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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE TRANSPACIFIC PASSENGER AIR TRANSPORTATION ANTITRUST LITIGATION

This Document Relates To:

All Actions

Civil Case No. 3:07-CV-05634-CRB
MDL 1913

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENTS WITH DEFENDANTS PHILLIPPINE AIRLINES, INC., AIR NEW ZEALAND LIMITED, AND CHINA AIRLINES, LTD.; AND MEMORANDUM AND POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing Date: Feb. 16, 2018
Judge: Hon. Charles R. Breyer
Time: 10:00 a.m.
Courtroom: 6, 17th Floor

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 16, 2018 at 10:00 a.m., before the Honorable Charles R. Breyer, United States District Court for the Northern District of California, 450 Golden Gate Ave., Courtroom 6, 17th Floor, San Francisco, California, Plaintiffs will move the Court, pursuant to Federal Rule of Civil Procedure 23(e), for entry of an Order:

1. Granting preliminary approval of the settlement agreements ("Settlements") Plaintiffs have executed with Defendants (1) Philippine Airlines, Inc.; (2) Air New Zealand Limited; and (3) China Airlines, Ltd.;

2. Certifying the Settlement Classes; and

3. Appointing Plaintiffs' Interim Lead Counsel as Settlement Class Counsel and named Plaintiffs to serve as Class Representatives on behalf of the Settlement Classes.

The motion should be granted because the proposed Class Settlements are within the range of reasonableness. The motion is based on this (i) Notice of Motion and Motion, (ii) the supporting Memorandum and Points and Authorities, (iii) the accompanying Declaration of Christopher L. Lebsock, (iv) the Class Settlement Agreements with Defendants: (a) Philippine Airlines, Inc., (b) Air New Zealand Limited, and (c) China Airlines, Ltd. (the "Settlement Agreements"), (v) any further papers filed in support of this Motion, (vi) the argument of counsel, and (vii) all pleadings and records on file in this matter.

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STATEMENT OF ISSUES TO BE DECIDED

1. Whether the proposed Settlement Agreements fall within the "range of possible approval," and should, therefore, be preliminarily approved by the Court?

2. Whether the proposed Settlement Classes meet the requirements of Federal Rule of Civil Procedure 23(a) and (b), and should be provisionally certified for settlement purposes?

3. Whether Plaintiffs' Interim Lead Counsel should be appointed as Settlement Class Counsel and named Plaintiffs appointed as Class Representatives on behalf of the Settlement Classes?

SUMMARY OF ARGUMENT

The Court should preliminarily approve the Settlements set forth more fully below because they are within the range of possible approval and justify giving notice to the class members and holding a fairness hearing. The Settlements are the result of informed and contested negotiations, and are fair, reasonable, and adequate. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). The monetary recovery for the class is significant, and the cooperation to be provided by Settling Defendants greatly strengthen Plaintiffs' case against the non-Settling Defendants.

Applying Rule 23 of the Federal Rules of Civil Procedure, the Court should certify the Classes for purposes of settlement. Rule 23(a)'s requirements of numerosity, commonality, typicality, and adequacy are met. *See, e.g.*, *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 267 F.R.D. 291, 300 (N.D. Cal. 2010), *abrogated on other grounds in In re ATM Fee Antitrust Litig.*,686 F.3d 741, 755 n. 7 (9th Cir. 2012); *In re Rubber Chemicals Antitrust Litig.*, 232 F.R.D. 346, 350-51 (N.D. Cal. 2005). Likewise, Rule 23(b) is satisfied because common questions predominate and a class action is superior to pursuing numerous individual cases. *See In re Static Random Access Memory (SRAM) Antitrust Litig.*, 264 F.R.D. 603, 615 (N.D. Cal. 2009); *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M 02-1486 PJH, 2006 WL 1530166 (N.D. Cal. June 5, 2006).

