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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

OKLAHOMA FIREFIGHTERS PENSION & RETIREMENT SYSTEM and OKLAHOMA LAW ENFORCEMENT RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

IXIA, VICTOR ALSTON, ATUL BHATNAGAR, THOMAS B. MILLER, and ERROL GINSBERG,

Defendants.

Case No. CV13-08440-DMG

LEAD PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

Date: July 29, 2016
Time: 10:00 a.m.
Courtroom: 7
Judge: Hon. Dolly M. Gee

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on July 29, 2016 at 10:00 a.m., in Courtroom 7 of the United States District Court for the Central District of California, U.S. Courthouse, 312 North Spring Street, Los Angeles, California 90012, the Honorable Dolly M. Gee presiding, Lead Plaintiffs Oklahoma Firefighters Pension & Retirement System and Oklahoma Law Enforcement Retirement System will and hereby do move for an Order pursuant to Rule 23 of the Federal Rules of Civil Procedure: (1) giving final approval to the proposed settlement of this action by entry of an order substantially in the form of the proposed Order and Final Judgment ("Judgment") which was negotiated by the parties and is attached as Exhibit B to the Stipulation and Agreement of Settlement dated November 11, 2015 ("Stipulation" or "Settlement Agreement"); (2) finally certifying the proposed Class for purposes of settlement; (3) finding that notice to the Class was provided as required and to the satisfaction of due process and the Private Securities Litigation Reform Act of 1995 (the "PLSRA"), 15 U.S.C. §§ 78u-4 *et seq*.; (4) appointing Lead Plaintiffs as Class Representatives and Lead Counsel, Grant & Eisenhofer P.A., as Class Counsel; and (5) approving the Plan of Allocation for distributing the Net Settlement Fund.

This motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities set forth below, the Stipulation, the Declaration of James J. Sabella, the Declaration of Jeff S. Westerman, the Joint Declaration of Robert E. Jones and Ginger Sigler, the Declaration of Sanjay Pansari, the Declaration of Brian Manigault, the pleadings and records on file in this action, and other such matters and argument as the Court may consider at the hearing of this motion. This motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on November 17, 2015, and the Court's February 29, 2016 Order Preliminarily Approving Settlement, Directing Notice

To Securities Holders, And Setting Hearing For Final Approval Of Settlement ("Preliminary Approval Order").

Dated: June 10, 2016

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

PRELIMINARY STATEMENT

Pursuant to Rule 23(c) of the Federal Rules of Civil Procedure, Lead Plaintiffs Oklahoma Firefighters Pension & Retirement System and Oklahoma Law Enforcement Retirement System ("Lead Plaintiffs") submit this Memorandum Of Points And Authorities in support of their motion for final approval of the settlement in the above-captioned action ("Action") and entry of an order and judgment which would: (1) give final approval to the proposed settlement of this action by entry of an order substantially in the form of the proposed Order and Final Judgment ("Judgment") which was negotiated by the parties as Exhibit B to the Stipulation and Agreement of Settlement dated November 11, 2015 ("Stipulation" or "Settlement Agreement");[1] (2) finally certify the proposed Class for purposes of settlement;[2] (3) find that notice to the Class was provided as required and to the satisfaction of due process and the Private Securities Litigation Reform Act of 1995 (the "PLSRA"), 15 U.S.C. §§ 78u-4 *et seq.*; (4) appoint Lead Plaintiffs as Class Representatives and Lead

[1] All capitalized terms not defined herein have the meanings ascribed to them in the Stipulation.

[2] The proposed Class is defined as all persons and entities who purchased or otherwise acquired the common stock of Ixia ("Ixia" or the "Company") between February 4, 2011 and April 3, 2013 (the "Class Period"), inclusive and who were damaged thereby. Excluded from the Class are (a) Defendants; (b) members of the immediate families of the Individual Defendants; (c) any subsidiaries of Defendants; (d) any affiliate, as that term is defined by the federal securities laws, of Ixia or any other Defendant, including the 401(k) plans of Ixia; (e) any person or entity who is a partner, executive officer, director or controlling person of Ixia (including any of their subsidiaries or affiliates) or any other Defendant; (f) any entity in which any Defendant has a controlling interest; (g) Defendants' directors' and officers' liability insurance carriers, and any affiliates or subsidiaries thereof; and (h) the legal representatives, heirs, successors and assigns of any such excluded party. Also excluded from the Class are the persons and/or entities who request exclusion from the Class within the time period set by the Court in the Preliminary Approval Order. "Individual Defendants" are Victor Alston, Atul Bhatnagar, Thomas B. Miller and Errol Ginsberg. "Defendants" includes all the Individual Defendants and Ixia.

Counsel Grant & Eisenhofer P.A. as Class Counsel; and (5) approve the Plan of Allocation for distributing the Net Settlement Fund.

