

1 LERACH COUGHLIN STOIA GELLER  
 2 RUDMAN & ROBBINS LLP  
 3 KIMBERLY EPSTEIN (169012)  
 4 CHRISTOPHER P. SEEFER (201197)  
 5 SHIRLEY H. HUANG (206854)  
 6 100 Pine Street, Suite 2600  
 7 San Francisco, CA 94111  
 Telephone: 415/288-4545  
 415/288-4534 (fax)  
 kepstein@lerachlaw.com  
 csefer@lerachlaw.com  
 shuang@lerachlaw.com

Lead Counsel for Plaintiffs

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10 SAN JOSE DIVISION

11	In re UTSTARCOM, INC. SECURITIES	)	Master File No. C-04-4908-JW(PVT)
12	LITIGATION	)	
13	_____	)	<u>CLASS ACTION</u>
14	This Document Relates To:	)	LEAD PLAINTIFFS' OPPOSITION TO
15	ALL ACTIONS.	)	DEFENDANTS SOFTBANK HOLDINGS
16	_____	)	INC. AND SOFTBANK AMERICA INC.'S
17		)	MOTION TO DISMISS

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

		<b>Page</b>
1		
2		
3	I. INTRODUCTION .....	1
4	II. STATEMENT OF FACTS .....	5
5	A. Son Co-founded UTSI and Was Its Original Chairman and Was Also the	
6	CEO, President, Director and Majority Shareholder of SoftBank.....	5
7	B. SoftBank and UTSI Engaged in Numerous Related-Party Transactions	
8	Before, During and After the Class Period .....	6
9	III. ARGUMENT .....	8
10	A. The SoftBank Defendants Are Liable Under Section 10(b) and Rule 10b-5	
11	For Their Active Involvement in a Scheme with UTSI to Misrepresent	
12	UTSI's Financial Results .....	8
13	1. Son Served as Chairman of the Board of All Three SoftBank	
14	Entities and Was SBA's Designee on UTSI's Board Which Son	
15	Himself Reported Gave SoftBank the Ability to Significantly	
16	Influence UTSI's Management and Affairs Irrespective of the	
17	Desires of UTSI's Other Stockholders and Directors.....	8
18	2. SoftBank is Liable Under Rule 10b-5(b) for Making Materially	
19	False and Misleading Statements with at Least Deliberate	
20	Recklessness .....	11
21	a. The False and Misleading Statements Are Attributable to	
22	SoftBank .....	11
23	b. The SAC Includes Numerous Facts that Considered	
24	Together Raise a Strong Inference that SoftBank Knew or	
25	was Deliberately Reckless in Not Knowing that the	
26	Statements were Materially False and Misleading .....	13
27	3. The Principal Purpose and Effect of the Japan Telecom	
28	Transaction was to Create the False Appearance of Revenue from	
	the Sale of UTSI's Products Outside of China in Furtherance of a	
	Scheme to Defraud.....	18
	B. SoftBank is Liable as a Control Person Under Section 20(a) Because It	
	Admittedly Had the Ability to Significantly Influence UTSI Irrespective	
	of the Desires of UTSI's Other Stockholders and Directors.....	23
	C. Plaintiffs Can and Should Be Permitted to Amend the Complaint to	
	Comply with Guidance from the Court, if Necessary.....	25
	IV. CONCLUSION.....	25

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

**CASES**

*Blake v. Dierdorff*,  
856 F.2d 1365 (9th Cir. 1988) .....12

*Bourjaily v. U.S.*,  
483 U.S. 171 (1987).....15, 17

*Central Bank, N.A. v. First Interstate Bank, N.A.*,  
511 U.S. 164 (1994).....19, 23

*City of Monroe Employees Ret. Sys. v. Bridgestone Corp.*,  
399 F.3d 651 (6th Cir. 2005) .....15

*Curtis v. Connly*,  
257 U.S. 260 (1921).....10

*Eminence Capital, LLC v. Aspeon, Inc.*,  
316 F.3d 1048 (9th Cir. 2003) .....25

*Funk v. The Tiff Agency and Pendor-Idaho Corp.*,  
515 F.2d 23 (9th Cir. 1975) .....10

*Hollinger v. Titan Capital Corp.*,  
914 F.2d 1564 (9th Cir. 1990) .....24

*Howard v. Everex Sys.*,  
228 F.3d 1057 (9th Cir. 2000) .....11, 12, 24, 25

*In re American Italian Pasta Co. Sec. Litig.*,  
No. 04-55665, 2006 U.S. Dist. LEXIS 40548 (W.D. Mo. June 19, 2006).....14

