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12 *Interim Co-Lead Counsel for Plaintiffs*

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

17 **IN RE TRANSPACIFIC PASSENGER**
18 **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**

**SETTLEMENT AGREEMENT BETWEEN
PLAINTIFFS AND PHILIPPINE AIRLINES,
INC.**

1 This Settlement Agreement (the “Settlement Agreement”), dated January __, 2017 (the
2 “Settlement Agreement Execution Date”), is made and entered into by and among defendant
3 Philippine Airlines, Inc. (“PAL”) and Meor Adlin, Franklin Ajaye, Andrew Barton, Rachel Diller,
4 Scott Frederick, David Kuo, Dickson Leung, Brendan Maloof, Donald Wortman, Harley Oda,
5 Roy Onomura, Shinsuke Kobayashi, Patricia Lee, Nancy Kajiyama, Della Ewing Chow, and
6 James Kawaguchi (collectively, “Plaintiffs”), both individually and as representatives of a class
7 of similarly situated persons who during the class period purchased air passenger transportation to
8 or from the United States from PAL or any of the other defendants (“Defendants”) in the Action,
9 as defined herein, in the MDL class action In re Transpacific Passenger Air Transportation
10 Antitrust Litigation, 07-cv-5634-CRB, MDL No. 1913, currently pending before the Honorable
11 Charles R. Breyer in the United States District Court for the Northern District of California, San
12 Francisco Division.

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

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

20 WHEREAS, the Court partially denied Defendants’ motion for summary judgment,
21 including PAL’s motion, regarding the filed rate doctrine;

22 WHEREAS, Defendants—including PAL—filed a petition for interlocutory review
23 pursuant to 28 U.S.C. § 1292(b) of the District Court’s decision on the motion for
24 summary judgment regarding the filed rate doctrine;

25 WHEREAS, both the District Court and the Ninth Circuit accepted PAL’s petition
26 for interlocutory review of the District Court’s decision;

1 WHEREAS, briefing on Defendants'—including PAL's—interlocutory appeal is
2 now complete and the appeal is scheduled for oral argument;

3 WHEREAS, Settlement Class Counsel have concluded, after an investigation into the
4 facts and the law, and after carefully considering the circumstances of claims made by Plaintiffs
5 and the Class, and the possible legal and factual defenses thereto, that it is in the best interests of
6 Plaintiffs and the Settlement Class to enter into this Settlement Agreement with PAL to avoid the
7 uncertainties and risks of litigation, and that the Settlement set forth herein is fair, reasonable,
8 adequate and in the best interests of the Settlement Class;

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

13 WHEREAS, Plaintiffs and PAL agree that neither this Settlement Agreement nor any
14 statement made in the negotiation thereof shall be deemed or construed to be an admission by or
15 evidence against PAL or any of its alleged co-conspirators or evidence of the truth of any of
16 Plaintiffs' allegations; and

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

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

1 **1. Definitions**

2 1.1. “Action” means the class action captioned In re Transpacific Passenger Air
3 Transportation Antitrust Litigation, 07-cv-5634-CRB, MDL No. 1913 (N.D. Cal.), currently
4 pending before the Honorable Charles R. Breyer in the United States District Court for the
5 Northern District of California, San Francisco Division, and all actions relating to the claims
6 alleged in “Plaintiffs’ Second Amended Consolidated Class Action Complaint” filed in that
7 litigation that were originally filed in the United States District Court for the Northern District of
8 California, those that have been or are subsequently filed in or transferred for consolidation
9 and/or coordination pretrial proceedings to the Northern District of California by the Judicial
10 Panel on Multidistrict Litigation as part of MDL No. 1913, all actions pending such transfer
11 (including but not limited to “tag-along” actions), and all actions that may be transferred in the
12 future, or are otherwise based on the conduct alleged in the above-captioned litigation, and all
13 actions now pending before the United States Ninth Circuit Court of Appeal, Case Nos. 15-
14 15364, 15-15362.

15 1.2. “Claims” shall mean any and all actions, suits, claims, rights, demands,
16 assertions, allegations, causes of action, controversies, proceedings, losses, damages, injuries,
17 attorneys’ fees, costs, expenses, debts, liabilities, judgments, or remedies, whether equitable or
18 legal.

19 1.3. “Court” means the United States District Court for the Northern District of
20 California.

21 1.4. “Defendants” means Air France, Air New Zealand, All Nippon Airways
22 Company, Limited, Cathay Pacific Airways Limited, China Airlines Limited, EVA Airways
23 Corporation, Japan Airlines International Company, Ltd. (“JAL”), Malaysian Airline System
24 Berhad, PAL, Qantas Airways Limited, Singapore Airlines Limited, Thai Airways
25 International Public Co., Ltd., and Vietnam Airlines.

1 1.5. "Document" is defined to be synonymous in meaning and equal in scope to the
2 usage of this term in Rule 34(a) of the Federal Rules of Civil Procedure. A draft or non-identical
3 copy is a separate document within the meaning of this term.

4 1.6. "Execution Date" means January ___, 2017, the date by which all parties have
5 executed this Settlement Agreement.

6 1.7. "Effective Date" means the earliest date on which all of the events and
7 conditions specified in Paragraph 8 herein have occurred or have been met.

