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15
 16 UNITED STATES DISTRICT COURT
 17 CENTRAL DISTRICT OF CALIFORNIA
 18

19 SECURITIES AND EXCHANGE
 20 COMMISSION,

21 Plaintiff,

22 vs.

23 MANOUCHEHR MOSHAYEDI,

24 Defendant.
 25
 26
 27
 28

NO. 12-CV-01179-JVS-MLG

**DEFENDANT MANOUCHEHR
 MOSHAYEDI'S ANSWER TO THE
 COMPLAINT**

DEMAND FOR JURY TRIAL

1 Defendant Manouchehr Moshayedi hereby answers the Complaint of the
2 United States Securities Exchange Commission (“Commission”) as follows, and
3 reserves his rights to request dismissal of the Complaint on any and all grounds.
4 To the extent not explicitly admitted, all allegations of the Complaint are denied.¹

5 **INTRODUCTION**

6 The Commission’s claim that Mr. Moshayedi engaged in insider trading is
7 false. At the time of the August 2009 Public Offering, Mr. Moshayedi did not
8 possess any material non-public information and did not engage in insider trading.

9 Mr. Moshayedi and his brothers, Mark and Mike, founded STEC, Inc.
10 (“STEC” or the “Company”) more than two decades ago. In the spring of 2009, in
11 order to diversify his holdings, Mr. Moshayedi established trading plans designed
12 to sell some of his STEC stock over time, at a series of staggered price thresholds.
13 Before those plans went into effect, however, STEC’s stock price rose above all
14 thresholds in the trading plans. Rather than have the shares sold piecemeal through
15 a series of large, unexplained transactions, Mr. Moshayedi, following consultation
16 with STEC’s outside counsel and Board of Directors (the “Board”), instead sold
17 his shares in a more transparent and orderly manner through a registered public
18 offering (the “Public Offering”) in early August of 2009. By choosing this course
19 of action, Mr. Moshayedi and his brother Mark incurred an \$11,160,000
20 underwriting discount on the transaction and paid about \$675,000 in transaction
21 expenses, costs they would not have incurred if they had maintained their
22 established trading plans. The Public Offering was conducted through a
23 prospectus and registration statement that was approved by the Board. The Public
24 Offering was preceded by several weeks of intensive due diligence involving four

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27 ¹ To the extent the headings in the Complaint are intended to constitute factual
28 allegations, Defendant denies each and every such allegation.

1 separate investment banks, legal counsel, accountants, and Company management,
2 all of whom had input into the disclosure documents filed with the Commission.
3 As part of the due diligence process, the underwriters interviewed a few of STEC's
4 key customers including, EMC Corporation ("EMC"). As a result of this detailed
5 process, all material facts were disclosed to purchasers in the August 2009 Public
6 Offering.

7 This extensive process notwithstanding, the Commission contends that at the
8 time of the Public Offering, Mr. Moshayedi was aware of two undisclosed "facts"
9 about STEC's relationship with EMC: (1) that a \$120 million supply agreement
10 between EMC and STEC for the second half of 2009 would be the last supply
11 agreement ever reached between EMC and STEC; and (2) that EMC's full-quarter
12 demand for STEC's ZeusIOPS drives during the third quarter of 2009 would be no
13 more than what EMC had already ordered from STEC during the first month of the
14 quarter. Neither of these "facts" was or could have been known to Mr. Moshayedi
15 at the time of the Public Offering.

16 The Commission first claims that Mr. Moshayedi proceeded with the Public
17 Offering despite learning that EMC would "never enter into a similar [volume]
18 agreement with STEC again." Complaint ¶ 6. This claim is based on a *single*
19 sentence, from a *single* email that Mr. Moshayedi received on the morning of
20 August 3, 2009 (the day the Public Offering was announced) from Tim Smith, the
21 EMC procurement executive who had negotiated the \$120 million supply
22 agreement for EMC. But this email was just a small part of a lengthy and ongoing
23 discussion between the two companies about a potential volume commitment for
24 2010, involving volumes ranging from \$200 million to \$400 million. These
25 discussions had begun before the August 3 email and—contrary to the
26 Commission's claim—they continued for several weeks afterwards. In fact, EMC
27 reached another agreement with STEC in April 2010 and purchased over \$100
28 million in ZeusIOPS drives in that year.

1 Taking the August 3 email as a business negotiation tactic (and not as a
2 statement that EMC would never enter another volume deal, as the Commission
3 claims), Mr. Moshayedi responded that while STEC could offer EMC competitive
4 pricing without a volume commitment, a volume deal would enable EMC to
5 continue to benefit from the significant pricing discounts it received in the \$120
6 million supply agreement. Mr. Moshayedi's interpretation of Mr. Smith's email
7 proved correct, as negotiations regarding a volume commitment for 2010
8 continued in August 2009. Indeed, just days after sending the email that the
9 Commission claims negated any chance that EMC would ever enter into another
10 volume agreement, Mr. Smith and EMC's then-Chief Procurement Officer, Trevor
11 Schick, met with Mr. Moshayedi in Boston to discuss a potential volume
12 agreement for 2010. Messrs. Schick and Smith told Mr. Moshayedi that EMC
13 might be willing to commit to \$200 million if the price were right. After that
14 meeting, Mr. Moshayedi and Mr. Smith exchanged many more emails discussing
15 the possible volume commitment for 2010.

16 By early September, Mr. Smith told Mr. Moshayedi that the "only real issue
17 on the table" standing in the way of a \$200 million volume deal for the first three
18 quarters of 2010 was EMC's desire for price protection should a viable alternative
19 to STEC emerge during that time period. A few days later, on September 10,
20 2009, Mr. Smith rejected STEC's proposal for a 2010 volume commitment, while
21 stating "of course, our partnership continues to grow and strengthen and it's our
22 hope that we can continue to have STEC as our majority SSD supplier well into the
23 future."

24 Mr. Smith's August 3 email was a small part of this ongoing negotiation
25 process. As of August 3, 2009 when he sold his shares, Mr. Moshayedi knew that
26 STEC's negotiations with EMC for a 2010 volume commitment were ongoing, and
27 he did not know—and could not have known—whether the parties would reach an
28 agreement for 2010. There is no basis for the Commission's assertion that Mr.

1 Moshayedi knew on August 3 that EMC would never enter into another agreement
2 like the \$120 million supply agreement.

3 The Commission's second claim—that Mr. Moshayedi knew in early August
4 2009 that EMC's "actual demand" for STEC's ZeusIOPS drives for the third
5 quarter of 2009 was just \$33 million to \$34 million—is also incorrect. As of July
6 27, 2009—less than one month into the third quarter—EMC had placed purchase
7 orders with STEC for \$34.6 million worth of ZeusIOPS drives. EMC never said
8 that it would not place additional orders or that it would not have additional
9 demand during the third quarter. On the contrary, as of July 27, 2009, EMC had
10 already asked STEC to build another \$9 million of ZeusIOPS drives as a "buffer"
11 to satisfy potential "upside" demand during the quarter. By that date, in other
12 words, EMC had already committed to buy over \$43 million worth of ZeusIOPS
13 drives during the third quarter of 2009.

14 As it was just one month into the quarter, moreover, there was every reason
15 for Mr. Moshayedi to believe that \$43 million would not be the full amount of
16 EMC's demand for the entire quarter. In fact, throughout the first half of 2009,
17 EMC's demand for ZeusIOPS drives had been skyrocketing: EMC bought about
18 \$7.6 million worth of ZeusIOPS drives from STEC during the first quarter of 2009,
19 and nearly \$33.3 million during the second quarter. During this period, EMC also
20 told STEC that EMC expected its demand for ZeusIOPS drives to double every
21 quarter, and the massive increase in EMC's demand from the first to the second
22 quarter appeared to confirm that projection.

23 At the same time, because SSDs were a new development in enterprise
24 applications, predicting accurate demand was impossible, and EMC was unable to
25 know in advance the demand for its systems that would integrate SSDs. EMC has
26 long warned investors about its "hockey-stick" sales pattern, whereby EMC
27 typically ships a disproportionate percentage of total sales in the last month of each
28 quarter. During the first half of 2009, due to its rapidly escalating demand and its

1 “hockey-stick” sales pattern, EMC repeatedly underestimated its demand for
2 ZeusIOPS. Thus, in the first and second quarters of 2009, EMC ended up
3 identifying a significant portion of its overall quarterly demand during the second
4 and even third months of the quarter.

5 Mr. Moshayedi therefore had no reason to assume that the \$43 million that
6 EMC had agreed to purchase as of late July, immediately before Mr. Moshayedi
7 sold his shares, would be the full extent of EMC’s demand for the third quarter.
8 On the contrary, given EMC’s purchasing behavior during the first two quarters of
9 2009, Mr. Moshayedi had every reason to believe that EMC would again come
10 back to STEC with “upside” demand during the second and third months of the
11 third quarter.

12 The Commission also claims that Mr. Moshayedi “secretly” negotiated with
13 EMC to allocate \$55 million of the \$120 million contract to the third quarter of
14 2009 so that STEC could meet consensus analyst estimates for that quarter.
15 According to the Commission, the consensus estimates had been increased on July
16 23, 2009, due to a new report by Noble Financial, and as a result of that report,
17 STEC’s guidance would not have met consensus if it had assumed only \$43
18 million in sales to EMC. Complaint ¶ 58. In fact, the July 23 report from Noble
19 Financial actually affirmed Noble Financial’s prediction of third quarter guidance
20 below the mean of then-existing consensus estimates—a prediction that had the
21 practical effect of lowering, not raising, those consensus estimates.

