

1 GARY Y. LEUNG (Cal. Bar No. 302928)
Email: leungg@sec.gov
2 JASON P. LEE (Cal. Bar No. 196520)
Email: leeja@sec.gov

3 Attorneys for Plaintiff
4 Securities and Exchange Commission
Michele Wein Layne, Regional Director
5 John W. Berry, Associate Regional Director
444 S. Flower Street, Suite 900
6 Los Angeles, California 90071
Telephone: (323) 965-3998
7 Facsimile: (213) 443-1904

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **Western Division**

11
12 **SECURITIES AND EXCHANGE**
13 **COMMISSION,**

14 **Plaintiff,**

15 **vs.**

16 **THOMAS MILLER and WILLIAM**
17 **LIANG,**

18 **Defendants.**

Case No. 2:17-cv-00897

COMPLAINT

19 Plaintiff Securities and Exchange Commission (“SEC”) alleges:

20 **JURISDICTION AND VENUE**

21 1. The Court has jurisdiction over this action pursuant to Sections 21(d)(1),
22 21(d)(3)(A), 21(e) and 27(a) of the Securities Exchange Act of 1934 (“Exchange
23 Act”), 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa(a).

24 2. Defendants have, directly or indirectly, made use of the means or
25 instrumentalities of interstate commerce, of the mails, or of the facilities of a national
26 securities exchange in connection with the transactions, acts, practices and courses of
27 business alleged in this complaint.
28

1 professional services onto a separate purchase order whenever they were included in
2 any sale (“Split POs” or “Splitting POs”). Splitting POs gave the false appearance
3 that customers were buying Ixia’s professional services in a stand-alone sale, and not
4 as part of a multi-element arrangement with the company’s software products. It also
5 allowed Ixia to prematurely recognize software revenue in contravention of its stated
6 revenue recognition policy and GAAP.

7 7. Miller and Liang were central figures in this course of events. Not only
8 did Miller internally enable and implement the tactic of Splitting POs, he further
9 concealed from outside auditors the fact that the company – through Split POs – was
10 exploiting a material weakness in Ixia’s internal control over financial reporting
11 (“ICFR”) in order to prematurely recognize software revenue. As for Liang, revenue
12 recognition was his area of expertise within Ixia’s finance department, and he
13 willingly participated in Splitting POs along with Miller. In fact, Liang was fully
14 aware of the Split PO directive and worked directly with Ixia’s auditors on revenue
15 recognition issues, yet in face-to-face meetings with them during quarterly reviews in
16 2013, Liang concealed the fact that Ixia was purposefully Splitting POs.

17 8. Following a 2014 internal investigation by its audit committee, Ixia
18 restated its first and second quarter 2013 financial statements and, among other
19 things, reversed in those periods nearly all revenue prematurely recognized because
20 of Split POs. The audit committee further concluded that the company had not
21 maintained effective ICFR in the first and second quarters of 2013. Upon completion
22 of Ixia’s internal investigation, Liang was terminated. Miller was allowed to resign.

23 9. By engaging in this conduct: (i) Defendant Miller violated the lying to
24 auditors provision of Rule 13b2-2 of the Exchange Act, 17 C.F.R. § 240.13b2-2; the
25 certification provision of Rule 13a-14, 17 C.F.R. § 240.13a-14; and the internal
26 controls and books and records provisions of Section 13(b)(5) of the Exchange Act,
27 15 U.S.C. §78m(b)(5), and Rule 13b2-1 thereunder, 17 C.F.R. §240.13b2-1; and
28 Miller aided and abetted Ixia’s violations of Sections 13(b)(2)(A), and 13(b)(2)(B) of

1 the Exchange Act, 15 U.S.C. §§ 78m(b)(2)(A) and (b)(2)(B); and (ii) Defendant
2 Liang violated the lying to auditors provision of Rule 13b2-2, 17 C.F.R. § 240.13b2-
3 2; and the internal controls and books and records provisions of Section 13(b)(5) of
4 the Exchange Act, 15 U.S.C. §78m(b)(5), and Rule 13b2-1 thereunder; and Liang
5 aided and abetted Ixia's violations of Sections 13(b)(2)(A), and 13(b)(2)(B) of the
6 Exchange Act, 15 U.S.C. §§ 78m(b)(2)(A) and (b)(2)(B).

7 10. With this complaint, the SEC seeks permanent injunctions prohibiting
8 future violations of the federal securities laws and an order requiring defendants to
9 pay civil penalties.

10 **THE DEFENDANTS**

11 11. Thomas Miller, age 61, lives in Calabasas, California. He joined Ixia in
12 March 2000 as its chief financial officer. He resigned from the company in March
13 2014. Miller received his CPA license in November 1988. His license was cancelled
14 in June 1989 and was reinstated in June 2009. His license is now inactive.

15 12. William Liang, age 46, lives in Woodland Hills, California. Liang was
16 first employed at Ixia in 2007. Over time, he served in various positions within the
17 company's accounting and finance department, including as its senior manager of
18 accounting, director of accounting, and North American controller. In the relevant
19 timeframe, Liang was Ixia's director of accounting, and was responsible for Ixia's
20 revenue recognition accounting. Ixia terminated Liang's employment at or around
21 the third quarter of 2013 based on findings from its Audit Committee's internal
22 investigation. Liang received his CPA license in May 1997. His license expired in
23 November 2001.

24 **RELEVANT ENTITY AND PERSON**

25 13. Ixia is a California corporation based in Calabasas, California. The
26 company's securities trade on the NASDAQ Global Select Market and are registered
27 with the SEC pursuant to Exchange Act Section 12(b).

28 14. Victor Alston, age 39, joined Ixia as its vice president of applications at

1 or around 2004 and served in sequentially higher positions until his elevation to chief
2 executive officer and president at or around May 2012. Alston left Ixia in October
3 2013 following certain findings from Ixia's internal investigation.

4 **THE ALLEGATIONS**

5 **A. Ixia's Revenue Recognition for Multi-Element Arrangements**

6 15. Like many of its peers in the software and hardware industry, Ixia was
7 required to defer revenue on certain significant transactions in accordance with
8 GAAP.

