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14 **IN THE UNITED STATES DISTRICT COURT**

15 **DISTRICT OF ARIZONA**

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

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  
24 Company, LLC; Stifel, Nicolaus &  
Company, Incorporated; and Imperial  
25 Capital, LLC,

26 Defendants.

No. CV-20-00648-PHX-MTL

**LEAD COUNSEL'S MOTION FOR AN  
AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES,  
AND AN AWARD TO LEAD  
PLAINTIFF; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

CLASS ACTION

27

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1 **PRELIMINARY STATEMENT**

2 Class Representative DeKalb County Pension Fund (“Plaintiff” or “DeKalb”) on  
3 behalf of itself and the proposed Settlement Class, respectfully moves this Court for an  
4 Order pursuant to Rules 23 and 54 of the Federal Rules of Civil Procedure, the Private  
5 Securities Litigation Reform Act of 1995, 15 U.S.C. § 77z-1, and Local Rule of Civil  
6 Procedure (“Local Rule”) 54.2: (a) awarding attorneys’ fees in the amount of 25% of the  
7 Settlement Fund, or \$1,250,000 plus accrued interest; (b) reimbursing expenses in the  
8 amount of \$95,089.47, plus accrued interest; and (c) authorizing an award for Plaintiff in  
9 the amount of \$5,382.18 pursuant to 15 U.S.C. §77z-1(a)(4).<sup>1</sup>

10 As discussed in Plaintiff’s Unopposed Motion for Preliminary Approval of Class  
11 Action Settlement (“Preliminary Approval Motion” or “PA Mot.”), Doc. 125, Plaintiff,  
12 on behalf of itself and the proposed Settlement Class, as well as Defendants Mesa Air  
13 Group, Inc. (“Mesa” or the “Company”), Jonathan G. Ornstein, Michael J. Lotz, Daniel J.  
14 Altobello, Ellen N. Artist, Mitchell Gordon, Dana J. Lockhart, G. Grant Lyon, Giacomo  
15 Picco, Harvey Schiller, Don Skiados (collectively, the “Mesa Defendants”), Raymond  
16 James & Associates, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Cowen  
17 and Company, LLC, Stifel, Nicolaus & Company, Incorporated, and Imperial Capital,  
18 LLC (collectively, the “Underwriter Defendants,” together with the Mesa Defendants, the  
19 “Defendants”), have reached a proposed Settlement for \$5,000,000 that, if given final  
20 approval, will resolve all claims in this Action. The Settlement is the result of zealous  
21 prosecution by Plaintiff’s Counsel and Plaintiff. It is a favorable result for the Class  
22 considering the risks that a smaller recovery, or no recovery at all, might be achieved  
23 after further litigation.

24  
25 <sup>1</sup> All capitalized terms not otherwise defined herein have the same meaning as those in  
26 the Stipulation and Agreement of Settlement, dated May 6, 2022 (the “Stipulation” or  
27 “Stip.”), Doc. 124. “Settlement” refers to the settlement set forth in the Stipulation. All  
28 internal quotations marks and citations are omitted and all emphases are added unless  
otherwise noted.

1 In connection with the Settlement, Lead Counsel, Faruqi & Faruqi, LLP (the  
2 “Faruqi Firm”), on behalf of Plaintiff’s Counsel, respectfully seeks approval of an award  
3 of attorneys’ fees in the amount of 25% of the Settlement Fund, and reimbursement of  
4 \$95,089.47 in expenses reasonably incurred during the course of the Action, plus interest  
5 accrued on both amounts.

6 As detailed below, the requested fee is fair and reasonable in light of the obstacles  
7 Plaintiff’s Counsel has faced during prosecution of this action, Lead Counsel’s skill and  
8 expertise in litigating securities class actions, the favorable result obtained for the Class,  
9 as well as the factors listed in Local Rule 54.2(c)(3). In recognition of the risks  
10 undertaken and the effort expended by counsel in contingency fee cases, courts in this  
11 Circuit and throughout the United States routinely award fees of this size in complex  
12 securities cases with comparable recoveries. Lead Counsel also requests that Plaintiff be  
13 granted an award of \$5,382.18 pursuant to 15 U.S.C. § 77z-1(a)(4) for the time and effort  
14 that it devoted to representing the Class in this Action.

15 Accordingly, Lead Counsel respectfully submits that the requested attorneys’ fees,  
16 reimbursement of expenses, and award for Plaintiff should be granted.