8 1.8. "Escrow Account" means the Agreement Among Citibank, N.A. as "Escrow
9 Agent", Cotchett, Pitre & McCarthy, LLP & Hausfeld LLP as "Settlement Class Counsel", and
10 Japan Airlines Co., Ltd. as "Settling Defendant," account number 25D078455768, as
11 subsequently amended on September 3, 2013.

12 1.9. "Judgment" means a final order of judgment by the Court dismissing the Action
13 as to any Released Party and approving the Settlement Agreement under Rule 23(e) of the
14 Federal Rules of Civil Procedure, as described in Paragraph 7.1 herein.

15 1.10. "Parties" means Plaintiffs, Settlement Class Members, and PAL.

16 1.11. "Person" means an individual or an entity.

17 1.12. "Plaintiffs" means Meor Adlin, Franklin Ajaye, Andrew Barton, Rachel Diller,
18 Scott Frederick, David Kuo, Dickson Leung, Brendan Maloof, Donald Wortman, Harley Oda,
19 Roy Onomura, Shinsuke Kobayashi, Patricia Lee, Nancy Kajiyama, Della Ewing Chow, and
20 James Kawaguchi.

21 1.13. "Preliminary Approval Order" means an order preliminarily approving the
22 settlement, to be rendered by the Court.

23 1.14. "Released Claims" means any and all Claims, demands, actions, suits, and causes
24 of action, damages, and liabilities of any nature, including without limitation claims for costs,
25 expenses, penalties, and attorneys' fees, whether class, individual or otherwise, that the Releasing
26 Parties, or any of them, ever had, now has, or hereafter can, shall, or may have, directly,
27 representatively, derivatively, or in any other capacity, against the Released Parties or any of them,
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1 whether such claims are based on federal, state, local, statutory, or common law, or any other law,
2 code, rule, or regulation of any country or other jurisdiction worldwide, whether such claims are
3 known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen,
4 actual or contingent, liquidated or unliquidated, regardless of legal theory, and regardless of the
5 type or amount of relief or damages claimed, or Claims that have been, could have been, or in the
6 future might have, in law or in equity, on account of, arising out of, resulting from, or in any way
7 related to any conduct regardless of where it occurred at any time prior to the Execution Date,
8 concerning the purchase of passenger air transportation between the United States and
9 Asia/Oceania, whether originating in the U.S. or Asia, including but not limited to the pricing,
10 selling, discounting, or marketing of one-way and round-trip passenger air transportation between
11 the United States and Asia/Oceania by PAL or Defendants, including, without limitation, pricing
12 of fares or fuel or insurance surcharges or any other element of, component of, or surcharge upon
13 such pricing, or claims brought or that could have been brought based in whole or in part on the
14 facts, occurrences, transactions or other matters that were alleged or could have been alleged in
15 the Second Amended Consolidated Class Action Complaint in the above-captioned matter or
16 otherwise related to the subject of that litigation, or in the complaints in the Action.

17 1.15. "Released Parties" means, jointly and severally, individually and collectively:
18 PAL, its present and former parents, subsidiaries, divisions, affiliates, and departments, its
19 respective past and present officers, directors, employees, agents, attorneys, servants,
20 representatives of each of the aforesaid entities, and the predecessors, successors, heirs, executors,
21 administrators, and assigns of each of the foregoing. As used in this definition, "affiliates" means
22 entities controlling, controlled by, or under common control with any of the Released Parties.

23 1.16. "Releasing Parties" means, jointly and severally, and individually and
24 collectively: Plaintiffs and all Settlement Class Members, their predecessors, successors, present
25 and former parents, subsidiaries, divisions, affiliates, and departments, each of their respective
26 past and present officers, directors, employees, agents, attorneys, servants, and representatives,
27 and the predecessors, successors, heirs, executors, administrators, and assigns of each of the
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1 foregoing. As used in this definition, “affiliates” means entities controlling, controlled by, or
2 under common control with any of the Releasing Parties.

3 1.17. “Settlement Amount” means nine million dollars (\$9,000,000.00) in United States
4 currency.

5 1.18. “Settlement Class Counsel” means the law firms of Cotchett Pitre & McCarthy,
6 LLP, San Francisco Airport Office Center, 840 Malcolm Road, Suite 200, Burlingame, CA 94010
7 and Hausfeld, LLP, 44 Montgomery Street, San Francisco, CA, 94104 and 1700 K Street, Suite
8 650, Washington, DC 20006.

9 1.19. “Settlement Class Member” means each member of the Settlement Class as
10 defined in Paragraph 3 herein, who does not timely and validly elect to be excluded from the
11 Settlement Class.

12 1.20. “Settlement Fund” shall mean those monies representing the consideration to be
13 paid by PAL in settlement of the Action pursuant to Paragraph 11.1 of this Settlement
14 Agreement and income earned on those amounts.

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

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

1 **3. Class Certification**

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

6 Settlement Class: All persons and entities that purchased passenger air
7 transportation originating in the United States that included at least one flight
8 segment to Asia or Oceania, from Defendants or their co-conspirators, or any
9 predecessor, subsidiary, or affiliate thereof, at any time between January 1, 2000
10 and December 1, 2016. Excluded from the class are governmental entities,
11 Defendants, former Defendants in the Action, any parent, subsidiary or affiliate
12 thereof, and Defendants' officers, directors, employees and immediate families.

