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8 *Interim Co-Lead Counsel for Plaintiffs*

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 **IN RE TRANSPACIFIC PASSENGER**
14 **AIR TRANSPORTATION**
15 **ANTITRUST LITIGATION**

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

MDL No. 1913

16 **This Document Relates To:**

17 **ALL ACTIONS**

18 **DECLARATION OF ADAM J. ZAPALA IN**
19 **SUPPORT OF PLAINTIFFS' MOTION FOR**
20 **FINAL APPROVAL OF SETTLEMENTS**
21 **WITH DEFENDANTS PHILIPPINE**
22 **AIRLINES, INC., AIR NEW ZEALAND**
23 **LIMITED, CHINA AIRLINES, LTD., AND**
24 **EVA AIRWAYS CORPORATION**

1 I, Adam J. Zapala, declare as follows:

2 1. I am an attorney licensed to practice law before the courts of the State of California
3 and a Partner of the law firm Cotchett, Pitre & McCarthy, LLP, which is Interim Co-Lead Class
4 Counsel for the putative classes. I make this Declaration in Support of Plaintiffs' Motion for
5 Final Approval of Settlements with Defendants Philippine Airlines, Inc. ("PAL"), Air New
6 Zealand Limited ("ANZ"), China Airlines, Ltd. ("CAL"), and EVA Airways Corporation
7 ("EVA") (collectively, "Settling Defendants"). I have personal knowledge of the facts stated in
8 this Declaration and, if called as a witness, I could and would testify competently to them. I make
9 this Declaration pursuant to 28 U.S.C. § 1746.

10 **Philippine Airlines, Inc. Settlement**

11 2. Between mid-2015 and mid-2016, which included during the pendency of the
12 appeal of the Court's summary judgment decision on the filed rate doctrine, Plaintiffs' counsel
13 engaged in extensive and protracted settlement negotiations with counsel for Philippine Airlines
14 Inc., ("PAL"). These settlement negotiations resulted in the execution of a settlement agreement
15 with PAL on January 3, 2017; that settlement agreement was amended on January 23, 2017 (ECF
16 No. 1112-2).

17 3. Plaintiffs' counsel deliberated carefully and at arm's length before entering the
18 settlement with PAL and believe that the settlement is in the best interests of the Class. The PAL
19 Settlement Agreement provides for a payment to the Class defined therein of \$9,000,000 and
20 cooperation with counsel for the Plaintiffs in their continued prosecution of the case. A true and
21 correct copy of the Settlement Agreement with PAL is attached hereto as **Exhibit 1**.

22 4. The amount of the settlement with PAL was premised on the following facts: (1)
23 the evidentiary record as of the date of the settlement, (2) PAL's agreement to provide
24 cooperation to Plaintiffs' counsel, (3) PAL's volume of U.S. originating travel during the class
25 period, (4) PAL's legal defenses, and (5) the pendency of the aforementioned appeal.

26 **Air New Zealand Limited Settlement**

27 5. Between mid-2015 and mid-2016, during the pendency of the appeal of the Court's
28 decision on the filed rate doctrine, Plaintiffs' counsel engaged in settlement negotiations with

1 counsel for Air New Zealand Limited (“ANZ”). These settlement negotiations resulted in the
2 execution of a settlement agreement with ANZ on January 9, 2017 (ECF No. 1112-3).

3 6. Plaintiffs’ counsel deliberated carefully and at arm’s length before entering the
4 settlement with ANZ and believe that the settlement is in the best interests of the Class. The ANZ
5 Settlement Agreement provides for a payment to the Class defined therein of \$650,000. A true
6 and correct copy of the Settlement Agreement with ANZ is attached hereto as **Exhibit 2**.

7 7. The amount of the settlement with ANZ was premised on similar considerations
8 as the PAL settlement: (1) the evidentiary record as of the date of the settlement, (2) ANZ’s
9 volume of U.S. originating travel during the class period, (3) ANZ’s legal defenses, (5) the
10 liability case against ANZ, and (5) the pendency of the aforementioned appeal.

11 **China Airlines, Ltd. Settlement**

12 8. In August 2017, after Plaintiffs prevailed on Defendants’ appeal of the filed rate
13 doctrine decision before the Ninth Circuit but prior to the Supreme Court’s denial of Defendants’
14 petition for certiorari, Plaintiffs’ counsel engaged in extensive settlement discussions with China
15 Airlines, Ltd. (“CAL”). Ultimately, the parties engaged in a two-day, protracted mediation
16 before the Honorable Judge Vaughn R. Walker (Ret.). These settlement negotiations resulted in
17 the execution of a settlement agreement with CAL on December 11, 2017 (ECF No. 1112-4).

18 9. Plaintiffs’ counsel deliberated carefully and at arm’s length before entering the
19 settlement with CAL and believe that the settlement is in the best interests of the Class. The CAL
20 Settlement Agreement provides for a total payment of \$19,750,000 and cooperation with counsel
21 for the Plaintiffs’ continued prosecution of the case. A true and correct copy of the Settlement
22 Agreement with CAL is attached hereto as **Exhibit 3**.

23 10. The amount of the settlement with CAL was premised on the following facts: (1)
24 the evidentiary record as of the date of the settlement, (2) CAL’s agreement to provide
25 cooperation to Plaintiffs’ counsel, (3) CAL’s volume of traffic for U.S. originating travel, (4)
26 CAL’s legal defenses, and (5) the fact that Plaintiffs prevailed on the aforementioned appeal.

EVA Airways Corporation Settlement

1
2 11. In November 2017, after Plaintiffs prevailed on Defendants’ appeal of the filed
3 rate doctrine decision before the Ninth Circuit but prior to the Supreme Court’s denial of
4 Defendants’ petition for certiorari, Plaintiffs’ counsel engaged in extensive settlement
5 discussions with EVA Airways Corporation (“EVA”). Ultimately, the parties engaged in
6 mediation before Robert A. Meyer, Esq. of JAMS. The case did not settle on the day of the
7 mediation. Instead, with the assistance of the Mediator, the parties continued to negotiate
8 thereafter. These settlement negotiations resulted in the execution of a settlement agreement
9 with EVA on February 27, 2018 (ECF No. 1129).

10 12. Plaintiffs’ counsel deliberated carefully and at arm’s length before entering the
11 settlement with EVA and believe that the settlement is in the best interests of the Class. The EVA
12 Settlement Agreement provides for a total payment of \$21,250,000 and cooperation with counsel
13 for the Plaintiffs. A true and correct copy of the Settlement Agreement with EVA is attached
14 hereto as **Exhibit 4**.

15 13. The amount of the settlement with EVA was premised on the following facts: (1)
16 the evidentiary record as of the date of the settlement, (2) EVA’s agreement to provide
17 cooperation to Plaintiffs’ counsel, (3) EVA’s traffic volume for U.S. originating travel, (4)
18 EVA’s legal defenses, and (5) the fact the Plaintiffs prevailed on the aforementioned appeal.

19 14. As a result of these Settlement Agreements with the Settling Defendants, the total
20 settlements for which final approval is now being sought is \$50,650,000. The total class recovery
21 to date is \$90,152,000.

22 15. Additionally, with the exception of ANZ, each Settling Defendant has agreed to
23 cooperate with Plaintiffs in the prosecution of this action by providing information relating to
24 Plaintiffs’ allegations, including through (1) interviews of persons with knowledge regarding the
25 conspiratorial conduct alleged in Plaintiffs’ Second Amended Consolidated Class Action
26 Complaint, (2) the production of relevant documents, including assistance in establishing the
27 admissibility of the documents produced, (3) making their counsel available for meetings for
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1 reasonable consultation, and (4) one or more witnesses to establish the foundation of documents
2 or data necessary for summary judgment and/or trial.