9 16. Ixia's primary product line is a combination of hardware and software
10 designed to test, assess, and validate the performance of technology networks.

11 17. Ixia also sells post-contract support ("PCS"), which is a line of products
12 that includes technical support and extended warranty and maintenance for Ixia's
13 hardware and software products.

14 18. Ixia further sells professional services, including providing customized
15 software and product training in the use of Ixia's hardware and software.

16 19. Because Ixia typically sold a combination of its products to customers in
17 a single transaction, those sales were "multi-element arrangements" subject to
18 revenue recognition rules that required deferral of some or all of the revenue
19 depending on the products included in the sale, and how they related to each other.

20 20. Under GAAP, revenue from a multi-element arrangement involving
21 software must be allocated to each element (e.g., the separate products sold in the
22 combination sale) based on the fair value of each element (e.g., the dollar value of
23 that element as established through evidence of a consistent price paid by customers
24 for the same or similar element), as measured by vendor-specific objective evidence
25 of fair value ("VSOE").

26 21. Thus, if VSOE does not exist for an undelivered software element, then
27 any software revenue from the multi-element arrangement must be deferred until
28 either the point in time when all elements have been delivered to the customer, or

1 when VSOE does exist for each individual element, whichever is earlier.

2 22. Consistent with this, Ixia's internal revenue recognition policy provided
3 that:

4 If evidence of fair value (or VSOE) cannot be established for an
5 undelivered element within the software group or software
6 arrangement, we defer revenue on the entire order until the earlier
7 of (i) delivery of all elements or (ii) establishment of VSOE of the
8 undelivered element. We have not been able to establish VSOE
9 for our Professional Services, therefore, if the only undelivered
10 element is Professional Services, the entire order or group is
11 recognized as revenue over the service term or when the service is
12 completed, depending on the arrangement.

13 23. Miller was Ixia's chief financial officer. He had ultimate responsibility
14 for the company's revenue recognition policy.

15 24. As the head of Ixia's finance group, Miller also reviewed Ixia's revenue
16 recognition policy, and once finalized, he distributed a summary of that policy to all
17 Ixia employees.

18 25. Liang was the accountant responsible for the accounting of most if not
19 all of Ixia's revenue. He was also involved in the preparation of Ixia's policy.

20 26. Ixia's revenue recognition policy was authored in part by Liang. Liang,
21 in addition, shared responsibility for reviewing the document as a whole prior to its
22 internal distribution at Ixia.

23 27. Crucially, however, Ixia had never established VSOE for any of its
24 professional services.

25 28. Accordingly, Miller and Liang both knew that GAAP and Ixia's revenue
26 recognition policy compelled the following – whenever Ixia sold a combination of
27 software and professional services in a multi-element arrangement, Ixia was
28 prohibited from recognizing revenue from its sale of the software element until
delivery of the professional services element was completed.

29 29. In time, Alston took issue with these limitations because the inclusion of

1 professional services in a sale, which was typically a nominal component of the total
2 deal, could have an outsized and disproportionate effect on the company's ability to
3 recognize software revenue immediately.

4 30. Alston eventually enlisted Miller and Liang to circumvent those limits.

5 **B. Ixia's Struggles with Deferred Revenue**

6 31. While each quarter was in progress, Ixia provided analysts and investors
7 with guidance on the amount of revenue management expected Ixia to report upon
8 quarter-end.

9 32. Once issued, Ixia's management prioritized meeting that guidance.

10 33. Their ability to do so, however, was complicated by the nature of Ixia's
11 business, its sales arrangements with customers, and the accounting rules governing
12 revenue recognition.

13 34. Most significantly, even when Ixia's sales for the quarter appeared to be
14 in the range of its previously-issued revenue guidance if those sales were all
15 recognized as revenue, Ixia remained at risk of missing its revenue guidance
16 whenever a sale included multi-element arrangements involving professional
17 services. That was because GAAP and Ixia's revenue policy could require deferral of
18 software revenue to later reporting periods.

19 35. A further complication arose from the nature of Ixia's professional
20 services. Many of Ixia's customers had discretion as to when to schedule training
21 sessions; hence, Ixia often had no ability or insight into when it could complete
22 delivery of professional services sold through a multi-element arrangement.

23 36. Since Ixia's ability to recognize revenue from software sold with
24 professional services in a multi-element arrangement depended on complete delivery
25 of the professional services element, this aspect of Ixia's business added another layer
26 of risk and uncertainty that Ixia might fall short of its revenue guidance in any given
27 quarter.

28 37. The uncertainty arising from Ixia's multi-element arrangements,

1 combined with fluctuating customer demand, placed pressure on management at the
2 end of Ixia's reporting periods.

3 38. As aptly described by its vice president of sales, "we always have 15%
4 of deals that cannot be recognized for one reason or another," thus posing a
5 significant risk that Ixia would "miss street expectations wildly."

6 **C. Ixia Splits POs to Immediately Recognize More Revenue**

7 39. Events at the end of third quarter 2012 coalesced to place the impact of
8 these accounting rules on Ixia's revenue recognition in sharp focus. On September
9 28, 2012, Ixia closed a significant, seven-figure sale to a large technology company.

10 40. The transaction was a multi-element arrangement comprised of software
11 and PCS, along with a nominal amount of hardware and professional services.

12 41. Although in the aggregate the value of the deal was substantial, Ixia
13 could not recognize any of the revenue from the software licensed in the transaction
14 in third quarter 2012 because the professional services sold to Ixia's customer would
15 not be delivered in the two days before quarter-end.

16 42. Once briefed on the situation, Alston instructed Miller and the Ixia
17 senior director responsible for its professional services group to meet with him, every
18 other week, to review status on delivery of professional services, pronouncing: "This
19 is important for revenue recognition."

20 43. Soon thereafter, however, Miller learned that the recognition of revenue
21 from Ixia's large transaction at the end of third quarter 2012 would be deferred even
22 further since Ixia's customer had decided that it wanted delivery of professional
23 services to complete in 2013, rather than fourth quarter 2012.

