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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

19 IN RE INTERNATIONAL AIR)
 20 TRANSPORTATION SURCHARGE)
 21 ANTITRUST LITIGATION)

Case No. M:06-cv-01793-CRB
 MDL No. 1793

Honorable Charles R. Breyer

22 This Document relates to:)

**[PROPOSED] ORDER AND FINAL
 JUDGMENT APPROVING
 SETTLEMENT BETWEEN CLASS
 PLAINTIFFS AND VIRGIN
 ATLANTIC AIRWAYS, LTD.**

23 ALL ACTIONS)
 24)
 25)
 26)
 27)
 28)

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

8 (b) “British Airways” means British Airways Plc.

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

11 (i) Virgin Atlantic has not timely availed itself of any right to
12 terminate the Settlement Agreement pursuant to paragraph 13.2 of the
13 Settlement Agreement;

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

20 (iii) the time for appeal or to seek permission to appeal from this
21 Judgment has expired or, if appealed, approval of the Settlement
22 Agreement and this Judgment has been affirmed in its entirety by the court
23 of last resort to which such appeal has been taken and such affirmance has
24 become no longer subject to further appeal or review. Neither the
25 provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All
26 Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining
27 the above-stated times.

1 (d) "Judgment" means this final order of judgment, dismissal, and approval of
2 the Settlement.

3 (e) "Person" means an individual or an entity.

4 (f) "Plaintiffs" means Kambiz Pahlavan, Frederick Waters, Maureen Ann
5 Waters, and Deborah Holley, who have been designated by the Court as class representatives for
6 the Settlement Classes.

7 (g) "Release Date" means, with respect to U.S. Releasing Parties, the
8 Effective Date; and, with respect to U.K. Releasing Parties, the date of receipt of a U.K. Refund
9 Payment by each such U.K. Releasing Party.

10 (h) "Released Claims" means any and all claims, demands, actions, suits, and
11 causes of action, whether class, individual, or otherwise in nature, that the Releasing Parties, or
12 any one of them, ever had, now has, or hereafter can, shall, or may have, directly,
13 representatively, derivatively, or in any other capacity, against the Released Parties, on account
14 of, arising from, or in any way related to, the pricing of passenger air transportation by Virgin
15 Atlantic or British Airways, including, without limitation, with respect to fuel surcharges or any
16 other element of, component of, or surcharge upon, the price of passenger air transportation, and
17 with respect to the facts, occurrences, transactions or other matters that were alleged or could
18 have been alleged in the First Consolidated Amended Complaint in the above-captioned matter
19 or in the complaints in any of the Actions arising out of the conspiracy between Virgin Atlantic
20 and British Airways to fix the prices of passenger air transportation, whether such claims are
21 based on federal, state, local, statutory, or common law, or any other law, code, rule, or
22 regulation of any country or other jurisdiction worldwide, regardless of whether such claims are
23 known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen,
24 actual or contingent, liquidated or unliquidated, regardless of legal theory, and regardless of the
25 type or amount of relief or damages claimed.

26 (i) "Released Parties" means, jointly and severally, individually and
27 collectively: Virgin Atlantic, its present and former parents, subsidiaries, divisions and affiliates,

1 each of their respective past and present officers, directors, employees and agents, and the
2 predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing;
3 and, subject to conclusion of a Court-approved settlement between British Airways and Plaintiffs
4 and the Settlement Classes, British Airways, its present and former parents, subsidiaries,
5 divisions and affiliates, each of their respective past and present officers, directors, employees
6 and agents, and the predecessors, successors, heirs, executors, administrators, and assigns of each
7 of the foregoing.

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

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

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

14 (m) “U.K. Releasing Parties” means, individually and collectively: Plaintiffs
15 and all U.K. Settlement Class Members who, at any time, receive and accept a Refund Payment
16 under the Settlement Agreement, on behalf of themselves and any Person claiming by or through
17 them as an heir, administrator, devisee, predecessor, successor, parent, subsidiary, representative
18 of any kind, shareholder, partner, director, owner of any kind, affiliate, assignee, agent,
19 employee, contractor, attorney, or insurer.

