

**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 11<sup>th</sup> day of February, 2011 (the "Execution Date"), by and between Thai Airways International Public Company Limited ("Thai Airways") and plaintiff class representatives Benchmark Export Services, FTS International Express, Inc., R.I.M. Logistics, Ltd., Olarte Transport Services, Inc., 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 Thai Airways 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 Thai Airways participated in an unlawful conspiracy in violation of Section 1 of the Sherman Act to raise, fix, maintain, or stabilize at artificially high levels the price of Airfreight Shipping Services for shipments to, from and within the United States;

WHEREAS, Thai Airways denies Plaintiffs' allegations and has asserted a number of defenses to Plaintiffs' Claims;

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

WHEREAS, Thai Airways 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 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 Thai Airways and all other Released Parties, without costs as to Plaintiffs, the Settlement Class, or Thai Airways, 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, specifically including the actions captioned *Benchmark Export Services et al. v. China Airlines Ltd.*, Case No. 10-cv-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.), all actions pending such transfer (including but not limited

to “tag-along” actions), 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 Thai Airways 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. “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.

10. "Effective Date" means the date that: (a) the Court has entered a final judgment approving this 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 Agreement and entry of a final judgment as described in clause (a) above has expired or, if appealed, approval of this 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. 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.

11. "Escrow Account" means the 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 Thai Airways.

12. "Plaintiffs" means Benchmark Export Services; FTS International Express, Inc.; R.I.M. Logistics, Ltd.; Olarte Transport Services, Inc.; S.A.T. Sea & Air Transport, Inc.; and Volvo Logistics AB.

13. "Preliminary Approval Date" means the date on which the Court enters an order granting preliminary approval of this Agreement.

14. "Released Claims" shall refer to the Claims described in Paragraph 28 of this Agreement.

15. "Released Parties" shall refer jointly and severally, individually and collectively, to Thai Airways, 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 any Defendant, other than the Released Parties. As used in this definition, "affiliates" means entities controlling, controlled by or under common control with any of the Released Parties.

16. "Releasing Parties" shall refer jointly and severally, and individually and collectively, to the Plaintiffs, 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.

17. "Settlement Amount" means three million five hundred thousand dollars (\$3,500,000.00) in United States currency.

18. "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 Thai Airways, 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.

19. "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.

20. The "Settlement Fund" shall be the amount paid by Thai Airways in settlement of the Action pursuant to Paragraph 31 of this Agreement and any income earned on amounts in the fund.

**B. Stipulation to Settlement Class Certification**

21. 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 Thai Airways:

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 Thai Airways, from 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.

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

22. Plaintiffs and Thai Airways 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 Thai Airways.

23. Promptly after the Execution Date of this Agreement, Plaintiffs shall submit to the Court a motion for preliminary approval of the settlement contemplated by this Agreement. The



motion shall include the proposed form of an order preliminarily approving this Agreement, the text of which shall be agreed upon by Plaintiffs and Thai Airways before submission of the motion.

24. Plaintiffs may combine dissemination of notice of the certification of the Settlement Class for settlement purposes and the preliminary approval of this Agreement with notice of other settlement agreements. The text of the notice shall be agreed upon by Plaintiffs and Thai Airways before submission to the Court for approval.

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

- a. After preliminary approval of this Agreement and submission to the Court and approval by it of notice procedures, 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").
- b. Upon approval by the Court of notice procedures, 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 3 of the Order Authorizing Dissemination of Class Notice and Scheduling Hearing for Final Approval of Proposed Settlements, ECF No. 1314, 06-MD-01775 (E.D.N.Y. October 28, 2010), unless impracticable, in which case notice will include substitute publications as deemed appropriate by the notice administrator.

26. Plaintiffs shall seek entry of an order and final judgment, the text of which shall be agreed upon by Plaintiffs and Thai Airways before submission to the Court:

- a. 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;



- b. reserving to the Court exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement;
- c. 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 exclude themselves from the Settlement Class, and to provide a copy of the record to counsel for Thai Airways; and
- d. dismissing the Action with prejudice as to the Released Parties.