22 EMC ultimately agreed to buy \$55 million worth of ZeusIOPS drives during
23 the third quarter, but required that STEC agree to give EMC a discount of about
24 3% on the drives that EMC was required to buy during the fourth quarter. The
25 discount was accomplished by STEC providing additional drives to EMC for the
26 same \$65 million price. The cost to STEC of providing the additional drives was
27 less than \$1 million. There was nothing improper or even unusual about this
28 agreement. Price or product concessions in exchange for firm order commitments

1 are an ordinary and well-known business practice designed to achieve
2 predictability of demand and thereby afford manufacturers more orderly
3 procurement and more efficient use of production resources. Moreover, the
4 revised pricing for which EMC negotiated resulted in EMC obtaining more drives
5 than it would have under the original \$120 million agreement. There is no reason
6 to believe that EMC would have structured the discount that way if, as the
7 Commission claims, EMC already knew that it was going to carry significant
8 excess inventory into 2010. The fact is, at the time of the Public Offering, EMC
9 did not know its own future demand, and Mr. Moshayedi could not possibly have
10 known it either. Emails exchanged in October 2009 among EMC executives reveal
11 EMC's own shock when EMC itself realized for the first time that it had a
12 verifiable inventory overhang issue.

13 In short, Mr. Moshayedi was unaware of any material information that had
14 not been publicly disclosed at the time of the Public Offering. The due diligence
15 performed by multiple professional firms and the underwriters further ensured the
16 disclosure of all material information. The Commission's claim that Mr.
17 Moshayedi engaged in insider trading is false and should be dismissed.

18 **ANSWER TO SPECIFIC ALLEGATIONS**

19 Mr. Moshayedi incorporates the Introduction of this Answer as if fully set
20 forth therein and answers each specific allegation as follows:

21 1. Answering Paragraph 1, Mr. Moshayedi admits that this Court has
22 jurisdiction over federal claims brought under 15 U.S.C. §§ 77t(b), 77t(d) &
23 77v(a), and 15 U.S.C. §§ 78u(d)(1), 78u(d)(3), 78u-1(a)(1)(A) & 78aa(a). Mr.
24 Moshayedi also admits that he has, directly or indirectly, used the United States
25 mail, interstate telephone communications and the facilities of the national
26 securities markets. Mr. Moshayedi denies the remaining allegations in this
27 paragraph, except to the extent that the allegations constitute legal conclusions
28 that do not require a response.

1 2. Answering Paragraph 2, Mr. Moshayedi admits that venue in this
2 district is proper because he resides and conducts business in this district. Mr.
3 Moshayedi denies the remaining allegations in this paragraph, except to the extent
4 that the allegations constitute legal conclusions that do not require a response.

5 3. Answering Paragraph 3, Mr. Moshayedi denies the allegations in the
6 first sentence which set forth the Commission’s characterization of this action.
7 Mr. Moshayedi admits that he is STEC’s Chief Executive Officer (“CEO”) and
8 Chairman of STEC’s Board, and admits that STEC manufactures and sells data
9 storage devices for computer systems, but denies the remaining allegations in the
10 second sentence.

11 4. Answering Paragraph 4, Mr. Moshayedi states that information in the
12 first sentence about STEC’s stock prices is publicly available. The allegations in
13 the second and third sentences include legal conclusions regarding the cause of
14 movement in STEC’s stock prices that do not require a response from Mr.
15 Moshayedi. Mr. Moshayedi admits that STEC manufactures a flash-based SSD
16 product called ZeusIOPS and that STEC announced in July 2009 that it had
17 entered into a supply agreement with one of STEC’s original equipment
18 manufacturers (“OEM”) customers, which agreed to buy \$120 million of
19 ZeusIOPS drives in the second half of 2009. Mr. Moshayedi denies all other
20 factual assertions in these sentences. Mr. Moshayedi’s statements referenced in
21 the fourth sentence are included in publicly available documents and speak for
22 themselves. Except as expressly admitted, the allegations in Paragraph 4
23 constitute a misleading and inaccurate description of relevant facts and Mr.
24 Moshayedi denies the allegations on that basis.

25 5. The allegations contained in Paragraph 5 constitute a misleading and
26 inaccurate description of relevant facts and Mr. Moshayedi denies the allegations
27 on that basis, except Mr. Moshayedi admits that he sold certain shares of his
28 STEC common stock in the Public Offering on August 3, 2009. Additionally,

1 Paragraph 5 sets forth legal conclusions that do not require a response from Mr.
2 Moshayedi. To the extent this paragraph contains factual allegations requiring a
3 response, Mr. Moshayedi denies the allegations.

4 6. The allegations contained in Paragraph 6 constitute a misleading and
5 inaccurate description of relevant facts and Mr. Moshayedi denies the allegations
6 on that basis. These allegations represent a new theory that the Commission
7 cobbled together after learning that each of its prior theories, like the current one,
8 was inconsistent with the evidence. In creating these allegations, the Commission
9 relies on a highly selective view of the record that is directly contradicted by
10 extensive evidence provided to the Commission. Paragraph 6 also sets forth legal
11 conclusions that do not require a response from Mr. Moshayedi. To the extent this
12 paragraph contains factual allegations requiring a response, Mr. Moshayedi denies
13 the allegations.

14 7. Answering Paragraph 7, Mr. Moshayedi denies that he entered into
15 any “secret side deal” with EMC. To the extent the Commission alleges that Mr.
16 Moshayedi had a duty to disclose price discounts offered to solidify customer
17 orders, Mr. Moshayedi denies each and every such allegation, denies that he
18 engaged in wrongdoing of any type or nature, and denies that he engaged in any
19 violation of law. The allegations contained in Paragraph 7 constitute a misleading
20 and inaccurate description of relevant facts and Mr. Moshayedi denies the
21 allegations on that basis. Paragraph 7 also sets forth legal conclusions that do not
22 require a response from Mr. Moshayedi. To the extent this paragraph contains
23 factual allegations requiring a response, Mr. Moshayedi denies the allegations.

24 8. The allegations contained in Paragraph 8 constitute a misleading and
25 inaccurate description of relevant facts and Mr. Moshayedi denies the allegations
26 on that basis. Paragraph 8 also sets forth legal conclusions that do not require a
27 response from Mr. Moshayedi. To the extent this paragraph contains factual
28 allegations requiring a response, Mr. Moshayedi denies the allegations.

1 9. Answering Paragraph 9, Mr. Moshayedi admits that on August 3,
2 2009, STEC announced the Public Offering, but denies the Commission's
3 allegations regarding the Public Offering because they are inaccurate. As
4 disclosed in the Prospectus Supplement filed with the Commission, Mr.
5 Moshayedi and his brother, Mark, sold 4,112,618 and 4,887,382 shares of STEC
6 common stock through the Public Offering, respectively. Of the shares sold by
7 Mr. Moshayedi, 1,070,496 were sold by Mr. Moshayedi as trustee for a trust
8 benefiting Mark's children and 70,464 were shares held by Mr. Moshayedi's
9 children. Excluding shares held by Mr. Moshayedi as a trustee and shares held by
10 Mr. Moshayedi's children, Mr. Moshayedi received proceeds, before taxes and
11 expenses of \$88,436,542. The allegations contained in the remainder of
12 Paragraph 9 constitute a misleading and inaccurate description of relevant facts
13 and Mr. Moshayedi denies the allegations on that basis. Paragraph 9 also sets
14 forth legal conclusions that do not require a response from Mr. Moshayedi.
15 Except as expressly admitted, Mr. Moshayedi denies the allegations in this
16 paragraph.

17 10. Paragraph 10 sets forth legal conclusions and the relief sought by the
18 Commission which do not require a response from Mr. Moshayedi. To the extent
19 this paragraph contains factual allegations requiring a response, Mr. Moshayedi
20 denies the allegations.

21 11. Answering Paragraph 11, Mr. Moshayedi admits that he is STEC's
22 CEO and Chairman of STEC's Board. Mr. Moshayedi further admits that he has
23 held these positions since 1990, when he founded the Company with his brothers,
24 Mark and Mike Moshayedi. Mr. Moshayedi further admits that he obtained a
25 Bachelors of Science degree in Engineering in 1982, and a Master's degree in
26 Business Administration in 1985. Mr. Moshayedi further admits that he resides in
27 Corona del Mar, California.

28

1 12. Answering Paragraph 12, Mr. Moshayedi admits that he reviewed and
2 approved STEC filings with the Commission during the relevant period, but
3 denies all other allegations in this paragraph.

4 13. Answering Paragraph 13, Mr. Moshayedi admits that STEC is a
5 California corporation with its principal place of business in Santa Ana,
6 California, and that STEC designs, manufactures, and markets computer storage
7 devices using “flash” memory and “Dynamic Random Access Memory,” or
8 “DRAM,” technologies. Mr. Moshayedi further admits that STEC specializes in
9 developing high speed, high capacity computer storage cards that use flash solid
10 state drives, or “SSDs.” Mr. Moshayedi further admits that Mark has been the
11 President of STEC since March 2007, and its Chief Operating Officer and Chief
12 Technical Officer since 1995. Except as expressly admitted, Mr. Moshayedi
13 denies the allegations in this paragraph.

14 14. Answering Paragraph 14, Mr. Moshayedi admits that STEC securities
15 have been publicly traded on the NASDAQ National Market since September
16 2000, and that STEC’s stock has been listed on the NASDAQ Global Select
17 Market since July 2006. Mr. Moshayedi further admits that STEC securities are
18 registered with the Commission pursuant to Section 12(b) of the Exchange Act, 15
19 U.S.C. § 78l(b). Except as expressly admitted, Mr. Moshayedi denies the
20 allegations in this paragraph.

