

1 Gary F. Urman (AZ 11748)
gurman@dmyl.com
2 **DECONCINI MCDONALD YETWIN & LACY, P.C.**
2525 East Broadway, Suite 500
3 Tucson, Arizona 85716
Telephone: 520-322-5000
4 Facsimile: 520-322-5585

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

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

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

13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF ARIZONA**

15
16 David G. Lowthorp, Individually And On
Behalf Of All Others Similarly Situated,

17
18 Plaintiff,

19 V.

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

26 Defendants.
27
28

Case No. 2:20-cv-00648-MTL

**LEAD COUNSEL’S MOTION FOR
LEAVE TO FILE UNDER SEAL
CERTAIN EXHIBITS SUBMITTED IN
SUPPORT OF LEAD COUNSEL’S
MOTION FOR ATTORNEYS’ FEES,
REIMBURSEMENT OF EXPENSES, AND
AN AWARD TO LEAD PLAINTIFF;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

CLASS ACTION

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PRELIMINARY STATEMENT

Faruqi & Faruqi, LLP (the “Faruqi Firm” or “Lead Counsel”), Lead Counsel to Class Representative DeKalb County Pension Fund (“Plaintiff”) and the Class, respectfully moves this Court for an Order pursuant to Local Rule 5.6, Local Rule 54.2, and Fed. R. Civ. P. 26(c) allowing Lead Counsel to file Exhibit 3-A, a task-based itemized statement of attorneys’ fees sought, completely under seal, and Exhibits 4-A, 4-B, 4-C, 4-E, 4-F, 4-G, 4-H, 4-I, 4-J, and 4-K, which contain receipts, invoices, and charges applicable to the reimbursement of expenses sought, with limited redactions.¹ These exhibits are appended to the Declaration of James M. Wilson, Jr. in Support of Class Representative’s Motion for Final Approval of Class Action Settlement and Lead Counsel’s Motion for an Award of Attorney’s Fees, Reimbursement of Expenses, and an Award to Lead Plaintiff (“Wilson Decl.”), filed today with the motions described in the declaration’s title.

Lead Counsel also seeks to file completely under seal the time report submitted by DeConcini McDonald Yetwin & Lacy, P.C. (the “DeConcini Firm” or “Liaison Counsel”) with the Affidavit of Gary F. Urman, filed herewith (“DeConcini Time Report”).

Lead Counsel consulted with Defense Counsel and were informed that Defendants do not oppose this request and do not intend to file a written response.

This motion is based on the accompanying Memorandum of Points and Authorities set forth below, and any other evidence and argument that may be presented prior to the Court’s decision on this motion.

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to this Court’s October 28, 2022 Order preliminarily approving the Settlement (“Preliminary Approval Order”), Lead Counsel is required to file its application for attorneys’ fees and expenses no later than February 10, 2023. Doc. 137 ¶ 25.

¹ Unless otherwise noted, 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.

1 Accordingly, Lead Counsel is filing its Motion for an Award of Attorney’s Fees,
2 Reimbursement of Expenses, and an Award to Lead Plaintiff in this Action today (“Fee
3 Motion”).

4 As required by Local Rule 54.2(d)(3), Plaintiff’s Counsel is submitting task-based
5 itemized statements of fees of expenses incurred with the Fee Motion. That rule provides
6 that counsel may seek leave of court to file such statements under seal “if deemed necessary
7 to prevent the disclosure of information protected by the attorney-client privilege and
8 attorney work-product doctrine.” L.R. Civ. 54.2(d)(3). Lead Counsel believes that the
9 sealing requested herein is necessary to prevent the disclosure of such information, as well
10 as information like account numbers and other financial information from being disclosed.

11 ARGUMENT

12 When considering a sealing request, “the starting point” is “a strong presumption in
13 favor of access.” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.
14 2006). While parties seeking to seal judicial records related to motions that are “more than
15 tangentially related to the underlying cause of action” must show “compelling reasons”
16 justifying sealing, [t]he Ninth Circuit applies a “good cause” standard to requests to seal
17 documents supporting a non-dispositive motion, like the Fee Motion at issue here. *Ctr. for*
18 *Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1099 (9th Cir. 2016) (stating that documents
19 attached to motions that are “not related, or only tangentially related, to the merits of a case”
20 are not subject to the strong presumption of access); *Arnold v. Standard Pac. of Arizona*
21 *Inc.*, No. CV-16-00452-PHX-DGC, 2016 WL 7046462, at *6 (D. Ariz. Dec. 5, 2016) (fee
22 motion is non-dispositive).