3 16. The negotiations leading to the Class Settlements were vigorous, informed, and
4 thorough; occurred over a span of many months for each settlement; and involved conversations
5 after the review of industry materials as well as documents and transactional data that Settling
6 Defendants and others produced. These negotiations were sharply contested and conducted in
7 the utmost good faith. Settlement discussions took place in one or more of the following ways:
8 through formal mediation (as to CAL and EVA only), in-person meetings of counsel, telephone
9 communications between counsel, and/or exchanges of written information between counsel.

10 17. Plaintiffs relied on extensive cooperation from Japan Airlines International
11 Company, Ltd.—the leniency applicant pursuant to the Antitrust Criminal Penalty Enhancement
12 and Reform Act and the first Settling Defendant—as well as voluminous document production
13 and numerous depositions to evaluate the reasonableness of the settlements with the Settling
14 Defendants.

15 18. Settlement funds owed pursuant to the Settlement Agreements have been
16 deposited in an escrow account at Citibank, N.A. in a manner and at a time that conforms to the
17 Settlement Agreements.

18 19. Plaintiffs have engaged and consulted extensively with experts and economists on
19 issues pertaining to liability, summary judgment, class certification, and damages. Discovery in
20 this action has been extensive. Throughout fact discovery, Class Counsel have analyzed millions
21 of documents produced by Defendants and others and obtained cooperation from Settling
22 Defendants, which has already yielded significant results. Class Counsel have also conducted an
23 independent investigation of the facts and analyzed Defendants' sales and pricing data and
24 conducted over 60 depositions.

25 20. The interests of named Plaintiffs and Class members are aligned because (a) all
26 claimed similar injury in the form of higher airline ticket prices for travel from the United States
27 to Asia/Oceania due to Defendants' alleged conspiracy and (b) seek the same relief. Plaintiffs
28 understand the allegations in this Action and have reviewed pleadings, responded to discovery,

1 and produced the documents requested. All representative Plaintiffs have been deposed except
2 Sharon Christian, who Class Counsel retained as a client while preparing a class certification
3 motion against EVA, which became unnecessary when EVA settled.

4 21. Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, the U.S. Attorney
5 General and Attorneys General of each State have been notified of the Class Settlements and
6 given an opportunity to raise concerns, but none of these government officials have come
7 forward with any complaints.

8 I declare under penalty of perjury under the laws of the United States of America that the
9 foregoing is true and correct to the best of my knowledge, information, and belief. Executed this
10 31st day of August 2018.

11 /s/ Adam J. Zapala
12 Adam J. Zapala
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EXHIBIT 1

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12 *Interim Co-Lead Counsel for Plaintiffs*

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

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

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

MDL No. 1913

Honorable Charles R. Breyer

20 **This Document Relates to:**

21 **All Actions**

22 **SETTLEMENT AGREEMENT BETWEEN**
 23 **PLAINTIFFS AND PHILIPPINE AIRLINES,**
 24 **INC.**

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

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

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

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

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

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

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

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

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

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

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

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

1 **1. Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **3. Class Certification**

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

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

13 **4. Motion for Preliminary Approval**

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

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

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

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

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

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

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

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

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

16 **6. Requests for Exclusion**

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

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

12 **7. Fairness Hearing**

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

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

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

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

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

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

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

7 **8. Effective Date of Agreement**

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

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

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

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

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

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

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

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

20 **11. Settlement Consideration**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 **14. Cooperation**

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

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

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

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

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

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

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

19 **15. No Admissions**

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

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

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

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

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

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

5 **17. Miscellaneous Provisions**

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

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

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

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

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

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

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

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

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

25 17.10. PAL, Plaintiffs and all Settlement Class Members hereby irrevocably submit to the
26 exclusive jurisdiction of the United States District Court for the Northern District of California for
27 any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or
28

1 the applicability of this Settlement Agreement, including, without limitation, any suit, action,
2 proceeding or dispute relating to the release provisions herein.

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

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

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

14 Dated: January 3, 2017

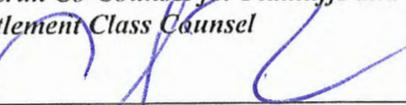
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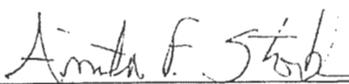
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*Interim Co-Counsel for Plaintiffs and
Settlement Class Counsel*

By: 

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EXHIBIT 2

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12 *Interim Co-Lead Counsel for Plaintiffs*

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

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

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

MDL No. 1913

Honorable Charles R. Breyer

20 **This Document Relates to:**

21 **All Actions**

22 **SETTLEMENT AGREEMENT BETWEEN**
 23 **PLAINTIFFS AND AIR NEW ZEALAND**
 24 **LIMITED**

25
 26
 27
 28 **SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS AND AIR NEW ZEALAND LIMITED;**
CASE NO. 3:07-cv-05634 CRB-DMR

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

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

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

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

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

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

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

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

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

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

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

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

3 **1. Definitions**

4 1.1. “Action” means the class action captioned In re Transpacific Passenger Air
5 Transportation Antitrust Litigation, 07-cv-5634-CRB, MDL No. 1913 (N.D. Cal.), currently
6 pending before the Honorable Charles R. Breyer in the United States District Court for the
7 Northern District of California, San Francisco Division, and all actions relating to the claims
8 alleged in “Plaintiffs’ Second Amended Consolidated Class Action Complaint” filed in that
9 litigation that were originally filed in the United States District Court for the Northern District
10 of California, those that have been or are subsequently filed in or transferred for consolidation
11 and/or coordinated pretrial proceedings to the Northern District of California by the Judicial
12 Panel on Multidistrict Litigation as part of MDL No. 1913, all actions pending such transfer
13 (including but not limited to “tag-along” actions), and all actions that may be transferred in the
14 future, or are otherwise based on the conduct alleged in the above-captioned litigation, and all
15 actions now pending before the United States Ninth Circuit Court of Appeal, Case Nos. 15-
16 15364, 15-15362.

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

21 1.3. “Court” means the United States District Court for the Northern District of
22 California.

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

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

6 1.6. “Execution Date” means January 9, 2017, the date by which all parties have
7 executed this Settlement Agreement.

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

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

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

17 1.10. “Parties” means Plaintiffs, Settlement Class Members, and ANZ.

18 1.11. “Person” means an individual or an entity.

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

23 1.13. “Preliminary Approval Order” means an order preliminarily approving the
24 settlement, to be rendered by the Court.

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

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

3 1.16. “Releasing Parties” means, jointly and severally, and individually and
4 collectively: Plaintiffs and all Settlement Class Members, their predecessors, successors,
5 present and former parents, subsidiaries, divisions, affiliates, and departments, each of their
6 respective past and present officers, directors, employees, agents, attorneys, servants, and
7 representatives, and the predecessors, successors, heirs, executors, administrators, and assigns
8 of each of the foregoing. As used in this definition, “affiliates” means entities controlling,
9 controlled by, or under common control with any of the Releasing Parties.

10 1.17. “Settlement Amount” means four hundred thousand dollars (\$400,000), plus two
11 hundred fifty thousand (\$250,000) for costs of notice and administration, totaling six hundred
12 fifty thousand dollars (\$650,000.00) in United States currency.

13 1.18. “Settlement Class Counsel” means the law firms of Cotchett Pitre & McCarthy,
14 LLP, San Francisco Airport Office Center, 840 Malcolm Road, Suite 200, Burlingame, CA
15 94010 and Hausfeld, LLP, 44 Montgomery Street, San Francisco, CA, 94104 and 1700 K
16 Street, Suite 650, Washington, DC 20006.

17 1.19. “Settlement Class Member” means each member of the Settlement Class as
18 defined in Paragraph 3 herein, who does not timely and validly elect to be excluded from the
19 Settlement Class.

20 1.20. “Settlement Fund” shall mean those monies representing the consideration to be
21 paid by ANZ in settlement of the Action pursuant to Paragraph 11.1 of this Settlement
22 Agreement and income earned on those amounts.

