Gary F. Urman (AZ 11748)
gurman@dmyl.com
DECONCINI MCDONALD YETWIN & LACY, P.C.
2525 East Broadway, Suite 200
Tucson, Arizona 85716
Telephone:520-322-5000
Facsimile: 520-322-5585

Attorneys for Class Representative DeKalb County Pension Fund and Liaison Counsel for the Class

Lubna Faruqi (*Admitted pro hac vice*)
Robert W. Killorin (*Admitted pro hac vice*)
James M. Wilson, Jr. (*Admitted pro hac vice*)
FARUQI & FARUQI, LLP
685 Third Avenue, 26th Floor
New York, NY 10017
Telephone: 212-983-9330
Facsimile: 212-983-9331
Email: lfaruqi@faruqilaw.com
rkillorin@faruqilaw.com
jwilson@faruqilaw.com

Attorneys for Class Representative DeKalb County Pension Fund and Lead Counsel for the Class

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

David G. Lowthorp, Individually And On Behalf Of All Others Similarly Situated,

Plaintiff,

V.

Mesa Air Group, Inc.; Jonathan G. Ornstein; Michael J. Lotz; Daniel J. Altobello; Ellen N. Artist; Mitchell Gordon; Dana J. Lockhart; G. Grant Lyon; Giacomo Picco; Harvey Schiller; Don Skiados; Raymond James & Associates, Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Cowen and Company, LLC; Stifel, Nicolaus & Company, Incorporated; and Imperial Capital, LLC,

Defendants.

No. CV-20-00648-PHX-MTL

CLASS REPRESENTATIVE'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

CLASS ACTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Other Authorities

PRELIMINARY STATEMENT

Class Representative DeKalb County Pension Fund ("Plaintiff" or "DeKalb") on behalf of itself and the putative Class, respectfully moves this Court for an Order pursuant to Rule 23(e) of the Federal Rules of Civil Procedure: (a) granting final approval of the proposed Settlement of the above-captioned securities class action (the "Action") on the terms set forth in the Stipulation; (b) finding that the form and manner of giving notice of the Settlement to the Class satisfied due process, Rule 23, and the Private Securities Litigation Reform Act of 1995 (the "PSLRA"); and (c) granting final approval of the proposed Plan of Allocation.

As discussed in Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Motion" or "PA Motion"), Doc. 125, Plaintiff, on behalf of itself, and the putative Class, and Defendants Mesa Air Group, Inc. ("Mesa" or the "Company"), Jonathan G. Ornstein, Michael J. Lotz, Daniel J. Altobello, Ellen N. Artist, Mitchell Gordon, Dana J. Lockhart, G. Grant Lyon, Giacomo Picco, Harvey Schiller, Don Skiados (collectively, the "Mesa Defendants"), Raymond James & Associates, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Cowen and Company, LLC, Stifel, Nicolaus & Company, Incorporated, and Imperial Capital, LLC (collectively, the "Underwriter Defendants," together with the Mesa Defendants, the "Defendants"), have reached a proposed Settlement for $5,000,000 that, if given final approval, will resolve all claims in this Action.[1] The Settlement represents a favorable result for the class in light of the significant risk that a smaller recovery—or no recovery at all—might be achieved after further litigation, particularly in light of the risks posed by continued litigation.

[1] All capitalized terms not otherwise defined herein have the same meaning as those in the Stipulation and Agreement of Settlement, dated May 6, 2022 (the "Stipulation" or "Stip."), Doc. 124. "Settlement" refers to the settlement set forth in the Stipulation. All internal quotations marks and citations are omitted and all emphases are added unless otherwise noted.

The Settlement was reached only after nearly two years of hard-fought litigation and resulted from arm's length negotiations with an accomplished mediator among experienced and capable counsel with a comprehensive understanding of the merits and value of the claims asserted.

The Class's reaction to the Settlement and Plan of Allocation has been positive to date. Pursuant to the Order preliminarily approving the settlement ("Preliminary Approval Order" or "PA Order") (Doc. 137), the Court-approved Claims Administrator, A.B. Data, Ltd., has, *inter alia*, mailed over 9,000 copies of the Notice of Pendency and Proposed Settlement of Class Action (the "Notice") and the Proof of Claim and Release form ("Claim Form") to potential Class Members and nominees, posted the requisite documents to the Action's settlement website, and caused the Summary Notice to be published in Investor's Business Daily and transmitted over GlobeNewswire. Wilson Decl. ¶¶ 52-56.[2] Although the deadline for Class Members to object to the Settlement or request exclusion has not yet passed, thus far no requests for exclusion or objections have been received. *Id.* ¶¶ 57-59.

In light of the considerations discussed herein, Plaintiff and Lead Counsel submit that the Settlement is fair, reasonable, and adequate; satisfies the standards of Rule 23, the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), 15 U.S.C. § 77z-1, the local rules of the District of Arizona, and due process; and provides a favorable recovery for the Settlement Class. Plaintiff accordingly requests that the Court grant the relief requested herein.