*In re BISYS Sec. Litig.*,  
397 F. Supp. 2d 430 (S.D.N.Y. 2005).....11

*In re Cabletron Sys.*,  
311 F.3d 11 (1st Cir. 2002).....15, 17

*In re Cylink Sec. Litig.*,  
178 F. Supp. 1077 (N.D. Cal. 2001) .....14, 16, 24

*In re Daou Systems, Inc.*,  
411 F.3d 1006 (9th Cir. 2005) .....14, 15, 17, 23

*In re GlenFed, Inc. Sec. Litig.*,  
42 F.3d 1541 (9th Cir. 1994) .....14, 16

*In re GlenFed, Inc. Sec. Litig.*,  
60 F.3d 591 (9th Cir. 1995) .....12

1		
2		<b>Page</b>
3	<i>In re Hellenic Inc.</i> ,	
4	252 F.3d 391 (5th Cir. 2001) .....	10
5	<i>In re Homestore.com, Inc. Sec. Litig.</i> ,	
6	252 F. Supp. 2d 1018 (C.D. Cal. 2003) .....	22, 23
7	<i>In re Interactive Network, Inc. Sec. Litig.</i> ,	
8	948 F. Supp. 917 (N.D. Cal. 1996) .....	12
9	<i>In re Lattice Semiconductor Corp. Sec. Litig.</i> ,	
10	No. CV 04-1255-AA, 2006 U.S. Dist. LEXIS 262 (D. Ore. Jan. 3, 2006).....	13, 14, 16
11	<i>In re McKesson HBOC, Inc. Sec. Litig.</i> ,	
12	126 F. Supp. 2d 1248 (N.D. Cal. 2000) .....	15
13	<i>In re Oak Tech. Sec. Litig.</i> ,	
14	Civil No. No. 96-20552 SW, 1997 U.S. Dist. LEXIS 18503	
15	(N.D. Cal. Aug. 1, 1997).....	14
16	<i>In re Pubs, Inc. of Champaign</i> ,	
17	618 F.2d 432 (7th Cir. 1980) .....	10
18	<i>In re Read-Rite Corp. Sec. Litig.</i> ,	
19	335 F.3d 843 (9th Cir. 2003) .....	17
20	<i>In re Scholastic Corp. Sec. Litig.</i> ,	
21	252 F.3d 63 (2nd Cir. 2000).....	16
22	<i>In re Secure Computing Corp. Sec. Litig.</i> ,	
23	120 F. Supp. 2d 810 (N.D. Cal. 2000) .....	11
24	<i>In re Stac Elecs. Sec. Litig.</i> ,	
25	89 F.3d 1399 (9th Cir. 1996) .....	12
26	<i>In re Stratosphere Corp. Sec. Litig.</i> ,	
27	1 F. Supp. 2d 1096 (D. Nev. 1998).....	11
28	<i>In re Syncor Int'l Corp. Sec. Litig.</i> ,	
	327 F. Supp. 2d 1149 (C.D. Cal. 2004) .....	15, 22
	<i>In re Sipex Corp. Sec. Litig.</i> ,	
	No. C 05-00392 WHA, 2005 U.S. Dist. LEXIS 30854	
	(N.D. Cal. Nov. 17, 2005).....	14, 16
	<i>In re Terayon Commc'ns Sys., Inc., No. C 00-01967 MHP</i> ,	
	2002 U.S. Dist. LEXIS 5502 (N.D. Cal. Mar. 29, 2002).....	16
	<i>In re Valence Tech. Sec. Litig., No. C 95-20459 JW</i> ,	
	1996 U.S. Dist. LEXIS 21773 (N.D. Cal. 1996) .....	12

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

*In re Worldcom, Inc. Sec. Litig.*,  
294 F. Supp. 2d 392 (S.D.N.Y. 2003).....16

*Makofsky v. Ultra Dynamics Corp.*,  
383 F. Supp. 631 (S.D.N.Y. 1974).....10

*No. 84 Employer-Teamster Joint Council Pension Trust Fund v. Am. West Holding Corp.*,  
320 F. 3d 920 (9th Cir. 2003) .....10, 22, 23, 24

*Nordstrom, Inc. v. Chubb & Son, Inc.*,  
54 F.3d 1424 (9th Cir. 1995) .....10

*Nursing Home Pension Fund, Local 144 v. Oracle Corp.*,  
380 F.3d 1226 (9th Cir. 2004) .....16, 17

*Parrino v. FHP, Inc.*,  
146 F.3d 699 (9th Cir. 1998) .....5

*Provenz v. Miller*,  
102 F.3d 1478 (9th Cir. 1996) .....15

*Rothman v. Gregor*,  
220 F.3d 81 (2d. Cir. 2000).....16

*Schwartz v. Celestial Seasonings, Inc.*,  
124 F.3d 1246 (10th Cir. 1997) .....11

*Simpson v. AOL Time Warner Inc.*,  
No. 04-55665, 2006 U.S. App. LEXIS 16556 (9th Cir. June 30, 2006)..... *passim*

*Strassman v. Fresh Choice, Inc.*,  
No. C-95-200177-RPA, 1995 U.S. Dist. LEXIS 19343 (N.D. Cal. Dec. 7, 1995).....12

*U.S. v. Hernandez-Escarsega*,  
886 F.2d 1560 (9th Cir. 1989) .....15, 17

*United States ex rel. Lee v. SmithKline Beecham, Inc.*,  
245 F.3d 1048 (9th Cir. 2001) .....25