17 This motion is based upon the memorandum of points and authorities set forth  
18 below; the Declaration of James M. Wilson, Jr., (“Wilson Declaration” or “Wilson  
19 Decl.”), with attached exhibits, filed herewith; the Affidavit of Gary Urman (“Urman  
20 Affidavit” or “Urman Aff.”), with attached exhibits, filed herewith; the pleadings and  
21 records on file in the above-captioned action (the “Action”), and other such matters and  
22 argument as the Court may consider at the hearing of this motion.

### 23 **MEMORANDUM OF POINTS AND AUTHORITIES**

#### 24 **FACTUAL AND PROCEDURAL BACKGROUND**

25 To avoid undue repetition, Lead Counsel respectfully refers the Court to the  
26 Wilson Declaration for a detailed description of Plaintiff’s claims and the prosecution of  
27 this Action. *See* Wilson Decl. ¶¶ 11-37.

1 **ARGUMENT**

2 **I. ELIGIBILITY**

3 As stated above, counsel seeks an award of attorneys’ fees and related expenses  
4 pursuant to Rules 23 and 54 of the Federal Rules of Civil Procedure, the Private  
5 Securities Litigation Reform Act of 1995, 15 U.S.C. § 77z-1, and Local Rule 54.2.  
6 Additionally, counsel seeks an award for Plaintiff pursuant to 15 U.S.C. § 77z-1(a)(4).

7 **II. ENTITLEMENT**

8 Lead Counsel is entitled to the fee and expenses award under the Common Fund  
9 Doctrine, an equitable theory used to prevent unjust enrichment such that a party in  
10 litigation who creates, discovers, magnifies, or protects a common fund for others may be  
11 entitled to recover litigation costs and attorney’s fees from that fund. *Paul, Johnson,*  
12 *Alston & Hunt v. Graulty*, 886 F.2d 268, 271-72 (9th Cir. 1989); *see also Boeing Co. v.*  
13 *Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] litigant or a lawyer who recovers a common  
14 fund for the benefit of persons other than himself or his client is entitled to a reasonable  
15 attorney’s fee from the fund as a whole.”). This is true in securities class actions as well.  
16 *See, e.g., Kui Zhu v. Taronis Techs. Inc.*, No. CV-19-04529-PHX-GMS, 2021 WL  
17 871775, at \*2 (D. Ariz. Mar. 9, 2021) (granting Class Counsel in securities class action’s  
18 request for attorney’s fees of 25% of the common fund and reimbursement of expenses).  
19 The reasonableness of the fee and expense award requested from the common fund in this  
20 action is set forth below.

21 **III. REASONABLENESS OF REQUESTED AWARD**

22 **A. Percentage Of the Fund Is The Preferred Method**

23 It is well established in the Ninth Circuit that, in a common fund case, the court  
24 has discretion to apply either the percentage of the fund method or the lodestar method in  
25 calculating a fee award. *See Fischel v. Equitable Life Assur. Soc’y of the U.S.*, 307 F.3d  
26 997, 1006 (9th Cir. 2002); *see also In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19  
27 F.3d 1291, 1295 (9th Cir. 1994) (“WPPSS”). However, “use of the percentage method in  
28

1 common fund cases appears to be dominant” in this Circuit and its “advantages . . . have  
2 been described thoroughly by other courts.” *In re Omnivision Techs., Inc.*, 559 F. Supp.  
3 2d 1036, 1046 (N.D. Cal. 2008). For example, the percentage of the fund method  
4 incentivizes attorneys to obtain the maximum possible recovery for the class in the most  
5 efficient manner. *See Lopez v. Youngblood*, No. CV-F-07-0474 DLB, 2011 WL  
6 10483569, at \*3 (E.D. Cal. Sept. 2, 2011) (“[T]he percentage of the available fund  
7 analysis is the preferred approach in class action fee requests because it more closely  
8 aligns the interests of the counsel and the class, i.e., class counsel directly benefit from  
9 increasing the size of the class fund and working in the most efficient manner.”).