This motion is based upon the below memorandum of points and authorities; the Wilson Declaration, with attached exhibits, filed herewith; the Declaration of Jack Ewashko Regarding: (A) Mailing of the Notice Packet; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion and Objections Received, with

[2] "Wilson Declaration" or "Wilson Decl." refers to the Declaration of James M. Wilson, Jr., with attached exhibits, filed herewith

attached exhibits, filed herewith; the Affidavit of Gary Urman ("Urman Aff."), with attached exhibits, filed herewith; the pleadings and records on file in this Action, and other such matters and argument as the Court may consider at the Settlement Hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

FACTUAL AND PROCEDURAL BACKGROUND

To avoid undue repetition, Plaintiff respectfully refers the Court to its Motion for Preliminary Approval of Settlement and the Wilson Declaration for a more detailed description of Plaintiff's claims and the prosecution of this Action. *See* Doc. 125 and Wilson Decl. ¶¶ 11-49.

Briefly, the initial federal complaint in this action was filed on April 1, 2020. Doc. 1.[3] On June 22, 2020, the Court appointed DeKalb as Lead Plaintiff, the Faruqi Firm as Lead Counsel, and the DeConcini Firm as Liaison Counsel. Doc. 33 at 4.

Following appointment, Plaintiff filed an amended operative complaint ("AC") on August 17, 2020, alleging that Mesa's Registration Statement for its IPO contained material misstatements and omissions in violation of Sections 11, 12(a)(2), and 15 of the Securities Act (15 U.S.C. §§ 77k, 77l(a)(2), 77o), as well as violations of Items 303 (17 C.F.R. § 229.303(a)(3)(ii)) and 503 (17 C.F.R. § 229.503(c)) by omitting adverse trends and risks from the Registration Statement. Doc. 52. On October 1, 2020, Defendants moved to dismiss the AC, and submitted a Notice of Incorporation by Reference and Request for Judicial Notice ("Request for Judicial Notice" or "RJN") in connection therewith. *See* Docs. 56 to 59. The Court heard in-person oral argument on July 15, 2021. Doc. 75. On July 22, 2021, the Court denied the motion to dismiss in part and granted it in part, and granted the RJN in part. Doc. 81 ("Motion to Dismiss Order" or "MTD Order"). After vigorous negotiations over the schedule in this case, necessitating

[3] Shortly before that complaint was filed, a similar securities class action was filed in Arizona state court in *City of Pittsburgh Comprehensive Municipal Pension Trust Fund v. Mesa Air Group, Inc., et al.*, Case No. CV2020-003927 (Superior Court of Arizona in and for the County of Maricopa, filed March 24, 2020).

the filing of a Joint Proposed Case Management Report, a supplemental Rule 26(f) report, and argument in two scheduling conferences, the Court issued its Scheduling Order on October 15, 2021. Doc. 101.

Thereafter, the Parties engaged in discovery, which included the exchange of Rule 26 initial disclosures, and the service of interrogatories and document demands. Wilson Decl. ¶ 26. On December 31, 2021, the parties entered into a Joint Stipulation regarding Class Certification (Doc. 108), which was adopted by the Court on January 24, 2022. Doc. 113. On January 5, 2022, Defendants filed a Motion for Leave to File an Early Motion for Summary Judgment based on negative causation ("Motion for Leave"), which Plaintiff opposed. *See* Docs. 109 to 112 and 116 to 118. On March 1, 2022, the Court entered an Order denying Defendants' Motion for Leave, without prejudice. Doc. 120.

On March 2, 2022, the Parties engaged in a mediation session before Jed D. Melnick, Esq., of JAMS Mediation Services, a highly experienced securities litigation mediator. Wilson Decl. ¶ 32. The mediation was preceded by submission of confidential mediation statements and exhibits. *Id.* The Parties came to an agreement in principle during the mediation session and thereafter Lead Counsel reviewed over 70,000 pages of confirmatory discovery to ensure that the Settlement was fair, reasonable, and adequate. *Id.* The complete terms of the Settlement negotiated by the Parties are set forth in the Stipulation and are subject to final approval by the Court. *Id.* ¶¶ 45-49.

On May 6, 2022, Plaintiff filed the Preliminary Approval Motion. Doc. 125. Following a hearing on October 28, 2022, the Court issued the Preliminary Approval Order on October 28, 2022, which approved the form and manner of providing notice to the Settlement Class and set a hearing date for the Final Approval Hearing, as well as deadlines related thereto. Doc. 137. The details of the notice program's progress to date is explained in further detail below.

ARGUMENT

I. THE PROPOSED SETTLEMENT MERITS FINAL APPROVAL

Rule 23(e) provides that a class action settlement must receive court approval. A court should approve a class action settlement if it determines that the settlement is "fair, reasonable, and adequate[.]" Rule 23(e)(2). While the authority to grant such approval lies within the court's discretion, the Ninth Circuit has a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *2 (C.D. Cal. June 10, 2005). Indeed, as one court has explained, "intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." *Nobles v. MBNA Corp.*, No. C 06-3723 CRB, 2009 WL 1854965, at *1 (N.D. Cal. June 29, 2009). Thus, when deciding whether to approve a settlement, the court must ensure that: (1) "the settlement is not the product of collusion among the negotiating parties" and (2) that the "settlement is fundamentally fair, adequate, and reasonable." *Hayes v. MagnaChip Semiconductor Corp.*, No.14-cv-01160-JST, 2016 WL 6902856, at *4 (N.D. Cal. Nov. 21, 2016).

