

EXHIBIT 3

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Interim Class Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

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

MDL No. 1913

Honorable Charles R. Breyer

This Document Relates to:

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

All Actions

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

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

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

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

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

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

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

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

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

24 **1. Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 1.18. "Released Parties" means, jointly and severally, individually and collectively:
22 China Airlines, its present and former parents, subsidiaries, divisions, affiliates, and departments,
23 its respective past and present officers, directors, employees, agents, attorneys, servants,
24 representatives of each of the aforesaid entities, and the predecessors, successors, heirs, executors,
25 administrators, and assigns of each of the foregoing. As used in this definition, "affiliates" means
26 entities controlling, controlled by, or under common control with any of the Released Parties.
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1 1.19. “Releasing Parties” means, jointly and severally, and individually and
2 collectively: Plaintiffs and all Settlement Class Members, their predecessors, successors, present
3 and former parents, subsidiaries, divisions, affiliates, and departments, each of their respective
4 past and present officers, directors, employees, agents, attorneys, servants, and representatives,
5 and the predecessors, successors, heirs, executors, administrators, and assigns of each of the
6 foregoing. As used in this definition, “affiliates” means entities controlling, controlled by, or
7 under common control with any of the Releasing Parties.

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

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

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

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

2. Cooperation and Effectuation of this Settlement Agreement

Plaintiffs and China Airlines shall use all reasonable efforts to effectuate this Settlement Agreement, including cooperating in Plaintiffs' efforts to obtain the Court's approval of procedures (including the giving of class notice under Rules 23(c) and 23(e) of the Federal Rules of Civil Procedure), and to secure certification of the Settlement Class for settlement purposes only and the complete and final dismissal with prejudice of the Action as to China Airlines. Prior to the filing of any motions or other papers in connection with the Settlement, including without limitation, the motions for preliminary approval of the Settlement (as contemplated in Paragraph 4.1 of this Settlement Agreement) and for final approval of the Settlement (as contemplated in

Paragraph 7.1 of this Settlement Agreement), Plaintiffs will send these papers to China Airlines. The text of any proposed form of order approving this Settlement Agreement shall be agreed upon by Plaintiffs and China Airlines before it is submitted to the Court.

3. Class Certification

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

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.

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

4. Motion for Preliminary Approval

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

- (a) finding the settlement proposed in the Settlement Agreement has been negotiated at arm's length, and preliminarily approving the settlement as fair, reasonable, and adequate, and in the best interests of the Settlement Class; scheduling a hearing to consider (i) whether the proposed settlement should be approved as fair, reasonable, and adequate to Settlement Class Members, and whether the Judgment should be entered dismissing the claims of Plaintiffs and all Settlement Class Members against China Airlines on the merits and with prejudice; and (ii) whether to approve any application by Settlement Class Counsel

1 for an award of attorneys' fees and payment of costs and expenses (the "Fairness
2 Hearing");

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

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

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

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

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

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

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

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

20 **6. Requests for Exclusion**

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

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

7. Fairness Hearing

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

- (a) approving the Settlement Agreement and its terms as being fair, reasonable, and adequate as to the Settlement Class, within the meaning of Rule 23 of the Federal Rules of Civil Procedure, and directing its consummation according to its terms;
- (b) determining that the notices to Settlement Class Members constituted, under the circumstances, the best practicable notice of this Settlement Agreement and the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;

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

21 7.2. Any Person who has not requested exclusion from the Settlement Class and who

22 objects to the settlement may appear, at that Person's own expense, at the Fairness Hearing in

23 person or through counsel, to present any evidence or argument with respect to the settlement,

24 to the extent permitted by the Court. However, no such Person shall be heard, and no papers,

25 briefs, pleadings, or other documents shall be received and considered by the Court unless such

26 Person properly submits a written objection that includes (a) notice of intention to appear, (b)

27 proof of membership in the Settlement Class, and (c) the specific grounds for the objection and

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any reasons why such Person desires to appear and be heard, as well as all documents or writings that such Person desires the Court to consider. Such a written objection must be both filed with the Court no later than thirty-five (35) days prior to the date set for the Fairness Hearing, and mailed to Settlement Class Counsel and China Airlines' counsel at the addresses provided in the notices to the Settlement Class, postmarked (or mailed by overnight delivery) no later than thirty-five (35) days prior to the date of the Fairness Hearing. Any Person who fails to object in the manner prescribed herein shall be deemed to have waived any objections to the settlement and this Settlement Agreement and will forever be barred from making any such objections to the settlement or this Settlement Agreement in the Action or in any other action or proceeding, unless otherwise permitted for good cause shown as determined by the Court.

8. Effective Date of Agreement

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

9. Release and Covenant Not to Sue

9.1. Upon the occurrence of the Effective Date, and in consideration of the payment by China Airlines of the Settlement Amount set forth in Paragraph 11.1 herein, the sufficiency of

1 which is hereby acknowledged, each of the Releasing Parties shall be deemed to have, and by
2 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and
3 discharged all Released Claims against the Released Parties, shall have covenanted not to sue or
4 otherwise seek to establish liability against any of the Released Parties based, in whole or in part,
5 upon any of the Released Claims, and shall be permanently barred and enjoined from instituting,
6 commencing, prosecuting or asserting any such Released Claim against any of the Released
7 Parties. Plaintiffs will prepare a proposed order and judgment dismissing with prejudice the
8 entire Action against China Airlines pursuant to Federal Rule of Civil Procedure 41(a)(2).
9 Following review and approval by China Airlines, Plaintiffs will submit the proposed order and
10 judgment to the Court to obtain dismissal with prejudice of the Action against China Airlines.

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

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

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

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

23 **11. Settlement Consideration**

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **13. Option to Rescind**

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

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

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

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

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

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

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

25 **15. Cooperation**

26 15.1 China Airlines shall provide full and complete cooperation with Settlement Class
27 Counsel as set forth specifically below.
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1 15.2. To the extent that any of China Airlines' documents produced or to be produced
2 in the Action are authentic and/or business records, including but not limited to evidence of
3 China Airlines' sales or costs of passenger travel and/or surcharges, China Airlines agrees to
4 produce, through affidavits or declarations, or, if necessary, through deposition or testimony at
5 trial, representatives qualified to authenticate such documents and information, and, to the extent
6 possible, provide confirmation that such documents and information are business records
7 provided that Settlement Class Counsel agrees to use reasonable efforts to minimize the burden
8 to China Airlines of any such authentication or business records testimony.

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

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

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

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

16. **No Admissions**

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

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

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

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

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

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

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

11 **18. Miscellaneous Provisions**

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: December 11, 2017

By: 

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