#### 10 **B. The Requested Fee of 25% is Reasonable**

11 While the ultimate determination of the appropriate amount of attorneys’ fees to  
12 be awarded in each case rests within the sound discretion of the district court, *see*  
13 *Rodriguez v. Disner*, 688 F.3d 645, 653 (9th Cir. 2012), “[t]his circuit has established  
14 25% of the common fund as a benchmark award for attorney fees” *Staton v. Boeing Co.*,  
15 327 F.3d 938, 968 (9th Cir. 2003). The benchmark is a starting point, as “the district  
16 court should be guided by the fundamental principle that fee awards out of common  
17 funds be reasonable under the circumstances.” *WPPSS*, 19 F.3d at 1296. Thus, in  
18 assessing whether a fee in line with the 25% benchmark is fair and reasonable in a  
19 particular case, or whether the fee should be adjusted upwards or downwards, courts  
20 generally consider the following factors: (1) the results achieved; (2) the risk the  
21 litigation posed; (3) the skill required and the quality of work performed; (4) the  
22 contingent nature of the fee and the financial burden; and (5) awards made in similar  
23 cases. *See DeStefano v. Zynga, Inc.*, No. 12-cv-04007-JSC, 2016 WL 537946, at \*17  
24 (N.D. Cal. Feb. 11, 2016). All of the factors support the requested fee.

#### 25 **1. Plaintiff’s Counsel Obtained a Favorable Result for the Class**

26 “The overall result and benefit to the class from the litigation is the most critical  
27 factor in granting a fee award.” *Omnivision*, 559 F. Supp. 2d at 1046; *In re Bluetooth*  
28

1 *Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (“Foremost among these  
2 considerations . . . is the benefit obtained for the class.”).

3 The recovery achieved in this Action, \$5,000,000 in cash, is a favorable result that  
4 will provide the Class with an immediate and certain benefit. As explained in the  
5 Preliminary Approval Motion, the Settlement Amount represents approximately 5.3% of  
6 the \$93.9 million in maximum possible statutory damages estimated by Plaintiff’s  
7 damages consultant before taking into account Defendants’ defense of negative  
8 causation, and approximately 16.6% of the \$30 million in maximum damages estimated  
9 by Defendants if Plaintiff was able to overcome Defendants’ negative causation defense  
10 not premised on lack of stock price reaction. PA Mot. 11; *see also* Wilson Decl. ¶ 70.  
11 This amount is well within the range of court-approved recoveries in complex securities  
12 class actions such as this. *See* PA Mot. 11-12.

13 Furthermore, when negotiating the Settlement, Lead Counsel carefully examined  
14 the continued time and expense of additional litigation, Plaintiff’s likelihood of success  
15 on the merits, the maximum provable damages, Defendants’ likelihood of success on  
16 their negative causation defense, and the likelihood of obtaining a larger settlement after  
17 continued litigation. *See* Wilson Decl. ¶¶ 38-44. Lead Counsel determined that, in light  
18 of these issues, the Settlement Amount was a favorable result for the Class. *See id.*  
19 Specifically, in order to continue to develop the claims in the operative complaint, the  
20 continued fact discovery process would require, among other things: meeting and  
21 conferring about the Parties’ respective discovery obligations and possible motion  
22 practice about the same; reviewing thousands more pages of documents; taking numerous  
23 depositions; serving and attempting to enforce third party subpoenas against former Mesa  
24 employees, Mesa third-party contractors, and the Federal Aviation Administration; and  
25 retaining expert witnesses regarding aircraft maintenance. . Even after putting in the  
26 considerable time and incurring the additional expenses that further discovery would  
27 require, there is a chance that Plaintiff’s claims could be dismissed at summary judgment,  
28

1 possibly on the negative causation defense that Defendants intend to assert at the earliest  
2 possible time, or following an expensive and resource-consuming trial. *See id.* ¶¶ 40-43.  
3 Thus, “the result achieved for the Class—especially at this early stage—is favorable  
4 considering the potential vulnerabilities of Lead Plaintiff’s case.” *Zynga*, 2016 WL  
5 537946, at \*17.

## 6                   **2.       Litigation of this Action Involved Significant Risks**

7                   “The risk that further litigation might result in Plaintiffs not recovering at all,  
8 particularly [in] a case involving complicated legal issues, is a significant factor in the  
9 award of fees.” *Wietzke v. CoStar Realty Info., Inc.*, No. 09cv2743 MMA (WVG), 2011  
10 WL 817438, at \*6 (S.D. Cal. Mar. 2, 2011).

11                  Plaintiff and Plaintiff’s Counsel continue to believe that the claims asserted in the  
12 Action are meritorious and that the evidence developed to date supports those claims.  
13 While Plaintiff believes that its claims would have survived summary judgment and trial,  
14 this result was far from guaranteed. *See* Wilson Decl. ¶¶ 38-41. Defendants have raised  
15 numerous challenges and adamantly deny any wrongdoing. *See* Stip. 3-4. Notably,  
16 Defendants repeatedly asserted a negative causation defense, and were prepared to argue  
17 that the stock price was not negatively impacted in the days following the alleged  
18 disclosure on May 10, 2019, and that the Class cannot recover for the stock drop on  
19 August 9, 2019, either. *See* PA Mot. 3-5, 9-11. There is no doubt that they would have  
20 continued to aggressively pursue this defense if litigation of this Action continued. *See*  
21 Wilson Decl. ¶¶ 39-40. Thus, after investing years of time litigating this Action,  
22 Plaintiff’s Counsel could be left with no compensation for their efforts.

