

1 Joseph W. Cotchett (36324; jcotchett@cpmlegal.com)
 2 COTCHETT, PITRE & McCARTHY
 3 San Francisco Airport Office Center
 4 840 Malcolm Road, Suite 200
 5 Burlingame, CA 94010
 6 T: (650) 697-6000
 7 F: (650) 697-0577

8 Michael D. Hausfeld (*pro hac vice*; mhausfeld@cmht.com)
 9 COHEN, MILSTEIN, HAUSFELD & TOLL P.L.L.C.
 10 1100 New York Avenue, N.W.
 11 Suite 500, West Tower
 12 Washington, DC 20005
 13 T: (202) 408-4600
 14 F: (202) 408-4699

15 *Co-Counsel for Plaintiffs and the Settlement Classes*

16 Daryl A. Libow (*pro hac vice*)
 17 SULLIVAN & CROMWELL LLP
 18 1701 Pennsylvania Avenue, NW
 19 Washington, DC 20006
 20 T: (202) 956-7500
 21 F: (202) 293-6330
 22 libowd@sullcrom.com

23 Brendan P. Cullen (SBN 194057)
 24 SULLIVAN & CROMWELL LLP
 25 1870 Embarcadero Road
 26 Palo Alto, California 94303
 27 Telephone: (650) 461-5600
 Facsimile: (650) 461-5700
 cullenb@sullcrom.com

28 *Attorneys for Defendant British Airways Plc*

29
 30 **UNITED STATES DISTRICT COURT**
 31 **NORTHERN DISTRICT OF CALIFORNIA**
 32 **SAN FRANCISCO DIVISION**

33 IN RE INTERNATIONAL AIR) Case No. M:06-cv-01793-CRB
 34 TRANSPORTATION SURCHARGE) MDL No. 1793
 35 ANTITRUST LITIGATION)
 36 _____)
 37) Honorable Charles R. Breyer

38 This Document relates to:) **[PROPOSED] ORDER AND FINAL**
 39) **JUDGMENT APPROVING**
 40 ALL ACTIONS) **SETTLEMENT BETWEEN CLASS**
 41) **PLAINTIFFS AND BRITISH**
 42) **AIRWAYS PLC**
 43 _____)

1 WHEREAS, a class action is pending before the Court entitled *In re International Air*
2 *Transportation Surcharge Antitrust Litigation*, Master File 06-1793-CRB (N.D. Cal., San
3 Francisco division);

4 WHEREAS, the Court has received and reviewed the settlement agreement entered into
5 between Plaintiffs and British Airways Plc (“British Airways”), dated February 15, 2008 (the
6 “Settlement Agreement”), and has considered the terms of the proposed settlement set forth
7 therein (the “Settlement”);

8 WHEREAS, all defined terms contained herein shall have the same meanings as set forth
9 in the Settlement Agreement, unless otherwise defined herein;

10 WHEREAS, on Plaintiffs’ motion for preliminary approval, the Court on April 25, 2008
11 entered an Order Preliminarily Approving Class Action Settlements With Virgin Atlantic
12 Airways and British Airways (the “Preliminary Approval Order”) and, in which the Court
13 certified the Settlement Classes, preliminarily approved the Settlement, set September 12, 2008
14 as the deadline for filing of objections to the Settlement, and scheduled a Final Approval Hearing
15 for September 26, 2008;

16 WHEREAS, on Plaintiffs’ motion for approval of the proposed notice program, notifying
17 Settlement Class Members of the Settlement and the Final Approval Hearing, the Court on April
18 25, 2008 entered an Order Approving Notice Program and Forms (the “Notice Approval Order”);

19 WHEREAS, Settlement Class Counsel have submitted declarations to the Court
20 confirming that the notice program has been implemented in substantial accordance with the
21 Notice Approval Order;

22 WHEREAS, the Court has considered all timely filed objections to the Settlement; and

23 WHEREAS, the Court conducted a Final Approval Hearing on September 26, 2008, and
24 has considered the arguments presented, all papers filed and all proceedings had herein;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1
2 1. As used in this Order the following terms (together with their cognate forms) have
3 the meanings specified below:

4 (a) “Actions” means this class action captioned In re International Air
5 Transportation Surcharge Antitrust Litigation, M-06-1793-CRB (N.D. Cal., San Francisco
6 division), MDL No. 1793, and all actions relating to the same claims alleged in Plaintiffs’ First
7 Consolidated Amended Complaint filed in this action, including those that were transferred to
8 this Court by the Judicial Panel on Multidistrict Litigation as part of MDL No. 1793 or that were
9 originally filed in this Court, including but not limited to those actions listed in Appendix A
10 hereto.

11
12 (b) “British Airways” means British Airways Plc.

