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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

SACV12 1179 JST (MLKx)

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

17 MANOUCHEHR MOSHAYEDI,

18 Defendant.

Case No.

COMPLAINT

19
20
21 Plaintiff Securities and Exchange Commission ("Commission") alleges:

22 **JURISDICTION AND VENUE**

23 1. This Court has jurisdiction over this action pursuant to Sections 20(b),
24 20(d) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§
25 77t(b), 77t(d) & 77v(a), and Sections 21(d)(1), 21(d)(3), 21(e), 21A(a)(1)(A) and
26 27(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§
27 78u(d)(1), 78u(d)(3), 78u(e), 78u-1(a)(1)(A) & 78aa(a). Defendant has, directly or
28 indirectly, made use of the means or instrumentalities of interstate commerce, of

1 the mails, or of the facilities of a national securities exchange in connection with
2 the transactions, acts, practices and courses of business alleged in this Complaint.

3 2. Venue is proper in this district pursuant to Section 22(a) of the
4 Securities Act, 15 U.S.C. § 77v(a), and Section 27(a) of the Exchange Act, 15
5 U.S.C. § 78aa(a), because the Defendant resides in and/or transacts business in this
6 district and certain of the transactions, practices, and courses of business
7 constituting violations of the federal securities laws occurred within this district.

8 **SUMMARY**

9 3. This case involves a fraudulent scheme by Defendant Manouchehr
10 Moshayedi (“Moshayedi”), in which he engaged in insider trading and made false
11 and misleading representations and omissions in connection with the sale of nine
12 million shares of stock of STEC, Inc. (“STEC”) in August 2009. Moshayedi is a
13 founder, and the chairman of the board and chief executive officer of STEC, which
14 makes and sells computer storage devices.

15 4. In 2009, STEC’s stock rose dramatically, increasing more than 800%
16 from January to August. This stock increase came as the company reported
17 increased revenues, sales and margins for its products, in particular its flagship
18 “flash” memory, solid state drive (or, “SSD”) product called “ZeusIOPS.” The
19 price increase also came on the heels of STEC’s announcement in July 2009 that it
20 had entered into a unique supply agreement with its largest customer, EMC
21 Corporation (“EMC”), which agreed to buy \$120 million of the ZeusIOPS SSD
22 product in the third and fourth quarters of 2009. During this time, Moshayedi
23 touted the sales growth of ZeusIOPS and STEC’s other products, and said the
24 supply agreement with EMC was “part of the expected growth” for STEC going
25 forward, and was “further indication of future SSD growth and customers’
26 acceptance of SSDs.”

27 5. In order to take advantage of this run-up in the stock price, Moshayedi
28 and his brother, Mehrdad Mark Moshayedi, who was also a founder of STEC,

1 decided to sell a significant portion of their STEC holdings in a secondary offering
2 of their shares. The secondary offering was scheduled to commence on August 3,
3 2009, the same day that STEC was to release its financial results for the second
4 quarter of 2009. It was also the same day that STEC would announce its revenue
5 guidance for the third quarter ended September 30, 2009 – revenue figures that
6 would be compared to the “consensus” estimate forecasts of the industry analysts
7 covering STEC.

8 6. However, shortly before the offering, Moshayedi learned two critical
9 – but not publicly known – pieces of information indicating that EMC’s actual
10 demand for STEC’s ZeusIOPS product was lower than expected. First, after
11 touting the future growth of the ZeusIOPS product and the importance of STEC’s
12 \$120 million supply agreement with EMC, Moshayedi was informed by EMC that
13 EMC would never enter into another similar agreement with STEC again. Second,
14 Moshayedi learned that EMC’s actual demand for the ZeusIOPS product in the
15 third quarter would be \$33-34 million – not near enough to ensure that STEC’s
16 third quarter revenue guidance could meet or exceed the consensus analyst
17 estimates for that quarter.

18 7. With this material, non-public information in hand, Moshayedi did not
19 call off the offering and abstain from selling. Instead, he engaged in a fraudulent
20 scheme to conceal from the investing public the truth about EMC’s actual demand
21 for STEC’s product, and proceeded with the secondary offering of his and his
22 brother’s STEC shares. As part of this scheme, Moshayedi entered into a secret
23 side deal with EMC to have EMC commit to take \$55 million of ZeusIOPS
24 product in the third quarter – which was far more than it actually needed – in
25 exchange for an undisclosed \$2 million price discount on the product. He then
26 announced third quarter revenue guidance for STEC that met the analysts’
27 consensus estimates. This guidance, however, included the \$55 million in orders
28 from EMC – an amount that was about \$21-22 million more than EMC’s actual

1 forecasted demand for the quarter, and that was only possible because of his secret
2 deal with EMC.

3 8. After securing this deal, and announcing the orchestrated guidance
4 figures, Moshayedi went ahead with the offering without disclosing that EMC's
5 demand for STEC's ZeusIOPS product was lower than expected, given that: (1)
6 EMC's actual demand for ZeusIOPS was far too low to justify reporting STEC's
7 third quarter guidance that met the consensus analyst revenue estimates for that
8 quarter; and (2) EMC would not enter into any more supply agreements for STEC
9 products. Also, in connection with the disclosures regarding the offering and
10 STEC's third quarter guidance, Moshayedi made representations that either
11 materially misstated or omitted this information.

12 9. In the secondary offering on August 3, 2009, Moshayedi and his
13 brother each sold 4.5 million shares of their STEC stock, and each received gross
14 proceeds, before expenses, of \$133,920,000. Three months later, in November
15 2009, some, but not all, of the material, non-public information Moshayedi
16 possessed when he sold was finally disclosed. Specifically, as part of its disclosure
17 of its third quarter earnings results on November 3, STEC disclosed that EMC
18 might carry inventory into 2010. But also, during a November 3, 2009 conference
19 call with analysts, Moshayedi disclosed what he had known back in August – that
20 the \$120 million supply agreement was, in fact, a “one-off” deal. STEC's stock
21 price plummeted 38.9% following these disclosures, from a closing price of \$23.15
22 per share on November 3, to a closing price of \$14.14 on November 4.

23 10. By engaging in this conduct, Moshayedi violated the antifraud
24 provisions of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section
25 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17
26 C.F.R. § 240.10b-5. The Commission seeks a permanent injunction prohibiting
27 future violations, an officer and director bar, disgorgement of ill-gotten gains
28 together with prejudgment interest thereon, and civil penalties under the Insider

1 Trading Sanctions Act of 1984 and the Securities Enforcement Remedies and
2 Penny Stock Reform Act of 1990.

3 **THE DEFENDANT**

4 11. Manouchehr Moshayedi is the chief executive officer and chairman of
5 the board of directors of STEC. He has held these positions since 1990, when he
6 founded the company with his brothers, Mehrdad Mark Moshayedi (“Mark
7 Moshayedi”) and Mike Masoud Moshayedi. Moshayedi obtained a bachelor of
8 science degree in engineering in 1982, and a master’s degree in business
9 administration in 1985. He resides in Corona Del Mar, California.

10 12. At all relevant times, as CEO of STEC, Moshayedi reviewed and
11 approved company press releases (including earnings releases) and company
12 filings with the Commission (including its annual and quarterly reports on Forms
13 10-K and 10-Q).

