

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

IN RE: AIR CARGO SHIPPING SERVICES  
ANTITRUST LITIGATION

**MDL No. 1775**

**Master File 06-MD-1775 (JG) (VVP)**

ALL CASES

**SETTLEMENT AGREEMENT**

This Settlement Agreement (the “Agreement”) is made and entered into as of this 29th day of October, 2010 (the “Execution Date”), by and between All Nippon Airways Co., Ltd. (“ANA”) and plaintiff class representatives Benchmark Export Services, FTS International Express, Inc., R.I.M. Logistics, Ltd., Ralph Olarte d/b/a/ Olarte Transport Services, S.A.T. Sea & Air Transport, Inc. and Volvo Logistics AB (collectively, “Plaintiffs”), both individually and on behalf of a class of persons who purchased Airfreight Shipping Services to, from or within the United States directly from ANA or any of the other Defendants in the Action, as defined herein, during the period from January 1, 2000, up to and including September 11, 2006.

WHEREAS, Plaintiffs are prosecuting the Action on their own behalf and on behalf of the Settlement Class (as defined below);

WHEREAS, Plaintiffs allege that ANA participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of Airfreight Shipping Services for shipments to, from and within the United States at artificially high levels in violation of Section 1 of the Sherman Act;

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

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

WHEREAS, arm's-length settlement negotiations have taken place between Settlement Class Counsel (as defined below) and counsel for ANA, and this Agreement has been reached as a result of those negotiations;

WHEREAS, Plaintiffs have conducted an investigation into the facts and the law regarding the Action and have concluded that a settlement with ANA according to the terms set forth below is in the best interest of Plaintiffs and the Settlement Class;

WHEREAS, the Action will continue against defendants that are not Released Parties (as defined herein);

WHEREAS, ANA, despite its belief that it has good defenses to the claims alleged, has nevertheless agreed to enter into this Agreement to avoid the expense, inconvenience, and the distraction of potentially burdensome and protracted litigation;

WHEREAS, Plaintiffs recognize the benefits of ANA's cooperation and recognize that, because of joint and several liability, this Agreement with ANA does not impair Plaintiffs' ability to collect the full amount of damages to which they may be entitled in this Action; and

WHEREAS, ANA has agreed to cooperate with Plaintiffs as set forth in this Agreement, and Plaintiffs recognize that this will reduce Plaintiffs' burden and expense associated with prosecuting the Action.

NOW, THEREFORE, in consideration of the promises, mutual promises, covenants, agreements and releases set forth herein and for other good and valuable consideration, and

incorporating the above recitals herein, it is agreed by and among the undersigned that claims that have been or could be asserted in the Action be settled and compromised as to ANA and all other Released Parties, without costs as to Plaintiffs, the Settlement Class, or ANA, subject to the approval of the Court, on the following terms and conditions.

**A. Definitions**

The following terms, as used in this Agreement have the following meanings:

1. “Action” means the action captioned *In re Air Cargo Shipping Services Antitrust Litigation*, 06-MD-1775 (JG)(VVP) (E.D.N.Y.), which is currently pending in the United States District Court for the Eastern District of New York, and including all actions filed in or transferred to the Eastern District of New York for consolidation and/or coordination with the above-captioned multidistrict litigation, all actions pending such transfer (including but not limited to “tag-along” actions), and specifically including the actions captioned *Benchmark Export Services et al. v. China Airlines Ltd.*, Case No. 10 Civ. 0639 (JG) (VVP) (E.D.N.Y.), *Benchmark Export Services et al. v. McCaffrey*, Case No. 10-CV-10253-NMG (D. Mass.), *Benchmark Export Services et al. v. De Jong*, Case No. 2:10-cv-00007-BO (E.D.N.C.), *Benchmark Export Services et al. v. Sanfilippo*, Case No. 10-cv-01084 JFW (AGR) (C.D. Cal.), and *Benchmark Export Services et al. v. AMR Corporation and American Airlines, Inc.*, Case No. 10-cv-3398 (JG) (VVP) (E.D.N.Y.), and all actions that may be transferred in the future, or are otherwise based on the conduct alleged in the above-captioned multidistrict litigation.
2. “Airfreight Shipping Services” means paid private air transport of freight or other cargo by any airline acting as a provider of such services.
3. “Claims” shall mean any and all actions, suits, claims, rights, demands, assertions, allegations, causes of action, controversies, proceedings, losses, damages, injuries, attorneys’

fees, costs, expenses, debts, liabilities, judgments, or remedies, whether equitable or legal, resulting from a direct purchase of Airfreight Shipping Services.

4. “Class Member” means each member of the Class who does not timely and validly elect to be excluded from the Class.

5. “Class Period” means the period from and including January 1, 2000 up to and including September 11, 2006.

6. “Cooperation Materials” means any information or material produced by ANA under the terms of this Settlement Agreement.

7. “Court” means the United States District Court for the Eastern District of New York.

8. “Defendant” means any party named as a defendant in the First Consolidated Amended Complaint in the Action or named thereafter as a defendant in the Action up to and including the Preliminary Approval Date, and also including Deutsche Lufthansa AG, Lufthansa Cargo AG, and Swiss International Airlines, Ltd. (the last three collectively “Lufthansa”).

