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19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**
21 **WESTERN DIVISION**

23 In re KOREAN AIR LINES CO.,
24 LTD ANTITRUST LITIGATION

MDL No. 1891
Master File No. CV 07-05107 SJO
(AGR_x)

25 This Document Relates To:

26 All Actions

27 STIPULATION OF SETTLEMENT
28 BETWEEN CLASS PLAINTIFFS AND
DEFENDANT ASIANA AIRLINES,
INC.

Judge: Hon. S. James Otero

1 This Stipulation of Settlement (“Agreement”) is made and entered into as of
2 this 30th day of July, 2010 (the “Execution Date,” as defined below), by and
3 between defendant Asiana Airlines, Inc. (“Asiana,” as defined below) and the Class
4 Plaintiffs (as defined below), both individually and on behalf of the Class Members
5 (as defined below).

6 WHEREAS, Class Plaintiffs are prosecuting the above-captioned litigation
7 (the “Action,” as defined below) on their own behalf and on behalf of the Class
8 (defined below) against defendants Asiana and Korean Air Lines Co., Ltd.
9 (“Korean Air”);

10 WHEREAS, Class Plaintiffs allege that Asiana participated in an unlawful
11 conspiracy to fix, raise, maintain, and stabilize the prices of Passenger Air
12 Transportation (as defined below) in violation of Section 1 of the Sherman Act, 15
13 U.S.C. § 1 *et seq.*;

14 WHEREAS, Asiana denies Class Plaintiffs’ allegations, has not conceded or
15 admitted any civil liability, and has asserted affirmative defenses to Class Plaintiffs’
16 claims;

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

20 WHEREAS, Asiana, despite its belief that it has good defenses to the claims
21 alleged, has nevertheless agreed to enter into this Agreement to avoid further
22 expense, inconvenience, and the distraction of burdensome and protracted
23 litigation;

24 WHEREAS, Class Plaintiffs have agreed to accept the Settlement Amount
25 (as defined below) based, in part, on (1) Asiana’s representations regarding both its
26 present and projected financial condition and its inability to pay more; and (2) the
27 value of its cooperation to Class Plaintiffs and the Class; and
28

1 WHEREAS, Asiana has agreed to cooperate with Class Plaintiffs and has
2 represented and agreed that it will provide cooperation with respect to named and
3 unnamed co-conspirators, and as the first-settling defendant, Asiana's cooperation
4 is expected to save Class Plaintiffs substantial burden and the expense of litigation;
5 and

6 WHEREAS, arm's-length settlement negotiations have taken place between
7 counsel for Class Plaintiffs and Asiana, and this Agreement embodies all of the
8 terms and conditions of the settlement between Asiana and Class Plaintiffs, both
9 individually and on behalf of the Class, and has been reached as a result of the
10 parties' negotiations.

11 NOW, THEREFORE, in consideration of the mutual covenants, agreements,
12 and releases set forth herein and for other good and valuable consideration, it is
13 agreed by and among the undersigned that this Action be settled, compromised, and
14 dismissed on the merits with prejudice as to Asiana only, without costs as to Class
15 Plaintiffs, the Class, or Asiana, except as otherwise expressly set forth herein,
16 subject to the approval of the Court, on the following terms and conditions:

17 **A. Definitions**

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

19 1. "Action" means the direct purchaser antitrust class actions
20 consolidated under the caption *In re Korean Air Lines Co., Ltd. Antitrust*
21 *Litigation*, MDL No. 1891, Master File No. CV-05107 SJO (AGRx).

22 2. "Asiana" means Asiana Airlines, Inc. and its subsidiaries,
23 predecessors, and affiliates.

24 3. "Class" means all persons and entities (excluding governmental
25 entities, defendants, and defendants' respective predecessors, subsidiaries, and
26 affiliates) who purchased Passenger Air Transportation on the airlines of
27 defendants, or any predecessor, subsidiary, or affiliate of the defendants, at any
28 time during the time period January 1, 2000 through August 1, 2007. As used

1 in this definition, “affiliates” means entities controlling, controlled by, or under
2 common control with a defendant. The term “affiliates” does not include any
3 travel agents.

4 4. “Class Cash Fund” means Eleven Million U.S. Dollars
5 (\$11,000,000 USD).

