Class, and to provide a copy of the record to
12 counsel for EVA;

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

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

18 7.2. Any Person who has not requested exclusion from the Settlement Class and who
19 objects to the settlement may appear, at that Person's own expense, at the Fairness Hearing in
20 person or through counsel, to present any evidence or argument with respect to the settlement,
21 to the extent permitted by the Court. However, no such Person shall be heard, and no papers,
22 briefs, pleadings, or other documents shall be received and considered by the Court unless such
23 Person properly submits a written objection that includes (a) notice of intention to appear, (b)
24 proof of membership in the Settlement Class, and (c) the specific grounds for the objection and
25 any reasons why such Person desires to appear and be heard, as well as all documents or
26 writings that such Person desires the Court to consider. Such a written objection must be both
27 filed with the Court no later than thirty-five (35) days prior to the date set for the Fairness
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1 Hearing, and mailed to Settlement Class Counsel and EVA's counsel at the addresses provided
2 in the notices to the Settlement Class, postmarked (or mailed by overnight delivery) no later
3 than thirty-five (35) days prior to the date of the Fairness Hearing. Any Person who fails to
4 object in the manner prescribed herein shall be deemed to have waived any objections to the
5 settlement and this Settlement Agreement and will forever be barred from making any such
6 objections to the settlement or this Settlement Agreement in the Action or in any other action or
7 proceeding, unless otherwise permitted for good cause shown as determined by the Court.

8 **8. Effective Date of Agreement**

9 This Settlement Agreement shall become final and effective on the earliest date on which
10 all of the following events and conditions have occurred or have been met (the "Effective
11 Date"): (a) the Court has entered a Judgment, following notice to the Settlement Class and the
12 Fairness Hearing, approving this Settlement Agreement under Rule 23(e) of the Federal Rules of
13 Civil Procedure and dismissing the Action as against any Released Party who is named as a
14 Defendant in the Action with prejudice as to all Settlement Class Members, and without costs
15 except as specified herein; and (b) the time for appeal or to seek permission to appeal from the
16 Court's approval of the Settlement Agreement and entry of the Judgment (as described in
17 subpart (a)) has expired or, if appealed, approval of this Settlement Agreement and the Judgment
18 has been affirmed in its entirety by the court of last resort to which such appeal has been taken
19 and such affirmance has become no longer subject to further appeal or review. Neither the
20 provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. §
21 1651, shall be taken into account in determining the above-stated times.

22 **9. Release and Covenant Not to Sue**

23 9.1. Upon the occurrence of the Effective Date, and in consideration of the payment by
24 EVA of the Settlement Amount set forth in Paragraph 11.1 herein, the sufficiency of which is
25 hereby acknowledged, each of the Releasing Parties shall be deemed to have, and by operation of
26 the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all
27 Released Claims against the Released Parties, shall have covenanted not to sue or otherwise seek
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1 to establish liability against any of the Released Parties based, in whole or in part, upon any of
2 the Released Claims, and shall be permanently barred and enjoined from instituting,
3 commencing, prosecuting or asserting any such Released Claim against any of the Released
4 Parties. Plaintiffs will prepare a proposed order and judgment dismissing with prejudice the
5 entire Action against EVA pursuant to Federal Rule of Civil Procedure 41(a)(2). Following
6 review and approval by EVA, Plaintiffs will submit the proposed order and judgment to the
7 Court to obtain dismissal with prejudice of the Action against EVA.

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

4 9.3. Upon the occurrence of the Effective Date, and as part of the Judgment, EVA
5 will waive any claim for indemnity or contribution, however denominated, against any of the
6 Defendants in the Action other than EVA, arising out of or related to the claims or allegations
7 asserted by Plaintiffs in the Action, whether arising under state, federal, or foreign law as
8 claims, cross-claims, counterclaims, or third-party claims, and whether asserted in the Action, in
9 this Court, in any federal or state court, or in any other court, arbitration proceeding,
10 administrative agency, or other forum in the United States, or elsewhere, and all such claims
11 shall be deemed extinguished, discharged, satisfied and unenforceable.

