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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. 20-00648-PHX-MTL

**REPLY IN SUPPORT OF CLASS
REPRESENTATIVE’S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND LEAD COUNSEL’S
MOTION FOR AN AWARD OF
ATTORNEYS’ FEES,
REIMBURSEMENT OF EXPENSES,
AND AN AWARD TO LEAD PLAINTIFF**

CLASS ACTION

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1 Class Representative DeKalb County Pension Fund (“Plaintiff” or “DeKalb”) on
2 behalf of itself and the proposed Settlement Class, and Lead Counsel, Faruqi & Faruqi,
3 LLP, respectfully submits this reply memorandum of law in support of Class
4 Representative’s Motion for Final Approval of Class Action Settlement (“Final Approval
5 Motion” or “FA Mot.”) (Doc. 140) and Lead Counsel’s Motion for an Award of
6 Attorneys’ Fees, Reimbursement of Expenses, and an Award to Lead Plaintiff (“Fee
7 Motion”) (Doc. 141) (collectively, the “Motions”).¹ This reply is supported by the
8 Supplemental Declaration of Jack Ewashko Regarding: (A) Mailing of the Notice Packet;
9 and (B) Report on Requests for Exclusions and Objections Received (“Ewashko
10 Supplemental Declaration” or “Ewashko Suppl. Decl.”), submitted herewith.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **INTRODUCTION**

13 Plaintiff and Lead Counsel are pleased to advise the Court of the positive reaction
14 to the proposed Settlement and Plan of Allocation, in addition to the request for
15 attorneys’ fees, reimbursement of expenses, and an award to Plaintiff (“Fee Requests”).
16 Following an extensive notice program, which included the mailing of 10,823 Notices of
17 Pendency and Proposed Settlement of Class Action (“Notice”) and Proof of Claim and
18 Release forms (“Claim Form”) (collectively, “Notice Packet”) to potential Class
19 members and nominees, no one has requested exclusion from the Settlement, or objected
20 to the Settlement, Plan of Allocation, or Fee Requests. *See* Ewashko Suppl. Decl. ¶¶ 3,
21 7-8.

22 Courts in this Circuit and throughout the country have uniformly recognized that
23 the Class’s reaction is a significant factor for the Court to consider when evaluating
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25 ¹ 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 quotation marks and citations are omitted and all emphases are added unless
otherwise noted.

1 whether the proposed Settlement and Plan of Allocation are fair, adequate, and
2 reasonable, and whether the requested attorneys' fees, expenses, and award for Plaintiff
3 are fair and reasonable. The Class's reaction has been overwhelmingly positive. Thus,
4 Plaintiff respectfully requests that the Court approve the Settlement and Plan of
5 Allocation as fair, reasonable, and adequate, and likewise approve the Fee Requests.

6 ARGUMENT

7 I. THE NOTICE PROGRAM TO DATE

8 As detailed in the Final Approval Motion, the notice program approved by the
9 Court was implemented and satisfies the requirements of Rule 23, the PSLRA, and due
10 process. *See* FA Mot. at 16-17; Preliminary Approval Order ¶ 13 (Doc. 137) (providing
11 that the notice program set forth therein is "the best notice practicable under the
12 circumstances, and shall constitute due and sufficient notice to all Persons entitled
13 thereto[>").

14 Pursuant to the Preliminary Approval Order, Notice Packets have been mailed to
15 10,823 potential Class Members and nominees beginning on November 18, 2022.
16 Mailing Decl.² ¶ 2; Ewashko Suppl. Decl. ¶ 3. On that same date, the Notice and Claim
17 Form were also made available on the website www.mesasecuritiesclassaction.com.
18 Mailing Decl. ¶ 9. The Summary Notice was published in *Investor's Business Daily* and
19 transmitted over *Globe Newswire* on November 28, 2022. *Id.* ¶ 8. The Claims
20 Administrator also set up a toll-free telephone number through which potential Class
21 Members could contact the Claims Administrator with any questions or concerns. *See id.*
22 at ¶ 10.

