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18
19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**
21 **SOUTHERN DIVISION**

22 IN RE STEC, INC. SECURITIES
23 LITIGATION

No. SACV 09-01304-JVS (MLGx)

24 This Document Relates To:

**STIPULATION AND AGREEMENT
OF SETTLEMENT**

25 ALL ACTIONS
26
27
28

1 This stipulation and agreement of settlement (the “Stipulation” or
2 “Settlement”) is made and entered into by and between Lead Plaintiff, the State of
3 New Jersey, Department of Treasury, Division of Investment (“Lead Plaintiff”) and
4 plaintiffs, International Brotherhood of Electrical Workers, Local 103 (“Local
5 103”) and The Norfolk County Retirement System (“Norfolk County”) (together,
6 with Lead Plaintiff, “Plaintiffs”) and plaintiff Mark Ripperda (collectively, with
7 Plaintiffs, “Class Representatives”) on behalf of themselves and the Class (defined
8 below), and STEC, Inc. (“STEC”), Manouch Moshayedi, Mark Moshayedi and
9 Raymond Cook (“Individual Defendants”) (collectively, “Defendants”).

10 **WHEREAS:**

11 A. All words or terms used herein that are capitalized shall have the
12 meaning ascribed to those words or terms as set forth herein and in ¶ 1 hereof
13 entitled “Definitions.”

14 B. Beginning on November 6, 2009, shareholders filed several securities
15 class action complaints in the U.S. District Court for the Central District of
16 California (the “Court”) on behalf of investors who purchased STEC stock
17 between June 16, 2009 and November 3, 2009: *Jean v. STEC, Inc.*, No. 09-CV-
18 1304; *Sakhai v. STEC, Inc.*, No. 09-CV-1306; *Greenwald v. STEC, Inc.*, No. 09-
19 CV-1315; *Munter v. STEC, Inc.*, No. 09-CV-1320; *Fisher v. STEC, Inc.*, No. 09-
20 CV-8536; and *Weinberger v. STEC, Inc.* 09-CV-1460.

21 C. On January 21, 2010, the Court issued an Order consolidating the
22 above listed actions under the caption *In re STEC Inc. Securities Litigation*, No.
23 SACV-09-01304-JVS (MLGx) (the “Action”). On February 8, 2010, the Court
24 appointed STEC shareholders Keith Ovitt and Arman Rashtchi lead plaintiffs
25 pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”), on
26 behalf of a putative class of purchasers of STEC stock during the period from June
27 16, 2009 through November 3, 2009.

28

1 D. On March 2, 2010, another class action entitled *Meda v. STEC, Inc.*,
2 10-CV-00248, was filed in the Court on behalf of investors who purchased STEC
3 stock between June 16, 2009 and February 23, 2010. On March 26, 2010, the
4 Court consolidated the *Meda* action with the earlier-filed actions, pursuant to the
5 Court's January 21, 2010 Order, and reopened the lead plaintiff selection process.

6 E. On July 14, 2010, the Court issued an Order appointing the State of
7 New Jersey, Department of Treasury, Division of Investment as Lead Plaintiff and
8 approved its selection of Labaton Sucharow LLP and Lite DePalma Greenberg,
9 LLC ("Co-Lead Counsel") to represent the putative class in the Action. The Court
10 also appointed Lim, Ruger & Kim LLP as Liaison Counsel.

11 F. On August 12, 2010, Plaintiffs filed the First Amended Consolidated
12 Complaint, alleging that Defendants had violated the Securities Exchange Act of
13 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder by the U.S.
14 Securities and Exchange Commission ("SEC") and the Securities Act of 1933
15 ("Securities Act"). On September 20, 2010, Defendants filed motions to dismiss
16 this complaint which the Court granted on January 21, 2011 with leave to replead.

17 G. The operative complaint in the Action is the Second Amended
18 Consolidated Complaint also filed by Plaintiffs on February 22, 2011 (the
19 "Complaint"). The Complaint alleges violations of §§ 10(b), 20(a) and 20A of the
20 Exchange Act and Rule 10b-5 and violations of §§ 11, 12 and 15 of the Securities
21 Act on behalf of a class of all Persons who purchased or otherwise acquired STEC
22 common stock between June 16, 2009 and February 23, 2010.

23 H. On March 22, 2011, Defendants filed motions to dismiss the
24 Complaint, which Plaintiffs opposed on April 25, 2011. On May 16, 2011,
25 Defendants filed reply briefs in further support of their motions. On June 17, 2011,
26 the Court partially denied and partially granted Defendants' motions to dismiss.
27 The Court denied the motions with respect to the claims under the Exchange Act
28 but granted the motions with respect to the claims under the Securities Act because

1 neither Lead Plaintiff nor either of the other Plaintiffs had standing to bring claims
2 under the Securities Act.

3 I. Discovery commenced in October 2011, including the production of
4 documents by Defendants and third-parties, which resulted in the production of
5 over two million pages of documents and answers to Interrogatories served by Co-
6 Lead Counsel. Co-Lead Counsel deposed over twenty-five witnesses including
7 Defendants and certain of their employees, and various third parties, including
8 customers of STEC and securities analysts who covered STEC during the Class
9 Period. Defendants deposed six witnesses, including two of the three Plaintiffs.
10 Additionally, Defendants served Lead Plaintiff with Interrogatories and Requests
11 for Production of Documents to which Lead Plaintiff responded. The Parties
12 exchanged expert reports including reports concerning the amount of Class
13 Members' damages, the role of securities analysts in the market, the response of
14 securities analysts to Defendants' allegedly misleading statements and omissions,
15 and Defendants' duties regarding their allegedly misleading statements and
16 omissions under regulations promulgated by the SEC.

17 J. On November 21, 2011, Plaintiffs moved to certify the Action as a
18 class action which Defendants opposed on January 12, 2012. The Court denied the
19 motion on March 7, 2012 on the ground that Plaintiffs did not have standing to
20 bring claims under the Securities Act. Plaintiffs petitioned the Ninth Circuit
21 pursuant to Rule 23(f) to reverse the denial of class certification, which petition
22 was denied on June 14, 2012. On May 25, 2012, Plaintiffs filed, with the Court's
23 permission, a supplemental memorandum of law in further support of their motion
24 for class certification informing the Court that they could not find a class
25 representative with standing to bring the Securities Act claims. On June 19, 2012,
26 the Court certified the Class for the claims under the Exchange Act and found Lead
27 Plaintiff and Local 103 adequate class representatives. The Court also appointed
28 Co-Lead Counsel and Liaison Counsel as joint lead counsel for the Class pursuant

1 to Rule 23(g). STEC petitioned the Ninth Circuit pursuant to Rule 23(f) to reverse
2 the grant of class certification, which petition was denied on September 6, 2012.

3 K. On June 11, 2012, the Court set trial to begin on November 6, 2012.

4 L. Plaintiffs and Defendants engaged the Honorable Layn R. Phillips
5 (Ret.) (“Judge Phillips”), a well-respected and highly experienced mediator, to
6 assist them in exploring a potential negotiated resolution of the claims against the
7 Defendants. On January 5, 2012, Plaintiffs and Defendants met with Judge
8 Phillips in attempt to reach a settlement. The day-long mediation involved an
9 extended effort to settle the claims and was preceded by the exchange of mediation
10 statements. While these discussions narrowed the differences between Plaintiffs
11 and Defendants, they did not result in a resolution of the Action.

12 M. Following the Court’s Order certifying the Class for Plaintiffs’ claims
13 under the Exchange Act and extensive discovery, Plaintiffs and Defendants
14 renewed their efforts to resolve the Action before Judge Phillips all day on July 30,
15 2012. While these discussions further narrowed the differences between Plaintiffs
16 and Defendants, they did not result in a resolution of the Action.

17 N. In August 2012, Mark Ripperda, who purchased STEC securities
18 pursuant to or traceable to the registration statement and/or the prospectus issued in
19 connection with the August 3, 2009 secondary offering of STEC stock, agreed to
20 serve as a Class Representative. Ripperda has at all times been represented by his
21 own separate counsel.