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

26 (o) “U.S. Settlement Class” means all Persons to whom, in the period
27 beginning on August 11, 2004 and ending on March 23, 2006, Virgin Atlantic sold, in the United

1 States, at least one coupon for passenger air travel on a flight operated by Virgin Atlantic and as
2 to which the long-haul fuel surcharge was paid and not refunded in whole as of the date of the
3 Settlement Agreement (“U.S. Qualifying Coupon”), but excluding the officers, directors,
4 employees, counsel and agents of Virgin Atlantic, and all government entities.

5 (p) “U.K. Settlement Class” means all Persons to whom, in the period
6 beginning on August 11, 2004 and ending on March 23, 2006, Virgin Atlantic sold, in the United
7 Kingdom, at least one coupon for passenger air travel on a flight operated by Virgin Atlantic and
8 as to which the long-haul fuel surcharge was paid and not refunded in whole as of the date of the
9 Settlement Agreement (“U.K. Qualifying Coupon”), but excluding the officers, directors,
10 employees, counsel and agents of Virgin Atlantic, and all government entities.

11 (q) “Virgin Atlantic” means Virgin Atlantic Airways, Ltd.

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

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

23 4. The Settlement Agreement was the result of *bona fide* and arm’s-length
24 negotiations between Settlement Class Counsel and counsel for Virgin Atlantic.

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

1 11. With respect to any and all Released Claims, upon the Effective Date, Plaintiffs
2 shall expressly waive, and, upon the Release Date, each of the Releasing Parties shall be deemed
3 to have waived, and by operation of this Judgment shall have waived, the provisions, rights, and
4 benefits of California Civil Code Section 1542 and Section 20-7-11 of the South Dakota
5 Codified Laws (to the extent either or both of them apply to the Actions), each of which
6 provides:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
8 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
9 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
 KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS
 SETTLEMENT WITH THE DEBTOR.

10 12. Plaintiffs shall further expressly waive, and each of the Releasing Parties shall be
11 deemed to have waived, and by operation of this Judgment shall have waived, any and all
12 provisions, rights, and benefits conferred by any law of any state or territory of the United States,
13 or of the United Kingdom, or of the European Union, or any principle of common law or foreign
14 law, that is similar, comparable, or equivalent in effect to California Civil Code Section 1542 or
15 that would otherwise act to limit the effectiveness or scope of the releases. Plaintiffs and the
16 Releasing Parties have acknowledged that they may hereafter discover facts in addition to or
17 different from those that any of them or their counsel now knows or believes to be true with
18 respect to the subject matter of the Released Claims or otherwise, but upon the Effective Date
19 each Plaintiff shall expressly have, and, upon the Release Date, each Releasing Party shall be
20 deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled
21 and released any and all Released Claims, known or unknown, suspected or unsuspected,
22 contingent or non-contingent, whether or not concealed or hidden, that now exist or heretofore
23 have existed, upon any theory of law or equity now existing or coming into existence in the
24 future, including, but not limited to, conduct that is negligent, reckless, intentional, with or
25 without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery
26 or existence of such different or additional facts. Plaintiffs have acknowledged, and the
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1 Releasing Parties shall be deemed to have acknowledged, and by operation of this Judgment
2 shall have acknowledged, that the foregoing waiver was separately bargained for and a key
3 element of the Settlement of which this release is a part.

4 13. Any U.K. Settlement Class Member who does not receive and accept a U.K.
5 Refund Payment shall not be deemed, directly or indirectly, to have released claims against
6 Virgin Atlantic by reason of the Settlement Agreement or this Judgment. Any such U.K.
7 Settlement Class Member who has not timely submitted a request for exclusion and who seeks to
8 pursue separately any claim that is described in the definition of “Released Claims” herein, must
9 first exhaust any and all rights and remedies in the United Kingdom before asserting any such
10 claim ~~elsewhere~~ **in the United States. (CRB)**

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

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

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

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

20
21 IT IS SO ORDERED on this 1st day of October, 2008.

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23 

24 Hon. Charles R. Breyer
25 United States District Judge