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*Plaintiffs' Interim Class Counsel*

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

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

**Case No. 07-cv-05634-CRB**

**MDL No. 1913**

**Honorable Charles R. Breyer**

**This Document relates to:**

**ALL ACTIONS**

**SETTLEMENT AGREEMENT  
 BETWEEN PLAINTIFFS AND  
 MALAYSIAN AIRLINE SYSTEM  
 BERHAD**

**SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS AND MALAYSIAN AIRLINE  
 SYSTEM BERHAD**

July 9, 2014

This Settlement Agreement, dated ~~May, 2013~~ (the "Settlement Agreement"), is made and entered into by and among defendant Malaysian Airline System Berhad ("MALAYSIA AIRLINES") and Meor Adlin, Franklin Ajaye, Andrew Barton, Lori Barrett, Rachel Diller, Scott Frederick, David Kuo, Dickson Leung, Brendan Maloof, David Murphy, and Donald Wortman ("Plaintiffs"), individually and as representatives of the class of plaintiffs (the "Settlement Class," as more specifically defined below), in the MDL class action In re Transpacific Passenger Air Transportation Antitrust Litigation, 07-cv-5634-CRB, MDL No. 1913, currently pending before the Honorable Charles R. Breyer in the United States District Court for the Northern District of California, San Francisco Division (the "Court").

WHEREAS, Plaintiffs are prosecuting the Actions (defined below) on their own behalf and on behalf of the Settlement Class.

WHEREAS, Plaintiffs allege, among other things, that MALAYSIA AIRLINES participated in an unlawful conspiracy or conspiracies to restrain trade, pursuant to which MALAYSIA AIRLINES and other defendants ("Defendants") allegedly agreed to fix, raise, maintain, and/or stabilize prices for air passenger travel, including associated surcharges, for international flights involving at least one flight segment between the United States and Asia/Oceania. For the purposes of this Settlement Agreement, "Oceania" is defined as Australia, New Zealand, and the Pacific Islands.

WHEREAS, MALAYSIA AIRLINES denies Plaintiffs' allegations and has asserted a number of defenses to Plaintiffs' claims.

WHEREAS, Plaintiffs have concluded, after an investigation into the facts and the law, and after carefully considering the circumstances of claims made by Plaintiffs and the Settlement Class, and the possible legal and factual defenses thereto, that it is in the best interests of

Plaintiffs and the Settlement Class to enter into this Settlement Agreement with MALAYSIA AIRLINES to avoid the uncertainties and risks of litigation, and that the Settlement set forth herein is fair, reasonable, adequate and in the best interests of the Settlement Class.

WHEREAS, MALAYSIA AIRLINES has concluded, despite its belief that it has good defenses with respect to Plaintiffs' claims, that it is in its best interests to enter into this Settlement Agreement to avoid the distractions, uncertainties, risks and costs of litigation.

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

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

NOW, THEREFORE, in consideration of the promises, mutual promises, covenants, agreements and releases set forth herein and for other good and valuable consideration, and incorporating the above recitals herein, it is agreed by the undersigned, on behalf of MALAYSIA AIRLINES, Plaintiffs, and the Settlement Class, that the Actions and all claims of Plaintiffs and the Settlement Class that have been or could be asserted in the Actions be settled, compromised and dismissed on the merits and with prejudice as to MALAYSIA AIRLINES and all other Released Parties (as defined below) and, except as hereinafter provided, without costs as to Plaintiffs, the Settlement Class or MALAYSIA AIRLINES, subject to court approval, on the following terms and conditions:

## 1. Definitions

1.1. “Actions” means the class action captioned In re Transpacific Passenger Air Transportation Antitrust Litigation, 07-cv-5634-CRB, MDL No. 1913, currently pending before the Honorable Charles R. Breyer in the United States District Court for the Northern District of California, San Francisco Division, and all actions filed in or transferred to the Northern District of California for consolidation and/or coordinated with the above-captioned MDL litigation, all actions pending such transfer (including but not limited to “tag-along” actions) and all actions that may be transferred or filed in the future, or are otherwise related to the claims and conduct alleged in the above-captioned multidistrict litigation.

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

1.3. “Judgment” means a final order of judgment, dismissal, and approval of the Settlement, to be rendered by the Court substantially in the form of Attachment A.

1.4. “Parties” means Plaintiffs, Settlement Class Members, and MALAYSIA AIRLINES.

1.5. “Defendants” means Air France, Air New Zealand, All Nippon Airways Company, Limited, Cathay Pacific Airways Limited, China Airlines Limited, Continental Airlines, Inc., EVA Airways Corporation, Japan Airlines International Company, Ltd. (“JAL”), KLM Royal Dutch Airlines (“KLM”), MALAYSIA AIRLINES, Philippine Airlines, Inc., Qantas Airways Limited, SAS AB, Singapore Airlines Limited, Thai Airways International Public Co., Ltd., and Vietnam Airlines, and any other party named as a defendant in the Actions at any time up to and including the Preliminary Approval Date (as defined below).