*Wool v. Tandem Computers, Inc.*,  
818 F.2d 1433 (9th Cir. 1987) .....11

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

**STATUTES, RULES AND REGULATIONS**

15 U.S.C. §78t(a) .....	23
17 C.F.R. §240.10b-5 .....	1, 8, 11
Federal Rules of Civil Procedure Rule 41(a).....	1

1 **I. INTRODUCTION**

2 This is a securities fraud class action on behalf of all persons who purchased the publicly  
 3 traded securities of UTStarcom, Inc. (“UTSI” or the “Company”) between February 21, 2003 and  
 4 October 6, 2005 (the “Class Period”), against UTSI, certain of its officers and directors, SoftBank  
 5 Corporation (“SBC”), SoftBank Holdings, Inc. (“SBH”) – a wholly owned subsidiary of SBC – and  
 6 SoftBank America, Inc. (“SBA”) – a wholly owned subsidiary of SBH (collectively, the “SoftBank  
 7 defendants”) for violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the “1934  
 8 Act”) and Rule 10b-5 promulgated thereunder, 17 C.F.R. §240.10b-5. ¶1.<sup>1</sup>

9 Plaintiffs allege defendants engaged in a scheme to defraud class members by making  
 10 material false and misleading statements about UTSI’s financial results and the demand for the  
 11 Company’s key products. Plaintiffs also allege UTSI and the SoftBank defendants created a sham  
 12 transaction whose principal purpose and effect was to create the false appearance of revenue.

13 The SoftBank defendants were knowing participants in the scheme. Masayoshi Son (“Son”),  
 14 the Chairman, CEO, President and largest shareholder of SBC co-founded UTSI with defendant  
 15 Hong Ling Lu (“Lu”) in 1991, and was a director of UTSI – explicitly acting as a designee of SBA.  
 16 SBA was UTSI’s largest shareholder – owning 14.6 million shares or 14.1% of UTSI’s shares.  
 17 Indeed, UTSI acknowledged in its SEC reports that SoftBank – and specifically SBA acting through  
 18 Son and its ownership of UTSI stock – had the ability to significantly influence UTSI’s management  
 19 and affairs irrespective of the desires of the Company’s other stockholders and directors.

20 Defendants falsely represented UTSI’s financial results were fairly presented in all material  
 21 respects and in accordance with GAAP. In addition, defendants assured investors they knew the

22

23 <sup>1</sup> All “¶\_\_\_\_” references are to the Second Amended Consolidated Complaint for Violations of  
 24 the Federal Securities Laws (“SAC”), filed on April 13, 2006. Banc of America Securities LLC is  
 25 also named as a defendant in the SAC but Plaintiffs voluntarily dismissed them from the suit in  
 26 accordance with Fed. R. Civ. P. 41(a), following the Ninth Circuit’s decision in *Simpson v. AOL*  
 27 *Time Warner Inc.*, No. 04-55665, 2006 U.S. App. LEXIS 16556 (9th Cir. June 30, 2006). Defendant  
 28 SBC has not responded to the SAC because it has not been served. Plaintiff is in the process of  
 serving SBC under the Hague Convention, because counsel for SBH and SBA refused to accept  
 service. Their counsel stated that he is not authorized to accept service on behalf of SBC, but will  
 represent SBC once it is served.

1 Company's financial results were fairly presented because they had designed and maintained  
2 effective internal controls that ensured they knew all material information that needed to be  
3 disclosed. Defendants have now admitted those representations were false. The Company has  
4 restated its financial statements twice so far and has admitted that every financial statement issued  
5 during the Class Period was materially false and misleading. Defendants have also admitted there  
6 were numerous material weaknesses in the Company's disclosure controls and procedures that  
7 caused the restatement and that the disclosure controls and procedures are still ineffective.

8       Indeed, defendants have admitted UTSI improperly recognized millions of dollars of revenue  
9 in violation of GAAP from 2003-2005 because of secret side letter requirements that had not been  
10 fulfilled when the revenue was recognized. In addition, former UTSI employees stated they were  
11 directed to enter orders as accepted even though acceptance contingencies had not been satisfied and  
12 customer acceptance had not been received. The defendants also concealed that the SEC was  
13 investigating the Company's financial reporting during the Class Period, including a sham  
14 transaction between UTSI and SoftBank whose principal purpose and effect was to create the false  
15 appearance of \$271.3 million of revenue. Additional investigations by the SEC and Department of  
16 Justice indicate defendants permitted UTSI to improperly report revenues on sales that were illegally  
17 procured by bribing foreign government officials in violation of the Foreign Corrupt Practices Act  
18 ("FCPA"). Defendants Lu and Mike J. Sophie ("Sophie") suspiciously announced their resignations  
19 from the Company as the investigations were being conducted and just weeks before the second  
20 restatement was publicly disclosed.

21       In addition to the multiple restatements and government investigations, defendants have  
22 acknowledged UTSI could not test for goodwill impairment during the Class Period as required by  
23 GAAP and the Company recorded a \$323 million impairment charge after the Class Period to write  
24 off 100% of goodwill. Defendants also have admitted UTSI did not maintain effective controls over  
25 inventories, costs of sales, and the recording of accrued expenses which led to the restatement of  
26 inventories and cost of sales and the recording of additional inventory and warranty reserves.

27       Defendants were also at least deliberately reckless in falsely representing there was  
28 "extraordinary demand" for the Company's PAS equipment when they knew China Telecom and

1 China Netcom had substantially reduced orders, there was excess capacity on existing PAS networks  
2 from billions of dollars of previous deployments that saturated the market and when PAS subscriber  
3 growth rates were declining. They also falsely represented that the Company's backlog of PAS  
4 equipment orders provided them with "tremendous visibility" into UTSI's future results - including  
5 gross margins - when they knew the undisclosed operational problems were delaying shipments and  
6 deployments and increasing the costs of the backlogged sales.