22 O. The Parties (as defined in ¶ 1(w)) renewed their efforts to resolve the
23 Action before Judge Phillips on September 5, 2012. Following intensive arm’s-
24 length mediated negotiations, the Parties reached an agreement in principle to
25 settle the claims against the Defendants, resulting in the Memorandum of
26 Understanding (“MOU”) entered into on September 11, 2012.

27 P. Plaintiffs, through Co-Lead Counsel, conducted a thorough
28 investigation relating to the claims, defenses, and underlying events and

1 transactions that are the subject of the Action. This process included reviewing
2 and analyzing: (i) documents filed publicly by STEC with the SEC; (ii) publicly
3 available information, including press releases, news articles, and other public
4 statements issued by or concerning Defendants; (iii) securities analysts' reports
5 issued by financial analysts concerning Defendants; (iv) other publicly available
6 information and data concerning Defendants; (v) more than 1.8 million pages of
7 documents produced by Defendants; (vi) more than 247,000 pages of documents
8 produced by third parties; (vii) pleadings filed in other pending litigation naming
9 certain Defendants herein; and (viii) the applicable law governing the claims and
10 potential defenses. Co-Lead Counsel also deposed over twenty-five witnesses as
11 described in ¶ 1, above. Additionally, Co-Lead Counsel interviewed former
12 employees of STEC and other persons with relevant knowledge (some of whom
13 have provided information as confidential witnesses), and consulted with experts
14 on accounting, valuation, damages, and causation issues.

15 Q. Defendants have denied and continue to deny any wrongdoing or any
16 violation of law, including any liability under the U.S. securities laws. Defendants
17 have denied and continue to deny each of the claims alleged by Plaintiffs on behalf
18 of the Class, including all claims in the Complaint.

19 R. This Stipulation, whether or not consummated, any proceedings
20 relating to any settlement, or any of the terms of any settlement, whether or not
21 consummated, shall in no event be construed as, or deemed to be evidence of, an
22 admission or concession on the part of the Parties with respect to any claim of any
23 liability or damage whatsoever, or any infirmity in any claim or defense that have
24 been or could have been asserted. Defendants are entering into this Settlement to
25 eliminate the burden, expense, uncertainty, distraction and risk of further litigation.

26 S. Defendants believe that the claims asserted in the Action have no
27 merit and that the evidence developed to date does not support the claims asserted.
28 However, Defendants recognize and acknowledge the expense and length of

1 continued proceedings necessary to defend the Action. Defendants also have taken
2 into account the uncertain outcome and the risk of any litigation, especially in
3 complex actions such as the Action. Defendants are entering into this Settlement
4 to eliminate this burden, expense, uncertainty, distraction and risk.

5 T. Class Representatives believe that the claims asserted in the Action
6 have merit and that the evidence developed to date supports the claims asserted.
7 However, Class Representatives and Co-Lead Counsel recognize and acknowledge
8 the expense and length of continued proceedings necessary to prosecute the Action
9 against the Defendants through trial and appeals. Class Representatives and Co-
10 Lead Counsel also have taken into account the uncertain outcome and the risk of
11 any litigation, especially in complex actions such as the Action, as well as the
12 difficulties and delays inherent in such litigation. Co-Lead Counsel also are
13 mindful of the inherent problems of proof and the possible defenses to the claims
14 alleged in the Action. Based on their evaluation, Class Representatives and Co-
15 Lead Counsel believe that the Settlement set forth in this Stipulation confers
16 substantial monetary benefits upon the Class and is in the best interests of the
17 Class.

18 **NOW THEREFORE**, without any concession by Class Representatives
19 that the Action lacks merit, and without any concession by Defendants of any
20 liability or wrongdoing or lack of merit in their defenses, it is hereby
21 **STIPULATED AND AGREED**, by and among the Parties to this Stipulation,
22 through their respective attorneys, subject to approval by the Court pursuant to
23 Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the
24 benefits flowing to the Parties hereto, all Released Claims and all Released
25 Defendants' Claims as against all Released Parties shall be compromised, settled,
26 released and dismissed with prejudice, and without costs, upon and subject to the
27 following terms and conditions:
28

DEFINITIONS

1
2 1. As used in this Stipulation, the following terms shall have the
3 meanings set forth below:

4 (a) “Action” means *In re STEC, Inc. Securities Litigation*, No.
5 SACV-09-01304-JVS (MLGx) pending in the United States District Court for the
6 Central District of California before the Honorable James V. Selna.

7 (b) “Alternative Judgment” means a form of final judgment that
8 may be entered by the Court herein but in a form other than the form of Judgment
9 provided for in this Stipulation and where none of the Parties hereto elects to
10 terminate this Settlement by reason of such variance.

11 (c) “Authorized Claimant” means a Class Member who timely
12 submits a valid Proof of Claim and Release form to the Claims Administrator that
13 is accepted for payment by the Court.

14 (d) “Claims Administrator” means the firm to be retained by Co-
15 Lead Counsel, subject to Court approval, to provide all notices approved by the
16 Court to Class Members, process proofs of claim and administer the Settlement.

17 (e) “Class” or “Class Member” means all Persons that, between
18 June 16, 2009 and February 23, 2010, inclusive, purchased or otherwise acquired
19 the publicly traded common stock of STEC and were damaged thereby. Excluded
20 from the Class are: Defendants; the members of the immediate families of the
21 Individual Defendants; the subsidiaries and affiliates of Defendants; any Person
22 who is an officer, director, partner or controlling person of STEC or any other
23 Defendant; any entity in which any Defendant has a controlling interest; and the
24 legal representatives, heirs, successors and assigns of any such excluded Person or
25 entity. Also excluded from the Class are any Class Members who properly
26 exclude themselves by filing a valid and timely request for exclusion in accordance
27 with the requirements set forth in the Notice.
28

1 (f) “Class Period” means the period from June 16, 2009 through
2 February 23, 2010, inclusive.

3 (g) “Co-Lead Counsel” means the law firms of Labaton Sucharow
4 LLP and Lite DePalma Greenberg, LLC.

5 (h) “Court” means the United States District Court for the Central
6 District of California.

7 (i) “Defendants” means STEC and the Individual Defendants.

8 (j) “Defendants’ Counsel” means the law firm of Latham &
9 Watkins LLP.

10 (k) “Distribution Order” means an order of the Court approving the
11 Claims Administrator’s administrative determinations concerning the acceptance
12 and rejection of the claims submitted and approving any fees and expenses not
13 previously paid, including the fees and expenses of the Claims Administrator and,
14 if the Effective Date has occurred, directing payment of the Net Settlement Fund to
15 Authorized Claimants.

16 (l) “Effective Date” means the date upon which the Settlement
17 shall become effective, as set forth in ¶ 38 below.

18 (m) “Escrow Account” means the separate escrow account
19 designated by Co-Lead Counsel at one or more national banking institutions into
20 which the Settlement Amount is deposited for the benefit of the Class.

21 (n) “Escrow Agent” means Co-Lead Counsel.

22 (o) “Final,” with respect to a court order, means the later of: (i) if
23 there is an appeal from a court order, the date of final affirmance on appeal and the
24 expiration of the time for any further judicial review whether by appeal,
25 reconsideration or a petition for a *writ of certiorari* and, if *certiorari* is granted, the
26 date of final affirmance of the order following review pursuant to the grant; or (ii)
27 the date of final dismissal of any appeal from the order or the final dismissal of any
28 proceeding on *certiorari* to review the order; or (iii) the expiration of the time for

1 the filing or noticing of any appeal from the order (or, if the date for taking an
2 appeal or seeking review of the order shall be extended beyond this time by order
3 of the issuing court, by operation of law or otherwise, or if such extension is
4 requested, the date of expiration of any extension if any appeal or review is not
5 sought). However, any appeal or proceeding seeking subsequent judicial review
6 pertaining solely to the Plan of Allocation of the Net Settlement Fund, or to the
7 Court's award of attorneys' fees or expenses, shall not in any way delay or affect
8 the time set forth above for the Judgment or Alternative Judgment to become Final,
9 or otherwise preclude the Judgment or Alternative Judgment from becoming Final.