21 15. Answering Paragraph 15, with regard to the first sentence, Mr.
22 Moshayedi admits that STEC had an ethics code for all of its directors, officers
23 and employees, who were required to sign a form acknowledging having received
24 and read STEC’s Code of Business Conduct and Ethics (“Ethics Code”). With
25 regard to the remaining sentences in this paragraph, STEC’s Ethics Code is
26 publicly available on STEC’s website and speaks for itself. The Commission
27 takes statements from the Ethics Code out of context to suggest meaning not
28

1 intended by that document. Except as expressly admitted, Mr. Moshayedi denies
2 the allegations in this paragraph.

3 16. Answering Paragraph 16, STEC's Ethics Code is publicly available on
4 STEC's website and speaks for itself. The Commission takes statements from the
5 Ethics Code out of context to suggest meaning not intended by that document and
6 Mr. Moshayedi denies the allegations on that basis. Except as expressly admitted,
7 Mr. Moshayedi denies the allegations in this paragraph.

8 17. Answering Paragraph 17, with regard to the first sentence, Mr.
9 Moshayedi admits that STEC manufactures a flash-based SSD product called
10 ZeusIOPS. With regard to the second sentence, STEC's gross margin varied
11 according to the time period and customer. This sentence constitutes a misleading
12 and inaccurate oversimplification of the causes of any increase in revenue and
13 gross margin, and Mr. Moshayedi denies the allegations on that basis. Except as
14 expressly admitted, Mr. Moshayedi denies the allegations in this paragraph.

15 18. Answering Paragraph 18, Mr. Moshayedi admits that STEC's product
16 line is marketed to and used by OEMs, which use STEC's devices in their
17 products. Mr. Moshayedi further admits that EMC was, at all relevant times, and
18 remains today, an OEM customer of STEC. As disclosed in STEC's filings with
19 the Commission, EMC was STEC's largest customer in 2009 and 2010. Through
20 late 2010, ZeusIOPS was the only enterprise-class SSD product line qualified for
21 use in EMC's storage systems. EMC's business accounted for 15.2%, 45.1%, and
22 37.8% of STEC's total revenues in 2008, 2009, and 2010 respectively. EMC's
23 business accounted for approximately 90% of STEC's ZeusIOPS sales in 2009.
24 Except as expressly admitted, Mr. Moshayedi denies the allegations in this
25 paragraph.

26 19. Answering Paragraph 19, Mr. Moshayedi admits that in July 2009,
27 STEC and EMC entered a supply agreement for ZeusIOPS drives for the third and
28 fourth quarters of 2009. Mr. Moshayedi denies the characterization of the supply

1 agreement as “unique” as vague and ambiguous. STEC’s sales of ZeusIOPS
2 drives in the first half of 2009 followed a “hockey stick” demand pattern by EMC,
3 as EMC’s demand was skewed heavily toward the end of each quarter and year,
4 rendering EMC’s demand for ZeusIOPS drives uneven and unpredictable. By
5 entering the supply agreement, STEC was able to commit cash to purchase the
6 flash components required to manufacture EMC’s customized ZeusIOPS drives to
7 meet EMC’s increasing supply requirements. Except as expressly admitted, Mr.
8 Moshayedi denies the allegations in this paragraph.

9 20. Answering Paragraph 20, Mr. Moshayedi states that STEC’s public
10 statements and information about historical prices for STEC stock are publicly
11 available. The Commission’s allegations in Paragraph 20 are mischaracterizations
12 of the \$120 million supply agreement and STEC’s public statements announcing
13 the agreement and do not require a response from Mr. Moshayedi. Mr.
14 Moshayedi denies the remaining allegations in Paragraph 20.

15 21. Answering Paragraph 21, Mr. Moshayedi admits that he had many
16 conversations with Mark, including conversations regarding the desire to diversify
17 their holdings and obtain a good price for the Company they had built together
18 over nearly twenty years. Mr. Moshayedi and Mark retained a substantial
19 ownership interest in the Company since founding STEC in 1990 and after the
20 Company went public in 2000. They began to diversify their holdings in 2003
21 when they each sold over one million shares in a public offering in October 2003.
22 In November 2008, they decided to further diversify by selling additional STEC
23 shares and entered into 10b5-1 trading plans, under which they would have sold 2
24 million shares each.

25 In March 2009, Mr. Moshayedi and Mark advised the Board that they
26 wanted to add additional shares to their November 2008 plans, but were counseled
27 by the Board that, rather than adding shares to the existing plans, they should
28 cancel their plans and enter into new plans. In consultation with legal counsel and

1 the Board, Mr. Moshayedi and Mark cancelled their plans in late April 2009 and,
2 in mid-May 2009, established new plans. Under the May 10b5-1 plans, Mr.
3 Moshayedi would have sold about 4.7 million shares starting on September 15,
4 2009 and Mark would have sold about 5 million shares starting on August 15,
5 2009, at then-current market prices if they exceeded thresholds of between
6 \$18.75-\$22.50 and \$17.90-\$22.70 per share, respectively.

7 Before any shares were scheduled for potential sale under either Mr.
8 Moshayedi's or Mark's plans, however, STEC's stock price rose above all of the
9 price thresholds that had been selected with the expectation that the sales would
10 be spread over time. In Mr. Moshayedi's case, all of the sales would have been
11 triggered beginning on September 15, 2009, as STEC's stock price had already
12 exceeded the top end of the plan's \$22.50 threshold, rather than pursuant to the
13 orderly, staggered sales that he had expected if STEC's stock price had more
14 gradually increased over time. To avoid the harm to STEC and its shareholders
15 from large, piecemeal sales by the founders without an accompanying
16 explanation, and following consultation with STEC's outside counsel and the
17 Board, Mr. Moshayedi and Mark cancelled their plans and instead agreed to sell
18 their stock through an orderly and publicly disclosed Public Offering. Mr.
19 Moshayedi and his brother incurred an \$11,160,000 underwriting discount on the
20 transaction and paid about \$675,000 in transaction expenses, costs they would not
21 have incurred if they had maintained their 10b5-1 trading plans. Except as
22 expressly admitted, Mr. Moshayedi denies the allegations in this paragraph.

23 22. Answering Paragraph 22, with regard to the first and second
24 sentences, Mr. Moshayedi admits that on March 12, 2009, STEC issued a news
25 release regarding its fourth quarter and full-year results and that Mr. Moshayedi
26 participated in a conference call with analysts that day. With regard to the
27 remainder of Paragraph 22, STEC's press release and Mr. Moshayedi's statements
28 are publicly available and speak for themselves. Consistent with Mr. Moshayedi's

1 statements, revenue from the ZeusIOPS product line for the first six months of
2 2009 surpassed the total of ZeusIOPS revenue achieved during the full-year 2008.
3 Except as expressly admitted, Mr. Moshayedi denies the allegations in this
4 paragraph.

5 23. Answering Paragraph 23, Mr. Moshayedi states that the press release
6 issued by STEC on March 12, 2009 is publicly available. Mr. Moshayedi admits
7 that STEC's first quarter revenue guidance on March 12, 2009, exceeded the
8 consensus estimates of the industry analysts covering STEC. Except as expressly
9 admitted, Mr. Moshayedi denies the allegations in this paragraph.

10 24. Answering Paragraph 24, Mr. Moshayedi states that information about
11 historical prices for STEC stock is publicly available and speaks for itself.

12 25. Answering Paragraph 25, Mr. Moshayedi reincorporates his answer to
13 Paragraph 21. Mr. Moshayedi and his brother Mark canceled their 10b5-1 plans
14 in April 2009 and established new plans in mid-May 2009 upon consultation with,
15 and at the advice of, legal counsel and the Board. The allegations regarding
16 statements made by Mr. Moshayedi's brother mischaracterize the statements and,
17 in any event, are irrelevant and misleading as to claims against Mr. Moshayedi.
18 To the extent any of the allegations in Paragraph 25 were intended by the
19 Commission to insinuate impropriety by Mr. Moshayedi, Mr. Moshayedi denies
20 each and every such allegation, denies that he engaged in wrongdoing of any type
21 or nature, and denies that he engaged in any violation of law.

22 26. Answering Paragraph 26, Mr. Moshayedi admits that on May 11,
23 2009, STEC issued a news release announcing its first quarter 2009 results. The
24 press release issued by STEC on May 11, 2009 is publicly available. Except as
25 expressly admitted, Mr. Moshayedi denies the allegations in this paragraph.

26 27. Answering Paragraph 27, Mr. Moshayedi states that the press release
27 issued by STEC on May 11, 2009 is publicly available. The allegations contained
28 in Paragraph 27 contain the Commission's mischaracterization of STEC's May

1 11, 2009 press release and do not require a response from Mr. Moshayedi. To the
2 extent this paragraph contains factual allegations requiring a response, Mr.
3 Moshayedi denies the allegations.

4 28. Answering Paragraph 28, Mr. Moshayedi states that the press release
5 issued by STEC on May 11, 2009 is publicly available. Mr. Moshayedi admits
6 that STEC's second quarter revenue guidance on May 11, 2009 exceeded the
7 consensus estimates of the industry analysts covering STEC.

8 29. Answering Paragraph 29, Mr. Moshayedi admits that on May 11,
9 2009, he participated in a conference call with industry analysts on behalf of
10 STEC. The transcript of the earnings call is publicly available. Except as
11 expressly admitted, Mr. Moshayedi denies the remaining allegations in this
12 paragraph.

13 30. Answering Paragraph 30, Mr. Moshayedi states that the information
14 about STEC's historical stock prices is publicly available. Except as expressly
15 admitted, Mr. Moshayedi denies the allegations in this paragraph.