1.6. “Person” means an individual or an entity.

1.7. “Plaintiffs” means Meor Adlin, Franklin Ajaye, Andrew Barton, Lori Barrett, Rachel Diller, Scott Frederick, David Kuo, Dickson Leung, Brendan Maloof, David Murphy, and Donald Wortman, and any other plaintiffs designated by the Court as class representatives, individually and on behalf of the Settlement Class.

1.8. “Preliminary Approval Date” means the date on which the Court enters an order granting preliminary approval of this Settlement Agreement.

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

1.10. “Released Claims” means any and all claims, demands, actions, suits, and causes of action, damages, and liabilities of any nature, including without limitation, claims for costs, expenses, penalties, and attorneys’ fees, whether class, individual, or otherwise, that the Releasing Parties, or any one of them, ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity against the Released Parties or any of them, regardless of whether such claims are known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, or claims that have been, could have been, or in the future might be asserted in law or in equity, on account of, arising out of, resulting from, or in any way related to any conduct regardless of where it occurred at any time prior to the Effective Date, concerning the purchase of passenger air transportation between the United States and Asia/Oceania, including, but not limited to, the pricing, selling, discounting or marketing of passenger air transportation between the United States and Asia/Oceania (but only to the extent such transportation originated in the United States) by MALAYSIA AIRLINES or Defendants or their alleged co-conspirators, including without limitation, claims based in whole or part on the facts, occurrences, transactions

or other matters that were alleged or could have been alleged in the Actions (including without limitation, pricing of fares or fuel surcharges or any other element of, component of, or surcharge upon such pricing), whether such claims are based on federal, state, local, statutory, or common law, or any other law, code, rule, or regulation of any country or other jurisdiction worldwide, regardless of legal theory, and regardless of the type or amount of relief or damages claimed.

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

1.12. "Releasing Parties" means, jointly and severally, and individually and collectively, Plaintiffs and the Settlement Class Members, their present and former parents, subsidiaries, divisions and affiliates, each of their respective past and present officers, directors, employees and agents, attorneys, representatives and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing. As used in this definition, "affiliates" means entities controlling, controlled by or under common control with any of the Released Parties.

1.13. "Settlement Class Counsel" means the law firms of Cotchett Pitre & McCarthy, LLP, San Francisco Airport Center, 840 Malcolm Road, Suite 200, Burlingame, CA 94010 and Hausfeld, LLP, 44 Montgomery Street, San Francisco, CA, 94104 and 1700 K Street, Suite 650, Washington, DC 20006.

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

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

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

Plaintiffs and MALAYSIA AIRLINES shall use all reasonable efforts to effectuate this Settlement Agreement, including cooperating in Plaintiffs' efforts to obtain the Court's approval of procedures (including the giving of class notice under Rules 23(c) and 23(e) of the Federal Rules of Civil Procedure) and to secure certification of the Settlement Class for settlement purposes only and the prompt, complete, and final dismissal with prejudice of the Actions as to MALAYSIA AIRLINES. Prior to the filing of any motions or other papers in connection with the Settlement, including without limitation, the motions for preliminary approval of the Settlement (as contemplated in paragraph 4.1 of this Settlement Agreement) and for final approval of the Settlement (as contemplated in paragraph 7.1 of this Settlement Agreement), Plaintiffs shall consult with MALAYSIA AIRLINES. The text of any proposed form of order approving the Settlement Agreement shall be agreed upon by Plaintiffs and MALAYSIA AIRLINES before it is submitted to the Court.

## **3. Class Certification**

In connection with Plaintiffs' motion for preliminary approval of the Settlement, pursuant to paragraph 4.1 herein, the parties stipulate that the following class should be certified for settlement purposes only:

Settlement Class: All persons and entities that purchased passenger air transportation that included at least one flight segment between the United States and Asia/Oceania from Defendants or their co-conspirators, or any predecessor, subsidiary or affiliate thereof, at any time between January 1, 2000 and the Effective Date. Excluded from the class are purchases of passenger air transportation between the United States and the Republic of South Korea purchased from Korean Air Lines, Ltd. and/or Asiana Airlines, Inc. Also excluded from the class are governmental entities, Defendants, former defendants in the Actions, any parent, subsidiary or affiliate thereof, and Defendants' officers, directors, employees or immediate families.

