

**WESTERMAN LAW CORP.**

Jeff S. Westerman (SBN 94559)  
1875 Century Park East, 22nd Floor  
Los Angeles, Ca. 90067  
Telephone: (310) 698-7450  
Fax: (310) 201-9160  
jwesterman@jswlegal.com

**GRANT & EISENHOFER P.A.**

James J. Sabella (admitted pro hac vice)  
John C. Kairis (admitted pro hac vice)  
Diane Zilka (admitted pro hac vice)  
485 Lexington Avenue  
New York, New York 10017  
Telephone: (646) 722-8500  
Fax: (646) 722-8501  
jsabella@gelaw.com  
jkairis@gelaw.com  
dzilka@gelaw.com

*Attorneys for Lead Plaintiffs*  
*Oklahoma Firefighters Pension & Retirement Fund*  
*and Oklahoma Law Enforcement Retirement System*

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(SHx)

)  
) **NOTICE OF MOTION AND**  
) **MOTION FOR THE AWARD**  
) **OF ATTORNEYS' FEES AND**  
) **REIMBURSEMENT OF**  
) **EXPENSES AND**  
) **MEMORANDUM OF POINTS**  
) **AND AUTHORITIES IN**  
) **SUPPORT**

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

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**NOTICE OF MOTION AND MOTION**

**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 awarding attorneys’ fees and authorizing reimbursement of expenses for Lead Plaintiffs’ counsel and the costs related to the notice program and claims administration in this litigation conducted by Angeion Group (“Angeion” or the “Claims Administrator”).

The grounds for this motion are that the requested award of attorneys’ fees and expenses are warranted under the fee-setting and expense reimbursement criteria applicable to common fund and Private Securities Litigation Reform Act (“PSLRA”) cases.

This motion is based upon this Notice of Motion, the Memorandum of Points and Authorities set forth below, the Declaration of James J. Sabella, the Declaration of Jeff Westerman, the Joint Declaration of Robert E. Jones and Ginger Sigler, the Declaration of Sanjay Pansari, the Declaration of Brian Manigault, the other pleadings and records on file in this action, and such other matters and arguments as the Court may consider at the hearing of this motion.

1 Dated: June 10, 2016

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Respectfully submitted,

**GRANT & EISENHOFER P.A.**

By     /s/ James J. Sabella      
485 Lexington Avenue  
New York, NY 10017  
646-722-8500

*Attorneys for Lead Plaintiffs Oklahoma  
Firefighters Pension & Retirement Fund  
and Oklahoma Law Enforcement  
Retirement System and Lead Counsel  
for the Class*

**WESTERMAN LAW CORP.**

By     /s/ Jeff S. Westerman      
1875 Century Park East, 22nd Floor  
Los Angeles, California 90067  
310 698-7450

*Attorneys for Lead Plaintiffs Oklahoma  
Firefighters Pension & Retirement Fund  
and Oklahoma Law Enforcement  
Retirement System*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **PRELIMINARY STATEMENT**

3 Lead Plaintiffs Oklahoma Firefighters Pension & Retirement System and  
4 Oklahoma Law Enforcement Retirement System respectfully submit this  
5 Memorandum Of Points And Authorities in support of their motion for an award  
6 of attorneys' fees, reimbursement of litigation costs and expenses incurred in  
7 prosecuting this action, and for approval to pay the Settlement Administrator the  
8 fees and expenses related to the notice program and the administration and  
9 implementation of the Settlement.<sup>1</sup> Pursuant to the Settlement Agreement,  
10 Plaintiffs' Lead Counsel seek a total fee award of \$875,000, representing 25% of  
11 the \$3,500,000 Settlement Fund, and expenses not to exceed \$260,000, which  
12 includes the expenses of the notice and claims administration –which shall be  
13 paid from the Settlement Fund.