13 (c) “Effective Date” means the earliest date on which all of the following
14 events and conditions have occurred or have been met:

15 (i) British Airways has not timely availed itself of any right to
16 terminate the Settlement Agreement pursuant to paragraph 13.2 of the
17 Settlement Agreement;

18 (ii) the Court has entered this Judgment, following notice to the
19 Settlement Classes and the Final Approval Hearing, approving this
20 Settlement Agreement under Rule 23(e) of the Federal Rules of Civil
21 Procedure and dismissing the Actions against British Airways with
22 prejudice as to all Settlement Class Members, and without costs except as
23 specified in the Settlement Agreement; and

24 (iii) the time for appeal or to seek permission to appeal from this
25 Judgment has expired or, if appealed, approval of the Settlement
26
27

1 Agreement and this Judgment has been affirmed in its entirety by the court
2 of last resort to which such appeal has been taken and such affirmance has
3 become no longer subject to further appeal or review. Neither the
4 provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All
5 Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining
6 the above-stated times.

7
8 (d) “Judgment” means this final order of judgment, dismissal, and approval of
9 the Settlement.

10 (e) “Person” means an individual or an entity.

11 (f) “Plaintiffs” means Kambiz Pahlavan, Frederick Waters, Maureen Ann
12 Waters, and Deborah Holley, who have been designated by the Court as class representatives for
13 the Settlement Classes.

14 (g) “Release Date” means, with respect to U.S. Releasing Parties, the
15 Effective Date; and, with respect to U.K. Releasing Parties, the date of receipt of a U.K. Refund
16 Payment by each such U.K. Releasing Party.

17
18 (h) “Released Claims” means any and all claims, demands, actions, suits, and
19 causes of action, whether class, individual, or otherwise in nature, that the Releasing Parties, or
20 any one of them, ever had, now has, or hereafter can, shall, or may have, directly,
21 representatively, derivatively, or in any other capacity, against the Released Parties, on account
22 of, arising from, or in any way related to, the pricing of passenger air transportation by British
23 Airways or Virgin Atlantic, including, without limitation, with respect to fuel surcharges or any
24 other element of, component of, or surcharge upon, the price of passenger air transportation, and
25 with respect to the facts, occurrences, transactions or other matters that were alleged or could
26 have been alleged in the First Consolidated Amended Complaint in the above-captioned matter
27

1 or in the complaints in any of the Actions arising out of the conspiracy between British Airways
2 or Virgin Atlantic to fix the prices of passenger air transportation, whether such claims are based
3 on federal, state, local, statutory, or common law, or any other law, code, rule, or regulation of
4 any country or other jurisdiction worldwide, regardless of whether such claims are known or
5 unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or
6 contingent, liquidated or unliquidated, regardless of legal theory, and regardless of the type or
7 amount of relief or damages claimed.
8

9 (i) “Released Parties” means, jointly and severally, individually and
10 collectively: British Airways, its present and former parents, subsidiaries, divisions and affiliates,
11 each of their respective past and present officers, directors, employees and agents, and the
12 predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing;
13 and, subject to conclusion of a Court-approved settlement between Virgin Atlantic and Plaintiffs
14 and the Settlement Classes, British Airways, its present and former parents, subsidiaries,
15 divisions and affiliates, each of their respective past and present officers, directors, employees
16 and agents, and the predecessors, successors, heirs, executors, administrators, and assigns of each
17 of the foregoing.
18

19 (j) “Releasing Parties” means, individually and collectively, the U.S.
20 Releasing Parties and the U.K. Releasing Parties.

21 (k) “Settlement Classes” means, collectively, the U.S. Settlement Class and
22 the U.K. Settlement Class, as defined herein.
23

24 (l) “Settlement Class Members” means, collectively, all members of the U.S.
25 Settlement Class and the U.K. Settlement Class, as defined herein.

26 (m) “U.K. Releasing Parties” means, individually and collectively: Plaintiffs
27 and all U.K. Settlement Class Members who, at any time, receive and accept a Refund Payment
28

1 under the Settlement Agreement, on behalf of themselves and any Person claiming by or through
2 them as an heir, administrator, devisee, predecessor, successor, parent, subsidiary, representative
3 of any kind, shareholder, partner, director, owner of any kind, affiliate, assignee, agent,
4 employee, contractor, attorney, or insurer.

5 (n) "U.S. Releasing Parties" means, individually and collectively: Plaintiffs
6 and all U.S. Settlement Class Members who did not timely submit a Request for Exclusion in
7 accordance with the Preliminary Approval Order, on behalf of themselves and any Person
8 claiming by or through them as an heir, administrator, devisee, predecessor, successor, parent,
9 subsidiary, representative of any kind, shareholder, partner, director, owner of any kind, affiliate,
10 assignee, agent, employee, contractor, attorney, or insurer.