## 23                   **3.       Plaintiff’s Counsel Provided Quality Representation**

24                  “The prosecution and management of a complex national class action requires  
25 unique legal skills and abilities.” *Zynga*, 2016 WL 537946, at \*17. The quality of the  
26 representation that Plaintiff’s Counsel provided supports the reasonableness of the  
27 requested fee. Lead Counsel is a national law firm with extensive experience representing  
28

1 investors in complex securities class actions. *See* Wilson Decl. ¶¶ 1-3, Ex. 2 (Faruqi  
2 Firm resume). Likewise, DeConcini McDonald Yetwin & Lacy, P.C. (the “DeConcini  
3 Firm”) has substantial complex litigation experience and has served the Class ably as  
4 Liaison Counsel. *See* Urman Decl. ¶ 2 & the DeConcini Firm Resume submitted  
5 therewith.

6 Plaintiff’s Counsel’s experience and skill were demonstrated by the zealous and  
7 effective prosecution of this Action. For example, Lead Counsel conducted an extensive  
8 factual investigation and engaged in significant legal research in connection with, *inter*  
9 *alia*, drafting the amended complaint; responding to Defendants’ motion to dismiss and  
10 Request for Judicial Notice; preparing for and attending two contested scheduling  
11 conferences; conducting substantial legal research regarding Defendants’ purported  
12 negative causation defense and working closely with damages consultants to better assess  
13 Defendants’ likelihood of success on this issue; responding to Defendants’ Motion for  
14 Leave to File an Early Motion for Summary Judgment (“Motion for Leave”); and  
15 reviewing over 70,000 pages of confirmatory discovery. Wilson Decl. ¶ 73.

16 “In addition to the difficulty of the legal and factual issues raised, the court should  
17 also consider the quality of opposing counsel as a measure of the skill required to litigate  
18 the case successfully.” *In re Am. Apparel, Inc. S’holder Litig.*, No. CV 10-06352 MMM  
19 (JCGx), 2014 WL 10212865, at \*22 (C.D. Cal. July 28, 2014). Defendants’ counsel,  
20 Wilson Sonsini Goodrich & Rosati, Ricketts & Case LLP, Shearman & Sterling LLP, and  
21 Lewis Roca Rothgerber Christie LLP, are skilled litigators. The attorneys who  
22 represented Defendants in this matter were formidable opponents who zealously  
23 represented their clients and mounted strong defenses. *See id.* To match defense  
24 counsel, Lead Counsel was required to litigate at a very high level of skill, efficiency, and  
25 professionalism at every stage of the proceedings. *See id.*; *HCL Partners Ltd. P’ship v.*  
26 *Lead Wireless Int’l, Inc.*, No. 07 CV 2245 MMA, 2010 WL 4156342, at \*2 (S.D. Cal.  
27 Oct. 15, 2010) (considering the quality of opposing counsel in approving the requested  
28

1 attorneys' fees). Indeed, this litigation was hard fought by both sides at every stage, as  
2 evidenced by the difficulties surrounding scheduling and the early motion practice  
3 regarding Defendants' negative causation defense.

4 Despite the formidable opposition faced throughout the litigation, Lead Counsel  
5 was able to reach an agreement with Defendants relatively early in the litigation on terms  
6 favorable to the Class. *See Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 373  
7 (S.D.N.Y. 2002) ("A prompt and efficient attorney who achieves a fair settlement without  
8 litigation serves both his client and the interests of justice.").

#### 9 **4. Plaintiff's Counsel Took on a Financial Burden**

10 In addition to the risks associated with complex litigation, "the risk of non-  
11 payment or reimbursement of expenses [in cases undertaken on a contingent basis] is a  
12 factor in determining the appropriateness of counsel's fee award." *In re Heritage Bond*  
13 *Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at \*21 (C.D. Cal. June 10, 2005).  
14 Courts in this Circuit have found that "[t]he importance of assuring adequate  
15 representation for plaintiffs who could not otherwise afford competent attorneys justifies  
16 providing those attorneys who do accept matters on a contingent-fee basis a larger fee  
17 than if they were billing by the hour or on a flat fee." *Omnivision*, 559 F. Supp. 2d at  
18 1047.

