

1 ROBBINS LLP
BRIAN J. ROBBINS (190264)
2 brobbins@robbinsllp.com
STEPHEN J. ODDO (174828)
3 soddo@robbinsllp.com
SHANE P. SANDERS (237146)
4 ssanders@robbinsllp.com
5040 Shoreham Place
5 San Diego, CA 92122
Telephone: (619) 525-3990
6 Facsimile: (619) 525-3991

7 RM LAW, P.C.
RICHARD A. MANISKAS
8 rmaniskas@rmclasslaw.com
1055 Westlakes Drive, Suite 300
9 Berwyn, PA 19312
Telephone: (484) 324-6800
10 Facsimile: (484) 631-1305

11 Attorneys for Plaintiff
Vladimir Gusinsky Revocable Trust
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SANTA CLARA

15 VLADIMIR GUSINSKY REVOCABLE)
TRUST, Derivatively on Behalf of VEECO)
16 INSTRUMENTS INC.,)

17 Plaintiff,)

18 v.)

19 JOHN R. PEELER, JOHN P. KIERNAN,)
SHUBHAM MAHESHWARI, RICHARD)
20 A. D'AMORE, PETER J. SIMONE,)
GORDON HUNTER, KEITH D.)
21 JACKSON, THOMAS ST. DENNIS,)
KATHLEEN A. BAYLESS, and DOES 1-)
22 25, Inclusive,)

23 Defendants.)

24 -and-)

25 VEECO INSTRUMENTS INC., a Delaware)
corporation,)

26 Nominal Defendant.)
27

Case No. 18CV339925

AMENDED NOTICE OF PENDENCY AND
PROPOSED SETTLEMENT OF
SHAREHOLDER DERIVATIVE ACTION

EXHIBIT C

1 **TO: ALL OWNERS OF THE COMMON STOCK OF VEECO INSTRUMENTS, INC.**
2 **("VEECO" OR THE "COMPANY") CURRENTLY AND AS OF AUGUST 16, 2022**
3 **("CURRENT SHAREHOLDERS"):**

4 THIS NOTICE RELATES TO THE PENDENCY AND PROPOSED SETTLEMENT OF
5 SHAREHOLDER DERIVATIVE LITIGATION. PLEASE READ THIS NOTICE
6 CAREFULLY AND IN ITS ENTIRETY. IF YOU ARE A VEECO SHAREHOLDER, THIS
7 NOTICE CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.

8 THIS ACTION IS NOT A "CLASS ACTION." THUS, THERE IS NO COMMON FUND
9 UPON WHICH YOU CAN MAKE A CLAIM FOR MONETARY PAYMENT. IF YOU DO
10 NOT OBJECT TO THE TERMS OF THE PROPOSED SETTLEMENT OR THE AMOUNT
11 OF ATTORNEYS' FEES AND EXPENSES DESCRIBED IN THIS NOTICE, YOU ARE
12 NOT OBLIGATED TO TAKE ANY ACTION.

13 **YOU ARE HEREBY NOTIFIED**, pursuant to an Order of the Superior Court of the State of
14 California, County of Santa Clara (the "Court"), that a proposed settlement (the "Settlement")¹ has
15 been reached by the parties to the above-captioned shareholder derivative action (the "Action").

16 As explained below, a hearing will be held on November 17, 2022 at 1:30 p.m. before the
17 Honorable Sunil R. Kulkarni, at the Superior Court of the State of California, County of Santa Clara,
18 Downtown Superior Court, 191 North First Street, San Jose, California 95113 (the "Settlement
19 Hearing"), at which the Court will determine whether to approve the Settlement. You have an
20 opportunity to be heard at this hearing.

21 The terms of the Settlement are set forth in the Stipulation and summarized in this Notice. If
22 approved by the Court, the Settlement will fully resolve the Action, including the dismissal of the
23 Action with prejudice. For a more detailed statement of the matters involved in the Action, the
24 Settlement, and the terms discussed in this Notice, the Stipulation may be inspected (a) online on the
25 Superior Court of California, County of Santa Clara's Electronic Filing and Service Website at
26 www.scefiling.org, or (b) in person at Records, Superior Court of California, County of Santa Clara,
27 191 N. First Street, San Jose, California 95113, between the hours of 8:30 a.m. and 4:00 p.m., Monday
28 through Friday, excluding Court holidays and closures. The Stipulation is also available for viewing

¹ All capitalized terms herein, including "Settlement," have the same meanings as set forth in the Amended Stipulation of Settlement dated September 9, 2022 (the "Stipulation").