14 **THE COMPANY**

15 13. STEC, Inc. is a California corporation with its principal place of
16 business in Santa Ana, California. STEC designs, manufactures and markets
17 computer storage devices using what are called “flash” memory and “Dynamic
18 Random Access Memory,” or “DRAM,” technologies. STEC specializes in
19 developing high-speed, high-capacity computer storage cards that use flash solid
20 state drives, or “SSDs.” Moshayedi’s brother, Mark Moshayedi, has been the
21 president of STEC since March 2007, and its chief operating officer and chief
22 technical officer since 1995.

23 14. Since September 2000, the securities of STEC have been publicly
24 traded on the NASDAQ National Market. Since July 2006, STEC’s stock has been
25 listed on the NASDAQ Global Select Market. STEC securities are registered with
26 the Commission pursuant to Section 12(b) of the Exchange Act, 15 U.S.C. §
27 78l(b).
28

THE FRAUDULENT SCHEME

A. Background

1. STEC's Ethics Code and Insider Trading Policy

15. During the relevant time, STEC had an ethics code (the "Ethics Code") for all of its directors, officers and employees, who were required to sign a form acknowledging having received and read the Ethics Code. Included in the code was a section entitled "Obligations Under Securities Laws – 'Insider Trading,'" which states, among other things, that a director, officer and employee "may not profit from [confidential information] by buying or selling securities yourself, or passing on the information to others to enable them to profit or for them to profit on your behalf." This section also states that "[t]rading on the basis of inside information, or passing inside information on to others who may trade (even if you receive no financial benefit), is a crime and can result in significant fines and/or imprisonment."

16. The Ethics Code also references the company's "Insider Trading Policy," which Moshayedi helped create. As the Ethics Code explains, the Insider Trading Policy's "trading rules are strictly enforced," and anyone who violates the policy is "subject to disciplinary action by the Company, which may include dismissal from the Board of Directors, termination of employment or of business relationship." At all relevant times, STEC's Insider Trading Policy defined "Insider" to include members of STEC's board of directors and its officers.

2. STEC's "ZeusIOPS" Product and its Biggest Customer, EMC

17. STEC's flagship, flash-based SSD product is called "ZeusIOPS." During the relevant time, STEC's margin on sales of its ZeusIOPS product was 40%-50%, which significantly increased STEC's overall revenues and gross margins.

18. STEC's product line is marketed to and used by original equipment manufacturers, or "OEMs," which use STEC's storage devices in their products.

1 EMC Corporation was, at all relevant times and remains today, a significant OEM
2 customer of STEC. In fact, in 2008 and 2009, STEC was the sole supplier of SSD
3 storage devices for EMC. EMC's business accounted for 15.2% of STEC's total
4 revenue in 2008, and constituted a growing source of revenues for STEC in the
5 first half of 2009. By the end of 2009, EMC accounted for approximately 45.1%
6 of STEC's total revenues, and 90% of STEC's ZeusIOPS sales.

7 **B. STEC's Sales, Revenue and Margin Growth in the First Half of 2009**
8 **and its Unique Supply Agreement with EMC**

9 19. Before Moshayedi's and his brother's secondary offering was
10 announced and commenced on August 3, 2009, STEC experienced significant
11 growth in its sales, revenues and gross margins in the first half of 2009. During
12 this time, as STEC's sales for its ZeusIOPS product increased, STEC entered into a
13 unique supply agreement for this product in July 2009 with its largest customer,
14 EMC, for the third and fourth quarters of 2009.

15 20. STEC's positive results and the announcement of this unique
16 agreement had an enormous positive impact on its stock price. Specifically,
17 STEC's stock price increased more than 800% from its opening price of \$4.27 per
18 share on January 2, 2009, to its opening price of \$35.22 per share on August 3,
19 2009, when STEC announced the secondary offering by Moshayedi and his
20 brother, and its second quarter results and third quarter guidance.

21 21. Beginning in at least mid-2009, Moshayedi and his brother, Mark
22 Moshayedi, discussed the best means by which they could sell a large number of
23 their STEC shares and thereby benefit from the enormous increases in STEC's
24 stock price. Ultimately, as alleged below, they decided to cancel their respective
25 "Rule 10b5-1 plans," which called for the automatic sale of STEC shares at pre-
26 determined prices, and instead elected to offer nine million of their STEC shares to
27 the public at one time, through a secondary offering.

1 **1. STEC's Stock Price Rises as Moshayedi Touts STEC's 2008**
2 **Results and 2009 Prospects**

3 22. On March 12, 2009, STEC issued a news release regarding its fourth
4 quarter and full-year results, entitled "STEC Announces Fourth Quarter and Full-
5 Year 2008 Results – ZeusIOPS SSD Revenue Increased 300% to \$53 million for
6 2008 and is Expected to Surpass That Mark in the First Six Months of 2009."
7 Moshayedi participated in a conference call with analysts that day. During that
8 call, and in the "Business Outlook" section of the March 12, 2009 news release,
9 Moshayedi discussed his optimistic outlook for the ZeusIOPS product for the first
10 half of 2009. For example, Moshayedi stated in the "Business Outlook" section:

11 Based on current customer indications and momentum, we
12 believe that revenue from our ZeusIOPS product line – for just
13 the first six months of 2009 – will surpass the total of
14 ZeusIOPS revenue achieved during the full-year 2008.

15 23. The news release contained a section entitled "Guidance," in which
16 Moshayedi stated that STEC expected its first quarter revenues to range from \$58
17 million to \$60 million. This first quarter revenue guidance exceeded the consensus
18 estimates of the industry analysts covering STEC.

19 24. Following STEC's March 12, 2009 announcement of its positive
20 fiscal year 2008 financial results and of its first quarter guidance that exceeded
21 analysts' estimates, STEC's stock price jumped 20.5%, increasing from its opening
22 price of \$6.10 per share on March 12 to a closing price of \$7.35 per share on
23 March 13.

24 25. As the stock price rose on this positive news in the spring of 2009,
25 Moshayedi decided to cancel his Rule 10b5-1 plan. In an email to Moshayedi on
26 April 30, 2009, his brother agreed to do the same, writing that "I will call and
27 cancel my plan and we can coordinate to get the stock up." In May 2009, both
28 Moshayedi and his brother adopted new Rule 10b5-1 plans for their STEC stock

1 holdings.

2 **2. The Stock Price Continues to Increase, and Moshayedi Touts**
3 **STEC's First Quarter 2009 Results**

4 26. On May 11, 2009, STEC issued a news release announcing its first
5 quarter 2009 financial results, entitled "STEC Announces First Quarter 2009
6 Results – Company Surpasses Previous Revenue and EPS Guidance." In its
7 release, STEC announced that its revenues were \$63.5 million – a 25.2% increase
8 from first quarter 2008 and an 11.6 % increase from the fourth quarter of 2008. It
9 also announced that shipments of STEC's ZeusIOPS SSDs into the enterprise-
10 storage market grew to \$25.7 million, an increase of 267.1% increase from the first
11 quarter of 2008 and a 29.8% from the fourth quarter of 2008.