10 (p) "Individual Defendants" means Manouch Moshayedi, Mark
11 Moshayedi, and Raymond Cook.

12 (q) "Judgment" means the proposed judgment to be entered
13 approving the Settlement substantially in the form attached hereto as Exhibit B.

14 (r) "Liaison Counsel" means Lim, Ruger & Kim LLP.

15 (s) "Lead Plaintiff" means the State of New Jersey, Department of
16 Treasury, Division of Investment.

17 (t) "Net Settlement Fund" means the Settlement Fund less: (i)
18 Court-awarded attorneys' fees and expenses; (ii) Notice and Administration
19 Expenses; (iii) Taxes; and (iv) any other fees or expenses approved by the Court,
20 including any award to Class Representatives for reasonable costs and expenses
21 (including lost wages) pursuant to the Private Securities Litigation Reform Act of
22 1995 ("PSLRA").

23 (u) "Notice and Administration Expenses" means all fees and
24 expenses incurred in connection with providing notice to the Class and the
25 administration of the Settlement, including but not limited to: (i) providing notice
26 of the proposed Settlement by mail, publication and other means to Class
27 Members; (ii) receiving and reviewing claims; (iii) applying the Plan of Allocation;
28 (iv) communicating with Persons regarding the proposed Settlement and claims

1 administration process; (v) distributing the proceeds of the Settlement; and (vi)
2 fees related to the Escrow Account and investment of the Settlement Fund.

3 (v) “Notice” means the Notice of Pendency of Class Action and
4 Proposed Settlement and Motion for Attorneys’ Fees and Expenses, which is to be
5 sent to Members of the Class, subject to approval of the Court, and shall be
6 substantially in the form attached hereto as Exhibit A-1 to Exhibit A hereto.

7 (w) “Party” or “Parties” means Defendants and Class
8 Representatives on behalf of themselves and other Class Members.

9 (x) “Person” means an individual, corporation (including all
10 divisions and subsidiaries), general or limited partnership, association, joint stock
11 company, joint venture, limited liability company, professional corporation, estate,
12 legal representative, trust, unincorporated association, government or any political
13 subdivision or agency thereof, and any other business or legal entity.

14 (y) “Plaintiffs” means Lead Plaintiff, Local 103 and Norfolk
15 County.

16 (z) “Plaintiffs’ Counsel” means Co-Lead Counsel and the firms of
17 Lim, Ruger & Kim LLP, Green & Noblin, P.C. and Bienert, Miller & Katzman.

18 (aa) “Preliminary Approval Order” means the proposed order
19 preliminarily approving the Settlement and directing notice to the Class of the
20 pendency of the Action and of the Settlement, which, subject to the approval of the
21 Court, shall be substantially in the form attached hereto as Exhibit A.

22 (bb) “Proof of Claim” means the Proof of Claim and Release form
23 for submitting a claim, subject to approval of the Court, which shall be
24 substantially in the form attached as Exhibit A-2 to Exhibit A hereto.

25 (cc) “Released Claims” means any and all claims, rights, causes of
26 action, duties, obligations, demands, actions, debts, sums of money, suits,
27 contracts, agreements, promises, damages, and liabilities of every nature and
28 description, including both known and Unknown Claims (defined below), whether

1 arising under federal, state, common or administrative law, or any other law,
2 whether fixed or contingent, liquidated or un-liquidated, at law or in equity,
3 whether class or individual in nature, that Class Representatives or any other Class
4 Member: (i) asserted in the Action; or (ii) could have asserted in the Action or any
5 other action or forum, that arise out of, relate to, or are in connection with the
6 claims, allegations, transactions, facts, events, acts, disclosures, statements,
7 representations or omissions or failures to act involved, set forth, or referred to in
8 the complaints filed in the Action, and that relate to the purchase of the publicly
9 traded common stock of STEC during the Class Period. Released Claims include
10 the claims in *West Virginia Laborers' Trust Fund v. STEC, Inc.*, No. 30-2011-
11 00489022-CU-SL-CXC (Orange County Super. Ct.), but do not include: (i) claims
12 to enforce the Settlement; (ii) any governmental or regulatory agency's claims in
13 any criminal or civil action against any of the Released Defendant Parties; (iii) *In*
14 *re STEC, Inc. Derivative Litigation*, Master File No. CV 10-00667-JVS(MLGx)
15 (C.D. Cal.); and (iv) *In re STEC, Inc. Shareholder Derivative Litigation*, No. 30-
16 2009-00320001-CU-SL-CXC (Orange County Super. Ct.).

17 (dd) "Released Defendants' Claims" means all claims, including
18 both known and Unknown Claims (as defined below), whether arising under
19 federal, state, common or administrative law, or any other law, that Defendants
20 could have asserted against any of the Released Plaintiff Parties that arise out of or
21 relate in any way to the institution, prosecution, or settlement of the Action (other
22 than claims to enforce the Settlement).

23 (ee) "Released Defendant Parties" means Defendants, their past or
24 present subsidiaries, parents, successors and predecessors, officers, directors,
25 shareholders, partners, agents, employees, attorneys, auditors, insurers,
26 underwriters of securities offerings, investment advisors, and their respective
27 employees and agents; the spouses, members of the immediate families,
28 representatives, and heirs of the Individual Defendants, as well as any trust of

1 which any Individual Defendant is the settlor or which is for the benefit of any of
2 their immediate family members; and any person, firm, trust, corporation, officer,
3 director or other individual or entity in which any Defendant has a controlling
4 interest or which is related to or affiliated with any of the Defendants and the legal
5 representatives, heirs, successors, in interest or assigns of Defendants.

6 (ff) “Released Parties” means the Released Defendant Parties and
7 the Released Plaintiff Parties.

8 (gg) “Released Plaintiff Parties” means each and every Class
9 Member, Class Representative, Lead Plaintiff, Co-Lead Counsel, Plaintiffs’
10 Counsel, and their respective past, current, or future trustees, officers, directors,
11 partners, employees, contractors, auditors, principals, agents, attorneys,
12 predecessors, successors, assigns, parents, subsidiaries, divisions, joint ventures,
13 general or limited partners or partnerships, and limited liability companies; and the
14 spouses, members of the immediate families, representatives, and heirs of any
15 Released Plaintiff Party who is an individual, as well as any trust of which any
16 Released Plaintiff Party is the settlor or which is for the benefit of any of their
17 immediate family members. Released Plaintiff Parties does not include any Person
18 who timely and validly seeks exclusion from the Class.

19 (hh) “Settlement Amount” means the total principal amount of
20 thirty-five million seven hundred fifty thousand dollars (\$35,750,000) in cash.

21 (ii) “Settlement Fund” means the Settlement Amount and any
22 earnings thereon.

23 (jj) “Settlement Hearing” means the hearing to be held by the Court
24 to determine whether the proposed Settlement is fair, reasonable, and adequate and
25 should be approved.

26 (kk) “Settlement” means the resolution of the Action as against the
27 Defendants in accordance with the terms and provisions of this Stipulation
28

1 (ll) “Stipulation” means this Stipulation and Agreement of
2 Settlement.

3 (mm) “Summary Notice” means the Summary Notice of Pendency of
4 Class Action and Proposed Settlement and Motion for Attorneys’ Fees and
5 Expenses for publication, which, subject to approval of the Court, shall be
6 substantially in the form attached as Exhibit A-3 to Exhibit A hereto.

7 (nn) “Taxes” means all taxes on the income of the Settlement Fund
8 and expenses and costs incurred in connection with the taxation of the Settlement
9 Fund (including, without limitation, interest, penalties and the expenses of tax
10 attorneys and accountants).

11 (oo) “Unknown Claims” means any and all Released Claims, which
12 Class Representatives or any other Class Member do not know or suspect to exist
13 in his, her or its favor at the time of the release of the Released Defendant Parties,
14 and any Released Defendants’ Claims that Defendants do not know or suspect to
15 exist in his, her or its favor at the time of the release of the Released Plaintiff
16 Parties, which if known by him, her or it might have affected his, her or its
17 decision(s) with respect to the Settlement. With respect to any and all Released
18 Claims and Released Defendants’ Claims, the Parties stipulate and agree that, upon
19 the Effective Date, Class Representatives and Defendants, shall expressly, and
20 each other Class Member shall be deemed to have, and by operation of the
21 Judgment or Alternative Judgment shall have, expressly waived and relinquished
22 any and all provisions, rights and benefits conferred by any law of any state or
23 territory of the United States, or principle of common law, which is similar,
24 comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

25 A general release does not extend to claims which the
26 creditor does not know or suspect to exist in his or her
27 favor at the time of executing the release, which if known
28

1 by him or her must have materially affected his or her
2 settlement with the debtor.

