

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
13 Pension Fund and Lead Counsel for the Class*

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

**STIPULATION AND AGREEMENT OF
SETTLEMENT**

CLASS ACTION

27
28

1 This Stipulation and Agreement of Settlement dated May 6, 2022 (“Stipulation”)
2 is made and entered into between and among Lead Plaintiff DeKalb County Pension
3 Fund (“Plaintiff”), individually and on behalf of each member of the Settlement Class
4 (defined below), and Defendants Mesa Air Group, Inc., Jonathan G. Ornstein, Michael J.
5 Lotz, Daniel J. Altobello, Ellen N. Artist, Mitchell Gordon, Dana J. Lockhart, G. Grant
6 Lyon, Giacomo Picco, Harvey Schiller, and Don Skiados (collectively, the “Mesa
7 Defendants”), Raymond James & Associates, Inc., Merrill Lynch, Pierce, Fenner &
8 Smith Incorporated, Cowen and Company, LLC, Stifel, Nicolaus & Company,
9 Incorporated, and Imperial Capital, LLC (collectively, the “Underwriter Defendants”) by
10 and through their respective counsel, and sets forth a settlement (“Settlement”) of the
11 above captioned action (“Action”).¹ The Settlement is intended to fully, finally, and
12 forever resolve, discharge, and settle the Action and the Released Claims (including
13 Unknown Claims) upon and subject to the terms and conditions set forth herein.

14 **WHEREAS:**

15 A. All words or terms used herein that are capitalized shall have the meanings
16 ascribed to those words or terms herein and in ¶ 1 hereof entitled “Definitions.”

17 B. On April 1, 2020, the initial federal complaint in this action was filed in the
18 United States District Court for the District of Arizona. ECF No. 1.

19 C. On June 22, 2020, the Court entered an Order appointing DeKalb as Lead
20 Plaintiff and Faruqi & Faruqi, LLP as Lead Counsel. ECF No. 33.

21 D. On August 17, 2020, Lead Plaintiff filed an Amended Class Action
22 Complaint (“AC”) for Violations of the Federal Securities Laws, alleging that Mesa’s
23 registration statement for its IPO contained material misstatements and omissions in
24 violation of Sections 11, 12(a)(2), and 15 of the Securities Act (15 U.S.C. §§ 77k,

25
26 ¹ All terms with initial capitalization not otherwise defined herein shall have the
27 meanings ascribed to them in ¶ 1 below. The Mesa Defendants and Underwriter Defendants
28 are referred to collectively herein as “Defendants.”

1 771(a)(2), 77o). ECF No. 52 at ¶ 1. The Section 11 and 12(a)(2) claims also alleged that
2 Defendants violated Items 303 (17 C.F.R. § 229.303(a)(3)(ii)) and 503 (17 C.F.R. §
3 229.503(c)) by omitting adverse trends and risks from the Registration Statement. ECF
4 No. 52 at ¶¶ 1, 76, 86.

5 E. On October 1, 2020, Defendants moved to dismiss the AC. *See* ECF Nos.
6 56 to 59.

7 F. Following oral argument on Defendants' motion to dismiss, on July 22,
8 2021, the Court dismissed certain of Plaintiff's claims and sustained claims that were
9 premised on statements concerning Mesa's aircraft maintenance (the "MTD Order"). *See*
10 MTD Order 19-25, ECF No. 81.

11 G. On September 3, 2021, Defendant Mesa Air and the Individual Defendants
12 filed their Answer to the AC. ECF No. 91. The Underwriter Defendants subsequently
13 filed their Answer on September 15, 2021. ECF No. 95.

14 H. The parties attended two Scheduling Conferences on September 9, 2021
15 and October 14, 2021. The Court entered a Scheduling Order on October 15, 2021 (ECF
16 No. 101) and the parties commenced discovery.

17 I. On December 31, 2021, all parties entered into a Joint Stipulation regarding
18 Class Certification (ECF No. 108), which was adopted by the Court on January 24, 2022.
19 ECF No. 113. The certified class included all individuals and entities that purchased or
20 otherwise acquired Mesa securities pursuant and/or traceable to the Company's IPO
21 commenced on or around August 9, 2018, and were damaged thereby.

22 J. On January 5, 2022, Defendants filed a Motion for Leave to File an Early
23 Motion for Summary Judgment based on negative causation, which Plaintiff opposed on
24 January 19, 2022. *See* ECF Nos. 109 to 112. Defendants filed their replies on February
25 1, 2022. *See* ECF Nos. 116 to 118.

26 K. In early 2022, Lead Plaintiff and the Mesa Defendants engaged Jed D.
27 Melnick of JAMS Mediation Services and reserved a mediation date in March 2022. In
28

1 advance of mediation, the parties exchanged detailed opening and reply mediation
2 statements to the Mediator, together with supporting exhibits, which addressed both
3 liability and damages issues.

4 L. On March 1, 2022, the Court entered an Order denying Defendants' Motion
5 for Leave to File an Early Motion for Summary Judgment. ECF No. 120.

6 M. On March 2, 2022, a full-day mediation session was conducted before the
7 mediator. The parties were able to reach an agreement in principle to settle the claims
8 against Defendants.

9 N. On March 9, 2022, the parties advised the Court of their agreement in
10 principle for settlement and that, in light of the settlement in principle, there was no need
11 to present the Court with the proposed form of notice and a proposed schedule for
12 disseminating notice to the Class pursuant to the Class Certification Order, and requested
13 an order staying all proceedings for sixty days from the date of the entry of the order.

14 O. On March 10, 2022, the Court issued an order staying all pending deadlines
15 and contemplating that Lead Plaintiff file its request for preliminary approval on or
16 before May 9, 2022.

17 P. Lead Plaintiff, through Lead Counsel, represents that it conducted a
18 thorough investigation relating to the claims, defenses, and underlying events and
19 transactions that are the subject of the Action. This process included reviewing and
20 analyzing: (i) documents filed publicly by the Company with the SEC; (ii) publicly
21 available information, including press releases, news articles, and other public statements
22 issued by or concerning the Company and the Defendants; (iii) research reports issued by
23 financial analysts concerning the Company; (iv) other publicly available information and
24 data concerning the Company; (v) press releases; (vi) documents produced by
25 Defendants in discovery; and (vii) the applicable law governing the claims and potential
26 defenses.

27 Q. Defendants have denied and continue to deny any wrongdoing, all
28

1 allegations by Lead Plaintiff, and that they have committed any act or omission giving
2 rise to any liability or violation of law, including the U.S. securities laws. Nonetheless,
3 Defendants have determined that it is desirable and beneficial to them that the Action be
4 settled in the manner and upon the terms and conditions set forth in this Stipulation to
5 avoid the further expense, inconvenience, and burden of this Action, the distraction and
6 diversion of personnel and resources, and to obtain the conclusive and complete dismissal
7 and/or release of this Action and the Released Claims.

8 R. The Stipulation, whether or not consummated, any proceedings relating to
9 any settlement, or any of the terms of any settlement, whether or not consummated, shall
10 in no event be construed as, or deemed to be evidence of, an admission or concession on
11 the part of the Defendants, or any of them, with respect to any fact or matter alleged in
12 the Action, or any claim of fault or liability or wrongdoing or damage whatsoever, or any
13 infirmity in any claim or defense that has been or could have been asserted. Each
14 Defendant reserves all defenses to any claims that may be filed by anyone, including any
15 individual or entity that has sought, or seeks, exclusion from the Settlement Class.

