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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

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17 In re: CV SCIENCES, INC. SECURITIES
LITIGATION

Case No. 2:18-cv-01602-JAD-BNW

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

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21 This Document Relates to: All Actions

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1 Lead Plaintiff Richard Ina, as Trustee for the Ina Family Trust (“Ina” or “Lead Plaintiff”),¹
 2 and Lead Counsel, Faruqi & Faruqi, LLP, respectfully submit this reply memorandum of law in
 3 support of Lead Plaintiff’s Motion for Final Approval of the Class Action Settlement (“Final
 4 Approval Motion” or “FA Motion”) (ECF No. 168) and Lead Counsel’s Motion for an Award of
 5 Attorneys’ Fees, Reimbursement of Expenses, and an Award for Lead Plaintiff (“Fee Motion”) (ECF
 6 No. 170) (collectively, the “Motions”). This reply is supported by the Supplemental Declaration of
 7 Kari L. Schmidt Regarding Class Notice and Report on Requests For Exclusion Received (“Schmidt
 8 Supplemental Declaration” or “Schmidt Suppl. Decl.”), submitted herewith.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **INTRODUCTION**

11 Lead Plaintiff and Lead Counsel are pleased to advise the Court of the positive reaction to the
 12 proposed Settlement, Plan of Allocation, and requests for attorneys’ fees, reimbursement of expenses,
 13 and an award to Lead Plaintiff (“Fee Requests”). Following an extensive notice program, which
 14 included the mailing of 42,603 Notice of Pendency and Proposed Settlement of Class Action
 15 (“Notice”) and Proof of Claim and Release forms (collectively, “Notice Packet”) to potential Class
 16 Members and nominees, only one person has objected to the Settlement, and no one has objected to
 17 the Plan of Allocation or the Fee Requests. *See* Schmidt Suppl. Decl. ¶¶2, 4; *see generally* FA
 18 Motion. As well, only three requests for exclusion from the Settlement have been received, only one
 19 of which is valid. *See* Schmidt Suppl. Decl. ¶4; ECF No. 169 at ¶13; FA Motion at 17.

20 Courts in this Circuit and throughout the country have uniformly recognized that the Class’s
 21 reaction is a significant factor for the Court to consider when evaluating whether the proposed
 22 Settlement and Plan of Allocation are fair, adequate, and reasonable. The Class’s response in this
 23 action has been overwhelmingly positive. Thus, Lead Plaintiff and Lead Counsel respectfully request
 24 that the Court approve the Settlement and Plan of Allocation as fair, adequate, and reasonable, and
 25 likewise approve the Fee Requests set forth in the Fee Motion.

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 27 ¹ Unless otherwise noted, the following conventions are used herein: (a) all emphases are
 28 added; (b) all internal citations and quotation marks are omitted; (c) all capitalized terms have the
 meaning ascribed to them in the Stipulation of Settlement dated January 31, 2022 (“Stipulation” or
 “Stip.”); and (d) “Settlement” refers to the settlement set forth in the Stipulation.

ARGUMENT

I. THE CLASS’S REACTION FURTHER SUPPORTS APPROVAL OF THE SETTLEMENT AND PLAN OF ALLOCATION

The class’s reaction to the proposed Settlement is “perhaps the most significant factor to be weighed in considering its adequacy.” *In re Rambus Inc. Derivative Litig.*, No. C 06-3513 JF (HRL), 2009 WL 166689, at *3 (N.D. Cal. Jan. 20, 2009). “If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.” *IBEW v. Int’l Game Tech., Inc.*, No. 3:09-cv-00419-MMD-WGC, 2012 WL 5199742, at *3 (D. Nev. Oct. 19, 2012); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (“It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms . . . are favorable to the class members.”).

The sole objection to the Settlement was submitted by Richard A. Durand. ECF No. 167. Lead Plaintiff respectfully submits that Mr. Durand’s objection is without merit and should be overruled for the reasons explained in the Final Approval Motion. *See* FA Motion at 15-18.