12 27. As with the release for the fourth quarter and full-year 2008 results,
13 Moshayedi is quoted in the "Business Outlook" section of that release, touting
14 STEC's "excellent first quarter of 2009 results which exceeded even our most
15 recent guidance. . . . [We] increased our non-GAAP gross profit margin to
16 39.8%." Moshayedi is further quoted discussing the prospects for ZeusIOPS for
17 the first half of 2009:

18 In our previous earnings report we had estimated that our
19 ZeusIOPS sales for the first half of 2009 would surpass \$53
20 million; however, it now appears that we had under estimated
21 the growth of this product line and now believe that we will
22 achieve an estimated \$65 million in sales of ZeusIOPS during
23 the first half of 2009.

24 28. In the "Guidance" portion of the release, Moshayedi also stated that
25 STEC expected its revenues for the second quarter of 2009 to range from \$68
26 million to \$70 million. This revenue guidance exceeded the second quarter
27 "consensus" estimates of the analysts covering STEC.

28 29. Also on May 11, 2009, Moshayedi participated on behalf of STEC in

1 a conference call with industry analysts. Among other representations, Moshayedi
2 gave his outlook for the second quarter. He stated: “[W]e always reach about 40%
3 gross profit margin. I think we will be over that in Q2. And I think Zeus for now
4 is maintaining above a 50% gross margin.” With regard to the accelerating
5 revenue growth resulting from sales of ZeusIOPS, when asked by an analyst
6 whether the Q2 revenue is going to grow another 50%, Moshayedi responded “I
7 think 50%, I don’t know if that is accurate, but we will be about \$40 million in
8 ZeusIOPS.”

9 30. Following STEC’s May 11, 2009 announcement of its positive first
10 quarter financial results, STEC’s stock price rose substantially, increasing 34.5%
11 from an opening price of \$10.11 per share on May 11 to a closing price of \$13.60
12 per share on May 12.

13 **3. STEC’s \$120 Million Supply Agreement with EMC**

14 31. In the first half of 2009, Moshayedi negotiated a supply agreement
15 with EMC, STEC’s largest customer (the “Supply Agreement”). In that deal, EMC
16 agreed to purchase at least \$120 million of the ZeusIOPS product from STEC, at
17 discounted prices, for the third and fourth quarters of 2009.

18 32. This Supply Agreement was the first agreement of its kind with EMC.
19 Before Moshayedi negotiated this deal with EMC, STEC had no significant supply
20 agreements for its ZeusIOPS product with any of its customers.

21 33. On June 15, 2009, Moshayedi sent an email to various company
22 personnel, copying his brother Mark Moshayedi and others, announcing the deal:

23 I have great news, EMC just confirmed their commitment to
24 purchase in excess of \$120,000,000 of Zeus IOPS from us
25 during Q-3 and Q-4 of this year, roughly 30,000 units.

26 This is a deal I have been working on for the past month, we
27 will have to accrue \$4,000,000 of rebates for this deal.

28 34. The terms of the deal were set forth in an email that Timothy Smith, a

1 senior director at EMC, sent Moshayedi the next day, June 16, 2009. In that email,
2 Smith wrote “to confirm our deal and make sure we’re on the same page,” and
3 stated his understanding of the agreement. Smith wrote:

4 Emc agrees to buy \$120 [million] of zeusiops from stec in 2h09
5 [second half of 2009]

6 Stec agrees:

7 1) To provide a 3.333% cost reduction on drive purchased after
8 7/1/09

9 2) To work with emc to find additional cost reductions beyond
10 #1

11 3) That the volume guarantees from the gen 2 zeusiops mlc
12 drive pricing fold into the above revenue guarantee.

13 In response to this email, Moshayedi confirmed that “[t]his is what we agreed on.”

14 35. Smith sent a further response in which he explained the uniqueness of
15 the Supply Agreement and outlined the plan for documenting it. Smith wrote:

16 Great. I’ll resend with a broader emc distribution and if you
17 could kindly reply again, I’d appreciate it. This is a risky move
18 for emc as we NEVER make volume guarantees and your
19 commitments on email will keep the momentum going.

20 (Capitalization in original.)

21 **4. STEC’s Revised Guidance for the Second Quarter of 2009**

22 36. On June 16, 2009, STEC issued a news release announcing revised
23 guidance for its revenues for the second quarter of 2009, entitled “STEC Increases
24 Its Guidance for the Second Quarter of 2009.” In its release, STEC announced that
25 it expected to report revenue in the range of \$82 million to \$84 million, rather than
26 the \$68-\$70 million estimate previously announced on May 11, 2009. STEC
27 further stated that in contrast to its previous estimate that ZeusIOPS SSD revenues
28 would surpass \$65 million during the first half of 2009, STEC now expected

1 ZeusIOPS SSD sales to exceed \$80 million for the first half of 2009. This June 16
2 guidance exceeded the analysts' estimates for STEC's second quarter results.

3 37. Following STEC's issuance of its news release increasing its second
4 quarter guidance, STEC's stock price increased 20.0% from an opening price of
5 \$19.75 per share on June 16, 2009, to a closing price of \$23.70 on June 17, 2009.

6 **5. The Execution of STEC's Supply Agreement with EMC**

7 38. In mid-July 2009, almost four weeks after Moshayedi and Smith
8 confirmed the terms of the Supply Agreement, STEC and EMC executed the
9 documents memorializing the deal. STEC and EMC executed an "Amendment
10 No. 2 to Master Purchase Agreement between EMC and STEC," which amended
11 the parties' prior purchase agreement entered into in January 2008. This
12 Amendment No. 2 formalized the material terms of the Supply Agreement that
13 Smith and Moshayedi agreed to in June 2009. Mark Moshayedi signed the
14 "Amendment No. 2" on behalf of STEC on July 10, 2009; and EMC's vice
15 president, global supply chain, Trevor Schick, signed it on behalf of EMC on or
16 about July 12 or 13, 2009.

17 39. While the executed Supply Agreement contract provided that EMC
18 would commit to purchase at least \$120 million of ZeusIOPS from STEC in the
19 second half of 2009, it did not state how this \$120 million commitment would be
20 allocated between the third and fourth quarters. It stated that "EMC hereby
21 commits that its purchases of Zeus drives from STEC for shipment within the
22 second half of 2009 shall be at least \$120 million (USD)." In exchange, the
23 contract stated that STEC committed to grant EMC a 3.33% (or, \$4 million)
24 reduction in the price that STEC would charge EMC for STEC's ZeusIOPS
25 product.

26 **6. The Decision to Sell Shares in a Secondary Offering**

27 40. In or about July 2009, Moshayedi and his brother decided to cancel
28 their recently adopted Rule 10b5-1 plans, and sell their STEC shares through a

1 secondary stock offering. On July 11, 2009, Moshayedi emailed his brother that a
2 secondary offering of their shares could commence on August 3, 2009, “the same
3 day as our earnings [announcement]” for the second quarter. Moshayedi also
4 discussed in his email to his brother whether the expected positive second quarter
5 earnings would mitigate any negative impact the secondary offering of their
6 substantial holdings would have on the price of STEC stock. He wrote:

7 The costs are 4% commission plus lawyer’s fees (\$100k-
8 \$200k), they estimate that the stock will get hit by 9-10% in a
9 normal filing for only insider sellers, *in our case, it might not*
10 *get hit at all as it will come on the back of great earnings* but
11 we should be prepared for it to get hit by 9%-20% if we are
12 unlucky.