6 5. “Class Counsel” means the law firms of Susman Godfrey L.L.P.,
7 1901 Avenue of the Stars, Suite 950, Los Angeles, CA 90067; Glancy Binkow
8 & Goldberg LLP, One Embarcadero Center, Suite 760, San Francisco, CA
9 94111; and Milberg LLP, 300 South Grand Avenue, Suite 3900, Los Angeles,
10 CA 90071.

11 6. “Class Coupon Fund” means the equivalent of Ten Million U.S.
12 Dollars (\$10,000,000 USD) in coupons as defined in Paragraph 26 below and its
13 subparts.

14 7. “Class Member” means each member of the Class who does not
15 timely and validly request to be excluded from the Class.

16 8. “Class Period” means the period from January 1, 2000 through
17 August 1, 2007.

18 9. “Class Plaintiffs” means Laura Albee, Joon Chung, Timothy
19 Murphy, Sungshic Park, Yoon Park, Howard Ree, Leon Song, and Edward Yoo.

20 10. “Court” means the United States District Court for the Central
21 District of California.

22 11. “Defendant” means any person or entity named as a defendant in
23 this Action.

24 12. “Effective Date” means the date on which final approval has been
25 obtained in this Action, as further defined in Paragraph 34 below.

26 13. “Escrow Account” means the accounts to be established by Class
27 Counsel for receipt of the Class Cash Fund and the Notice and Administration
28 Costs Fund to be paid by Asiana pursuant to the Agreement.

1 14. “Execution Date” means the date first appearing above.

2 15. “Passenger Air Transportation” means passenger air transportation
3 service for flights originating in the United States and ending in the Republic of
4 Korea (“Korea”) or flights originating in Korea and ending in the United States.

5 16. “Releasees” means Asiana, its past and present officers, directors,
6 employees, agents, attorneys, servants, representatives, parents, subsidiaries,
7 and affiliates and the predecessors, successors, heirs, executors, administrators,
8 and assigns of each of the foregoing. As used in this definition, “affiliates”
9 means entities controlling, controlled by, or under common control with a
10 Releasee. The term “Releasees” does not include Korean Air or any of Korean
11 Air’s past or present officers, employees, or agents acting in such capacity.

12 17. “Released Claims” means any and all claims, demands, actions,
13 suits, and causes of action (whether class, individual, or otherwise in nature)
14 that any Releasors, or any one of them, ever had, now has, or hereafter can,
15 shall or may have against the Releasees, whether known or unknown, which
16 were or could have been alleged in this Action on behalf of the Class on a class-
17 wide basis on account of or arising out of, resulting from or related in any
18 respect to the alleged conspiracy or conspiracies to fix the prices of Passenger
19 Air Transportation during the Class Period. This release does not include any
20 claims that are not related to those asserted in the Action. The Releasors shall
21 not, after the Effective Date, seek to recover against any of the Releasees for
22 any of the Released Claims.

23 18. “Releasors” means the Class Plaintiffs and the Class Members, and
24 their successors, heirs, and assigns.

25 19. “Released Defendant’s Claims” means any and all claims, rights or
26 causes of action or liabilities whatsoever, whether based on federal, state, local,
27 statutory or common law or any other law, rule or regulation, including both
28 known claims and unknown claims, that have been or could have been asserted

1 in the Action or any forum by Asiana or any of the Releasees or the successors
2 and assigns of any of them against any of the Class Plaintiffs, other Class
3 Members, or their attorneys, which arise out of or relate in any way to the
4 institution, prosecution, or settlement of the Action (except for claims to enforce
5 the Settlement).

6 20. "Settlement Amount" means the aggregate amount of the Class
7 Cash Fund and the Class Coupon Fund.

8 21. "Settlement Fund" means the Settlement Amount plus any interest
9 earned on that amount.

10 22. "Taxes" means any sums due to be paid to governmental taxing
11 authorities from the Settlement Amount and the Notice and Administration
12 Costs Fund, including taxes, estimated taxes, interest, and penalties.

13 23. "Tax Expenses" means any and all reasonable fees and costs due to
14 be paid to tax preparers, tax consultants, or others for determining the tax
15 liability of the Settlement Amount and the Notice and Administration Costs
16 Fund and otherwise assisting Class Counsel in carrying out their responsibilities
17 set forth in this Agreement.

