

Schenker Settlement Agreement

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

PRECISION ASSOCIATES, INC.; JAMES BARNES; and ANYTHING GOES LLC d/b/a MAIL BOXES ETC., on behalf of themselves and all others similarly situated,

Plaintiffs,

Case No. 08 Civ. 0042 (JG) (VVP)

vs.

PANALPINA WORLD TRANSPORT (HOLDING) LTD.; PANALPINA, INC.; KÜEHNE + NAGEL INTERNATIONAL AG; KUEHNE + NAGEL, INC.; EXPEDITORS INTERNATIONAL OF WASHINGTON, INC.; EGL, INC.; EGL EAGLE GLOBAL LOGISTICS, LP; DEUTSCHE BAHN AG; SCHENKER AG; SCHENKER, INC.; DEUTSCHE POST AG; DHL EXPRESS (USA), INC.; UTI WORLDWIDE INC.; AND SPEDLOGSWISS, AKA THE ASSOCIATION OF SWISS FORWARDERS,

Defendants.

**SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS AND
DEFENDANT SCHENKER, INC.**

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into as of July 7, 2009, by and between Defendant Schenker, Inc. and Plaintiffs Precision Associates, Inc., James Barnes, and Anything Goes LLC d/b/a Mailbox Etc. (collectively, “Plaintiffs”), individually and on behalf of a class of Persons that directly purchased Freight Forwarding Services from any Defendant in this Action or any related actions from January 1, 2001, to and including the Effective Date, subject to the approval of the Court (the “Settlement”).¹

¹ All capitalized terms not otherwise defined carry the meaning set forth in Section I, below.

RECITALS

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

B. Settling Defendants vigorously deny that they engaged in any unlawful conduct that damaged or otherwise injured Plaintiffs, have numerous defenses to Plaintiffs' Claims, disclaim any wrongdoing or liability whatsoever to Plaintiffs, and intend to assert a number of defenses to Plaintiffs' Claims if the Actions proceed further.

C. Settling Defendants have provided Settlement Class Counsel with the subpoena that they have received from the U.S. Department of Justice and have discussed the types of documents that have been produced in response thereto.

D. 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 Settling Defendants or of the truth of any of Plaintiffs' Claims or allegations.

E. Settlement Class Counsel have conducted an investigation into the facts and the law regarding the Actions, and the possible legal and factual defenses thereto, and have concluded that it is in the best interests of Plaintiffs and the Settlement Class to enter a settlement with Settling Defendants according to the terms set forth below, especially including the cooperation Settling Defendants have provided and agree to provide to Plaintiffs and the Settlement Class pursuant to this Settlement Agreement, and to avoid the uncertainties, risks, and costs of litigation.

F. Despite their belief that they are not liable for the Claims asserted by Plaintiffs and have good defenses thereto, and mindful that no Defendant has been found liable for or criminally charged in the United States based on the Claims asserted in the Complaint, Settling

Defendants have agreed to enter into this Settlement to avoid the further expense, inconvenience, disruption, and burden of this litigation and any other present or future litigation arising out of facts that gave rise to this litigation, to avoid the risks inherent in uncertain complex litigation, and thereby to put to rest this controversy. In particular, Settling Defendants recognize that the expenses of litigating Plaintiffs' Claims cannot be recovered even if Settling Defendants were to prevail in this Action.

G. The Parties desire fully and finally to settle all actual and potential Claims arising from or in connection with the Actions, and each of them, and avoid the costs and risks of protracted litigation.

NOW THEREFORE, in consideration of the promises and agreements, covenants, representations, and warranties set forth herein, intending to be legally bound;

IT IS HEREBY AGREED, by and among the Settling Parties, that these Actions and all Released Claims are finally and fully settled and compromised and that these Actions shall be dismissed 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 following terms and conditions:

I. DEFINITIONS

A. Class Definition.

"Settlement Class" means the class described in Section II(D)(1), below.