24 44. Miller was told that:

25 We were trying to schedule the second two weeks [of professional
26 services] in early December. Yesterday the customer confirmed
27 this CANNOT happen this year ... Therefore we must go back to
28 the customer and propose some options if we must have it this
quarter ...

1 45. Faced with this, certain Ixia employees asked its customer to “split” its
2 original purchase order into two purchase orders to falsely create the impression that
3 there were two transactions instead of one.

4 46. One purchase order would refer to software and already-completed
5 professional services.

6 47. The other purchase order would reference the uncompleted professional
7 services previously negotiated and agreed to by the customer.

8 48. The terms of the original transaction with its customer – agreed to back
9 on September 28, 2012 – were left undisturbed. The only difference arose now from
10 the issuance of two purchase orders, rather than one, to document what remained in
11 substance a single multi-element arrangement.

12 49. Ixia’s customer agreed to its request and submitted new purchase orders.
13 On that fiction, Ixia prematurely recognized approximately \$530,000 of software
14 revenue from the deal in 2012.

15 50. Miller and Liang were both involved in and knew of the decision to Split
16 POs for this significant transaction.

17 51. This course of action, however, violated Ixia’s revenue recognition
18 policy, which strictly prohibited “[p]romises and commitments to customers outside
19 of the quote or customer contract,” and further required that the quote or customer
20 contract “represent the entire agreement between Ixia and the customer with respect
21 to deliverables.”

22 52. Even so, Miller soon approved of expanding this practice throughout
23 Ixia, in the case of every combination sale involving professional services.

24 53. On October 26, 2012, following Miller’s review and approval of his
25 draft email, Ixia’s vice president of sales wrote the following to his sales executives:

26 Please cascade throughout all of your teams.

27 I need to update you all on a decision Tom [Miller] and I have
28 made over the past few days after looking back at Q3 and what we

1 feel to be appropriate moves to ensure we do not have the last
2 minute challenges on meeting our revenue commitments quarter
3 to quarter.

4 Do keep in mind [professional services] is now becoming a
5 critical factor in developing our business and evolving to stronger
6 customer engagement for the longer term. The “rules” we want to
7 apply are a [sic] aimed at reducing risk on a continuous basis,
8 below are the steps we will be needing to monitor with great care
9 ...

10 1. All customer quotations that require delivery of services should
11 separate product and services on different quotations.) this [sic] is
12 the ideal position.

13 2. Should the customer demand combined quotations then if the
14 deal is combined greater than 100K it should be escalated to
15 myself and to Tom [Miller] for review and approval going
16 forward ...

17 54. As instructed by Miller and Ixia’s vice president of sales, Ixia’s sales
18 force began submitting two separate quotes to Ixia’s customers whenever the
19 company offered a multi-element arrangement involving professional services. The
20 sales team then asked customers to submit two separate purchase orders. Those Split
21 POs did not cross-reference one another, nor did they otherwise indicate that they
22 involved a related sale and were not independent sales.

23 55. This practice fundamentally changed the way Ixia historically conducted
24 business with its customers. As put by its vice president of sales, who voiced
25 concerns about the practice, “nobody would [p]ut a car and its engine on separate
26 orders!!”

27 56. Splitting POs caused the company to artificially create separate sales
28 quotations, which led to separate purchase orders.

57. The company’s revenue recognition policy required that order
documentation reflect the details of all other orders or open negotiations for products
that were discussed as part of the order; in other words, it prohibited “side deals” not

1 reflected in a given customer quote or contract.

2 58. Consequently, Split POs generated books and records that failed to
3 accurately reflect Ixia's sales transactions at the end of 2012 and in the first and
4 second quarters of 2013, thus resulting in the falsification of Ixia's books and records.

5 59. Split POs had a further consequence – they resulted in the company's
6 improper premature recognition of software revenue in violation of GAAP.

7 60. Split POs circumvented internal Ixia accounting controls designed to
8 ensure that order documentation was complete, and thus created a material weakness
9 in Ixia's ICFR – which had no procedures in place to practicably relink POs once
10 artificially split – that Miller and Liang then exploited.

11 61. At all relevant times, both Miller and Liang understood that even if
12 professional services and software are reflected on a purportedly separate purchase
13 order, GAAP and Ixia's revenue recognition policy still required deferral of that
14 software revenue whenever sold in a multi-element arrangement along with
15 undelivered professional services.

16 62. That was because the act of Splitting POs could not change the
17 underlying substance of a sales transaction, and was accordingly not an appropriate
18 basis to avoid deferring software revenue.

19 63. Knowing this, Miller initially advised Alston against Splitting POs. But
20 in the end, Miller – Ixia's chief financial officer and a trained accountant versed in
21 Ixia's revenue recognition policy – chose to approve and implement the Split POs
22 practice.

23 64. As for Liang, he took no steps to halt the practice even though he had
24 responsibility for Ixia's revenue recognition and was the auditors' point of contact on
25 those issues.

26 65. Indeed, when Ixia's revenue manager – who directly reported to Liang –
27 told Liang that Split POs was violating Ixia's revenue recognition policy and placing
28 the company's revenue at risk, Liang failed to heed his revenue manager's

1 reservations. Instead, Liang simply responded that, “we have to do this,” and then
2 allowed the practice to continue.

3 66. Splitting POs remained in force through the second quarter 2013. And
4 on April 21, 2013, Alston reiterated the importance of his directive in an email sent
5 to, among others, key sales executives along with Miller and Liang:

6 Team

7 Carrier deals that involve services need to be quoted with
8 [professional services] on a separate quote.

9 We cannot have [hardware/software] and Services quoted on the
10 same order. That includes [professional services,] RE, or any
11 other custom work.

12 Ixia cannot deliver the quarter or meet revenue recognition any
13 longer if we continue to book orders in this manner ...

14 Its [sic] not a business choice. It’s a business reality ...

15 67. Following Alston’s email, Miller and Liang still failed to raise any
16 objection, and Miller continued to approve of the practice even though it violated
17 GAAP and circumvented Ixia’s stated revenue recognition policy. And so Split POs
18 continued unchecked.