18 **B. Payment**

19 24. The total amount of the Class Cash Fund and the Class Coupon
20 Fund is Twenty-One Million U.S. Dollars (\$21,000,000 USD).

21 25. Asiana shall deposit the Class Cash Fund on or before thirty (30)
22 days from the Execution Date into the Escrow Account established by Class
23 Counsel.

24 26. Asiana shall make available on or before thirty (30) business days
25 from the Effective Date the equivalent of Ten Million U.S. Dollars
26 (\$10,000,000 USD) in coupons for passenger flight tickets sold by Asiana.

- 27 a. Each coupon shall be (i) designated with a unique identifier; (ii)
28 redeemable for a period no later than the third anniversary of the

1 issuance of the coupon to the Class Member (all coupons shall
2 be issued on a single issuance date); (iii) transferable by the
3 Class Member; (iv) subject to no “black-out” dates; and (v) not
4 subject to a service or redemption charge of any kind. Each
5 coupon may be redeemed toward any one-way or round-trip
6 ticket for Passenger Air Transportation. A coupon cannot be
7 used to purchase a ticket for a codeshare flight operated by
8 Asiana but sold by another carrier. If warranted, a Class
9 Member may receive more than one coupon.

- 10 b. The monetary face amount of the coupons allotted will be based
11 on the claims submitted or as otherwise provided in the
12 proposed plan of allocation. Asiana and Class Counsel shall set
13 the maximum coupon redemption value per ticket by mutual
14 agreement. The claims administrator shall maintain a record of
15 each coupon recipient, including the recipient’s name and
16 address, and provide a copy of the record to Asiana.
- 17 c. The full value of any unexercised coupons shall be made
18 available for a *cy pres* distribution, upon Court approval, to
19 charitable organizations to be identified by Class Counsel, and
20 shall be valid for an additional six (6) months upon issuance to
21 the Court approved *cy pres* recipients. All such coupons shall
22 be issued on a single issuance date.
- 23 d. The conditions set forth in Paragraphs 26(a) and (b) except
24 26(a)(ii) shall apply to the *cy pres* distribution described in
25 Paragraph 26(c).
- 26 e. Class Counsel agrees Asiana and its counsel shall participate in
27 the process for determining a proposed plan of allocation. The
28 plan of allocation shall be subject to the approval of the Court.

1 **C. Stipulation to Class Certification**

2 27. Subject to the approval of the Court and for the purpose of this
3 Agreement, the parties agree and stipulate to the certification of the Class
4 pursuant to Rule 23 of the Federal Rules of Civil Procedure.

5 28. If the Court grants Defendants' Joint Motion to Dismiss Plaintiffs'
6 Korea-Purchase Claims for Lack of Subject Matter Jurisdiction by the time of
7 preliminary approval, the claims of any person or entity based on the purchase
8 of Passenger Air Transportation on the airlines of Defendants, or any
9 predecessor, subsidiary, or affiliate of each, or their agents, which the Court
10 dismisses by granting Defendants' motion shall likewise be excluded from the
11 Released Claims provided for by this Agreement and the definition of the Class
12 as set forth in this Agreement shall be modified accordingly.

13 **D. Approval of This Agreement, Notice, and Dismissal of Claims**

14 29. Class Plaintiffs, Class Counsel, Asiana, and its counsel agree to use
15 their best efforts to effectuate this Agreement, and shall cooperate promptly to
16 seek and obtain both preliminary and final approval of this Agreement
17 (including the giving of class notice under Federal Rule of Civil Procedure
18 23(c) and (e)) and to secure the complete and final dismissal with prejudice of
19 this Action solely as to Asiana.

20 30. On or before twenty-eight (28) days from the Execution Date or as
21 soon thereafter as may be practicable, Class Plaintiffs shall submit a motion to
22 the Court in this Action for preliminary approval of this Agreement and
23 authorization to disseminate notice of the settlement to the Class and for a stay
24 of all Class proceedings in this Action by or against Asiana, except for
25 proceedings provided for, by, or in connection with this Agreement as set forth
26 herein (the "Motion"). Except as provided in Paragraph 28 above, the Motion
27 shall include (i) the definition of the Class as set forth in this Agreement; and
28 (ii) a proposed form of, method for, and date of dissemination of notice to the

1 Class. Except as otherwise provided in this Agreement, the text of the items
2 referenced in clauses (i) and (ii) of this Paragraph 30 shall be agreed upon by
3 the Class Plaintiffs and Asiana before submission of the Motion.