Finally, under Rule 23(g), class certification requires that the Court appoint class counsel. Based on their experience and vigorous prosecution of this action, as well as this Court's prior orders with respect to earlier settlements, Cotchett, Pitre & McCarthy, LLP and Hausfeld LLP should be appointed as Settlement Class Counsel for purposes of these Settlements, and named Plaintiffs should be appointed as Class Representatives for the Settlement Classes.

MEMORANDUM AND POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs hereby move this Court for an order preliminarily approving class action Settlements reached with Defendants Philippine Airlines, Inc. ("PAL"), Air New Zealand Limited ("ANZ"), and China Airlines, Ltd. ("CAL") (collectively, "Settling Defendants"). Copies of the Settlement Agreements are attached to the Declaration of Christopher L. Lebsock ("Lebsock Decl."), as Exhibits 1, 2 and 3, respectively. These Settlements resolve all claims brought by Plaintiffs against Settling Defendants, who will pay a combined $29,400,000 (including costs for notice). In addition, CAL and PAL have each agreed to cooperate with Plaintiffs by providing information related to the existence, scope, and implementation of the conspiracy alleged in the Second Amended Consolidated Class Action Complaint ("SAC"). Lebsock Decl. ¶¶ 5, 12.

These Settlements are within the range of possible approval and in the best interests of all class members. Accordingly, Plaintiffs seek an order preliminarily approving the Settlement Agreements, provisionally certifying the Settlement Classes, and appointing Plaintiffs' Interim Co-Lead Counsel as Settlement Class Counsel and named plaintiffs as Class Representatives.[1]

II. SETTLEMENT NEGOTIATIONS

Plaintiffs' Interim Co-Lead Counsel ("Class Counsel") and counsel for each Settling Defendant engaged in extensive arm's length negotiations before reaching these Settlements. *See* Lebsock Decl. ¶¶ 3, 7, 10 (describing negotiation scope and details). Class Counsel and defense counsel, all experienced and skilled attorneys, vigorously advocated their respective clients' positions. Initial negotiations, beginning years ago with all three Settling Defendants and continuing through 2017, were conducted via telephone conferences, in-person meetings, and written correspondence. *Id.* ¶ 14. For Defendant CAL, the negotiations included a multi-day mediation with the Hon. Vaughn Walker (ret.). *Id.* ¶ 10.

Before each subsequent Settlement was reached, Plaintiffs spent significant time investigating the claims against each Settling Defendant, including through extensive discovery

[1] Plaintiffs will submit a proposed notice plan to the Court in the near future.

and proffer sessions from previously-settling Defendants. Given the procedural status of this litigation, including the completion of fact discovery long ago, Class Counsel had significant knowledge of the evidence regarding each Settling Defendants' alleged conspiratorial conduct and the strengths and weaknesses of Plaintiffs' claims and each Defendants' asserted defenses. Class Counsel used discovery materials, as well as information obtained from other already-settled Defendants, to evaluate each Settling Defendant's position and negotiate a fair settlement. *Id.* ¶¶ 6, 9, 13. Class Counsel believe these Settlements, including over $29 million in recovery and extensive cooperation obligations that will assist the proposed Classes in prosecuting this action, are fair, reasonable, and adequate to the Classes. Plaintiffs respectfully submit that these Settlements are in the best interests of the Classes, and should be preliminarily approved by the Court.

III. THE SETTLEMENT AGREEMENTS

The proposed Settlement Agreements resolve all claims against Settling Defendants in the alleged conspiracy to fix or stabilize prices for air passenger travel, including associated surcharges, for international flights involving at least one flight segment between the United States and Asia/Oceania. The Classes will receive $29,400,000 and significant cooperation. *See* Lebsock Decl. ¶¶ 4, 8, 11.; *id*. Exs. 1-3. The terms of the Agreements are outlined below.

A. The Settlement Classes

The proposed Settlement Classes (the "Settlement Classes") are defined as follows:

> PAL Settlement Class
>
> 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 Defendantsor their co-conspirators, or any predecessor, subsidiary, or affiliate thereof, at any time between January 1, 2000 and December 1, 2016.[2]
>
> ANZ Settlement Class

[2] *See* Lebsock Decl. Ex. 1 ¶ 3 (PAL Settlement Agreement).