13 (Emphasis added.) On July 13, Moshayedi also wrote his brother that “we can
14 always not do it [the offering] if the price during that day drops too much.”

15 41. Because the Rule 10b5-1 plans called for the sale of their holdings in
16 increments at certain, pre-determined prices, Moshayedi and his brother believed
17 they could obtain more proceeds from the sale of their stock in a one-time, public
18 secondary offering. As his brother explained in an email exchange on July 13,
19 2009, “I think we will get more by the secondary [offering] than by the existing
20 10B5-1s as the low [price] limits [at which the stock would automatically be sold
21 under the plans] are very low.”

22 42. On July 16, 2009, the STEC board of directors held a special
23 telephonic meeting to discuss the proposed secondary offering, the filing of the
24 necessary Form S-3 Registration Statement, the timetable of the offering and
25 STEC’s second quarter earnings announcement on August 3, 2009, and the
26 termination of the Rule 10b5-1 plans of Moshayedi and his brother. Moshayedi, as
27 chairman, presided over the meeting. The STEC board, with Moshayedi and Mark
28 Moshayedi present but recused from voting, approved Moshayedi engaging

1 bankers to undertake a secondary offering, and authorized Moshayedi and Mark
2 Moshayedi to terminate their Rule 10b5-1 trading plans.

3 **7. STEC's July 16, 2009 Announcement of its \$120 Million Supply**
4 **Agreement with EMC**

5 43. Also on July 16, 2009, STEC issued a press release announcing its
6 Supply Agreement with EMC, as well as its new sales forecasts for ZeusIOPS.
7 The news release was entitled "STEC Signs a \$120 Million Supply Agreement for
8 ZeusIOPS SSDs for 2H [second half] 2009 and Now Forecasts Sales of ZeusIOPS
9 SSDs to Exceed \$220 Million in 2009."

10 44. The July 16 announcement stated that STEC had signed an agreement
11 "with one of its largest enterprise storage customers for sales of \$120 million of
12 ZeusIOPS SSDs in the second half of 2009," and that STEC believed "that this
13 agreement reflects the enterprise storage manufacturer's continued commitment to
14 integrate STEC's SSD technology into the manufacturer's systems." The
15 announcement also stated that: "With this agreement signed, STEC now forecasts
16 revenue from the sale of its ZeusIOPS drives will exceed \$220 million in 2009."

17 45. The announcement did not identify EMC as the counter-party to the
18 Supply Agreement, or disclose that in exchange for the \$120 million volume
19 commitment, STEC had agreed to discount its prices by 3.33%.

20 46. Following the July 16, 2009 announcement, STEC's stock price
21 increased 8.8% from an opening price of \$29.96 per share on July 16 to a closing
22 price of \$32.59 per share on July 17, 2009.

23 **8. Moshayedi's Discussions with the Underwriters**

24 47. Deutsche Bank Securities, Inc. ("Deutsche Bank"), Barclays Capital
25 Inc., J.P. Morgan Securities Inc. and Oppenheimer & Co. Inc. were the managing
26 underwriters for the secondary offering.

27 48. Generally, in a secondary offering, underwriters purchase the selling
28 shareholders' stock at a discount, and then sell the stock to the public at a higher

1 offering price. In the weeks and days leading up to the secondary offering,
2 scheduled for August 3, 2009, Moshayedi discussed with the underwriters the
3 pricing of the offering and the underwriters' discount, as well as STEC's quarterly
4 forecasts and its revenue guidance for the third quarter.

5 49. For example, in July 2009, Moshayedi discussed with a Deutsche
6 Bank underwriter what the underwriter thought the pricing and the discount for the
7 offering would be. In response to Moshayedi's question about the discount, in a
8 July 16 email, the Deutsche Bank underwriter asked Moshayedi for his "estimates
9 for Q3 and Q4," explaining that, "[t]he more detail you can give me the more
10 accurate I can give you advice on discount." In his email response on July 17,
11 2009, Moshayedi noted that the analysts' "consensus" estimate for STEC's third
12 quarter revenue was \$86 million to \$87.5 million, and that as of that time, STEC's
13 expected guidance for the third quarter was that its revenues would be \$92 million
14 to \$94 million.

15 50. Moshayedi also spoke with Needham & Co. ("Needham"), a
16 brokerage firm, which had proposed a private sale of his shares (as opposed to an
17 underwritten public offering). He specifically discussed the discount that
18 Needham would propose for that kind of transaction, and how that discount – like
19 the discount for the underwritten secondary offering – could be impacted by
20 STEC's second quarter results and its third quarter guidance. Needham had
21 suggested selling at least a \$100 million worth of Moshayedi's shares at a 12%
22 discount. Moshayedi expressed his views on that discount in a July 23, 2009
23 email. He wrote: "we think our Q-2 earnings and our Q-3 forecasts are so strong
24 that this fact alone should take the stock up after our earnings announcement, so I
25 think a 12% discount is not going to be available."

26 **C. Moshayedi's Secret Deal to Boost STEC's Third Quarter Estimates to**
27 **Meet Analyst's Guidance Before his Secondary Offering**

28 51. The secondary offering was scheduled to be announced and initiated

1 on August, 3, 2009, which was the day that STEC was also planning to announce
2 its guidance for its projected third quarter results. Ultimately, STEC did not have
3 enough committed orders from its customers to ensure that its guidance for the
4 third quarter could meet or exceed the analysts' consensus estimates for that
5 quarter.

6 **1. EMC's Projected Orders for the Third Quarter Fall Short**

7 52. As alleged above, the \$120 million Supply Agreement for the second
8 half of 2009 did not specify how much product EMC would buy in either the third
9 or fourth quarter. In July, with the approaching secondary offering and STEC's
10 third quarter guidance announcement scheduled for August 3, 2009, how much
11 STEC's biggest customer, EMC, would order for that quarter became a key issue
12 for Moshayedi.

13 53. On July 21, 2009, Moshayedi sent an email to Trevor Schick and
14 Timothy Smith of EMC inquiring when STEC would receive purchase orders for
15 the third quarter "or at least a good guess from you about what to build."
16 Moshayedi also wrote: "We are assuming that the \$120 [million pursuant to the
17 agreement] will be divided to \$50-52[million] in Q-3 and \$68-70 [million] in Q-4."

18 54. Later that day, Chris Casella, EMC's senior manager, global supply
19 chain management, sent an email to William Fahey, STEC's director of sales,
20 attaching EMC's third quarter total forecast. EMC's projected orders for the third
21 quarter were significantly lower than STEC had anticipated. The next day, July
22 22, Fahey expressed concern over the lower-than-expected EMC forecast, in an
23 email to Casella in which he stated, "this puts us at \$34.3M [in revenue]."