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

13 All rights of any Settlement Class Member against any alleged co-conspirator or any
14 other Person other than the Released Parties are specifically reserved by Plaintiffs and the
15 Settlement Class Members. The sales of passenger air transportation by EVA shall, to the extent
16 permitted and/or authorized by U.S. law, remain in the case against any other Defendants or
17 future Defendants in the Action as a potential basis for damage claims and shall be part of any
18 joint and several liability claims against such Defendants in the Action or other persons or
19 entities other than Released Parties, to the extent permitted and/or authorized by law.

20 **11. Settlement Consideration**

21 11.1. The total monetary amount payable by EVA (comprising class damages, costs of
22 class notice and administration, and attorneys' fees and costs) in settlement of all claims relating
23 to the Action and all Released Claims, is the Settlement Amount described above. The deposited
24 sums shall be held in the Escrow Account until there is an order from the District Court
25 concerning distribution or use of the Settlement Amount. The Escrow Account Agent shall be
26 subject to escrow instructions mutually acceptable to Settlement Class Counsel and EVA, such
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1 escrow to be administered under the Court's continuing supervision and control. The timing
2 provisions herein are a material part of this Settlement Agreement.

3 11.2. The Escrow Agent shall cause the funds deposited in the Escrow Account to be
4 invested in instruments backed by the full faith and credit of the United States Government or
5 fully insured by the United States Government or an agency thereof, or money market funds
6 invested substantially in such instruments, and shall reinvest any income from these
7 instruments and the proceeds of these instruments as they mature in similar instruments at their
8 then-current market rates.

9 11.3. All funds held in the Escrow Account shall be deemed and considered to be in
10 *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until
11 such time as such funds shall be distributed pursuant to this Settlement Agreement and/or
12 further order(s) of the Court.

13 11.4. Plaintiffs and EVA intend for the Settlement Fund to be treated as being at all times
14 a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. In addition, the
15 Escrow Agent shall timely make such elections as necessary or advisable to carry out the
16 provisions of Paragraph 11.6, including the "relation-back election" (as defined in Treas. Reg. §
17 1.468B-1) so as to enable the Settlement Fund to be treated as a "qualified settlement fund" from
18 the earliest date possible. Such elections shall be made in compliance with the procedures and
19 requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to
20 timely and properly prepare and deliver the necessary documentation for signature by all
21 necessary parties, and thereafter to cause the appropriate filing to occur.

22 11.5. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended,
23 and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The
24 Escrow Agent shall timely and properly file all information and other tax returns necessary or
25 advisable with respect to the Settlement Fund (including without limitation the returns described
26 in Treas. Reg. § 1.468B-2(k)(1)). Such returns (as well as the elections described in Paragraph
27 11.4) shall be consistent with Paragraph 11.7.
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1 11.6. All (i) taxes (including any estimated taxes, interest or penalties) arising with
2 respect to the income earned by the Settlement Fund, including any taxes or tax detriments that
3 may be imposed upon EVA or any other Released Party with respect to any income earned by
4 the Settlement Fund for any period during which the Settlement Fund does not qualify as a
5 “qualified settlement fund” for federal or state income tax purposes (“Taxes”); and (ii) expenses
6 and costs incurred in connection with the operation and implementation of Paragraphs 11.6
7 through 11.9 (including, without limitation, expenses of tax attorneys and/or accountants and
8 mailing and distribution costs and expenses relating to filing (or failing to file) the returns
9 described in Paragraph 11.5 (“Tax Expenses”)), shall be paid out of the Settlement Fund.

10 11.7. Neither EVA nor any other Released Party nor their respective counsel shall have
11 any liability or responsibility, including filing responsibility, for the Taxes or the Tax Expenses.
12 Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of
13 administration of the Settlement Fund and shall be timely paid, subject to Court approval, by the
14 Escrow Agent out of the Settlement Fund. The Escrow Agent shall be obligated (notwithstanding
15 anything herein to the contrary) to withhold from distribution to any claimants authorized by the
16 Court any funds necessary to pay such amounts including the establishment of adequate reserves
17 for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld
18 under Treas. Reg. § 1.468B-2 (l)(2)). Neither EVA nor any other Released Party is responsible
19 nor shall they have any liability therefor. Plaintiffs and EVA agree to cooperate with the Escrow
20 Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to
21 carry out the provisions of Paragraphs 11.2 through 11.10. EVA makes no representation to
22 Plaintiffs regarding the appropriate tax treatment of the Settlement Fund, income earned on the
23 Settlement Fund, or any distribution taken from the Settlement Fund.