> 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 Defendants or their alleged co-conspirators, or any predecessor, subsidiary, or affiliate thereof, at any time between January 1, 2000 and December 1, 2016.[3]

CAL Settlement Class

> 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 Defendants, or any predecessor, subsidiary, or affiliate thereof, at any time between January 1, 2000 and December 1, 2016.[4]

Excluded from each of the Settlement Classes are: governmental entities, Defendants, former Defendants in the action, any parent, subsidiary, or affiliate thereof, and Defendants' officers, directors, employees, and immediate families.

B. Consideration Provided by the Settlement Agreements

Together, the Settling Defendants agreed to pay $24,400,000, with PAL paying $9 million, ANZ paying $400,000 in cash and contributing another $250,000 toward the cost of notice, and CAL paying $19.5 million in cash and contributing another $250,000 toward the cost of notice. Lebsock Decl. ¶¶ 4, 8, 11. The PAL and CAL Settlements also confer significant non-monetary benefits. Both PAL and CAL have agreed to cooperate with Plaintiffs in the prosecution of this action by providing information relating to Plaintiffs' allegations, including through (1) attorney proffers; (2) interviews of persons with knowledge regarding the conspiratorial conduct alleged in Plaintiffs' SAC; and (3) assistance reasonably necessary to establish the admissibility for trial of documents each Defendant produced. *Id.* ¶¶ 5, 12.

C. Releases for the Settling Defendants

Plaintiffs agreed to release PAL, ANZ and CAL from all claims arising from or relating to the pricing of passenger air transportation between the United States and Asia/Oceania with respect to the pricing of fares, fuel surcharges, or any other element or component of pricing that were or could have been alleged in the Consolidated Class Action Complaints. Lebsock Decl. Ex. 1 ¶¶ 1.14, 9.1; Ex. 2 ¶¶ 1.14, 9.1; Ex. 3 ¶¶ 1.17, 9.1.

[3] *See* Lebsock Decl. Ex. 2 ¶ 3 (ANZ Settlement Agreement)
[4] *See* Lebsock Decl. Ex. 3 ¶ 3 (CAL Settlement Agreement).

The Settlement Agreements specifically preserve the rights of members of the Settlement Classes against any co-conspirator or non-Settling Defendant. Lebsock Decl. Ex. 1 ¶ 10; Ex. 2 ¶ 10; Ex. 3 ¶ 10. Furthermore, the sales of passenger air transportation by Settling Defendants remain in the case as a potential basis for damage claims and shall be part of any joint and several liability claims against the non-settling Defendants.

IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENTS

A. Class Action Settlement Procedure

Proposed class action settlements must be approved by the Court. Fed. R. Civ. P. 23(e). Plaintiffs respectfully request that the Court certify the proposed Settlement Classes, preliminarily approve the Settlements, and appoint Plaintiffs' Interim Co-Lead Counsel as Settlement Class Counsel. *See* A. Conte & H.B. Newberg, *Newberg on Class Actions* § 11:25 (4th ed. 2002) ("Newberg") (outlining the steps of preliminary approval and class certification, notice, and a fairness hearing, which are required prior to final approval of a class settlement and are designed to safeguard the rights of absent class members).

B. Standards for Settlement Approval

"[T]here is an overriding public interest in settling and quieting litigation . . . particularly . . . in class action suits." *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). The district court has substantial discretion in deciding to approve a class action settlement. *See Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). Preliminary approval requires only that the terms of the proposed settlement fall within the "range of possible approval." *See Vasquez v. Coast Valley Roofing, Inc.*, 670 F. Supp. 2d 1114, 1125 (E.D. Cal. 2009); *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). Preliminary approval is appropriate when the terms are "sufficient to warrant public notice and a hearing." *See Manual for Complex Litigation*, Fourth, § 13.14 (2004) ("*Manual*").

