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Plaintiffs' Interim Class Counsel

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

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

MDL No. 07-01891

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

This Document Relates To:

ALL ACTIONS

**JOINT DECLARATION OF SUSAN
G. KUPFER, MARC M. SELTZER,
AND JEFF S. WESTERMAN IN
SUPPORT OF PLAINTIFFS'
MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES**

**Date: December 2, 2013
Time: 10:00 a.m.
Place: Courtroom No. 1
Judge: Hon. S. James Otero**

JOINT DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 1

II. LITIGATION HISTORY 2

III. RESOLVING THE LITIGATION 4

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT 5

V. SUMMARY OF THE SETTLEMENT AND PLAN OF ALLOCATION 5

VI. NOTICE OF SETTLEMENT 6

VII. THE FAIRNESS AND REASONABLENESS OF THE SETTLEMENT 7

VIII. CO-LEAD COUNSEL’S REQUEST FOR ATTORNEYS’ FEES AND EXPENSES ON BEHALF OF THEMSELVES AND PLAINTIFFS’ COUNSEL 9

 A. The Fee Application 9

 B. Reputation and Caliber of Opposing Counsel 12

 C. The Risks of Contingent Litigation 12

 D. The Reaction of the Class to the Requested Fee 13

 E. The Fee Request Is Also Justified Under the Lodestar/Multiplier Cross-Check Approach 13

IX. CO-LEAD COUNSEL’S REQUEST FOR REIMBURSEMENT OF EXPENSES 15

X. CONCLUSION 16

1 The undersigned, Susan G. Kupfer, Marc M. Seltzer and Jeff S. Westerman,
2 hereby jointly declare as follows:

3 1. Susan G. Kupfer is a partner in the law firm Glancy Binkow & Goldberg
4 LLP; Marc M. Seltzer is a partner in the law firm of Susman Godfrey L.L.P.; and
5 Jeff S. Westerman is the founder and partner of the Westerman Law Group. We
6 respectfully submit this Joint Declaration of Susan G. Kupfer, Marc M. Seltzer,
7 and Jeff S. Westerman in Support of Plaintiffs' Motion for an Award of Attorneys'
8 Fees and Reimbursement of Expenses ("Declaration"), following the conclusion of
9 the litigation between defendants Korean Air Lines Co., Ltd. ("Korean Air") and
10 Asiana Airlines, Inc. ("Asiana").

11 2. By its Order dated March 14, 2008, the Court appointed us as Interim
12 Class Counsel for the Class ("Co-Lead Class Counsel")¹. As Co-Lead Class
13 Counsel, we have personally supervised and directed every aspect of the
14 prosecution and resolution of this litigation on behalf of the Class.

15 3. We have personal knowledge of the various matters set forth in this
16 Declaration based on our day-to-day participation in the prosecution and settlement
17 of this litigation, and, if called as witnesses, we could and would testify
18 competently thereto. Additionally, we have a detailed understanding of the efforts
19 of other attorneys for plaintiffs. Additional matters are attested to by
20 accompanying declarations.

21 **I. INTRODUCTION**

22 4. After more than five years of litigation and a thorough analysis of the
23 merits of the claims against Korean Air, assessing its defenses, and estimating
24 likely damages that could be recovered by the Class, the parties agreed to arm's-
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27 ¹ Mr. Westerman was a partner with the firm Milberg LLP until January 1, 2013,
28 and served as Co-Lead Class Counsel while he was at that firm.

1 length negotiations conducted under the supervision of a respected mediator, the
2 Hon. Layn R. Phillips, United States District Judge (Ret.). As a result of these
3 negotiations, the parties agreed to a settlement fund valued at \$65,000,000 –
4 consisting of a cash payment of \$39,000,000, and the distribution in coupons
5 issued by Korean Air redeemable for \$26,000,000 in air travel services on Korean
6 Air.

7 5. On July 31, 2013, the Court preliminarily approved the Settlement with
8 Korean Air and directed notice of the Settlement to be disseminated to the Class.
9 Dkt. No. 608.

10 6. The Claims Administrator has now distributed via mail or email over
11 1,500,000 notice packets to potential Class members, which included the Notice
12 and the Proof of Claim Form (“Notice Packets”). Additional copies of the Notice
13 and Proof of Claim Form were made available for download on the Claims
14 Administrator’s website.