7 The SAC also explains how defendants falsely represented that gross margins on handset  
8 sales would improve from the introduction of (1) PAS handsets with lower cost internally-designed  
9 ASICs and (2) internally-designed and manufactured CDMA handsets. Defendants knew there were  
10 undisclosed problems with the development of both handsets that delayed their introduction and  
11 contributed to the Company reporting substantial declines in sales and gross margins.

12 When defendants reported disappointing gross margins and began to reveal in 7/04 and 9/04  
13 that China PAS sales would decline in 2005, they falsely represented sales and margins would  
14 improve from sales of the Company's recently developed broadband products outside of China. But  
15 defendants knew there were problems with the quality of UTSI's new broadband product offerings,  
16 particularly the iAN-8000 Multi-Service Access Node equipment and the mVision TVoIP  
17 equipment. Moreover, defendants knew a majority of the \$600 million of international revenue was  
18 the result of the sham Japan Telecom transaction that has spurred an investigation by the SEC  
19 including numerous depositions of the Company's officers and others.

20 SoftBank through Son made the false and misleading statements with at least deliberate  
21 recklessness. Son, as SBA's designee on UTSI's board, signed the Company's Form 10-K reports  
22 for 2002 and 2003 that reported the materially false and misleading financial results and falsely  
23 represented the Company's disclosure controls and procedures were effective. The other false and  
24 misleading statements included in other SEC reports and press releases are also attributable to Son  
25 and SoftBank because of the SoftBank defendants' special relationship with UTSI and their  
26 participation in the day-to-day affairs of UTSI. Indeed, in addition to Son's membership on the  
27 UTSI board and SoftBank's explicitly admitted controlling ownership interest of UTSI's stock,  
28 SoftBank and UTSI engaged in hundreds of millions of dollars of related-party transactions during

1 the Class Period. UTSI purchased \$140 million of SoftBank's UTSI stock, and a majority of the  
2 Company's broadband sales and sales from outside of China were to SoftBank. SoftBank also  
3 invested with China Netcom, one of UTSI's two largest China PAS customers. And as detailed  
4 below, SoftBank and UTSI engineered and executed the sham Japan Telecom transaction to create  
5 the false appearance of revenues after the Company began to reveal declines in China PAS sales and  
6 after the value of SoftBank's UTSI stock had declined by more than \$400 million.

7         The SoftBank defendants do not directly address the allegations. Instead they contend the  
8 SAC does not attribute a single act, statement or event to SBA or SBH because the SAC refers to  
9 SoftBank generically and does not allege what connection SBA or SBH had to any of the events in  
10 the Complaint. That contention ignores that (1) SBA was wholly owned by SBH which was wholly  
11 owned by SBC, (2) Son was the chairman of the board of each SoftBank entity, and (3) UTSI and  
12 SoftBank referred to all SoftBank entities collectively as SoftBank in UTSI's SEC reports and  
13 expressly stated SBA had the ability to control UTSI through its stock ownership and Son.

14         Further, the contention that the SAC fails to attribute any of the false statements to SoftBank  
15 is wrong because Son signed UTSI's Form 10-K reports and because the other false and misleading  
16 statements contained in press releases and SEC reports are attributable to SoftBank under the group  
17 publication rule. SoftBank's assertion that the SAC fails to plead SoftBank had the requisite scienter  
18 simply ignores Son's knowledge of the numerous undisclosed problems that made the statements  
19 materially false and misleading and SoftBank's participation in the sham Japan Telecom transaction.

20         Finally, SoftBank's assertion that it cannot be liable as a control person under section 20(a) is  
21 incredible in light of UTSI's repeated disclosures in its SEC reports that SoftBank had the ability to  
22 significantly influence the management and affairs of UTSI, "irrespective of the desires of [UTSI's]  
23 other stockholders or directors," and the numerous related party transactions between UTSI and  
24 SoftBank. Indeed, it is hard to imagine a stronger case of control-person liability.

25         Because the SAC adequately alleges that the SoftBank defendants violated sections 10(b) and  
26 20(a) of the Exchange Act, their motion to dismiss should be denied.

27  
28

1 **II. STATEMENT OF FACTS**

2 **A. Son Co-founded UTSI and Was Its Original Chairman and Was Also**  
 3 **the CEO, President, Director and Majority Shareholder of SoftBank**

4 Defendant SBA is a wholly owned subsidiary of defendant SBH, which is a wholly owned  
 5 subsidiary of defendant SBC. ¶28. The SAC collectively refers to the SoftBank defendants as  
 6 “SoftBank.” ¶1. SBC is also the parent company to several of UTSI’s key service provider  
 7 customers in Japan, including Yahoo! BB, SBBC and Japan Telecom. ¶30.