3 Class Representatives, the other Class Members, or Defendants may hereafter
4 discover facts in addition to or different from those which he, she, or it now knows
5 or believes to be true with respect to the subject matter of the Released Claims and
6 the Released Defendants' Claims, but Class Representatives and Defendants shall
7 expressly, fully, finally and forever settle and release, and each other Class
8 Member shall be deemed to have settled and released, and upon the Effective Date
9 and by operation of the Judgment or Alternative Judgment shall have settled and
10 released, fully, finally, and forever, any and all Released Claims and Released
11 Defendants' Claims as applicable, without regard to the subsequent discovery or
12 existence of such different or additional facts. Class Representatives and
13 Defendants acknowledge, and other Class Members by operation of law shall be
14 deemed to have acknowledged, that the inclusion of "Unknown Claims" in the
15 definition of Released Claims and Released Defendants' Claims was separately
16 bargained for and was a key element of the Settlement.

17 **SCOPE AND EFFECT OF SETTLEMENT**

18 2. The obligations incurred pursuant to this Stipulation are subject to
19 approval by the Court, such approval becoming Final, and are in full and final
20 disposition of the claims in the Action with respect to the Released Parties and any
21 and all Released Claims and Released Defendants' Claims.

22 3. For purposes of this Settlement only, the Parties agree to the
23 certification of the Class for the purposes of the Class Representatives' claims
24 under the Securities Act and certification of Mark Ripperda as a Class
25 Representative for the Class.

26 4. By operation of the Judgment or Alternative Judgment, as of the
27 Effective Date, Class Representatives and each and every other Class Member on
28 behalf of themselves and each of their respective heirs, executors, trustees,

1 administrators, predecessors, successors, and assigns, shall be deemed to have
2 fully, finally, and forever waived, released, discharged, and dismissed each and
3 every one of the Released Claims against each and every one of the Released
4 Defendant Parties and shall forever be barred and enjoined from commencing,
5 instituting, prosecuting, or maintaining any of the Released Claims against any of
6 the Released Defendant Parties.

7 5. By operation of the Judgment or Alternative Judgment, as of the
8 Effective Date, Defendants, on behalf of themselves and each of their respective
9 heirs, executors, trustees, administrators, predecessors, successors, and assigns by
10 operation of the Judgment or Alternative Judgment, shall be deemed to have fully,
11 finally, and forever waived, released, discharged, and dismissed each and every
12 one of the Released Defendants' Claims, as against each and every one of the
13 Released Plaintiff Parties and shall forever be barred and enjoined from
14 commencing, instituting, prosecuting, or maintaining any of the Released
15 Defendants' Claims against any of the Released Plaintiff Parties.

16 **THE SETTLEMENT CONSIDERATION**

17 6. In full settlement of the claims asserted in the Action against
18 Defendants and in consideration of the releases specified in ¶¶ 4-5, above,
19 Defendants shall pay, or cause to be paid, the sum of thirty-five million seven
20 hundred fifty thousand dollars (\$35,750,000) in cash into the Escrow Account
21 within fifteen (15) business days after the Court enters the Preliminary Approval
22 Order and Co-Lead Counsel has provided Defendants' counsel with complete and
23 accurate wiring instructions, payment address, and a complete and accurate W-9
24 form for the Settlement Fund.

25 7. With the sole exception of Defendants' obligation to pay, or cause
26 payment of, the Settlement Amount into the Escrow Account as provided for in ¶
27 6, or the obligations in ¶ 35, Defendants and Defendants' Counsel shall have no
28 responsibility for, interest in, or liability whatsoever with respect to: (i) any act,

1 omission, or determination of Co-Lead Counsel, the Escrow Agent or the Claims
2 Administrator, or any of their respective designees or agents, in connection with
3 the administration of the Settlement or otherwise; (ii) the management, investment,
4 or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the
5 determination, administration, calculation, or payment of any claims asserted
6 against the Settlement Fund; (v) any losses suffered by, or fluctuations in value of,
7 the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses,
8 and/or costs incurred in connection with the taxation of the Settlement Fund or the
9 filing of any returns.

10 **USE AND TAX TREATMENT OF SETTLEMENT FUND**

11 8. The Settlement Fund shall be used: (i) to pay any Taxes; (ii) to pay
12 Notice and Administration Expenses; (iii) to pay any attorneys' fees and expenses
13 awarded by the Court; (iv) to pay any costs and expenses allowed by the PSLRA
14 and awarded to Class Representatives by the Court; (v) to pay any other fees and
15 expenses awarded by the Court; and (vi) to pay the claims of Authorized
16 Claimants.

17 9. The Net Settlement Fund shall be distributed to Authorized Claimants
18 as provided in ¶¶ 21-33 hereof. The Net Settlement Fund shall remain in the
19 Escrow Account prior to the Effective Date. All funds held in the Escrow Account
20 shall be deemed to be in the custody of the Court and shall remain subject to the
21 jurisdiction of the Court until such time as the funds shall be disbursed or returned,
22 pursuant to ¶ 45 of this Stipulation, and/or further order of the Court. The Escrow
23 Agent shall invest funds in the Escrow Account in instruments backed by the full
24 faith and credit of the United States Government (or a mutual fund invested solely
25 in such instruments), or deposit some or all of the funds in non-interest-bearing
26 transaction account(s) up to the limit of Federal Deposit Insurance Corporation
27 insurance. Defendants and Defendants' Counsel shall have no responsibility for,
28

1 interest in, or liability whatsoever with respect to investment decisions executed by
2 the Escrow Agent.

3 10. After the Settlement Amount has been paid into the Escrow Account
4 in accordance with ¶ 6 above, the Parties agree to treat the Settlement Fund, as a
5 “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. In
6 addition, Co-Lead Counsel shall timely make, or cause to be made, such elections
7 as necessary or advisable to carry out the provisions of this paragraph, including
8 the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the
9 earliest permitted date. Such election shall be made in compliance with the
10 procedures and requirements contained in such regulations. It shall be the
11 responsibility of Co-Lead Counsel to timely and properly prepare and deliver, or
12 cause to be prepared and delivered, the necessary documentation for signature by
13 all necessary parties, and thereafter take all such actions as may be necessary or
14 appropriate to cause the appropriate filing to occur.

15 (a) For the purposes of Section 468B of the Internal Revenue Code
16 of 1986, as amended, and Treas. Reg. § 1.468B promulgated thereunder, the
17 “administrator” shall be Co-Lead Counsel or its successors, who shall timely and
18 properly file, or cause to be filed, all informational and other tax returns necessary
19 or advisable with respect to the earnings on the fund deposited in the Escrow
20 Account (including without limitation the returns described in Treas. Reg. §
21 1.468B-2(k)). Such returns (as well as the election described above) shall be
22 consistent with this subparagraph and in all events shall reflect that all Taxes
23 (including any estimated taxes, earnings, or penalties) on the income earned on the
24 funds deposited in the Escrow Account shall be paid out of such funds as provided
25 in subparagraph (c) hereof.

26 (b) All Taxes shall be paid solely out of the Escrow Account. In all
27 events, Defendants and Defendants’ Counsel shall have no liability or
28 responsibility whatsoever for the Taxes or the filing of any tax returns or other

1 documents with the Internal Revenue Service or any other state or local taxing
2 authority. In the event any Taxes are owed by any of the Defendants on any
3 earnings on the funds on deposit in the Escrow Account, such amounts shall also
4 be paid out of the Escrow Account. Any taxes or tax expenses owed on any
5 earnings on the Settlement Amount prior to its transfer to the Escrow Account shall
6 be the sole responsibility of Defendants.