9. “Distribution Date” means the date of distribution to Class Members from the Escrow Account for this settlement that would be the last and final distribution but for any subsequent distribution of funds required as a result of the operation of Paragraph 46.

10. “Document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Rule 34(a) of the Federal Rules of Civil Procedure, including, without limitation, electronically stored information. A draft or non-identical copy is a separate document within the meaning of this term.

11. “Effective Date” means the date that: (a) the Court has entered a final judgment approving this Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure

and a final judgment dismissing the Action as against any Released Party who is named as a defendant in the Action with prejudice as to all Class Members and without costs; and (b) the time for appeal or to seek permission to appeal from the Court's approval of this Settlement Agreement and entry of a final judgment as described in clause (a) above has expired or, if appealed, approval of this Settlement Agreement and the final 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. It is agreed that 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.

12. "Escrow Accounts" mean the accounts (the Escrow Account and Opt-Out Escrow Account) established pursuant to the terms and conditions set forth in an escrow agreement to be entered into with Citibank N.A., subject to the approval of Plaintiffs and ANA.

13. "Opt-Out Percentage" means the dollar amount of Opt-Out Sales (as defined below) divided by the total dollar amount of direct sales of Airfreight Shipping Services by ANA to the Settlement Class during the Class Period if such data is reasonably available or some other period as agreed by the Parties.

14. "Opt-Out Plaintiff" means a person, otherwise qualifying as a member of the Settlement Class, that has validly elected to be excluded from the Settlement Class.

15. "Opt-Out Retention Period" means the period of time from when funds are first deposited in Opt-Out Escrow Account, as set out in Paragraph 46(d), up to and including one year after the Distribution Date.

16. "Opt-Out Sales" means the dollar amount of purchases of Airfreight Shipping Services to, from and within the United States by Opt-Out Plaintiffs directly from ANA during

the Class Period if such data is reasonably available or some other period as agreed by the Parties.

17. “Plaintiffs” means Benchmark Export Services, FTS International Express, Inc., R.I.M. Logistics, Ltd., Ralph Olarte d/b/a Olarte Transport Services, S.A.T. Sea & Air Transport, Inc., and Volvo Logistics AB.

18. “Preliminary Approval Date” means the date on which the Court enters an order granting preliminary approval of this Agreement.

19. “Proof of Payment” means a written statement that ANA has paid an Opt-Out Plaintiff in resolution of its claim, either by settlement or judgment, and the amount of such payment.

20. “Provisional Opt-Out Reduction” means the dollar amount reduction in the Settlement Amount, determined by multiplying the Settlement Amount by the Opt-Out Percentage.

21. “Released Claims” shall refer to the claims described in Paragraph 35 of this Agreement.

22. “Released Parties” shall refer jointly and severally, individually and collectively, to ANA, its parents, subsidiaries, affiliates, divisions, and departments, its respective past and present officers, directors, employees, agents, attorneys, servants, representatives of each of the aforesaid entities, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing. Notwithstanding any part of the foregoing, however, for purposes of this Agreement, “Released Parties” does not include (a) any Defendant, other than the Released Parties, or (b) any natural person who has entered into a tolling agreement with Plaintiffs, as of

the Execution Date. As used in this definition, “affiliates” means entities controlling, controlled by or under common control with any of the Released Parties.

23. “Releasing Parties” shall refer jointly and severally, and individually and collectively, to the Plaintiffs, the Class Members, their predecessors, successors, past and present parents, subsidiaries, affiliates, divisions, and departments, and each of their respective past and present officers, directors, employees, agents, attorneys, servants, and representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing. As used in this definition, “affiliates” means entities controlling, controlled by or under common control with any of the Releasing Parties.

24. “Settlement Amount” means ten million four hundred thousand dollars (\$10,400,000.00) in United States currency.

25. “Settlement Class” means, for purposes of settlement under this Agreement all persons or entities (but excluding Defendants, their parents, predecessors, successors, subsidiaries, affiliates, as well as government entities) who purchased Airfreight Shipping Services for shipments to, from or within the United States directly from ANA, any other Defendant, or from any of their parents, predecessors, successors, subsidiaries, or affiliates, at any time during the period from January 1, 2000 up to and including September 11, 2006.

26. “Settlement Class Counsel” shall refer to the law firms of: Hausfeld LLP, 1700 K Street NW, Suite 650, Washington, DC 20006; Kaplan Fox & Kilsheimer LLP, 850 Third Avenue, New York, NY 10022; Labaton Sucharow LLP, 140 Broadway, New York, NY 10005; and Levin, Fishbein, Sedran & Berman, 510 Walnut Street, Philadelphia, PA 19106.

27. The “Settlement Fund” shall be the amount paid by ANA in settlement of the Action pursuant to Paragraph 38 of this Agreement and any income earned on amounts in the fund.

28. “Total Purchases” shall mean the sum of the revenue from all of ANA’s sales of Air Freight Shipping Services during the Class Period to direct purchasers for shipments to, from or within the United States.

**B. Stipulation to Settlement Class Certification**

29. The parties to this 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 ANA:

All persons or entities (but excluding Defendants, their parents, predecessors, successors, subsidiaries, affiliates, as well as government entities) who purchased Airfreight Shipping Services for shipments to, from or within the United States directly from ANA, from any Defendant, or from any of their parents, predecessors, successors, subsidiaries, or affiliates, at any time during the period from January 1, 2000 up to and including September 11, 2006.