8 Throughout the Class Period, Son was SBC’s President, CEO, Chairman and largest  
 9 shareholder. ¶28. During the same time period, Son served as CEO and Chairman of SBH and  
 10 Chairman of SBA. *Id.* According to UTSI’s SEC filings and SBC’s website, Son was also: (1) a  
 11 director of BB Technologies Corporation (Yahoo Japan Corporation), and (2) Representative  
 12 Director Chairman of Japan Telecom, the SoftBank subsidiary that entered into the illegitimate  
 13 related party transaction with UTSI. *See* Declaration of Cheryl Fong in Support of UTStarcom  
 14 Defendants’ Motion to Dismiss (“Fong Decl.”), Ex. 21 at 4 and [http://www.japan-](http://www.japan-telecom.co.jp/english/aboutus/about/director.html)  
 15 [telecom.co.jp/english/aboutus/about/director.html](http://www.japan-telecom.co.jp/english/aboutus/about/director.html).

16 Son co-founded UTSI and served as UTSI’s Chairman of the Board from 10/95 – 3/03 and as  
 17 a director until 9/15/04. ¶28; Fong Decl., Ex. 21 at 4. UTSI reported in its 2002 Form 10-K that  
 18 Son was *SBA’s designee* on UTSI’s board of directors and Son signed UTSI’s Form 10-K reports  
 19 for 2002 and 2003. Seefer Decl., Exs. 4, 5.<sup>2</sup> According to UTSI’s September 20, 2004 press release,  
 20 Son resigned from the board so that UTSI could comply with the Nasdaq requirement to have the  
 21 board of directors “comprised of a majority of independent directors to *minimize conflicts of*  
 22 *interests and improve corporate governance.*”

---

23  
 24 <sup>2</sup> “Seefer Decl.” refers to the Declaration of Christopher P. Seefer in Support of Lead  
 25 Plaintiffs’ Oppositions to (1) the UTStarcom Defendants’ and (2) Defendants SoftBank Holdings  
 26 Inc. and SoftBank America Inc.’s Motions to Dismiss the Second Amended Consolidated  
 27 Complaint. Seefer Decl., Exs. 3-6, are referenced in the SAC and/or provide part of the basis for the  
 28 allegations regarding SoftBank’s ownership and control. ¶¶29, 378. Therefore, they may be  
 considered by the Court under the incorporation doctrine. *Parrino v. FHP, Inc.*, 146 F.3d 699, 705  
 (9th Cir. 1998).

1           **B.     SoftBank and UTSI Engaged in Numerous Related-Party**  
 2                           **Transactions Before, During and After the Class Period**

3           SoftBank and UTSI engaged in numerous related-party transactions. SoftBank has always  
 4           been UTSI's largest stockholder. ¶29. At the time of UTSI's IPO in 2000, SoftBank owned 60% of  
 5           the Company's common stock and had three directors on the board. *Id.* On 4/5/03, UTSI  
 6           repurchased 8 million shares of the Company's stock from SoftBank for \$139.6 million which  
 7           reduced SoftBank's ownership of UTSI's shares from 21.2% in 2002 to 14.1% in 2003. *Id.* In 2004,  
 8           SoftBank's ownership of UTSI's stock declined to 12.8% because UTSI issued 12.1 million  
 9           additional shares in 1/04. *Id.* It was reported in SoftBank's Schedule 13G filings and UTSI's proxy  
 10          filings that the shares were registered in the name of SBA but that SBC, SBH, SBA and Son were all  
 11          beneficial owners of the shares and had the shared power to vote or dispose of the shares. *See, e.g.,*  
 12          Seefer Decl., Ex. 3; Fong Decl., Ex. 21 at 18-19.

13          In its Forms 10-K reports for 2002, 2003 and 2004, UTSI admitted that SoftBank's stock  
 14          ownership gave it the ability to significantly influence all matters submitted to the Company's  
 15          stockholders for approval, as well as UTSI's management and affairs.

16                   **SOFTBANK CORP. and its related entities, including *SOFTBANK America, Inc.,***  
 17                   ***significant influence over our management and affairs, which it could exercise***  
 18                   ***against the best interests of our stockholders.***

19                   ***SOFTBANK CORP. and its related entities, including SOFTBANK America, Inc.***  
 20                   ***(collectively, "SOFTBANK"), beneficially own approximately 12.8% of our***  
 21                   ***outstanding stock as of December 31, 2004. As a result, SOFTBANK has the ability***  
 22                   ***to influence all matters submitted to our stockholders for approval, as well as our***  
 23                   ***management and affairs.***

24          Seefer Decl., Ex. 6 (emphasis added). In addition, UTSI disclosed in its 2002 Form 10-K that SBA  
 25          had the ability to control UTSI through Son.

26                   ***SOFTBANK CORP. AND ITS RELATED ENTITIES, INCLUDING SOFTBANK***  
 27                   ***AMERICA, INC., HAS SIGNIFICANT INFLUENCE OVER OUR***  
 28                   ***MANAGEMENT AND AFFAIRS, WHICH IT COULD EXERCISE AGAINST***  
 29                   ***YOUR BEST INTERESTS***

30                   **SOFTBANK CORP. and its related entities, including *SOFTBANK America Inc.,***  
 31                   ***beneficially own 21.2% of our outstanding stock.*** As a result, SOFTBANK CORP.  
 32                   and its related entities, including SOFTBANK America Inc., ***have the ability to***  
 33                   ***exercise significant influence over all matters submitted to our stockholders for***  
 34                   ***approval and exert significant influence over our management and affairs.***

35   \*           \*           \*

1 The interests of SOFTBANK America Inc. may not always coincide with our  
 2 interests. *SOFTBANK America Inc., acting through its designees [i.e., Son] on the*  
 3 *Board of Directors and through its ownership of voting securities, will have the*  
 4 *ability to exercise significant influence over our actions irrespective of the desires*  
*of our other stockholders or directors.* On August 29, 2002, we completed the  
 repurchase of six million shares of our common stock for \$72.9 million from  
 SOFTBANK CORP., reducing their beneficial ownership to 21.2%.