A. The Proposed Settlement Is Not The Result of Collusion

As the Ninth Circuit explained in *In re Bluetooth Headset Products Liability Litigation*, the court must analyze whether the settlement was reached as a result of collusion between the parties. *DeStefano v. Zynga, Inc.*, No. 12-cv-04007-JSC, 2016 WL 537946, at *8 (N.D. Cal. Feb. 11, 2016) (citing *Bluetooth*, 654 F.3d 935, 947 (9th Cir. 2011)). As Plaintiff explained throughout its Preliminary Approval Motion, there was no collusion here. Plaintiff and Lead Counsel agreed to settle only after engaging in hard-fought litigation and in a mediation process overseen by an experienced mediator. Doc. No. 125 at 7-11.

Additionally, none of the subtle factors indicating collusion are present either. *See Bluetooth*, 654 F.3d at 947 (identifying three subtle signs of collusion: (1) when class counsel receives a disproportionate percentage of the settlement; (2) when the parties negotiate a "clear sailing" agreement separate from the settlement fund; and (3) when the parties arrange for fees not paid to revert to defendants). Lead Counsel is requesting an award of attorneys' fees equal to 25% of the Settlement Fund, which is based on the benchmark in this Circuit and often awarded in similar actions, thus weighing against a finding of collusion. *See* § I.B.3.c, *infra*. There is also no "clear sailing" agreement—*i.e.*, an "arrangement providing for the payment of attorneys' fees separate and apart from class funds[.]" *Bluetooth*, 654 F.3d at 947. The attorneys' fees are to be paid only out of the Settlement Fund, at a rate approved by the Court, and any fees requested but denied by the Court would remain in the Class's Settlement Fund. *See* Stip. ¶¶ 13-20. Even if there were such an agreement, "the absence of a 'kicker provision' stating that all fees not awarded would revert to defendants, weighs against a finding of collusion." *Klee v. Nissan N. Am., Inc.*, No. CV 12-08238 AWT (PJWx), 2015 WL 4538426, at *10 (C.D. Cal. July 7, 2015).

B. The Proposed Settlement is Fair, Adequate, And Reasonable

To determine whether a proposed settlement is fair, adequate, and reasonable, courts consider the factors in recently amended Rule 23(e)(2), which provides that a court may grant final approval of a settlement only after a hearing and only on finding that it is fair, reasonable, and adequate after considering the factors set forth therein. *See* PA Mot. 6. Amended Rule 23(e)(2)'s factors do not displace the factors that the Ninth Circuit previously used to determine whether the settlement is fair, reasonable, and adequate, several of which overlap with Rule 23(e)(2)'s factors. *See id.*

As explained in the Preliminary Approval Motion, all of the requirements imposed by Rule 23(e)(2) and the relevant Ninth Circuit factors have been met. Courts that have analyzed proposed settlements following the amendments to Rule 23 have found that the

factors are usually satisfied where little has changed between preliminary and final approval. *See In re Chrysler-Dodge-Jeep Ecodiesel® Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 17-md-02777-EMC, 2019 WL 2554232, at *2 (N.D. Cal. May 3, 2019) (finding that the conclusions the court made in granting preliminary approval "stand and counsel equally in favor of final approval now"); *In re GSE Bonds Antitrust Litig.*, No. 19-cv-1704 (JSR), 2020 WL 3250593, at *1 (S.D.N.Y. June 16, 2020) (stating that the Court's previous orders granting preliminary approval of the settlements at issue already detailed why the relevant factors support approval, readopting that analysis at the final approval stage, and focusing only on "those few developments since" preliminary approval that impact the analysis). Nevertheless, the factors are briefly analyzed below.

1. The Class Has Been Adequately Represented

Rule 23(e)(2)(A) is satisfied because Plaintiff and Plaintiff's Counsel have adequately represented the Class throughout the litigation and will continue to do so through the Settlement administration process. Plaintiff's interests are directly aligned with those of other Class members, as it claims to have suffered damages from the same alleged conduct, and through those claims seeks the same recovery from Defendants. *See* PA Mot. 7-8 (explaining Plaintiff's adequacy). Additionally, Plaintiff has actively overseen the litigation every step of the way, having, among other things, reviewed filings in this Action, communicated with counsel about all aspects of the case, responded to discovery requests, and authorized the proposed settlement. *See* Wilson Decl., Ex. 6 (Plaintiff's declaration). Furthermore, Plaintiff's Counsel has zealously represented the Class at all times. *See generally* Wilson Decl.; *see also* PA Mot. 7-8, 15-16 (explaining counsels' adequacy).

2. The Proposed Settlement Was Negotiated at Arm's Length

Rule 23(e)(2)(B) is satisfied because the proposed Settlement was the result of arm's length negotiations between Lead Counsel and Defendants' counsel. The Ninth Circuit "put[s] a good deal of stock in the product of an arms-length, non-collusive,

negotiated resolution" in approving a class action settlement. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009); *see also In re Netflix Privacy Litig.*, No. 5:11-CV-00379 EJD, 2013 WL 1120801, at *3 (N.D. Cal. Mar. 18, 2013) (finding the fact that the settlement "was a product of arm's length negotiation before a mediator" relevant to its decision to grant final approval).

As described in the Preliminary Approval Motion and the Wilson Declaration, the Settlement is the product of extensive arm's length negotiations among counsel with significant experience in securities class action litigation, and was reached following mediation with an experienced mediator. *See* Wilson Decl. ¶¶ 31-37. Lead Counsel thoroughly investigated the facts and law, drafted the AC, and vigorously opposed Defendants' motion to dismiss and RJN, plan for bifurcation of discovery, and Motion for Leave. *Id.* ¶¶14-30. After submitting mediation statements and exhibits, the Parties engaged in a mediation session with the assistance of Jed Melnick, a well-respected mediator. *See id*. ¶¶ 31-32. After debating their positions during the mediation session, the Parties reached an agreement in principle to settle the Action and, following extensive confirmatory discovery, came to a final agreement on the full terms of the Settlement. *See id.* ¶¶ 33-37. Thus, the Settlement was plainly the result of hard-fought, arm's length negotiations among the parties.