15 7. At the time of this filing, although the deadlines have not yet passed, no
16 Class member has objected to any aspect of the Settlement, the Plan of Allocation,
17 or Co-Lead Class Counsels’ requested fees and expenses described in the Notice.

18 8. Co-Lead Class Counsel respectfully submit that the Settlement provides
19 for an excellent result for the Class and that the requested fees and expenses should
20 be awarded in full.

21 **II. LITIGATION HISTORY**

22 9. On August 23, 2007, defendant Korean Air pled guilty to participating in
23 conspiracies to fix prices for certain U.S./trans-Pacific air cargo services and
24 certain air passenger flights from the United States to Korea and agreed to pay a
25 fine of \$300 million. On May 6, 2009, Asiana also pled guilty to participating in
26 conspiracies to fix prices for certain U.S./trans-Pacific air cargo services and
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1 certain air passenger flights from the United States to Korea. Asiana agreed to pay
2 a fine of \$50 million.

3 10. Following the Korean Air plea, passengers who had travelled on
4 defendants' airlines filed private antitrust actions seeking to recover resulting
5 damages from defendants' conduct. Those cases were consolidated before the
6 Court by the Judicial Panel on Multi-District Litigation and the Court held its
7 initial status conference in January, 2008. Co-Lead Class Counsel were appointed
8 by the Court to represent the plaintiffs on March 14, 2008.

9 11. Plaintiffs filed the operative complaint—the Second Amended Complaint
10 (“SAC”)—on February 29, 2008, alleging that Korean Air and Asiana conspired to
11 fix air fares and fuel surcharges for passenger air transportation on flights between
12 the United States and Korea in violation of Section 1 of the Sherman Act, 15
13 U.S.C. § 1.

14 12. Defendants each filed a motion to dismiss on April 4, 2008. After briefing
15 and argument, the Court granted defendants' motions in part, dismissing plaintiffs'
16 “pass through” claims—i.e., claims that were based on an itinerary that includes a
17 U.S.-Korea flight segment but where the original point of departure or ultimate
18 destination was not in Korea or the U.S. The Court denied defendants' motions as
19 to all other of plaintiffs' claims.

20 13. On August 12, 2009, defendants jointly filed a second motion to dismiss
21 the claims of purchasers of Korea-origin travel pursuant to the Foreign Trade
22 Antitrust Improvement Act (“FTAIA”). On December 22, 2009, the Court struck
23 the parties' briefing on the motion to dismiss and ordered further discovery. On
24 February 26, 2010, defendants again filed a joint motion to dismiss the claims of
25 purchasers of Korea-origin travel. On August 2, 2010, the Court granted
26 defendants' motion and dismissed claims based on purchases of tickets for air
27 passenger travel made in Korea.
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1 14. Discovery began in 2009. Plaintiffs’ primary goal at the outset of
2 discovery was to obtain early access to the core documents in the case. Many of
3 the documents produced to plaintiffs were in the Korean language and required
4 initial translation and interpretation, making document review challenging.
5 Plaintiffs’ Counsel reviewed thousands of documents and prepared for depositions
6 of defendants’ employees and expert economic witnesses.

7 15. On July 30, 2010, following months of arm’s-length negotiations—
8 including numerous conference calls and face-to-face discussions among
9 counsel—plaintiffs and Asiana agreed to a settlement of the claims asserted against
10 Asiana. The proposed settlement provided for \$11,000,000 in cash and
11 \$10,000,000 in coupons for future travel, as set forth in the Settlement Agreement
12 with Asiana. Asiana also agreed to cooperate with plaintiffs in their prosecution of
13 claims against Korean Air. That Settlement received final approval from this
14 Court in July 2011. Plaintiffs’ Co-Lead Counsel were reimbursed for litigation
15 expenses incurred to date at final approval but did not apply for award of
16 attorneys’ fees at that time. (Dkt.506). The litigation against Korean Air
17 continued.

18 **III. RESOLVING THE LITIGATION**

19 16. The parties engaged in preliminary settlement discussions with Korean Air
20 beginning in 2012 and decided that it would be helpful seek the assistance of a
21 mediator. Judge Phillips was retained by the parties to so serve. Prior to the
22 mediation, the parties prepared detailed confidential mediation statements outlining
23 the relative strengths and weaknesses of their positions in the litigation and their
24 economic analyses of defendants’ volume of commerce during the Class Period
25 and the potential range of damages sustained by the Class.