23 Pursuant to the schedule set forth in the Preliminary Approval Order, Plaintiff and
24 Lead Counsel filed their opening papers in support of the Final Approval Motion and the
25

26 ² "Mailing Decl." refers to the Declaration of Jack Ewashko Regarding: (A) Mailing of
27 the Notice Packet; (B) Publication of the Summary Notice; and (C) Report on Requests for
28 Exclusion and Objections Received. Doc. 139.

1 Fee Motion on February 10, 2023. *See* Docs. 139 to 143. Those papers described the
2 Settlement, Plaintiff’s and Lead Counsel’s views about the Settlement, the work
3 performed in this litigation, and the specific fees and expenses requested. *See generally*
4 *id.*

5 Further information about the notice program’s progress is set forth in the
6 Ewashko Supplemental Declaration, filed herewith.

7 **II. THE CLASS’S REACTION FURTHER SUPPORTS APPROVAL OF THE**
8 **SETTLEMENT AND PLAN OF ALLOCATION**

9 The class’s reaction to the proposed Settlement is “perhaps the most significant
10 factor to be weighed in considering its adequacy[.]” *In re Rambus Inc. Derivative Litig.*,
11 No. C 06-3513 JF (HRL), 2009 WL 166689, at *3 (N.D. Cal. Jan. 20, 2009). “It is
12 established that the absence of a large number of objections to a proposed class action
13 settlement raises a strong presumption that the terms of a proposed class [action
14 settlement] are favorable to the class members.” *In re Omnivision Techs., Inc.*, 559 F.
15 Supp. 2d 1036, 1043 (N.D. Cal. 2008). “[T]he willingness of the overwhelming majority
16 of the class to approve the offer and remain part of the class presents at least some
17 objective positive commentary as to its fairness.” *In re Celera Corp. Sec. Litig.*, No.
18 5:10-cv-02604-EJD, 2015 WL 7351449, at *7 (N.D. Cal. Nov. 20, 2015).

19 In accordance with the Court’s Order preliminarily approving the Settlement (Doc.
20 137), 10,823 copies of the Notice Packet have been mailed to potential Class Members
21 and their nominees. *See* Ewashko Suppl. Decl. ¶ 3. Key aspects of the Settlement were
22 also contained in the Summary Notice published in *Investor’s Business Daily* and *Globe*
23 *Newswire*, which directed potential Class Members to contact the Claims Administrator
24 or visit the Settlement website to obtain copies of the Notice. *See* Docs. 139-2, 139-3.
25 The settlement website at www.mesasecuritiesclassaction.com also provided copies of
26 the Stipulation, Preliminary Approval Order, Final Approval Motion, and Fee Motion in
27 this case for class members to review, information on how to report a change of address,
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1 and provided links to submit a claim electronically through the website. The Notice
2 informed Class Members of the terms of the proposed Settlement and Plan of Allocation,
3 and that Lead Counsel, on behalf of all Plaintiff’s Counsel, would seek attorneys’ fees of
4 25% of the Settlement Fund, reimbursement of up to \$100,000 in expenses, and an award
5 for Plaintiff pursuant to 15 U.S.C. § 77z-1(a)(4) of up to \$10,000. Doc. 139-1 at 1, 3, 11-
6 13. The Notice also informed investors of how to object should they consider any portion
7 unreasonable. *See id.* at 9. Specifically, Class Members seeking to object were required
8 to submit a letter delivered by hand or postmarked by March 17, 2023 containing the
9 information required in the Notice to the Clerk of the Court, as well as to Lead Counsel
10 and Defendants’ Counsel. *See id.*

11 These procedures provided Class Members with notice of the terms of the
12 Settlement, the Fee Requests, the steps to submit a claim, and the option to object to or
13 request exclusion from the Settlement, satisfying due process, Rule 23, and the PSLRA.
14 *See In re HP Sec. Litig.*, No. 3:12-cv-05980-CRB, 2015 WL 4477936, at *2 (N.D. Cal.
15 July 20, 2015) (finding that the procedures for notice, including mailing individual notice
16 and publication notice satisfy Rule 23, the PSLRA, and constitute the best notice
17 practicable); *see also e.g., In re Portal Software, Inc. Sec. Litig.*, No. C-03-5138 VRW,
18 2007 WL 1991529, at *7 (N.D. Cal. June 30, 2007).