13 **4. Motion for Preliminary Approval**

14 4.1. At an appropriate time after the Execution Date of this Settlement Agreement,
15 Plaintiffs shall file with the Court a motion requesting entry of a Preliminary Approval Order,
16 *inter alia:*

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

3 (c) enjoining initiation, commencement, or prosecution of any action or proceeding
4 asserting any Claims released in Paragraph 9 by any Releasing Party.

5 4.2. Plaintiffs shall seek, and PAL shall support, certification solely for purposes of
6 this Settlement of the Settlement Class as defined herein, and appointment of Settlement Class
7 Counsel as lead counsel for purposes of this Settlement Agreement.

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

9 5.1. After preliminary approval of this Settlement Agreement and submission to the
10 Court and approval of a program to provide notice to the Class in accordance with the
11 requirements of Federal Rule of Civil Procedure 23 and due process, Settlement Class Counsel
12 shall provide those Settlement Class Members identified with notice of the settlement and the
13 date of the Fairness Hearing in a manner to be approved by the Court. PAL has determined that
14 individual contact information for Settlement Class Members is not reasonably available and that
15 any such personal information of Settlement Class Members that might conceivably be found in
16 the business records of PAL could not be released without violating laws of the Republic of the
17 Philippines, including the Data Privacy Act of 2012 and/or the laws of other countries with
18 jurisdiction over PAL's business operations.

19 5.2. Upon approval by the Court of a program to provide notice to the Class,
20 Settlement Class Counsel shall cause a summary notice of the settlement to be published in such
21 manner and scope as is reasonable and consistent with the requirements of Federal Rule of Civil
22 Procedure 23. Plaintiffs shall develop, with the cooperation of PAL and any other settling
23 defendant, the details of the publication notice program. Plaintiffs shall submit a publication
24 notice program, the text of which shall be provided to PAL by Plaintiffs before submission to the
25 Court.

26 5.3. The parties to this Settlement Agreement agree that the notice program to be
27 implemented pursuant to this Settlement Agreement may be combined with notice of such other
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1 class(es) as may be certified by the Court. The parties to this Settlement Agreement agree that to
2 the extent that any notice program approved by the Court differs from any description of the
3 program to give notice to the class described in this Settlement Agreement, the orders of the
4 Court shall govern and no variation between such Court order and the terms of this Settlement
5 Agreement shall be deemed a breach of this Settlement Agreement, nor give rise to any right of
6 any party to void or withdraw from this Settlement Agreement.

7 5.4. Except as provided herein, the costs and expenses associated with providing notice
8 of the settlement to members of the Settlement Class pursuant to the Court-approved notification
9 plan shall be paid from the Settlement Fund, and PAL shall have no obligation to pay for the costs
10 and expenses of providing notice of the settlement to members of the Settlement Class. PAL
11 agrees that Settlement Class Counsel may withdraw funds as necessary from the Settlement Fund
12 for the purpose of providing notice to the class of the settlement as described herein, which shall
13 be non-refundable. In the event that the settlement is not approved, PAL shall not be entitled to
14 any sums spent or owing for purposes of disseminating notice and/or administering the notice
15 program as approved by the Court.

16 **6. Requests for Exclusion**

17 6.1. Any Person that wishes to seek exclusion from the Settlement Class must timely
18 submit a written request for exclusion as provided in this Paragraph ("Request for Exclusion").
19 Any Person who timely submits a Request for Exclusion shall be excluded from the Settlement
20 Class, shall have no rights with respect to this Settlement Agreement, and shall receive no
21 benefits as provided in this Settlement Agreement. A Request for Exclusion must be in writing
22 and state the name, address, and telephone number of the Person(s) seeking exclusion. Each
23 request must also contain a signed statement that "I/we hereby request that I/we be excluded
24 from the proposed Settlement Class in the *In re Transpacific Passenger Air Transportation*
25 *Antitrust Litigation.*" Settlement Class Counsel and PAL's counsel shall jointly request that the
26 deadline for submitting exclusions from this Action be set thirty-five (35) days prior to the
27 Fairness Hearing in connection with final approval of this settlement. A Request for Exclusion
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1 that does not include all of the foregoing information, that does not contain a proper signature,
2 that is sent to an address other than the one designated in the Class Notice, or that is not sent
3 within the time specified, shall be invalid, and the Person(s) serving such an invalid request
4 shall be Settlement Class members and shall be bound by this Settlement Agreement, if
5 approved. Any Person that has properly excluded itself from the Settlement Class shall be
6 permitted to apply to the Court for good cause shown to re-enter the Settlement Class, with the
7 same rights and obligations under this Settlement Agreement as the Settlement Class Members.

8 6.2. Settlement Class Counsel shall promptly forward copies of all Requests for
9 Exclusions, as they are received, to PAL's counsel. Settlement Class Counsel shall also forward
10 a list of all Requests for Exclusion to PAL's counsel no later than thirty (30) days prior to the
11 Fairness Hearing.

