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24 **UNITED STATES DISTRICT COURT**

25 **NORTHERN DISTRICT OF CALIFORNIA**

26 **IN RE TRANSPACIFIC PASSENGER** )  
27 **AIR TRANSPORTATION** )  
28 **ANTITRUST LITIGATION** )

No. 07-CV-5634-CRB

MDL 1913

CLASS ACTION

**This Document Relates to:** )

**PLAINTIFFS' CONSOLIDATED**  
**CLASS ACTION COMPLAINT**

**ALL ACTIONS** )

**JURY TRIAL DEMANDED**

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## NATURE OF THE ACTION

1  
2 1. This action arises out of a long-running, international conspiracy by the  
3 defendants named herein (collectively, “Defendants”) and their co-conspirators which began no  
4 later than January 1, 2000, and continues to the present (the “Class Period”), to fix, raise,  
5 maintain, and/or stabilize air passenger travel, including associated surcharges, for international  
6 flights involving at least one flight segment between the United States and Asia/Oceania<sup>1</sup> in  
7 violation of Section 1 of the Sherman Antitrust, 15 U.S.C. § 1.

8 2. As set forth in greater detail below, beginning no later than January 1, 2000, the  
9 Defendants and their unnamed co-conspirators began imposing air fare increases, including fuel  
10 surcharge increases, on international air passengers that were in substantial lockstep both in their  
11 timing and amount. The close timing and amount of Defendants’ increases were not  
12 coincidences, but rather were the product of a collusive agreement to fix, raise, maintain, and  
13 stabilize the prices of base passenger fares and fuel surcharges on international flights.

14 3. This complaint is based upon the investigation of counsel and information  
15 provided by a participant in the conspiracy. The participant has provided Interim Class Counsel  
16 with the dates on which meetings took place to initiate and coordinate the conspiracy and the  
17 identities of those who participated in these meetings and communications. The participant has  
18 substantiated these descriptions by identifying pertinent documents.

19 4. The complaint is filed during the pendency of various on-going enforcement  
20 actions taken by competition authorities around the world concerning anticompetitive conduct in  
21 the air passenger transportation industry. The actions taken so far include, but are not limited to:

- 22 ● Korean Air Lines, Ltd.’s (“KAL”) guilty plea in the United States for  
23 participating in a conspiracy with others to fix the prices of passenger travel,  
24 including certain fares and surcharges. “Plea Agreement,” (Aug. 1, 2007) in  
25 *United States v. Korean Air Lines, Ltd.*, No.Cr. 07-184 JDB (D.D.C.).
- 26 ● Asiana Airlines, Inc.’s (“Asiana”) guilty plea in the United States for participating  
27 in a conspiracy with others to fix the prices of certain air passenger fares. “Plea

28 <sup>1/</sup> Oceania is defined as Australia, New Zealand, and the Pacific Islands. See  
<http://www.airnewzealand.com/gateway.jsp>.

1 Agreement” (April 9, 2009) in *United States v. Asiana Airlines, Inc.*, Cr. No. 09-  
2 Cr-00009 JDB (D.D.C.)

- 3 • The grant of conditional immunity from the United States Department of Justice  
4 (“DOJ”) to at least one of the Defendants in exchange for its agreement to  
5 cooperate with an investigation concerning price-fixing of passenger travel,  
6 including surcharges.
- 7 • Virgin Atlantic’s receipt of leniency from the DOJ and British competition  
8 authorities after disclosing its participation in a conspiracy to fix the prices of  
9 long-haul international passenger travel, including surcharges.
- 10 • British Airways PLC’s (“British Airways”) guilty plea in the United States and  
11 admission to British competition authorities concerning its involvement in a  
12 conspiracy to fix the price of long-haul international air transportation, including  
13 surcharges. “Plea Agreement” (July 31, 2007) in *United States v. British Airways  
14 PLC*, No. Cr 07183 (D.D.C.)

### 15 **JURISDICTION AND VENUE**

16 5. This complaint is filed under Sections 4 and 16 of the Clayton Act (15 U.S.C. §§  
17 15 and 26), to obtain injunctive relief for violation of Section 1 of the Sherman Act (15 U.S.C. §  
18 1). The Court has original federal question jurisdiction over the Sherman Act claim asserted in  
19 this complaint pursuant to 28 U.S.C. §§ 1331 and 1337 and Sections 4 and 16 of the Clayton Act  
20 (15 U.S.C. §§ 15 and 26).

21 6. Venue is proper in this District pursuant to Sections 4(a) and 12 of the Clayton  
22 Act (15 U.S.C. §§ 15 and 22), and 28 U.S.C. § 1391(b), (c), and (d) because Defendants reside,  
23 transact business, are found within, and/or have agents within this District and a substantial part  
24 of the events giving rise to Plaintiffs’ claims occurred and a substantial portion of the affected  
25 interstate trade and commerce described below has been carried out in this District.

26 7. This Court has personal jurisdiction over Defendants because, *inter alia*, each: (a)  
27 transacted business in this District; (b) directly or indirectly sold and/or delivered passenger air  
28 transportation in this District; (c) has substantial aggregate contacts with this District; and/or (d)  
engaged in an illegal price-fixing conspiracy that was directed at, and had the intended effect of  
causing injury to, persons and entities residing in, located in, or doing business in this District.

**PLAINTIFFS**

1  
2           8.       Plaintiff Meor Adlin is a California resident. During the Class Period, Plaintiff  
3 purchased air transportation services from one of more of the Defendants that included at least  
4 one flight segment between the United States and Asia/Oceania and has suffered pecuniary  
5 injury as a result of the antitrust violation alleged herein.

6           9.       Plaintiff Franklin Ajaye is a California resident. During the Class Period, Plaintiff  
7 purchased air transportation services from one of more of the Defendants that included at least  
8 one flight segment between the U.S. and Asia/Oceania and has suffered pecuniary injury as a  
9 result of the antitrust violation alleged herein.

10          10.       Plaintiff Andrew Barton is a California resident. During the Class Period,  
11 Plaintiff purchased air transportation services from one of more of the Defendants that included  
12 at least one flight segment between the U.S. and Asia/Oceania and has suffered pecuniary injury  
13 as a result of the antitrust violation alleged herein.

14          11.       Plaintiff Lori Barrett is a resident of Ontario, Canada. During the Class Period,  
15 Plaintiff purchased air transportation services from one of more of the Defendants that included  
16 at least one flight segment between the U.S. and Asia/Oceania and has suffered pecuniary injury  
17 as a result of the antitrust violation alleged herein.

18          12.       Plaintiff Larry Chen is a California resident. During the Class Period, Plaintiff  
19 purchased air transportation services from one of more of the Defendants that included at least  
20 one flight segment between the U.S. and Asia/Oceania and has suffered pecuniary injury as a  
21 result of the antitrust violation alleged herein.

22          13.       Plaintiff Rachel Diller is a California resident. During the Class Period, Plaintiff  
23 purchased air transportation services from one of more of the Defendants that included at least  
24 one flight segment between the U.S. and Asia/Oceania and has suffered pecuniary injury as a  
25 result of the antitrust violation alleged herein.

26          14.       Plaintiff Scott Frederick is a Washington resident. During the Class Period,  
27 Plaintiff purchased air transportation services from one of more of the Defendants that included  
28

1 at least one flight segment between the U.S. and Asia/Oceania and has suffered pecuniary injury  
2 as a result of the antitrust violation alleged herein.

3 15. Plaintiff David Kuo is a California resident. During the Class Period, Plaintiff  
4 purchased air transportation services from one of more of the Defendants that included at least  
5 one flight segment between the U.S. and Asia/Oceania and has suffered pecuniary injury as a  
6 result of the antitrust violation alleged herein.

7 16. Plaintiff Dickson Leung is a California resident. During the Class Period,  
8 Plaintiff purchased air transportation services from one of more of the Defendants that included  
9 at least one flight segment between the U.S. and Asia/Oceania and has suffered pecuniary injury  
10 as a result of the antitrust violation alleged herein.

11 17. Plaintiff Brendan Maloof is a New York resident. During the Class Period,  
12 Plaintiff purchased air transportation services from one of more of the Defendants that included  
13 at least one flight segment between the U.S. and Asia/Oceania and has suffered pecuniary injury  
14 as a result of the antitrust violation alleged herein.

15 18. Plaintiff David Murphy is a resident of Tokyo, Japan. During the Class Period,  
16 Plaintiff purchased air transportation services from one of more of the Defendants that included  
17 at least one flight segment between the U.S. and Asia/Oceania and has suffered pecuniary injury  
18 as a result of the antitrust violation alleged herein.

19 19. Plaintiff Trong Nguyen is a Washington resident. During the Class Period,  
20 Plaintiff purchased air transportation services from one of more of the Defendants that included  
21 at least one flight segment between the U.S. and Asia/Oceania and has suffered pecuniary injury  
22 as a result of the antitrust violation alleged herein.

23 20. Plaintiff Titi Tran is a California resident. During the Class Period, Plaintiff  
24 purchased air transportation services from one of more of the Defendants that included at least  
25 one flight segment between the U.S. and Asia/Oceania and has suffered pecuniary injury as a  
26 result of the antitrust violation alleged herein.

27 21. Plaintiff Donald Wortman is a California resident. During the Class Period,  
28 Plaintiff purchased air transportation services from one of more of the Defendants that included

1 at least one flight segment between the U.S. and Asia/Oceania and has suffered pecuniary injury  
2 as a result of the antitrust violation alleged herein.

### 3 DEFENDANTS

4 22. Defendant Air France is a French company with its principal place of business  
5 located at 45, rue de Paris, Roissy CDG cedex , France F-95747. Air France conducts passenger  
6 air transportation throughout the world, including flights to and from the United States and this  
7 District. Defendant Air France participated in the conspiracy alleged herein by, among other  
8 things, sharing commercially sensitive information through its code-sharing agreements with  
9 competitors (*see* ¶¶54-65), participating directly or indirectly in industry meetings that have been  
10 deemed by antitrust officials in the U.S., Europe, and Australia to be inherently anticompetitive  
11 and not in the best interests of competitive airline markets (*see* ¶¶66-71, 85, 89-99), participating  
12 in meetings hosted by regional trade associations in which anticompetitive conduct is encouraged  
13 and/or tolerated (*see* ¶¶72-76), participating directly or indirectly in meetings with its  
14 competitors at which coordinating increased base passenger fares were agreed upon (*see* ¶¶111-  
15 180), participating directly or indirectly in meetings with competitors at which passenger fare  
16 pricing was discussed and then benchmarking fares off of the prices agreed upon at those  
17 meetings (*see* ¶¶83-105), participating directly or indirectly in meetings with competitors at  
18 which collectively increasing fuel surcharges was agreed upon as a means of dealing with rising  
19 fuel costs (*see* ¶¶185, 188, 204-235), raising fares and surcharges more than necessary to offset  
20 increased fuel costs even though such actions are not consistent with economic theory (*see*  
21 ¶¶237-244), instituting surcharges in close proximity to those of its competitors in sharp contrast  
22 to conduct that occurred prior to the Class Period (*see* ¶¶191-203), and participating directly or  
23 indirectly in anticompetitive meetings with other Defendants concerning the fixing of prices in  
24 the closely related air-cargo market (*see* ¶¶245-293). Industry analysts based in Asia/Oceania  
25 acknowledge that anticompetitive conduct “overhangs” the airline passenger transportation  
26 industry, particularly in light of lax antitrust enforcement in Asia (*see* ¶105).

27 23. Defendant Air New Zealand Limited (“Air New Zealand”) is a New Zealand  
28 company with its principal place of business located at Quay Tower, 29 Customs Street West,



1 Auckland, 1020, New Zealand. Air New Zealand conducts passenger air transportation  
2 throughout the world, including flights to and from the United States and this District.  
3 Defendant Air New Zealand participated in the conspiracy alleged herein by, among other  
4 things, sharing commercially sensitive information through its code-sharing agreements with  
5 competitors (*see* ¶¶54-65), participating directly or indirectly in industry meetings that have been  
6 deemed by antitrust officials in the U.S., Europe, and Australia to be inherently anticompetitive  
7 and not in the best interests of competitive airline markets (*see* ¶¶66-71, 85, 89-99), participating  
8 in meetings hosted by regional trade associations in which anticompetitive conduct is encouraged  
9 and/or tolerated (*see* ¶¶72-76), participating directly or indirectly in meetings with its  
10 competitors at which coordinating increased base passenger fares were agreed upon (*see* ¶¶111-  
11 180), participating directly or indirectly in meetings with competitors at which passenger fare  
12 pricing was discussed and then benchmarking fares off of the prices agreed upon at those  
13 meetings (*see* ¶¶83-105), participating directly or indirectly in meetings with competitors at  
14 which collectively increasing fuel surcharges was agreed upon as a means of dealing with rising  
15 fuel costs (*see* ¶¶185, 188, 204-235), raising fares and surcharges more than necessary to offset  
16 increased fuel costs even though such actions are not consistent with economic theory (*see*  
17 ¶¶237-244), instituting surcharges in close proximity to those of its competitors in sharp contrast  
18 to conduct that occurred prior to the Class Period (*see* ¶¶191-203), and participating directly or  
19 indirectly in anticompetitive meetings with other Defendants concerning the fixing of prices in  
20 the closely related air-cargo market (*see* ¶¶245-293). Industry analysts based in Asia/Oceania  
21 acknowledge that anticompetitive conduct “overhangs” the airline passenger transportation  
22 industry, particularly in light of lax antitrust enforcement in Asia (*see* ¶105).

23 24. Defendant All Nippon Airways Company, Limited (“ANA”) is a Japanese  
24 company with its principal place of business located at Shidome-City Center, 1-5-2, Higashi-  
25 Shimbashi Minato-ku, Tokyo 105-7133, Japan. ANA conducts passenger air transportation  
26 throughout the world, including flights to and from the United States and this District.  
27 Defendant ANA participated in the conspiracy alleged herein by, among other things, sharing  
28 commercially sensitive information through its code-sharing agreements with competitors (*see*

1 ¶¶54-65), participating directly or indirectly in industry meetings that have been deemed by  
2 antitrust officials in the U.S., Europe, and Australia to be inherently anticompetitive and not in  
3 the best interests of competitive airline markets (*see* ¶¶66-71, 85, 89-99), participating in  
4 meetings hosted by regional trade associations in which anticompetitive conduct is encouraged  
5 and/or tolerated (*see* ¶¶72-76), participating directly or indirectly in meetings with its  
6 competitors at which coordinating increased base passenger fares were agreed upon (*see* ¶¶111-  
7 180), participating directly or indirectly in meetings with competitors at which passenger fare  
8 pricing was discussed and then benchmarking fares off of the prices agreed upon at those  
9 meetings (*see* ¶¶83-105), participating directly or indirectly in meetings with competitors at  
10 which collectively increasing fuel surcharges was agreed upon as a means of dealing with rising  
11 fuel costs (*see* ¶¶185, 188, 204-235), raising fares and surcharges more than necessary to offset  
12 increased fuel costs even though such actions are not consistent with economic theory (*see*  
13 ¶¶237-244), instituting surcharges in close proximity to those of its competitors in sharp contrast  
14 to conduct that occurred prior to the Class Period (*see* ¶¶191-203), and participating directly or  
15 indirectly in anticompetitive meetings with other Defendants concerning the fixing of prices in  
16 the closely related air-cargo market (*see* ¶¶245-293). Industry analysts based in Asia/Oceania  
17 acknowledge that anticompetitive conduct “overhangs” the airline passenger transportation  
18 industry, particularly in light of lax antitrust enforcement in Asia (*see* ¶105).

19 25. Defendant British Airways is a British company with its principal place of  
20 business located at Waterside, Harmondsworth, Middlesex, United Kingdom, UB7 0GB. British  
21 Airways conducts passenger air transportation throughout the world, including flights to and  
22 from the United States and this District. Defendant British Airways participated in the  
23 conspiracy alleged herein by, among other things, sharing commercially sensitive information  
24 through its code-sharing agreements with competitors (*see* ¶¶54-65), participating directly or  
25 indirectly in industry meetings that have been deemed by antitrust officials in the U.S., Europe,  
26 and Australia to be inherently anticompetitive and not in the best interests of competitive airline  
27 markets (*see* ¶¶66-71, 85, 89-99), participating in meetings hosted by regional trade associations  
28 in which anticompetitive conduct is encouraged and/or tolerated (*see* ¶¶72-76), participating

1 directly or indirectly in meetings with its competitors at which coordinating increased base  
2 passenger fares were agreed upon (*see* ¶¶111-180), participating directly or indirectly in  
3 meetings with competitors at which passenger fare pricing was discussed and then benchmarking  
4 fares off of the prices agreed upon at those meetings (*see* ¶¶83-105), participating directly or  
5 indirectly in meetings with competitors at which collectively increasing fuel surcharges was  
6 agreed upon as a means of dealing with rising fuel costs (*see* ¶¶185, 188, 204-235), raising fares  
7 and surcharges more than necessary to offset increased fuel costs even though such actions are  
8 not consistent with economic theory (*see* ¶¶237-244), instituting surcharges in close proximity to  
9 those of its competitors in sharp contrast to conduct that occurred prior to the Class Period (*see*  
10 ¶¶191-203), and participating directly or indirectly in anticompetitive meetings with other  
11 Defendants concerning the fixing of prices in the closely related air-cargo market (*see* ¶¶245-  
12 293). Industry analysts based in Asia/Oceania acknowledge that anticompetitive conduct  
13 “overhangs” the airline passenger transportation industry, particularly in light of lax antitrust  
14 enforcement in Asia (*see* ¶105).

15         26. Defendant Cathay Pacific Airways Limited (“Cathay Pacific”) is a Hong Kong-  
16 based company with its principal place of business located at 5/F, South Tower, Cathay Pacific  
17 City, 8 Scenic Rd., Hong Kong International Airport, Lantau, Hong Kong. Cathay Pacific  
18 conducts passenger air transportation throughout the world, including flights to and from the  
19 United States and this District. Defendant Cathay Pacific participated in the conspiracy alleged  
20 herein by, among other things, sharing commercially sensitive information through its code-  
21 sharing agreements with competitors (*see* ¶¶54-65), participating directly or indirectly in  
22 industry meetings that have been deemed by antitrust officials in the U.S., Europe, and Australia  
23 to be inherently anticompetitive and not in the best interests of competitive airline markets (*see*  
24 ¶¶66-71, 85, 89-99), participating in meetings hosted by regional trade associations in which  
25 anticompetitive conduct is encouraged and/or tolerated (*see* ¶¶72-76), participating directly or  
26 indirectly in meetings with its competitors at which coordinating increased base passenger fares  
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5 with economic theory (*see* ¶¶237-244), instituting surcharges in close proximity to those of its  
6 competitors in sharp contrast to conduct that occurred prior to the Class Period (*see* ¶¶191-203),  
7 and participating directly or indirectly in anticompetitive meetings with other Defendants  
8 concerning the fixing of prices in the closely related air-cargo market (*see* ¶¶245-293). Industry  
9 analysts based in Asia/Oceania acknowledge that anticompetitive conduct “overhangs” the  
10 airline passenger transportation industry, particularly in light of lax antitrust enforcement in Asia  
11 (*see* ¶105).

12 27. Defendant China Airlines Limited (“China Airlines”) is a Taiwanese company  
13 with its principal place of business located at 131 Nanking East Rd., Section 3, Taipei, Taiwan.  
14 China Airlines conducts passenger air transportation throughout the world, including flights to  
15 and from the United States and this District. Defendant China Airlines participated in the  
16 conspiracy alleged herein by, among other things, sharing commercially sensitive information  
17 through its code-sharing agreements with competitors (*see* ¶¶54-65), participating directly or  
18 indirectly in industry meetings that have been deemed by antitrust officials in the U.S., Europe,  
19 and Australia to be inherently anticompetitive and not in the best interests of competitive airline  
20 markets (*see* ¶¶66-71, 85, 89-99), participating in meetings hosted by regional trade associations  
21 in which anticompetitive conduct is encouraged and/or tolerated (*see* ¶¶72-76), participating  
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25 fares off of the prices agreed upon at those meetings (*see* ¶¶83-105), participating directly or  
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27 agreed upon as a means of dealing with rising fuel costs (*see* ¶¶185, 188, 204-235), raising fares  
28 and surcharges more than necessary to offset increased fuel costs even though such actions are

1 not consistent with economic theory (*see* ¶¶237-244), instituting surcharges in close proximity to  
2 those of its competitors in sharp contrast to conduct that occurred prior to the Class Period (*see*  
3 ¶¶191-203), and participating directly or indirectly in anticompetitive meetings with other  
4 Defendants concerning the fixing of prices in the closely related air-cargo market (*see* ¶¶245-  
5 293). Industry analysts based in Asia/Oceania acknowledge that anticompetitive conduct  
6 “overhangs” the airline passenger transportation industry, particularly in light of lax antitrust  
7 enforcement in Asia (*see* ¶105).

8         28. Defendant Continental Airlines, Inc. (“Continental Airlines”) is a United States  
9 corporation with its principal place of business located at 1600 Smith Street, Houston, Texas  
10 77002. Continental Airlines conducts passenger air transportation throughout the world,  
11 including flights to and from the United States and this District. Defendant Continental Airlines  
12 participated in the participated in the conspiracy alleged herein by, among other things, sharing  
13 commercially sensitive information through its code-sharing agreements with competitors (*see*  
14 ¶¶54-65), participating directly or indirectly in industry meetings that have been deemed by  
15 antitrust officials in the U.S., Europe, and Australia to be inherently anticompetitive and not in  
16 the best interests of competitive airline markets (*see* ¶¶66-71, 85, 89-99), participating in  
17 meetings hosted by regional trade associations in which anticompetitive conduct is encouraged  
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19 competitors at which coordinating increased base passenger fares were agreed upon (*see* ¶¶111-  
20 180), participating directly or indirectly in meetings with competitors at which passenger fare  
21 pricing was discussed and then benchmarking fares off of the prices agreed upon at those  
22 meetings (*see* ¶¶83-105), participating directly or indirectly in meetings with competitors at  
23 which collectively increasing fuel surcharges was agreed upon as a means of dealing with rising  
24 fuel costs (*see* ¶¶185, 188, 204-235), raising fares and surcharges more than necessary to offset  
25 increased fuel costs even though such actions are not consistent with economic theory (*see*  
26 ¶¶237-244), instituting surcharges in close proximity to those of its competitors in sharp contrast  
27 to conduct that occurred prior to the Class Period (*see* ¶¶191-203), and participating directly or  
28 indirectly in anticompetitive meetings with other Defendants concerning the fixing of prices in

1 the closely related air-cargo market (*see* ¶¶245-293). Industry analysts based in Asia/Oceania  
2 acknowledge that anticompetitive conduct “overhangs” the airline passenger transportation  
3 industry, particularly in light of lax antitrust enforcement in Asia (*see* ¶105).

4 29. Defendant Deutsche Lufthansa AG (“Lufthansa”) is a German company with its  
5 principal place of business located at Von-Gablenz-Strasse 2-6, Cologne, North Rhine-  
6 Westphalia, Germany, D-50664. Lufthansa conducts passenger air transportation throughout the  
7 world, including flights to and from the United States and this District. Defendant Lufthansa  
8 participated in the conspiracy alleged herein by, among other things, sharing commercially  
9 sensitive information through its code-sharing agreements with competitors (*see* ¶¶54-65),  
10 participating directly or indirectly in industry meetings that have been deemed by antitrust  
11 officials in the U.S., Europe, and Australia to be inherently anticompetitive and not in the best  
12 interests of competitive airline markets (*see* ¶¶66-71, 85, 89-99), participating in meetings hosted  
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23 occurred prior to the Class Period (*see* ¶¶191-203), and participating directly or indirectly in  
24 anticompetitive meetings with other Defendants concerning the fixing of prices in the closely  
25 related air-cargo market (*see* ¶¶245-293). Industry analysts based in Asia/Oceania acknowledge  
26 that anticompetitive conduct “overhangs” the airline passenger transportation industry,  
27 particularly in light of lax antitrust enforcement in Asia (*see* ¶105).

28

1           30. Defendant EVA Airways Corporation (“EVA”) is a Taiwanese company with its  
2 principal place of business located at 117, Sec. 2, Chang-An E. Rd., Taipei, 104, Taiwan. EVA  
3 conducts passenger air transportation throughout the world, including flights to and from the  
4 United States and this District. Defendant EVA participated in the conspiracy alleged herein by,  
5 among other things, sharing commercially sensitive information through its code-sharing  
6 agreements with competitors (*see* ¶¶54-65), participating directly or indirectly in industry  
7 meetings that have been deemed by antitrust officials in the U.S., Europe, and Australia to be  
8 inherently anticompetitive and not in the best interests of competitive airline markets (*see* ¶¶66-  
9 71, 85, 89-99), participating in meetings hosted by regional trade associations in which  
10 anticompetitive conduct is encouraged and/or tolerated (*see* ¶¶72-76), participating directly or  
11 indirectly in meetings with its competitors at which coordinating increased base passenger fares  
12 were agreed upon (*see* ¶¶111-180), participating directly or indirectly in meetings with  
13 competitors at which passenger fare pricing was discussed and then benchmarking fares off of  
14 the prices agreed upon at those meetings (*see* ¶¶83-105), participating directly or indirectly in  
15 meetings with competitors at which collectively increasing fuel surcharges was agreed upon as a  
16 means of dealing with rising fuel costs (*see* ¶¶185, 188, 204-235), raising fares and surcharges  
17 more than necessary to offset increased fuel costs even though such actions are not consistent  
18 with economic theory (*see* ¶¶237-244), instituting surcharges in close proximity to those of its  
19 competitors in sharp contrast to conduct that occurred prior to the Class Period (*see* ¶¶191-203),  
20 and participating directly or indirectly in anticompetitive meetings with other Defendants  
21 concerning the fixing of prices in the closely related air-cargo market (*see* ¶¶245-293). Industry  
22 analysts based in Asia/Oceania acknowledge that anticompetitive conduct “overhangs” the  
23 airline passenger transportation industry, particularly in light of lax antitrust enforcement in Asia  
24 (*see* ¶105).

25           31. Defendant Japan Airlines International Company, Limited (“JAL”) is a Japanese  
26 company with its principal place of business located at 4-11 Higashi-shinagawa 2-chome,  
27 Shinagawa-ku, Tokyo, 140-8605, Japan. JAL conducts passenger air transportation throughout  
28 the world, including flights to *and* from the United States and this District. Defendant JAL

1 participated in the conspiracy alleged herein by, among other things, sharing commercially  
2 sensitive information through its code-sharing agreements with competitors (*see* ¶¶54-65),  
3 participating directly or indirectly in industry meetings that have been deemed by antitrust  
4 officials in the U.S., Europe, and Australia to be inherently anticompetitive and not in the best  
5 interests of competitive airline markets (*see* ¶¶66-71, 85, 89-99), participating in meetings hosted  
6 by regional trade associations in which anticompetitive conduct is encouraged and/or tolerated  
7 (*see* ¶¶72-76), participating directly or indirectly in meetings with its competitors at which  
8 coordinating increased base passenger fares were agreed upon (*see* ¶¶111-180), participating  
9 directly or indirectly in meetings with competitors at which passenger fare pricing was discussed  
10 and then benchmarking fares off of the prices agreed upon at those meetings (*see* ¶¶83-105),  
11 participating directly or indirectly in meetings with competitors at which collectively increasing  
12 fuel surcharges was agreed upon as a means of dealing with rising fuel costs (*see* ¶¶185, 188,  
13 204-235), raising fares and surcharges more than necessary to offset increased fuel costs even  
14 though such actions are not consistent with economic theory (*see* ¶¶237-244), instituting  
15 surcharges in close proximity to those of its competitors in sharp contrast to conduct that  
16 occurred prior to the Class Period (*see* ¶¶191-203), and participating directly or indirectly in  
17 anticompetitive meetings with other Defendants concerning the fixing of prices in the closely  
18 related air-cargo market (*see* ¶¶245-293). Industry analysts based in Asia/Oceania acknowledge  
19 that anticompetitive conduct “overhangs” the airline passenger transportation industry,  
20 particularly in light of lax antitrust enforcement in Asia (*see* ¶105).