14 First, the requested award of attorneys' fees is appropriate given the  
15 substantial risk Counsel assumed in prosecuting this Action on a contingent  
16 basis. Litigation, particularly securities class action litigation, is notoriously  
17 risky and complex. In this case, the fact that the governing complaints were  
18 dismissed twice (with leave to replead) aptly demonstrates the significant hurdles  
19 and risks assumed by Counsel.

20 Second, the Settlement returns Class Members approximately 10% of their  
21 damages, before fees and expenses. This is a recovery well within the typical  
22 range in a securities class action, and thus constitutes an excellent result for the  
23 Class. Additionally, the requested fee falls well within the range of the fees  
24 typically awarded in similar cases in the Ninth Circuit.

25  
26  
27 <sup>1</sup> All capitalized terms not defined herein have the meanings ascribed to them in the Settlement  
28 Agreement.



1 Third, the fairness and reasonableness of the requested fee award is  
2 confirmed by cross-checking it with Counsel's lodestar of \$1,551,080.50. The  
3 cross-check shows that Counsel are seeking a fee amounting to only 56.4% of  
4 their total lodestar. The fairness and reasonableness of the requested fee award is  
5 further confirmed by the reaction of the Class – to date there have been no  
6 objections to the award and only two requests for exclusion.

7 Finally, the Court should grant the request for an award of \$260,000 to  
8 cover costs and expenses related to the litigation, providing notice to Class  
9 Members, and administering and implementing the Settlement. All of these costs  
10 and expenses were reasonable and necessary.

## 11 **SUMMARY OF PLAINTIFFS' COUNSEL'S WORK IN THIS ACTION<sup>2</sup>**

12 The Declaration of James J. Sabella ("Sabella Decl.") sets forth in detail  
13 the work performed by Plaintiffs' Counsel in this case, which produced the  
14 settlement for the Class. A brief summary is as follows.

15 After the appointment of Lead Plaintiffs and Lead Counsel in March 2014,  
16 Lead Counsel commenced preparation of the Amended Complaint ("AC"). In  
17 order to do so, Lead Counsel undertook a detailed review and analysis of publicly  
18 available information, including: (i) public filings with the SEC by Ixia;  
19 (ii) research reports by securities and financial analysts; (iii) transcripts of  
20 investor conference calls; (iv) publicly available presentations by Ixia; (v) press  
21 releases and media reports; and (vi) economic analyses of securities price  
22 movements and pricing data. Sabella Decl. ¶ 18.

23  
24 \_\_\_\_\_  
25 <sup>2</sup> The Memorandum of Points and Authorities in support of Lead Plaintiffs' Motion for Final  
26 Approval of Class Action Settlement, filed contemporaneously herewith, discusses the risks  
27 and legal obstacles associated with continued litigation and the value of the Settlement. Rather  
28 than repeating those matters here, this Memorandum will focus on the legal and factual  
standards applicable to attorneys' fees requested by plaintiffs' counsel in securities class action  
litigation and the reasonableness of the fees requested by Lead Counsel here.

1 In addition, prior to the filing of the AC, Lead Counsel retained and  
2 consulted with accounting experts to address the substantive claims particularly  
3 with respect to alleged GAAP violations, and securities fraud damages experts to  
4 assist in assessing the damages suffered by the Class and developing the claims  
5 that would ultimately be asserted. *Id.* ¶ 19.

6 Lead Counsel also retained the services of an investigation firm to seek out  
7 witnesses with information relevant to the allegations in the Complaint. Lead  
8 Plaintiffs included allegations in the AC based on information provided by two of  
9 those witnesses. *Id.* ¶ 20.

10 Drafting the AC was not an easy task. Unlike the usual case, where a  
11 securities defendant has overstated revenue during the class period, in this case  
12 Ixia had understated current revenue and overstated deferred revenue. On the  
13 basis of the investigation and analysis described above, Lead Counsel developed  
14 the theory that Ixia wanted to portray itself as a growth company, with good  
15 future prospects. In such circumstances, the AC explained, deferred revenue  
16 would be more significant than current revenue, and hence Ixia shifted revenue to  
17 future periods in order to give the appearance that the company had attractive  
18 growth prospects.