3. The Relief Provided for the Class Is Adequate

a. The Costs, Risks, and Delay of Trial and Appeal

Rule 23(e)(2)(C)(i) requires the Court to consider whether the Settlement Amount is adequate when taking into account the costs, risks, and delay of trial and appeal. This inquiry overlaps with the following Ninth Circuit factors: "the strength of the plaintiffs' case;" "the risk, expense, complexity, and likely duration of further litigation;" and "the amount offered in settlement[.]" *See Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575-76 (9th Cir. 2004).

As the Ninth Circuit has noted, "[t]he proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators. . . ."; rather, "the very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes." *Officers for Justice v. Civil Serv. Comm'n of City and Cty. of S.F.*, 688 F.2d 615, 624-25 (9th Cir. 1982) . Thus, "[t]he fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). When determining the reasonableness of the settlement, "the Court must balance against the continuing risks of litigation (including the strengths and weaknesses of the plaintiff's case), the benefits afforded to members of the Class, and the immediacy and certainty of a substantial recovery." *Johansson-Dohrmann v. Cbr Sys., Inc.*, No. 12-cv-1115-MMA (BGS), 2013 WL 3864341, at *4 (S.D. Cal. July 24, 2013). While "there is no particular formula by which the outcome must be tested" when "assessing the strength of a plaintiff's case," "[t]he court may presume that through negotiation, the Parties, counsel, and mediator arrived at a reasonable range of settlement by considering Plaintiff's likelihood of recovery." *In re Celera Corp. Sec. Litig.*, No. 5:10-cv-02604-EJD, 2015 WL 7351449, at *5 (N.D. Cal. Nov. 20, 2015).

As explained in the Preliminary Approval Motion, the $5,000,000 Settlement provides an immediate benefit to the class and is adequate when compared to the risk that no recovery, or lesser recovery, might be achieved after protracted litigation. Plaintiff has always believed that its claims have merit and would be proven through fact discovery. *See* Wilson Decl. ¶ 38. Despite this confidence, Plaintiff is aware of the substantial risks and expenses that would be presented by further litigation based on its work to date. *Id.* ¶¶ 38-39. For example, Defendants have maintained that they have a complete negative causation defense under Section 11(e) of the Securities Act. *See id.*

¶ 40; PA Mot. 9. If Defendants successfully asserted this defense at summary judgment, or trial, the Class would have no damages. *See* Wilson Decl. ¶ 40.

It is well known that class action litigation is inherently complex, *see Nobles*, 2009 WL 1854965, at *2, and this case is no exception. As explained in the Preliminary Approval Motion and the Wilson Declaration, the motion practice surrounding case management and the Motion for Leave plainly demonstrates the cost, risks, and delay present in this Action. There is no doubt that Defendants would continue to aggressively litigate were this Action to continue. *See* Wilson Decl. ¶¶ 39-40. Thus, even after the considerable time and expense of additional discovery, which would span many more months, there is a chance Plaintiff's claims could be dismissed at summary judgment. *Id.* Even if Plaintiff's claims survived summary judgment, a trial in the Action would be time consuming, expensive, and expend judicial resources. *Id.*

In light of the foregoing, the Settlement Amount of $5,000,000 provides a favorable result for the Class and is well within the range of reasonableness. *Id.* ¶¶ 45-49, 70. It represents approximately 5.3% of the $93.9 million in maximum possible statutory damages estimated by Plaintiff's damages consultant before taking into account Defendants' defense of negative causation, and approximately 16.6% of the $30 million in maximum damages estimated by Defendants if Plaintiff was able to overcome Defendants' negative causation defense not premised on lack of stock price reaction. *See id*. ¶ 70; PA Mot. 11. This is well within the range of typical recoveries in complex securities litigation such as this. *See* PA Mot. 11-12 (citing caselaw); Docs. 125-4 to 125-9 (caselaw submitted with PA Motion).

b. The Proposed Method for Distributing Relief Is Effective

Rule 23(e)(2)(C)(ii) requires the court to consider whether the proposed method of distributing relief to the class is effective, including the processing of class members' claims. The method used in this Action is traditionally used in securities class actions.

Beginning on November 18, 2022, copies of the Notice and Claim Form were mailed to potential Class Members and nominees, and the Summary Notice was published in Investor's Business Daily and transmitted over GlobeNewswire on November 28, 2022. Wilson Decl. ¶¶ 52-53, 55. Class Members who want to object to the Settlement or request exclusion from the Class are required to do so by March 17, 2023. *See id.*, Ex. 1 (PA Order) at ¶ 18. Although the time for objections and exclusions has not yet expired, no requests for exclusion or objections to the Settlement have been received. *See* Wilson Decl. ¶¶ 57-58. Thus, the reaction of the Class so far confirms the adequacy of the Settlement. *See Redwen v. Sino Clean Energy, Inc.*, No. CV 11-3936 PA (SSx), 2013 WL 12303367, at *8 (C.D. Cal. July 9, 2013) (explaining that "[i]f only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement[]" and finding that the class's reaction was "overall positive" where there were five requests for exclusion and one objection).