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

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

9 **3. Class Certification**

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

14 Settlement Class: All persons and entities that purchased passenger air
15 transportation originating in the United States that included at least one flight
16 segment to Asia or Oceania, from Defendants or their alleged co-conspirators, or
17 any predecessor, subsidiary, or affiliate thereof, at any time between January 1,
18 2000 and December 1, 2016. Excluded from the class are governmental entities,
19 Defendants, former Defendants in the Action, any parent, subsidiary or affiliate
20 thereof, and Defendants' officers, directors, employees and immediate families.

21 **4. Motion for Preliminary Approval**

22 4.1. At an appropriate time after the Execution Date of this Settlement Agreement,
23 Plaintiffs shall file with the Court a motion requesting entry of a Preliminary Approval Order,
24 *inter alia*:

- 25 (a) finding the settlement proposed in the Settlement Agreement has been
26 negotiated at arm's length, and preliminarily approving the settlement as fair,
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1 reasonable, and adequate, and in the best interests of the Settlement Class;
2 scheduling a hearing to consider (i) whether the proposed settlement should be
3 approved as fair, reasonable, and adequate to Settlement Class Members, and
4 whether the Judgment should be entered dismissing the claims of Plaintiffs and all
5 Settlement Class Members against ANZ on the merits and with prejudice; and (ii)
6 whether to approve any application by Settlement Class Counsel for an award of
7 attorneys' fees and payment of costs and expenses (the "Fairness Hearing");

8 (b) certifying the Settlement Class for settlement purposes only, designating Class
9 representatives and Settlement Class counsel as defined herein, and finding that
10 each element for certification of the Settlement Class pursuant to Rule 23 of the
11 Federal Rules of Civil Procedure is met; and

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

14 4.2. Plaintiffs shall seek, and ANZ shall not oppose, certification solely for purposes
15 of this Settlement of the Settlement Class as defined herein, and appointment of Settlement
16 Class Counsel as lead counsel for purposes of this Settlement Agreement.

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

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

1 5.2. Upon approval by the Court of a program to provide notice to the Class,
2 Settlement Class Counsel shall cause a summary notice of the settlement to be published in
3 such manner and scope as is reasonable and consistent with the requirements of Federal Rule of
4 Civil Procedure 23. Plaintiffs shall develop, with the cooperation of ANZ and any other
5 settling defendant, the details of the publication notice program. Plaintiffs shall submit a
6 publication notice program, the text of which shall be provided to ANZ by Plaintiffs before
7 submission to the Court.

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

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

25 **6. Requests for Exclusion**

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

20 6.2. Settlement Class Counsel shall promptly forward copies of all Requests for
21 Exclusions, as they are received, to ANZ’s counsel. Settlement Class Counsel shall also
22 forward a list of all Requests for Exclusion to ANZ’s counsel no later than thirty (30) days
23 prior to the Fairness Hearing.

24 **7. Fairness Hearing**

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1 7.1. At the Fairness Hearing, Plaintiffs shall seek entry of a Judgment, the text of
2 which shall be agreed upon by Plaintiffs and ANZ before submission to the Court, *inter*
3 *alia*:

- 4 (a) approving the Settlement Agreement and its terms as being fair, reasonable,
5 and adequate as to the Settlement Class, within the meaning of Rule 23 of
6 the Federal Rules of Civil Procedure, and directing its consummation
7 according to its terms;
- 8 (b) determining that the notices to Settlement Class Members constituted, under the
9 circumstances, the best practicable notice of this Settlement Agreement and the
10 Fairness Hearing, and constituted due and sufficient notice for all other purposes
11 to all Persons entitled to receive notice;
- 12 (c) dismissing the Action with prejudice as to the Released Parties, 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
16 any nation, or in any agency or other authority or arbitral or other forum
17 wherever located;
- 18 (e) providing that any Settlement Class Member who fails to object in the manner
19 prescribed in the Settlement Agreement shall be deemed to have waived any
20 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 record of
24 potential members of the Settlement Class who timely and validly excluded
25 themselves from the Settlement Class, and to provide a copy of the record to
26 counsel for ANZ;
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- 1 (g) retaining exclusive jurisdiction over the settlement and this Settlement Agreement,
2 including the administration and consummation of the settlement; and
- 3 (h) determining under Federal Rule of Civil Procedure 54(b) that there is no just
4 reason for delay and directing that the judgment of dismissal as to ANZ shall be
5 final and entered forthwith.

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

24 **8. Effective Date of Agreement**

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

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

14 9.1. Upon the occurrence of the Effective Date, and in consideration of the payment by
15 ANZ of the Settlement Amount set forth in Paragraph 11.1 herein, the sufficiency of which is
16 hereby acknowledged, each of the Releasing Parties shall be deemed to have, and by operation
17 of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all
18 Released Claims against the Released Parties, shall have covenanted not to sue or otherwise
19 seek to establish liability against any of the Released Parties based, in whole or in part, upon
20 any of the Released Claims, and shall be permanently barred and enjoined from instituting,
21 commencing, prosecuting or asserting any such Released Claim against any of the Released
22 Parties. For avoidance of doubt, within 7 days of the Execution Date, Plaintiffs will prepare a
23 proposed order and judgment dismissing with prejudice the entire Action against ANZ pursuant
24 to Federal Rule of Civil Procedure 41(a)(2). Following review and approval by ANZ, Plaintiffs
25 will submit the proposed order and judgment to the Court to obtain dismissal with prejudice of
26 the Action against ANZ.

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

25 9.3. Upon the occurrence of the Effective Date, and as part of the Judgment, ANZ
26 will waive any claim for indemnity or contribution, however denominated, against any of the
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1 Defendants in the Action other than ANZ, arising out of or related to the claims or allegations
2 asserted by Plaintiffs in the Action, whether arising under state, federal, or foreign law as
3 claims, cross-claims, counterclaims, or third-party claims, and whether asserted in the Action,
4 in this Court, in any federal or state court, or in any other court, arbitration proceeding,
5 administrative agency, or other forum in the United States, or elsewhere, and all such claims
6 shall be deemed extinguished, discharged, satisfied and unenforceable.

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

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

15 **11. Settlement Consideration**

16 11.1. The total monetary amount payable by ANZ (comprising class damages, costs of
17 class notice and administration, and attorneys' fees and costs) in settlement of all claims
18 relating to the Action, whether purchased in the United States or outside the United States, is
19 six hundred fifty thousand dollars and no cents (\$650,000.00) in U.S. currency, which includes
20 two hundred fifty thousand dollars (\$250,000) for notice to the class and for administration (the
21 "Settlement Amount"). Within twenty (20) business days after the Execution Date, ANZ will
22 deposit the Settlement Amount into the Escrow Account established by Plaintiffs. The
23 deposited sum shall be held in the Escrow Account until there is an order from the District
24 Court concerning distribution or use of the Settlement Amount. The Escrow Account Agent
25 shall be subject to escrow instructions mutually acceptable to Settlement Class Counsel and
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1 ANZ, such escrow to be administered under the Court’s continuing supervision and control.

2 The timing provisions herein are a material part of this Settlement Agreement.

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

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

13 11.4. Plaintiffs and ANZ intend for the Settlement Fund to be treated as being at all
14 times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. In addition,
15 the Escrow Agent shall timely make such elections as necessary or advisable to carry out the
16 provisions of Paragraph 11.6, including the “relation-back election” (as defined in Treas. Reg. §
17 1.468B1) so as to enable the Settlement Fund to be treated as a “qualified settlement fund” from
18 the earliest date possible. Such elections shall be made in compliance with the procedures and
19 requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to
20 timely and properly prepare and deliver the necessary documentation for signature by all
21 necessary parties, and thereafter to cause the appropriate filing to occur.

22 11.5. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended,
23 and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent.
24 The Escrow Agent shall timely and properly file all informational and other tax returns
25 necessary or advisable with respect to the Settlement Fund (including without limitation the
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1 returns described in Treas. Reg. § 1.468B-2(k)(1)). Such returns (as well as the elections
2 described in Paragraph 11.4) shall be consistent with Paragraph 11.7.