19 Defendants moved to dismiss the AC, and Lead Counsel prepared a  
20 lengthy opposing brief, as well as a request for judicial notice. *Id.* ¶ 23. The  
21 Court, however, granted the motion to dismiss, with leave to replead.

22 Lead Counsel then prepared the Second Amended Complaint (“SAC”).  
23 This involved further analysis of Ixia’s SEC filings and other materials in the  
24 public record, as well as further discussions with Lead Plaintiffs’ accounting  
25 experts and investigators. *Id.* ¶ 26.

26 Defendants again moved to dismiss, and Lead Counsel again needed to  
27 prepare lengthy opposition papers. *Id.* ¶ 30. Once again, however, the Court  
28 granted the motion, with leave to replead.

1 While preparation of the Third Amended Complaint (“TAC”) was  
 2 underway, the parties discussed the notion of mediating a possible settlement. *Id.*  
 3 ¶ 34.

4 The parties then retained retired federal judge Layn Phillips and Robert  
 5 Fairbank to mediate the case. The mediation process involved the preparation  
 6 and submission of lengthy mediation briefs; a full day in-person mediation  
 7 session, at which counsel for the parties made detailed presentations; and  
 8 numerous subsequent follow up calls with Mr. Fairbank. *Id.* ¶¶ 36-39.  
 9 Ultimately, a settlement in principal was reached. Following extensive  
 10 discussions regarding the precise provisions of a settlement agreement, the  
 11 Settlement Stipulation was executed on or about November 11, 2015. *Id.* ¶ 40.

## 12 ARGUMENT

### 13 I. THE REQUESTED ATTORNEYS’ FEES ARE FAIR AND 14 REASONABLE

15 In a certified class action, Federal Rule of Civil Procedure 23(h) authorizes  
 16 the Court to “award reasonable attorney[s]’ fees and nontaxable costs that are  
 17 authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h).

#### 18 A. THE RELEVANT FACTORS SUPPORT THE REQUESTED FEE AWARD

19 In *Aichele v. City of Los Angeles*, 2015 WL 5286028, at \*4 (C.D. Cal.  
 20 Sept. 9, 2015) (Gee, J.), this Court set forth the factors relevant to fee awards in  
 21 class action cases:

22 It is well established in the Ninth Circuit that, while the court has  
 23 discretion to use either a percentage of the fund or a lodestar approach  
 24 in compensating class counsel (*see, e.g., Paul, Johnson, Alston &*  
 25 *Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989); *In re Washington*  
 26 *Public Power Supply System Securities Litigation*, 19 F.3d 1291, 1295  
 27 (9th Cir. 1994), the percentage of the fund is the typical method of  
 28 calculating class fund fees. *See Vizcaino v. Microsoft Corp.*, 290 F.3d  
 1043, 1050 (9th Cir. 2002) (“the primary basis of the fee award  
 remains the percentage method”). While most circuits leave the  
 method used to the discretion of the trial court, “[m]ost federal courts  
 use the percentage of the fund approach in awarding attorneys’ fees in  
 common fund classes.” *In re Enron Corp. Securities, Derivative &*  
*ERISA Litigation*, 586 F. Supp. 2d 732, 748 (S.D. Tex. 2008).

1 The percentage method is particularly appropriate in a securities fraud  
2 class action. The PSLRA provides: “Total attorneys’ fees and expenses awarded  
3 by the court to counsel for the plaintiff class shall not exceed a reasonable  
4 percentage of the amount of damages and prejudgment interest actually paid to  
5 the class.” 15 U.S.C. § 78u-4(a)(6). By using this language, Congress plainly  
6 contemplated that percentage-of-recovery would be the primary measure of  
7 attorneys’ fees awards in federal securities class actions. *In re Telik, Inc. Sec.*  
8 *Litig.*, 576 F. Supp. 2d 570, 586 (S.D.N.Y. 2008).