1 on the website of Plaintiff's Counsel, Robbins LLP ([https://robbinsllp.com/veeco-instruments-inc-](https://robbinsllp.com/veeco-instruments-inc-settlement/)
2 settlement/).

3 This Notice is NOT an expression of any opinion by the Court with respect to the merits of the
4 claims or defenses asserted in the Action or whether Defendants engaged in any wrongdoing. The Notice
5 is merely intended to advise you of the pendency and settlement of the Action.

6 **THERE IS NO CLAIMS PROCEDURE.** The Settlement will result in certain changes to the
7 Company's corporate governance reforms, not in payment to individuals, and accordingly, there will be
8 no claims procedure.

9 **I. THE ACTION**

10 **A. Brief Factual and Procedural Summary**

11 Plaintiff alleges that it brought this Action on behalf of and for the benefit of Veeco and against
12 the Individual Defendants. On December 21, 2018, Plaintiff filed a derivative complaint on behalf of
13 Veeco, pleading claims against the Individual Defendants for breach of fiduciary duty, unjust
14 enrichment, and waste of corporate assets (the "Complaint"). Specifically, Plaintiff alleges that the
15 Individual Defendants made false and misleading statements in connection with the Company's
16 acquisition of Ultratech, Inc. in 2017. The Individual Defendants have denied, and continue to deny,
17 all of Plaintiff's allegations and that there was any violation of law.

18 Defendants filed a demurrer to the Complaint on September 20, 2019, arguing that Plaintiff
19 had failed to adequately plead demand futility and had failed to adequately plead any of its underlying
20 derivative claims. Plaintiff filed an opposition to the demurrer on November 13, 2019, and
21 Defendants filed a reply brief in support of their demurrer on December 16, 2019.

22 The Court heard argument from the parties on June 5, 2020, and, following the hearing, issued
23 an order sustaining the demurrer for failure to adequately plead demand futility, holding that the
24 Offering Documents "did disclose 'continu[ing]' risks in the Asia-Pacific region bearing on increased
25 competition" and that Plaintiff's allegations failed to establish demand futility because the
26 "allegations regarding the defendants' knowledge are conclusory and are not specific to each
27 director." Order Sustaining Demurrer at 5. The Court gave Plaintiff sixty (60) days to amend.

1 On June 12, 2020, Plaintiff served on the Company a request for the production of certain
2 documents relevant to demand futility, as well as a demand to inspect the documents pursuant to the
3 applicable inspection demand statutes under Delaware and California law. The Company served its
4 responses and objections to Plaintiff's request for production of documents on July 14, 2020. The
5 parties thereafter met and conferred and, notwithstanding their dispute concerning Plaintiff's
6 entitlement to discovery at the pleading stage reached an agreement pursuant to which the Company
7 would produce certain documents responsive to Plaintiff's requests and extend Plaintiff's time to file
8 an amended complaint pending the production and review of those documents.

9 On July 28, 2020, subject to the Stipulation and Protective Order Regarding Confidential
10 Information that was entered by the Court on July 24, 2020 and Veeco's reservation of rights regarding
11 Plaintiff's entitlement to discovery, Defendants produced the documents—which included all board
12 books and records from board meetings (including minutes, resolutions, reports, presentations, or
13 memoranda made, reviewed by, or provided to the Board) between July 1, 2016, and December 31,
14 2017—to Plaintiff. Following a review of those documents, on August 24, 2020, Plaintiff filed its
15 amended complaint (the "Amended Complaint"). The Amended Complaint contained additional
16 allegations from the document production that Plaintiff believes were sufficient to support a finding
17 that a majority of the members of Veeco's Board faced a substantial likelihood of liability and,
18 therefore, that demand was futile.

19 Defendants filed a demurrer directed at the Amended Complaint on September 23, 2020, again
20 arguing that Plaintiff had failed to adequately plead demand futility and had failed to adequately plead
21 any of its underlying derivative claims. Plaintiff filed an opposition to the demurrer to the Amended
22 Complaint on November 19, 2020, and defendants filed a reply brief in support of their demurrer to
23 the Amended Complaint on December 23, 2020. The Court heard argument from the parties on the
24 demurrer to the Amended Complaint on January 13, 2021.