4 31. Individual notice of the settlement shall be given to persons and
5 entities who may be identified through reasonable effort as potential members
6 of the Class, to the extent available. Notice of the settlement and other forms of
7 notice are to be determined in joint consultation with the Claims Administrator
8 consistent with the requirements of Rule 23.

9 32. On or before twenty (20) business days from the Execution Date,
10 Asiana shall deposit \$60,000 into the Notice and Administration Costs Fund, a
11 second Escrow Account established by Class Counsel. Additional contributions
12 to the Notice and Administration Costs Fund shall be made out of the Class
13 Cash Fund at the direction of Class Counsel on a non-recoupable basis. The
14 Notice and Administration Costs Fund may be used by Class Counsel to pay
15 costs and expenses reasonably and actually incurred in connection with
16 providing notice to the Class, locating Class Members, processing Class claims,
17 assisting with the filing of claims, administering and distributing the Settlement
18 Fund to authorized claimants, processing Proof of Claim and Release forms, and
19 paying escrow fees and costs, if any. If the Settlement is terminated in
20 accordance with its terms, only the balance, if any, of any unspent funds shall be
21 returned to Asiana, less any Taxes and Tax Expenses due, and after deducting
22 any costs and expenses incurred but not yet paid.

23 33. Class Plaintiffs shall submit a motion for final approval of this
24 Agreement promptly after notice of the settlement hearing is given to the Class.
25 Asiana shall provide assistance, if necessary, including providing evidence of its
26 financial condition in support of settlement. At the same time, Class Plaintiffs
27 shall seek entry of an Order and Final Judgment, in a form mutually agreeable
28 to the Class Plaintiffs and Asiana, which shall include the following findings

1 and provisions:

- 2 a. as to the Action, approving finally this Agreement and its terms
3 as being a fair, reasonable, and adequate as to the Class within
4 the meaning of Rule 23 of the Federal Rules of Civil Procedure
5 and directing its consummation according to its terms;
6 b. providing that, as to Asiana, this Action be dismissed with
7 prejudice and, except as otherwise provided in this Agreement,
8 without costs;
9 c. notwithstanding the entry of the Order and Final Judgment, the
10 Court shall retain exclusive and continuing jurisdiction over
11 Class Plaintiffs, the Class Members, Asiana, and the Settlement
12 Fund, for the purposes of effectuating and enforcing the
13 settlement set forth in this Agreement and administering the
14 Settlement Fund; and
15 d. determining under Federal Rule of Civil Procedure 54(b) that
16 there is no just reason for delay and directing that the judgment
17 of dismissal as to Asiana shall be final and entered forthwith.

18 34. This Agreement shall become final only when: (i) the Court has
19 entered a final judgment order approving this Agreement under Rule 23(e) of
20 the Federal Rules of Civil Procedure and a final judgment dismissing the Action
21 against Asiana on the merits and with prejudice (each side bearing their own
22 costs) has been entered, and (ii) the time for appeal or to seek permission to
23 appeal from the Court's approval of this Agreement and entry of a final
24 judgment as described in clause (i) above has expired or, if appealed, approval
25 of this Agreement and the final judgment has been affirmed in its entirety by the
26 court of last resort to which such appeal has been taken and such affirmance has
27 become no longer subject to further appeal or review ("Effective Date"). It is
28 agreed that neither the provisions of Rule 60 of the Federal Rules of Civil

1 Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account
2 in determining the above-stated times.

3 **E. Releases and Discharge**

4 35. Upon the occurrence of the Effective Date and in consideration of
5 payments of the Settlement Amount, the Cooperation Agreement set forth in
6 Section J, and for other valuable consideration, the Releasees shall be
7 completely released, acquitted, and forever discharged from any and all
8 Released Claims as set forth in this Agreement.

9 36. Upon the occurrence of the Effective Date, Asiana, on behalf of
10 itself, its heirs, executors, administrators, predecessors, successors and assigns,
11 and the other Releasees, shall completely release, acquit, and forever discharge
12 any and all Released Defendant's Claims, and shall forever be enjoined from
13 prosecuting the Released Defendant's Claims against Class Plaintiffs, all other
14 Class Members, and their counsel.

