

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

<p>PRECISION ASSOCIATES, INC., <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>PANALPINA WORLD TRANSPORT (HOLDING) LTD., <i>et al.</i></p> <p>Defendants.</p>	<p>CASE NO. 08-CV-00042 (JG)(PK)</p>
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**DECLARATION OF W. JOSEPH BRUCKNER IN SUPPORT OF MOTION FOR (1)
PRELIMINARY APPROVAL OF SETTLEMENT WITH THE DHL DEFENDANTS;
AND (2) CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS**

I, W. Joseph Bruckner, declare and state as follows:

1. I am a Partner of the law firm of Lockridge Grindal Nauen P.L.L.P. This Court has appointed me and my firm as Interim Co-Lead Counsel for Plaintiffs and the Plaintiff Class in this litigation. I submit this Declaration in support of Plaintiffs' Motion For (1) Preliminary Approval of Settlement with the DHL Defendants; and (2) Conditional Certification of Settlement Class filed simultaneously herewith.

2. I respectfully submit this declaration in support of Plaintiffs' Motion to (a) preliminarily approve a settlement reached with Defendants Deutsche Post AG; Danzas Corporation (d/b/a DHL Global Forwarding); DHL Express (USA) Inc.; DHL Global Forwarding Japan K.K; DHL Japan Inc.; Exel Global Logistics, Inc.; Air Express International USA, Inc.; and their subsidiaries, affiliates and predecessors (collectively "DHL" or "Settling Defendants"); and (b) to conditionally certify the Settlement Class.

3. On behalf of Plaintiffs, other Co-Lead Counsel and I personally conducted settlement negotiations with counsel for DHL over the course of several years and on many occasions. Our negotiations included separate mediation sessions with two different third-party mediators. The parties first met for mediation in December 2013. The parties scheduled another mediation for December 4, 2014, but cancelled it because their settlement positions were so far apart. Eventually, the parties met on July 2, 2015, for a second mediation. Although we did not settle at that time, counsel continued to discuss settlement, and the parties finally signed a memorandum of understanding in October 2015. The Plaintiffs and DHL recently signed the current proposed settlement agreement.

4. As counsel for Plaintiffs we discussed settlement with DHL during 2010, but were far from agreement. Our disagreements with DHL over several issues limited our progress. Those issues included whether Plaintiffs and the class were injured by DHL's conduct and, if so, the amount of that injury, and the extent and effect of DHL's cooperation with Plaintiffs under the Antitrust Criminal Penalty Enhancement Reform Act.¹

5. We met with DHL's counsel and a nationally prominent mediator, Antonio Piazza, in San Francisco on December 16, 2013. Mr. Piazza has assisted counsel with other settlements in this case. Nevertheless, we could not reach agreement with DHL at that time, and our respective settlement positions remained far apart at the end of this mediation.

6. In July 2014, we met again in San Francisco with Anthony Piazza, DHL, and the Japanese Defendants to mediate the "Japanese" or "Severed" claims.² We reached agreements in

¹ Antitrust Criminal Penalty Enhancement Reform Act of 2004 ("ACPERA"), Pub. L. No. 108-237, § 213, et seq., 118 Stat. 661, 666 (2004), as amended by Pub. L. 111-190, 124 Stat. 1275, codified as amended at 15 U.S.C. § 1 note.

² The "Japanese" or "Severed" claims were specific claims in Plaintiffs' Corrected Third Amended Complaint involving the Japanese Defendants and price-fixing on shipping routes

principle to settle the Severed Claims in July 2015. Plaintiffs and DHL signed an agreement on October 24, 2014 to settle the Severed Claims (the “Japanese Claim Settlement”), and the Court has given final approval to that settlement. Memorandum and Order at 7, 14 (ECF No. 1330, November 10, 2015). The Japanese Claim Settlement is separate from the present proposed settlement agreement since they involve different claims and different co-defendants.

7. We scheduled another mediation with Mr. Piazza for December 4, 2014 for the remaining “Non-Severed Claims.”³ However, due to the lack of progress at that time, Plaintiffs decided not to go forward with this mediation. Accordingly, in November 2014, the parties cancelled the scheduled mediation, and over the following several months proceeded with depositions and other discovery of DHL and the other remaining defendant.

8. After further litigation, discovery, and work with Plaintiffs’ economists, Plaintiffs and DHL agreed to mediate in New York City with Kenneth Feinberg, a prominent and experienced mediator, on July 2, 2015. While the parties did not reach any agreement at that time, we continued to discuss settlement.

9. Three months after the mediation with Mr. Feinberg, on October 14, 2015, we and DHL executed a memorandum of understanding on the essentials of settlement, to be followed by a full written agreement. However, it took further time to agree on all the terms for a full

between Japan and the US. These claims are the 2002 Japanese Fuel Surcharge Agreement (Second Claim), the 2004 Japanese U.S. Customs Air Automated Manifest System Charge Agreement originating in Japan (“Japanese Air AMS”) (Fourth Claim), the 2006 Security and Explosives Examination Agreement (Seventh Claim), and the overarching Japanese Regional Conspiracy (Eleventh Claim), which incorporates the three surcharge conspiracies. By the Court’s order these claims were partially severed from the other claims in the case.

³ The “non-severed” claims include the 2001 Security Surcharge Agreement (1st Claim); 2002 New Export System Fee Agreement (3rd Claim); 2005 Currency Adjustment Factor Agreement (5th Claim); Peak Season Rate Increase Agreements (6th Claim); 2004 U.S. Customs Air “AMS” Charge Agreement (8th Claim); U.S. Customs Ocean “AMS” Agreement (9th Claim); and the Global Agreement (10th Claim). Generally, the Non-Severed Claims relate to shipping routes that touch on the US and Europe or Southeast Asia.

written agreement. Co-Lead Counsel for Plaintiffs and counsel for DHL signed the current proposed settlement agreement on December 18, 2015.

10. Co-Lead Counsel filed this case in January 2008, and we have litigated this case extensively since then. By the time we signed the Memorandum of Understanding with DHL to settle our claims against them, we were fully aware of the strengths and weaknesses of each side's positions. We had prevailed in two rounds of extensive motions to dismiss our complaints, fact discovery had closed, and the parties were heading into expert discovery and class certification motions. During discovery Plaintiffs served 16 sets of discovery requests, and obtained 5.1 million documents from defendants. Using advanced analytical search techniques and keyword searches, we identified and reviewed 1,062,552 of the most relevant defendant documents, including translating and reviewing several documents in Japanese, German, and Italian. We interviewed 43 witnesses produced by DHL and other settling defendants, and participated in 18 attorney proffers. We conducted 50 depositions in four countries across three continents. We obtained transactional data from defendants, discussed the data with defense counsel, and worked with economists to analyze the data.⁴ We also demanded from DHL and other defendants their revenue data and other information about their operations. We also defended depositions of the proposed class representatives, taken in New York and Washington, D.C. As a result, we have had the benefit of substantial information obtained from the defendants through their cooperation and through formal discovery.

11. During the litigation, Co-Lead Counsel researched, analyzed, and evaluated many contested legal and factual issues. Based on that analysis, and the information obtained from

⁴ See Joint Declaration Of Co-Lead Counsel In Support Of Co-Lead Counsel's Petition For A Second Interim Award Of Attorney's Fees And Reimbursement Of Expenses, at 8 – 10 (ECF No. 1281) for further detail.

discovery and cooperation, Co-Lead Counsel were well informed of the facts and the benefits, risks, and consequences of the proposed settlement with DHL. Counsel thoroughly evaluated the relative strengths and weaknesses of our respective litigation positions in relation to this settlement.

12. The resulting settlement negotiations with DHL were at arm's length and were hard fought at all times. The parties debated many issues, and negotiated many terms of the settlement, including the amount of payment, the timing of payment, potential conditions on payment, the effect of opt-outs on any settlement, and potential cooperation against other defendants. As described, the negotiations required two mediations and innumerable conferences among counsel. Throughout this process, DHL has been represented by experienced, sophisticated counsel.

