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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re UTSTARCOM, INC. SECURITIES )  
LITIGATION )

Master File No. C-04-4908-JW(PVT)

CLASS ACTION

This Document Relates To: )

ALL ACTIONS. )

LEAD PLAINTIFFS' *EX PARTE*  
APPLICATION TO STAY BRIEFING ON  
MOTIONS TO DISMISS, NOTICE OF  
INTENT AND REQUEST TO FILE  
MOTION FOR LEAVE TO AMEND THE  
FIRST AMENDED COMPLAINT

1 Locals 302 and 612 of the International Union of Operating Engineers-Employees  
2 Construction Industry and Erwin DeBruycker (“lead plaintiffs” or “plaintiffs”) hereby give notice  
3 that they intend to file a Motion for Leave to Amend the First Consolidated Class Action Complaint  
4 for Violation of Federal Securities Laws and request permission to file within 30 days of defendant  
5 UTStarcom, Inc.’s (“UTStarcom” or the “Company”) filing with the Securities and Exchange  
6 Commission (“SEC”) of its Form 10-Q for the period ended September 30, 2005 (“3Q05”),  
7 incorporating its financial results for that period. UTStarcom’s 3Q05 Form 10-Q is likely to be filed  
8 on or about November 3, 2005. In addition, plaintiffs hereby request that the Court stay all briefing  
9 on motions to dismiss the First Consolidated Class Action Amended Complaint for Violation of  
10 Federal Securities Laws (“First Amended Complaint”).

11 On July 26, 2005, lead plaintiffs filed the First Amended Complaint, which alleged violations  
12 of federal securities laws against UTStarcom and several of its executives, SOFTBANK  
13 Corporation, SOFTBANK America Inc. and SOFTBANK Holdings Inc. (collectively,  
14 “SOFTBANK”), and Banc of America Securities LLC (“Banc of America”). Pursuant to various  
15 stipulations entered between plaintiffs and each of the defendants (except SOFTBANK Corporation  
16 which is yet to be served), defendants’ motions to dismiss the First Amended Complaint are  
17 scheduled to be due on October 10, 2005. Paragraph (“¶”) 2 to the Declaration of Kimberly C.  
18 Epstein (“Epstein Decl.”), filed concurrently herewith

19 On October 6, 2005, at or around 4:19 p.m., defendant UTStarcom announced that (1) it  
20 missed its 3Q05 revenue and profits guidance because of a delay in revenue recognition of a high-  
21 margin product related to a contract with SOFTBANK BB, an affiliate of defendants SOFTBANK,  
22 (2) the Company was evaluating possible asset impairment charges, and (3) UTStarcom received  
23 notice of a formal inquiry by the SEC. Epstein Decl., Exhibit B. As a result, UTStarcom’s stock  
24 price plunged the following trading day by 26.27% from \$7.65 to \$5.64. Plaintiffs received notice of  
25 this announcement at approximately 5:31 p.m. on October 6, 2005. In light of this announcement,  
26 counsel for plaintiffs has determined that the fraud, which had been alleged in the First Amended  
27 Complaint to have concluded on September 20, 2004, was ongoing. Plaintiffs contacted counsel for  
28

1 defendants to inform them that, in light of the facts revealed by UTStarcom’s October 6, 2005  
2 announcement, plaintiffs intended to file an amended complaint. Epstein Decl., ¶¶4-7.

3 Amending the First Amended Complaint is necessary to include recent disclosures and more  
4 detailed information soon to be filed with the SEC about the fraud described in the First Amended  
5 Complaint. For instance, plaintiffs alleged in the First Amended Complaint that: (1) throughout the  
6 Class Period (February 21, 2003 through September 20, 2004), UTStarcom’s margin projections  
7 were false and misleading because UTStarcom’s margins on its main source of revenue, the Personal  
8 Access System marketed and sold in China, were rapidly declining and could not be replaced by  
9 higher-margin international sales (*see, e.g.*, ¶¶8-18, 20, 27)<sup>1</sup>; (2) UTStarcom made false and  
10 misleading statements regarding revenue recognition of a high-margin international contract between  
11 UTStarcom and an affiliate of defendant SOFTBANK (*see, e.g.*, ¶¶19, 22 ), and (3) UTStarcom and  
12 several of its executive were under investigation by the SEC, but UTStarcom continued to conceal  
13 all information regarding the ongoing SEC investigation (¶26). The October 6, 2005 announcement  
14 revealed that the fraudulent conduct, which lead plaintiffs originally alleged had concluded on  
15 September 20, 2004, in fact, continued and thus warrants an extension of the current class period to  
16 October 6, 2005. The Class Period alleged in the First Amended Complaint was February 21, 2003  
17 through September 20, 2004. The extended class period to be alleged in the amendment to be filed  
18 following UTStarcom’s filing of its 3Q05 Form 10-Q will be February 21, 2003 through October 6,  
19 2005 (the “Extended Class Period”).

20 UTStarcom announced that its final third quarter results would be released on November 3,  
21 2005. Epstein Decl., ¶3. While the announcement concerning the Company’s review of potentially  
22 impaired assets and revenue shortfall attributed to defendants SOFTBANK gives plaintiffs some  
23 information to amend its pleading, these results are admittedly preliminary and subject to further  
24 review prior to finalization. Epstein Decl., Ex. B. Thus, filing an amended complaint, or any  
25 proposed amended complaint as required with a motion for leave to amend, prior to such finalization

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27 <sup>1</sup> All paragraph (“¶”) references are to the First Amended Complaint.  
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1 would not provide the most complete complaint possible and would also lead to further waste of  
2 judicial and litigant resources. Accordingly, plaintiffs respectfully request that the Court order that  
3 plaintiffs may file their Motion for Leave to Amend the First Amended Complaint no later than 30  
4 days following the filing of UTStarcom's 3Q05 Form 10-Q.

5 Notwithstanding plaintiffs' timely notification to defendants concerning their intent to amend  
6 the complaint by stipulation or motion, and request that defendants not file their motions to dismiss,  
7 defendants persisted in their insistence upon filing these motions.<sup>2</sup> Continuing with the stipulated  
8 briefing schedule would constitute an unnecessary and extreme waste of judicial and litigant  
9 resources justifying *ex parte* relief. Epstein Decl., ¶11. Plaintiffs, therefore, request that the Court  
10 vacate its order imposing the stipulated briefing schedule and stay all briefing on the soon-to-be  
11 superseded First Amended Complaint.

12 **CONCLUSION**

13 For the foregoing reasons, plaintiffs respectfully request that the stipulated briefing schedule  
14 be vacated pending resolution of Plaintiffs' Motion for Leave to Amend the First Amended  
15 Complaint. Plaintiffs will consult with defendants concerning an appropriate briefing schedule and  
16 hearing date for plaintiffs' motion to amend.

17 DATED: October 7, 2005

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26 <sup>2</sup> Initially, counsel for UTStarcom agreed to file a stipulation to permit plaintiffs to file an  
27 amended complaint but withdrew that agreement when plaintiffs sought to include the Extended  
28 Class Period in the recitals of the Stipulation. Epstein Decl., ¶¶4-10.

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UTSTARCOM 04 (CA) (LEAD)

Service List - 10/7/2005 (04-0558C)

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