B. General Definitions.

1. "Action" or "Actions" means the action captioned *Precision Associates, Inc., et al. v. Panalpina World Transport (Holding) Ltd., CV 08-0042, et al. (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 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 Freight Forwarder and alleging violations of the antitrust laws arising from the same or similar conduct as alleged in *Precision Associates*.

2. “Claims” means any and all causes of action, claims, damages, losses, injuries, expenses, remedies, and rights of action, of every nature and description, whether known or unknown, suspected or unsuspected, asserted or unasserted, matured or unmatured, liquidated or unliquidated, absolute or contingent, direct or indirect, at law, equity or otherwise, whether based on federal, state, local, statutory, or common law, or any other law, code, rule, or regulation of any country or other jurisdiction in the world, that the Releasing Parties had, now have, or may have in the future, against any or all of the Defendants named in the Action now or in the future, arising from, in any way relating to, or in connection with any conduct, express, implied, or tacit agreement, or activity occurring during the Class Period: (a) complained of or relating or referred to in the Actions; (b) relating in any way to any understanding, agreement, or coordinated activity between or among two or more Defendants and/or unnamed co-conspirators regarding Freight Forwarding Services; or (c) concerning the pricing of, charges for, or payments made for Freight Forwarding Services for shipments within, to, or from the United States (and specifically including, without limitation, claims in any way related to cargo rates, any surcharges or fees (including, without limitation, fuel surcharges, security surcharges or fees, automated manifest system fees, new export security system fees, advanced customs information fees, currency adjustment factor fees, peak season surcharges, freight scanning or x-ray fees, customs surcharges, or war risk surcharges), commissions, incentives, rebates, credits, yields, or any other element of the price of or the compensation related to Freight Forwarding Services).

3. “Class Notice” means the notice to the Settlement Class agreed upon by the Parties and that is approved by the Court, in accordance with Section II(D)(3).

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

5. “Cooperation Materials” means any information or material relevant to Claims in the Actions, as described in Section II(B)(3), provided, however, that such Cooperation Materials shall not mean or include any information or material subject to the attorney client privilege, the attorney work product doctrine, the joint defense privilege, the

common interest privileges, any right to privacy or any other applicable privilege or privacy right, subject to Sections II(B)(3)(g) and II(C).

6. “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.

7. “Date of Final Approval” means the date as of which this Settlement Agreement becomes final, as provided in Section II(D)(6).

8. “Date of Preliminary Approval” means the date as of which this Settlement Agreement is preliminarily approved, as provided in Section II(D)(2).

9. “Defendants” means any or all of the defendants named in the Action now or in the future.

10. “Documents” means: (a) all papers, electronically stored information (“ESI”) or other materials within the scope of Rule 34(a) of the Federal Rules of Civil Procedure; and (b) any copies or reproductions of the foregoing, including microfilm copies or computer images.

11. “Effective Date” means the date as of which this Settlement Agreement is entered into and executed.

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

13. “Freight Forwarding Services” means freight forwarding, transportation, or logistics services for shipments and includes services relating to the organization or transportation of items via air, ocean, rail, and road, both nationally and internationally, and related activities such as customs clearance, warehousing, and ground services.

14. “Net Settlement Fund” means the Settlement Fund 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.

15. “Opt-Out Claim” means any claim within the scope of the release set forth in Section II(A)(1) made by a Person, otherwise qualifying as a member of the Settlement Class,

that has validly excluded itself from the Settlement Class.

16. “Order and Final Judgment” means the order and final judgment of the court approving the Settlement, as described in Sections II(D)(6) and (9).

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

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

19. “Plaintiffs” means Precision Associates, Inc., James Barnes, and Anything Goes LLC dba Mail Boxes Etc., and any other plaintiffs designated by the Court as direct purchaser plaintiff class representatives, individually and on behalf of the Settlement Class.

20. “Released Claims” means any and all 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 or in any way related to the pricing of, charges for, or payments made for Freight Forwarding Services for shipments within, to, or from the United States through the Effective Date, 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, or could 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.