Additionally, the Settlement's claims process is similar to the process commonly used in securities class action settlements. The claims process provides for cash payments to eligible class members based on their pro rata share of the recovery as established by the trading information eligible Class Members provide. *See* PA Motion 12. This factor supports final approval for the same reason that it supported preliminary approval.

c. Terms of Attorney's Fees and Timing of Payment

Rule 23(e)(2)(C)(iii) requires the Court to consider "the terms of any proposed award of attorney's fees, including timing of payment[.]" Consistent with the Notice, and as discussed in the Fee Motion, Lead Counsel seeks an award of attorneys' fees in an amount of 25% of the Settlement Fund, which is the benchmark award in this Circuit. *See Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA (EMC), 2012 WL 5878390, at *7 (N.D. Cal. Nov. 21, 2012). This amount is supported by Plaintiff's Counsel's lodestar, which is $1,257,537 based on 1,838.1 hours of attorney and

professional staff time and results in a negative multiplier. *See* Wilson Decl. ¶¶ 73-74.

As explained in the Preliminary Approval Motion, the Stipulation provides that attorney's fees are to be paid "immediately after the Court executes an order awarding such fees and expenses notwithstanding any objection thereto[,]" subject to the obligation to repay as described therein. Stip. ¶¶ 13-20. The timing of payment is standard in class action cases and typically approved. *See* PA Motion 13. Lead Counsel respectfully submits that the contemplated attorneys' fee award and the timing of payment are reasonable and do not weigh against final approval.

d. Related Agreements

Rule 23(e)(2)(C)(iv) requires the Court to determine the proposed Settlement's adequacy in light of any agreements made in connection with it. As disclosed in the Preliminary Approval Motion, the only such agreements here are the Confidential Supplemental Agreement Regarding Requests for Exclusion ("Supplemental Agreement") and the escrow agreement. *See* PA Motion 13-14.

4. The Settlement Treats Class Members Equitably

Rule 23(e)(2)(D) requires the court to consider whether "the proposal treats class members equitably relative to each other." The Plan of Allocation does just that, calculating each Authorized Claimant's losses based on the timing of their purchases and sales of Mesa securities and providing that each Authorized Claimant shall receive their pro rata share of the Net Settlement Fund based on their recognized losses. Plaintiff's request for an award of $5,382.18 pursuant to 15 U.S.C. § 77z-1(a)(4) is reasonable, as explained in the accompanying Fee Motion,[4] and does not change this conclusion. *See* Fee Motion at 2, 14-15; *see In re Regulus Therapeutics Inc. Sec. Litig.*, No. 3:17-cv-182-BTM-RBB, 2020 WL 6381898, at *5 (S.D. Cal. Oct. 30, 2020) (finding that a reasonable

[4] "Fee Motion" refers to Lead Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and an Award for Lead Plaintiff, filed contemporaneously herewith.

service award to lead plaintiff "does not constitute inequitable treatment of class members").

5. Stage of the Proceedings and Extent of Discovery Completed

When determining whether the stage of the proceedings and extent of discovery completed supports settlement, "the court focuses on whether the parties carefully investigated the claims before reaching a resolution." *Zynga*, 2016 WL 537946, at *12. While the litigation settled in its early stages, the Parties garnered substantial information related to the Action and their respective claims and defenses prior to engaging in settlement negotiations, and Lead Counsel reviewed over 70,000 pages of confirmatory discovery to ensure that the Settlement was fair, reasonable, and adequate before entering into the Stipulation. Wilson Decl. ¶¶ 31-44. Thus, the parties had sufficient information to make an informed assessment of the Action's strengths and weaknesses and the Settlement's fairness. *See Rieckborn v. Velti PLC*, No. 13-cv-03889-WHO, 2015 WL 468329, at *6 (N.D. Cal. Feb. 3, 2015) (finding that "[d]espite reaching settlement relatively early in the life span of this case, the Settling Parties have shown that their decision to settle was made on the basis of a thorough understanding of the relevant facts and law[,]" even though settlement was reached before the filing of a motion to dismiss). Thus, this factor supports final approval.

6. The Risks of Maintaining the Class Action Through Trial

As explained in the Preliminary Approval Motion, the Class was certified on January 24, 2022, although there is always a risk that the Class could be decertified later. *See* Rule 23(c)(1)(C).

7. The Experience and Views of Counsel

"Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *see also Ramirez v. Ghilotti Bros. Inc.*, No. C 12-04590 CRB, 2014 WL 1607448, at *1 (N.D. Cal. Apr. 21,

2014) (finding that experienced class counsel's support for the settlement, which "was reached after arm's length negotiations," weighed in favor of settlement).

As set forth in detail in the Faruqi Firm's resume, Lead Counsel is a national law firm that has substantial experience litigating securities class action lawsuits. *See* Wilson Decl., Ex. 2. Likewise, the DeConcini Firm has substantial complex litigation experience and has served the Class ably as Liaison Counsel. *See* Urman Aff. ¶ 2. Defendants were also represented by highly reputable firms. Lead Counsel, having carefully considered and evaluated the relevant legal authorities and evidence to support the claims asserted against Defendants, the likelihood of prevailing on these claims, the risk, expense, and duration of continued litigation, and the likelihood of subsequent appellate proceedings even if Plaintiff prevailed at trial, concluded that settlement here is a favorable result for the Class. *See* Wilson Decl. ¶¶ 38-44. Thus, since "[b]oth Parties are represented by experienced counsel[,] . . . their mutual desire to adopt the terms of the proposed settlement, while not conclusive, is entitled to [a] great deal of weight." *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1174 (S.D. Cal. 2007).