13. There was no collusion or preference among counsel for the parties at any time during these negotiations. To the contrary, the negotiations were contentious, hard fought, and fully informed. Plaintiffs sought to obtain the greatest monetary benefit possible from DHL. Furthermore, there was no discussion or agreement at any time regarding the amount of attorneys' fees Plaintiffs' counsel would ask the Court to award in this case.

14. In the proposed settlement, DHL commits to pay US\$53 million to the settlement fund within 14 days after the Court preliminarily approves the Agreement. DHL also agrees to cooperate with Plaintiffs in prosecuting any remaining claims against other defendants. DHL's cooperation will include providing declarations or affidavits, authenticating exhibits, and producing trial witnesses. DHL has provided transactional data, and will explain the data further and supplement it with other data if appropriate.

15. The proposed settlement provides for notice to Settlement Class Members of, among other things, the fact and material terms of the proposed settlement, instructions on how to opt out of the proposed class or object to the settlement, and other information.

16. I have practiced law since 1983, I have specialized in antitrust class action law since 1988, and I have prosecuted numerous antitrust class actions as lead counsel or other leadership positions. I have negotiated many settlements during those years. In my opinion, and in that of my Co-Lead Counsel, the proposed settlement agreement with DHL is fair, reasonable, and adequate. The settlement provides substantial benefits to the Class, and avoids the delay and uncertainty of continuing protracted litigation with DHL.

17. To the best of Co-Lead Counsels' knowledge, no individual actions have been filed regarding an agreement during the class period to fix prices for Freight Forwarding Services, and throughout this litigation no class member otherwise has expressed an interest in individually controlling separate actions.

18. A true and correct copy of the Settlement Agreement Between Plaintiffs And DHL Resolving The Non-Severed Claims, fully executed on December 18, 2015, is attached hereto as Exhibit A to this Declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 22nd day of December, 2015 at Minneapolis, Minnesota.

s/W. Joseph Bruckner
W. Joseph Bruckner

EXHIBIT A

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

PRECISION ASSOCIATES, INC., et al., on
behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

PANALPINA WORLD TRANSPORT
(HOLDING) LTD., et al.,

Defendants.

Case No.: 08-CV-00042 (JG) (VVP)

SETTLEMENT AGREEMENT

**SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS AND DHL RESOLVING THE
NON-SEVERED CLAIMS**

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into as of the Effective Date, by and between Defendants Deutsche Post AG; Danzas Corporation (d/b/a DHL Global Forwarding); DHL Express (USA) Inc.; DHL Global Forwarding Japan K.K.; DHL Japan Inc.; Exel Global Logistics, Inc.; Air Express International USA, Inc.; and their subsidiaries, affiliates and predecessors (collectively, “DHL” or “Settling Defendants”); and Plaintiffs Precision Associates, Inc.; JCK Industries, Inc.; RBX Industries, Inc.; Mary Elle Fashions, Inc.; Zeta Pharmaceuticals, LLC.; Kraft Chemical Company; Printing Technology, Inc.; David Howell Product Design Inc.; Innovation 714 Inc.; Mika Overseas Corporation; and NORMA Pennsylvania Inc. (collectively, “Plaintiffs”), individually and on behalf of a class of direct purchasers of Freight Forwarding Services, as defined herein, subject to the approval of the Court (the “Settlement”). This Settlement Agreement resolves a subset of claims – the “Non-Severed Claims,” defined herein – brought by Plaintiffs against Settling Defendants in this Action. In a separate agreement (the “Japanese Claim Settlement”), Plaintiffs and Settling Defendants previously reached an agreement to settle the Severed Claims (also defined herein) by Plaintiffs against Settling Defendants, which agreement is now pending the

Court's final approval.

RECITALS

A. Plaintiffs are prosecuting the Action on their own behalf and on behalf of the Settlement Class.

B. Plaintiffs have alleged, among other things, that the Settling Defendants participated in unlawful conspiracies to restrain trade pursuant to which Settling Defendants and the alleged co-conspirators agreed to fix, raise, or maintain the prices of specified Freight Forwarding Services for shipments within, to, or from the United States or for purchases made within the United States during the Class Period, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

C. More specifically, Plaintiffs have alleged in their Fourth Amended Complaint ("FAC") that the Settling Defendants engaged in the following unlawful agreements:

1. The 2001 Security Surcharge Agreement (First Claim);
2. The 2002 New Export System Fee Agreement (Third Claim);
3. The 2005 Chinese Currency Adjustment Factor ("CAF") Agreement (Fifth Claim);
4. The Peak Season Rate Increase Agreements (Sixth Claim);
5. The European U.S. Customs Air Automated Manifest System Charge Agreement ("European Air AMS") (Eighth Claim);
6. The U.S. Customs Ocean Automated Manifest System Charge Agreement ("Ocean AMS") (Ninth Claim); and
7. The Global Overarching Agreement (Tenth Claim) (the claims listed in Nos. 1-7, above, are collectively referred to as "the Non-Severed Claims).

In addition, Plaintiffs allege that the Settling Defendants also engaged in the following unlawful agreements:

8. The 2002 Japanese Fuel Surcharge Agreement (Second Claim);
9. The 2004 Japanese U.S. Customs Air Automated Manifest System Charge Agreement originating in Japan (“Japanese Air AMS”) (Fourth Claim);
10. The 2006 Security and Explosives Examination Surcharges Agreement (Seventh Claim); and
11. The Japanese Regional Conspiracy (Eleventh Claim), incorporating the three surcharge conspiracies listed herein (the claims listed in Nos. 8-11, above, are collectively referred to as “the Japanese Claims” or “the Severed Claims.”)

This Settlement Agreement resolves **only** the Non-Severed Claims, and **does not affect** the Parties’ separate settlement of the Severed Claims.

D. Settling Defendants have asserted numerous defenses to the Non-Severed Claims and intend to assert a number of additional defenses to the Non-Severed Claims if the Action proceeds further.

E. Plaintiffs and Settling Defendants agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule or regulation or of any liability or wrongdoing by the Settling Defendants with respect to the Non-Severed Claims or of the truth of any of the Non-Severed Claims or allegations related thereto.

F. Despite their belief that they are not liable for the Non-Severed Claims asserted by Plaintiffs and have good defenses thereto, Settling Defendants have agreed to enter into this Settlement Agreement to avoid the further expense, inconvenience, disruption and burden of this

litigation and any other present or future litigation arising out of the facts that gave rise to this litigation, to avoid the risks inherent in uncertain complex litigation, and thereby put to rest this controversy with respect to the Non-Severed Claims.

G. Arm's-length settlement negotiations have taken place between Settlement Class Counsel and the Settling Defendants' Counsel, including with the assistance of a neutral third-party mediator, and this Agreement has been reached as a result of those negotiations.

H. The Parties to this Agreement desire fully and finally to settle all actual and potential claims arising from or in connection with the Non-Severed Claims, the factual allegations underlying the Non-Severed Claims, and each of them, and avoid the costs and risks of protracted litigation with respect to the Non-Severed Claims.

IT IS HEREBY AGREED, by and among Plaintiffs and the Settling Defendants, that the Non-Severed Claims are finally and fully settled and compromised and that the Non-Severed Claims shall be dismissed in their entirety with prejudice as to Settling Defendants and without costs, subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, upon and subject to the terms and conditions in this Agreement. It is also agreed by and among Plaintiffs and the Settling Defendants that this Settlement Agreement resolves only the Non-Severed Claims. This Settlement Agreement **has no bearing on** the Parties' separate settlement with respect to the Severed Claims.

I. DEFINITIONS

A. Class Definition

"Settlement Class" means the class described in Section II(E)(2), below.

B. General Definitions

1. "Action" or "Actions" means the action captioned *Precision Associates, Inc., et al. v. Panalpina World Transport (Holding) Ltd., et al.*, No. 08-CV-0042 (JG) (VVP)

(E.D.N.Y.) (“*Precision Associates*”), which is currently pending in the United States District Court for the Eastern District of New York, and any previously filed, subsequently filed, or transferred actions, whether brought in state or federal court, on behalf of persons or entities that purchased Freight Forwarding Services directly from any Defendant and alleging violations of any federal or state law, including but not limited to the antitrust laws, unfair competition laws, and conspiracy laws, arising from the same or similar conduct as alleged in *Precision Associates*.