16 31. Answering Paragraph 31, Mr. Moshayedi admits that in the first half
17 of 2009, he assisted in negotiating a supply agreement with EMC. In early 2009,
18 STEC saw a surge in demand for its products. In March 2009, near the end of the
19 first quarter, EMC executives predicted that EMC's requirements for ZeusIOPS
20 drives would double each quarter in 2009, as EMC was selling "every Flash drive
21 we could get our hands on." EMC's ZeusIOPS purchases in the first half of
22 2009—approximately \$7.6 million in the first quarter and \$33.3 million in the
23 second quarter—supported EMC's prediction that its quarter-over-quarter demand
24 for ZeusIOPS drives would dramatically increase. In the second quarter of 2009,
25 EMC's escalating orders were causing STEC to consume all of the flash memory it
26 had purchased for the year. Given EMC's ever-increasing demand and its
27 prediction in early 2009 that its demand would double from quarter to quarter that
28 year, STEC realized that it would need to place at risk a large percentage of its

1 available cash to purchase the flash components required to manufacture EMC's
2 customized ZeusIOPS drives during the second half of 2009. STEC was
3 understandably hesitant to take such a risk without a commitment from EMC.
4 Accordingly, Mr. Moshayedi negotiated an agreement with EMC pursuant to
5 which EMC agreed to purchase at least \$120 million of ZeusIOPS SSDs from
6 STEC for the third and fourth quarters of 2009 in exchange for a cost reduction on
7 drives purchased. Mr. Smith documented the agreement in an email indicating that
8 as part of the agreement STEC would work with EMC to provide cost reductions
9 in addition to those guaranteed by the agreement. In reducing the agreement to
10 writing, EMC explicitly reserved the right to purchase more than \$120 million in
11 the second half of 2009 at the negotiated prices, providing further indications of
12 EMC's belief about the high growth potential for SSDs. Except as expressly
13 admitted, Mr. Moshayedi denies the allegations in this paragraph.

14 32. Answering Paragraph 32, Mr. Moshayedi admits that prior to the \$120
15 million supply agreement with EMC, STEC did not have supply agreements for
16 ZeusIOPS drives from its customers. Sales of ZeusIOPS drives were made
17 through individual purchase orders, or in certain cases, under master agreements
18 governing the terms and conditions of the relationship. At that time, STEC's
19 customers had not begun volume production of products incorporating ZeusIOPS
20 drives. As the market grew, however, a number of factors allowed STEC to
21 negotiate for volume guarantees. First, STEC was EMC's only qualified vendor
22 of enterprise-class SSDs. Second, EMC's demand for ZeusIOPS drives was
23 skyrocketing. Third, STEC was the only SSD vendor qualified with STEC's other
24 OEM customers, thereby creating competitive pressure on EMC to enter into a
25 volume commitment with STEC to assure access to a potentially limited supply of
26 ZeusIOPS drives. Based on information received from Mr. Smith, as well as
27 EMC's reservation of the right in the \$120 million supply agreement to purchase
28 even more than this volume at the agreed-upon prices, STEC believed that \$120

1 million worth of drives would likely satisfy only part of EMC's demand during
2 the second half of 2009. In fact, STEC and EMC had originally discussed that the
3 supply agreement should be for \$200 million. STEC also believed that EMC's
4 growing demand, the growth of the market for enterprise-class SSDs expected by
5 recognized third-party industry analysts, EMC's own public and private
6 statements that it anticipated strong and continuing demand for SSDs, and STEC's
7 position as the only SSD vendor qualified with its OEM customers would result in
8 growth of ZeusIOPS sales into 2010 and, potentially, further volume
9 commitments from EMC and other OEM customers. Except as expressly
10 admitted, Mr. Moshayedi denies the allegations in this paragraph.

11 33. Answering Paragraph 33, Mr. Moshayedi admits that on June 15,
12 2009, he sent an email to certain company personnel. Except as expressly
13 admitted, Mr. Moshayedi denies the remaining allegations in this paragraph.

14 34. Answering Paragraph 34, Mr. Moshayedi admits that he received and
15 responded to an email from Mr. Smith on June 16, 2009. Except as expressly
16 admitted, Mr. Moshayedi denies the remaining allegations in this paragraph.

17 35. Answering Paragraph 35, Mr. Moshayedi admits that he received and
18 participated in an email exchange with Mr. Smith on June 16, 2009. Mr. Smith
19 made statements to Mr. Moshayedi indicating that EMC never makes volume
20 commitments with suppliers, both before and after EMC signed the \$120 million
21 volume agreement with STEC. Yet EMC engaged in negotiations regarding a
22 potential volume agreement with STEC for 2010, both before and after EMC
23 signed the \$120 million volume agreement. This inconsistency led Mr.
24 Moshayedi to believe that Mr. Smith's statements indicating that EMC never
25 agreed to volume commitments were a mere negotiating tactic. To the extent any
26 of the allegations in Paragraph 35 were intended by the Commission to insinuate
27 impropriety by Mr. Moshayedi, Mr. Moshayedi denies each and every such
28 allegation, denies that he engaged in wrongdoing of any type or nature, and denies

1 that he engaged in any violation of law.

2 36. Answering Paragraph 36, Mr. Moshayedi states that the news release
3 issued by STEC on June 16, 2009 is publicly available. With regard to the fourth
4 sentence, Mr. Moshayedi admits that STEC's second quarter revenue guidance
5 issued on June 16, 2009, exceeded the consensus estimates of the industry analysts
6 covering STEC for second quarter revenue. Except as expressly admitted, Mr.
7 Moshayedi denies the allegations in this paragraph.

8 37. Answering Paragraph 37, Mr. Moshayedi states that the information
9 about historical prices for STEC stock is publicly available. Except as expressly
10 admitted, Mr. Moshayedi denies the allegations in this paragraph.

11 38. Answering Paragraph 38, Mr. Moshayedi admits that on July 13,
12 2009, STEC and EMC amended the parties' January 2008 master purchase
13 agreement, and executed "Amendment No. 2 to Master Purchase Agreement
14 between EMC and STEC" ("Amendment No. 2"). Amendment No. 2 sets forth
15 the terms of the \$120 million supply agreement and the language of Amendment
16 No. 2 speaks for itself. Except as expressly admitted, Mr. Moshayedi denies the
17 allegations in this paragraph.

18 39. Answering Paragraph 39, Mr. Moshayedi admits that in Amendment
19 No. 2, EMC committed to purchase at least \$120 million of ZeusIOPS drives from
20 STEC in the second half of 2009 in exchange for a 3.33% price reduction on those
21 purchases. Mr. Moshayedi further admits that Amendment No. 2 did not
22 memorialize how the \$120 million supply agreement would be split in the third
23 and fourth quarters of 2009. With regard to the second and third sentences, the
24 language of Amendment No. 2 speaks for itself. To Mr. Moshayedi's knowledge
25 EMC anticipated that its orders could grow higher than \$120 million in the second
26 half of 2009, as EMC explicitly reserved the right to purchase more than \$120
27 million in the second half of 2009 at the negotiated prices. Except as expressly
28 admitted, Mr. Moshayedi denies the allegations in this paragraph.

1 40. Answering Paragraph 40, Mr. Moshayedi reincorporates his answer to
2 Paragraph 21. The allegations in the first sentence constitute a misleading and
3 inaccurate characterization of Mr. Moshayedi's decision to adopt and then cancel
4 his 10b5-1 plans. When STEC's stock price rose above all of the price thresholds
5 that had been selected with the expectation that the sales would be spread over
6 time, and following consultation with STEC's outside counsel and the Board, Mr.
7 Moshayedi and Mark decided to cancel their plans in July 2009 and instead agreed
8 to sell their stock through an orderly and publicly disclosed public offering
9 underwritten by four major investment banks. Mr. Moshayedi admits that he sent
10 an email to Mark on July 11, 2009. The statements in this email speak for
11 themselves. Mr. Moshayedi and Mark carefully considered the pros and cons of
12 selling their shares through the existing 10b5-1 plans or through the Public
13 Offering, including the costs of executing the Public Offering and the potential
14 adverse impact to the stock price of leaving the 10b5-1 plans in place. Except as
15 expressly admitted, Mr. Moshayedi denies the allegations in this paragraph.

16 41. Answering Paragraph 41, Mr. Moshayedi admits that his 10b5-1
17 plans, as well Mark's 10b5-1 plans, called for the sale of their shares in
18 increments at certain, pre-determined prices. Specifically, under his trading plans,
19 Mr. Moshayedi would have sold about 4.7 million shares starting on September
20 15, 2009, at current market prices if they exceeded thresholds of between \$18.75
21 and \$22.50 per share—about 25 percent above the then-current market price.
22 Allegations regarding statements made by Mr. Moshayedi's brother
23 mischaracterize the statements and, in any event, are irrelevant and misleading as
24 to claims against Mr. Moshayedi. Except as expressly admitted, Mr. Moshayedi
25 denies the allegations in this paragraph.