12 7. Fairness Hearing

13 7.1. At the Fairness Hearing, Plaintiffs shall seek entry of a Judgment, the text of
14 which shall be agreed upon by Plaintiffs and PAL before submission to the Court, *inter alia*:

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

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

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

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

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

17 7.2. Any Person who has not requested exclusion from the Settlement Class and who
18 objects to the settlement may appear, at that Person's own expense, at the Fairness Hearing in
19 person or through counsel, to present any evidence or argument with respect to the settlement,
20 to the extent permitted by the Court. However, no such Person shall be heard, and no papers,
21 briefs, pleadings, or other documents shall be received and considered by the Court unless such
22 Person properly submits a written objection that includes (a) notice of intention to appear, (b)
23 proof of membership in the Settlement Class, and (c) the specific grounds for the objection and
24 any reasons why such Person desires to appear and be heard, as well as all documents or
25 writings that such Person desires the Court to consider. Such a written objection must be both
26 filed with the Court no later than thirty-five (35) days prior to the date set for the Fairness
27 Hearing, and mailed to Settlement Class Counsel and PAL's counsel at the addresses provided
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1 in the notices to the Settlement Class, postmarked (or mailed by overnight delivery) no later
2 than thirty-five (35) days prior to the date of the Fairness Hearing. Any Person who fails to
3 object in the manner prescribed herein shall be deemed to have waived any objections to the
4 settlement and this Settlement Agreement and will forever be barred from making any such
5 objections to the settlement or this Settlement Agreement in the Action or in any other action or
6 proceeding, unless otherwise permitted for good cause shown as determined by the Court.

7 **8. Effective Date of Agreement**

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

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

22 9.1. Upon the occurrence of the Effective Date, and in consideration of the payment by
23 PAL of the Settlement Amount set forth in Paragraph 11.1 herein, the sufficiency of which is
24 hereby acknowledged, each of the Releasing Parties shall be deemed to have, and by operation of
25 the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all
26 Released Claims against the Released Parties, shall have covenanted not to sue or otherwise seek
27 to establish liability against any of the Released Parties based, in whole or in part, upon any of
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1 the Released Claims, and shall be permanently barred and enjoined from instituting,
2 commencing, prosecuting or asserting any such Released Claim against any of the Released
3 Parties. For avoidance of doubt, within 7 days of the Execution Date, Plaintiffs will prepare a
4 proposed order and judgment dismissing with prejudice the entire Action against PAL pursuant
5 to Federal Rule of Civil Procedure 41(a)(2), confirming the dismissal of all Released Claims.
6 Following review and approval by PAL, Plaintiffs will submit the proposed order and judgment
7 to the Court to obtain dismissal with prejudice of the Action against PAL.

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
18 may 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, PAL will
5 waive any claim for indemnity or contribution, however denominated, against any of the
6 Defendants in the Action other than PAL, 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 co-conspirator or any other
14 Person other than the Released Parties are specifically reserved by Plaintiffs and the Settlement
15 Class Members. The sales of passenger air transportation by PAL shall, to the extent permitted
16 and/or authorized by U.S. law, remain in the case against any other Defendants or future
17 Defendants in the Action as a potential basis for damage claims and shall be part of any joint
18 and several liability claims against such Defendants in the Action or other persons or entities
19 other than Released Parties.

20 **11. Settlement Consideration**

21 11.1. The total monetary amount payable by PAL (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. The Settlement Amount shall
24 be paid over time, without interest, as follows. Within twenty (20) business days after the
25 Execution Date, PAL will deposit the sum of seven hundred thousand dollars (\$700,000) into the
26 Escrow Account established by Plaintiffs. On or before November 31, 2017, PAL will deposit
27 the additional sum of six hundred thousand dollars (\$600,000) into the Escrow Account. On or
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1 before November 31, 2018, PAL will deposit the additional sum of one million seven hundred
2 thousand dollars (\$1,700,000) into the Escrow Account. On or before November 31, 2019, PAL
3 shall deposit the remaining sum of six million dollars (\$6,000,000) into the Escrow Account. The
4 deposited sums shall be held in the Escrow Account until there is an order from the District Court
5 concerning distribution or use of the Settlement Amount. The Escrow Account Agent shall be
6 subject to escrow instructions mutually acceptable to Settlement Class Counsel and PAL, such
7 escrow to be administered under the Court's continuing supervision and control. The timing
8 provisions herein are a material part of this Settlement Agreement.

9 11.2. The Escrow Agent shall cause the funds deposited in the Escrow Account to be
10 invested in instruments backed by the full faith and credit of the United States Government or
11 fully insured by the United States Government or an agency thereof, or money market funds
12 invested substantially in such instruments, and shall reinvest any income from these
13 instruments and the proceeds of these instruments as they mature in similar instruments at their
14 then-current market rates.

15 11.3. All funds held in the Escrow Account shall be deemed and considered to be in
16 *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until
17 such time as such funds shall be distributed pursuant to this Settlement Agreement and/or
18 further order(s) of the Court.

