

1 Martin A. Muckleroy  
State Bar #9634  
2 **MUCKLEROY LUNT, LLC**  
6077 S. Fort Apache Rd., Ste 140  
3 Las Vegas, NV 89148  
Telephone: 702-907-0097  
4 Facsimile: 702-938-4065  
Email: martin@muckleroylunt.com

5  
6 Katherine Lenahan (*pro hac vice*)  
Email: klenahan@faruqilaw.com  
**FARUQI & FARUQI, LLP**  
7 685 Third Avenue, 26th Floor  
New York, NY 10017  
8 Telephone: 212-983-9330  
Facsimile: 212-983-9331

9  
10 *Attorneys for Lead Plaintiff Richard Ina, Trustee for The Ina Family Trust  
and the Settlement Class*

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

13  
14  
15 In re: CV SCIENCES, INC. SECURITIES  
16 LITIGATION

17  
18  
19 This Document Relates to: All Actions

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

**LEAD PLAINTIFF'S MOTION FOR  
DISTRIBUTION OF THE NET  
SETTLEMENT FUND AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

**TABLE OF CONTENTS**

1

2 MOTION ..... 1

3 MEMORANDUM OF POINTS AND AUTHORITIES..... 1

4 RELEVANT PROCEDURAL BACKGROUND ..... 1

5 ARGUMENT ..... 2

6 I. THE CLAIMS ADMINISTRATOR’S ADMINISTRATIVE DETERMINATIONS SHOULD

7 BE APPROVED..... 2

8 A. Overview Of The Claims Administration Process ..... 3

9 B. Ineligible Claims Should Be Rejected..... 3

10 C. Timely Eligible Claims And Late But Otherwise Eligible Claims Should Be Accepted .. 4

11 II. THE DISTRIBUTION OF THE NET SETTLEMENT FUND TO AUTHORIZED

12 CLAIMANTS SHOULD BE APPROVED ..... 5

13 III. PAYMENT OF ANALYTICS’ OUTSTANDING FEES AND EXPENSES FROM THE

14 SETTLEMENT FUND SHOULD BE AUTHORIZED ..... 6

15 IV. RETENTION OF CLAIM FORMS AND OTHER DOCUMENTS ..... 7

16 V. RELEASE OF CLAIMS ..... 7

17 CONCLUSION ..... 8

18

19

20

21

22

23

24

25

26

27

28

**TABLE OF AUTHORITIES**

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

<b>Cases</b>	<b>Page(s)</b>
<i>In re Authentidate Holding Corp. Sec. Litig.</i> , No. 05-CV-5323, 2013 WL 324153 (S.D.N.Y. Jan. 25, 2013).....	4
<i>In re Capstone Turbine Corp. Sec. Litig.</i> , No. 15-CV-8914-DMG, 2020 WL 7889062 (C.D. Cal. Aug. 26, 2020) .....	7
<i>Kuehbeck v. Genesis Microchip Inc.</i> , No. 02-CV-5344, 2007 WL 2382030 (N.D. Cal. Aug. 17, 2007).....	4
<i>Meyer v. United Microelectronics Corp.</i> , No. 19-CV-02304-VM, 2022 WL 43345 (S.D.N.Y. Jan. 5, 2022).....	6
<i>In re Qudian Inc. Sec. Litig.</i> , No. 17-CV-09741-JMF, 2022 WL 633863 (S.D.N.Y. Mar. 4, 2022).....	7
<i>Sudunagunta v. Nantkwest, Inc.</i> , No. 16-CV-1947, 2019 WL 13060483 (C.D. Cal. Dec. 9, 2019) .....	4

**MOTION**

1  
2 Lead Plaintiff Richard Ina, as Trustee for the Ina Family Trust (“Lead Plaintiff”), on behalf of  
3 himself, as trustee, and the settlement Class,<sup>1</sup> respectfully moves this Court for an Order: (i)  
4 approving the administrative recommendations of Analytics Consulting LLC (“Analytics”), the  
5 Court-approved Claims Administrator, rejecting and accepting Claims submitted in the above-  
6 captioned action (“the Action”); (ii) authorizing distribution of the Net Settlement Fund to  
7 Authorized Claimants whose claims have been accepted; (iii) authorizing payment from the  
8 Settlement Fund for Analytics’ \$69,000 requested fees and expenses; (iv) authorizing Analytics’  
9 proposed timetable for destruction of paper and electronic claim forms and related documentation;  
10 and (v) granting the release of claims related to the administration or taxation of the Settlement Fund.