26 42. Answering Paragraph 42, Mr. Moshayedi admits that on July 16,
27 2009, the Board held a special telephonic meeting to discuss the Public Offering,
28 the filing of a Form S-3 Registration Statement in order for STEC to become a

1 well-known seasoned issuer, the timetable of the offering and STEC's second
2 quarter earnings announcement on August 3, 2009, and the termination of Mr.
3 Moshayedi's and Mark's 10b5-1 plans. Mr. Moshayedi presided over the
4 telephonic meeting as he was required to as Chairman of the Board. As of July
5 2009, the Board was composed of Mr. Moshayedi, Mark, and five independent
6 directors that were not employed by STEC. Mr. Moshayedi and Mark recused
7 themselves from all votes on proposals discussed at the July 16, 2009 special
8 telephonic meeting, including the votes regarding the approval of the Public
9 Offering and the termination of Mr. Moshayedi's and Mark's 10b5-1 plans. The
10 Board acknowledged Mr. Moshayedi's and Mark's interest in the sale of STEC
11 shares and carefully considered the benefits to the Company resulting from the
12 offering, including the fact that a public offering is a more transparent and orderly
13 manner to sell securities than through the existing 10b5-1 trading plans and the fact
14 that STEC would undergo thorough diligence, thereby better positioning the
15 Company to undertake an offering in the future. In addition to the advantages, the
16 Board discussed the risks of the Public Offering, including the potential adverse
17 market reaction. After careful consideration of the benefits and risks, and in
18 consultation with STEC's outside counsel, the Board agreed that Mr. Moshayedi
19 and Mark should cancel their 10b5-1 plans to avoid the consequent potential harm
20 that STEC and its shareholders would suffer from large, piecemeal sales by the
21 founders of the Company without an accompanying explanation, and approved the
22 sale of Mr. Moshayedi's and Mark's stock through an orderly and publicly
23 disclosed offering underwritten by four major investment banks. Except as
24 expressly admitted, Mr. Moshayedi denies the allegations in this paragraph.

25 43. Answering Paragraph 43, Mr. Moshayedi states that the press release
26 issued by STEC on July 16, 2009 is publicly available and speaks for itself. In
27 announcing the \$120 million supply agreement, STEC did not predict the level of
28 EMC's purchases after the second half of 2009, did not state whether there would

1 be any future volume commitments between STEC and EMC, and did not predict
2 how much product EMC would use during the second half of 2009. The press
3 release incorporated by reference cautionary language about the risks and
4 uncertainties of STEC's business, including that its customers typically bought
5 through individual purchase orders that could be changed or cancelled with
6 minimal or no penalties, as well as the risks attendant to a new and evolving
7 market, including difficulties in forecasting customer demand, fluctuations in order
8 levels from period-to-period, and the risk of customers' inventory build-ups.
9 Except as expressly admitted, Mr. Moshayedi denies the allegations in this
10 paragraph.

11 44. Answering Paragraph 44, Mr. Moshayedi states that the press release
12 issued by STEC on July 16, 2009, is publicly available and speaks for itself. To
13 the extent this paragraph contains factual allegations requiring a response, Mr.
14 Moshayedi denies the allegations.

15 45. Answering Paragraph 45, Mr. Moshayedi states that the press release
16 issued by STEC on July 16, 2009, is publicly available and speaks for itself. At
17 EMC's request, the July 16, 2009 press release did not identify EMC as the
18 counter-party to the supply agreement and for business reasons did not include
19 information about ZeusIOPS pricing under the supply agreement—consistent with
20 STEC's practice not to disclose pricing information for ZeusIOPS, a customized
21 product with negotiated pricing unique to each customer. Except as expressly
22 admitted, Mr. Moshayedi denies the allegations in this paragraph.

23 46. Answering Paragraph 46, Mr. Moshayedi states that the information
24 about historical prices for STEC stock is publicly available. To the extent this
25 paragraph contains factual allegations requiring a response, Mr. Moshayedi denies
26 the allegations.

27 47. Answering Paragraph 47, Mr. Moshayedi admits that Deutsche Bank,
28 Inc. ("Deutsche Bank"), Barclays Capital Inc., J.P. Morgan Inc. and Oppenheimer

1 & Co. were the managing underwriters of the Public Offering. Except as expressly
2 admitted, Mr. Moshayedi denies the allegations in this paragraph.

3 48. Answering Paragraph 48, Mr. Moshayedi lacks knowledge or
4 information sufficient to form a belief as to the truth of the allegations regarding
5 general practices in public offerings and denies the allegations on that basis. Mr.
6 Moshayedi admits that the underwriters for the Public Offering, with the assistance
7 of legal counsel, accountants, the Board, and STEC's management, spent weeks in
8 advance of the offering conducting diligence into STEC's business and customer
9 relationships, speaking directly to representatives of EMC, discussing all matters
10 related to the Public Offering, and reviewing the numerous documents and
11 disclosures associated with the transaction. Except as expressly admitted, Mr.
12 Moshayedi denies the allegations in this paragraph.

13 49. Answering Paragraph 49, Mr. Moshayedi admits that he and
14 representatives of Deutsche Bank discussed in July 2009 the transaction details of
15 the Public Offering, including the timeline, the costs and expenses, the underwriter
16 discount, pricing of the offering, and STEC's finances. The July 16-17, 2009
17 email exchange between Mr. Moshayedi and Deutsche Bank's Managing Director
18 Mark Keene speaks for itself. A discount that a seller will take in a public offering
19 is influenced by a great many factors, and STEC's third quarter guidance is no
20 more exclusively tied to that discount than any of the myriad of factors that affect a
21 company's stock price. Except as expressly admitted, Mr. Moshayedi denies the
22 allegations in this paragraph.

23 50. Answering Paragraph 50, Mr. Moshayedi states that the statements in
24 the July 23, 2009 emails between him and Needham & Company's ("Needham")
25 Vice Chairman Chad Whitney Keck speak for themselves. On July 23, 2009,
26 Needham, an investment banking firm that initially was underwriting the Public
27 Offering before being replaced by Oppenheimer, proposed to Mr. Moshayedi that
28 he and his two brothers sell their stock in a private sale to a hedge fund at a

1 discount no greater than 12% to the investor, with a lower commission than that
2 associated with the Public Offering. Mr. Moshayedi declined this offer. Except
3 as expressly admitted, Mr. Moshayedi denies the allegations in this paragraph.

4 51. Answering Paragraph 51, Mr. Moshayedi admits that on August 3,
5 2009, STEC announced the Public Offering and issued an earnings release,
6 reporting second quarter 2009 results and issuing revenue guidance for the third
7 quarter of 2009. Mr. Moshayedi reincorporates his answer to Paragraph 19 and
8 denies the remaining allegations in this paragraph which constitute a misleading
9 and inaccurate characterization of STEC's expectations for third quarter revenue
10 at the end of July 2009, less than one month into the third quarter of 2009. Based
11 on EMC's statements regarding growth, STEC believed that ZeusIOPS sales to
12 EMC would double the \$33 million in second quarter 2009 revenue. Except as
13 expressly admitted, Mr. Moshayedi denies the allegations in this paragraph.

14 52. Answering Paragraph 52, Mr. Moshayedi reincorporates his answer to
15 Paragraph 39. Mr. Moshayedi admits that Amendment No. 2 did not memorialize
16 how the \$120 million supply agreement would be split in the third and fourth
17 quarters of 2009. Mr. Moshayedi denies the remaining allegations of Paragraph
18 52 which constitute a misleading and inaccurate characterization of STEC's
19 motivation in attempting to obtain firm customer orders. Except as expressly
20 admitted, Mr. Moshayedi denies the allegations in this paragraph.

21 53. Answering Paragraph 53, Mr. Moshayedi states that he sent the July
22 21, 2009 email to Mr. Schick and Mr. Smith. Given the lengthy lead times to
23 manufacture and test ZeusIOPS drives, STEC pressed EMC in late July 2009 for
24 specific information regarding demand for the third quarter of 2009. To the extent
25 any of the allegations in Paragraph 53 were intended by the Commission to
26 insinuate impropriety by Mr. Moshayedi, Mr. Moshayedi denies each and every
27 such allegation, denies that he engaged in wrongdoing of any type or nature, and
28 denies that he engaged in any violation of law.

1 54. Answering Paragraph 54, Mr. Moshayedi reincorporates his answer to
2 Paragraph 53. The Commission's allegations regarding statements made in the
3 July 21-22, 2009 email exchange by STEC's Director of Sales, William Fahey,
4 and EMC's Senior Manager, Global Supply Chain Management, Chris Casella,
5 mischaracterize the statements and, in any event, are irrelevant and misleading as
6 to claims against Mr. Moshayedi. Mr. Moshayedi denies the allegations on that
7 basis.

8 55. Answering Paragraph 55, Mr. Moshayedi incorporates his answer to
9 Paragraph 53. The Commission's allegations regarding statements made by Mr.
10 Fahey in his July 24, 2009 email to Mr. Casella mischaracterize the statements
11 and, in any event, are irrelevant and misleading as to claims against Mr.
12 Moshayedi. Mr. Moshayedi denies the allegations on that basis and denies the
13 remaining allegations in this paragraph.

14 56. Answering Paragraph 56, Mr. Moshayedi incorporates his answer to
15 Paragraph 53. The Commission's allegations regarding statements made by Mr.
16 Fahey in his email to Mr. Casella mischaracterize the statements and, in any event,
17 are irrelevant and misleading as to claims against Mr. Moshayedi. Mr. Moshayedi
18 denies the allegations on that basis.

19 57. Answering Paragraph 57, Mr. Moshayedi incorporates his answer to
20 Paragraph 53. The Commission's allegations regarding statements made by Mr.
21 Fahey in his email to Mr. Casella mischaracterize the statements and, in any event,
22 are irrelevant and misleading as to claims against Mr. Moshayedi. Mr. Moshayedi
23 denies the allegations on that basis.