7 (c) Taxes shall be treated as, and considered to be, a cost of
8 administration of the Settlement and shall be timely paid, or caused to be paid, by
9 Co-Lead Counsel out of the Escrow Account without prior order from the Court or
10 approval by Defendants, and Co-Lead Counsel shall be obligated (notwithstanding
11 anything herein to the contrary) to withhold from distribution to Authorized
12 Claimants any funds necessary to pay such amounts (as well as any amounts that
13 may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). The Parties
14 agree to cooperate with Co-Lead Counsel, each other, and their tax attorneys and
15 accountants to the extent reasonably necessary to carry out the provisions of this
16 paragraph.

17 11. This is not a claims-made settlement. As of the Effective Date,
18 Defendants and/or such other persons or entities funding the Settlement on
19 Defendants' behalf, shall not have any right to the return of the Settlement Fund or
20 any portion thereof for any reason.

21 **ATTORNEYS' FEES AND EXPENSES**

22 12. Co-Lead Counsel will apply to the Court, on behalf of Plaintiffs'
23 Counsel, for an award from the Settlement Fund of attorneys' fees and
24 reimbursement of litigation expenses incurred in prosecuting the Action, plus any
25 earnings on such amounts at the same rate and for the same periods as earned by
26 the Settlement Fund ("Fee and Expense Application"). Defendants shall take no
27 position with respect to the Fee and Expense Application.
28

1 13. The amount of attorneys' fees and expenses awarded by the Court is
2 within the sole discretion of the Court. Any attorneys' fees and expenses awarded
3 by the Court shall be paid from the Settlement Fund to Co-Lead Counsel
4 immediately upon after entry of the Order awarding such attorneys' fees and
5 expenses, notwithstanding the existence of any timely filed objections thereto, or
6 potential for appeal therefrom, or collateral attack on the Settlement or any part
7 thereof.

8 14. Any payment of attorneys' fees and litigation expenses pursuant to ¶¶
9 12-13 above shall be subject to all Plaintiffs' Counsel's obligation to make refunds
10 or repayments to the Settlement Fund of any paid amounts, plus accrued earnings
11 at the same net rate as is earned by the Settlement Fund, if the Settlement is
12 terminated or fails to become effective for any reason or if, as a result of any
13 appeal or further proceedings on remand, or successful collateral attack, the award
14 of attorneys' fees and/or litigation expenses is reduced or reversed by Final non-
15 appealable court order. Plaintiffs' Counsel shall make the appropriate refund or
16 repayment in full no later than thirty (30) calendar days after receiving notice from
17 a court of appropriate jurisdiction of the termination of the Settlement or notice of
18 any reduction or reversal of the award of attorneys' fees and/or litigation expenses
19 by Final non-appealable court order.

20 15. With the sole exception of Defendants causing the payment of the
21 Settlement Amount into the Escrow Account as provided for in ¶ 6, Defendants
22 shall have no responsibility for, and no liability whatsoever with respect to, any
23 payment to Plaintiffs' Counsel in the Action that may occur at any time.

24 16. Defendants shall have no responsibility for, and no liability
25 whatsoever with respect to, the allocation of any attorneys' fees or expenses among
26 Plaintiffs' Counsel in the Action, or any other Person who may assert some claim
27 thereto, or any fee or expense awards the Court may make in the Action.
28

1 17. Defendants shall have no responsibility for, and no liability
2 whatsoever with respect to, any attorneys' fees, costs, or expenses incurred by or
3 on behalf of the Class Members, whether or not paid from the Escrow Account.

4 18. The procedure for and the allowance or disallowance by the Court of
5 any Fee and Expense Application are not part of the Settlement set forth in this
6 Stipulation, and are separate from the Court's consideration of the fairness,
7 reasonableness, and adequacy of the Settlement set forth in the Stipulation, and any
8 order or proceeding relating to any Fee and Expense Application, including an
9 award of attorneys' fees or expenses in an amount less than the amount requested
10 by Co-Lead Counsel, or any appeal from any order relating thereto or reversal or
11 modification thereof, shall not operate to terminate or cancel the Stipulation, or
12 affect or delay the finality of the Judgment or Alternative Judgment approving the
13 Stipulation and the Settlement set forth herein, including, but not limited to, the
14 release, discharge, and relinquishment of the Released Claims against the Released
15 Defendant Parties, or any other orders entered pursuant to the Stipulation. Class
16 Representatives and Plaintiffs' Counsel may not cancel or terminate the Stipulation
17 or the Settlement in accordance with ¶ 39 or otherwise based on the Court's or any
18 appellate court's ruling with respect to fees and expenses in the Action.

19 **ADMINISTRATION EXPENSES**

20 19. Except as otherwise provided herein, the Settlement Fund shall be
21 held in the Escrow Account until the Effective Date.

22 20. Prior to the Effective Date, without further approval from Defendants
23 or further order of the Court, Co-Lead Counsel may expend up to \$450,000 from
24 the Settlement Fund to pay Notice and Administration Expenses actually incurred
25 (the "Pre-Effective Date Expenses"). Taxes and fees related to the Escrow
26 Account and investment of the Settlement Fund may be paid as incurred, without
27 further approval of Defendants or further order of the Court. After the Effective
28

1 Date, without further approval of Defendants or further order of the Court, Notice
2 and Administration Expenses may be paid as incurred.

3 **DISTRIBUTION TO AUTHORIZED CLAIMANTS**

4 21. Co-Lead Counsel will apply to the Court for a Distribution Order, on
5 notice to Defendants' Counsel, approving the Claims Administrator's
6 administrative determinations concerning the acceptance and rejection of the
7 claims submitted herein, and, if the Effective Date has occurred, directing the
8 payment of the Net Settlement Fund to Authorized Claimants.

9 22. The Claims Administrator shall administer the Settlement under
10 Plaintiffs' Counsel's supervision and subject to the jurisdiction of the Court.
11 Except as stated in ¶¶ 6 and 35, hereof, Defendants and Defendants' Counsel shall
12 have no responsibility for, interest in, or liability whatsoever with respect to the
13 administration of the Settlement or the actions or decisions of the Claims
14 Administrator, and shall have no liability to the Class in connection with such
15 administration.

16 23. The Claims Administrator shall determine each Authorized
17 Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized
18 Claimant's Recognized Loss, as defined in the Plan of Allocation of Net
19 Settlement Fund (the "Plan of Allocation") included in the Notice, or in such other
20 plan of allocation as the Court may approve.

21 24. Defendants will take no position with respect to the Plan of
22 Allocation. The Plan of Allocation is a matter separate and apart from the
23 proposed Settlement between Class Representatives and Defendants, and any
24 decision by the Court concerning the Plan of Allocation shall not affect the validity
25 or finality of the proposed Settlement. The Plan of Allocation is not a necessary
26 term of this Stipulation and it is not a condition of this Stipulation that any
27 particular plan of allocation be approved by the Court. Class Representatives and
28 Plaintiffs' Counsel may not cancel or terminate the Stipulation or the Settlement in

1 accordance with ¶ 39 or otherwise based on the Court's or any appellate court's
2 ruling with respect to the Plan of Allocation or any plan of allocation in the Action.
3 Defendants and Defendants' Counsel shall have no responsibility or liability for
4 reviewing or challenging claims, the allocation of the Net Settlement Fund, or the
5 distribution of the Net Settlement Fund.

6 **ADMINISTRATION OF THE SETTLEMENT**

7 25. Any Class Member who fails to timely submit a valid Proof of Claim
8 (substantially in the form of Exhibit A-2 to Exhibit A hereto) will not be entitled to
9 receive any of the proceeds from the Net Settlement Fund, except as otherwise
10 ordered by the Court, but will otherwise be bound by all of the terms of this
11 Stipulation and the Settlement, including the terms of the Judgment or Alternative
12 Judgment to be entered in the Action and the releases provided for herein, and will
13 be barred from bringing any action against the Released Defendant Parties
14 concerning the Released Claims.