24 11.8. If this Settlement Agreement does not receive final Court approval, or if the
25 Action is not certified as a class action for settlement purposes, or if this Settlement
26 Agreement is terminated or voided for any reason, then all amounts paid by EVA into the
27 Settlement Fund (other than costs that may already have reasonably been incurred or expended
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1 in accordance with Paragraphs 5.4 and 11) shall be returned to EVA from the Escrow Account
2 by the Escrow Agent along with any interest accrued thereon, within ten (10) business days
3 after such order becomes final and non-appealable.

4 11.9. EVA shall not be liable for any costs, fees, or expenses of any of Plaintiffs'
5 respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and
6 expenses as provided for in Paragraphs 5.4 and 11 or otherwise approved by the Court may be
7 paid out of the Settlement Fund.

8 11.10. If, after all costs (including notice costs), attorneys' fees, and any other expenses
9 have been paid from the Settlement Fund, there are any remaining funds, they shall be distributed
10 pro-rata to the Settlement Class, or in Settlement Class Counsel's reasonable judgment, be made
11 the subject of an application to the Court by Plaintiffs for *cy pres* distribution in accordance with
12 governing standards in the Ninth Circuit.

13 **12. Administration of the Settlement Fund**

14 12.1. The costs and expenses of administration of the settlement pursuant to the terms of
15 this Settlement Agreement shall be paid out of the Settlement Fund. The Claims Administrator(s)
16 shall, on a monthly basis, submit invoices, with appropriate supporting documentation, to
17 Settlement Class Counsel for payment from the Escrow Account. To the extent practicable, the
18 administration of this settlement shall be coordinated with the administration of other aspects of
19 this Action, including, but not limited to, any other settlement(s) entered into between Plaintiffs
20 and any other settling Defendant(s) and/or the administration of any recovery obtained on behalf
21 of the class by summary judgment or trial.

22 12.2. EVA shall not have any responsibility, financial obligation, or liability whatsoever
23 with respect to the investment, distribution, or administration of the Settlement Fund, including,
24 but not limited to, the costs and expenses of such investment, distribution and administration,
25 except as expressly otherwise provided in the Settlement Agreement. For the avoidance of doubt,
26 under no circumstances will EVA be obligated to pay any sums other than the Settlement
27 Amount.

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2 **13. Option to Rescind**

3 13.1. In the event that the Opt-Out Percentage exceeds five percent (5%), EVA shall
4 have the option to rescind the Settlement Agreement.

5 13.2. Within twenty (20) business days of the delivery of the list described in Paragraph
6 6.2, EVA shall provide to Settlement Class Counsel the total amount of Opt-Out Sales, the
7 resulting Opt-Out Percentage, the Opt-Out Sales for each Opt-Out Plaintiff, and supporting data
8 for Opt-Out Sales (to the extent such data is reasonably available).

9 13.3 EVA shall have up to the second business day prior to the Settlement Fairness
10 Hearing to give notice in writing to Settlement Class Counsel that it elects to exercise their option
11 to rescind the Settlement Agreement.

12 **14. Withdrawal From or Modification of the Settlement**

13 14.1. If the Court declines to approve this Settlement Agreement or any material part
14 hereof, or if such approval is materially modified or set aside on appeal, or if the Court does not
15 enter the Judgment, or if the Court enters the Judgment and appellate review is sought and, on
16 such review, such Judgment is not affirmed or is materially modified, then EVA and Plaintiffs
17 shall each, in their respective sole discretion, have the option to rescind this Settlement
18 Agreement in its entirety.