24 58. Answering Paragraph 58, Mr. Moshayedi denies the allegation in this
25 paragraph. Analysts covering STEC issued estimates for STEC's third quarter
26 financial results on July 16 and 17, 2009, immediately following announcement of
27 the \$120 million supply agreement on July 16. The third quarter estimate
28 published by Noble Financial on July 16 was \$95.0 million, below the mean (\$95.7

1 million) of the analysts' range of \$74.6 million to \$115.6 million, and thus would
2 have reduced, not raised, consensus estimates. Noble Financial's second July
3 report published on July 23 commented on EMC's strong support for STEC's
4 products as expressed by EMC during its earnings call. Noble Financial's July 23
5 report did not change the estimates Noble Financial had issued on July 16. Thus,
6 contrary to the Commission's allegations, nothing in the July 23 report could have
7 alerted Mr. Moshayedi to any news, or any change in analysts' revenue estimates.
8 Allegations regarding Mr. Moshayedi's response to the Noble Financial report
9 mischaracterize his statements by taking them out of context. In the very same
10 July 26 email to STEC's Vice President of Investor Relations, Mr. Moshayedi
11 correctly noted that the analyst consensus for third quarter guidance was \$95.7
12 million. Other email messages on July 26 and July 27 indicate that STEC's third
13 quarter estimates of \$94 million to \$97 million were based on an expected \$45
14 million in ZeusIOPS revenues from EMC—demonstrating that at this point, Mr.
15 Moshayedi did not, in fact, expect to miss consensus, regardless of whether EMC's
16 orders were \$50 million or \$55 million in the third quarter. As the Commission is
17 well aware, nothing about the July 26 email or the Noble Financial analyst reports
18 would have prompted him to seek to increase EMC's purchases in the third
19 quarter.

20 59. Answering Paragraph 59, Mr. Moshayedi denies the allegations in this
21 paragraph. There was a clear business purpose for seeking a third quarter
22 commitment from EMC in exchange for revised fourth quarter 2009 pricing:
23 EMC's total third quarter demand was not firm as of the end of July, and STEC
24 wanted to obtain accurate information about EMC's total expected third quarter
25 orders early enough in the quarter to be able to timely manufacture, test, and ship
26 the ZeusIOPS drives to fill those orders, which ordinarily required a lead time of
27 several weeks. Except as expressly admitted, Mr. Moshayedi denies the
28 allegations in this paragraph.

1 60. Answering Paragraph 60, Mr. Moshayedi admits that on July 26,
2 2009, to provide accurate third quarter 2009 revenue guidance to the market, and
3 consistent with STEC's past and continuing business practices quarter-in and
4 quarter-out, he sent an email asking STEC's sales management to provide their
5 best estimates of revenue per product line by July 30. Except as expressly
6 admitted, Mr. Moshayedi denies the allegations in this paragraph.

7 61. Answering Paragraph 61, Mr. Moshayedi admits that on July 26,
8 2009, consistent with STEC's past and continuing business practices quarter-in
9 and quarter-out, he sent an email asking STEC's Vice President of Sales for the
10 EMC and IBM accounts, Anthony Anvari, for an update on EMC's and IBM's
11 purchase orders as of that date. Except as expressly admitted, Mr. Moshayedi
12 denies the allegations in this paragraph.

13 62. Answering Paragraph 62, Mr. Moshayedi denies the allegation in the
14 first sentence and reincorporates his answer to Paragraphs 51. EMC's public
15 predictions of expansive growth, the exponential growth of EMC's orders in the
16 first and second quarters of 2009, EMC's "hockey-stick" demand pattern, and the
17 multitude of positive statements by EMC to both STEC and the market strongly
18 suggested that the \$43 million in orders submitted and predicted by July 27 would
19 not represent EMC's total orders for the third quarter of 2009. Mr. Moshayedi
20 admits that, on July 26, 2009, he contacted Mr. Smith and sought a third quarter
21 commitment from EMC. STEC wanted to obtain accurate information about
22 EMC's total expected third quarter orders early enough in the quarter to be able to
23 manufacture, test, and ship the ZeusIOPS drives to fill those orders, and to provide
24 accurate third quarter guidance in STEC's upcoming second quarter earnings
25 announcement. Because STEC needed to know for operational reasons by the end
26 of July how many ZeusIOPS drives to build in the third quarter, STEC offered
27 EMC a minimal price concession on fourth quarter orders in exchange for a
28 commitment from EMC regarding its third quarter orders pursuant to the \$120

1 million supply agreement. As a result of this discount, EMC obtained more drives
2 in the second half of 2009 than it originally would have under the \$120 million
3 supply agreement. The Commission's allegations about this email include
4 mischaracterizations of Mr. Moshayedi's request that do not require a response
5 from Mr. Moshayedi. Except as expressly admitted, Mr. Moshayedi denies the
6 allegations in this paragraph.

7 63. Answering Paragraph 63, Mr. Moshayedi lacks knowledge or
8 information sufficient to form a belief as to the truth of the allegations and denies
9 the allegations on that basis. To the extent this paragraph contains factual
10 allegations requiring a response, Mr. Moshayedi denies the allegations.

11 64. Answering Paragraph 64, Mr. Moshayedi states that the allegations in
12 Paragraph 64 mischaracterize Mr. Anvari's statements in his July 27, 2009 email
13 and, in any event, are irrelevant and misleading as to claims against him,
14 especially when a later email exchange between Mr. Moshayedi and Mr. Smith
15 indicate that Mr. Anvari was not up to date on current negotiations. Except as
16 expressly admitted, Mr. Moshayedi denies the allegations in this paragraph.

17 65. Answering Paragraph 65, Mr. Moshayedi states that he received the
18 July 28, 2009 email from Mr. Smith. Except as expressly admitted, Mr.
19 Moshayedi denies the remaining allegations in this paragraph.

20 66. Answering Paragraph 66, Mr. Moshayedi reincorporates his answer to
21 Paragraph 62. Information available on July 28, 2009, led Mr. Moshayedi to
22 conclude that the \$43 million in orders would not represent EMC's total orders for
23 the third quarter of 2009. In fact, on July 29, 2009, EMC sent STEC an "updated
24 forecast for Q3" in which EMC requested that "STEC build up all of these units as
25 quickly as possible." The Commission's allegation mischaracterizes Mr. Smith's
26 prior statement as expressing concern regarding excess inventory. The emphasis
27 and allegations in this sentence contain the Commission's mischaracterization of
28

1 these statements and do not require a response from Mr. Moshayedi. Except as
2 expressly admitted, Mr. Moshayedi denies the allegations in this paragraph.

3 67. Answering Paragraph 67, Mr. Moshayedi states that he received the
4 July 28, 2009 email from Mr. Smith. The emphasis and allegations in Paragraph
5 67 include the Commission's mischaracterization of these statements that do not
6 require a response from Mr. Moshayedi. Except as expressly admitted, Mr.
7 Moshayedi denies the remaining allegations in this paragraph.

8 68. Answering Paragraph 68, Mr. Moshayedi states that the allegations in
9 this paragraph constitute a misleading and inaccurate characterization of STEC
10 and EMC's agreement splitting the \$120 million volume commitment between the
11 third and fourth quarters of 2009. First, the agreement was no more "secret" than
12 any other sale of ZeusIOPS drives. As the Commission admits in Paragraph 80,
13 STEC publicly disclosed during its August 3, 2009 earnings call that EMC would
14 purchase \$55 million of the \$120 million ZeusIOPS drives in the third quarter of
15 2009. Consistent with STEC's practice not to disclose pricing information
16 regarding any of its ZeusIOPS sales, STEC did not disclose information about the
17 price to be paid for EMC's fourth quarter ZeusIOPS purchases. Rather, STEC
18 had disclosed that ZeusIOPS is a customized product with negotiated pricing
19 unique to each customer, based on the complexity of the necessary customization
20 and the volumes purchased. Disclosure of a pricing discount would not have
21 provided any meaningful information to the market because the market was
22 unaware of ZeusIOPS pricing in the first place, and the discount was otherwise
23 immaterial. Second, offering price or product concessions to firm up customer
24 demand was an ordinary business practice that occurred in every quarter, as
25 STEC's sales team pressed their customers for commitments, often giving
26 discounted pricing in exchange for those commitments. Many of these discounts
27 were significantly more than what STEC offered for the EMC third and fourth
28 quarter revenue split. Offering pricing concessions or additional product in

1 exchange for higher sales earlier in the year or quarter is something that
2 companies, including STEC, do regularly. The allegations also constitute a
3 misleading and inaccurate characterization of EMC's third quarter 2009 demand
4 and Mr. Moshayedi reincorporates his answer to Paragraph 62. Additionally, the
5 Commission's allegation regarding the cost of the discount is inaccurate. The
6 revised fourth quarter pricing granted in exchange for EMC's commitment to an
7 agreed upon split of its third and fourth quarter 2009 orders represented a small
8 incremental cost to STEC. The discount was about 3% and caused no change in
9 top line revenue numbers and no material impact on margins. The cost of STEC
10 providing the additional drives was less than \$1 million. The statements in his
11 July 29 email exchange with Mr. Smith entitled "fourth quarter pricing" speak for
12 themselves. Except as expressly admitted, Mr. Moshayedi denies the allegations
13 in this paragraph.

