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12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF ARIZONA**

14
15
16 David G. Lowthorp, Individually And On
Behalf Of All Others Similarly Situated,

17 Plaintiff,

18 V.

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

26 Defendants.

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

**CLASS REPRESENTATIVE'S
UNOPPOSED MOTION FOR
DISTRIBUTION OF THE NET
SETTLEMENT FUND AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

CLASS ACTION

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PRELIMINARY STATEMENT

Class Representative DeKalb County Pension Fund (“Plaintiff”) on behalf of itself and the Class, respectfully moves this Court for an Order: (i) approving the administrative recommendations of A.B. Data, Ltd. (“A.B. Data”), the Court-approved Claims Administrator, rejecting and accepting Claims submitted in the above-captioned action (“the Action”); (ii) authorizing distribution of the Net Settlement Fund to Authorized Claimants whose claims have been accepted; (iii) authorizing payment from the Settlement Fund for A.B. Data’s \$24,380.05 requested fees and expenses and a reserve for A.B. Data’s anticipated expenses in connection with the initial distribution of the Net Settlement Fund; (iv) authorizing A.B. Data’s proposed timetable for destruction of paper and electronic claim forms and related documentation; and (v) granting the release of claims related to the administration or taxation of the Settlement Fund.¹

Defendants have no interest in the distribution of the Settlement Fund, Stip. ¶7, and therefore do not oppose the motion.

This motion is based upon the below memorandum of points and authorities; the Declaration of Jack Ewashko in Support of Class Representative’s Motion for Distribution of the Net Settlement Fund (“Ewashko Distribution Declaration” or “Ewashko Distrib. Decl.”), filed herewith; the pleadings and records on file in this Action, and other such matters and argument as the Court may consider.

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff, on behalf of itself and the Class, respectfully submits this memorandum in support of its motion for distribution of the Net Settlement Fund.

RELEVANT PROCEDURAL BACKGROUND

On April 7, 2023, the Court issued the Order and Judgment (“Final Approval Order”)

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 granting final approval to the \$5,000,000.00 cash settlement between Plaintiff, on behalf of
2 itself and the Class, and defendants Mesa Air Group, Inc. (“Mesa” or the “Company”),
3 Jonathan G. Ornstein, Michael J. Lotz, Daniel J. Altobello, Ellen N. Artist, Mitchell Gordon,
4 Dana J. Lockhart, G. Grant Lyon, Giacomo Picco, Harvey Schiller, Don Skiados
5 (collectively, the “Mesa Defendants”), Raymond James & Associates, Inc., Merrill Lynch,
6 Pierce, Fenner & Smith Incorporated, Cowen and Company, LLC, Stifel, Nicolaus &
7 Company, Incorporated, and Imperial Capital, LLC (collectively, “Defendants”), under the
8 terms set forth in the Stipulation, and dismissing the Action. Doc. 169.

9 As described in the Ewashko Distribution Declaration, A.B. Data, under Class
10 Counsel’s supervision, provided the requisite Notice of Pendency and Proposed Settlement
11 of Class Action to potential Class Members, processed the Proof of Claim and Release forms
12 (“Claims” or “Claim Forms”), calculated Recognized Loss amounts, and performed related
13 work consistent with the Stipulation and the Final Approval Order. *See generally* Ewashko
14 Distrib. Decl.

15 A.B. Data has completed the processing of Claims, including Claims submitted after
16 the March 7, 2023 Claims-submission deadline but received on or before September 20,
17 2023, and related work. As a result, Class Counsel and the Claims Administrator are now
18 prepared to distribute the Net Settlement Fund to Authorized Claimants in accordance with
19 the Plan of Allocation.

20 ARGUMENT

21 I. THE CLAIMS ADMINISTRATOR’S ADMINISTRATIVE 22 DETERMINATIONS SHOULD BE APPROVED

23 Pursuant to the Order preliminarily approving the settlement (“Preliminary Approval
24 Order”) (Doc. 137), all Class Members wishing to obtain their *pro rata* share of the Net
25 Settlement Fund were required to timely submit a completed Claim Form with supporting
26 documentation to A.B. Data, postmarked or submitted electronically on or before the
27 submission deadline of March 7, 2023. *See, e.g.*, Preliminary Approval Order at ¶ 14(a).

1 As detailed in the accompanying declaration, A.B. Data reviewed and processed all
2 Claims received from potential Class Members through September 20, 2023. Ewashko
3 Distrib. Decl. ¶¶ 3, 7. A.B. Data prepared exhibits detailing: (i) all timely eligible Claims
4 postmarked or received on or before the Claims submission deadline (*id.* at ¶ 33; Ex. D); (ii)
5 all late but otherwise eligible claims that were postmarked or received after the Claims
6 submission deadline but received on or before September 20, 2023 (*id.* at ¶34; Ex. E); and
7 (iii) all rejected Claims that were deemed ineligible through A.B. Data’s deficiency process
8 (Ewashko Distrib. Decl. ¶ 35; Ex. F).