3 11.6. All (i) taxes (including any estimated taxes, interest or penalties) arising with
4 respect to the income earned by the Settlement Fund, including any taxes or tax detriments that
5 may be imposed upon ANZ or any other Released Party with respect to any income earned by
6 the Settlement Fund for any period during which the Settlement Fund does not qualify as a
7 “qualified settlement fund” for federal or state income tax purposes (“Taxes”); and (ii)
8 expenses and costs incurred in connection with the operation and implementation of Paragraphs
9 11.6 through 11.9 (including, without limitation, expenses of tax attorneys and/or accountants
10 and mailing and distribution costs and expenses relating to filing (or failing to file) the returns
11 described in Paragraph 11.5 (“Tax Expenses”)), shall be paid out of the Settlement Fund.

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

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

8 11.9. ANZ shall not be liable for any costs, fees, or expenses of any of Plaintiffs'
9 respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and
10 expenses as provided for in Paragraphs 5.4 and 11 or otherwise approved by the Court may be
11 paid out of the Settlement Fund.

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

17 11.11. The Settlement Amount shall not be used for any purpose until such time as the
18 Court grants preliminary approval to this Settlement Agreement.

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

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

3 12.2. ANZ shall not have any responsibility, financial obligation, or liability
4 whatsoever with respect to the investment, distribution, or administration of the Settlement
5 Fund, including, but not limited to, the costs and expenses of such investment, distribution and
6 administration, except as expressly otherwise provided in the Settlement Agreement. For the
7 avoidance of doubt, under no circumstances will ANZ be obligated to pay any sums other than
8 the Settlement Amount.

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

10 13.1. If the Court declines to approve this Settlement Agreement or any material part
11 hereof, or if such approval is materially modified or set aside on appeal, or if the Court does not
12 enter the Judgment, or if the Court enters the Judgment and appellate review is sought and, on
13 such review, such Judgment is not affirmed or is materially modified, then ANZ and Plaintiffs
14 shall each, in their respective sole discretion, have the option to rescind this Settlement
15 Agreement in its entirety.

16 13.2. If ANZ or Plaintiffs choose to exercise the option to rescind pursuant to
17 Paragraph 13.1, any and all amounts then constituting the Settlement Fund (including all
18 income earned thereon and excluding any reasonable expenses that have been paid or
19 incurred associated with providing notice to the Settlement Class, administering the
20 Settlement Fund, incurred or paid under Paragraph 11.8 of this Settlement Agreement, and/or
21 any Taxes already paid on such income), together with any amounts, including attorneys'
22 fees, paid to Settlement Class Counsel pursuant to Paragraph 16 below (including all income
23 earned thereon), shall be returned forthwith to ANZ. A modification or reversal on appeal of
24 any amount of Settlement Class Counsel's fees and expenses awarded by the Court or any
25 plan of allocation of the Settlement Fund shall not be deemed a modification of all or a part
26 of the terms of this Settlement Agreement or the Judgment.

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

18 **14. Cooperation**

19 14.1. ANZ agrees to perform the following acts following execution of this Settlement
20 Agreement:

- 21 (a) Taking all actions necessary to vest the District Court with jurisdiction to hear the
22 preliminary approval of the Settlement Agreement, including the filing of a
23 motion for dismissal, without prejudice, of its appeal in the docket for the Ninth
24 Circuit Court of Appeals, Case No. 15-15364, and filing a notice of settlement so
25 that the Ninth Circuit is made aware of the existence of the Settlement Agreement;
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1 (b) Providing assistance reasonably necessary to notify the class of this Settlement
2 Agreement, as discussed in Paragraph 5, and the Fairness Hearing, as discussed
3 in Paragraph 7.

4 **15. No Admissions**

5 15.1. The Parties intend the Settlement as described herein to be a final and complete
6 resolution of all disputes between them with respect to the Action and to compromise claims
7 that are contested, and it shall not be deemed an admission by any party as to the merits of
8 any claim or defense or any allegation made in the Action. Any press release issued in
9 connection with this Settlement will state only that the matter has been resolved by ANZ
10 agreeing to pay the Settlement Amount to compromise Plaintiffs' contested claims and that
11 ANZ does not admit any liability to any claim in the Action.

12 15.2. The Parties acknowledge that ANZ is entering into this Settlement to eliminate
13 the inconvenience and distraction of potentially burdensome and protracted litigation.
14 Neither the Settlement nor this Settlement Agreement, nor any negotiations or act performed
15 or document executed pursuant to or in furtherance of the Settlement or this Settlement
16 Agreement is or may be deemed to be or may be used as an admission of, or evidence of,
17 ANZ's conduct having violated the laws of any state, country, or other jurisdiction or of
18 having caused any harm to any Person. Neither the Settlement nor this Settlement
19 Agreement, nor any act performed or document executed pursuant to or in furtherance of the
20 Settlement or this Settlement Agreement, shall be admissible in any proceeding for any
21 purpose, except to consummate or enforce the terms of the Settlement, and except that the
22 Released Parties may file this Settlement Agreement or the Judgment in any action for any
23 purpose, including, but not limited to, in support of a defense or counterclaim based on
24 principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar,
25 reduction, or any other theory of claim preclusion or issue preclusion or similar defense or
26 counterclaim.

1 **16. Settlement Class Counsel’s Attorneys’ Fees and Expenses**

2 16.1. The procedure for, and the allowance or disallowance by the Court of, any
3 application by Settlement Class Counsel for attorneys’ fees and expenses are not part of the
4 Settlement Agreement, and are to be considered by the Court separately from the Court’s
5 consideration of the fairness, reasonableness, and adequacy of the settlement. Any order or
6 proceeding relating to any application for, or approval of, attorneys’ fees and expenses, the
7 pendency of any such application, or any appeal or review of an order relating thereto or reversal
8 or modification thereof, shall not operate to terminate or cancel this Settlement Agreement, or
9 affect or delay the finality of the Judgment. ANZ agrees that Settlement Class Counsel may
10 withdraw from the Settlement Fund any amount awarded by the Court for attorneys’ fees and
11 costs five (5) days following the Court’s award, subject to an appropriate financial undertaking
12 required by the Court in the event of an appeal of the Court’s award of attorneys’ fees and
13 expenses. For the avoidance of doubt, any attorneys’ fees or expenses shall come out of the
14 settlement fund, and ANZ under no circumstances will be obligated to pay sums in addition to
15 the Settlement Amount.

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

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

23 **17. Miscellaneous Provisions**

24 17.1. ANZ expressly represents that it has obtained all required approvals from its
25 management for this Settlement Agreement.
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1 17.2. This Settlement Agreement shall constitute the entire agreement between the
2 Parties pertaining to the Settlement of the Action against ANZ and supersedes any and all
3 prior and contemporaneous undertakings of the Parties in connection therewith. The terms of
4 the Settlement Agreement are and shall be binding upon each of the Parties hereto, their heirs,
5 executors, administrators, representatives, agents, attorneys, partners, successors,
6 predecessors-in-interest, and assigns, and upon all other Persons claiming any interest in the
7 subject matter hereto through any of the parties hereto including any Settlement Class
8 Members.

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

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

17 17.5. This Agreement shall be construed and interpreted to effectuate the intent of the
18 parties which is to provide, through this Settlement Agreement, for a complete resolution of the
19 Released Claims with respect to the Released Parties.

20 17.6. Nothing expressed or implied in this Settlement Agreement is intended to or
21 shall be construed to confer upon or give any person or entity other than Class Members,
22 Releasing Parties, and Released Parties any right or remedy under or by reason of this
23 Agreement.