2. “Class Notice” means the notice to the Settlement Class that is approved by the Court, in accordance with Sections II(E)(4) and (5).

3. “Class Period” means the period from January 1, 2001 up to and including January 4, 2011.

4. “Cooperation Materials” means any non-public data, information, testimony, materials or communications provided to Settlement Class Counsel pursuant to Section II(A)(2) of this Agreement.

5. “Court” or “District Court” means the United States District Court for the Eastern District of New York and the Honorable Judge John Gleeson or his successor or any other Court in which an Action is proceeding.

6. “Date of Final Approval” means the date as of which this Settlement Agreement becomes final, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, as provided in Section II(E)(11).

7. “Date of Preliminary Approval” means the date as of which this Settlement Agreement is preliminarily approved by the Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, as provided in Section II(E)(3).

8. “Defendants” means any or all of the Defendants named in the Action(s) now or in the future.

9. “Effective Date” means the date as of which this Settlement Agreement is entered into and executed by all Parties.

10. “Escrow Account” means the account with the Escrow Agent that holds

the Settlement Fund.

11. “Escrow Agent” means the bank into which the Settlement Fund shall be deposited and maintained as set forth in Section II(C) of this Agreement.

12. “Fairness Hearing” means a hearing on the settlement proposed in this Settlement Agreement held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.

13. “Freight Forwarder” means any person or entity that engages in or has engaged in or provides or has provided Freight Forwarding Services.

14. “Freight Forwarding Services” includes services relating to the organization of transportation of items via air, ocean, and/or ancillary rail, and/or truck, both nationally and internationally, and can include related activities such as customs clearance, warehousing and ground services.

15. “Net Settlement Fund” means the Settlement Fund, plus accrued interest, less any award of attorneys’ fees or reimbursement of expenses and less applicable taxes, tax preparation expenses, and costs of notice and administration, that may be awarded or approved by the Court or otherwise paid from the Settlement Fund pursuant to this Agreement.

16. “Non-Severed Claims” means all claims in this Action, except the Severed Claims, and specifically includes (i) the 2001 Security Surcharge Agreement (FAC ¶¶ 300-317), (ii) the 2002 New Export System (“NES”) Fee Agreement (FAC ¶¶ 335-359), (iii) the 2005 Currency Adjustment Factor (“CAF”) Surcharge Agreement (FAC ¶¶ 377-444), (iv) the Peak Season Rate Increase Agreements (FAC ¶¶ 445-483), (v) the 2004 European U.S. Customs Air AMS Charge Agreement (FAC ¶¶ 495-540), (vi) the U.S. Customs Ocean AMS Charge Agreement (FAC ¶¶ 541-559), and (vii) the Global Agreement (FAC ¶¶ 560-583).

17. “Opt-Out Claim” means any claim within the scope of the settlement class, as set forth in Section II(E)(2), made by a Person, otherwise qualifying as a member of the Settlement Class, that has validly and timely excluded itself from the Settlement Class.

18. “Order and Final Judgment” means the order and final judgment of the

Court approving the Settlement Agreement, as described in Sections II(E)(8) and (11).

19. “Other Defendant” means any Defendant named in the Actions other than the Settling Defendants named herein.

20. “Parties” or “Settling Parties” means Settling Defendants and Plaintiffs.

21. “Person(s)” means an individual or an entity.

22. “Plaintiffs” means Precision Associates, Inc., JCK Industries, Inc., RBX Industries, Inc., Mary Elle Fashions, Inc., Zeta Pharmaceuticals, LLC., Kraft Chemical Company, Printing Technology, Inc., David Howell Product Design Inc., Innovation 714 Inc., Mika Overseas Corporation, NORMA Pennsylvania Inc., and any other plaintiffs designated by the Court as direct purchaser plaintiff class representatives, individually and on behalf of the Settlement Class.

23. “Released Claims” means any and all actual or potential causes of action, claims, damages, losses, injuries, expenses, demands, debts, liabilities, obligations, liens, judgments, remedies and rights of action, of every nature and description, whether known or unknown (including unknown claims), suspected or unsuspected, asserted or unasserted, matured or unmatured, liquidated or unliquidated, absolute or contingent, accrued or unaccrued, whether or not concealed or hidden, direct or indirect, at law, equity or otherwise, including monetary, injunctive or declaratory relief, arising from the alleged facts giving rise to, or in any way relating to the Non-Severed Claims, whether such claims are based on federal, state, local, statutory, or common law, or any other law, code, rule, or regulation, including known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated claims, whether brought in an individual, representative, or any other capacity, that the Releasing Parties have asserted or in the future might assert against the Released Parties in any action or proceeding in any court or forum, in any country or other jurisdiction worldwide, regardless of the legal theory, or type or amount of relief or damages claimed. Specifically **excluded** from the definition of “Released Claims,” are (a) all Severed Claims asserted against the Settling Defendants, which are separately addressed in a previously

executed settlement agreement entered into by Plaintiffs and Settling Defendants, (b) claims asserted against any other Defendant (provided, however, that the Released Parties cannot be held liable for the Non-Severed Claims except as addressed in and resolved by this Agreement) nor (c) any claims not arising out of the allegations in the Actions based on: (1) product defect or breach of warranty; (2) breach of contract; or (3) indirect purchases of Freight Forwarding Services by persons or entities other than the Releasing Parties. The reservation of claims set forth in (a), (b) and (c) of this paragraph does not impair or diminish the right of the Released Parties to assert any and all defenses to such claims.

24. “Released Parties” means jointly and severally, individually and collectively, the Settling Defendants, their respective predecessors; successors; assigns; and any and all past, present, and future parents, owners, subsidiaries, divisions, departments, affiliates, heirs, executors, devisees, administrators, officers, directors, stockholders, partners, agents, attorneys, advisors, auditors, accountants, contractors, servants, employees, representatives, insurers, and assignees. Notwithstanding the foregoing, Released Parties does not include Defendants formerly or currently named in the Action other than the Settling Defendants. The Released Parties who are not Settling Defendants are intended to be third-party beneficiaries of this Settlement Agreement with respect to the release of the Released Claims. Other Defendants are not Released Parties.

25. “Releasing Parties” means jointly and severally, individually and collectively, Plaintiffs and all Settlement Class Members, on behalf of themselves and any person or entity claiming by or through them as, including without limitation, their respective predecessors; successors; assigns; and any and all past, present, and future parents, owners, subsidiaries, divisions, departments, affiliates, heirs, executors, devisees, administrators, officers, directors, stockholders, partners, agents, attorneys, advisors, auditors, accountants, contractors, servants, employees, representatives, insurers, and assignees.

26. “Severed Claims” or “Japanese Claims” means (a) the 2002 Japanese Fuel Surcharge Agreement (FAC ¶¶ 318-334), (b) the 2004 Japanese U.S. Customs Air AMS

Agreement originating in Japan (“Japanese Air AMS”) (FAC ¶¶ 360-376), (c) the 2006 Security and Explosives Examination Surcharges Agreement (FAC ¶¶ 484-494), and (d) the Japanese Regional Conspiracy, incorporating the foregoing three surcharge conspiracies (FAC ¶¶ 584-591).

27. “Settlement Class Counsel” or “Class Counsel” means, collectively, the law firms of Lovell Stewart Halebian Jacobson LLP; Lockridge Grindal Nauen PLLP; Cotchett, Pitre & McCarthy, LLP; and Gustafson Gluek PLLC.

28. “Settlement Class Member” means each member of the Settlement Class that does not timely and properly elect to be excluded from the Settlement Class.

29. “Settling Defendants” means Defendants Deutsche Post AG; Danzas Corporation (d/b/a DHL Global Forwarding); DHL Express (USA) Inc.; DHL Global Forwarding Japan K.K.; DHL Japan Inc.; Exel Global Logistics, Inc.; Air Express International USA, Inc.; and their subsidiaries, affiliates and predecessors.

30. “Settling Defendants’ Counsel” means Cleary Gottlieb Steen & Hamilton LLP.

31. “Settlement Fund” means the separate Escrow Account for the settlement contemplated by this Settlement Agreement to hold payments made pursuant to this Settlement Agreement, as described in Section II(A) below.