25 On January 25, 2021, the Court issued an order sustaining Defendants' demurrer with prejudice
26 for failure to adequately plead demand futility (the "Dismissal Order"). The Court held that Plaintiff's
27 "allegations fall short of establishing an inference of scienter [and] Plaintiff fails to explain specifically
28

1 how Veeco's financial projections were misleading in light of the information known to the board"
2 Dismissal Order at 11. The Court further held that Plaintiff "does not adequately plead facts supporting
3 an inference that directors knew positive statements" were "false or misleading," or "explain exactly
4 how these statements are false or misleading." Id. at 12. The Court denied Plaintiff's request for leave
5 to amend.

6 On March 26, 2021, Plaintiff filed a notice of appeal of the Dismissal Order.

7 After the parties agreed to settle the Action, on June 3, 2022, Plaintiff requested dismissal of
8 its appeal in the Sixth Appellate District of the California Court of Appeal (the "Court of Appeal") and
9 immediate issuance of remittitur of record so that jurisdiction would be reinstated in the Court and the
10 parties could seek settlement approval pursuant to California Rules of Court 8.272(c) and 8.244(c)(2).
11 The Court of Appeal, thus, dismissed Plaintiff's appeal on June 7, 2022. On June 9, 2022, the Court
12 of Appeal issued a remittitur reinstating jurisdiction in the Court, and the remittitur was filed in the
13 Court on June 10, 2022.

14 On July 7, 2022, the parties filed a stipulation requesting that the Court vacate the Dismissal
15 Order for the limited purpose of permitting the Court to consider and approve the agreed-to settlement.
16 The Court signed an order vacating the Dismissal Order for that limited purpose the same day.

17 **B. The Parties' Settlement Negotiations**

18 Following the Dismissal Order and the filing of Plaintiff's notice of appeal, Plaintiff and
19 Defendants actively engaged in discussions aimed at a possible resolution of the Action. In the fall of
20 2021, Plaintiff served the Company with a letter setting forth a detailed framework for a potential
21 settlement of the Derivative Action ("Settlement Demand"), which included a slate of proposed
22 corporate reforms. Over the next several months, counsel for the Settling Parties engaged in good-
23 faith negotiations regarding a potential resolution of the Action, which included participating in a
24 number of telephonic conferences and exchanging multiple drafts of corporate governance reforms
25 that the Settling Parties believed could possibly form the basis for a settlement.

1 The Settling Parties' extensive negotiations culminated in the settlement agreement set forth in
2 the Stipulation. Subject to approval of the Court, the Settling Parties agree that Plaintiff's Action and
3 the Released Claims shall be resolved as set forth in the Stipulation.²

4 **II. PLAINTIFF'S CLAIMS AND THE BENEFITS OF SETTLEMENT**

5 Plaintiff believes the Action has substantial merit, and Plaintiff's entry into the Stipulation and
6 Settlement is not intended to be and shall not be construed as an admission or concession concerning
7 the relative strength or merit of the claims alleged in the Action. However, Plaintiff and Plaintiff's
8 Counsel recognize and acknowledge the significant risk, expense, and length of continued proceedings
9 necessary to prosecute the Action against the Individual Defendants through trial and possible appeals,
10 even if Plaintiff were successful in overturning the Dismissal Order on appeal. Plaintiff's Counsel also
11 have taken into account the uncertain outcome and the risk of any litigation, especially in complex
12 cases such as the Action, as well as the difficulties and delays inherent in such litigation. Plaintiff's
13 Counsel are also mindful of the inherent problems of establishing standing in derivative litigation—
14 as evidenced by the Court's dismissal of the Action—and the possible defenses to the claims alleged
15 in the Action.

16
17
18 ² Pursuant to paragraph 1.15 of the Stipulation, "Released Claims" means any and all actions, suits,
19 claims, demands, losses, debts, rights, liabilities, and causes of action of every nature, including known
20 claims as to the Releasing Parties and both known and Unknown Claims as to the Settling Parties,
21 fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or
22 unmatured, suspected or unsuspected, apparent or unapparent, and without regard to the subsequent
23 discovery of additional or different facts, that (i) have been or could have been or in the future might
24 be asserted by Veeco, derivatively by Plaintiff as a stockholder of Veeco, or any other Veeco
25 stockholder or any other Person acting or purporting to act derivatively on behalf of Veeco, against
26 the Released Persons, and which arise out of, or are connected to, or based upon, or are related in any
27 way to any of the allegations, transactions, facts, matters, events, disclosures, non-disclosures,
28 occurrences, representations, statements, acts or omissions, alleged or referred to in the Action, or that
could have been alleged in any pleading, amended pleading, complaint, amended complaint, brief,
motion, report, or filing in this Action; or (ii) arise from or relate to the Settlement, provided, however,
that the Released Claims shall not include any claims by Veeco, any of its current or former directors,
officers, employees, or any other Person for coverage under an insurance policy against the insurer(s)
under such policy and that nothing herein shall in any way impair or restrict the rights of any Settling
Party to enforce the terms of the Stipulation.