24 17.7. This Agreement shall be binding upon, and inure to the benefit of, the
25 Releasing Parties and the Released Parties.
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1 17.8. Plaintiffs and ANZ acknowledge that they have been represented by counsel,
2 and have made their own investigations of the matters covered by this Settlement Agreement
3 to the extent they have deemed it necessary to do so. Therefore, Plaintiffs and ANZ and their
4 respective counsel agree that they will not seek to set aside any part of the Settlement
5 Agreement on the grounds of mistake. Moreover, Plaintiffs and ANZ and their respective
6 counsel understand, agree, and expressly assume the risk that any fact may turn out
7 hereinafter to be other than, different from, or contrary to the facts now known to them or
8 believed by them to be true, and further agree that the Settlement Agreement shall be
9 effective in all respects and shall not be subject to termination, modification, or rescission by
10 reason of any such difference in facts. If any provision of this Settlement Agreement is found
11 by a court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, the
12 remainder of this Settlement Agreement will not be affected, and, in lieu of each provision
13 that is found illegal, invalid or unenforceable, a provision will be added as a part of this
14 Settlement Agreement that is as similar to the illegal, invalid or unenforceable provision as
15 may be legal, valid and enforceable.

16 17.9. All terms of this Settlement Agreement shall be governed by and interpreted
17 according to the substantive laws of the State of California, without regard to its choice of law
18 or conflicts of laws principles.

19 17.10. ANZ, 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.

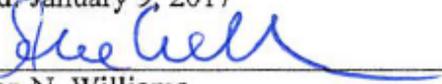
24 17.11. This Settlement Agreement may be executed in counterparts. Facsimile or
25 Portable Document Format signatures shall be considered as valid signatures for purposes of
26
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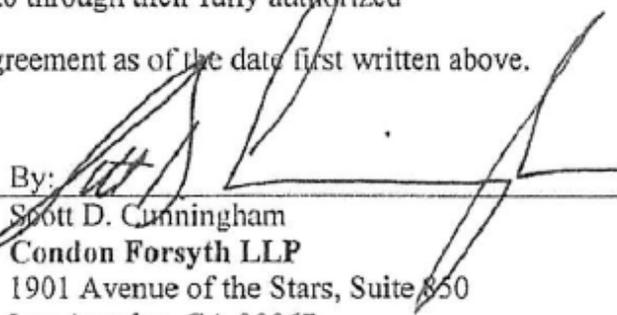
1 execution of this Settlement Agreement, but original signature pages shall thereafter be collated
2 for filing of this Settlement Agreement with the Court.

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

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

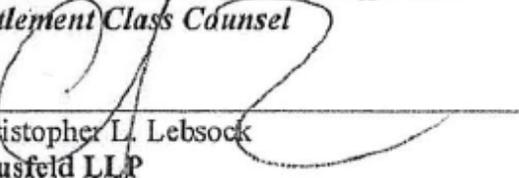
10 Dated: January 9, 2017

11 By: 
12 Steven N. Williams
13 **Cotchett, Pitre & McCarthy, LLP**
14 San Francisco Airport Office Center
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By: 
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Condon Forsyth LLP
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Counsel for Air New Zealand Limited

15 *Interim Co-Counsel for Plaintiffs and
16 Settlement Class Counsel*

17 By: 
18 Christopher L. Lebsack
19 **Hausfeld LLP**
44 Montgomery Street
San Francisco, CA 94111

20 *Interim Co-Counsel for Plaintiffs and
21 Settlement Class Counsel*

EXHIBIT 3

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12 *Interim Class Counsel for Plaintiffs*

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

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

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

MDL No. 1913

Honorable Charles R. Breyer

20 **This Document Relates to:**

**SETTLEMENT AGREEMENT BETWEEN
PLAINTIFFS AND CHINA AIRLINES, LTD**

21 **All Actions**

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

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

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

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

25 WHEREAS, Settlement Class Counsel have concluded, after an investigation into the
26 facts and the law, and after carefully considering the circumstances of claims made by Plaintiffs
27 and the Class, and the possible legal and factual defenses thereto, that it is in the best interests of
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1 Plaintiffs and the Settlement Class to enter into this Settlement Agreement with China Airlines to
2 avoid the uncertainties and risks of litigation, and that the Settlement set forth herein is fair,
3 reasonable, adequate and in the best interests of the Settlement Class;

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

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

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

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

24 **1. Definitions**

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

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

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

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

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

24 1.6. “Execution Date” means December 11, 2017, the date by which all parties have
25 executed this Settlement Agreement.

26 1.7. “Effective Date” means the earliest date on which all of the events and
27 conditions specified in Paragraph 8 herein have occurred or have been met.

1 1.8. “Escrow Account” means the Agreement Among Citibank, N.A. as “Escrow
2 Agent”, Cotchett, Pitre & McCarthy, LLP & Hausfeld LLP as “Settlement Class Counsel”, and
3 Japan Airlines Co., Ltd. as “Settling Defendant,” account number 25D078455768, as
4 subsequently amended on September 3, 2013.

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

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

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

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

18 1.13. “Parties” means Plaintiffs, Settlement Class Members, and China Airlines.

19 1.14. “Person” means an individual or an entity.

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

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

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

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

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

8 1.20. "Settlement Amount" means Nineteen Million Five Hundred Thousand dollars
9 (\$19,500,000.00), plus Two Hundred Fifty Thousand (\$250,000.00) for costs of notice and
10 administration, totaling Nineteen Million Seven Hundred Fifty Thousand dollars
11 (\$19,750,000.00) in United States currency. The Settlement Amount shall be paid in the
12 following installments: (1) Five Million Two Hundred Fifty Thousand dollars (\$5,250,000.00),
13 which includes Two Hundred Fifty Thousand dollars (\$250,000.00) for costs of notice and
14 administration, payable within 5 business days following preliminary approval of the settlement;
15 (2) Five Million dollars (\$5,000,000.00) on or before December 31, 2018; (3) Five Million
16 dollars (\$5,000,000.00) on or before December 31, 2019; and Four Million Five Hundred
17 Thousand dollars (\$4,500,000.00) on or before June 30, 2020. China Airlines shall be entitled to a
18 reduction in the Settlement Amount described herein that equals the difference between the
19 Settlement Amount and the lower of any settlement amount that EVA and/or All Nippon Airways
20 Company, Limited ("ANA") might in the future agree to pay as a result of some or all of the
21 conduct alleged by Plaintiffs in this Action, but only in connection with a settlement for which
22 both of the following conditions occur: (1) EVA and/or ANA settles its potential liability in this
23 Action for less than the Settlement Amount, and (2) at the time of EVA's and/or ANA's
24 settlement in this Action no Triggering Event has occurred. Triggering Events shall mean: (1) the
25 issuance of an order in this Action denying class certification of a putative class in which EVA
26 and/or ANA is defined as a defendant (or issuance of an order in this Action decertifying any
27 class previously certified against EVA); (2) issuance of an order granting summary judgment
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1 and/or summary adjudication in favor of EVA and/or ANA in this Action; (3) commencement of
2 trial on the merits of this Action (or any subset of the claims made in this Action); and (4)
3 enactment of a federal class action reform bill that (a) requires, in order to certify a class, a
4 showing (i) that each proposed class member suffered or suffers the same type and scope of
5 injury as the named class representatives, and (ii) that there is a reliable and administratively
6 feasible mechanism for the Court to determine whether putative class members fall within the
7 class definition and for the distribution of any monetary relief directly to a substantial majority of
8 class members; and (b) applies to civil cases that are pending at the time of its enactment.

9 1.21. "Settlement Class Counsel" means the law firms of Cotchett Pitre & McCarthy,
10 LLP, San Francisco Airport Office Center, 840 Malcolm Road, Suite 200, Burlingame, CA 94010
11 and Hausfeld, LLP, 44 Montgomery Street, San Francisco, CA, 94104 and 1700 K Street, Suite
12 650, Washington, DC 20006.

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

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

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

20 Plaintiffs and China Airlines shall use all reasonable efforts to effectuate this Settlement
21 Agreement, including cooperating in Plaintiffs' efforts to obtain the Court's approval of
22 procedures (including the giving of class notice under Rules 23(c) and 23(e) of the Federal Rules
23 of Civil Procedure), and to secure certification of the Settlement Class for settlement purposes
24 only and the complete and final dismissal with prejudice of the Action as to China Airlines. Prior
25 to the filing of any motions or other papers in connection with the Settlement, including without
26 limitation, the motions for preliminary approval of the Settlement (as contemplated in Paragraph
27 4.1 of this Settlement Agreement) and for final approval of the Settlement (as contemplated in
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1 Paragraph 7.1 of this Settlement Agreement), Plaintiffs will send these papers to China Airlines.
2 The text of any proposed form of order approving this Settlement Agreement shall be agreed
3 upon by Plaintiffs and China Airlines before it is submitted to the Court.