14 69. Answering Paragraph 69, Mr. Moshayedi admits that around the time
15 that EMC and STEC executed the \$120 million supply agreement, he and Mr.
16 Smith began negotiating ZeusIOPS pricing for 2010 and 2011, including the
17 possibility of another volume commitment. Mr. Moshayedi also admits that in
18 response to Mr. Smith's July 16, 2009 request for pricing, Mr. Moshayedi sent an
19 email with a proposal for another volume commitment on July 31, 2009. Mr.
20 Moshayedi's July 31 email contained two pricing alternatives for 2010: one
21 proposal offering pricing with a \$330 million volume commitment, and one
22 proposal with pricing without a volume commitment. In his August 3 response to
23 Mr. Moshayedi, Mr. Smith wrote that "we hope our partnership to be as strong for
24 years to come," but told Mr. Moshayedi that the pricing STEC proposed was too
25 high noting "we expect stec to provide emc with the kind of pricing to keep this
26 'party' going." Mr. Smith also observed that after STEC announced the \$120
27 million supply agreement, EMC "sure heard the blow back" from its hard disk
28 drive vendors, which had complained about EMC giving a volume commitment to

1 STEC, but not to them. Mr. Smith wrote, “I think I can say with a very high
2 degree of confidence that our most recent volume commitment deal will be our
3 last.”

4 Mr. Moshayedi asserts that the allegations in the third sentence regarding
5 Mr. Smith’s August 3, 2009 email constitute a misleading and inaccurate
6 characterization of the negotiations between Mr. Smith and Mr. Moshayedi. Mr.
7 Moshayedi reasonably believed that Mr. Smith’s statement was a price negotiation
8 tactic prompted in part by complaints Mr. Smith received from EMC’s other
9 suppliers when they learned of the \$120 million supply agreement. This statement
10 did not signify that EMC would be unwilling to enter further volume agreements,
11 as demonstrated by the events that followed, including the fact that Messrs.
12 Moshayedi, Smith, and Schick continued to negotiate volumes and pricing and a
13 potential even larger volume commitment for 2010 well after Mr. Smith’s August
14 3 email. On August 11, 2009, Messrs. Moshayedi, Smith, and Schick met in
15 person to discuss a proposed \$400 million volume commitment for 2010. Messrs.
16 Smith and Schick indicated to Mr. Moshayedi that EMC might be willing to
17 commit to half of that amount if the price were right. These discussions of a
18 potential 2010 volume commitment continued until September 10, 2009. Except
19 as expressly admitted, Mr. Moshayedi denies the allegations in this paragraph.

20 70. Answering Paragraph 70, Mr. Moshayedi admits that he received Mr.
21 Smith’s August 3, 2009 email. Reincorporating his answer to Paragraph 69, Mr.
22 Moshayedi states that he understood Mr. Smith’s August 3, 2009 email as a
23 pricing negotiation tactic, and not a final rejection of additional supply agreements
24 between STEC and EMC. Thus, Mr. Moshayedi responded to this email stating
25 that while STEC could offer EMC competitive pricing without a volume
26 commitment, a volume deal would enable EMC to continue to benefit from the
27 significant pricing discounts it received in the \$120 million supply agreement.
28 Mr. Moshayedi’s interpretation of Mr. Smith’s email proved correct, as

1 demonstrated by the fact that Messrs. Smith and Schick continued to negotiate a
2 further volume commitment for 2010 for at least another month after Mr. Smith's
3 statement, as well as by the fact that EMC ultimately reached another agreement
4 with STEC in April 2010 and purchased over \$100 million in ZeusIOPS drives in
5 that year. Except as expressly admitted, Mr. Moshayedi denies the allegations in
6 this paragraph.

7 71. Answering Paragraph 71, with regard to the first sentence, Mr.
8 Moshayedi admits that on August 3, 2009, STEC announced a Public Offering of
9 stock held by Mr. Moshayedi and Mark Moshayedi. Mr. Moshayedi and Mark
10 sold their shares of STEC common stock through the Public Offering for
11 proceeds, before expenses, of approximately \$122 million and \$145 million,
12 respectively. Mr. Moshayedi and Mark sold their shares in good faith as part of
13 an underwritten, registered public offering. Four investment banking firms, legal
14 counsel, accountants, the Board, and Company management spent weeks in
15 advance of the Public Offering conducting diligence into STEC's business and
16 customer relationships. The underwriters' due diligence included interviewing
17 EMC directly and outside the presence of any STEC representatives regarding the
18 \$120 million supply agreement it had signed with STEC about three weeks before
19 the Public Offering and its future demand. Except as expressly admitted, Mr.
20 Moshayedi denies the allegations in this paragraph.

21 72. Answering Paragraph 72, Mr. Moshayedi denies the allegations in this
22 paragraph. Mr. Moshayedi reincorporates his answer to Paragraphs 19, 53, 59, 62,
23 and 69. After entering the \$120 million supply agreement and shortly before the
24 Public Offering, EMC continued to predict strong expected demand. During
25 EMC's analyst call on July 23, 2009, EMC's Chief Financial Officer predicted
26 increasing demand for products using SSDs (for which STEC was EMC's only
27 supplier): "[T]he fastest growing opportunities in our storage business is flash
28 technology and we continue to see a high level demand for this capability across

1 our platforms . . . and we expect to see even more utilization of flash on our
2 systems going forward, particularly when our fully automated storage tiering
3 (FAST) software comes out for Symmetrix V-Max later this year.” On August
4 11, 2009, Messrs. Smith and Schick indicated that EMC might be willing to
5 commit to a volume agreement for purchases of approximately \$200 million
6 ZeusIOPS drives in 2010 if the pricing were right. Additionally, on August 12,
7 2009, Mr. Smith agreed with demand estimates for EMC purchases of ZeusIOPS
8 in 2010 that translated into about \$400 million of revenue for STEC. Indeed, it
9 was not until the middle of October 2009 that STEC first learned that EMC’s sales
10 had decelerated and that EMC might carry inventory from the \$120 million supply
11 agreement into 2010.

12 73. Answering Paragraph 73, Mr. Moshayedi states that this paragraph
13 sets forth the Commission’s characterization of this action as well as legal
14 conclusions and does not require a response. To the extent that this paragraph
15 contains factual allegations requiring a response, Mr. Moshayedi denies the
16 allegations.

17 74. Answering Paragraph 74, Mr. Moshayedi states that the first sentence
18 sets forth the Commission’s characterization of this action as well as legal
19 conclusions that do not require a response. Mr. Moshayedi denies any factual
20 allegations in this sentence. With regard to the remaining sentences, Mr.
21 Moshayedi admits that on August 3, 2009, STEC issued a press release
22 announcing the Public Offering, and filed (i) a Form 8-K attaching a news release
23 announcing the Company’s second quarter results and third quarter guidance,
24 (ii) a Form 10-Q for the second quarter of 2009, and (iii) a Form S-3 Registration
25 statement for the Public Offering. Mr. Moshayedi further admits that on August
26 3, 2009, he participated in a conference call with analysts. Except as expressly
27 admitted, Mr. Moshayedi denies the allegations in this paragraph.

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1 75. Answering Paragraph 75, Mr. Moshayedi states that the Form S-3
2 Registration Statement was filed by STEC on August 3, 2009 and that the full
3 content of that document is publicly available. The emphasis and allegations
4 contained in Paragraph 75 contain the Commission's mischaracterization of the
5 statements in the Form S-3 Registration Statement and do not require a response
6 from Mr. Moshayedi. To the extent this paragraph contains factual allegations
7 requiring a response, Mr. Moshayedi denies the allegations.

8 76. Answering Paragraph 76, Mr. Moshayedi states that the Form 8-K
9 announcing results of operations and the press release attached as an exhibit
10 thereto were filed by STEC on August 3, 2009 and that the full content of those
11 documents is publicly available. The emphasis and allegations contained in
12 Paragraph 76 contain the Commission's mischaracterization of the statements in
13 the Form 8-K and press release and do not require a response from Mr.
14 Moshayedi. To the extent this paragraph contains factual assertions requiring a
15 response, Mr. Moshayedi denies the allegations.

16 77. Answering Paragraph 77, Mr. Moshayedi states that the Form 8-K
17 announcing results of operations and the press release attached as an exhibit
18 thereto were filed by STEC on August 3, 2009 and that the full content of these
19 documents is publicly available. Except as expressly admitted, Mr. Moshayedi
20 denies the allegations in this paragraph.

21 78. Answering Paragraph 78, Mr. Moshayedi states that the Form 10-Q
22 was filed by STEC on August 3, 2009 and the full content of that document is
23 publicly available. The emphasis in Paragraph 78 contains the Commission's
24 mischaracterization of the statements in the Form 10-Q and does not require a
25 response from Mr. Moshayedi. Except as expressly admitted, Mr. Moshayedi
26 denies the allegations in this paragraph.

27 79. Answering Paragraph 79, Mr. Moshayedi admits that on August 3,
28 2009, at or about 2:30 p.m. PDT, STEC held an open conference call with

1 analysts, which was also webcast, to discuss its second quarter 2009 results, and
2 that Mr. Moshayedi participated in that call. A transcript of this call is publicly
3 available. The emphasis in Paragraph 79 contains the Commission's
4 mischaracterization of the statements from the call and does not require a response
5 from Mr. Moshayedi. Except as expressly admitted, Mr. Moshayedi denies the
6 allegations in this paragraph.

7 80. Answering Paragraph 80, Mr. Moshayedi states that a full and
8 complete transcript of the August 3, 2009 conference call is publicly available.
9 The Commission's mischaracterization of the statements made during that call
10 does not require a response from Mr. Moshayedi. To the extent that Paragraph 80
11 contains factual allegations requiring a response, Mr. Moshayedi denies the
12 allegations.

13 81. Answering Paragraph 81, Mr. Moshayedi denies the allegations in this
14 paragraph.

15 82. Answering Paragraph 82, Mr. Moshayedi reincorporates his answer to
16 Paragraphs 19, 53, 59, 62, 68, and 69. STEC's third quarter 2009 guidance was
17 reasonably based on expected sales and, ultimately, accurate. The \$55 million of
18 expected ZeusIOPS sales to EMC were grounded in an agreement with a
19 legitimate business purpose—to firm up unpredictable demand in order to relieve
20 expected stress on a long lead time manufacturing and testing process. Mr.
21 Moshayedi denies all allegations in this paragraph.

