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14 *Interim Co-Lead Counsel for Plaintiffs*

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

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

Case No. 3:07-cv-05634-CRB-DMR

MDL No. 1913

20 **This Document Relates to:**
21 **ALL ACTIONS**

Honorable Charles R. Breyer

SETTLEMENT AGREEMENT
BETWEEN PLAINTIFFS AND
QANTAS AIRWAYS LIMITED

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

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

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

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

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

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

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

15 **1. Definitions**

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

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

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

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

5 1.5. "Parties" means Plaintiffs, Settlement Class Members, and Qantas.

6 1.6. "Defendants" means Air France, Air New Zealand Limited, All Nippon Airways
7 Company, Limited, British Airways plc, Cathay Pacific Airways Limited, China Airlines
8 Limited, Continental Airlines, Inc., Deutsche Lufthansa AG, EVA Airways Corporation, Japan
9 Airlines International Company, Ltd. ("JAL"), KLM Royal Dutch Airline, Malaysian Airline
10 System Berhad, Philippine Airlines, Inc., Qantas Airways Limited, SAS AB, Singapore Airlines
11 Limited, Swiss International AG, Thai Airways International Public Co., Ltd., and Vietnam
12 Airlines Company Limited.

13 1.7. "Person" means an individual or an entity.

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

19 1.9. "Preliminary Approval Order" means an order preliminarily approving the
20 Settlement Agreement, to be rendered by the Court.

21 1.10. "Released Claims" means any and all claims, demands, actions, suits, and causes
22 of action, whether class, individual, or otherwise, damages, and liabilities of any nature, including
23 without limitation claims for costs, expenses, penalties, and attorneys' fees, that the Releasing
24 Parties, or any one of them, ever had, now has, or hereafter can, shall, or may have, directly,
25 representatively, derivatively, or in any other capacity, against the Released Parties or any of
26 them, which arise under any antitrust, unfair competition, unfair practices, price discrimination,
27 unitary pricing, trade practice, consumer protection, unjust enrichment, or civil conspiracy law, or
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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, regardless of whether
3 such claims are known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or
4 unforeseen, actual or contingent, liquidated or unliquidated, regardless of legal theory, and
5 regardless of the type or amount of relief or damages claimed, or claims that have been, could
6 have been, or in the future might have been brought in law or in equity, on account of, arising out
7 of, resulting from, or in any way related to any conduct regardless of where it occurred at any
8 time prior to the Effective Date, concerning the pricing, marketing or sales of passenger air
9 transportation (but only to the extent such transportation originated in the United States) by
10 Qantas or Defendants, including, without limitation, pricing of fares or fuel, insurance, baggage
11 or security surcharges or any other element of, component of, or surcharge upon such pricing, or
12 concerning commissions or incentives, or concerning any involvement by Qantas in the
13 International Air Transport Association (IATA) or any Board of Airlines Representatives (BAR)
14 association (wherever located), or concerning the facts, occurrences, transactions or other matters
15 that were alleged or could have been alleged in the Second Amended Consolidated Class Action
16 Complaint in the above-captioned matter or in the complaints in any of the Actions.

17 1.11. “Released Parties” means, jointly and severally, individually and collectively:
18 Qantas, its present and former parents, subsidiaries, divisions and affiliates, each of their
19 respective past and present officers, directors, employees and agents, attorneys, representatives
20 and the predecessors, successors, heirs, executors, administrators, and assigns of each of the
21 foregoing. As used in this definition, “affiliates” means entities controlling, controlled by or
22 under common control with any of the other Released Parties.

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

3 1.13. "Settlement Class Counsel" means the law firms of Cotchett Pitre & McCarthy,
4 LLP, San Francisco Airport Center, 840 Malcolm Road, Suite 200, Burlingame, CA 94010 and
5 Hausfeld, LLP, 44 Montgomery Street, San Francisco, CA, 94104 and 1700 K Street, Suite 650,
6 Washington, DC 20006.