5 Seefer Decl., Ex. 4 (emphasis added).

6 SoftBank was also UTSI's third largest customer, after China Netcom and China Telecom.  
 7 ¶29. During FY05, FY04, FY03 and FY02, UTSI recognized revenue of \$332.1 million, \$143.7  
 8 million, \$184.4 million and \$123 million, respectively from sales to SoftBank affiliates. ¶30. As  
 9 shown in the following chart, revenues from related party transactions between UTSI and SoftBank  
 10 represented a majority of UTSI revenues from outside China and a majority of UTSI's broadband  
 11 revenues.

	FY02	1Q03	2Q03	3Q03	4Q03	1Q04	2Q04	3Q04	4Q04	1Q05	2Q05	3Q05
International Revenues (excluding Audiovox/PCD sales)	\$157	\$62.8	\$73.0	\$64.3	\$83.7	\$49.8	\$68.9	\$58.1	\$119	\$361	\$91.4	\$61.6
Broadband revenues	\$159.2	\$65.7	\$75.3	\$58.9	\$71	\$49.4	\$67.7	\$58.8	\$105.7	\$324.9	\$64.7	\$32.9
SOFTBANK Revenues	\$123	\$58.5	\$60.2	\$26.1	\$39.6	\$11.6	\$21.1	\$32	\$79	\$295.6	\$30.5	\$5.9
SOFTBANK Percentage of Int'l Revs	78%	93%	82%	41%	47%	23%	31%	55%	67%	82%	33%	10%
SOFTBANK Percentage of Broadband revenues	77%	89%	80%	44%	56%	23%	31%	54%	75%	91%	47%	18%

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
 23 ¶200. As the chart also shows, the amount and percentage of international and broadband revenues  
 24 from related party transactions with SoftBank increased substantially from 2Q04 to 1Q05 after  
 25 declining from 1Q03 to 1Q04. The increase occurred immediately after defendants assured investors  
 26 on 7/27/04 that higher margin international revenues would increase and offset the decline in gross  
 27 margins reported for 2Q04. ¶¶159, 275-79. In addition, the increase occurred when defendants  
 28 knew revenues from China PAS sales would decline by hundreds of millions of dollars by 4Q04

1 because orders from China Telecom and China Netcom had plummeted. ¶159. Indeed, UTSI  
 2 received no orders in 3Q04. *Id.* And \$271.3 million of the revenues were the result of the sham  
 3 Japan Telecom transaction. ¶¶109-27.

4 UTSI and SoftBank also entered into multiple joint ventures and invested in each other's  
 5 affiliates. Following the Company's 2000 IPO, UTSI invested \$10 million in SoftBank China,  
 6 owning 10% of the entity, with SoftBank controlling 90% of it. ¶31. In 1Q02, UTSI invested \$2  
 7 million in a venture capital investment limited partnership established by an affiliate of SoftBank.  
 8 *Id.* In 3Q03, UTSI entered into a \$10.1 million Mezzanine Loan Agreement and modem rental and  
 9 service agreements with other SoftBank affiliates. *Id.* Additionally, UTSI and SoftBank Asia  
 10 Infrastructure Fund ("SAIF"), a venture capital fund affiliated with SoftBank, invested in MDC  
 11 Holdings Limited ("MDC"), with UTSI's employees owning 67% of MDC and holding key  
 12 management positions. ¶¶31, 93. UTSI registered MDC's websites and formed a strategic business  
 13 relationship with MDC. *Id.* UTSI did not disclose this affiliated transaction with SoftBank or its  
 14 investment in MDC as required by GAAP until UTSI restated its 2003 financial statements on  
 15 4/13/05. ¶31. SoftBank also invested with China Netcom, one of UTSI's largest customers. ¶32.  
 16 China Netcom and SAIF also purchased Asia Global Crossing. *Id.*

### 17 **III. ARGUMENT**

#### 18 **A. The SoftBank Defendants Are Liable Under Section 10(b) and Rule** 19 **10b-5 For Their Active Involvement in a Scheme with UTSI to** **Misrepresent UTSI's Financial Results**

##### 20 **1. Son Served as Chairman of the Board of All Three SoftBank** 21 **Entities and Was SBA's Designee on UTSI's Board Which Son** 22 **Himself Reported Gave SoftBank the Ability to Significantly** **Influence UTSI's Management and Affairs Irrespective of the** **Desires of UTSI's Other Stockholders and Directors**

23 In its 2004 Form 10-K, UTSI reported "SOFTBANK CORP. and its related entities,  
 24 *including SOFTBANK America, Inc. (collectively, "SOFTBANK")*, beneficially own  
 25 approximately 12.8% of our outstanding stock as of December 31, 2004." Seefer Decl., Ex. 6.  
 26 Moreover, in its 2002 Form 10-K, UTSI specifically identified SBA as the entity that had "the ability  
 27 to exercise significant influence over UTSI's actions irrespective of the desires of our other  
 28 stockholders or directors." *Id.*, Ex. 4. In addition, SBA was a wholly owned subsidiary of SBH

1 which was a wholly owned subsidiary of SBC. ¶28. Thus, the SAC's reference to SoftBank is  
2 entirely proper and meets the pleading standards of Rule 9(b) and the PSLRA.