9 A. Overview of the Claims Administration Process

10 To avoid undue repetition, Class Counsel respectfully refers the Court to the Ewashko
11 Distribution Declaration filed herewith for a detailed description of the factual and
12 procedural background of the claims review and administration process.

13 Briefly, A.B. Data sent 10,823 Notices and Claim Forms and received and processed
14 5,606 Claims. Ewashko Distrib. Decl. ¶¶ 4, 7. The information from each Claim was
15 entered into a computerized database maintained by A.B. Data. *Id.* at ¶¶ 10, 14. A.B. Data
16 reviewed all Claim Forms and supporting documentation to determine, among other things,
17 whether each claimant had purchased Mesa securities during the Class Period and whether
18 the claimant was in fact a Class Member. *Id.* at ¶¶ 10-12, 14-17.

19 A.B. Data made substantial efforts to provide claimants with a fair opportunity to cure
20 deficiencies in their Claim Forms. As set forth in the Ewashko Distribution Declaration,
21 A.B. Data sent notices (“Deficiency Notices”) in letter or email form for claims that it
22 determined contained deficiencies. *Id.* at ¶¶ 19-20, 23. For example, such deficiencies
23 included inadequate supporting documentation or missing signatures. *See id.* at ¶ 19. A.B.
24 Data sent Deficiency Notices to 71 claimants in an effort to inform the claimants of the steps
25 needed to remedy the deficiencies. *Id.* at ¶¶ 20, 23, 25. The Deficiency Notices informed
26 the claimant of the deficiency and requested the submission of the appropriate information or
27 documentary evidence needed to correct the defect within twenty (20) days or the Claim may
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1 have been rejected to the extent the deficiency was not cured. *Id.* ¶¶ 20, 23.

2 A.B. Data received and processed claimants' responses to the Deficiency Notices. *Id.*
3 ¶¶ 21, 26.

4 **B. Ineligible Claims Should Be Rejected**

5 A.B. Data has completed the processing of the Claims received through September
6 20, 2023 and recommends 4,773 Claims for rejection. *Id.* at ¶ 35; Ex. F (schedule of all
7 ineligible claimants). Most of the Rejected Claims either have no Recognized Loss (1,993
8 Claims) or no eligible purchases during the Class Period (2,722 Claims). *Id.* The remainder
9 of the ineligible claims were rejected because the claim was a duplicate or replaced another
10 claim (48 Claims), contained defects that were never cured (5 Claims) or were withdrawn (5
11 Claims). *Id.* Plaintiff respectfully requests that the Court approve A.B. Data's
12 recommendation to reject the 4,773 Claims deemed ineligible.

13 **C. Timely Eligible Claims And Late But Otherwise Eligible Claims 14 Should Be Accepted**

15 A.B. Data has determined that 833 Claims should be accepted. *Id.* at ¶¶ 33-34. Of
16 the Claims received that are eligible to participate in the Settlement, 831 were postmarked or
17 received on or before the Claims submission deadline ("Timely Eligible Claims") and 2 were
18 postmarked or received after the Claims submission deadline but on or before September 20,
19 2023 ("Late But Otherwise Eligible Claims" or "Late Claims"). *Id.* at ¶¶ 33-34; Exs. D-E.
20 The total Recognized Losses calculated pursuant to the Plan of Allocation for the Timely
21 Eligible Claims is \$17,926,360.33 and the total Recognized Losses for the Late Claims is
22 \$8,946.20. Ewashko Distrib. Decl. ¶¶ 33-34. A.B. Data recommends, and Class Counsel
23 agrees, that the Late Claims should be deemed timely and included in the Settlement
24 distribution. *See id.* at ¶ 34. A.B. Data believes that no delay in the processing or
25 distribution of the Net Settlement Fund has resulted from provisionally accepting the Late
26 Claims. *See id.* at ¶ 28. Further, the Recognized Loss amount of the Late Claims is about
27 5% of the total Recognized Losses for all 833 valid Claims. *See id.* at ¶¶ 33-34;

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1 *Sudunagunta v. Nantkwest, Inc.*, No. CV 16-1947-MWF (JEMx), 2019 WL 13060483, at *2
2 (C.D. Cal. Dec. 9, 2019) (approving distribution and accepting “late but otherwise valid
3 claims because they have not caused significant delay to the distribution of the Net
4 Settlement Fund to the Class, as [the Claims administrator]’s work on other claims was
5 ongoing, or otherwise prejudiced any Authorized Claimant[.]”) (internal quotation marks
6 omitted); *Kuehbeck v. Genesis Microchip Inc.*, No. C 02-05344 JSW, 2007 WL 2382030, at
7 *1 (N.D. Cal. Aug. 17, 2007) (approving distribution and accepting claims of those “who
8 timely filed their claims and those claimants whose claims were filed late but who, in every
9 other respect, have filed valid claims, pursuant to the Plan of Allocation . . . ”); *In re*
10 *Authentidate Holding Corp. Sec. Litig.*, No. 05 Civ. 5323(LTS), 2013 WL 324153, at *1
11 (S.D.N.Y. Jan. 25, 2013) (courts have “inherent power to accept late claims”) (internal
12 quotation marks omitted).