8. The Reaction of the Class

"It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class [action settlement] are favorable to the class members." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008). "[T]he willingness of the overwhelming majority of the class to approve the offer and remain part of the class presents at least some objective positive commentary as to its fairness." *Celera*, 2015 WL 7351449, at *7. To date, a total of 9,661 copies of the Notice and Claim Form have been mailed to potential Class members and nominees, and the Summary Notice was published in Investor's Business Daily and transmitted over GlobeNewswire on November 28, 2022. *See* Wilson Decl. ¶¶ 53-55. Despite this large number of potential Class Members, no objections or requests for exclusion have been received. Thus, although the time for

objections and exclusions has not yet expired, the reaction of the Class so far confirms the adequacy of the Settlement. *See id.* ¶¶ 57-58; *see also Zynga*, 2016 WL 537946, at *14 (stating that a low number of exclusions supports a settlement's reasonableness).[5]

II. THE PLAN OF ALLOCATION IS FAIR, REASONABLE, AND ADEQUATE

The Court has broad discretion in approving a plan of allocation. "Approval of a plan of allocation of settlement proceeds in a class action under FRCP 23 is governed by the same standards of review applicable to approval of the settlement as a whole: the plan must be fair, reasonable, and adequate." *In re Am. Apparel, Inc. S'holder Litig.*, No. CV 10-06352 MMM (JCGx), 2014 WL 10212865, at *18 (C.D. Cal. July 28, 2014). "A plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable." *In re High-Tech Emp. Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL 5159441, at *6 (N.D. Cal. Sept. 2, 2015).

In developing the Plan of Allocation, Plaintiff enlisted the help of a damages consultant who is familiar with the damage issues in this Action, as well as the help of the Claims Administrator which has experience implementing plans of allocation in securities class actions. *See* Wilson Decl. ¶ 64. The Plan of Allocation's objective is to distribute a pro rata share of the Net Settlement Fund to Authorized Claimants based upon their claimed losses consistent with the AC's allegations. *See id*. ¶ 62. Specifically, after Authorized Claimants submit their Claim Forms and supporting documentation, the Claims Administrator will calculate their Recognized Loss according to a formula that will take into account when and at what price they purchased Mesa securities. *See id*. ¶ 63.

[5] One of the Ninth Circuit factors used to determine whether a settlement if fair, reasonable, and adequate—the "presence of a governmental participant"—is irrelevant because there is no governmental entity involved. *Zynga*, 2016 WL 537946, at *8.

Thus, "the plan allocates the settlement fund proportional to the actual injury of each class member. Accordingly, the plan of allocation is fair, reasonable and adequate." *Patel v. Axesstel, Inc.*, No. 3:14-CV-1037-CAB-BGS, 2015 WL 6458073, at *7 (S.D. Cal. Oct. 23, 2015); *see also Heritage*, 2005 WL 1594403, at *11 ("[A] plan of allocation . . . fairly treats class members by awarding a pro rata share to every Authorized Claimant, [even as it] sensibly makes interclass distinctions based upon, *inter alia*, the relative strengths and weaknesses of class members' individual claims and the timing of purchases of the securities at issue.").

The terms of the Plan of Allocation were fully disclosed in the Notice that was mailed to 9,661 potential Class Members and nominees and posted on the settlement website. *See* Wilson Decl. ¶¶ 53, 55. While Class Members have until March 17, 2023 to object, there have been no objections to the Plan to date. *See id.* ¶ 57-58, 65. Thus, Plaintiff respectfully requests that the Court approve the Plan of Allocation as fair, reasonable, and adequate.

III. THE NOTICE PROGRAM SATISFIES RULE 23, THE PSLRA, AND DUE PROCESS

Notice of a class action settlement must meet the requirements of Rule 23, the PSLRA, and the due process clause of the United States Constitution. Rules 23(c)(2)(B) and 23(e)(1)(B) require that the Court direct to class members "the best notice that is practicable under the circumstances" and "in a reasonable manner[.]" The PSLRA and the due process clause impose similar requirements. *See* PA Mot. 16.

The Court preliminarily approved the form, content, and method of dissemination of the notices provided to potential Class Members. *See* PA Order ¶ 5. Pursuant to the Preliminary Approval Order, the Notice and Proof of Claim Form have been mailed to 9,661 potential Class Members and nominees beginning on November 18, 2022. *See* Wilson Decl. ¶ 53.

As described in the Preliminary Approval Motion, the Notice included the information required by Rule 23, the due process clause, and the PSLRA. *See* PA Motion 16-17. Courts in this Circuit have routinely found that this method of mailing, publication, and Internet notice satisfies the applicable notice standards in similar class actions. This manner of providing notice represents the best notice practicable under the circumstances, is typical of the notice given in other class actions, and satisfies the requirements of Rule 23, the PSLRA, and due process. *See, e.g., Celera*, 2015 WL 7351449, at *5 (finding a similar notice plan appropriate).

Thus, Plaintiff respectfully requests that the Court find the notice program satisfies the requirements of Rule 23, the PSLRA, and due process.