19 **D. Ixia’s 2012 Form 10-K**

20 **1. Disclosures regarding Ixia’s revenue recognition policy**

21 68. Given its significance to Ixia’s financial statements, Ixia’s 2012 Form
22 10-K explicitly referenced and incorporated Ixia’s revenue recognition policy for
23 multi-element arrangements in the company’s disclosures to investors.

24 69. Within the Form 10-K’s discussion of its “Significant Accounting
25 Policies” in the notes to the financial statements, the company represented that:

26 As our systems typically include hardware and software products,
27 and the related services, we recognize our revenue in accordance
28 with authoritative guidance on both hardware and software
revenue recognition.

1 ***

2 If VSOE cannot be established for an undelivered element within
3 the software group (or arrangement), we defer the entire value
4 allocated to the software group (or arrangement) until the earlier
5 of (i) delivery of all elements (other than technical support,
6 warranty and software maintenance services, provided VSOE has
7 been established) or (ii) establishment of VSOE of the undelivered
8 element(s).

2. Management's report on ICFR

8 70. Rule 13a-15(f) of the Exchange Act defines ICFR as:

9 [A] process designed by, or under the supervision of, the issuer's
10 principal executive and principal financial officers, or persons
11 performing similar functions, and effected by the issuer's board of
12 directors, management and other personnel, to provide reasonable
13 assurance regarding the reliability of financial reporting and the
14 preparation of financial statements for external purposes in
15 accordance with generally accepted accounting principles[.]

16 71. Item 308 of Regulation S-K required Ixia's management to provide a
17 report on ICFR that contains management's assessment of the effectiveness of the
18 company's ICFR; in that report, management must disclose any material weaknesses
19 in the company's ICFR identified by management. 17 C.F.R. § 229.308(a).

20 72. Further, Item 308 of Regulation S-K prohibited Ixia's management from
21 concluding that its ICFR was effective if there were one or more material weaknesses
22 in that ICFR. 17 C.F.R. § 229.308(a)(3).

23 73. A "material weakness" in a company's ICFR is a "deficiency, or a
24 combination of deficiencies, in [ICFR] such that there is a reasonable possibility that
25 a material misstatement of the company's annual or interim financial statements will
26 not be prevented or detected on a timely basis." 17 C.F.R. § 210.1-02(a)(4).

27 74. A misstatement is reasonably possible if the chance of a misstatement is
28 more than remote but less than likely. *See* Release No. 34-55929, Commission
Guidance Regarding Management's Report on Internal Control Over Financial

1 Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934t 34-
2 35, n. 47.

3 75. Management’s report on the company’s ICFR is found in Item 9A of
4 Ixia’s 2012 Form 10-K. That report, entitled “Management’s Report on Internal
5 Control over Financial Reporting,” stated:

6 As of December 31, 2012, our management (with the participation
7 of our Chief Executive Officer and our Chief Financial Officer)
8 conducted an evaluation of the effectiveness of our internal
9 control over financial reporting based on the framework in
10 Internal Control – Integrated Framework issued by the Committee
11 of Sponsoring Organizations of the Treadway Commission
12 (“COSO”). Based on this evaluation, management concluded that
13 our internal control over financial reporting was not effective as of
14 December 31, 2012 based on criteria in Internal Control –
15 Integrated Framework issued by the COSO.

16 76. The report, however, set forth only two reasons that led to management’s
17 conclusion that Ixia’s ICFR was not effective as of December 31, 2012. Neither
18 concerned Split POs.

19 77. Rather, management’s report only disclosed deficiencies arising from
20 warranty and software maintenance revenue recognition. And so in his report to the
21 investing public on ICFR, Miller only represented that management had concluded
22 that Ixia’s ICFR was not effective. He did not disclose that Splitting POs had been
23 intentionally implemented at the company, or that management was exploiting a
24 separate material weakness in Ixia’s ICFR, one unrelated to the warranty and
25 software maintenance revenue recognition deficiencies referenced by management’s
26 report.

27 **E. Ixia’s Accounting and Reporting Issues Come to Light**

28 78. Splitting POs in contravention of Ixia’s own revenue policies may have
continued unchecked at the company but for an unrelated development in the second
half 2013 – the company discovered that Alston had fabricated his education and

1 work experience when he first sought employment with Ixia.

2 79. Ixia's audit committee then decided to conduct an internal investigation,
3 the scope of which was later expanded to examine the accuracy of Ixia's SEC filings
4 and incorporated financial statements.

5 80. Following the audit committee's internal investigation, Ixia restated its
6 first and second quarter 2013 financial statements on June 20, 2014.

7 81. In its restatement, Ixia reversed software revenue from first and second
8 quarter 2013 that had been prematurely recognized because of Split POs.

9 82. The company further concluded that Ixia had not maintained effective
10 ICFR for the first and second quarters of 2013.

11 83. Ixia specifically identified a number of material weaknesses in its
12 internal controls from those reporting periods, including a lack of competent and
13 sufficient resources in its accounting department which had led to "widespread
14 control deficiencies," and that the company's internal controls had not been designed
15 to identify and assess Split POs and their revenue recognition accounting impact.

16 84. Upon completion of the audit committee's internal investigation, Ixia
17 allowed Miller to resign. Liang was terminated.

18 **F. Miller's False Representations to Auditors**

19 85. As the company's chief financial officer, Miller signed and delivered
20 management representation letters to Ixia's outside auditors in connection with the
21 auditor's year-end audits and quarterly reviews.

22 86. In the management representation letter to Ixia's auditors for the 2012
23 year-end audit, dated April 4, 2013, Miller represented that:

- 24 - Miller had disclosed to the auditors "all deficiencies in the
25 design or operation of internal control over financial reporting
26 (whether or not remediated) identified" as part of his
assessment of ICFR.
- 27 - Miller had "no knowledge of any fraud or suspected fraud
28 affecting the Company involving Senior management ...