21 32. Defendant KLM Royal Dutch Airline (“KLM”) is a Dutch company with its  
22 principal place of business located at Amsterdamseweg 55, 11282 GP Amstelveen, The  
23 Netherlands. KLM conducts passenger air transportation throughout the world, including flights  
24 to and from the United States and this District. Defendant KLM participated in the conspiracy  
25 alleged herein by, among other things, sharing commercially sensitive information through its  
26 code-sharing agreements with competitors (*see* ¶¶54-65), participating directly or indirectly in  
27 industry meetings that have been deemed by antitrust officials in the U.S., Europe, and Australia  
28 to be inherently anticompetitive and not in the best interests of competitive airline markets (*see*



1 ¶¶66-71, 85, 89-99), participating in meetings hosted by regional trade associations in which  
2 anticompetitive conduct is encouraged and/or tolerated (*see* ¶¶72-76), participating directly or  
3 indirectly in meetings with its competitors at which coordinating increased base passenger fares  
4 were agreed upon (*see* ¶¶111-180), participating directly or indirectly in meetings with  
5 competitors at which passenger fare pricing was discussed and then benchmarking fares off of  
6 the prices agreed upon at those meetings (*see* ¶¶83-105), participating directly or indirectly in  
7 meetings with competitors at which collectively increasing fuel surcharges was agreed upon as a  
8 means of dealing with rising fuel costs (*see* ¶¶185, 188, 204-235), raising fares and surcharges  
9 more than necessary to offset increased fuel costs even though such actions are not consistent  
10 with economic theory (*see* ¶¶237-244), instituting surcharges in close proximity to those of its  
11 competitors in sharp contrast to conduct that occurred prior to the Class Period (*see* ¶¶191-203),  
12 and participating directly or indirectly in anticompetitive meetings with other Defendants  
13 concerning the fixing of prices in the closely related air-cargo market (*see* ¶¶245-293). Industry  
14 analysts based in Asia/Oceania acknowledge that anticompetitive conduct “overhangs” the  
15 airline passenger transportation industry, particularly in light of lax antitrust enforcement in Asia  
16 (*see* ¶105).

17 33. Defendant Malaysian Airline System Berhad (“Malaysian Airlines”) is a  
18 Malaysian company with its principal place of business located at Bangunan MAS, 33rd Fl.,  
19 Jalan Sultan Ismail, 50250 Kuala Lumpur, Malaysia. Malaysian Airlines conducts passenger air  
20 transportation throughout the world, including flights to and from the United States and this  
21 District. Defendant Malaysian Airlines participated in the conspiracy alleged herein by, among  
22 other things, sharing commercially sensitive information through its code-sharing agreements  
23 with competitors (*see* ¶¶58-65), participating directly or indirectly in industry meetings that have  
24 been deemed by antitrust officials in the U.S., Europe, and Australia to be inherently  
25 anticompetitive and not in the best interests of competitive airline markets (*see* ¶¶66-71, 85, 89-  
26 99), participating in meetings hosted by regional trade associations in which anticompetitive  
27 conduct is encouraged and/or tolerated (*see* ¶¶72-76), participating directly or indirectly in  
28 meetings with its competitors at which coordinating increased base passenger fares were agreed

1 upon (*see* ¶¶111-180), participating directly or indirectly in meetings with competitors at which  
2 passenger fare pricing was discussed and then benchmarking fares off of the prices agreed upon  
3 at those meetings (*see* ¶¶83-105), participating directly or indirectly in meetings with  
4 competitors at which collectively increasing fuel surcharges was agreed upon as a means of  
5 dealing with rising fuel costs (*see* ¶¶185, 188, 204-235), raising fares and surcharges more than  
6 necessary to offset increased fuel costs even though such actions are not consistent with  
7 economic theory (*see* ¶¶237-244), instituting surcharges in close proximity to those of its  
8 competitors in sharp contrast to conduct that occurred prior to the Class Period (*see* ¶¶191-203),  
9 and participating directly or indirectly in anticompetitive meetings with other Defendants  
10 concerning the fixing of prices in the closely related air-cargo market (*see* ¶¶245-293). Industry  
11 analysts based in Asia/Oceania acknowledge that anticompetitive conduct “overhangs” the  
12 airline passenger transportation industry, particularly in light of lax antitrust enforcement in Asia  
13 (*see* ¶105).

14 34. Defendant Philippine Airlines, Inc. (“Philippine Airlines”) is a Philippine  
15 corporation with its principal place of business located at PNB Financial Center, Pres. Diosdado  
16 Macapagal Avenue, CCP Complex, Passay City, Philippines. Philippine Airlines conducts  
17 passenger air transportation throughout the world, including flights to and from the United States  
18 and this District. Defendant Philippine Airlines participated in the conspiracy alleged herein by,  
19 among other things, sharing commercially sensitive information through its code-sharing  
20 agreements with competitors (*see* ¶¶54-65), participating directly or indirectly in industry  
21 meetings that have been deemed by antitrust officials in the U.S., Europe, and Australia to be  
22 inherently anticompetitive and not in the best interests of competitive airline markets (*see* ¶¶66-  
23 71, 85, 89-99), participating in meetings hosted by regional trade associations in which  
24 anticompetitive conduct is encouraged and/or tolerated (*see* ¶¶72-76), participating directly or  
25 indirectly in meetings with its competitors at which coordinating increased base passenger fares  
26 were agreed upon (*see* ¶¶111-180), participating directly or indirectly in meetings with  
27 competitors at which passenger fare pricing was discussed and then benchmarking fares off of  
28 the prices agreed upon at those meetings (*see* ¶¶83-105), participating directly or indirectly in

1 meetings with competitors at which collectively increasing fuel surcharges was agreed upon as a  
2 means of dealing with rising fuel costs (*see* ¶¶185, 188, 204-235), raising fares and surcharges  
3 more than necessary to offset increased fuel costs even though such actions are not consistent  
4 with economic theory (*see* ¶¶237-244), instituting surcharges in close proximity to those of its  
5 competitors in sharp contrast to conduct that occurred prior to the Class Period (*see* ¶¶191-203),  
6 and participating directly or indirectly in anticompetitive meetings with other Defendants  
7 concerning the fixing of prices in the closely related air-cargo market (*see* ¶¶245-293). Industry  
8 analysts based in Asia/Oceania acknowledge that anticompetitive conduct “overhangs” the  
9 airline passenger transportation industry, particularly in light of lax antitrust enforcement in Asia  
10 (*see* ¶105).

11 35. Defendant Qantas Airways Limited (“Qantas”) is an Australian corporation with  
12 its principal place of business located at Qantas Centre, 203 Coward Street, Mascot New South  
13 Wales 2020. Qantas conducts passenger air transportation throughout the world, including  
14 flights to and from the United States and this District. Defendant Qantas participated in the  
15 conspiracy alleged herein by, among other things, sharing commercially sensitive information  
16 through its code-sharing agreements with competitors (*see* ¶¶54-65), participating directly or  
17 indirectly in industry meetings that have been deemed by antitrust officials in the U.S., Europe,  
18 and Australia to be inherently anticompetitive and not in the best interests of competitive airline  
19 markets (*see* ¶¶66-71, 85, 89-99), participating in meetings hosted by regional trade associations  
20 in which anticompetitive conduct is encouraged and/or tolerated (*see* ¶¶72-76), participating  
21 directly or indirectly in meetings with its competitors at which coordinating increased base  
22 passenger fares were agreed upon (*see* ¶¶111-180), participating directly or indirectly in  
23 meetings with competitors at which passenger fare pricing was discussed and then benchmarking  
24 fares off of the prices agreed upon at those meetings (*see* ¶¶83-105), participating directly or  
25 indirectly in meetings with competitors at which collectively increasing fuel surcharges was  
26 agreed upon as a means of dealing with rising fuel costs (*see* ¶¶185, 188, 204-235), raising fares  
27 and surcharges more than necessary to offset increased fuel costs even though such actions are  
28 not consistent with economic theory (*see* ¶¶237-244), instituting surcharges in close proximity to

1 those of its competitors in sharp contrast to conduct that occurred prior to the Class Period (*see*  
2 ¶¶191-203), and participating directly or indirectly in anticompetitive meetings with other  
3 Defendants concerning the fixing of prices in the closely related air-cargo market (*see* ¶¶245-  
4 293). Industry analysts based in Asia/Oceania acknowledge that anticompetitive conduct  
5 “overhangs” the airline passenger transportation industry, particularly in light of lax antitrust  
6 enforcement in Asia (*see* ¶105).

7 36. Defendant SAS AB (“SAS”) is a company based in Scandinavia with its principal  
8 place of business located at Frösundaviks Allé 1, Solna, SE-195 87, Stockholm, Sweden. SAS  
9 conducts passenger air transportation throughout the world, including flights to and from the  
10 United States and this District. Defendant SAS Airlines participated in the conspiracy alleged  
11 herein by, among other things, sharing commercially sensitive information through its code-  
12 sharing agreements with competitors (*see* ¶¶54-65), participating directly or indirectly in  
13 industry meetings that have been deemed by antitrust officials in the U.S., Europe, and Australia  
14 to be inherently anticompetitive and not in the best interests of competitive airline markets (*see*  
15 ¶¶66-71, 85, 89-99), participating in meetings hosted by regional trade associations in which  
16 anticompetitive conduct is encouraged and/or tolerated (*see* ¶¶72-76), participating directly or  
17 indirectly in meetings with its competitors at which coordinating increased base passenger fares  
18 were agreed upon (*see* ¶¶111-180), participating directly or indirectly in meetings with  
19 competitors at which passenger fare pricing was discussed and then benchmarking fares off of  
20 the prices agreed upon at those meetings (*see* ¶¶83-105), participating directly or indirectly in  
21 meetings with competitors at which collectively increasing fuel surcharges was agreed upon as a  
22 means of dealing with rising fuel costs (*see* ¶¶185, 188, 204-235), raising fares and surcharges  
23 more than necessary to offset increased fuel costs even though such actions are not consistent  
24 with economic theory (*see* ¶¶237-244), instituting surcharges in close proximity to those of its  
25 competitors in sharp contrast to conduct that occurred prior to the Class Period (*see* ¶¶191-203),  
26 and participating directly or indirectly in anticompetitive meetings with other Defendants  
27 concerning the fixing of prices in the closely related air-cargo market (*see* ¶¶245-293). Industry  
28 analysts based in Asia/Oceania acknowledge that anticompetitive conduct “overhangs” the

1 airline passenger transportation industry, particularly in light of lax antitrust enforcement in Asia  
2 (*see* ¶105).

3 37. Defendant Singapore Airlines Limited (“Singapore Airlines”) is a Singaporean  
4 company with its principal place of business located at Airline House, 25 Airline Rd., 819829  
5 Singapore. Singapore Airlines conducts passenger air transportation throughout the world,  
6 including flights to and from the United States and this District. Defendant Singapore Airlines  
7 participated in the conspiracy alleged herein by, among other things, sharing commercially  
8 sensitive information through its code-sharing agreements with competitors (*see* ¶¶54-65),  
9 participating directly or indirectly in industry meetings that have been deemed by antitrust  
10 officials in the U.S., Europe, and Australia to be inherently anticompetitive and not in the best  
11 interests of competitive airline markets (*see* ¶¶66-71, 85, 89-99), participating in meetings hosted  
12 by regional trade associations in which anticompetitive conduct is encouraged and/or tolerated  
13 (*see* ¶¶72-76), participating directly or indirectly in meetings with its competitors at which  
14 coordinating increased base passenger fares were agreed upon (*see* ¶¶111-180), participating  
15 directly or indirectly in meetings with competitors at which passenger fare pricing was discussed  
16 and then benchmarking fares off of the prices agreed upon at those meetings (*see* ¶¶83-105),  
17 participating directly or indirectly in meetings with competitors at which collectively increasing  
18 fuel surcharges was agreed upon as a means of dealing with rising fuel costs (*see* ¶¶185, 188,  
19 204-235), raising fares and surcharges more than necessary to offset increased fuel costs even  
20 though such actions are not consistent with economic theory (*see* ¶¶237-244), instituting  
21 surcharges in close proximity to those of its competitors in sharp contrast to conduct that  
22 occurred prior to the Class Period (*see* ¶¶191-203), and participating directly or indirectly in  
23 anticompetitive meetings with other Defendants concerning the fixing of prices in the closely  
24 related air-cargo market (*see* ¶¶245-293). Industry analysts based in Asia/Oceania acknowledge  
25 that anticompetitive conduct “overhangs” the airline passenger transportation industry,  
26 particularly in light of lax antitrust enforcement in Asia (*see* ¶105).

27 38. Defendant Swiss International AG (“Swiss International”) is a Swiss company  
28 with its principal place of business located at Aeschenvorstadt 4, CH-4051 Basel, Switzerland

1 4002. Swiss International conducts passenger air transportation throughout the world, including  
2 flights to and from the United States and this District. Defendant Swiss International  
3 participated in the conspiracy alleged herein by, among other things, sharing commercially  
4 sensitive information through its code-sharing agreements with competitors (*see* ¶¶54-65),  
5 participating directly or indirectly in industry meetings that have been deemed by antitrust  
6 officials in the U.S., Europe, and Australia to be inherently anticompetitive and not in the best  
7 interests of competitive airline markets (*see* ¶¶66-71, 85, 89-99), participating in meetings hosted  
8 by regional trade associations in which anticompetitive conduct is encouraged and/or tolerated  
9 (*see* ¶¶72-76), participating directly or indirectly in meetings with its competitors at which  
10 coordinating increased base passenger fares were agreed upon (*see* ¶¶111-180), participating  
11 directly or indirectly in meetings with competitors at which passenger fare pricing was discussed  
12 and then benchmarking fares off of the prices agreed upon at those meetings (*see* ¶¶83-105),  
13 participating directly or indirectly in meetings with competitors at which collectively increasing  
14 fuel surcharges was agreed upon as a means of dealing with rising fuel costs (*see* ¶¶185, 188,  
15 204-235), raising fares and surcharges more than necessary to offset increased fuel costs even  
16 though such actions are not consistent with economic theory (*see* ¶¶237-244), instituting  
17 surcharges in close proximity to those of its competitors in sharp contrast to conduct that  
18 occurred prior to the Class Period (*see* ¶¶191-203), and participating directly or indirectly in  
19 anticompetitive meetings with other Defendants concerning the fixing of prices in the closely  
20 related air-cargo market (*see* ¶¶245-293). Industry analysts based in Asia/Oceania acknowledge  
21 that anticompetitive conduct “overhangs” the airline passenger transportation industry,  
22 particularly in light of lax antitrust enforcement in Asia (*see* ¶105).

23 39. Defendant Thai Airways International Public Co., Ltd. (“Thai Airways”) is a Thai  
24 company with its principal place of business located at 89 Vibhavadi-Rangsit Rd., Bangkok,  
25 10900, Thailand. Thai Airways conducts passenger air transportation throughout the world,  
26 including flights to and from the United States and this District. Defendant Thai Airways  
27 participated in the conspiracy alleged herein by, among other things, sharing commercially  
28 sensitive information through its code-sharing agreements with competitors (*see* ¶¶54-65),

1 participating directly or indirectly in industry meetings that have been deemed by antitrust  
2 officials in the U.S., Europe, and Australia to be inherently anticompetitive and not in the best  
3 interests of competitive airline markets (*see* ¶¶66-71, 85, 89-99), participating in meetings hosted  
4 by regional trade associations in which anticompetitive conduct is encouraged and/or tolerated  
5 (*see* ¶¶72-76), participating directly or indirectly in meetings with its competitors at which  
6 coordinating increased base passenger fares were agreed upon (*see* ¶¶111-180), participating  
7 directly or indirectly in meetings with competitors at which passenger fare pricing was discussed  
8 and then benchmarking fares off of the prices agreed upon at those meetings (*see* ¶¶83-105),  
9 participating directly or indirectly in meetings with competitors at which collectively increasing  
10 fuel surcharges was agreed upon as a means of dealing with rising fuel costs (*see* ¶¶185, 188,  
11 204-235), raising fares and surcharges more than necessary to offset increased fuel costs even  
12 though such actions are not consistent with economic theory (*see* ¶¶237-244), instituting  
13 surcharges in close proximity to those of its competitors in sharp contrast to conduct that  
14 occurred prior to the Class Period (*see* ¶¶191-203), and participating directly or indirectly in  
15 anticompetitive meetings with other Defendants concerning the fixing of prices in the closely  
16 related air-cargo market (*see* ¶¶245-293). Industry analysts based in Asia/Oceania acknowledge  
17 that anticompetitive conduct “overhangs” the airline passenger transportation industry,  
18 particularly in light of lax antitrust enforcement in Asia (*see* ¶105).

19 40. Defendant Vietnam Airlines (“Vietnam Airlines”) is a Vietnamese corporation  
20 with its principal place of business located at 200 Nguyen Son Str., Long Bien District, Hanoi  
21 City, Vietnam. Vietnam Airlines conducts passenger air transportation throughout the world,  
22 including flights to and from the United States and this District. Defendant Vietnam Airlines  
23 participated in the conspiracy alleged herein by, among other things, sharing commercially  
24 sensitive information through its code-sharing agreements with competitors (*see* ¶¶54-65),  
25 participating directly or indirectly in industry meetings that have been deemed by antitrust  
26 officials in the U.S., Europe, and Australia to be inherently anticompetitive and not in the best  
27 interests of competitive airline markets (*see* ¶¶66-71, 85, 89-99), participating in meetings hosted  
28 by regional trade associations in which anticompetitive conduct is encouraged and/or tolerated

1 (*see* ¶¶72-76), participating directly or indirectly in meetings with its competitors at which  
2 coordinating increased base passenger fares were agreed upon (*see* ¶¶111-180), participating  
3 directly or indirectly in meetings with competitors at which passenger fare pricing was discussed  
4 and then benchmarking fares off of the prices agreed upon at those meetings (*see* ¶¶83-105),  
5 participating directly or indirectly in meetings with competitors at which collectively increasing  
6 fuel surcharges was agreed upon as a means of dealing with rising fuel costs (*see* ¶¶185, 188,  
7 204-235), raising fares and surcharges more than necessary to offset increased fuel costs even  
8 though such actions are not consistent with economic theory (*see* ¶¶237-244), instituting  
9 surcharges in close proximity to those of its competitors in sharp contrast to conduct that  
10 occurred prior to the Class Period (*see* ¶¶191-203), and participating directly or indirectly in  
11 anticompetitive meetings with other Defendants concerning the fixing of prices in the closely  
12 related air-cargo market (*see* ¶¶245-293). Industry analysts based in Asia/Oceania acknowledge  
13 that anticompetitive conduct “overhangs” the airline passenger transportation industry,  
14 particularly in light of lax antitrust enforcement in Asia (*see* ¶105).

#### 15 AGENTS

16 41. The acts alleged to have been done by Defendants were authorized, ordered, or  
17 performed by their directors, officers, managers, agents, employees, or representatives while  
18 actively engaged in the management of Defendants’ affairs.

#### 19 NON-DEFENDANT, NAMED CO-CONSPIRATORS

20 42. On information and belief, at all relevant times, other airlines, entities, and/or  
21 persons, including, but not limited to, Northwest Airlines Corporation (“Northwest”), United  
22 Airlines, Inc. (“UAL”), American Airlines, Inc. (“American Airlines”), Delta Airlines, Inc.  
23 (“Delta”), KAL, Asiana, Virgin Atlantic Airways Ltd. (“Virgin Atlantic”), and International Air  
24 Transport Association (“IATA”) willingly conspired with Defendants in their unlawful restraint  
25 of trade. All averments of wrongdoing alleged herein against Defendants are also alleged against  
26 these non-defendant co-conspirators.



1 **UNNAMED CO-CONSPIRATORS**

2 43. On information and belief, at all relevant times, other airlines, entities, and/or  
3 persons willingly conspired with Defendants and the non-defendant, named co-conspirators in  
4 their unlawful restraint of trade. All averments of wrongdoing alleged herein against Defendants  
5 and the non-defendant co-conspirators are also alleged against these unnamed co-conspirators as  
6 though set forth at length.

7 **INTERSTATE TRADE AND COMMERCE**

8 44. Throughout the Class Period, there was a continuous and uninterrupted flow of  
9 invoices for payment, payments, and other documents essential to the provision of passenger air  
10 transportation transmitted in interstate and foreign trade and commerce between and among  
11 offices of Defendants and their customers located throughout the world, including throughout the  
12 United States.

13 45. Throughout the Class Period, Defendants transported substantial numbers of  
14 passengers, in a continuous and uninterrupted flow of interstate and foreign trade and commerce,  
15 between various airports in the United States and foreign airports.

16 46. Throughout the Class Period, Defendants' unlawful activities, as described herein,  
17 took place within and substantially affected the flow of interstate and foreign trade and  
18 commerce and had a direct, substantial and reasonably foreseeable effect upon commerce in the  
19 United States and elsewhere.

20 **THE FOREIGN TRADE AND ANTITRUST IMPROVEMENT ACT IS INAPPLICABLE**

21 47. The Foreign Trade And Antitrust Improvement Act ("FTAIA") (15 U.S.C. §6(a))  
22 does not shield defendants' conduct here from liability under the Sherman and Clayton Acts.

23 48. Defendants are engaged in the business of delivering air passengers from place to  
24 place, including delivery of air passengers from points in the United States to points in  
25 Asia/Oceania and vice versa. Pursuant to the FTAIA, the delivery of air passengers from  
26 airports in Asia/Oceania to airports in the United States and vice versa constitutes or involves  
27 import trade or import commerce. The bargained for service provided by the Defendants is the  
28 transportation of people from one place to another, not the ticket. Indeed, the Defendants

1 themselves acknowledge this by marketing the quality of their passenger flight services and the  
2 excitement of international travel. *See, e.g.* [http://www.qantas.com.au/info/flying/qantas-](http://www.qantas.com.au/info/flying/qantas-experience)  
3 [experience](http://www.qantas.com.au/info/flying/qantas-experience) (“no matter how far you travel, you’ll enjoy superior service from departure to  
4 arrival”); <http://www.airnewzealand.com/on-the-plane/economy/default.htm> (“[o]ur friendly,  
5 professional crew will make sure you're comfortable throughout your journey”);  
6 [http://www.singaporeair.com/saa/en\\_UK/content/exp/cabin/index.jsp?](http://www.singaporeair.com/saa/en_UK/content/exp/cabin/index.jsp?) (“[o]ur world-class  
7 service, along with our industry leading cabins, and young and modern fleet are cornerstones of  
8 our success. Experience the romance of travel as it should be with our award winning cabins.”);  
9 [http://www.thaiair.com/thai-services/in-the-air/en/Economy%20class/economy-class-](http://www.thaiair.com/thai-services/in-the-air/en/Economy%20class/economy-class-services.htm)  
10 [services.htm](http://www.thaiair.com/thai-services/in-the-air/en/Economy%20class/economy-class-services.htm) (“the dynamic growth and unrivalled reputation of this airline was inspired  
11 especially by one outstanding feature – the superior quality of its Economy Class, offering levels  
12 of space, comfort and service unmatched by other airlines”).

13 49. Moreover, pursuant to 15 U.S.C. §6(a)(1)-(2), the delivery of air passengers from  
14 airports in Asia/Oceania to airports in the United States and vice versa has a direct, substantial,  
15 reasonably foreseeable, and proximate effect: (a) on trade or commerce that is not trade or  
16 commerce with foreign nations, and/or on import trade or import commerce with foreign nations,  
17 or (b) on export trade or export commerce with foreign nations, of a person engaged in such  
18 trade or commerce in the United States.

19 50. The direct, substantial, reasonably foreseeable, and proximate effect of the  
20 anticompetitive conduct set forth below is the type of harm prohibited by the Sherman Act.

21 51. For example, U.S. residents and citizens paid more for air passenger  
22 transportation services, whether those services were purchased in the United States or elsewhere  
23 in the world. As another example of the direct, substantial, reasonably foreseeable, and  
24 proximate effect that Defendants’ alleged conduct has on United States trade and commerce is  
25 the fact that travelers using price-fixed air transportation services are able to allocate a smaller  
26 fraction of their total travel budget to the purchase of commercial goods and services during their  
27 stay in the United States. The alleged conduct also injures any foreign national that purchased  
28 air transportation services in the United States. In addition, the inflated fares charged by

1 Defendants for air passenger transportation from Asia/Oceania to the United States is  
2 inextricably bound up with and dependent upon the fares charged by Defendants for air  
3 transportation from the United States to Asia/Oceania.

4 52. Moreover, as discussed below, a number of price-fixing agreements were reached  
5 using United States dollars as the benchmark currency.

## 6 **FACTUAL ALLEGATIONS**

### 7 **A. Aspects Of The Airline Industry That Facilitate The Alleged Conspiracy**

8 53. Most of the Defendants are the dominant international airlines based in Asia and  
9 Oceania, and provide passenger air transportation services on international routes between the  
10 United States and Asia/Oceania.

#### 11 **1. The Airline Industry's Use Of Airline Alliances**

12 54. In recent years, the Defendants have established highly integrated alliances that  
13 substantially deviate from the norm in most competitive industries.

14 55. The European Competition Authorities (“ECA”) recently prepared a working  
15 paper entitled “Code-sharing agreements in scheduled passenger air transport—The European  
16 Competition Authorities’ perspective.” The ECA explained the nature and purpose of code-  
17 sharing agreements between airlines:

18 A code-sharing agreement is an agreement between two or more  
19 air carriers whereby the carrier operating a given flight allows one  
20 or more other carriers to market this flight and issue tickets for it as  
21 if they were operating the flight themselves. In practice, these  
22 other carriers add their own carrier designator code and flight  
23 number onto that of the operating carrier. Code share partners also  
24 agree on how they compensate each other for the seats they sell on  
25 one another’s flights.

26 Code-sharing agreements between airlines may go beyond a mere  
27 sharing of the designator codes and may be supplemented by other  
28 elements of cooperation: *e.g.* coordination of the frequent flyer  
programmes, route and schedule planning, coordination of  
marketing, sales and distribution networks, joint pricing, sharing of  
facilities and services at airports, integration and development of  
information systems etc.

1           56.       These code-sharing agreements blur the line between partner and competitor.

2   Indeed, the ECA continued:

3                   [A] code-sharing agreement between two previously competing  
4                   airlines may significantly dampen competition on the routes  
5                   covered by the agreement which may lead to price increases.  
6                   **Given the multi-market nature of the airline industry, where**  
7                   **airlines compete on various routes, the exchange of**  
8                   **commercially sensitive information that might take place in a**  
9                   **code-sharing agreement could favour tacit collusion between**  
10                   **the code-share partners also with respect to routes not covered**  
11                   **by the agreement.** (Emphases added).