11 This motion is based upon the memorandum of points and authorities set forth below; the  
12 Declaration of Kari L. Schmidt in Support of Lead Plaintiff’s Motion for Distribution of the Net  
13 Settlement Fund (“Schmidt Distribution Declaration” or “Schmidt Distrib. Decl.”), with attached  
14 exhibits, filed herewith; the pleadings and records on file in this Action, and other such matters and  
15 argument as the Court may consider.

16 Pursuant to the Stipulation, Defendants have no interest in the relief sought by this motion.  
17 See Stipulation ¶2.9 (“[I]t is not a claims-made settlement.”).

**MEMORANDUM OF POINTS AND AUTHORITIES**

18  
19 Lead Plaintiff, on behalf of himself, as trustee, and the settlement Class, respectfully submits  
20 this memorandum in support of his motion for distribution of the Net Settlement Fund.

**RELEVANT PROCEDURAL BACKGROUND**

21  
22 On July 22, 2022, the Court issued the Order Granting Final Approval of Class Action  
23 Settlement (“Final Approval Order”) granting final approval to the \$712,500.00 cash settlement  
24 between Lead Plaintiff, on behalf of himself, as trustee, and the settlement Class, and defendants CV  
25 Sciences, Inc. (“CV Sciences”), Michael Mona, Jr., Joseph D. Dowling, and Michael Mona, III  
26

27 <sup>1</sup> 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.”) (ECF No. 158); and (d) “Settlement” refers to the settlement set forth in the Stipulation.

1 (collectively “Defendants”), under the terms set forth in the Stipulation, and dismissing the Action.  
2 ECF No. 177.

3 As described in the Schmidt Distribution Declaration, Analytics, under Lead Counsel’s  
4 supervision, provided the requisite Notice of Pendency and Proposed Settlement of Class Action to  
5 potential Class Members, processed the Proof of Claim and Release forms (“Claims” or “Claim  
6 Forms”), calculated Recognized Loss<sup>2</sup> amounts, and performed related work consistent with the  
7 Stipulation and the Final Approval Order. *See generally* Schmidt Distrib. Decl.

8 Analytics has completed the processing of Claims, including Claims submitted after the July  
9 15, 2022 Claims-submission deadline but received on or before May 31, 2023, and related work. As  
10 a result, Lead Counsel and the Claims Administrator are now prepared to distribute the Net  
11 Settlement Fund to Authorized Claimants in accordance with the Plan of Allocation.

## 12 ARGUMENT

### 13 I. THE CLAIMS ADMINISTRATOR’S ADMINISTRATIVE DETERMINATIONS 14 SHOULD BE APPROVED

15 Pursuant to the Stipulation and the Order Certifying Settlement Class and Preliminarily  
16 Approving Class Action Settlement and Related Notices (“Preliminary Approval Order”) (ECF No.  
17 166), all Class Members wishing to obtain their *pro rata* share of the Net Settlement Fund were  
18 required to timely submit a completed Claim Form with supporting documentation to Analytics,  
19 postmarked or submitted electronically on or before the submission deadline of July 15, 2022. *See,*  
20 *e.g.*, Preliminary Approval Order at ¶18; Stipulation at ¶¶5.4-5.5.

21 As detailed in the accompanying declaration, Analytics reviewed and processed all Claims  
22 received from potential Class Members through May 31, 2023. Schmidt Distrib. Decl. ¶7. Analytics  
23 prepared exhibits detailing: (i) all timely eligible Claims postmarked or received on or before the  
24 Claims submission deadline (Schmidt Distrib. Decl. ¶¶34, 38; Ex. D<sup>3</sup>); (ii) all late but otherwise  
25 eligible claims that were postmarked or received after the Claims submission deadline but received

26 <sup>2</sup> The Schmidt Distribution Declaration refers to “Recognized Claim,” which means the same  
27 thing as “Recognized Loss” as defined in the Plan of Allocation in the Notice. *See* ECF No. 169-1  
(Notice) at 9-10.

28 <sup>3</sup> All “Ex.” references herein are to Exhibits A-G annexed to the Schmidt Distribution  
Declaration, submitted herewith.

1 on or before May 31, 2023 (Schmidt Distrib. Decl. ¶¶35, 38; Ex. E); and (iii) all rejected Claims that  
2 were deemed ineligible through Analytics' deficiency process (Schmidt Distrib. Decl. ¶¶37-38; Ex.  
3 F).

#### 4 **A. Overview Of The Claims Administration Process**

5 To avoid undue repetition, Lead Counsel respectfully refers the Court to the Schmidt  
6 Distribution Declaration filed herewith for a detailed description of the factual and procedural  
7 background of the claims review and administration process.

