

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

RUSSELL DOVER, HENRY HORSEY,
CODY RANK, and SUZETTE PERRY,
on behalf of themselves and all others
similarly situated,

Plaintiff,

-against-

BRITISH AIRWAYS, PLC (UK),

Defendant.

CASE NO. 1:12-CV-05567-RJD-CLP

SETTLEMENT AGREEMENT

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Subject to the approval of the Court and pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Class Action Settlement Agreement and Release, including the attached Exhibits (“Settlement Agreement”), is entered into between Plaintiffs Russell Dover, Henry Horsey, Cody Rank, and the Estate of Suzette Perry, on behalf of themselves and on behalf of each of the Settlement Class Members (“Plaintiffs”), and Defendant British Airways Plc. (“BA” or the “Company”) (collectively, the “Parties”).

I. RECITALS

WHEREAS, on November 9, 2012, Russell Dover, Jonathan Stone, Cody Rank, and Suzette Perry filed a putative class action in the United States District Court for the Eastern District of New York (the “Complaint”) against BA on behalf of themselves and all others similarly situated, alleging a claim for breach of contract because: (a) the Executive Club contract (“EC Contract”) allegedly did not permit BA to impose a fuel surcharge unless it was assessed by a third party; and (b) even if the EC Contract permitted BA to impose its own fuel surcharge, BA’s fuel surcharge allegedly was not based on BA’s actual fuel costs; and

WHEREAS, on November 7, 2013, the Court denied BA’s motion to dismiss Plaintiffs’ Complaint. The Court, however, limited the Plaintiffs’ breach of contract claim by explaining that the EC Contract explicitly permitted BA to assess its own fuel surcharge; and

WHEREAS, on November 22, 2013, BA filed its Answer to Plaintiffs’ Complaint, denying the allegations of the Complaint and raising affirmative defenses; and

WHEREAS, on January 9, 2015, Plaintiffs filed an Amended Class Action Complaint in the United States District Court for the Eastern District of New York (“Amended Complaint”) against BA on behalf of themselves and all others similarly situated, removing Jonathan Stone as a named plaintiff and adding Henry Horsey in his place; and

WHEREAS, on January 23, 2015, BA filed its Answer to Plaintiffs' Amended Complaint, denying the allegations of the Complaint and raising affirmative defenses; and

WHEREAS, on October 1, 2015, Plaintiffs filed a motion to certify a class in this case, which the Court granted after modifying the class definition on March 31, 2017; and

WHEREAS, on April 18, 2017, BA filed a Rule23(f) petition to obtain an interlocutory appeal with the Second Circuit regarding the Court's decision to certify a class. The Second Circuit held oral argument and ultimately denied BA's request to appeal the decision on June 14, 2017; and

WHEREAS, on June 5, 2017, the Court denied the Parties' *Daubert* motions to exclude experts, but informed the Parties that expert testimony would be limited to matters about which the experts were competent and were otherwise appropriate subjects for expert testimony; and

WHEREAS, the Parties cross-moved for summary judgment seeking to resolve some or all of the Claims, which the Court denied in its order dated September 28, 2017; and

WHEREAS, Plaintiffs have strongly asserted their claim for breach of contract resulting in damages in briefing and argument before this Court and the Second Circuit; and Plaintiffs agree with the Court that this case satisfies the requirements to be tried as a class action under Federal Rule of Civil Procedure 23; and

WHEREAS, BA denies each and every one of Plaintiffs' allegations of breach of contract and damages, BA has asserted numerous defenses to Plaintiffs' claims, BA disclaims any liability whatsoever, and BA further denies that this case satisfies the requirements to be tried as a class action under Federal Rule of Civil Procedure 23; and

WHEREAS, this settlement ("Settlement") has been reached after extensive fact and expert discovery, including 37 depositions, briefing, arguments, a decision on class certification,

Daubert and summary judgment briefing, and more than five years of hard-fought litigation and is the product of extensive, arm's-length settlement negotiations and mediation sessions conducted first before the Honorable Layn Phillips, then before Larry Pollack, Esq., and then before Magistrate Judge Cheryl L. Pollak; and

WHEREAS, the Parties recognize that the outcome of this Litigation is uncertain, and that a final resolution through the litigation process would require several more years of protracted, adversarial litigation, trial, and appeals, substantial risk and expense, the distraction and diversion of BA's personnel and resources, and the expense of any possible future litigation raising similar or duplicative claims; and

WHEREAS, the Parties believe that this Settlement Agreement is fair, reasonable, and adequate because it provides substantial economic consideration to the Settlement Class in exchange for Settlement Class Members' release of certain Claims.

NOW, THEREFORE, without (a) any admission or concession on the part of Plaintiffs about the likelihood of success at trial, on appeal, or in other motions practice, or (b) any admission or concession of the merit of this Litigation or of liability or wrongdoing or the lack of merit of any defense whatsoever by BA, it is hereby stipulated and agreed by the undersigned, on behalf of Plaintiffs, the Settlement Class and BA, that this Litigation and all Claims of the Settlement Class be settled, compromised, and dismissed on the merits and with prejudice as to BA, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the terms and conditions set forth herein.

The recitals stated above are true and accurate and are hereby made a part of this Settlement Agreement.

II. DEFINITIONS

For the purposes of this Settlement Agreement, the following terms shall have the following meanings:

1. “Active Executive Club Member” means a Settlement Class Member whose Executive Club account with BA is currently open. Named Plaintiffs Russell Dover, Cody Rank and Henry Horsey are Active Executive Club Members.

2. “Avios” means the frequent flyer points awarded to members of BA’s Executive Club and provided to Settlement Class Members as Settlement Consideration, as described in detail in Section IV.A.

3. “BA.com” means the Internet website created by BA and used by BA customers to access their Executive Club account, found at <https://www.britishairways.com/en-us/home#/>.

4. “CAFA Notice” means notice of this settlement to the appropriate federal and state officials, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and the form of which is attached in **Exhibit A**.