15 37. Class Plaintiffs and Asiana waive California Civil Code Section
16 1542 ("Section 1542") and similar provisions in other states. Class Plaintiffs
17 and Asiana hereby certify that they are aware of and have read and reviewed the
18 following provisions of Section 1542 : "A general release does not extend to
19 claims which the creditor does not know or suspect to exist in his favor at the
20 time of executing the release, which if known by him must have materially
21 affected his settlement with the debtor." The provisions of the release set forth
22 above shall apply according to their terms, regardless of the provisions of
23 Section 1542 or any equivalent, similar, or comparable present or future law or
24 principle of law of any jurisdiction. Class Plaintiffs and Asiana hereby
25 expressly waive and relinquish any and all rights and benefits existing under (a)
26 Section 1542 or any equivalent, similar, or comparable present or future law or
27 principle of law of any jurisdiction; and (b) any law or principle of law of any
28 jurisdiction that would limit or restrict the effect or scope of the provisions of

1 the release set forth above.

2 **F. Persons Requesting Exclusion and Right to Withdraw from Settlement**

3 38. Class Counsel or their designee shall cause copies of any requests
4 for exclusion from the Class to be sent to counsel for Asiana as they are
5 received.

6 39. On or before five (5) business days after the end of the period to
7 request exclusion from the Class established by the Court and set forth in the
8 notices of settlement described in Paragraph 31 (“opt-out period”), Class
9 Counsel shall provide Asiana, through its counsel, with a written list of all
10 potential Class members who have timely exercised their rights to be excluded
11 from the Class. Class Counsel and Asiana will then ascertain the total dollar
12 amount of U.S. sales of Passenger Air Transportation made during the Class
13 Period to those individuals or entities requesting exclusion from the Class (the
14 “opt-out amount”). In the event that the opt-out amount of U.S. purchases is
15 equal to or greater than ten percent (10%) of the total dollar amount of U.S.
16 sales of Passenger Air Transportation made by Defendants during the Class
17 Period, then Asiana may in its discretion elect to withdraw from this Agreement
18 by providing written notice to Class Counsel on or before ten (10) business days
19 from receipt of the list of opt-outs.

20 40. Class Counsel shall, on or before five (5) business days from
21 receipt of the notice of withdrawal from Asiana, provide Asiana with written
22 notice of any challenge by Class Plaintiffs to Asiana’s claim of entitlement to
23 withdraw from the Settlement Agreement. In the event the parties are unable to
24 agree upon the opt-out amount, they shall submit the issue to the Court for
25 decision, and the Court’s decision will be final, binding, and unappealable.

26 **G. The Settlement Fund**

27 41. Payment into the Escrow Accounts shall, when made, be invested
28 in short-term United States Agency or Treasury Securities (or a mutual fund

1 invested solely in such instruments), or in a fully U.S. Government-insured
2 account. Any interest earned thereon shall be collected and reinvested and shall
3 become part of the Class Cash Fund or the Notice and Administration Costs
4 Fund, respectively. Any sums required to be held in escrow hereunder before
5 the Effective Date shall be held by Class Counsel as Escrow Agents for the
6 Escrow Accounts. All funds held by the Escrow Agents shall be deemed to be
7 in the custody of the Court and shall remain subject to the jurisdiction of the
8 Court until such time as the funds shall be distributed or returned to the persons
9 paying the same pursuant to this Agreement and/or further order of the Court.
10 The parties hereto agree that the Escrow Accounts are intended to be a Qualified
11 Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and
12 shall be treated as a Qualified Settlement Fund from the earliest date possible,
13 and agree to any relation-back election required to treat the Escrow Accounts as
14 a Qualified Settlement Fund from the earliest date possible. Counsel for Asiana
15 agree to provide promptly to the Escrow Agents the statement described in
16 Treasury Regulation § 1.468B-3(e).

17 42. Class Counsel shall be reimbursed and paid solely out of the Class
18 Cash Fund for all expenses including, but not limited to, attorneys' fees and
19 related costs. Following Final Approval and subject to Court approval, a
20 portion of the Settlement Fund may be withdrawn to defray the costs of
21 prosecuting claims against the non-settling Defendant(s).