1 Plaintiff's Counsel have conducted extensive investigation and analysis, including, *inter alia*:
2 (i) reviewing Veeco's press releases, public statements, U.S. Securities and Exchange Commission
3 ("SEC") filings, and securities analysts' reports and advisories about the Company; (ii) reviewing
4 related media reports about the Company; (iii) propounding discovery requests and issuing an
5 inspection demand on the Company, negotiating for internal books and records and other documents
6 regarding the alleged wrongdoing, and reviewing the documents produced; (iv) researching applicable
7 law with respect to the claims alleged in the Action and potential defenses thereto; (v) preparing and
8 filing the derivative complaint; (vi) conducting damages analyses; (vii) evaluating the merits of, and
9 potential liability in connection with the factually related securities action, captioned *Wolther v.*
10 *Maheshwari, et al.*, No. 18CV329690 (Cal. Super. Ct.-Santa Clara Cty.); and (viii) negotiating this
11 Settlement with Defendants, including researching corporate governance best practices and
12 negotiating the Reforms.

13 Based on Plaintiff's Counsel's thorough review and analysis of the relevant facts, allegations,
14 defenses, and controlling legal principles, Plaintiff's Counsel believe that the Settlement set forth in
15 the Stipulation is fair, reasonable, and adequate, and confers substantial benefits upon Veeco. Based
16 upon Plaintiff's Counsel's evaluation, Plaintiff has determined that the Settlement is in the best interests
17 of Veeco and has agreed to settle the Action upon the terms and subject to the conditions set forth in
18 the Stipulation.

19 **III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

20 Defendants have denied and continue to deny each and all of the claims and contentions alleged
21 by Plaintiff in the Derivative Action, and the Individual Defendants have expressly denied and
22 continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct,
23 statements, acts, or omissions alleged, or that could have been alleged in the Action. Defendants note
24 that the Superior Court dismissed Plaintiff's complaint twice, the second time with prejudice.

25 Without limiting the foregoing, the Individual Defendants have denied, and continue to deny,
26 among other things, that they breached their fiduciary duties or any other duty owed to Veeco or its
27 stockholders; committed or engaged in any violation of law or wrongdoing whatsoever; or that
28

1 Plaintiff, Veeco, or its stockholders suffered any damage or were harmed as a result of any act,
2 omission, or conduct by the Individual Defendants alleged in the Action, or otherwise. The Individual
3 Defendants have further asserted, and continue to assert, that at all relevant times, they acted in good
4 faith and in a manner that they reasonably believed to be in the best interests of Veeco and its
5 stockholders. Nonetheless, Defendants have taken into account the uncertainty and risks inherent in
6 any litigation, including legal fees and expenses.

7 The Defendants are entering into this Settlement to eliminate the uncertainty, distraction,
8 disruption, burden, risk, and expense of further litigation. Defendants have, therefore, determined that
9 it is in the best interests of Veeco for the Action to be settled in the manner and upon the terms and
10 conditions set forth in the Stipulation. Neither the Stipulation, nor any of its terms or provisions, nor
11 entry of the Judgment, nor any document or exhibit referred or attached to the Stipulation, nor any
12 action taken to carry out the Stipulation, is, may be construed as, or may be used as evidence of the
13 validity of any of the Released Claims or an admission by or against the Individual Defendants of any
14 fault, wrongdoing, or concession of liability whatsoever.

15 **IV. INDEPENDENT DIRECTOR APPROVAL**

16 The independent non-defendant outside directors on Veeco's Board are unanimously approving
17 a resolution reflecting their determination, in an exercise of their business judgment, that: (a) the filing,
18 prosecution, and resolution of the Action was the cause for the implementation of the Reforms; (b) the
19 Reforms confer substantial benefits on the Company and its stockholders; and (c) the Settlement is
20 fair, reasonable and in the best interests of the Company and its stockholders.