15 26. Plaintiffs' Counsel shall be responsible for supervising the
16 administration of the Settlement and disbursement of the Net Settlement Fund by
17 the Claims Administrator. Plaintiffs' Counsel shall have the right, but not the
18 obligation, to advise the Claims Administrator to waive what Plaintiffs' Counsel
19 deems to be *de minimis* or formal or technical defects in any Proofs of Claim
20 submitted. Defendants and Defendants' Counsel shall have no liability, obligation
21 or responsibility for the administration of the Settlement, the allocation of the Net
22 Settlement Fund or reviewing or challenging of claims of Members of the Class.
23 Co-Lead Counsel shall be solely responsible for designating the Claims
24 Administrator, subject to approval by the Court.

25 27. For purposes of determining the extent, if any, to which a Class
26 Member shall be entitled to be treated as an Authorized Claimant, the following
27 conditions shall apply:
28

1 (a) Each Class Member shall be required to submit a Proof of
2 Claim, substantially in the form attached hereto as Exhibit A-2 to Exhibit A,
3 supported by such documents as are designated therein, including proof of the
4 claimant's loss, or such other documents or proof as the Claims Administrator or
5 Co-Lead Counsel, in their discretion, may deem acceptable;

6 (b) All Proofs of Claim must be submitted by the date set by the
7 Court in the Preliminary Approval Order and specified in the Notice, unless such
8 deadline is extended by Co-Lead Counsel in their discretion, or by Order of the
9 Court. Any Class Member who fails to submit a Proof of Claim by such date shall
10 be barred from receiving any distribution from the Net Settlement Fund or
11 payment pursuant to this Stipulation (unless, by Order of the Court or the
12 discretion of Co-Lead Counsel, late-filed Proofs of Claim are accepted), but shall
13 in all other respects be bound by all of the terms of this Stipulation and the
14 Settlement, including the terms of the Judgment or Alternative Judgment and the
15 releases provided for herein, and will be permanently barred and enjoined from
16 bringing any action, claim or other proceeding of any kind against any Released
17 Party concerning any Released Claim or Released Defendants' Claims. Provided
18 that it is received before the motion for the Distribution Order is filed, a Proof of
19 Claim shall be deemed to be submitted when mailed, if received with a postmark
20 on the envelope and if mailed by first-class or overnight U.S. Mail and addressed
21 in accordance with the instructions thereon. In all other cases, the Proof of Claim
22 shall be deemed to have been submitted when actually received by the Claims
23 Administrator;

24 (c) Each Proof of Claim shall be submitted to and reviewed by the
25 Claims Administrator, under the supervision of Co-Lead Counsel, who shall
26 determine in accordance with this Stipulation the extent, if any, to which each
27 claim shall be allowed, subject to review by the Court;

28

1 (d) Proofs of Claim that do not meet the submission requirements
2 may be rejected. Prior to rejecting a Proof of Claim in whole or in part, the Claims
3 Administrator shall communicate with the claimant in writing to give the claimant
4 the chance to remedy any curable deficiencies in the Proof of Claim submitted.
5 The Claims Administrator, under supervision of Co-Lead Counsel, shall notify, in
6 a timely fashion and in writing, all claimants whose claims the Claims
7 Administrator proposes to reject in whole or in part for curable deficiencies, setting
8 forth the reasons therefor, and shall indicate in such notice that the claimant whose
9 claim is to be rejected has the right to a review by the Court if the claimant so
10 desires and complies with the requirements of subparagraph (e) below;

11 (e) If any claimant whose claim has been rejected in whole or in
12 part for curable deficiency desires to contest such rejection, the claimant must,
13 within twenty (20) calendar days after the date of mailing of the notice required in
14 subparagraph (d) above, serve upon the Claims Administrator a notice and
15 statement of reasons indicating the claimant's grounds for contesting the rejection
16 along with any supporting documentation, and requesting a review thereof by the
17 Court. If a dispute concerning a claim cannot be otherwise resolved, Co-Lead
18 Counsel shall thereafter present the request for review to the Court; and

19 (f) The administrative determinations of the Claims Administrator
20 accepting and rejecting disputed claims shall be presented to the Court, on notice
21 to Defendants' Counsel, for approval by the Court in the Distribution Order.

22 28. Each claimant who submits a Proof of Claim shall be deemed to have
23 submitted to the jurisdiction of the Court with respect to the claimant's claim, and
24 the claim will be subject to investigation and discovery under the Federal Rules of
25 Civil Procedure, provided that such investigation and discovery shall be limited to
26 the claimant's status as a Class Member and the validity and amount of the
27 claimant's claim. In connection with processing the Proofs of Claim, no discovery
28 shall be allowed on the merits of the Action or the Settlement.

1 29. Payment pursuant to the Distribution Order shall be deemed final and
2 conclusive against all Class Members. All Class Members whose claims are not
3 approved by the Court shall be barred from participating in distributions from the
4 Net Settlement Fund, but otherwise shall be bound by all of the terms of this
5 Stipulation and the Settlement, including the terms of the Judgment or Alternative
6 Judgment to be entered in the Action and the releases provided for herein, and will
7 be barred from bringing any action against the Released Defendant Parties
8 concerning the Released Claims.

9 30. All proceedings with respect to the administration, processing and
10 determination of claims described by ¶¶ 21-33 of this Stipulation and the
11 determination of all controversies relating thereto, including disputed questions of
12 law and fact with respect to the validity of claims, shall be subject to the
13 jurisdiction of the Court, but shall not in any event delay or affect the finality of the
14 Judgment or Alternative Judgment.

15 31. No Person shall have any claim of any kind against the Released
16 Defendant Parties or their counsel with respect to the matters set forth in this
17 Section or any of its subsections.

18 32. No Person shall have any claim against Class Representatives or their
19 counsel (including Co-Lead Counsel and Plaintiffs' Counsel), or the Claims
20 Administrator, or other agent designated by Co-Lead Counsel, based on the
21 distributions made substantially in accordance with this Stipulation and the
22 Settlement contained herein, the Plan of Allocation, or further order(s) of the
23 Court.

24 33. If there is any balance remaining in the Net Settlement Fund after at
25 least six (6) months from the date of initial distribution of the Net Settlement Fund
26 (whether by reason of tax refunds, uncashed checks or otherwise), Co-Lead
27 Counsel shall, if feasible and economical, reallocate such balance among
28 Authorized Claimants who have cashed their checks in an equitable and economic

1 fashion. Any balance that still remains in the Net Settlement Fund, after payment
2 of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if
3 any, shall be contributed to a non-sectarian not-for-profit charitable organization(s)
4 serving the public interest, designated by Class Representatives.

5 **TERMS OF THE PRELIMINARY APPROVAL ORDER**

6 34. Concurrently with their application for preliminary Court approval of
7 the Settlement contemplated by this Stipulation and promptly upon execution of
8 this Stipulation, Plaintiffs' Counsel and Defendants' Counsel shall jointly apply to
9 the Court for entry of the Preliminary Approval Order, which shall be substantially
10 in the form annexed hereto as Exhibit A. The Preliminary Approval Order will,
11 *inter alia*, set the date for the Settlement Hearing and prescribe the method for
12 giving notice of the Settlement to the Class.

13 35. Defendants shall use their best efforts to provide, or cause to be
14 provided, to Co-Lead Counsel or the Claims Administrator within seven (7)
15 calendar days of Class Representatives filing the Stipulation with the Court, at no
16 cost to the Class, transfer records in electronic searchable form containing the
17 names and addresses of purchasers of the publicly traded common stock of STEC
18 during the Class Period.

19 **TERMS OF THE JUDGMENT**

20 36. If the Settlement contemplated by this Stipulation is approved by the
21 Court, Plaintiffs' Counsel and Defendants' Counsel shall jointly request that the
22 Court enter a Judgment substantially in the form annexed hereto as Exhibit B.