The Settlement is the result of arm's-length negotiations between counsel for the parties with the substantial assistance of retired federal judge Hon. Layn Phillips, an accomplished mediator, as assisted by Robert Fairbank and Kimberly West, who each have extensive experience resolving complex class actions. Equally driving the Settlement were Plaintiffs' Counsel's aggressive and comprehensive prosecution efforts, detailed in the Declaration of James J. Sabella. As that declaration explains, Counsel: (1) conducted an extensive investigation, including numerous interviews with confidential witnesses who were former employees at Ixia, three of whom were discussed in complaints and briefs filed by Lead Plaintiffs; (2) amended the original complaint in this action three times, based on the Court's rulings and additional information gained in Lead Plaintiffs' investigation; (3) opposed two motions to dismiss; (4) reviewed and analyzed numerous publicly available documents, including the Company's SEC filings and analyst reports about the Company; (5) consulted with accounting and damages experts; (6) negotiated with Defendants; and (7) conducted successful mediation discussions.

Plaintiffs' Counsel, who are well-respected and experienced in prosecuting securities fraud class actions, have concluded that the Settlement is a good result and is in the best interest of the Class. This conclusion is based on an analysis of all of the relevant factors present here, including the substantial risk, expense and uncertainty in continuing this Action through additional potentially dispositive motions, trial and appeal; the relative strengths and weaknesses of the claims and defenses asserted; an analysis of the evidence obtained to date and the legal and factual issues presented; past experience in litigating securities fraud class actions and other similarly complex litigation; and the serious disputes between the parties concerning the merits and damages.

The risks and uncertainty of continuing litigation are particularly dramatic in this case, given that Defendants were able to obtain dismissal of both the Amended Class Action Complaint ("AC") and the Second Amended Class Action Complaint ("SAC"), and the sufficiency of the Third Amended Class Action Complaint ("TAC") had not yet been addressed by the Court. Notwithstanding the dismissals, Lead Counsel persevered, making clear that they would go forward with the TAC and an appeal if necessary, unless a reasonable settlement could be reached. The fact that the possibility of dismissal and zero recovery was very real supports approval of the Settlement that was obtained.

For all of these and the other reasons discussed herein and in the declarations filed herewith, Lead Plaintiffs and Lead Counsel respectfully submit that the Settlement is eminently fair, reasonable and adequate to the Class and should be approved by the Court. Moreover, the Plan of Allocation of Settlement proceeds was developed by Lead Plaintiffs' damages consultant, tracks the theory of damages asserted, and is likewise fair, reasonable and adequate and should be approved by the Court. The proposed Class should be finally certified and Lead Plaintiffs and Lead Counsel should be appointed as Class Representatives and Lead Counsel, respectively.

OVERVIEW OF THE ACTION

A. HISTORY OF THE LITIGATION

This Action was filed on November 14, 2013 as a class action on behalf of purchasers of Ixia common stock. The complaint alleged that Defendants had made misrepresentations or omissions of material facts concerning Ixia's financial condition in violation of section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and SEC Rule 10b-5 thereunder. The complaint further alleged that the Individual Defendants violated section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

On March 24, 2014, the Court appointed Oklahoma Firefighters Pension & Retirement System and Oklahoma Law Enforcement Retirement System as Lead Plaintiffs and Grant & Eisenhofer P.A. as Lead Counsel for the putative class.

On June 11, 2014, Lead Plaintiffs filed the Amended Class Action Complaint ("AC"). Defendants moved to dismiss, and by Order filed October 6, 2014, the Court dismissed the AC, with leave to replead. On November 5, 2014, Lead Plaintiffs filed the SAC. Defendants again moved to dismiss, and by Order filed April 14, 2015, the Court dismissed the SAC, again with leave to replead.

Lead Counsel commenced preparing the TAC, which was due May 14, 2015. In the midst of Lead Counsel's drafting of the TAC, the parties raised the subject of mediating a possible settlement of the litigation. On April 24, 2015, which was prior to the date on which Lead Plaintiffs were to file the TAC, the Court entered an Order staying the case pending the outcome of mediation.[3]

B. NEGOTIATIONS AND SETTLEMENT

The parties thereafter engaged in substantial mediation efforts, including submitting detailed mediation briefs at the request of the mediators and attending a formal mediation session on July 23, 2015 at which both sides made detailed presentations regarding the strengths and weaknesses of their cases. The mediation was conducted by Judge Phillips and Mr. Fairbank and was attended by multiple persons, including Ixia's counsel, the Individual Defendants' counsel, Lead Counsel and local counsel for Lead Plaintiffs, and counsel for Ixia's primary insurance carrier. Sabella Decl. ¶ 7. The parties were not able to reach final resolution during that session. However, following an additional three weeks of arm's-length negotiations conducted by Mr. Fairbank, on August 14, 2015 the parties reached an agreement-in-principle to settle the Action.