8 Briefly, Analytics sent 42,602 Notices and Claim Forms and received and processed 1,461  
9 Claims. Schmidt Distrib. Decl. ¶¶4, 7. The information from each Claim was entered into a  
10 computerized database maintained by Analytics. *Id.* at ¶¶10, 13. Analytics reviewed all Claim  
11 Forms and supporting documentation to determine, among other things, whether each claimant had  
12 purchased CV Sciences common stock during the Class Period and whether the claimant was in fact a  
13 Class Member. *Id.* at ¶¶11, 15, 18.

14 Analytics made substantial efforts to provide claimants with a fair opportunity to cure  
15 deficiencies in their Claims. As set forth in the Schmidt Distribution Declaration, Analytics sent  
16 notices ("Deficiency Notices") for claims that Analytics determined contained deficiencies. *Id.* at  
17 ¶¶20, 22. For example, such deficiencies included inadequate supporting documentation or missing  
18 signatures. *See id.* at ¶¶11-12, 15. Analytics sent Deficiency Notices to 1,331 claimants in an effort  
19 to inform the claimants of the steps needed to remedy the deficiencies. *Id.* ¶¶20, 22, 37. The  
20 Deficiency Notice informed the claimant of the deficiency and requested the submission of the  
21 appropriate information or documentary evidence needed to correct the defect within twenty-one (21)  
22 days or the Claim may be rejected to the extent the deficiency was not cured. *Id.* ¶¶20, 23.

23 Analytics received and processed claimants' responses to the Deficiency Notices. *Id.* ¶¶21,  
24 26.

#### 25 **B. Ineligible Claims Should Be Rejected**

26 Analytics has completed the processing of the Claims received through May 31, 2023 and  
27 recommends 1,295 Claims for rejection. *Id.* at ¶37; Ex. F (schedule of all ineligible claimants). Most  
28 of the 1,295 Claims either have no Recognized Loss (772 Claims) or no eligible purchases during the

1 Class Period (478 Claims). *Id.* The remainder of the ineligible claims were rejected because the  
2 claim contained defects that were never cured (36 Claims) or were withdrawn (9 Claims). *Id.* Lead  
3 Plaintiff respectfully requests that the Court approve Analytics’ recommendation to reject the 1,295  
4 Claims deemed ineligible.

5 **C. Timely Eligible Claims And Late But Otherwise Eligible Claims Should Be**  
6 **Accepted**

7 Analytics has determined that 166 Claims should be accepted. *Id.* at ¶¶34-35. Of the 166  
8 Claims received that are eligible to participate in the Settlement, 160 were postmarked or received on  
9 or before the Claims submission deadline (“Timely Eligible Claims”) and 6 were postmarked or  
10 received after the Claims submission deadline but received on or before May 31, 2023 (“Late But  
11 Otherwise Eligible Claims” or “Late Claims”). Schmidt Distrib. Decl. ¶¶34-35; Exs. D & E. The  
12 total Recognized Losses calculated pursuant to the Plan of Allocation for the Timely Eligible Claims  
13 is \$2,768,673.92 and the total Recognized Losses for the Late Claims is \$12,747.44. Schmidt  
14 Distrib. Decl. ¶¶34-35. Analytics recommends, and Lead Counsel agrees, that the Late Claims  
15 should be deemed timely and included in the Settlement distribution. *See id.* at ¶35. Analytics  
16 believes that no delay in the processing or distribution of the Net Settlement Fund has resulted from  
17 provisionally accepting the Late Claims. *See id.* at ¶29. Further, the Recognized Loss amount of the  
18 Late Claims is less than 1% of the total Recognized Losses for all 166 valid Claims. *See id.* at ¶¶34-  
19 35; *Sudunagunta v. Nantkwest, Inc.*, No. 16-CV-1947, 2019 WL 13060483, at \*2 (C.D. Cal. Dec. 9,  
20 2019) (approving distribution and accepting “late but otherwise valid claims because they have not  
21 caused significant delay to the distribution of the Net Settlement Fund to the Class, as [the Claims  
22 administrator]’s work on other claims was ongoing, or otherwise prejudiced any Authorized  
23 Claimant[.]”); *Kuehbeck v. Genesis Microchip Inc.*, No. 02-CV-5344, 2007 WL 2382030, at \*1 (N.D.  
24 Cal. Aug. 17, 2007) (approving distribution and accepting claims of those “who timely filed their  
25 claims and those claimants whose claims were filed late but who, in every other respect, have filed  
26 valid claims, pursuant to the Plan of Allocation . . .”); *In re Authentidate Holding Corp. Sec. Litig.*,  
27 No. 05-CV-5323, 2013 WL 324153, at \*1 (S.D.N.Y. Jan. 25, 2013) (courts have “inherent power to  
28 accept late claims”).