27. This Agreement shall become final only on the Effective Date defined in Paragraph 10 above.

**D. Release and Discharge**

28. Upon the occurrence of the Effective Date and in consideration of the payment by Thai Airways of the Settlement Amount as specified in Paragraph 31 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 Thai Airways 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, unjust enrichment, civil conspiracy law or any other law, code, rule, or regulation of any country or jurisdiction worldwide, regardless of legal theory, and regardless of the type or amount of damages claimed. 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.

29. 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.

30. The release set forth in Paragraphs 28 and 29 constitutes 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 Agreement, but that it is their intention to release fully, finally, and forever all Claims released in Paragraphs 28 and 29, 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**

31. Thai Airways shall pay or cause to be paid the Settlement Amount of three million five hundred thousand dollars and no cents (\$3,500,000.00). This amount shall be wire transferred by Thai Airways 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. This amount shall not be subject to further reduction on account of exclusions from the Class.

32. Settlement Class Counsel may, in their sole discretion, submit a motion at an appropriate time seeking approval of the payment of attorneys' fees and expenses from the Settlement Fund. Thai Airways will not oppose any motion by Settlement Class Counsel seeking approval of payment of attorneys' fees and past and current expenses from the Settlement Fund. Nor will Thai Airways oppose any motion by Settlement Class Counsel seeking approval of payment for future litigation expenses in an amount up to \$500,000 from the Settlement Fund. Thai Airways 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**

33. 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 Thai Airways, 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.

34. 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 account or United States Treasury Money Market funds in an amount not exceeding \$100,000 or the limits of federal insurance, whichever is greater). All income earned on the Settlement Fund shall become and remain part of the Settlement Fund.

35. Thai Airways 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.

36. 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 Agreement 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. Thai Airways 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**

37. 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 26 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 Thai Airways 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 and excluding any reasonable expenses that have been paid or incurred associated with providing notice to the Class, administering the Settlement Fund and any taxes already paid on such income), together with any amounts paid to Settlement Class Counsel pursuant to Paragraph 36 hereof (including all income earned thereon), shall be returned forthwith to Thai Airways. To the extent that expenses associated with providing notice to the Class and administering the Settlement Fund are not fully covered by separate notice funds established under other settlement agreements, Settlement Class Counsel shall reasonably apportion the balance of such costs among the settlement funds for the settlements included in the same notice, provided that the share apportioned to the Settlement Fund under this Agreement shall not exceed the pro rata amount based on the number of settlements included in the notice (e.g., if there are four included settlements, no more than one-fourth of the balance shall be apportioned to the Settlement Fund). 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.

38. Thai Airways and Plaintiffs expressly reserve all of their rights if this Agreement does not become effective or if it is rescinded by Plaintiffs or Thai Airways pursuant to Paragraph 37 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, this Agreement, whether or not it is finally approved and whether or not Thai Airways or Plaintiffs elect to rescind it under Paragraph 37 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 Thai Airways 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, or waiver or invalidity of any defense, and evidence thereof shall neither be discoverable nor used directly or indirectly except in a proceeding to enforce or interpret the Agreement.

**I. Cooperation**

39. Thai Airways shall cooperate with Settlement Class Counsel as set forth specifically below.

40. In connection with its provision of information, testimony, and Documents under this Agreement, Thai Airways 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. Thai Airways 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.

41. If any Document protected by the attorney-client privilege, attorney, work-product protection, joint defense or any other protection, privilege, or immunity is accidentally or inadvertently produced, the Document shall promptly be returned to Thai Airways, and its production shall in no way be construed to have waived any privilege or protection attached to such Document.

42. 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, the Korea Fair Trade 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, the Korea Fair Trade Commission, or any other national competition authority.