26 17. On October 16, 2012, the parties engaged in an all-day mediation. The
27 mediation was attended by Co-Lead Class Counsel, as well as counsel for Korean
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1 Air and high level officials of Korean Air. As a result of these arm’s-length
2 negotiations, and continued discussions over the next several months, the parties
3 ultimately reached an agreement in principle regarding the components of the
4 Settlement.

5 18. After reaching an agreement in principle, there were extensive
6 negotiations over the details of the Settlement and the mechanics of implementing
7 the distribution and redemption of the coupon portion of a settlement.

8 19. Throughout the course of the litigation and settlement negotiations, the
9 parties were represented by counsel experienced in prosecuting and defending
10 antitrust class actions. The Settlement was the result of an adversarial process
11 designed to produce a fair and honest compromise, was the result of arm’s-length
12 negotiations, and was aided by an experienced and well-respected retained jurist
13 who served as the parties’ mediator.

14 **IV. PRELIMINARY APPROVAL OF THE SETTLEMENT**

15 20. By its Order dated July 31, 2013, the Court granted preliminary
16 approval of the Settlement. (Dkt. No. 608.) The preliminary approval order: (1)
17 found that the Stipulation was sufficiently fair, reasonable, and adequate as to
18 warrant providing Notice of the Settlement to Class Members; (2) appointed Rust
19 Corporation to serve as the Claims Administrator; (3) appointed Chicago Clearing
20 Corporation to serve as Coupon Claims Administrator; and (4) preliminarily
21 certified, for the purposes of effectuating the Settlement, the Settlement Class
22 pursuant to Rule 23 of the Federal Rules of Civil Procedure. (*Id.*)

23 21. The Court set a final settlement approval hearing to be held on December
24 2, 2013, at 10:00 a.m. (the “Settlement Fairness Hearing”). (Dkt. No. 608.)

25 **V. SUMMARY OF THE SETTLEMENT AND PLAN OF ALLOCATION**

26 22. The total Settlement Fund derived from both settlements is \$86 million –
27 consisting of a cash payments of \$50,000,000 and coupons for future travel on
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1 Asiana and Korean Air with a face value of \$36 million. *See* Stipulation of
2 Settlement, (Dkt. No. 596-2).

3 23. The Net Settlement Fund is to be distributed on a *pro rata* basis pursuant
4 to the Plan of Allocation to those Class Members submitting valid claims (the
5 “Authorized Claimants”). As set forth in the Notice, the Claims Administrator
6 shall determine each Authorized Claimant’s *pro rata* share of the Net Settlement
7 Fund based upon each Authorized Claimant’s “Recognized Claim,” which is based
8 upon the dollar value of the trips they have taken to and from the United States and
9 Korea during the Class Period. Each class claimant will received a proportionate
10 share of the cash fund, and coupons for travel from each defendant.

11 **VI. NOTICE OF SETTLEMENT**

12 24. Pursuant to the Court’s Order dated July 31, 2013, Co-Lead Class
13 Counsel, through the Claims Administrator, implemented a comprehensive notice
14 program with notice given to the members of the Class by mail, by email and by
15 publication. The Notice contained, *inter alia*, the following information necessary
16 to evaluate the benefits of the Settlement to the Class Members: (1) the amount
17 and makeup of the Settlement Fund; (2) the Plan of Allocation; (3) that Co-Lead
18 Class Counsel would apply for a fee award in an amount not to exceed 25% of the
19 Settlement Fund as well as reimbursement of expenses incurred prosecuting this
20 litigation; (4) that any Class member could object to the Settlement or fee and
21 expense application, or both, or seek exclusion from the Class; (5) a discussion of
22 the background of the Settlement; (6) that the deadline for requesting exclusion
23 from the Settlement is October 25, 2013; (7) that objections to the Settlement, the
24 Plan of Allocation or the fee and expenses application must be filed no later than
25 October 25, 2013; (8) the date, time, and location of the Settlement Fairness
26 Hearing and that Class members have the right to attend and be heard; and (9) that
27 the deadline for filing Proofs of Claim is December 31, 2013.
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1 25. Pursuant to this procedure, beginning August 2, 2013, the Claims
2 Administrator disseminated 1,500,000 Notice Packets to potential Class Members
3 by email or mail.

4 26. Additionally, beginning September 2, 2013, the Summary Notice was
5 published in both the English language and Korean language in numerous
6 publications prepared by Kinsella Media, and set forth in the order granting
7 preliminary approval. (Dkt. No. 608.) Finally, a complete set of Settlement papers
8 was posted on the Claims Administrator's website,
9 www.koreanairpassengercases.com.