**C. Approval of this Agreement, Notice, and Dismissal of Claims**

30. Plaintiffs and ANA shall use their best efforts to effectuate this Agreement, including cooperating in Plaintiffs’ effort 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 and the prompt, complete, and final dismissal with prejudice of the Action as to ANA.

31. Promptly after the Execution Date of this Agreement, Plaintiffs shall submit to the Court a motion for preliminary approval of the settlement. The motion shall include (a) the proposed form of an order preliminarily approving this Agreement and (b) the proposed forms of mail notice and publication notice of the settlement to Class Members. (Plaintiffs may combine



dissemination of notice of the proposed certification of the Settlement Class for settlement purposes and the Agreement with notice of other settlement agreements.) The text of the items referred to in clauses (a) and (b) shall be agreed upon by Plaintiffs and ANA before submission of the motion.

32. Notice to the Settlement Class shall be given as follows:

- i. Upon preliminary approval of this Agreement, Settlement Class Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure and the Court's order, provide those members of the Settlement Class who have been identified by reasonable means, including those identified in customer lists previously provided to the Garden City Group in connection with the prior settlements, with notice by first class mail of the settlement and the date of the hearing scheduled by the Court to consider the fairness, adequacy and reasonableness of the proposed settlement (the "Settlement Hearing").
- ii. Upon preliminary approval of this Agreement, Settlement Class Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure and the Court's order cause a summary notice of the settlement and the Settlement Hearing to be published one time in each of the publications identified in Paragraph 8 of the Order Granting Preliminary Approval of Settlement with Japan Airlines International Co., Ltd., Docket No. 1255, 06-MD-01775 (E.D.N.Y. Sept. 8, 2010), unless impracticable in which case notice will include substitute publications as deemed appropriate by the notice administrator.

33. Plaintiffs shall seek entry of an order and final judgment, the text of which shall be agreed upon by Plaintiffs and ANA before submission:

- i. approving this Agreement and its terms as being a fair, reasonable, and adequate settlement 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;
- ii. reserving exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement; and
- iii. requiring Settlement Class Counsel to file with the Clerk of the Court a record of potential members of the Settlement Class who timely and validly excluded themselves from the Settlement Class, and to provide a copy of the record to counsel for ANA.

iv. dismissing the Action with prejudice as to the Released Parties.

34. This agreement shall become final only on the Effective Date defined in Paragraph 11 above.

**D. Release and Discharge**

35. Upon the occurrence of the Effective Date and in consideration of the payment by ANA of the Settlement Amount as specified in Paragraph 38 of this Agreement, the Released Parties shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, and causes of action, damages, and liabilities of any nature—including without limitation claims for costs, expenses, penalties, and attorneys' fees—whether class, individual, or otherwise, that the Releasing Parties, or any of them, ever had, now has, or hereafter can, shall, or may have directly, representatively, derivatively or in any other capacity against the Released Parties or any of them, whether known or unknown, suspected or unsuspected, asserted or unasserted, in law or equity, on account of or arising out of or resulting from or related to the direct purchase from ANA or any other Defendant, of Airfreight Shipping Services to, from or within, the United States, during the Class Period or from any conduct regardless of where it occurred at any time prior to the Effective Date concerning the pricing, selling, discounting, or marketing of Airfreight Shipping Services for shipments to, from or within the United States, including without limitation, claims brought or that could have been brought based in whole or in part on the facts, occurrences, transactions, or other matters alleged in the First Consolidated Amended Complaint filed in the Action or otherwise the subject of that litigation, which arise under any antitrust, unfair competition, unfair practices, price discrimination, unitary pricing trade practice, consumer protection, or civil conspiracy law. However, nothing herein shall release (a) any claim made with respect to any indirect purchase of Airfreight Shipping Services, and/or (b) any claim for negligence, breach of contract,

bailment, failure to deliver, lost goods, damaged or delayed goods or similar claim between any of the Released Parties and any of the Releasing Parties relating to Airfreight Shipping Services.

36. The Releasing Parties hereby covenant and agree that they shall not, hereafter, sue or otherwise seek to establish liability against any of the Released Parties based, in whole or in part, upon any of the Released Claims.

37. The release set forth in Paragraphs 35, 36, and 37 constitute a waiver of Section 1542 of the California Civil Code and Section 20-7-11 of the South Dakota Codified Laws, each of which provides that “[a] general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor,” and a waiver of any similar provisions, statute, regulation, rule, or principle of law or equity of any other state or applicable jurisdiction. In connection with the waiver and relinquishment set forth in this paragraph, Plaintiffs and each member of the Settlement Class acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Settlement Agreement, but that it is their intention to release fully, finally, and forever all Claims released in Paragraph 35, and in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

**E. Payments**

38. ANA shall pay or cause to be paid the Settlement Amount of ten million four hundred thousand dollars and no cents (\$10,400,000.00). This amount shall be wire transferred by ANA or its designee within ten (10) calendar days after the Execution Date into the Escrow Account and administered in accordance with the provisions of this Agreement.