9 This Court has described the factors relevant to a fee award:

10 [C]ourts often consider the following factors when determining the  
11 benchmark percentage to be applied: (1) the result obtained for the  
12 class; (2) the effort expended by counsel; (3) counsel’s experience;  
13 (4) counsel’s skill; (5) the complexity of the issues; (6) the risks of  
nonpayment assumed by counsel; (7) the reaction of the class; and  
(8) comparison with counsel’s lodestar.

14 *Aichele*, 2015 WL 5286028, at \*2.

15 Lead Counsel has requested an award of 25% of the \$3,500,000 Settlement  
16 Fund, which amounts to \$875,000. Consideration of the relevant factors  
17 demonstrates that this request is fair and reasonable.

### 18 **1. The Results Obtained**

19 “The overall result and benefit to the class from the litigation is the most  
20 critical factor in granting a fee award.” *In re Omnivision Technologies, Inc.*, 559  
21 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008). Here, the Settlement confers a  
22 substantial and immediate monetary benefit on the Class. The \$3,500,000  
23 recovery represents approximately 10% of the potential recovery that Lead  
24 Plaintiffs’ damage expert predicted the Class could have won if completely  
25 successful. *See Pansari Decl.* ¶ 32 & n.19. This result compares favorably to  
26 recoveries in other securities fraud class actions: *See In re OCZ Tech. Group,*  
27 *Inc. Sec. Litig.*, 2015 WL 7687710, at \*25 (N.D. Cal. June 12, 2015) (awarding  
28 25% of \$7.5 million settlement fund where the amount of the fund represented

1 4.5% of the total estimated damages recoverable if plaintiffs were completely  
2 successful on all issues of liability and damages); *Omnivision*, 559 F. Supp. 2d at  
3 1046 (concluding that total award of 9% of possible damages weighed in favor of  
4 granting a requested 28% fee); *In re Immune Response Sec. Litig.*, 497 F. Supp.  
5 2d 1166, 1175 (S.D. Cal. 2007) (awarding attorneys' fees of 25% of settlement  
6 fund, despite fact that the "\$10 million award only represents approximately 12%  
7 of the maximum provable damages assuming complete success"). *See also* Lead  
8 Plaintiffs' Memorandum of Points and Authorities in Support of Final Approval  
9 of Class Action Settlement at 13-14.

## 10 **2. The Effort Expended by Counsel**

11 As set forth in the Sabella Declaration, Plaintiff's Counsel litigated this case  
12 for more than two years. In that time, they investigated the underlying facts,  
13 including reviewing publicly available documents and obtaining information from  
14 numerous former Ixia employees about the matters at issue in the case; consulted  
15 with accounting and damages experts; prepared the AC, the SAC, and the TAC;  
16 briefed opposition to motions to dismiss the AC and the TAC; participated in a full  
17 day mediation session and numerous follow up telephone conversations with the  
18 mediator; negotiated and drafted numerous lengthy settlement documents,  
19 including the Settlement Stipulation, the preliminary approval order, the class  
20 notice and publication notice, and the claim form; and responded to inquiries from  
21 Class Members.

## 22 **3. Counsel's Experience**

23 Lead Counsel Grant & Eisenhofer is among the nation's most experienced  
24 law firms in the area of securities class action and has served as lead or co-lead  
25 counsel on behalf of major institutional investors in numerous securities class  
26 actions. Lead Plaintiffs' local counsel, Jeff S. Westerman, is a lawyer with a  
27  
28

1 long track record of representing plaintiffs in securities class action cases  
2 throughout the country.<sup>3</sup>