10 27. In addition, the Claims Administrator established a toll-free telephone
11 number for Class Members to call and receive answers to any questions that they
12 may have concerning, among other things, the terms of the Settlement and the
13 process for submitting a claim for proceeds from the Settlement Fund. The Claims
14 Administrator has already responded to thousands of calls in both the English and
15 Korean languages.

16 28. As of the time of this filing, no Class member has objected to the
17 Settlement, the request for attorneys' fees, or the reimbursement of expenses.

18 **VII. THE FAIRNESS AND REASONABLENESS OF THE SETTLEMENT**

19 29. Before representing to the Court that the Settlement is fair, reasonable, and
20 adequate, Co-Lead Class Counsel carefully evaluated the prospects of obtaining a
21 better result at trial – one that would also have to withstand later attack on appeal.

22 30. Co-Lead Class Counsel were keenly aware during the course of this
23 litigation that if the case was not settled, defendants' weakened financial condition
24 might constrain obtaining an adequate award. Both defendant airlines have
25 successfully applied to the United States District Court for the District of
26 Columbia, the Court supervising their criminal proceedings, for extensions of their
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1 installment payments of the fines imposed upon them due to their financial
2 condition.

3 31. Co-Lead Class Counsel firmly believe – based on their investigation and
4 discovery – that plaintiffs’ claims against Defendants have considerable merit, and
5 that plaintiffs ultimately could prevail at trial. However, Co-Lead Class Counsel
6 also recognize that establishing liability and class-wide damages would by no
7 means be guaranteed. Prosecuting the case through trial would have first required
8 plaintiffs to survive an opposition to class certification and a motion for summary
9 judgment or summary adjudication on a variety of grounds including challenges to
10 plaintiffs’ ability to prove class-wide impact and damages. Even if plaintiffs
11 cleared those hurdles, there was no guarantee that they would do so without being
12 affected in a way that would very substantially reduce the potential for recovery at
13 trial.

14 32. In light of the various risks in this litigation and based on their analysis
15 and evaluation of the strengths and weaknesses of the claims asserted, the evidence
16 developed through their investigation and discovery, and the damages that might
17 be proven at trial, the total amount of the settlements with both Korean Air and
18 Asiana -- which provide an aggregate recovery for the Class in excess of \$86
19 million, consisting of \$50 million in cash and \$36 million in coupons redeemable
20 for air travel -- is substantial, is in the best interests of the Class and is, in the
21 considered professional opinion of Co-Lead Class Counsel, clearly fair, reasonable
22 and adequate to the Class.

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1 **VIII. CO-LEAD COUNSEL’S REQUEST FOR ATTORNEYS’ FEES AND**
2 **EXPENSES ON BEHALF OF THEMSELVES AND PLAINTIFFS’**
3 **COUNSEL**

4 **A. The Fee Application**

5 33. As compensation for their efforts, Co-Lead Class Counsel seek an award
6 of attorneys’ fees in the amount of 25% of the Settlement Fund and reimbursement
7 of no more than \$600,000 in unreimbursed expenses reasonably incurred by
8 plaintiffs’ counsel in the prosecution and settlement of the litigation. Co-Lead
9 Class Counsel, along with other plaintiffs’ counsel, have prosecuted this case for
10 more than six years without any compensation for attorney time, and have incurred
11 hundreds of thousands of dollars in unreimbursed expenses.

12 34. The fee request is within the range of fees awarded by courts in the Ninth
13 Circuit, as further detailed and discussed in Co-Lead Class Counsel’s concurrently
14 filed Plaintiffs’ Memorandum in Support of Plaintiffs’ Motion for an Award of
15 Attorneys’ Fees and Reimbursement of Expenses (the “Fee Memorandum”).

16 35. As discussed in the Memorandum, the request of 25% of the Settlement
17 Fund in this case – the benchmark applied by the Ninth Circuit -- is within the
18 range of fees awarded by this Court and by numerous other courts both within the
19 Ninth Circuit and across the country, on settlement amounts that are on par with
20 the settlements achieved in this action. Co-Lead Class Counsel’s work and
21 expertise made possible the settlements achieved on behalf of the Class.