32. “Termination Provision” refers to the provisions at Section II(E)(12).

II. SETTLEMENT

A. Performance By Settling Defendants

1. Settlement Payment. Within fourteen calendar days of the Date of Preliminary Approval of this Settlement Agreement, Settling Defendants or their designee shall wire transfer pursuant to instructions from Settlement Class Counsel \$53 million (\$53,000,000.00) in United States Dollars to the Escrow Agent.

2. Cooperation: This Settlement Agreement shall not affect Settling Defendants’ discovery, cooperation, or other litigation obligations, if any, related to the Severed

Claims. The Settling Defendants shall provide reasonable good faith cooperation with Plaintiffs and Settlement Class Counsel in accordance with the terms and provisions of this Agreement regarding the Non-Severed Claims. Such cooperation shall be as follows:

a. Declarations or Affidavits. Settling Defendants agree to use reasonable efforts to provide, at Settlement Class Counsel's request, up to five sworn declarations or affidavits of Settling Defendants' current or former employees on topics relating to Plaintiffs' Claims in the Action. Settlement Class Counsel agree to use reasonable efforts to minimize the burden to Settling Defendants of providing such declarations or affidavits. The failure of any former employee to provide a sworn declaration or affidavit shall not affect in any way the release of the Settling Defendants provided that the Settling Defendants have acted reasonably. In no event shall Settling Defendants be required to provide a declaration or affidavit from any individual who has been deposed in the Action.

b. Authentication of Documents. In addition to the provisions of Section II(A)(2)(a) above, Settling Defendants agree to use reasonable efforts to provide written declarations pursuant to Federal Rules of Evidence 902(11) and (12) with respect to Documents produced by Settling Defendants. Settlement Class Counsel agree to use reasonable efforts to minimize the burden to Settling Defendants of any such authentication testimony. In the event that such declarations are not sufficient to secure the admission of the Documents, the Settling Defendants agree to produce at trial and/or deposition, to the extent reasonably necessary, one or more representatives of their choice qualified to testify as to the facts related to authentication of any of Settling Defendants' Documents produced at any time pursuant to this Settlement Agreement or in the course of the litigation of the Actions.

c. Transactional Data. Settling Defendants have previously produced transactional data to Plaintiffs. Settling Defendants will answer Settlement Class Counsels' reasonable inquiries regarding Settling Defendants' previously produced transactional data and, if necessary, will produce any transactional data that should have previously been produced that for whatever reason was not produced.

d. Testimony at Trial. Settling Defendants agree to make reasonable efforts to make available at Settling Defendants' expense and upon reasonable notice, for testimony at trial in the Actions: up to ten current or former employees of Settling Defendants whom Settlement Class Counsel, in consultation with Settling Defendants' Counsel, reasonably believe have knowledge regarding Plaintiffs' Claims alleged in the Actions. To the extent that Settlement Class Counsel desire the testimony of former employees of Settling Defendants or other Released Parties, Settling Defendants shall use reasonable efforts to secure the appearance of such former employees. The failure of any former employee to make himself or herself available for testimony at trial shall not affect in any way the release of the Released Parties, provided that the Settling Defendants have used reasonable efforts.

e. Attorney Client Privilege, Work Product Doctrine. Notwithstanding any other provision in this Settlement Agreement, Settling Defendants may assert where applicable the work product doctrine and the attorney client privilege, the joint defense privilege, and the common interest privilege with respect to any Cooperation Materials requested under this Settlement Agreement. If any Documents protected by the attorney client privilege, the work product doctrine, the joint defense privilege, and/or the common interest privilege are accidentally or inadvertently produced, these Documents shall be promptly returned to Settling Defendants' Counsel, and their production shall in no way be construed to have waived in any manner any privilege or protection attached to such Documents. No Document shall be withheld under claim of privilege or work product if produced to or made available to the U.S. Department of Justice, other than privileged Documents inadvertently produced thereto.

f. Confidentiality. All Cooperation Materials provided to Settlement Class Counsel pursuant to this Section II(A)(2) shall be treated as "Highly Confidential" under the protective order entered on July 19, 2011 in the Action. Settlement Class Counsel shall use Cooperation Materials solely for purposes of prosecuting Plaintiffs' Claims in the Actions against non-settling defendants, and for no other purpose. Other than as provided herein, Settlement Class Counsel shall not disclose such Cooperation Materials to any

Person (other than experts retained by Plaintiffs or Settlement Counsel in connection with the Action), except pursuant to legal compulsion. In the event disclosure of Cooperation Materials is sought or the confidentiality of Cooperation Materials is challenged by any Person, Settlement Counsel agree to use their best efforts to assist Settling Defendants in opposing disclosure of such Cooperation Materials. The confidentiality requirements of this Section shall continue to bind Plaintiffs and Settlement Class Counsel in the event that this Agreement is rescinded, terminated, not approved by the Court, or otherwise no longer in effect. Within thirty days of the Actions having been finally resolved as set forth in Sections II(E)(8) and (11), or in the event that this Agreement is rescinded, terminated, not approved by the Court, or is otherwise no longer in effect, at their election Settlement Class Counsel either shall return or destroy (with a written certification of destruction) such Cooperation Materials. Nothing in this Agreement shall be construed to require Settling Defendants to produce Cooperation Materials to the extent such production is prohibited by any law or legal requirement.

g. Ongoing Duty to Cooperate. Settling Defendants' obligations to cooperate pursuant to Section II(A)(2) of this Agreement shall not be affected by the release set forth in Section II(B) of this Agreement. Unless this Agreement is not approved by the Court or terminates pursuant to Section II(E)(12) or otherwise, Settling Defendants' obligations to cooperate under this Settlement Agreement as provided in Section II(A)(2) shall continue until final judgment has been rendered in the Actions against all Defendants, and the time to appeal or to seek permission to appeal from the Court's entry of final judgment has expired or, if appealed, final judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

B. Release of Claims.

1. Release. Upon the occurrence of the Date of Final Approval, and in consideration of the valuable consideration set forth in this Agreement, Plaintiffs and each Settlement Class Member shall be deemed to, and by operation of the Order and Final Judgment shall have, hereby fully, finally, and forever released, relinquished, and discharged Settling

Defendants of and from any and all Released Claims that any Settlement Class Member ever had, now has, or may have in the future.

2. Covenant Not to Sue. Plaintiffs and each Settlement Class Member covenant not to sue the Settling Defendants for any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type arising out of the Released Claims, including, without limitation, seeking to recover damages relating to the surcharges at issue in respect of any of the Released Claims. This Paragraph shall not apply to any action to enforce this Settlement Agreement.

3. Full Release. The Parties to this Agreement expressly agree and confirm that the Released Claims as set forth in Section I(B)(23) and the provisions of Section II(B), constitute a full and final release of the Settling Defendants by Plaintiffs and each Settlement Class Member of the Released Claims.

4. Waiver. Upon the Date of Final Approval, Plaintiffs and each Settlement Class Member shall be deemed to have, and by operation of the Order and Final Judgment shall have, waived the provisions, rights, and benefits of Section 1542 of the California Civil Code and Section 20-7-11 of the South Dakota Codified Laws, each of which provides:

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

Plaintiffs and each Settlement Class Member shall further be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived all similar provisions, statutes, regulations, rules, or principles of law or equity of any other state or applicable jurisdiction, or principle of common law. In connection with the waiver and relinquishment set forth in this Paragraph, Plaintiffs and each Settlement Class Member acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Released Claims, but that it is

their intention to release fully, finally, and forever all Released Claims, and, upon the Date of Final Approval, shall be deemed to have, and by operation of the Order and Final Judgment, shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, notwithstanding the discovery or existence of any such additional or different facts. Plaintiffs and each Settlement Class Member intend and, by operation of the Order and Final Judgment, shall be deemed to have acknowledged that the foregoing waiver was separately bargained for and a key element of the Settlement of which this waiver and release is a part.