39. Settlement Class Counsel may at an appropriate time, determined in their sole discretion, submit a motion seeking approval of the payment of attorneys' fees and expenses from the Settlement Fund. ANA will not oppose any motion by Settlement Class Counsel seeking approval of payment of attorneys' fees and past and current expenses. Nor will ANA oppose any motion by Settlement Class Counsel seeking approval of payment for future litigation expenses in an amount up to \$500,000. ANA shall have no obligation to pay any amount of Settlement Class Counsel's attorneys' fees or the costs or expenses of litigation for the Settlement Class.

**F. Settlement Fund**

40. The Settlement Fund is intended by the parties to this Agreement to be treated as a "qualified settlement fund" for federal income tax purposes pursuant to Treas. Reg. § 1.468B-1, and to that end the parties to this Agreement shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of ANA, a "relation back election" as described in Treas. Reg. § 1.468B-1(j) shall be made so as to enable the Settlement Fund to be treated as a qualified settlement fund from the earliest date possible, and the parties shall take all actions as may be necessary or appropriate to this end.

41. The Settlement Fund shall be invested in United States Government Treasury obligations (provided, however, that residual amounts that cannot be so invested or such portions of the Settlement Fund as may reasonably be needed to pay current expenses associated with providing notice to the Class, administering the Settlement Fund and any taxes may be deposited in a federally insured interest bearing account or United States Treasury Money Market funds in an amount not exceeding \$100,000). All income earned on the Settlement Fund shall become and remain part of the Settlement Fund.

42. ANA shall not have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such investment, distribution and administration, except as expressly otherwise provided in this Agreement.

43. Subject to Court approval, Plaintiffs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses including, but not limited to, attorneys' fees and past, current, or future litigation expenses. Attorneys' fees and expenses awarded by the Court shall be payable from the Settlement Fund upon award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or cost award is reduced or reversed. ANA shall not be liable for any costs, fees, or expenses of any of Plaintiffs' respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court may be paid out of the Settlement Fund.

**G. Rescission of the Agreement**

44. If the Court refuses to approve this Agreement or any part hereof, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 33 of this Agreement, or if the Court enters the final judgment and appellate review is sought and, on such review, such final judgment is not affirmed, then ANA and the Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety and any and all amounts then constituting the Settlement Fund (including all income earned thereon), shall be returned forthwith to ANA. A modification or reversal on appeal of any amount of Settlement Class Counsel's fees and expenses awarded by the Court or any plan of allocation of the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

45. ANA and Plaintiffs expressly reserve all of their rights if this Agreement does not become effective or if it is rescinded by Plaintiffs or ANA pursuant to Paragraph 44 of this Agreement. In addition, if for any reason (including a party's exercise of a valid right to rescind the Agreement), the Agreement does not receive final Court approval, then the certification of the Settlement Class shall become null and void without further Court action, and shall not be used or referred to for any further purpose in the Action or in any other action or proceeding, and shall not prejudice any party in arguing for or against contested class certification in this Action or in any other proceeding. Further, Plaintiffs and ANA agree that this Agreement, whether or not it is finally approved and whether or not ANA or Plaintiffs elect to rescind it under Paragraph 44 of this Agreement, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by ANA or any Defendant, or of the truth of any

of the claims or allegations contained in the First Consolidated Amended Complaint or any other pleading filed by Plaintiffs in the Action, and evidence thereof shall neither be discoverable nor used directly or indirectly except in a proceeding to enforce or interpret the Agreement.

**H. Provisional Opt-Out Reduction**

46. (a) Within ten (10) business days of the conclusion of the opt-out period, Settlement Class Counsel shall provide to counsel for ANA a list of all persons and entities that have requested exclusion from the Settlement Class.

(b) Within ten (10) business days of the delivery of the list described in Paragraph 46(a), ANA shall provide to Settlement Class Counsel the total amount of Opt-Out Sales, the resulting Opt-Out Percentage, the Opt-Out Sales for each Opt-Out Plaintiff, and supporting data for Opt-Out Sales.

(c) In the event Plaintiffs dispute the Opt-Out Sales amount and/or the resulting Opt-Out Percentage as described in Paragraph 46(b), Plaintiffs must notify counsel for ANA within ten (10) business days from the delivery thereof. Such notification shall include the basis for any dispute and any supporting data or documentation. ANA shall respond to such notification within ten (10) business days. If after further good faith discussions about the dispute, the parties cannot agree to a resolution, they shall submit the dispute to arbitration for final resolution pursuant to Paragraph 63 of this Agreement. Pending such final resolution, there shall be no further disbursements from the Settlement Fund.

(d) Within ten (10) business days of the determination of the Opt-Out Percentage (whether upon a failure of Plaintiffs to dispute ANA's calculation, as set forth in Paragraph 46(c), by agreement of the parties, or pursuant to arbitration), Plaintiffs and ANA shall direct the Escrow Agent to transfer from the Escrow Account funds equal to the Provisional

Opt-Out Reduction (plus any net income attributable to the amount so calculated) into a separately established escrow account for the purpose of effectuating this Paragraph 46 (the “Opt-Out Escrow Account”).

(e) ANA shall provide to the Escrow Agent and Settlement Class Counsel a Proof of Payment upon the resolution by settlement or judgment with any Opt-Out Plaintiff during the Opt-Out Retention Period of any claim that would have been a Released Claim.