16 S. Lead Plaintiff believes that the claims asserted in the Action have merit and
17 that the information developed to date supports the claims asserted. However, Lead
18 Plaintiff and Lead Counsel recognize and acknowledge the expense and length of
19 continued proceedings necessary to prosecute the Action through trial and appeals. They
20 also have taken into account the uncertain outcome and the risk of any litigation,
21 especially in complex actions such as the Action, as well as the difficulties and delays
22 inherent in such litigation. Lead Counsel also are mindful of the inherent problems of
23 proof and the possible defenses to the claims alleged in the Action. Based on their
24 evaluation, Lead Plaintiff and Lead Counsel believe that the Settlement set forth in this
25 Stipulation confers substantial monetary benefits upon the Settlement Class and is in the
26 best interests of Lead Plaintiff and the Settlement Class.

27

28

1 e. “Claims Administrator” means A.B. Data, Ltd., the firm retained by
2 Lead Counsel, subject to Court approval, to provide all notices approved by the Court to
3 Settlement Class Members, to process proofs of claim, and to administer the Settlement.

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

9 g. “Defendants’ Counsel” means the law firms of Wilson Sonsini
10 Goodrich & Rosati, Ricketts Case, LLP, Shearman and Sterling, LLP, and Lewis Roca
11 Rothergerber Christie, LLP.

12 h. “Effective Date” means the date upon which the Settlement shall
13 have become effective, as set forth in ¶40 below.

14 i. “Escrow Account” means the separate escrow account maintained at
15 The Huntington National Bank, wherein the Settlement Amount shall be deposited and
16 held for the benefit of the Settlement Class pursuant to this Stipulation and subject to the
17 jurisdiction of the Court.

18 j. “Escrow Agent” means The Huntington National Bank or its
19 successor.

20 k. “Fee and Expense Application” means Lead Counsel’s application,
21 on behalf of all Plaintiff’s Counsel, for an award of attorneys’ fees and payment of
22 litigation expenses incurred in prosecuting the case, including any award of reasonable
23 costs and expenses to Lead Plaintiff pursuant to 15 U.S.C. § 77z-1(a)(4) of the Private
24 Securities Litigation Reform Act of 1995 (“PSLRA”).

25 l. “Final,” with respect to a court order, means the later of: (i) if there
26 is an appeal from a court order, the date of final affirmance on appeal and the expiration
27 of the time for any further judicial review whether by appeal, reconsideration or a petition
28

1 for a writ of certiorari and, if certiorari is granted, the date of final affirmance of the order
2 following review pursuant to the grant; or (ii) the date of final dismissal of any appeal
3 from the order or the final dismissal of any proceeding on certiorari to review the order;
4 or (iii) the expiration of the time for the filing or noticing of any appeal or petition for
5 certiorari from the order (or, if the date for taking an appeal or seeking review of the
6 order shall be extended beyond this time by order of the issuing court, by operation of
7 law or otherwise, or if such extension is requested, the date of expiration of any extension
8 if any appeal or review is not sought), without any such filing or noticing being made.
9 However, any appeal or proceeding seeking subsequent judicial review pertaining solely
10 to the Plan of Allocation of the Net Settlement Fund, to the Court’s award of attorneys’
11 fees and expenses, or to an award to Lead Plaintiff under 15 U.S.C. § 77z-1(a)(4), shall
12 not in any way delay or affect the time set forth above for the Judgment or Alternative
13 Judgment to become Final or otherwise preclude the Judgment or Alternative Judgment
14 from becoming Final.

15 m. “Individual Defendants” means Jonathan G. Ornstein, Michael J.
16 Lotz, Daniel J. Altobello, Ellen N. Artist, Mitchell Gordon, Dana J. Lockhart, G. Grant
17 Lyon, Giacomo Picco, Harvey Schiller, and Don Skiados.

18 n. “Judgment” means the proposed Final Order and Judgment to be
19 entered by the Court approving the Settlement, substantially in the form attached hereto
20 as Exhibit B.

21 o. “Lead Counsel” means the law firm of Faruqi & Faruqi, LLP.

22 p. “Liaison Counsel” means the law firm of DeConcini McDonald
23 Yetwin & Lacy, P.C.

24 q. “Lead Plaintiff” means DeKalb County Pension Fund.

25 r. “Mediator” means Jed D. Melnick of JAMS Mediation Services.

26 s. “Mesa Defendants” means Mesa Air Group, Inc. and the Individual
27 Defendants.

28

1 t. “Net Settlement Fund” means the Settlement Fund less: (i) Court
2 awarded attorneys’ fees and expenses; (ii) Notice and Administration Expenses; (iii)
3 Taxes; and (iv) any other fees or expenses approved by the Court.

4 u. “Notice” means the Notice of Pendency and Proposed Settlement of
5 Class Action to be sent to Settlement Class Members, which, subject to approval of the
6 Court, shall be substantially in the form attached as Exhibit 1 to Exhibit A hereto.

7 v. “Notice and Administration Expenses” means all costs, fees, and
8 expenses incurred in connection with providing notice to the Settlement Class and the
9 administration of the Settlement, including but not limited to: (i) providing notice of the
10 proposed Settlement by mail, publication, and other means to Settlement Class Members;
11 (ii) receiving and reviewing claims; (iii) applying the Plan of Allocation; (iv)
12 communicating with Persons regarding the proposed Settlement and claims
13 administration process; (v) distributing the proceeds of the Settlement; and (vi) fees
14 related to the Escrow Account and investment of the Settlement Fund.

15 w. “Person(s)” means any individual, corporation (including all
16 divisions and subsidiaries), general or limited partnership, association, joint stock
17 company, joint venture, limited liability company, professional corporation, estate, legal
18 representative, trust, unincorporated association, government or any political subdivision
19 or agency thereof, and any other business or legal entity.

20 x. “Plaintiff’s Counsel” means Lead Counsel and Liaison Counsel.

21 y. “Plan of Allocation” means the proposed Plan of Allocation of Net
22 Settlement Fund, which, subject to the approval of the Court, shall be substantially in the
23 form described in the Notice.

24 z. “Preliminary Approval Order” means the Order Preliminarily
25 Approving Settlement and Providing for Notice, which, subject to the approval of the
26 Court, shall be substantially in the form of the proposed order attached hereto as Exhibit
27 A.

28

1 aa. “Proof of Claim” or “Claim Form” means the Proof of Claim and
2 Release form for submitting a claim, which, subject to approval of the Court, shall be
3 substantially in the form attached as Exhibit 2 to Exhibit A hereto.

4 bb. “Released Claims” means any and all pending claims arising from
5 the same operative facts as this Action, and any and all causes of action of every nature
6 and description, including both known claims and Unknown Claims (defined below),
7 contingent or absolute, mature or not mature, liquidated or not liquidated, accrued or not
8 accrued, concealed or hidden, regardless of legal or equitable theory and whether arising
9 under federal, state, common or foreign law, that Lead Plaintiff or any other Settlement
10 Class Member: (i) asserted in the Action; or (ii) could have asserted in the Action or any
11 forum, domestic or foreign, that arise out of, are based upon, or relate to, directly or
12 indirectly, in whole or in part, to: (a) the allegations, transactions, facts, events, matters or
13 occurrences, representations or omissions involved, set forth, alleged or referred to in the
14 Action; and (b) the purchase or sale or other acquisition or disposition, or holding of
15 Mesa securities pursuant and/or traceable to Mesa’s Initial Public Offering (“IPO”) that
16 was commenced on or around August 9, 2018. For the avoidance of doubt, Released
17 Claims include those claims asserted in *City of Pittsburgh Comprehensive Municipal*
18 *Pension Trust Fund, et al. v. Mesa Air Group, Inc., et al.*, Civ. No. CV2020-003927
19 (Superior Court of Arizona in and for the County of Maricopa, filed March 24, 2020). For
20 the avoidance of doubt, Released Claims do not include: (i) claims relating to the
21 enforcement of the Settlement; and (ii) any claims of Persons who submit a request for
22 exclusion that is accepted by the Court.