23 There is good cause to grant Lead Counsel’s request to file the task-based itemized
24 statements of attorneys’ fees completely under seal because they contain information
25 protected by attorney-client privilege and the work-product doctrine. For example, they
26 contain details about Plaintiff’s Counsel’s internal discussions about the Action (*see, e.g.*,
27 Ex. 3-A at 10, 11; DeConcini Time Report at 1-2), Lead Counsel’s communications with
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1 Lead Plaintiff (*see, e.g.*, Ex. 3-A at 1, 48), Lead Counsel’s communications with damages
2 consultants and investigators (*see, e.g.*, Ex. 3-A at 55, 60, 64-66, 83), and the specifics
3 about the types of research Lead Counsel undertook during the litigation that would reveal
4 counsel’s mental impressions and strategy (*see, e.g.*, Ex. 3-A at 10-14, 45, 60). *See*
5 *Adtrader, Inc. v. Google LLC*, Case No. 17-cv-07082-BLF, 2020 WL 6389186, at *1 (N.D.
6 Cal. Feb. 24, 2020) (“Under Ninth Circuit authority, attorney-client privilege embraces
7 attorney time, records and statements to the extent that they reveal litigation strategy and the
8 nature of the services provided.”).

9 Courts have found it proper to seal task-based itemized statements of fees in similar
10 circumstances. *See BoxNic Anstalt v. Gallerie degli Uffizi*, No. CV-18-1263-PHX-DGC,
11 2020 WL 2991561, at *4 (D. Ariz. June 4, 2020) (“With respect to the itemized task-based
12 statement, the Court agrees that the individual entries may reveal confidential information,
13 including counsel’s legal strategy and client communications that detail legal services
14 rendered throughout this litigation.”); *Meidicis Pharm. Corp. v. Acella Pharms., LLC*, No.
15 CV-10-1780-PHX-JAT, 2012 WL 2260928, at *2 (D. Ariz. June 15, 2012) (finding good
16 cause to seal “an itemized summary of [party’s] attorney fees and expenses”); *cf. Arnold*,
17 2016 WL 7046462, at *6 (granting motion to seal a fee agreement where it described “in
18 part [] counsels’ methods of litigating a case and strategy regarding retention of clientele”).

19 Additionally, Lead Counsel seeks to file under seal with redactions certain of the
20 invoices and receipts in Exhibit 4. Specifically, Lead Counsel seeks to redact the detailed
21 descriptions of work performed by its investigators (Ex. 4-B) on the grounds that these
22 detailed descriptions of the tasks they undertook are work-product and there is therefore
23 good cause for them to be filed under seal. For example, the investigators’ invoices contain
24 descriptions of conversations about its investigation with Lead Counsel, as well as details
25 about who was contacted as a potential witness and the outcomes of those interviews. *Cf. In*
26 *re Bofi Holding Inc. Sec. Litig.*, Case No. 15-cv-2324-GPC-KSC, 2021 WL 3700749, at *5
27 (S.D. Cal. July 27, 2021) (finding interview notes and memoranda prepared by plaintiff’s
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1 counsel are protected work-product).

2 Lead Counsel also seeks to redact sensitive financial information such as account
3 numbers and wiring instructions, as well as personally identifiable information such as
4 home addresses, phone numbers, tax id numbers, and personal emails that appear on the
5 receipts and invoices in Exhibit 4-A at 1, 10; Exhibit 4-B at 1, 8, 11; Exhibit 4-C at 1-3;
6 Exhibit 4-E at 1-2; Exhibit 4-F at 4-7, 11-18, 20-26; Exhibit 4-G at 2-5, 7-9, 12; Exhibit 4-I
7 at 4-5; 4-J at 2-3, 9-10, 22-23, 24-26, 28, 30-39, 41-42, 46, 49-53, 55-59; and Exhibit 4-K at
8 2-15. There is good cause to redact this information because its disclosure not only invades
9 the privacy of non-parties like Lead Counsel’s employees and consultants, but puts the
10 subject at risk of identity theft. *See Kamakana*, 447 F.3d at 1184 (affirming magistrate
11 judge’s decision to seal disclosure of individuals’ “home address and social security
12 numbers” because disclosure could expose them “or their families to harm or identity
13 theft”); *Kumandan v. Google LLC*, Case No. 19-cv-04286-BLF, 2022 WL 1501017, at * 2
14 (May 12, 2022) (permitting personal email addresses of non-parties to be sealed as
15 personally identifiable information); *Chloe SAS v. Sawabeh Info. Servs. Co.*, No. CV 11-
16 04147-MMM (MANx), 2015 WL 12734004, at *3 (C.D. Cal. Feb. 4, 2015) (finding that
17 non-party privacy interests sufficed for “good cause” and citing cases); Discover.com, How
18 do Credit Card Numbers Get Stolen? (Mar. 9, 2022) (noting that the last four digits of an
19 account number can help thieves steal a credit card), [https://www.discover.com/credit-](https://www.discover.com/credit-cards/card-smarts/how-do-credit-card-numbers-get-stolen/#:~:text=Thieves%20can%20access%20information%20from,as%20well%20as%20t)
20 [cards/card-smarts/how-do-credit-card-numbers-get-](https://www.discover.com/credit-cards/card-smarts/how-do-credit-card-numbers-get-stolen/#:~:text=Thieves%20can%20access%20information%20from,as%20well%20as%20t)
21 [stolen/#:~:text=Thieves%20can%20access%20information%20from,as%20well%20as%20t](https://www.discover.com/credit-cards/card-smarts/how-do-credit-card-numbers-get-stolen/#:~:text=Thieves%20can%20access%20information%20from,as%20well%20as%20t)
22 [ransaction%20information](https://www.discover.com/credit-cards/card-smarts/how-do-credit-card-numbers-get-stolen/#:~:text=Thieves%20can%20access%20information%20from,as%20well%20as%20t) (last visited February 10, 2023).