43. Beginning within ten (10) days, and to be completed within 90 days, after the Execution Date, Thai Airways shall, to the extent reasonably available and not previously produced, and subject to the limitations set forth in Paragraph 40 of this Agreement, promptly produce in the United States to Settlement Class Counsel the following categories of Documents that are in Thai Airways's possession, custody, or control:

- a. copies of existing CDs containing electronic images of air waybills from 2002 through 2009, with the understanding that Thai Airways



cannot guarantee and makes no representation as to the integrity of such CDs;

- b. monthly reports containing electronic "flown" transactional data for the LAX-BKK and BKK-LAX routes for May 1, 2005, through March 31, 2009, and monthly reports containing electronic "sales" transactional data for the LAX-BKK and BKK-LAX routes for January 1, 2004, through March 31, 2009;
- c. information sufficient to show Thai Airways's monthly tonnage, net freight revenue, fuel surcharge revenue, war risk surcharge revenue, security surcharge revenue, and revenue from other charges, by origin and destination country, for shipments to and from the United States for January 1, 2004, through March 31, 2009;
- d. information sufficient to show Thai Airways's monthly tonnage, by origin and destination country, for shipments to and from the United States for April 1, 2002, through December 31, 2003;
- e. copies of all Documents that were produced by Thai Airways to the European Commission, the Korea Fair Trade Commission, or any other national competition authority, in connection with an investigation of the air cargo industry which relate to Airfreight Shipping Services; and any available translations in English thereof.

44. 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.

45. Authentication and Admissibility of Documents. To the extent that any of Thai Airways's Documents produced or to be produced in the Action, evidence of Thai Airways's sales or costs of Airfreight Shipping Services, and/or surcharges related thereto, and any other Documents of Thai Airways are authentic and/or business records, Thai Airways agrees to produce, through affidavits or declarations, or, if necessary, through deposition or testimony at trial, representatives qualified to authenticate such documents and information and, to the extent possible, provide confirmation that such documents and information are business records,

provided that Settlement Class Counsel agrees to use reasonable efforts to minimize the burden to Thai Airways of any such authentication or business records testimony.

46. Thai Airways's obligations to cooperate shall not be affected by the release set forth in Paragraph 28 of this Agreement. Unless this Agreement is rescinded, disapproved, or otherwise fails to take effect, Thai Airways's obligations to cooperate under Paragraph 45 of this Agreement shall continue until the date that final judgment has been rendered in the Action against all Defendants.

**J. Taxes**

47. 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. Thai Airways 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 Thai Airways. In the event the Settlement Fund is returned to Thai Airways because the settlement is not consummated, Thai Airways shall be responsible for the payment of all taxes on income earned by the Settlement Fund (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), except to the extent such taxes have been previously paid from the Settlement Fund. Thai Airways 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**

48. All rights of any Class Member against former, current, or future Defendants or co-conspirators or any other person other than the Released Parties are specifically reserved by Plaintiffs and the Class Members. The sales of Airfreight Shipping Services by Thai Airways 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 48 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**

49. 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.

50. Thai Airways 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 resolved by the Court.

51. 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.

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

53. 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.

54. Neither Thai Airways 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.

55. 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.

56. 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.


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

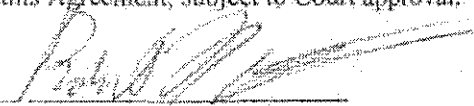
58. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, the remainder of this Agreement will not be affected, and, in lieu of each provision that is found illegal, invalid or unenforceable, a provision will be added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

59. 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.

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

61. 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.

  
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58. 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.


59. 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.

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

61. 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.

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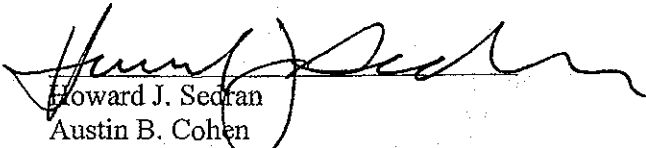
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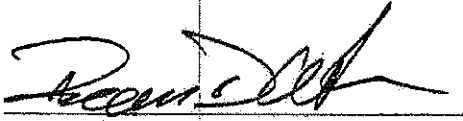
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