22 **H. Termination**

23 43. If the Court presiding over this Action declines to approve the
24 Settlement Agreement without modification, or does not enter a Final Judgment
25 in this Action as to the claims against Asiana, or if such Final Judgment is
26 entered in this Action and appellate review is sought and, on such review, such
27 Final Judgment is modified or set aside on appeal, Asiana and Class Plaintiffs
28 each shall, in their sole discretion, have the option to terminate this Agreement

1 in its entirety. If either party terminates, any and all amounts then constituting
2 the Settlement Fund and the Notice and Administration Costs Fund shall be
3 returned forthwith to Asiana, less only such disbursements that have been
4 properly made, or incurred, or are due and payable, in accordance with this
5 Agreement, which includes, but is not limited to, any costs of administration
6 and claim notice paid or incurred and paid or payable from the Notice and
7 Administration Costs Fund and any Taxes and Tax Expenses due with respect to
8 the Settlement Fund or the Notice and Administration Costs Fund. No amounts
9 paid or incurred for costs of administration and class notice shall be recoupable
10 by Asiana.

11 44. A modification or reversal on appeal of any amount of attorneys'
12 fees or expenses awarded by the Court or of any plan of allocation of settlement
13 proceeds among Class Members in this Action shall not be deemed a
14 modification of this Agreement or of a Final Judgment in this Action.

15 45. Asiana and Class Plaintiffs expressly reserve all of their respective
16 rights to the extent that the Agreement does not become effective or if it is
17 terminated by either party pursuant to this Agreement.

18 **I. Taxes and Tax Expenses**

19 46. Class Counsel or their designee shall be solely responsible for
20 filing all informational and other tax returns necessary to report any taxable
21 income earned by the Settlement Fund and shall file all informational and other
22 tax returns necessary to report any income earned by the Settlement Fund and
23 pay any Taxes due thereon out of the Class Cash Fund, as and when legally
24 required including interest and penalties due on income earned by the
25 Settlement Fund. Class Counsel shall be entitled to pay customary and
26 reasonable Tax Expenses, including professional fees and expenses incurred in
27 connection with carrying out their responsibilities as set forth in this Paragraph
28 from the Class Fund. Asiana shall have no responsibility to make any tax

1 filings relating to this Agreement or the Settlement Fund or to pay any taxes
2 with respect thereto.

3 **J. Cooperation Agreement**

4 47. Upon execution of this Agreement, Asiana shall begin cooperating
5 with Class Counsel with respect to discovery in this Action, as set forth in this
6 Paragraph, and shall provide assistance to Class Counsel in seeking to secure
7 evidentiary materials from third parties.

8 a. On or before sixty (60) to one hundred twenty (120) days from
9 the Execution Date, Asiana shall produce to Class Counsel
10 electronic transactional data for Passenger Air Transportation
11 sales by Asiana, and data regarding costs associated with those
12 sales, during the Class Period and for the following periods
13 before and after the Class Period: January 1, 1998 through
14 December 31, 1999 and from August 2, 2007 through December
15 31, 2009; if reasonably available. In connection with the
16 production of these data, Asiana, at Class Counsel's election,
17 shall make available the relevant personnel, at reasonable and
18 mutually agreed upon times, to assist Class Counsel in
19 understanding, interpreting, and using such data.

20 b. On or before thirty (30) days from the Execution Date or at
21 another mutually specified and agreeable time, Asiana agrees to
22 meet with Class Counsel to identify documents, people, and
23 entities, relating to the claims alleged, or which may be alleged,
24 in this Action, including the conduct and potential culpability of
25 Korean Air and any unnamed co-conspirators, the impact of the
26 conduct, and any damages arising from the conduct.

27 48. Promptly following preliminary approval of this Agreement:

28 a. Asiana shall produce all documents provided to any grand jury,

1 the United States Department of Justice, the Korea Fair Trade
2 Commission, the European Commission, or any other state,
3 federal, or international governmental or administrative agency,
4 without geographic limitation, concerning the antitrust
5 violations alleged in this Action, or which may be alleged,
6 including any white papers, any witness statements, transcripts
7 of any statements whether or not made under oath, chronologies,
8 or other materials provided to any of the foregoing.