1 Management or other employees who have significant roles in
2 internal control over financial reporting”

- 3 - Miller and the company had “identified and accounted for all
4 revenue arrangements involving multiple deliverables in
5 accordance with ASC 605, Revenue Recognition (ASC 605),
6 605-25, Multiple-Element Arrangements.”
7 - There are no material transactions, agreements or accounts that
8 have not been properly recorded in the accounting records
9 underlying the consolidated financial statements.

10 87. In the management representation letter to Ixia’s auditors for the first
11 quarter 2013 review, dated May 10, 2013, Miller represented that:

- 12 - Miller had “disclosed to you all significant deficiencies and
13 material weaknesses in the design or operation of internal
14 controls over financial reporting that adversely affect the
15 Company’s ability to record, process, summarize, and report
16 interim financial data that a) existed as of the fiscal quarter
17 ended March 31, 2013 or b) were identified and remediated
18 during the fiscal quarter ended March 31, 2013.”
19 - Miller had “no knowledge of any fraud or suspected fraud
20 affecting the Company involving: a. Senior management; b.
21 Management or other employees who have significant roles in
22 internal control over financial reporting ...”

23 88. In the management representation letter to Ixia’s auditors for the second
24 quarter 2013 review, dated August 9, 2013, Miller represented that:

- 25 - Miller had “disclosed to you all unremediated deficiencies in
26 the design or operation of internal controls over financial
27 reporting identified as part of our process to comply with
28 Sections 302 and 404 of the Sarbanes Oxley Act of 2002 and
Regulation S-K, Items 307 and 308, including separately
disclosing to you all such deficiencies that we believe to be
significant deficiencies or material weaknesses in internal
controls over financial reporting.”
- Miller had “no knowledge of any fraud or suspected fraud
affecting the Company involving: a. Management. b.

1 Employees who have significant roles in the Company's
2 internal control over financial reporting."

3 89. Miller signed each of the management representation letters to Ixia's
4 auditors for the 2012 year-end audit (dated April 4, 2013), for the first quarter 2013
5 review (dated May 10, 2013) and for the second quarter 2013 review (dated August 9,
6 2013).

7 90. The foregoing representations by Miller in these management
8 representation letters were false and misleading.

9 91. For example, Miller had authorized a Split PO mandate for all multi-
10 element transactions involving professional services, but this Split PO mandate
11 violated Ixia's revenue recognition policy, circumvented its internal accounting
12 controls, and exploited a material weakness in the company's ICFR (e.g., no
13 procedures in place to relink split POs) for the purpose of prematurely recognizing
14 software revenue in violation of GAAP.

15 92. In addition, management with significant roles in Ixia's ICFR had
16 engaged in a fraud or suspected fraud.

17 93. Miller was aware that the foregoing statements to Ixia's auditors were
18 false and did not make those false statements through ignorance, mistake, or accident.

19 94. Miller further acted unreasonably in making those false statements to
20 Ixia's auditors.

21 95. This is because: (i) Miller had directly participated in the
22 implementation of Split POs at the company; (ii) he understood that professional
23 services were expected to be a larger segment of the company's business and would
24 be included in multi-element arrangements at an even greater frequency in the future;
25 (iii) he also understood that even if professional services are reflected on a
26 purportedly separate purchase order from software sales, GAAP and Ixia's revenue
27 recognition policy still required deferral of software revenue in a multi-element
28 arrangement; (iv) he consequently knew that Split POs contravened the company's

1 stated revenue recognition policy, circumvented its internal accounting controls, and
2 had exploited a material weakness in Ixia's ICFR; and (v) Miller understood that the
3 large transaction at the end of third quarter 2012 discussed above was material, under
4 the terms of his April 4, 2013 management representation letter, and knew that the
5 transaction had not been properly recorded in Ixia's accounting records because the
6 customer's purchase order had been artificially split.

7 **G. Liang's False Representations to Auditors**

8 96. In his role as Ixia's director of accounting, Liang was responsible for the
9 proper accounting of Ixia's revenue recognition during the relevant period.

10 97. During Ixia's outside auditors' 2012 audit and first and second quarter
11 2013 quarterly reviews, Liang was the auditors' primary point of contact at Ixia for
12 revenue recognition issues.

13 98. Thus, with respect to revenue recognition and Ixia's audit, Liang
14 routinely performed the function of a controller or principal accounting officer.

15 99. Although Liang knew of Split POs and understood that it presented a
16 risk that Ixia's reported software revenue would be inaccurate, he took no action to
17 cease the practice within Ixia, or at the least, to bring Split POs to the auditors'
18 attention.

19 100. Further, on at least three occasions, Liang participated in in-person
20 meetings with Ixia's auditors in which revenue recognition for multi-element
21 arrangements was a focus of discussion. Although according to Ixia's auditor, any
22 competent accountant would have brought Split POs to the auditors' attention at those
23 times, Liang failed to do so, and therefore omitted to state a material fact necessary to
24 make the affirmative representations he had made to Ixia's auditors, not misleading.

25 101. Specifically, in July 2013, Liang met with Ixia's auditors and discussed
26 risks associated with accounting for multi-element arrangements. Even though Split
27 POs were plainly pertinent to this discussion, Liang did not disclose the Split PO
28 mandate to Ixia's auditors.

1 102. Subsequent to that July 2013 meeting, Liang again met with Ixia's
2 auditors in order to discuss Ixia's efforts to establish VSOE for its professional
3 services. While that issue was inextricably linked to Ixia's accounting for multi-
4 element arrangements, Liang did not disclose the Split PO mandate to Ixia's auditors.

5 103. Finally, at a September 4, 2013 meeting with Ixia's auditors, the risk of
6 Split POs was a specific topic of discussion between Liang and the auditors.
7 However, Liang never told them that the company was purposefully Splitting POs.
8 In fact, despite discussing with auditors risk factors for when POs are inadvertently
9 split, Liang failed to disclose that Ixia was actually Splitting POs on purpose, and had
10 been doing so for some time.

11 104. In addition, Liang, as Miller's subordinate in Ixia's finance department,
12 was acting at Miller's direction during the foregoing events because Miller had tasked
13 Liang with the responsibility of determining whether or not to discuss Split POs with
14 Ixia's auditors.