#### 3 **4. Counsel's Skill**

4 As stated in *Omnivision*, 559 F. Supp. 2d at 1047, "prosecution and  
5 management of a complex national class action requires unique legal skills and  
6 ability" (internal quotation marks omitted). As set forth in Lead Plaintiffs'  
7 Motion for Final Approval of the Settlement, Plaintiffs' counsel were able to  
8 extract a favorable settlement in very difficult circumstances. Unlike the usual  
9 securities case, where a company improperly accelerates revenue in order to  
10 inflate its current financials, in this case Ixia improperly deferred revenue to later  
11 periods. In order to show that such conduct could have a fraudulent motivation,  
12 Counsel advanced the argument that Ixia sought to portray itself as a "growth  
13 company," and as such was motivated to push revenues into future periods, at the  
14 expense of current periods. The Court found this theory plausible. *See* April 14,  
15 2015 Order (ECF No. 116) at 44 ("Plaintiffs argue that their theory of overstating  
16 deferred revenue to create a false image of growth is plausibly alleged."); Oct. 6,  
17 2014 Order (ECF No. 98) 42 ("plaintiffs' theory is a potentially plausible one").  
18 Counsel's creativity in developing this theory was a substantial factor in their  
19 ability to extract a monetary settlement in this case. Along with the fact that they  
20 were able to negotiate a settlement notwithstanding that the motions to dismiss  
21 had been granted, this illustrates the skill that Plaintiffs' Counsel possess and  
22 brought to bear in this case.

23 The quality of opposing counsel as a measure of the skill required to  
24 litigate the case should also be considered. *In re Heritage Bond Litig*, 2005 U.S.

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25  
26 <sup>3</sup> Resumes for Grant & Eisenhofer and for Jeff S. Westerman were attached as Exhibits G and  
27 H, respectively, to the Declaration of James J. Sabella, dated Jan. 14, 2014, in support of Lead  
28 Plaintiffs' motion for appointment as lead plaintiffs in this case. *See* ECF No. 21-1 pp. 28-82,  
83.

1 Dist. LEXIS 13555, at \*66 (C.D. Cal. June 10, 2005); *In re Equity Funding Corp.*  
2 *Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977); *Wing v. Asarco*, 114 F.3d  
3 986, 989 (9th Cir. 1997) (noting district court’s evaluation of the job done by  
4 class counsel “in light of the quality of opposition counsel and [defendant’s]  
5 record of success in this type of litigation”). Opposing counsel here were Bryan  
6 Cave LLP, Drinker Biddle & Reath LLP and Caldwell Leslie & Proctor, P.C., all  
7 prominent, well-respected firms with substantial experience defending securities  
8 class actions. The fact that Plaintiffs’ Counsel obtained this Settlement for the  
9 Class in the face of such formidable legal opposition further evidences the quality  
10 of their work.

### 11 **5. The Complexity of the Issues**

12 Federal securities class actions are “notoriously complex and difficult to  
13 prove,” *In re Marsh & McLennan Cos. Sec. Litig.*, 2009 WL 5178546, at \*17  
14 (S.D.N.Y. Dec. 23, 2009), and this case is no exception. In addition to the usual  
15 complexities involving issues such as loss causation, this case presented  
16 questions as to how Ixia’s warranty and maintenance contracts should have been  
17 accounted for under generally accepted accounting principles. The applicable  
18 rules are complicated, and it was necessary for Counsel to understand those rules  
19 and how Ixia ran afoul of them in order to explain in the complaints that Ixia  
20 acted with scienter in misapplying those principles.

### 21 **6. The Risk of Non-Payment Assumed by Counsel**

22 “The risk that further litigation might result in Plaintiffs not recovering at  
23 all . . . is a significant factor in the award of fees.” *Omnivision*, 559 F. Supp. 2d  
24 at 1046-47; see *In re Wash. Public Power Supply Sys. Sec. Litig.*, 19 F.3d 1291,  
25 1299 (9th Cir. 1994) (discussing policy to reward counsel who take cases on  
26 contingency fee basis).