Preliminary approval should be granted "[w]here the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and

falls within the range of possible approval." *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997). Application of these factors here supports preliminary approval of the Settlements. As shown below, the proposed Settlements are fair, reasonable, and adequate. Therefore, the Court should allow notice of the Settlements to be disseminated to the Settlement Classes.

C. The Proposed Settlements are Within the Range of Reasonableness

The proposed Settlements are well within the reasonable range. First, the Settlements are entitled to "an initial presumption of fairness" because they resulted from arm's length negotiations among experienced counsel. *See Newberg* § 11.41. These negotiations occurred over a span of years and collectively involved telephonic and face to face meetings; substantial correspondence; and the review of industry materials, documents produced by all of the Defendants, and transactional data produced in this litigation. The negotiations were sharply contested and conducted in good faith. Lebsock Decl. ¶¶ 4, 8, 11, 14. The CAL settlement was reached after engaging an experience mediator—Judge Vaughn Walker (ret.), formerly a federal judge in this district court. "'Great weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation." *Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004). Thus, "the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel." *Id.* (internal citation omitted). Plaintiffs' counsel believes that these Settlements are in the best interests of the Classes.

Second, the total Settlement Amount of $29,400,000 (including costs for notice) is significant and compares favorably to other antitrust settlements. *See, e.g., In re Nasdaq Mkt.-Makers Antitrust Litig.*, 176 F.R.D. 99 (approving settlements with all defendants totaling $9,940,000). Moreover, the damages Plaintiffs suffered due to the Settling Defendants' alleged conduct remain in the case, and, under joint and several liability, are recoverable from other Defendants. *See In re Korean Ramen Antitrust Litig.*, No. 13-CV-04115, 2015 WL 5604045 (N.D. Cal. Sept. 21, 2015) (preliminarily approving a settlement because, *inter alia*, "the damages Plaintiffs suffered due to [the settling defendant's] alleged conduct remain in the case,

and, under principles of joint and several liability, are recoverable from other defendants")..

Third, PAL and CAL must provide significant cooperation to Plaintiffs in pursuing this case against the non-settling Defendants, including attorney proffers and making witnesses available for interviews with personal knowledge relating to the allegations of conspiratorial conduct in Plaintiffs' SAC. *See* Section III.B, *supra*. "The provision of such assistance is a substantial benefit to the classes and strongly militates toward approval of the Settlement Agreement." *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003). This cooperation will save time, reduce costs, and provide access to information regarding the transpacific air passenger conspiracy that might otherwise not be available to Plaintiffs. *See In re Mid-Atl. Toyota Antirust Litig.*, 564 F. Supp. 1379, 1386 (D. Md. 1983) (finding a defendant's agreement not to contest provision of certain discovery "is an appropriate factor for a court to consider in approving a settlement"); *In re Corrugated Container Antitrust Litig.*, No. M.D.L. 310, 1981 WL 2093, at *16 (S.D. Tex. June 4, 1981), *aff'd*, 659 F.2d 1322 (5th Cir. 1981) (finding that "[t]he cooperation clauses constituted a substantial benefit to the class.").

Finally, the Settlements will not adversely affect the remainder of the case. These Settlements preserve Plaintiffs' right to litigate against non-settling Defendants for the entire amount of Plaintiffs' damages based on joint and several liability. Lebsock Decl. ¶ 15. In fact, these Settlements may aid in the ultimate resolution of this case. "In complex litigation with a plaintiff class, partial settlements often play a vital role in resolving class actions." *Agretti v. ANR Freight Sys., Inc.*, 982 F.2d 242, 247 (7th Cir. 1992) (internal quotation omitted).

For these reasons, the proposed Settlements meet the judicially established criteria for class action settlements and warrant notice of their terms to the members of the Classes.