[3] At the direction of the Court, the TAC eventually was filed on March 2, 2016.

Thereafter, the parties negotiated a formal agreement and executed the Stipulation.

Lead Plaintiffs entered this Settlement with a solid understanding of the strengths and weaknesses of their claims. This understanding is based on Lead Counsel's (and its agents') extensive research and investigation during the prosecution of this Action which has included, *inter alia*: (i) review and analysis of filings made with the SEC by Ixia during the relevant time period, which reached back a number of years before commencement of the Class Period and including filings by Ixia after the end of the Class Period; (ii) review and analysis of securities analyst reports, press releases, and media reports regarding Ixia and other publications issued by and through the Company; (iii) review and analysis of pleadings in related actions; (iv) interviews with numerous former employees of the Company; (v) research of the applicable law with respect to the claims asserted in the Action and potential defenses thereto; and (vii) consultation with experienced accounting experts and damage experts. In addition, Lead Plaintiffs had the benefit of two lengthy decisions by this Court on Defendants' motions to dismiss, which detailed the considerable problems Lead Plaintiffs faced in trying to pursue their claims against Defendants.

Based on a careful analysis of the considerations listed above, as well as the substantial expense and length of time necessary to prosecute this Action – assuming a motion to dismiss the TAC could be defeated – through the completion of merits and expert discovery, trial and appeals, and the considerable uncertainties in predicting the outcome of complex litigation, Lead Plaintiffs concluded that a substantial risk existed that the Class could recover less than the Settlement, or nothing, if the Action were to continue.

C. PRELIMINARY APPROVAL AND THE NOTICE PROGRAM

On February 29, 2016, this Court granted preliminary approval to the Settlement and the related Notice, Claim Form and Publication Notice. Docket

No. 130 (the "Preliminary Approval Order").[4] The Court also approved Lead Counsel's selection of Angeion Group as Settlement Administrator who, along with Lead Counsel, were authorized and directed to commence the notice program. The Court set a hearing for July 29, 2016 at 10:00 a.m. to consider the fairness, reasonableness and adequacy of the Settlement and Plan of Allocation, whether to certify a settlement Class, and to determine the amount of fees and expenses that should be awarded to Lead Counsel (the "Fairness Hearing").

In compliance with the Preliminary Approval Order and under the supervision of Lead Counsel, Angeion Group mailed copies of the Notice and Claim Form to all Class Members at the address of each such person as set forth in the records of Ixia or its transfer agent, or who otherwise could be identified through reasonable effort. Preliminary Approval Order ¶ 7; Manigault Decl. ¶¶ 3-10. To date, Angeion has mailed 16,812 notice packets containing the Notice and Claim Form to Class Members and brokers and nominees who may have purchased Ixia stock for the beneficial interest of individual investors. Manigault Decl. ¶ 10. The Notice, Publication Notice, Plan of Allocation and Claim Form were also made available via an Angeion-created website for the Settlement: www.ixiasecuritiessettlement.com ("Website"). Manigault Decl. ¶ 12. The Website also provided the TAC and other important pleadings, as well as other information regarding the Action and Proposed Settlement, such as the deadlines for submitting claims, objecting and requesting exclusion from the Class, and the date for the Fairness Hearing. In addition, the Publication Notice was published once each in *Investor's Business Daily* and the *PR Newswire* on [dates], respectively. Manigault Decl. ¶ 11. Additionally, Ixia filed a Form 8-K

[4] Copies of the Claim Form, Notice and Publication Notice are annexed as exhibits to the Manigault Declaration.

attaching the Publication Notice, and Ixia put the Publication Notice on its website.

The Notice described, *inter alia*, the claims asserted in this Action, Plaintiffs' contentions and Defendants' defenses and arguments against liability, the course of the litigation, the terms of the Settlement, the attorneys' fees and expense request, the Plan of Allocation, the right to object and the right to be excluded from the Class, along with the deadlines for exercising those rights. The Notice specifically notified Class Members of the scheduled Fairness Hearing. The Notice also stated that the Settlement will provide a Settlement Fund of $3,500,000 for the benefit of the Class, and that Lead Counsel would ask the Court for attorneys' fees not to exceed 25% of the Settlement Fund and expenses not to exceed $260,000, each of which would be paid from the Settlement Fund.

The Class's reaction to the proposed Settlement has been extremely positive. The deadline to file objections to the Settlement or to file exclusions from the Settlement is June 29, 2016. To date, there have been no objections and only two requests for exclusion. Manigault Decl. ¶¶ 15-16.