C. Settlement Fund Administration. The Settlement Fund shall be administered pursuant to the provisions of this Settlement Agreement and subject to the Court's continuing supervision and control, until the funds in the Settlement Fund are fully distributed or returned to Settling Defendants as follows:

1. The Settlement Fund shall be established as an Escrow Account at a bank located in the United States designated by Settlement Class Counsel and administered by an Escrow Agent designated by Settlement Class Counsel. Counsel for the parties agree to cooperate in good faith to form an appropriate escrow agreement in conformance with this Agreement.

2. Neither the Plaintiffs, nor Class Counsel shall have any responsibility, financial obligation, or liability for any fees, costs or expenses related to providing notice to the Class or for any fees obtaining approval of the settlement, or administering the Settlement. Settlement Class Counsel may, without prior order of the Court, withdraw from the Settlement Fund up to \$3,500,000.00 in United States Dollars to pay the costs of notice to the class in this Action, including costs for notice and for preliminary and final approval of this settlement, and including for the services of experts on class publication or other issues relating to notice, preliminary approval or final approval, and also to pay interim account escrow fees. In the event

that Court-ordered notice and administration costs exceed \$3,500,000.00, the Plaintiffs and Class Counsel may apply to the Court to pay such notice and administration costs from the Settlement Fund. The costs of notice shall be non-refundable in the event that, for any reason, the Settlement is not finally approved.

3. The Escrow Agent shall, to the extent practicable, invest the funds deposited in the Settlement Fund in discrete and identifiable instruments backed by the full faith and credit of the United States Government, or fully insured by the United States Government or any agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then current market rates. Any cash portion of the Settlement Fund not invested in instruments of the type described in the first sentence of this Paragraph shall be maintained by the Escrow Agent, and not commingled with any other funds or monies, in a federally insured bank account. Subsequent to payment into the Settlement Fund pursuant to Section II(A)(1), neither the Settling Defendants nor Settling Defendants' Counsel shall bear any responsibility or risk related to the Settlement Fund or the Net Settlement Fund.

4. The Parties agree that the Settlement Fund and the Net Settlement Fund are each intended to be a "Qualified Settlement Fund" within the meaning of Treasury Regulation § 1.468B-1 and that the Escrow Agent, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing tax returns for the Escrow Account and paying from the Escrow Account any Taxes, as defined below, owed with respect to the Escrow Account. Neither the Settling Defendants nor the Settling Defendants' Counsel shall have any other liability or responsibility of any sort for filing any tax returns or paying any Taxes with respect to the Escrow Account.

5. All: (i) taxes on the income of the Settlement Fund ("Taxes"), and (ii) expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants) shall timely be paid by the Escrow Agent out of the Settlement Fund. The Settlement Class Members shall be responsible for paying any and all federal, state, and local income taxes due on any distribution

made to them pursuant to the Settlement provided herein.

6. After the Date of Final Approval, the Net Settlement Fund shall be disbursed in accordance with a plan of distribution approved by the Court. The Settlement Class Members shall look solely to the Net Settlement Fund for settlement and satisfaction of any and all Released Claims.

D. No Reversion

1. Except as may otherwise be provided in Section II(E)(12) of this Agreement or by other written agreement among the Settling Defendants and the Plaintiffs, Settling Defendants shall have no rights to reversion in the event that Class members request exclusion or opt out of the Settlement Class, and neither these requests for exclusion nor Opt-Out Claims shall have any effect on this Settlement Agreement.

E. Approval of Settlement Agreement and Dismissal of Claims.

1. **Cooperation.** Plaintiffs and Settling Defendants shall use their best efforts to effectuate this Settlement Agreement, including cooperating in promptly seeking the Court's approval of the Settlement Agreement, the giving of appropriate class notice under Federal Rules of Civil Procedure 23(c) and (e), securing certification of the Settlement Class, and the prompt, complete, and final dismissal with prejudice of the Actions as to the Settling Defendants only, as follows:

2. **Settlement Class Certification.** Plaintiffs shall seek, and Settling Defendants shall not object to, appointment of Settlement Class Counsel as lead counsel for purposes of this Settlement, and certification in the Actions of a class for settlement purposes only, defined as follows:

All persons (excluding governmental entities, Defendants, their respective parents, subsidiaries and affiliates) who directly purchased U.S. Freight Forwarding Services

(a) for shipments within, to, or from the United States, or

(b) purchased or sold in the United States regardless of the location of shipment;

from any of the Defendants or any subsidiary or affiliate thereof, at any time during the period from January 1, 2001 to January 4, 2011.

3. Preliminary Approval. Plaintiffs shall submit to the District Court a motion, to be joined by Settling Defendants, requesting entry of an order preliminarily approving the settlement substantially in the form of Exhibit A, attached hereto, to the Settlement Class (“Preliminary Order”). The Preliminary Order shall provide that, *inter alia*:

- a.** the settlement proposed in the Settlement Agreement has been negotiated at arm’s length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class;
- b.** Co-Lead Counsel for Plaintiffs shall submit for the Court’s approval a Proposed Notice to the Class, including a schedule for notice and final approval, a proposed Plan of Notice that includes the proposed manner of Notice, and a proposed Administrator for Notice and Claims;
- c.** the Settlement Class defined herein be certified, designating Class Representatives and Settlement Class Counsel as defined herein, on the condition that the certification and designations shall be automatically vacated in the event that the Settlement Agreement is terminated pursuant to its terms or is not approved by the Court or any appellate court;
- d.** Settling Defendants will provide to the appropriate state officials and the appropriate federal official the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b) (“CAFA”);
- e.** A hearing on the settlement proposed in this Settlement Agreement shall be held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court (the “Fairness Hearing”); and
- f.** in aid of the Court’s jurisdiction to implement and enforce the proposed settlement, Plaintiffs and all Settlement Class Members shall be preliminarily enjoined and barred from instituting, commencing, or prosecuting any action or other proceeding asserting any of the Claims released in Section II(B) against any Released Party, either directly, individually, representatively, derivatively, or in any other capacity, by whatever means, in any local, state, or federal court, or in any agency or other authority or

arbitral or other forum wherever located.

4. Class Notice. All materials and information provided to Settlement Class Counsel by Settling Defendants with respect to Class Members shall be treated as “Highly Confidential” under the terms of the Protective Order approved by the Court, and any Person involved in Class Notice shall agree in writing to comply with the terms of the Protective Order before receiving Class Member or Class Notice information, and shall agree in writing to be subject to the jurisdiction of the Court for any violation of any such Order.

5. The Class Notice shall provide for a right of exclusion, as set forth in Section II(E)(6), and shall provide that a request for exclusion must be postmarked (or mailed by overnight delivery) no later than forty-five days prior to the date set for the Fairness Hearing by the Court. The Class Notice shall also provide for a right to object, as set forth in Section II(E)(7). Individual notice of the Settlement shall be mailed or emailed to Persons that are identified by Settling Defendants and/or any other named Defendant, or will be provided to class members as otherwise ordered by the Court. Notice to other members of the Settlement Class shall be by publication or other means deemed necessary if approved or required by the Court. Within ten days of filing of this Settlement Agreement in court, Settling Defendants will provide to the appropriate state officials and the appropriate federal official the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b) (“CAFA”).

