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8 *Co-Lead Counsel for Plaintiffs*

9
10 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
11 **SAN FRANCISCO DIVISION**

12
13 **IN RE TRANSPACIFIC PASSENGER**
AIR TRANSPORTATION
14 **ANTITRUST LITIGATION**

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

MDL No. 1913

15 **This Document Relates To:**

16 **ALL ACTIONS**

DECLARATION OF CHRISTOPHER L. LEBSOCK IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT WITH DEFENDANT ALL NIPPON AIRWAYS CO., LTD.

1 I, Christopher L. Lebsock, 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 Hausfeld, LLP, which is Co-Lead Class Counsel (“Class Counsel”)
4 for the putative classes. I make this Declaration in Support of Plaintiffs’ Motion for Final
5 Approval of Settlement with Defendant All Nippon Airways Co., Ltd. (“ANA”). I have personal
6 knowledge of the facts stated in this Declaration and, if called as a witness, I could and would
7 testify competently to them. I make this Declaration pursuant to 28 U.S.C. § 1746.

8 2. Class Counsel and counsel for ANA commenced settlement negotiations over two
9 years ago after nearly 12 years of hotly contested litigation. Class Counsel and counsel for ANA
10 met on several occasions to discuss a potential settlement in light of each party’s respective views
11 of the merits of the case. In doing so, the parties exchanged demands and counter-offers. The
12 parties also engaged in a two-day mediation before Kenneth R. Feinberg, a neutral who
13 specializes in mediation and alternative dispute resolution. Those mediation sessions were held
14 in Washington D.C. on December 12 and 13, 2018. While agreement was not reached at the
15 mediation, Mr. Feinberg continued to mediate with the parties by phone and email, and
16 ultimately, he was able to broker the settlement agreement (“ANA Settlement Agreement”)
17 attached as Exhibit A to the Joint Declaration of Co-Lead Counsel for Plaintiffs in Support of
18 Plaintiffs’ Motion for Preliminary Approval (ECF 1297-2) previously submitted to the Court.

19 3. Class Counsel deliberated carefully and at arm’s length before entering the
20 settlement with ANA and believe that the settlement is in the best interests of the Settlement
21 Classes as set forth in the ANA Settlement Agreement. The ANA Settlement Agreement
22 provides for a payment to the Classes defined therein of \$58,000,000. In order to allocate funds
23 amongst the three Settlement Classes, Class Counsel engaged Mr. Feinberg to determine an
24 appropriate allocation. Based on Mr. Feinberg’s analysis, Class Counsel intends to allocate the
25 funds as follows: (1) \$39,440,752.50 to the Japan Class (Settlement Class I); (2) \$11,059,247.50
26 to the *Satogaeri* Class (Settlement Class II); and (3) \$7,500,000.00 to Settlement Class III. *See*
27 ECF No. 1297-4, Feinberg Decl. at ¶ 7 (describing, *inter alia*, five factors that led to the
28 conclusion that the allocation is fair, reasonable, and adequate)

1 4. The amount of the settlement with ANA was premised on the following facts: (1)
2 the evidentiary record as of the date of the settlement, (2) the evidence of its participation in the
3 conspiracy alleged and its legal defenses, (3) ANA’s transactional data and overall volume of
4 commerce for U.S. originating travel, (4) ANA’s likely defenses at trial and on appeal, and (5)
5 the likelihood of any potential order decertifying the classes after a full trial on the merits.

6 5. As a result of the \$58,000,000 settlement with ANA, the total class recovery in
7 this case is \$148,152,000.

8 6. The negotiations leading to the settlement with ANA were vigorous, informed,
9 and thorough; occurred over a span of many years; involved conversations after the review of
10 industry materials as well as documents and transactional data that ANA and other Defendants
11 in this action produced. These negotiations were sharply contested and conducted in the utmost
12 good faith. Settlement discussions took place through formal mediation (as described in
13 Paragraph 2, *supra*), in-person meetings of counsel, telephone communications between counsel,
14 and/or exchanges of written information between counsel.

15 7. Plaintiffs relied on extensive cooperation from Japan Airlines International
16 Company, Ltd.—the leniency applicant pursuant to the Antitrust Criminal Penalty Enhancement
17 and Reform Act and the first Defendant to settle in this action—as well as voluminous data and
18 document productions and numerous depositions to evaluate the reasonableness of the settlement
19 with ANA.

20 8. Settlement funds owed pursuant to the ANA Settlement Agreement have been
21 deposited in an escrow account at Citibank, N.A. in a manner and at a time that conforms to the
22 Settlement Agreement.

23 9. Plaintiffs have engaged and consulted extensively with experts and economists on
24 issues pertaining to liability, summary judgment, class certification, and damages. Discovery in
25 this Action has been extensive. Throughout fact discovery, Class Counsel have analyzed over a
26 million documents produced by Defendants and others and obtained cooperation from
27 Defendants who had previously settled in this action, which yielded significant results. Class
28 Counsel have also conducted an independent investigation of the facts and analyzed Defendants’

1 sales and pricing data and conducted over 60 depositions. At the time the ANA settlement was
2 reached, Plaintiffs were preparing for a two-week trial beginning March 4, 2019 and had already
3 engaged in extensive trial preparations, including producing expert reports and exchanging
4 exhibit and witness lists with ANA.

5 10. The interests of named Plaintiffs and Class members are aligned because (a) all
6 claimed similar injury in the form of higher airline ticket prices for travel from the United States
7 to Asia/Oceania due to Defendants' alleged conspiracy and (b) seek the same relief. Named
8 Plaintiffs understand the allegations in this Action and have reviewed pleadings, responded to
9 discovery, and produced the documents requested. All representative Plaintiffs have been
10 deposed except Sharon Christian, who Class Counsel retained as a client while preparing a class
11 certification motion against EVA and whose deposition became unnecessary when EVA settled.

12 11. Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, the U.S. Attorney
13 General and Attorneys General of each State in which ANA determined that there are likely to
14 be class members have been notified of the Settlement with ANA and given an opportunity to
15 raise concerns, but none of these government officials have come forward with any complaints.

16 I declare under penalty of perjury under the laws of the United States of America that the
17 foregoing is true and correct to the best of my knowledge, information, and belief. Executed this
18 4th day of October 2019.

19 /s/ Christopher L. Lebsock
20 Christopher L. Lebsock
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