12           57.       Defendants Air New Zealand, ANA, Lufthansa, SAS, Singapore Airlines, and  
13   Thai Airways, among others, including non-defendant co-conspirators Asiana and UAL, operate  
14   jointly through the Star Alliance, and have established agreements in which they code share seats  
15   on each other's flights and share in the revenue generated.

16           58.       Another major industry alliance, Oneworld, includes Defendants JAL, Cathay  
17   Pacific, Qantas, British Airways, and others. These Defendants have established agreements in  
18   which they code share seats on each other's flights and share in the revenue generated.  
19   Moreover, during the Class Period, members of Oneworld pressured at least one of the  
20   Defendants to combine separate APEX fares into a single APEX (Advanced Purchase Excursion)  
21   fare. (APEX fares are discussed below in greater detail.)

22           59.       The third major alliance is SkyTeam. Its members include KAL, Air France,  
23   KLM, Continental, and others. These Defendants and non-defendant co-conspirators have  
24   established agreements in which they code share seats on each other's flights and share in the  
25   revenue generated.

26           60.       In addition, many of the Defendants and non-defendant co-conspirators are  
27   participants in a multitude of independent code-sharing arrangements outside of their primary  
28   alliances, including, but not limited to, the following agreements: Air New Zealand and JAL;  
Air New Zealand and Qantas (never implemented because the Australian Competition &  
Consumer Commission ("ACCC") determined that the agreement was anticompetitive); Cathay  
Pacific and Malaysian Airlines; EVA and ANA; EVA and Qantas; Malaysian Airlines and ANA;

1 Malaysian Airlines and Singapore Airlines; Malaysian Airlines and Thai Airways; Asiana and  
2 Qantas; Thai Airways and China Airlines; Vietnam Airlines and JAL; Vietnam Airlines and  
3 China Airlines; Vietnam Airlines and Cathay Pacific; Vietnam Airlines and Qantas; Vietnam  
4 Airlines and Philippine Airlines; Philippine Airlines and Cathay Pacific; Philippine Airlines and  
5 Malaysian Airlines; Lufthansa and Swiss International; Swiss International and Singapore  
6 Airlines; Swiss International and Thai Airways; Swiss International and UAL; Air France and  
7 Qantas; Air France and JAL; KLM and JAL; KLM and Malaysian Airlines; KLM and  
8 Northwest; KLM and Qantas; Continental Airlines and EVA; Northwest and Air France;  
9 Northwest and Continental; Northwest and KLM; and Northwest and Delta.

10 61. According to testimony by the DOJ's Antitrust Division before the Senate  
11 Committee on Commerce, Science and Transportation:

12 [A]irline marketing alliances . . . are essentially joint ventures  
13 between airlines. These alliances fall somewhere between an  
14 outright merger and a traditional arm's-length interline agreement.  
15 Marketing alliances come in all shapes and sizes . . . Alliances  
16 involving code-sharing are in many respects the most  
17 controversial . . . . Code sharing agreements also have the  
18 potential to be anticompetitive. They can result in market  
19 allocation, capacity limitations, higher fares, or foreclosure of  
20 rivals from markets, all to the injury of consumers . . . the greatest  
21 threat to competition comes when two of very few airlines that  
22 compete in a market enter into a code-sharing agreement in that  
23 market.

19 62. Antitrust regulators have just begun to step up their oversight of these far reaching  
20 alliances. For example, the Directorate General (Competition) for the European Commission has  
21 opened a "priority" investigation into the competitive effects of certain agreements between  
22 airlines on trans-Atlantic routes. On or about April 20, 2009, *Bloomberg News* reported that  
23 "Jonathan Todd, a commission spokesman, told reporters that the commission doesn't open  
24 probes on a 'routine basis.'" "Based on what commission has seen so far, 'we think that there  
25 may be breaches of the antitrust rules because of the very extensive levels of cooperation on  
26 trans-Atlantic routes between these airlines,' Todd said."

1           63.       On July 1, 2009, Neelie Kroes, the European Commission’s Competition  
2 Commissioner, raised “serious concerns” about the proposed merger of Lufthansa and Austrian  
3 Airlines.

4           64.       In addition, on June 26, 2009, the DOJ announced that it was opposed to a  
5 proposal by the Star Alliance to add Continental as a member. The DOJ determined that the  
6 sweeping request was anticompetitive and asked the United States Department of Transportation  
7 (“DOT”) to reconsider its tentative approval of the agreement.

8           65.       The Defendants’ extensive use of code-sharing agreements exposes them to each  
9 others’ commercially sensitive information and therefore reduces strategic uncertainty for each  
10 of them within the marketplace.

## 11           **2.       The Industry’s Use Of Trade Associations**

12           66.       The Defendants’ alliance and code-sharing arrangements are not the only  
13 opportunities for close interaction between the Defendants. Defendants’ personnel also  
14 participate in various trade associations with each other, including the following trade  
15 associations relevant to this litigation: the IATA, the Association of Asia-Pacific Airlines  
16 (“AAPA”), and the Bureau of Airline Representatives (“BARs”) for Hong Kong, Thailand,  
17 Philippines, and Malaysia, among other countries.

18           67.       Each Defendant is a member of IATA. IATA is an international trade body  
19 representing over 230 airlines.

20           68.       IATA has served as a forum for its members to discuss rising fuel costs and the  
21 need for measures to mitigate such costs, such as increasing fares or levying fuel surcharges. In  
22 fact, as detailed below, IATA has specific committees, such as the IATA Tariff Coordination  
23 Conferences, whose express purpose is to collectively set air passenger fares throughout the  
24 world, including between the United States and Asia/Oceania. These Tariff Coordination  
25 Conferences have been condemned as anticompetitive. For example, on November 9, 2006, the  
26 ACCC noted that **“IATA Passenger Tariff Coordinating Conferences provide an  
27 opportunity for the sharing of knowledge which given the roles of the airline  
28 representatives attending, the clearly stated objectives of the conferences and the matters**

1 **being discussed would not be in the interests of competitive air passenger markets.”**

2 (Emphases added).

3 69. During the Class Period, one of IATA’s express goals was “[t]o assist the  
4 **industry to achieve adequate levels of profitability.”** (Emphases added). That goal is  
5 repeatedly driven home to IATA’s members, including Defendants. Giovanni Bisignani,  
6 Director General and CEO of IATA, gave a speech in Paris on June 5, 2006 in which he urged  
7 the industry to “manage capacity” in order to increase profitability:

8 Let’s start at home. Sometimes we have been our own worst  
9 enemy—chasing growth instead of profitability. As discussed, we  
10 changed after 2001. But let’s be frank. We are now benefiting  
11 from a strong global economy. And record aircraft orders could be  
our Achilles heel if we stop managing capacity carefully.

12 70. Bisignani made similar comments a year earlier, on May 30, 2005, in Tokyo,  
13 when he urged IATA’s members to limit seating capacity: “We focused too much on market  
14 share. We did not effectively match capacity to demand.”

15 71. IATA’s goal of assisting the industry achieve “adequate” levels of profitability is  
16 not the type of mission statement one would normally expect an industry trade association to  
17 adopt in order to enhance competition. Indeed, Bisignani’s comments are patently  
18 anticompetitive—he is repeatedly exhorting individual market participants to refrain from  
19 vigorous competition with each other in order to facilitate enhanced profitability for all. And, it  
20 is basic microeconomic theory that “managing” supply provides opportunities to increase and/or  
21 stabilize prices.

22 72. In addition to their general memberships in IATA, Singapore Airline’s CEO,  
23 Chew Choon Seng, and JAL’s former President, Toshiyuki Shinmachi, served on IATA’s Board  
24 during the Class Period. They are also actively involved in AAPA, as are other Defendants (Air  
25 New Zealand, ANA, Cathay Pacific, China Airlines, EVA, KAL, Malaysian Airlines, Philippine  
26 Airlines, Qantas, Thai Airways, and Vietnam Airlines).

1           73.     Like IATA, the AAPA has served as a forum for its members to discuss rising  
2 fuel costs and the need for measures to mitigate such costs, such as increasing fares or levying  
3 fuel surcharges.

4           74.     Like IATA, the AAPA has a long history of emphasizing collusion over  
5 competition. For example, at the AAPA's November 15, 2002, annual meeting, the chief  
6 executive officer of Philippine Airlines, Lucio Tan, declared: "The issues confronting our  
7 industry today are critical and pressing." Tan cited security threats, declining traffic, high  
8 insurance premiums and rising fuel costs as among the major challenges facing the industry. "To  
9 effectively address these issues, we need our combined strategies," Tan explained. "We need to  
10 direct our efforts towards one goal—survival. **And in order to survive, competition must be**  
11 **replaced by cooperation.**" (Emphases added).

12           75.     In anticipation of AAPA's annual meeting, China Airlines similarly stated in  
13 November 2004 that:

14                   The 48th Assembly of Presidents will take place at the Grand  
15 Hyatt Taipei November 25 and 26. Important airline industry  
16 issues, such as US regulatory policies, rising fuel costs, hedging  
17 strategies, insurance, war risks and low-cost carriers, will be  
18 reviewed and discussed. **In the past, the Assembly has helped**  
**maintain a mutual understanding and a common purpose**  
**among airlines in the Asia Pacific region.** (Emphases added).

19           76.     In addition, the Defendants are participants in BAR organizations in Hong Kong,  
20 Thailand, the Philippines, and Malaysia. Until very recently, Hong Kong did not have a  
21 competition law that prevented Defendants from tacitly or expressly reaching agreements on  
22 passenger fares, including surcharges. Moreover, antitrust regulators in these and other Asian  
23 countries have not, until very recently, aggressively enforced their countries' respective  
24 competition rules. These BAR organizations have served as forums for Defendants to discuss  
25 and agree on passenger fares and fuel surcharges. Indeed, the Thailand BAR describes itself as a  
26 "forum for member airlines to deal with common interests and issues and represents the interests  
27 of member airlines to government, official organizations and other parties interested in the  
28



1 aviation industry in Thailand. This includes maintaining close liaison on a regular basis with the  
2 International Air Transport Association (IATA), the IATA Billing and Settlement Plan (BSP),  
3 the Air Cargo Business Association (ACBA) and other industry bodies.” As of 2006, the  
4 Thailand BAR had 56 members and 4 associate members. The Thailand BAR’s executive  
5 committee included Thai Airways, Cathay Pacific, Singapore Airlines, Swiss International, SAS,  
6 Qantas, British Airways, Northwest, and Emirates. An executive from Swiss International was  
7 appointed president of the Thailand BAR as of 2006.

8 77. In November 2007, shortly after the first of these lawsuits was filed, BAR HK  
9 uploaded onto its website a new policy prohibiting anticompetitive conduct, which provides in  
10 relevant part as follows:

11 Participants shall comply with the following general principles in  
12 respect of all their activities within BAR HK:

13 Participants’ competitive behaviour should remain independent.  
14 Participants’ commercial decisions must be made unilaterally and  
15 independently from that of their competitors. Participants will not  
engage in express or tacit agreements or understandings to reduce  
competition or any form of collusion.

16 78. In summary, the highly integrated economic agreements between the Defendants  
17 and their various code-share and alliance partners, and the relationships fostered by Defendants’  
18 key employees at industry meetings concerning fares and surcharges reinforce and facilitate the  
19 conspiracy alleged below.

## 20 **B. The Conspiracy**

21 79. Beginning no later than January 1, 2000, the Defendants and their co-conspirators  
22 began increasing the price of passenger air transportation on international air passengers that  
23 were in substantial lockstep both in their timing and amount. The close timing and amount of  
24 Defendants’ increases were not coincidences, but rather the product of a collusive agreement to  
25 fix, raise, maintain, and stabilize the prices of base passenger fares and fuel surcharges on  
26 international flights.

27 80. Base fares for multi-segment travel—*e.g.* a flight from the United States to New  
28 Zealand to Western Samoa—are constructed using a methodology established by the Defendants

1 that allows for ready determination of the portion of the total fare allocated to each segment of  
2 travel.

3 81. The fuel surcharges referenced herein are applied “per segment” or “per coupon”  
4 —*i.e.*, they apply to a discreet and identifiable segment of travel. Therefore, these fuel  
5 surcharges apply equally, for example, to any passenger traveling from San Francisco to Japan  
6 regardless of whether San Francisco was the point of origin for the trip, whether Japan was the  
7 final destination, or whether the flight from San Francisco to Japan was only one segment of a  
8 multi-segment trip.

9 82. Neither the DOT nor United States law allows Defendants to participate in  
10 coordinated efforts to set the price fares and surcharges for air transportation to and from the  
11 United States, except with respect to the limited grants of immunity discussed herein.

12 **1. Base Passenger Fares Are Set In An Anticompetitive Environment**

13 **a. Immunized IATA Fares**

14 83. IATA and its airline members have historically been the beneficiaries of limited  
15 antitrust immunity from a number of worldwide competition authorities, including the DOT, the  
16 ACCC, and the European Union. These grants of immunity allowed IATA and its member  
17 airlines to meet and agree on fares for interline (a.k.a. multi-airline) travel throughout the world.

18 84. Immunized fares (hereinafter referred to as “IATA fares”) are set during meetings  
19 between member airlines at regularly scheduled IATA Tariff Coordination Conferences and are  
20 issued in fare classes P and F (First Class), J and C (Business Class), and Y (Economy Class),  
21 although not all fares in each of those service classes are immunized. Moreover, the agreements  
22 reached at IATA Tariff Conferences cannot be implemented until all governmental approvals,  
23 including approval from the DOT, have been obtained.

24 85. Each of the Defendants participates in these Tariff Coordination Conferences.  
25 *See* <http://www.iata.org/whatwedo/passenger/tariffs/tcparticipants.htm>.

26 86. In a November 9, 2006, Determination by the ACCC concerning IATA’s  
27 Application for Revocation and Substitution of Authorisation A90435 (the “ACCC  
28 Determination”), the ACCC summarized the way in which IATA fares are established:

1 The interaction of elements which constitute the IATA interline  
2 system for the transport of passenger and cargo occurs as follows:

- 3 A. Airlines agree between each other that they will accept  
4 each others' passenger tickets and cargo air waybills where  
5 those tickets and waybills incorporate an IATA  
6 interlineable fare or rate (IATA Multilateral Interline  
7 Agreements).
- 8 B. IATA interline fares for passengers and rates for cargo are  
9 determined jointly by airlines at IATA Tariff Coordinating  
10 Conferences (Passenger Tariff Coordination and Cargo  
11 Tariff Coordination).
- 12 C. Airlines agree how revenue from the sale of a passenger  
13 ticket with an IATA interlineable fare or a cargo air waybill  
14 with an IATA interlineable rate is to be apportioned  
15 between the carriers who accept the waybill as part of an  
16 interline journey (IATA Prorate System).
- 17 D. Revenue from a waybill with an interline rate is nominally  
18 attributed to the primary carrier, the carrier undertaking the  
19 first leg of the journey, and then distributed amongst other  
20 participating carriers using proportions agreed with the  
21 Prorate System (IATA Clearing House).

22 87. Not surprisingly, IATA fares are generally the most expensive fare available in  
23 each service class.

24 88. In recent years, competition authorities in the United States, Europe, and Australia  
25 have moved to scale back the limited grant of antitrust immunity provided to IATA due to  
26 concerns about the inherently anticompetitive nature of the Tariff Coordination Conferences.

27 89. In a July 5, 2006 "Order to Show Cause" concerning why IATA's antitrust  
28 immunity should not be revoked, the DOT examined a handful of minutes from the Tariff  
Coordination Conferences and noted that the conference structure has led to substantial  
anticompetitive abuse by member airlines, including abuse by several Defendants and their co-  
conspirators.

90. For example, the DOT noted:

**A participating airline will at times urge competing airlines to raise fares in their markets in order to avoid undercutting the fares charged in the airline's own principal markets. See, . . . IATA Application, Docket 2004-20051, Minutes of October 25-November 4, 2004, Conference at para. 147 (Japan Air Lines**

1 asked for higher fares in U.S.-Korean markets because the  
2 existing fares were undercutting U.S.-Japan fares). (Emphases  
3 added).

4 91. The DOT, in its “Order to Show Cause” concluded:

5 The chairman [at IATA Tariff Conferences] does not otherwise  
6 state that the discussions are subject to any antitrust or  
7 competition law restraints, except insofar as our alliance condition  
8 bars alliance members from participating in the discussions of  
9 fares and rates for alliance markets . . . . **The minutes thus show  
10 that the IATA members do not believe that their discussions  
11 are subject to the antitrust law prohibitions normally imposed  
12 on pricing discussions between competitors.**

13 \* \* \*

14 In these circumstances, we think the IATA by-laws reduce  
15 competition. This tentative finding is consistent with the  
16 established antitrust law principle that, with rare exceptions,  
17 discussions and agreements on pricing between competitors  
18 reduce competition. (Emphases added).

19 92. Moreover, following each Tariff Coordination Conference, IATA publishes and  
20 distributes the names, e-mail addresses, and telephone numbers of each of the participants. This  
21 practice facilitates communication between employees of the Defendants outside of the Tariff  
22 Coordination Conferences. It is neither necessary nor appropriate for the various attendees at the  
23 Tariff Coordination Conferences—whose express duties are to collectively set fares—to be  
24 communicating with each other outside of formal IATA channels.

25 93. On June 3, 2005, the ACCC preliminarily concluded that “while there may not be  
26 any explicit agreement on market fares between airline representatives at IATA Tariff  
27 Coordination Conferences, it is likely given the roles of the representatives, the clearly stated  
28 objectives of the conferences and the matters being discussed that the sharing of knowledge that  
occurs could be conducive to coordinated conduct in relation to market fares and would not be in  
the interests of competitive airline markets.”

94. On November 9, 2006, the ACCC announced that all immunity for IATA  
activities will be phased out by June 30, 2008, noting again that “[t]he ACCC believes that  
**IATA Passenger Tariff Coordinating Conferences provide an opportunity for the sharing  
of knowledge which given the roles of the airline representatives attending, the clearly**

1 **stated objectives of the conferences and the matters being discussed would not be in the**  
2 **interests of competitive air passenger markets.”** (Emphases added).

3 95. Similarly, on or about March 14, 2005, the Directorate General (Competition) of  
4 the European Commission found that the IATA Tariff Conferences present a “major risk” for  
5 anticompetitive conduct by the member airlines. The Directorate General stated:

6 To conclude, the organisation of **IATA Tariff Conferences . . .**  
7 **provides an opportunity for competing undertakings to**  
8 **regularly communicate on commercially sensitive**  
9 **information, in particular pricing and sale conditions. Such**  
10 **regular communication helps to eliminate strategic**  
11 **uncertainty and thereby raises significantly the risk of**  
12 **collusion between airlines.** Airlines can agree on future conduct  
and generally coordinate tacitly or explicitly their behaviour.  
IATA Passenger Tariff Conferences therefore appear to present a  
major risk to restrict competition. (Emphases added).

12 96. The Commission further noted:

13 By adopting similar terms and conditions [for non-immunized  
14 fares], IATA members develop similar tariff structures. This  
15 makes it easier for competing carriers to monitor each other’s  
16 fares. Detection on deviation from agreed upon conduct is  
quicker. This reinforces the stability of possible collusive  
agreements between competing airlines, whether tacit or explicit.

17 The standardisation of pricing rules is suspicious because it  
remains unclear how this benefits consumers.

18 97. On October 3, 2006, the European Commission published (EC) Commission  
19 Regulation 1459/2006, which phased out antitrust immunity to IATA and its member airlines,  
20 including the elimination of immunity for Tariff Coordination Conferences concerning the routes  
21 between Europe and the United States and Australia on June 30, 2007 and between Europe and  
22 the rest of the world on October 31, 2007.

23 98. On March 30, 2007, the DOT entered a final order disapproving IATA’s  
24 Provisions for the Conduct of the IATA Traffic Coordination Conferences insofar as the  
25 agreement authorized United States and foreign carriers to discuss and agree upon fares, rates,  
26 conditions of service, and price and rate applicability conditions, either directly or indirectly or  
27 through tariff conferences or other related means of information sharing for passenger and cargo  
28

1 air services: (i) between the United States and the European Union (together with Iceland,  
2 Norway, Switzerland, and Liechtenstein); (ii) between the United States and the overseas  
3 territories of the member states of the European Union subject to an air services agreement  
4 between the United States and a member state; and (iii) between the United States and Australia  
5 (the “Final Order”). *See* IATA Tariff Conference Case, Order 2007-3-23 (Docket OST-2006-  
6 25307).

7 99. The DOT explained that “[t]he tariff conferences are anticompetitive and do not  
8 provide important public benefits or meet a serious transportation need. **Pricing discussions**  
9 **among competitors of the kind that take place at the IATA tariff conferences are inherently**  
10 **anticompetitive and likely to increase the fares paid by consumers.”** (Emphases added).

11 **b. The Use Of Immunized IATA Fares As A Benchmark For Non-**  
12 **Immunized Fares**

13 100. The number of IATA fares sold by airlines is a small fraction of the number of  
14 tickets issued to air passengers annually. However, the effect of the anticompetitive conduct  
15 observed in the immunized Tariff Coordination Conferences is not limited to the relatively small  
16 market for immunized IATA fares—it also affects the vastly larger market for non-immunized  
17 fares as well.

18 101. For example, the ACCC recently conducted a fare analysis which suggests that  
19 immunized IATA fares are used by the airline industry as benchmarks for the fare prices charged  
20 for non-immunized air passenger service.

21 102. The ACCC also noted “that the IATA Tariff Services Handbook, Issue 1 of 1 July  
22 1999, specifically identifies as a benefit to airlines from attending IATA Tariff Coordinating  
23 Conferences the gaining of ‘access to market knowledge’: ‘Participation in Tariff Coordination  
24 opens the door to sharing in the exchange of market and other types of information required to  
25 intelligently price passenger and cargo tariffs.’”

26 103. The DOT similarly noted in its March 30, 2007 Final Order that “an agreement by  
27 airlines participating in a tariff conference that IATA fares should be increased by a certain  
28 percentage amount can easily represent an industry agreement that equivalent fares for on-line

1 service [i.e., non-immunized fares] should be increased by a similar amount. DG-Competition  
2 and the ACCC showed that in fact this has happened.”

3 104. In connection with its analysis, the ACCC interviewed Qantas personnel, who  
4 confirmed the existence of a pricing relationship between IATA fares and Qantas’ non-  
5 immunized fares. Indeed, “Qantas indicated in its discussions with the ACCC that it would  
6 normally try to apply fare increases agreed at IATA Tariff Coordinating Conferences to Qantas’  
7 own published fares for premium classes on all routes on which it operates as the market  
8 allows.”

9 105. The ACCC has reported that many other airlines have acknowledged in  
10 submissions that IATA fares are used for benchmarking prices for non-immunized fares. In a  
11 recent article, Peter Harbison from the Sydney-based Centre for Asia Pacific Aviation, a  
12 consulting organization, noted that fixing prices of passenger fares occurred “fairly openly” at  
13 one point in time, and that the culture still “overhangs” today. Harbison went on to note that  
14 [t]here’s a lot of interaction at management level between airlines.” Shukor Yusof, an aviation  
15 analyst with Standard and Poor’s Equity Research, further commented that Asia, in particular,  
16 lacks an over-arching anti-trust legal framework. Yusof was quoted as saying, “There’s no one  
17 main body to oversee that kind of thing.” Jim Eckes of Indoswiss Aviation Consultancy in Hong  
18 Kong noted that talking about prices between competitors has more of a stigma in the United  
19 States, where the law is firm.

20 **c. Lockstep Pricing Is Not To Be Expected In A Competitive Market**

21 106. The following chart shows the pricing for a small selection of non-immunized  
22 passenger air fares (and surcharges) as of November of 2007, as reported by  
23 www.flightstats.com. There is an obvious pattern of identical or virtually identical pricing by the  
24 defendants’ closest competitors on routes between the United States and Asia and Oceania:  
25  
26  
27  
28

1 **San Francisco to Auckland**

2

Airline	Cabin	Base Fare	Surcharges	Total
Air New Zealand	Coach	\$918	\$255	\$1173
Qantas	Coach	\$918	\$255	\$1173

5

6 **San Francisco to Sydney**

7

Airline	Cabin	Base Fare	Surcharges	Total
Air New Zealand	Coach	\$818	\$312	\$1130
Qantas	Coach	\$818	\$308	\$1126

10

11 **San Francisco to Bangkok**

12

Airline	Cabin	Base Fare	Surcharges	Total
ANA	Coach	\$650	\$281	\$931
JAL	Coach	\$620	\$281	\$901

15

16 **San Francisco to Hong Kong**

17

Airline	Cabin	Base Fare	Surcharges	Total
ANA	Coach	\$580	\$269	\$849
JAL	Coach	\$579	\$269	\$848

20

21 **San Francisco to Tokyo**

22

Airline	Cabin	Base Fare	Surcharges	Total
ANA	Coach	\$529	\$270	\$799
JAL	Coach	\$529	\$270	\$799

25

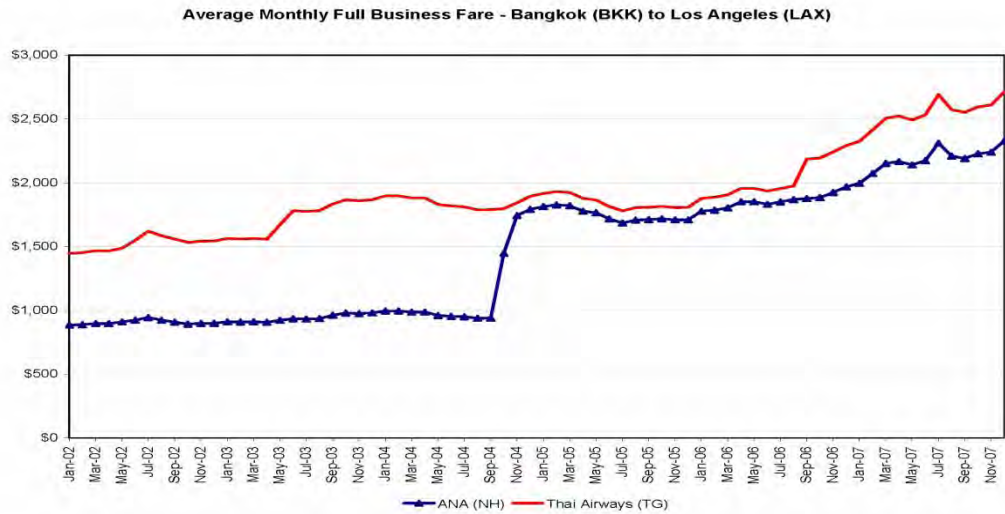
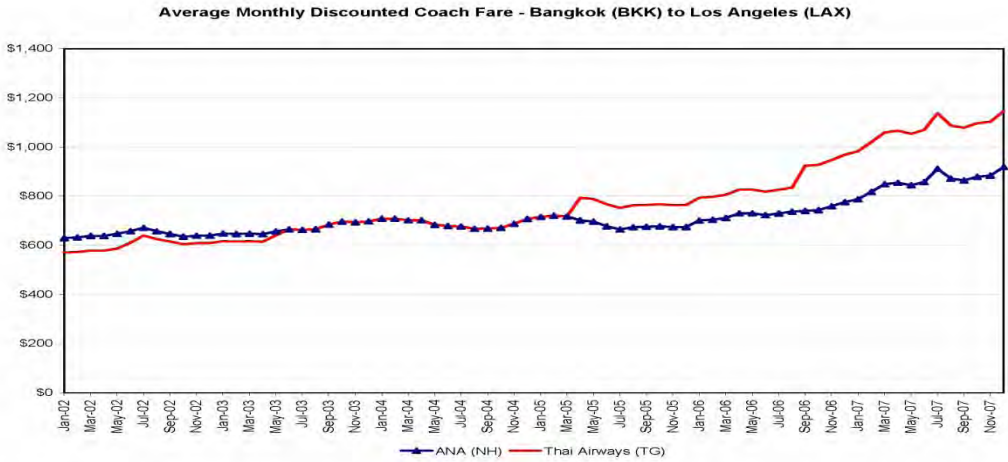
26 107. There are other instances of coordinated base fare pricing. For example, the

27 following charts demonstrate that Defendant ANA and Defendant Thai Airways closely

28 coordinated base fares during portions of the Class Period.



