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12  
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14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**  
16 **SAN FRANCISCO DIVISION**

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

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

MDL No. 1913

19 **This Document Relates To:**

20 **ALL ACTIONS**

**SETTLEMENT AGREEMENT BETWEEN**  
**PLAINTIFFS AND ALL NIPPON AIRWAYS**  
**CO., LTD.**

1        This Settlement Agreement ("Settlement Agreement"), dated February 8, 2019  
2 ("Execution Date"), is made and entered into by and among Defendant All Nippon Airways  
3 Co., Ltd. ("ANA") and Plaintiffs 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, James  
6 Kawaguchi, and Sharon Christian (together, "Plaintiffs"), both individually and as  
7 representatives of the Settlement Classes as defined herein.

8        WHEREAS, in the instant class action *In re Transpacific Passenger Air Transportation*  
9 *Antitrust Litigation*, No. 3:07-cv-05634-CRB, MDL No. 1913, currently pending before the  
10 Honorable Charles R. Breyer in the United States District Court for the Northern District of  
11 California, San Francisco Division, Plaintiffs have alleged that ANA participated in an unlawful  
12 conspiracy or conspiracies to restrain trade;

13        WHEREAS, ANA denies Plaintiffs' allegations and has asserted a number of defenses  
14 to Plaintiffs' claims;

15        WHEREAS, the Court issued an order partially granting and partially denying  
16 Defendants' motions for summary judgment regarding the filed-rate doctrine, including that of  
17 ANA, which the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") affirmed  
18 on appeal; and the Supreme Court of the United States ("Supreme Court") denied ANA's  
19 petition for writ of certiorari;

20        WHEREAS, the Court issued an order granting Plaintiffs' motion to certify the Japan  
21 and Satogaeri Classes, as further defined herein, and reserving the right to decertify one or both  
22 classes upon the presentation of evidence and testimony at trial;

23        WHEREAS, the Court issued an order denying ANA's motion for summary judgment  
24 based on Plaintiffs' lack of standing as direct purchasers and based on the *Noerr-Pennington*  
25 doctrine;

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

1 of Plaintiffs and the Settlement Classes to enter into this Settlement Agreement with ANA to  
2 avoid the uncertainties and risks of further litigation, and that the settlement set forth herein is  
3 fair, reasonable, adequate and in the best interests of the Settlement Classes;

4 WHEREAS, ANA, having concluded that there is no legal or factual basis for its  
5 liability in this matter and that it has valid defenses to the claims alleged, has nevertheless  
6 agreed to enter into this Settlement Agreement to avoid the expense, inconvenience, and  
7 distraction of potentially burdensome and further protracted litigation;

8 WHEREAS, this Settlement Agreement was only reached after a hard-fought, two-day  
9 mediation, along with subsequent efforts by the parties and mediator, all presided over by  
10 Mediator Kenneth R. Feinberg;

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

15 WHEREAS, Settlement Class Counsel and ANA have engaged in arm's-length  
16 settlement negotiations with the assistance of Kenneth R. Feinberg, and have reached this  
17 Settlement Agreement, which, subject to approval of the Court, embodies all of the terms and  
18 conditions of the settlement between Plaintiffs and ANA.

19 NOW, THEREFORE, in consideration of the promises, covenants, agreements, and  
20 releases set forth herein and for other good and valuable consideration, and incorporating the  
21 above recitals herein, it is agreed by the undersigned, on behalf of ANA, Plaintiffs, and the  
22 Settlement Classes, that the claims of Plaintiffs and the Settlement Classes that have been or  
23 could have been asserted in the Action be settled, compromised, and dismissed on the merits  
24 and with prejudice as to ANA, and, except as hereinafter provided, without costs as to Plaintiffs,  
25 the Settlement Classes, or ANA, subject to the approval of the Court, on the following terms  
26 and conditions:  
27  
28

1           **1.     Definitions**

2           1.1.    "Action" means the class action captioned *In re Transpacific Passenger*  
3 *Air Transportation Antitrust Litigation*, No. 3:07-cv-05634-CRB, MDL No. 1913 (N.D. Cal.),  
4 currently pending before the Honorable Charles R. Breyer in the United States District Court for  
5 the Northern District of California, San Francisco Division, all actions relating to the claims  
6 alleged in "Plaintiffs' Second Amended Consolidated Class Action Complaint" filed in the  
7 litigation that were originally filed in the United States District Court for the Northern District  
8 of California, all actions that have been or are subsequently filed in or transferred for  
9 consolidation and/or coordinated pretrial proceedings to the Northern District of California by  
10 the Judicial Panel on Multidistrict Litigation as part of MDL No. 1913, all actions pending such  
11 transfer (including, but not limited to, "tag-along" actions), all actions that may be transferred in  
12 the future or are otherwise based on the conduct alleged in the above-captioned litigation, and  
13 all related actions previously pending before the Ninth Circuit and the Supreme Court.