(f) If ANA provides a Proof of Payment on or before the Distribution Date, then ANA and Settlement Class Counsel shall, within five (5) business days after ANA provides the Proof of Payment, jointly instruct the Escrow Agent to earmark for payment of the Opt-Out Plaintiff’s claim an amount equal to the lesser of either the amount ANA paid to the Opt-Out Plaintiff as reflected in the Proof of Payment provided by ANA, or such Opt-Out Plaintiff’s pro rata share of the Opt-Out Escrow Account (plus any net income as may have accrued with respect to such pro rata share).

(g) Within ten (10) business days of the Distribution Date, Settlement Class Counsel and ANA shall direct the Escrow Agent to pay to ANA from the Opt-Out Escrow Account all funds earmarked for payment pursuant to Paragraph 46(f) as of the Distribution Date, less the attorneys’ fee percentage awarded by the Court, in an amount not to exceed twenty-five (25) percent of such funds. In connection with Settlement Class Counsel’s request to the Court for an award of attorneys’ fees and reimbursement of litigation expenses with respect to the Settlement Fund, ANA agrees to take no position.

(h) If ANA provides a Proof of Payment to Settlement Class Counsel after the Distribution Date, but during the Opt-Out Retention Period, then within five (5) business days after ANA provides the Proof of Payment, ANA and Settlement Class Counsel shall jointly



instruct the Escrow Agent to pay from the Opt-Out Escrow Account to ANA an amount equal to the lesser of either the amount ANA paid to the Opt-Out Plaintiff as reflected in the Proof of Payment provided by ANA, or such Opt-Out Plaintiff's pro-rata share of the Opt-Out Escrow Account (plus any net income as may have accrued with respect to such pro-rata share less the attorneys' fee percentage awarded by the Court, in an amount not to exceed twenty-five (25) percent of each such pro-rata share.

(i) Fourteen (14) days after the conclusion of the Opt-Out Retention Period, ANA and Settlement Class Counsel shall jointly instruct the Escrow Agent to promptly transfer all funds remaining in the Opt-Out Escrow Account to the Escrow Account.

(j) Any dispute regarding the rights and obligations of the parties under this Paragraph 46 that cannot be resolved by agreement of the parties shall be submitted to an agreed upon arbitrator for final resolution pursuant to Paragraph 63 of this Agreement.

**I. Cooperation**

47. ANA shall cooperate with Settlement Class Counsel as set forth specifically below.

48. In connection with its provision of information, testimony, and Documents under this Agreement, ANA shall have the right to assert the attorney-client privilege, attorney work-product protection, joint defense or any other protection, privilege, or immunity available under United States law. ANA also shall have the right to designate any information, testimony, or Documents provided as "Confidential" or "Highly Confidential" in accordance with the Confidentiality Stipulation and Protective Order Governing Production of Documents Between Plaintiffs and Defendants (the "Protective Order") entered in the Action. Any such designations

shall survive the termination or rescission of this Agreement and shall continue to enjoy the fullest protections offered by the Protective Order.

49. If any document protected by the attorney-client privilege or the work product doctrine is accidentally or inadvertently produced, the Document shall promptly be returned to ANA, and its production shall in no way be construed to have waived any privilege or protection attached to such Document.

50. No Document shall be withheld under claim of privilege or work product if produced to or made available to the U.S. Department of Justice, the European Commission, or any other national competition authority, other than privileged Documents inadvertently produced to or seized by the U.S. Department of Justice, the European Commission, or any other national competition authority, including the Japan Fair Trade Commission.

51. Beginning within ten (10) days, and to be completed within 90 days, after the Execution Date, ANA shall, to the extent not previously produced and subject to the limitations set forth in Paragraph 48 of this Agreement, promptly produce in the United States to Settlement Class Counsel the following categories of Documents that are in ANA's possession, custody, or control:

- i. worldwide transaction data, to the extent not previously produced and reasonable under the circumstances, in electronic format for all of ANA's sales of Airfreight Shipping Services, including for each transaction, but not limited to, (a) origin; (b) destination; (c) flight miles; (d) airway bill number; (e) date of departure; (f) customer, including its name and address; (g) any consignee, including its name and address; (h) any shipper, if different from the customer or consignee, including its name and address; (i) ship-to address; (j) product class; (k) product shipped; (l) actual weight of shipment; (m) chargeable weight of shipment; (n) gross price charged; (o) every price adjustment, including credits, discounts, fuel surcharges, security surcharges, war risk surcharges, or custom fees, separately identified; (p) price charged, net of any discounts; (q) yield; and (r) currency recorded for the period January 1, 1997 through March 31, 2009;

- ii. to the extent not previously produced and reasonable under the circumstances, information sufficient to show the following costs (aggregated monthly or as frequently as available if monthly information is not maintained) incurred by ANA in connection with its purchase, sale or delivery of Airfreight Shipping Services, including freight forwarding services: operating, overhead, sales/marketing, labor, transportation, fuel, hedging, insurance and security costs, and taxes, tariffs, and duties for the period January 1, 1997, through March 31, 2009;
- iii. to the extent not previously produced and reasonable under the circumstances, all price announcements for surcharges for Airfreight Shipping Services to, from, or within the United States for the period January 1, 1997 through March 31, 2009;
- iv. copies of all Documents created or obtained for ordinary business purposes that were produced to the European Commission, or any other national competition authority, in connection with an investigation of the air cargo industry which relate to Airfreight Shipping Services;
- v. a reasonable number of additional Documents related to Airfreight Shipping Services to, from, or within the United States that Settlement Class Counsel specifically identify, and the collection and production of which is not burdensome to ANA;
- vi. available translations in English of foreign language documents that are or have been produced.