22 36. Plaintiffs, through the vigorous efforts of Co-Lead Class Counsel, engaged
23 in extensive factual investigation and litigation of the claims alleged in the
24 Complaint. By the time the Settlement was reached, Co-Lead Counsel had:

- 25 • Reviewing and analyzing the factual background underlying the
- 26 complaint and airline industry characteristics;
- 27 • Collecting and reviewing a comprehensive compilation of analyst
- 28 reports and major news service reports on Asiana and Korean Air;

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- Reviewing and analyzing the allegations of price-fixing and market allocation relating to Asiana and Korean Air;
- Locating and interviewing witnesses and third parties;
- Translating and analyzing thousands of documents produced by defendants;
- Reviewing named class plaintiffs' qualifications to serve as class representatives and defending discovery and depositions;
- Researching and analyzing publicly-available presentations, journals, industry publications, and other materials, specifically related to defendants' conduct;
- Drafting the initial complaints and the First and Second Consolidated Class Action Complaint setting forth the violations of the federal antitrust laws;
- Researching and drafting memoranda opposing Defendants' Motions to Dismiss;
- Preparing for and appearing at oral argument on Defendants' Motions to Dismiss;
- Preparing Initial Disclosures and assisting in the production of documents by plaintiffs;
- Serving narrowly-tailored and specific Requests for Admissions, and Requests for Production of Documents on Defendants;
- Negotiating a confidentiality stipulation (and proposed Order) with defendants;
- Engaging in multiple efforts to meet and confer concerning discovery disputes and prosecution of a motion to compel before the Magistrate Judge;

- 1 • Spending substantial amounts of time reviewing written discovery
2 responses, as well as reviewing thousands of pages of documentary
3 evidence received in response to Plaintiffs' discovery requests;
- 4 • Taking the early 30(b)(6) deposition of Korean Air and several
5 30(b)(6) depositions of defendants' revenue management team in
6 connection with the motions to dismiss;
- 7 • Consulting with economic experts in the areas of revenue
8 management, class certification and damages;
- 9 • Engaging expert economists to conduct studies and prepare analyses
10 with respect to the issues of class certification and damages;
- 11 • Preparing for and participating in a mediation process with a
12 nationally regarded third-party neutral, former Judge Phillips,
13 including drafting opening and reply mediation statements, and
14 participating in continued negotiation efforts over the weeks following
15 the mediation to achieve and finalize the Settlement;
- 16 • Drafting the settlement papers, related motion papers and other
17 documents necessary to provide notice of the Settlement to Class
18 Members and to obtain preliminary and final approval of the
19 Settlement;
- 20 • Securing the appointment of a coupon claims administrator, and
21 working with all parties to implement the process, to establish a
22 market in the travel coupons and enable claimants to easily transfer
23 and redeem the coupons.

24 37. The expertise and experience of Co-Lead Class Counsel is also an
25 important factor to be weighed in assessing a fair fee. Co-Lead Class Counsel are
26 experienced and skilled practitioners in the field of complex antitrust litigation.
27 Co-Lead Class Counsel have achieved significant class action settlements, as well
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1 as being lead counsel of record in cases establishing important precedents that
2 enable litigation such as this to be successfully prosecuted.

3 38. Co-Lead Class Counsel prosecuted the litigation vigorously, expending
4 substantial time and resources without any assurance of obtaining any
5 compensation for their efforts. Specifically, as set forth below, Co-Lead Class
6 Counsel have already devoted 23,384 hours to this case, and fully expect to devote
7 more time in the future administration and distribution of the settlements.

8 **B. Reputation and Caliber of Opposing Counsel**

9 39. The quality of the work performed by Co-Lead Class Counsel in attaining
10 the Settlement should also be evaluated in light of the quality of the opposition.
11 Defendants were represented by three of the nation's leading law firms,
12 O'Melveny & Myers, Morgan Lewis and Bockius and Paul Hastings. In the face
13 of this knowledgeable and formidable opposition, Co-Lead Class Counsel were
14 nevertheless able to develop a case that was sufficiently strong to persuade the
15 defendants to settle it on terms that we believe are highly favorable to the Class.

16 **C. The Risks of Contingent Litigation**

17 40. Co-Lead Class Counsel undertook representation of Lead Plaintiffs and
18 the putative class on a wholly contingent basis. Co-Lead Counsel knew from the
19 outset that they would expend a substantial amount of time prosecuting this action,
20 yet receive no compensation if the litigation proved ultimately unsuccessful. Thus,
21 the contingent nature of payment of fees and expenses and the risks and
22 complexity of the litigation should be given substantial weight by the Court in
23 considering the instant application for fees and expenses.

