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13 Plaintiffs' Interim Class Counsel

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**

17 IN RE KOREAN AIR LINES CO., LTD.
18 ANTITRUST LITIGATION

MDL No. 1891

Master File No. CV 07-05107 SJO
(AGRx)

19
20 This Document Relates To:

21 ALL ACTIONS

**ORDER GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT
BETWEEN PLAINTIFFS AND
DEFENDANT ASIANA AIRLINES,
INC. AND APPROVING FORM
AND MANNER OF CLASS NOTICE**

22
23
24 **Date: Not Set**
Time: Not Set
Place: Courtroom of the Hon.
S. James Otero

1 Plaintiffs have moved the Court for Orders:

- 2 1. Preliminarily approving the settlement reached between Laura
3 Albee, Joon Chung, Timothy Murphy, Sungshic Park, Yoon Park,
4 Howard Ree, Leon Song, and Edward Yoo (“Class Plaintiffs”) and
5 defendant Asiana Airlines, Inc. (“Asiana”);
- 6 2. Certifying the Settlement Class, as defined below, for the purpose
7 of effectuating the settlement;
- 8 3. Authorizing the withdrawal of funds from the Settlement Fund to
9 pay the costs of notice and claims administration;
- 10 4. Appointing Interim Class Counsel as Settlement Class Counsel;
- 11 5. Appointing Class Plaintiffs as Settlement Class Representatives;
12 and
- 13 6. Approving the form and manner of providing notice of the proposed
14 settlement to the Settlement Class.

15 Having reviewed the Stipulation of Settlement Between Class Plaintiffs and
16 Defendant Asiana Airlines, Inc. (the “Settlement Agreement”), dated as of July 30,
17 2010, Plaintiffs’ Memorandum In Support of Plaintiffs’ Motion For Preliminary
18 Approval of Settlement Between Plaintiffs and Defendant Asiana Airlines, Inc., the
19 Declaration of Marc M. Seltzer in Support of Plaintiffs’ Motion for Preliminary
20 Approval of Settlement Between Plaintiffs and Defendant Asiana Airlines, Inc.,
21 dated October 8 2010, the Declaration of Katherine Kinsella Regarding Class
22 Notice (the “Kinsella Declaration”), dated November 3, 2010, and all of the
23 pleadings, papers, filings on file in this litigation, the argument and submissions of
24 counsel as reflected in the record of this litigation, and good cause appearing
25 therefor,

1 IT IS HEREBY ORDERED as follows:

2 1. The Settlement Agreement appears to the Court to be sufficiently fair,
3 reasonable, and adequate to warrant notice to the Settlement Class. Accordingly,
4 the Settlement Agreement is preliminarily approved, pending a final hearing, as
5 provided for below.

6 2. This litigation concerns an alleged conspiracy entered into by the
7 defendants to fix the prices of Passenger Air Transportation, as defined below,
8 during the period from January 1, 2000 through August 1, 2007 (the “Class
9 Period”).

10 3. The issues common to the members of the Class, as defined below,
11 include, among others, the following:

- 12 • Whether defendants violated the federal antitrust laws by conspiring
13 to fix the prices of Passenger Air Transportation during the Class
14 Period;
- 15 • Whether defendants and their co-conspirators combined, agreed, or
16 conspired to raise, fix, maintain or stabilize Passenger Air
17 Transportation prices;
- 18 • The scope and duration of the alleged conspiracy;
- 19 • The conduct of defendants in furtherance of the alleged conspiracy;
- 20 • Whether plaintiffs and the members of the Class were injured and
21 damaged by defendants’ conduct as alleged, and if so, how; and
- 22 • The proper measure of damages and the amount of aggregate
23 damages.

24 4. The following class (the “Settlement Class” or “Class”) is certified for
25 settlement purposes only:

1 All persons and entities (excluding governmental entities,
2 defendants, and defendants' respective predecessors,
3 subsidiaries, and affiliates) who purchased Passenger Air
4 Transportation on the airlines of defendants, or any
5 predecessor, subsidiary, or affiliate of the defendants, at any
6 time during the time period January 1, 2000 through
7 August 1, 2007. As used in this definition, "affiliates" means
8 entities controlling, controlled by, or under common control
9 with a defendant. The term "affiliates" does not include any
10 travel agents.

11 5. "Passenger Air Transportation" means passenger air transportation
12 services for flights originating in the United States and ending in Korea or flights
13 originating in Korea and ending in the United States, purchased in the United
14 States. Pursuant to the Order of the Court, dated August 2, 2010, claims based on
15 Passenger Air Transportation purchased in Korea are not included in the
16 Settlement Class. The Settlement Class only includes those persons and entities
17 who may assert a claim for damages for violation of Section 1 of the Sherman Act,
18 15 U.S.C. § 1.