21 **V. TERMS OF THE SETTLEMENT**

22 The terms and conditions of the proposed Settlement are set forth in the Stipulation, which has
23 been filed with the Court³ and is available for viewing on the website of Plaintiff's Counsel, Robbins
24

25 ³ The Stipulation may be inspected (a) online on the Superior Court of California, County of Santa
26 Clara's Electronic Filing and Service Website at www.scefiling.org, or (b) in person at Records,
27 Superior Court of California, County of Santa Clara, 191 N. First Street, San Jose, California 95113,
28 between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and
closures.

1 LLP (<https://robbinsllp.com/veeco-instruments-inc-settlement/>). The following is only a summary of
2 its terms.

3 As consideration for the Settlement, and as a result of the filing, prosecution, and settlement
4 of the Action, within sixty business (60) days of issuance of an order finally approving the Settlement,
5 Veeco's Board shall adopt resolutions and amend committee Charters and/or By-Laws to ensure
6 adherence to the following Corporate Governance Reforms as provided for in Exhibit A attached to
7 the Stipulation. The Reforms shall remain in effect for no less than five (5) years from the date of
8 adoption. Veeco and the Individual Defendants acknowledge and agree that the adoption,
9 implementation, and maintenance of the Reforms detailed herein confer substantial and material
10 benefits upon the Company, and that the filing, prosecution, and resolution of the Action was the cause
11 for the implementation of the Reforms.

12 The Reforms provide for the following:

13 **Disclosure Committee**

14 The Company shall formalize and enhance the duties and responsibilities of the Disclosure
15 Committee (the "Disclosure Committee") with the following purpose, members and responsibilities,
16 to be reflected in an official Charter:

17 1. **Purpose**

18 The purpose of the Disclosure Committee is to ensure that all public disclosures made by the
19 Company are accurate and complete, should fairly present in all material respects the Company's
20 financial condition and results of operations, and should be made on a timely basis as required by
applicable laws and stock exchange requirements.

21 2. **Membership**

22 (a) The Disclosure Committee shall be comprised of the following Company
23 employees: Kevin Artz, Director, Accounting (Disclosure Committee Chair); Gary Reifert, Vice
24 President, Corporate Controller; Scott Kapica, Manager, Accounting; Anthony Bencivenga, Senior
25 Director, Investor Relations; Betty Ruan, Director, Tax; Wen (Wendy) Yu, Tax Manager; Adrian
26 Devasahayam, Senior Vice President, Product Line Management and Kirk Mackey, Vice President,
General Counsel. Such members may be replaced, or new members added, at any time and from time
to time by Veeco's Chief Executive Officer and Chief Financial Officer (collectively, the "Senior
Officers").

27 (b) Notwithstanding any provision to the contrary, the Senior Officers at their
28 option may at any time (i) take on the responsibilities of and function as a member of the Disclosure
Committee, as identified in this Charter, or (ii) may designate two or more Committee members (at

1 least one of whom shall be an attorney knowledgeable about Securities and Exchange Commission
2 ("SEC") disclosure rules and regulations and at least one of whom shall be knowledgeable about
3 accounting and SEC financial reporting) who shall have the power, acting together, to review and
4 approve disclosure statements (other than periodic reports) when deemed appropriate by the Senior
5 Officers.

6 (c) One member of the Disclosure Committee shall be appointed by the Senior
7 Officers as chairperson (the "**Chair**"). The Chair shall be responsible for scheduling and presiding
8 over meetings and preparing agendas.

9 (d) The Disclosure Committee may solicit input from officers and employees
10 throughout the Company as necessary to carry out its responsibilities.

11 (e) The Disclosure Committee may consult with the Company's outside counsel
12 and independent public accountants from time to time as deemed appropriate by the Committee in
13 discharging its responsibilities. Representatives of such counsel and such accountants, and any other
14 person or persons deemed appropriate by the Disclosure Committee, may attend meetings of the
15 Disclosure Committee upon invitation by the Chair.

16 3. Duties and Responsibilities

17 The Disclosure Committee shall assist the Senior Officers in fulfilling their responsibility to
18 oversee the accuracy, completeness and timeliness of certain public disclosures made by the Company
19 by taking responsibility for the following tasks, in each case subject to the supervision and oversight
20 of the Senior Officers:

21 (a) Establish and maintain controls and procedures (which may include controls
22 and procedures currently used by the Company) that are designed to ensure that:

23 (i) information required to be disclosed by the SEC, together with certain
24 other information that the Company publicly discloses, is recorded, processed, summarized and
25 reported accurately and on a timely basis; and

26 (ii) information is accumulated and communicated to management,
27 including the Senior Officers, as appropriate to allow timely decisions regarding such disclosure
28 (collectively, the "**Disclosure Controls and Procedures**").