24 41. Continued litigation would have entailed significant risks to the Class, as
25 the litigation could have been derailed in any number of ways before a final
26 judgment in plaintiffs' favor was achieved (and withstood inevitable appeals).
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1 42. Even assuming plaintiffs were able to establish defendants' liability to the
2 Class, plaintiffs would have faced the challenge of establishing class-wide
3 damages. Even if Plaintiffs were to obtain and maintain class certification, and
4 establish liability and damages at trial, the Class would still face the risk of no
5 recovery should defendants prevail on either post-trial motions or on appeal.

6 43. As a result of consistent and persistent efforts in the face of substantial
7 risks and uncertainties, Co-Lead Class Counsel, together with other counsel for
8 plaintiffs, achieved highly favorable recovery for the Class. In circumstances such
9 as these, and in consideration of Co-Lead Class Counsel's hard work and the
10 excellent result achieved, the requested 25% fee is reasonable and should be
11 approved.

12 **D. The Reaction of the Class to the Requested Fee**

13 44. Over 1,500,000 copies of the Notice have been mailed or emailed to
14 potential Class Members. The Notice advised Class Members that Co-Lead
15 Counsel would apply for an award of attorneys' fees from the Settlement Fund in
16 an amount not to exceed 25% of the Settlement Fund. Additionally, summary
17 notices were published nationally in both Korean and English language
18 publications as well as posted on the Claims Administrator's website. As of the
19 time of this filing, no objection to the Settlement, Plan of Allocation, or request for
20 attorneys' fees and reimbursement of expenses has been received.

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22 **E. The Fee Request Is Also Justified Under the Lodestar/Multiplier
23 Cross-check Approach**

24 45. The Ninth Circuit has held that a court may also consider a
25 lodestar/multiplier approach in assessing the reasonableness of a fee request. The
26 lodestar is determined by multiplying the number of reasonable hours worked on a
27 client's case by a reasonable hourly billing rate for such services given the
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1 geographical location, the nature of the services provided, and the experience of
2 the lawyer. It can then be increased or decreased based upon the contingent nature
3 or risk in the particular case involved, and the quality of the attorney's work. A
4 percentage increase or decrease of the lodestar amount is referred to as a
5 "multiplier."

6 46. Co-Lead Class Counsel's firms have collectively dedicated 23,384 hours
7 to prosecuting this litigation. These hours were compiled from contemporaneous
8 time records maintained by each attorney and each paralegal affiliated with Co-
9 Lead Class Counsel. Applying Co-Lead Counsel's normal hourly rates, which are
10 consistent with those charged by similarly-skilled firms in their respective
11 geographic areas, to the hours expended in this Action yields a total lodestar of
12 \$11,175,134 for the Co-Lead Class Counsel's firms alone. Co-Lead Class
13 Counsel's firms also have total unreimbursed expenses of \$521,823. These
14 substantial hours and expenses reflect Co-Lead Class Counsel's commitment to the
15 aggressive prosecution of this litigation.

16 47. Annexed as Exhibit A is a true and correct copy of the Declaration of
17 Susan G. Kupfer, attaching the total lodestar and expenses for Glancy Binkow &
18 Goldberg LLP.

19 48. Annexed as Exhibit B is a true and correct copy of the Declaration of
20 Marc M. Seltzer, attaching the total lodestar and expenses for Susman Godfrey
21 LLP.

22 49. Annexed as Exhibit C is a true and correct copy of the Declaration of Jeff
23 S. Westerman, with the total lodestar and expenses for Westerman Law Corp.

24 50. Annexed as Exhibit D is a true and correct copy of the Declaration of Paul
25 Novak, attaching the total lodestar and expenses for Milberg LLP.

26 51. During the course of the litigation, Co-Lead Class Counsel maintained a
27 reporting requirement for time and expenses for other plaintiffs' counsel working
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1 on the litigation. Those lodestar reports and expense reports were submitted based
2 on contemporaneous billing records. The total lodestar reported by other
3 plaintiffs' counsel, which was not audited by the Co-Lead Counsel, based on a
4 total of 12,635 hours, is \$6,158,220.