21. “Released Parties” means jointly and severally, individually and collectively, the Settling Defendants, their respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, affiliates, heirs, executors, administrators, and any and all

past, present, and future officers, directors, stockholders, partners, agents, attorneys, advisors, auditors, accountants, servants, employees, representatives, and their heirs, executors, administrators, and assignees. Notwithstanding the foregoing, Released Parties does not include: (a) defendants other than the Settling Defendants formerly or currently named in the Actions; (b) other defendants subsequently added or joined in the Actions; and/or (c) any other alleged co-conspirator. The Released Parties who are not Settling Defendants are third party beneficiaries of this Settlement Agreement with respect to the release of Released Claims.

22. “Releasing Parties” means individually and collectively, Plaintiffs and all Settlement Class Members, on behalf of themselves and any person or entity claiming by or through them as an heir, administrator, devisee, predecessor, successor, parent, subsidiary, representative of any kind, shareholder, partner, director, owner of any kind, affiliate, assignee, agent, employee, contractor, attorney, or insurer.

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

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

25. “Settling Defendants” means Schenker, Inc., its parents, subsidiaries, affiliates, including but not limited to Deutsche Bahn AG, Schenker AG, and BAX Global, Inc., all of their current or former officers and directors, and any and all current and former employees.

26. “Settling Defendants’ Counsel” means Katten Muchin Rosenman LLP.

27. “Settlement Fund” means the amount deposited by Settling Defendants or their designee to the Escrow Account established pursuant to Section II(B)(2) of this Settlement Agreement, including all monies held therein in accordance with the terms of this Settlement Agreement, including any interest accrued thereon.

II. SETTLEMENT

A. 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, the Releasing Parties shall be deemed to, and by operation of the Order and Final Judgment shall have, hereby fully, finally, and forever released, relinquished, and discharged the Released Parties 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.** Subject to the provisions of Section II(A)(5), the Releasing Parties covenant not to sue any Released Party for any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type arising out of or related to the Actions or 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 acknowledge that the Released Claims described and set forth in Sections I(B)(20), and the covenant described and set forth in Section II(A)(2), constitute a full and final release by the Releasing Parties.

4. **Waiver.** Upon the Date of Final Approval, the Releasing Parties 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.

The Releasing Parties 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 Settlement Class Members 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 release is a part.

5. **Other Jurisdictions.** The Parties intend this Agreement to effect a complete release of all Claims. Therefore, to the extent class actions or representative actions are permitted in countries and jurisdictions other than the United States, including but not limited to Canada (“Other Jurisdictions”), and in the event the release set forth in Section II(A)(1) is determined by any court or tribunal of competent jurisdiction in such Other Jurisdictions not to constitute a full and final release of the Released Claims in such Other Jurisdictions, then Settlement Class Counsel shall cooperate in good faith with the Released Parties or other parties as necessary to reasonably assist the Released Parties in their efforts to obtain a valid and enforceable release of claims against the Released Parties, comparable to the Released Claims, from Persons in such Other Jurisdictions who directly purchased Freight Forwarding Services in those Other Jurisdictions from any Settling Defendant on or between January 1, 2001 and the Effective Date.

B. Performance By Settling Defendants.

1. **Settlement Payment.** Settling Defendants or their designee shall wire transfer pursuant to instructions from Settlement Class Counsel the total amount of \$8,750,000 in United States dollars (the “Settlement Amount”) into the Settlement Fund pursuant to the following schedule: (a) an initial payment of \$300,000, to be used to pay for the estimated costs of class notice, shall be made within fifteen (15) business days after the Date of Preliminary Approval; and (b) the remainder of the payment shall be made within ten (10) business days after the Date of Final Approval.