13 Therefore, Class Counsel respectfully requests that the Court approve A.B. Data’s
14 recommendation to include the 2 valid Late Claims in the Settlement distribution.

15
16 **II. THE DISTRIBUTION OF THE NET SETTLEMENT FUND TO
AUTHORIZED CLAIMANTS SHOULD BE APPROVED**

17 Plaintiff respectfully requests that the Court authorize the distribution of the Net
18 Settlement Fund to the Class Members whose claims have been accepted by A.B. Data.
19 These Claims are listed in Exhibits D and E to the Ewashko Distribution Declaration.

20 The Ewashko Distribution Declaration sets forth a plan for distribution of the Net
21 Settlement Fund in accordance with the Plan of Allocation. *See* Ewashko Distrib. Decl. ¶ 40.
22 Briefly, pursuant to the plan, A.B. Data will calculate the *pro rata* distribution amounts from
23 the Net Settlement Fund based on the amount of the Authorized Claimant’s Recognized Loss
24 in comparison to the total Recognized Losses of all Authorized Claimants. *Id.* at ¶ 40(a)(1),
25 (3). A.B. Data will then prepare and distribute checks to all Authorized Claimants whose *pro*
26 *rata* share of the Net Settlement Fund amounts to a distribution of \$10.00 or more. *Id.* at ¶¶
27 40(a)(2)-(3).

1 To encourage Authorized Claimants to cash their distribution checks promptly and to
2 avoid or reduce future expenses relating to uncashed checks, all checks for distribution
3 should bear the notation “CASH PROMPTLY. VOID AND SUBJECT TO
4 REDISTRIBUTION IF NOT CASHED BY DATE 90 DAYS AFTER ISSUE DATE.” *Id.* at
5 ¶ 40(b).

6 Consistent with the Stipulation of Settlement, if any funds remain in the Net
7 Settlement Fund after the Claims Administrator has made reasonable and diligent efforts to
8 contact claimants who have not cashed their payments, the Claims Administrator will consult
9 with Class Counsel to determine if a redistribution of the remaining Net Settlement Fund to
10 Class members who cashed their initial distribution check and would receive a minimum of
11 \$10.00 is cost effective, after taking into consideration payment of any additional costs and
12 expenses incurred by A.B. Data in carrying out the initial distribution, any additional costs
13 and expenses that would be associated with a redistribution, any estimated taxes, the costs of
14 preparing appropriate tax returns, and any escrow fees. *See id.* at ¶ 40(d); Stip. at ¶ 28.

15 These redistributions shall be repeated until it is no longer feasible to conduct any
16 further distributions of the Net Settlement Fund. Stip. at ¶ 28; Ewashko Distrib. Decl. ¶
17 40(d). Thereafter, any balance that still remains in the Net Settlement Fund shall be donated
18 to the Investor Protection Trust, in accordance with the Stipulation. Stip. at ¶ 28; Ewashko
19 Distrib. Decl. ¶ 40(e).

20 New Claims received after September 20, 2023, and adjustments to previously-
21 received Claims that would result in an increased Recognized Loss amount received after
22 September 20, 2023, will not be accepted, subject to the following exception. If Claims are
23 received or modified after September 20, 2023 that would have been eligible for payment or
24 additional payment under the Plan of Allocation if timely received, then, at the time that
25 Class Counsel, in consultation with A.B. Data, determines that a redistribution is not cost-
26 effective as described above, such claimants, at the discretion of Class Counsel, may be paid
27 the distribution amounts or additional distribution amounts on a *pro rata* basis that would
28

1 bring them into parity with other Authorized Claimants who have cashed their prior
2 distribution checks, to the extent possible. *See* Ewashko Distrib. Decl. ¶ 40(f); *see also*
3 *Meyer v. United Microelectronics Corp.*, No. 19-cv-02304-VM, 2022 WL 43345, at *3
4 (S.D.N.Y. Jan. 5, 2022) (approving similar language in distribution order).