22 83. Answering Paragraph 83, Mr. Moshayedi reincorporates his answer to
23 Paragraphs 51 and 82. Paragraph 83 sets forth the Commission's characterization
24 of this action as well as legal conclusions that do not require a response from Mr.
25 Moshayedi. To the extent that Paragraph 83 contains factual allegations requiring
26 a response, Mr. Moshayedi denies the allegations.

27 84. Answering Paragraph 84, Mr. Moshayedi states that this paragraph
28 sets forth the Commission's characterization of this action as well as legal

1 conclusions that do not require a response. Mr. Moshayedi could not have
2 omitted to disclose EMC's actual demand for the third quarter on August 3, 2009
3 because EMC was unable to predict its own actual demand at that time. STEC's
4 experiences with EMC's ordering of ZeusIOPS drives in the second quarter 2009
5 led STEC to expect that late in the third quarter, EMC again would make large
6 upside orders, causing similar stresses on STEC's ability to timely manufacture,
7 test, and deliver the drives. Nor could Mr. Moshayedi have truthfully disclosed
8 that STEC would not enter into further supply agreements with EMC because he
9 was at that time negotiating a potential even larger volume agreement with EMC
10 for 2010, and continued to negotiate an agreement for weeks thereafter. Mr.
11 Moshayedi denies all allegations in this paragraph.

12 85. Answering Paragraph 85, Mr. Moshayedi admits that he signed the
13 Form S-3 Registration statement and the required certification for the Form 10-Q.
14 The remainder of Paragraph 85 sets forth the Commission's characterization of
15 this action as well as legal conclusions that do not require a response from Mr.
16 Moshayedi. Except as expressly admitted, Mr. Moshayedi denies the allegations
17 in this paragraph.

18 86. Answering Paragraph 86, with regard to the first sentence, Mr.
19 Moshayedi lacks knowledge or information sufficient to form a belief as to the
20 truth of the allegation that a decline in stock price "was expected" and denies the
21 allegations on that basis. Information about STEC's historical stock prices is
22 publicly available. To the extent this paragraph contains factual allegations
23 requiring a response, Mr. Moshayedi denies the allegations.

24 87. Answering Paragraph 87, Mr. Moshayedi admits that on November 3,
25 2009, STEC issued its third quarter earnings release. The earnings release and
26 Mr. Moshayedi's statements in the release are publicly available. The emphasis in
27 Paragraph 87 contains the Commission's mischaracterization of the earnings
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1 release statements and does not require a response from Mr. Moshayedi. Except
2 as expressly admitted, Mr. Moshayedi denies the allegations in this paragraph.

3 88. Answering Paragraph 88, Mr. Moshayedi admits that on November 3,
4 2009, STEC issued its third quarter earnings release. The earnings release and
5 Mr. Moshayedi's statements therein are publicly available. Except as expressly
6 admitted, Mr. Moshayedi denies the allegations in this paragraph.

7 89. Answering Paragraph 89, Mr. Moshayedi admits that at or about 1:30
8 p.m. PDT on November 3, 2009, STEC held an open conference call with
9 analysts, which was also webcast. Mr. Moshayedi also admits that he participated
10 in the call. A transcript of this call is publicly available. The emphasis in
11 Paragraph 89 contains the Commission's mischaracterization of statements made
12 during this call and does not require a response from Mr. Moshayedi. Except as
13 expressly admitted, Mr. Moshayedi denies the allegations in this paragraph.

14 90. Answering Paragraph 90, this paragraph sets forth the Commission's
15 characterization of this action as well as legal conclusions that do not require a
16 response from Mr. Moshayedi. On August 3, 2009, Mr. Moshayedi could not
17 have truthfully stated that STEC would not enter into further supply agreements
18 with EMC because he was at that time negotiating an even larger potential volume
19 agreement for 2010, and continued to negotiate such an agreement for weeks
20 thereafter. To the extent that Paragraph 90 contains factual allegations requiring a
21 response, Mr. Moshayedi denies the allegations.

22 91. Answering Paragraph 91, a transcript of the November 3, 2009 analyst
23 call is publicly available. To the extent this paragraph contains factual allegations
24 requiring a response, Mr. Moshayedi denies the allegations.

25 92. Answering Paragraph 92, this paragraph sets forth the Commission's
26 mischaracterization of this action as well as legal conclusions that do not require a
27 response from Mr. Moshayedi. To the extent this paragraph contains factual
28 allegations requiring a response, Mr. Moshayedi denies the allegations.

1 93. Answering Paragraph 93, information about STEC’s historical stock
2 prices is publicly available. To the extent this paragraph contains factual
3 allegations requiring a response, Mr. Moshayedi denies the allegations.

4 **FIRST CLAIM FOR RELIEF**

5 94. Answering Paragraph 94, Mr. Moshayedi reincorporates his answers
6 to Paragraphs 1 through 93 above.

7 95. Answering Paragraph 95, Mr. Moshayedi avers that Paragraph 95 sets
8 forth the Commission’s characterization of this action as well as legal conclusions
9 and does not purport to require a response from Mr. Moshayedi. To the extent
10 this paragraph purports to contain factual assertions requiring a response, Mr.
11 Moshayedi denies the allegations contained therein.

12 96. Answering Paragraph 96, Mr. Moshayedi reincorporates his answer to
13 Paragraph 95.

14 **SECOND CLAIM FOR RELIEF**

15 97. Answering Paragraph 97, Mr. Moshayedi reincorporates his answers
16 to Paragraphs 1 through 96 above.

17 98. Answering Paragraph 98, Mr. Moshayedi avers that Paragraph 98 sets
18 forth the Commission’s characterization of this action as well as legal conclusions
19 and does not purport to require a response from Mr. Moshayedi. To the extent
20 this paragraph purports to contain factual assertions requiring a response, Mr.
21 Moshayedi denies the allegations contained therein.

22 99. Answering Paragraph 99, Mr. Moshayedi reincorporates his answer to
23 Paragraph 98.

24 **PRAYER FOR RELIEF**

25 To the extent that any response is required to Plaintiff’s prayer for relief, Mr.
26 Moshayedi denies each and every allegation contained therein.

27 **JURY DEMAND**

28 Mr. Moshayedi demands a trial by jury on all triable issues.

1 Mr. Moshayedi reserves the right to amend his Answer as necessary once the
2 precise nature of the relevant circumstances or events is determined through
3 discovery.

4 **AFFIRMATIVE DEFENSES**

5 Without assuming the burden of proof for such defenses that he would not
6 otherwise have, Mr. Moshayedi asserts the following affirmative defenses:

7 **First Affirmative Defense**

8 The Commission's Complaint, and each claim alleged therein, fails to state a
9 claim upon which relief can be granted.

10 **Second Affirmative Defense**

11 The Commission's claims are barred because the Complaint was filed after
12 the deadline for filing an action under 15 U.S.C. § 78d-5 and the Commission's
13 investigation was not sufficiently complex such that a determination regarding the
14 filing of an action against a person could not be completed within the deadline
15 specified in paragraph (1) of 15 U.S.C. § 78d-5.

16 **Third Affirmative Defense**

17 The Commission's claims are barred, in whole or in part, because Mr.
18 Moshayedi acted in good faith at all material times and in conformity with all
19 applicable federal statutes, including the Securities Act and Exchange Act, and all
20 applicable rules and regulations promulgated thereunder.

21 **Fourth Affirmative Defense**

22 The Commission's claim for injunctive relief is barred because, *inter alia*,
23 there has been no violation of the Securities Act or the Exchange Act, and because
24 there is no reasonable likelihood that any violation will be repeated. The
25 Commission's injunctive relief claim is further barred because the adverse effects
26 of an injunction far outweigh any benefit from an injunction.

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Fifth Affirmative Defense

The Commission’s claim for penalties is barred because, *inter alia*, any alleged violation was isolated and / or unintentional.

Sixth Affirmative Defense

The Commission’s claim for disgorgement is barred because, *inter alia*, Mr. Moshayedi never received any ill-gotten profits or direct economic gains as a result of any of the actions alleged in the Complaint.

Seventh Affirmative Defense

The Commission’s claim for an officer and director bar is barred because, *inter alia*, there has been no violation of the Securities Act or the Exchange Act and because Mr. Moshayedi is not unfit to serve as an officer or director of a public company.

Eighth Affirmative Defense

The Commission is precluded from pursuing a claim for civil penalties pursuant to Section 20(d) of the Securities Act and Sections 21(d)(3) and 21A(a) of the Exchange Act because those penalties are not available for the conduct charged in the Complaint.

Mr. Moshayedi hereby gives notice that he intends to rely upon such other and further defenses as may become available or apparent during pretrial proceedings in this action and hereby reserves all rights to amend this Answer and all such defenses.

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PRAYER FOR RELIEF

WHEREFORE, Mr. Moshayedi respectfully requests that the Court enter an Order:

- 1. Entering judgment in favor of Mr. Moshayedi and against the Commission on all alleged claims for relief;
- 2. Dismissing the Complaint with prejudice;
- 3. Granting such other and further relief as the Court deems just and proper.

Dated: August 29, 2012

Respectfully submitted,
 LATHAM & WATKINS LLP
 William R. Baker
 Sean M. Berkowitz
 Patrick E. Gibbs
 Michele D. Johnson
 Matthew Rawlinson

By /s/ Patrick E. Gibbs
 Attorneys for Defendant
 Manouchehr Moshayedi

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