19 11.4. Plaintiffs and PAL intend for the Settlement Fund to be treated as being at all times
20 a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. In addition, the
21 Escrow Agent shall timely make such elections as necessary or advisable to carry out the
22 provisions of Paragraph 11.6, including the "relation-back election" (as defined in Treas. Reg. §
23 1.468B1) so as to enable the Settlement Fund to be treated as a "qualified settlement fund" from
24 the earliest date possible. Such elections shall be made in compliance with the procedures and
25 requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to
26 timely and properly prepare and deliver the necessary documentation for signature by all
27 necessary parties, and thereafter to cause the appropriate filing to occur.

1 11.5. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended,
2 and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The
3 Escrow Agent shall timely and properly file all informational and other tax returns necessary or
4 advisable with respect to the Settlement Fund (including without limitation the returns described
5 in Treas. Reg. § 1.468B-2(k)(1)). Such returns (as well as the elections described in Paragraph
6 11.4) shall be consistent with Paragraph 11.7.

7 11.6. All (i) taxes (including any estimated taxes, interest or penalties) arising with
8 respect to the income earned by the Settlement Fund, including any taxes or tax detriments that
9 may be imposed upon PAL or any other Released Party with respect to any income earned by the
10 Settlement Fund for any period during which the Settlement Fund does not qualify as a
11 “qualified settlement fund” for federal or state income tax purposes (“Taxes”); and (ii) expenses
12 and costs incurred in connection with the operation and implementation of Paragraphs 11.6
13 through 11.9 (including, without limitation, expenses of tax attorneys and/or accountants and
14 mailing and distribution costs and expenses relating to filing (or failing to file) the returns
15 described in Paragraph 11.5 (“Tax Expenses”)), shall be paid out of the Settlement Fund.

16 11.7. Neither PAL nor any other Released Party nor their respective counsel shall have
17 any liability or responsibility, including filing responsibility, for the Taxes or the Tax Expenses.
18 Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of
19 administration of the Settlement Fund and shall be timely paid, subject to Court approval, by the
20 Escrow Agent out of the Settlement Fund. The Escrow Agent shall be obligated (notwithstanding
21 anything herein to the contrary) to withhold from distribution to any claimants authorized by the
22 Court any funds necessary to pay such amounts including the establishment of adequate reserves
23 for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld
24 under Treas. Reg. § 1.468B-2 (1)(2)). Neither PAL nor any other Released Party is responsible
25 nor shall they have any liability therefor. Plaintiffs and PAL agree to cooperate with the Escrow
26 Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to
27 carry out the provisions of Paragraphs 11.2 through 11.10. PAL makes no representation to
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1 Plaintiffs regarding the appropriate tax treatment of the Settlement Fund, income earned on the
2 Settlement Fund, or any distribution taken from the Settlement Fund.

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

10 11.9. PAL shall not be liable for any costs, fees, or expenses of any of Plaintiffs'
11 respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and
12 expenses as provided for in Paragraph 5.4 or otherwise approved by the Court may be paid out
13 of the Settlement Fund.

14 11.10. If, after all costs (including notice costs), attorneys' fees, and any other expenses
15 have been paid from the Settlement Fund, there are any remaining funds, they shall be distributed
16 pro-rata to the Settlement Class, or in Settlement Class Counsel's reasonable judgment, be made
17 the subject of an application to the Court by Plaintiffs for *cy pres* distribution in accordance with
18 governing standards in the Ninth Circuit.

19 11.11. **Contingent Settlement Refund Clause:** Settlement Class Counsel agrees to grant
20 PAL a Contingent Settlement Refund ("CSR") in accord with the following terms. During the
21 pendency of the appeal in the Ninth Circuit of Defendants' Motion for Summary Judgment
22 Regarding the Filed Rate Doctrine, Case No. 15-15364, Plaintiffs shall not settle, compromise or
23 release claims against either EVA Airways Corporation ("EVA") or China Airlines Limited
24 ("China Airlines") for a settlement amount less than the Settlement Amount. If Plaintiffs settle
25 with either EVA or China Airlines for less than the Settlement Amount, then the Settlement
26 Amount shall be reduced, dollar-for-dollar, to the amount of any EVA or China Airlines
27 settlement (or the lesser of any two such settlements), with the difference refunded to PAL out of
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1 the Settlement Fund, or, if the Settlement Fund is insufficient, out of PAL's next scheduled
2 payment pursuant to Paragraph 11.1, and if that amount is insufficient, out of funds supplied by
3 EVA or China Airlines pursuant to any settlement. This CSR provision is limited in both time
4 and in scope. The CSR is limited to the time period during the pendency of Defendants' appeal in
5 the Ninth Circuit, Case No. 15-15364. The CSR is limited in scope to only those settlements
6 potentially reached with EVA or China Airlines. This CSR provision is a material part of this
7 Settlement Agreement.

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

9 12.1. The costs and expenses of administration of the settlement pursuant to the terms of
10 this Settlement Agreement shall be paid out of the Settlement Fund. The Claims Administrator(s)
11 shall, on a monthly basis, submit invoices, with appropriate supporting documentation, to
12 Settlement Class Counsel for payment from the Escrow Account. To the extent practicable, the
13 administration of this Settlement shall be coordinated with the administration of other aspects of
14 this Action, including, but not limited to, any other settlement(s) entered into between Plaintiffs
15 and any other settling Defendant(s) and/or the administration of any recovery obtained on behalf
16 of the class by summary judgment or trial.