#### 4. Motion for Preliminary Approval

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

- (a) preliminarily approving the Settlement;
- (b) scheduling a hearing (the "Fairness Hearing") to consider (i) whether the Settlement should be approved as fair, reasonable, and adequate to Settlement Class Members, and whether the Judgment should be entered dismissing the claims of Plaintiffs and all Settlement Class Members on the merits and with prejudice; and (ii) whether to approve any application by Settlement Class Counsel for an award of attorneys' fees and payment of costs and expenses;
- (c) certifying the Settlement Class for settlement purposes only, and finding that each element for certification of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure is met;

- (d) approving the Parties' proposed methods for giving notice of the Settlement and the Fairness Hearing to Settlement Class Members;
- (e) approving the Parties' proposed forms of notice;
- (f) setting the date by which any Settlement Class Member who seeks exclusion from a Settlement Class must submit a Request for Exclusion, which shall, subject to the Court's approval, be a date no earlier than forty-five (45) days after notice is given to Settlement Class Members, and no later than fourteen (14) days prior to the Fairness Hearing;
- (g) setting the date by which any Settlement Class Member may serve written objections to the Settlement or to any application by Settlement Class Counsel for attorneys' fees and expenses, which shall, subject to the Court's approval, be fourteen (14) days prior to the Fairness Hearing; and
- (h) enjoining initiation, commencement, or prosecution of any action or claim that is subject to the release and dismissal contemplated by this Settlement, by any Releasing Party.

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

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

5.1. In accordance with the requirements of Federal Rule of Civil Procedure 23 and due process, individual notice shall be given to those Settlement Class Members whom the Parties can identify with reasonable effort, in accordance with Federal Rule of Civil Procedure 23 and to the extent not prohibited by law. In addition, in order to provide notice of the settlement

to those Settlement Class Members who do not receive individual notice pursuant to paragraph 5.1 herein, notice shall be given by publication in such manner and scope as is reasonable, and consistent with the requirements of Federal Rule of Civil Procedure 23. Plaintiffs shall develop, with the cooperation of MALAYSIA AIRLINES, the details of the publication notice program. Plaintiffs shall submit an agreed publication notice program to the Court or, in the absence of agreement upon the publication notice program. Plaintiffs shall submit their proposed publication notice program to the Court and MALAYSIA AIRLINES shall submit any objections within ten (10) days thereafter.

5.2. If any other settlement class is certified by the Court in these Actions, the parties to this Settlement Agreement agree that the notice program to be implemented pursuant to this Settlement Agreement may be combined with notice of such other settlement class(es) as may be certified by the Court.

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

## **6. Requests for Exclusion**

6.1. Any Person that wishes to seek exclusion from the Settlement Class must timely submit a written request for exclusion as provided in this paragraph (a "Request for Exclusion"). Any Person who timely submits a Request for Exclusion shall be excluded from the Settlement Class, shall have no rights with respect to this Settlement Agreement, and shall receive no benefits as provided in this Settlement Agreement. A Request for Exclusion must be in writing

and state the name, address, and telephone number of the Person(s) seeking exclusion. A Request for Exclusion must be mailed to Settlement Class Counsel at the address provided in the notices to Settlement Class Members and postmarked (or mailed by overnight delivery) no later than fourteen (14) days prior to the date set for the Fairness Hearing or any other date set by the Court.

6.2. Settlement Class Counsel shall forward each Request for Exclusion to MALAYSIA AIRLINES's counsel within three (3) business days of receipt.

## 7. Fairness Hearing

7.1. At the Fairness Hearing, Plaintiffs shall seek, and MALAYSIA AIRLINES shall support, entry of a Judgment *inter alia*:

- (a) finally approving the Settlement and its terms as being fair, reasonable, and adequate, within the meaning of Rule 23 of the Federal Rules of Civil Procedure, and directing its consummation according to its terms;
- (b) determining that the notices to Settlement Class Members constituted, under the circumstances, the best practicable notice of this Settlement Agreement and the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;
- (c) directing that, as to MALAYSIA AIRLINES, the Actions be dismissed with prejudice and, except as provided for in this Settlement Agreement, without costs;
- (d) permanently barring and enjoining the institution, commencement, or prosecution, by any of the Releasing Parties, of any action asserting any Released Claim against any Released Party, in any local, state, federal, or other court of any

nation, or in any agency or other authority or arbitral or other forum wherever located;

- (e) providing that any Settlement Class Member who fails to object in the manner prescribed in this Settlement Agreement shall be deemed to have waived any objections to the Settlement and the Settlement Agreement and will forever be barred from making any such objections to the Settlement or the Settlement Agreement;
- (f) retaining exclusive jurisdiction over the settlement and this Settlement Agreement, including the administration and consummation of the settlement; and
- (g) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to MALAYSIA AIRLINES shall be final and entered forthwith.

7.2. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who objects to the Settlement may appear at the Fairness Hearing in person or through counsel, at their own expense, to present any evidence or argument with respect to the settlement, to the extent permitted by the Court. However, no such Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents shall be received and considered by the Court unless such Settlement Class Member properly submits a written objection that includes (a) notice of their intention to appear, (b) proof of membership in the Settlement Class, and (c) the specific grounds for the objection. Such a written objection must be filed with the Court no later than fourteen (14) days prior to the date set for the Fairness Hearing, and mailed to Settlement Class Counsel and MALAYSIA AIRLINES's counsel, postmarked no later than fourteen (14) days prior to the date of the Fairness Hearing. Any Settlement Class

Member who fails to object in the manner prescribed herein shall be deemed to have waived any objections to the Settlement and this Settlement Agreement and will forever be barred from making any such objections to the Settlement or this Settlement Agreement.