2. **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 such time as the funds in the Settlement Fund are fully distributed or are returned to the Settling Defendants pursuant to this Settlement Agreement and/or further order of the Court, as follows:

a. The Settlement Fund shall be established as an escrow account at a bank designated by Settlement Class Counsel and administered by an escrow agent (“Escrow Agent”) designated by Settlement Class Counsel, as approved by Settling Defendants’ Counsel. Counsel for the Parties agree to cooperate in good faith to form an appropriate escrow agreement in conformance with this Agreement.

b. No monies shall be paid or disbursements made from the Settlement Fund without an order of the Court or the specific authorization of both Settlement Class Counsel and Settling Defendants’ Counsel, and such authorization may not be withheld if withholding such authorization is inconsistent with this Agreement.

c. 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(B)(1), neither the Settling Defendants nor Settling Defendants' Counsel shall bear any responsibility or risk, except as provided in Sections II(D)(10)(c), related to the Settlement Fund or the Net Settlement Fund.

d. 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 § 1.48B-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.

e. 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.

f. 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. It shall be a pre-condition to any receipt of funds under this Agreement that each Settlement Class Member seeking to receive funds execute a written release in favor of the Released Parties of all Released Claims.

3. **Cooperation.** The Settling Defendants shall cooperate in good faith with

Settlement Class Counsel in accordance with the terms and provisions of this Agreement to support the prosecution of Plaintiffs' Claims in the Actions against the non-settling defendants, and provide Cooperation Materials, as follows:

a. **Meetings with Counsel for Settling Defendants.** Within three (3) business days after the Effective Date of this Settlement Agreement, or within such other time period on which the Parties shall agree, Settling Defendants' Counsel shall meet in person with Settlement Class Counsel for at least seven (7) hours, and more if appropriate, at a location of Settlement Class Counsel's choice within the United States and provide at that meeting a reasonably detailed description of the principal facts previously provided to the U.S. Department of Justice in response to subpoenas or otherwise that are relevant to the conduct at issue in the Actions, including the times, places, and participants with respect to any communications or meetings relevant to such conduct. To the extent Settlement Class Counsel have follow-up questions to this meeting, Settling Defendants' Counsel shall endeavor to answer such questions. In addition, within five (5) business days after the Date of Preliminary Approval of this Settlement in accordance with Section II(D)(2), or within such other time period on which the Parties shall agree, Settling Defendants' Counsel shall meet or confer with Settlement Class Counsel as often as Settlement Class Counsel believe is reasonably necessary, to support Plaintiffs' prosecution of the Actions against non-settling defendants.

Any statements made by Settling Defendants' Counsel under this Paragraph shall be deemed to be "conduct or statements made in compromise negotiations regarding the claim" and shall be inadmissible in evidence under Federal Rule of Evidence 408. In the event, for whatever reason, this Agreement is terminated or the Settlement is not approved by the Court, this provision shall survive, provided, however, that Settling Defendants acknowledge that the information provided pursuant to this Paragraph and set forth in an amended complaint may be used by Plaintiffs in this Action. To the extent permitted under the Federal Rules of Civil Procedure and the Local Civil Rules for the Eastern District of New York, Plaintiffs shall seek to file such portions of the amended complaint under seal. Settling Defendants acknowledge that

the Court may deny an application or motion to file such material under seal.

b. **Depositions.** Within three (3) business days after the Date of Final Approval, or within such other time period after the Date of Final Approval on which the Parties shall agree, Settling Defendants shall make available at Settling Defendants' expense, at a location on which the Parties shall agree and upon reasonable notice, for depositions: (i) any current directors, officers, and employees of Settling Defendants who have been interviewed by the U.S. Department of Justice or the European Commission, if any, regarding Plaintiffs' Claims; and (ii) five (5) additional, current employees of Settling Defendants whom Settlement Class Counsel, in consultation with Settling Defendants' Counsel, reasonably believe have knowledge regarding Plaintiffs' Claims as alleged in the Actions.