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108. With respect to ANA’s business fare pricing from Bangkok to Los Angeles, the preceding chart identifies a substantial and historically unprecedented change in pricing behavior that commenced in or about September 2004 and continued through the DOJ raids in February 2006. This sharp change in pricing occurred during summer 2004, which is the same time period during which the Defendants and their co-conspirators instituted and quickly raised fuel surcharges.

1           109. Defendants' cost structures are markedly different and vary based in part on the  
2 age of their aircraft fleet, their labor costs, and whether and to what extent they hedged input  
3 costs, including fuel costs. Under these circumstances, economic theory suggests that  
4 competition would result in varying fare prices. This is particularly true where, as here, fixed  
5 costs, including the acquisition, operation, and maintenance of aircraft, are high and the marginal  
6 cost of adding additional passengers to each flight is small. Under such circumstances, one  
7 would expect to see airlines with cost advantages routinely undercutting their competitors'  
8 pricing in order to maximize seat occupancy on their planes. During the Class Period, that has  
9 not occurred.

10           110. The United States domestic market provides an illustrative example of how  
11 economic theory plays out in the real world. Southwest Airlines—which is not a member of  
12 IATA, AAPA, and the various Asian BAR associations and is therefore not exposed to the  
13 collective rate-setting culture promoted by these organizations—is well-known to be a vigorous  
14 competitor in the domestic markets in which it operates. Southwest Airlines is able to routinely  
15 beat—not simply match—the fares offered by its competition by, among other things, hedging  
16 fuel costs, minimizing the diversity of aircraft it operates, and paying close attention to its labor  
17 costs. The difference in cost structure between Southwest and its competitors naturally leads to a  
18 variation in fare prices, something that is not seen on routes between the United States and  
19 Asia/Oceania—routes that are dominated by the majority of the Defendants.

20                           **d. Specific Examples Of Base Fare Coordination**

21           111. Plaintiffs have learned to date of a number of specific examples of collusion  
22 among Defendants on base air passenger fares. These are only illustrative; discovery in this case  
23 is likely to yield more evidence.

24           112. ANA and JAL conspired with one another and with other Defendants to  
25 coordinate various non-IATA carrier fares between different city pairs. ANA and JAL  
26 functioned as the primary airlines operating in Japan, and were consistently contacted by non-  
27 Japanese Defendant carriers regarding the coordination of carrier fares for all fare categories for  
28

1 flights from Japan to the United States. In hubs in which ANA and JAL were less prominent  
2 players, ANA and JAL remained actively involved in the coordination of carrier fares, often  
3 involving the primary Defendant or Defendants operating from any given hub.

4 113. Airline carriers generally set passenger fares for different fare categories twice a  
5 year. The fare decisions were effective throughout the first and second half of each fiscal year.  
6 Carrier fare communications that took place from December through February of a given year set  
7 the fare price for the first half of that fiscal year. Carrier fare communications that took place  
8 from June through August of a given year set the fare price for the second half of that fiscal year.  
9 Defendants coordinated at least the following fare categories for transpacific flights from Asia to  
10 the United States: (a) an APEX (Advanced Purchase Excursion) fare, which is a discounted  
11 economy class fare that requires an advanced purchase, and is set based on specific city-pair  
12 destinations; (b) a ZONE PEX (or Z-PEX) fare, which is a discounted economy class fare that  
13 does not require an advanced purchase and does not involve specific city-pair destinations  
14 (ZONE PEX fares are set based on zone, or regional, destinations as opposed to individual cities  
15 (*i.e.*, Narita to a group of United States West Coast cities)); and (c) C-APEX fares, which is a  
16 special form of an APEX fare.

17 114. From at least 2004 into the summer of 2006, ANA and JAL coordinated APEX,  
18 ZONE PEX and C-APEX carrier fares on flights from Japan to the United States. ANA and JAL  
19 communicated approximately five or six fiscal half-years within the relevant time period. ANA  
20 and JAL communications regarding the coordination of carrier fares occurred in January and  
21 February for carrier fares effective during the first half of the fiscal year, and June and July for  
22 carrier fares effective during the second half of the fiscal year. During that time, ANA and JAL  
23 illegally set carrier fares for the six month period that followed. ANA and JAL discussed and  
24 agreed upon the level of the fares, fare rules, seasonal discounting, fare finalization and final fare  
25 structures.

26 115. The primary ANA employees who participated in these discussions were Akiko  
27 Oyama, Atsushi Yabuki, and Keiji Omae (among others). The primary JAL employees who  
28 participated in these discussions regarding carrier fares were Misato Tanaka, Noboru Hirai,

1 Tomomi Kubota, Takeshi Aoki, Kenichiro Ochi, and Takashi Inagaki. Although all individuals  
2 listed above were not involved in the conspiracy at the same time, during their tenure as  
3 employees of ANA and JAL's fare-setting groups, these ANA and JAL employees participated  
4 in discussions regarding coordinated rates.

5 116. Direct communications between ANA and JAL employees regarding seasonality  
6 and the coordination of fare levels occurred by e-mail and telephone.

7 117. In addition, ANA employees and JAL employees also exchanged fare charts and  
8 then discussed those charts.

9 118. Various ANA employees discussed carrier fare levels at least eight times with  
10 Takashi Inagaki of JAL. Similarly, various ANA employees, including Keiji Omae, also  
11 discussed carrier fare coordination with Kenichiro Ochi of JAL. Akiko Oyama and Atsushi  
12 Yabuki, both from ANA, also discussed C-APEX carrier fare coordination with Tomomi Kubota  
13 and Takashi Inagaki of JAL.

14 119. Between December of 2005 and January of 2006, ANA employees, including  
15 Akiko Oyama, participated in discussions with JAL employees Misato Tanaka, Takeshi Aoki  
16 and Takashi Inagaki regarding the coordination of APEX, ZONE PEX and C-APEX fares for  
17 flights from Japan, including Japan-U.S. flights for the first half of the 2006 fiscal year. For  
18 example, one e-mail dated December 27, 2005 mentions that JAL prepared APEX pricing that  
19 matched ANA's pricing for the first half of the 2006 fiscal year and that the two companies  
20 would get together to "talk this over."

21 120. In July of 2006, ANA employees, including Atsushi Yabuki, participated in  
22 communications with JAL employees, including Takeshi Aoki, regarding the coordination of  
23 changes to each airline's APEX fare structure. Prior to the proposed coordination, ANA and  
24 JAL offered separate 14 day and 28 day APEX fares. (The term "14 day and 28 day APEX fare"  
25 is defined by the number of days a ticket is bought prior to a given flight). JAL employees  
26 contacted ANA employees, including Atsushi Yabuki, with a proposal for both ANA and JAL to  
27 coordinate and combine their APEX fares into a single 21 day APEX fare.

28

1           121.     Indeed, a number of e-mails that were generated in late 2005 and early 2006 that  
2 reflect ANA's agreements with JAL to coordinate certain fares. One set of examples involved  
3 ZONE PEX pricing. These e-mails showed that ANA proposed that JAL raise such passenger  
4 fares during 2006. Subsequent e-mails reveal that an agreement "probably" could be reached.  
5 This agreement was, in fact, reached. ANA and JAL also exchanged proposals and counter  
6 proposals via e-mail throughout the month of January regarding ZONE PEX pricing.

7           122.     Other passenger fares between the United States and Japan were also set through  
8 coordinated agreements between ANA and JAL. Non-immunized fares are benchmarked off of  
9 the IATA "normal" rate. Thus, for example, one of the fares classes discussed below (the non-  
10 immunized "Business Saver" fare) was discounted by 25% off of the IATA fare for routes  
11 between Tokyo and New York during 2005 (for weekday service).

12           123.     Beginning no later than January 1, 2000, ANA and JAL began to coordinate the  
13 price of non-immunized passenger fares they offered for travel between the United States and  
14 Japan, including, so-called "Yobiyose" economy-class fares, "Satogaeri" economy-class fares,  
15 and "Business Saver" business class fares. All three fare categories are discounted relative to the  
16 IATA "normal" rate for seating in the respective class on transpacific flights.

17           124.     **Yobiyose Fares.** From at least 2000 or early 2001 until their elimination in  
18 October of 2005, ANA and JAL coordinated the setting and eventual elimination of Yobiyose  
19 fares. Yobiyose fares were discount fares for sale in the United States for roundtrip travel from  
20 Japan to the United States. They were established to allow Japanese nationals living in the  
21 United States to bring their family members in Japan to visit them in the United States.  
22 Yobiyose fares were set semi-annually for the periods between April 1 to September 30 and  
23 October 1 through March 31. When advance purchase published fares were introduced in Japan,  
24 however, these Yobiyose fares became a problem for the companies because they were  
25 undercutting the companies' published fares. ANA and JAL began coordinating Yobiyose fares  
26 to increase the Yobiyose fares to be more in line with the published fares and then eventually  
27 agreed to eliminate Yobiyose fares altogether.

28

1           125.     The employees that either participated in or had knowledge of the Yobiyose fare  
2 agreements between ANA and JAL include: Yosaku Osumi, ANA's Deputy Director of  
3 Marketing and Sales Planning; Aknobu Shibata and Yasushi Omori of JAL's Tokyo office;  
4 Shinzo Amagai and his superior at JAL Americas Region El Segundo Headquarters, Fusako  
5 Cahill, among others.

6           126.     Every half-year, beginning no later than later 2000 or early 2001, representatives  
7 from the United States head offices of ANA and JAL coordinated on Yobiyose fares for the next  
8 six-month rate period. In-person meetings were usually held at ANA's office in New York.  
9 Often, during or before these meetings, ANA and JAL exchanged proposed fare sheets.

10          127.     For example, during a meeting at ANA's New York office on February 16, 2001,  
11 ANA and JAL considered proposed coordinated Yobiyose fares for the upcoming six-month  
12 period.

13          128.     On March 1, 2002, representatives of ANA and JAL met again at ANA's New  
14 York office to discuss revising the Yobiyose rate structure and level. They discussed whether to  
15 introduce a lower price for 14-day advance purchase tickets or to adopt a three-tiered advance  
16 purchase structure, in which the ticket price would depend on whether the ticket was purchased  
17 more than 28 days in advance, more than 14 days in advance or less than 14 days in advance.

18          129.     Another meeting was held on August 15, 2002. At that meeting, representatives  
19 of ANA and JAL agreed to discontinue the 28-day and 14-day "advance purchase" Yobiyose  
20 fares and to offer only the highest-priced fare that did not require any advance purchase. ANA  
21 and JAL also agreed to a formula for setting the non-advance purchase Yobiyose fares.

22          130.     At a lunch meeting in late 2002 or early 2003, representatives of ANA and JAL  
23 agreed that the system previously established for Yobiyose fares should be maintained for the  
24 upcoming six month period.

25          131.     The two carriers subsequently agreed on the price and terms of Yobiyose fares for  
26 each six-month period until October 1, 2005.

1           132.     At some point in 2005, a discussion was held between ANA and JAL at which  
2 both airlines confirmed that they would discontinue Yobiyose fares beginning with the fare  
3 season starting October 1, 2005.

4           133.     **Satogaeri fares.** Satogaeri, or “homecoming” fares, are discount fares  
5 established to allow Japanese people living in the United States to travel to Japan to visit family  
6 and friends. Satogaeri fares are discount fares for sale in the United States for roundtrip travel  
7 from the United States to Japan. Unlike Yobiyose fares, Satogaeri fares (which are sometimes  
8 called “M” class fares) fluctuated in response to changing market conditions.

9           134.     Beginning no later than late 2000 and continuing through early 2006, ANA and  
10 JAL frequently exchanged advance notice of proposed changes in Satogaeri fares. Such  
11 communications took place between employees in regional sales offices within the United States,  
12 as well as between employees in the two carriers’ U.S. headquarters offices.

13           135.     ANA and JAL employees with knowledge of the conspiracy include Sugi,  
14 Yokoyama and Isao Ono of ANA; and Amagai, Sun, Cahill and Michiko Kumataka of JAL.

15           136.     **Discount Business Class fares.** Discount or “Business Saver” fares are business  
16 (or “C”) class fares for sale in the United States that are set substantially below immunized IATA  
17 tariff rates for business class travel. For example, in 2005, the benchmark for discount business  
18 class travel between Tokyo and New York (for weekday travel) was 75% of the IATA  
19 immunized business class fare. ANA introduced discount business class fares from the United  
20 States to Japan in early 2002, followed soon thereafter by JAL.

21           137.     In March of 2002, ANA and JAL agreed not to compete with respect to the level  
22 of discount business class fares from the United States.

23           138.     On March 11, 2002, Shuta Saito, JAL’s Vice-President of Industry Affairs,  
24 reconfirmed JAL’s intent not to “compete” with ANA on non-immunized C-class fares. In  
25 January 2003, ANA representatives reconfirmed at a lunch meeting with Amagai that they would  
26 continue to coordinate those fares with JAL. JAL then requested that ANA raise the fare out of  
27 New York (and use as the pretext for doing so a claim that ANA had increased the level of  
28 accommodations on its flights).

1           139.     The parties effectuated and monitored their conspiracy by exchanging proposals  
2 concerning the fare levels for non-immunized “C” class fares before these fares were announced  
3 to the public. On March 17, 2004, a JAL employee requested that the ANA-JAL agreements be  
4 circulated to all JAL offices in the Americas Region so that all JAL personnel were aware of  
5 pricing changes agreed to by JAL and ANA.

6           140.     On September 1, 2004, an ANA representative e-mailed JAL representatives a  
7 fare chart for ANA’s discount class fares for the forthcoming six-month period. That same ANA  
8 representative sent JAL another fare chart in February 2006, before the fares in the chart were  
9 made public.

10          141.     Employees of ANA and JAL with knowledge of the conspiracy concerning non-  
11 immunized business class fares include: Mr. Fukuda of ANA, Cahill, Sun, Amagai, Saito,  
12 Kaneko, Fujiki, Ono, and Joan Kumai of JAL, among others.

13          142.     Thai Airways joined ANA and JAL to coordinate APEX, ZONE PEX and C-  
14 APEX fares from Japan to the United States. Beginning in 2001, Thai Airways representatives  
15 sought prior approval or “concurrence” of their carrier fares with the carrier fares of ANA and  
16 JAL on flights from Japan to the United States. Concurrence involving routes to and from the  
17 United States implicates the antitrust laws of this country and constitutes illegal communication  
18 and coordination of prices.

19          143.     Every fiscal half-year from at least August 2000 through at least August of 2002,  
20 Thai Airways e-mailed representatives of ANA and JAL requesting prior approval (concurrence)  
21 for the forthcoming six-month period on ZONE PEX, and occasionally also APEX, fares from  
22 Japan to various cities in the western United States, including Las Vegas, Los Angeles, Oakland,  
23 Portland, San Diego, San Francisco, and Seattle. In almost all instances, these e-mails attached  
24 fare sheets and fare rules for the relevant period.

25          144.     In an e-mail dated August 20, 2000, Tsuneo Kojima (Thai Airways) wrote to  
26 Keeratiroj Sirisap (Thai Airways), Shinji Ono (JAL) and Fukushima (ANA), stating that Thai  
27 Airways would send to ANA and JAL its fares and rules of application for the period between  
28 October 1, 2000 and March 31, 2001 on certain flights from Tokyo and Osaka to the United



1 States. In the e-mail, Tsuneo Kojima wrote, “[w]e will send fares/rules for USA from TYO/OSA  
2 effective 01OCT00 through 31MAR01 as per attached . . . . We would appreciate if you can  
3 obtain concurrence from JL/NH [JAL/ANA] on fares/rules soonest.” The attachment to the e-  
4 mail included ZPEX fares that Plaintiffs allege were subject to the conspiratorial agreement, for  
5 LAX [Los Angeles], SFO [San Francisco], LAS [Las Vegas], SEA [Seattle], PDX [Portland],  
6 SAN [San Diego] and OAK [Oakland].

7 145. On February 13, 2001, Tsuneo Kojima (Thai Airways) sent an e-mail to  
8 Keeratiroj Sirisap (Thai Airways), copying Shinji Ono (JAL) and Akiko Oyama (ANA)  
9 regarding concurrence on ZONE PEX fares to the U.S. for the first half of FY 2001. In that e-  
10 mail Tsuneo Kojima wrote: “Now we have completed TG Zpex fares/rules from Japan to USA  
11 for S2001 . . . . We would like to ask you to obtain concurrence from JL/NH [JAL/ANA] as soon  
12 as possible . . . and would appreciate your usual kind cooperation and support.” Attached to the  
13 e-mail was the proposed ZONE PEX fares for Japan to the U.S. and the rules of application  
14 about the ZONE PEX fare.

15 146. On July 25, 2001, Tsuneo Kojima (Thai Airways) sent an e-mail to Keeratiroj  
16 Sirisap (Thai Airways), copying Shinji Ono (JAL) and A. Kawaguchi (ANA) regarding ZONE  
17 PEX fares for the second half of FY 2001. Similar to the February 13, 2001 e-mail, Tsuneo  
18 Kojima wrote on July 25, 2001 that: “[w]e have now completed the fares for TG [Thai Airways]  
19 Zone Pex from Japan to USA for 01Oct01 through 31Mar02. Applicable rules remain  
20 unchanged. We would like to request you to receive concurrence from JL/NH on our proposal as  
21 soon as possible.” Kojima again attached a fare sheet to the e-mail.

22 147. On July 26, 2001, Keeratiroj Sirisap (Thai Airways) sent an e-mail to Shinji Ono  
23 (JAL) and Yasuhiro Nishiyama (ANA), copying Tsuneo Kojima (Thai Airways) and Seree  
24 Pipatchaipoom (Thai Airways) asking for concurrence as to the flights on various city pairs,  
25 including flights between Japan and the United States. In his July 26, 2001 e-mail, Keeratiroj  
26 Sirisap proposed coordinated fares for the approval of ANA and JAL, writing: “TG [Thai  
27 Airways] proposed Z-PEX/APEX/Special Apex fares from Japan to Thailand/MNL/USA for the  
28 period of 01Oct01 – 31Mar02.”

1           148.     On January 29, 2002, Tsuneo Kojima (Thai Airways) sent Thai Airways'  
2 proposed ZONE PEX fares between Narita/Kansai to Los Angeles for the period between April  
3 1, 2002, and September 30, 2002, to Keeratiroj Sirisap (Thai Airways), Shinji Ono (JAL), Akiko  
4 Kawaguchi (ANA) and Hajime Kuroiwa (Thai Airways). The e-mail requested that Thai  
5 Airways' proposed ZONE PEX fares be proposed to ANA and JAL and indicated that Thai  
6 Airways would like to have concurrence from JL/NH [JAL/ANA] as early as possible.

7           149.     On August 5, 2002, Tsuneo Kojima (Thai Airways) sent an e-mail to Akiko  
8 Oyama (ANA) and Shinji Ono (JAL), copying Shingo Komatsu (Thai Airways) and Hajime  
9 Kuriowa (Thai Airways) requesting concurrence on ZONE PEX fares on flights to the U.S. for  
10 the second half of FY 2002. In his e-mail, Kojima wrote, "[w]e would like to apply solely for  
11 TG [Thai Airways] FLEX fares to the USA for the second half in the same way as for the present  
12 term. We have matched NH's [ANA's] GET price; therefore, please confirm this, and if you are  
13 fine with that, we would like to contact TG headquarters."

14           150.     On August 9, 2002, an e-mail from Tsuneo Kojima (Thai Airways) to Keeratiroj  
15 Sirisap (Thai Airways), Shingo Komatsu (Thai Air) and Hajime Kuroiwa (Thai Airways),  
16 copying Shinji Ono (JAL) and Akiko Oyama (ANA) confirmed that an agreement had been  
17 reached between the three airlines regarding carrier fares from Japan to the U.S.: "[p]lease be  
18 informed that TG [Thai Airways] Zone Pex fares/rules to USA for W02/03 have been concluded  
19 now which fares/rules agreed with JL/NH [JAL/ANA] at our end."

20           151.     On October 24, 2002, Shinji Ono (JAL) sent an e-mail to Keeratiroj Sirisap (Thai  
21 Airways) and Tsuneo Kojima (Thai Airways) responding to Thai Airways' ZONE-PEX fares  
22 from Japan to the U.S. proposed on July 26, 2001: "Regarding your ZPEX fares from JPN to  
23 USA, we have no objection." In that e-mail, Shinji Ono also discussed with Keeratiroj Sirisap  
24 and Tsuneo Kojima the fact that JAL intended to seek agreement with Philippine Airlines  
25 regarding coordinated fares to Manila and also indicated a willingness to coordinate with Thai  
26 Airways on carrier fares to Thailand. This is evidence that all coordination efforts from any  
27 major airline hub in Asia involved the prior approval of the dominant airline at that hub.  
28

1           152.     Singapore Airlines also coordinated carrier fares on flights to the U.S. On August  
2 9, 2002, Takashi Oshima (Singapore Airlines) e-mailed Shinji Ono (JAL), writing that “[f]or Los  
3 Angeles and Las Vegas fares, we have matched your fares . . . .”

4           153.     On February 19, 2003, Takashi Oshima (Singapore Airlines) sent an e-mail to  
5 Shinji Ono (JAL) asking for concurrence on APEX fares from Tokyo to Los Angeles, writing,  
6 “APEX fares in Los Angeles match those of ANA; Taiwan fares match those of Japan Asia  
7 Airways; zone fares to Los Angeles and Las Vegas match your company’s fares.” Following  
8 this exchange, Singapore Airlines matched exactly JAL’s APEX fares from Tokyo to Los  
9 Angeles. After communications with ANA and JAL, Singapore Airlines also matched the  
10 ZONE PEX fares charged by ANA and JAL for routes from Tokyo to Los Angeles and Las  
11 Vegas for the first half of the 2003 fiscal year.

12           154.     KAL also coordinated carrier fares on Japan-U.S. routes. On July 13, 2004, Si  
13 Yeon Lee (KAL) sent an e-mail to Takashi Inagaki (JAL) providing him with proposed APEX  
14 fares from Tokyo to Los Angeles for the first half of FY2004. “Now, due to fare increases, we  
15 are about to file Zone Pex fares from Japan to US and need your concurrence on TYO-LAX  
16 portion. All the fares are matching JL fares.” That e-mail included an attachment with  
17 agreement upon ZONE PEX prices between Tokyo and Los Angeles. Eight days later, on July  
18 21, 2004, Tomomi Kubota (JAL) responded to Si Yeon Lee, stating, “[a]fter reviewing, we  
19 would like to offer our official concurrence to your proposal,” indicating JAL’s agreement with  
20 KAL’s proposed coordinated price.

21           155.     On October 31, 2005, KAL provided JAL with the fare levels from Japan to U.S.  
22 In the e-mail to JAL, KAL wrote, “[w]e are matching NW’s [Northwest] level.”

23           156.     In an e-mail dated October 31, 2005, Takashi Inagaki (JAL) discussed KAL’s  
24 proposed coordinated fares for flights from Japan to the United States and described JAL’s  
25 relationship with KAL as one premised on a “gentlemen’s agreement.” The e-mail also noted  
26 that Northwest was matching the fares.

27           157.     In a November 1, 2005 e-mail Takashi Inagaki stated again that KAL always  
28 agreed to match JAL’s fares pursuant to a “gentlemen’s agreement.” The e-mail specifically

1 referenced fares from Tokyo to Los Angeles.

2 158. China Airlines also sought prior approval from ANA and JAL regarding flights  
3 from Tokyo to Honolulu and explicitly sought the coordination of such carrier fares.

4 159. A January 25, 2000 e-mail from Hidetomi Kadoya (JAL) evidenced discussions  
5 with China Airlines regarding the agreement on ZONE PEX prices to Honolulu and that the two  
6 companies were finalizing the specifics on ZONE PEX prices to Honolulu after agreeing in  
7 principle to coordinate ZONE PEX pricing.

8 160. On August 19, 2000, Eugene Yi-Ching Lee (China Airlines) sent an e-mail to  
9 Shinji Ono (JAL), with a carbon copy to multiple China Airlines employees, stating that he had  
10 recently faxed 20 pages with China Airlines' ZONE PEX, APEX and other carrier fares from  
11 Japan to Taiwan, S.E. Asia and Honolulu for the period from October 1, 2000 to March 31,  
12 2001. In his e-mail, Eugene Lee asks JAL to review and concur with China Airlines' prices.

13 161. On October 24, 2000, Shinji Ono (JAL) responded to Eugene Lee: "I reviewed all  
14 of your documents and concur your Zpex/Apex/carrier IIT fares" except for APEX fares from  
15 Tokoname in Japan to Kaohsiung in Taiwan. Shinji Ono goes on to ask, for the Tokoname-  
16 Kaohsiung route, that China Airlines agree to the fare set by EG (Japan Asia Airways) on that  
17 route. After making that request, Shinji Ono went on to state that "if you will agree with the  
18 above matching, EG will concur . . . ."

19 162. In a July 27, 2001 e-mail, Katsutaka Fujii (China Airlines) wrote to Shinji Ono  
20 (JAL) stating that, "We have received the fares for Hong Kong and Honolulu. Are they final  
21 fares? If they are final, we will match and send them to the head office. Thank you."

22 163. On July 30, 2001, Katsutaka Fujii (China Airlines) sent an e-mail to Shinji Ono  
23 (JAL), and various China Airlines employees, including Mei-Wen Lin, Yoshihisa Yamamoto  
24 and Masaru Kunihiro, notifying JAL employees of China Airlines' intention to match JAL's  
25 ZONE PEX and APEX fares from Hong Kong to Honolulu for the second half of FY 2001 and  
26 attached fare sheets with pricing for the referenced fares. Fujii wrote, "[a]s per attached, TYOCI  
27 [China Airlines] will match JL's HKG/HNL PEX/APEX Fare." Amongst the attachments to the  
28 e-mail were coordinated carrier fares between Japan and Honolulu.

1           164.     On August 2, 2001, Katsutaka Fujii (China Airlines) e-mailed Shinji Ono (JAL),  
2     Choji Nakamura (JAL), Mei-Wen Lin (China Airlines), Tsugio Arasaki (China Airlines), Kengo  
3     Tanaka (China Airlines), Yoshihisa Yamamoto (China Airlines) and Masaru Kunihiro (China  
4     Airlines), informing JAL that China Airlines was going to match JAL's ZONE PEX and APEX  
5     fares between Tokyo and various destinations including Honolulu. The e-mail identified  
6     matching fares between various city pairs, including flights between Asia and Honolulu.