15 105. Liang was aware that the foregoing statements and omissions to Ixia's
16 auditors were false and did not make those false statements and omissions through
17 ignorance, mistake, or accident.

18 106. Liang further acted unreasonably in making those false statements and
19 omissions to Ixia's auditors.

20 107. This is because: (i) Liang had directly participated in the
21 implementation of Split POs at the company; (ii) he understood that professional
22 services were expected to be a larger segment of the company's business and would
23 be included in multi-element arrangements at an even greater frequency in the future;
24 (iii) he also understood that even if professional services are reflected on a
25 purportedly separate purchase order from software sales, GAAP and Ixia's revenue
26 recognition policy still required deferral of software revenue in a multi-element
27 arrangement; and (iv) he consequently knew that Split POs would have been
28 significant to the quarterly reviews being performed by Ixia's outside auditors.

1 **H. Miller’s False SOX Certifications**

2 108. In accordance with Section 302 of SOX and Exchange Act Rule 13a-14,
3 Miller signed a certification which the company attached to its 2012 Form 10-K.

4 109. In his certification, Miller represented that:

5 Based on my knowledge, this report does not contain any untrue
6 statement of a material fact or omit to state a material fact
7 necessary to make the statements made, in light of the
8 circumstances under which such statements were made, not
misleading with respect to the period covered by this report

9 * * *

10 I have disclosed, based on our most recent evaluation of internal
11 control over financial reporting, to the registrant’s auditors and the
audit committee of the registrant’s board of directors

12 a) All significant deficiencies and material weaknesses in the
13 design or operation of internal control over financial reporting
14 which are reasonably likely to adversely affect the registrant’s
15 ability to record, process, summarize and report financial
information; and

16 b) Any fraud, whether or not material, that involves management
17 or other employees who have a significant role in the registrant’s
18 internal control over financial reporting.

19 110. The foregoing representations by Miller were false and misleading.

20 111. Miller had not disclosed to the auditors or Ixia’s audit committee “[a]ll
21 significant deficiencies and material weaknesses” in the company’s ICFR. As alleged
22 above, the company did not have the ability, once it began Splitting POs, to reliably
23 identify all of its multi-element arrangements involving software and undelivered
24 professional services, and therefore could not appropriately account for that revenue
25 under the rules set forth by Ixia’s revenue recognition policy. Miller not only did not
26 disclose this significant deficiency and material weakness in the company’s SEC
27 filings, he also did not disclose it to the outside auditors or audit committee.

28 112. The certified representations were also false because Miller failed to

1 disclose to Ixia's auditors and audit committee that by authorizing Split POs,
2 management and other employees with a significant role in ICFR had engaged in a
3 fraud – namely, misrepresentations and omissions in Ixia's 2012 Form 10-K about
4 the company's revenue recognition policy and its ICFR.

5 113. Miller knew, or was reckless in not knowing, that his certifications were
6 materially false and misleading, or acted unreasonably in making those certifications.

7 114. Specifically, based on his knowledge, Miller was aware that Ixia's 2012
8 10-K contained an untrue statement of a material fact or omitted to state a material
9 fact necessary to make the statements made, in light of the circumstances under
10 which such statements were made, not misleading.

11 115. And based on management's most recent evaluation of ICFR, Miller did
12 not disclose: (i) all significant deficiencies and material weaknesses in the design or
13 operation of Ixia's ICFR which were reasonably likely to adversely affect the
14 company's ability to record, process, summarize and report financial information; and
15 (ii) any fraud, whether or not material, involving management or other employees
16 who had a significant role in Ixia's ICFR.

17 116. This is because: (i) Miller had directly participated in the
18 implementation of Split POs at the company; (ii) he understood that professional
19 services were expected to be a larger segment of the company's business and would
20 be included in multi-element arrangements at an even greater frequency in the future;
21 (iii) he also understood that even if professional services are reflected on a
22 purportedly separate purchase order from software sales, GAAP and Ixia's revenue
23 recognition policy still required deferral of software revenue in a multi-element
24 arrangement; and (iv) he consequently knew that Split POs contravened the
25 company's stated revenue recognition policy, circumvented its internal accounting
26 controls, and had exploited a material weakness in Ixia's ICFR.

27 **I. The Materiality of the False Statements and Omissions**

28 117. Miller and Liang's misrepresentations and omissions to the outside

1 auditors and Miller's false SOX certifications all concern facts that would have been
2 viewed by a reasonable investor or auditor as significantly altering the total mix of
3 available information about the company.

4 118. Ixia is a technology company that routinely transacted software sales
5 through multi-element arrangements. Therefore, the manner and timing in which it
6 recognized software revenue – which represented a substantial part of Ixia's overall
7 revenues – was a fundamental component of the company's financial reporting.

8 119. Correspondingly, Ixia made affirmative representations to investors that
9 specifically detailed the content of its revenue recognition policy for multi-element
10 arrangements in its filings with the Commission.

11 120. Notwithstanding this, Split POs resulted in: the violation of Ixia's
12 revenue recognition policy; the circumvention of its internal controls; and the
13 exploitation of a material weakness in Ixia's ICFR in order to improperly recognize
14 software revenue. At the same time, Miller was falsely certifying and
15 misrepresenting to auditors that he had fulfilled his responsibility to fully disclose any
16 and all material weaknesses and fraud involving management with significant
17 responsibility for ICFR to Ixia's auditors and audit committee, and Liang was
18 concealing the practice from Ixia's outside auditors. These misrepresentations and
19 omissions would have been viewed by a reasonable investor as significant
20 information, and would have altered the total mix of information about the company.

21 121. Similarly, had they known the truth, the auditors would have considered
22 Miller's misrepresentations and omissions in the management representation letters,
23 and Liang's failure to disclose the issues regarding the Split PO practice to be
24 information material to their annual audits and quarterly reviews of the company.