Written notice served by Settlement Class Counsel upon Settling Defendants' Counsel shall constitute sufficient service of notice of any depositions requested under this Paragraph. Depositions taken pursuant to this Paragraph shall be administered according to the Federal Rules of Civil Procedure (U.S.), and the admissibility thereof shall be determined pursuant to the Federal Rules of Evidence (U.S.), regardless of the location at which the depositions take place or the citizenship of the deponent. Except as otherwise expressly set forth in this Settlement Agreement, the Settling Defendants shall not assert that a provision of any foreign procedural law, whether based in case law, statutory law, or public policy, or of any treaty or convention, shall override the Federal Rules of Civil Procedure and Federal Rules of Evidence with respect to the taking of such depositions and the admissibility of such depositions as evidence in the Actions.

c. **Testimony at Trial.** Subsequent to the Date of Final Approval, Settling Defendants shall make available at Settling Defendants' expense and upon reasonable notice, for testimony at trial in the Actions: (i) any current directors, officers, and employees of Settling Defendants who have been interviewed by the U.S. Department of Justice or the European Commission, if any, regarding Plaintiffs' Claims; and (ii) five (5) additional current 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.

d. **Interviews.** After the Date of Final Approval, Plaintiffs may request that Settling Defendants make up to four (4) current employees of Settling Defendants available for interviews with Settlement Class Counsel if Plaintiffs can show that they need information relevant to the Actions that Settling Defendants have not otherwise provided pursuant to the meetings with Settling Defendants' Counsel, depositions, or production of Documents described herein, and Settling Defendants agree that such interviews are necessary.

e. **Best Efforts.** Notwithstanding the foregoing Sections II(B)(3)(a)-(d), with regard to any current directors, officers, and employees of Settling Defendants who either have retained counsel and/or have confirmed an intention to assert any rights against self incrimination, Settling Defendants agree to use their best efforts to obtain the cooperation in good faith of such individuals, but in no event are Settling Defendants obligated to make such individuals available to Settlement Class Counsel for interviews, declarations, affidavits, depositions, or at trial. Any failure or inability by Settling Defendants to make such individuals available shall not be deemed a failure or breach of Settling Defendants' agreement to cooperate with Settlement Class Counsel under the terms of this Settlement Agreement.

f. **Documents.**

i. Within five (5) business days after the Effective Date, or within such other time period after the Effective Date on which the Parties shall agree, Settling Defendants shall, to the extent not previously produced pursuant to this Settlement Agreement, produce to Settlement Class Counsel publicly disseminated price announcements for Freight Forwarding Services, including surcharges related thereto, for shipments within, to, or from the United States for the period January 1, 1999 through the Effective Date.

ii. Within five (5) business days after the Date of Preliminary Approval, or within such other time period after the Date of Preliminary Approval on which the Parties shall agree, Settling Defendants shall, to the extent not previously produced pursuant to

this Settlement Agreement, produce to Settlement Class Counsel ESI as agreed upon by the Parties in their possession, custody or control containing documents or summaries sufficient to show the revenues and amount of traffic of Freight Forwarding Services within, to, or from the United States for the period January 1, 1999 through the Effective Date, provided that the Settling Defendants shall not be obligated to produce invoices, individual transaction records, or documents other than summaries or reports sufficient to break down and reflect the foregoing information.

iii. Within five (5) business days after the Date of Final Approval, or within such other time period after the Date of Final Approval on which the Parties shall agree, Settling Defendants shall, to the extent not previously produced pursuant to this Settlement Agreement, produce to Settlement Class Counsel: (A) copies of Documents produced to the U.S. Department of Justice by Settling Defendants' Counsel, provided that such Documents concern Freight Forwarding Services within, to, or from the United States, produced in the same format as produced to the U.S. Department of Justice; and (B) copies of any other Documents in the possession of Settling Defendants' Counsel as of the Effective Date that are responsive to reasonable and specific requests, within a reasonable timeframe, made by Settlement Class Counsel regarding any other issue relevant to the Claims alleged in the Actions. Settling Defendants may withhold production of any Document(s) otherwise subject to production to Settlement Class Counsel pursuant to this Paragraph if the production of such Document(s) would prejudice Settling Defendants' interests in connection with any investigation conducted by the U.S. Department of Justice or antitrust or competition regulators in any other jurisdiction, provided, however, that Settling Defendants shall produce any such relevant withheld Document(s) no later than (3) years after the Date of Final Approval, unless Settling Defendants can show good cause in accordance with the terms of this Agreement to the Court *in camera* that the deadline should be extended. If the Documents were kept at any time in an electronically searchable format, they shall be produced in such format. Counsel for the Parties shall agree to reasonable custodial and search-term limitations on the document-production