6. Right of Exclusion.

a. Any Person seeking exclusion from the Settlement Class must file a timely written request for exclusion as provided in this Paragraph. Any Person that files such a request shall be excluded from the Settlement Class, and shall have no rights with respect to this Settlement. A request for exclusion must be in writing and: (a) state the name, address, and

phone number of the Settlement Class Member seeking exclusion; (b) all trade names or business names and addresses that the Settlement Class Member has used, as well as any parents, subsidiaries, or affiliates that have purchased Freight Forwarding Services; (c) the name of the Action (*Precision Associates, Inc., et al. v. Panalpina World Transport (Holdings) Ltd., et al.*, No. 08-CV-0042 (JG) (VVP) (E.D.N.Y.)); and (d) a signed statement that “I/we hereby request that I/we be excluded from the proposed settlement of the Non-Severed Claims with DHL in *Precision Associates, Inc., et al. v. Panalpina World Transport (Holdings) Ltd., et al.*, No. 08-CV-0042 (JG) (VVP) (E.D.N.Y.).” Further, each Person seeking exclusion from the Settlement Class shall identify all Freight Forwarding Services and an estimate of the total amount of direct purchases (by dollar volume) of Freight Forwarding Services (a) for shipments within, to, or from the United States, or (b) purchased or sold in the United States regardless of the location of shipment; by such person from all Defendants during the Class Period. The request must be mailed to Settlement Class Counsel at the address provided in the Class Notice and postmarked (or mailed by overnight delivery) no later than forty-five days prior to the date set for the Fairness Hearing or any other date set by the Court. A request for exclusion that does not include all of the foregoing information, that does not contain the proper signature, that is sent to an address other than the one designated in the Class Notice, or that is not sent within the time specified, shall be invalid, and the Person(s) serving such an invalid request shall be Settlement Class Member(s) and shall be bound by this Settlement Agreement. Settlement Class Counsel shall promptly forward complete copies of all requests for exclusion, as they are received, to Settling Defendants’ Counsel.

b. To the extent permitted by the Court, the Parties agree that any Person that has properly excluded itself from the Settlement Class (“Opt-Out Class Member”)

shall be permitted to apply to the Court for good cause shown to re-enter the Settlement Class at the time of distribution of the Settlement Fund, with the same rights and obligations under this Settlement Agreement as the Settlement Class Members. Settlement Class Counsel shall, within fourteen (14) days after the Court-ordered deadline for timely requests for exclusion from the Class, cause to be provided to Settling Defendants' Counsel a list of those Class Members who have timely excluded themselves from the Class.

7. Right to Object. Any Person who has not requested exclusion from the Settlement Class and who objects to the settlement may appear in person or through counsel, at that Person's own expense, at the Fairness Hearing to present any evidence or argument that the Court deems proper and relevant. However, no such Person shall be heard, and no papers, briefs, pleadings, or other Documents submitted by any such Person shall be received and considered by the Court, unless such Person properly submits a written objection that includes: (a) a notice of intention to appear; (b) proof of membership in the Settlement Class; and (c) the specific grounds for the objection and any reasons why such Person desires to appear and be heard, as well as all Documents or writings that such Person desires the Court to consider. Such a written objection must be both filed with the Court no later than thirty (30) days prior to the date set for the Fairness Hearing and mailed to Settlement Class Counsel and Settling Defendants' Counsel at the addresses provided in the Class Notice and postmarked (or mailed by overnight delivery) no later than thirty (30) days prior to the date of the Fairness Hearing. Any Person that fails to object in the manner prescribed herein shall be deemed to have waived its objections and will forever be barred from making any such objections in the Actions or in any other action or proceeding, unless otherwise excused for good cause shown as determined by the Court.

8. Final Approval. If this Settlement Agreement is preliminarily approved by the Court, Plaintiffs and Settling Defendants shall jointly seek entry of an Order and Final Judgment that, *inter alia*:

- a.** finally approves this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms and conditions;
- b.** determines that the Class Notice constituted, under the circumstances, the most effective and practicable notice of this Settlement Agreement and the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;
- c.** reconfirms the appointment of Class Representatives and Settlement Class Counsel as defined herein;
- d.** directs that, as to the Settling Defendants, any and all then currently pending class action lawsuits directly related to the subject matter of the action captioned *Precision Associates, Inc., et al. v. Panalpina World Transport (Holding) Ltd., et al.*, No.08-CV-0042 (JG) (VVP) (E.D.N.Y.), be dismissed with prejudice and, except as provided for in this Settlement Agreement, without costs;
- e.** orders that the Releasing Parties are permanently enjoined and barred from instituting, commencing, or prosecuting any action or other proceeding asserting any of the Released Claims released in Section II(B) against any Released Party, either directly, individually, representatively, derivatively, or in any other capacity, by whatever means, in any local, state, or federal court, or in any agency or other authority or arbitral or other forum wherever located;
- f.** retains exclusive jurisdiction over the Settlement and this Settlement Agreement, including the administration and consummation of this Settlement; and
- g.** determines under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directs that the judgment of dismissal as to the Released Parties shall be final and entered forthwith.

9. Cost of Class Notice. The costs of providing Class Notice to Settlement Class Members shall be paid by the Escrow Agent from the Settlement Fund pursuant to Section II(C)(2). With the object of reducing the costs of notice, Settlement Class Counsel will use their reasonable best efforts to coordinate the provision of Class Notice with the provision of notice for any other settlements that have or may be reached.

10. Class Counsel Fees and Expenses; No Other Costs.

a. Except as otherwise expressly provided in this Settlement Agreement, Settling Defendants shall have no responsibility for any costs, including Settlement Class Counsel's attorneys' fees, costs and expenses or the fees, costs, or expenses of any Plaintiff's or Settlement Class Member's respective attorneys, experts, advisors, or representatives, provided, however, that with respect to the Actions, including this Settlement Agreement, Settling Defendants shall bear their own costs and attorneys' fees.

b. Settlement Class Counsel may seek, after proper notice to the Settlement Class and opportunity to object, a court order awarding attorneys' fees and reimbursement of their expenses from the Settlement Fund. Any such award or reimbursement shall not be withdrawn from the Settlement Fund until after the Settlement becomes final as set forth in Section II(E)(11).

c. The procedure for and the allowance or disallowance by the Court of any applications by Settlement Class Counsel for attorneys' fees and expenses, or the expenses of Plaintiffs, to be paid out of the Settlement Fund, are not part of or a condition to the settlement set forth herein, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement set forth in this Agreement, and any order or proceeding relating to an application for attorneys' fees or expenses shall not operate to terminate or cancel this Agreement or the releases set forth herein, or affect or delay the finality of the judgment approving this settlement.

d. Settling Defendants shall have no role in or responsibility for the allocation among Plaintiffs' counsel and/or any other Person who may assert some claim thereto,

of any attorneys' fee and expense award that the Court may make.

e. The named Plaintiffs may seek reimbursement of their costs and compensation for their time donated in this action from the Settlement Fund. Any such award or reimbursement shall not be withdrawn from the Settlement Fund until after the Settlement becomes final as set forth in Section II(E)(11).

11. When Settlement Becomes Final. The settlement contemplated by this Settlement Agreement shall become final on the date that: (a) the Court has entered the Order and Final Judgment, approving this Settlement Agreement, and all of its material terms and conditions, in accordance with Section II(E)(8), above, under Rule 23(e) of the Federal Rules of Civil Procedure and dismissing the Released Claims as against the Settling Defendants with prejudice as to all Settlement Class Members and without costs; and (b) the time for appeal or to seek permission to appeal from the Court's approval of this Settlement Agreement and entry of the order of Final Judgment as described in Section II(E)(8) above, has expired or, if appealed, approval of this Settlement Agreement and the Order and Final Judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review. The Parties agree that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times.

12. Termination and Rescission.

a. **Rejection or Alteration of Settlement Terms.** If the Court declines to grant either preliminary or final approval to this Settlement Agreement or any material part hereof (as set forth in Sections II(E)(3) or (E)(8) above, respectively), or if the Court approves this Settlement Agreement in a materially modified form, or if, after the Court's approval, such approval is materially modified or set aside on appeal, or if the Court does not enter the Final Order and Judgment, or if the Court enters the Final Order and Judgment and appellate review is sought and, on such review, such Final Order and Judgment is not affirmed (collectively "Triggering Events"); then Settling Defendants and Plaintiffs shall each, in their

respective sole discretion, have the option to rescind this Settlement Agreement in its entirety by providing written notice of their election to do so (“Termination Notice”) to each other within thirty days of such Triggering Event. For purposes of this Section II(E)(12), a material modification includes, but is not limited to, the scope of the Released Claims or the settlement payments pursuant to Section II(A)(1).

b. Option to Terminate Based on Exclusions. Settling Defendants shall have the option to terminate this Settlement Agreement, and thus prevent the entry of the Order and Final Judgment, in accordance with the provisions set forth in a separate Supplemental Agreement, dated December 17, 2015, the provisions of which are incorporated by reference as though fully set forth herein, if the criteria specified in the Supplemental Agreement are met. Absent an order or other direction from the Court, the Supplemental Agreement will not be filed with the Court unless and until either: (1) a dispute among the Parties concerning its interpretation or application arises, and in that event it shall be, to the greatest extent allowable by law and/or the Court, filed and maintained with the Court under seal; or (ii) the Court otherwise orders the Supplemental Agreement disclosed. In the event of termination of this Settlement Agreement, neither Plaintiffs nor their counsel shall have any responsibility for the costs of Class Notice nor to pay or reimburse Settling Defendants for any sums expended for the costs of Class Notice or otherwise expended in accordance with Court orders.