**8. Effective Date of the Settlement Agreement**

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

- (a) the Court has entered the Judgment, following notice to the Settlement Class and the Fairness Hearing, approving this Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and dismissing the Actions against MALAYSIA AIRLINES with prejudice, and without costs except as specified herein; and
- (b) the time for appeal or to seek permission to appeal from the Judgment has expired or, if appealed, approval of this Settlement Agreement and the Judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times.

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

9.1. Upon the Effective Date, and in consideration of the good and valuable consideration set forth in this Settlement Agreement, the sufficiency and receipt of which is hereby acknowledged, each of the Releasing Parties shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, shall have covenanted not to sue or otherwise seek

to establish liability against any of the Released Parties with respect to any Released Claims, and shall be permanently barred and enjoined from instituting, commencing, prosecuting or asserting any Released Claim against any of the Released Parties.

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

Plaintiffs acknowledge, and the Releasing Parties shall be deemed to have acknowledged, and by operation of the Judgment shall have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

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

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

All rights of any Settlement Class Member against any co-conspirator or any other Person other than the Released Parties are specifically reserved by Plaintiffs and the Settlement Class Members. The sales of passenger air transportation by MALAYSIA AIRLINES shall, to the extent permitted and/or authorized by U.S. law, remain in the case against any other future defendants in the Actions as a potential basis for damage claims and shall be part of any joint and several liability claims against future defendants in the Actions or other persons or entities other than the Released Parties.

#### **11. Settlement Consideration**

11.1. The total monetary amount payable by MALAYSIA AIRLINES in settlement of the Released Claims is U.S.D. \$950,000.00. Within forty-five (45) business days after the execution of this Settlement Agreement, MALAYSIA AIRLINES will deposit U.S.D. \$475,000

into an escrow account (the “Escrow Account”) established by Plaintiffs; within one hundred and thirty-five (135) days after the execution of this Settlement Agreement, Malaysian Airlines will deposit an additional U.S.D. \$475,000 into the Escrow Account. The deposited sum shall be held in the Escrow Account until there is an order from the District Court concerning distribution or use of the sum identified in paragraph 11.1. The Escrow Account will be established at a bank located within the Northern District of California, with such Bank serving as escrow agent (“Escrow Agent”) subject to escrow instructions mutually acceptable to Settlement Class Counsel and MALAYSIA AIRLINES, such escrow to be administered under the Court’s continuing supervision and control.

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

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

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

defined in Treas. Reg. 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

11.5. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder the "administrator" shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)(1)). Such returns (as well as the election described in paragraph 11.4) shall be consistent with paragraph 11.6 and in all events shall reflect that all Taxes, as defined below (including any estimated Taxes, interest or penalties), on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in paragraph 11.8 hereof.

11.6. All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon MALAYSIA AIRLINES or any other Released Party with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes ("Taxes"); and (ii) expenses and costs incurred in connection with the operation and implementation of paragraphs 11.6 through 11.8 (including without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in paragraph 11.7 ("Tax Expenses")), shall be paid out of the Settlement Fund.

11.7. Neither MALAYSIA AIRLINES nor any other Released Party nor their respective counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid, subject to Court approval, by the Escrow Agent out of the Settlement Fund. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the Court any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2 (1)(2)). Neither MALAYSIA AIRLINES nor any other Released Party is responsible nor shall they have any liability therefore. Plaintiff and MALAYSIA AIRLINES agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of paragraphs 11.3 through 11.9.

11.8. If this Settlement Agreement does not receive final Court approval, or if the Actions are not certified as a class action for settlement purposes, or if this Settlement Agreement is terminated or voided for any reason, then all amounts paid by MALAYSIA AIRLINES into the Settlement Fund (other than costs that may already have reasonably been incurred or expended in accordance with paragraphs 5.3 and 11) shall be promptly returned to MALAYSIA AIRLINES from the Escrow Account by the Escrow Agent along with any interest accrued thereon.

11.9. If, after all costs (including notice costs), attorneys' fees, and any other expenses have been paid from the Settlement Fund, there are any remaining funds, they shall be distributed pro-rata to the Settlement Class, or in Settlement Class Counsel's reasonable judgment, be made

the subject of an application to the Court by Plaintiffs for *cy pres* distribution in accordance with governing standards in the Ninth Circuit.

11.10. MALAYSIA AIRLINES shall not have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Escrow Account, including (but not limited to) the costs and expenses of such investment, distribution and investment.