12 (o) "U.S. Settlement Class" means all Persons to whom, in the period
13 beginning on August 11, 2004 and ending on March 23, 2006, British Airways sold, in the
14 United States, at least one coupon for passenger air travel on a flight operated by British Airways
15 and as to which the long-haul fuel surcharge was paid and not refunded in whole as of the date of
16 the Settlement Agreement ("U.S. Qualifying Coupon"), but excluding the officers, directors,
17 employees, counsel and agents of British Airways, and all government entities.

19 (p) "U.K. Settlement Class" means all Persons to whom, in the period
20 beginning on August 11, 2004 and ending on March 23, 2006, British Airways sold, in the
21 United Kingdom, at least one coupon for passenger air travel on a flight operated by British
22 Airways and as to which the long-haul fuel surcharge was paid and not refunded in whole as of
23 the date of the Settlement Agreement ("U.K. Qualifying Coupon"), but excluding the officers,
24 directors, employees, counsel and agents of British Airways, and all government entities.

26 (q) "Virgin Atlantic" means Virgin Atlantic Airways, Ltd.

1 2. This Court finds that it has jurisdiction over the Actions, each of the parties to the
2 Settlement Agreement, and each of the Settlement Class Members.

3 3. The notice given to the Settlement Classes of the Settlement and the Final
4 Approval Hearing, in substantial accordance with the terms of the Notice Approval Order, was
5 the best notice practicable under the circumstances, including individual notice to those
6 Settlement Class Members whose addresses could be identified through reasonable effort, and
7 notice by various means of publication and internet advertising as set forth in the proposed notice
8 program and approved by the Court in the Notice Approval Order. Said notice provided due and
9 adequate notice of these proceedings, the Final Approval Hearing, and the Settlement, to all
10 persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the
11 Federal Rules of Civil Procedure and due process.
12

13 4. The Settlement Agreement was the result of *bona fide* and arm's-length
14 negotiations between Settlement Class Counsel and counsel for British Airways.
15

16 5. On September 26, 2008, the Court held a Final Approval Hearing to consider the
17 fairness, reasonableness, and adequacy of the proposed Settlement.

18 6. The Court has given fair consideration to all objections to the Settlement that have
19 been timely submitted by Settlement Class Members, and hereby overrules each such objection.
20 Any Settlement Class Member who failed to timely object to the Settlement in the manner
21 prescribed in the Preliminary Approval Order shall be deemed to have waived any objections to
22 the Settlement and the Settlement Agreement and by operation of this Judgment shall be forever
23 barred from making any such objections to the Settlement or the Settlement Agreement.
24

25 7. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby
26 approves the Settlement as set forth in the Settlement Agreement, finds that said Settlement is, in
27 all respects, fair, reasonable, and adequate with respect to the Settlement Classes, and directs that
28

1 the Settlement be consummated in accordance with the terms and conditions set forth in the
2 Settlement Agreement.

3 8. The Actions are hereby dismissed with prejudice as to British Airways, without
4 costs (except as set forth in the Settlement Agreement and in any order of this Court on
5 Settlement Class Counsel's motion for attorneys' fees and reimbursement of litigation expenses).

6 9. Upon the Release Date, and in consideration of the Settlement Payments specified
7 in paragraphs 10.1, 10.2, 10.3 and 10.4 of the Settlement Agreement, and for other good and
8 valuable consideration, the sufficiency and receipt of which the Plaintiffs have acknowledged,
9 each of the Releasing Parties shall be deemed to have, and by operation of this Judgment shall
10 have, fully, finally, and forever released, relinquished, and discharged all Released Claims
11 against the Released Parties, shall have covenanted not to sue any of the Released Parties with
12 respect to all such Released Claims, and shall be permanently barred and enjoined from
13 instituting, commencing, prosecuting or asserting any such Released Claim against any of the
14 Released Parties.
15

16 10. Each Settlement Class Member who submits a claim pursuant to the Settlement
17 will also be required, as a condition to obtaining a Refund Payment, to sign a written release (by
18 electronic means or by physical signature, depending on how the claim is submitted) expressly
19 releasing all Released Claims of such Settlement Class Member.
20

21 11. With respect to any and all Released Claims, upon the Effective Date, Plaintiffs
22 shall expressly waive, and, upon the Release Date, each of the Releasing Parties shall be deemed
23 to have waived, and by operation of this Judgment shall have waived, the provisions, rights, and
24 benefits of California Civil Code Section 1542 and Section 20-7-11 of the South Dakota
25 Codified Laws (to the extent either or both of them apply to the Actions), each of which
26 provides:
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1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
2 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
3 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS
SETTLEMENT WITH THE DEBTOR.