c. Termination of Settlement. In the event this Settlement Agreement is rescinded or terminated for any reason then: (i) within ten business days, the Settlement Fund (including accrued interest), less expenses and costs that have been disbursed pursuant to Sections II(C)(2) and II(C)(5), shall be refunded by the Escrow Agent to the Settling Defendants pursuant to written instructions from Settling Defendants’ Counsel to Settlement Class Counsel; and (ii) the Parties shall be deemed to have reverted to their respective status in the Actions as of October 14, 2015, and without waiver of any positions asserted in the Actions as of that date, which shall then resume proceedings in the District Court, that Court having retained jurisdiction over the Settlement and related matters and, except as otherwise expressly

provided in this Settlement Agreement, the Parties shall proceed in all respects as if this Settlement Agreement had not been executed and mutually will use reasonable efforts to obtain a new schedule from the Court reflecting this Section.

13. No Admission.

a. Nothing in this Settlement Agreement constitutes an admission by Settling Defendants as to the merits of the allegations made in the Actions, an admission by Plaintiffs of the validity of any defenses that could be asserted by Settling Defendants, or the appropriateness of certification of any class other than the Settlement Class under Rule 23 of the Federal Rules of Civil Procedure. This Settlement Agreement is without prejudice to the rights of Settling Defendants to: (i) challenge the Court's class certification in the Actions should the Settlement Agreement not be approved or implemented for any reason; and/or (ii) oppose any certification or request for certification in any other proposed or certified class action.

b. This Settlement Agreement, and any of its terms, and any agreement or order relating thereto, shall not be deemed to be, or offered by any of the Settling Parties to be received in any civil, criminal, administrative, or other proceeding, or utilized in any manner whatsoever as, a presumption, a concession, or an admission of any fault, wrongdoing, or liability whatsoever on the part of any of the Settling Defendants or other Released Parties; provided, however, that nothing contained in this Section II(E)(13) shall prevent this Settlement Agreement (or any agreement or order relating thereto) from being used, offered, or received in evidence in any proceeding to approve, enforce, or otherwise effectuate the Settlement (or any agreement or order relating thereto) or the Order and Final Judgment, or in which the reasonableness, fairness, or good faith of any Party participating in the Settlement (or any agreement or order relating thereto) is in issue, or to enforce or effectuate provisions of this Settlement Agreement or the Order and Final Judgment. This Settlement Agreement may, however, be filed and used in other proceedings, where relevant, to demonstrate the fact of its existence and of this Settlement, including but not limited to Settling Defendants filing the Settlement Agreement and/or the Order and Final Judgment in any other action that may be

brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, waiver, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

III. MISCELLANEOUS

A. Entire Agreement. This Settlement Agreement shall constitute the entire agreement between Plaintiffs and Settling Defendants pertaining to the Settlement of the Non-Severed Claims against Settling Defendants and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Settling Defendants in connection therewith. All terms of the Settlement Agreement are contractual and not mere recitals.

B. Inurement. The terms of the Settlement Agreement are and shall be binding upon, to the fullest extent possible, each of the Releasing Parties and the Released Parties, and upon all other Persons claiming any interest in the subject matter hereto through any of the Parties, Releasing Parties, or Released Parties, including any Settlement Class Members.

C. Modification. This Settlement Agreement may be modified or amended only by a writing executed by Plaintiffs and Settling Defendants, subject (if after preliminary or final approval) to approval by the Court. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

D. Drafted Mutually. For the purpose of construing or interpreting this Settlement Agreement, Plaintiffs and Settling Defendants shall be deemed to have drafted it equally, and it shall not be construed strictly for or against any party.

E. Governing Law. All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of New York without regard to its choice-of-law or conflict-of-law principles.

F. Jurisdiction. This Settlement Agreement is subject to the continuing and exclusive jurisdiction of the United States District Court for the Eastern District of New York, for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action,

proceeding, or dispute relating to the release provisions herein. If for any reason this Settlement is rescinded, terminated or fails to become effective, then, in such event, nothing in this Settlement Agreement or with regard to any conduct of Settling Defendants or Settling Defendants' Counsel pursuant to any obligations Settling Defendants have pursuant to the Agreement shall constitute or are intended to be construed as any agreement to personal jurisdiction (general or specific) or subject matter jurisdiction so as to confer the jurisdiction of the District Court over Settling Defendants, nor shall it constitute any waiver of any defenses based on personal or subject matter jurisdiction.

G. Counterparts. This Settlement Agreement may be executed in counterparts by Plaintiffs and Settling Defendants, each of which shall be deemed an original and all of which taken together shall constitute the same Settlement Agreement. A facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

H. Represented by Counsel. Plaintiffs and Settling Defendants acknowledge that each have been represented by counsel, and have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so and are not relying on any representation or warranty by the other party other than as set forth herein. Therefore, Plaintiffs and Settling Defendants and their respective counsel agree that they will not seek to set aside any part of the Settlement Agreement on the grounds of mistake.

I. Authorization. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement, subject to Court approval; and the undersigned Settlement Class Counsel represent that they are authorized to execute this Settlement Agreement on behalf of Plaintiffs.

J. Privilege. Nothing in this Settlement Agreement, Settlement, or the negotiations or proceedings relating to the foregoing is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, the accountants' privilege, the attorney-client privilege, the joint defense privilege, or work product immunity.

K. Notice. Any notice required pursuant to or in connection with this Settlement

shall be in writing and shall be given by: (1) hand delivery; (2) registered or certified mail, return receipt requested, postage prepaid; or (3) Federal Express or similar overnight courier, addressed, in the case of notice to any Plaintiff or Settlement Class Member, to Settlement Class Counsel at their addresses set forth below, and, in the case of notice to Settling Defendant, to its representatives at the address set forth below, or such other address as Settling Defendants or Settlement Class Counsel may designate, from time to time, by giving notice to all Parties in the manner described in this Paragraph.

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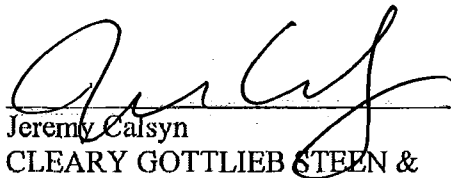
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2000 Pennsylvania Avenue, NW
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Telephone: (202) 974-1500
Fax: (202) 974-1999

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the Effective Date.

Dated: December 18, 2015



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Counsel for DHL

Dated:



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IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the Effective Date.

Dated:

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*Plaintiffs' Interim Co-Lead Counsel and
Settlement Class Counsel*

Facsimile: (612) 339-0981

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Dated:

12/18/15



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*Plaintiffs' Interim Co-Lead Counsel and
Settlement Class Counsel*

Exhibit A

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

PRECISION ASSOCIATES, INC., *et al.*, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

PANALPINA WORLD TRANSPORT
(HOLDING) LTD., *et al.*,

Defendants.