17 12.2. PAL shall not have any responsibility, financial obligation, or liability whatsoever
18 with respect to the investment, distribution, or administration of the Settlement Fund, including,
19 but not limited to, the costs and expenses of such investment, distribution and administration,
20 except as expressly otherwise provided in the Settlement Agreement. For the avoidance of doubt,
21 under no circumstances will PAL be obligated to pay any sums other than the Settlement
22 Amount.

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

24 13.1. If the Court declines to approve this Settlement Agreement or any material part
25 hereof, or if such approval is materially modified or set aside on appeal, or if the Court does not
26 enter the Judgment, or if the Court enters the Judgment and appellate review is sought and, on
27 such review, such Judgment is not affirmed or is materially modified, then PAL and Plaintiffs
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1 shall each, in their respective sole discretion, have the option to rescind this Settlement
2 Agreement in its entirety.

3 13.2. If PAL or Plaintiffs choose to exercise the option to rescind pursuant to
4 Paragraph 13.1, any and all amounts then constituting the Settlement Fund (including all
5 income earned thereon and excluding any reasonable expenses that have been paid or incurred
6 associated with providing notice to the Settlement Class, administering the Settlement Fund,
7 incurred or paid under Paragraph 11.10 of this Settlement Agreement, and/or any Taxes
8 already paid on such income), together with any amounts, including attorneys' fees, paid to
9 Settlement Class Counsel pursuant to Paragraph 16 below (including all income earned
10 thereon), shall be returned forthwith to PAL. A modification or reversal on appeal of any
11 amount of Settlement Class Counsel's fees and expenses awarded by the Court or any plan of
12 allocation of the Settlement Fund shall not be deemed a modification of all or a part of the
13 terms of this Settlement Agreement or the Judgment.

14 13.3. PAL and Plaintiffs expressly reserve all of their rights if this Settlement
15 Agreement does not become effective or if it is rescinded by Plaintiffs or PAL pursuant to
16 Paragraph 13.1 of this Settlement Agreement. In addition, if for any reason (including a party's
17 exercise of a valid right to rescind this Settlement Agreement), the Settlement Agreement does
18 not receive final Court approval, then the certification of the Settlement Class shall become null
19 and void without further Court action, and shall not be used or referred to for any further purpose
20 in the Action or in any other action or proceeding, and shall not prejudice any party in arguing
21 for or against contested class certification in these Actions or in any other proceeding. Further,
22 this Agreement, whether or not it is finally approved and whether or not PAL or Plaintiffs elect
23 to rescind it under Paragraph 13.1 of the Settlement Agreement, and any and all negotiations,
24 documents, and discussions associated with it, shall not be deemed or construed to be an
25 admission or evidence of any violation of any statute or law, or of any liability or wrongdoing
26 by PAL or any Defendant, or of the truth of any of the claims or allegations contained in
27 Plaintiffs' Second Amended Consolidated Class Action Complaint or any other pleading filed
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1 by Plaintiffs in the Action, or waiver or invalidity of any defense, and evidence thereof shall
2 neither be discoverable nor used directly or indirectly except in a proceeding to enforce or
3 interpret the Settlement Agreement.

4 **14. Cooperation**

5 14.1. PAL agrees to perform the following acts following execution of this Settlement
6 Agreement:

- 7 (a) Taking all actions necessary to vest the District Court with jurisdiction to hear the
8 preliminary approval of the Settlement Agreement, including the filing of a
9 dismissal, without prejudice, of its appeal in the docket for the Ninth Circuit Court
10 of Appeals, Case No. 15-15364, and filing a notice of settlement so that the Ninth
11 Circuit is made aware of the existence of the Settlement Agreement;
- 12 (b) Responding in good faith to a limited number of reasonable questions posed by
13 Settlement Class Counsel concerning the transactional data previously produced
14 by PAL;
- 15 (c) Providing assistance reasonably necessary to establish the admissibility of all
16 Documents it has produced, including, as reasonably necessary, producing at trial
17 or in person, by deposition or by affidavit, whichever is legally sufficient, written
18 or oral testimony as to the genuineness, status as business records, and authenticity
19 of Documents. Plaintiffs will reimburse PAL for reasonable travel expenses, if
20 any, associated with making available any witness at trial in person or by
21 deposition (except with respect to airfare concerning travel to/from the
22 Philippines);
- 23 (d) Making available, upon reasonable notice and at mutually agreed dates, for
24 interview via telephone, or at a location or locations of PAL's choice, up to two (2)
25 current PAL employees, to be agreed upon by Settlement Class Counsel and
26 counsel for PAL, to (i) provide information about Plaintiffs' substantive
27 allegations or (ii) provide a declaration about factual matters asserted by any
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1 Defendant(s) seeking summary disposition of these Actions before trial or to
2 authenticate Documents. An interview for the purposes of this paragraph shall last
3 no longer than four hours. In the event that Plaintiffs believe more time is
4 necessary for any interview conducted pursuant to this paragraph, they may
5 request additional time from PAL, and PAL shall consider such request in good
6 faith. Witnesses under this section, provided they are current employees of PAL at
7 the time of trial, shall also be made available to testify at trial as needed, with
8 Plaintiffs responsible for reasonable travel costs for these witnesses (except with
9 respect to travel to/from the Philippines). Upon request of the witness, Plaintiffs
10 shall provide an interpreter for interviews, depositions and/or trial testimony at
11 Plaintiffs' expense. This paragraph is not intended to create any obligation on the
12 part of PAL if PAL lacks knowledge concerning the factual basis of any motion
13 for summary disposition filed or about Plaintiffs' substantive allegations;