19 When Plaintiff's Counsel undertook representation of Plaintiff in this Action, it  
20 was aware that it was embarking on a complex securities class action that posed a  
21 significant risk of non-payment after many years of litigation. *See Wilson Decl.* ¶¶ 66,  
22 69. Despite this risk, Plaintiff's Counsel prosecuted this Action on a contingent fee basis  
23 and has not received any compensation for its services or reimbursement for the expenses  
24 it has incurred. *Id.* In order to reach the Settlement for the benefit of the Class,  
25 Plaintiff's Counsel has had to work thoroughly and diligently, investing a significant  
26 amount of time and energy into the litigation of this Action. Through these efforts,  
27 Plaintiff's Counsel has incurred 1,838.1 hours of attorney and staff time and \$95,089.47  
28

1 in expenses without reimbursement. *See id.* ¶¶ 73-74, Exs. 3-4; Urman Aff. ¶¶ 4-5.  
2 “This type of substantial outlay, when there is a risk that [no money] will be recovered,  
3 further supports the award of the requested fees.” *Am. Apparel*, 2014 WL 10212865, at  
4 \*22; *see also In re DJ Orthopedics, Inc. Sec. Litig.*, No. 01-CV-2238KRBB, 2004 WL  
5 1445101, at \*7 (S.D. Cal. June 21, 2004) (finding requested fee of 25% of the settlement  
6 fund reasonable when counsel litigated the case on a contingency fee basis because, *inter*  
7 *alia*, “Plaintiffs’ counsel conducted all of these activities with no guarantee of  
8 compensation for the investment of time and resources[.]”). Furthermore, although  
9 working on this case did not outright preclude Plaintiff’s Counsel from taking on other  
10 matters, the time spent litigating this matter is time that it could have devoted to working  
11 on other matters. .

#### 12 **5. The Fee Is In Line With the Customary Fee in Similar Actions**

13 “This circuit has established 25% of the common fund as a benchmark award for  
14 attorney fees.” *Boeing*, 327 F.3d at 968. In regard to the fees awarded in similar actions,  
15 “several other courts . . . have concluded that a 25 percent award was appropriate in  
16 complex securities class actions. . . . Indeed, in many securities class actions, the award  
17 has exceeded the 25[%] benchmark.” *Zynga*, 2016 WL 537946, at \*18; *see, e.g., In re*  
18 *Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457, 463 (9th Cir. 2000) (affirming a fee  
19 award of 33.33% of the \$1.725 million fund); *Omnivision*, 559 F. Supp. 2d at 1047-48  
20 (approving a 28% fee award); *In re Nuvelo, Inc. Sec. Litig.*, No. C 07-04056 CRB, 2011  
21 WL 2650592, at \*3 (N.D. Cal. July 6, 2011) (approving a 30% fee); *In re CV*  
22 *Therapeutics, Inc., Sec. Litig.*, No. C 03-3709 SI, 2007 WL 1033478, at \*1 (N.D. Cal.  
23 Apr. 4, 2007) (same).

24 Accordingly, it is respectfully submitted that the attorneys’ fees requested here are  
25 well within the range of fees awarded in this Circuit and in other securities class actions.  
26  
27  
28

1                   **6. The Requested Fee is Reasonable Under the Lodestar Cross-Check**

2                   The “lodestar, which measures the lawyers’ investment of time in the litigation,  
3 provides a check on the reasonableness of the percentage award.” *In re Immune*  
4 *Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1176 (S.D. Cal. 2007). As the Court in  
5 *Vizcaino v. Microsoft Corp.* explained:

6                   Where such investment [of time] is minimal, as in the case of an early  
7 settlement, the lodestar calculation may convince a court that a lower  
8 percentage is reasonable. Similarly, the lodestar calculation can be helpful  
9 in suggesting a higher percentage when litigation has been protracted.  
10 Thus, while the primary basis of the fee award remains the percentage  
11 method, the lodestar may provide a useful perspective on the  
12 reasonableness of a given percentage award.

13                   290 F.3d 1043, 1050 (9th Cir. 2002). “The lodestar is calculated by multiplying the  
14 number of hours . . . reasonably expended on the litigation by a reasonable hourly rate.”  
15 *Zynga*, 2016 WL 537946, at \*18. “In securities class actions, it is common for a  
16 counsel’s lo[de]star figure to be adjusted upward by some multiplier reflecting a variety  
17 of factors such as the effort expended by counsel, the complexity of the case, and the  
18 risks assumed by counsel.” *Heritage*, 2005 WL 1594403, at \*22.