obligations enumerated in this Paragraph.

g. **Authentication of Documents.** Settling Defendants agree to produce at trial and/or deposition, up to three (3) representatives of their choice qualified to establish for admission into evidence any of Settling Defendants' Documents produced at any time pursuant to this Settlement Agreement or in the course of the litigation of the Actions. Settling Defendants agree to produce at trial and/or deposition, or through affidavits or declarations, additional representatives of their choice for the purposes described in this Paragraph, provided such additional representatives are reasonably necessary to Plaintiffs' prosecution of the Claims alleged in the Actions.

h. **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 (including Documents, statements, testimony, material, and/or information) 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.

i. **Discovery.** None of the foregoing provisions shall be construed to prohibit Plaintiffs from seeking discovery from non-settling defendants or any Person other than Settling Defendants if Settlement Class Counsel deem such discovery to be advisable for purposes of the class certification motion, merits discovery, or other aspects of the prosecution of Plaintiffs' Claims against the non-settling defendants. Subject to any applicable protective orders, Plaintiffs and Settlement Class Counsel hereby agree to provide Settling Defendants'

Counsel, at Settling Defendants' expense, with copies of any documents, deposition testimony, or other evidence received by Plaintiffs or Settlement Class Counsel from any non-settling defendants or third-parties in the Action. In addition, the foregoing provisions shall be construed and deemed to prohibit Plaintiffs from seeking: (i) discovery of any kind whatsoever relating to the Action, whether pursuant to this Agreement or by formal requests or other means, from Settling Defendants; or (ii) any additional trial witnesses beyond those specified herein, whether pursuant to this Agreement or by subpoena or other means, from Settling Defendants.

j. **Ongoing Duty to Cooperate.** Settling Defendants' obligations to cooperate pursuant to Section II(B)(3) of this Agreement shall not be affected by the release set forth in Section II(A) of this Agreement. Unless this Agreement is rescinded, disapproved, or otherwise fails to take effect, Settling Defendants' obligations to cooperate under this Settlement Agreement as provided in Section II(B)(3), 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.

C. Privacy and Confidentiality.

1. **Privacy Laws.** Nothing in this Agreement shall be construed to require Settling Defendants to produce any Cooperation Materials to the extent such production is prohibited by: (a) court order entered after the Effective Date of this Settlement Agreement; (b) any federal, state or local privacy or confidentiality law, rule or regulation; or (c) any privacy or confidentiality law, rule, or regulation of any other jurisdiction in the world.

2. **Confidentiality.** All Cooperation, Documents, and other Cooperation Materials provided by Settling Defendants to Plaintiffs and/or Settlement Class Counsel under this Settlement Agreement: (a) shall be used only in connection with the Actions and only for the prosecution of Claims regarding Freight Forwarding Services for shipments within, to, or from the United States; (b) shall not be used directly or indirectly for any other purpose; and (c)

subject to (a) above, may not be disclosed by Plaintiffs or Settlement Class Counsel, except pursuant to legal compulsion, to any Person (other than experts retained by Plaintiffs and Settling Defendants in the course of the Actions), including absent Settlement Class Members, Persons that have excluded themselves from the Settlement Class, and counsel for such absent Settlement Class Members or excluded Persons.