ARGUMENT

I. THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT AS FAIR, REASONABLE AND ADEQUATE TO THE CLASS

A. THE STANDARDS FOR JUDICIAL APPROVAL OF CLASS ACTION SETTLEMENTS

Strong judicial policy favors settlement of class actions. *Class Plaintiffs v. City of Seattle,* 955 F.2d 1268, 1276 (9th Cir. 1992). It is well established in the Ninth Circuit that "voluntary conciliation and settlement are the preferred means of dispute resolution." *Officers for the Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). Indeed, "there is an overriding public interest in

settling and quieting litigations," and this is "particularly true in class action suits." *Van Bronkhorst v. Safeco Corp*., 529 F.2d 943, 950 (9th Cir. 1976); *see also Barbosa v. Cargill Meat Solutions Corp*., 2013 WL 3340939, at *13 (E.D. Cal. July 2, 2013) ("[S]ettlement is encouraged in class actions where possible."). Class-action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation. Settlements of complex cases such as this one greatly contribute to the efficient utilization of scarce judicial resources and achieve the speedy resolution of claims. *See, e.g., Garner v. State Farm Mut. Auto Ins. Co*., 2010 WL 1687832, at *10 (N.D. Cal. Apr. 22, 2010) ("Settlement avoids the complexity, delay, risk and expense of continuing with the litigation and will produce a prompt, certain and substantial recovery for the Plaintiff class.") (citation and internal quotation marks omitted).

Rule 23(e) of the Federal Rules of Civil procedure requires judicial approval of the compromise of claims brought on a class basis. The standard for determining whether to grant final approval to a class action settlement is whether the proposed settlement is "fundamentally fair, adequate and reasonable." *In re Mego Fin. Corp. Sec. Litig*., 213 F.3d 454, 458 (9th Cir. 2000) (citing *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1026 (9th Cir. 1998)). In making this assessment, the court balances:

> (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

Churchill Village, L.L.C. v. General Electric, 361 F.3d 566, 575 (9th Cir. 2004). Not all of these factors will apply to every class action settlement; under certain circumstances, one factor alone may prove determinative in finding sufficient grounds for court approval. *Torrisi v. Tucson Elec. Power Co*., 8 F.3d 1370,

1376 (9th Cir. 1993); *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *8 (N.D. Cal. Feb. 11, 2016) ("The Court need not consider all of these factors").

"[T]he settlement hearing is not meant to be conducted as a trial or rehearsal for trial on the merits." *Barbosa*, 2013 WL 3340939, at *11 (citation omitted). "It is neither for the court to reach any ultimate conclusions regarding the merits of the dispute, nor to second guess the settlement terms." *Evans v. Linden Research Inc.*, 2014 WL 1724891, at *3 (N.D. Cal. Apr. 29, 2014). Significantly, a strong initial presumption of fairness attaches to a proposed settlement if it is reached by experienced counsel after arm's-length negotiations and great weight is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the litigation. *See, e.g., In re Celera Corp. Sec. Litig.,* 2015 WL 7351449, at *5 (N.D. Cal. Nov. 20, 2015) ("The court 'may presume that through negotiation, the Parties, counsel, and mediator arrived at a reasonable range of settlement by considering Plaintiff's likelihood of recovery'") (citation omitted). *Ramirez v. Ghilotti Bros. Inc.*, 2014 WL 1607448, at *1 (N.D. Cal. Apr. 21, 2014) ("When class counsel is experienced and supports the settlement, and the agreement was reached after arm's length negotiations, courts should give a presumption of fairness to the settlement.").

As discussed below, the proposed Settlement meets these standards and thus merits final approval.

1. The Strength of Lead Plaintiffs' Case

To determine whether the proposed Settlement is fair, reasonable, and adequate, the Court must balance the "strengths and weaknesses of Lead Plaintiff's case on the merits . . . against the certainty and immediacy of recovery from the Settlement." *Destefano*, 2016 WL 537946, at *9. While Lead Plaintiffs have confidence in their case against the Defendants, that confidence must be tempered by the fact that there were significant risks of less or no recovery,

particularly because this is a complex securities fraud case and because it has already been dismissed (with leave to replead) twice.

Preliminarily, there were substantial hurdles to proving Defendants' liability. In order to prove liability under the Exchange Act, a plaintiff must prove, *inter alia*, that: (i) defendants were responsible for materially false or misleading representations entering the market; (ii) defendants acted with scienter (*i.e.*, that defendants made their misrepresentations knowingly or recklessly); (iii) that plaintiffs' losses were caused by defendants' misrepresentations (*i.e.,* "loss causation"); and (iv) that plaintiff and the class members suffered damages. *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005). In the case at bar, proving these requirements posed significant risks.

