EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

RUSSELL DOVER, HENRY HORSEY, CODY RANK, and SUZETTE PERRY, on behalf of themselves and all others similarly situated, Plaintiffs -vs.- BRITISH AIRWAYS, PLC (UK), Defendant.	Case No. 1:12-cv-05567 (RJD) (CLP) Judge: Raymond J. Dearie Magistrate Judge: Cheryl L. Pollak

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT, ATTORNEYS' FEES, LITIGATION EXPENSES, AND SERVICE AWARDS

On November 9, 2012, Plaintiffs filed a proposed class action complaint against British Airways Plc ("BA"). They asserted a claim breach of contract because, among other things, they stated that BA's fuel surcharge was not based on BA's actual fuel costs. Nearly six years later, the parties entered into a proposed class action settlement, which the Court preliminarily approved on May 29, 2018. *See* Dkt. 307.

Plaintiffs now ask this Court for an Order finally approving that settlement and granting their motion for attorneys' fees, expenses, and service awards. That motion is GRANTED in full.

IT IS HEREBY ORDERED THAT:

1. All terms are defined as defined in this Court's Order granting preliminary approval.

CLASS CERTIFICATION REMAINS PROPER

2. The Court previously certified a class defined as: All United States resident members of BA's Executive Club who redeemed frequent flyer miles for an award ticket during the Class Period and who paid a BA-imposed fuel surcharge so long as that United States

resident member provided BA with a valid United States address at the time of booking. The Settlement Class excludes: (1) Executive Club members who redeemed frequent flyer miles exclusively using BA's "Cash + Avios" option; (2) any judge to whom this case is assigned, along with his or her staff; (3) BA's officers, directors, employees, as well as outside counsel in this Litigation, and (4) immediate family of any individual excluded by 2 or 3.

3. The Court previously found the law firm of Lieff Cabraser Heimann & Bernstein, LLP to have significant expertise and knowledge in prosecuting class actions involving consumer claims, and to have committed the necessary resources to represent the Settlement Class.

4. Class Certification remains proper. Plaintiffs' counsel have fulfilled their obligations as Class Counsel.

THE COURT APPROVES THE SETTLEMENT

5. The Court has scrutinized the Settlement agreement carefully in light of all of the briefing and argument that have been presented to it. In particular, the Court has carefully weighed: (A) the complexity, expense and likely duration of the litigation; (B) the reaction of the class to the settlement; (C) the stage of the proceedings and the amount of discovery completed; (D) the risks of establishing liability; (E) the risks of establishing damages; (F) the risks of maintaining the class action through the trial; (G) the ability of the defendants to withstand a greater judgment; (H) the range of reasonableness of the Settlement Fund in light of the best possible recovery; and (I) the range of reasonableness of the Settlement Fund to a possible recovery in light of all the attendant risks of litigation. *See* Dkt. 307 at 18-19. All nine of these factors support final approval. In particular:

a. The complexity, expense, and likely duration of the litigation strongly favor settlement. The litigation was filed more than five years ago, and it is unlikely that it

would have finally resolved after trial. *See, e.g.*, Dkt. 296 (containing BA's summary of planned appellate arguments). By reaching a favorable settlement prior to trial, Plaintiffs ensure a risk-free recovery for the Class.

b. The response to the Settlement has been extremely positive. As of June 13, 2018, for example, no Class Member had objected to, or opted-out of, the Settlement. The Court reiterates, moreover, that notice was appropriate for the reasons articulated in its order granting preliminary settlement approval.

c. The Court finds that "counsel had an adequate appreciation of the merits of the case before negotiating." *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 537 (3d Cir. 2004) (internal quotation marks omitted). The parties have completed all major pretrial motion practice and all pretrial discovery, including dozens of depositions. The parties were well equipped to evaluate the strengths and weaknesses of the case; indeed, trial was the sole remaining event that would have been expected to provide the parties with significant additional information.

d. The fourth factor considers how likely Plaintiffs were to establish liability. *Cf. Velez v. Majik Cleaning Serv., Inc.*, No. 03 CIV. 8698, 2007 WL 7232783, at *6 (S.D.N.Y. June 25, 2007) ("The proposed settlement benefits each plaintiff in that he or she will recover a monetary award immediately, without having to risk that an outcome unfavorable to the plaintiffs will emerge from a trial."). The Court observes that *both* parties survived summary judgment. Trial is never predictable and would have carried considerable uncertainty for Plaintiffs.

e. The fifth factor considers the risks associated with damages. Even prior to class certification, the District Court specifically raised the possibility that a jury might well fail

to award Plaintiffs all of their requested damages. *See* Dkt. 295-2 (6/28/16 Tr.) at 68:11-69:4. This Court considers it possible that Plaintiffs would not have succeeded in recovering the full amount of the disputed fuel surcharges, given that Plaintiffs acknowledge that BA was allowed to assess *some* measure of fuel surcharge.

f. The sixth factor examines the risk of losing class certification during trial or appeal. Plaintiffs likely would have been able to maintain class certification through trial and appeal for the reasons articulated in the District Court's opinion granting class certification, *see* Dkt. 249, although risk always exists of an adverse change in the law.

g. The penultimate factor is the range of reasonableness in light of the best possible recovery. Plaintiffs' maximum damages at trial were approximately $104.52 million after likely attorneys' fees and litigation expenses. The cash value of the settlement after attorneys' fees and litigation expenses is more than 25% of this number, which also weighs in favor of final approval.

h. The Court, finally, turns to the range of reasonable settlements in light of all risks of litigation. This settlement is remarkable in light of these risks, discussed above.