7 1.14. "Settlement Class Members" means, collectively, all members of the Settlement
8 Class as defined in paragraph 3 herein.

9 1.15. "Settlement Fund" shall mean those monies representing the consideration to be
10 paid by Qantas pursuant to paragraph 11.1 of this Settlement Agreement and any interest or
11 earnings relating to such consideration as provided for herein.

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

13 Plaintiffs and Qantas shall use all reasonable efforts to effectuate this Settlement
14 Agreement, including cooperating in Plaintiffs' efforts to obtain the Court's approval of
15 procedures (including the giving of class notice under Rules 23(c) and 23(e) of the Federal Rules
16 of Civil Procedure) and to secure certification of the Settlement Class for settlement purposes
17 only and the prompt, complete, and final dismissal with prejudice of the Actions as to Qantas. At
18 least two (2) court days prior to the filing of any motions or other papers in connection with the
19 settlement, including without limitation, the motions for preliminary approval of the settlement
20 (as contemplated in paragraph 4.1 of this Settlement Agreement) and for final approval of the
21 settlement (as contemplated in paragraph 7.1 of this Settlement Agreement), Plaintiffs will send
22 these papers to Qantas.

23 **3. Class Certification**

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

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

8 **4. Motion for Preliminary Approval**

9 4.1. Plaintiffs, with the cooperation of Qantas, shall file with the Court a motion
10 requesting entry of a Preliminary Approval Order, the text of which shall be agreed upon by
11 Plaintiffs and Qantas before submission to the Court, *inter alia*:

- 12 (a) preliminarily approving the Settlement Agreement;
- 13 (b) scheduling a hearing (the "Fairness Hearing") to consider (i) whether the
14 Settlement Agreement should be approved as fair, reasonable, and adequate to
15 Settlement Class Members, and whether the Judgment should be entered
16 dismissing the claims of Plaintiffs and all Settlement Class Members on the merits
17 and with prejudice; and (ii) whether to approve any application by Settlement
18 Class Counsel for an award of attorneys' fees and payment of costs and expenses;
- 19 (c) certifying the Settlement Class for settlement purposes only, and finding
20 that each element for certification of the Settlement Class pursuant to Rule 23 of
21 the Federal Rules of Civil Procedure is met, on the condition that the certification
22 shall be automatically vacated in the event the Settlement Agreement is terminated
23 pursuant to its terms or is not approved by the Court or by any appellate Court;
- 24 (d) approving the Parties' proposed methods for giving notice of the
25 Settlement Agreement and the Fairness Hearing to Settlement Class Members;
- 26 (e) approving the Parties' proposed forms of notice;

1 (f) setting the date by which any Settlement Class Member who seeks
2 exclusion from a Settlement Class must submit a Request for Exclusion, which
3 shall, subject to the Court's approval, be a date no earlier than forty-five (45) days
4 after notice is given to Settlement Class Members, and no later than fourteen (14)
5 days prior to the Fairness Hearing;

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

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

13 4.2. Plaintiffs shall seek, and Qantas shall support, certification solely for purposes of
14 this Settlement of the Settlement Class as defined herein, and appointment of Settlement Class
15 Counsel as lead counsel for purposes of this Settlement Agreement.

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

17 5.1. In accordance with the requirements of Federal Rule of Civil Procedure 23 and
18 due process, individual notice shall be given to Settlement Class Members for whom other
19 Defendants have email or physical addresses, such Settlement Class Members having been
20 determined by the Parties to be those whom the Parties can identify with reasonable effort, in
21 accordance with Federal Rule of Civil Procedure 23 and to the extent not prohibited by law.
22 Qantas represents that the email or physical addresses or other contact information for Settlement
23 Class Members are not reasonably available to Qantas. In addition, in order to provide notice of
24 the settlement to those Settlement Class Members who do not receive individual notice pursuant
25 to paragraph 5.1 herein, notice shall be given by publication in such manner and scope as is
26 reasonable, and consistent with the requirements of Federal Rule of Civil Procedure 23.