19                   Lead Counsel devoted a significant amount of time to the prosecution of this case  
20 to protect the Class’s interests. Much of this time was spent on investigating the claims  
21 in the action, negotiating, researching, and briefing the motion to dismiss, issues of  
22 bifurcation of discovery, and negative causation. *See Wilson Decl.*, Ex. 3. As set forth in  
23 the time reports submitted herewith, Plaintiffs’ Counsel has expended 1,838.1 hours on  
24 this litigation (excluding time spent in connection with this fee motion). *See Wilson*  
25 *Decl.* ¶ 73.

26                   Partners rates are \$350 to \$950 per hour, associates’ rates range from \$425 to \$550  
27 per hour, and paralegals’ rates range from \$250-425 per hour. *See Wilson Decl.* ¶ 76;  
28 *Urman Aff.* ¶ 3. These are “reasonable hourly rate[s] for the region and for the

1 experience of the lawyer[,]"<sup>2</sup> *Bluetooth*, 654 F.3d at 941, and when multiplied by the  
2 number of hours expended, result in a lodestar of \$1,257,537. Wilson Decl. ¶ 74. When  
3 the lodestar is compared to the fee of approximately \$1,250,000 requested by Plaintiff's  
4 Counsel, it results in a negative multiplier. *See id.* Courts in this Circuit regularly  
5 approve fees that result in positive lodestar multipliers "ranging between 1 and 4."  
6 *Omnivision*, 559 F. Supp. 2d at 1048; *Vizcaino*, 290 F.3d at 1050-51 (approving fee  
7 representing a multiple of 3.65 times counsel's lodestar); *In re Mercury Interactive Corp.*  
8 *Sec. Litig.*, No. 5:05-cv-03395-JF, 2011 WL 826797, at \*2 (N.D. Cal. Mar. 3, 2011)  
9 (lodestar cross-check multiplier of 3.08 "is within the acceptable range"). Therefore, the  
10 negative lodestar multiplier in this case results in no windfall to Plaintiff's Counsel and  
11 shows that the requested fee is more than reasonable in light of the substantial time and  
12 energy Lead Counsel has invested in this Action.

13 Plaintiff's Counsel will also devote additional hours and resources to this Action  
14 on an ongoing basis. For example, Plaintiff's Counsel will need to prepare for and  
15 participate in the Settlement Hearing; assist potential Class Members with the completion  
16 and submission of their Proof of Claim forms; monitor the claims process; correspond  
17 with the Claims Administrator; file a motion for distribution of the Net Settlement Fund  
18 and supervise that distribution to Settlement Class Members. Thus, the lodestar  
19 multiplier will decrease during the next phases of this Action, as Plaintiff's Counsel will  
20 not seek any additional compensation for the time spent going forward.

21  
22 <sup>2</sup> *See, e.g., Greene v. Jacob Transp. Servs., LLC*, No. 2:09-cv-00466-GMN-CWH, 2018  
23 WL 11424176, at \*2 (D. Nev. Aug. 29, 2018) (finding attorneys' hourly rates of \$390-\$800  
24 reasonable); *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., and Prods. Liab. Litig.*,  
25 MDL No. 2672 CRB (JSC), 2017 WL 1047834, at \*5 (N.D. Cal. Mar. 17, 2017) (finding  
26 lodestar cross-check supported the reasonableness of the requested fee award where "[t]he  
27 blended average hourly billing rate is \$529 per hour for all work performed and projected,  
28 with billing rates ranging from \$275 to \$1,600 for partners, \$150 to \$790 for associates, and  
\$80 to \$490 for paralegals[]"); *Hefler v. Wells Fargo & Co.*, No. 16-cv-05479-JST, 2018  
WL 6619983, at \*14 (N.D. Cal. Dec. 18, 2018) (finding reasonable plaintiffs' counsel's rates  
that ranged from \$650 to \$1,250 for partners or senior counsel, from \$400 to \$650 for  
associates, and from \$245 to \$350 for paralegals).

