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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 **SETTLEMENT AGREEMENT BETWEEN**
PLAINTIFFS AND AIR NEW ZEALAND
LIMITED

22 **All Actions**

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 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**

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
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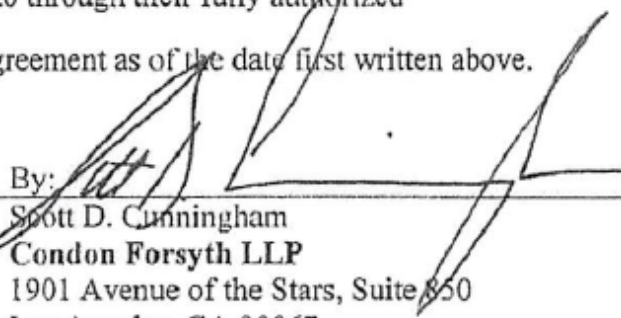
1 execution of this Settlement Agreement, but original signature pages shall thereafter be collated
2 for filing of this Settlement Agreement with the Court.

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.

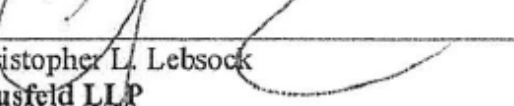
10 Dated: January 9, 2017

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