## **12. Administration of the Settlement**

The costs and expenses of administration of the settlement pursuant to the terms of this Settlement Agreement shall be paid out of the Settlement Fund. Subject to the discretion of Settlement Class Counsel and/or order of the Court, Settlement Class Counsel shall retain the services of an independent administrator to process any claims and respond to any inquiries made by members of the Settlement Class, and to provide other services incident thereto (the "Claims Administrator(s)"). The Claims Administrator(s) shall, on a monthly basis, submit invoices, with appropriate supporting documentation, to Settlement Class Counsel for payment from the Escrow Account. To the extent practicable, the administration of this Settlement shall be coordinated with the administration of other aspects of these Actions, including, but not limited to, any other settlement(s) entered into between Plaintiffs and any other settling defendant(s) and/or the administration of any recovery obtained on behalf of the class by summary judgment or trial. MALAYSIA AIRLINES shall not have any responsibility, financial obligation, or liability whatsoever with respect to the administration of the settlement.

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

If the Court declines to approve this Settlement Agreement or any material part hereof, or if such approval is materially modified or set aside on appeal, or if the Court does not enter the

Judgment, or if the Court enters the Judgment and appellate review is sought and, on such review, such Judgment is not affirmed or is materially modified, then MALAYSIA AIRLINES and Plaintiffs shall each, in their respective sole discretion, have the option to rescind this Settlement Agreement in its entirety. If for any reason (including a party's exercise of a valid right to rescind this Settlement Agreement), the Settlement Agreement does not receive final Court approval, then the certification of the Settlement Class shall become null and void without further Court action, and shall not be used or referred to for any further purpose in the Actions or in any other action or proceeding, and shall not prejudice any party in arguing for or against contested class certification in this Actions or in any other proceeding.

#### **14. Cooperation**

14.1. MALAYSIA AIRLINES shall cooperate with Settlement Class Counsel as set forth below following execution of this Settlement Agreement:

- (a) providing assistance reasonably necessary to establish the admissibility of all documents it has produced, including, as reasonably necessary, producing at trial in person, by deposition or by affidavit, whichever is legally required, representatives to testify as to the genuineness, status as business records, and authenticity of documents;
- (b) making available, upon reasonable notice and at mutually agreed dates and locations, for an interview and/or testimony in the United States (by deposition, declaration, or at trial), up to two (2) current and/or former MALAYSIA AIRLINES employee witnesses, to be agreed upon by Settlement Class Counsel and counsel for MALAYSIA AIRLINES, for one (1) interview each (and related testimony by deposition, declaration, or trial, as required), to provide information about Plaintiffs' substantive allegations, it being understood that as to any former employee, MALAYSIA

AIRLINES's obligation under this clause is to use reasonable efforts to make such former employee available. An interview or deposition for purposes of this paragraph shall last no longer than seven hours, including reasonable breaks and, subject to reasonable limitations, may occur on more than a single day, but not more than two days.

(c) MALAYSIA AIRLINES will search for and produce relevant documents, following the application of a set of search terms to be agreed upon by Settlement Class Counsel and counsel for MALAYSIA AIRLINES, from the files of the current or former MALAYSIA AIRLINES employees agreed upon under paragraph 14.1(b). MALAYSIA AIRLINES shall also produce to Plaintiffs transactional data, to the extent reasonably available or as otherwise agreed, for one-way or roundtrip travel originating in the United States to Asia and/or Oceania for the period from January 1, 2000 to August 6, 2009.

(d) providing assistance reasonably necessary to notify the class of this Settlement Agreement and the fairness hearing contemplated in Paragraph 7, above.

14.2. Any documents, information or testimony provided pursuant to paragraph 14.1 may only be used in connection with the Actions and may not be used to prosecute claims against the Released Parties.

14.3. All documents and information provided pursuant to paragraph 14.1 shall be treated as confidential under the terms of the protective order entered in the Actions ("Protective Order") and shall be used only as provided under the terms of the Protective Order. The confidentiality requirements of this paragraph shall continue to bind Plaintiffs and Settlement Class Counsel even in the event that the Settlement Agreement is terminated or rescinded, rejected by the Court, or otherwise fails to take or remain in effect.

14.4. In connection with the provision of information, testimony and documents under this Settlement Agreement, MALAYSIA AIRLINES shall have the right to assert the attorney-client privilege, attorney work-product protection, joint defense privilege or any other protection, privilege or immunity available under United States law, and to assert the attorney-client privilege, attorney work-product protection, joint defense privilege or any similar privilege under foreign law. If any document protected by the attorney-client privilege, attorney work-product protection, joint defense privilege or any other protection, privilege or immunity is inadvertently produced, it shall be promptly returned to MALAYSIA AIRLINES, and its production shall in no way be construed to have waived any applicable privilege or protection.