Case No.: 08-CV-00042 (JG) (VVP)

**[PROPOSED] ORDER PRELIMINARILY APPROVING PROPOSED SETTLEMENT
WITH DHL; AND CERTIFYING SETTLEMENT CLASS**

THIS CAUSE came before the Court on Plaintiffs' Motion for Preliminary Approval of Settlement. Plaintiffs have entered into a Settlement Agreement with Defendants Deutsche Post AG; Danzas Corporation (d/b/a DHL Global Forwarding); DHL Express (USA) Inc.; DHL Global Forwarding Japan K.K.; DHL Japan Inc.; Exel Global Logistics, Inc.; Air Express International USA, Inc.; and their subsidiaries, affiliates and predecessors (all defendants collectively referred to herein as "DHL" or "Settling Defendants"). The Court, having reviewed

the Motion, its accompanying memorandum and the exhibits thereto, the Settlement Agreement,¹ and the file, hereby:

ORDERS AND ADJUDGES:

Preliminary Approval of Settlement Agreement

1. This is a **partial** settlement between Settling Defendants and Plaintiffs resolving a subset of claims, the Non-Severed Claims, brought by Plaintiffs against Settling Defendants in this Action. Plaintiffs and Settling Defendants have previously settled the remainder of Plaintiffs' claims in this Action against Settling Defendants in a separate agreement (the "Japanese Claim Settlement"). The Japanese Claim Settlement and the Parties' Agreement regarding the Non-Severed Claims will have no effect on one another.²

2. This Court has jurisdiction over this action and each of the parties to the Settlement Agreement. Upon review of the record, the Court finds that the proposed Settlement Agreement, which was arrived at by arm's-length negotiations by highly experienced counsel, falls within the range of possible approval and is hereby preliminarily approved, subject to further consideration at the Court's Fairness Hearing. The Court preliminarily finds that the proposed Settlement Agreement has been negotiated at arm's length and preliminarily finds the proposed Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class. The Court also preliminarily finds that the Settlement encompassed by the Settlement

¹ Except as otherwise specified in this Order, the terms used in this Order shall have the same meaning as set forth in the Settlement Agreement executed by the settling parties and filed with this Court.

² As noted in the Settlement Agreement, "Non-Severed Claims" means all claims in this Action, except the Severed Claims, and specifically includes (i) the 2001 Security Surcharge Agreement (FAC ¶¶ 300-317), (ii) the 2002 New Export System ("NES") Fee Agreement (FAC ¶¶ 335-359), (iii) the 2005 Currency Adjustment Factor ("CAF") Surcharge Agreement (FAC ¶¶ 377-444), (iv) the Peak Season Rate Increase Agreements (FAC ¶¶ 445-483), (v) the 2004 European U.S. Customs Air AMS Charge Agreement (FAC ¶¶ 495-540), (vi) the U.S. Customs Ocean AMS Charge Agreement (FAC ¶¶ 541-559), and (vii) the Global Agreement (FAC ¶¶ 560-583). As further noted in the Settlement Agreement, "Severed Claims" means (i) the 2002 Japanese Fuel Surcharge Agreement (FAC ¶¶ 318-334), (ii) the 2004 Japanese U.S. Customs Air AMS Agreement originating in Japan ("Japanese Air AMS") (FAC ¶¶ 360-376), (iii) the 2006 Security and Explosives Examination Surcharges Agreement (FAC ¶¶ 484-494), and (iv) the Japanese Regional Conspiracy, incorporating the foregoing three surcharge conspiracies (FAC ¶¶ 584-591).

Agreement raises no obvious reasons to doubt its fairness, and raises a reasonable basis for presuming that the Settlement and its terms satisfy the requirements of Federal Rules of Civil Procedure 23(c)(2) and 23(e) and due process so that Notice of the Settlement should be given.

Class Certification

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and in light of the proposed Settlement, the Court hereby finds that the prerequisites for a class action have been met and certifies the following class for settlement purposes (the “Settlement Class”):

All persons (excluding governmental entities, Defendants, their respective parents, subsidiaries and affiliates) who directly purchased Freight Forwarding Services

(a) for shipments within, to, or from the United States, or

(b) purchased or sold in the United States regardless of the location of shipment;

from any of the Defendants or any subsidiary or affiliate thereof, at any time during the period from January 1, 2001 to January 4, 2011.

4. For settlement purposes, the Court finds that the certification of the Settlement Class is warranted in light of the Settlement Agreement because:

(a) The Settlement Class, which has well over 1,000 members, is sufficiently numerous to satisfy the numerosity requirement;

(b) There are sufficient legal and factual issues common to the Settlement Class to meet the commonality requirement;

(c) Plaintiffs’ and the Settlement Class’ claims arise out of the same alleged illegal anticompetitive conduct and are based on the same legal theories, and therefore satisfy the typicality requirement;

(d) Plaintiffs Precision Associates, Inc., JCK Industries, Inc., RBX Industries, Inc., Mary Elle Fashions, Inc., Zeta Pharmaceuticals, LLC., Kraft Chemical Company, Printing Technology, Inc., David Howell Product Design Inc., Innovation 714 Inc., Mika Overseas Corporation, and NORMA Pennsylvania Inc. (collectively, “Plaintiffs”) have retained experienced counsel and do not have interests antagonistic to the class, and thus these Plaintiffs will fairly and adequately represent the Settlement Class; and

(e) Common issues, including those noted above, predominate over any individual issues affecting the members of the Settlement Class.

(f) Settlement of this Action on a class basis is superior to other means of adjudicating this matter.

5. Plaintiffs will serve as Class Representatives on behalf of the Settlement Class.

Class Notice and Fairness Hearing

6. Co-Lead Counsel for Plaintiffs shall submit for the Court’s approval a Proposed Notice to the Class, including a proposed schedule for Class Members to opt out or object to the proposed Settlement, a proposed Plan of Notice that includes the proposed manner of Notice, a proposed Administrator for Notice and Claims and a proposed date for the Court’s Fairness Hearing to determine whether the Settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.

Class Counsel

7. The Court confirms the appointment of class counsel for purposes of the Settlement Class as the law firms of Lovell Stewart Halebian Jacobson LLP, Lockridge Grindal Nauen PLLP, Cotchett, Pitre & McCarthy, LLP, and Gustafson Gluek PLLC.

Other Provisions

8. Terms used in this Order that are defined in the Settlement Agreement are, unless otherwise defined herein, used in this Order as defined in the Settlement Agreement.

9. In aid of the Court's jurisdiction to implement and enforce the proposed Settlement, as of the date of entry of this Order, Plaintiffs and all members of the Settlement Class shall be preliminarily enjoined from commencing or prosecuting any action or other proceeding against the Settling Defendants asserting any of the Non-Severed Claims released in Section II(B) of the Settlement Agreement pending final approval of the Settlement Agreement or until such time as this Court lifts such injunction by subsequent order. This Settlement Agreement does not release Settling Defendants from the Severed Claims or affect their obligations or defenses regarding those claims. The status of those Severed Claims is governed separately by the previously executed Japanese Claim Settlement.

10. Settling Defendants will provide to the appropriate state officials and the appropriate federal official the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b) ("CAFA");

11. This Settlement Agreement does not affect any party's arguments or position with respect to the Antitrust Criminal Penalty Enhancement and Reform Act ("ACPERA") and, if this Settlement Agreement is terminated for any reason, Settling Defendants' ACPERA responsibilities shall immediately resume.

12. If the Settlement Agreement is terminated in accordance with its provisions, or is not approved by the Court or any appellate court, then the Settlement Agreement and all proceedings had in connection therewith shall be vacated, and shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice

to the *status quo ante* rights of Plaintiffs, the Settling Defendant, and the members of the Settlement Class.

13. If the Settlement Agreement is terminated or is ultimately not approved, the Court will modify any existing scheduling order to ensure that the Plaintiffs and Settling Defendant will have sufficient time to prepare for the resumption of litigation, including, but not limited to, motion(s) to dismiss any amended complaint, the completion of discovery, preparation of expert reports, the filing of any summary judgment motion or motions, and preparation for trial.

14. The Court's certification of the Settlement Class as provided herein is without prejudice to, or waiver of: (a) the rights of any non-settling Defendant to contest certification of any other class proposed in this Action; or (b) the rights and/or arguments which have been or may be asserted by any non-settling Defendant in a motion to dismiss. The Court's findings in this Order shall have no effect on the Court's ruling on any motion to certify any class in this Action or on the Court's rulings concerning any non-settling Defendant's motion to dismiss; and no party may cite or refer to the Court's approval of the Settlement Class as persuasive or binding authority with respect to any motion to certify any such class or any non-settling Defendant's motion to dismiss. Further, if the Settlement Agreement is terminated or is ultimately not approved, Settling Defendants expressly retain the right to contest class certification, including, but not limited to, the right of appeal, of any other litigation class proposed in this Action.

IT IS SO ORDERED.

DATED: _____, 2015

HON. JOHN GLEESON
United States District Judge

Conformed copies furnished to:
Counsel of Record