19 14.2. If EVA chooses to exercise the option to rescind pursuant to Paragraph 13.1 or if
20 EVA or Plaintiffs choose to exercise the option to rescind pursuant to Paragraph 14.1, any and
21 all amounts then constituting the Settlement Fund (including all income earned thereon and
22 excluding any reasonable expenses that have been paid or incurred associated with providing
23 notice to the Settlement Class, administering the Settlement Fund, incurred or paid under
24 Paragraph 11.8 of this Settlement Agreement, and/or any Taxes already paid on such income),
25 together with any amounts, including attorneys' fees, paid to Settlement Class Counsel
26 pursuant to Paragraph 17 below (including all income earned thereon), shall be returned
27 forthwith to EVA. A modification or reversal on appeal of any amount of Settlement Class
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1 Counsel's fees and expenses awarded by the Court or any plan of allocation of the Settlement
2 Fund shall not be deemed a modification of all or a part of the terms of this Settlement
3 Agreement or the Judgment.

4 14.3. EVA and Plaintiffs expressly reserve all of their rights if this Settlement
5 Agreement does not become effective or if it is rescinded by EVA pursuant to Paragraph 13.1 or
6 by Plaintiffs or EVA pursuant to Paragraph 14.1 of this Settlement Agreement. In addition, if for
7 any reason (including a party's exercise of a valid right to rescind this Settlement Agreement),
8 the Settlement Agreement does not receive final Court approval, then the certification of the
9 Settlement Class shall become null and void without further Court action, and shall not be used
10 or referred to for any further purpose in the Action or in any other action or proceeding, and shall
11 not prejudice any party in arguing for or against contested class certification in these Actions or
12 in any other proceeding. Further, this Agreement, whether or not it is finally approved and
13 whether or not EVA or Plaintiffs elect to rescind it under Paragraph 13.1 or Paragraph 14.1 of
14 the Settlement Agreement, and any and all negotiations, documents, and discussions associated
15 with it, shall not be deemed or construed to be an admission or evidence of any violation of any
16 statute or law, or of any liability or wrongdoing by EVA or any Defendant, or of the truth of
17 any of the claims or allegations contained in Plaintiffs' Second Amended Consolidated Class
18 Action Complaint or any other pleading filed by Plaintiffs in the Action, or waiver or
19 invalidity of any defense, and evidence thereof shall neither be discoverable nor used directly
20 or indirectly except in a proceeding to enforce or interpret the Settlement Agreement.

21 **15. Cooperation**

22 15.1 EVA shall provide full and complete cooperation with Settlement Class Counsel
23 as set forth specifically below.

24 15.2. To the extent that any of EVA's documents produced or to be produced in the
25 Action are authentic and/or business records, including but not limited to evidence of EVA's
26 sales or costs of passenger travel and/or surcharges, EVA agrees to produce, through affidavits or
27 declarations, or, if necessary, through deposition or testimony at trial, representatives qualified to
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1 authenticate such documents and information, and, to the extent possible, provide confirmation
2 that such documents and information are business records provided that Settlement Class
3 Counsel agrees to use reasonable efforts to minimize the burden to EVA of any such
4 authentication or business records testimony.

5 15.3 EVA agrees that, after the Execution Date, EVA's counsel will make themselves
6 available for up to a total of 8 hours for meetings or calls with Settlement Class Counsel to
7 provide information concerning documents, witnesses, meetings, communications, and events
8 not covered by privilege or other protections available under any applicable United States laws,
9 plus reasonable follow-up conversations including, but not limited to, identifying individuals
10 such as current or former employees, who may provide information or potential testimony
11 relevant to the Action. Notwithstanding any other provision in this Settlement Agreement,
12 Plaintiffs and Settlement Class Counsel agree that they shall maintain all statements made by
13 EVA's counsel under this subparagraph as strictly confidential; and that they shall not use
14 directly or indirectly the information so received for any purpose other than the prosecution of
15 the Action. The Parties and their counsel further agree that any statements made by EVA's
16 counsel in connection with and/or as part of this Settlement Agreement shall be protected by
17 Federal Rule of Evidence 408, and shall in no event be discoverable by any person or treated as
18 evidence of any kind, unless otherwise ordered by a Court. Settlement Class Counsel may use
19 information contained in such statements in the prosecution of the Action without attributing the
20 source of the information.