27 The risks were particularly high here from the outset because there was no  
28 governmental complaint to follow. See *Rodriguez v. West Publ’g Corp.*, 563

1 F.3d 948, 964 (9th Cir. 2009) (stressing that “there were no government coattails  
2 for the class to ride”). And the risks increased as the case progressed, because  
3 the case was dismissed twice.

4 Even assuming that Lead Plaintiffs could successfully overcome another  
5 motion to dismiss, significant additional risks would remain in prevailing at trial  
6 and on any likely appeal. *See, e.g., In re Apollo Group Inc. Sec. Litig.*, 2008 U.S.  
7 Dist. LEXIS 61995, at \*22 (D. Ariz. Aug. 4, 2008) (district court vacated \$280  
8 million jury verdict for plaintiffs and entered judgment for defendants); *Robbins*  
9 *v. Koger Props., Inc.*, 116 F.3d 1441, 1443 (11th Cir. 1997) (\$81 million verdict  
10 for plaintiffs reversed and judgment entered for defendant).

11 Plaintiffs’ Counsel have, to date, received no compensation for their  
12 service, despite expending over 2200 hours on this litigation and incurring  
13 expenses over \$319,000 in litigating this case for the benefit of the Class. Any  
14 fee award and expense reimbursement to Counsel has always been at risk and  
15 completely contingent on the results achieved and this Court’s exercise of  
16 discretion in determining any award.

## 17 **7. The Reaction of the Class**

18 The Class overwhelmingly favors the Settlement and Lead Counsel’s  
19 request for fees and expenses, as those amounts were included in the Notice sent  
20 to Class Members as well as the Publication Notice and the Stipulation posted on  
21 the Settlement website. *See Knight v. Red Door Salons, Inc.*, 2009 WL 248367,  
22 at \*7 (N.D. Cal. Feb. 2, 2009) (“The reaction of the class may also be a factor in  
23 determining the fee award”). To date, no Class Members have filed objections to  
24 the fee request and only two Class Members have requested exclusion from the  
25 Class (neither specified the fee request as a reason for doing so). *See In re Am.*  
26 *Apparel, Inc. S’holder Litig.*, 2014 WL 10212865, at \*21 (C.D. Cal. July 28,  
27 2014) (lack of objections and single request for exclusion supported fee request  
28 of 25% of \$4.8 million fund); *Knight*, 2009 WL 248367, at \*7 (lack of an



1 objection or request for exclusion supported requested award of 30% of  
2 settlement fund).

### 3 **8. Comparison with Counsel’s Lodestar**

4 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002), noted  
5 that “while the primary basis of the fee award remains the percentage method, the  
6 lodestar may provide a useful perspective on the reasonableness of a given  
7 percentage award.” The lodestar is “calculated by multiplying the number of  
8 hours . . . reasonably expended on the litigation by a reasonable hourly rate.”  
9 *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996). However, as  
10 explained by one court, “[t]he lodestar cross-check calculation need entail neither  
11 mathematical precision nor bean-counting.” *In re Rite Aid Corp.*, 396 F.3d 294,  
12 306 (3d Cir. 2005); *see also Fernandez v. Victoria Secret Stores LLC*, 2008 WL  
13 8950856, at \*9 n.35 (C.D. Cal. July 21, 2008) (“In contrast to the use of the  
14 lodestar method as a primary tool for setting a fee award, the lodestar cross-check  
15 can be performed with a less exhausting cataloging and review of counsel’s  
16 hours”; relying on sworn statements of attorneys regarding hours reasonably  
17 expended and customary billing rates); *Winterrowd v. Am. Gen. Annuity Ins. Co.*,  
18 556 F.3d 815, 827 (9th Cir. 2009) (“Testimony of an attorney as to the number of  
19 hours worked on a particular case is sufficient evidence to support an award of  
20 attorney fees, even in the absence of detailed time records”) (citation omitted).