4 12. Plaintiffs shall further expressly waive, and each of the Releasing Parties shall be
5 deemed to have waived, and by operation of this Judgment shall have waived, any and all
6 provisions, rights, and benefits conferred by any law of any state or territory of the United States,
7 or of the United Kingdom, or of the European Union, or any principle of common law or foreign
8 law, that is similar, comparable, or equivalent in effect to California Civil Code Section 1542 or
9 that would otherwise act to limit the effectiveness or scope of the releases. Plaintiffs and the
10 Releasing Parties have acknowledged that they may hereafter discover facts in addition to or
11 different from those that any of them or their counsel now knows or believes to be true with
12 respect to the subject matter of the Released Claims or otherwise, but upon the Effective Date
13 each Plaintiff shall expressly have, and, upon the Release Date, each Releasing Party shall be
14 deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled
15 and released any and all Released Claims, known or unknown, suspected or unsuspected,
16 contingent or non-contingent, whether or not concealed or hidden, that now exist or heretofore
17 have existed, upon any theory of law or equity now existing or coming into existence in the
18 future, including, but not limited to, conduct that is negligent, reckless, intentional, with or
19 without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery
20 or existence of such different or additional facts. Plaintiffs have acknowledged, and the
21 Releasing Parties shall be deemed to have acknowledged, and by operation of this Judgment
22 shall have acknowledged, that the foregoing waiver was separately bargained for and a key
23 element of the Settlement of which this release is a part.
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1 13. Any U.K. Settlement Class Member who does not receive and accept a U.K.
2 Refund Payment shall not be deemed, directly or indirectly, to have released claims against
3 British Airways by reason of the Settlement Agreement or this Judgment. Any such U.K.
4 Settlement Class Member who has not timely submitted a request for exclusion and who seeks to
5 pursue separately any claim that is described in the definition of “Released Claims” herein, must
6 first exhaust any and all rights and remedies in the United Kingdom before asserting any such
7 claim ~~elsewhere~~ in the United States. (CRB)

8
9 14. Upon the Effective Date, and by operation of this Judgment, British Airways will
10 be deemed to have waived any claim for indemnity or contribution, however denominated,
11 against Virgin Atlantic, arising out of or related to the claims or allegations asserted by Plaintiffs
12 in the Actions, whether arising under state, federal, or foreign law as claims, cross-claims,
13 counterclaims, or third-party claims, and whether asserted in the Actions, in this Court, in any
14 federal or state court, or in any other court, arbitration proceeding, administrative agency, or
15 other forum in the United States, the United Kingdom, or elsewhere, and all such claims shall be
16 deemed extinguished, discharged, satisfied and unenforceable, provided however, that such
17 waiver by British Airways is conditional upon this Court entering a judgment giving effect to a
18 waiver by Virgin Atlantic in favor of British Airways on the same terms, and such judgment
19 becoming final and effective.

20
21 15. This Judgment is a final judgment in the Actions as to all Released Claims. This
22 Court finds, for purposes of Rule 54(b) of the Federal Rules of Civil Procedure, that there is no
23 just reason for delay and expressly directs entry of judgment as set forth herein.

24
25 16. Neither this Judgment, the Settlement, the Settlement Agreement, nor any act
26 performed or document executed pursuant to or in furtherance of the Settlement or the
27 Settlement Agreement is or may be deemed to be or may be used as an admission of, or evidence

1 of, British Airways' conduct having caused any harm to consumers. Neither this Judgment, the
2 Settlement, the Settlement Agreement, nor any act performed or document executed pursuant to
3 or in furtherance of the Settlement or the Settlement Agreement, shall be admissible in any
4 proceeding for any purpose, except to consummate or enforce the terms of the Settlement, and
5 except that the Released Parties may file the Settlement Agreement or this Judgment in any
6 action for any purpose, including, but not limited to, in support of a defense or counterclaim
7 based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment
8 bar, or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or
9 counterclaim.
10

11 17. Without affecting the finality of this Judgment in any way, this Court retains
12 jurisdiction over (a) implementation of the Settlement; (b) distribution of Refund Payments and
13 the U.S. *Cy Pres* Payment pursuant to the Settlement Agreement; and (c) all other proceedings
14 related to the implementation and enforcement of the terms of the Settlement Agreement and/or
15 the Settlement, and the administration of claims by Settlement Class Members. The time to
16 appeal from this Judgment shall commence upon its entry.
17

18 18. In the event that the Effective Date does not occur, this Judgment shall be
19 rendered null and void and shall be vacated, *nunc pro tunc*, except insofar as expressly provided
20 to the contrary in the Settlement Agreement, and without prejudice to the *status quo ante* rights
21 of Plaintiffs, Settlement Class Members, and British Airways.
22

23
24 IT IS SO ORDERED on this 1st day of October , 2008.

25
26 

27 Hon. Charles R. Breyer
28 United States District Judge