23 cc. “Released Defendant Parties” means Defendants, Defendants’
24 Counsel, and each of their respective past or present direct or indirect subsidiaries,
25 parents, affiliates, principals, successors and predecessors, assigns, officers, directors,
26 shareholders, trustees, partners, agents, fiduciaries, contractors, employees, attorneys,
27 auditors, insurers; the spouses, members of the immediate families, representatives, and
28

1 heirs of the Individual Defendants, as well as any trust of which any Individual
2 Defendant is the settlor or which is for the benefit of any of their immediate family
3 members; any firm, trust, corporation, or entity in which any Defendant has a controlling
4 interest; and any of the legal representatives, heirs, successors in interest or assigns of
5 Defendants.

6 dd. “Released Defendants’ Claims” means all claims and causes of
7 action of every nature and description, including both known claims and Unknown
8 Claims (as defined below), whether arising under federal, state, common or foreign law,
9 that Defendants could have asserted against any of the Released Plaintiff Parties that arise
10 out of or relate in any way to the institution, prosecution, or settlement of the claims in
11 the Action, except for claims relating to the enforcement of the Settlement or any claims
12 against any Person who submits a request for exclusion that is accepted by the Court.

13 ee. “Released Parties” means the Released Defendant Parties and the
14 Released Plaintiff Parties.

15 ff. “Released Plaintiff Parties” means each and every Settlement Class
16 Member, Lead Plaintiff, Plaintiff’s Counsel, and each of their respective past or present
17 trustees, officers, directors, partners, employees, affiliates, contractors, auditors,
18 principals, agents, attorneys, predecessors, successors, assigns, insurers, parents,
19 subsidiaries, general or limited partners or partnerships, and limited liability companies;
20 and the spouses, members of the immediate families, representatives, and heirs of any
21 Released Plaintiff Party who is an individual, as well as any trust of which any Released
22 Plaintiff Party is the settlor or which is for the benefit of any of their immediate family
23 members. Released Plaintiff Parties does not include any Person who timely and validly
24 seeks exclusion from the Settlement Class.

25 gg. “Settlement” means the resolution of the Action in accordance with
26 the terms and provisions of this Stipulation.

27 hh. “Settlement Amount” means the total principal amount of five
28

1 million U.S. dollars (\$5,000,000) in cash.

2 ii. “Settlement Class” or “Settlement Class Member” means all Persons
3 that purchased or otherwise acquired Mesa’s securities pursuant and/or traceable to the
4 Company’s IPO commenced on or around August 9, 2018, and were damaged thereby.
5 Excluded from the Settlement Class are the Company, its officers and directors,
6 employees, affiliates, legal representatives, heirs, predecessors, successors, and assigns,
7 and any entity in which the Company has a controlling interest or of which the Company
8 is a parent or subsidiary, and the Underwriter Defendants. Also excluded from the
9 Settlement Class will be any Person who or which timely and validly seeks exclusion
10 from the Settlement Class.

11 jj. “Settlement Fund” means the Settlement Amount plus any interest or
12 income earned thereon.

13 kk. “Settlement Hearing” means the hearing to be held by the Court to
14 determine whether the proposed Settlement is fair, reasonable, and adequate and should
15 be approved.

16 ll. “Stipulation” means this Stipulation and Agreement of Settlement.

17 mm. “Summary Notice” means the Summary Notice of Pendency and
18 Proposed Settlement of Class Action for publication, which, subject to approval of the
19 Court, shall be substantially in the form attached as Exhibit 3 to Exhibit A hereto.

20 nn. “Tax” or “Taxes” mean all taxes, fees, levies, duties, tariffs, imposts,
21 and charges of any kind imposed on the Settlement Fund and the expenses and costs
22 incurred in connection with the taxation of the Settlement Fund (together with any and all
23 interest, penalties, additions to tax and additional amounts imposed with respect thereto
24 and the reasonable expenses of tax attorneys and accountants).

25 oo. “Underwriter Defendants” means Raymond James & Associates,
26 Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Cowen and Company, LLC,
27 Stifel, Nicolaus & Company, Incorporated, and Imperial Capital, LLC.

28

1 pp. “Unknown Claims” means any and all Released Claims that Lead
2 Plaintiff or any other Settlement Class Member does not know or suspect to exist in his,
3 her, or its favor at the time of the release of the Released Defendant Parties, and any and
4 all Released Defendants’ Claims that any Defendant does not know or suspect to exist in
5 his, her, or its favor at the time of the release of the Released Plaintiff Parties, which if
6 known by him, her, or it might have affected his, her, or its decision(s) with respect to the
7 Settlement, including the decision to object to the terms of the Settlement or to exclude
8 himself, herself, or itself from the Settlement Class. With respect to any and all Released
9 Claims and Released Defendants’ Claims, the Parties stipulate and agree that, upon the
10 Effective Date, Lead Plaintiff and Defendants shall expressly, and each other Settlement
11 Class Member shall be deemed to have, and by operation of the Judgment or Alternative
12 Judgment shall have, to the fullest extent permitted by law, expressly waived and
13 relinquished any and all provisions, rights and benefits conferred by any law of any state
14 or territory of the United States or foreign law, or principle of common law, which is
15 similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

16 **A general release does not extend to claims that the**
17 **creditor or releasing party does not know or suspect to**
18 **exist in his or her favor at the time of executing the release**
19 **and that, if known by him or her, would have materially**
20 **affected his or her settlement with the debtor or released**
21 **party.**

22 Lead Plaintiff, other Settlement Class Members, or Defendants may hereafter discover
23 facts, legal theories, or authorities in addition to or different from those which any of
24 them now knows or believes to be true with respect to the subject matter of the Released
25 Claims and the Released Defendants’ Claims, but Lead Plaintiff and Defendants shall
26 expressly, fully, finally, and forever settle and release, and each Settlement Class
27 Member shall be deemed to have settled and released, and upon the Effective Date and by
28 operation of the Judgment or Alternative Judgment shall have settled and released, fully,

1 finally, and forever, any and all Released Claims and Released Defendants' Claims as
2 applicable, without regard to the subsequent discovery or existence of such different or
3 additional facts, legal theories, or authorities. Lead Plaintiff and Defendants
4 acknowledge, and other Settlement Class Members by operation of law shall be deemed
5 to have acknowledged, that the inclusion of "Unknown Claims" in the definition of
6 Released Claims and Released Defendants' Claims was separately bargained for and was
7 a material element of the Settlement.

8 **DUE DILIGENCE**

9 2. The parties have conferred in good faith and, with the assistance of mediator
10 Jed D. Melnick of JAMS, agreed on an appropriate set of documents reasonably necessary
11 for Lead Plaintiff to confirm and determine in good faith that the Settlement is fair,
12 reasonable, and adequate to the Settlement Class. The Mesa Defendants have produced
13 the mutually agreed set of documents to Lead Plaintiff which its counsel has reviewed.
14 After reviewing these documents, Lead Plaintiff submitted questions to Defendants and
15 received and reviewed written responses thereto in order to better assess the fairness and
16 reasonableness of the Settlement. Defendants produced over 72,000 pages of documents
17 which were produced for settlement purposes only, are confidential and subject to an
18 agreed-upon protective order, and Lead Plaintiff may only reference their review thereof
19 as part of their assessment of the fairness and reasonableness of the Settlement and the
20 potential risk of proceeding with the Action rather than settling now.