1 5.2. If any other settlement class is certified by the Court in these Actions, the parties
2 to this Settlement Agreement agree that the notice program to be implemented pursuant to this
3 Settlement Agreement will be combined with notice of such other settlement class(es) as may be
4 certified by the Court. Specifically, Plaintiffs, with the explicit permission of Qantas, shall
5 include notice of this Settlement Agreement, pending approval from the Court of the notice
6 program and the inclusion of Qantas therein.

7 5.3. Qantas shall contribute U.S.D. \$100,000.00 towards the costs and expenses
8 associated with providing notice of the settlement to members of the Settlement Class pursuant to
9 the Court-approved notification plan, and Qantas shall have no further obligation to pay for the
10 costs and expenses of providing notice of the Settlement Agreement to members of the Settlement
11 Class. In the event that the settlement is not approved, Qantas shall not be entitled to any sums
12 spent or owing for purposes of the notice program as approved by the Court but shall be entitled
13 to a refund of any amounts that were not spent or are not owing at the time that the Court declines
14 to approve the settlement.

15 **6. Requests for Exclusion**

16 6.1. Any Person who wishes to seek exclusion from the Settlement Class must timely
17 submit a written request for exclusion as provided in this paragraph (a "Request for Exclusion").
18 Any Person who timely submits a Request for Exclusion shall be excluded from the Settlement
19 Class, shall have no rights with respect to this Settlement Agreement, and shall receive no
20 benefits as provided in this Settlement Agreement. A Request for Exclusion must be in writing
21 and state the name, address, and telephone number of the Person(s) seeking exclusion. A Request
22 for Exclusion must be mailed to Settlement Class Counsel at the address provided in the notices
23 to Settlement Class Members and postmarked (or mailed by overnight delivery) no later than
24 fourteen (14) days prior to the date set for the Fairness Hearing or any other date set by the Court.

25 6.2. Settlement Class Counsel shall forward a list of all Requests for Exclusion to
26 Qantas' counsel within three (3) business days of the expiration of the time for requesting
27 exclusion from the Class.
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1 **7. Fairness Hearing**

2 7.1. At the Fairness Hearing, Plaintiffs shall seek entry of a Judgment, the text of
3 which shall be agreed upon by Plaintiffs and Qantas before submission to the Court, *inter alia*:

- 4 (a) finally approving the Settlement Agreement and its terms as being fair,
5 reasonable, and adequate, within the meaning of Rule 23 of the Federal Rules of
6 Civil Procedure, and directing its consummation according to its terms;
7 (b) determining that the notices to Settlement Class Members constituted,
8 under the circumstances, the best practicable notice of this Settlement Agreement
9 and the Fairness Hearing, and constituted due and sufficient notice for all other
10 purposes to all Persons entitled to receive notice;
11 (c) directing that, as to Qantas, the Actions be dismissed with prejudice and,
12 except as provided for in this Settlement Agreement, without costs;
13 (d) permanently barring and enjoining the institution, commencement, or
14 prosecution, by any of the Releasing Parties, of any action asserting any Released
15 Claim against any Released Party, in any local, state, federal, or other court of any
16 nation, or in any agency or other authority or arbitral or other forum wherever
17 located;
18 (e) providing that any Settlement Class Member who fails to object in the
19 manner prescribed in the Settlement Agreement shall be deemed to have waived
20 any objections to the settlement and the Settlement Agreement and will forever be
21 barred from making any such objections to the settlement or the Settlement
22 Agreement;
23 (f) requiring Settlement Class Counsel to file with the Clerk of the Court a
24 record of potential members of the Settlement Class who timely and validly
25 exclude themselves from the Settlement Class, and to provide a copy of the record
26 to counsel for Qantas;

1 (g) retaining exclusive jurisdiction over the settlement and this Settlement
2 Agreement, including the administration and consummation of the settlement; and
3 (h) determining under Federal Rule of Civil Procedure 54(b) that there is no
4 just reason for delay and directing that the judgment of dismissal as to Qantas shall
5 be final and entered forthwith.