19 6. Excluded from the Settlement Class, in accordance with their request,
20 are those persons and entities who timely and validly request exclusion from the
21 Settlement Class pursuant to the instructions detailed in the notice to be
22 disseminated to the Settlement Class described below.

23 7. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Class
24 Plaintiffs shall serve as the Settlement Class Representatives.

25 8. The Court finds, for settlement purposes only, the prerequisites to a
class action under Federal Rule of Civil Procedure 23(a) have been satisfied, in

1 that, with respect to the Class:

- 2 (a) numerosity is satisfied;
- 3 (b) the claims of the Class Plaintiffs are typical of those of the
4 other Class members;
- 5 (c) there are questions of fact and law that are common to all
6 members of the Class; and
- 7 (d) the Class Plaintiffs will fairly and adequately protect the
8 interests of the Class and have retained counsel experienced in
9 antitrust and class action litigation who have and will continue
10 to adequately represent the Class.

11 9. The Court finds, for settlement purposes only, this action may be
12 maintained as a class action under Rule 23(b)(3) of the Federal Rules of Civil
13 Procedure because (i) a class action is superior to other available methods for the
14 fair and efficient adjudication of this controversy, and (ii) questions of fact and law
15 common to the members of the Class predominate over any questions affecting
16 only individual members.

17 10. This Court approves and appoints the following individuals and firms
18 as Settlement Class Counsel: Marc M. Seltzer of Susman Godfrey L.L.P.; Jeff S.
19 Westerman of Milberg LLP; and Susan G. Kupfer of Glancy Binkow & Goldberg
20 LLP. Settlement Class Counsel are authorized to act on behalf of the Settlement
21 Class with respect to all acts required by, or which may be taken pursuant to, the
22 Settlement Agreement, or such other acts which are reasonably necessary to
23 consummate and effectuate the proposed settlement set forth in the Settlement
24 Agreement.

1 11. Rust Consulting, Inc. (“Rust” or “the Settlement Administrator”) is
2 hereby appointed as Settlement Administrator.

3 12. On or before March 11, 2011, Rust shall cause the short-form class
4 notice (the “Summary Notice”), substantially in the form attached hereto as Exhibit
5 B, to be mailed postage prepaid, or disseminated via electronic mail to all potential
6 Settlement Class members who can be so identified from the records of defendants
7 Asiana and Korean Air, as described in the Kinsella Declaration. The Summary
8 Notice will be mailed or e-mailed to potential Settlement Class members at their
9 last known address, and updated based on the National Change of Address
10 database or other similar databases prior to mailing. The long-form class notice
11 (the “Class Notice”), substantially in the form attached hereto as Exhibit A, will be
12 posted on the internet at a readily accessible website to be created and maintained
13 by the Settlement Administrator and sent to anyone who requests a copy.

14 13. On or before March 11, 2011, Settlement Class Counsel shall file their
15 motion and supporting papers in support of final approval of the settlement set
16 forth in the Settlement Agreement, including their application for reimbursement
17 of costs and expenses and to set aside funds out of the Settlement Fund for future
18 litigation costs and expenses.

19 14. Commencing on or before March 14, 2011, Rust shall cause the
20 Summary Notice, substantially in the form attached hereto as Exhibit B, to be
21 published in the print media publications specified in the Kinsella Declaration. At
22 the same time, Rust shall cause a copy of the Summary Notice to be posted on the
23 internet website created and maintained by Rust.

24 15. Commencing on or before March 21, 2011, Rust shall cause the
25 Summary Notice to be broadcast on cable television outlets in accordance with the

1 Kinsella Declaration.

2 16. All funds deposited by Asiana and held by Settlement Class Counsel
3 or the Settlement Administrator shall be deemed and considered to be *in custodia*
4 *legis* of the Court in accordance with the Settlement Agreement, and shall remain
5 subject to the jurisdiction of the Court, until such time as such funds shall be
6 distributed pursuant to the Settlement Agreement or further order of the Court.

7 17. Settlement Class Counsel are authorized to withdraw reasonable
8 notice and claims administration costs from the Settlement Fund, over and above
9 the \$60,000 for notice and administration costs contributed by Asiana in
10 accordance with the terms of the Settlement Agreement, for the printing, mailing
11 and publication of notice to the Settlement Class, the establishment of an Internet
12 website, and other reasonable and necessary costs related to notice and claims
13 administration by the Settlement Administrator.

14 18. The Court finds this manner of giving notice fully satisfies the
15 requirements of Rule 23 of the Federal Rules of Civil Procedure and constitutional
16 due process, constitutes the best notice practicable under the circumstances, and
17 shall constitute due and sufficient notice to all persons and entities entitled thereto.

18 19. Settlement Class Counsel shall file, not later than June 13, 2011, proof
19 of mailing and publication of notice to potential Settlement Class members.