23 Even assuming, *arguendo*, that the “compelling reasons” standard applies, Lead
24 Counsel’s request here would satisfy it. Generally, a “compelling reason” is sufficient to
25 outweigh the public’s interest in disclosure and to justify sealing a court record when the
26 court files might become a vehicle for improper purposes, such as the use of records to
27 gratify private spite, promote public scandal, circulate libelous statements, or release trade
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1 secrets. *Kamakana*, 447 F.3d at 1179. “Courts generally accept attorney-client privilege
2 and the work-product doctrine as a compelling reason justifying a motion to seal[,]” which
3 is the reason Lead Counsel seeks to seal Exhibit 3 and parts of Exhibit 4. *WatchGuard*
4 *Techs., Inc. v. iValue Infosolutions Pvt. Ltd.*, Case No. C15-1697-BAT, 2017 WL 3581624,
5 at *2 (W.D. Wash. Aug. 18, 2017). Additionally, courts often find compelling reasons to
6 seal personally identifiable and other private information of the type that Lead Counsel
7 seeks to redact in Exhibit 4. *See Snapkeys, Ltd. v. Google LLC*, Case No. 19-CV-02658-
8 LHK, 2021 WL 1951250, at *3 (N.D. Cal. May 14, 2021) (finding compelling reasons to
9 seal personally identifiable information of litigant’s current and former employees,
10 including their email addresses and telephone numbers, and collecting cases).

11 **CONCLUSION**

12 For the above-mentioned reasons, Lead Counsel respectfully requests that the Court
13 grant this motion to seal and enter the attached order granting the motion.

14
15 Dated: February 10, 2023

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

16
17 Lubna Faruqi (*Admitted pro hac vice*)
18 Robert W. Killorin (*Admitted pro hac vice*)
19 James M. Wilson, Jr. (*Admitted pro hac vice*)
20 **FARUQI & FARUQI, LLP**
21 685 Third Avenue, 26th Floor
22 New York, NY 10017
23 Telephone: 212-983-9330
24 Facsimile: 212-983-9331
25 Email: lfaruqi@faruqilaw.com
26 rkillorin@faruqilaw.com
27 jwilson@faruqilaw.com

28 *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 500
Tucson, Arizona 85716

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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*

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**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] ORDER GRANTING
MOTION TO FILE UNDER SEAL
CERTAIN EXHIBITS SUBMITTED IN
SUPPORT OF LEAD COUNSEL'S
MOTION FOR ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND AN AWARD TO LEAD PLAINTIFF**

CLASS ACTION

1 UPON CONSIDERATION OF LEAD COUNSEL’S MOTION TO SEAL
2 CERTAIN EXHIBITS SUBMITTED IN SUPPORT OF LEAD COUNSEL’S MOTION
3 FOR ATTORNEYS’ FEES, REIMBURSEMENT OF EXPENSES, AND AN AWARD
4 TO LEAD PLAINTIFF (“MOTION TO SEAL”), and good cause appearing therefore;

5 IT IS HEREBY ORDERED that Exhibit 3-A to the Declaration of James M.
6 Wilson, Jr. in Support of Class Representative’s Motion for Final Approval of Class
7 Action Settlement and Lead Counsel’s Motion for an Award of Attorney’s Fees,
8 Reimbursement of Expenses, and an Award to Lead Plaintiff (“Wilson Declaration”) and
9 the DeConcini Time Report submitted with the Affidavit of Gary F. Urman in Support of
10 Plaintiff’s Motion for Final Approval of Class Action Settlement and Award of
11 Attorney’s Fees and Expenses shall be placed under seal in their entirety by the Clerk of
12 the Court.

13 IT IS FURTHER HEREBY ORDERED that Exhibits 4-A through 4-C, and
14 Exhibit 4-E through 4-K shall be filed under seal with the redactions requested in Lead
15 Counsel’s Motion to Seal.

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