5. “Cash Claim Form” means the proposed Cash Claim Form in substantially the form attached hereto as **Exhibit B** to be used by Settlement Class Members to make a Claim for the Cash Option, which form is to be approved by the Court and to be posted online in accordance with Section VII of this Settlement Agreement.

6. “Cash Option” means the election that Settlement Class Members will have to receive a payment of 16.9 percent of their total fuel surcharge paid for all redemption tickets purchased during the Class Period. The minimum Cash Option payment is \$5, and Settlement Class Members may use their class member identifier to access the amount of Avios (if applicable) and the Cash Option they would be eligible to receive if they file a Valid Claim at www.fuelsurchargeclassaction.com. There is a total cap on the Cash Option payment by BA of

no more than \$27,125,000 in the aggregate, assuming the Court awards the attorneys' fees and expenses sought by Plaintiffs in full. If the Court awards less than the full amount of fees and expenses requested, the unawarded amount will be distributed to Cash Option claimant Settlement Class Members *pro rata*.

7. “**Claim**” or “**Claims**” mean all claims, counterclaims, demands (including, without limitation, demands for arbitration), actions, suits, causes of action, allegations of wrongdoing, and liabilities.

8. “**Claims Administration Expenses**” means the Class Notice expenses and other expenses incurred by the Settlement Claims Administrator in administering this Settlement Agreement, including, without limitation: responding to inquiries from Settlement Class Members; creating and maintaining a Settlement Website; coordinating Cash Option request information with BA and Class Counsel; accepting, reviewing, maintaining and processing Cash Option requests submitted by Settlement Class Members; and maintaining all Claims and other Settlement Agreement-related data through the conclusion of the settlement administration process.

9. “**Claims Deadline**” means the date by which a Cash Claim Form must be received via United States First Class Mail or via electronic submission by 11:59 p.m. Eastern Time to be considered timely. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Class Notice, and shall not exceed sixty (60) consecutive days from the Class Notice Date.

10. “**Class Counsel**” or “**Plaintiffs’ Counsel**” means David S. Stellings, Nicholas Diamand, Jason L. Lichtman, and Douglas I. Cuthbertson of the law firm Lief Cabraser Heimann & Bernstein, LLP.

11. “**Class Notice**” means the form of notice to be disseminated to Settlement Class Members informing them about the terms of this Settlement Agreement, their right to participate in this Settlement Agreement, to opt out, or to object to same, and to appear at the Final Approval Hearing, and instructing Settlement Class Members on how to submit requests for the Cash option. A copy of the proposed Long Form Notice is attached as **Exhibit C** and the proposed Summary Notice is attached as **Exhibit D**.

12. “**Class Notice Date**” means the first date on which Class Notice is sent by the Settlement Claims Administrator to each Settlement Class Member.

13. “**Class Representatives**” or “**Plaintiffs**” means named Plaintiffs Russell Dover, Henry Horsey, Cody Rank, and the Estate of Suzette Perry.

14. “**Class Period**” means the period commencing on November 9, 2006 and ending on April 17, 2013.

15. “**Court**” means the United States District Court for the Eastern District of New York, the Honorable Raymond J. Dearie presiding.

16. “**Effective Date**” means the date on which all appellate rights with respect to the Final Order and Judgment have expired or have been exhausted in such a manner as to affirm the Final Order and Judgment, and when no further appeals are possible.

17. “**Estate of Suzette Perry**” means the estate of Former Executive Club Member Suzette Perry, the executor of which is Noel Perry.

18. “**Executive Club**” means BA’s frequent flyer program.

19. “**Final Approval Hearing**” means the hearing to be held by the Court to consider and determine whether the proposed settlement of this Litigation as contained in this Settlement Agreement should be approved as fair, reasonable, and adequate, whether Plaintiffs’ request for

an award of attorneys' fees and expenses should be granted, and whether the Final Order and Judgment approving this Settlement Agreement should be entered.

20. “**Final Order and Judgment**” means the order and judgment entered by the Court giving approval to the terms of this Settlement Agreement as fair, reasonable and adequate, certifying a class for settlement purposes, providing for the orderly performance and enforcement of the terms of this Settlement Agreement, discharging the Released Parties of and from all further liability for the Released Claims to the Releasing Parties, and permanently barring and enjoining the Releasing Parties from instituting, filing, commencing, prosecuting, maintaining, continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or in any other capacity of any kind whatsoever, any action in any state court, federal court, or any other tribunal, forum, or proceeding of any kind, against the Released Parties that asserts any Released Claims.

21. “**Former Executive Club Member**” means a Settlement Class Member whose Executive Club account with BA has been deleted or closed. The Estate of Suzette Perry is a Former Executive Club Member.

22. “**Litigation**” means the civil action captioned *Russell Dover, et al. v. British Airways, Plc (UK)*, 1:12-cv-05567-RJD-CLP, pending in the United States District Court for the Eastern District of New York.

23. “**Long Form Notice**” means the proposed notice in substantially the form attached as **Exhibit C**.

24. “**Notice Plan**” means the plan created by the Parties for the purpose of providing notice of this Settlement Agreement to the Settlement Class Members, as described in Section VI.

25. “**Opt-Out and Objection Date**” means the date ordered by the Court, which the Parties shall request be set at twenty-one (21) days prior to the Final Approval Hearing.

26. “**Preliminary Approval Order**” means the proposed order preliminarily approving this Settlement Agreement, substantially in the form of **Exhibit E** attached hereto.

27. “**Release**” means the release set forth in Section VIII.

28. “**Released Claims**” means any and all claims (excluding claims for personal injury), whether known or unknown, relating to the purchase of redemption tickets by Settlement Class Members during the Class Period under federal, state, foreign, or any other law or regulation.

29. “**Released Parties**” means BA and each and all of its respective present or former parents, subsidiaries, affiliates, successors and assigns, and each and all of the respective present or former officers, directors, employees, employers, attorneys, accountants, financial advisors, commercial bank lenders, insurers, investment bankers, representatives, general and limited partners and partnerships, any trust of which BA is a settlor, trustee or beneficiary, heirs, executors, administrators, successors, affiliates, and assigns of each of them.