4 **3. Class Certification**

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

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

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

16 **4. Motion for Preliminary Approval**

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

- 20 (a) finding the settlement proposed in the Settlement Agreement has been
21 negotiated at arm's length, and preliminarily approving the settlement as fair,
22 reasonable, and adequate, and in the best interests of the Settlement Class;
23 scheduling a hearing to consider (i) whether the proposed settlement should be
24 approved as fair, reasonable, and adequate to Settlement Class Members, and
25 whether the Judgment should be entered dismissing the claims of Plaintiffs and all
26 Settlement Class Members against China Airlines on the merits and with
27 prejudice; and (ii) whether to approve any application by Settlement Class Counsel
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1 for an award of attorneys' fees and payment of costs and expenses (the "Fairness
2 Hearing");

3 (b) certifying the Settlement Class for settlement purposes only, designating Class
4 representatives and Settlement Class counsel as defined herein, and finding that
5 each element for certification of the Settlement Class pursuant to Rule 23 of the
6 Federal Rules of Civil Procedure is met; and

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

9 4.2. Plaintiffs shall seek, and China Airlines shall not oppose, certification solely for
10 purposes of this Settlement of the Settlement Class as defined herein, and appointment of
11 Settlement Class Counsel as lead counsel for purposes of this Settlement Agreement.

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

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

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

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

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

20 **6. Requests for Exclusion**

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

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

16 **7. Fairness Hearing**

17 7.1. At the Fairness Hearing, Plaintiffs shall seek entry of a Judgment, the text of
18 which shall be agreed upon by Plaintiffs and China Airlines before submission to the Court,
19 *inter alia*:

- 20 (a) approving the Settlement Agreement and its terms as being fair, reasonable,
21 and adequate as to the Settlement Class, within the meaning of Rule 23 of
22 the Federal Rules of Civil Procedure, and directing its consummation
23 according to its terms;
- 24 (b) determining that the notices to Settlement Class Members constituted, under the
25 circumstances, the best practicable notice of this Settlement Agreement and the
26 Fairness Hearing, and constituted due and sufficient notice for all other purposes
27 to all Persons entitled to receive notice;
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- 1 (c) dismissing the Action with prejudice as to the Released Parties, without costs;
- 2 (d) permanently barring and enjoining the institution, commencement, or prosecution,
- 3 by any of the Releasing Parties, of any action asserting any Released Claim
- 4 against any Released Party, in any local, state, federal, or other court of any
- 5 nation, or in any agency or other authority or arbitral or other forum wherever
- 6 located;
- 7 (e) providing that any Settlement Class Member who fails to object in the manner
- 8 prescribed in the Settlement Agreement shall be deemed to have waived any
- 9 objections to the settlement and the Settlement Agreement and will forever be
- 10 barred from making any such objections to the Settlement or the Settlement
- 11 Agreement;
- 12 (f) requiring Settlement Class Counsel to file with the Clerk of the Court a record of
- 13 potential members of the Settlement Class who timely and validly excluded
- 14 themselves from the Settlement Class, and to provide a copy of the record to
- 15 counsel for China Airlines;
- 16 (g) retaining exclusive jurisdiction over the settlement and this Settlement Agreement,
- 17 including the administration and consummation of the settlement; and
- 18 (h) determining under Federal Rule of Civil Procedure 54(b) that there is no just
- 19 reason for delay and directing that the judgment of dismissal as to China Airlines
- 20 shall be final and entered forthwith.

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

11 **8. Effective Date of Agreement**

12 This Settlement Agreement shall become final and effective on the earliest date on which
13 all of the following events and conditions have occurred or have been met (the "Effective
14 Date"): (a) the Court has entered a Judgment, following notice to the Settlement Class and the
15 Fairness Hearing, approving this Settlement Agreement under Rule 23(e) of the Federal Rules of
16 Civil Procedure and dismissing the Action as against any Released Party who is named as a
17 Defendant in the Action with prejudice as to all Settlement Class Members, and without costs
18 except as specified herein; and (b) the time for appeal or to seek permission to appeal from the
19 Court's approval of the Settlement Agreement and entry of the Judgment (as described in
20 subpart (a)) has expired or, if appealed, approval of this Settlement Agreement and the Judgment
21 has been affirmed in its entirety by the court of last resort to which such appeal has been taken
22 and such affirmance has become no longer subject to further appeal or review. Neither the
23 provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. §
24 1651, shall be taken into account in determining the above-stated times.

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

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

9 Following review and approval by China Airlines, Plaintiffs will submit the proposed order and
10 judgment to the Court to obtain dismissal with prejudice of the Action against China Airlines.

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

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

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

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

23 **11. Settlement Consideration**

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

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

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

15 11.4. Plaintiffs and China Airlines intend for the Settlement Fund to be treated as being
16 at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. In
17 addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out
18 the provisions of Paragraph 11.6, including the “relation-back election” (as defined in Treas. Reg.
19 § 1.468B1) so as to enable the Settlement Fund to be treated as a “qualified settlement fund” from
20 the earliest date possible. Such elections shall be made in compliance with the procedures and
21 requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to
22 timely and properly prepare and deliver the necessary documentation for signature by all
23 necessary parties, and thereafter to cause the appropriate filing to occur.

24 11.5. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended,
25 and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The
26 Escrow Agent shall timely and properly file all informational and other tax returns necessary or
27 advisable with respect to the Settlement Fund (including without limitation the returns described
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1 in Treas. Reg. § 1.468B-2(k)(1)). Such returns (as well as the elections described in Paragraph
2 11.4) shall be consistent with Paragraph 11.7.

3 11.6. All (i) taxes (including any estimated taxes, interest or penalties) arising with
4 respect to the income earned by the Settlement Fund, including any taxes or tax detriments that
5 may be imposed upon China Airlines or any other Released Party with respect to any income
6 earned by the Settlement Fund for any period during which the Settlement Fund does not qualify
7 as a “qualified settlement fund” for federal or state income tax purposes (“Taxes”); and (ii)
8 expenses and costs incurred in connection with the operation and implementation of Paragraphs
9 11.6 through 11.9 (including, without limitation, expenses of tax attorneys and/or accountants
10 and mailing and distribution costs and expenses relating to filing (or failing to file) the returns
11 described in Paragraph 11.5 (“Tax Expenses”)), shall be paid out of the Settlement Fund.

12 11.7. Neither China Airlines nor any other Released Party nor their respective counsel
13 shall have any liability or responsibility, including filing responsibility, for the Taxes or the Tax
14 Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of
15 administration of the Settlement Fund and shall be timely paid, subject to Court approval, by the
16 Escrow Agent out of the Settlement Fund. The Escrow Agent shall be obligated (notwithstanding
17 anything herein to the contrary) to withhold from distribution to any claimants authorized by the
18 Court any funds necessary to pay such amounts including the establishment of adequate reserves
19 for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld
20 under Treas. Reg. § 1.468B-2 (1)(2)). Neither China Airlines nor any other Released Party is
21 responsible nor shall they have any liability therefor. Plaintiffs and China Airlines agree to
22 cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent
23 reasonably necessary to carry out the provisions of Paragraphs 11.2 through 11.10. China
24 Airlines makes no representation to Plaintiffs regarding the appropriate tax treatment of the
25 Settlement Fund, income earned on the Settlement Fund, or any distribution taken from the
26 Settlement Fund.

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

8 11.9. China Airlines shall not be liable for any costs, fees, or expenses of any of
9 Plaintiffs' respective attorneys, experts, advisors, agents, or representatives, but all such costs,
10 fees, and expenses as provided for in Paragraphs 5.4 and 11 or otherwise approved by the Court
11 may be paid out of the Settlement Fund.