7           165.     On August 7, 2001, Mei-Wen Lin (China Airlines) wrote to Shinji Ono (JAL) and  
8     copying various China Airlines employees, requesting coordination with JAL on various city  
9     pair routes, including the coordination of ZONE PEX and APEX fares between Tokyo and  
10    Honolulu.

11          166.     In an October 31, 2001 e-mail, Katsutaka Fujii (China Airlines) wrote to Choji  
12    Nakamura (JAL) and Shinji Ono (JAL) and other China Air employees, stating their proposal for  
13    Special APEX fares to Honolulu. In the e-mail, Katsutaka Fujii wrote, "We will inform you if  
14    there is [sic] any changes, but we match fare and rule with JL."

15          167.     In a January 24, 2002 e-mail, Katsutaka Fujii (China Airlines) wrote an internal e-  
16    mail, on which both Shinji Ono and Choji Nakamura of JAL were copied, stating that, "[p]lease  
17    be advised of the ZPEX/APEX fare for S02, which is matched with JL's fare."

18          168.     On February 18, 2002, Mei-Wen Lin (China Airlines) sent an e-mail to Shinji  
19    Ono (JAL), Katsutaka Fujii (China Airlines), Masaru Kunihiro (China Airlines), Kengo Tanaka  
20    (China Airlines), Yoshihisa Yamamoto (China Airlines), Tsugio Arasaki (China Airlines) and  
21    Kenji Doi (China Airlines) requesting concurrence for ZONE PEX and APEX fares from Tokyo  
22    to Honolulu for the first half of FY2002. The last line of the e-mail stated, "HNL ROUTE  
23    (MATCHING WITH JL) TYO-HNL ZPEX/APEX."

24          169.     On July 29, 2002, Kenji Doi (China Airlines) wrote an e-mail to Shinji Ono (JAL)  
25    stating that, "As to the HNL route and the South East Asia route, . . . we will match JAL  
26    naturally but we have no information [about it]."

27          170.     On August 16, 2002, Mei-Wen Lin (China Airlines) sent an e-mail to Shinji Ono  
28    (JAL), copying other China Air employees, requesting concurrence of ZONE PEX, 14 day

1 APEX and 35 day APEX fares from Tokyo to Honolulu for the second half of FY2002. In the e-  
2 mail this is expressed by writing, “TYO [Tokyo] to HNL [Honolulu] –  
3 ZPEX/APEX14/APEX35.”

4 171. On October 24, 2002, Shinji Ono (JAL) responded to Mei-Wen Lin (China  
5 Airlines), Masaru Kunihiro (China Airlines) and Kenji Doi (China Airlines) on behalf of JAL  
6 explaining JAL had “no objection for the captioned fares” between Tokyo and Honolulu  
7 proposed by China Airlines.

8 172. On July 7, 2006, Ai Watanabe (China Airlines) e-mailed Owano Hideo (JAL),  
9 copying Kenji Doi (China Airlines), explaining that China Airlines hoped to establish an APEX  
10 fare between Tokyo and Honolulu soon. China Airlines requested concurrence from JAL as  
11 soon as JAL’s routes became available. Watanabe’s e-mail indicated he wanted to know when  
12 JAL’s second half FY2006 fare proposal to Honolulu would be provided, writing, “however,  
13 because we soon would like to establish APEX fares for HNL routes . . . could you please let me  
14 know when your final fare proposal for the second half is finalized?”

15 173. Northwest and Continental also illegally coordinated carrier fares with other  
16 carriers. During a meeting on October 23, 2002, JAL representatives discussed the coordination  
17 of carrier fares with Northwest employees regarding coordination between ANA and JAL on C-  
18 APEX fares to North America with advance purchase provisions.

19 174. On May 31, 2005, Noboru Hirai (Northwest) sent an e-mail to JAL referencing a  
20 May 30, 2005 meeting between Northwest and JAL. The e-mail discussed pricing for fares to  
21 Honolulu and Micronesia for the second half of FY2005. For flights from Osaka to Honolulu,  
22 Noboru Hirai wrote that he would “seek to coordinate and consider with branch offices for plus  
23 5000 yen.” For flights from Tokyo to Honolulu, Mr. Hirai wrote that he would “seek  
24 coordination within a range from about the same as last year to about plus 2000 yen.” For fares  
25 from Tokyo to Micronesia, Mr. Hirai wrote, “[d]ecision will be made after CO  
26 [Continental]/JAL price coordination. Desire price increase of about 5% . . . AP [APEX] would  
27 continue.”  
28

1           175.     The coordination of fares between Japan and the United States alleged herein is  
2 just one example of a wide-ranging conspiracy to coordinate passenger fares on flights between  
3 Asia/Oceania and the United States.

4           176.     The airline industry, particularly in Asia, operates through the use of a hub  
5 system. Each airline maintains one or more hubs in which it is the primary airline serving that  
6 destination. For example, Singapore Airlines' hub is at Singapore Changi International Airport  
7 and Cathay Pacific's hub is at Hong Kong International Airport. For each of these hubs,  
8 concurrence communications relating to the coordination of carrier fares takes place with the  
9 primary airline at each hub for flights between that hub and the United States. In other words,  
10 the coordination of carrier fares from Thailand's Bangkok-Suvarnabhumi Airport to the United  
11 States involves communications amongst the Defendant carriers and Thai Airways, the primary  
12 airline at that hub. These coordination efforts are similar to those that occurred for flights from  
13 Japan to the United States and involved communications and exchanges of information that  
14 allowed the members of the conspiracy to coordinate the carrier fares charged from these  
15 international hubs to the United States.

16           177.     For example, at a September 1, 2005 meeting of the Thailand BAR, the attendees  
17 complained that fares to and from Thailand were substantially below fares charged to other  
18 regional destinations. The attendees were urged to support the creation of a subgroup to examine  
19 base fare prices and to otherwise discuss each other's fares.

20           178.     Other airlines have also suggested that the coordination involved in this case  
21 extends far beyond routes between the Japan and the United States. An e-mail from an employee  
22 of Singapore Airlines circulated to a number of "Airline Partners"—some of whom have been  
23 identified as JAL, Malaysian Airlines, Thai Airways, and Vietnam Airlines—stated that "[e]ven  
24 if a carrier would not be able to increase the fares from their country, it would benefit from fare  
25 increases adopted ex other countries."

26           179.     Additionally, a JAL e-mail dated November 8, 2004, described the assistance that  
27 JAL will provide to other airlines concerning pricing for "arrivals from Europe, the Americas  
28

1 and Asia.” At “overseas” hubs of other carriers, JAL said it would “follow” the lead of other  
2 carriers.

3 180. Other examples of coordinated pricing activity throughout Asia are set forth in the  
4 following section.

## 5 **2. Fuel Surcharges**

6 181. Defendants’ discussions concerning the implementation of and/or amount of fuel  
7 surcharges (as opposed to certain base fares) have never been immunized by IATA Tariff  
8 Coordination Conferences, though as described below, there was an attempt to obtain immunity  
9 for such discussions by the Defendants. The fuel surcharge conspiracy was facilitated by  
10 discussions and agreements reached by the Defendants and others at various IATA, AAPA, and  
11 BAR meetings in Hong Kong, Manila, Malaysia, Thailand, and elsewhere.

### 12 **a. Defendants’ Unsuccessful Effort To Obtain Immunity For Fuel** 13 **Surcharge Agreements**

14 182. As early as December 31, 2000, Defendants, through the Malaysian BAR  
15 undertook collective efforts to impose fuel surcharges, though these efforts were short lived and  
16 largely unsuccessful.

17 183. However, during the first half of 2003, Defendants, through the Philippine BAR,  
18 again undertook collective efforts to obtain governmental approval of a surcharge from the  
19 Philippines Department of Justice. On May 16, 2003, Defendants’ request for approval of fuel  
20 surcharges was “declined.”

21 184. Thereafter, during an IATA Special Composite Meeting of Passenger Tariff  
22 Coordinating Conferences held in Geneva, Switzerland from July 14 through 18, 2003,  
23 participating members adopted Resolution 001w titled “Special Enabling Resolution  
24 (Surcharges).” Resolution 001w would have established a procedure by which IATA members  
25 could quickly agree to and then implement fuel, security, and other surcharges on IATA fares.  
26 Resolution 001w had an intended effective date of April 1, 2004 so that IATA and its members  
27 could obtain approval from various government agencies, including the DOT, which has the  
28



1 authority to immunize agreements reached at Tariff Conferences from scrutiny under the  
2 Sherman Act.

3 185. Thirty-six air carriers voiced support “in principle” for a collective fuel surcharge,  
4 including Air France, British Airways, China Airlines, JAL, KAL, KLM, Lufthansa, ANA,  
5 Northwest, Air New Zealand, Qantas, and Thai Airways. There was no opposition. The  
6 participants then commenced discussions concerning the specific wording of the proposal.  
7 Several air carriers objected to minor details concerning the implementation and operation of the  
8 fuel surcharge. Defendants ultimately voting in favor of Resolution 001w included: Air New  
9 Zealand, ANA, China Airlines, EVA, JAL, Qantas, and Thai Airways. Several members  
10 abstained from voting and no member opposed the resolution.

11 186. On August 25, 2003, IATA filed Resolution 001w with the DOT and sought  
12 immunity for the agreements set forth in it. The DOT did not act on the proposal.

13 187. On May 27, 2004 Giovanni Bisignani of IATA, stated:

14 On average, fuel accounts for 16% of airline operating costs. Fuel  
15 prices are 55% higher than one year ago. This could add between  
16 US\$8 and US\$12 billion to our annual fuel bill and threatens to  
17 strangle our modest projected return to profitability. Instead of  
18 flying high, we could be left swimming in red ink . . . The current  
19 crisis resulting from sky high fuel prices once again highlights the  
20 industry's vulnerability to external shocks. . . . We need to build a  
21 new industry structure capable of withstanding external shocks  
22 and delivering sustained profitability.

23 188. On May 28, 2004, IATA held a Special Composite Meeting of Passenger Tariff  
24 Coordinating Conferences in Geneva, Switzerland. Minutes of the meeting reflect that at least  
25 seven airlines, including Cathay Pacific and KAL, sought to achieve an agreement with respect  
26 to fuel surcharges ranging from US\$4 per sector to US\$18 for one way travel. Other airlines  
27 proposed raising passenger fares instead. IATA's Secretary reminded its airline members that  
28 Resolution 001w had not been approved by all necessary governmental entities, so collective  
agreements concerning fuel surcharges were not immunized. Mr. McEwen, Manager of IATA  
Ticketing Services, then explained to the meeting's participants that IATA was nonetheless  
developing a methodology for collection of fuel surcharges. Thereafter, the airlines agreed to

1 increase immunized IATA base fares on interline tickets to offset increased fuel costs. Implicit  
2 in this change in tactics was an understanding by Defendants that non-immunized base fares  
3 would also be raised.

4 189. On April 29, 2005, another Special Composite Meeting of Passenger Tariff  
5 Coordinating Conferences was held in Geneva, Switzerland. At the meeting, Cathay Pacific, Air  
6 France and others again sought agreement on fuel surcharges. Again, the airlines were advised  
7 that Resolution 001w had not been approved by all necessary governmental entities and again the  
8 airlines raised base fares for immunized IATA interline tickets to offset increased fuel costs.  
9 Again, there was an implicit understanding that non-immunized base fares would also be raised.

10 190. Despite IATA's efforts to obtain immunity for the collective rate-setting of fuel  
11 surcharges, the DOT never acted on IATA's request, and several years later, on March 9, 2007,  
12 IATA quietly moved to withdraw the resolution from further consideration by the DOT.

13 **b. Defendants' Fuel Surcharges Which Commenced In 2004 Contrast**  
14 **With Their Conduct In The Preceding Years**

15 191. Prior to 2004, the Defendants had not successfully imposed fuel surcharges on top  
16 of the price of an air passenger ticket. However, as noted above, collusive efforts to attempt to  
17 do so commenced in or about 2000 through the Asian BAR organizations and IATA. These  
18 efforts began to have an effect in May of 2004.

19 192. On May 11, 2004, Qantas publicly announced that it was introducing a fuel  
20 surcharge, effective on May 17, 2004. The very next day, Qantas' partner in the Oneworld  
21 Alliance, British Airways, also announced that it was implementing a fuel surcharge. On May  
22 12, 2004, Air New Zealand announced that it, too, was implementing a fuel surcharge, effective  
23 May 17, 2004, and that "numerous other airlines around the world are also considering similar  
24 surcharges." Air New Zealand's announcement was remarkable because it demonstrated that it  
25 had material non-public information in its possession about other airlines' internal fuel surcharge  
26 discussions before it made its announcement.

27 193. The decision to introduce fuel surcharges required prior consideration by senior  
28 executives and planning committees. Computers must be programmed to accept fuel surcharges,

1 and marketing and customer service departments must prepare for the change. The rapid fire  
2 introduction of these fuel surcharges over a period of, at most, 24 hours is not consistent with  
3 independent, uncoordinated actions by Air New Zealand, Qantas, and British Airways.

4 194. Thus, in the late-spring/early summer, Air New Zealand imposed a fuel surcharge  
5 of approximately US \$13.00, Qantas imposed a fuel surcharge of US \$15.00, Cathay Pacific  
6 imposed a fuel surcharge of approximately US \$14.00, Thai Airways imposed a fuel surcharge of  
7 approximately US \$15.00, and non-Defendant co-conspirator UAL imposed a fuel surcharge of  
8 US \$15.00. The surcharge amounts cited herein can and do vary based on differences in the  
9 relative valuation of foreign currencies over time and the assumptions underlying currency to  
10 currency comparisons. They also vary based on geography and flight routing as well as on  
11 airline perceptions about the tolerance level of regulators and passengers for these surcharges.

12 195. Discreet examples of contemporaneous fuel surcharge increases exist for other  
13 Defendants as well. In October-November of 2004, Qantas imposed a fuel surcharge of  
14 approximately US \$21.22, Singapore Airlines imposed a fuel surcharge of approximately US  
15 \$22.00, and Thai Airways imposed a fuel surcharge of approximately US \$20.00.

16 196. On February 1, 2005, ANA and JAL added a US \$24.37 fuel surcharge on  
17 passenger flights between North America and Japan. On the same day, Singapore Airlines added  
18 a fuel surcharge of approximately US \$22.00 on international air passenger tickets.

19 197. In March of 2005, co-conspirator Northwest and Qantas introduced fuel  
20 surcharges of US \$35.00.

21 198. In July of 2005, ANA and JAL imposed a fuel surcharge of US \$48.00 and  
22 Singapore Airlines imposed a fuel surcharge of approximately US \$45.00, as did non-defendant  
23 co-conspirator Northwest.

24 199. In September-October of 2005, Cathay Pacific imposed a fuel surcharge of  
25 approximately US \$45.30 and co-conspirator Northwest imposed a fuel surcharge of US \$45.00.

26 200. In the spring of 2006, ANA and JAL increased their respective fuel surcharges to  
27 US \$66.00. Qantas raised its surcharge to approximately US \$65.00, as did Air New Zealand,  
28 Thai Airways, and EVA.

1           201.     During the summer 2006 travel season, Singapore Airlines raised its fuel  
2 surcharge to approximately US \$60.00 (on long-haul routes between Japan and Los Angeles),  
3 Malaysian Airlines raised its fuel surcharge to approximately US \$60.00 (on long-haul routes  
4 between Taipei and Los Angeles), and Cathay Pacific raised its fuel surcharge to approximately  
5 US \$61.70.

6           202.     Later that summer, Thai Airways raised its fuel surcharge to approximately US  
7 \$90.00 and Malaysian Airlines raised its fuel surcharge to approximately US \$92.00 (on routes  
8 between Malaysia and the U.S.), non-defendant co-conspirator Northwest raised its fuel  
9 surcharge to US \$90.00, non-defendant co-conspirator UAL raised its fuel surcharge to US  
10 \$90.00, China Airlines raised its fuel surcharge to approximately US \$95.00, and Singapore  
11 Airlines raised its fuel surcharge to approximately US \$90.00 (on routes between Singapore and  
12 the U.S.).

13           203.     Moreover, during much of the Class Period, the Defendants repeatedly charged  
14 identical fuel surcharges for passenger traffic from Hong Kong, including to the United States:  
15

Air Carrier	Fuel Surcharge Amount	Effective Date
Air New Zealand	HKD481 per coupon (long haul) ( <b>approximately US \$62.00</b> )	August 1, 2006
Air France	HKD468 per coupon	August 1, 2006
Qantas	HKD481 per coupon (long haul)	August 1, 2006
British Airways	HKD481 per coupon	August 1, 2006
Cathay Pacific	Short haul: HKD117 per coupon Long haul: HKD481 per coupon	August 1, 2006
Singapore Airlines	HK/SIN HKD117 per coupon (short haul) HK/SFO HKD481 per coupon (long haul)	August 1, 2006
ANA	HKD117 per coupon (short haul)	August 1, 2006
China Airlines	HKD117 per coupon (short	August 1, 2006

	haul)	
1	Continental Airlines	HKD481 per coupon August 1, 2006
2	EVA	HKD117 per coupon (short haul) August 1, 2006
3	JAL	HKD117 per coupon (short haul) August 1, 2006
4	KLM	HKD481 per coupon August 1, 2006
5	Lufthansa	HKD481 per coupon August 1, 2006
6	Malaysian Airlines	HKD117 per coupon (short haul) August 1, 2006
7	Philippine Airlines	HKD481 per coupon August 1, 2006
8	Swiss International	HKD481 per coupon August 1, 2006
9	Thai Airways	HKD117 per coupon (short haul) August 1, 2006
10	Vietnam Airlines	HKD117 per coupon August 1, 2006
11	Air France	HKD481 per coupon October 1, 2006
12	Qantas	HKD481 per coupon (long haul) October 1, 2006
13	Singapore Airlines	HK/SIN HKD117 per coupon (short haul) HK/SFO HKD481 per coupon (long haul) October 1, 2006
14	ANA	HKD117 per coupon (short haul) October 1, 2006
15	British Airways	HKD481 per coupon October 1, 2006
16	China Airlines	HKD117 per coupon (short haul) October 1, 2006
17	Continental Airlines	HKD481 per coupon October 1, 2006
18	EVA	HKD117 per coupon (short haul) October 1, 2006
19	JAL	HKD117 per coupon (short haul) October 1, 2006
20	KLM	HKD481 per coupon October 1, 2006
21	Lufthansa	HKD481 per coupon October 1, 2006
22	Malaysian Airlines	HKD117 per coupon (short haul) October 1, 2006
23	Philippine Airlines	HKD117 per coupon October 1, 2006
24	Swiss International	HKD481 per coupon October 1, 2006
25	Thai Airways	HKD117 per coupon (short haul) October 1, 2006
26	Vietnam Airlines	HKD481 per coupon October 1, 2006
27	Air New Zealand	HKD466 per coupon (long haul) December 1, 2006
28	Air France	HKD466 per coupon (long haul) December 1, 2006

1	British Airways	HKD466 per coupon (long haul)	December 1, 2006
2	China Airlines	HKD113 per coupon (short haul)	December 1, 2006
3	Continental Airlines	HKD466 per coupon (long haul)	December 1, 2006
4	KLM	HKD455 per coupon (long haul)	December 1, 2006
5	Lufthansa	HKD466 per coupon (long haul)	December 1, 2006
6	Philippine Airlines	HKD113 per coupon (short haul)	December 1, 2006
7	Qantas	HKD466 per coupon (long haul)	December 1, 2006
8	Singapore Airlines	HK/SIN HKD113 per coupon (short haul)	December 1, 2006
9		HK/SFO HKD466 per coupon (long haul)	
10	Swiss International	HKD466 per coupon (long haul)	December 1, 2006
11	ANA	HKD113 per coupon (short haul)	December 1, 2006
12	China Airlines	HKD113 per coupon (short haul)	December 1, 2006
13	EVA	HKD113 per coupon (short haul)	December 1, 2006
14	JAL	HKD113 per coupon (short haul)	December 1, 2006
15	Malaysian Airlines	HKD113 per coupon (short haul)	December 1, 2006
16	Thai Airways	HKD113 per coupon (short haul)	December 1, 2006
17	Vietnam Airlines	HKD113 per coupon (short haul)	December 1, 2006
18			
19			
20			
21			
22			
23	Air New Zealand	HKD438 per coupon (long haul)	February 1, 2007
24	Air France	HKD438 per coupon (long haul)	February 1, 2007
25	British Airways	HKD438 per coupon (long haul)	February 1, 2007
26	Continental Airlines	HKD438 per coupon (long haul)	February 1, 2007
27	KLM	HKD438 per coupon (long haul)	February 1, 2007
28			

1	Lufthansa	HKD438 per coupon (long haul)	February 1, 2007
2	Philippine Airlines	HKD106 per coupon (short haul)	February 1, 2007
3	Qantas	HKD438 per coupon (long haul)	February 1, 2007
4	Cathay Pacific	Short haul: HKD106 per coupon (short haul) Long haul: HKD438 per coupon	February 1, 2007
5			
6	Singapore Airlines	HK/SIN HKD106 per coupon (short haul) HK/SFO HKD438 per coupon	February 1, 2007
7			
8	Swiss International	HKD438 per coupon (short haul)	February 1, 2007
9			
10	ANA	HKD106 per coupon	February 1, 2007
11	China Airlines	HKD106 per coupon (short haul)	February 1, 2007
12	EVA	HKD106 per coupon (short haul)	February 1, 2007
13	JAL	HKD106 per coupon (short haul)	February 1, 2007
14	Malaysian Airlines	HKD106 per coupon (short haul)	February 1, 2007
15	Thai Airways	HKD106 per coupon (short haul)	February 1, 2007
16	Vietnam Airlines	HKD438 per coupon (short haul)	February 1, 2007
17			
18	Air New Zealand	HKD420 per coupon (long haul)	April 1, 2007
19	Air France	HKD420 per coupon (long haul)	April 1, 2007
20	British Airways	HKD420 per coupon (long haul)	April 1, 2007
21	Continental Airlines	HKD420 per coupon (long haul)	April 1, 2007
22			
23	Lufthansa	HKD420 per coupon (long haul)	April 1, 2007
24	KLM	HKD420 per coupon (long haul)	April 1, 2007
25	Philippine Airlines	HKD102 per coupon (short haul)	April 1, 2007
26	Qantas	HKD420 per coupon (long haul)	April 1, 2007
27			
28	Cathay Pacific	Short haul: HKD102 per coupon	April 1, 2007

1		Long haul: HKD420 per coupon	
2	Singapore Airlines	HK/SIN HKD102 per coupon (short haul)	April 1, 2007
3		HK/SFO HKD420 per coupon (long haul)	
4	Swiss International	HKD420 per coupon (long haul)	April 1, 2007
5	ANA	HKD102 per coupon (short haul)	April 1, 2007
6	China Airlines	HKD102 per coupon (short haul)	April 1, 2007
7	EVA	HKD102 per coupon (short haul)	April 1, 2007
8	Malaysian Airlines	HKD102 per coupon (short haul)	April 1, 2007
9	Thai Airways	HKD102 per coupon (short haul)	April 1, 2007
10	Vietnam Airlines	HKD102 per coupon (short haul)	April 1, 2007
11			
12			
13	Air New Zealand	HKD412 per coupon (long haul)	June 1, 2007
14			
15	Air France	HKD412 per coupon (long haul)	June 1, 2007
16			
17	British Airways	HKD412 per coupon (long haul)	June 1, 2007
18			
19	Continental Airlines	HKD412 per coupon (long haul)	June 1, 2007
20			
21	KLM	HKD412 per coupon (long haul)	June 1, 2007
22			
23	Lufthansa	HKD412 per coupon (long haul)	June 1, 2007
24			
25	Philippine Airlines	HKD100 per coupon (short haul)	June 1, 2007
26	Qantas	HKD412 per coupon (long haul)	June 1, 2007
27	Cathay Pacific	Short haul: HKD100 per coupon	June 1, 2007
28		Long haul: HKD412 per	



	coupon	
1	Singapore Airlines	HK/SIN HKD100 per coupon (short haul) HK/SFO HKD412 per coupon (long haul)
2		June 1, 2007
3	Swiss International	HKD100 per coupon (short haul)
4		June 1, 2007
5	ANA	HKD100 per coupon (short haul)
6		June 1, 2007
7	China Airlines	HKD100 per coupon (short haul)
8		June 1, 2007
9	EVA	HKD100 per coupon (short haul)
10		June 1, 2007
11	Malaysian Airlines	HKD100 per coupon (short haul)
12		June 1, 2007
13	Thai Airways	HKD100 per coupon (short haul)
14		June 1, 2007
15	Vietnam Airlines	HKD100 per coupon (short haul)
16		June 1, 2007
17	Air New Zealand	HKD424 per coupon (long haul)
18		August 1, 2007
19	Air France	HKD424 per coupon (long haul)
20		August 1, 2007
21	British Airways	HKD424 per coupon (long haul)
22		August 1, 2007
23	Continental Airlines	HKD424 per coupon (long haul)
24		August 1, 2007
25	KLM	HKD424 per coupon (long haul)
26		August 1, 2007
27	Lufthansa	HKD424 per coupon (long haul)
28		August 1, 2007
	Philippine Airlines	HKD103 per coupon (short haul)
		August 1, 2007
	Qantas	HKD424 per coupon (long haul)
		August 1, 2007
23	Cathay Pacific	Short haul: HKD103 per coupon Long haul: HKD424 per coupon
24		August 1, 2007
25	Singapore Airlines	HK/SIN HKD103 per coupon (short haul) HK/SFO HKD424 per coupon (long haul)
26		August 1, 2007
27	Swiss International	HKD424 per coupon (long haul)
28		August 1, 2007

1	ANA	HKD103 per coupon (short haul)	August 1, 2007
2	China Airlines	HKD103 per coupon (short haul)	August 1, 2007
3	EVA	HKD103 per coupon (short haul)	August 1, 2007
4	JAL	HKD103 per coupon (short haul)	August 1, 2007
5	Malaysian Airlines	HKD103 per coupon (short haul)	August 1, 2007
6	Thai Airways	HKD103 per coupon (short haul)	August 1, 2007
7	Air New Zealand	HKD428 per coupon (long haul)	October 1, 2007
8	Air France	HKD428 per coupon (long haul)	October 1, 2007
9	British Airways	HKD428 per coupon (long haul)	October 1, 2007
10	Continental Airlines	HKD428 per coupon (long haul)	October 1, 2007
11	KLM	HKD428 per coupon (long haul)	October 1, 2007
12	Lufthansa	HKD428 per coupon (long haul)	October 1, 2007
13	Philippine Airlines	HKD104 per coupon	October 1, 2007
14	Qantas	HKD428 per coupon (long haul)	October 1, 2007
15	Cathay Pacific	Short haul: HKD104 per coupon Long haul: HKD428 per coupon	October 1, 2007
16	Singapore Airlines	HK/SIN HKD104 per coupon (short haul) HK/SFO HKD428 per coupon (long haul)	October 1, 2007
17	Swiss International	HKD428 per coupon (long haul)	October 1, 2007
18			
19	ANA	HKD104 per coupon (short haul)	October 1, 2007
20	China Airlines	HKD104 per coupon (short haul)	October 1, 2007
21	EVA	HKD104 per coupon (short haul)	October 1, 2007
22	JAL	HKD104 per coupon (short haul)	October 1, 2007
23	Malaysian Airlines	HKD104 per coupon (short haul)	October 1, 2007
24			