30. “**Releasing Parties**” means Plaintiffs and Class Representatives Russell Dover, Henry Horsey, Cody Rank, and the Estate of Suzette Perry, and all Settlement Class Members who have not validly and timely opted out of the Settlement Class, and all their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, successors, bankruptcy estates, bankruptcy trustees, predecessors, agents, and assigns, and all those who claim through them or who assert or could assert claims on their behalf.

31. “**Settlement Claims Administrator**” means JND Legal Administration or such other entity that the Court shall approve with the consent of the Parties to administer the Notice

Plan and to oversee the processing and resolution of Cash Claim Forms as set forth in this Settlement Agreement.

32. “**Settlement Agreement**” means this executed Class Action Settlement Agreement and Release, including all of its Exhibits.

33. “**Settlement Class**” or “**Settlement Class Members**” means all United States resident members of BA’s Executive Club who (a) provided BA with a valid United States address at the time of booking, (b) redeemed frequent flyer miles for an award ticket during the Class Period, and (c) paid a BA-imposed fuel surcharge. The Settlement Class excludes: (1) Executive Club members who redeemed frequent flyer miles exclusively using BA’s “Cash + Avios” option; (2) any judge to whom this case is assigned, along with his or her staff; (3) BA’s officers, directors, employees, as well as outside counsel in this Litigation, and (4) immediate family of any individual excluded by 2 or 3.

34. “**Settlement Consideration**” means the benefits available to Settlement Class Members as described in detail in Section IV.

35. “**Settlement Website**” means the website established by the Settlement Claims Administrator at ww.fuelsurchargeclassaction.com, on which the Class Notice and other information relevant to this Settlement Agreement will be posted for Settlement Class Members’ benefit.

36. “**Summary Notice**” means the proposed postcard notice in substantially the form attached as **Exhibit D**.

37. “**Valid Claim**” means a Cash Claim Form submitted by a Settlement Class Member that: (a) is submitted in accordance with the directions accompanying the Cash Claim Form and the terms of this Settlement Agreement; (b) is accurately, fully, and truthfully

completed and executed by a Settlement Class Member; (c) is signed physically or by e-signature by a Settlement Class Member or authorized representative personally, subject to the penalty of perjury; (d) is received by the Claims Deadline; and (e) is determined to be valid by the Settlement Claims Administrator.

III. MOTION FOR PRELIMINARY APPROVAL

As soon as reasonably practicable after execution of this Settlement Agreement, Plaintiffs shall file with the Court an Unopposed Motion for Preliminary Approval of the Settlement Agreement, Approval and Direction of Notice Plan, and Appointment of Settlement Claims Administrator that seeks entry of an order that, by its terms, shall:

1. Preliminarily approve this Settlement Agreement as fair, reasonable and adequate;
2. Approve the proposed Notice Plan and Class Notice in forms substantially similar to those attached hereto as **Exhibits C and D**;
3. Establish deadlines for the filing of objections and notice of opting out of the settlement;
4. Appoint the Settlement Claims Administrator; and
5. Set a date for the Final Approval Hearing at which the Court will consider final approval of the Settlement and Plaintiffs' motion for attorneys' fees and expenses.

IV. SETTLEMENT CONSIDERATION

BA shall provide the following settlement consideration in exchange for the release detailed in Section VIII:

A. Active Executive Club Members

1. BA has agreed automatically to place Avios into the accounts of Active Executive Club Members who do not elect the Cash Option. For any Active Executive Club Members who do not elect the Cash Option, BA will automatically place Avios into the Executive Club

accounts of Active Executive Club Members at the time and in the manner described in this Section. The total number of Avios that will be placed into the Executive Club accounts of Active Executive Club Members pursuant to the procedures described in this Section will be up to 2,228,677,500 Avios. Depending on how many Active Executive Club Members elect the Cash Option, the Avios could have a maximum value of more than \$63 million.

2. Unless an Active Executive Club Member elects the Cash Option, each Active Executive Club Member who redeemed once during the Class Period and paid a fuel surcharge will receive 12,500 Avios. Any Active Executive Club Member who redeemed between two and five times during the Class Period and paid those fuel surcharges will receive 20,000 Avios. Any Active Executive Club Member who redeemed six or more times during the Class Period and paid those fuel surcharges will receive 35,000 Avios.

3. Within thirty (30) days of the Effective Date, BA will place the appropriate number of Avios into the Executive Club account of each Active Executive Club Member, unless he or she has opted out or elects the Cash Option described below.

4. The Avios will be subject to the exact same terms and conditions as any other Avios issued on that date, including their lapse period. The terms are available at www.avios.com/gb/en_gb/about_us/terms_and_conditions.

5. Each Active Executive Club Member will have the election to receive, in lieu of the Avios, the Cash Option, which is a payment of 16.9 percent of his or her total fuel surcharges paid for all redemption tickets purchased during the Class Period. The minimum Cash Option payment is \$5, and Active Executive Club Members may use their class member identifier to access the amount of Avios they qualify for and the Cash Option they would be eligible to receive if they file a Valid Claim at www.fuelsurchargeclassaction.com. There is a total cap on the Cash

Option payment by BA of no more than \$27,125,000 in the aggregate, except in the event that Class Counsel is not awarded the full amount of attorneys' fees and expenses sought by Plaintiffs as provided in Section X. If the Court awards less than the full amount of fees and expenses requested, the unawarded amount will be distributed to Settlement Class Members who elect the Cash Option on a *pro rata* basis.

6. The Active Executive Club Members can elect the Cash Option by submitting a Cash Claim Form, as described in detail in Section VII.

7. To the extent that Settlement Class Members do not submit Valid Claims that would require the payment by BA of the full \$27,125,000 available to Settlement Class Members, the remainder will remain the property of BA. This Settlement Agreement does not create any vested property interest or unclaimed property rights for Active Executive Club Members who do not file Valid Claims for the Cash Option.