21 **SCOPE AND EFFECT OF SETTLEMENT**

22 3. The obligations incurred pursuant to this Stipulation are: (i) subject to
23 approval by the Court and the Judgment, or Alternative Judgment, reflecting such
24 approval becoming Final; and (ii) in full and final disposition of the Action with respect
25 to the Released Parties and any and all Released Claims and Released Defendants'
26 Claims.

27 4. By operation of the Judgment or Alternative Judgment, as of the Effective
28

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

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

17 **THE SETTLEMENT CONSIDERATION**

18 6. In full settlement of the claims asserted in the Action against Defendants
19 and in consideration of the releases specified in ¶¶4-5, above, all of which the Parties
20 agree are good and valuable consideration, Mesa and/or the Mesa Defendants' insurers
21 shall pay, or cause to be paid, the Settlement Amount into the Escrow Account within
22 thirty (30) calendar days following the later of: (i) the date of entry of the Preliminary
23 Approval Order, and (ii) Lead Counsel providing to Defendants' Counsel the information
24 necessary to effectuate a transfer of funds to the Escrow Account, consisting of wire
25 transfer instructions and a complete and executed Form W-9 for the Settlement Fund that
26 reflects a valid tax identification number. If the Settlement Amount is not timely paid to
27 the Escrow Agent, Lead Plaintiff may terminate the Settlement but only if (a) Lead
28

1 Counsel has notified Defendants' counsel in writing of Lead Counsel's intention to
2 terminate the Settlement, and (b) the entire Settlement Amount is not transferred to the
3 Escrow Agent within ten (10) business days after Lead Counsel has provided such
4 written notice. Once the Settlement Amount is deposited by Mesa and/or the Mesa
5 Defendants' insurers, they shall have no right to the return of such funds except as
6 provided in the termination provisions in ¶¶41-48 below.

7 7. With the sole exception of Mesa's obligation to secure payment of the
8 Settlement Amount into the Escrow Account as provided for in ¶6, the Mesa Defendants'
9 obligation pursuant to ¶22, and the Mesa Defendants' obligation pursuant to ¶38,
10 Defendants and Defendants' Counsel shall have no responsibility for, interest in, or
11 liability whatsoever with respect to: (i) any act, omission, or determination by Lead
12 Counsel or the Claims Administrator, or any of their respective designees or agents, in
13 connection with the administration of the Settlement or otherwise; (ii) the management,
14 investment, or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the
15 determination, administration, calculation, or payment of any claims asserted against the
16 Settlement Fund; (v) any loss suffered by, or fluctuation in value of, the Settlement Fund;
17 or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in
18 connection with the taxation of the Settlement Fund, distributions or other payments from
19 the Escrow Account, or the filing of any federal, state, or local returns.

20 8. Other than the obligation of Mesa and/or its insurance carriers to cause
21 payment of the Settlement Amount pursuant to ¶6, and any Class Action Fairness Act of
22 2005 ("CAFA") expenses referred to in ¶22 which will be paid by Mesa and/or its
23 insurance carriers, Defendants shall have no obligation to make any other payments into
24 the Escrow Account or to any Settlement Class Member pursuant to this Stipulation.

25 **USE AND TAX TREATMENT OF SETTLEMENT FUND**

26 9. The Settlement Fund shall be used: (i) to pay any Taxes; (ii) to pay Notice
27 and Administration Expenses; (iii) to pay any attorneys' fees and expenses awarded by
28

1 the Court; (iv) to pay any other fees and expenses awarded by the Court; and (v) to pay
2 the claims of Authorized Claimants.

3 10. The Net Settlement Fund shall be distributed to Authorized Claimants as
4 provided in ¶¶23-28 hereof. The Net Settlement Fund shall remain in the Escrow
5 Account prior to the Effective Date. All funds held in the Escrow Account, and all
6 earnings thereon, shall be deemed to be in the custody of the Court and shall remain
7 subject to the jurisdiction of the Court until such time as the funds shall have been
8 disbursed or returned, pursuant to the terms of this Stipulation, and/or further order of the
9 Court. The Escrow Agent shall invest funds in the Escrow Account in instruments
10 backed by the full faith and credit of the United States Government (or a mutual fund
11 invested solely in such instruments), or deposit some or all of the funds in transaction
12 account(s) that are fully insured by the Federal Deposit Insurance Corporation (“FDIC”)
13 in amounts that are up to the limit of FDIC insurance. Defendants and Defendants’
14 Counsel shall have no responsibility for, interest in, or liability whatsoever with respect
15 to investment decisions executed by the Escrow Agent. All risks related to the
16 investment of the Settlement Fund shall be borne solely by the Settlement Fund.

17 11. After the Settlement Amount has been paid into the Escrow Account, the
18 Parties agree to treat the Settlement Fund as a “qualified settlement fund” within the
19 meaning of Treas. Reg. § 1.468B-1. All provisions of this Stipulation shall be interpreted
20 in a manner that is consistent with the Settlement Amount being a “qualified settlement
21 fund” within the meaning of Treasury Regulation § 1.468B-1. In addition, the Claims
22 Administrator shall timely make, or cause to be made, such elections as necessary or
23 advisable to carry out the provisions of this paragraph 11, including the “relation-back
24 election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such
25 elections shall be made in compliance with the procedures and requirements contained in
26 such regulations. It shall be the responsibility of the Escrow Agent to timely and properly
27 prepare and deliver, or cause to be prepared and delivered, the necessary documentation
28

1 for signature by all necessary parties, and thereafter take all such actions as may be
2 necessary or appropriate to cause the appropriate filing(s) to timely occur. Consistent
3 with the foregoing:

4 a. For the purposes of Section 468B of the Internal Revenue Code of
5 1986, as amended, and Treas. Reg. § 1.468B promulgated thereunder, the “administrator”
6 shall be the Claims Administrator, who shall timely and properly file, or cause to be filed,
7 all tax returns and information returns (together, “Tax Returns”) necessary or advisable
8 with respect to the Settlement Fund (including without limitation the returns described in
9 Treas. Reg. § 1.468B-2(k)). Such Tax Returns (as well as the election described above)
10 shall be consistent with this subparagraph and in all events shall reflect that all Taxes
11 (including any estimated taxes, earnings, or penalties) on the income earned on the funds
12 deposited in the Escrow Account shall be paid out of such funds as provided in
13 subparagraph (c) of this paragraph 11.

14 b. All Taxes shall be paid out of the Settlement Fund. In all events,
15 Defendants and Defendants’ Counsel shall have no liability or responsibility whatsoever
16 for the Taxes or the filing of any Tax return or other document with the Internal Revenue
17 Service or any other state or local taxing authority. Defendants shall have no liability or
18 responsibility for the Taxes of the Escrow Account with respect to the Settlement
19 Amount nor the filing of any Tax Returns or other documents with the Internal Revenue
20 Service or any other taxing authority. In the event any Taxes are owed by any of the
21 Defendants on any earnings on the funds on deposit in the Escrow Account, such
22 amounts shall also be paid out of the Settlement Fund.