20 20. Each Settlement Class member shall have the right to be excluded
21 from the Settlement Class by mailing a request for exclusion to the Settlement
22 Administrator postmarked not later than May 16, 2011. Requests for exclusion
23 must be in writing and set forth the name, address, and telephone number of the
24 person or entity who wishes to be excluded, as well as all trade names or business
25 names and addresses used by such person or entity, must state that the person or

1 entity wishes to be excluded, and must be signed by the person or entity seeking
2 exclusion. Persons or entities requesting exclusion are also requested to state the
3 dates and prices of all purchases of Passenger Air Transportation from Asiana and
4 defendant Korean Air during the Class Period. All persons or entities who submit
5 valid and timely requests for exclusion shall have no rights or benefits under the
6 Settlement Agreement, shall not share in the distribution of settlement proceeds
7 under the settlement, and shall not be bound by the terms of the Settlement
8 Agreement or a final judgment approving the Settlement Agreement.

9 21. By May 23, 2011, Settlement Class Counsel shall file with the Court a
10 list of all persons and entities who have timely and validly requested exclusion
11 from the Settlement Class. The Court will exclude all persons and entities who
12 submit timely and valid requests for exclusion.

13 22. Any Settlement Class member who does not validly and timely
14 request exclusion from the Settlement Class shall, upon final approval of the
15 Settlement Agreement, be bound by all the terms and provisions of the Settlement
16 Agreement, including, but not limited to, the releases, waivers, and covenants set
17 forth therein, whether or not such person or entity has objected to the settlement set
18 forth in the Settlement Agreement and whether or not such person or entity makes
19 a claim to participate in the Settlement Fund.

20 23. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, a final
21 fairness hearing (the "Fairness Hearing") will be held by the Court on June 27,
22 2011, at 1:30 p.m.

23 24. The Fairness Hearing will be held for the following purposes:

- 24 (a) To determine that the Court has subject matter jurisdiction, and
25 personal jurisdiction over plaintiffs, Asiana, and Settlement

1 Class members for the purpose of approving and enforcing the
2 Settlement Agreement;

3 (b) To determine finally whether the Settlement Class satisfies the
4 requirements of a class action under Rule 23(a) and Rule
5 23(b)(3) of the Federal Rules of Civil Procedure and applicable
6 case law;

7 (c) To determine whether the notice given satisfies the
8 requirements of Rule 23 of the Federal Rules of Civil Procedure
9 and constitutional due process;

10 (d) To determine whether to finally approve the settlement set forth
11 in the Settlement Agreement as being fair, reasonable and
12 adequate to the Settlement Class, and directing consummation
13 of the Settlement Agreement pursuant to its terms;

14 (e) To determine whether each Settlement Class member who has
15 not filed a request for exclusion accepted by the Court is bound
16 by the terms of the Settlement Agreement;

17 (f) To determine whether a final judgment should be entered
18 dismissing the claims of the Class against Asiana with
19 prejudice, as provided by the Settlement Agreement;

20 (g) To determine whether to pay Settlement Class Counsel from the
21 Settlement Fund unreimbursed out-of-pocket costs and
22 expenses and to set aside an amount not to exceed \$2.5 million
23 from the Settlement Fund to be used to pay future litigation
24 costs and expenses as approved by the Court; and
25

1 (h) To rule upon other such matters as the Court may deem
2 appropriate.

3 25. Any Settlement Class member who does not timely request exclusion
4 from the Settlement Class may appear at the Fairness Hearing and seek to show
5 cause why the Court should not approve the settlement set forth in the Settlement
6 Agreement and dismiss this action with prejudice as to Asiana, and may appear at
7 the hearing to support or oppose Settlement Class Counsel's application for
8 reimbursement of costs and expenses and to establish an expense fund to pay
9 future litigation expenses and costs, provided that no Settlement Class member
10 shall be heard unless his, her or its objection or opposition is made in writing,
11 signed by the objecting member, and filed, together with any papers or briefs in
12 support of such objections, with the Court not later than May 16, 2011, and served
13 on the Settlement Administrator, Settlement Class Counsel, and Asiana's counsel
14 by first-class mail, postage prepaid. Failure to timely file and serve written
15 objections will preclude a Settlement Class member from having the right to be
16 heard at the Fairness Hearing.

17 26. Any objection to the settlement set forth in the Settlement Agreement
18 by a Settlement Class member shall include: (1) the complete name and residence
19 or business address of the objecting member; (2) a statement signed under penalty
20 of perjury by the objecting Class member that the Class member purchased
21 Passenger Air Transportation on Asiana or Korean Air during the Class Period;
22 and (3) each ground for comment or objection and any supporting papers the
23 member desires the Court to consider. The filing of an objection shall not extend
24 the time to file a request for exclusion from the Settlement Class.

1 Submitted By:
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5 SUSAN G. KUPFER (141724)
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8 By /s/ Marc M. Seltzer
9 Marc M. Seltzer
10 Plaintiffs' Interim Class Counsel
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