B. Former Executive Club Members

1. Each Former Executive Club Member will have the election to receive the Cash Option, which is a payment of 16.9 percent of his or her total fuel surcharges paid for all redemption tickets purchased during the Class Period. The minimum Cash Option payment is \$5, and Former Executive Club Members may use their class member identifier to access the amount of the Cash Option they would be eligible to receive if they file a Valid Claim at www.fuelsurchargeclassaction.com. There is a total cap on the Cash Option payment by BA of no more than \$27,125,000 in the aggregate, except in the event that Class Counsel is not awarded the full amount of attorneys' fees and expenses sought by Plaintiffs as provided in Section X. If the Court awards less than the full amount of fees and expenses requested, the unawarded amount will be distributed to Settlement Class Members who elect the Cash Option on a *pro rata* basis.

2. The Former Executive Club Members can elect the Cash Option by submitting a Cash Claim Form, as described in detail in Section VII.

3. To the extent that Settlement Class Members do not submit Valid Claims that would require the payment by BA of the full \$27,1250,000 available to Settlement Class Members, the remainder will remain the property of BA. This Settlement Agreement does not create any vested property interest or unclaimed property rights for Former Executive Club Members who do not file Valid Claims for the Cash Option.

V. THE SETTLEMENT CLASS

A. Class Definitions

This Court has certified a class defined as follows: All United States resident members of BA's Executive Club who redeemed frequent flyer miles for an award ticket during the Class Period and who paid a BA-imposed fuel surcharge so long as that United States resident member provided BA with a valid United States address at the time of booking. The Settlement Class excludes: (1) Executive Club members who redeemed frequent flyer miles exclusively using BA's "Cash + Avios" option; (2) any judge to whom this case is assigned, along with his or her staff; (3) BA's officers, directors, employees, as well as outside counsel in this Litigation, and (4) immediate family of any individual excluded by 2 or 3.

B. BA Reservation of Rights

BA contends that this Litigation should not have been certified as a class action under Federal Rule of Civil Procedure 23(b). Nothing in this Settlement Agreement shall be construed as an admission by BA that this Litigation or any similar case is amenable to class certification for trial purposes. Furthermore, nothing in this Settlement Agreement shall prevent BA from opposing class certification or seeking decertification of the Settlement Class if final approval of this Settlement Agreement is not obtained, or not upheld on appeal, including review by the

United States Supreme Court, for any reason. BA supports certification of the class for settlement purposes only.

VI. CLASS SETTLEMENT NOTICE

A. Settlement Claims Administrator

1. In their motion for preliminary approval, Plaintiffs will propose that the Court appoint JND Legal Administration as the Settlement Claims Administrator.

2. The Settlement Claims Administrator will facilitate the notice process by providing professional guidance in the implementation of the Notice Plan and by overseeing the Cash Claim Form submission process.

B. Notice Plan

1. The Parties and the Settlement Claims Administrator have developed an appropriate and reasonable Notice Plan to reach Settlement Class Members. The Parties acknowledge and expressly agree that the Notice Plan constitutes due and sufficient notice under Federal Rule of Civil Procedure 23. The Parties will recommend to the Court the Notice Plan, which will be administered by the Settlement Claims Administrator.

2. Under the Notice Plan, upon Preliminary Approval of this Settlement Agreement, the Settlement Claims Administrator shall cause the Long Form Notice to be disseminated to Settlement Class Members via e-mail and the Summary Notice by U.S. mail for any Settlement Class Members with respect to whom BA does not have an e-mail address on file. The Class Notice shall conform substantially with the notices attached as **Exhibits C and D**. The Class Notice is designed to provide clear and concise notice of the terms of this Settlement Agreement in plain, easily understood language.

3. To allow the notice and claims administration processes to run smoothly, BA shall provide the Settlement Claims Administrator with the names, e-mail addresses, and the mailing

addresses of any Settlement Class Members for whom BA does not have an e-mail address on file for purposes of disseminating the Class Notice and validating the Cash Claim Form. This information will not be shared with Class Counsel.

4. For any e-mails to Settlement Class Members that are returned to the Settlement Claims Administrator as undeliverable and for Settlement Class Members for whom BA does not have an e-mail address, a Summary Notice shall be sent to each Settlement Class Member's last known address on a double-sided postcard with a change of address form on the back flap. Only one Class Notice will be provided to each Settlement Class Member.

5. The Settlement Claims Administrator will also create and maintain a Settlement Website to be activated within five (5) days following entry of the Preliminary Approval Order. The Settlement Claims Administrator has secured an appropriate URL, www.fuelsurchargeclassaction.com. The Settlement Website will contain the Preliminary Approval Order, the Class Notice, this Settlement Agreement, and other relevant information regarding the Court approval process. In addition, the Settlement Website will include a section for frequently asked questions and procedural information regarding the status of the Court-approval process, such as an announcement when the final approval hearing is scheduled, deadlines for opting out and objecting, when the Final Order and Judgment has been entered, and when the Effective Date is expected or has been reached. The Settlement Website may not include any of BA's logos or trademarks. BA will not display ads or otherwise make reference to this Settlement on any of its or its affiliates' websites. The Settlement Claims Administrator will terminate the Settlement Website forty-five (45) days after either (1) the Effective Date, or (2) the date on which the settlement is terminated or otherwise not approved by a court. The Settlement Claims Administrator will then promptly transfer ownership of the URL to BA.

6. The Settlement Claims Administrator will also establish a toll-free telephone number for Settlement Class Members to call and receive pre-recorded answers to questions regarding this Settlement Agreement.

7. BA shall serve notice of the settlement that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials not later than ten (10) days after the filing of this Settlement Agreement with the Court. A proposed form of CAFA Notice, without the accompanying attachments, is attached as **Exhibit A**. Within a reasonable time thereafter, BA shall file with the Court a certification of the date(s) on which the CAFA Notice was served.

8. BA shall be responsible for the costs of the Notice Plan and CAFA Notice without diminishing or eroding the Settlement Consideration being provided to Settlement Class Members.

VII. CASH OPTION CLAIMS SUBMISSION PROCESS AND ADMINISTRATION

1. BA shall provide the Settlement Claims Administrator with a listing of the amounts of fuel surcharges paid by each Settlement Class Member during the Class Period.