23 c. Taxes with respect to the Settlement Amount and the Escrow
24 Account shall be treated as, and considered to be, a cost of administration of the
25 Settlement and shall be timely paid, or caused to be paid, by the Escrow Agent out of the
26 Settlement Fund without prior order from the Court or approval by Defendants, as
27 directed by Lead Counsel and the Claims Administrator. The Escrow Agent shall be
28

1 obligated (notwithstanding anything herein to the contrary) to withhold from distribution
2 to Authorized Claimants any funds necessary to pay such amounts (as well as any
3 amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)), as
4 directed by Lead Counsel and the Claims Administrator. The Parties agree to cooperate
5 with each other, the Escrow Agent, the Claims Administrator, and their tax attorneys and
6 accountants to the extent reasonably necessary, to carry out the provisions of this
7 paragraph 11.

8 12. This is not a claims-made settlement. As of the Effective Date, Defendants,
9 and/or any other Person funding the Settlement on a Defendant's behalf, shall not have
10 any right to the return of the Settlement Fund or any portion thereof for any reason.

11 **ATTORNEY'S FEES AND EXPENSES**

12 13. Lead Counsel, on behalf of all Plaintiff's Counsel, will apply to the Court
13 for an award from the Settlement Fund of attorneys' fees and payment of litigation
14 expenses incurred in prosecuting the Action, including reimbursement to Lead Plaintiff
15 pursuant to the PSLRA, plus earnings on such amounts at the same rate and for the same
16 periods as earned by the Settlement Fund. Defendants shall take no position with respect
17 to any Fee and Expense Application.

18 14. The amount of attorneys' fees and expenses awarded by the Court is within
19 the sole discretion of the Court. Any attorneys' fees and expenses awarded by the Court
20 shall be paid from the Settlement Fund to Lead Counsel immediately after entry of the
21 Order awarding such attorneys' fees and expenses and entry of the Judgment or
22 Alternative Judgment, notwithstanding the existence of any timely filed objections
23 thereto or to the Settlement, or potential for appeal therefrom, or collateral attack on the
24 Fee and Expense Application, the Settlement, or any part thereof. Lead Counsel shall
25 allocate any Court-awarded attorneys' fees and expenses among Plaintiff's Counsel.

26 15. Any payment of attorneys' fees and expenses pursuant to ¶¶13-14 above
27 shall be subject to Plaintiff's Counsel's obligation to make refunds or repayments to the
28

1 Settlement Fund of any paid amounts, plus accrued earnings at the same net rate as is
2 earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of
3 this Stipulation or fails to become effective for any reason, or if, as a result of any appeal
4 or further proceedings on remand or successful collateral attack, the award of attorneys'
5 fees and/or expenses is reduced or reversed by Final non-appealable court order. Lead
6 Counsel shall make the appropriate refund or repayment in full no later than twenty (20)
7 business days after receiving notice of the termination of the Settlement pursuant to this
8 Stipulation, notice from a court of appropriate jurisdiction of the disapproval of the
9 Settlement by Final non-appealable court order, or notice of any reduction or reversal of
10 the award of attorneys' fees and/or expenses by Final non-appealable court order.

11 16. Lead Counsel's Fee and Expense Application may include a request for
12 reimbursement of Lead Plaintiff's reasonable costs and expenses in connection with its
13 representation of the Class pursuant to 15 U.S.C. § 77z-1(a)(4). However, in the event
14 that the Effective Date does not occur, or the judgment or the order approving Lead
15 Plaintiff's application for an award for its costs and expenses is reversed or modified, or
16 the Stipulation is canceled or terminated for any other reason, and such reversal,
17 modification, cancellation or termination becomes final and not subject to review, then
18 Lead Plaintiff shall within twenty (20) business days after receiving notice from
19 Defendants' Counsel or from a court of appropriate jurisdiction, refund to the Settlement
20 Fund or to Defendants if appropriate such amounts for costs and expenses previously
21 paid to Lead Plaintiff from the Settlement Fund plus interest thereon at the same net rate
22 as is earned by the Settlement Fund in an amount consistent with such reversal or
23 modification.

24 17. With the exception of Mesa's and/or its insurance carriers' obligation to
25 pay the Settlement Amount into the Escrow Account as provided for in ¶6, Defendants
26 shall have no responsibility for, and no liability whatsoever with respect to, any payment
27 whatsoever to Plaintiff's Counsel in the Action that may occur at any time.
28

1 this purpose prior to the Effective Date may be paid from the Settlement Fund upon order
2 of the Court. Taxes and fees related to the Escrow Account and investment of the
3 Settlement Fund may be paid as incurred, without further approval of Defendants or
4 further order of the Court. After the Effective Date, without approval of Defendants or
5 further order of the Court, Notice and Administration Expenses may be paid as incurred.
6 Mesa on behalf of all Defendants, shall be responsible for providing any required notice
7 under CAFA, if any, at its own expense.

8 **DISTRIBUTION TO AUTHORIZED CLAIMANTS**

9 23. Except as otherwise provided herein, the Settlement Fund shall be held in
10 the Escrow Account until the Effective Date.

11 24. The Claims Administrator, subject to such supervision and direction of
12 Lead Counsel and/or the Court as may be necessary or as circumstances may require,
13 shall administer the Settlement in accordance with the terms of this Stipulation, the
14 Court-approved Plan of Allocation, and subject to the jurisdiction of the Court.
15 Defendants and Defendants' Counsel shall have no responsibility for (except as stated in
16 ¶¶6 and 38 hereof), interest in, or liability whatsoever with respect to the administration
17 of the Settlement or the actions or decisions of the Claims Administrator, and shall have
18 no liability to the Settlement Class in connection with such administration.

19 25. The Claims Administrator shall determine each Authorized Claimant's pro
20 rata share of the Net Settlement Fund based upon each Authorized Claimant's recognized
21 loss, as defined in the Plan of Allocation included in the Notice, or in such other plan of
22 allocation as the Court may approve.

23 26. Defendants have no role in the development of, and will take no position
24 with respect to, the Plan of Allocation. Any decision by the Court concerning the Plan of
25 Allocation shall not affect the validity or finality of the proposed Settlement. The Plan of
26 Allocation is not a necessary term of this Stipulation and it is not a condition of this
27 Stipulation that any particular plan of allocation be approved by the Court. Lead Plaintiff
28

1 and Lead Counsel may not cancel or terminate the Stipulation or the Settlement in
2 accordance with ¶41 or otherwise based on the Court's or any appellate court's ruling
3 with respect to the Plan of Allocation or any plan of allocation in the Action. Defendants
4 and Defendants' Counsel shall have no responsibility or liability for reviewing or
5 challenging claims, the allocation of the Net Settlement Fund, or the distribution of the
6 Net Settlement Fund.

7 27. Upon the Effective Date and thereafter, and in accordance with the terms of
8 the Stipulation, the Plan of Allocation, or such further approval and further order(s) of the
9 Court as may be necessary or as circumstances may require, the Net Settlement Fund
10 shall be distributed to Authorized Claimants.

11 28. If there is any balance remaining in the Net Settlement Fund (whether by
12 reason of tax refunds, uncashed checks or otherwise) after at least six (6) months from the
13 date of initial distribution of the Net Settlement Fund, the Claims Administrator shall, if
14 feasible and economical after payment of Notice and Administration Expenses, Taxes,
15 and attorneys' fees and expenses, if any, redistribute such balance in an equitable and
16 economic fashion among Authorized Claimants who have cashed their checks. Once it is
17 no longer feasible or economical to make further distributions, any balance that still
18 remains in the Net Settlement Fund after re-distribution(s) and after payment of
19 outstanding Notice and Administration Expenses, Taxes, and attorneys' fees and
20 expenses, if any, shall be donated to Investor Protection Trust, a nation-wide non-profit
21 organization dedicated to providing investor education and advocacy, or to another non-
22 sectarian, not-for-profit charitable organization serving the public interest designated and
23 approved by the Court.