24 55. On July 24, Fahey wrote another email to Casella stating "we really,
25 really need to understand the balance of your Q3 demand as we are now at the end
26 of July!" He then explained his concern that EMC's projected order of about \$33-
27 34 million for the third quarter was "way short," and that STEC was expecting
28 EMC to order \$55 million or more. Fahey wrote:

1 Also, *our expectation is that we do at least \$55M ideally, \$60M*
2 *in Q3. We are WAY short at ~ \$33M* based on what we have
3 already shipped and what your new demand is. We are *\$20M+*
4 *short* and we have no idea what to build and we are running out
5 of time. . . . I would really like to try to avoid getting Manouch
6 [Moshayedi] and Trevor [Schick of EMC] involved in this. I
7 am being killed on this. . . .

8 Again, this was the [\$120 million] agreement and Manouch is
9 reporting earning[s] soon and we still don't know what EMC's
10 total Q3 demand is. Can you please help with this so we do not
11 have to get Sr. Mgmt involved in this issue. . . .

12 (Emphasis added; capitalization in original.)

13 56. Shortly after that, Fahey transmitted another email to Casella at EMC,
14 summarizing a conversation that they had had, and reminding Casella that \$33
15 million from EMC would be "well short" of STEC's "target" for that quarter.
16 Specifically, he wrote:

17 It is also critically important that we achieve *our committed*
18 *revenue goal of at least \$55M, ideally \$60M* per our recent
19 contract addendum.

20 As discussed, with the orders shipped to date this quarter and
21 the new demand requirements you provided a couple days ago,
22 this puts us at ~ \$33M in Q3 revenue which is well short of our
23 \$55 - \$60M target.

24 57. In that same email, Fahey also summarized his understanding that
25 EMC was willing to increase its commitment for the third quarter to approximately
26 \$43 million by taking on "buffer" inventory – still short of what STEC was
27 anticipating. Fahey wrote to Casella:

28 As you mentioned, EMC will likely commit to take all the buffer

1 inventory which puts us up to ~ \$43M. We will need to fill this
2 gap with additional requirements to get us up to the \$55M-\$60M
3 target. Please discuss this with Trevor [Schick] and Tim [Smith]
4 so we can provide a full picture of your Q3 revenue requirements
5 which will hopefully get us to the \$55M revenue target by next
6 **Wednesday [July] 29th latest.**

7 (Boldface in original.)

8 **2. Consensus Analyst Revenue Estimates for the Third Quarter**
9 **Increase to a Level that STEC Cannot Meet**

10 58. Meanwhile, Moshayedi became aware that on July 16 and 23, 2009,
11 an analyst for Noble Financial Group (“Noble”) had issued reports providing
12 Noble’s guidance figures for STEC’s upcoming third quarter. Moshayedi was
13 dismayed by the reports because the consensus analysts’ third quarter estimates for
14 STEC increased with Noble’s reported guidance to a level that STEC, with its
15 current projections for the third quarter, would not be able to meet. He wrote in an
16 email on July 26:

17 [Noble Financial Group] has just brought up all of our averages
18 (\$95.7) to the point that we can’t meet [analysts’ consensus
19 expectations] *We are now going to miss the top line and*
20 *EPS [earnings per share] estimate numbers for Q-3.*

21 (Emphasis added.)

22 59. Moshayedi then embarked on a fraudulent course of conduct to ensure
23 that STEC would not announce lower-than-expected third quarter revenue
24 guidance on August 3, 2009, when it was planning to release its quarterly results
25 for the second quarter and announce the secondary stock offering by Moshayedi
26 and his brother.

27 60. On Sunday, July 26, 2009, with only one week before the August 3,
28 2009 announcement, and only a few hours after sending the email expressing

1 dismay about the increase in consensus expectations, Moshayedi sent another
2 email to certain members of his sales staff, copying his brother Mark Moshayedi.
3 In that email, Moshayedi asked the staff to provide their best estimates of orders by
4 July 30, so that STEC could finalize its third quarter guidance figures. Moshayedi
5 wrote:

6 Guys,

7 As you know our earnings call is comming [sic] up on Monday
8 August 3rd.

9 Please review your shipments to date and give your best
10 estimate of revenue per product line with 95% accuracy by
11 Thursday afternoon [July 30] and please notify us with any
12 updates or changes on Monday the 3rd in the morning.

13 61. Rather than waiting until July 30 for the information from his staff as
14 he originally requested, Moshayedi emailed Anvari, STEC's vice president of
15 sales, a few hours later that same Sunday, July 26, to find out "[h]ow much worth
16 of orders from EMC and IBM do you already have. . . ." After some back-and-
17 forth, Anvari responded that he was still working with EMC to commit to purchase
18 \$43 million for the third quarter, including \$9 million in buffer, and to possibly
19 "give" STEC another \$7 million. He wrote:

20 I am working with EMC to receive all buffers of \$9M by the
21 end of Q3 and give us another \$7M to get them to \$50M. We
22 will know all solid numbers this coming week.

23 3. **The Secret, Side Deal with EMC to Commit to \$55 Million**

24 62. Moshayedi knew that EMC was only projecting to order \$43 million
25 from STEC for the third quarter, and that this order included \$9 million in buffer
26 inventory. So, later that night, Sunday, July 26, 2009, Moshayedi contacted
27 Timothy Smith of EMC to see what he could get EMC to agree to order from
28 STEC for the third quarter, after EMC had expressly stated that it only needed

1 about \$33-34 million in actual orders.

2 63. Smith summarized his July 26 conversation with Moshayedi in a July
3 27 email to Trevor Schick, his boss at EMC. He wrote:

4 [S]poke with manouch and he REALLY wants that \$55m in q3.
5 bottom line is that we're on the hook for ~\$43m. the carrying
6 cost of bringing in that extra \$12m over the quarter end and
7 holding through October is ~\$250k. ...

8 Also, he wants us to make a deal in advance of their earnings
9 call next week so he can guide appropriately.

10 64. Meanwhile, Anvari followed up with EMC. On July 27, 2009, Anvari
11 sent an email to Casella of EMC, copying EMC's Timothy Smith, pleading for
12 him to agree to take more than the \$43 million Casella had indicated EMC might
13 take for the third quarter. Anvari wrote:

14 Here is a summary of where we are:

- 15 1) We have shipped you about \$21M in July
- 16 2) Per your request, we are building the following quantities for
17 your Q3 demand. The value is \$13.59M. . . .
- 18 3) Per your request, we are building the following buffer
19 inventory, value at \$9.18M which we would like to ship all to
20 EMC by the end of Q3. . . .

21 All of the above would total to \$43.7M. In addition to above, I
22 would like [to] ask you to allow us to ship another \$7M, so we
23 can reach at least \$50M for the quarter. . . .

24 This email was later forwarded to Moshayedi by Timothy Smith, who stated: "I
25 assume Anthony is not up to date on our exchanges last night?," which Moshayedi
26 confirmed in a follow-up email.

27 65. On July 28, Smith sent an email to Moshayedi entitled "\$55m"
28 asking him:

1 How much do you want this? There is really no appetite for any
2 more inventory. . . .

3 66. Moshayedi knew that EMC's projected \$43 million order for the third
4 quarter included \$9 million in buffer inventory and that Timothy Smith had
5 expressed concerns regarding EMC's excess inventory. Nonetheless, Moshayedi
6 responded to Smith's July 28, 2009 email later that day, asking Smith what
7 Moshayedi could offer to have EMC take on even more unwanted inventory.
8 Moshayedi wrote:

9 Just tell me what you need, *I knew asking you guys for a favor*
10 *would go nowhere so I am now back at paying for favors. What*
11 *is your price for keeping inventory for a week or two? I*
12 *thought East Coast guys from Boston area were supposed to be*
13 *nice.*

14 (Emphasis added.)