21 Plaintiffs’ Counsel billed 2,201.8 hours on this case. Sabella Decl. ¶ 44;  
22 Westerman Decl. ¶ 3. At their usual and customary billing rates, this amounts to  
23 a lodestar of \$1,551,080.50. While courts in contingent fee class actions  
24 typically award a multiple of class counsel’s lodestar,<sup>4</sup> the lodestar here is

25 \_\_\_\_\_  
26 <sup>4</sup> *See Vizcaino*, 290 F.3d at 1051 (courts reward successful class counsel in contingency case  
27 “by paying them a premium over their normal hourly rates”); *Sadowska v. Volkswagen Group*  
28 *of Am., Inc.*, 2013 WL 9600948, at \*9 (C.D. Cal. Sept. 25, 2013) (approving negotiated fee  
representing a 1.37 multiplier); *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1328  
(W.D. Wash. 2009) (approving 1.82 multiplier where “the demanding nature of this action

(Cont’d)

1 considerably more than the \$875,000 award that Plaintiffs' Counsel are seeking.  
 2 The fact that Counsel are seeking only 56.4% of their total lodestar—what is  
 3 often referred to as a “negative multiplier” – supports the reasonableness of the  
 4 request. *See Aichele*, 2015 WL 5286028, at \*7; *Chun-Hoon v. McKee Foods*  
 5 *Corp.*, 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010).

6 The billing rates charged by the attorneys, paralegals and others charged  
 7 by Counsel are the same as they have charged, and courts have approved, in other  
 8 similar contingent matters. Sabella Decl. ¶ 44; Westerman Decl. ¶ 3.  
 9 Furthermore, the time spent here was not devoted to document review or other  
 10 relatively straightforward tasks, but rather consisted of preparing the complaints,  
 11 briefing the motions to dismiss, and participating in the mediation and settlement  
 12 negotiations. *See Schiller v. David's Bridal, Inc.*, 2012 WL 2117001, at \*21  
 13 (E.D. Cal. June 11, 2012).

14 **B. THE PERCENTAGE REQUESTED IS FAIR AND REASONABLE**

15 Counsel request a fee equal to 25% of the recovery. As this Court noted in  
 16 *Aichele*, 2015 WL 5286028, at \*5, “the Ninth Circuit has set a benchmark of 25%  
 17 as a percentage of the fund” awarded in contingent class action litigation.

18 Furthermore, the fact that this case involves a settlement below \$10 million  
 19 reinforces that a fee of at least 25% is appropriate. “[I]n cases under \$10 million,  
 20 the awards more frequently will exceed the 25% benchmark, and indeed go  
 21 above 30%.” *Id.* Thus, the 25% requested here “puts the fee request here at the  
 22 lower end of settlements under \$10 million.” *Id.* at \*6.

23 In light of all the difficulties faced by Lead Counsel in this case, and the  
 24 skill and creativity that Counsel needed to employ in order to obtain a settlement  
 25 for the Class, it is respectfully submitted that a fee award of 25% is appropriate.

26 \_\_\_\_\_  
 27 precluded Class Counsel from accepting other potentially profitable work.”); *Wing*, 114 F.3d at  
 28 988-89 (approving 2.0 multiplier in part because of “the quality of the [defendant's]  
 opposition”).

1 **II. THE REQUEST FOR REIMBURSEMENT OF EXPENSES IS**  
2 **FAIR AND REASONABLE**

3 This Court also has discretion to award costs and expenses. Fed. R. Civ. P.  
4 23(h). “[C]ourts throughout the Ninth Circuit regularly award litigation costs and  
5 expenses – including photocopying, printing, postage, court costs, research on  
6 online databases, experts and consultants, and reasonable travel expenses – in  
7 securities class actions, as attorneys routinely bill private clients for such  
8 expenses in non-contingent litigation.” *Destefano v. Zynga, Inc.*, 2016 WL  
9 537946, at \*22 (N.D. Cal. Feb. 11, 2016). Counsel seek \$260,000 in  
10 unreimbursed costs and expenses in connection with researching and  
11 investigating the claims, retaining experts and investigators, postage, travel,  
12 engaging a mediator, and other customary expenses, and the costs of notice and  
13 claims administration. *See* Sabella Decl. ¶¶ 49-57; Westerman Decl. ¶ 4. All of  
14 these expenses are reflected on the books and records of Plaintiffs’ Counsel and  
15 were all reasonably incurred in furtherance of the investigation, prosecution and  
16 settlement of this Action. *Id.*