V. THE COURT SHOULD PROVISIONALLY CERTIFY THE SETTLEMENT CLASSES

The Court should provisionally certify the Settlement Classes contemplated by the Settlement Agreements. It is well-established that price-fixing actions like this are appropriate

for class certification. *See, e.g.*, *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 267 F.R.D. 291 (N.D. Cal. 2010) ("*LCD*"); *In re Static Random Access (SRAM) Antitrust Litig.*, No. C 07-01819 CW, 2008 WL 4447592 (N.D. Cal. Sept. 29, 2008); *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M 02-1486 PJH, 2006 WL 1530166 (N.D. Cal. June 5, 2006) ("*DRAM*"); *In re Rubber Chemicals Antitrust Litig.*, 232 F.R.D. 346, 350 (N.D. Cal. 2005) ("*Rubber Chems.*").

Federal Rule of Civil Procedure 23 provides that a court should certify a class action where, as here, Plaintiffs satisfy the prerequisites of Rule 23(a) (numerosity, commonality, typicality, and adequacy) and 23(b) (predominance and superiority).[5] This does not involve determination of whether Plaintiffs will ultimately prevail on the substantive merits of their claims. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-78 (1974); *see also Blackie v. Barrack*, 524 F.2d 891, 901 (9th Cir. 1975) (finding that on class certification motion, plaintiffs' substantive allegations are accepted as true); *Rubber Chems.*, 232 F.R.D. at 350 (same). The only issue is whether Plaintiffs satisfy the Rule 23 requirements. *Eisen*, 417 U.S. at 178.

A. The Proposed Settlement Classes Satisfies Rule 23(a)

1. The Classes are so numerous that joinder is impracticable.

The first requirement for maintaining a class action is that its members are so numerous that joinder would be impracticable. Fed. R. Civ. P. 23(a)(1). Courts have generally found that the numerosity requirement is satisfied when class members exceed forty. Newberg § 18:4; *Or. Laborers-Emp'rs. Health & Welfare Trust Fund v. Philip Morris, Inc.*, 188 F.R.D. 365, 372-73 (D. Or. 1998). Geographic dispersal of plaintiffs may also support a finding that joinder is "impracticable." *Rubber Chems.*, 232 F.R.D. at 350-51; *see also LCD*, 267 F.R.D. at 300 (stating that given the nature of the LCD market, "common sense dictates that joinder would be impracticable."). Here, the Settlement Classes consists of hundreds of thousands of members who purchased qualifying airfare involving at least one flight segment between the United

[5] Rule 23(b)(3)'s "manageability" requirements need not be satisfied in order to certify a settlement class. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (stating that when "[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, . . . for the proposal is that there be no trial.").

States and Asia/Oceania. The proposed Settlement Classes satisfy the numerosity requirement.

2. This case involves common questions of law and fact.

The second prerequisite to class certification is the existence of "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The Ninth Circuit has made clear that the commonality requirement is to be "construed permissively." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). Commonality is satisfied by the existence of a single common issue. *Blackie*, 524 F.2d at 901. "Courts consistently have held that the very nature of a conspiracy antitrust action compels a finding that common questions of law and fact exist." *Rubber Chems.*, 232 F.R.D. at 351 (internal citation omitted). Here, all class members share common questions of law and fact that revolve around the existence, scope, effectiveness, and implementation of Defendants' alleged conspiracy, and that are central to each class members' claims. Similar questions have satisfied the commonality requirement in antitrust class actions in this District. *LCD*, 267 F.R.D. at 300 (stating "the very nature of a conspiracy antitrust action compels a finding that common questions of law and fact exist") (citing *Rubber Chems.*, 232 F.R.D. at 351; *DRAM*, 2006 WL 1530166, at *3).

3. Representative Plaintiffs' claims are typical of the claims of the Classes.

"Under [Rule 23]'s permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020. "Generally, the class representatives 'must be part of the class and possess the same interest and suffer the same injury as the class members.'" *LCD*, 267 F.R.D. at 300 (quoting *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 156 (1982)).