CONCLUSION

For the reasons stated above, Plaintiff respectfully requests that the Court: (a) grant final approval of the proposed Settlement; (b) find that the form and manner of giving notice of the Settlement to the Class satisfied due process, Rule 23, and the PSLRA; and (c) grant approval of the Plan of Allocation.

Dated: February 10, 2023

By: */s/ James M. Wilson, Jr.*
James M. Wilson, Jr.

Lubna Faruqi (*Admitted pro hac vice*)
Robert W. Killorin (*Admitted pro hac vice*)
James M. Wilson, Jr. (*Admitted pro hac vice*)
FARUQI & FARUQI, LLP
685 Third Avenue, 26th Floor
New York, NY 10017
Telephone: 212-983-9330
Facsimile: 212-983-9331
Email: lfaruqi@faruqilaw.com
rkillorin@faruqilaw.com
jwilson@faruqilaw.com

Attorneys for Class Representative DeKalb County Pension Fund and Lead Counsel for the Class

Gary F. Urman
DECONCINI MCDONALD YETWIN & LACY, P.C.

2525 East Broadway, Suite 200
Tucson, Arizona 85716
Telephone:520-322-5000
Facsimile: 520-322-5585
Email: gurman@dmyl.com

Attorneys for Class Representative DeKalb County Pension Fund and Liaison Counsel for the Class

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

David G. Lowthorp, Individually And On Behalf Of All Others Similarly Situated, Plaintiff, V. Mesa Air Group, Inc.; Jonathan G. Ornstein; Michael J. Lotz; Daniel J. Altobello; Ellen N. Artist; Mitchell Gordon; Dana J. Lockhart; G. Grant Lyon; Giacomo Picco; Harvey Schiller; Don Skiados; Raymond James & Associates, Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Cowen and Company, LLC; Stifel, Nicolaus & Company, Incorporated; and Imperial Capital, LLC, Defendants.	No. 20-00648-PHX-MTL **[PROPOSED] FINAL ORDER AND JUDGMENT** CLASS ACTION

WHEREAS:

A. On May 6, 2022, Dekalb County Pension Fund ("Lead Plaintiff"), and all other members of the Settlement Class, on the one hand, and Defendants Mesa Air Group, Inc. ("Mesa"), Jonathan G. Ornstein, Michael J. Lotz, Daniel J. Altobello, Ellen N. Artist, Mitchell Gordon, Dana J. Lockhart, G. Grant Lyon, Giacomo Picco, Harvey Schiller, and Don Skiados (collectively with Mesa, the "Mesa Defendants"), and Raymond James & Associates, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated,

Cowen and Company, LLC, Stifel, Nicolaus & Company, Incorporated, and Imperial Capital, LLC (collectively, the "Underwriter Defendants," and together with the Mesa Defendants, "Defendants"), on the other, entered into a Stipulation and Agreement of Settlement (the "Stipulation") in the above-titled litigation (the "Action");

B. Pursuant to the Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, entered October 28, 2022 (the Preliminary Approval Order"), the Court scheduled a hearing for April 6, 2023, to, among other things: (i) determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate, and should be approved by the Court; (ii) determine whether a judgment as provided for in the Stipulation should be entered; and (iii) rule on Lead Counsel's Fee and Expense Application;

C. The Court ordered that the Notice of Pendency of Class Action and Proposed Settlement (the "Notice") and a Proof of Claim and Release form ("Claim Form"), substantially in the forms attached to the Preliminary Approval Order as Exhibits 1 and 2, respectively, be mailed by first-class mail, postage prepaid, on or before twenty-one (21) calendar days after the date of entry of the Preliminary Approval Order ("Notice Date") to all potential Settlement Class Members to the list of record holders of Mesa Securities, and that a Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses (the "Summary Notice"), substantially in the form attached to the Preliminary Approval Order as Exhibit 3, be published in *Investor's Business Daily* and transmitted over *GlobeNewswire* within fourteen (14) calendar days of the Notice Date;

D. The Notice and the Summary Notice advised potential Settlement Class Members of the date, time, place, and purpose of the Settlement Hearing. The Notice further advised that any objections to the Settlement were required to be filed with the Court and served on counsel for the Parties such that they were received by March 17,

2023;

E. The provisions of the Preliminary Approval Order as to notice were complied with;

F. On February 10, 2023, Lead Plaintiff moved for final approval of the Settlement, as set forth in the Preliminary Approval Order. The Settlement Hearing was duly held before this Court on April 6, 2023, at which time all interested Persons were afforded the opportunity to be heard; and

G. This Court has duly considered Lead Plaintiff's motion for final approval of the Settlement, the affidavits, declarations, memoranda of law submitted in support thereof, the Stipulation, and all of the submissions and arguments presented with respect to the proposed Settlement;

NOW, THEREFORE, after due deliberation, IT IS ORDERED, ADJUDGED AND DECREED that:

1. This Judgment incorporate and makes a part hereof: (i) the Stipulation filed with the Court on May 6, 2022; and (ii) the Notice, which was filed with the Court on May 6, 2022. Capitalized terms not defined in this Judgment shall have the meaning set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Settlement Class Members.