1                   **7. Information Required By Local Rule 54.2(c)(3)**

2                   This District's Local Rule 54.2(c)(3) provides that certain information must be  
3 included in a request for attorneys' fees. Lead Counsel respectfully submits that most of  
4 the information required by this rule is addressed above: the time and labor required of  
5 counsel; the novelty and difficulty of the questions presented; the skill requisite to  
6 perform the legal service properly; the customary fee charged in matters of the type  
7 involved; whether the fee contracted between the attorney and the client is fixed or  
8 contingent; the amount of money involved and the results obtained; the experience,  
9 reputation, and ability of counsel; and awards in similar actions. A reasonable  
10 itemization and description of the work performed and the costs incurred can be found in  
11 the Wilson Declaration (¶¶ 73-46, Exs. 3 and 3-A) and the Urman Affidavit (¶ 4 and the  
12 DeConcini Time Report submitted therewith). The remaining information is provided  
13 below:

14                   ***The preclusion of other employment by counsel because of the acceptance of the***  
15 ***action.*** While Plaintiff's Counsel was not outright precluded from taking on any  
16 additional cases, the amount of time this case required was something Plaintiff's Counsel  
17 took into account when considering whether to take on other work.

18                   ***The time limitations imposed by the client or the circumstances.*** The time  
19 limitations in this case were nothing out of the ordinary for securities litigation.

20                   ***The undesirability of the case, if any.*** There was nothing undesirable about this  
21 case.

22                   ***The nature and length of the professional relationship with the client.*** Plaintiff  
23 has been a client of the Faruqi Firm for about six years. The Faruqi Firm has monitored  
24 DeKalb's investment portfolio since 2017 and represents DeKalb in this and other  
25 securities class actions, including *In re Allergan plc Sec. Litig.*, No. 18 Civ. 12089  
26 (CM)(GWG) (S.D.N.Y.). Mr. Wilson and Mr. Killorin have represented DeKalb in  
27 multiple securities litigations since 2007.

28

1 **IV. THE LITIGATION EXPENSES ARE REASONABLE AND WERE**  
2 **NECESSARILY INCURRED**

3 Lead Counsel also respectfully requests reimbursement, on behalf of Plaintiff's  
4 Counsel, of \$95,089.47, plus accrued interest, for expenses reasonably incurred in  
5 prosecuting this Action. *See* Wilson Decl. ¶ 78, Ex. 4. "There is no doubt that an  
6 attorney who has created a common fund for the benefit of the class is entitled to  
7 reimbursement of reasonable litigation expenses from that fund." *Heritage*, 2005 WL  
8 1594403, at \*23. The appropriate analysis to apply in deciding whether expenses are  
9 compensable in a common fund case is whether the particular costs are of the type  
10 typically billed by attorneys to paying clients in the marketplace. *See Harris v.*  
11 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) ("Harris may recover as part of the award of  
12 attorneys' fees those out-of-pocket expenses that would normally be charged to a fee  
13 paying client."). "To that end, courts throughout the Ninth Circuit regularly award  
14 litigation costs and expenses—including photocopying, printing, postage, court costs,  
15 research on online databases, experts and consultants, and reasonable travel expenses—in  
16 securities class actions, as attorneys routinely bill private clients for such expenses in  
17 non-contingent litigation." *Zynga*, 2016 WL 537946, at \*22 (approving expense request  
18 for, *inter alia*, "copying, court costs, computer research, delivery fees, expert and  
19 investigator fees, mediation, telephone, and travel costs[]"); *Rieckborn v. Velti PLC*, No.  
20 13-cv-03889-WHO, 2015 WL 468329, at \*22 (N.D. Cal. Feb. 3, 2015) (approving  
21 \$219,469.67 in expenses for primarily "experts, consultants, and investigators" and  
22 "computerized factual and legal research and [] travel expenses"). Courts often award  
23 interest on expense requests as well. *See In re Vocera Commn'cs, Inc., Sec. Litig.*, No.  
24 3:13-cv-03567 EMC, 2016 WL 8201593, at \*1 (N.D. Cal. July 29, 2016) (awarding  
25 "payment of litigation expenses in the amount of \$382,010.861, plus interest at the same  
26 rate earned by the Settlement Fund"); *In re Hewlett-Packard Co. Sec. Litig.*, No. SACV  
27 11-1404-AG (RNBx), 2014 WL 12656737, at \*1 (C.D. Cal. Sept. 15, 2014) (similar).

28

1           Lead Counsel has itemized the categories of expenses it incurred and attests to  
2 their accuracy. *See* Wilson Decl. ¶¶ 78-84, Ex. 4;. Plaintiff’s Counsel’s expenses include  
3 investigator’s fees, damages consultant fees, mediation fees, filing fees, electronic  
4 research, eDiscovery storage, postage, travel, and meals, all of which Plaintiff’s Counsel  
5 believes were reasonable and necessary to adequately prosecute the claims in this Action.  
6 *See id.* Thus, Lead Counsel respectfully requests an award of \$95,089.47, plus accrued  
7 interest, for Plaintiff’s Counsel as reimbursement for these reasonable expenses.