Further, any disclosure of such Documents or Cooperation Materials in connection with the Actions shall be governed by the terms of a Protective Order to be agreed upon by the Parties after the Effective Date and approved by the Court ("Protective Order"). In the event the Protective Order, as described above, has not been entered by the Court at the time any Documents or other Cooperation Materials are produced by Settling Defendants under this Agreement, Settlement Class Counsel agree that they cannot in any way use or share these materials with any other Person until the Protective Order has been agreed upon by the Parties and approved by the Court.

The confidentiality requirements in this Paragraph will continue to bind Plaintiffs and Settlement Class Counsel even in the event that the Settlement Agreement is rescinded, rejected by the Court, or otherwise fails to take effect. Further, in the event discovery of Documents or Cooperation Materials is sought in any jurisdiction, wherever located, or the confidentiality of any Documents or Cooperation Materials is in any way challenged by any Person in any jurisdiction, wherever located, Settlement Class Counsel agree to use their best efforts to assist Settling Defendants' Counsel in opposing the disclosure of such Documents and Cooperation Materials, including but not limited to assisting in pleadings, providing affidavits or declarations, and court appearances.

D. Approval Of Settlement Agreement And Dismissal Of Claims.

Plaintiffs and Settling Defendants shall use their best efforts to effectuate this Settlement Agreement, including cooperating in promptly seeking the Court's approval of procedures, 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 Released Parties only, as follows:

1. **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 Freight Forwarding Services for shipments within, to, or from the United States from any of the Defendants or any subsidiary or affiliate thereof, at any time during the period from January 1, 2001 to the Effective Date of this Settlement Agreement.

2. **Preliminary Approval.** Within thirty (30) business days after the Effective Date of this Settlement Agreement, Plaintiffs shall submit to the District Court a motion, to be joined by Settling Defendants, requesting entry of an order preliminarily approving the settlement and authorizing dissemination of Class Notice 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. the Class Notice meets the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and constitutes the best notice practicable under the circumstances for settlement purposes;
- 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. A Fairness 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; and

- e. 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(A)(1) 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.

3. **Class Notice.** The Preliminary Order shall include the proposed form of, method for, and date of Class Notice substantially in the form of Exhibit B, attached hereto, unless the Parties mutually agree to defer the date of notice for any reason. The Class Notice shall provide for a right of exclusion, as set forth in Section II(D)(4), and shall provide that a request for exclusion must be postmarked (or mailed by overnight delivery) no later than forty-five (45) 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(D)(5). Individual notice of the Settlement shall be mailed to Persons that, to the extent permitted by applicable law, are identified by Settling Defendants and/or any other named Defendant. Notice to other members of the Settlement Class shall be by publication or other means deemed necessary if approved or required by the Court. Settling Defendants, to the extent permitted by applicable law, shall, at their own expense, supply to Settlement Class Counsel in electronic mailing format, or such form as may reasonably be requested by Settlement Class Counsel and agreed upon by Settling Defendants, the names and addresses of potential Settlement Class Members as they have in their files.

If Settling Defendants so elect in writing within forty-five (45) days of the entry of the

Preliminary Order, they may instead mail the Class Notice (and any subsequent class notices) to those of their current or former customers whom they reasonably believe may be Settlement Class Members according to what they deem to be their reasonably available records, in which event that Settling Defendants shall bear the costs of that mailing, and shall submit an affidavit to Settlement Class Counsel stating that they mailed notice to those of their present and former customers whom they reasonably believed to be Class Members according to what they deem to be their reasonably available records.

All materials and information provided to Settlement Class Counsel by Settling Defendants with respect to Class Members, Class Notice and Claims shall be treated as “Highly Confidential” for purposes of the Protective Order provided for in Section II(C)(2). 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.