1 Therefore, Lead Counsel respectfully requests that the Court approve Analytics’  
2 recommendation to include the 6 valid Late Claims in the Settlement distribution.

3 **II. THE DISTRIBUTION OF THE NET SETTLEMENT FUND TO AUTHORIZED**  
4 **CLAIMANTS SHOULD BE APPROVED**

5 Lead Plaintiff respectfully requests that the Court authorize the distribution of the Net  
6 Settlement Fund to the Class Members whose claims have been accepted by Analytics. These Claims  
7 are listed in Exhibits D & E to the Schmidt Distribution Declaration.

8 The Schmidt Distribution Declaration sets forth a plan for distribution of the Net Settlement  
9 Fund in accordance with the Plan of Allocation. *See* Schmidt Distrib. Decl. ¶40. Briefly, pursuant to  
10 the plan, Analytics will calculate the *pro rata* distribution amounts from the Net Settlement Fund  
11 based on the amount of the Authorized Claimant’s Recognized Loss in comparison to the total  
12 Recognized Losses of all Authorized Claimants. *Id.* at ¶40(a)(1). Analytics will then prepare and  
13 distribute checks to all Authorized Claimants whose *pro rata* share of the Net Settlement Fund  
14 amounts to a distribution of \$10.00 or more. *Id.* at ¶40(a)(2)-(3).

15 To encourage Authorized Claimants to cash their distribution checks promptly and to avoid or  
16 reduce future expenses relating to uncashed checks, all checks for distribution should bear the  
17 notation “CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED  
18 BY [DATE 120 DAYS AFTER ISSUE DATE].” *Id.* at ¶40(b).

19 Consistent with the Stipulation of Settlement, if any funds remain in the Net Settlement Fund  
20 after the Claims Administrator has made reasonable and diligent efforts to contact claimants who  
21 have not cashed their payments, the Claims Administrator will consult with Lead Counsel to  
22 determine if a redistribution of the remaining Net Settlement Fund to Class members who cashed  
23 their initial distribution check and would receive a minimum of \$10.00 is cost effective, after taking  
24 into consideration payment of any additional costs and expenses that would be associated with a  
25 redistribution, any estimated taxes, the costs of preparing appropriate tax returns, and any escrow  
26 fees. *See id.* at ¶40(d); Stip. at ¶5.6.

27 These redistributions shall be repeated until it is no longer feasible to conduct any further  
28 distributions of the Net Settlement Fund. Stip. at ¶5.6; Schmidt Distrib. Decl. ¶40(d)-(e). Thereafter,



1 any balance that still remains in the Net Settlement Fund shall be donated to the Investor Protection  
2 Trust, in accordance with the Stipulation. Stip. at ¶5.6; Schmidt Distrib. Decl. ¶40(e).

3 New Claims received after May 31, 2023, and adjustments to previously-received Claims that  
4 would result in an increased Recognized Loss amount received after May 31, 2023, will not be  
5 accepted, subject to the following exception. If Claims are received or modified after May 31, 2023  
6 that would have been eligible for payment or additional payment under the Plan of Allocation if  
7 timely received, then, at the time that Lead Counsel, in consultation with Analytics, determines that a  
8 redistribution is not cost-effective as described above, such claimants, at the discretion of Lead  
9 Counsel, may be paid the distribution amounts or additional distribution amounts on a *pro rata* basis  
10 that would bring them into parity with other Authorized Claimants who have cashed their prior  
11 distribution checks, to the extent possible. *See* Schmidt Distrib. Decl. ¶40(f); *see also Meyer v.*  
12 *United Microelectronics Corp.*, No. 19-CV-02304-VM, 2022 WL 43345, at \*3 (S.D.N.Y. Jan. 5,  
13 2022) (approving similar language in distribution order).

14 **III. PAYMENT OF ANALYTICS' OUTSTANDING FEES AND EXPENSES FROM THE**  
15 **SETTLEMENT FUND SHOULD BE AUTHORIZED**

16 The Court retained jurisdiction to consider an application for an award of fees and  
17 reimbursement of expenses relating to the Claims Administrator's implementation of the terms of the  
18 Stipulation. Final Approval Order at ¶18. Pursuant to the Stipulation, the Settlement Fund may be  
19 used to pay Notice and Administration Expenses, which include costs and expenses incurred in  
20 connection with distributing the Notices to the Class and the costs of the Claims Administrator,  
21 among other things. *See* Stipulation at ¶¶1.20, 5.2.