25 **J. Miller's Circumvention of Ixia's Internal Controls and Falsification of its**
26 **Books and Records**

27 122. By authorizing the directive to Split POs, Miller circumvented Ixia's
28 revenue recognition policy and Ixia internal accounting controls in place to ensure

1 complete and accurate sales documentation.

2 123. Miller was aware that he was circumventing Ixia's revenue recognition
3 policy, and that circumvention was not the result of Miller's ignorance, mistake, or
4 accident.

5 124. Similarly, by authorizing the directive to Split POs, Miller falsified
6 Ixia's books and records at the end of 2012 and in the first and second quarters of
7 2013. With no controls in place to identify multi-element arrangements involving
8 professional services and software purchase orders that had been earlier split because
9 of Miller's directive, Ixia's books and records could not appropriately account for
10 those revenues in accordance with the company's revenue recognition policy.

11 125. For example, Miller directly or indirectly falsified sales documentation
12 relating to the Split POs, including quotes, purchase orders, invoices, and Ixia's
13 related-revenue account entries for those transactions.

14 126. Miller was aware that he was falsifying Ixia's books and records, and
15 that falsification was not the result of Miller's ignorance, mistake, or accident.

16 **K. Liang's Circumvention of Ixia's Internal Controls and Falsification of its**
17 **Books and Records**

18 127. By facilitating the directive to Split POs and concealing it from Ixia's
19 auditors, Liang circumvented Ixia's revenue recognition policy and Ixia internal
20 accounting controls in place to ensure complete and accurate sales documentation.

21 128. Liang was aware that he was circumventing Ixia's revenue recognition
22 policy, and that circumvention was not the result of Liang's ignorance, mistake, or
23 accident.

24 129. Similarly, by facilitating the directive to Split POs and concealing it
25 from Ixia's auditors, Liang falsified Ixia's books and records at the end of 2012 and
26 in the first and second quarters of 2013. With no controls in place to identify multi-
27 element arrangements involving professional services and software purchase orders
28 that had been earlier split, Ixia's books and records could not appropriately account

1 for those revenues in accordance with the company's revenue recognition policy.

2 130. For example, Liang directly or indirectly falsified sales documentation
3 relating to the Split POs, including quotes, purchase orders, invoices, and Ixia's
4 related-revenue account entries for those transactions.

5 131. Liang was aware that he was falsifying Ixia's books and records, and
6 that falsification was not the result of Liang's ignorance, mistake, or accident.

7 **FIRST CLAIM FOR RELIEF**

8 **Lying to Auditors**

9 **Violations of Rule 13b2-2 of the Exchange Act**

10 **(against Defendants Miller and Liang)**

11 132. The SEC realleges and incorporates by reference paragraphs 1 through
12 131 above.

13 133. As alleged above in paragraphs 39-67 and 85-95 among other
14 allegations, Miller lied to Ixia's auditors in his management representation letters
15 when he represented that Ixia had identified and accounted for all of its multi-element
16 arrangements in accordance with GAAP, that he had disclosed to them all significant
17 deficiencies and material weaknesses in Ixia's ICFR, that he had no knowledge of
18 any fraud or suspected fraud involving management or employees with significant
19 roles in ICFR, and that there were no material transactions that had not been properly
20 recorded at Ixia.

21 134. As alleged above in paragraphs 39-67 and 96-107, among other
22 allegations, Liang lied to Ixia's auditors when he failed to disclose Split POs to them,
23 despite having had many opportunities to do so when meeting and otherwise
24 interacting with them as their point of contact at the company on revenue recognition
25 issues.

26 135. By engaging in the conduct described above, Defendants Miller and
27 Liang, directly or indirectly: (1) made or caused to be made a materially false or
28 misleading statement to an accountant in connection with: (i) any audit, review or

1 examination of the financial statements of the issuer required to be made under the
2 federal securities laws; or (ii) the preparation or filing of any document or report
3 required to be filed with the Commission; or (2) omitted to state, or caused another
4 person to omit to state, any material fact necessary in order to make statements made,
5 in light of the circumstances under which such statements were made, not misleading,
6 to an accountant in connection with: (i) any audit, review or examination of the
7 financial statements of the issuer required to be made under the federal securities
8 laws; or (ii) the preparation or filing of any document or report required to be filed
9 with the Commission.

10 136. Further, by engaging in the conduct described above, Defendant Liang,
11 as a person acting under the direction of an officer of Ixia, directly or indirectly took
12 action to coerce, manipulate, mislead, or fraudulently influence an independent public
13 or certified public accountant engaged in the performance of an audit or review of
14 financial statements that are required to be filed with the Commission, and knew or
15 should have known that these actions, if successful, could result in rendering the
16 issuer's financial statements materially misleading.

17 137. Defendant Miller knew, or was reckless in not knowing, his statements
18 to Ixia's auditors were materially false and misleading. Miller further acted
19 unreasonably in making the foregoing statements to Ixia's auditors.

20 138. Defendant Liang knew, or was reckless in not knowing, that his
21 statements and omissions to Ixia's auditors were materially false and misleading.
22 Liang further acted unreasonably in his interactions with Ixia's auditors.

23 139. Defendant Liang also knew or should have known that his actions – if
24 successful – to coerce, manipulate, mislead, or fraudulently influence Ixia's auditors
25 could have resulted in a material impact on Ixia's reported revenue.

26 140. By engaging in the conduct described above, Defendants Miller and
27 Liang violated, and unless restrained and enjoined will continue to violate Rule 13b2-
28 2 of the Exchange Act, 17 C.F.R. § 240.13b2-2.

1 knowingly authorized and Liang knowingly participated in a Split PO practice that
2 circumvented Ixia internal accounting controls designed to ensure complete and
3 accurate sales documentation.

4 147. As alleged above in paragraphs 19-66, among other allegations, Miller
5 and Liang knew that Ixia's internal accounting controls required that order
6 documentation reflect the details of all other orders or open negotiations for products
7 that were discussed as part of the order, and that as a result, Split POs had generated
8 books and records that failed to accurately reflect Ixia's sales transactions.

9 148. By engaging in the conduct described above, Defendants Miller and
10 Liang knowingly circumvented, or knowingly failed to implement, a system of
11 internal accounting controls.