2. For those Settlement Class Members who elect the Cash Option, the Parties agree that the Settlement Claims Administrator shall process those Cash Claims Forms as follows:

(a) The Settlement Claims Administrator shall cause the Cash Claim Form to be available on the Settlement Website. The Cash Claim Form shall conform substantially with the form attached as **Exhibit B**.

(b) The Settlement Website will permit each Settlement Class Member to input his or her class member identifier to determine the potential Cash Option payment if the Settlement Class Member files a Valid Claim.

(c) All Cash Claim Forms must be either electronically submitted or mailed to the Settlement Claims Administrator and received by the Claims Deadline. Settlement Class

Members shall access the Cash Claim Form using their unique class member identifier provided on the notice or by request to the Settlement Class Administrator.

(d) The Settlement Claims Administrator shall use adequate and customary procedures and standards to prevent the payment of fraudulent claims, including, but not limited to: (i) validating claims against BA's records, (ii) determining the amount of the Cash Option payment based solely upon BA's records, (iii) using a class member identifier, which will be matched to the notice list, and (iv) screening for multiple or fraudulent claims which are not consistent with the facts. The Settlement Claims Administrator shall have the right to audit claims and the Settlement Claims Administrator when necessary may request additional information from Settlement Class Members submitting Cash Claim Forms.

(e) The Settlement Class Administrator shall approve or deny all Cash Claim Forms and will only pay Valid Claims. If any fraud is detected or reasonably suspected, the Settlement Claims Administrator may request further information from the Settlement Class Member or deny claims, subject to the ultimate oversight of the Court.

(f) Cash Option payments shall be mailed by the Settlement Claims Administrator thirty (30) days after the Effective Date. Checks will be valid for ninety (90) days from the date on the check. Any funds from voided checks shall be returned to BA or its assigns.

3. The Settlement Claims Administrator shall maintain records of all Cash Claim Forms until ninety (90) days after all Cash Option Claims have been finally resolved and the Settlement Claims Administrator has issued payment to those Settlement Class Members who submitted Cash Claims Forms, and such records will be made available upon request to Class Counsel and BA's counsel. The Settlement Claims Administrator also shall provide such reports, declarations, and such other information to the Court as the Court may require.

VIII. RELEASE

Upon the Effective Date and by operation of the judgment, the Releasing Parties shall have, fully, finally, and forever released, relinquished, and discharged against the Released Parties all Released Claims (including, without limitation, any unknown claims), as well as any claims arising out of, relating to, or in connection with, the defense, settlement or resolution of this Litigation or the Released Claims.

This release includes a release of any and all rights and benefits under Section 1542 of the California Civil Code (and any and all similar provisions, rights, and benefits conferred by any law), which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Releasing Parties and BA agree that the above waiver of rights under Section 1542 is an essential term of this Settlement Agreement. The Releasing Parties acknowledge and understand that they may later discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now believe to be true with respect to the matters released in this Settlement Agreement. Nevertheless, it is the intention of the Releasing Parties to fully, finally, and forever settle and release the Released Claims with the Released Parties that exist, hereafter may exist, or might have existed.

IX. OBJECTIONS, NOTICES TO APPEAR, AND OPT-OUTS (REQUESTS FOR EXCLUSION)

1. Any Settlement Class Member who wishes to object to this Settlement Agreement must file with the Court and serve on Class Counsel, BA's counsel and the Settlement Claims Administrator his or her objection no later than the Opt-Out and Objection Date, which shall be

set by the Court in its Preliminary Approval Order. The Parties shall request an Opt-Out and Objection Deadline of twenty-one (21) days prior to the Final Approval Hearing.

2. The Parties shall request that the Court require any objection to be in writing, filed with the Court, and include the following information: (a) the objector's name, address, telephone number and, if represented by counsel, the name, address, and telephone number of his or her counsel; (b) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel; (c) all grounds for his or her objection, accompanied by any legal support for the objection known to the objector or his or her counsel; (d) copies of any papers, briefs, or other documents upon which the objection is based or upon which the objector or his or her counsel intends to rely; (e) a statement of whether the objector or his or her counsel will ask to speak at the Final Approval Hearing and, if so, the amount of time the objector or counsel requested; and (f) the objector's handwritten signature.

3. The Parties shall also request that the Court require any objector or his or her counsel who intends to make an appearance at the Final Approval Hearing to file, and serve on Class Counsel and BA's counsel, a notice of intention to appear at the Final Approval Hearing by no later than the Opt-Out and Objection Date.

4. Any Settlement Class Member who wishes to be excluded from the settlement; (i.e., to opt out of the Settlement Class), must mail or deliver a written request for exclusion to the Settlement Claims Administrator, received by the Opt-Out and Objection Date, which shall be no later than twenty-one (21) days before the Final Approval Hearing. The written request must provide the Settlement Class Member's name, address and telephone number, state that the Settlement Class Member requests exclusion from the Settlement Class, and must be signed by the Settlement Class Member. Any Settlement Class Member who does not submit a timely

request for exclusion shall be bound by all subsequent proceedings, orders, and the Final Order and Judgment in this Litigation relating to this Settlement Agreement, even if he or she has pending, or subsequently initiates, litigation, arbitration, or any other proceeding against BA relating to the Released Claims.

5. The Settlement Claims Administrator shall receive and maintain the exclusion requests and provide copies of the exclusion requests to the Parties' counsel. At least fourteen (14) court days before the Final Approval Hearing, the Settlement Claims Administrator shall provide the Parties' counsel with a list of all Settlement Class Members who submitted timely, valid exclusion requests.

X. ATTORNEYS' FEES, COSTS, OTHER EXPENSES AND CLASS REPRESENTATIVES' SERVICE AWARDS

1. Class Counsel will ask the Court for an award of reasonable expenses and attorneys' fees in connection with this Litigation, with the total amount not to exceed \$3,750,000 in expenses and costs and \$11,095,000 in fees, which is approximately equal to 29 percent of the \$42,000,000 total cash settlement compensation net of expenses.