14           1.2.    "Claims" shall mean any and all actions, suits, claims, rights, demands,  
15 assertions, allegations, causes of action, controversies, proceedings, losses, damages, injuries,  
16 attorneys' fees, costs, expenses, debts, liabilities, judgments, or remedies, whether equitable or  
17 legal.

18           1.3.    "Court" means the United States District Court for the Northern District  
19 of California.

20           1.4.    "Defendants" means ANA, Japan Airlines International Co., Ltd ("JAL"),  
21 Air France, Air New Zealand, Cathay Pacific Airways Limited, China Airlines, Ltd., EVA  
22 Airways Corporation, Malaysian Airline System Berhad, Philippine Airlines, Inc., Qantas  
23 Airways Limited, Singapore Airlines Limited, Thai Airways International Public Co., Ltd., and  
24 Vietnam Airlines.

25           1.5.    "Document" is defined to be synonymous in meaning and equal in scope  
26 to the usage of this term in Federal Rule of Civil Procedure ("Federal Rule") 34(a). A draft or  
27 non-identical copy is a separate document within the meaning of this term.  
28

1 1.6. "Execution Date" means February 8, 2019, the date by which all parties  
2 have executed this Settlement Agreement.

3 1.7. "Effective Date" means the earliest date on which all of the events and  
4 conditions specified in Paragraph 8 herein have occurred or have been met.

5 1.8. "Escrow Account" means the Agreement between Citibank, N.A. as  
6 "Escrow Agent," Cotchett, Pitre & McCarthy, LLP and Hausfeld LLP as "Settlement Class  
7 Counsel," and Japan Airlines Co., Ltd. as "Settling Defendant," account number  
8 25D078455768, as subsequently amended on September 3, 2013.

9 1.9. "Judgment" means a final order of judgment by the Court dismissing the  
10 Action as to any Released Party and approving the Settlement Agreement under Federal Rule  
11 23(e), as described in Paragraph 7.1 herein.

12 1.10. "Opt-Out Plaintiff" means a Person, otherwise qualifying as a member of  
13 one or more Settlement Classes, that has validly elected to be excluded from one or more of the  
14 Settlement Classes pursuant to Paragraph 6.1 herein.

15 1.13. "Parties" means Plaintiffs, Settlement Class Members, and ANA.

16 1.14. "Person" means an individual or an entity.

17 1.15. "Plaintiffs" means Meor Adlin, Franklin Ajaye, Andrew Barton, Rachel  
18 Diller, Scott Frederick, David Kuo, Dickson Leung, Brendan Maloof, Donald Wortman, Harley  
19 Oda, Roy Onomura, Shinsuke Kobayashi, Patricia Lee, Nancy Kajiyama, Della Ewing Chow,  
20 James Kawaguchi, and Sharon Christian. "Japan Class Plaintiffs" (defined with reference to the  
21 "Japan Class" described in Section 3 below) means Nancy Kajiyama, Brendan Maloof, Harley  
22 Oda, and Della Ewing Chow with respect to the Japan Settlement Class. "Satogaeri Class  
23 Plaintiffs" (defined with reference to the "Satogaeri Class" described in Section 3 below) means  
24 Harley Oda, James Kawaguchi, and Shinsuke Kobayashi with respect to the *Satogaeri*  
25 Settlement Class. All named Plaintiffs are representatives of Settlement Class III (defined with  
26 reference to the "Settlement Class III" described in Section 3 below).

27 1.16. "Preliminary Approval Order" means an order preliminarily approving  
28 the settlement to be rendered by the Court.