3. The Court finds that that the mailing and publication of the Notice, Claim Form, and Summary Notice: (i) complied with the Preliminary Approval Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated to apprise Settlement Class Members of the effect of the Settlement, of the proposed Plan of Allocation, of Lead Counsel's anticipated Fee and Expense Application, of Settlement Class Members' right to object or seek exclusion from the Settlement Class, and of their right to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of

the proposed Settlement; and (v) satisfied the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and the Private Securities Litigation Reform Act of 1995 (the "PSLRA")., 15 U.S.C. § 77z-1(a)(7).

4. [There have been no objections to the Settlement.]

5. Pursuant to Rule 23(e)(2) of the Federal Rules of Civil Procedure, this Court hereby approves the Settlement and finds that in light of the benefits to the Settlement Class, the complexity and expense of further litigation, and the costs of continued litigation, said Settlement is, in all respects, fair, reasonable, and adequate, having considered and found that: (a) Lead Plaintiff and Plaintiff's Counsel have adequately represented the Settlement Class; (b) the proposal was negotiated at arm's-length; (c) the relief provided for the Settlement Class is adequate, having taken into account (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the Settlement Class, including the method of processing Settlement Class Member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (d) the proposed Plan of Allocation treats Settlement Class Members equitably relative to each other. Accordingly, the Settlement is hereby approved in all respects and shall be consummated in accordance with the terms and provisions of the Stipulation.

6. The Amended Complaint ("AC"), filed on August 17, 2020, is dismissed in its entirety, with prejudice, and without costs to any Party, except as otherwise provided in the Stipulation.

7. The Court finds that during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

8. Upon the Effective Date, Lead Plaintiff and each and every other

Settlement Class Member, on behalf of themselves and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Released Claims against each and every one of the Released Defendant Parties and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Released Claims against any and all of the Released Defendant Parties.

9. Upon the Effective Date, Defendants, on behalf of themselves and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Released Defendants' Claims against each and every one of the Released Plaintiff Parties and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Released Defendants' Claims against any and all of the Released Plaintiff Parties.

10. Each Settlement Class Member, whether or not such Settlement Class Member executes and delivers a Claim Form, is bound by this Judgment, including, without limitation, the release of claims as set forth in the Stipulation.

11. This Judgment and the Stipulation, whether or not consummated, and any discussion, negotiation, proceeding, or agreement relating to the Stipulation, the Settlement, and any matter arising in connection with settlement discussions or negotiations, proceedings, or agreements, shall not be offered or received against or to the prejudice of the Parties or their respective counsel, for any purpose other than in an action to enforce the terms hereof, and in particular:

a. Do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants with

respect to the truth of any allegation by Lead Plaintiff and the Settlement Class, or the validity of any claim that has been or could have been asserted in the Action or in any litigation, including but not limited to the Released Claims, or of any liability, damages, negligence, fault or wrongdoing of Defendants or any person or entity whatsoever;

b. Do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of a presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by Defendants, or against or to the prejudice of Lead Plaintiff, or any other member of the Settlement Class as evidence of any infirmity in the claims of Lead Plaintiff, or the other members of the Settlement Class;

c. Do not constitute, and shall not be offered or received against or to the prejudice of Defendants, Lead Plaintiff, any other member of the Settlement Class, or their respective counsel, as evidence of a presumption, concession, or admission with respect to any liability, damages, negligence, fault, infirmity, or wrongdoing, or in any way referred to for any other reason against or to the prejudice of any of the Defendants, Lead Plaintiff, other members of the Settlement Class, or their respective counsel, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;

d. Do not constitute, and shall not be construed against Defendants, Lead Plaintiff, or any other member of the Settlement Class, as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial; and

e. Do not constitute, and shall not be construed as or received in evidence as an admission, concession, or presumption against Lead Plaintiff, or

any other member of the Settlement Class that any of their claims are without merit or infirm or that damages recoverable under the Complaint would not have exceeded the Settlement Amount. Plaintiff shall return or certify the deletion of all documents voluntarily provided by Defendants as "confirmatory discovery" in connection with the settlement.

12. The administration of the Settlement, and the decision of all disputed questions of law and fact with respect to the validity of any claim or right of any Person to participate in the distribution of the Net Settlement Fund, shall remain under the authority of this Court.

13. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated, and in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

14. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

15. The Parties are hereby directed to execute the Stipulation and to perform its terms.

16. The Court hereby finds that the proposed Plan of Allocation is a fair and reasonable method to allocate the Settlement Fund among Class Members, and Lead Counsel and the Claims Administrator are directed to administer the Plan of Allocation in accordance with its terms and the terms of the Stipulation.

17. Lead Counsel is awarded attorneys' fees in the amount of $1,250,000, and expenses in the amount of $95,089.47, plus any applicable interest, and these amount shall be paid of the of the Settlement Fund immediately following entry of this Order subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

18. Lead Plaintiff is awarded in total $5,382.18 as an award for reasonable costs and expenses directly relating to the representation of the Settlement Class as provided in 15 U.S.C. § 77z-1(a)(4), such amounts to be paid from the Settlement Fund upon the Effective Date of the Settlement.

19. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (i) implementation of the Settlement; (ii) the allowance, disallowance or adjustment of any Settlement Class Member's claim on equitable grounds and any award or distribution of the Settlement Fund; (iii) disposition of the Settlement Fund; (iv) any applications for attorneys' fees, costs, interest and payment of expenses in the Action; (v) all Parties for the purpose of construing, enforcing and administering the Settlement and this Judgment; and (vi) other matters related or ancillary to the foregoing. There is no just reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is expressly directed.