12 149. By engaging in the conduct described above, Defendants Miller and
13 Liang knowingly falsified books, records, and accounts issuers are required to make
14 and keep which, in reasonable detail, accurately and fairly reflect the issuer's
15 transactions and dispositions of its assets.

16 150. By engaging in the conduct described above, Defendants Miller and
17 Liang have violated, and unless restrained and enjoined, are reasonably likely to
18 continue to violate, Section 13(b)(5) of the Exchange Act, 15 U.S.C. § 78m(b)(5) and
19 Rule 13b2-1 thereunder, 17 C.F.R. § 240.13b2-1.

20 **FOURTH CLAIM FOR RELIEF**

21 **Aiding and Abetting Violations of**

22 **Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act**

23 **(against Defendants Miller and Liang)**

24 151. The SEC realleges and incorporates by reference paragraphs 1 through
25 131 above.

26 152. As alleged above in paragraphs 15-67, among other allegations, Split
27 POs resulted in the falsification of Ixia's books and records, and, given the absence of
28 any procedures in place to later relink split purchase orders so that multi-element

1 arrangements could be properly accounted for, exploited a material weakness in
2 Ixia's internal accounting controls for the purpose of prematurely recognizing
3 software revenue in violation of GAAP. Because Miller and Liang knowingly
4 participated in Split POs, lied about or concealed the practice from Ixia's outside
5 auditors and audit committee, and (in the case of Miller) falsely certified Ixia's 2012
6 Form 10-K in connection with the practice, Miller and Liang substantially assisted
7 the falsification of Ixia's books and records and the company's failure to implement
8 effective internal controls.

9 153. By reason of the conduct described above, Ixia violated Sections
10 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act by: failing to make and keep
11 books, records, and accounts, which, in reasonable detail, accurately and fairly reflect
12 the transactions and dispositions of the assets of Ixia; and failing to devise and
13 maintain a system of internal accounting controls sufficient to provide reasonable
14 assurances that transactions are recorded as necessary to permit preparation of
15 financial statements in conformity with generally accepted accounting principles or
16 any other criteria applicable to such statements, and to maintain accountability for
17 assets.

18 154. By reason of the conduct described above, Defendants Miller and Liang
19 knowingly and recklessly provided substantial assistance to, and thereby aided and
20 abetted Ixia in its violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange
21 Act, 15 U.S.C. §§ 78m(b)(2)(A) and (B).

22 155. By engaging in the conduct described above, Defendants Miller and
23 Liang have aided and abetted, and unless restrained and enjoined, are reasonably
24 likely to continue to aid and abet, violations of Sections 13(b)(2)(A) and 13(b)(2)(B)
25 of the Exchange Act, 15 U.S.C. §§ 78m(b)(2)(A) and (B).

26 **PRAYER FOR RELIEF**

27 WHEREFORE, the SEC respectfully requests that the Court:
28

1 **I.**

2 Issue findings of fact and conclusions of law that Defendants committed the
3 alleged violations.

4 **II.**

5 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
6 Civil Procedure, permanently enjoining Defendants Miller and Liang, and their
7 agents, servants, employees, and attorneys, and those persons in active concert or
8 participation with any of them, who receive actual notice of the judgment by personal
9 service or otherwise, and each of them, from violating Rule 13b2-2 of the Exchange
10 Act [17 C.F.R. § 240.13b2-2].

11 **III.**

12 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
13 Civil Procedure, permanently enjoining Defendant Miller, and his agents, servants,
14 employees, and attorneys, and those persons in active concert or participation with
15 any of them, who receive actual notice of the judgment by personal service or
16 otherwise, and each of them, from violating Rule 13a-14 of the Exchange Act [17
17 C.F.R. § 240.13a-14].

18 **IV.**

19 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
20 Civil Procedure, permanently enjoining Defendants Miller and Liang, and their
21 agents, servants, employees, and attorneys, and those persons in active concert or
22 participation with any of them, who receive actual notice of the judgment by personal
23 service or otherwise, and each of them, from violating Section 13(b)(5) of the
24 Exchange Act [15 U.S.C. §§ 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. §
25 240.13b2-1].

26 **V.**

27 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
28 Civil Procedure, permanently enjoining Defendants Miller and Liang, and their

1 agents, servants, employees, and attorneys, and those persons in active concert or
2 participation with any of them, who receive actual notice of the judgment by personal
3 service or otherwise, and each of them, from aiding and abetting any violation of
4 Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§
5 78m(b)(2)(A) and 78m(b)(2)(B)].

6 **VI.**

7 Order Defendants to pay civil penalties under Section 21(d)(3) of the Exchange
8 Act [15 U.S.C. § 78u(d)(3)].

9 **VII.**

10 Retain jurisdiction of this action in accordance with the principles of equity and
11 the Federal Rules of Civil Procedure in order to implement and carry out the terms of
12 all orders and decrees that may be entered, or to entertain any suitable application or
13 motion for additional relief within the jurisdiction of this Court.

14 **VIII.**

15 Grant such other and further relief as this Court may determine to be just and
16 necessary.

17 Dated: February 3, 2017

18 */s/ Gary Y. Leung*

19 _____
Gary Y. Leung

20 Jason P. Lee

21 Attorneys for Plaintiff

22 Securities and Exchange Commission
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Complaints and Other Initiating Documents

[2:17-cv-00897 Securities and Exchange Commission v. Miller et al](#)

UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA

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Case Name: Securities and Exchange Commission v. Miller et al

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Document Number: [1](#)

Docket Text:

COMPLAINT No Fee Required - US Government, filed by PLAINTIFF Securities and Exchange Commission. (Attorney Gary Y Leung added to party Securities and Exchange Commission(pty:pla))(Leung, Gary)

2:17-cv-00897 Notice has been electronically mailed to:

Gary Y Leung LeungG@sec.gov, berryj@sec.gov, irwinma@sec.gov, larofiling@sec.gov

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The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\Users\KASSABGUIR\Desktop\Ixia DCT Complaint .pdf

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