1	Thai Airways	HKD104 per coupon	October 1, 2007
	Vietnam Airlines	HKD104 per coupon	October 1, 2007
2			
3	Air New Zealand	HKD466 per coupon (long haul)	December 1, 2007
4	Air France	HKD466 per coupon (long haul)	December 1, 2007
5	British Airways	HKD466 per coupon (long haul)	December 1, 2007
6	Continental Airlines	HKD466 per coupon (long haul)	December 1, 2007
7	KLM	HKD466 per coupon (long haul)	December 1, 2007
8	Lufthansa	HKD466 per coupon (long haul)	December 1, 2007
9	Philippine Airlines	HKD113 per coupon (short haul)	December 1, 2007
10			
11	Qantas	HKD466 per coupon (long haul)	December 1, 2007
12	Cathay Pacific	Short haul: HKD113 per coupon Long haul: HKD466 per coupon	December 1, 2007
13			
14	Singapore Airlines	HK/SIN HKD113 per coupon (short haul) HK/SFO HKD466 per coupon (long haul)	December 1, 2007
15			
16	Swiss International	HKD466 per coupon (long haul)	December 1, 2007
17			
18	ANA	HKD113 per coupon (short haul)	December 1, 2007
19	China Airlines	HKD113 per coupon (short haul)	December 1, 2007
20	EVA	HKD113 per coupon (short haul)	December 1, 2007
21	JAL	HKD113 per coupon (short haul)	December 1, 2007
22			
23	Malaysian Airlines	HKD113 per coupon (short haul)	December 1, 2007
24	Thai Airways	HKD113 per coupon (short haul)	December 1, 2007
25	Vietnam Airlines	HKD113 per coupon (short haul)	December 1, 2007
26			
27	Air New Zealand	HKD508 per coupon (long haul)	February 1, 2008
28			

1	Air France	HKD508 per coupon (long haul)	February 1, 2008
2	British Airways	HKD508 per coupon (long haul)	February 1, 2008
3	Continental Airlines	HKD508 per coupon (long haul)	February 1, 2008
4	KLM	HKD508 per coupon (long haul)	February 1, 2008
5	Lufthansa	HKD508 per coupon (long haul)	February 1, 2008
6	Philippine Airlines	HKD123 per coupon (short haul)	February 1, 2008
7	Qantas	HKD508 per coupon (long haul)	February 1, 2008
8	Cathay Pacific	Short haul: HKD123 per coupon (short haul) Long haul: HKD508 per coupon	February 1, 2008
9	Singapore Airlines	HK/SIN HKD123 per coupon (short haul) HK/SFO HKD508 per coupon (long haul)	February 1, 2008
10	Swiss International	HKD508 per coupon (long haul)	February 1, 2008
11	ANA	HKD113 per coupon (short haul)	February 1, 2008
12	China Airlines	HKD123 per coupon	February 1, 2008
13	EVA	HKD123 per coupon	February 1, 2008
14	JAL	HKD113 (2/1/08 – 2/9/08) per coupon (short haul) HKD123 (2/10/08 – 3/31/08) per coupon	February 1, 2008
15	Malaysian Airlines	HKD123 per coupon (short haul)	February 1, 2008
16	Thai Airways	HKD123 per coupon (short haul)	February 1, 2008
17	Vietnam Airlines	HKD123 per coupon (short haul)	February 1, 2008
18			
19			
20	Air New Zealand	HKD518 per coupon (long haul)	April 1, 2008
21	Air France	HKD518 per coupon (long haul)	April 1, 2008
22	British Airways	HKD518 per coupon (long haul)	April 1, 2008
23	Continental	HKD518 per coupon (long haul)	April 1, 2008
24			
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1	KLM	HKD518 per coupon (long haul)	April 1, 2008
2	Lufthansa	HKD518 per coupon (long haul)	April 1, 2008
3	Philippine Airlines	HKD125 per coupon (short haul)	April 1, 2008
4	Qantas	HKD518 per coupon (long haul)	April 1, 2008
5	Cathay Pacific	Short haul: HKD125 per coupon Long haul: HKD518 per coupon	April 1, 2008
6			
7			
8	Singapore Airlines	HK/SIN HKD125 per coupon (short haul) HK/SFO HKD518 per coupon (long haul)	April 1, 2008
9			
10	Swiss International	HKD518 per coupon (long haul)	April 1, 2008
11	ANA	HKD125 per coupon (short haul)	April 1, 2008
12			
13	China Airlines	HKD125 per coupon (short haul)	April 1, 2008
14	EVA	HKD125 per coupon (short haul)	April 1, 2008
15	JAL	HKD125 per coupon (short haul)	April 1, 2008
16	Malaysian Airlines	HKD125 per coupon (short haul)	April 1, 2008
17	Thai Airways	HKD125 per coupon (short haul)	April 1, 2008
18	Vietnam Airlines	HKD125 per coupon (short haul)	April 1, 2008
19			

20 **c. Fuel Surcharges Were Implemented And Raised Through Collective Action**

21 204. During and after various BAR meetings in Thailand, the Philippines, Malaysia,  
22 and Hong Kong, the Defendants exchanged information about the imposition of fuel surcharges  
23 and reached express and tacit agreements about whether to impose fuel surcharges, the amounts  
24 of the surcharges, and the timing of their imposition. These fuel surcharges included surcharges  
25 imposed on flights to and from the United States.

26 205. Defendants Air New Zealand, Air France, ANA, British Airways, Cathay Pacific,  
27 China Airlines, Continental Airlines, EVA, JAL, Lufthansa, Malaysian Airlines, Philippine  
28

1 Airlines, Qantas, Singapore Airlines, Swiss International, Thai Airways, and Vietnam Airlines  
2 are all members of BAR HK which facilitated agreements to coordinate fuel surcharge pricing by  
3 the Defendants through its “Airline Charges Sub-Committee” on a bi-monthly basis during at  
4 least a portion of the Class Period alleged herein. Additional meetings were facilitated by the  
5 BAR organizations in Thailand, Philippines, and Malaysia. The agreements reached at these  
6 formal meetings (which included agreements with respect to flights to and from the United  
7 States) were reinforced through additional agreements between the conspirators.

8 206. For example, on or before May 17, 2004, the exact date of which is unknown to  
9 Plaintiffs, a representative of Philippine Airlines (Ida Vinas) circulated a request to its “Airline  
10 Partners” in which Philippine Airlines asked: “Are you considering a fuel-related fare increase  
11 or a fixed amount?” On May 17, 2004, Hary Suhardi of Garuda Airlines responded to this  
12 request and copied a number of the “Airline Partners,” some of whom have been identified as  
13 Kim Lye of Singapore Airlines, “Laurence” of Malaysian Airlines, “Sahhiran” of Malaysian  
14 Airlines, “Seree” of Thai Airways, “trangtt.pmd” of Vietnam Airlines and Anzai Yoshharu of  
15 JAL. In his response, the Garuda Airlines employee expressed concern that his government  
16 would not like to “see this,” referring to implementation of a fuel surcharge. Singapore Airlines  
17 then responded that while it had not taken any action yet, the company “may match national  
18 carriers practice” and that “IATA has called for a Special Meeting. Believe it is beneficial for all  
19 carriers to support the IATA Meeting. Even if a carrier would not be able to increase the fares  
20 from their country, it would benefit from fare increases adopted ex other countries.” Vietnam  
21 Airlines (Tran Thu Hein) then noted that it had not taken any action yet. “However, I am not  
22 sure that we can maintain the current situation if fuel prices continue to escalate.”

23 207. The next day, Tuesday, May 18, 2004, at the Thai BAR meeting in the Thai  
24 Airways office in Bangkok, the Thai BAR chairman, Suthep Suebsantiwongse, advised that  
25 implementation of fuel surcharges would not be opposed by Thai regulators so long as the total  
26 ticket price remained below IATA immunized fare levels. Mr. Suebsantiwongse proposed  
27 benchmarks and a formula for fuel surcharges. The participants agreed to “come up with a  
28 proposal . . . with a target implementation date of 1<sup>st</sup> June 2004.” Each of the BAR members

1 was asked to check with their superiors about the palatability of fuel surcharges, with “[r]esults  
2 to be collated next Monday, 24 May.” During the meeting, the attendees discussed surcharges  
3 for domestic, regional and international (including United States) flights. The latter was  
4 proposed to start at US\$15. The formula proposed was that if fuel costs were up or down by  
5 20% over two consecutive weeks, the surcharge would change correspondingly by US\$2.50.  
6 Mr. Suebsantiwongse stated that success depended on “airline unity in practice.” It was  
7 specifically noted that the United States carriers in attendance could participate in discussions  
8 about implementing a fuel surcharge, but could not discuss rates.

9 208. According to the minutes for the May 18 meeting, participants included  
10 representatives of Thai Airways (Suthep Suebsantiwongse, Pandit Chanapai), Qantas (Julianne  
11 Rogers, J. Louisi Moser), EVA (Thira K.) British Airways (Julianne Rogers, J. Louisi Moser),  
12 UAL (Warren Gerig, left meeting before specific fuel surcharges discussed), Air France  
13 (Smartchai Tuchinda), China Airlines (Nelson Fang), Cathay Pacific (Yongyut Lujintanon), JAL  
14 (Kamol V.), KAL (James K.C. Yeung), KLM (Ihab Sourial), Lufthansa (Wolfgang Schmidt),  
15 ANA (Somnuek Asavaveeradej), Northwest (Sarathool M., left meeting before specific fuel  
16 surcharges discussed), Asiana (Vorakit Nivatwong), and Philippine Airlines (Dell Merano,  
17 Vatchara Silpohevagitja), among others. A complete list is set forth in Appendix B.

18 209. On May 24, 2004, Carol Phathomros (Thai Airways) followed up the May 18  
19 Thai BAR meeting with an e-mail to the meeting participants and others, including American  
20 Airlines (Prajak Burarak, Chaichan Khongsrithong) and EVA Airways. The e-mail attached a  
21 letter that Thai Airways was sending to the Thai Department of Transport. The letter stated in  
22 part that “[t]he members of the Board of Airlines Representatives at a meeting on 18<sup>th</sup> May  
23 agreed that unless otherwise instructed by their Head Offices . . . they would apply the following  
24 fuel surcharges adapting the fuel price index methodology of calculating the surcharge . . . .  
25 US15.00 for intercontinental flights. The fuel surcharge will be on a per sector basis . . . .”  
26 These surcharges included surcharges on flights to and from the United States. The complete list  
27 of recipients of this e-mail is set forth in Appendix C.

28

1           210.     A number of Defendants acquiesced to this letter, which was sent out on May 26,  
2 2004.

3           211.     On June 7, 2004, Thai Airways sent an e-mail confirming the imposition of fuel  
4 surcharges as previously discussed by Thailand BAR members. The e-mail further noted that  
5 “[t]he surcharge amounts are as agreed by BAR members at the BAR meeting on 18May04 . . .”

6           212.     Thailand was not the only country in which collusive action was being taken on  
7 fuel surcharges in 2004. On May 21, 2004, at a meeting of the Philippine BAR, the issue of fuel  
8 surcharges on passenger fares was again discussed by the meeting’s participants. Philippine  
9 Airlines advocated for a US\$6.00 per segment, which would include flights to and from the  
10 United States. Other carriers were concerned that this would disadvantage carriers with multiple  
11 stops on transpacific routes. Philippine Airlines was seeking to introduce the fuel surcharge on  
12 June 1, 2004.

13           213.     On May 25, 2004, Estrellita O. Inoturan from the Manilla BAR and a manager in  
14 Philippine Airlines’ Tariffs, Revenue Management Department sent an e-mail to a JAL  
15 employee further discussing the intended surcharge, the effective date, and method of  
16 implementation (as a separate YQ element on the passenger’s bill). The e-mail asked for  
17 confirmation that the recipients would agree to it. A follow-up e-mail by Joanne Sotocinal of  
18 Philippine Airlines noted that Swiss International had agreed to imposition of the surcharge. A  
19 complete list of the recipients of this e-mail is set forth in Appendix F.

20           214.     On May 26, 2004, Terada Haruhiku (JAL) indicated in an e-mail that “[w]e do not  
21 oppose PR’s [Philippine Airlines’] adoption of the fuel Surcharge.”

22           215.     Also in May of 2004, the members of the Malaysia BAR exchanged information  
23 regarding a fuel surcharge. Malaysian Airlines wanted a \$50 Malay (roughly US \$14.00)  
24 surcharge per sector (including North America), effective June 1. EVA proposed a surcharge as  
25 well. These surcharges included surcharges on flights to and from the United States.

26           216.     Various communications reflect collusion among numerous air carriers with  
27 respect to fuel surcharges. On October 29, 2004, Hirashi Rie (JAL) sent an e-mail confirming  
28 that Air France would begin collection of a 10 Euro fuel surcharge on international flights. An e-



1 mail earlier in the day confirmed that Lufthansa had increased its fuel surcharge for international  
2 carriage from 7 Euros to 17 Euros and that British Airways had increased its fuel surcharge from  
3 £6 to £10.

4 217. Another e-mail of that same date from Liu Zheng (JAL) to Mr. Yamasaki  
5 confirms that China Airlines will start collection of fuel surcharge for the “China-America” route  
6 of US\$14.00 and that KAL had started imposing a fuel surcharge of US\$25.00 for departures  
7 from the United States on October 25, 2004. The same e-mail noted that Qantas had increased  
8 its fuel surcharge for the “America routes” to US\$21.30, effective October 20, 2004.

9 218. On November 1, 2004, Naoma Kaori (JAL) sent an e-mail confirming that she  
10 had communicated with American Airlines, UAL, Delta, Continental, and Northwest and that  
11 these airlines had imposed fuel surcharges of US\$25.00 on transpacific routes, except to/from  
12 Japan, where the fuel surcharge was US\$5.00. With the exception of Northwest, these  
13 surcharges were not expressly described as “fuel surcharges.” The same e-mail noted that  
14 Philippine Airlines was also imposing a US\$25.00 fuel surcharge, effective for tickets issued on  
15 and after October 22, 2004, and that Thai Airways was introducing a fuel surcharge of  
16 US\$19.00, effective November 1, 2004, for routes to and from the United States. Ms. Kaori was  
17 also able to confirm through ATPCO, a tariff publication company owned by Air France,  
18 American Airlines, British Airways, Continental, JAL, Delta, KLM, Lufthansa, Northwest,  
19 Swiss International, UAL, and others, that Thai Airways was implementing a fuel surcharge of  
20 US\$15.00 one way to and from the United States, and that Singapore Airlines was collecting a  
21 US\$17.00 fuel surcharge to and from the United States.

22 219. On June 15, 2004, Akira Mori (JAL) responded to an inquiry from Vietnam  
23 Airlines (Tran Thu Hien) regarding ANA’s fuel surcharge intentions. Mr. Mori stated that JAL  
24 was planning on implementing Vietnam Airlines’ “captioned surcharge from July 1, 2004” and  
25 that ANA “will most likely match us.” A subsequent JAL e-mail from Nakano Hoshiko dated  
26 June 22, 2004 noted that “[w]e have a sensitive relationship with the authority and we do not  
27 want to have any arguments about the set-up of carrier fares etc.” On September 21, 2004, Mr.  
28 Yamasaki of JAL wrote to Mohamed Habib of Northwest asking why the DOT was reluctant to

1 authorize fuel surcharges for passenger tickets. Mr. Habib quickly responded that same day and  
2 inquired: “Is there interest in your company to implement fuel surcharge?”

3 220. On October 15, 2004, Inagaki Takashi of JAL wrote to Mohamed Habib of  
4 Northwest: “Have you heard that DOT at last decided to permit the filing of FUEL surcharges  
5 by carriers!?” Mr. Habib responded, in part, by noting that American Airlines has already  
6 undertaken efforts to implement a fuel surcharge. Mr. Habib stated that Northwest would “most  
7 likely match” it.

8 221. From November 8, 2004 through November 10, 2004, Mr. Yamasaki engaged in  
9 an effort on behalf of JAL to coordinate fuel surcharges with other airlines. Mr. Yamasaki noted  
10 that Air France, KLM, Lufthansa, British Airways, Singapore Airlines, Thai Airways, KAL,  
11 China Airlines, Qantas, Air New Zealand, American Airlines, UAL, and Northwest, among  
12 others, had instituted fuel surcharges.

13 222. Mamaoru Tsutsumi of JAL concluded in a November 8, 2004 e-mail that JAL  
14 would help its competitors implement fuel surcharges in Japan and would then follow the lead of  
15 these competitors in their home markets.

16 223. Mr. Tsutsumi then referenced the second round of fuel surcharges imposed by the  
17 industry that occurred in the fall of 2004 and stated that JAL would implement a fuel surcharge  
18 of its own “for Japan departures, after secondary fare increase approval, with an eye on levels in  
19 Europe and the Americas, we will file C/S at around JPY 1,000 for short distance and JPY 2,000-  
20 2,500 for long distance, and other foreign airlines to follow.”

21 224. On November 10, 2004, Mr. Yamasaki confirmed the following current and  
22 future fuel surcharges in the Japanese market (including flights to and from the United States):

23 Carriers that have implemented fuel surcharges:

24 British Airways (USD17)

25 American Airlines (USD25)

26 Carriers that have not yet implemented fuel surcharges:

27 SU (Aeroflot) (USD10)

28 LH (Lufthansa) (USD17)

1 CX (Cathay Pacific) (USD7)

2 NW (USD25)

3 CO (USD25)

4 225. On November 30, 2004, Hiroko Ueba (Cathay Pacific) e-mailed Yasuhiro  
5 Nishiyama (ANA) and Ms. Noma (JAL). The subject matter of the e-mail was “Fuel  
6 Surcharge.” Mr. Ueba opened his e-mail by stating that he thanked JAL for their “continued  
7 support.” He continued by explaining that ANA wanted to implement a fuel surcharge: “I was  
8 wondering if I could obtain an agreement from your company.” The requested agreement  
9 concerned flight coupons between Hong Kong and North America, among other places around  
10 the world effective December 1, 2004. Ms. Noma obtained the approval of Gen Yamasaki (JAL)  
11 through an e-mail dated November 30, 2004. Mr. Yamasaki wrote, “It is okay to agree.” On  
12 December 2, 2004, Ms. Noma confirmed to Mr. Yamasaki that “[y]esterday I told CX [Cathay  
13 Pacific] that we would agree to it.”

14 226. On December 26, 2004, Mr. Yamasaki reported in an e-mail to Irie Kesuke of  
15 JAL and others that an “airline concordance” was submitted to KE [KAL] today.”

16 227. On January 5, 2005, Kubota Tomomi of JAL wrote to Mr. Yamasaki of JAL and  
17 reported that “TG [Thai Airways] has inquired about a fuel surcharge with a view to obtaining an  
18 agreement from us. According to them, it will be USD 20 per leg for international flights. Is it  
19 okay to agree?” Mr. Yamasaki replied: “Yes, go ahead and agree.” Mr. Tomomi then stated that  
20 he has “confirmed with them as follows . . . Manila International sector: USD 20.00 or  
21 equivalent for LAX-bound Kansai departures.”

22 228. On January 7, 2005, Kubota Tomomi of JAL sent an e-mail to Toshiaki Oshima  
23 of Singapore Airlines thanking him for his “continuous help” and asking for information about  
24 the status of Singapore Airlines’ fuel surcharges. Mr. Tomomi followed up with Mr. Oshima  
25 again on January 13, 2005. Kazuhisa Okamoto of Singapore Airlines’ “Alliance dept.” then  
26 responded to Mr. Tomomi on January 17, 2005 by explaining the details of Singapore Airlines’  
27 fuel surcharges. Mr. Tomomi thanked Mr. Okamoto for the information, promised to be “very  
28

1 careful [sic] with handling”, and requested that Singapore Airlines “keep cooperating with us in  
2 the future.”

3 229. Also, for a period of time commencing in 2004 and for the next several years  
4 thereafter, ANA and JAL held regular meetings (which usually took place at ANA’s  
5 headquarters in Tokyo) in order to agree on the timing and amount of fuel surcharge increases  
6 for flights into and out of Japan, including flights to and from the United States. ANA and JAL  
7 also agreed on the exchange rates that would be used to effectuate their agreements and the  
8 trigger points for changes in the surcharges. For example, ANA and JAL agreed that a February  
9 1, 2005 surcharge described below would terminate when the price of crude oil dropped below  
10 \$40/barrel on the Singapore index and that the surcharge into and out of Japan would be \$2,500  
11 yen.

12 230. As of December 24, 2005 JAL proposed implementing the surcharge only on  
13 outbound flights. On January 5, 2005, ANA proposed a surcharge for both inbound and  
14 outbound flights. On January 18, 2005, JAL agreed with ANA’s proposal.

15 231. Participants in the earliest meetings between ANA and JAL included Mr. Shinobe  
16 (ANA revenue management); Mr. Kato (ANA revenue management); Mr. Ineda (ANA revenue  
17 management); Yugi Saito (JAL international marketing); and Mr. Ishida (JAL revenue  
18 management). Beginning in late-November or early December 2004 and continuing thereafter,  
19 additional meetings were held between Mr. Yabuki, Mr. Sato, and Mr. Yakoyama from the ANA  
20 tariff group and Ms. Hoshiko, Ms. Nakano, and Mr. Yamasaki from the JAL tariff group to  
21 facilitate and implement agreements concerning the timing and amount of fuel surcharges on  
22 routes into and out of Japan.

23 232. ANA and JAL agreed to raise and lower passenger fuel surcharges on nearly  
24 always the same dates and in the same amounts:

25 January 5, 2005. ANA announced it  
26 would add fuel surcharges on  
27 international fares on **February 1**. The  
28 surcharges for transpacific flights were  
2,500 yen (approximately US \$24.37)

January 20, 2005. JAL announced it  
would add fuel surcharges on  
international passenger fares on  
**February 1**. The surcharges for  
transpacific flights were 2,500 yen  
(approximately US \$24.37).

1 2	<u>June 3, 2005</u> . JAL announced its intention to raise its international fuel surcharge effective <b>July 1</b> .	<u>June 7, 2005</u> . ANA announced its intention to raise its international fuel surcharge effective <b>July 7</b> .
3 4	<u>January 16, 2006</u> . JAL announced its intention to raise its international fuel charge effective <b>March 1</b> .	<u>January 23, 2006</u> . ANA announced its intention to raise its international fuel surcharge, effective <b>March 1</b> .
5 6	<u>August 17, 2006</u> . JAL announced its intention to raise its international fuel surcharge, effective <b>October 1</b> , from 8,000 yen to 13,600 yen (\$66 to \$113).	<u>August 31, 2006</u> . ANA announced its intention to raise its international fuel surcharge, effective <b>October 15</b> , from 8,000 yen to 13,600 yen (\$66 to \$113).
7 8 9 10	<u>November 16, 2006</u> . JAL announced its intention to reduce the fuel surcharge on international passenger fares effective <b>January 1</b> , lowering the surcharge from 13,600 yen to 13,000 yen (\$113 to \$108).	<u>November 16, 2006</u> . ANA announced its intention to reduce the fuel surcharge in international passenger fares effective <b>January 1</b> , lowering the surcharge from 13,600 yen to 13,000 yen (\$113 to \$108).
11 12	<u>March 19, 2007</u> . JAL announced its intention to reduce the fuel surcharge on international passenger fares effective <b>May 1</b> , to 11,000 yen (\$91).	<u>March 20, 2007</u> . ANA announced its intention to reduce the fuel surcharge on international passenger fares effective <b>May 1</b> , to 11,000 yen (\$91).
13 14 15	<u>May 15, 2007</u> . JAL announced its intention to raise the fuel surcharge on international passenger fares effective <b>July 1</b> , from 11,000 yen or \$91 to 12,000 yen (\$100).	<u>May 25, 2007</u> . ANA announced its intention to raise the fuel surcharge on international passenger fares effective <b>July 10</b> , from 11,000 yen or \$91 to 12,000 yen (\$100).
16 17 18	<u>August 15, 2007</u> . JAL announced its intention to raise the fuel surcharge on international passenger fares effective <b>October 1</b> , from 12,000 yen or \$100 to 13,000 yen (\$108).	<u>August 20, 2007</u> . ANA announced its intention to raise the fuel surcharge on international passenger fares effective <b>October 1</b> , from 12,000 yen or \$100 to 13,000 yen (\$108).

20           233.     On May 31, 2005, Hirai Noboru of JAL circulated an e-mail with a subject line  
21 titled: “[r]egarding meeting with NW (forwarding prohibited read only).” Mr. Noboru stated that  
22 he was providing a summary of his meeting with NW “yesterday” and that the recipients should  
23 “delete this after you have finished reading.” The e-mail noted that Northwest was considering  
24 matching JAL’s application on fuel surcharge increases on routes to Honolulu, but that  
25 Northwest had not yet made a determination about North America “because of reasons such as  
26 the need to watch the trend in other American companies.” This e-mail also referenced fare  
27 coordination between JAL and Northwest, with a final decision to be “made after CO  
28

1 [Continental]/JL [JAL] price coordination.” The e-mail concluded: “The environment is such  
2 that continued price increases will be desired.”

3 234. Collusion on air passenger surcharges continued in Thailand and other countries  
4 as well. For example, on August 18, 2005, Carol Phathomros of Thai Airways circulated an e-  
5 mail on behalf of “Wallop/VP Sales and Distribution.” The e-mail was titled: “Message from  
6 THAI re Fuel Surcharge.” In the e-mail, Thai Airways stated in part: “[w]e also know that we  
7 have to be aware of market acceptability of these increases. But most of all, we at THAI are  
8 looking for all of your efforts to toe the line with us. All the time we compete absolutely, but  
9 this time we ask for unity and to be onboard the fuel surcharge wagon for our future and  
10 survival.” The e-mail was sent to Singapore Airlines (David Lau), UAL (Eric Wilson), SAS  
11 (Axel Blom), Cathay Pacific (Patrick Yeung), British Airways (Julianne Rogers), Lufthansa  
12 (Wofgang Schmidt), Air India, Air Canada, Eva Airways, KLM (Jhab Sorial), Northwest  
13 (“Sarathool”), Air New Zealand (Panya Silpargam), Asiana, Cathay Pacific (Alan Tang), IATA,  
14 KAL, China Airlines (Charlie Fu), American Airlines (Pajack Burarak, Chaichan  
15 Khorgsrithong), JAL (Chanchai Wangyuenyong), Qantas (L. Moser), Vietnam Airlines, Air  
16 France, Swiss International (Brian Sinclair-Thompson), Alitalia, Vietnam Airlines, Philippine  
17 Airlines, and ANA, among others.