22 Analytics was retained to supervise and administer the notice program and to process Claims  
23 in connection with the Settlement. *See* Preliminary Approval Order at ¶7. As Claims Administrator,  
24 Analytics was and is responsible for, among other things, printing and mailing copies of the Notice  
25 and Claim Forms to Class Members, effecting publication of the Summary Notice of the Settlement,  
26 processing and reviewing the filed Claims, preparing the tax returns for the Settlement Fund,  
27 calculating the *pro rata* distribution amount by calculating each Authorized Claimant's percentage of  
28 the Net Settlement Fund in accordance with the Plan of Allocation, and distributing the Net

1 Settlement Fund to accepted claimants. *See generally* Schmidt Distrib. Decl.; Preliminary Approval  
2 Order at ¶¶7, 11-16; Stipulation at ¶¶1.3, 2.11, 5.1.

3 In connection with that work, Analytics has incurred and expects to incur a total of \$69,000 in  
4 administrative fees and expenses through the initial distribution of the Net Settlement Fund. Schmidt  
5 Distrib. Decl. at ¶39; Ex. G (invoice). To date, Analytics has not received payment for any of its fees  
6 and expenses. *See id.* Accordingly, there is an outstanding balance of \$69,000 payable to Analytics.  
7 *Id.* Lead Plaintiff respectfully requests that the Court approve Analytics' requested fees and expenses  
8 for its services.

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

10 Lead Plaintiff also requests that the Court permit Analytics to destroy paper copies of the  
11 Claim Forms and all supporting documentation one (1) year after the initial distribution of the Net  
12 Settlement Fund and electronic copies of the same one (1) year after all funds have been distributed  
13 from the Net Settlement Fund. *See* Schmidt Distrib. Decl. ¶40(g).

14 **V. RELEASE OF CLAIMS**

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

17 All persons involved in the review, verification, calculation, tabulation, or any other aspect of  
18 the processing of the Claims submitted in this matter, or otherwise involved in the  
19 administration or taxation of the Settlement Fund or Net Settlement Fund, including Lead  
20 Plaintiff, Lead Counsel, Liaison Counsel, and Analytics, are hereby released and discharged  
21 from any and all claims arising out of such involvement, and all Class Members, whether or  
22 not they are to receive payment from the Net Settlement Fund, are hereby barred from making  
23 any further claims against the Net Settlement Fund or the released persons beyond the amount  
24 allocated to them pursuant to this Order.

25 *See* Stipulation ¶5.7; *In re Capstone Turbine Corp. Sec. Litig.*, No. 15-CV-8914-DMG (RAOx), 2020  
26 WL 7889062, at \*2 (C.D. Cal. Aug. 26, 2020) (approving a similar release); *In re Qudian Inc. Sec.*  
27 *Litig.*, No. 17-CV-09741-JMF, 2022 WL 633863, at \*2 (S.D.N.Y. Mar. 4, 2022) (same).

**CONCLUSION**

1 For the foregoing reasons, Lead Plaintiff respectfully submits that Lead Plaintiffs' Motion for  
2 Distribution of the Net Settlement Fund should be granted, and the [Proposed] Distribution Order  
3 should be entered.  
4

5 Dated: June 5, 2023

6 By: /s/ Katherine Lenahan  
Katherine Lenahan

7 Martin A. Muckleroy  
8 State Bar #9634  
9 **MUCKLEROY LUNT, LLC**  
10 6077 S. Fort Apache Rd., Ste 140  
11 Las Vegas, NV 89148  
12 Telephone: 702-907-0097  
13 Facsimile: 702-938-4065  
14 Email: martin@muckleroylunt.com

15 *Attorneys for Lead Plaintiff Richard Ina, as*  
16 *Trustee for The Ina Family Trust, and Liaison*  
17 *Counsel*

18 Katherine Lenahan (*pro hac vice*)  
19 Email: klenahan@faruqilaw.com  
20 **FARUQI & FARUQI, LLP**  
21 685 Third Avenue, 26th Floor  
22 New York, NY 10017  
23 Telephone: 212-983-9330  
24 Facsimile: 212-983-9331

25 *Attorneys for Lead Plaintiff Richard Ina, as*  
26 *Trustee for The Ina Family Trust, and Lead*  
27 *Counsel*  
28

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

**CERTIFICATE OF SERVICE**

I hereby certify that on June 5, 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/ Katherine Lenahan  
Katherine Lenahan