1.17. "Released Claims" means any and all Claims, whether class, individual, or otherwise, that the Releasing Parties or any of them ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, against the Released Parties or any of them, whether such Claims are based on federal, state, local, statutory, or common law, or any other law, code, rule, or regulation of any country or other jurisdiction worldwide, whether such claims are known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, regardless of legal theory, and regardless of the type or amount of relief or damages claimed, or Claims that have been, could have been, or in the future might have been, claimed in law or in equity, on account of, arising out of, resulting from, or in any way related to any conduct regardless of where it occurred at any time prior to the Execution Date—including, but not limited to, the pricing, selling, discounting, or marketing of passenger air transportation—that could have been brought based in whole or in part on the facts, occurrences, transactions, or other matters that were alleged in the Second Amended Consolidated Class Action Complaint in the Action, including, but not limited to, the purchase of such passenger air transportation on any Defendant, or any predecessor, subsidiary, or affiliate thereof, that originated in the United States and included at least one flight segment from the United States to Asia or Oceania. For avoidance of doubt, the Released Claims shall extend to, but only to, the fullest extent permitted by federal law.

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

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

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 fifty-eight million dollars (\$58,000,000.00) in  
7 United States currency. ANA will deposit the Settlement Amount into the Escrow Account  
8 established by Plaintiffs within thirty (30) calendar days after the Execution Date.

9 1.21. "Settlement Class Counsel" means counsel for all three of the Settlement  
10 Classes described in Section 3 below and refers to the law firms of Cotchett, Pitre & McCarthy,  
11 LLP, 840 Malcolm Road, Burlingame, CA 94010 and Hausfeld, LLP, 600 Montgomery Street,  
12 Suite 3400, San Francisco, CA, 94111 and 1700 K Street, Suite 650, Washington, D.C. 20006.

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

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

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

20 Plaintiffs and ANA 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 Federal Rules 23(c) and 23(e)) and to  
23 secure certification of the Settlement Classes for settlement purposes and the complete and final  
24 dismissal with prejudice of the Action as to ANA. Prior to the filing of any motions or other  
25 papers in connection with the settlement, including without limitation, the motions for  
26 preliminary approval of the settlement (as contemplated in Paragraph 4.1 of this Settlement  
27 Agreement) and for final approval of the settlement (as contemplated in Paragraph 7.1 of this  
28 Settlement Agreement), Plaintiffs will send those papers to ANA. The text of any proposed

1 form of order approving this Settlement Agreement shall be agreed upon by Plaintiffs and ANA  
2 before it is submitted to the Court.

3           **3. Settlement Class Certification**

4           On August 8, 2018, the Court granted Plaintiffs' motion to certify two classes pursuant  
5 to Federal Rule 23(b)(3). The following Settlement Classes I and II are identical to the classes  
6 certified by the Court. The parties to this Settlement Agreement hereby stipulate for purposes of  
7 this settlement only that the requirements of Rule 23(a) and 23(b)(3) of the Federal Rules are  
8 satisfied, and, subject to Court approval, the following classes shall be certified for settlement  
9 purposes:

10           Settlement Class I ("Japan Settlement Class"). All persons and entities that  
11 directly purchased tickets for passenger air transportation from JAL or ANA, or  
12 any predecessor, subsidiary or affiliate thereof, that originated in the United States  
13 and included at least one flight segment from the United States to Japan between  
14 the period beginning February 1, 2005 and ending December 31, 2007. Excluded  
15 from the class are any tickets that did not include a fuel surcharge. Excluded from  
16 the class are any antitrust immunized fares agreed upon at IATA "Tariff  
17 Coordinating Conferences." Excluded from the class are tickets exclusively  
18 acquired through award or reward travel or any tickets acquired for infant travel  
19 with a 90% discount. Also excluded from the class are purchases by government  
20 entities, Defendants, any parent subsidiary or affiliate thereof, and Defendants' or  
21 any other commercial airline's officers, directors, employees, agents, and  
22 immediate families.

23           Settlement Class II ("Satogaeri Settlement Class"). All persons and entities that  
24 directly purchased *Satogaeri* fares from JAL or ANA or any predecessor,  
25 subsidiary or affiliate thereof that originated in the United States and included at  
26 least one flight segment to Japan and does not include travel to countries other  
27 than the United States and Japan between the period beginning January 1, 2000  
28 and ending April 1, 2006. Excluded from the class are purchases by government  
entities, Defendants, any parent subsidiary or affiliate thereof, and Defendants'  
officers, directors, employees and immediate families. Also excluded are  
purchases of "Satogaeri Special" and maerui satogaeri fares.