The absence of any other objections to the Settlement, and the lack of any objections to the Plan of Allocation, weigh in favor of their approval. *See IBEW*, 2012 WL 5199742, at *3 (finding that the receipt of only one objection supported settlement); *Omnivision*, 559 F. Supp. 2d at 1043 (finding that the class’s reaction weighed in favor of the settlement where “the Court received objections from only 3 out of 57,630 potential Class Members who received the notice[.]”); *Arnold v. Fitflop USA, LLC*, No. 11-CV-0973 W(KSC), 2014 WL 1670133, at *8 (S.D. Cal. Apr. 28, 2014) (stating that the presence of only one objection “indicat[es] that the vast majority of Class Members and other concerned parties are likely satisfied with the resolution of this case as set forth in the proposed settlement”); *Atlas v. Accredited Home Lenders Holding Co.*, No. 07-CV-00488-H (CAB), 2009 WL 3698393, at *4 (S.D. Cal. Nov. 4, 2009) (finding the class’s reaction to the plan of allocation to be “predominantly positive” where only two objections to it were filed).

Additionally, three requests for exclusion to the Settlement were submitted by (1) Jesse Miller and Christine Moondancer; (2) Charlotte McCann; and (3) Brandon Bell. Only McCann’s request is valid. As explained in the Claims Administrator’s mailing declaration (ECF No. 169) and the Supplemental Schmidt Declaration, the requests for exclusion submitted by Miller, Moondancer, and

1 Bell are invalid because they are not Class Members. *See* ECF No. 169 at ¶13; Schmidt Suppl. Decl.
2 ¶4; *see also* FA Motion at 17.

3 The fact that only three requests for exclusion—two of which are invalid—have been
4 submitted in response to the mailing of 42,603 Notice Packets further supports approval of the
5 Settlement. *See Destefano v. Zynga, Inc.*, No. 12-cv-04007-JSC, 2016 WL 537946, at *14 (N.D. Cal.
6 Feb. 11, 2016) (stating that a low number of exclusions supports a settlement’s reasonableness and
7 collecting cases).

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

10 As noted above, the Notice informed Class Members that Lead Counsel would apply for an
11 award of attorneys’ fees of 25% of the Settlement Fund, payment of litigation expenses in an amount
12 not to exceed \$50,000 of the Settlement Fund, and an award for Lead Plaintiff not to exceed \$12,000.
13 *See* ECF No. 169-1 at 1. The Notice also informed Class Members of their right to object to the Fee
14 Requests and the July 1, 2022 deadline for filing such objections. *See id.* at 2. On June 2, 2022, Lead
15 Counsel filed the Fee Motion seeking an award of 25% of the Settlement Fund, reimbursement of
16 \$37,731.49 in expenses, plus accrued interest, and an award of \$12,000 to Lead Plaintiff for the time
17 and effort that he devoted to representing the Class in this Action. *See* ECF No. 170 at 1-2. The
18 deadline for objections has passed and no objections have been received.

19 The absence of any objections to the Fee Requests weighs strongly in favor of approval. *See,*
20 *e.g., Zynga*, 2016 WL 537946, at *18 (stating that “the lack of objection by any Class Members also
21 supports the 25 percent fee award”); *Omnivision*, 559 F. Supp. 2d at 1048-49 (stating that where no
22 objections “raised any concern about the amount of the fee . . . [t]his factor . . . also supports the
23 requested award of 28% of the Settlement Fund” and granting Lead Plaintiff’s requested award of
24 \$29,913.80 where no one objected).

25 **CONCLUSION**

26 For the reasons set forth herein and in the papers filed in support of the Final Approval
27 Motion and Fee Motion, Lead Plaintiff and Lead Counsel respectfully request that the Court grant
28 both Motions in full.

1 Dated: July 15, 2022

By: /s/ Katherine Lenahan
Katherine Lenahan

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12 *Attorneys for Lead Plaintiff Richard Ina, as*
13 *Trustee for The Ina Family Trust and Lead*
14 *Counsel for the Class*

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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2022, 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/ Katherine Lenahan
Katherine Lenahan