29 (b) Participate in discussions and make recommendations to the Senior Officers
30 regarding decisions related to the materiality of information and determination of disclosure
31 obligations with respect to Disclosure Statements (as defined below in Section 3(c)). The Disclosure
32 Committee should serve as a central point to which material information is directed and a resource to
33 address questions regarding materiality and the requirement to disclose.

34 (c) Supervise the preparation and review of the Company's:

35 (i) quarterly earnings press release and related materials (such as analyst
36 conference call scripts);

37 (ii) periodic and current reports, proxy statements, information statements,
38 registration statements and other information filed with or furnished to the SEC;

1 (iii) Correspondence broadly disseminated to the Company's
securityholders;

2 (iv) where directed by the Senior Officers, presentations to analysts, rating
3 agencies and lenders, and presentations of financial information and earnings guidance to
securityholders and the investment community; and

4 (v) disclosures relating to the Company's results of operations and financial
5 position as posted to the Company's website (clauses (i) through (v) collectively, the "Disclosure
6 Statements").

7 (d) Monitor the integrity and effectiveness of the Company's Disclosure Controls
and Procedures.

8 (e) Conduct periodic discussions with the Senior Officers regarding the Disclosure
9 Committee's proceedings, the preparation of the Disclosure Statements and the Disclosure
Committee's evaluation of the effectiveness of the Company's Disclosure Controls and Procedures.

10 (f) Provide an assessment to the Company's Senior Officers prior to the filing of
11 each periodic report as to: (i) any concerns identified by the Disclosure Committee regarding its
12 evaluation of the effectiveness of the Company's Disclosure Controls and Procedures; and (ii) any
other matters that the Senior Officers may request.

13 (g) Evaluate the effectiveness of the Company's disclosure controls and procedures
14 as of the end of the fiscal period covered by each Annual Report on Form 10-K and each Quarterly
Report on Form 10-Q.

15 (h) Review and reassess this Charter annually and recommend any proposed
16 changes to the Senior Officers for approval.

17 (i) The Disclosure Committee shall have such additional responsibilities as a
18 Senior Officer may assign to it from time to time.

19 (j) Any questions of interpretation of this Charter or questions regarding the
20 Disclosure Committee's procedures, responsibilities and powers shall be determined by any Senior
Officer or, in the absence of the Senior Officers from any meeting, the Chair.

21 4. Meetings. The Disclosure Committee shall meet at the request of any Disclosure
22 Committee member and as frequently as necessary to:

23 (a) Review, and ensure the accuracy and completeness of, the Disclosure
Statements.

24 (b) Evaluate the disclosure controls and procedures and determine whether any
25 changes to the disclosure controls and procedures are necessary or advisable in connection with the
preparation of the Company's Disclosure Statements, taking into account developments since the
26 Disclosure Committee's most recent meeting, including changes to the Company's organization and
business lines and any change in economic, regulatory or industry conditions.

27 5. Audit Committee Participation. The Senior Officers, together with their designees,
28 shall present the periodic reports to the Audit Committee, with an oral or written report highlighting

1 any particular issues, followed by a discussion. In connection with this presentation, full disclosure
2 shall be made of any significant deficiencies in the design or operation of the Disclosure Controls and
3 Procedures, as well as any fraud or intentional wrongdoing that involves management or other
4 employees with a significant role in internal controls.

5 6. Charter. The Charter of the Disclosure Committee will be provided to any stockholder
6 who makes a proper and lawful request for a copy pursuant to Section 220 of the Delaware General
7 Corporation Law.

8 **Director Education**

9 The Company's Director Education Policy shall be amended to require each member of the
10 Board to annually participate in (including by virtual means) a director education program that will
11 address corporate governance principles and best practices for effective board oversight of audit and
12 internal controls functions, enterprise risk, financial reporting and disclosures, and legal-regulatory
13 compliance.

14 **VI. DISMISSAL AND RELEASES**

15 The Effective Date of the Settlement is conditioned upon the following: (i) final approval of
16 the Settlement by the Court following notice to Current Shareholders and the Settlement Hearing
17 contemplated by the Stipulation; (ii) Court entry of the Judgment, approving the Settlement and
18 dismissing with prejudice the Action, without awarding costs to any Party, except as provided in the
19 Stipulation; and (iii) passing of the date upon which the Judgment becomes Final (the "Effective
20 Date").