5 52. Co-Lead Class Counsel seek a fee of 25% of the Settlement Fund, which
6 fee will be comprised of: (i) \$12,500,000, together with interest thereon
7 (representing 25% of the \$50 million cash portion of the Settlement Fund); and (ii)
8 25% of the coupons for future travel distributed to the Class, with a face value of
9 \$36 million. As set forth above, Co-Lead Class Counsel spent 23,384 hours of
10 professional time, having a market value of approximately \$11,175,134, in
11 prosecuting the litigation. Thus, the cash fee portion requested by Co-Lead Class
12 Counsel alone barely represents a multiplier of 1.1 of the lodestar reported by
13 them. This figure does not include the reported lodestar of other plaintiffs'
14 counsel.

15 53. Co-Lead Class Counsel thus respectfully submit that, with respect to a
16 lodestar cross-check, a lodestar multiplier close to 1.1 demonstrates that Co-Lead
17 Class Counsel's fee request is more than reasonable, particularly in light of the
18 complexity of the case, the risks of litigation and its highly-uncertain outcome.

19 **IX. CO-LEAD COUNSEL'S REQUEST FOR REIMBURSEMENT OF**
20 **EXPENSES**

21 54. Co-Lead Class Counsel also request reimbursement of up to \$600,000 in
22 expenses, for expenses incurred by Co-Lead counsel and other Plaintiffs' counsel.
23 The expenses requested are reflected on the records of the law firms of Co-Lead
24 Class Counsel and plaintiffs' counsel, prepared in the normal course of business
25 and are an accurate record of the expenses incurred. The expenses noted are
26 reasonable and were incurred for items necessary to the prosecution of the
27 litigation. The expenses were incurred largely in conjunction with discovery, the
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1 services of expert economists, mediation, travel and miscellaneous office expenses.
2 Additionally, because the expenses were incurred for the benefit of the Class and
3 are of a type generally reimbursed in the marketplace, they should be reimbursed
4 from the common fund prior to the payment of attorneys' fees, in the same manner
5 as an individual client would reimburse counsel's expenses.

6 **X. CONCLUSION**

7 55. Co-Lead Class Counsel respectfully submit that, based on the facts and
8 circumstances of this litigation, the principles of law applicable to their motion, the
9 procedural posture of this litigation, and the risks of continued litigation against the
10 defendants, the settlements represent an extremely favorable result for the Class
11 and fully justify the requested fees and expenses.

12 56. Based on all of these factors, as well as Co-Lead Class Counsel's
13 extensive experience in litigating antitrust class actions, Co-Lead Class Counsel
14 believe that the Settlement, which provides an excellent recovery to the Class, is
15 far more beneficial than continuing to prosecute the litigation towards an uncertain
16 outcome.

17 57. Co-Lead Counsel respectfully submit that the Court should grant their
18 application for attorneys' fees in the amount of 25% of the Settlement Fund and, in
19 addition, grant reimbursement of reasonable expenses incurred by Co-Lead
20 Counsel and other plaintiffs' counsel in an amount not to exceed \$600,000.

21 We hereby declare under penalty of perjury under the laws of the United
22 States that the above statements are true and correct and that this declaration was
23 executed on this 4th day of October, 2013.
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1 San Francisco, California

/s/ Susan G. Kupfer
Susan G. Kupfer

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3 Paris, France

/s/Marc M. Seltzer
Marc M. Seltzer

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6 Orange County, California

/s/ Jeff S. Westerman
Jeff S. Westerman

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**PROOF OF SERVICE VIA ELECTRONIC POSTING PURSUANT TO
CENTRAL DISTRICT OF CALIFORNIA LOCAL RULES
AND ECF GENERAL ORDER NO. 10-07**

I, the undersigned, say:

I am a citizen of the United States and am employed in the office of a member of the Bar of this Court. I am over the age of 18 and not a party to the within action. My business address is One Embarcadero Center, Suite 760, San Francisco, California 94111.

On October 4, 2013, I caused to be served the following document by posting such document electronically to the ECF website of the United States District Court for the Central District of California:

JOINT DECLARATION OF SUSAN G. KUPFER, MARC M. SELTZER, AND JEFF S. WESTERMAN IN SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

to all ECF registered parties as listed on the attached Court's Service List.

And on any non-ECF registered party:

By Mail: By placing true and correct copies thereof in individual sealed envelopes, with postage thereon fully prepaid, which I deposited with my employer for collection and mailing by the United States Postal Service. I am readily familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, this correspondence would be deposited by my employer with the United States Postal Service that same day.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 4, 2013, at San Francisco, California.

s/ Susan G. Kupfer
Susan G. Kupfer

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