6 7.2. Any Settlement Class Member who has not requested exclusion from the
7 Settlement Class and who objects to the Settlement Agreement may appear at the Fairness
8 Hearing in person or through counsel, at their own expense, to present any evidence or argument
9 with respect to the settlement, to the extent permitted by the Court. Written objections must be
10 filed with the Court no later than fourteen (14) days prior to the date set for the Fairness Hearing,
11 and mailed to Settlement Class Counsel and Qantas' counsel, postmarked no later than fourteen
12 (14) days prior to the date of the Fairness Hearing. Any Settlement Class Member who fails to
13 object in the manner prescribed herein shall be deemed to have waived any objections to the
14 Settlement and this Settlement Agreement and will forever be barred from making any such
15 objections to the Settlement or this Settlement Agreement.

16 **8. Effective Date of Agreement**

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

19 (a) the Court has entered the Judgment, following notice to the Settlement Class and
20 the Fairness Hearing, approving this Settlement Agreement under Rule 23(e) of the
21 Federal Rules of Civil Procedure and dismissing the Actions against Qantas with
22 prejudice as to all Settlement Class Members, and without costs except as specified
23 herein; and

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

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

5 9.1. Upon the Effective Date, and in consideration of the good and valuable
6 consideration set forth in this Settlement Agreement, the sufficiency and receipt of which is
7 hereby acknowledged, each of the Releasing Parties shall be deemed to have, and by operation of
8 the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all
9 Released Claims against the Released Parties, shall have covenanted not to sue any of the
10 Released Parties with respect to any such Released Claims, and shall be permanently barred and
11 enjoined from instituting, commencing, prosecuting or asserting any such Released Claim against
12 any of the Released Parties.

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

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

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

19 All rights of any Settlement Class Member against any Person other than the Released
20 Parties are specifically reserved by Plaintiffs and the Settlement Class Members. Sales of
21 passenger air transportation by Qantas shall, to the extent permitted and/or authorized by U.S.
22 law, remain in the case against any other Defendants in the Actions as a potential basis for
23 damage claims and shall be part of any joint and several liability claims against Defendants in the
24 Actions or other persons or entities other than the Released Parties, to the extent permitted and/or
25 authorized by U.S. law.

1 **11. Settlement Consideration**

2 11.1. Except for those funds to be paid under paragraph 5.3 above, the total monetary
3 amount payable by Qantas (comprising payment to the class, costs of class notice and
4 administration, and attorneys' fees and costs) in settlement of all claims relating to the Actions,
5 whether purchased in the United States or outside the United States, is U.S.D. \$550,000.00.
6 Within thirty (30) calendar days after the execution of this Settlement Agreement, Qantas will
7 deposit the sum identified in paragraph 11.1 into an escrow account (the "Escrow Account")
8 established by Plaintiffs. The deposited sum shall be held in the Escrow Account until there is an
9 order from the District Court concerning distribution or use of the sum identified in paragraph
10 11.1. The Escrow Account will be established at a bank located within the Northern District of
11 California, with such Bank serving as escrow agent ("Escrow Agent") subject to escrow
12 instructions mutually acceptable to Settlement Class Counsel and Qantas, and such escrow to be
13 administered under the Court's continuing supervision and control.

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

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

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

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

5 11.5. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and
6 the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The
7 Escrow Agent shall timely and properly file all informational and other tax returns necessary or
8 advisable with respect to the Settlement Fund (including without limitation the returns described
9 in Treas. Reg. § 1.468B-2(k)(1)). Such returns (as well as the election described in paragraph 11.
10 4) shall be consistent with paragraph 11.6 and in all events shall reflect that all Taxes, as defined
11 below (including any estimated Taxes, interest or penalties), on the income earned by the
12 Settlement Fund shall be paid out of the Settlement Fund as provided in paragraph 11.8 hereof.