21 Upon the Effective Date, the Releasing Parties shall be deemed to have, and by operation of
22 the Judgment shall have, fully, finally, and forever waived, released, relinquished, discharged, and
23 dismissed with prejudice all Released Claims (including Unknown Claims) against each and every
24 one of the Released Persons and any and all claims arising out of, relating to, or in connection with
25 the defense, settlement, or resolution of the Action against each and every one of the Released Persons.
26 Upon the Effective Date, each and every Releasing Party will be permanently and forever barred,
27 estopped, and enjoined from asserting, commencing, instituting, prosecuting, continuing to prosecute,
28 or maintaining in any court of law or equity, arbitration tribunal, or administrative forum any and all
of the Released Claims against any and all of the Released Persons. Nothing in the Stipulation shall
in any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation.

1 The Settling Parties acknowledge, and the Releasing Parties shall be deemed by operation of law to
2 acknowledge, that the waiver of Unknown Claims, and of the provisions, rights and benefits of § 1542
3 of the California Civil Code, was bargained for and is a key element of the Settlement.

4 Upon the Effective Date, each of the Defendants shall be deemed to have fully, finally, and
5 forever released, relinquished, and discharged Plaintiff and Plaintiff's Counsel from all claims
6 (including Unknown Claims), arising out of, relating to, or in connection with the institution,
7 prosecution, assertion, settlement, or resolution of the Action or the Released Claims. Nothing in the
8 Stipulation shall in any way impair or restrict the rights of any Settling Party to enforce the terms of
9 the Stipulation.

10 The releases provided in this Stipulation shall become effective immediately upon occurrence
11 of the Effective Date without the need for any further action, notice, condition or event.

12 **VII. PLAINTIFFS' ATTORNEYS' FEES AND EXPENSES**

13 After negotiating the substantive terms of the settlement, the Settling Parties separately
14 negotiated the attorneys' fees and expenses the Defendants would pay or cause to be paid to Plaintiff's
15 Counsel. As a result of those negotiations, Defendants have agreed, subject to Court approval, to pay
16 or cause to be paid to Plaintiff's counsel \$300,000 in attorneys' fees and expenses, in recognition of
17 the substantial benefits conferred upon Veeco as a result of the Action and the Settlement (the "Fee
18 and Expense Amount"). The independent non-defendant directors of the Company's Board, in the
19 good faith exercise of their business judgment, have approved the agreed-to Fee and Expense Amount.
20 To date, Plaintiff's Counsel have neither received any payment for their services in conducting the
21 Action, nor have counsel been reimbursed for their out-of-pocket expenses incurred. Except as
22 otherwise provided herein, each of the Settling Parties shall bear his, her, or its own fees and costs,
23 and neither the Company nor any other Released Person shall have any obligations with respect to
24 Plaintiff's Counsel's fees and/or expenses beyond the Fee and Expense Amount. Veeco shareholders
25 are not personally liable for the payment of any award of attorneys' fees and expenses.

26 The Settlement is not contingent on the allowance or disallowance by the Court of the Fee and
27 Expense Amount or any minimum or specific amount of attorneys' fees or litigation expenses.

1 Notwithstanding any other terms of the Settlement, the Fee and Expense Amount shall be considered
2 by the Court separate and apart from its consideration of the fairness, reasonableness, and adequacy
3 of the Settlement, and any order or proceeding pertaining solely to the Fee and Expense Amount, or
4 any appeal of any order pertaining solely thereto or reversal or modification thereof, shall not operate
5 to, or be grounds to, terminate or cancel the Settlement of this Action, or affect or delay the finality of
6 the Judgment approving this Settlement.

7 **VIII. THE SETTLEMENT HEARING**

8 The Settlement Hearing will be held on November 17, 2022, at 1:30 p.m., before the Honorable
9 Sunil R. Kulkarni, at the Superior Court of the State of California, County of Santa Clara, Downtown
10 Superior Court, 191 North First Street, San Jose, California 95113, at which the Court will determine:
11 (i) whether the terms of the Stipulation should be approved as fair, reasonable, and adequate;
12 (ii) whether the Judgment finally approving the Settlement, substantially in the form of Exhibit E
13 attached to the Stipulation, should be entered, dismissing the Action with prejudice and releasing and
14 enjoining the prosecution of any and all Released Claims against the Released Persons; (iii) whether
15 the agreed-to Fee and Expense Amount should be approved; and (iv) such other matters as the Court
16 may deem appropriate. The Settlement Hearing may be continued by the Court at the Settlement
17 Hearing, or at any adjourned session thereof without further written notice to Current Shareholders.