14.5. The cooperation set forth in paragraph 14.1 shall constitute the exclusive means by which Plaintiffs and Settlement Class counsel may obtain discovery from the Released Parties, whether under the Federal Rules of Civil Procedure or the laws or rules of any other jurisdiction.

## **15. No Admissions**

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

15.2. The Parties acknowledge that MALAYSIA AIRLINES is entering into this Settlement to eliminate the distractions, uncertainties, burden, and expense of protracted litigation. Neither the Settlement nor this Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement or this Settlement Agreement is or may be deemed to be or may be used as an admission of, or evidence of, MALAYSIA

AIRLINES's conduct having violated the laws of any state, country, or other jurisdiction or of having caused any harm to consumers. Neither the Settlement nor this Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement or this Settlement Agreement, shall be admissible in any proceeding for any purpose, except to consummate or enforce the terms of the Settlement, and except that the Released Parties may file this Settlement Agreement or the Judgment in any action for any purpose, including, but not limited to, in support of a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

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

16.1. The procedure for, and the allowance or disallowance by the Court of, any application by Settlement Class Counsel for attorneys' fees and expenses are not part of the Settlement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement. Any order or proceeding relating to any application for, or approval of, attorneys' fees and expenses, the pendency of any such application, or any appeal or review of an order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement, or affect or delay the finality of the Judgment. MALAYSIA AIRLINES shall not take a position with respect to the timing or amount of any application Settlement Class Counsel makes for an award of attorneys' fees and costs out of the Settlement Fund and hereby agrees that Settlement Class Counsel may withdraw any amount awarded by the Court for attorneys' fees and costs five days following the Court's award, subject to an appropriate financial undertaking required by the Court in the event of an appeal of the Court's award of attorneys' fees and expenses.

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

16.3. Except as otherwise provided herein, Plaintiffs and MALAYSIA AIRLINES shall each be responsible for bearing their own costs and fees incurred in this Actions.

#### **17. Miscellaneous Provisions**

17.1. MALAYSIA AIRLINES expressly represents that it has obtained all required approvals from its management, and trustee(s) for this Settlement Agreement.

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

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

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

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

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

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

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

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

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

Dated: <sup>June 11</sup> ~~May 27~~ 2013

By: 

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**ATTACHMENT A**

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*Interim Co- Lead Counsel for Plaintiffs & the  
 Settlement Class*

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

<p><b>IN RE TRANSPACIFIC PASSENGER          AIR TRANSPORTATION ANTITRUST          LITIGATION</b></p> <hr/> <p><b>This Document Relates to:</b></p> <p><b>ALL ACTIONS</b></p> <hr/>	<p>) Civil Case No. 3:07-cv-05634-CRB-DMR</p> <p>) MDL No. 1913</p> <p>) <b>[PROPOSED] ORDER AND FINAL          JUDGMENT APPROVING SETTLEMENT          BETWEEN CLASS PLAINTIFFS AND</b></p>
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1 WHEREAS, a class action is pending before the Court entitled *In Re Transpacific*  
 2 *Passenger Air Transportation Antitrust Litigation*, Civil Case No. 3:07-cv-05634-CRB-DMR  
 3 (N.D. Cal., San Francisco division);

4 WHEREAS, the Court has received and reviewed the settlement agreement entered into  
 5 between Plaintiffs and Malaysian Airline Systems Bhd. ("MAS"), dated \_\_\_\_\_, 2013  
 6 (the "Settlement Agreement"), and has considered the terms of the proposed settlement set forth  
 7 therein (the "Settlement");

8 WHEREAS, all defined terms contained herein shall have the same meanings as set forth  
 9 in the Settlement Agreement, unless otherwise defined herein;

10 WHEREAS, on Plaintiffs' motion for preliminary approval, the Court on \_\_\_\_\_,  
 11 2013 entered an order preliminarily approving class action settlement with MAS (the  
 12 "Preliminary Approval Order") in which the Court certified the Settlement Class, preliminarily  
 13 approved the Settlement, set \_\_\_\_\_, 2013 as the deadline for filing of objections to the  
 14 Settlement, and scheduled a final approval hearing for \_\_\_\_\_, 2013;

15 WHEREAS, the Court on \_\_\_\_\_, 2013 entered an order approving a notice  
 16 program and related claim forms (the "Notice Approval Order");

17 WHEREAS, Settlement Class Counsel have submitted declarations to the Court  
 18 confirming that the notice program has been implemented in substantial accordance with the  
 19 notice approval order;

20 WHEREAS, the Court has considered all timely filed objections to the Settlement; and

21 WHEREAS, the Court conducted a final approval hearing on \_\_\_\_\_, 2013,  
 22 and has considered the arguments presented, all papers filed and all proceedings had herein;

23 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

24 1. As used in this Order the following terms (together with their cognate forms) have  
 25 the meanings specified below:

26 1.1. (a) "Actions" means the class action captioned In re Transpacific Passenger  
 27 Air Transportation Antitrust Litigation, 07-cv-5634-CRB, MDL No. 1913, currently pending  
 28 before the Honorable Charles R. Breyer in the United States District Court for the Northern