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

Concurrent Settlement Classes. Settlement Classes I, II, and III are not mutually  
exclusive. Between February 2005 and March 2006, all *Satogaeri* fares sold



1 would have also included a fuel surcharge. Therefore, all *Satogaeri* Class  
2 members purchasing a ticket during this period are also members of the Japan  
3 Settlement Class, barring unusual circumstances in individual cases. Furthermore,  
4 all members of both the *Satogaeri* Settlement Class and the Japan Settlement  
5 Class are members of Settlement Class III.

6 Collectively, Settlement Classes I, II, and II are referred to herein as the  
7 "Settlement Classes".

8 **4. Motion for Preliminary Approval**

9 4.1. At an appropriate time after the Execution Date of this Settlement  
10 Agreement, and after consultation as to timing with counsel for ANA, Plaintiffs shall file with  
11 the Court a motion requesting entry of a Preliminary Approval Order, *inter alia*:  
12

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

25 (b) certifying the Settlement Classes for settlement purposes,  
26 designating Class Representatives and Settlement Class Counsel  
27 as defined herein, and finding that each element for certification  
28 of the Settlement Classes pursuant to Federal Rule 23 is met;

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

1           4.2. Plaintiffs shall seek, and ANA shall not oppose, certification of the  
2           Settlement Classes and appointment of Settlement Class Counsel as lead  
3           counsel for purposes of this settlement.

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

5           5.1. After preliminary approval of this Settlement Agreement and submission  
6 to the Court and approval of a program to provide notice to the Classes in accordance with the  
7 requirements of the Federal Rules and due process, Settlement Class Counsel shall provide  
8 members of the Settlement Classes identified with notice of the settlement and the date of the  
9 Fairness Hearing in a manner to be approved by the Court.

10          5.2. Upon approval by the Court of a program to provide notice to the Class,  
11 Settlement Class Counsel shall cause a summary notice of the settlement to be published in such  
12 manner and scope as is reasonable and consistent with the requirements of Federal Rule 23.  
13 Plaintiffs shall develop, with the cooperation of ANA, the details of the publication notice  
14 program. Subject to Paragraph 5.3 below, Plaintiffs agree not to include, in their publication  
15 notice program, and not to seek, from the Court, provisions for any form of notice to be posted  
16 on ANA's website. Plaintiffs shall submit a publication notice program, the text of which shall  
17 be provided to ANA by Plaintiffs before submission to the Court.

18          5.3. The parties to this Settlement Agreement agree that to the extent that any  
19 notice program approved by the Court differs from any description of the program to give  
20 notice to the class described in this Settlement Agreement, the orders of the Court shall govern  
21 and no variation between such Court order and the terms of this Settlement Agreement shall be  
22 deemed a breach of this Settlement Agreement, or give rise to any right of any party to void or  
23 withdraw from this Settlement Agreement.

24          5.4. Except as provided herein, the costs and expenses associated with  
25 providing notice of the settlement to members of the Settlement Classes pursuant to the Court-  
26 approved notification plan shall be paid from the Settlement Fund, and ANA shall have no  
27 obligation to pay for the costs and expenses of providing notice of the settlement to members of  
28 the Settlement Classes. ANA agrees that Settlement Class Counsel may withdraw funds as

1 necessary from the Settlement Fund for the purpose of providing notice to the class of the  
2 settlement as described herein, which shall be non-refundable. In the event that the settlement is  
3 not finally approved, ANA shall not be entitled to any sums spent or owing for purposes of  
4 disseminating notice and/or administering the notice program as approved by the Court.

5         **6. Requests for Exclusion**

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

26                 6.2. Settlement Class Counsel shall promptly forward copies of all Requests  
27 for Exclusions, as they are received, to ANA's counsel. Settlement Class Counsel shall also  
28

1 forward a list of all Requests for Exclusion to ANA's counsel no later than fourteen (14) days  
2 prior to the Fairness Hearing.