- 9 b. Asiana shall produce additional data and documents, if
10 reasonably related to Plaintiffs' prosecution of this Action to the
11 extent reasonably available. Asiana shall provide information
12 and produce documents within its possession, custody, or
13 control relating to the claims alleged, or which may be alleged,
14 in this Action, including without limitation the dates, locations,
15 and participants in meetings or communications between
16 competitors, and the substance of those communications.
17 Asiana also will provide other information and documents
18 within its possession, custody, or control regarding the potential
19 culpability of Asiana, Korean Air and any unnamed co-
20 conspirators in this Action, except for documents or information
21 subject to the attorney-client privilege or joint defense privilege
22 and for documents subject to the attorney work product doctrine.
23 For each document created by Asiana in the ordinary course of
24 business, withheld in whole or in part, Asiana shall, at Class
25 Counsel's election, produce a privilege log similar to the
26 Supplemental Amended Privilege and Redaction Log it
27 produced on May 25, 2010 in this Action.

1 49. Commencing on or before 35 days from the final date of the opt-
2 out period:

3 a. Asiana shall make Asiana's counsel available for interviews at a
4 mutually agreeable time and place.

5 b. Asiana shall use its best efforts to make available in Los
6 Angeles, California, upon reasonable notice, current directors,
7 officers, and employees of Asiana who are believed to have
8 knowledge of the antitrust violations alleged, or which may be
9 alleged, in this Action for interviews, the preparation of
10 declarations, affidavits, and providing testimony at depositions
11 and trial. As to former directors, officers, and employees,
12 Asiana shall use its best efforts to make such individuals
13 available for interviews, depositions, and trial testimony under
14 the same conditions as current directors, officers, and employees
15 of Asiana. Any witness made available to be interviewed or to
16 testify at deposition pursuant to this subpart shall be made
17 available by Asiana at a mutually agreeable time and place. The
18 refusal of any current or former director, officer, or employee to
19 provide information to Class Counsel because of a good faith
20 belief that he or she has potential criminal exposure shall not
21 constitute a violation of this Agreement either by Asiana or that
22 individual.

23 c. Asiana shall produce at trial and deposition, or through
24 acceptable affidavits, declarations, or other testimony,
25 representatives qualified to establish for admission into evidence
26 data and any documents or other evidence provided by Asiana
27 consistent with the Federal Rules of Evidence.
28

1 50. Nothing in this Agreement shall require Asiana or any of its
2 present, former, or future officers, directors, or employees to provide any
3 information or documents subject to any privilege or protection from discovery
4 based upon the work product doctrine, attorney client privilege, Fifth
5 Amendment privilege (if based on a good faith belief that he or she has potential
6 criminal exposure), or a court order of non-disclosure, or to violate any
7 provision of law, nor shall these privileges be deemed waived. For each
8 document created by Asiana in the ordinary course of business, withheld in
9 whole or in part, Asiana shall, at Class Counsel's election, produce a privilege
10 log similar to the Supplemental Amended Privilege and Redaction Log it
11 produced on May 25, 2010 in this Action.

12 51. On or before 20 business days following (i) a reasonable
13 determination by Asiana that preliminary approval or final approval will not be
14 obtained in this Action, or (ii) pursuant to termination as set forth in Paragraph
15 43, Class Plaintiffs shall, if requested by Asiana to do so, return to Asiana or
16 destroy, and provide Asiana with a written certification by Class Counsel of
17 such destruction, all documents or other materials provided to the Class
18 Plaintiffs by Asiana pursuant to Section J or containing information derived
19 from such documents or other materials, unless otherwise discoverable. Class
20 Plaintiffs shall destroy, in lieu of returning, any of their work product created
21 from documents, other materials, or information provided pursuant to the
22 Cooperation Agreement described in Section J.

23 52. All information and documents provided by Asiana or any of its
24 present, former, or future officers, directors, or employees to Class Counsel
25 shall be used only in connection with this Action and shall not be used directly
26 or indirectly for any other purpose.

27 53. Documents or information provided to Class Counsel pursuant to
28 this Agreement shall not be disclosed to or shared with any Class Member who

1 opt outs of this Agreement or counsel to any opt-out unless otherwise properly
2 discoverable.

3 54. Asiana shall have the right to designate any information or
4 materials in accordance with the protective order in this Action.