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

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

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

26 12.2. China Airlines shall not have any responsibility, financial obligation, or liability
27 whatsoever with respect to the investment, distribution, or administration of the Settlement Fund,
28

1 including, but not limited to, the costs and expenses of such investment, distribution and
2 administration, except as expressly otherwise provided in the Settlement Agreement. For the
3 avoidance of doubt, under no circumstances will China Airlines be obligated to pay any sums
4 other than the Settlement Amount.

5 **13. Option to Rescind**

6 13.1. In the event that the Opt-Out Percentage exceeds five percent (5%), China Airlines
7 shall have the option to rescind the Settlement Agreement.

8 13.2. Within twenty (20) business days of the delivery of the list described in Paragraph
9 6.2, China Airlines shall provide to Settlement Class Counsel the total amount of Opt-Out Sales,
10 the resulting Opt-Out Percentage, the Opt-Out Sales for each Opt-Out Plaintiff, and supporting
11 data for Opt-Out Sales.

12 13.3 China Airlines shall have up to the second business day prior to the Settlement
13 Fairness Hearing to give notice in writing to Settlement Class Counsel that it elects to exercise
14 their option to rescind the Settlement Agreement.

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

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

22 14.2. If China Airlines chooses to exercise the option to rescind pursuant to
23 Paragraph 13.1 or if China Airlines or Plaintiffs choose to exercise the option to rescind
24 pursuant to Paragraph 14.1, any and all amounts then constituting the Settlement Fund
25 (including all income earned thereon and excluding any reasonable expenses that have been
26 paid or incurred associated with providing notice to the Settlement Class, administering the
27 Settlement Fund, incurred or paid under Paragraph 11.8 of this Settlement Agreement, and/or
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1 any Taxes already paid on such income), together with any amounts, including attorneys' fees,
2 paid to Settlement Class Counsel pursuant to Paragraph 16 below (including all income earned
3 thereon), shall be returned forthwith to China Airlines. A modification or reversal on appeal
4 of any amount of Settlement Class Counsel's fees and expenses awarded by the Court or any
5 plan of allocation of the Settlement Fund shall not be deemed a modification of all or a part of
6 the terms of this Settlement Agreement or the Judgment.

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

25 **15. Cooperation**

26 15.1 China Airlines shall provide full and complete cooperation with Settlement Class
27 Counsel as set forth specifically below.
28

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

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

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

16 15.5. China Airlines shall reasonably assist in notifying the class of this Settlement
17 Agreement, as discussed in Paragraph 5, and the Fairness Hearing, as discussed in Paragraph 7.

18 15.6. China Airlines understands and agrees that the cooperation described in this
19 Paragraph 14 is a material condition of settlement.

20 **16. No Admissions**

21 16.1. The Parties intend the Settlement as described herein to be a final and complete
22 resolution of all disputes between them with respect to the Action and to compromise claims
23 that are contested, and it shall not be deemed an admission by any party as to the merits of any
24 claim or defense or any allegation made in the Action. Any press release issued in connection
25 with this Settlement will state only that the matter has been resolved by China Airlines
26 agreeing to pay the Settlement Amount to compromise Plaintiffs' contested claims and that
27 China Airlines does not admit any liability to any claim in the Action.

1 16.2. The Parties acknowledge that China Airlines is entering into this Settlement to
2 eliminate the inconvenience and distraction of potentially burdensome and protracted
3 litigation. Neither the Settlement nor this Settlement Agreement, nor any negotiations or act
4 performed or document executed pursuant to or in furtherance of the Settlement or this
5 Settlement Agreement is or may be deemed to be or may be used as an admission of, or
6 evidence of, China Airlines' conduct having violated the laws of any state, country, or other
7 jurisdiction or of having caused any harm to any Person. Neither the Settlement nor this
8 Settlement Agreement, nor any act performed or document executed pursuant to or in
9 furtherance of the Settlement or this Settlement Agreement, shall be admissible in any
10 proceeding for any purpose, except to consummate or enforce the terms of the Settlement, and
11 except that the Released Parties may file this Settlement Agreement or the Judgment in any
12 action for any purpose, including, but not limited to, in support of a defense or counterclaim
13 based on principles of res judicata, collateral estoppel, release, good faith settlement,
14 judgment bar, reduction, or any other theory of claim preclusion or issue preclusion or similar
15 defense or counterclaim.

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

17 17.1. The procedure for, and the allowance or disallowance by the Court of, any
18 application by Settlement Class Counsel for attorneys' fees and expenses are not part of the
19 Settlement Agreement, and are to be considered by the Court separately from the Court's
20 consideration of the fairness, reasonableness, and adequacy of the settlement. Any order or
21 proceeding relating to any application for, or approval of, attorneys' fees and expenses, the
22 pendency of any such application, or any appeal or review of an order relating thereto or reversal or
23 modification thereof, shall not operate to terminate or cancel this Settlement Agreement, or affect or
24 delay the finality of the Judgment. China Airlines agrees that Settlement Class Counsel may
25 withdraw from the Settlement Fund any amount awarded by the Court for attorneys' fees and costs
26 five (5) days following the Court's award, subject to an appropriate financial undertaking required
27 by the Court in the event of an appeal of the Court's award of attorneys' fees and expenses. For
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1 the avoidance of doubt, any attorneys' fees or expenses shall come out of the settlement fund, and
2 China Airlines under no circumstances will be obligated to pay sums in addition to the Settlement
3 Amount.

4 17.2. China Airlines shall have no responsibility for, and no liability whatsoever
5 with respect to, the division of attorneys' fees and expenses among Settlement Class Counsel,
6 and any negotiation or dispute among Settlement Class Counsel in that regard shall not
7 operate to terminate or cancel this Settlement Agreement, or affect or delay the finality of the
8 Judgment.

9 17.3. Except as otherwise provided herein, Plaintiffs and China Airlines shall each be
10 responsible for bearing their own costs and fees incurred in this Action.

11 **18. Miscellaneous Provisions**

12 18.1. China Airlines expressly represents that it has obtained all required
13 approvals from its management for this Settlement Agreement.

14 18.2. This Settlement Agreement shall constitute the entire agreement between the
15 Parties pertaining to the Settlement of the Action against China Airlines and supersedes any
16 and all prior and contemporaneous undertakings of the Parties in connection therewith. The
17 terms of the Settlement Agreement are and shall be binding upon each of the Parties hereto,
18 their heirs, executors, administrators, representatives, agents, attorneys, partners, successors,
19 predecessors-in-interest, and assigns, and upon all other Persons claiming any interest in the
20 subject matter hereto through any of the parties hereto including any Settlement Class
21 Members.

22 18.3. This Settlement Agreement may be modified or amended only by a writing
23 executed by Plaintiffs and China Airlines, subject (if after preliminary or final approval by any
24 court) to approval by the Court. Amendments and modifications may be made without notice to
25 the Settlement Class unless notice is required by law or by the Court.

26 18.4. None of the Parties hereto shall be considered to be the drafter of this
27 Settlement Agreement or any its provisions hereof for the purpose of any statute, case law or
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1 rule of interpretation or construction that would or might cause any provision to be construed
2 against the drafters of this Settlement Agreement.

3 18.5. This Agreement shall be construed and interpreted to effectuate the intent of the
4 parties which is to provide, through this Settlement Agreement, for a complete resolution of the
5 Released Claims with respect to the Released Parties.

6 18.6. Nothing expressed or implied in this Settlement Agreement is intended to or
7 shall be construed to confer upon or give any person or entity other than Class Members,
8 Releasing Parties, and Released Parties any right or remedy under or by reason of this
9 Agreement.

10 18.7. This Agreement shall be binding upon, and inure to the benefit of, the
11 Releasing Parties and the Released Parties.