First, Lead Plaintiffs faced substantial risks in proving that the alleged misstatements were made with scienter. A defendant's state of mind in a securities case is often the most difficult element of proof and one which is rarely supported by direct evidence such as an admission. Twice the Court found that Lead Plaintiffs' allegations as to scienter were insufficient, and the sufficiency of the TAC's scienter allegations was yet to be decided.

Second, Lead Plaintiffs faced a substantial hurdle in successfully pleading and proving their theory of Defendants' alleged fraud. Lead Plaintiffs claimed that Defendants intentionally understated current revenue in order to overstate deferred revenue and thereby portray Ixia as a growth company. The Court's opinions expressed serious doubt about this theory. April 14, 2015 Order (ECF No. 116) at 42-43.

Finally, the question of whether Ixia's restatements caused declines in the Company's stock and, if so, whether the restatements caused all or only a part of the declines would almost certainly be hotly contested by Defendants during class certification, summary judgment, pretrial *Daubert* motions, and trial. The United States Supreme Court has confirmed that the law requires that "a plaintiff

1 prove that the defendant's misrepresentation (or other fraudulent conduct)
2 proximately caused the plaintiff's economic loss." *Dura Pharms.*, 544 U.S. at
3 346.

4 In short, the tenuous strength of Lead Plaintiffs' claims, balanced against
5 the successes that Defendants have already obtained on their motions to dismiss,
6 support a finding that this Settlement is fair.

7 **2. The Risk, Expense, Complexity and Likely Duration of**
8 **Further Litigation**

9 Had this case not settled, continued litigation would have been extremely
10 risky for Lead Plaintiffs, and more expensive and lengthy for all parties. While
11 Lead Plaintiffs were afforded the opportunity to amend their claims and file a
12 TAC, that pleading would have been challenged by another expected motion to
13 dismiss. The Settlement eliminates the risk that the Court would again dismiss
14 the entire case, this last time with prejudice, and likewise eliminates the risk that,
15 assuming Lead Plaintiffs overcome another motion to dismiss and any other
16 dispositive motions, the jury might award less than the amount of the Settlement
17 or nothing at all.

18 Further litigation would have involved costly and time-consuming fact and
19 expert discovery, as well as class certification and summary judgment motions
20 and preparing the case for trial. A trial of a complex, fact-intensive case like this
21 would have taken weeks and appeals of rulings on summary judgment or trial
22 likely would add years to the litigation. Barring a settlement, there is no question
23 that this case would be litigated for many years and involved very significant
24 expense, taking a considerable amount of court time, with the possibility that the
25 end result would be no better for the Class, and might even be worse.
26 Accordingly, this factor supports approval of the Settlement. *See, e.g., Patel v.*
27 *Axesstel, Inc.*, 2015 WL 6458073, at *5 (S.D. Cal. Oct. 23, 2015) (approving
28 settlement, noting that plaintiff "face[d] hurdles proving scienter, loss causation

and damages. Further, there is no guarantee that a class would be certified. Moreover, at the time of settlement, this case was in its nascency, and significant and costly litigation remained, including discovery, motion practice, experts, trial, and appeals."); *Larsen v. Trader Joe's Co.*, 2014 WL 3404531, at *4 (N.D. Cal. July 11, 2014) ("[T]he high risk, expense, and complex nature of the case weigh in favor of approving the settlement."); *Hartless v. Clorox Co.*, 273 F.R.D. 630, 640 (S.D. Cal. 2011), *aff'd in part*, 473 Fed. App'x 716 (9th Cir. 2012) ("Considering these risks, expenses and delays, an immediate and certain recovery for class members . . . favors settlement of this action.").

3. The Risk of Maintaining Class-Action Status Through Trial

Absent the Settlement (and again, assuming Lead Plaintiffs overcame another motion to dismiss), class certification discovery would have been conducted and Defendants, without doubt, would have opposed the motion. While Lead Counsel were confident that they would have presented a compelling motion for certification of a litigation class, the process would have added time and expense to the proceedings, and the outcome of such a contested motion was far from certain. Moreover, throughout the remainder of the Action, as issues of loss causation and class-wide reliance were resolved and the law evolved, it is possible that Defendants would have sought to decertify any class certified by the Court. *See In re Am. Apparel, Inc. S'holder Litig.*, 2014 WL 10212865, at *11 (C.D. Cal. July 28, 2014) ("Even had the court certified a class, moreover, subsequent facts adduced through discovery might have led to decertification.").

4. The Amount of the Settlement

In evaluating the fairness of a settlement, a fundamental question is how the value of the settlement compares to the amount the class potentially could recover at trial, discounted for risk, delay, and expense. In this regard, "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair."

1 *Mego Fin.*, 213 F.3d at 459 (citation omitted). "The proposed settlement is [thus]
2 not to be judged against a hypothetical or speculative measure of what *might*
3 have been achieved by the negotiators." *Officers for Justice*, 688 F.2d at 625
4 (emphasis added).