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

22 11.7. Neither Qantas nor any other Released Party nor their respective counsel shall
23 have any liability or responsibility for the Taxes or the Tax Expenses. Further, Taxes and Tax
24 Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund
25 and shall be timely paid, subject to Court approval, by the Escrow Agent out of the Settlement
26 Fund. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to
27 withhold from distribution to any claimants authorized by the Court any funds necessary to pay
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1 such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses
2 (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2 (1)(2)).
3 Neither Qantas nor any other Released Party is responsible nor shall they have any liability
4 therefor. Plaintiff and Qantas agree to cooperate with the Escrow Agent, each other, and their tax
5 attorneys and accountants to the extent reasonably necessary to carry out the provisions of
6 paragraphs 11.3 through 11.10.

7 11.8. If this Settlement Agreement does not receive final Court approval, or if the
8 Actions are not certified as a class action for settlement purposes, or if this Settlement Agreement
9 is terminated or voided for any reason, then all amounts paid by Qantas into the Settlement Fund
10 (including all income earned thereon and other than costs that may already have reasonably been
11 incurred or expended in accordance with paragraphs 5.3 and 11) shall be returned to Qantas from
12 the Escrow Account by the Escrow Agent, along with any interest accrued thereon, within ten
13 (10) business days after such order becomes final and non-appealable.

14 11.9. 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 in a manner consistent with a plan of allocation prepared by
17 Settlement Class Counsel, or in Settlement Class Counsel's reasonable judgment, be made the
18 subject of an application to the Court by Plaintiffs for *cy pres* distribution in accordance with
19 governing standards in the Ninth Circuit.

20 **12. Administration of the Settlement**

21 The costs and expenses of administration of the settlement pursuant to the terms of this
22 Settlement Agreement shall be paid out of the Settlement Fund. The Claims Administrator(s)
23 shall, on a monthly basis, submit invoices, with appropriate supporting documentation, to
24 Settlement Class Counsel for payment from the Escrow Account. To the extent practicable, the
25 administration of this Settlement Agreement shall be coordinated with the administration of other
26 aspects of these Actions, including, but not limited to, any other settlement(s) entered into
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1 between Plaintiffs and any other settling defendant(s) and/or the administration of any recovery
2 obtained on behalf of the class by summary judgment or trial.

3 Qantas shall not have any responsibility, financial obligation, or liability whatsoever with
4 respect to the investment, distribution, or administration of the Settlement Fund, including, but
5 not limited to, the costs and expenses of such investment, distribution and administration, except
6 as expressly otherwise provided in the Settlement Agreement.

7 **13. Withdrawal From or Modification of the Settlement Agreement**

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

19 A modification or reversal on appeal of any amount of Settlement Class Counsel's fees
20 and expenses awarded by the Court or any plan of allocation of the Settlement Fund shall not be
21 deemed a modification of all or a part of the terms of this Settlement Agreement or the Judgment.

22 **14. Cooperation**

23 14.1. Qantas agrees to perform the following acts following execution of this
24 Settlement Agreement:

- 25 (a) respond in good faith to questions posed by Settlement Class Counsel concerning the
26 transactional data previously produced by Qantas.

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

5 (c) Making Qantas' lead counsel available for up to a total of three (3) meetings via
6 telephone or in Washington, D.C. for reasonable consultation, including but not
7 limited to consultation regarding the involvement of other airlines in the alleged
8 conspiracy, the interpretation of documents, and about the airline industry in general.
9 A meeting for the purposes of this paragraph shall last no longer than four hours.