2. Class Counsel shall file, and the Settlement Administrator shall post to the Settlement Website, its papers supporting the petition for attorneys' fees, expenses, and costs at least twenty-one (21) days before the Opt-Out and Objection Date.

3. This agreement with respect to attorneys' fees and expenses was not negotiated until after the substantive terms of the Settlement, including the consideration to the Settlement Class, had been negotiated and agreed upon. The amount of the attorneys' fees and expenses to be sought by Plaintiffs' counsel was mediated by Magistrate Judge Cheryl Pollak.

4. To the extent awarded by the Court and subject to Class Counsel's undertaking to repay attorneys' fees and expenses in the event of an adverse ruling on appeal, BA will use its best

efforts to wire the attorneys' fees and expenses into an account specified by Class Counsel within eighteen (18) business days of the Court's Final Order and Judgment awarding such fees and expenses, provided that BA has received the applicable completed W-9 form.

5. In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, expenses, and costs in the amounts requested, the remaining provisions of this Settlement Agreement shall remain in full force and effect. The amounts awarded by the Court in attorneys' fees, expenses, and costs shall be the sole aggregate compensation paid by BA to Class Counsel in connection with this Litigation.

6. In the event that an appellate court reverses Final Approval of the Settlement, or rejects or reduces the award of attorneys' fees or expenses, Class Counsel undertakes that it shall return all amounts received, and all interest accrued thereon, to BA within eighteen (18) business days. Class Counsel will execute an undertaking in the form attached as **Exhibit F**.

7. Class Counsel will make, and BA agrees not to oppose, an application for service awards, in amounts not to exceed \$10,000 each, for the Class Representatives to compensate them for their efforts and commitment on behalf of the Class. Neither Class Counsel's application for, nor any Class Representative's entitlement to, a service award shall be conditioned in any way upon the Class Representative's support for this Settlement Agreement.

8. In the event the Court declines to approve, in whole or in part, the payment of service awards in the amounts requested, the remaining provisions of this Settlement Agreement shall remain in full force and effect.

9. BA shall pay any service awards granted by the Court within thirty (30) calendar days after the Effective Date, in accordance with instructions for payment provided by Class Counsel provided that BA has received a completed W-9 form for each Class Representative.

10. In the event that Class Counsel does not seek the full amount of expenses, fees or service awards contemplated, such action will not increase the Settlement Consideration to the Settlement Class Members.

11. To the extent that the Court does not award Class Counsel the full amount of expenses, costs and fees sought, any differential will not revert to BA, but will instead be distributed, on a pro rata basis, to those Settlement Class Members who have submitted Valid Claims prior to the Claims Deadline.

XI. ENTRY OF FINAL ORDER AND JUDGMENT

This Settlement Agreement is subject to and conditioned upon the issuance by the Court of a Final Order and Judgment that grants approval of this Settlement Agreement and orders the consideration specified herein, which consideration shall be subject to the terms and conditions of this Settlement Agreement and the Parties' performance of their continuing rights and obligations hereunder. Such Final Order and Judgment shall:

1. Grant final approval of this Settlement Agreement and direct its implementation pursuant to its terms and conditions;
2. Confirm that the Notice Plan complies in all respects with the requirements of due process and Rule 23 by providing due, adequate, and sufficient notice to the Settlement Class;
3. Determine that this Settlement Agreement is fair, reasonable and adequate;
4. Release Claims as provided in Section VIII;
5. Permanently bar and enjoin all Settlement Class Members from initiating, maintaining, prosecuting or pursuing, either directly or indirectly, any claim or action asserting Released Claims;
6. Direct that this Litigation be dismissed with prejudice;

7. State pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and direct that the Final Order and Judgment is a final, appealable order; and

8. Retain the Court's continuing and exclusive jurisdiction over the Parties, including all Settlement Class Members, to construe and enforce this Settlement Agreement in accordance with its terms for the mutual benefit of the Parties.

XII. DISMISSAL

Upon final approval of this Settlement Agreement by the Court, this Litigation will be dismissed with prejudice, including Plaintiffs Russell Dover, Henry Horsey, Cody Rank, and the Estate of Suzette Perry's individual claims, as provided for in the Final Order and Judgment.

XIII. TERMINATION

Either Party may unilaterally terminate this Settlement Agreement, declare it null and void, and have no further obligations under this Settlement Agreement, if any of the following conditions subsequent occurs:

1. The Parties fail to obtain and maintain preliminary approval of the proposed settlement;

2. Any court requires a Notice Plan in addition to or in any form other than as specifically set forth in Section VI and attached **Exhibits C and D** or a material change to the Cash Option Claims submission process and administration specifically set forth in Section VII;

3. Any court orders BA to pay, in the aggregate, attorneys' fees, costs, and other expenses in connection with this Litigation in excess of \$15,375,000.00, other than Claims Administration Expenses, or requires material changes to the Settlement Consideration as specifically set forth in Section IV and Section X(11);

4. The Court fails to enter a Final Order and Judgment consistent with the provisions in Section XI; or

5. This Settlement Agreement is not upheld on appeal, including review by the United States Supreme Court.

6. The decision of the Court or any appellate court not to approve in full the request by Class Counsel for attorneys' fees, costs, and other expenses shall not be grounds for Plaintiffs, the Settlement Class, or Class Counsel to cancel or terminate this Settlement Agreement.

If this Settlement Agreement is not finally approved, is not upheld on appeal, or is otherwise terminated for any reason before the Effective Date, this Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any Party and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law; and all Parties shall stand in the same procedural position as if this Settlement Agreement had not been negotiated, made, or filed with the Court.

XIV. DENIAL OF WRONGDOING AND LIABILITY

1. BA has denied and continues to deny that it has breached the EC Contract with Settlement Class Members as alleged in this Litigation. In addition, BA maintains that it has meritorious defenses to the claims alleged in this Litigation, believes that a litigation class was improvidently certified, and that it would have prevailed at trial.