6. The Court hereby approves the Settlement, as fair, reasonable, and adequate, and in the best interest of the Plaintiffs and the other Settlement Class Members.

ATTORNEYS' FEES, LITIGATION EXPENSES, AND SERVICE AWARDS

7. The Court weighed six factors when considering Class Counsel's fee request. In particular, it evaluated: (A) counsel's time and labor; (B) the litigation's complexities and magnitude; (C) the litigation risks; (D) the quality of representation; (E) the relationship of the requested fee to the settlement; and (F) considerations of public policy. *See United States v. City of New York*, No. 07CV2067, 2016 WL 3417218, at *2 (E.D.N.Y. June 16, 2016). All six

factors support a fee award of $11,095,000. This represents 26.44% of the common fund and a 1.75 multiplier on counsels' lodestar of $6,352,432. Turning to each of the factors:

a. Class Counsel devoted 10,687 hours and incurred $3,978,296.71 million in expenses prosecuting this Action in order to achieve an outstanding recovery for the Class. They answered voluminous discovery, conducted very significant discovery of their own, and wrote hundreds of pages of successful briefs. The lodestar in this case reflects the successful efforts of a small, highly efficient team.

b. This litigation was not straightforward. The parties submitted 14 expert reports, for example, many of which delved into highly technical economic and statistical issues. *See*, *e.g.*, Dkt. 178; Dkt. 182. The Parties' summary judgment briefs further emphasize that there were numerous difficult disputes regarding a myriad of issues, both complex and foundational. *See*, *e.g.*, Dkt. 234 at 2 ("BA's opposition brief asserts repeatedly that BA did not 'set its fuel surcharge based upon 2003 costs.' . . . [but] BA's own expert . . . [admits] that "consistent testimony by BA personnel indicate[d] that . . . . BA's fuel surcharge was intended to recover the increase in fuel costs over [the] 2003-2004 base year.").

c. The Court specifically finds that the litigation was highly risky. For example, BA submitted an expert report that attempted to dispose of Plaintiffs' claims entirely. Plaintiffs' claims survived only because of Class Counsels' conscientious and effective advocacy. *See* Dkt. 182 at 1 ("Dr. Hildreth claims that BA's "fuel surcharge" (the YQ Charge) is correlated with the price of fuel. . . . Nobel Laureate Robert F. Engle—the very "Engle" on whom Dr. Hildreth relies—now submits a sworn declaration to set the record straight."). And as explained above, damages in this litigation posed considerable risk: Plaintiffs may well have prevailed on liability, but received only a sharply reduced or even nominal award.

d. The Court finds that Class Counsel represented the class well. As explained above, Plaintiffs' maximum damages at trial after fees and expenses were $104.52 million. The Settlement thus returns between 26.69% and 62.27% of the maximum possible trial damages. It is appropriate that Class Counsels' fee reflects this exceptional result they achieved for the Class.

e. Class Counsel seek 26.44% of the $42,070,000 common fund as fees. The court observes that "in this Circuit, courts routinely award attorneys' fees that run to 30% and even a little more . . . ." *Seijas v. Republic of Argentina*, No. 04-CV-1085 (TPG), 2017 WL 1511352, at *13 (S.D.N.Y. Apr. 27, 2017) (citation omitted). Class Counsels' fee request is justified in light of the very considerable amount of work and high risk Class Counsel undertook to prosecute this litigation.

f. The Court holds that the requested fee furthers the policy goal of providing lawyers with sufficient incentive to bring common fund cases that serve the public interest, but does not provide a windfall. The fee would compensate Class Counsel at a level commensurate with the benefits they have conferred on the Class, the substantial investment of time and money they devoted to litigating this case and bringing about the Settlement, and the contingent nature of their representation.

8. The Court awards Class Counsel $3.75 million in expenses. Courts "normally grant expense requests in common fund cases as a matter of course." *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1775 JG VVP, 2015 WL 5918273, at *7 (E.D.N.Y. Oct. 9, 2015) (quoting *In re Vitamin C Antitrust Litig.*, No. 06-MD-1738 BMC JO, 2012 WL 5289514, at *11 (E.D.N.Y. Oct. 23, 2012). The Court finds this expense request is particularly well-supported given the critical role experts for both parties played in this litigation.

9. Each of the four class representatives is awarded a service award of $10,000. *See Karic v. Major Auto. Companies, Inc.*, No. 09 CV 5708 (CLP), 2016 WL 1745037, at *8 (E.D.N.Y. Apr. 27, 2016). The Court observes that these service awards are supported by a detailed declaration from Class Counsel that allows the Court to assess the time and effort expended by the class representatives.

CONTINUING JURISDICTION

10. The Court retains exclusive jurisdiction over this Litigation to consider all further matters connected with the Settlement, Attorneys' Fees, Litigation Expenses, or Service Awards.

IT IS SO ORDERED.

Date:_____

_____
THE HONORABLE CHERYL L. POLLAK
UNITED STATES MAGISTRATE JUDGE