15 67. Smith responded later that day, explaining the inventory issues EMC
16 faced, as well as acknowledging the issues both companies faced regarding
17 earnings expectations. He wrote to Moshayedi:

18 Not fair, manouch.
19 We currently have an extensive mckinsey [consultant]
20 engagement ongoing to reduce EOQ [end of quarter] inventory.
21 . . . *As you have your earnings call issues, so do we (have a*
22 *read on how many questions [EMC Executive VP and CFO]*
23 *[G]oulden got last week on this and the subsequent valuation*
24 *impact of every million). Its not the time period, manouch, you*
25 *know better. Its the ending balance. For \$4m in savings, we*
26 *added almost a \$B in market cap to STEC. I think we've*
27 *demonstrated our partnership.*

28 (Emphasis added.) Moshayedi responded: "Do you want to have a call instead?"

1 and Smith agreed to speak with him.

2 68. On July 29, 2009, and only five days before the secondary offering,
3 Moshayedi and Smith spoke and agreed to a secret deal to have EMC commit to
4 purchase \$55 million of STEC product in the third quarter, even though it only
5 projected needing about \$33-34 million for actual orders. In exchange, Moshayedi
6 agreed to give EMC an additional approximate \$2 million discount on top of the
7 approximate \$4 million discount (3.33%) already set forth in the \$120 million
8 Supply Agreement. Moshayedi memorialized this agreement in an email to Smith
9 later that day, July 29, entitled "Q-4 2009 pricing:"

10 This price represents a significant discount to our regular large
11 volume pricing and is solely based on your commitment of the
12 \$120M for the 2nd half of 2009 representing \$55M in Q-3 and
13 \$65M in Q-4.

14 Smith responded, "Confirmed."

15 **D. EMC Tells Moshayedi, "With A Very High Degree Of Confidence," that**
16 **There Will Be No More Supply Agreements With STEC**

17 69. Shortly after successfully negotiating the secret side-deal with EMC
18 for its \$55 million third quarter commitment, Moshayedi sought to secure a supply
19 agreement for 2010 from EMC. Moshayedi emailed his proposal to Trevor Schick
20 and Timothy Smith on Friday, July 31, 2009. Early in the morning of August 3,
21 2009, at 4:34 a.m. PDT, Smith responded to this email entitled "2010 EMC pricing
22 as follows:"

23 hi manouch,

24 I'm not sure we share your excitement in the attached. . .

25 *I think I can say with a very high degree of confidence that our*
26 *most recent [July 16] volume commitment deal will be our last.*

27 as we've shared many times, this practice is just not in our

28 playbook and we have resisted such offers from the hdd folks

1 for years (and we've sure heard the blow back from them the
2 past week with the announced deal that is widely assumed to be
3 us). . . .

4 My recommendation is that we remove all volume guarantees
5 and press release requests from future negotiations. . . .

6 (Emphasis added.)

7 70. In response to Smith's email informing him, "with a very high degree
8 of confidence" that the Supply Agreement with EMC would be EMC's "last" with
9 STEC, Moshayedi wrote: "Thanks for throwing cold water on this proposal."

10 **E. The August 3, 2009 Secondary Offering and Announcement of Third**
11 **Quarter 2009 Guidance**

12 **1. Moshayedi's Insider Trading**

13 71. As planned, the secondary offering of Moshayedi's and his brothers
14 shares went forward, beginning on August 3, 2009. Through the sale of STEC
15 securities in the secondary offering, Moshayedi gained and/or realized gross
16 offering proceeds of \$133,920,000. His brother Mark Moshayedi also benefitted
17 from the offering, gaining and/or realizing gross offering proceeds of
18 \$133,920,000. The total gross offering proceeds for both brothers was
19 \$267,840,000.

20 72. Shortly before the offering, Moshayedi learned negative and material
21 non-public information regarding EMC's lower-than-expected demand for STEC's
22 product. Specifically, Moshayedi knew that: (1) in order for STEC to present third
23 quarter guidance in line with analyst expectations, Moshayedi gave EMC an
24 additional \$2 million discount so EMC would take \$55 million in ZeusIOPS
25 product in the third quarter even though EMC did not need that much product; and
26 (2) EMC had informed him "with a very high degree of confidence" that the
27 Supply Agreement deal entered into on July 16, 2009 "will be our last."

28 73. In the offering, Moshayedi sold STEC securities in possession of this

1 material, non-public information. He caused such sales to be made in breach of a
2 duty of trust or confidence that he owed directly, indirectly, or derivatively to
3 STEC and its shareholders by reason of his position as CEO and chairman of
4 STEC. In making these sales while in possession of material, non-public
5 information, Moshayedi also violated STEC's Ethic Code and Insider Trading
6 Policy.

7 **2. Moshayedi's False and Misleading Statements and Omissions**

8 74. Moshayedi also made material misrepresentations and omissions in
9 the disclosures that were made in connection with the secondary offering on
10 August 3, 2009. On that day, STEC filed a Form 8-K attaching a news release
11 announcing the company's second quarter results and its guidance for the third
12 quarter. The company also issued a news release announcing the Moshayedi
13 brothers' secondary offering of their STEC shares. Moreover, Moshayedi
14 participated in a conference call with analysts that day and discussed these
15 announcements. The company also filed its Form 10-Q for the second quarter of
16 2009, and the Form S-3 Registration Statement for the secondary offering.

17 75. The August 3, 2009 Form S-3 Registration Statement for the
18 secondary offering represented, among other things, that:

19 For the six months ended June 30, 2009, we derived \$132.7
20 million in revenues from the sale of Flash products, which
21 represented 89% of our total revenues. We expect *continued*
22 *growth* in the sales of our Flash-based SSD ZeusIOPS products
23 through 2009 based on the accelerated adoption of our
24 ZeusIOPS SSDs by most of our major . . . customers into their
25 systems. *As part of this expected growth*, on July 16, 2009 we
26 announced an agreement with one of our largest enterprise-
27 storage customers for sales of \$120 million of ZeusIOPS SSDs
28 to be delivered in the second half of 2009.

1 (Emphasis added.)

2 76. The Form 8-K attached a STEC news release, in which STEC
3 announced that its second quarter revenues were \$86.4 million, an increase of
4 35.9% from the first quarter. The release also touted STEC's Supply Agreement
5 with EMC. As the first of its "Additional highlights" for the second quarter, the
6 release provided that STEC "signed a recently-announced \$120 million contract to
7 supply ZeusIOPS SSDs to a major Enterprise-Storage customer for the second half
8 of 2009." Moshayedi also stated in the release:

9 I believe that the \$120 million supply agreement that we signed
10 for the second half of 2009 is *a further indication of future SSD*
11 *growth* and customers' acceptance of SSDs into this growing
12 market.

13 (Emphasis added.)