23 37. The proposed Judgment will contain the following bar order
24 provision:

25 Pursuant to the PSLRA, 15 U.S.C. § 78u-4(f)(7), upon
26 the Effective Date, Defendants are hereby discharged
27 from all claims for contribution and indemnification that
28 have been or may hereafter be brought by or on behalf of

1 any person or entity arising out of the Action. Any and
2 all persons and entities are permanently BARRED,
3 ENJOINED and RESTRAINED from commencing,
4 prosecuting or asserting any and all claims for
5 contribution or indemnification arising out of the Action,
6 whether arising under state, federal or common law, as
7 claims, cross-claims, counterclaims, or third-party
8 claims, in this Action or as a separate action, in this Court
9 or other forum (collectively, the “Barred Contribution
10 Claims”) against Defendants; and Defendants are hereby
11 permanently BARRED, ENJOINED and RESTRAINED
12 from commencing, prosecuting or asserting any and all
13 Barred Contribution Claims against any person or entity,
14 other than any person or entity whose liability to the
15 Class has been extinguished pursuant to the Stipulation
16 and this Judgment. Any final verdict or judgment
17 obtained by or on behalf of Class Representatives, the
18 Class or any Class Member shall be reduced as provided
19 by the PSLRA.

20 **EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION**

21 38. The Effective Date of this Settlement shall be the date when all of the
22 following shall have occurred:

- 23 (a) entry of the Preliminary Approval Order, which shall be in all
24 material respects substantially in the form set forth in Exhibit A annexed hereto;
25 (b) payment of the Settlement Amount into the Escrow Account;
26 (c) approval by the Court of the Settlement, following notice to the
27 Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil
28 Procedure; and

1 (d) a Judgment, which shall be in all material respects substantially
2 in the form set forth in Exhibit B annexed hereto, has been entered by the Court
3 and has become Final; or in the event that an Alternative Judgment has been
4 entered and none of the Parties elects to terminate the Settlement by reason of such
5 variance, the Alternative Judgment has become Final.

6 39. Defendants and Class Representatives shall have the right to terminate
7 the Settlement and this Stipulation by providing written notice of their election to
8 do so (“Termination Notice”), through counsel, to all other Parties hereto within
9 fourteen (14) calendar days of: (i) the Court’s Final refusal to enter the Preliminary
10 Approval Order in any material respect; (ii) the Court’s Final refusal to approve
11 this Stipulation or any material part of it; (iii) the Court’s Final refusal to enter the
12 Judgment in any material respect or an Alternative Judgment; or (iv) the date upon
13 which the Judgment or Alternative Judgment is modified or reversed in any
14 material respect by Final order of the United States Court of Appeals or the
15 Supreme Court of the United States.

16 40. STEC shall also have the right to terminate the Settlement in the event
17 the Termination Threshold (defined below) has been reached.

18 (a) Simultaneously herewith, Defendants’ Counsel and Plaintiffs’
19 Counsel are executing a confidential Supplemental Agreement Regarding Requests
20 for Exclusion (“Supplemental Agreement”). The Supplemental Agreement sets
21 forth certain conditions under which STEC shall have the sole option to terminate
22 the Settlement and render this Stipulation null and void in the event that requests
23 for exclusion from the Class exceed certain agreed-upon criteria (the “Termination
24 Threshold”). The Parties agree to maintain the confidentiality of the Termination
25 Threshold in the Supplemental Agreement, which shall not be filed with the Court
26 unless a dispute arises as to its terms, or as otherwise ordered by the Court, nor
27 shall the Supplemental Agreement otherwise be disclosed unless ordered by the
28 Court. If submission of the Supplemental Agreement is required for resolution of a

1 dispute or is otherwise ordered by the Court, the Parties will undertake to have the
2 Supplemental Agreement and/or Termination Threshold submitted to the Court *in*
3 *camera* or under seal.

4 (b) In the event of a termination of this Settlement pursuant to the
5 Supplemental Agreement, this Stipulation shall become null and void and of no
6 further force and effect, with the exception of the provisions of ¶¶ 44-45, and 46
7 which shall continue to apply.

8 41. In addition to all of the rights and remedies that the Class
9 Representatives have under the terms of this Stipulation, Class Representatives
10 shall also have the right to terminate the Settlement in the event that Defendants do
11 not pay, or cause to be paid, the Settlement Amount as provided in ¶ 6 above, by
12 providing written notice of their election to terminate to all other Parties to this
13 Stipulation and, thereafter, Defendants fail to pay the Settlement Amount within
14 fourteen (14) calendar days of such written notice.

15 42. If, before the Settlement becomes Final, a trustee, receiver,
16 conservator, or other fiduciary is appointed under Title 11 of the United States
17 Code (Bankruptcy), or any similar law, and in the event of the entry of a Final
18 order of a court of competent jurisdiction determining the transfer of money or any
19 portion thereof to the Settlement Fund by or on behalf of a Defendant to be a
20 preference, voidable transfer, fraudulent transfer, or similar transaction and any
21 portion thereof is required to be returned, and such amount is not promptly
22 deposited into the Settlement Fund by others, then, at the election of Class
23 Representatives, the Parties shall jointly move the Court to vacate and set aside the
24 release given and the Judgment or Alternative Judgment entered, and Defendants,
25 Class Representatives and the Members of the Class shall be restored to their
26 litigation positions immediately prior to the execution of the MOU on September
27 11, 2012.
28

1 43. If an option to withdraw from and terminate this Stipulation and
2 Settlement arises under any of ¶¶ 39-42 above: (i) neither Defendants nor Class
3 Representatives (as the case may be) will be required for any reason or under any
4 circumstance to exercise that option; and (ii) any exercise of that option shall be
5 made in good faith, but in the sole and unfettered discretion of Defendants or Class
6 Representatives, as applicable.

7 44. In the event the Settlement is terminated or fails to become effective
8 for any reason, then: the Settlement shall be without prejudice, and none of its
9 terms, including, but not limited to, the selection of the additional Class
10 Representative, shall be effective or enforceable except as specifically provided
11 herein; the Parties to this Stipulation shall be deemed to have reverted to their
12 respective litigation positions in the Action immediately prior to their execution of
13 the MOU on September 11, 2012; and the Parties in the Action shall proceed in all
14 respects as if this Stipulation and any related orders had not been entered. In such
15 event, the MOU, this Stipulation or any aspect of the discussions or negotiations
16 leading to this Stipulation, shall not be admissible in this Action and shall not be
17 used by Class Representatives against or to the prejudice of Defendants or by
18 Defendants against or to the prejudice of Class Representatives in any court filings,
19 depositions, at trial or otherwise.

20 45. In the event the Settlement is terminated or fails to become effective
21 for any reason, any portion of the Settlement Amount previously paid on behalf of
22 or by Defendants, together with any earnings thereon, less any Taxes paid or due,
23 less Pre-Effective Date Expenses actually incurred and paid or payable from the
24 Settlement Amount shall be returned to the entities that made the deposit(s) within
25 ten (10) business days after written notification of such event. At the request of
26 Defendants' Counsel, the Escrow Agent or its designee shall apply for any tax
27 refund owed on the amounts in the Escrow Account and pay the proceeds, after
28

1 any deduction of any fees or expenses incurred in connection with such
2 application(s), for refund to the applicable funder or as otherwise directed.

3 **NO ADMISSION OF WRONGDOING**

4 46. Except as set forth in ¶ 47 below, this Stipulation, whether or not
5 consummated, and any discussions, negotiations, proceedings, or agreements
6 relating to the Stipulation, the Settlement, and any matters arising in connection
7 with settlement discussions or negotiations, proceedings, or agreements, shall not
8 be offered or received against or to the prejudice of the Parties for any purpose,
9 and in particular:

10 (a) do not constitute, and shall not be offered or received against or
11 to the prejudice of Defendants as evidence of, or construed as, or deemed to be
12 evidence of any presumption, concession or admission by Defendants with respect
13 to the truth of any allegation by Class Representatives and the Class or the validity
14 of any claim that has been or could have been asserted in the Action or in any
15 litigation, including but not limited to the Released Claims, or of any liability,
16 damages, negligence, fault or wrongdoing of Defendants;

17 (b) do not constitute, and shall not be offered or received against or
18 to the prejudice of Defendants as evidence of a presumption, concession, or
19 admission of any fault, misrepresentation, or omission with respect to any
20 statement or written document approved or made by Defendants, or against or to
21 the prejudice of Class Representatives or any other Members of the Class as
22 evidence of any infirmity in the claims of Class Representatives or the other
23 Members of the Class;

24 (c) do not constitute, and shall not be offered or received against or
25 to the prejudice of Defendants or against Class Representatives or any other
26 Members of the Class, as evidence of a presumption, concession or admission with
27 respect to any liability, damages, negligence, fault, infirmity, or wrongdoing, or in
28 any way referred to for any other reason against or to the prejudice of any of the

1 Parties to this Stipulation, in any other civil, criminal, or administrative action or
2 proceeding, other than such proceedings as may be necessary to effectuate the
3 provisions of this Stipulation;

4 (d) do not constitute, and shall not be construed as, or offered or
5 received against or to the prejudice of Defendants, Class Representatives, or any
6 other Members of the Class, as evidence of a presumption, concession, or
7 admission that the consideration to be given hereunder represents the amount
8 which could be or would have been recovered after trial;

9 (e) do not constitute, and shall not be construed as, or offered or
10 received against or to the prejudice of Defendants, Class Representatives, or any
11 other Members of the Class, as evidence of a presumption, concession, or
12 admission that any of their claims are without merit or infirm or that damages
13 recoverable under the Complaint would not have exceeded the Settlement Amount.