14 (e) For a period up to and including twelve (12) months from the execution date of
15 this Agreement, making PAL's lead counsel available for up to a total of three (3)
16 meetings for reasonable consultation, including, but not limited to, consultation
17 regarding PAL's knowledge with respect to the involvement of other airlines in the
18 alleged conspiracy, the interpretation of Documents, and the airline industry in
19 general;

20 (f) Providing assistance reasonably necessary to notify the class of this Settlement
21 Agreement, as discussed in Paragraph 5, and the Fairness Hearing, as discussed in
22 Paragraph 7.

23 14.2. In connection with its provision of information, testimony, and Documents under
24 this Settlement Agreement, PAL shall have the right to assert the attorney-client privilege,
25 attorney work-product protection, joint defense privilege, or any other protection, privilege, or
26 immunity available under United States law, and to assert the attorney-client privilege,
27 attorney work-product protection, joint defense privilege, or any similar privilege under
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1 foreign law. All Documents, testimony, and information provided pursuant to Paragraph 14.1
2 may be designated as "Confidential" or "Highly Confidential", at PAL's discretion, in
3 accordance with the Protective Order entered in this Action, and shall be used only in
4 connection with the Action and only as provided under the terms of the Protective Order. The
5 Documents, testimony and information described in Paragraph 14.1 may not be used to
6 prosecute any claim against the Released Parties. The confidentiality requirements of this
7 paragraph shall continue to bind Plaintiffs and Settlement Class counsel even in the event that
8 the Settlement Agreement is rejected by the Court, terminated, rescinded, or otherwise unable
9 to take or remain in effect.

10 14.3. If any Document protected by the attorney-client privilege, attorney work-
11 product protection, joint defense privilege, or any other protection, privilege, or immunity is
12 accidentally or inadvertently produced, the Document shall promptly be returned to PAL, and
13 its production shall in no way be construed to have waived any privilege or protection attached
14 to such Document.

15 14.4. The cooperation set forth in Paragraph 14.1 shall constitute the exclusive means
16 by which Plaintiffs and Settlement Class Counsel may obtain discovery from the Released
17 Parties whether under the Federal Rules of Civil Procedure or the laws or rules of any other
18 jurisdiction.

19 **15. No Admissions**

20 15.1. The Parties intend the Settlement as described herein to be a final and complete
21 resolution of all disputes between them with respect to the Action and to compromise claims
22 that are contested, and it shall not be deemed an admission by any party as to the merits of any
23 claim or defense or any allegation made in the Action.

24 15.2. The Parties acknowledge that PAL is entering into this Settlement to eliminate
25 the inconvenience and distraction of potentially burdensome and protracted litigation. Neither
26 the Settlement nor this Settlement Agreement, nor any negotiations or act performed or
27 document executed pursuant to or in furtherance of the Settlement or this Settlement
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1 Agreement is or may be deemed to be or may be used as an admission of, or evidence of,
2 PAL's conduct having violated the laws of any state, country, or other jurisdiction or of
3 having caused any harm to any Person. Neither the Settlement nor this Settlement
4 Agreement, nor any act performed or document executed pursuant to or in furtherance of the
5 Settlement or this Settlement Agreement, shall be admissible in any proceeding for any
6 purpose, except to consummate or enforce the terms of the Settlement, and except that the
7 Released Parties may file this Settlement Agreement or the Judgment in any action for any
8 purpose, including, but not limited to, in support of a defense or counterclaim based on
9 principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar,
10 reduction, or any other theory of claim preclusion or issue preclusion or similar defense or
11 counterclaim.

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

13 16.1. The procedure for, and the allowance or disallowance by the Court of, any
14 application by Settlement Class Counsel for attorneys' fees and expenses are not part of the
15 Settlement Agreement, and are to be considered by the Court separately from the Court's
16 consideration of the fairness, reasonableness, and adequacy of the settlement. Any order or
17 proceeding relating to any application for, or approval of, attorneys' fees and expenses, the
18 pendency of any such application, or any appeal or review of an order relating thereto or reversal or
19 modification thereof, shall not operate to terminate or cancel this Settlement Agreement, or affect or
20 delay the finality of the Judgment. PAL agrees that Settlement Class Counsel may withdraw from
21 the Settlement Fund any amount awarded by the Court for attorneys' fees and costs five (5) days
22 following the Court's award, subject to an appropriate financial undertaking required by the Court
23 in the event of an appeal of the Court's award of attorneys' fees and expenses. For the avoidance
24 of doubt, any attorneys' fees or expenses shall come out of the settlement fund, and PAL under no
25 circumstances will be obligated to pay sums in addition to the Settlement Amount.