Typicality is easily satisfied in horizontal price-fixing cases because "where[] it is alleged that the defendants engaged in a common scheme relative to all members of the class, there is a strong assumption that the claims of the representative parties will be typical of the absent class members." *In re Catfish Antitrust Litig.*, 826 F. Supp. 1019, 1035 (N.D. Miss. 1993); *In re Citric Acid Antitrust Litig.*, No. 95-1092, 1996 WL 655791, at *3 (N.D. Cal. Oct. 2, 1996) ("*Citric Acid*"). As such, factual differences among individual transactions or in the amount of damages do not undermine typicality, so long as the damages suffered by Plaintiffs

and the Classes arise from the purchase of products affected by the conspiracy. *See Armstrong v. Davis*, 275 F.3d 849, 869 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499 (2005); *DRAM*, 2006 WL 1530166, at *33. Here, Plaintiffs assert the same claims on behalf of themselves and the proposed Classes—that they purchased air passenger tickets from Defendants and were overcharged due to the alleged antitrust conspiracy between the Settling Defendants and their co-conspirators. Therefore, Plaintiffs' claims are typical of the claims of the other class members, and certification is appropriate.

4. Representative Plaintiffs will fairly and adequately represent the interests of the Classes, and should be appointed as Class Representatives.

A representative plaintiff is an adequate representative of the class if he or she: (1) does not have any interests antagonistic to or in conflict with the interests of the class; and (2) is represented by qualified counsel who will vigorously prosecute the class's interests. *Hanlon*, 150 F.3d at 1020. Here, representative Plaintiffs satisfy both of these requirements. The interests of Plaintiffs and Class members are aligned because they all claimed similar injury in the form of higher airline ticket prices for travel from the United States to Asia/Oceania due to Defendants' alleged conspiracy, and all seek the same relief. Plaintiffs understand the allegations in this case, and have reviewed pleadings, responded to discovery, and produced the documents requested. Lebsock Decl. ¶ 17. They have been deposed. *Id.* By proving their own claims, Plaintiffs will necessarily prove the claims of their fellow class members; as such they should be named as Class Representatives for the Settlement Classes.

Further, Plaintiffs are represented by highly qualified counsel. Both Cotchett, Pitre & McCarthy and Hausfeld LLP have successfully prosecuted numerous antitrust class actions throughout the United States, and are committed to vigorously prosecuting this action on behalf of the Classes. They have undertaken the responsibilities assigned by the Court and have directed the efforts of other Plaintiffs' counsel. Counsel's prosecution of this case, and as with earlier settlements in this case, amply demonstrate their diligence and competence. Therefore, the requirements of Rule 23(a)(4) are satisfied.

B. The Proposed Settlement Classes Satisfies the Requirements of Rule 23(b)(3)

1. Common questions of law or fact predominate over individual questions.

"Courts have frequently found that whether a price-fixing conspiracy exists is a common question that predominates over other issues because proof of an alleged conspiracy will focus on defendants' conduct and not on the conduct of individual class members." *LCD*, 267 F.R.D. at 310. Courts have held that this issue alone is sufficient to satisfy the predominance requirement. *See, e.g., In re Static Random Access Memory (SRAM) Antitrust Litig.*, 264 F.R.D. 603, 612-14 (N.D. Cal. 2009) ("SRAM"); *Rubber Chems.*, 232 F.R.D. at 353; *Citric Acid*, 1996 WL 655791, at *8. Therefore, common issues relating to the existence and effect of the alleged conspiracy on air passenger ticket prices for travel from the United States to Asia/Oceania predominate over any questions arguably affecting individual class members. Proof of how Defendants implemented and enforced their conspiracy will also be common to the Classes and predicated on establishing the existence of Defendants' antitrust conspiracy. These overriding issues satisfy the predominance requirement.[6]

2. A class action is superior to other available methods for the fair and efficient adjudication of this case.

"[I]f common questions are found to predominate in an antitrust action, then courts generally have ruled that the superiority prerequisite of Rule 23(b)(3) is satisfied." Wright, Miller & Kane, *Federal Practice and Procedure: Civil Procedure* § 1781 at 254-55 (3d ed. 2004). That is because in price-fixing cases, "the damages of individual indirect purchasers are likely to be too small to justify litigation, but a class action would offer those with small claims the opportunity for meaningful redress." *SRAM*, 264 F.R.D. at 615. Here, a class action is superior to individual litigation because "[n]umerous individual actions would be expensive and time-consuming and would create the danger of conflicting decisions as to persons similarly situated." *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978).