14 77. The August 3, 2009 press release also set forth the company's revenue
15 guidance for the third quarter. It stated: "We currently expect third quarter of
16 2009 revenue to range from \$95 million to \$97 million with diluted non-GAAP
17 earnings per share to range from \$0.45 to \$0.47."

18 78. The Form 10-Q filed on August 3, 2009 also stated that:

19 We expect continued growth in the sales of our Flash-based
20 SSD ZeusIOPS products through 2009 based on the *accelerated*
21 *adoption* of our ZeusIOPS SSDs by most of our major
22 enterprise-storage and enterprise-server OEM customers into
23 their systems. *As part of this expected growth*, on July 16, 2009
24 we announced an agreement with one of our largest enterprise
25 storage customers for sales of \$120 million of ZeusIOPS SSDs
26 in the second half of 2009.

27 (Emphasis added.)

28 79. At or about 2:30 p.m. PDT on August 3, 2009, STEC held an open

1 conference call with analysts, which was also webcast, to discuss its second quarter
2 2009 results. Moshayedi participated in that call. During that call, Moshayedi
3 responded to an analyst's question regarding the Supply Agreement. The analyst
4 asked Moshayedi whether he "expected more of your OEMs . . . to come up with
5 supply agreements? Or do you think that's going to be the norm from here out, or
6 is this unusual?" Moshayedi answered by stating that "I think it's going to be *more*
7 *normal* for us to get those sort of agreements in place. . . ." (Emphasis added.)

8 80. Moshayedi also discussed the third quarter revenue guidance figures
9 during the conference call. He stated how much of that guidance was allegedly
10 comprised of EMC's orders under the Supply Agreement. Specifically, he
11 informed the analysts that "\$55 million out of the \$120 million [Supply
12 Agreement] was built into the Q3 [guidance] numbers."

13 81. The statements Moshayedi made in the August 3, 2009 press release
14 attached to the Form 8-K, in the Form 10-Q, in the Form S-3 Registration
15 Statement for the secondary offering and during the conference call were
16 materially false and misleading.

17 82. First, the third quarter guidance announced in the press release, which
18 predicted revenues of \$95 million to \$97 million, was materially false and
19 misleading because, as Moshayedi disclosed during the analyst conference call, he
20 claimed \$55 million of the \$95-97 million guidance represented EMC's orders
21 under the Supply Agreement. But Moshayedi knew that this \$55 million figure did
22 not represent actual demand from EMC. EMC's actual demand for that quarter
23 was approximately \$33-34 million. The \$55 million amount, which made up a
24 significant amount of the third quarter revenue guidance, was an inflated figure
25 Moshayedi personally procured by making an undisclosed side deal with EMC to
26 accept \$55 million in STEC's ZeusIOPS products in the third quarter even though
27 EMC had "no more appetite for inventory." Moshayedi knew, or was reckless in
28 not knowing, that these statements regarding STEC's third quarter revenue

1 guidance were false and materially misleading when he made them.

2 83. Second, the statements regarding the demand for STEC's products
3 and its \$120 million Supply Agreement with EMC in the Form 8-K, the Form S-3
4 Registration Statement, and the Form 10-Q were false and misleading. Stating that
5 demand for STEC's products would continue to grow and accelerate, and that the
6 Supply Agreement was part of this expected growth, was materially false and
7 misleading because EMC had informed him that EMC would no longer enter into
8 these kinds of agreements and that EMC's actual demand for STEC's ZeusIOPS
9 product for the third quarter was lower than expected – so low, in fact, Moshayedi
10 had to enter into the secret side deal to have EMC agree to take \$55 million in that
11 product even though it did not have actual demand for that amount. Moshayedi
12 knew, or was reckless in not knowing, that these statements regarding the demand
13 for STEC's products and the Supply Agreement were false and materially
14 misleading when he made them.

15 84. In addition, Moshayedi omitted and failed to ensure disclosure of
16 material, non-public information in the Form 8-K and its attached press release, in
17 the Form 10-Q, in the Form S-3 Registration Statement and during the conference
18 call with analysts on August 3, 2009. Moshayedi omitted and failed to disclose
19 material information regarding EMC's actual demand for STEC's ZeusIOPS
20 product, which was lower than expected. Specifically, he did not disclose that: (1)
21 STEC's third quarter guidance was only able to meet analyst expectations because
22 Moshayedi had orchestrated a secret deal with EMC to have EMC take \$21-22
23 million more in ZeusIOPS product in that quarter than EMC actually needed; and
24 (2) EMC had informed Moshayedi that EMC would not enter into any more supply
25 agreements, like the \$120 million Supply Agreement it executed with STEC in
26 July 2009. Nor did Moshayedi disclose this material, non-public information to
27 the underwriters of the secondary offering of his and his brother's STEC stock. He
28 knew, or was reckless in not knowing, that these omissions were false and

1 materially misleading when he made them.

2 85. Moshayedi had ultimate authority over and made these misstatements
3 and omissions. He orally made the misrepresentations, and omitted and failed to
4 disclose material facts, when making the oral statements during the analyst
5 conference call on August 3, 2009. Moshayedi also made the misrepresentations
6 in his quoted statement in the August 3 press release attached to the Form 8-K, and
7 omitted and failed to disclose material facts when making that quoted statement, or
8 otherwise approved and had ultimate authority over the misrepresentations and
9 omissions in the Form 8-K. Moshayedi signed the Form S-3 Registration
10 Statement, and he also signed the required certification for the Form 10-Q.

11 86. Following the August 3, 2009 disclosures, STEC's stock price
12 declined somewhat, which was expected following the announcement of the
13 secondary offering. STEC's price declined from an opening price of \$35.22 per
14 share on August 3 to a closing price of \$32.75 per share on August 4, 2009.

15 **F. The Price of STEC's Stock Declines Dramatically When Negative**
16 **Information Regarding EMC's Actual Demand Becomes Public**

17 87. On November 3, 2009, STEC issued its third quarter 2009 earnings
18 release. In that release, STEC touted its increased revenues over the prior year and
19 previous quarter. However, Moshayedi also stated in the release that:

20 One of our customers entered into a \$120 million supply
21 agreement with us for shipments covering the second half of
22 2009. We *recently* received preliminary indications that our
23 customer might carry inventory of our ZeusIOPS at the end of
24 2009, which they will use in 2010. . . .

25 (Emphasis added.)

26 88. Consistent with the above disclosure that STEC's major ZeusIOPS
27 customer might carry inventory, STEC's third quarter earnings release also set
28 forth guidance for the fourth quarter that was below analyst consensus estimates.

1 Moshayedi also stated in the release that “[i]f our marketing program is not
2 successful in increasing the demand flow of SSDs, our first quarter of 2010 orders
3 from this customer will be negatively affected.”

4 89. At or about 1:30 p.m. PDT on November 3, 2009, STEC held an open
5 conference call with analysts, which was also webcast, to discuss its third quarter
6 2009 results. Moshayedi participated in that call. During the call, the same analyst
7 who had asked Moshayedi in the August 2009 call about his expectations
8 regarding future supply agreements, asked Moshayedi: “With the supply
9 agreement, I guess even when the inventory runs out, do you expect to have the
10 supply agreement renewed?” Moshayedi responded:

11 It is possible.

12 . . . I don’t think that we need at this point to sign another
13 supply agreement with a customer who is buying exclusively
14 from us and doing everything that they can to promote our
15 SSDs.