24 **ADMINISTRATION OF THE SETTLEMENT**

25 29. Any Settlement Class Member who fails to timely submit a valid Proof of
26 Claim (substantially in the form of Exhibit 2 to Exhibit A) will not be entitled to receive
27 any of the proceeds from the Net Settlement Fund, except as otherwise ordered by the
28

1 Court, but will otherwise be bound by all of the terms of this Stipulation and the
2 Settlement, including the terms of the Judgment or Alternative Judgment to be entered in
3 the Action and all releases provided for herein, and will be barred from bringing any
4 action against the Released Defendant Parties concerning the Released Claims.
5 Notwithstanding the foregoing, Lead Counsel shall have the discretion (but not the
6 obligation) to accept for processing late submitted claims so long as the distribution of
7 the Net Settlement Fund is not materially delayed. Plaintiff's Counsel shall have no
8 liability for not accepting late claims.

9 30. Lead Counsel shall be responsible for supervising the administration of the
10 Settlement and disbursement of the Net Settlement Fund by the Claims Administrator.
11 Lead Counsel shall have the right, but not the obligation, to advise the Claims
12 Administrator to waive what Lead Counsel deems to be *de minimis* or formal or technical
13 defects in any Proof of Claim submitted. Defendants and Defendants' Counsel shall have
14 no liability, obligation or responsibility for the administration of the Settlement, the
15 allocation of the Net Settlement Fund, or the reviewing or challenging of claims, subject
16 to Defendants' right to receive reasonable information concerning the settlement
17 administration process upon request. Lead Counsel was and is solely responsible for
18 designating the Claims Administrator, subject to approval by the Court.

19 31. For purposes of determining the extent, if any, to which a claimant shall be
20 entitled to be treated as an Authorized Claimant, the following conditions shall apply:

21 a. Each Claimant shall be required to submit a Claim Form,
22 substantially in the form attached hereto as Exhibit 2 to Exhibit A, supported by such
23 documents as are designated therein, including proof of the Claimant's loss, or such other
24 documents or proof as the Claims Administrator or Lead Counsel, in their discretion, may
25 deem acceptable;

26 b. All Claim Forms must be submitted by the date set by the Court in
27 the Preliminary Approval Order and specified in the Notice, unless such deadline is
28

1 extended by Order of the Court. Any Settlement Class Member who fails to submit a
2 Claim Form by such date shall be barred from receiving any distribution from the Net
3 Settlement Fund or payment pursuant to this Stipulation (unless, late-filed Claim Forms
4 are accepted by Lead Counsel in its discretion and approved by the Court), but shall in all
5 other respects be bound by all of the terms of this Stipulation and the Settlement,
6 including the terms of the Judgment or Alternative Judgment and all releases provided for
7 herein, and will be permanently barred and enjoined from bringing any action, claim or
8 other proceeding of any kind against any Released Defendant Party asserting any
9 Released Claims. A Claim Form shall be deemed to be submitted when mailed, if
10 received with a postmark on the envelope and if mailed by first-class or overnight U.S.
11 Mail and addressed in accordance with the instructions thereon. In all other cases, the
12 Claim Form shall be deemed to have been submitted when actually received by the
13 Claims Administrator;

14 c. Each Claim Form shall be submitted to and reviewed by the Claims
15 Administrator, under the supervision of Lead Counsel, which shall determine in
16 accordance with this Stipulation the extent, if any, to which each claim shall be allowed;

17 d. Claim Forms that do not meet the submission requirements may be
18 rejected. Prior to rejecting a Claim Form in whole or in part, the Claims Administrator
19 shall communicate with the claimant in writing to give the Claimant the chance to
20 remedy any curable deficiencies in the Claim Form submitted. The Claims
21 Administrator, under supervision of Lead Counsel, shall notify, in a timely fashion and in
22 writing, all Claimants whose claims the Claims Administrator proposes to reject in whole
23 or in part for curable deficiencies, setting forth the reasons therefor, and shall indicate in
24 such notice that the Claimant whose claim is to be rejected has the right to a review by
25 the Court if the Claimant so desires and complies with the requirements of subparagraph
26 (e) below; and

27 e. If any Claimant whose timely claim has been rejected in whole or in
28

1 part for curable deficiency desires to contest such rejection, the Claimant must, within
2 twenty (20) calendar days after the date of mailing of the notice required in subparagraph
3 (d) above, or a lesser period of time if the claim was untimely, serve upon the Claims
4 Administrator a notice and statement of reasons indicating the claimant's grounds for
5 contesting the rejection along with any supporting documentation, and requesting a
6 review thereof by the Court. If a dispute concerning a claim cannot be otherwise
7 resolved, Lead Counsel shall thereafter present the request for review to the Court.

8 32. Each Claimant who submits a Claim Form shall be deemed to have
9 submitted to the jurisdiction of the Court with respect to the Claimant's claim, including
10 but not limited to, all releases provided for herein and in the Judgment or Alternative
11 Judgment, and the claim will be subject to investigation and discovery under the Federal
12 Rules of Civil Procedure, provided that such investigation and discovery shall be limited
13 to the Claimant's status as a Settlement Class Member and the validity and amount of the
14 Claimant's claim.

15 33. Payment pursuant to the Stipulation and Court-approved Plan of Allocation
16 shall be deemed final and conclusive against any and all Claimants. All Settlement Class
17 Members whose claims are not approved shall be barred from participating in
18 distributions from the Net Settlement Fund, but otherwise shall be bound by all of the
19 terms of this Stipulation and the Settlement, including the terms of the Judgment or
20 Alternative Judgment to be entered in the Action and the releases provided for herein and
21 therein, and will be barred from bringing any action against the Released Defendant
22 Parties concerning the Released Claims.

23 34. All proceedings with respect to the administration, processing and
24 determination of claims described by this Stipulation and the determination of all
25 controversies relating thereto, including disputed questions of law and fact with respect to
26 the validity of claims, shall be subject to the jurisdiction of the Court, but shall not in any
27 event delay or affect the finality of the Judgment or Alternative Judgment.

28

1 35. No Person shall have any claim of any kind against the Released Defendant
2 Parties or Defendants' Counsel with respect to the matters set forth in this section (*i.e.*,
3 ¶¶29-36) or any of its subsections, or otherwise related in any way to the administration
4 of the Settlement, including without limitation the processing of claims and distributions.

5 36. No Person shall have any claim against Lead Plaintiff, Lead Counsel, or the
6 Claims Administrator, or other agent designated by Lead Counsel, based on the
7 distributions made substantially in accordance with this Stipulation and the Settlement
8 contained herein, the Plan of Allocation, or further order(s) of the Court.

9 **TERMS OF THE PRELIMINARY APPROVAL ORDER**

10 37. Concurrently with their application for preliminary approval by the Court
11 of the Settlement contemplated by this Stipulation and promptly upon execution of this
12 Stipulation, Lead Counsel shall apply to the Court for entry of the Preliminary Approval
13 Order, which shall be substantially in the form annexed hereto as Exhibit A. The
14 Preliminary Approval Order will, *inter alia*, preliminarily approve the Settlement, set the
15 date for the Settlement Hearing, approve the form of notice, and prescribe the method for
16 giving notice of the Settlement to the Settlement Class.