5 **K. Additional Provisions**

6 55. This Agreement does not settle or compromise any claim by the
7 Class Plaintiffs or any Class Member asserted in this Action against any
8 Defendant or alleged co-conspirator other than the Releasees. All rights of the
9 Class Plaintiffs and any Class Member against Korean Air, other alleged co-
10 conspirators or any other person or entity other than the Releasees are
11 specifically reserved by the Class Plaintiffs and the Class Members, and such
12 rights continue to exist even if Korean Air or any alleged co-conspirator
13 acquires all or part of Asiana, or engages in any transaction, directly or
14 indirectly, through a parent, subsidiary, affiliate or otherwise, such that it might
15 otherwise become a Releasee. Asiana's sale of Passenger Transportation
16 Services shall remain in this Action as a basis for damage claims against Korean
17 Air and shall be part of any joint and several liability claims against Korean Air
18 or other persons or entities other than the Releasees.

19 56. Asiana warrants, as to the payments made by or on behalf of it, at
20 the time of such payment that the Defendant made or caused to be made
21 pursuant to Paragraphs 25, 26, and 32 above, it was not insolvent, nor did nor
22 will the payment required to be made by or on behalf of it render Asiana
23 insolvent, within the meaning of and/or for the purposes of the United States
24 Bankruptcy Code, including §§ 101 and 547 thereof, or the insolvency laws of
25 the Republic of Korea. This warranty is made by Asiana and not by Asiana's
26 Counsel.

27 57. If a case is commenced in respect of Asiana (or any insurer
28 contributing funds to the Class Cash Fund on behalf of Asiana) under Title 11

1 of the United States Code (Bankruptcy), or a trustee, receiver, conservator, or
2 other fiduciary is appointed under any similar law (including in the Republic of
3 Korea), and in the event of the entry of a final order of a court of competent
4 jurisdiction determining the transfer to the Settlement Fund or any portion
5 thereof by or on behalf of Asiana to be a preference, voidable transfer,
6 fraudulent transfer or similar transaction and any portion thereof is required to
7 be returned, and such amount is not promptly deposited to the Settlement Fund
8 by others, then, at the election of Class Counsel, the parties shall jointly move
9 the Court to vacate and set aside the releases given and Judgment entered in
10 favor of the Releasees pursuant to this Agreement, which releases and Judgment
11 shall be null and void, and the parties shall be restored to their respective
12 positions in the litigation immediately prior to the execution of this Agreement
13 and any cash amounts in the Settlement Fund and the Notice and Administration
14 Costs Fund shall be returned as provided in Paragraph 43 above.

15 58. This Agreement constitutes the entire agreement among Class
16 Plaintiffs and Asiana pertaining to the settlement of this Action against Asiana
17 only and supersedes any and all prior and contemporaneous undertakings of
18 Class Plaintiffs and Asiana in connection therewith. This Agreement may be
19 modified or amended only by a writing executed by Class Plaintiffs and Asiana
20 and approved by the Court.

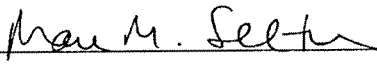
21 59. This Agreement may be executed in counterparts by Asiana and
22 Class Plaintiffs, and a facsimile or .pdf signature shall be deemed an original
23 signature for purposes of executing this Agreement.

24 60. The Parties represent and warrant that they are authorized to enter
25 into this Agreement, on their own behalf and on behalf of their subsidiaries and
26 affiliated entities, and that they intend the Agreement to be a valid and binding
27 obligation, enforceable in accordance with its terms.

28 61. The signatories to this Agreement represent and warrant that they

1 have the authority to bind the Parties on whose behalf they are signing, and their
2 subsidiaries and affiliated entities.

3
4 July 30, 2010

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8 MARC M. SELTZER
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14 July _____, 2010

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2 subsidiaries and affiliated entities.

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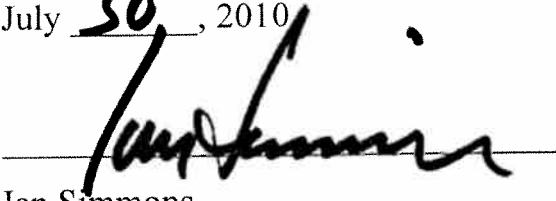
21 Co-Lead Counsel For Plaintiffs
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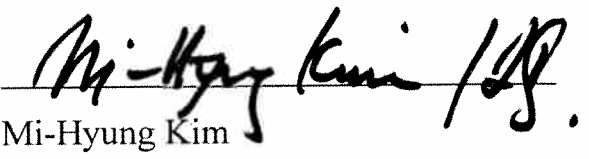
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July 30, 2010

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