21 15.4 Upon reasonable notice after the Execution Date, EVA agrees to use all
22 reasonable efforts to make available for interviews, and trial testimony at a location or locations
23 of EVA's choice (except for testimony at trial, which shall be at the United States Courthouse of
24 the United States District Court for the Northern District of California) a total of three (3) current
25 officers and employees of EVA who Settlement Class Counsel, in consultation with EVA's
26 counsel, reasonably and in good faith believe to have knowledge regarding Plaintiffs' claims as
27 alleged in the Action. If it is necessary to preserve testimony before trial, Plaintiffs may move the
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1 Court for leave to take the deposition of any such individual and EVA agrees not to oppose such
2 motion. Nothing herein shall require EVA to pay any expense of Plaintiffs or Settlement Class
3 Counsel in connection with any interview, deposition, or testimony provided for in this
4 subparagraph. Upon request of the witness, Plaintiffs shall provide a mutually agreeable
5 translator for interviews and/or trial testimony. An "interview" for purposes of this subparagraph
6 shall last no longer than eight hours, excluding reasonable breaks and, subject to reasonable
7 limitations, may occur on more than a single day and not more than two days. EVA agrees to
8 bear reasonable travel costs incurred by witnesses pursuant to this subparagraph, and Plaintiffs
9 agree to bear lodging and meal expenses for such witnesses, not to exceed \$450.00 per day, and
10 the cost of any translator that may be required pursuant to this subparagraph.

11 15.5. EVA shall reasonably assist in notifying the class of this Settlement Agreement,
12 as discussed in Paragraph 5, and the Fairness Hearing, as discussed in Paragraph 7.

13 15.6. In connection with its provision of information, testimony, and Documents under
14 this Settlement Agreement, EVA shall have the right to assert the attorney-client privilege,
15 attorney work-product protection, joint defense privilege, or any other protection, privilege, or
16 immunity available under United States law, and to assert the attorney-client privilege, attorney
17 work-product protection, joint defense privilege, or any similar privilege under foreign law. All
18 Documents, testimony, and information provided pursuant to this Paragraph 15 may be
19 designated as "Confidential" or "Highly Confidential," at EVA's discretion, in accordance with
20 the Protective Order entered in this Action, and shall be used only in connection with the Action
21 and only as provided under the terms of the Protective Order. The Documents, testimony and
22 information described in Paragraph 15 may not be used to prosecute any claim against the
23 Released Parties. The confidentiality requirements of this Paragraph 15.6 shall continue to bind
24 Plaintiffs and Settlement Class Counsel even in the event that this Settlement Agreement is
25 rejected by the Court, terminated, rescinded, or otherwise unable to take or remain in effect.

26 15.7. If any Document protected by the attorney-client privilege, attorney work-product
27 protection, joint defense privilege, or any other protection, privilege, or immunity is accidentally
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1 or inadvertently produced, the Document shall promptly be returned to EVA, and its production
2 shall in no way be construed to have waived any privilege or protection attached to such
3 Document.

4 15.8. EVA understands and agrees that the cooperation described in this Paragraph 15
5 is a material condition of settlement. Further, the cooperation set forth in this Paragraph 15 shall
6 constitute the exclusive means by which Plaintiffs and Settlement Class Counsel may obtain
7 discovery from the Released Parties whether under the Federal Rules of Civil Procedure or the
8 laws or rules of any other jurisdiction.

9 **16. No Admissions**

10 16.1. The Parties intend the settlement as described herein to be a final and complete
11 resolution of all disputes between them with respect to the Action and to compromise claims
12 that are contested, and it shall not be deemed an admission by any party as to the merits of any
13 claim or defense or any allegation made in the Action. Any press release issued in connection
14 with this settlement will state only that the matter has been resolved by EVA agreeing to pay
15 the Settlement Amount to compromise Plaintiffs' contested claims and that EVA does not
16 admit any liability to any claim in the Action.