16 *So when we did sign the last of our agreement, we did – this*
17 *was a one-off type of a deal.* It was a very big deal for us and
18 we had to go buy the products. Once we bought the products
19 and we’ve got chips coming into us, . . . I don’t think we are
20 going to be asking our customer for another commitment on – I
21 don’t think we are going to need a commitment.

22 (Emphasis added.)

23 90. This was the first time that Moshayedi had publicly disclosed that the
24 July 2009 Supply Agreement with EMC was a one-time deal, even though he was
25 aware of this material fact on August 3, 2009, right before STEC’s third quarter
26 guidance was announced and the Moshayedi brothers’ reaped almost \$268 million
27 in gross proceeds in their secondary offering.

28 91. During the November 3 analyst call, Moshayedi was also asked

1 questions by another analyst whether Moshayedi knew EMC had inventory issues
2 when the Moshayedi brothers sold their stock in August 2009:

3 Analyst: And finally, in August you guys are [*sic*] sold a
4 majority position of your stock.

5 Moshayedi: That's true.

6 Analyst: Can you tell me why you did that back then? *If*
7 *you have any knowledge then that EMC was not*
8 *pushing through as much inventory as you might*
9 *have thought? And then finally, down at these*
10 *levels, are you considering buying any back? I*
11 *mean the stock's basically cut in half from where*
12 *you sold.*

13 Moshayedi: EMC had just placed that PO, so I don't think at
14 that time that they knew that three months down
15 the road, their sales flow wasn't going to be as
16 good as they had thought. . . .

17 (Emphasis added.)

18 92. Moshayedi's statements in the November 3 earnings release and
19 during the November 3 analyst call, claiming he only "recently" learned of EMC's
20 inventory issues, were materially false and misleading. In fact, when he was
21 pressing EMC to order \$55 million in product for the third quarter, Moshayedi was
22 specifically told on July 28 by Timothy Smith of EMC that "[t]here is really no
23 appetite for any more inventory." Indeed, Moshayedi was specifically aware then,
24 and when he sold his stock a few days later, that EMC only had about \$33-34
25 million in actual demand for the third quarter, and that the remaining \$21-22
26 million of the \$55 million he pressed EMC to order in the third quarter was
27 "buffer." Notwithstanding the specific nature of the questions asked by the
28 analysts in the November 3 call, Moshayedi did not disclose in that call or in the

1 earnings release that EMC committed to take \$55 million in product in the third
2 quarter only because he made a last-minute, secret deal with them to do so, which
3 involved “paying for favors” by agreeing to a discount on the products sold to
4 EMC in the fourth quarter by an additional \$2 million.

5 93. Following the November 3, 2009 earnings release and analyst
6 conference call, STEC’s stock price fell 38.9%, from a closing price of \$23.15 per
7 share on November 3, 2009, to a closing price of \$14.14 per share at the close of
8 the market on November 4, 2009.

9 **FIRST CLAIM FOR RELIEF**

10 **Fraud in The Offer or Sale of Securities**

11 **Violations of Section 17(a) of the Securities Act**

12 94. The Commission realleges and incorporates by reference paragraphs 1
13 through 93 above.

14 95. Moshayedi, by engaging in the conduct described above, directly or
15 indirectly, in the offer or sale of securities by the use of means or instruments of
16 transportation or communication in interstate commerce or by use of the mails:

- 17 a. with scienter, employed devices, schemes, or artifices to
18 defraud;
- 19 b. obtained money or property by means of untrue statements of a
20 material fact or by omitting to state a material fact necessary in
21 order to make the statements made, in light of the
22 circumstances under which they were made, not misleading; or
- 23 c. engaged in transactions, practices, or courses of business which
24 operated or would operate as a fraud or deceit upon the
25 purchaser.

26 96. By engaging in the conduct described above, Moshayedi violated, and
27 unless restrained and enjoined will continue to violate, Section 17(a) of the
28 Securities Act, 15 U.S.C. § 77q(a).

1 **SECOND CLAIM FOR RELIEF**

2 **Fraud In Connection With the Purchase or Sale of Securities**

3 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

4 97. The Commission realleges and incorporates by reference paragraphs 1
5 through 96 above.

6 98. Moshayedi, by engaging in the conduct described above, directly or
7 indirectly, in connection with the purchase or sale of a security, by the use of
8 means or instrumentalities of interstate commerce, of the mails, or of the facilities
9 of a national securities exchange, with scienter:

- 10 a. employed devices, schemes, or artifices to defraud;
- 11 b. made untrue statements of a material fact or omitted to state a
12 material fact necessary in order to make the statements made, in
13 light of the circumstances under which they were made, not
14 misleading; or
- 15 c. engaged in acts, practices, or courses of business which operated
16 or would operate as a fraud or deceit upon other persons.

17 99. By engaging in the conduct described above, Moshayedi violated, and
18 unless restrained and enjoined will continue to violate, Section 10(b) of the
19 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §
20 240.10b-5.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, the Commission respectfully requests that the Court:

23 **I.**

24 Issue findings of fact and conclusions of law that Defendant committed the
25 alleged violations.

26 **II.**

27 Issue a judgment, in a form consistent with Fed. R. Civ. P. 65(d),
28 permanently enjoining Moshayedi and his agents, servants, employees and

1 attorneys, and those persons in active concert or participation with any of them,
2 who receive actual notice of the judgment by personal service or otherwise, from
3 violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b)
4 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §
5 240.10b-5.

6 **III.**

7 Order Moshayedi to disgorge all ill-gotten gains from his illegal conduct and
8 any gains or benefits conferred upon Mark Moshayedi, together with prejudgment
9 interest thereon.

10 **IV.**

11 Order Moshayedi to pay civil penalties under Section 20(d) of the Securities
12 Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. §
13 78u(d)(3).

14 **V.**

15 Order Moshayedi to pay civil penalties for insider trading under Section
16 21A(a) of the Exchange Act, 15 U.S.C. § 78u-1(a).

17 **VI.**

18 Enter an order against Moshayedi pursuant to Section 20(e) of the Securities
19 Act, 15 U.S.C. § 77t(e), and Section 21(d)(2) of the Exchange Act, 15 U.S.C. §
20 78u(d)(2), prohibiting him from acting as an officer or director of any issuer that
21 has a class of securities registered pursuant to Section 12 of the Exchange Act, 15
22 U.S.C. § 78l, or that is required to file reports pursuant to Section 15(d) of the
23 Exchange Act, 15 U.S.C. § 78o(d).

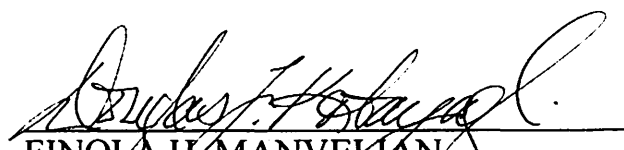
24 **VII.**

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

VIII.

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

DATED: July 19, 2012


FINOLA H. MANVELIAN
DOUGLAS F. KOBAYASHI
Attorneys for Plaintiff
Securities and Exchange Commission

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