52. All Cooperation Materials shall be confidential and may be used by Settlement Class Counsel only in connection with this Action and may not be used to prosecute any claim against the Released Parties.

53. Authentication and Admissibility of Documents. ANA agrees to produce at trial, deposition, or through affidavits or declarations, representatives qualified to establish for admission into evidence any of ANA's Documents produced or to be produced in the Action, evidence of ANA's sales or costs of Airfreight Shipping Services, and/or surcharges related thereto, any other Documents of ANA, and, to the extent possible, any Documents produced by any of ANA's alleged co-conspirators.

54. Meetings with Counsel. ANA agrees that, beginning within ten (10) days after the execution of this Agreement, its counsel will make themselves available in the United States for up to a total of three (3) meetings with Settlement Class Counsel to provide information concerning documents, witnesses, meetings, communications, and events not covered by privilege or other protections available under any applicable United States law, plus reasonable follow-up conversations including, but not limited to, identifying individuals such as current or former employees, who may provide information or potential testimony relevant to the Action. Notwithstanding any other provision in this Agreement, Plaintiffs and Settlement Class Counsel agree that they shall maintain all statements made by the ANA's counsel under this Paragraph strictly confidential; and that they shall not use directly or indirectly the information so received for any other purpose than the prosecution of the Action. Subject to applicable law, the Parties and their counsel further agree that any statements made by the ANA's counsel in connection with and/or as part of this settlement shall be protected by Federal Rule of Evidence 408, and shall in no event be discoverable by any person or treated as evidence of any kind, unless otherwise ordered by a Court.

55. Witnesses. Upon reasonable notice, ANA agrees to make available (or, with respect to former directors, officers, and employees, will use all reasonable efforts to make available), at mutually agreed dates and locations in the United States, for interviews, depositions and testimony at hearings or trial, and at ANA's expense (a) any persons who may be current and former directors, officers, and employees of ANA who have been interviewed by the U.S. Department of Justice or the Japan Fair Trade Commission in conjunction with their investigations of Air Freight Shipping Services, or have testified regarding the same; and (b) no more than five (5) additional current and former directors, officers, and employees of ANA who

Settlement Class Counsel, in consultation with counsel for ANA, reasonably and in good faith believe to have knowledge regarding Plaintiffs' claims as alleged in the Action. Upon request of the witness, Plaintiffs shall provide a translator for interviews, depositions and/or testimony. Written notice served by Settlement Class Counsel upon the ANA's counsel shall constitute sufficient service of notice to any person employed by the ANA at the time of such notice of any depositions requested under this Paragraph unless the witness is represented by separate counsel. Depositions shall be administered according to the rules and limitations of the Federal Rules of Civil Procedure, regardless of the location at which they take place or the citizenship of the deponent. If ANA is unable to make a requested individual available in the United States, ANA shall use its best efforts to make the individual available at such alternative location as Settlement Class Counsel may reasonably request. ANA agrees to bear reasonable travel expenses incurred by witnesses pursuant to this Paragraph.

56. If one or more witnesses notified pursuant to Paragraph 55 are not available before the fact discovery period has ended and become available thereafter, ANA will not object to any application by Plaintiffs to the Court for permission to take the deposition of such a witness, unless such objection is based upon grounds other than timeliness of the application (*e.g.*, violation of foreign law).

57. If any persons whose interviews or depositions are subject to this Agreement refuse to cooperate with Settlement Class Counsel, Settlement Class Counsel shall have the discretion to institute process to obtain testimony from such person.

58. ANA's obligations to cooperate shall not be affected by the release set forth in Paragraph 35 of this Agreement. Unless this Agreement is rescinded, disapproved, or otherwise

fails to take effect, ANA's obligations to cooperate under this Agreement shall continue until the date that final judgment has been rendered in the Action against all Defendants.

**J. Taxes**

59. Settlement Class Counsel shall be solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund and shall file all informational and other tax returns necessary to report any income earned by the Settlement Fund and shall be solely responsible for taking out of the Settlement Fund, as and when legally required, any tax payments, including interest and penalties due on income earned by the Settlement Fund. All taxes (including any interest and penalties) due with respect to the income earned by the Settlement Fund shall be paid from the Settlement Fund. ANA shall have no responsibility to make any filings relating to the Settlement Fund and will have no responsibility to pay tax on any income earned by the Settlement Fund or to pay any taxes on the Settlement Fund unless the settlement is not consummated and until the Settlement Fund is returned to ANA. In the event the Settlement Fund is returned to ANA because the settlement is not consummated, ANA shall be responsible for the payment of all taxes (including any interest or penalties, except to the extent that interest and penalties result from the failure of Plaintiffs to file any necessary tax returns or make tax payments, in which case Plaintiffs shall be responsible for the payment of interest and/or penalties), if any, on said income. ANA makes no representation to Plaintiffs regarding the appropriate tax treatment of the Settlement Fund, income earned on the Settlement Fund, or any distribution taken from the Settlement Fund.