5 **III. PAYMENT OF A.B. DATA'S OUTSTANDING FEES AND**
6 **EXPENSES FROM THE SETTLEMENT FUND SHOULD BE**
7 **AUTHORIZED**

8 The Court retained jurisdiction to consider an application for an award of fees and
9 reimbursement of expenses relating to the Claims Administrator's implementation of the
10 terms of the Stipulation. Final Approval Order at ¶ 19. Pursuant to the Stipulation, the
11 Settlement Fund may be used to pay Notice and Administration Expenses, which include
12 costs and expenses incurred in connection with distributing the Notices to the Class and the
13 costs of the Claims Administrator, among other things. *See* Stip. at ¶¶ 1.v, 9, 22, 28.

14 A.B. Data was retained to supervise and administer the notice program and to process
15 Claims in connection with the Settlement. *See* Preliminary Approval Order at ¶ 6. As
16 Claims Administrator, A.B. Data was and is responsible for, among other things, printing
17 and mailing copies of the Notice and Claim Form to Class Members, effecting publication of
18 the Summary Notice of the Settlement, processing and reviewing the filed Claims, preparing
19 the tax returns for the Settlement Fund, calculating the *pro rata* distribution amount by
20 calculating each Authorized Claimant's percentage of the Net Settlement Fund in accordance
21 with the Plan of Allocation, and distributing the Net Settlement Fund to accepted claimants.
22 *See generally* Ewashko Distrib. Decl.; Preliminary Approval Order at ¶¶ 9-11; Stip. at ¶¶ 1.e,
23 11, 24-25, 28, 30-31.

24 In connection with that work, A.B. Data has incurred a total of \$140,431.37 in
25 administrative fees and expenses through the initial distribution of the Net Settlement Fund.
26 Ewashko Distrib. Decl. at ¶ 37; Ex. G (invoice). The estimated cost of conducting the initial
27 distribution is \$14,503.50. Ewashko Distrib. Decl. at ¶ 38.

28 The Preliminary Approval Order allows for \$150,000 to be paid to A.B. Data without

1 further order of the Court, and that any additional amounts may be approved by the Court.
2 Preliminary Approval Order at ¶ 24. Consistent with the Order, A.B. Data was paid
3 \$116,051.32 in payment from the Settlement Fund for its costs and expenses. *See* Ewashko
4 Distrib. Decl. at ¶ 37. Plaintiff respectfully requests that the Court authorize payment to
5 A.B. Data of the outstanding balance of \$24,380.05 for costs and expenses already incurred,
6 and the reservation of \$14,503.50 for anticipated costs and expenses related to the initial
7 distribution. *See id.* at ¶¶ 37-38. If the cost of the initial distribution is less than \$14,503.50,
8 the excess will be returned to the Net Settlement Fund. *Id.* If the cost of the initial
9 distribution exceeds \$14,503.50, and additional funds remain in the Net Settlement Fund
10 following the initial distribution, A.B. Data will seek Lead Counsel's approval to be paid its
11 excess costs, before the implementation of a second distribution or payment to the *cy pres*
12 recipient, without further order of the Court. *Id.* at ¶ 39.

13 **IV. RETENTION OF CLAIM FORMS AND OTHER DOCUMENTS**

14 Plaintiff also requests that the Court permit A.B. Data to destroy paper copies of the
15 Claim Forms and all related documentation one (1) year after the initial distribution of the
16 Net Settlement Fund and electronic copies of the same one (1) year after all funds have been
17 distributed from the Net Settlement Fund. *See* Ewashko Distrib. Decl. ¶ 40(g).

18 **V. RELEASE OF CLAIMS**

19 To allow the full and final distribution of the Net Settlement Fund, Plaintiff
20 respectfully requests that the Court approve the following release:

21 All persons involved in the review, verification, calculation, tabulation, or any other
22 aspect of the processing of the Claims submitted in this matter, or otherwise involved in the
23 administration or taxation of the Settlement Fund or Net Settlement Fund, including Plaintiff,
24 Class Counsel, Liaison Class Counsel, and A.B. Data, are hereby released and discharged
25 from any and all claims arising out of such involvement, and all Settlement Class Members,
26 whether or not they are to receive payment from the Net Settlement Fund, are hereby barred
27

1 from making any further claims against the Net Settlement Fund or the released persons
2 beyond the amount allocated to them pursuant to this Order. *See* Stipulation ¶ 36; *In re*
3 *Capstone Turbine Corp. Sec. Litig.*, CV 15-8914-DMG (RAOx), 2020 WL 7889062, at *2
4 (C.D. Cal. Aug. 26, 2020) (approving a similar release); *In re Qudian Inc. Sec. Litig.*, No.
5 1:17-CV-09741-JMF, 2022 WL 633863, at *2 (S.D.N.Y. Mar. 4, 2022) (same).

6 **CONCLUSION**

7 For the foregoing reasons, Plaintiff respectfully submits that its Motion for
8 Distribution of the Net Settlement should be granted, and the [Proposed] Distribution Order
9 should be entered.

10 Dated: November 10, 2023

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

11
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CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2023, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record.

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