18 235. On September 1, 2005, a meeting of the Thai BAR was held. It was noted at the  
19 meeting that Thai Airways was asking for support for higher fuel surcharges, which would  
20 encompass surcharges on flights to and from the United States. The meeting minutes indicated  
21 that “[i]t was proposed that BAR should write to TG [Thai Airways] noting that all airlines suffer  
22 and in principle accept the higher fuel surcharge, but at the same time have to look at market  
23 fares in Thailand which are 20-30% below published [IATA] fares.” The airlines in attendance  
24 at the meeting were upset that the “BKK [Suvarnabhumi Bangkok International Airport] fare  
25 was below other regional destinations.” Airlines present at this meeting included Thai Airlines  
26 (Rangsiman Mokhansasamit), British Airways (Julianne Rogers), Qantas (Julianne Rogers),  
27 Cathay Pacific (Patrick Yeung), Northwest (Sarathool), Air France (Christine Seuge), China  
28 Airlines (Charlie Fu, Andy Yao), JAL (S. Iwasaki, Chanchai Wangyuenyong), Lufthansa

1 (Wolfgang Schmidt), Korean Air (Suchon Paleewong), ANA (Kimiya Arima, Somnuk Asava),  
2 Philippine Airlines (Monet Trespeses), UAL (Eric Wilson), and Vietnam Airlines (Ngayen Nhu  
3 Thang), among others. The attendees were urged to support the creation of a subgroup to  
4 examine base fare prices and to otherwise discuss each other's fares.

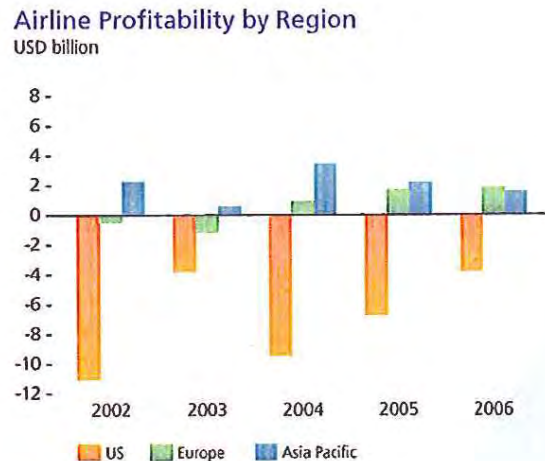
5 **d. Coordination Of Fuel Surcharge Increases Are Not An Expected By-**  
6 **Product Of Competition**

7 236. The coordination of the Defendants' fuel surcharge increases cannot be explained  
8 merely as a function of the industry's exposure to fuel cost increases. The impact of rising fuel  
9 costs on individual airline profits varies widely depending on factors such as fleet utilization and  
10 efficiency. Singapore Airlines, for example has newer, more fuel-efficient planes than a number  
11 of the Defendants. The impact of rising fuel also varies depending how much of projected fuel  
12 consumption was committed to at a fixed price at the beginning of the year, a practice known as  
13 hedging. In short, the Defendants' cost structures differ widely. Their desire to coordinate the  
14 timing and amount of fuel surcharges is not consistent with a competitive air transportation  
15 market.

16 **e. Substantial Increases In Profitability Are Not An Expected By-**  
17 **Product Of Competition**

18 237. The Defendants and their trade associations encourage a false public perception  
19 that the airline industry has been unprofitable in recent years due to increased fuel prices, which  
20 have increased substantially during the latter part of the Class Period.

21 238. While it is true that some airlines have been recently unprofitable—mainly U.S.  
22 airlines whose profitability problems are only tangentially related to fuel prices—the majority of  
23 airlines headquartered in the Asia and Oceania have achieved substantial profits throughout the  
24 Class Period, as the following AAPA chart indicates:  
25  
26  
27  
28



239. The 2007 financial report produced by the AAPA notes that carriers in Asia Pacific were collectively recording substantially increased profits even as they were experiencing increased fuel costs:

**FY2006/2007 saw a significant improvement in profitability for Asia Pacific airlines. Net income tripled, while operating profit increased by 69% to USD 3.7 billion. The healthy performance was achieved with strong revenue growth, up 15.4%, outpacing the overall cost increase of 14.1%.**  
(Emphases added).

240. AAPA's 2008 financial report demonstrated that the Asia Pacific carriers recorded historically high profits again for the year ending 2007.

Asia Pacific airlines' net income grew by 38% to USD 5.1 billion while operating profit was USD 7.3 billion, up by 87%. AAPA member airline consolidated net income totaled USD 3.9 billion, up by 12.5% or USD 433 million. **Operating profit surged 68% to a record high of USD 6.2 billion.**

241. Moreover, Defendants' own data demonstrates that the imposition of fuel surcharges was a profit generator for the airlines, not just a cost recovery mechanism.

242. For example, ANA reported a net profit of 7.68 billion Japanese yen for the first quarter of fiscal year 2006. Thai Airways collected nearly US\$80 million in fuel surcharges and reported substantial profits in the third quarter of 2006. An August 10, 2006 article in the *China Post* quoted a securities analyst as saying that "[t]he higher fuel surcharge in place was also



1 quite effective” in raising Thai Airway's revenues. Similarly, on August 28, 2007, Air New  
2 Zealand announced a net profit of NZ\$214 million, up 123% from the previous year. For the  
3 same period, Air New Zealand's operating costs increased by 13% while the number of  
4 passengers increased only by 4.9%.

5 243. On August 7, 2007, the *Japan Times* reported that JAL's operating loss shrank  
6 from 31.9 billion yen the prior year to 8.5 billion yen. The article further stated, “JAL's  
7 executive officer, attributed the improved earnings performance to the carrier's efforts to cut  
8 costs, brisk business demand for international flights, higher revenue per passenger achieved  
9 through fare hikes on domestic routes and increased fuel surcharges on international flights.”

10 244. On August 8, 2007, Cathay Pacific announced that its passenger revenue had  
11 increased 14.6% for the first half of 2007, compared with the previous year. The total number of  
12 passengers increased by only 4.1%, but passenger yield was up 10.9%. The Defendants operate  
13 within the confines of a highly-competitive, mature industry. Their ability to substantially affect  
14 profitability unilaterally, particularly during a period of turbulent changes in input costs, is not  
15 consistent with free and unfettered marketplace competition.

16 **3. Additional Evidence Establishes That There Was A Wide-Ranging Conspiracy**  
17 **To Impose Fuel Surcharges In The Closely Related Cargo Market During the**  
18 **Class Period**

19 245. Defendants engaged in conspiratorial meetings in Asia, Europe, and the Middle  
20 East during and prior to the Class Period in which they reached generalized global agreements to  
21 fix prices that were then implemented regionally and on a route-by-route basis.

22 246. Indeed, in an April 30, 2009 press release from the ACCC, Australian  
23 Competition Authorities alleged that “arrangements or understandings were reached in countries  
24 including Singapore, Indonesia, Hong Kong, United Arab Emirates, India, Japan and Italy.” The  
25 same press release also asserts that Cathay Pacific entered into at least 70 agreements with other  
26 air cargo carriers to fix the price of fuel and other surcharges.

27 247. During the meetings described above, the participants, including the Defendants,  
28 agreed to conceal their price-fixing cartel by staggering the dates on which airlines would

1 publicly announce that they would match a fare and/or surcharge increase.

2 248. Airline cargo and passenger services are inextricably intertwined markets. The  
3 efficient operation of an airline requires close coordination between its cargo and air passenger  
4 operations. Indeed, much of the cargo that is shipped around the world is carried in the belly of  
5 aircraft that is also used to simultaneously transport people. Accordingly, there is close  
6 interaction between cargo and passenger operations to reserve space, coordinate schedules, and  
7 maximize revenue of each flight.

8 **GOVERNMENT INVESTIGATIONS INTO THE AIR PASSENGER INDUSTRY AND**  
9 **THE CLOSELY RELATED AIR CARGO INDUSTRY**

10 249. The DOJ and competition authorities around the world are investigating  
11 anticompetitive conduct by the airline industry. Indeed, a criminal grand jury has been  
12 empanelled in the District Court for the District of Columbia to investigate price-fixing of  
13 passenger and cargo air transportation, including related fuel surcharges.

14 250. The investigation into passenger fares and cargo began on or before December 31,  
15 2005, when Lufthansa, on behalf of itself and its subsidiaries, approached the DOJ, the European  
16 Commission, the ACCC, and other competition authorities, with evidence of illegal price-fixing  
17 of air cargo rates.

18 251. The DOJ has “a policy of according leniency to corporations reporting their  
19 illegal antitrust activity at an early stage, if they meet certain conditions.”

20 252. Based on its report to the DOJ and consistent with and pursuant to the DOJ  
21 leniency policy, Lufthansa was accepted into the leniency program.

22 253. Thereafter, Virgin Atlantic sought (and was granted) amnesty from the DOJ and  
23 British competition authorities after disclosing its participation in a conspiracy to fix the prices of  
24 international passenger fares, including surcharges.

25 254. On August 1, 2007, the DOJ filed criminal information against KAL in the United  
26 States District Court for the District of Columbia, charging it with violating Section 1 of the  
27 Sherman Act for engaging in the price fixing of *inter alia*, air passenger fuel surcharges.  
28

1           255.     That same day, the DOJ announced that KAL had agreed to plead guilty and pay a  
2 \$300 million fine for its participation in the passenger and cargo conspiracy. In confirming that  
3 it had agreed to plead guilty, KAL attorney Ahn Yong-Seok announced that the company  
4 “apologises to shareholders and customers for causing trouble.” He further stated that KAL’s  
5 compliance officer would attempt to ensure future compliance with U.S. and global fair trade  
6 rules. Subsequent news reports indicated that Asiana may also be subject to potential fines.

7           256.     On August 23, 2007, British Airways pled guilty and was sentenced to pay a \$300  
8 million criminal fine for conspiring to fix cargo rates for international air shipments, including to  
9 and from the United States, and to fix passenger fuel surcharges for long-haul international air  
10 transportation, including between the United States and United Kingdom.

11           257.     On November 27, 2007, it was announced that Qantas had agreed to plead guilty  
12 to fixing prices for cargo shipments to and from the U.S. and elsewhere, in violation of Section 1  
13 of the Sherman Act.

14           258.     On November 28, 2007, Qantas’ CEO, Geoff Dixon, apologized for his  
15 company’s behavior and confirmed:

16                     Similar investigations to those being carried out by the US  
17                     Department of Justice (DOJ) are being undertaken by antitrust  
18                     regulators in other countries, including Australia. We understand  
19                     more than 30 other airlines are included in these investigations.

20           259.     In an April 29, 2009 press release by the DOJ announcing the guilty plea of Frank  
21 De Jong of Martinair in connection with the price-fixing of air cargo rates, the DOJ summed up  
22 its efforts in this area as follows:

23                     The 15 airlines that have pleaded guilty or agreed to plead guilty  
24                     to date as a result of the Department’s ongoing investigation into  
25                     the air transportation industry are: British Airways Plc, Korean  
26                     Air Lines Co. Ltd., Qantas Airways Limited, Japan Airlines  
27                     International Co. Ltd., Martinair, Cathay Pacific Airways Limited,  
28                     SAS Cargo Group A/S, Société Air France, Koninklijke  
                      Luchtvaart Maatschappij N.V. (KLM Royal Dutch Airlines), EL  
                      AL Israel Airlines Ltd., LAN Cargo S.A., Aerolinhas Brasileiras  
                      S.A., Cargolux Airlines International S.A., Nippon Cargo Airlines  
                      Co. Ltd., and Asiana Airlines Inc. Airline executives who have  
                      already pleaded guilty for their involvement in the illegal activity

1 are Bruce McCaffrey of Qantas, Timothy Pfeil of SAS and Keith  
2 Packer of British Airways.

3 260. On December 22, 2007, ANA announced that it had received a statement of  
4 objections from the European Commission regarding ANA's participation in the fixing of prices  
5 of air freight.

6 261. Other air carriers, including a number of Defendants and their co-conspirators,  
7 have also announced that in late-December 2007 they, too, received formal charges from the  
8 European Commission for conspiring to fix cargo rates, including, Air New Zealand, Air France,  
9 Lufthansa, Qantas, co-conspirator KAL, Malaysian Airlines, British Airways, Cathay Pacific,  
10 JAL, Thai Airways, and Singapore Airlines, among others. According to Thai Airways, a total  
11 of 26 airlines have received "Statements of Objection" from the European Commission.

12 262. Thai Airways has further disclosed that it is being investigated by competition  
13 authorities in Europe, the United States, New Zealand, South Korea, and Australia concerning its  
14 participation in anticompetitive conduct involving the global airline industry.

15 263. In their 2007 Annual Reports, China Airlines and EVA acknowledged that the  
16 DOJ is investigating price-fixing of cargo rates. Both China Airlines and EVA stated that they  
17 were cooperating with the investigation, but were unable to assess their financial exposure at the  
18 time the reports were published.

19 264. On January 14, 2008, Qantas pled guilty and was sentenced to pay a \$61 million  
20 criminal fine for its role in a conspiracy to fix the rates of shipments of cargo to and from the  
21 United States and elsewhere.

22 265. News reports indicated that during the week of March 10, 2008, the DOJ ordered  
23 a number of Qantas employees to appear in San Francisco for further questioning in the ongoing  
24 price-fixing investigations.

25 266. On March 11, 2008, the European Commission raided the offices of Lufthansa  
26 (the DOJ's air cargo amnesty candidate), Air France, KLM, and Alitalia for evidence of price-  
27 fixing on air passenger tickets for international flights.

28 267. The European Commission confirmed the raids by its personnel:

1 The European Commission can confirm that on 11th March 2008  
2 Commission officials carried out unannounced inspections at the  
3 premises of a number of international airline passenger carriers.  
4 These airline carriers provide scheduled passenger air transport  
5 services on long-haul routes between Europe and a third country.  
6 The Commission has reason to believe that the companies  
7 concerned may have violated EC Treaty rules on restrictive  
8 business practices (Article 81).

9 268. Following the raids, Lufthansa stated that "[a]ccording to information from the  
10 investigation decision, the commission has information that passenger aviation companies  
11 including Lufthansa in Europe and in Japan may have taken part in anticompetitive price-fixing  
12 and collusive behavior in traffic between the EU and Japan."

13 269. On March 12, 2008, the European Commission announced that the Japanese  
14 competition authorities also have an investigation underway concerning price-fixing of passenger  
15 fares on routes between Japan and Europe.

16 270. On April 16, 2008, the DOJ announced that JAL agreed to plead guilty to fixing  
17 the rates for international cargo shipments and to pay a \$110 million fine.

18 271. On April 30, 2008, ANA announced that it had recorded an "extraordinary loss"  
19 of \$156 million, which it noted is a preliminary estimate of the fines it is facing from the  
20 European Commission for anti-competitive conduct related to the fixing of prices for air freight.  
21 ANA noted that "[t]he allegations are based on evidence held by the European Commission and  
22 provided to them by other companies."

23 272. On May 8, 2008, the DOJ announced that Bruce McCaffrey, a Qantas executive,  
24 agreed to plead guilty to price-fixing cargo fares. He will serve 8 months in federal prison. The  
25 announcement explained:

26 McCaffrey is the first individual to be charged, and this is the fifth  
27 case to arise, in the wide-ranging investigation into the air  
28 transportation industry.

29 273. Also on May 8, 2008, Air Canada disclosed that it, too, had received a statement  
30 of objections from the European Commission concerning its participation in a conspiracy to fix  
31 air cargo rates. Air Canada also disclosed that it was reserving Cdn. \$125 million to resolve its  
32 antitrust problems.

1           274.    On June 17, 2008, the *Business Spectator* reported as follows:

2                   Qantas Airways has reached a confidential settlement agreement  
3                   with the Australian Competition and Consumer Commission, in a  
4                   deal expected to see the airline pay a multi-million dollar penalty  
5                   for its alleged role in illegally fixing fuel surcharges as part of a  
6                   global cartel, reports The Australian Financial Review.

7                   According to the paper, the European Commission is also in the  
8                   final stages of its price-fixing investigations and is ready to take  
9                   action against 26 airlines.

10                  Qantas has signaled to the European regulators that it will admit  
11                  liability and is expected to pay a hefty fine, the paper said.

12           275.    On June 26, 2008, the DOJ announced that it had filed informations against KLM,  
13           Air France, Cathay Pacific, and others for fixing cargo rates on international flights to and from  
14           the United States. Air France and KLM, which have now merged their operations, have agreed  
15           to admit guilt and will pay a \$350 million fine. Cathay Pacific has also agreed to admit guilt and  
16           will pay a fine of \$60 million.

17           276.    Cathay Pacific's CEO has admitted that Cathay Pacific's actions "were in conflict  
18           with US antitrust laws, and we very much regret this."

19           277.    On July 18, 2008, the New Zealand Commerce Commission announced that it had  
20           filed criminal charges against Singapore Airlines' Cargo Division, Cathay Pacific, and another  
21           airline for failing to provide relevant documents and information in response to the  
22           Commission's investigation into an international cartel to fix cargo rates, including surcharges.  
23           Paula Rebstock, the chairwoman of the New Zealand Commerce Commission stated: "Any  
24           failure to comply with . . . statutory notices that form part of a commission investigation is a  
25           serious enforcement issue."

26           278.    In July of 2008, Air France agreed to plead guilty to fixing cargo fares in the  
27           United States. As part of its guilty plea, Air France agreed to a criminal fine of US \$210 million.

28           279.    In August of 2008, Timothy Pfeil, the former highest-ranking cargo executive in  
                 the United States for SAS, pleaded guilty to conspiring to fix the rates charged to U.S. and  
                 international customers on air cargo shipments.

1           280.     On September 30, 2008, the DOJ announced that Keith Packer, former  
2 Commercial General Manager for British Airways World Cargo, had agreed to plead guilty to  
3 fixing air cargo rates charged to customers for international air shipments, including to and from  
4 the U.S., in violation of the Sherman Act. Under the plea agreement, which is subject to court  
5 approval, Packer has agreed to serve eight months in jail, pay a \$20,000 criminal fine and  
6 cooperate with the DOJ's ongoing investigation.

7           281.     On October 28, 2008, the ACCC announced that British Airways had agreed to a  
8 fine of AU\$5,000,000.00 to resolve price-fixing claims lodged against its cargo division. The  
9 ACCC also announced that Qantas had similarly agreed to a fine of AU\$20,000,000.00 for its  
10 participation in the cargo conspiracy. The ACCC Chairman, Graeme Samuel stated, "There are  
11 some other airlines who are not cooperating with us and we will pursue our investigations there,  
12 with a view to bringing them to account as soon as we possibly can. We regard any cartel  
13 activity—particularly those that are engaged in by large businesses and are of a price fixing  
14 nature—as very serious in terms of consumers, they are nothing more than theft. They steal from  
15 consumers potentially millions if not tens of millions of dollars; there's no way that consumers  
16 can recover what it has cost them."

17           282.     On December 15, 2008, the New Zealand Commerce Commission announced that  
18 it had filed an action in the High Court in Auckland against 13 airlines and 10 senior executives,  
19 including Air New Zealand, Air France, Cathay Pacific, British Airways, JAL, KAL, Malaysian  
20 Airlines, Singapore Airlines, Qantas, Thai Airways, and co-conspirators KAL and UAL, for  
21 violations of New Zealand's Commerce Act. The New Zealand Commerce Commission also  
22 noted that other airlines were cooperating with the investigation. The Commission alleged "that  
23 airlines throughout the world colluded to raise the price of freighting cargo by imposing fuel  
24 surcharges for more than seven years." The Commerce Commission further noted that the  
25 conspiracy "affected the price of cargo both into and out of New Zealand. It is alleged that  
26 airlines first entered into an illegal global agreement in 1999/2000 under the auspices of the trade  
27 organization International Air Transport Association (IATA). The airlines imposed the fuel  
28

1 surcharges between 2000 and 2006. The allegations also involve a series of regional price fixing  
2 agreements.”

3 283. On December 22, 2008, the ACCC announced that it had instituted proceedings  
4 against Singapore Airline’s cargo division in Federal Court in Sydney. “The ACCC alleges that  
5 Singapore Airlines Cargo Pte Ltd, between 2001 and 2005, entered into arrangements or  
6 understandings with other international air cargo carriers that had the purpose or effect of fixing  
7 the price of a fuel surcharge and a security surcharge that was applied to air cargo carried by  
8 Singapore Airlines Cargo Pte Ltd and other airlines including to and from Australia.” The  
9 ACCC further noted that a number of additional airlines were not cooperating with its  
10 investigation. In a related proceeding, on or about April 3, 2009, Australia’s Federal Court in  
11 Melbourne ordered Singapore Airlines and its subsidiary, Singapore Cargo, and Emirates to turn  
12 over documents to the ACCC.

13 284. On January 22, 2009, El Al, Aerolinhas Brasileiras, and Lan Cargo agreed to  
14 plead guilty to price-fixing air cargo charges.

15 285. On February 16, 2009, a federal court in Australia ordered Air France to pay a  
16 AU \$6 million penalty for participating in a conspiracy to fix cargo fuel surcharges.

17 286. On March 31, 2009, Air France agreed to pay a penalty to antitrust authorities in  
18 Canada of Cdn. \$4 million.

19 287. On April 9, 2009, Asiana, Nippon Cargo (an affiliate of ANA), and Cargolux  
20 agreed to plead guilty to price-fixing air cargo charges in the United States. Asiana also  
21 admitted to fixing the price of wholesale and passenger fares and has agreed to pay a \$50 million  
22 fine.

23 288. On or about April 20, 2009, the European Commission announced that it has  
24 opened a “priority” investigation into certain airline alliance agreements on trans-Atlantic routes.  
25 According to Jonathan Todd, a Commission spokesperson, “we think that there may be breaches  
26 of the antitrust rules because of the very extensive levels of cooperation on trans-Atlantic routes  
27 between these airlines.”

28



1           289.     On April 30, 2009, the ACCC announced that it had filed suit against Cathay  
2 Pacific for fixing the prices of fuel and other surcharges. The ACCC noted that it had evidence  
3 of at least 70 agreements between Cathay Pacific and its conspirators to fix cargo fares during  
4 the period from 2000 to 2006. The ACCC also stated that it is continuing to investigate the  
5 airline industry and “further actions are expected over the next few months.”

6           290.     Also on April 30, 2009, the DOJ announced that a Martinair Holland executive  
7 had agreed to plead guilty to fixing air cargo fares, pay a \$20,000 criminal fine and spend 8  
8 months in jail.

9           291.     On June 26, 2009, the Canadian Competition Bureau announced that Air France,  
10 KLM, and Martin Air pled guilty to fixing the price of air cargo shipments during the period  
11 from April 2002 to February 2006 and were fined Cdn. \$10 million.

12           292.     On July 7, 2009, the Canadian Competition Bureau announced that Qantas had  
13 agreed to plead guilty to fixing the price of air cargo shipments during the period from May 2002  
14 to February 2006.

15           293.     Total fines levied by the DOJ to date in this wide-ranging investigation exceed  
16 \$1.6 billion and collectively constitute the largest fines ever imposed by the DOJ as a result of a  
17 criminal antitrust investigation. As of April of 2009, fifteen airlines and four executives have  
18 admitted (or have agreed to admit) guilt in US courts for their involvement in the worldwide  
19 cargo conspiracy. Five airlines have either admitted guilt in fixing the prices of passenger fares  
20 or have sought leniency from the DOJ for doing so. The DOJ has stated that its investigation of  
21 the industry is continuing. Appendix G summarizes the status of the DOJ investigation with  
22 respect to the Defendants named in this complaint.

23           294.     It is significant that Defendants' anticompetitive behavior is the subject of a  
24 criminal grand jury investigation by the DOJ. In order for the DOJ to institute a grand jury  
25 investigation, a DOJ Antitrust Division attorney must believe that a crime has been committed  
26 and prepare a detailed memo to that effect. *See Antitrust Grand Jury Practice Manual*, Vol. 1,  
27 Ch. I.B.1 (“[i]f a Division attorney believes that a criminal violation of the antitrust laws has  
28 occurred, he should prepare a memorandum requesting authority to conduct a grand jury

1 investigation.”). Furthermore, following a review of the memorandum, the request for a grand  
2 jury must be approved by the Assistant Attorney General for the Antitrust Division, based on the  
3 standard that a criminal violation may have occurred. *See id.* In addition, the fact that the DOJ  
4 Antitrust Division investigation is criminal, as opposed to civil, is significant as well. The  
5 Antitrust Division’s “Standards for Determining Whether to Proceed by Civil or Criminal  
6 Investigation” state: “[i]n general, current Division policy is to proceed by criminal investigation  
7 and prosecution in cases involving horizontal, per se unlawful agreements such as price fixing,  
8 bid rigging and horizontal customer and territorial allocations.” *See Antitrust Division Manual*,  
9 Chapter III.C.5.

10 **ACCRUAL OF CLAIM, EQUITABLE TOLLING, EQUITABLE ESTOPPEL, AND**  
11 **FRAUDULENT CONCEALMENT**

12 295. Plaintiffs had no knowledge of the combination or conspiracy alleged herein, or  
13 of facts sufficient to place them on inquiry notice of the antitrust claims set forth in this  
14 Complaint, until shortly before the initial class action complaint was filed in this multi-district  
15 litigation.

16 296. Nor could Plaintiffs and the members of the Class have discovered the violations  
17 through the exercise of reasonable diligence earlier than that time because Defendants conducted  
18 their conspiracy in secret, concealed the nature of their unlawful conduct and acts in furtherance  
19 thereof, and fraudulently concealed their activities through various other means and methods  
20 designed to avoid detection. The conspiracy was by its nature self-concealing.

21 297. Only on or about August 1, 2007, when the DOJ announced the charges against  
22 KAL for fixing passenger fares and wholesale fares was the existence of the conspiracy disclosed  
23 to the public.

24 298. As an example of Defendants’ concealment, Plaintiffs have alleged herein an  
25 instance in which the author of an e-mail about fuel surcharge communications asked the  
26 recipients to destroy it.

27 299. Moreover, following the February 2006 raids by competition regulators,  
28 directions were given by senior management of one of the Defendants to destroy all documents

1 concerning communications with competitors regarding fare and rate-setting activities. Plaintiffs  
2 believe that a substantial number of documents relevant to the claims made in this litigation were  
3 destroyed pursuant to that directive.

4 300. Plaintiffs have also alleged an instance in which one of the Defendants suggested  
5 that another Defendant conceal a collusive fare increase by falsely stating that it was due to the  
6 enhanced in-flight services provided to passengers.

7 301. Further, Mr. Suebsantiongse referred to fuel surcharges as a “sensitive” issue  
8 when the Thailand BAR met and agreed to joint imposition of such charges. JAL also referred to  
9 the sensitive nature of the imposition of fuel surcharges. A JAL response to Singapore Airlines  
10 in January 2005 references an understanding that JAL must be “careful” with confidential  
11 information supplied to it by Singapore Airlines.

12 302. The existence of coordinated activity was further concealed by the way in which  
13 the implementation of surcharges were staggered, both in timing and amount—such as was done  
14 by JAL, ANA and other Defendants in Japan in early 2005.

15 303. Indeed, the existence, timing and amount of fuel surcharges are often difficult to  
16 detect by a lay person. Fuel surcharges were often identified on an airline ticket only as the  
17 “YQ” portion of an airline fare, a designation that is totally unintelligible to those outside of the  
18 airline industry.