3           **7. Fairness Hearing**

4           7.1 At the Fairness Hearing, Plaintiffs shall seek entry of a Judgment, the text  
5 of which shall be agreed upon by Plaintiffs and ANA before submission to the Court, *inter alia*:

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

- 1 (f) requiring Settlement Class Counsel to file with the Clerk of the  
2 Court a record of potential members of the Settlement Classes  
3 who timely and validly excluded themselves from the Settlement  
4 Classes and to provide a copy of the record to counsel for ANA;  
5 (g) retaining exclusive jurisdiction over the settlement and this  
6 Settlement Agreement, including the administration and  
7 consummation of the settlement; and  
8 (h) determining under Federal Rule 54(b) that there is no just reason  
9 for delay and directing that the Judgment of dismissal as to ANA  
10 shall be final and entered forthwith.

11 7.2. Any Person who has not requested exclusion from the Settlement Classes  
12 and who objects to the settlement may appear, at that Person's own expense, at the Fairness  
13 Hearing in person or through counsel, to present any evidence or argument with respect to the  
14 settlement, to the extent permitted by the Court. However, no such Person shall be heard, and no  
15 papers, briefs, pleadings, or other documents shall be received and considered by the Court  
16 unless such Person properly submits a written objection that includes (a) notice of intention to  
17 appear, (b) proof of membership in the Settlement Classes, and (c) the specific grounds for the  
18 objection and any reasons why such Person desires to appear and be heard, as well as all  
19 documents or writings that such Person desires the Court to consider. Such a written objection  
20 must be both filed with the Court no later than thirty-five (35) days prior to the date set for the  
21 Fairness Hearing, and mailed to Settlement Class Counsel and ANA's counsel at the addresses  
22 provided in the notices to the Settlement Classes, postmarked (or mailed by overnight delivery)  
23 no later than thirty-five (35) days prior to the date of the Fairness Hearing. Any Person who  
24 fails to object in the manner prescribed herein shall be deemed to have waived any objections to  
25 the settlement and this Settlement Agreement and will forever be barred from making any such  
26 objections to the settlement or this Settlement Agreement in the Action or in any other action or  
27 proceeding, unless otherwise permitted for good cause shown as determined by the Court.  
28

1           **8.       Effective Date of Agreement**

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

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

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

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

25           9.3. Upon the occurrence of the Effective Date, and as part of the Judgment,  
26 ANA will waive any claim for indemnity or contribution, however denominated, against any of  
27 the Defendants in the Action other than ANA, arising out of or related to the claims or  
28 allegations asserted by Plaintiffs in the Action, whether arising under state, federal, or foreign

1 law as claims, cross-claims, counterclaims, or third-party claims, and whether asserted in the  
2 Action, in this Court, in any federal or state court, or in any other court, arbitration proceeding,  
3 administrative agency, or other forum in the United States, or elsewhere, and all such claims  
4 shall be deemed extinguished, discharged, satisfied, and unenforceable.

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

6 All rights of any Settlement Class Member against any alleged co-conspirator or any  
7 other Person other than the Released Parties are specifically reserved by Plaintiffs and the  
8 Settlement Class Members.

9 **11. Settlement Consideration**

10 11.1. The total monetary amount payable by ANA (comprising class damages,  
11 costs of class notice and administration, and attorneys' fees and costs) in settlement of all claims  
12 relating to the Action and all Released Claims, is the Settlement Amount described above. The  
13 deposited sums shall be held in the Escrow Account until there is an order from the District  
14 Court concerning distribution or use of the Settlement Amount. The Escrow Account Agent  
15 shall be subject to escrow instructions mutually acceptable to Settlement Class Counsel and  
16 ANA, such escrow to be administered under the Court's continuing supervision and control.  
17 The timing provisions herein are a material part of this Settlement Agreement.

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

24 11.3. All funds held in the Escrow Account shall be deemed and considered to  
25 be in *custodia legis* of the Court and shall remain subject to the jurisdiction of the Court, until  
26 such time as such funds shall be distributed pursuant to this Settlement Agreement and/or  
27 further order(s) of the Court.  
28



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

10           11.5. For the purpose of § 468B of the Internal Revenue Code of 1986, as  
11 amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow  
12 Agent. The Escrow Agent shall timely and properly file all information and other tax returns  
13 necessary or advisable with respect to the Settlement Fund (including without limitation the  
14 returns described in Treas. Reg. § 1.468B-2(k)(1)). Such returns (as well as the elections  
15 described in Paragraph 11.4) shall be consistent with Paragraph 11.7.