2. Nonetheless, taking into account the uncertainty, risks and costs inherent in any litigation, BA has concluded that further conduct of this Litigation could be protracted, burdensome, expensive and distracting. BA has, therefore, determined that it is desirable and beneficial to the Company that this Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. As set forth in Section XV(B) below, this Settlement shall in no event be construed as or deemed to be evidence of an admission or concession by BA with respect to any claim or fault, liability, wrongdoing or damage whatsoever.

XV. ADDITIONAL PROVISIONS

A. Best Efforts to Obtain Court Approval

The Parties and the Parties' counsel agree to use their best efforts to obtain Court approval of this Settlement Agreement, subject to the Parties' rights to terminate this Settlement Agreement as stated in Section XIII.

B. No Admission

This Settlement Agreement, whether or not it shall become final, and any and all negotiations, communications, and discussions associated with it, shall not be:

1. Offered or received by or against any Party as evidence of, or be construed as or deemed to be evidence of, any presumption, concession, or admission by a Party, of the truth of any fact alleged by Plaintiffs or defense asserted by BA of the validity of any Claim that has been or could have been asserted in this Litigation, or the deficiency of any defense that has been or could have been asserted in this Litigation, or of any liability, negligence, fault, or wrongdoing on the part of Plaintiffs or BA;

2. Offered or received by or against Plaintiffs or BA as a presumption, concession, admission, or evidence of any violation of any state or federal statute, law, rule, or regulation or of any liability or wrongdoing by BA, or of the truth of any of the claims made in this Litigation, and evidence thereof shall not be directly or indirectly admissible in any way (whether in this Litigation or in any other action or proceeding), except for purposes of enforcing this Settlement Agreement and the Final Order and Judgment including, without limitation, asserting as a defense the release and waivers provided herein;

3. Offered or received by or against Plaintiffs or BA as evidence of a presumption, concession, or admission with respect to a decision by any court regarding the certification of a class, or for purposes of proving any liability, negligence, fault, or wrongdoing, or in any way

referred to for any other reason as against BA, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement; provided, however, that if this Settlement Agreement is approved by the Court, the Plaintiffs or BA may refer to it to enforce their rights hereunder; or

4. Construed as an admission or concession by Plaintiffs, the Settlement Class, or BA that the consideration to be given hereunder represents the consideration that could or would have been obtained through trial in this Litigation.

These prohibitions on the use of this Settlement Agreement include, but are not limited to, any individual lawsuit preserved from release by an individual Settlement Class Member opting out of this Settlement Agreement.

C. Communications with BA's Customers and Other Members of the Public

1. BA reserves the right to communicate with its customers, members of the Executive Club and members of the public in the ordinary course of business. BA's customer service representatives will be permitted to use the customer service script attached as **Exhibit G** to answer questions regarding the Settlement.

2. With the exception of Class Notice, no Party or counsel shall make any mass or generalized communications to the public, media or press regarding the Settlement. To avoid contradictory, incomplete, or confusing information about the Settlement, the Parties agree that if Class Counsel wants to make any written press releases, disclosures on their website, or statements to the media about the Settlement before the conclusion of the Claims Deadline, such releases or statements will have to be approved by BA in advance. Such approval shall not be unreasonably withheld. Except as noted herein and by mutual agreement of the Parties, the notice shall constitute the only communication from either BA or Class Counsel to Settlement Class

Members regarding the Settlement prior to the Final Approval Hearing. Notwithstanding, BA and Class Counsel can answer any inquiries initiated by Settlement Class Members.

3. The Parties and their counsel agree that no party or counsel shall make any disparaging public announcements about the other.

D. Entire Agreement

1. This Settlement Agreement, including all Exhibits hereto, shall constitute the entire agreement among the Parties with regard to the settlement and shall supersede any previous agreements, representations, communications and understandings among the Parties with respect to the subject matter of this Settlement Agreement. This Settlement Agreement may not be changed, modified, or amended except in a writing signed by all Parties and, if required, approved by the Court. The Parties contemplate that certain of the Exhibits to this Settlement Agreement relating to Class Notice may be modified by subsequent agreement of BA and Class Counsel prior to dissemination to the Settlement Class, without requirement of Court approval.

E. Governing Law

This Settlement Agreement shall be construed under and governed by the laws of the State of New York, applied without regard to laws applicable to choice of law.

F. Execution by Counterparts

This Settlement Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures sent by e-mail shall be treated as original signatures and shall be binding.

G. No Assignment

Plaintiffs and Class Counsel represent and warrant that none of Plaintiffs' Claims referred to in this Litigation or this Settlement Agreement have been assigned, encumbered, or in any manner transferred in whole or in part.

H. Stay of Proceedings

Upon entry of the Preliminary Approval Order, all proceedings in this Litigation shall be stayed and all Settlement Class Members shall be barred and enjoined from prosecuting any of the Released Claims against any of the Released Parties.

I. Binding Effect

This Settlement Agreement shall be binding upon, and inure to the benefit of, the heirs, successors, assigns, executors and legal representatives of the Parties to this Settlement Agreement and all Released Parties.

J. Severability

In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Settlement Agreement shall continue in full force and effect without said provision.

K. Reasonable Extensions

The Parties may agree to reasonable extensions of time to carry out any of the provisions of this Settlement Agreement.

L. No Primary Drafter of Settlement Agreement

The determination of the terms of, and the drafting of, this Settlement Agreement has been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their counsel.

None of the Parties shall be considered to be the primary drafter of this Settlement Agreement.

M. Effect of Waiver of Provisions

The waiver by any Party of any provision of this Settlement Agreement shall not constitute a waiver of any other provision of this Settlement Agreement.

N. Variance In Terms

In the event of any variance between the terms of this Settlement Agreement and any of the Exhibits hereto, the terms of this Settlement Agreement shall control and supersede the Exhibit(s).

O. Exhibits to Settlement Agreement

All Exhibits to this Settlement Agreement are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein.