5 Here, the proposed $3.5 million Settlement is well within the range of
6 reasonableness in light of the most likely possible recovery at trial and the risks
7 of continued litigation. According to analyses prepared by Lead Plaintiffs'
8 consulting damages expert, the maximum aggregate damages the proposed Class
9 could have obtained at trial are estimated to be approximately $35 million
10 assuming that liability and loss causation for the alleged corrective disclosure
11 were proven. Pansari Decl. ¶ 32 & n.19. Defendants strenuously maintained,
12 and continue to maintain, that no damages could be proven at trial. As such, the
13 $3.5 million Settlement represents a gross recovery of approximately 10% of
14 Lead Plaintiffs' consulting expert's estimate of the maximum recovery. *Id.* This
15 percentage is well within the range of recoveries approved by courts in other
16 cases. *See, e.g., Mego Fin.,* 213 F.3d at 459 (holding that settlement amount
17 equaling one-sixth of plaintiff's estimate of the potential recovery was fair and
18 adequate); *Celera Corp.*, 2015 WL 7351449, at *6 (granting final approval on
19 settlement fund of $24,750,000 which represented 17% of plaintiffs' total
20 estimated damages); *McPhail v. First Command Fin. Planning, Inc.*, 2009 WL
21 839841, at *5 (S.D. Cal. Mar. 30, 2009) (finding a $12 million settlement
22 recovering 7% of estimated damages was fair and adequate); *In re Omnivision*
23 *Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving $13.75
24 million settlement yielding 6% of potential damages after deducting fees and
25 costs, noting that it was "higher than the median percentage of investor losses
26 recovered in recent shareholder class action settlements"); *Destefano*, 2016 WL
27 537946, at *12 (approving settlement representing "approximately 14 percent of
28 likely recoverable aggregate damages at trial," noting that "while the percentage

may seem small compared to the potential maximum investor loss identified, . . . Lead Plaintiff's willingness to accept a smaller certain award rather than attempt to seek full recovery but risk getting nothing is reasonable in light of the risk, expense, complexity, and likely duration attached to the litigation of these claims.").

5. The Extent of Discovery Completed and the Stage of the Proceedings

Courts also consider the stage of the proceedings and the amount of discovery completed in determining the fairness, reasonableness and adequacy of a settlement. *Mego Fin.*, 213 F.3d at 459. Because of the stay on discovery imposed by the PSLRA, Lead Plaintiffs did not conduct formal discovery prior to filing any of the complaints in this Action. However, "'[i]n the context of class action settlements, as long as the parties have sufficient information to make an informed decision about settlement, formal discovery is not a necessary ticket to the bargaining table.'" *Celera Corp.*, 2015 WL 7351449, at *6 (quoting *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 257 (N.D. Cal. 2015)).

Here, Lead Plaintiffs, through their counsel, conducted their own investigation of Ixia in preparing the AC, SAC and TAC. Indeed, as detailed in the Sabella Declaration, Lead Counsel obtained and thoroughly reviewed numerous Ixia SEC filings, numerous confidential witnesses were interviewed, and accounting and damages experts were consulted. This assisted Lead Counsel in evaluating the strengths and weaknesses of the claims, assisted them in mediation, and further helped them, and their clients, confirm that the Settlement was fair, reasonable, and adequate to the Class.

Lead Counsel also had the benefit of the Court's two detailed decisions dismissing the AC and the SAC, which provided great insight as to the pitfalls and perceived weaknesses in the case.

As a result, Lead Plaintiffs, through their counsel, had a comprehensive understanding of the Action and sufficient information to make a well-informed decision regarding the fairness of the Settlement. *See Destefano,* 2016 WL 537946, at *12 (approving settlement where lead plaintiffs and their counsel had conducted pre-filing investigation, interviewed confidential witnesses, consulted with damages and accounting experts, opposed two rounds of motions to dismiss, propounded and responded to some discovery, and prepared for and participated in mediation); *Eisen v. Porsche Cars N. Am., Inc.,* 2014 WL 439006, at *4 (C.D. Cal. Jan. 30, 2014) (approving settlement where record established that "all counsel had ample information and opportunity to assess the strengths and weaknesses of their claims and defenses"); *Redwen v. Sino Clean Energy, Inc.*, 2013 U.S. Dist. LEXIS 100275, at *22 (C.D. Cal. July 9, 2013) (settlement approved when, as here, "the parties have spent a significant amount of time considering the issues and facts in this case and are in a position to determine whether settlement is a viable alternative").