**K. Reservation of Class Members' Rights Against Other Defendants**

60. All rights of any Class Member against former, current, or future defendants or co-conspirators or any other person other than the Released Parties, for sales made by ANA, are

specifically reserved by Plaintiffs and the Class Members. The sales of Airfreight Shipping Services by ANA shall, to the extent permitted or authorized by law, remain in the case against the other current or future defendants in the Action as a potential basis for damage claims and shall be part of any joint and several liability claims against other current or future defendants in the Action or other persons or entities other than the Released Parties. This Paragraph 60 shall not be construed to impact the right of such other current or future defendants in the Action to receive any set-off to which they are entitled.

**L. Miscellaneous**

61. This Agreement does not settle or compromise any claim by Plaintiffs or any Class Member against any former or current defendants or alleged co-conspirator or any other person or entity other than the Released Parties.

62. All rights of any Class Member against former or current defendants or co-conspirators or any other person or entity other than the Released Parties are specifically reserved by Plaintiffs and the Class Members. The sales of Airfreight Shipping Services by ANA to, from or within the United States may, to the extent permitted and/or authorized by law, remain in the Action as a basis for damage claims against current or future defendants and may be part of any joint and several liability claims against those defendants or other persons or entities other than the Released Parties.

63. ANA and its present, former, and future directors, officers, and employees and the Settlement Class Members and Settlement Class Counsel agree that all disputes, claims or controversies arising in connection with, pursuant to, or related to the cooperation terms of this Agreement shall be finally resolved by arbitration conducted by an arbitrator jointly selected by ANA and Settlement Class Counsel.

64. This Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed to by and between the parties hereto with respect to the subject matter of this Agreement.

65. This Agreement may be modified or amended only by a writing executed by Plaintiffs and ANA and, after the Preliminary Approval Date, with approval by the Court.

66. Neither this Agreement nor any negotiations or proceedings connected with it shall be deemed or construed to be an admission by any party to this Agreement or any Released Party or evidence of any fact or matter in this Action or in any related actions or proceedings, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way, except in a proceeding to interpret or enforce this Agreement.

67. Neither ANA nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

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

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

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



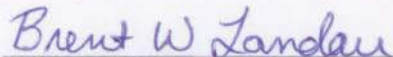
71. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, the remainder of this Agreement will not be affected, and, in lieu of each provision that is found illegal, invalid or unenforceable, a provision will be added as a part of this Agreement that is as similar to the illegal, invalid or unenforceable provision as may be legal, valid and enforceable.

72. All terms of this Agreement and the exhibits hereto shall be governed and interpreted according to the substantive laws of the State of New York without regard to its choice of law or conflict of laws principles.

73. This Agreement may be executed in counterparts by counsel for Plaintiffs and ANA, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

74. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of and to execute this Agreement, subject to Court approval.

Dated: October 20, 2010.



Michael D. Hausfeld  
William P. Butterfield  
Brent W. Landau  
**HAUSFELD LLP**  
1700 K Street, NW, Suite 650  
Washington, DC 20006  
Telephone: (202) 540-7200  
Facsimile: (202) 540-7201



Robert N. Kaplan  
Gregory K. Arenson  
**KAPLAN FOX & KILSHEIMER LLP**  
850 Third Avenue, 14th Floor  
New York, NY 10022  
Telephone: (212) 687-1980  
Facsimile: (212) 687-7114

\_\_\_\_\_  
Hollis L. Salzman  
Jay Himes  
**LABATON SUCHAROW LLP**  
140 Broadway

\_\_\_\_\_  
Howard J. Sedran  
Austin B. Cohen  
**LEVIN, FISHBEIN, SEDRAN & BERMAN**  
510 Walnut Street

71. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, the remainder of this Agreement will not be affected, and, in lieu of each provision that is found illegal, invalid or unenforceable, a provision will be added as a part of this Agreement that is as similar to the illegal, invalid or unenforceable provision as may be legal, valid and enforceable.

72. All terms of this Agreement and the exhibits hereto shall be governed and interpreted according to the substantive laws of the State of New York without regard to its choice of law or conflict of laws principles.

73. This Agreement may be executed in counterparts by counsel for Plaintiffs and ANA, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

74. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of and to execute this Agreement, subject to Court approval.

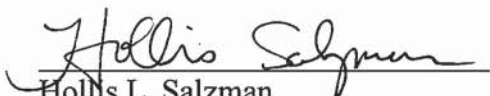
Dated: October 20, 2010.

---

Michael D. Hausfeld  
William P. Butterfield  
Brent W. Landau  
**HAUSFELD LLP**  
1700 K Street, NW, Suite 650  
Washington, DC 20006  
Telephone: (202) 540-7200  
Facsimile: (202) 540-7201

---

Robert N. Kaplan  
Gregory K. Arenson  
**KAPLAN FOX & KILSHEIMER LLP**  
850 Third Avenue, 14th Floor  
New York, NY 10022  
Telephone: (212) 687-1980  
Facsimile: (212) 687-7114



---

Hollis L. Salzman  
Jay Himes  
**LABATON SUCHAROW LLP**  
140 Broadway

---

Howard J. Sedran  
Austin B. Cohen  
**LEVIN, FISHBEIN, SEDRAN & BERMAN**  
510 Walnut Street



71. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, the remainder of this Agreement will not be affected, and, in lieu of each provision that is found illegal, invalid or unenforceable, a provision will be added as a part of this Agreement that is as similar to the illegal, invalid or unenforceable provision as may be legal, valid and enforceable.

