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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Lawrence Joseph, On Behalf of Himself and
All Others Similarly Situated,

Plaintiff(s),

v.

UTSTARCOM, INC., et al.,

Defendant(s).

NO. C 04-04908 JW

**ORDER GRANTING LEAD PLAINTIFF'S
EX PARTE APPLICATION TO STAY
BRIEFING ON MOTIONS TO DISMISS**

On October 7, 2005, Lead Plaintiff filed an ex parte application to stay briefing on Defendants' motions to dismiss the First Amended Complaint. (See Docket Item No. 85.) Pursuant to various stipulations, the parties had agreed that Defendants would file their motions by October 10, 2005.

Plaintiff now seeks a stay of the briefing schedule on these motions so that Plaintiff may file a motion for leave to amend the First Consolidated Class Action Complaint for Violation of Federal Securities Laws. The basis for Plaintiff's application rests with an October 6, 2005 announcement by Defendant UTStarcom. Plaintiff contends that the announcement caused the stock price to plunge the following trading day by 26.26% from \$7.65 to \$5.64. UTStarcom also announced that its final third quarter results would be released on November 3, 2005.

In light of the announcement and the resulting effects, Plaintiff alleges that the fraud, which had been alleged in the First Amended Complaint to have concluded on September 20, 2004, was on-going. Plaintiff argues that amending the First Amended Complaint is necessary to include recent disclosures and

1 more detailed information soon to be filed with the SEC about the fraud described in the First Amended
2 Complaint. Plaintiff contends that since the alleged fraud has continued to October 6, 2005, the date of the
3 latest announcement, an extension of the current class period is warranted.

4 Defendants have no objection to suspending briefing on the motion to dismiss. Since Defendants
5 do not object, and the Court concurs that any amended complaint would not be complete without all of the
6 available facts, Plaintiff's motion is granted.

7 Accordingly, the Court vacates its order imposing the stipulated briefing schedule and stays all
8 briefing on the superseded First Amended Complaint. Plaintiff shall file a motion for leave to amend the
9 Complaint within 30 days of the entry of this Order.

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11 Dated: October 26, 2005

/s/ James Ware
JAMES WARE
United States District Judge

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1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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13 **Dated: October 26, 2005**

Richard W. Wicking, Clerk

14 **By: /s/JWchambers**
 15 **Ronald L. Davis**
 16 **Courtroom Deputy**