17 Lead Counsel could not attempt to plead the claims based on alleged  
18 accounting improprieties without retaining an accounting expert, nor attempt to  
19 settle the Class’s damages without retaining an expert to determine the amount of  
20 those damages. Thus, these expert expenses (in the amount of \$105,065.90) were  
21 necessarily incurred.

22 Lead Counsel also retained an investigative firm to identify and contact  
23 potential witnesses, including former Ixia employees, who might have knowledge  
24 about the underlying claims. Twenty witnesses were interviewed, and  
25 information provided by some of them were incorporated in the complaints.  
26 Sabella Decl. ¶¶ 20, 27. These expenses were reasonably incurred because they  
27 “assisted in alleging facts” regarding the Defendants’ scienter. *Am. Apparel*,  
28 2014 WL 10212865, at \*29.

1 The assistance of a qualified mediator is virtually a prerequisite for settling  
2 a securities class action. *See Moore v. IMCO Recycling of CA, Inc.*, 2005 WL  
3 5887180, at \*2 (C.D. Cal. Sept. 28, 2005) (recognizing the importance of  
4 mediation as a way to avoid trial and that awards of mediation expenses are  
5 “reasonably necessary to the conduct of litigation”). The fee charged for the  
6 services of experienced mediators Judge Phillips and Mr. Fairbank (\$17,512.50)  
7 was necessarily incurred in obtaining the Settlement.

8 Other expenses include the cost of computerized online research  
9 (\$8,716.77), copies (\$4,083.90), and travel (\$9,820.97). These costs were all  
10 reasonably incurred, particularly since this is not a case in which class counsel  
11 seek reimbursement for “first class airplane tickets, luxury hotel  
12 accommodations, and gourmet dinner meetings.” *In re Media Vision Tech. Sec.*  
13 *Litig.*, 913 F. Supp. 1362, 1372 (N.D. Cal. 1996).

14 Finally, included in the expense figure is \$130,000 for the services of the  
15 notice and claims administrator, Angeion. Angeion, whose appointment the  
16 Court approved in the Preliminary Approval Order, is one of the foremost firms  
17 in the country providing these services in securities cases. Angeion agreed to cap  
18 its charges at \$130,000, which figure is less than other firms in the industry  
19 would have charged. Sabella Decl ¶ 53.

## 20 CONCLUSION

21 For all the foregoing reasons, the Court should grant Lead Plaintiffs’  
22 motion and issue an order: (1) awarding attorneys’ fees of \$875,000; and  
23 (2) granting reimbursement of \$260,000 in litigation, notice and settlement  
24 administration costs and expenses.

1 Dated: June 10, 2016

Respectfully submitted,

2 **GRANT & EISENHOFER P.A.**

3 By  /s/ James J. Sabella  
4 485 Lexington Avenue  
5 New York, NY 10017  
6 646-722-8500

7 *Attorneys for Lead Plaintiffs Oklahoma*  
8 *Firefighters Pension & Retirement Fund*  
9 *and Oklahoma Law Enforcement*  
10 *Retirement System and Lead Counsel*  
11 *for the Class*

12 **WESTERMAN LAW CORP.**

13 By  /s/ Jeff S. Westerman  
14 1875 Century Park East, 22nd Floor  
15 Los Angeles, Ca. 90067  
16 310-698-7450

17 *Attorneys for Lead Plaintiffs Oklahoma*  
18 *Firefighters Pension & Retirement Fund*  
19 *and Oklahoma Law Enforcement*  
20 *Retirement System*

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