8 **V. THE REQUESTED AWARD FOR PLAINTIFF IS REASONABLE**

9           Finally, Lead Counsel seeks an award in the amount of \$5,382.18 for Plaintiff’s  
10 reasonable costs and expenses pursuant to the PSLRA, 15 U.S.C. § 77z-1(a)(4). The  
11 PSLRA limits a class representative’s recovery to an amount “equal, on a per share basis,  
12 to the portion of the final judgment or settlement awarded to all other members of the  
13 class[.]” but explicitly provides that “[n]othing in this paragraph shall be construed to  
14 limit the award of reasonable costs and expenses (including lost wages) directly relating  
15 to the representation of the class to any representative party serving on behalf of a class.”  
16 15 U.S.C. § 77z-1(a)(4). Congress acknowledged “that lead plaintiffs should be  
17 reimbursed for reasonable costs and expenses associated with service as lead plaintiff,  
18 including lost wages, and grants the courts discretion to award fees accordingly.” H.R.  
19 Conf. Rep. No. 104-369, at 35 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 734.

20           Many courts have construed 15 U.S.C. § 77z-1(a)(4) (and its analogue under the  
21 Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(4)) to include as compensable  
22 “costs” or “expenses” the amount of time a lead plaintiff or class representative spent on  
23 the litigation. *See Ramsey v. MRV Commc’ns Inc.*, No. CV 08-04561 GAF (RCx), 2010  
24 WL 11596641, at \*8-9 (C.D. Cal. Nov. 16, 2010) (awarding the lead plaintiff \$11,000 for  
25 35.75 hours he spent working on the case at the hourly rate of \$300 an hour); *Immune*  
26 *Response*, 497 F. Supp. 2d at 1173-74 (awarding lead plaintiff \$40,000 based on his  
27 hourly rate of \$200 as CEO); *CV Therapeutics*, 2007 WL 1033478, at \*2 (“[P]ursuant to  
28

1 15 U.S.C. § 78u-4(a)(4), the Court awards lead plaintiff [] the amount of \$26,000.00 for  
2 reimbursement of time and expenses incurred in representing the class.”); *In re Amgen*  
3 *Inc. Sec. Litig.*, No. CV 7-2536 PSG (PLAx), 2016 WL 10571773, at \*10 (C.D. Cal. Oct.  
4 25, 2016) (explaining that “courts have awarded reasonable payments to compensate  
5 class representatives for the time, effort, and expenses devoted to litigation on behalf of  
6 the class[]” and awarding the class representative, an institutional investor, \$30,983.99  
7 for “reimbursement for the time” spent on the litigation).

8 Plaintiff’s request here is justified for similar reasons. Plaintiff played an integral  
9 role in this action, complying with the numerous demands on its time and attention that  
10 arose during the past two years of litigation. *See* Wilson Decl. ¶¶ 85-87. As set forth in  
11 its declaration accompanying this motion, Plaintiff estimates that its employees spent 54  
12 hours of their time in work directly related to the representation of the Class. Wilson  
13 Decl., Ex. 5 ¶ 11. Plaintiff’s work on behalf of the Class included: (1) engaging in  
14 communications with Lead Counsel; (2) reviewing documents filed and/or prepared in  
15 the Action; (3) reviewing and responding to discovery; (4) providing input on the  
16 mediation and settlement negotiations and authorizing the Settlement; and (5) attending  
17 and participating in the mediation. *Id.* at ¶ 6. Plaintiff submits that the time it devoted to  
18 this litigation should be valued at the rates set forth in its declaration. *Id.* at ¶ 11. This is  
19 time that Plaintiff would have devoted to other matters on behalf of DeKalb, and thus,  
20 represented a cost to DeKalb. Accordingly, Lead Counsel, on behalf of Plaintiff,  
21 respectfully requests that the Court reimburse Plaintiff \$5,382.18 for its reasonable costs  
22 and expenses pursuant to 15 U.S.C. § 77z-1(a)(4).

### 23 CONCLUSION

24 For the reasons stated above, Lead Counsel respectfully requests that the Court  
25 award: (a) attorneys’ fees of 25% of the Settlement Fund, or \$1,250,000 plus accrued  
26 interest; (b) reimbursement of litigation expenses in the amount of \$95,089.47, plus  
27  
28

1 accrued interest; and (c) an award to Plaintiff pursuant to 15 U.S.C. § 77z-1(a)(4) in the  
2 amount of \$5,382.18.

3 Dated: February 10, 2023

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

4  
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