4. 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 Civ. 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 with Schenker, Inc., Schenker, AG, and Deutsche Bahn, AG in *Precision Associates, Inc., et al. v. Panalpina World Transport (Holdings) Ltd., et al.*, No. 08 Civ. 0042 (JG) (VVP) (E.D.N.Y.). Further, each Person seeking exclusion from the Settlement Class should identify all Freight Forwarders from whom the Settlement Class Member purchased Freight Forwarding Services and an estimate of the total amount of direct purchases (by dollar volume) of Freight Forwarding Services 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 (45) 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, if approved. Settlement Class Counsel shall immediately 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 five (5) business 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.

c. As shall be disclosed in the Class Notice, any Opt-Out Class Member that elects to exclude itself from the Settlement shall have and shall be deemed to have, elected to exclude itself from the Actions for all purposes, including but not limited to any and all future prosecution of the Actions by Class Counsel, any and all discovery undertaken in the Actions, and any and all future settlements with any named Defendant or any Defendant named in the future in the Actions.

5. **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 forty-five (45) 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 forty-five (45) 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.

6. **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 Released Parties, 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.* CV 08-0042 (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(A)(1) 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 directing that the judgment of

dismissal as to the Released Parties shall be final and entered forthwith.

7. **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, as approved by the Court and pursuant to the Court-approved notification plan. With the object of reducing the costs of notice, and if Settling Defendants agree, Settlement Class Counsel shall 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. In such circumstances, the costs of provision of notice shall be allocated among all the Settling Defendants.

8. **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.

9. **When Settlement Becomes Final.** 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 Paragraph 6, above, under Rule 23(e) of the Federal Rules of Civil Procedure and dismissing the Actions as against all Released Parties 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 clause (a) 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.

10. **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(D)(2) or (D)(6) 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 (together "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 (30) days of such Triggering Event. Moreover, Plaintiffs shall return to Settling Defendants, or destroy (with a written certification by Settlement Class Counsel of such destruction), all Documents, and all copies of such Documents, provided by Settling Defendants under this Settlement Agreement or otherwise, including those Documents shared by Settlement Class Counsel with its experts.

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 July 7, 2009, the provisions of which are incorporated by reference as though fully set forth herein, if the threshold specified in the Supplemental Agreement is reached. Absent an order or other direction from the Court, the Supplemental Agreement will not be filed

with the Court unless and until either: (i) a dispute among the Parties concerning its interpretation or application arises, and in that event it shall be 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 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 of a Triggering Event or termination pursuant to this Paragraph, then: (i) within fifteen (15) business days, the Settlement Fund (including accrued interest), less expenses and costs that have been disbursed pursuant to Court order and/or in accordance with Section II(B)(2), 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 Action as of July 7, 2009, 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.

11. **No Admission.**

a. Nothing in this Settlement Agreement constitutes an admission by Settling Defendants as to the merits of the allegations made in these 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 conditional 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 Settling Party 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 Settling Defendant or other Released Parties; provided, however, that nothing contained in this Paragraph 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 Settling Defendant 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 any Settling Defendant 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, 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 Actions 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 each of the Parties hereto, their heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, and upon all other Persons

claiming any interest in the subject matter hereto through any of the Parties hereto 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 by any court) 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 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 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 their 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, and 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. 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) by registered or certified mail, return receipt requested, postage prepaid; or (3) by 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 a Settling Defendant, to their representatives at the address set forth below, or such other address as a Settling Defendant or Settlement Class Counsel may designate, from time to time, by giving notice to all Parties in the manner described in this Paragraph.

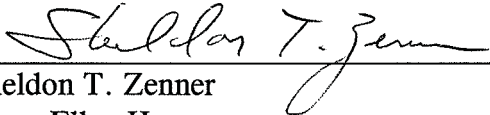
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IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the Effective Date.



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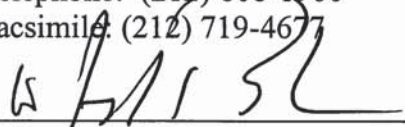
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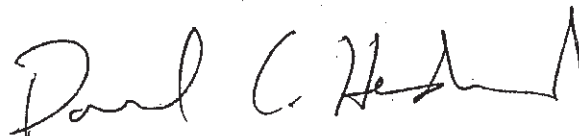
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