17 38. Mesa shall provide, or cause to be provided, to Lead Counsel or the Claims
18 Administrator, at no cost to Lead Plaintiff or the Settlement Class, promptly after entry of
19 the Preliminary Approval Order, transfer records in electronic searchable form, such as
20 Excel, containing the names and addresses of Persons who purchased or acquired Mesa
21 securities pursuant and/or traceable to the Company's IPO commenced on or around
22 August 9, 2018, *i.e.*, those who purchased or acquired Mesa securities prior to February
23 5, 2019.

24 **TERMS OF THE JUDGMENT**

25 39. If the Settlement contemplated by this Stipulation is approved by the Court,
26 Lead Counsel and Defendants' Counsel shall jointly request that the Court enter a
27 Judgment substantially in the form annexed hereto as Exhibit B.

28

1 **EFFECTIVE DATE OF SETTLEMENT**

2 40. The Effective Date of this Settlement shall be the first business day on
3 which all of the following shall have occurred or been waived:

- 4 a. Entry of the Preliminary Approval Order, which shall be in all
5 material respects substantially in the form set forth in Exhibit A annexed hereto;
- 6 b. Payment of the Settlement Amount into the Escrow Account;
- 7 c. Approval by the Court of the Settlement, following notice to the
8 Settlement Class and the Settlement Hearing, as prescribed by Rule 23 of the Federal
9 Rules of Civil Procedure; and
- 10 d. A Judgment, which shall be in all material respects substantially in
11 the form set forth in Exhibit B annexed hereto, has been entered by the Court and has
12 become Final; or in the event that an Alternative Judgment has been entered, the
13 Alternative Judgment has become Final.

14 **WAIVER OR TERMINATION**

15 41. Defendants and Lead Plaintiff shall have the right to terminate the
16 Settlement and this Stipulation by providing written notice of their election to do so
17 (“Termination Notice”), through counsel, to all other Parties hereto within fourteen (14)
18 calendar days of: (i) the Court’s Final refusal to enter the Preliminary Approval Order in
19 any material respect; (ii) the Court’s Final refusal to approve this Stipulation or any
20 material part of it; (iii) the Court’s Final refusal to enter (a) the Judgment in any material
21 respect or (b) an Alternative Judgment; or (iv) the date upon which the Judgment or
22 Alternative Judgment is modified or reversed in any material respect by a Final order of
23 the Court, the United States Court of Appeals, or the Supreme Court of the United States.
24 For the avoidance of doubt, Lead Plaintiff shall not have the right to terminate the
25 Settlement due to any decision, ruling, or order respecting the Fee and Expense
26 Application or any plan of allocation. For the further avoidance of doubt, Defendants
27 shall deem any decision, ruling, or order that purports to limit the scope of the Released
28

1 Claims or the Released Defendant Parties to constitute a material change for purposes of
2 the foregoing.

3 42. In addition to the foregoing, Defendants shall also have the right to
4 terminate the Settlement in the event the Opt-Out Threshold (defined below) has been
5 reached.

6 a. Simultaneously herewith, Defendants' Counsel and Lead Counsel
7 are executing a Confidential Supplemental Agreement Regarding Requests for Exclusion
8 ("Supplemental Agreement"). The Supplemental Agreement sets forth certain conditions
9 under which Defendants shall have the sole option to terminate the Settlement and render
10 this Stipulation null and void in the event that requests for exclusion from the Settlement
11 Class exceed certain agreed-upon criteria (the "Opt-Out Threshold"). The Parties agree
12 to maintain the confidentiality of the Supplemental Agreement, which shall not be filed
13 with the Court unless a dispute arises as to its terms, or as otherwise ordered by the
14 Court, nor shall the Supplemental Agreement otherwise be disclosed unless ordered by
15 the Court. If submission of the Supplemental Agreement is required for resolution of a
16 dispute or is otherwise ordered by the Court, the Parties agree that the Supplemental
17 Agreement and/or any of its terms will be submitted to the Court in camera or under seal.
18 In the event of a termination of this Settlement pursuant to the Supplemental Agreement,
19 this Stipulation shall become null and void and of no further force and effect, with the
20 exception of the provisions of ¶¶47-50 which shall continue to apply.

21 43. The Preliminary Approval Order, attached hereto as Exhibit A, shall
22 provide that requests for exclusion shall be received no later than twenty-one (21)
23 calendar days prior to the Settlement Hearing. Upon receiving any request for exclusion
24 pursuant to the Notice, Lead Counsel shall promptly, and in no event no later than three
25 (3) business days after receiving a request for exclusion or fifteen (15) calendar days
26 prior to the Settlement Hearing, whichever is earlier, notify Defendants' Counsel of such
27 request for exclusion and provide copies of such request for exclusion and any
28

1 documentation accompanying it by email.

2 44. In addition to all of the rights and remedies that Lead Plaintiff has under the
3 terms of this Stipulation, Lead Plaintiff shall also have the right to terminate the
4 Settlement in the event that the Settlement Amount has not been paid in the time period
5 provided for in ¶6 above, pursuant to the procedures described in ¶6 above.

6 45. If, before the Settlement becomes Final, any Defendant files for protection
7 under the Bankruptcy Code or any similar law or a trustee, receiver, conservator, or other
8 fiduciary is appointed under Bankruptcy, or any similar law, and in the event of the entry
9 of a Final order of a court of competent jurisdiction determining the transfer of money or
10 any portion thereof to the Settlement Fund by or on behalf of such Defendant to be a
11 preference, voidable transfer, fraudulent transfer or similar transaction and any portion
12 thereof is required to be returned, and such amount is not promptly deposited into the
13 Settlement Fund on behalf of such Defendant by others, then, at the election of Lead
14 Plaintiff, the Parties shall jointly move the Court to vacate and set aside the release given
15 and the Judgment or Alternative Judgment entered in favor of that Defendant and that
16 Defendant and Lead Plaintiff and the members of the Settlement Class shall be restored
17 to their litigation positions immediately prior to March 2, 2022. All releases and the
18 Judgment or Alternative Judgment as to other Defendants shall remain unaffected.

19 a. Mesa warrants as to the payments it or its insurers makes pursuant to
20 this Stipulation, that, at the time of such payment, it will not be insolvent, nor will
21 payment render it insolvent, within the meaning of and/or for the purposes of the United
22 States Bankruptcy Code, including Sections 101 and 547 thereof.

23 46. If an option to withdraw from and terminate this Stipulation and Settlement
24 arises under any of ¶¶41-45 above: (i) neither Defendants nor Lead Plaintiff (as the case
25 may be) will be required for any reason or under any circumstance to exercise that
26 option; and (ii) any exercise of that option shall be made in good faith, but in the sole and
27 unfettered discretion of Defendants or Lead Plaintiff, as applicable.

28

1 matter arising in connection with settlement discussions or negotiations, proceedings, or
2 agreements, including documents produced as part of confirmatory discovery, shall not
3 be offered or received against or to the prejudice of the Parties or their respective counsel,
4 for any purpose other than in an action to enforce the terms hereof, and in particular:

5 a. Do not constitute, and shall not be offered or received against or to
6 the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of
7 any presumption, concession, or admission by Defendants with respect to the truth of any
8 allegation by Lead Plaintiff and the Settlement Class, or the validity of any claim that has
9 been or could have been asserted in the Action or in any litigation, including but not
10 limited to the Released Claims, or of any liability, damages, negligence, fault or
11 wrongdoing of Defendants or any person or entity whatsoever;

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

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

26 d. Do not constitute, and shall not be construed against Defendants,
27 Lead Plaintiff, or any other member of the Settlement Class, as an admission or
28

1 concession that the consideration to be given hereunder represents the amount that could
2 be or would have been recovered after trial; and

3 e. Do not constitute, and shall not be construed as or received in
4 evidence as an admission, concession, or presumption against Lead Plaintiff, or any other
5 member of the Settlement Class that any of their claims are without merit or infirm or
6 that damages recoverable under the Complaint would not have exceeded the Settlement
7 Amount.