10 (d) Making available, upon reasonable notice and at mutually agreed dates, for interview
11 via telephone, or at a location or locations of Qantas' choice, up to two (2) current
12 and/or former Qantas employees, to be agreed upon by Settlement Class Counsel and
13 counsel for Qantas, to (i) provide information about Plaintiffs' substantive allegations
14 or (ii) provide a declaration about factual matters asserted by any Defendant(s)
15 seeking summary disposition of these Actions before trial or to authenticate
16 documents, it being understood that as to any former employee, Qantas' obligation
17 under this clause is to use reasonable efforts to make such former employee
18 available. An interview for the purposes of this paragraph shall last no longer than
19 four hours. In the event that Plaintiffs believe more time is necessary for any
20 interview conducted pursuant to this paragraph, they may request additional time from
21 Qantas and Qantas shall consider such request in good faith. Witnesses under this
22 section shall also be made available to testify at trial as needed. This paragraph is not
23 intended to create any obligation on the part of Qantas if Qantas lacks knowledge
24 concerning the factual basis of any motion for summary disposition filed or about
25 Plaintiffs' substantive allegations.

26 (e) Providing assistance reasonably necessary to notify the class of this Settlement
27 Agreement and the fairness hearing contemplated in Paragraph 7, above.
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1 (f) The cooperation obligations of Qantas under this section are to be carried out in
2 utmost good faith for the maximum benefit of the Plaintiffs and the class they purport
3 to represent.

4 (g) In connection with its provision of information and testimony under this Settlement
5 Agreement, Qantas shall have the right to assert the attorney-client privilege, attorney
6 work-product protection, joint defense or any other protection, privilege or immunity
7 available under United States law.

8 14.2. All documents and information provided pursuant to paragraph 14.1 shall be
9 confidential and shall be used only in connection with the Actions and only as provided under
10 the terms of the Protective Order. The confidentiality requirements of this paragraph shall
11 continue to bind Plaintiffs and Settlement Class counsel even in the event that the Settlement
12 Agreement is terminated or rescinded, rejected by the Court, or otherwise fails to take or remain
13 in effect.

14 14.3. The cooperation set forth in paragraph 14.1 shall constitute the exclusive means by
15 which Plaintiffs and Settlement Class counsel may obtain discovery from Qantas or the Released
16 Parties, whether under the Federal Rules of Civil Procedure or the laws or rules of any other
17 jurisdiction.

18 **15. No Admissions**

19 15.1. The Parties intend the settlement as described herein to be a final and complete
20 resolution of all disputes between them with respect to the Actions and to compromise claims
21 that are contested, and it shall not be deemed an admission by any party as to the merits of any
22 claim or defense or any allegation made in the Actions.

23 15.2. The Parties acknowledge that Qantas is entering into this Settlement Agreement
24 to eliminate the distraction, burden and expense of protracted litigation. Neither the settlement
25 nor this Settlement Agreement, nor any act performed or document executed pursuant to or in
26 furtherance of the settlement or this Settlement Agreement is or may be deemed to be or may be
27 used as an admission of, or evidence of, Qantas' conduct having violated the laws of any state,
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1 country, or other jurisdiction or of having caused any harm to any Person. Neither the settlement
2 nor this Settlement Agreement, nor any act performed or document executed pursuant to or in
3 furtherance of the settlement or this Settlement Agreement, shall be admissible in any
4 proceeding for any purpose, except to consummate or enforce the terms of the Settlement
5 Agreement, and except that the Released Parties may file this Settlement Agreement or the
6 Judgment in any action for any purpose, including, but not limited to, in support of a defense or
7 counterclaim based on principles of res judicata, collateral estoppel, release, good faith
8 settlement, judgment bar, reduction, or any other theory of claim preclusion or issue preclusion
9 or similar defense or counterclaim.

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

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

22 16.2. Qantas shall have no responsibility for, and no liability whatsoever with respect to,
23 the division of attorneys' fees and expenses among Settlement Class Counsel, and any negotiation
24 or dispute among Settlement Class Counsel in that regard shall not operate to terminate or cancel
25 this Settlement Agreement, or affect or delay the finality of the Judgment.