3 SoftBank contends incorrectly that plaintiffs do not allege Son ever held any position with  
4 SBA. The SAC specifically alleges Son was the president, CEO and chairman of SoftBank and  
5 certain of its affiliates. ¶29. UTStarcom's proxies – which are part of the basis of the allegations  
6 describing the defendants – expressly state that Son was (1) the Chairman of the board of directors of  
7 SBA and (2) the chairman of the board of directors and CEO of SBH. Found Decl., Ex. 21 at 3-4.

8 SoftBank misleadingly contends that “even if SoftBank America designated Mr. Son to serve  
9 as a UTStarcom director, a fact not alleged in the SAC, that would not mean that Mr. Son was  
10 SoftBank America's ‘agent’ in his capacity as a UTStarcom director.” SoftBank Mem. at 9.  
11 SoftBank is wrong. UTSI reported in its 2002 Form 10-K that SBA designated Son to serve as a  
12 UTStarcom director and that SBA “acting through its designees [*i.e.*, Son]<sup>3</sup> on the [UTSI] Board of  
13 Directors and through its ownership of voting securities, [had] the ability to exercise significant  
14 influence over [UTSI's] actions irrespective of the desires of [UTSI's] other stockholder or  
15 directors.” Seefer Decl., Ex. 4. SoftBank's contention that its designation of Son as a UTSI director  
16 does not mean that Son was under the control of SBA is wrong because it is conflicts with the  
17 contrary representations in UTSI's Form 10-Ks. Indeed, by signing UTSI's 2002 Form 10-K, Son  
18 and SoftBank have admitted they had the ability to exercise significant influence over UTSI's  
19 management and officers. *Howard v. Everex Sys.*, 228 F.3d 1057, 1061-1063 (9th Cir. 2000)  
20 (signing document signifies that the signer has read the document and attests to its accuracy).<sup>4</sup>

21 Because Son was a director and/or officer of SBC, SBH, SBA and Japan Telecom, his  
22 knowledge is imputed to each of those entities. “It is a fundamental principle of both corporate and  
23 agency law that a corporation has knowledge of all matters known to any of its officers or directors.”

---

24  
25 <sup>3</sup> SoftBank America originally designated three individuals to serve on UTSI's board of  
directors. ¶29.

26 <sup>4</sup> Moreover, because Son was the majority shareholder of SoftBank Corp., which was the sole  
27 owner of SBH and SBA, Son designated himself to serve on UTSI's board. Indeed, there is no  
substantive difference between Son and any of the SoftBank entities.

1 *Curtis v. Connly*, 257 U.S. 260, 264 (1921) (holding that knowledge of and notice to directors of a  
2 bank was knowledge by the bank); *Funk v. The Tiff Agency and Pendor-Idaho Corp.*, 515 F.2d 23,  
3 26, n.4 (9th Cir. 1975) (a person who serves as a president and stockholder of a corporation is  
4 deemed an agent of that corporation, and the agent’s knowledge is attributable to the principal  
5 corporation, citing to Restatement (Second) of Agency, §§274, 276 (1958)); *Nordstrom, Inc. v.*  
6 *Chubb & Son, Inc.*, 54 F.3d 1424, 1435-36 (9th Cir. 1995) (“corporate scienter relies heavily on the  
7 awareness of the directors and officers, who – unlike the public relations or personnel departments –  
8 are necessarily aware of the requirements of SEC regulations . . . and of the danger of misleading  
9 buyers and sellers.”).

10           The Ninth Circuit has addressed this kind of agency relationship for purposes of pleading a  
11 securities fraud case in *No. 84 Employer-Teamster Joint Council Pension Trust Fund v. Am. West*  
12 *Holding Corp.*, 320 F. 3d 920, 942-943 (9th Cir. 2003). In *Am. West*, the Ninth Circuit held the  
13 allegations that two of TPG’s officers served as members of America West’s Board of Directors and  
14 attended the board meetings, in combination with other allegations, provided sufficient and  
15 particularized factual allegations that **TPG** and its officers knew about the internal operational  
16 problems and the misstatements made by America West’s officers. *Id.*

17           Other circuits agree. *See, e.g., Makofsky v. Ultra Dynamics Corp.*, 383 F. Supp. 631, 640  
18 (S.D.N.Y. 1974) (where corporation placed two designees on another corporation’s board of  
19 directors, knowledge by the designees about the other corporation, or their access to such  
20 knowledge, is imputed “as a matter of law” to the corporation which designated them); *In re Pubs,*  
21 *Inc. of Champaign*, 618 F.2d 432, 438 (7th Cir. 1980) (“If the president, vice-president or director of  
22 a corporation has knowledge or notice of a fact, knowledge or notice of that fact is generally imputed  
23 to the corporation.”); *In re Hellenic Inc.*, 252 F.3d 391, 395 (5th Cir. 2001) (“courts generally agree  
24 that the knowledge of directors or key officers, such as the president and vice-president, is imputed  
25 to the corporation”).