17 16.2. The Parties acknowledge that EVA is entering into this Settlement Agreement
18 to eliminate the inconvenience and distraction of potentially burdensome and protracted
19 litigation. Neither the settlement nor this Settlement Agreement, nor any negotiations or act
20 performed or document executed pursuant to or in furtherance of the settlement or this
21 Settlement Agreement is or may be deemed to be or may be used as an admission of, or
22 evidence of, EVA's conduct having violated the laws of any state, country, or other
23 jurisdiction or having caused any harm to any Person. Neither the settlement nor this
24 Settlement Agreement, nor any act performed or document executed pursuant to or in
25 furtherance of the settlement or this Settlement Agreement, shall be admissible in any
26 proceeding for any purpose, except to consummate or enforce the terms of the Settlement
27 Agreement, and except that the Released Parties may file this Settlement Agreement or the
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1 Judgment in any action for any purpose, including, but not limited to, in support of a defense
2 or counterclaim based on principles of res judicata, collateral estoppel, release, good faith
3 settlement, judgment bar, reduction, or any other theory of claim preclusion or issue
4 preclusion or similar defense or counterclaim.

5 **17. Settlement Class Counsel's Attorneys' Fees and Expenses**

6 17.1. The procedure for, and the allowance or disallowance by the Court of, any
7 application by Settlement Class Counsel for attorneys' fees and expenses are not part of the
8 Settlement Agreement, and are to be considered by the Court separately from the Court's
9 consideration of the fairness, reasonableness, and adequacy of the settlement. Any order or
10 proceeding relating to any application for, or approval of, attorneys' fees and expenses, the
11 pendency of any such application, or any appeal or review of an order relating thereto or reversal or
12 modification thereof, shall not operate to terminate or cancel this Settlement Agreement, or affect or
13 delay the finality of the Judgment. EVA agrees that Settlement Class Counsel may withdraw from
14 the Settlement Fund any amount awarded by the Court for attorneys' fees and costs five (5) days
15 following the Court's award, subject to an appropriate financial undertaking required by the Court
16 in the event of an appeal of the Court's award of attorneys' fees and expenses. For the avoidance
17 of doubt, any attorneys' fees or expenses shall come out of the Settlement Fund, and EVA under
18 no circumstances will be obligated to pay sums in addition to the Settlement Amount.

19 17.2. EVA shall have no responsibility for, and no liability whatsoever with respect
20 to, the division of attorneys' fees and expenses among Settlement Class Counsel, and any
21 negotiation or dispute among Settlement Class Counsel in that regard shall not operate to
22 terminate or cancel this Settlement Agreement, or affect or delay the finality of the Judgment.

23 17.3. Except as otherwise provided herein, Plaintiffs and EVA shall each be
24 responsible for bearing their own costs and fees incurred in this Action.

25 **18. Miscellaneous Provisions**

26 18.1. EVA expressly represents that it has obtained all required approvals from its
27 management for this Settlement Agreement.

1 18.2. This Settlement Agreement shall constitute the entire agreement between the
2 Parties pertaining to the settlement of the Action against EVA and supersedes any and all prior
3 and contemporaneous undertakings of the Parties in connection therewith. The terms of the
4 Settlement Agreement are and shall be binding upon each of the Parties hereto, their heirs,
5 executors, administrators, representatives, agents, attorneys, partners, successors,
6 predecessors-in-interest, and assigns, and upon all other Persons claiming any interest in the
7 subject matter hereto through any of the parties hereto including any Settlement Class
8 Members.

9 18.3. This Settlement Agreement may be modified or amended only by a writing
10 executed by Plaintiffs and EVA, subject (if after preliminary or final approval by any court) to
11 approval by the Court. Amendments and modifications may be made without notice to the
12 Settlement Class unless notice is required by law or by the Court.

13 18.4. None of the Parties hereto shall be considered to be the drafter of this
14 Settlement Agreement or any its provisions hereof for the purpose of any statute, case law or
15 rule of interpretation or construction that would or might cause any provision to be construed
16 against the drafters of this Settlement Agreement.

17 18.5. This Settlement Agreement shall be construed and interpreted to effectuate the
18 intent of the parties which is to provide, through this Settlement Agreement, for a complete
19 resolution of the Released Claims with respect to the Released Parties.