12 18.8. Plaintiffs and China Airlines acknowledge that they have been represented by
13 counsel, and have made their own investigations of the matters covered by this Settlement
14 Agreement to the extent they have deemed it necessary to do so. Therefore, Plaintiffs and
15 China Airlines and their respective counsel agree that they will not seek to set aside any part of
16 the Settlement Agreement on the grounds of mistake. Moreover, Plaintiffs and China Airlines
17 and their respective counsel understand, agree, and expressly assume the risk that any fact may
18 turn out hereinafter to be other than, different from, or contrary to the facts now known to
19 them or believed by them to be true, and further agree that the Settlement Agreement shall be
20 effective in all respects and shall not be subject to termination, modification, or rescission by
21 reason of any such difference in facts. If any provision of this Settlement Agreement is found
22 by a court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, the
23 remainder of this Settlement Agreement will not be affected, and, in lieu of each provision that
24 is found illegal, invalid or unenforceable, a provision will be added as a part of this Settlement
25 Agreement that is as similar to the illegal, invalid or unenforceable provision as may be legal,
26 valid and enforceable.

1 18.9. All terms of this Settlement Agreement shall be governed by and interpreted
2 according to the substantive laws of the State of California, without regard to its choice of law
3 or conflicts of laws principles.

4 18.10. China Airlines, Plaintiffs and all Settlement Class Members hereby irrevocably
5 submit to the exclusive jurisdiction of the United States District Court for the Northern District of
6 California for any suit, action, proceeding, or dispute arising out of or relating to this Settlement
7 Agreement or the applicability of this Settlement Agreement, including, without limitation, any
8 suit, action, proceeding or dispute relating to the release provisions herein.

9 18.11. This Settlement Agreement may be executed in counterparts. Facsimile or
10 Portable Document Format signatures shall be considered as valid signatures for purposes of
11 execution of this Settlement Agreement, but original signature pages shall thereafter be collated
12 for filing of this Settlement Agreement with the Court.

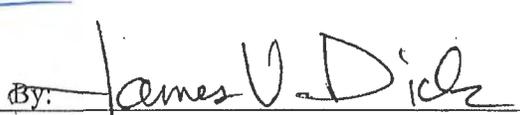
13 18.12. Each of the undersigned attorneys represents that he or she is fully authorized to
14 enter into the terms and conditions of, and execute, this Settlement Agreement, subject to
15 Court approval, and the undersigned Settlement Class Counsel represent that they are
16 authorized to execute this Settlement Agreement on behalf of Plaintiffs and the proposed
17 Settlement Class.

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

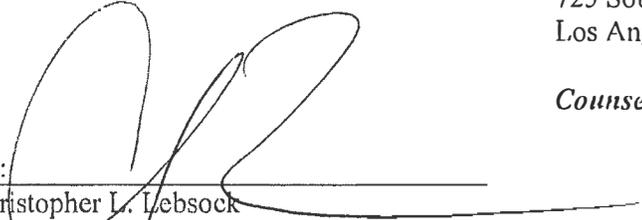
2
3 Dated: December 11, 2017

4
5 By: 
6 Steven N. Williams *Adam J. Cugler*
7 **Cotchett, Pitre & McCarthy, LLP**
8 San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010

By: 
James V. Dick
Pillsbury Winthrop Shaw Pittman, LLP
1200 Seventeenth Street NW
Washington, DC 20036-3006

9 *Interim Class-Counsel for Plaintiffs and
10 Settlement Class Counsel*

Thomas T. Liu
Pillsbury Winthrop Shaw Pittman, LLP
725 South Figueroa Street, Suite 2800
Los Angeles, CA 90017-5406

11
12
13 By: 
14 Christopher L. Lebsock
15 **Hausfeld LLP**
16 600 Montgomery Street,
32nd Floor
San Francisco, CA 94111

Counsel for China Airlines, Ltd.

17 *Interim Class-Counsel for Plaintiffs and
18 Settlement Class Counsel*

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27
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EXHIBIT 4

1 Adam J. Zapala (245748)
Elizabeth Castillo (280502)
2 **COTCHETT, PITRE & McCARTHY, LLP**
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3 840 Malcolm Road, Suite 200
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12 sgassman@hausfeld.com

13 *Interim Class Counsel for Plaintiffs*

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

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

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

MDL No. 1913

Honorable Charles R. Breyer

20 **This Document Relates to:**

SETTLEMENT AGREEMENT BETWEEN
PLAINTIFFS AND EVA AIRWAYS
CORPORATION

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

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

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

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

24 WHEREAS, Settlement Class Counsel have concluded, after an investigation into the
25 facts and the law, and after carefully considering the circumstances of claims made by Plaintiffs

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27 ¹ Settlement Class Counsel intend to request that the Court add Sharon Christian as a plaintiff.
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1 and the Class, and the possible legal and factual defenses thereto, that it is in the best interests of
2 Plaintiffs and the Settlement Class to enter into this Settlement Agreement with EVA to avoid
3 the uncertainties and risks of litigation, and that the settlement set forth herein is fair, reasonable,
4 adequate and in the best interests of the Settlement Class;

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

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

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

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

23 **1. Definitions**

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

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

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

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

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

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

26 1.7. “Effective Date” means the earliest date on which all of the events and
27 conditions specified in Paragraph 8 herein have occurred or have been met.

1 1.8. "Escrow Account" means the Agreement Among Citibank, N.A. as "Escrow
2 Agent", Cotchett, Pitre & McCarthy, LLP & Hausfeld LLP as "Settlement Class Counsel", and
3 Japan Airlines Co., Ltd. as "Settling Defendant," account number 25D078455768, as
4 subsequently amended on September 3, 2013.

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

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

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

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

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

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

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

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

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

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

26 1.19. "Releasing Parties" means, jointly and severally, and individually and
27 collectively: Plaintiffs and all Settlement Class Members, their predecessors, successors, present
28

1 and former parents, subsidiaries, divisions, affiliates, and departments, each of their respective
2 past and present officers, directors, employees, agents, attorneys, servants, and representatives,
3 and the predecessors, successors, heirs, executors, administrators, and assigns of each of the
4 foregoing. As used in this definition, “affiliates” means entities controlling, controlled by, or
5 under common control with any of the Releasing Parties.

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

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

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

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

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

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

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

3 **3. Class Certification**

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

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

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

15 **4. Motion for Preliminary Approval**

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

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

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

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

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

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

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

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

18 **6. Requests for Exclusion**

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

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

14 **7. Fairness Hearing**

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

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

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

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

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

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

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

8 **8. Effective Date of Agreement**

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

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

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

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

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

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

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

20 **11. Settlement Consideration**

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

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

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

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

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

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

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

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

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

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

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

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

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2 **13. Option to Rescind**

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

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

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

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

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

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

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

21 **15. Cooperation**

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

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

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

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

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

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

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

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

9 **16. No Admissions**

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

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

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

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

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

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

25 **18. Miscellaneous Provisions**

26 18.1. EVA expressly represents that it has obtained all required approvals from its
27 management for this Settlement Agreement.
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1 18.2. This Settlement Agreement shall constitute the entire agreement between the
2 Parties pertaining to the settlement of the Action against EVA and supersedes any and all prior
3 and contemporaneous undertakings of the Parties in connection therewith. The terms of the
4 Settlement Agreement are and shall be binding upon each of the Parties hereto, their heirs,
5 executors, administrators, representatives, agents, attorneys, partners, successors,
6 predecessors-in-interest, and assigns, and upon all other Persons claiming any interest in the
7 subject matter hereto through any of the parties hereto including any Settlement Class
8 Members.

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

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

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

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

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

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

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

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

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

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

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

6
7 Dated: February 27, 2018

8
9 By: 
10 Adam J. Zapala
11 **Cotchett, Pitre & McCarthy, LLP**
12 San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010

By: 
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Chicago, IL 60654

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

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15
16 **Counsel for EVA Airways Corporation**

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

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

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26
27
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1 Court approval, and the undersigned Settlement Class Counsel represent that they are
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3 Settlement Class.

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5 representatives have agreed to this Settlement Agreement as of the date first written above.

6 Dated: February 26 2018
7

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

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