16           11.6. All (i) taxes (including any estimated taxes, interest, or penalties) arising  
17 with respect to the income earned by the Settlement Fund, including any taxes or tax detriments  
18 that may be imposed upon ANA or any other Released Party with respect to any income earned  
19 by the Settlement Fund for any period during which the Settlement Fund does not qualify as a  
20 "qualified settlement fund" for federal or state income tax purposes ("Taxes"); and (ii) expenses  
21 and costs incurred in connection with the operation and implementation of Paragraphs 11.6  
22 through 11.9 (including, without limitation, expenses of tax attorneys and/or accountants and  
23 mailing and distribution costs and expenses relating to filing (or failing to file) the returns  
24 described in Paragraph 11.5) ("Tax Expenses"), shall be paid out of the Settlement Fund.

25           11.7. Neither ANA nor any other Released Party nor their respective counsel  
26 shall have any liability or responsibility, including filing responsibility, for the Taxes or the Tax  
27 Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of  
28 administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the

1 Settlement Fund. The Escrow Agent shall be obligated (notwithstanding anything herein to the  
2 contrary) to withhold from distribution to any claimants authorized by the Court any funds  
3 necessary to pay such amounts including the establishment of adequate reserves for any Taxes  
4 and Tax Expenses (as well as any amounts that may be required to be withheld under Treas.  
5 Reg. § 1.468B-2(1)(2)). Neither ANA nor any other Released Party is responsible nor shall they  
6 have any liability therefor. Plaintiffs and ANA agree to cooperate with the Escrow Agent, each  
7 other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the  
8 provisions of Paragraphs 11.2 through 11.10. ANA makes no representation to Plaintiffs  
9 regarding the appropriate tax treatment of the Settlement Fund, income earned on the Settlement  
10 Fund, or any distribution taken from the Settlement Fund.

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

18           11.9. ANA shall not be liable for any costs, fees, or expenses of any of  
19 Plaintiffs' respective attorneys, experts, advisors, agents, or representatives, but all such costs,  
20 fees, and expenses as provided for in Paragraphs 5.4 and 11 or otherwise approved by the Court  
21 may be paid out of the Settlement Fund.

22           11.10. If, after all costs (including notice costs), attorneys' fees, and any other  
23 expenses have been paid from the Settlement Fund, there are any remaining funds, they shall be  
24 distributed to the Settlement Classes, or in Settlement Class Counsel's reasonable judgment, be  
25 made the subject of an application to the Court by Plaintiffs for *cy pres* distribution in  
26 accordance with governing standards in the Ninth Circuit.

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

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

10           12.2. ANA shall not have any responsibility, financial obligation, or liability  
11 whatsoever with respect to the investment, distribution, or administration of the Settlement  
12 Fund, including, but not limited to, the costs and expenses of such investment, distribution, and  
13 administration, except as expressly otherwise provided in the Settlement Agreement. For the  
14 avoidance of doubt, under no circumstances will ANA be obligated to pay any sums other than  
15 the Settlement Amount.

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

17           13.1. If the Court declines to approve this Settlement Agreement or any  
18 material part hereof, or if such approval is materially modified or set aside on appeal, or if the  
19 Court does not enter the Judgment, or if the Court enters the Judgment and appellate review is  
20 sought and, on such review, such Judgment is not affirmed or is materially modified, then ANA  
21 and Plaintiffs shall each, in their respective sole discretion, have the option to rescind this  
22 Settlement Agreement in its entirety. Any modification of the provisions of this Settlement  
23 Agreement concerning the release and covenant not to sue provided by the Releasing Parties  
24 shall be considered material.

25           13.2. If ANA chooses to exercise the option to rescind pursuant to Paragraph  
26 13.1, any and all amounts then constituting the Settlement Fund (including all income earned  
27 thereon and excluding any reasonable expenses that have been paid or incurred associated with  
28 providing notice to the Settlement Classes, administering the Settlement Fund, incurred or paid

1 under Paragraph 11.8 of this Settlement Agreement, and/or any Taxes already paid on such  
2 income), together with any amounts, including attorneys' fees, paid to Settlement Class Counsel  
3 pursuant to Paragraph 15 below (including all income earned thereon), shall be returned  
4 forthwith to ANA. A modification or reversal on appeal of any amount of Settlement Class  
5 Counsel's fees and/or expenses awarded by the Court or any plan of allocation or distribution of  
6 the Settlement Fund shall not be deemed a modification of all or a part of the terms of this  
7 Settlement Agreement or the Judgment.