20 18.6. Nothing expressed or implied in this Settlement Agreement is intended to or
21 shall be construed to confer upon or give any person or entity other than Settlement Class
22 Members, Releasing Parties, and Released Parties any right or remedy under or by reason of
23 this Settlement Agreement.

24 18.7. This Settlement Agreement shall be binding upon, and inure to the benefit
25 of, the Releasing Parties and the Released Parties.

26 18.8. Plaintiffs and EVA acknowledge that they have been represented by counsel,
27 and have made their own investigations of the matters covered by this Settlement Agreement
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1 to the extent they have deemed it necessary to do so. Therefore, Plaintiffs and EVA and their
2 respective counsel agree that they will not seek to set aside any part of the Settlement
3 Agreement on the grounds of mistake. Moreover, Plaintiffs and EVA and their respective
4 counsel understand, agree, and expressly assume the risk that any fact may turn out hereinafter
5 to be other than, different from, or contrary to the facts now known to them or believed by
6 them to be true, and further agree that the Settlement Agreement shall be effective in all
7 respects and shall not be subject to termination, modification, or rescission by reason of any
8 such difference in facts. If any provision of this Settlement Agreement is found by a court of
9 competent jurisdiction to be illegal, invalid, or unenforceable for any reason, the remainder of
10 this Settlement Agreement will not be affected, and, in lieu of each provision that is found
11 illegal, invalid or unenforceable, a provision will be added as a part of this Settlement
12 Agreement that is as similar to the illegal, invalid or unenforceable provision as may be legal,
13 valid and enforceable.

14 18.9. All terms of this Settlement Agreement shall be governed by and interpreted
15 according to the substantive laws of the State of California, without regard to its choice of law
16 or conflicts of laws principles.

17 18.10. EVA, Plaintiffs and all Settlement Class Members hereby irrevocably submit to
18 the exclusive jurisdiction of the United States District Court for the Northern District of California
19 for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement
20 or the applicability of this Settlement Agreement, including, without limitation, any suit, action,
21 proceeding or dispute relating to the release provisions herein.

22 18.11. This Settlement Agreement may be executed in counterparts. Facsimile or Portable
23 Document Format signatures shall be considered as valid signatures for purposes of execution of
24 this Settlement Agreement, but original signature pages shall thereafter be collated for filing of
25 this Settlement Agreement with the Court.

26 18.12. Each of the undersigned attorneys represents that he or she is fully authorized to
27 enter into the terms and conditions of, and execute, this Settlement Agreement, subject to
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1 Court approval, and the undersigned Settlement Class Counsel represent that they are
2 authorized to execute this Settlement Agreement on behalf of Plaintiffs and the proposed
3 Settlement Class.

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

6
7 Dated: February 27, 2018

8
9 By: 

10 Adam J. Zapala
11 **Cotchett, Pitre & McCarthy, LLP**
12 San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010

13 *Interim Class-Counsel for Plaintiffs and*
14 *Settlement Class Counsel*

By: 

James H. Mutchnik
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300 North LaSalle
Chicago, IL 60654

Tammy A Tsoumas
Kirkland & Ellis LLP
333 South Hope Street
Los Angeles, CA 90071

15
16 *Counsel for EVA Airways Corporation*

17 By: _____

18 Christopher L. Lebsack
19 **Hausfeld LLP**
600 Montgomery Street, 32nd
20 Floor
San Francisco, CA 94111

21 *Interim Class-Counsel for Plaintiffs and*
22 *Settlement Class Counsel*

1 Court approval, and the undersigned Settlement Class Counsel represent that they are
2 authorized to execute this Settlement Agreement on behalf of Plaintiffs and the proposed
3 Settlement Class.

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

6 Dated: February 26 2018
7

8
9 By: _____
Adam J. Zapala
10 **Cotchett, Pitre & McCarthy, LLP**
San Francisco Airport Office Center
11 840 Malcolm Road, Suite 200
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13 *Interim Class-Counsel for Plaintiffs and*
14 *Settlement Class Counsel*

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16 *Counsel for EVA Airways Corporation*

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21 *Interim Class-Counsel for Plaintiffs and*
22 *Settlement Class Counsel*