6. The Recommendations of Experienced Counsel

Experienced counsel, negotiating at arm's-length, have weighed the factors discussed above and endorse the Settlement. As courts have stated, the views of the attorneys actively conducting the litigation and who are most closely acquainted with the facts of the underlying litigation are entitled to "great weight," *Nat'l Rural Telecomm. Coop v. DIRECTV, Inc.*, 221 F.R.D. 523, 528, (C.D. Cal. Jan. 5, 2004), and their recommendations should be given a presumption of reasonableness. *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979). *See also In re Pacific Enterprises Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995) ("Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation.").

The Settlement negotiations were led by Grant & Eisenhofer, which is among the nation's most experienced law firms in this area of practice and has served as lead or co-lead counsel on behalf of major institutional investors in numerous class actions since the enactment of the PSLRA. Also participating on behalf of Lead Plaintiffs was local counsel Jeff Westerman, a highly experienced lawyer with a long track record of representing plaintiffs in securities class action cases throughout the country.[5]

Based on their knowledge of the law, their experience litigating securities-fraud class actions and their rigorous investigation and consultation with experts in this litigation, Lead Counsel believe that the Settlement is a favorable result which is in the best interests of the Class. Accordingly, this factor strongly weighs in favor of the Settlement. *See, e.g., Destefano,* 2016 WL 537946, at *13 (finding counsel' recommendation favored settlement where counsel "have litigated numerous class action securities cases and have worked on numerous mediations and settlements"); *Pierce v. Rosetta Stone, Ltd.*, 2013 WL 5402120, at *5 (N.D. Cal. Sept. 26, 2013) ("Given the collective experience of the attorneys involved in this litigation, the Court credits counsels' view that the settlement is worthy of approval.").

7. The Presence of a Government Participant

Although no government entity is a party to this action, the United States Attorney General, as well as the Attorneys General for the relevant states, were notified of the Settlement pursuant to the notice provision of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715 "Although CAFA does not create an affirmative duty for either state or federal officials to take any action in response

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[5] Resumes for Grant & Eisenhofer and for Jeff S. Westerman were attached as Exhibits G and H, respectively, to the Declaration of James J. Sabella, dated Jan. 14, 2014 in support of Lead Plaintiffs' motion for appointment as lead plaintiffs in this case. *See* ECF No. 21-1 pp. 28-82, 83.

to a class action settlement, CAFA presumes that, once put on notice, state or federal officials will raise any concerns that they may have during the normal course of the class action settlement procedures." *Garner*, 2010 WL 1687832, at *14 (internal quotation marks and citation omitted).

8. The Reaction of Class Members to the Proposed Settlement

"The absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of the settlement are favorable to the class members." *Eisen*, 2014 WL 439006, at *5. In the case at bar, Angeion, the Claims Administrator, mailed 26,829 copies of the Notice, published the Summary Notice nationally in *The Investor's Business Daily* and over *PR Newswire*, and made information about the Settlement available to Class members through its website. The Notice thoroughly described the case and the Settlement, provided detailed instructions for filing an exclusion request or objection to the Settlement, and also provided contact information for Class Members who wanted to obtain additional information.

To date, only two potential Class Members have elected to be excluded from the Settlement. Manigault Decl. ¶ 15. The requests received to date represents 500 shares of Ixia stock and no public pension fund or institutional investor has sought exclusion. *Id.*

Further, while the objection deadline has not yet passed, to date no purported Class Members have submitted an objection to the Settlement. Notably, no public pension fund or institutional investor has objected to any aspect of the Settlement, the Plan of Allocation, or the attorney's fee request. Accordingly, these facts weigh in favor of final approval of the Settlement. *See Aichele v. City of Los Angeles*, 2015 U.S. Dist. LEXIS 120226, at *9 (C.D. Cal. Sept. 9, 2015) (Gee, J.) ("The lack of any objection and the limited opt-outs, at least three of which facially are unrelated to the merits of the settlement, and one

of which expresses no view on that issue or any intention to proceed separately), strongly supports the fairness and adequacy of the settlement.”).

B. THE SETTLEMENT IS NOT THE PRODUCT OF COLLUSION, WAS FACILITATED BY EXPERIENCED MEDIATORS, AND HAS THE SUPPORT OF LEAD PLAINTIFFS

Another factor to be considered is whether there is any evidence that the settlement is the result of collusion. *Mego Fin.*, 213 F.3d at 458. As discussed above, this suit was initiated over two years ago and was aggressively litigated through two motions to dismiss.

Following the granting of Defendants’ second motion to dismiss, the parties agreed to mediate. The mediation process demonstrates that the Settlement is the result of hard-fought and arm’s length negotiations. The mediators have considerable knowledge and expertise mediating federal securities cases. As courts in this District and elsewhere have found, “[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.” *Satchell v. Fed. Express Corp.,* 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007); *see also Eisen*, 2014 WL 439006, at *5 (“[W]here the services of a private mediator are engaged, this fact tends to support a finding that the settlement valuation by the parties was not collusive.”).