72. All terms of this Agreement and the exhibits hereto shall be governed and interpreted according to the substantive laws of the State of New York without regard to its choice of law or conflict of laws principles.

73. This Agreement may be executed in counterparts by counsel for Plaintiffs and ANA, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

74. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of and to execute this Agreement, subject to Court approval.

Dated: October 20, 2010.

---


Michael D. Hausfeld  
William P. Butterfield  
Brent W. Landau  
**HAUSFELD LLP**  
1700 K Street, NW, Suite 650  
Washington, DC 20006  
Telephone: (202) 540-7200  
Facsimile: (202) 540-7201

---

Hollis L. Salzman  
Jay Himes  
**LABATON SUCHAROW LLP**  
140 Broadway

---

Robert N. Kaplan  
Gregory K. Arenson  
**KAPLAN FOX & KILSHEIMER LLP**  
850 Third Avenue, 14th Floor  
New York, NY 10022  
Telephone: (212) 687-1980  
Facsimile: (212) 687-7114



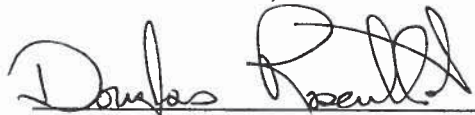
---

Howard J. Sedran  
Austin B. Cohen  
**LEVIN, FISHBEIN, SEDRAN & BERMAN**  
510 Walnut Street

New York, NY 10005  
Telephone: (212) 907-0717  
Facsimile: (212) 592-4663  
*Class Counsel*

Philadelphia, PA 19106  
Telephone: (215) 592-1500  
Facsimile: (215) 592-4663

Dated: October 20, 2010.



---

Douglas E. Rosenthal  
Todd Anderson  
**CONSTANTINE CANNON LLP**  
One Franklin Square  
1301 K Street, N.W., Suite 1050 East  
Washington, DC 20005  
Telephone: (202) 204-3500  
Facsimile: (202) 204-3501  
*Counsel for All Nippon Airways Co., Ltd.*

---

Charles J. Simpson, Jr.  
**ZUCKERT, SCOUTT & RASENBERGER,  
LLP**  
888 Seventeenth Street, N.W., Suite 700  
Washington, DC 20006  
Telephone: (202) 298-8660  
Facsimile: (202) 342-0683  
*Counsel for All Nippon Airways Co., Ltd.*

Dated: October 29, 2010.

---

Shinichiro Ito  
President and Chief Executive Officer  
**ALL NIPPON AIRWAYS CO., LTD.**


New York, NY 10005  
Telephone: (212) 907-0717  
Facsimile: (212) 592-4663  
*Class Counsel*

Philadelphia, PA 19106  
Telephone: (215) 592-1500  
Facsimile: (215) 592-4663

Dated: October 20, 2010.

---

Douglas E. Rosenthal  
Todd Anderson  
**CONSTANTINE CANNON LLP**  
One Franklin Square  
1301 K Street, N.W., Suite 1050 East  
Washington, DC 20005  
Telephone: (202) 204-3500  
Facsimile: (202) 204-3501  
*Counsel for All Nippon Airways Co., Ltd.*



---

Charles J. Simpson, Jr.  
**ZUCKERT, SCOUTT & RASENBERGER,  
LLP**  
888 Seventeenth Street, N.W., Suite 700  
Washington, DC 20006  
Telephone: (202) 298-8660  
Facsimile: (202) 342-0683  
*Counsel for All Nippon Airways Co., Ltd.*

Dated: October 29, 2010.

---

Shinichiro Ito  
President and Chief Executive Officer  
**ALL NIPPON AIRWAYS CO., LTD.**

4811-1680-5639

New York, NY 10005  
Telephone: (212) 907-0717  
Facsimile: (212) 592-4663  
*Class Counsel*

Philadelphia, PA 19106  
Telephone: (215) 592-1500  
Facsimile: (215) 592-4663

Dated: October 20, 2010.


---

Douglas E. Rosenthal  
Todd Anderson  
**CONSTANTINE CANNON LLP**  
One Franklin Square  
1301 K Street, N.W., Suite 1050 East  
Washington, DC 20005  
Telephone: (202) 204-3500  
Facsimile: (202) 204-3501  
*Counsel for All Nippon Airways Co., Ltd.*

---

Charles J. Simpson, Jr.  
**ZUCKERT, SCOUTT & RASENBERGER,**  
**LLP**  
888 Seventeenth Street, N.W., Suite 700  
Washington, DC 20006  
Telephone: (202) 298-8660  
Facsimile: (202) 342-0683  
*Counsel for All Nippon Airways Co., Ltd.*

Dated: October 29, 2010.



---

Shinichiro Ito  
President and Chief Executive Officer  
**ALL NIPPON AIRWAYS CO., LTD.**

4811-1680-5639