19 304. Accordingly, Defendants engaged in a successful, illegal price-fixing conspiracy  
20 with respect to passenger air transportation, which they affirmatively concealed in at least the  
21 following respects:

- 22 (a) By agreeing among themselves not to discuss publicly, or otherwise  
23 reveal, the nature and substance of the acts and communications in  
24 furtherance of the illegal scheme;
- 25 (b) By engaging in secret meetings, telephone calls, and other  
26 communications in order to further their illicit cartel;
- 27 (c) By staggering the dates on which changes to fares, including surcharges,  
28 became effective and/or were announced to the public;
- (d) By generating e-mails which recipients were told to destroy after reading;

- 1 (e) By destroying documentary evidence of the alleged conspiracy after the  
2 regulatory raids described above; and/or  
3 (f) By giving false and pretextual reasons for their pricing of passenger fares  
4 and for the increases in those prices during the relevant period, and by  
5 describing such pricing and increases falsely as being a result of external  
6 costs, including the cost of fuel, rather than collusion.

7 305. As a result of the foregoing, Plaintiffs and the members of the Class assert the  
8 tolling of any applicable statute of limitations affecting the rights of action of Plaintiffs and the  
9 members of the Class during the Class Period.

### 10 CLASS ACTION ALLEGATIONS

11 306. The Plaintiffs bring this action on their own behalf and as a class action pursuant  
12 to Rule 23(a) and (b) of the Federal Rules of Civil Procedure on behalf of the following Class:

13 All persons and entities that purchased passenger air transportation  
14 at rates that were not immunized by the United States Department  
15 of Transportation and which included at least one flight segment  
16 between the United States and Asia or Oceania from Defendants or  
17 their co-conspirators, or any predecessor, subsidiary or affiliate  
18 thereof, at any time between January 1, 2000 and the present.  
19 Excluded from the class are purchases of passenger air  
20 transportation directly between the United States and the Republic  
21 of South Korea purchased from Korean Air Lines, Ltd. and/or  
22 Asiana Airlines, Inc.. Also excluded from the class are  
23 governmental entities, Defendants, any parent, subsidiary or  
24 affiliate thereof, and Defendants' officers, directors, employees  
25 and immediate families.

26 307. Plaintiffs do not know the exact number of members of the Class because such  
27 information is in the exclusive control of Defendants. Due to the nature of the trade and  
28 commerce involved, however, Plaintiffs believe that members of the Class number at least in the  
hundreds of thousands and are sufficiently numerous and geographically dispersed throughout  
the United States and the world so that joinder of all Class members is impracticable.

308. There are questions of law and fact which are common to the claims of Plaintiffs  
and the Class they seek to represent, including, but are not limited to:

- 26 (a) Whether Defendants engaged in a combination or conspiracy with their  
27 co-conspirators to fix, raise, maintain, and/or stabilize the prices for  
28 passenger air transportation, including surcharges;

- 1 (b) Whether the purpose and/or effect of the acts and omissions alleged herein  
2 was to restrain trade, or to affect, fix, control, and/or maintain the prices  
3 for passenger air transportation, including surcharges;
- 4 (c) The existence and duration of the horizontal agreements alleged herein to  
5 fix, raise, maintain, and/or stabilize the prices for passenger air  
6 transportation, including surcharges;
- 7 (d) Whether Defendants violated Section 1 of the Sherman Act (15 U.S.C. §  
8 1);
- 9 (e) Whether Defendants fraudulently concealed the alleged conspiracy so as  
10 to equitably toll any applicable statute of limitations;
- 11 (f) Whether Defendants' agents, officers, employees, or representatives  
12 participated in correspondence and meetings in furtherance of the illegal  
13 conspiracy alleged herein, and, if so, whether such agents, officers,  
14 employees, or representatives were acting within the scope of their  
15 authority and in furtherance of Defendants' business interests;
- 16 (g) Whether, and to what extent, the conduct of Defendants caused injury to  
17 Plaintiffs and members of the Class, and, if so, the appropriate measure of  
18 damages; and
- 19 (h) Whether Plaintiffs and members of the Class is entitled to injunctive relief  
20 to prevent the continuation or furtherance of the violation of Section 1 of  
21 the Sherman Act and/or the foreign laws alleged.

22 309. Plaintiffs' claims are typical of the claims of the members of the Class they seek  
23 to represent.

24 310. Plaintiffs will fairly and adequately assert and protect the interests of the Class  
25 members. Plaintiffs' interests are coincident with, and not antagonistic to, those of the other  
26 members of Class they seek to represent.

27 311. Plaintiffs are represented by counsel competent and experienced in the  
28 prosecution of antitrust and class action litigation.

1 312. The questions of law and fact common to the members of the Class predominate  
2 over any questions affecting only individual members.

3 313. A class action is superior to other available methods for the fair and efficient  
4 adjudication of this controversy because:

5 (a) The prosecution of separate actions by individual members of the Class  
6 would create a risk of inconsistent or varying adjudications, establishing  
7 incompatible standards of conduct for Defendants.

8 (b) The Class is readily definable and one for which records should exist in  
9 the files of Defendants.

10 (c) Prosecution as a class action will eliminate the possibility of repetitious  
11 litigation.

12 (d) Treatment as a class action will permit a large number of similarly situated  
13 persons to adjudicate their common claims in a single forum  
14 simultaneously, efficiently, and without the duplication of effort and  
15 expense that numerous individual actions would require.

16 (e) Class treatment will permit the adjudication of relatively small claims by  
17 many Class members who otherwise could not afford to litigate an  
18 antitrust claim such as is asserted in this complaint on an individual basis.

19 314. This class action presents no difficulties of management that would preclude its  
20 maintenance as a class action.

21 **COUNT I**

22 **VIOLATION OF SECTION 1 OF THE SHERMAN ACT, 15 U.S.C. § 1**

23 315. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth  
24 herein.

25 316. Defendants and their co-conspirators engaged in a continuing contract,  
26 combination, and conspiracy to artificially fix, raise, maintain, and/or stabilize the prices of  
27 passenger air transportation, including surcharges for flights between the United States and Asia  
28

1 and between the United States and Oceania, in violation of Section 1 of the Sherman Act, 15  
2 U.S.C. § 1.

3 317. Defendants and their co-conspirators agreed to, and did in fact, restrain trade or  
4 commerce by fixing, raising, maintaining, and/or stabilizing at artificial and non-competitive  
5 levels, the prices of passenger air transportation, including surcharges. Their illegal activities  
6 involved import trade or import commerce with foreign nations.

7 318. In formulating and effectuating their contract, combination or conspiracy,  
8 Defendants and their co-conspirators engaged in anticompetitive activities, the purpose and  
9 effect of which were to artificially fix, raise, maintain and/or stabilize passenger air  
10 transportation, including surcharges. These activities included the following:

- 11 (a) Agreeing to charge prices for passenger air transportation, including  
12 surcharges, at certain levels and otherwise fix, raise, maintain and/or  
13 stabilize prices for passenger air transportation, including surcharges; and  
14 (b) Charging for passenger air transportation, including surcharges at agreed  
15 upon levels.

16 319. The illegal combination and conspiracy alleged herein had the following effects,  
17 among others:

- 18 (a) The prices charged by Defendants to, and paid by Plaintiffs and members  
19 of the Class for passenger air transportation, including surcharges were  
20 fixed, raised, maintained and/or stabilized at artificially high and non-  
21 competitive levels;  
22 (b) Plaintiffs and members of the Class have been deprived of free and open  
23 competition in the purchase of passenger air transportation;  
24 (c) Plaintiffs and members of the Class have been required to pay more for  
25 passenger air transportation, including surcharges, than they would have  
26 paid in a competitive marketplace absent Defendants' price-fixing  
27 conspiracy;  
28 (d) Competition in the sale of passenger air transportation has been restrained,  
suppressed or eliminated.





1 C. That the Court enter judgment against Defendants, jointly and severally, in favor  
2 of Plaintiffs and the Class;

3 D. That the Court award Plaintiffs and the Class treble damages;

4 E. That the Court award Plaintiffs and the Class attorneys' fees and costs as well as  
5 pre-judgment and post-judgment interest as permitted by law;

6 F. That Defendants and their co-conspirators, their respective successors, assigns,  
7 parents, subsidiaries, affiliates and transferees, and their respective officers, directors, agents and  
8 employees, and all other persons acting or claiming to act on behalf of Defendants or their co-  
9 conspirators, or in concert with them, be permanently enjoined and restrained from, in any  
10 manner, directly or indirectly, continuing, maintaining or renewing the combination, conspiracy,  
11 agreement, understanding or concert of action, or adopting any practice, plan, program or design  
12 having a similar purpose or affect in restraining competition; and

13 G. That the Court award Plaintiffs and the Class such other and further relief as may  
14 be deemed necessary and appropriate.

15 **JURY TRIAL DEMANDED**

16 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of the  
17 Sherman Act claims and any other claims so triable asserted in this Complaint.

18 Dated: August 5, 2009

Respectfully submitted,

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1 Dated: August 5, 2009

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**Appendix A**

**Members of the Hong Kong Board of Airline Representatives**

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- Aer Lingus
- Aeroflot
- Aerolineas Argentinas
- Aeromexico Airlines
- Aeromexpress Cargo Airlines
- Air Astana
- AirBridge Cargo Airlines Limited
- Air Canada
- Air France
- Air Hong Kong
- Air India
- Air Mauritius
- Air New Zealand
- Air Niugini
- Alitalia
- All Nippon Airways
- Aloha Airlines
- American Airlines
- Asiana Airlines
- Austrian Airlines
- Bangkok Airways
- Biman Bangladesh Airlines
- BMI British Midland
- British Airways
- Cargolux Airlines
- Cathay Pacific Airways
- Cebu Pacific
- China Airlines
- China National Aviation Corporation
- Continental Airlines
- CSA Czech Airlines
- Delta Airlines
- Egypt Air
- Emirates
- El Al Israel Airlines
- Ethiopian Airlines
- Etihad Airways
- Eva Airways
- Evergreen Int'l Airlines
- Federal Express Corporation
- Finnair
- Garuda Indonesia
- Gulf Air

- 1 Hahn Air
- Hong Kong Airlines Limited
- 2 Hong Kong Dragon Airlines
- Hong Kong Express Airways Ltd
- 3 Japan Airlines
- Japan Asia Airways
- 4 Jet Airways (India) Ltd
- Kalitta Air
- 5 Kenya Airways
- 6 KLM Royal Dutch Airlines
- Korean Air
- 7 Lanchile Airlines
- Lufthansa Cargo AG
- 8 Lufthansa German Airlines
- 9 Malaysian Airlines
- Martinair Cargo
- 10 Myanmar Airways
- Nippon Cargo Airlines
- 11 Northwest Airlines
- Oasis Hong Kong Airlines Ltd
- 12 Ocean Airlines Hong Kong Limited
- Orient Thai Airlines
- 13 Pakistan Int'l Airlines
- 14 Philippine Airlines
- Polar Air Cargo
- 15 Qantas Airways
- Qatar Airways
- 16 Royal Brunei Airlines
- Royal Jordanian
- 17 Royal Nepal Airlines
- 18 Saudi Arabian Airlines
- Scandinavian Airlines System
- 19 Singapore Airlines
- Sky Express S.A.
- 20 South African Airways
- SriLankan Airlines
- 21 Swiss International
- 22 Thai Airways
- Transmile Air Services Sdn. Bhd.
- 23 Turkish Airlines Inc.
- United Airlines
- 24 United Parcel Service
- 25 US Airways
- Varig Brazilian Airlines
- 26 Vietnam Airlines
- Virgin Atlantic
- 27
- 28

**Appendix B**

**List of Attendees at May 18, 2004 Meeting of the Thailand**

**Board of Airline Representatives**

- 1
- 2
- 3
- 4 Mr. Suthep Suebsantiwongse (TG-Chairman)
- 5 Mr. Axel Blom (SK-Chairman EXCOM)
- 6 Ms. J. Rogers (QF/BA(EXCOM Australia))
- 7 Mr. Pandit Chanapai (TG(EXCOM/Thailand))
- 8 Mr. Warren Gerig (UA(EXCOM/N.America))
- 9 Mr. Kachornsak V. (JL-Chairman AC BA)
- 10 Mr. Louis Moser (QF/BA-Chairman AOC)
- 11 Mr. Smartchai Tuchinda (AF)
- 12 Ms. Ujala tham (AI)
- 13 Mr. Shafiwar Rahman (BG)
- 14 Mr. Thira K. (BR)
- 15 Mr. Nelson Fang (CI)
- 16 Mr. Yongyut Lujintanon (CX)
- 17 Mr. Soonthorn Suree (EK)
- 18 Ms. Aree H. (GA)
- 19 Mr. Rakesh Bhatia (IC)
- 20 Mr. Kamol V. (JL)
- 21 Mr. James K. C. Yeung (KA)
- 22 Mr. Suchon Paleewong (KE)
- 23 Ms. Merita Ombuor (KQ)
- 24 Mr. Ihab Sourial (KL)
- 25 Mr. Hamed Almatoq (KU)
- 26 Mr. Wolfgang Schmidt (LH)
- 27 Mr. Ashrat Osmen (MS)
- 28 Mr. Somnuek Asavaveeradej (NH)
- Mr. Sarathool M. (NW)
- Mr. Buranut Limjitti (OS)
- Mr. Vorakit Nivatwong (OZ)
- Mr. Suchard Buranakarn (PG)
- Ms. Dell Merano (PR)
- Ms. Vatchara Silpohevagitja (PR)
- Mr. Taleb Hadidi (RJ)
- Ms. Wantip Piyamalmas (RJ)
- Mr. Chokchai Ittipanuvat (TK)
- Mr. Esra Pehlivangogli (TK)
- Mr. Rohan Seneviratne (UL)
- Ms. Vannasiri (8M)
- Guest Mr. Prakobkiat Ninnad (TG (VP, Petroleum Management))

**Appendix C****List of Recipients of Carol Phatoomros May 24, 2004 E-mail****Re: Fuel Surcharges**

1  
 2  
 3  
 4 Singapore Air (Tuckwah Tang)  
 5 Thai (BAR Chairman Suthep Suebsantiwongse, pandit.c@thaiairways.com)  
 6 US (Warren Gerig)  
 7 SAS (Alex Blom)  
 8 CX (Ivan Chu)  
 9 BA (Julianne M. Rogers)  
 10 LH (Wolfgang Schmidt)  
 11 Emirates (Soonthorn Suree)  
 12 Dragon Air (Sutthisak Pungtamawatthanakun, James Yeung)  
 13 KLM (Ihab Sorial)  
 14 Air New Zealand (Panya Silparjarn)  
 15 South African Airways (Annie Tsimma)  
 16 American Airlines (Prajak Burarak, Chaichan Khongsrithong)  
 17 Airline Cargo Business Association (kachornsak@jalcargobkk.com)  
 18 Druk Air (drukair@loxinfo.co.th)  
 19 Aloha Airlines (malai@plt.co.th)  
 20 Air India (airindia@loxinfo.co.th)  
 21 Angel Airlines (info@angelairlines.com)  
 22 Air Canada (airagcy@asiaaccess.net.th)  
 23 Air France (joroutier@airfrance.fr, potulyaanukij@airfrance.fr)  
 24 Finnair (Finnair.Thailand@finnair.com)  
 25 Eva Airways (gsiamair@loxinfo.co.th)  
 26 Air China (cabkk@asianet.co.th)  
 27 China Southern Airlines (bkkcsn@ksc.th.com)  
 28 Ethiopian Airlines (bkkam@ethiopianairlines.com)  
 Indian Airlines (smicbkk@ksc.th.com)  
 ANA (bkksg@ana.co.th, asava@ana.co.jp)  
 NWA (sarathool@nwa.com)  
 Air Macau (deksth@asiaaccess.net.th)  
 Czech Airlines (prae@guetravel.com)  
 Asiana (aabkksmz@flyasiana.com)  
 Bangkok Air (pwiesner@bangkokair.co.th)  
 Qatar Air (qatarair@loxinfo.co.th)  
 Varig (varigbkk@federal.co.th)  
 China Southwest Airlines (szbkk@bkk3.loxinfo.co.th)  
 Turkish Airlines (tkacct@thy.co.th)  
 Myanmar Airways (maibkk@asiaaccess.net.th)  
 Sri Lanka (bkkadmin@srilankan.lk, bkksales@srilankan.lk)  
 Egypt Air (bkkdm@egyptair-bangkok.th.com)  
 Korean Air (bkksm@koreanair.co.kr)  
 Air-MPA (hhansen@mpa-security.com)  
 Royal Brunei Airlines (bkkprapat@rba.com.bn, bkkwatans@rba.com.bn)

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2 Gulf Air (bkkszgf@gulfair.co.th)  
3 China Airlines (lin-sen\_fang@e-mail.china-airlines.com)  
4 Bangladesh Biman (bimanbkk@loxinfo.co.th)  
5 El Al (elalbkk@hotmail.com)  
6 Qantas (Lmoser@qantas.com.au)  
7 Federal Express (cliftonchua@fedex.com, phaswan@fedex.com)  
8 Lauda Air (sirichanyaW@laudaair.com)  
9 Kuwait Airways (bkk@kuwait-airways.net, airkuwait@yahoo.com)  
10 British Midland (dtwm@loxinfo.co.th)  
11 Vietnam Air (admin.bkk@vietnam-air.com, Sale.bkk@vietnam-air.com)  
12 Lao Aviation (bkkrrqv@ksc.th.com)  
13 Swiss International Airlien (bsinclai@mail.swiss.com)  
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15 Alitalia (korn@bravox.net)  
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24 Malaysia Airlines (bkkzqmh@samart.co.th)  
25 LOT (preecha@wondervacation.com)  
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27 Tarom (tarombkk@yahoo.com)  
28 Royal Nepal Airlines (rabkk@cscoms.com)

**Appendix D**

**List of Attendees at September 1, 2005 Meeting of the Thailand**

**Board of Airline Representatives**

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- 4 Mr. Brian Sinclair-Thompson (LX – President)
- 5 Ms. Julianne Rogers (BA/QF – Board)
- 6 Mr. Patrick Yeung (CX – Board)
- 7 Mr. Soonthorn Suree (EK – Board)
- 8 Mr. Sarathool M. (NW – Board)
- 9 Mr. Rangsiman Mekkhanasamit (TG – Board)
- 10 Ms. Christine Seuge (AF)
- 11 Mrs. Ujala Tham (AI)
- 12 Mr. A. V. Trindade (AI)
- 13 Ms. Neeramun Namalee (AI)
- 14 Mr. Malai Sakolviphak (AQ)
- 15 Mr. Markku Dravainen (AY)
- 16 Mr. Vorakit Nivatvongs (BI)
- 17 Mr. Charlie Fu (CI)
- 18 Mr. Andy Yao (CI)
- 19 Mr. Billy Chomsakorn (EY)
- 20 Mr. Teguh Subandrio (GA)
- 21 Mr. Comson Leelalumert (GA)
- 22 Mr. John Evans (GF)
- 23 Mr. Somporn K. Utasiri (GF)
- 24 Mr. S. Iwasaki (JL)
- 25 Mr. Chanchai Wangyuenyong (JL)
- 26 Mr. Sutthisak P. (KA)
- 27 Mr. Suchon Paleewong (KE)
- 28 Mr. Nieon Suddhidhanaroq (KQ)
- Mr. Wolfgang Schmidt (LH)
- Mr. Raymond Honings (LT)
- Mr. Howard Noble (MD)
- Mr. Kimiya Artma (NH)
- Mr. Somnuck Asava (NH)
- Mr. Suchard Buranakorn (PG)
- Ms. Monet Trespeses (PR)
- Mr. Taleb Hadidi (RJ)
- Ms. Wantip Piyamalamas (RJ)
- Mr. Chokchai Ittipanuvat (SA)
- Ms. Punthip Issarungura (SK)
- Mr. Eric Wilson (VA)
- Mr. Ngayen Nhu Than (VN)
- Mr. Gilmore Soe Min (8M)
- Mr. Prakit Trongkarmonmas (EY/ACBA Chairman)
- Ms. Sopin Daengteth (LX/AOC Chairperson)
- Mr. Chitvee Leelasiri (IATA)

**Appendix E****List of Recipients of Carol Phatoomros August 18, 2005****E-mail Re: Fuel Surcharges**

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 2  
 3  
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 wallop.b@thaiairways.com)  
 6 United Airlines (Eric Wilson)  
 SAS (Axel Blom)  
 7 CX (Patrick Yeung,  
 BA (Julianne M. Rogers)  
 8 LH (Wolfgang Schmidt)  
 Tarom (tarombkk@yahoo.com)  
 9 JAL (kachornsak@jalcargo.com)  
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 Aloha Airlines (malai@plt.co.th)  
 11 Air India (airindia@loxinfo.co.th)  
 Angel Airlines (info@angelairlines.com)  
 12 Air Canada (airagcy@asiaaccess.net.th)  
 Air France (joroutier@airfrance.fr)  
 13 Finnair (Finnair.Thailand@finnair.com)  
 14 Eva Airways (gsiamair@loxinfo.co.th)  
 Air China (cabkk@asianet.co.th)  
 15 China Southern Airlines (bkkcsn@ksc.th.com)  
 Emirates (Soonthorn Suree)  
 16 Ethiopian Airlines (bkkam@ethiopianairlines.com)  
 Garuda (secrdmga@box1.a-net.net.th)  
 17 Indian Airlines (smicbkk@ksc.th.com)  
 18 Dragon Air (Sutthisak Pungtamawatthanakun)  
 KLM (Ihab Sorial)  
 19 LOT (preecha@wondervacation.com)  
 20 Malaysia Airlines (bkkzqmh@samart.co.th, mohdali@samart.co.th)  
 Silkair (silkair@upc1.loxinfo.co.th)  
 21 China Eastern Airlines (musales@ksc.th.com)  
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 22 Air Macau (deksth@asiaaccess.net.th)  
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 23 Asiana (aabkksmz@flyasiana.com)  
 24 Bangkok Airways (pwiesner@bangkokair.co.th)  
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 25 Qatar Airways (jer@th.qatarairways.com)  
 China Southwest Airlines (szbkk@bkk3.loxinfo.co.th)  
 26 SAA (Nely Kusmin)  
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 27 Cathay Pacific (Alan Tang)  
 28 LH (Vanida Charoensombud, lhbkk@samart.co.th)

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 2 Myanmar Airways (bkk.cm@maiair.com)  
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 3 KAL (bkksm@koreanair.co.kr)  
 Royal Nepal Airlines (rabkk@cscoms.com)  
 4 Air- MPA (hhansen@mpa-security.com)  
 American Airlines (Prajak Burarak, Chaichan Khongsrithong)  
 5 Japan Airlines (chanchai.wangyuenyong@jal.com)  
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 6 China Airlines (Charlie Fu)  
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 7 El Al (elalbkk@hotmail.com)  
 Qantas (Lmoser@qantas.com.au)  
 8 Fedex (cliftonchua@fedex.com)  
 9 Kuwait Airways (bkk@kuwait-airways.net, airkuwait@yahoo.com)  
 10 Srilankan (bkksales@srilankan.aero)  
 British Midland (dtwm@loxinfo.co.th)  
 11 Vietnam Airlines (admin.bkk@vietnam-air.com)  
 Lao Aviation (bkkrrqv@ksc.th.com)  
 12 Lauda Air (TantiprasutP@laudaair.com)  
 Swiss International (Brian Sinclair-Thompson)  
 13 Air France (potulyaanukij@airfrance.fr)  
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 14 Federal Express (phaswan@fedex.com, ichand@fedex.com)  
 15 Alitalia (korn@bravox.net)  
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 16 Philippine Airlines (palphstar@hotmail.com)  
 Austrian Airlines (Buranut Limjitti)  
 17 Royal Brunei (vorakitn@rba.com.bn)  
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 18 Air Berlin (Raymond Honings, Markus Moschner)  
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 19 Malaysia Airlines (mohdali@samart.co.th)  
 20 Etihad Airways (kalbrow@etihadairways.co.th, asomjaiwongse@etihadairways.co.th)  
 21 Kenya Air (Merita Ombour, kenyaair@loxinfo.co.th)  
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 22 Phuket Airlines (kavida@phuketairlines.com)  
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 26  
 27  
 28



**Appendix F**

**Recipients of Joanne Sotocinal E-mail of May 25, 2004**

**Re The Philippines BAR Fuel Surcharge Proposal**

1  
2  
3  
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5 Royal Brunei Airlines (Mnlagnes@rba.com.bn)  
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10 Gulf Airways (Bobby Hukom)  
11 DLH (Darryl Modelo, Dietmar Kramer, Jo Portugal)  
12 Singapore Air (David Lau, Nenita Dy, Eugene Chew)  
13 Felix Cruz (PAL)  
14 Kuwait Airways (Manager@kuwaitairways.com.ph, Sales@kuwaitairways.com.ph)  
15 Emirates (Gigie Baroa)  
16 Malaysia Airlines (Malaysia@skyinet.net)  
17 Pakistan International Airlines (Mnlupk@piac.com.pk)  
18 EVA (Jackyu@asia-pacific.evaair.com, Nenitachan@asia-pacific.evaair.com)  
19 PAL (Jing Javier, Tillit Inoturan, Rol\_legal)  
20 KLM (Jose Laurente)  
21 Cebu Pacific Air (Jose Inez, Roland Nunez)  
22 Qatar Airways (manolo@qatarairways.com.ph)  
23 Cathay Pacific (Mark Sutch, Vickie Yue)  
24 American Airways (Mary Ann Marcias)  
25 JAL (Kubo Masanobu)  
26 Alitalia (Benini Mauro)  
27 SAS (Nila Layug)  
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## Appendix G

### Summary of DOJ Investigation With Respect to Defendants Named in the Transpacific Litigation

DEFENDANT	AIR CARGO <sup>1</sup> AND/OR AIR PASSENGER <sup>2</sup> DEFENDANT	PLED GUILTY TO US DOJ CRIMINAL CHARGES	US DOJ FINE	FOREIGN INVESTIGATIONS			
				EC <sup>3</sup>	NZCC <sup>4</sup>	ACCC <sup>5</sup>	CCB <sup>6</sup>
AIR NEW ZEALAND	X			X	X		
AIR FRANCE/KLM	X	X	\$350 million	X	X	X	X
ALL NIPPON AIRWAYS CO. LTD	X			X			
BRITISH AIRWAYS	X	X	\$300 million	X	X	X	
CATHAY PACIFIC AIRWAYS LTD	X	X	\$60 million	X	X	X	
CHINA AIRLINES				X			
CONTINENTAL AIRLINES							
EVA (TAIWAN)				X			
JAL (JAPAN AIRLINES INT'L)	X	X	\$110 million	X	X		
LUFTHANSA/ SWISS INTERNATIONAL	X	Amnesty Applicant <sup>7</sup>		X		X	
MALAYSIAN AIRLINES				X	X		
PHILIPPINE AIRLINES							
QANTAS (AUSTRALIA)	X	X	\$61 million	X	X	X	X
SAS (SCANDINAVIAN)	X	X	\$52 million	X			
SINGAPORE AIRLINES	X			X	X	X	
THAI AIRWAYS	X			X	X	X	
VIETNAM AIRLINES							
		<b>TOTAL</b>	\$933 million				

**<sup>1</sup>AIR CARGO**

*In re Air Cargo Shipping Services Antitrust Litigation*; US District Court, ED New York, Case no. 06-MD-1775

**<sup>2</sup>AIR PASSENGER**

<sup>3</sup>EC - European Commission

<sup>4</sup>NZCC - New Zealand Commerce Commission

<sup>5</sup>ACCC- Australian Competition and Consumer Commission

<sup>6</sup>CCB - Canadian Competition Bureau

leniency and agreed to cooperate with prosecutors in their ongoing investigation.