18 **IX. THE RIGHT TO OBJECT AND/OR BE HEARD AT THE HEARING**

19 Any Current Shareholder may object and/or appear and show cause, if he, she, or it has any
20 concern, why the Settlement should not be approved as fair, reasonable, and adequate, or why the
21 Judgment should not be entered thereon, or why the amount of attorneys' fees and reimbursement of
22 expenses should not be approved. Hearings before the judge overseeing this case will be conducted
23 remotely. (As of August 15, 2022, the Court's remote platform is Microsoft Teams.) Shareholders
24 who wish to appear should contact Plaintiff's counsel at least three days before the hearing if possible.
25 Instructions for appearing remotely are provided at [https://www.sccourt.org/general_](https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml)
26 [info/ra_teams/video_hearings_teams.shtml](https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml) and should be reviewed in advance. Shareholders may
27 appear remotely using the Microsoft Teams link for Department 1 (Afternoon Session) or by calling
28

1 the toll free conference call number for Department 1, which is 669-245-6247 (access code 399 396
2 192#).

3 In addition, any Current Shareholder may file with the Court, ***at least fourteen (14) calendar***
4 ***days prior to the Settlement Hearing***, a written notice of objection containing the following
5 information:

- 6 1. Your name, legal address, and telephone number;
- 7 2. The case name and number (*Vladimir Gusinsky Revocable Trust v. Peeler, et al.*, No.
8 18CV339925);
- 9 3. Proof of being a Veeco shareholder currently and as of August 16, 2022;
- 10 4. The date(s) you acquired your Veeco shares;
- 11 5. A statement of each of each objection being made;
- 12 6. Notice of whether you intend to appear at the Settlement Hearing (you are not required
13 to appear); and
- 14 7. Copies of any papers you intend to submit to the Court, along with the names of any
15 witness(es) you intend to call to testify at the Settlement Hearing and the subject(s) of their testimony.

16 All written objections and supporting papers must be filed on or before November 3, 2022,
17 with the Clerk of the Court, Superior Court of the State of California, County of Santa Clara,
18 Downtown Superior Court, 191 North First Street, San Jose, California 95113 and serve such materials
19 by that date, to each of the following Settling Parties' counsel:

20 *Counsel for Plaintiff:*

21 Shane P. Sanders
22 ROBBINS LLP
23 5040 Shoreham Place
24 San Diego, CA 92122
25 Telephone: (619) 525-3990
26 Facsimile: (619) 525-3991
27 ssanders@robbinsllp.com

Counsel for Defendants:

Matthew W. Close
Jonathan B. Waxman
O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
mclose@omm.com
jwaxman@omm.com

26 Any Current Shareholder may appear and object at the Settlement Hearing without submitting
27 a written objection.

1 Unless otherwise ordered by the Court, any Current Shareholder who does not make his, her,
2 or its objection in the manner provided herein, whether by filing a written objection and/or appearing
3 at the Settlement Hearing, shall be deemed to have waived such objection (including the right to
4 appeal) and shall forever be barred and foreclosed, in this proceeding or in any other proceeding, from
5 making any objection to the fairness, reasonableness, or adequacy of the Settlement, or to otherwise
6 be heard, and shall otherwise be bound by the Judgment to be entered and the releases to be given.

7 **X. EXAMINATION OF PAPERS AND INQUIRIES**

8 There is additional information concerning the Settlement available in the Stipulation, which
9 is available for viewing on the website of Plaintiff's Counsel, Robbins LLP
10 (<https://robbinsllp.com/veeco-instruments-inc-settlement/>). You may also inspect the Stipulation
11 during business hours at the office of the Clerk of the Court, Superior Court of the State of California,
12 County of Santa Clara, Downtown Superior Court, 191 North First Street, San Jose, California 95113.
13 Or you can call Robbins LLP, 5040 Shoreham Place, San Diego, California 92122, telephone: (619)
14 525-3990, for additional information concerning the Settlement.

15 **PLEASE DO NOT CONTACT THE COURT, VEECO, OR VEECO'S
16 COUNSEL REGARDING THIS NOTICE OR THE SETTLEMENT.**

17 DATED:

18 _____
19 HONORABLE SUNIL R. KULKARNI
20 SUPERIOR COURT JUDGE

21 1570429