[6] Potential individualized damages do not defeat predominance. *See, e.g., DRAM*, 2006 WL 1530166, at *47 (holding that courts may certify classes "regardless [of] whether some members of the class negotiated price individually, or whether—as here—differences among product type, customer class, and method of purchase existed.").

Further, requiring individual cases would deprive many class members of any practical means of redress. Because prosecution of an antitrust conspiracy against economically powerful defendants is difficult and expensive, most class members would be effectively foreclosed from pursuing their claims absent class certification. *See Hanlon*, 150 F.3d at 1023 ("Many claims [that] could not be successfully asserted individually . . . would not only unnecessarily burden the judiciary, but would prove uneconomic for potential plaintiffs."); *see also SRAM*, 264 F.R.D. at 615. Moreover, separate adjudication of claims creates a risk of inconsistent rulings, which further favors class treatment. Therefore, a class action is the superior method of adjudicating the claims raised in this case.

C. The Court Should Appoint Plaintiffs' Interim Co-Lead Counsel as Settlement Classes Counsel.

"An order that certifies a class action . . . must appoint class counsel under Rule 23(g)." Fed. R. Civ. P. 23(c)(1)(B). Courts must consider (i) counsels' work in identifying or investigating claims; (ii) counsel's experience in handling the types of claims asserted; (iii) counsel's knowledge of applicable law; and (iv) the resources counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A). After considering competing motions, the Court appointed Cotchett, Pitre & McCarthy and Hausfeld LLP as Interim Co-Lead Class Counsel. *See* Dkt. Nos. 130, 175. "Class counsel's competency is presumed absent specific proof to the contrary by defendants." *Farley v. Baird, Patrick & Co., Inc.*, No. 90 CIV. 2168 (MBM), 1992 WL 321632, at *5 (S.D.N.Y. Oct. 28, 1992). Cotchett, Pitre & McCarthy and Hausfeld LLP are willing and able to vigorously prosecute this action and to devote all necessary resources. The work they have done since their appointment provides substantial basis for the Court's earlier finding that they satisfy Rule 23(g)'s criteria. Accordingly, Cotchett, Pitre & McCarthy and Hausfeld LLP should be appointed as Settlement Class Counsel for purposes of these Settlements, as they were for the previous Settlements in this action.

VI. PROPOSED PLAN OF NOTICE AND PLAN OF ALLOCATION

Rule 23(e)(1) states that, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Plaintiffs' counsel will submit a notice plan to the Court in the near future. Plaintiffs propose that distribution of Settlement funds be deferred until the termination of the case, when there may be additional settlements from remaining Defendants to distribute, and because piecemeal distribution is expensive, time-consuming, and likely to cause confusion to members of the Classes. Deferring allocation of settlement funds is a common practice in cases where claims against other defendants remain. *See Manual* § 21.651. Although distribution will be deferred, Plaintiffs propose notifying the Classes that distribution of funds will be made on a *pro rata* basis. A plan of allocation that compensates members based on the type and extent of their injuries is generally considered reasonable. *In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001).

VII. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court: (1) grant preliminary approval of the Settlement Agreements; (2) certify the Settlement Classes; and (3) appoint Plaintiffs' Interim Co-Lead Counsel as Settlement Class Counsel and named Plaintiffs as Class Representatives for the Settlement Classes.

Dated: January 10, 2018

Respectfully submitted,

/s/*Adam J. Zapala*

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