8         13.3. ANA and Plaintiffs expressly reserve all of their rights if this Settlement  
9 Agreement does not become effective or if it is rescinded pursuant to Paragraph 13.1 of this  
10 Settlement Agreement. In addition, if for any reason (including a party's exercise of a valid  
11 right to rescind this Settlement Agreement), the Settlement Agreement does not receive final  
12 Court approval, then the certification of the Settlement Classes shall become null and void  
13 without further Court action, and shall not be used or referred to for any further purpose in the  
14 Action or in any other action or proceeding, and shall not prejudice any party in arguing for or  
15 against contested class certification in this Action or in any other proceeding. Further, this  
16 Agreement, whether or not it is finally approved and whether or not ANA or Plaintiffs elect to  
17 rescind it under Paragraph 13.1 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 ANA or any Defendant, or of the truth of any of the claims or allegations contained in  
21 Plaintiffs' Second Amended Consolidated Class Action Complaint or any other pleading filed  
22 by Plaintiffs in the Action, or waiver or invalidity of any defense, and evidence thereof shall  
23 neither be discoverable nor used directly or indirectly except in a proceeding to enforce or  
24 interpret the Settlement Agreement.

25         **14. No Admissions**

26         14.1. The Parties intend the settlement as described herein to be a final and  
27 complete resolution of all disputes between them with respect to the Action and to compromise  
28

1 claims that are contested, and it shall not be deemed an admission by any party as to the merits  
2 of any claim or defense or any allegation made in the Action.

3 14.2. The Parties acknowledge that ANA is entering into this Settlement  
4 Agreement to eliminate the inconvenience and distraction of potentially burdensome and  
5 protracted litigation. Neither the settlement nor this Settlement Agreement, nor any negotiations  
6 or act performed or document executed pursuant to or in furtherance of the settlement or this  
7 Settlement Agreement, is or may be deemed to be or may be used as an admission of, or  
8 evidence of, ANA's conduct having violated the laws of any state, country, or other jurisdiction  
9 or having caused any harm to any Person. Neither the settlement nor this Settlement Agreement,  
10 nor any act performed or document executed pursuant to or in furtherance of the settlement or  
11 this Settlement Agreement, shall be admissible in any proceeding for any purpose, except to  
12 consummate or enforce the terms of the Settlement Agreement, and except that the Released  
13 Parties may file this Settlement Agreement or the Judgment in any action for any purpose,  
14 including, but not limited to, in support of a defense or counterclaim based on principles of res  
15 judicata, collateral estoppel, release, good faith settlement, judgment bar, reduction, or any other  
16 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

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

18 15.1. The procedure for, and the allowance or disallowance by the Court of,  
19 any application by Settlement Class Counsel for attorneys' fees and expenses are not part of the  
20 Settlement Agreement and are to be considered by the Court separately from the Court's  
21 consideration of the fairness, reasonableness, and adequacy of the settlement. Any order or  
22 proceeding relating to any application for, or approval of, attorneys' fees and expenses, the  
23 pendency of any such application, or any appeal or review of an order relating thereto or  
24 reversal or modification thereof, shall not operate to terminate or cancel this Settlement  
25 Agreement, or affect or delay the finality of the Judgment. ANA agrees that Settlement Class  
26 Counsel may withdraw from the Settlement Fund any amount awarded by the Court for  
27 attorneys' fees and costs five (5) days following the Court's award, subject to an appropriate  
28 financial undertaking required by the Court in the event of an appeal of the Court's award of

1 attorneys' fees and expenses. For the avoidance of doubt, any attorneys' fees or expenses shall  
2 come out of the Settlement Fund, and ANA under no circumstances will be obligated to pay  
3 sums in addition to the Settlement Amount.

4 15.2. ANA shall have no responsibility for, and no liability whatsoever with  
5 respect to, the division of attorneys' fees and expenses among Settlement Class Counsel, and  
6 any negotiation or dispute among Settlement Class Counsel in that regard shall not operate to  
7 terminate or cancel this Settlement Agreement, or affect or delay the finality of the Judgment.

8 15.3. Except as otherwise provided herein, Plaintiffs and ANA shall each be  
9 responsible for bearing their own costs and fees incurred in this Action.