14 47. Defendants may file this Stipulation and/or the Judgment or
15 Alternative Judgment in any action that may be brought against them in order to
16 support a defense or counterclaim based on principles of res judicata, collateral
17 estoppel, release, good-faith settlement, judgment bar or reduction, or any theory
18 of claim preclusion or issue preclusion or similar defense or counterclaim, or to
19 effectuate the liability protection granted them under any applicable insurance
20 policies. The Parties may file this Stipulation and/or the Judgment or Alternative
21 Judgment in any action that may be brought to enforce the terms of this Stipulation
22 and/or the Judgment or Alternative Judgment. All Parties submit to the jurisdiction
23 of the Court for purposes of implementing and enforcing the Settlement.

24 **MISCELLANEOUS PROVISIONS**

25 48. All of the exhibits to the Stipulation, except any Plan of Allocation, to
26 the extent incorporated in those exhibits, are material and integral parts hereof and
27 are fully incorporated herein by this reference.
28

1 49. Defendants warrant that, as to the payments made on behalf of
2 Defendants, at the time of such payment, Defendants will not be insolvent, nor will
3 the payment required to be made, if made by Defendants themselves, render
4 Defendants insolvent, within the meaning of and/or for the purposes of the United
5 States Bankruptcy Code, including §§ 101 and 547 thereof.

6 50. The Parties to this Stipulation intend the Settlement of the Action to
7 be the full, final and complete resolution of all claims asserted or which could have
8 been asserted by the Parties with respect to the Released Claims and Released
9 Defendants' Claims. Accordingly, the Parties agree not to assert in any forum that
10 the Action was brought, prosecuted or defended in bad faith or without a
11 reasonable basis. The Parties and their counsel agree that each has complied fully
12 with Rule 11 of the Federal Rules of Civil Procedure in connection with the
13 maintenance, prosecution, defense and settlement of the Action and shall not make
14 any applications for sanctions, pursuant to Rule 11 or other court rule or statute,
15 with respect to any claims or defenses in this Action. The Parties agree that the
16 amount paid and the other terms of the Settlement were negotiated at arm's-length
17 in good faith by the Parties and their respective counsel, and reflect a settlement
18 that was reached voluntarily based upon adequate information and after
19 consultation with experienced legal counsel.

20 51. This Stipulation may not be modified or amended, nor may any of its
21 provisions be waived, except by a writing signed by all Parties hereto or their
22 successors.

23 52. The headings herein are used for the purpose of convenience only and
24 are not meant to have legal effect.

25 53. The administration and consummation of the Settlement as embodied
26 in this Stipulation shall be under the authority of the Court, and the Court shall
27 retain jurisdiction for the purpose of entering orders providing for awards of
28

1 attorneys' fees and any expenses, and implementing and enforcing the terms of this
2 Stipulation.

3 54. The waiver by one party of any breach of this Stipulation by any other
4 party shall not be deemed a waiver of any other prior or subsequent breach of this
5 Stipulation.

6 55. This Stipulation, its exhibits and the Supplemental Agreement
7 constitute the entire agreement among the parties hereto concerning the Settlement
8 of the Action as against Defendants, and no representations, warranties, or
9 inducements have been made by any party hereto concerning this Stipulation and
10 its exhibits other than those contained and memorialized in such documents.

11 56. Nothing in the Stipulation, or the negotiations relating thereto, is
12 intended to or shall be deemed to constitute a waiver of any applicable privilege or
13 immunity, including, without limitation, attorney-client privilege, joint defense
14 privilege, or work product protection.

15 57. This Stipulation may be executed in one or more counterparts. All
16 executed counterparts and each of them shall be deemed to be one and the same
17 instrument. Signatures sent by facsimile or pdf'd via e-mail shall be deemed
18 originals.

19 58. This Stipulation shall be binding when signed, but the Settlement shall
20 be effective only on the condition that the Effective Date occurs.

21 59. This Stipulation shall be binding upon, and inure to the benefit of, the
22 successors and assigns of the Parties hereto.

23 60. The construction, interpretation, operation, effect and validity of this
24 Stipulation, and all documents necessary to effectuate it, shall be governed by the
25 internal laws of the State of California without regard to conflicts of laws, except
26 to the extent that federal law requires that federal law govern.

27 61. This Stipulation shall not be construed more strictly against one Party
28 than another merely by virtue of the fact that it, or any part of it, may have been

1 prepared by counsel for one of the Parties, it being recognized that it is the result of
2 arm's-length negotiations among the Parties, and all Parties have contributed
3 substantially and materially to the preparation of this Stipulation.

4 62. The Parties and their counsel agree that they will refrain from
5 disparaging each other in any publicly disseminated statements in connection with
6 the Action.

7 63. All counsel and any other Person executing this Stipulation and any of
8 the exhibits hereto, or any related Settlement documents, warrant and represent that
9 they have the full authority to do so, and that they have the authority to take
10 appropriate action required or permitted to be taken pursuant to the Stipulation to
11 effectuate its terms.

12 64. The Parties and their counsel agree to cooperate fully with one
13 another in promptly applying, no later than October 5, 2012, for preliminary
14 approval by the Court of the Settlement and for the scheduling of a hearing for
15 consideration of final approval of the Settlement and Co-Lead Counsel's
16 application for an award of attorneys' fees and expenses, and to promptly agree
17 upon and execute all such other documentation as reasonably may be required to
18 obtain final approval by the Court of the Settlement.

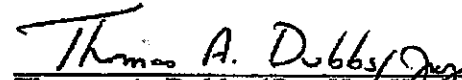
19 65. If any disputes arise out of the finalization of the Settlement
20 documentation or the Settlement itself prior to submission to the Court of the
21 application for preliminary approval of the Settlement, the Honorable Layn R.
22 Phillips shall decide any such disputes, first by way of expedited telephonic
23 mediation and, if unsuccessful, then by way of final, binding, non-appealable
24 resolution. This agreement to submit disputes to Judge Phillips for binding
25 resolution shall not apply to any attempts by any Party to alter any of the terms
26 expressly agreed to in the MOU.

27 66. Except as otherwise provided herein, each Party shall bear its own
28 costs.

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IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed, by their duly authorized attorneys, as of October 5, 2012.

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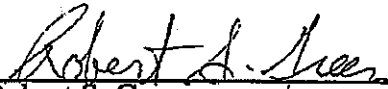
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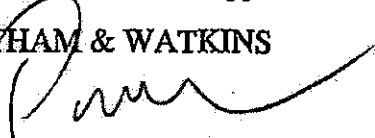

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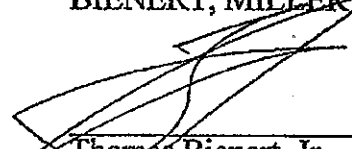
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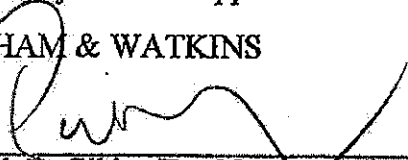
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