8 50. Notwithstanding ¶49 above, the Parties, and their respective counsel, may
9 file this Stipulation and/or the Judgment or Alternative Judgment in any action that may
10 be brought against them in order to support a defense or counterclaim based on principles
11 of res judicata, collateral estoppel, release, statute of limitations, statute of repose, good-
12 faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue
13 preclusion or similar defense or counterclaim, or to effectuate any liability protection
14 granted them under any applicable insurance policy. The Parties may file this Stipulation
15 and/or the Judgment or Alternative Judgment in any action that may be brought to
16 enforce the terms of this Stipulation and/or the Judgment or Alternative Judgment. All
17 Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing
18 the Settlement.

19 **MISCELLANEOUS**

20 51. All of the exhibits to the Stipulation, except any plan of allocation to the
21 extent incorporated in those exhibits, and the Supplemental Agreement are material and
22 integral parts hereof and are fully incorporated herein by this reference.

23 52. The Parties intend the Settlement to be the full, final, and complete
24 resolution of all claims asserted or that could have been asserted by the Parties with
25 respect to the Released Claims and Released Defendants' Claims. Accordingly, the
26 Parties agree not to assert in any forum that the Action was brought, prosecuted, or
27 defended in bad faith or without a reasonable basis. The Parties and their respective
28

1 counsel agree that each has complied fully with Rule 11 of the Federal Rules of Civil
2 Procedure in connection with the maintenance, prosecution, defense, and settlement of
3 the Action and shall not make any application for sanctions, pursuant to Rule 11 or other
4 court rule or statute, with respect to any claim or defense in this Action. The Parties
5 agree that the amount paid and the other terms of the Settlement were negotiated at
6 arm's-length and in good faith by the Parties and their respective counsel and reflect a
7 settlement that was reached voluntarily based upon adequate information and after
8 consultation with experienced legal counsel and the assistance and recommendation of a
9 well-qualified mediator.

10 53. This Stipulation, along with its exhibits and the Supplemental Agreement
11 may not be modified or amended, nor may any of its provisions be waived, except by a
12 writing signed by counsel for the Parties hereto, or their successors, that are materially
13 and adversely affected by the modification, amendment, or waiver.

14 54. The headings herein are used for the purpose of convenience only and are
15 not meant to have legal effect.

16 55. The administration and consummation of the Settlement as embodied in
17 this Stipulation shall be under the authority of the Court, and the Court shall retain
18 jurisdiction for the purpose of entering orders providing for awards of attorneys' fees,
19 expenses, and any award to Lead Plaintiff pursuant to 15 U.S.C. § 77z-1(a)(4) and
20 implementing and enforcing the terms of this Stipulation.

21 56. The waiver by one Party of any breach of this Stipulation by any other
22 Party shall not be deemed a waiver of any other prior or subsequent breach of this
23 Stipulation.

24 57. This Stipulation, its exhibits, and the Supplemental Agreement constitute
25 the entire agreement among the Parties concerning the Settlement as against the
26 Defendants, and no representation, warranty, or inducement has been made by any Party
27 concerning this Stipulation and its exhibits other than those contained and memorialized
28

1 in such documents.

2 58. Nothing in the Stipulation, or the negotiations relating thereto, is intended
3 to or shall be deemed to constitute a waiver of any applicable privilege or immunity,
4 including, without limitation, attorney-client privilege, joint defense privilege, or work
5 product protection.

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

8 60. All designations and agreements made, or orders entered during the course
9 of the Action relating to the confidentiality of documents or information shall survive this
10 Stipulation.

11 61. This Stipulation may be executed in one or more counterparts. All executed
12 counterparts and each of them shall be deemed to be one and the same instrument.
13 Signatures sent by facsimile or via e-mail in pdf format shall be deemed originals.

14 62. This Stipulation shall be binding when signed, subject to the settlement
15 reaching its Effective Date pursuant to ¶40 and the provisions for termination set forth in
16 ¶¶41-48.

17 63. This Stipulation shall be binding upon, and inure to the benefit of, the
18 successors and assigns of the Parties.

19 64. The construction, interpretation, operation, effect, and validity of this
20 Stipulation, and all documents necessary to effectuate it, shall be governed by the laws of
21 the State of Arizona without regard to conflicts of laws, except to the extent that federal
22 law requires that federal law govern.

23 65. This Stipulation shall not be construed more strictly against one Party than
24 another merely by virtue of the fact that it, or any part of it, may have been prepared by
25 counsel for one of the Parties, it being recognized that it is the result of arm's-length
26 negotiations among the Parties, and all Parties have contributed substantially and
27 materially to the preparation of this Stipulation.

28

1 66. All counsel and any other person executing this Stipulation and any of the
2 exhibits hereto, or any related Settlement document, warrant and represent that they have
3 the full authority to do so, and that they have the authority to take appropriate action
4 required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

5 67. The Parties and their respective counsel agree to cooperate fully with one
6 another in promptly applying for preliminary approval by the Court of the Settlement and
7 for the scheduling of a hearing for consideration of Final approval of the Settlement and
8 Lead Counsel's Fee and Expense Application, and to agree promptly upon and execute
9 all such other documentation as reasonably may be required to obtain Final approval by
10 the Court of the Settlement.

11 68. If any disputes arise out of the finalization of the settlement documentation
12 or the Settlement itself prior to joint submission to the Court of the application for
13 preliminary approval of the Settlement as set forth in ¶37 above, those disputes will be
14 resolved by the Mediator first by way of expedited telephonic mediation and, if
15 unsuccessful, then by final, binding, non-appealable resolution by the Mediator.

16 69. Except as otherwise provided herein, each Party shall bear its own costs.
17
18

19 Dated: May 6, 2022

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
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
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

WILSON SONSINI GOODRICH & ROSATI

Professional Corporation

Nina F. Locker (*pro hac vice*)
Laurie B. Smilan (*pro hac vice*)
Charles A. Talpas (*pro hac vice*)
Douglas W. McManaway (*pro hac vice*)
650 Page Mill Road
Palo Alto, CA 94304

/s/ Laurie B. Smilan
Laurie B. Smilan

RICKETTS & CASE LLP

Cynthia A. Ricketts (Arizona Bar No. 012668)
Andrew C. Stanley (Arizona Bar No. 029789)
2800 N. Central Avenue, Suite 1910
Phoenix, AZ 85004

Attorneys for Mesa Defendants

/s/ Agnès Dunogué
Agnès Dunogué

SHEARMAN AND STERLING LLP

Agnès Dunogué (*pro hac vice*)
Adam S. Hakki (*pro hac vice*)
599 Lexington Avenue
New York, NY 10022-6069

LEWIS ROCA ROTHGERBER CHRISTIE LLP

Edwin A. Barkel (Arizona Bar No. 021666)
John C. Gray (Arizona Bar No. 028454)
Michael C. Brown (Arizona Bar No. 030524)
201 East Washington Street, Suite 1200

Phoenix, AZ 85004

Attorneys for Underwriter Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28