10 **16. Miscellaneous Provisions**

11 16.1. ANA expressly represents that it has obtained all required approvals from  
12 its management for this Settlement Agreement.

13 16.2. This Settlement Agreement shall constitute the entire agreement between  
14 the Parties pertaining to the settlement of the Action against ANA and supersedes any and all  
15 prior and contemporaneous undertakings of the Parties in connection therewith. The terms of  
16 the Settlement Agreement are and shall be binding upon each of the Parties hereto, their heirs,  
17 executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-  
18 in-interest, and assigns, and upon all other Persons claiming any interest in the subject matter  
19 hereto through any of the parties hereto including any Settlement Class Members.

20 16.3. This Settlement Agreement may be modified or amended only by a  
21 writing executed by Plaintiffs and ANA, subject (if after preliminary or final approval by any  
22 court) to approval by the Court. Amendments and modifications may be made without notice to  
23 the Settlement Classes unless notice is required by law or by the Court.

24 16.4. None of the Parties hereto shall be considered to be the drafter of this  
25 Settlement Agreement or any its provisions hereof for the purpose of any statute, case law, or  
26 rule of interpretation or construction that would or might cause any provision to be construed  
27 against the drafters of this Settlement Agreement.

1           16.5. This Settlement Agreement shall be construed and interpreted to  
2 effectuate the intent of the parties which is to provide, through this Settlement Agreement, for a  
3 complete resolution of the Released Claims with respect to the Released Parties.

4           16.6. Nothing expressed or implied in this Settlement Agreement is intended to  
5 or shall be construed to confer upon or give any person or entity other than Settlement Class  
6 Members, Releasing Parties, and Released Parties any right or remedy under or by reason of  
7 this Settlement Agreement.

8           16.7. This Settlement Agreement shall be binding upon, and inure to the  
9 benefit of, the Releasing Parties and the Released Parties.

10           16.8. Plaintiffs and ANA acknowledge that they have been represented by  
11 counsel and have made their own investigations of the matters covered by this Settlement  
12 Agreement to the extent they have deemed it necessary to do so. Therefore, Plaintiffs and ANA  
13 and their respective counsel agree that they will not seek to set aside any part of the Settlement  
14 Agreement on the grounds of mistake. Moreover, Plaintiffs and ANA and their respective  
15 counsel understand, agree, and expressly assume the risk that any fact may turn out hereinafter  
16 to be other than, different from, or contrary to the facts now known to them or believed by them  
17 to be true, and further agree that the Settlement Agreement shall be effective in all respects and  
18 shall not be subject to termination, modification, or rescission by reason of any such difference  
19 in facts. If any provision of this Settlement Agreement is found by a court of competent  
20 jurisdiction to be illegal, invalid, or unenforceable for any reason, the remainder of this  
21 Settlement Agreement will not be affected and, in lieu of each provision that is found illegal,  
22 invalid, or unenforceable, a provision will be added as a part of this Settlement Agreement that  
23 is as similar to the illegal, invalid or unenforceable provision as may be legal, valid, and  
24 enforceable.

25           16.9. All terms of this Settlement Agreement shall be governed by, and  
26 interpreted according to, the substantive laws of the State of California without regard to its  
27 choice of law or conflicts of laws principles.  
28

1           16.10. ANA, Plaintiffs, and all Settlement Class Members hereby irrevocably  
2 submit to the exclusive jurisdiction of the United States District Court for the Northern District  
3 of California for any suit, action, proceeding, or dispute arising out of or relating to this  
4 Settlement Agreement or the applicability of this Settlement Agreement, including, without  
5 limitation, any suit, action, proceeding or dispute relating to the release provisions herein.

6           16.11. This Settlement Agreement may be executed in counterparts. Facsimile  
7 or Portable Document Format signatures shall be considered as valid signatures for purposes of  
8 execution of this Settlement Agreement, but original signature pages shall thereafter be collated  
9 for filing of this Settlement Agreement with the Court.

10           16.12. Each of the undersigned attorneys represents that he or she is fully  
11 authorized to enter into the terms and conditions of, and execute, this Settlement Agreement,  
12 subject to Court approval, and the undersigned Settlement Class Counsel represent that they are  
13 authorized to execute this Settlement Agreement on behalf of Plaintiffs and the Settlement  
14 Classes.

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

17                           *[signature page follows]*  
18  
19  
20  
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1 Dated: February 8, 2019

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