P. Confidentiality of Discovery Materials and Information

The Parties, their counsel and any experts in this Litigation agree that they shall remain subject to the Court's Protective Order with respect to confidentiality. Within sixty (60) days after the Effective Date, Class Counsel and Plaintiffs shall destroy all confidential documents, data and information, and all copies thereof in their possession, custody, or control, provided by BA to Class Counsel or anyone they employed or retained in this Litigation. As soon as reasonably practicable, but no later than seventy-five (75) days after the Effective Date, Class Counsel shall deliver a letter to BA certifying their compliance with this paragraph. As of the Effective Date, Class Counsel and Plaintiffs agree that BA may discontinue the litigation hold process and preservation in connection with this Litigation.

Q. Authorization to Enter Settlement Agreement

The individual signing this Settlement Agreement on behalf of BA represents that he/she is fully authorized by BA to enter into, and to execute, this Settlement Agreement on behalf of BA. Class Counsel represent that they are fully authorized to conduct settlement negotiations with BA's counsel on behalf of Plaintiffs, and to enter into, and to execute, this Settlement Agreement on behalf of the Settlement Class, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e). Plaintiffs enter into and execute this Settlement Agreement on behalf of themselves, and as representatives of and on behalf of the Settlement Class, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e).

R. Tax Consequences

No opinion concerning the tax consequences of this Settlement Agreement to any Settlement Class Member is given or will be given by BA, BA's counsel, or Class Counsel, nor is any Party or his/her/its counsel providing any representation or guarantee respecting the tax consequences of the Settlement as to any Settlement Class Member. The Class Notice will direct Settlement Class Members to consult their own tax advisors regarding the tax consequences of the Settlement and any tax reporting obligations with respect thereto. Each Settlement Class Member is responsible for his/her tax reporting and other obligations respecting the Settlement, if any.

S. Notices

All notices to the Parties or counsel required by this Settlement Agreement shall be made in writing and communicated by mail and e-mail to the following addresses:

- (a) If to the Class Representatives or Class Counsel:

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

David S. Stellings
Nicholas Diamand
Jason L. Lichtman
Douglas I. Cuthbertson
250 Hudson Street, 8th Floor
New York, NY 10013
Tel: 212-355-9500
dstellings@lchb.com
ndiamand@lchb.com
jlichtman@lchb.com
dcuthbertson@lchb.com

(b) If to BA or BA's counsel:

DLA PIPER LLP (US)

Keara M. Gordon
Richard F. Hans
Colleen Carey Gulliver
Matthew Graves
Daniel Harkins
1251 Avenue of the Americas
New York, NY 10020-1104
Tel: 212-335-4500
keara.gordon@dlapiper.com
richard.hans@dlapiper.com
colleen.gulliver@dlapiper.com
matthew.graves@dlapiper.com
daniel.harkins@dlapiper.com

Dated: _____
RUSSELL DOVER

Dated: _____
HENRY HORSEY

Dated: _____
CODY RANK

Dated: _____
NOEL PERRY, Executor, the Estate of Suzette Perry

Dated: May 14, 2018

**LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP**


By  _____
DAVID S. STELLINGS

*Attorney for Plaintiffs Russell Dover,
Henry Horsey, Cody Rank, the Estate of Suzette Perry,
and the Class*

Dated: **DLA Piper, LLP**

By _____
Keara M. Gordon

Attorney for British Airways, PLC (UK)

Dated: 

RUSSELL DOVER

Dated: _____
HENRY HORSEY

Dated: _____
CODY RANK

Dated: _____
NOEL PERRY (as the executor of Suzette Perry)

Dated: **LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP**

By _____
DAVID S. STELLINGS

*Attorney for Plaintiffs Russell Dover,
Henry Horsey, Cody Rank, Noel Perry (as the executor
of Suzette Perry), and the Class*

Dated: **DLA Piper, LLP**

By _____
Keara M. Gordon

Attorney for British Airways, PLC (UK)

Dated:

RUSSELL DOVER

Dated:

5/14/2018



HENRY HORSEY

Dated:

CODY RANK

Dated:

NOEL PERRY (as the executor of Suzette Perry)

Dated:

**LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP**

By

DAVID S. STELLINGS

*Attorneys for Plaintiffs Russell Dover,
Henry Horsey, Cody Rank, Noel Perry (as the executor
of Suzette Perry), and the Class*

Dated:

RUSSELL DOVER

Dated:

HENRY HORSEY

Dated: 5/14/2018



CODY RANK

Dated:

NOEL PERRY (as the executor of Suzette Perry)

Dated:

**LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP**

By

DAVID S. STELLINGS

*Attorney for Plaintiffs Russell Dover,
Henry Horsey, Cody Rank, Noel Perry (as the executor
of Suzette Perry), and the Class*

Dated:

DLA Piper, LLP

By

Keara M. Gordon

Attorney for British Airways, PLC (UK)

Dated:

RUSSELL DOVER

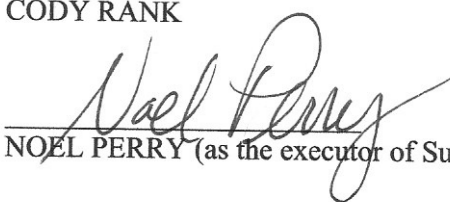
Dated:

HENRY HORSEY

Dated:

CODY RANK

Dated:



NOEL PERRY (as the executor of Suzette Perry)

Dated:

**LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP**

By

DAVID S. STELLINGS

*Attorneys for Plaintiffs Russell Dover,
Henry Horsey, Cody Rank, Noel Perry (as the executor
of Suzette Perry), and the Class*

Dated:

RUSSELL DOVER

Dated:

HENRY HORSEY

Dated:

CODY RANK

Dated:

NOEL PERRY (as the executor of Suzette Perry)

Dated:

**LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP**

By

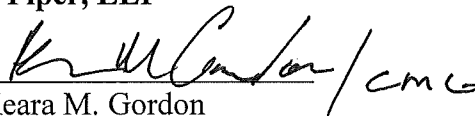
DAVID S. STELLINGS

*Attorney for Plaintiffs Russell Dover,
Henry Horsey, Cody Rank, Noel Perry (as the executor
of Suzette Perry), and the Class*

Dated:

DLA Piper, LLP

By



Keara M. Gordon

Attorney for British Airways, PLC (UK)