Additionally, the recommendation of the Lead Plaintiffs, both sophisticated institutional investors who have been involved in other securities class actions, also supports the fairness of the Settlement. Courts generally give weight to the lead plaintiffs in evaluating the process of the settlement as well as its substantive fairness. *See In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *5 (N.D. Cal. Nov. 26, 2007); *Am. Apparel*, 2014 WL 10212865, at *16.

C. THE PLAN OF ALLOCATION IS FAIR, REASONABLE, AND ADEQUATE

The standard of approval of a plan of allocation in a class action under Rule 23 of the Federal Rules of Civil Procedure is the same as the standard applicable to the settlement as a whole – the plan must be fair, reasonable, and adequate. *Destefano,* 2016 WL 537946, at *14; *Class Plaintiffs*, 955 F.2d at 1284; *Omnivision*, 559 F. Supp. 2d at 1045. An allocation formula need only have a reasonable basis, particularly if recommended by experienced class counsel. *Destefano,* 2016 WL 537946, at *14; *In re Heritage Bond Litig*., 2005 WL 1594403, at *11 (C.D. Cal. June 10, 2005). Here, Lead Counsel prepared the Plan of Allocation after careful consideration and with the assistance of a consulting damages expert. The Plan of Allocation was posted on the Website and, as of the filing of this motion, no objections to it have been filed.

"'A plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable.'" *Patel*, 2015 WL 6458073, at *7 (quoting *In re Quintus Sec. Litig*., 2006 WL 3507936, at *4 (N.D. Cal. Dec. 5, 2006)). Here, the Plan of Allocation reflects the allegations that the price of Ixia common stock was artificially inflated during the Class Period until the inflation dissipated following Ixia's disclosures on April 3, 2013 and provides for the distribution of the Net Settlement Fund to Class Members who purchased or otherwise acquired Ixia common stock during the Class Period, on a pro rata basis according to the ratio of the recognized loss of each Class Member submitting a claim form to the aggregate recognized loss of all Class Members submitting claims. This is fair and reasonable. *See, e.g*., *Patel*, 2015 WL 6458073, at *7 (approving similar plan of allocation); *Destefano*, 2016 WL 537946, at *15 (same).

II. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES

In the Preliminary Approval Order, the Court granted Lead Plaintiffs' request that the Court preliminarily certify the Class for settlement purposes so that notice of the proposed Settlement, the final approval hearing and the rights of Class Members to request exclusion, object, or submit proofs of claim could be issued. Nothing has changed to alter the propriety of the Court's certification and no potential Class Member has objected to class certification. *See Destefano*, 2016 WL 537946, at *5. Accordingly, and for all the reasons stated in Lead Plaintiffs' Memorandum of Points and Authorities in Support of Their Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement (ECF No. 124) incorporated herein by reference, Lead Plaintiffs now request that the Court: (i) finally certify the Class for purposes of carrying out the Settlement pursuant to Fed. R. Civ. P. 23(a) and (b)(3); (ii) appoint Lead Plaintiffs as Class Representatives; and (iii) appoint Lead Counsel as Class Counsel. *See, e.g., Boring v. Bed Bath & Beyond of Cal. LLC*, 2014 WL 2967474, at *2 (N.D. Cal. June 30, 2014) ("For the reasons discussed in the Court's Preliminary Approval Order, the Court finds that the requirements for certification of the conditionally certified settlement class have been met, and that the appointment of . . . Class Representative and . . . Class Counsel is proper.").

STATEMENT PURSUANT TO FED. R. CIV. P. 23(e)(3)

Pursuant to Fed. R. Civ. P. 23(e)(3), the Court is hereby informed that, as provided for in ¶ 42 of the Settlement Agreement, the parties have entered into a confidential agreement providing Defendants an option to withdraw from the Settlement based on the amount of valid exclusion requests that are received.

CONCLUSION

The Settlement achieves substantial benefits for the Class, and is reasonable, fair, and adequate under any standard, but particularly when the risks and complexity of the litigation are considered. Lead Plaintiffs and Lead Counsel support the Settlement after thorough investigation of the facts and the law and careful consideration of both the risks and the benefits. Judging by the absence objections and the few exclusion requests to date, the reaction of the Class to the Settlement has been very positive. Accordingly, for the reasons set forth above, Lead Plaintiffs respectfully request that the Court: (i) grant final approval of the Settlement; (ii) find that notice to the Class was provided as required and to the satisfaction of due process and the PSLRA; (iii) finally certify the Settlement Class; (iv) appoint Lead Plaintiffs as Class Representatives and Lead Counsel as Class Counsel; and (v) approve the Plan of Allocation as fair, reasonable and adequate.

Dated: June 10, 2016

Respectfully submitted,

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