19 No objections to any aspect of the Settlement, Plan of Allocation, or the Fee
20 Requests have been served on Lead Counsel or the Claims Administrator, *see* Ewashko
21 Suppl. Decl. ¶¶ 7-8, and no objections appear to have been filed on the Action’s docket.
22 A lack of objections strongly supports final approval. *See In re Apollo Grp. Inc. Sec.*
23 *Litig.*, No. CV 04-2147-PHX-JAT, 2012 WL 1378677, at *3 (D. Ariz. Apr. 20, 2012)
24 (“There have been no objections from Class Members or potential class members, which
25 itself is compelling evidence that the Proposed Settlement is fair, just, reasonable, and
26 adequate.”).

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1 Additionally, the fact that no requests for exclusion (due by March 17, 2023) have
2 been submitted further supports final approval. *See* Ewashko Suppl. Decl. ¶¶ 7-8; *Wood*
3 *v. Ionatron, Inc.*, No. CV 06-354-TUC-CKJ, 2009 WL 10673479, at *5 (D. Ariz. Sept.
4 28, 2009) (finding that the class’s reaction “supports final approval” where no objections
5 and only one request for exclusion were received); *DeStefano v. Zynga, Inc.*, No. 12-cv-
6 04007-JSC, 2016 WL 537946, at *14 (N.D. Cal. Feb. 11, 2016) (stating that a low
7 number of exclusions supports a settlement’s reasonableness).

8 **III. THE CLASS’S REACTION FURTHER SUPPORTS APPROVAL OF THE**
9 **FEE REQUESTS**

10 As noted above, the Notice informed Class Members that Lead Counsel would
11 apply for an award of attorneys’ fees of 25% of the Settlement Fund, reimbursement of
12 expenses up to \$100,000, and an award for Plaintiff not to exceed \$10,000. *See* Doc.
13 139-1 at 1, 3. The Notice also informed Class Members of their right to object to the Fee
14 Requests and the March 17, 2023 deadlines for filing such objections. *See id.* at 9. On
15 February 10, 2023, Lead Counsel filed the Fee Motion seeking an award of 25% of the
16 Settlement Fund, reimbursement of \$95,089.47 in expenses, plus accrued interest, and an
17 award for Lead Plaintiff of \$5,382.18 for the time and effort it devoted to representing the
18 Class in this Action. *See generally* Fee Motion. The deadline for objections has passed
19 and no objections have been received.

20 The absence of any objections to the Fee Requests weighs strongly in favor of
21 approval. *See Zynga*, 2016 WL 537946, at *18 (stating that “the lack of objection by any
22 Class Members also supports the 25 percent fee award”); *Omnivision*, 559 F. Supp. 2d at
23 1048-49 (stating that where no objections “raised any concerns about the amount of the
24 fee [t]his factor . . . also supports the requested award of 28% of the Settlement
25 Fund” and granting the lead plaintiff’s requested award of \$29,913.80 where no one
26 objected); *see also Wood*, 2009 WL 10673479, at *5, *8 (granting the requested award of
27 30% of the settlement fund where no class members objected).

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CONCLUSION

For the reasons stated above, Lead Counsel respectfully requests that the Court award: (a) attorneys’ fees of 25% of the Settlement Fund, or \$1,250,000 plus accrued interest; (b) reimbursement of litigation expenses in the amount of \$95,089.47, plus accrued interest; and (c) an award to Lead Plaintiff pursuant to 15 U.S.C. § 77z-1(a)(4) in the amount of \$5,382.18.

Dated: March 31, 2023

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

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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 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.