1 District of California, San Francisco Division, and all actions filed in or transferred to the  
2 Northern District of California for consolidation and/or coordinated with the above-captioned  
3 MDL litigation, all actions pending such transfer (including but not limited to “tag-along”  
4 actions) and all actions that may be transferred or filed in the future, or are otherwise related to  
5 the claims and conduct alleged in the above-captioned multidistrict litigation.  
6

7 (c) “Effective Date” means the earliest date on which all of the following events and  
8 conditions have occurred or have been met:

9 (1) the Court has entered this Judgment, following notice to the Settlement  
10 Class of the final approval hearing, approving this Settlement Agreement under Rule 23(e) of the  
11 Federal Rules of Civil Procedure and dismissing the Actions against MAS with prejudice, and  
12 without costs except as specified in the Settlement Agreement; and

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

19 (d) “Defendants” mean Air France, Air New Zealand, All Nippon Airways Company,  
20 Cathay Pacific Airways Limited, China Airlines Limited, Continental Airlines, Inc., EVA Airways  
21 Corporation, Japan Airlines International Company, Ltd. (“JAL”), KLM Royal Dutch Airlines  
22 (“KLM”), MALAYSIA AIRLINES, Philippine Airlines, Inc., Qantas Airways Limited, SAS AB,  
23 Singapore Airlines Limited, Thai Airways International Public Co., Ltd., and Vietnam Airlines, and  
24 any other party named as a defendant in the Actions at any time up to and including the Preliminary  
25 Approval Date.

26 (e) “Judgment” means this final order of judgment, dismissal, and approval of the  
27 Settlement.  
28

1 (f) "Person" means an individual or an entity.

2 (f) "Plaintiffs" mean Meor Adlin, Franklin Ajaye, Andrew Barton, Lori Barrett, Rachel  
3 Diller, Scott Frederick, David Kuo, Dickson Leung, Brendan Maloof, David Murphy, and Donald  
4 Wortman, who have been designated by the Court as class representatives for the Settlement  
5 Class.

6 (g) "Released Claims" means any and all claims, demands, actions, suits, and causes of  
7 action, damages, and liabilities of any nature, including without limitation, claims for costs, expenses,  
8 penalties, and attorneys' fees, whether class, individual, or otherwise, that the Releasing Parties, or  
9 any one of them, ever had, now has, or hereafter can, shall, or may have, directly, representatively,  
10 derivatively, or in any other capacity against the Released Parties or any of them, regardless of  
11 whether such claims are known or unknown, suspected or unsuspected, asserted or unasserted,  
12 foreseen or unforeseen, actual or contingent, liquidated or unliquidated, or claims that have been,  
13 could have been, or in the future might be asserted in law or in equity, on account of, arising out of,  
14 resulting from, or in any way related to any conduct regardless of where it occurred at any time prior  
15 to the Effective Date, concerning the purchase of passenger air transportation between the United  
16 States and Asia/Oceania, including, but not limited to, the pricing, selling, discounting or marketing  
17 of passenger air transportation between the United States and Asia/Oceania (but only to the extent  
18 such transportation originated in the United States) by MAS or Defendants or their alleged co-  
19 conspirators, including without limitation, claims based in whole or part on the facts, occurrences,  
20 transactions or other matters that were alleged or could have been alleged in the Actions (including  
21 without limitation, pricing of fares or fuel surcharges or any other element of, component of, or  
22 surcharge upon such pricing), whether such claims are based on federal, state, local, statutory, or  
23 common law, or any other law, code, rule, or regulation of any country or other jurisdiction  
24 worldwide, regardless of legal theory, and regardless of the type or amount of relief or damages  
25 claimed.

26 (h) "Released Parties" means, jointly and severally, individually and collectively:  
27 MAS, its present and former parents, subsidiaries, divisions and affiliates, each of their respective  
28 past and present officers, directors, employees and agents, attorneys, representatives and the

predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing. As used in this definition, "affiliates" means entities controlling, controlled by or under common control with any of the Released Parties.

(i) "Settlement Class" means:

All persons and entities that purchased passenger air transportation that included at least one flight segment between the United States and Asia/Oceania from Defendants or their co-conspirators, or any predecessor, subsidiary or affiliate thereof, at any time between January 1, 2000 and the Effective Date. Excluded from the class are purchases of passenger air transportation between the United States and the Republic of South Korea purchased from Korean Air Lines, Ltd. and/or Asiana Airlines, Inc. Also excluded from the class are governmental entities, Defendants, former defendants in the Actions, any parent, subsidiary or affiliate thereof, and Defendants' officers, directors, employees or immediate families.

(j) "Settlement Class Members" means, collectively, all members of the Settlement Class, as defined herein.