26 16.2. PAL shall have no responsibility for, and no liability whatsoever with respect
27 to, the division of attorneys' fees and expenses among Settlement Class Counsel, and any
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1 negotiation or dispute among Settlement Class Counsel in that regard shall not operate to
2 terminate or cancel this Settlement Agreement, or affect or delay the finality of the Judgment.

3 16.3. Except as otherwise provided herein, Plaintiffs and PAL shall each be
4 responsible for bearing their own costs and fees incurred in this Action.

5 **17. Miscellaneous Provisions**

6 17.1. PAL expressly represents that it has obtained all required approvals from its
7 management for this Settlement Agreement.

8 17.2. This Settlement Agreement shall constitute the entire agreement between the
9 Parties pertaining to the Settlement of the Action against PAL and supersedes any and all prior
10 and contemporaneous undertakings of the Parties in connection therewith. The terms of the
11 Settlement Agreement are and shall be binding upon each of the Parties hereto, their heirs,
12 executors, administrators, representatives, agents, attorneys, partners, successors,
13 predecessors-in-interest, and assigns, and upon all other Persons claiming any interest in the
14 subject matter hereto through any of the parties hereto including any Settlement Class
15 Members.

16 17.3. This Settlement Agreement may be modified or amended only by a writing
17 executed by Plaintiffs and PAL, subject (if after preliminary or final approval by any court) to
18 approval by the Court. Amendments and modifications may be made without notice to the
19 Settlement Class unless notice is required by law or by the Court.

20 17.4. None of the Parties hereto shall be considered to be the drafter of this
21 Settlement Agreement or any its provisions hereof for the purpose of any statute, case law or
22 rule of interpretation or construction that would or might cause any provision to be construed
23 against the drafters of this Settlement Agreement.

24 17.5. This Agreement shall be construed and interpreted to effectuate the intent of the
25 parties which is to provide, through this Settlement Agreement, for a complete resolution of the
26 Released Claims with respect to the Released Parties.

1 17.6. Nothing expressed or implied in this Settlement Agreement is intended to or
2 shall be construed to confer upon or give any person or entity other than Class Members,
3 Releasing Parties, and Released Parties any right or remedy under or by reason of this
4 Agreement.

5 17.7. This Agreement shall be binding upon, and inure to the benefit of, the
6 Releasing Parties and the Released Parties.

7 17.8. Plaintiffs and PAL acknowledge that they have been represented by counsel,
8 and have made their own investigations of the matters covered by this Settlement Agreement
9 to the extent they have deemed it necessary to do so. Therefore, Plaintiffs and PAL and their
10 respective counsel agree that they will not seek to set aside any part of the Settlement
11 Agreement on the grounds of mistake. Moreover, Plaintiffs and PAL and their respective
12 counsel understand, agree, and expressly assume the risk that any fact may turn out hereinafter
13 to be other than, different from, or contrary to the facts now known to them or believed by
14 them to be true, and further agree that the Settlement Agreement shall be effective in all
15 respects and shall not be subject to termination, modification, or rescission by reason of any
16 such difference in facts. If any provision of this Settlement Agreement is found by a court of
17 competent jurisdiction to be illegal, invalid, or unenforceable for any reason, the remainder of
18 this Settlement Agreement will not be affected, and, in lieu of each provision that is found
19 illegal, invalid or unenforceable, a provision will be added as a part of this Settlement
20 Agreement that is as similar to the illegal, invalid or unenforceable provision as may be legal,
21 valid and enforceable.

22 17.9. All terms of this Settlement Agreement shall be governed by and interpreted
23 according to the substantive laws of the State of California, without regard to its choice of law
24 or conflicts of laws principles.

25 17.10. PAL, Plaintiffs and all Settlement Class Members hereby irrevocably submit to the
26 exclusive jurisdiction of the United States District Court for the Northern District of California for
27 any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or
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1 the applicability of this Settlement Agreement, including, without limitation, any suit, action,
2 proceeding or dispute relating to the release provisions herein.

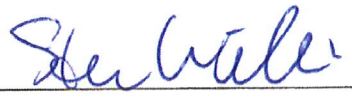
3 17.11. This Settlement Agreement may be executed in counterparts. Facsimile or
4 Portable Document Format signatures shall be considered as valid signatures for purposes of
5 execution of this Settlement Agreement, but original signature pages shall thereafter be collated
6 for filing of this Settlement Agreement with the Court.

7 17.12. Each of the undersigned attorneys represents that he or she is fully authorized to
8 enter into the terms and conditions of, and execute, this Settlement Agreement, subject to
9 Court approval, and the undersigned Settlement Class Counsel represent that they are
10 authorized to execute this Settlement Agreement on behalf of Plaintiffs and the proposed
11 Settlement Class.

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

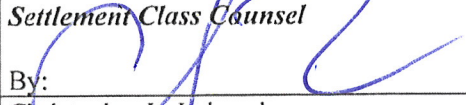
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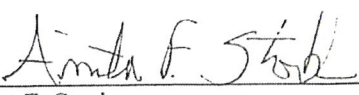
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