26 16.3. Except as otherwise provided herein, Plaintiffs and Qantas shall each be
27 responsible for bearing their own costs and fees and expenses incurred in this Action. Qantas
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1 shall not be liable for any costs, fees, or expenses of Plaintiffs' respective attorneys, experts,
2 advisors, agents, or representatives, but all such costs, fees, and expenses may be paid out of the
3 Settlement Fund, or as provided under Paragraph 5.3, or as otherwise approved by the Court.

4 **17. Miscellaneous Provisions**

5 17.1. Qantas expressly represents that it has obtained all required approvals from its
6 management for this Settlement Agreement.

7 17.2. This Settlement Agreement shall constitute the entire agreement between the
8 Parties pertaining to the settlement of the Actions against Qantas and supersedes any and all prior
9 and contemporaneous undertakings of the Parties in connection therewith. The terms of the
10 Settlement Agreement are and shall be binding upon each of the Parties hereto, their heirs,
11 executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-
12 interest, and assigns, and upon all other Persons claiming any interest in the subject matter hereto
13 through any of the parties hereto including any Settlement Class Members.

14 17.3. This Settlement Agreement may be modified or amended only by a writing
15 executed by Plaintiffs and Qantas, subject (if after preliminary or final approval by any court) to
16 approval by the Court. Amendments and modifications may be made without notice to the
17 Settlement Class unless notice is required by law or by the Court.

18 17.4. None of the Parties hereto shall be considered to be the drafter of this Settlement
19 Agreement or any provision hereof for the purpose of any statute, case law or rule of
20 interpretation or construction that would or might cause any provision to be construed against the
21 drafters hereof.

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

4 17.6. All terms of this Settlement Agreement shall be governed by and interpreted
5 according to the substantive laws of the State of California, without regard to its choice of law or
6 conflicts of laws principles.

7 17.7. This Settlement Agreement shall be construed and interpreted to effectuate the
8 intent of the Parties which is to provide, through this Settlement Agreement, for a complete
9 resolution of the Released Claims with respect to the Released Parties.

10 17.8. Nothing expressed or implied in this Settlement Agreement is intended to or shall
11 be construed to confer upon or give any person or entity other than Class Members, Releasing
12 Parties, and Released Parties any right or remedy under or by reason of this Settlement
13 Agreement.

14 17.9. If any provision of this Settlement Agreement is found by a court of competent
15 jurisdiction to be illegal, invalid or unenforceable for any reason, the remainder of this Settlement
16 Agreement will not be affected, and, in lieu of each provision that is found illegal, invalid or
17 unenforceable, a provision will be added as a part of this Settlement Agreement that is as similar
18 to the illegal, invalid or unenforceable provision as may be legal, valid and enforceable.

19 17.10. Qantas, Plaintiffs and all Settlement Class Members hereby irrevocably submit to
20 the exclusive jurisdiction of the United States District Court for the Northern District of
21 California for any suit, action, proceeding or dispute arising out of or relating to this Settlement
22 Agreement or the applicability of this Settlement Agreement, including, without limitation, any
23 suit, action, proceeding or dispute relating to the release provisions herein.

24 17.11. This Settlement Agreement may be executed in counterparts. Facsimile or pdf
25 signatures shall be considered as valid signatures for purposes of execution of this Settlement
26 Agreement, but original signature pages shall thereafter be collated for filing of this Settlement
27 Agreement with the Court.

1 17.12. Each of the undersigned attorneys represents that he or she is fully authorized to
2 enter into the terms and conditions of, and execute, this Settlement Agreement, subject to Court
3 approval, and the undersigned Settlement Class Counsel represent that they are authorized to
4 execute this Settlement Agreement on behalf of Plaintiffs and the proposed Settlement Class.

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

7 Dated: ~~____~~, 2014-

8 By: 

9 Christopher L. Lebsack
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13 *Co-Counsel for Plaintiffs and Settlement*
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