(k) "Releasing Parties" means, jointly and severally, and individually and collectively, Plaintiffs and the Settlement Class Members, their present and former parents, subsidiaries, divisions and affiliates, each of their respective past and present officers, directors, employees and agents, attorneys, representatives and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing. As used in this definition, "affiliates" means entities controlling, controlled by or under common control with any of the Released Parties.

2. This Court finds that it has jurisdiction over the Actions, each of the parties to the Settlement Agreement, and each of the Settlement Class Members.

3. The notice given to the Settlement Classes of the Settlement and the Final Approval Hearing, in substantial accordance with the terms of the Notice Approval Order, was the best notice practicable under the circumstances. Said notice provided due and adequate notice of these proceedings, the final approval hearing, and the Settlement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

4. The Court finds that the Settlement Agreement was the result of bona fide and arm's-length negotiations between Settlement Class Counsel and counsel for MAS.

5. The Court has given fair consideration to all objections to the Settlement that have

1 been timely submitted by Settlement Class Members, and hereby overrules each such objection.  
2 Any Settlement Class Member who failed to timely object to the Settlement in the manner  
3 prescribed in the Preliminary Approval Order shall be deemed to have waived any objections to  
4 the Settlement and the Settlement Agreement and by operation of this Judgment shall be forever  
5 barred from making any such objections to the Settlement or the Settlement Agreement.

6         6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby  
7 approves the Settlement as set forth in the Settlement Agreement, finds that said Settlement is, in  
8 all respects, fair, reasonable, and adequate with respect to the Settlement Class, and directs that  
9 the Settlement be consummated in accordance with the terms and conditions set forth in the  
10 Settlement Agreement.

11         7. The Actions are hereby dismissed with prejudice as to MAS, without costs (except  
12 as set forth in the Settlement Agreement).

13         8. With respect to any and all Released Claims, upon the Effective Date, Plaintiffs  
14 shall expressly waive, and, upon the Release Date, each of the Releasing Parties shall be deemed  
15 to have waived, and by operation of this Judgment shall have waived, the provisions, rights, and  
16 benefits of California Civil Code Section 1542 and Section 20-7-11 of the South Dakota  
17 Codified Laws (to the extent either or both of them apply to the Actions), each of which provides:

18             A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
19             THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
20             FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
21             KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS  
22             SETTLEMENT WITH THE DEBTOR.

23         9. Plaintiffs shall further expressly waive, and each of the Releasing Parties shall be  
24 deemed to have waived, and by operation of this Judgment shall have waived, any and all  
25 provisions, rights, and benefits conferred by any law of any state or territory of the United States,  
26 or any principle of common law, that is similar, comparable, or equivalent in effect to California  
27 Civil Code Section 1542 or that would otherwise act to limit the effectiveness or scope of the  
28 releases. Plaintiffs and the Releasing Parties have acknowledged that they may hereafter discover  
facts in addition to or different from those that any of them or their counsel now knows or

believes to be true with respect to the subject matter of the Released Claims or otherwise, but upon the Effective Date each Plaintiff shall expressly have, and, upon the Release Date, each Releasing Party shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that now exist or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs have acknowledged, and the Releasing Parties shall be deemed to have acknowledged, and by operation of this Judgment shall have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

12. Upon the Effective Date, and by operation of this Judgment, MAS will be deemed to have waived any claim for indemnity or contribution, however denominated, against Defendants, arising out of or related to the claims or allegations asserted by Plaintiffs in the Actions, whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, or third-party claims, and whether asserted in the Actions, in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States, and all such claims shall be deemed extinguished, discharged, satisfied and unenforceable.

13. The persons and entities identified in Exhibit A, which is attached hereto and incorporated by reference herein, have validly requested exclusion from the Settlement Class and are hereby excluded from the Settlement Class, are not bound by this Judgment, and may not make any claim or receive any benefit from the Settlement, whether monetary or otherwise. Said excluded persons may not pursue any claims released under the Settlement Agreement on behalf of those who are bound by this Judgment. Each Settlement Class Member not appearing in Exhibit A is bound by this Judgment and will remain forever bound.

14. This Judgment is a final judgment in the Actions as to all Released Claims. This

1 Court finds, for purposes of Rule 54(b) of the Federal Rules of Civil Procedure, that there is no  
2 just reason for delay and expressly directs entry of judgment as set forth herein.

3 15. Without affecting the finality of this Judgment in any way, this Court retains  
4 jurisdiction over (a) implementation of the Settlement; (b) distribution of any and all settlement  
5 funds; and (c) all other proceedings related to the implementation and enforcement of the terms of  
6 the Settlement Agreement and/or the Settlement, and the administration of claims by Settlement  
7 Class Members. The time to appeal from this Judgment shall commence upon its entry.

8  
9 IT IS SO ORDERED on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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12 \_\_\_\_\_  
13 Hon. Charles R. Breyer  
14 United States District Judge  
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