26

27

28

1                   **2. SoftBank is Liable Under Rule 10b-5(b) for Making Materially**  
2                   **False and Misleading Statements with at Least Deliberate**  
3                   **Recklessness**

4                   **a. The False and Misleading Statements Are Attributable**  
5                   **to SoftBank**

6                   The false and misleading statements contained in UTSI's 2002 and 2003 Form 10-Ks are  
7                   attributable to Son – and therefore SoftBank – because Son signed them. *Howard*, 228 F.3d at 1061-  
8                   63 (signing document signifies that the signer has read the document and attests to its accuracy). In  
9                   the 10-Ks, UTSI reported (1) materially false and misleading financial results, (2) the financial  
10                  results were fairly presented in all material respects and in accordance with GAAP and (3) the  
11                  Company's disclosure controls and procedures were effective because they were designed and  
12                  maintained to ensure Lu and Sophie knew material information that was required to be disclosed.

13                  In addition, SoftBank is liable for the false statements in press releases, annual reports and  
14                  other public documents issued by the Company under the group publication rule. *Wool v. Tandem*  
15                  *Computers, Inc.*, 818 F.2d 1433, 1440 (9th Cir. 1987). In those group published documents,  
16                  defendants also reported false and misleading financial results and that the Company's disclosure  
17                  controls and procedures were effective. In addition, defendants falsely represented there was  
18                  extraordinary demand for the Company's products. The group publication rule remains the law of  
19                  this Circuit, and is grounded in the common sense notion that in cases of corporate fraud where the  
20                  false or misleading information is conveyed in a corporation's annual reports, press releases, or other  
21                  “group published” information, *it is reasonable to infer* that these are the collective actions of the  
22                  officers. *Wool*, 818 F.2d at 1440; *accord Schwartz v. Celestial Seasonings, Inc.*, 124 F.3d 1246,  
23                  1254 (10th Cir. 1997). A majority of courts have held the PSLRA did not *sub silentio* abolish the  
24                  group publication rule. *In re BISYS Sec. Litig.*, 397 F. Supp. 2d 430, 439 (S.D.N.Y. 2005) (“[T]he  
25                  majority of courts in this and other jurisdictions have found that the doctrine is alive and well.”); *In*  
26                  *re Secure Computing Corp. Sec. Litig.*, 120 F. Supp. 2d 810, 821-22 (N.D. Cal. 2000). Indeed,  
27                  “even in *In re Silicon Graphics*, which established the most stringent of pleading standards under the  
28                  PSLRA, the Court did not question whether group pleading was still viable post-PSLRA.” *In re*  
29                  *Stratosphere Corp. Sec. Litig.*, 1 F. Supp. 2d 1096, 1108 (D. Nev. 1998).

1 The Ninth Circuit has also held that the group publication presumption particularly applies to  
2 a “small board of directors.” *In re GlenFed, Inc. Sec. Litig.*, 60 F.3d 591, 593 (9th Cir. 1995) (citing  
3 *Blake v. Dierdorff*, 856 F.2d 1365, 1367-69 (9th Cir. 1988) (applying group publication rule to the  
4 directors of an eight-member board)). Application of group publication liability to outside directors  
5 is “grounded in reasonableness” and applies where plaintiffs allege that the directors “either  
6 participated in the day-to-day corporate activities, or had a special relationship with the corporation .  
7 . . .” *GlenFed*, 60 F.3d at 593; *In re Valence Tech. Sec. Litig.*, No. C 95-20459 JW, 1996 U.S. Dist.  
8 LEXIS 21773, at \*12 (N.D. Cal. 1996); *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399 (9th Cir. 1996); *In*  
9 *re Interactive Network, Inc. Sec. Litig.*, 948 F. Supp. 917 (N.D. Cal. 1996); *Strassman v. Fresh*  
10 *Choice, Inc.*, No. C-95-200177-RPA, 1995 U.S. Dist. LEXIS 19343 (N.D. Cal. Dec. 7, 1995).

11 Son, SoftBank’s designee on UTSI’s board of directors, participated in the management of  
12 UTSI and had a special relationship with the Company. He co-founded UTSI and served as the  
13 Chairman of the Board of Directors until March 2003 and as a director until September 15, 2004.  
14 ¶28. He is also the President, CEO, Chairman and largest shareholder of SBC. He is chairman and  
15 CEO of SBH and chairman of SBA. *Id.* By signing the 2002 and 2003 Form 10-Ks, Son  
16 participated “in preparing or communicating group information at a particular time.” *Valance*, 1996  
17 U.S. Dist. LEXIS 21773, at \*\*13-14 (“To rely on the ‘group published information’ presumption,  
18 plaintiffs’ complaint must contain allegations that an outside director either participated in the day-  
19 to-day corporate activities, or had a special relationship with the corporation, such as participation in  
20 preparing or communicating group information at particular times.”); *Howard*, 228 F.3d at 1061-63  
21 (signing document signifies signer has read the document and attests to its accuracy).

22 SoftBank was the Company’s largest shareholder and admittedly had the ability to  
23 significantly influence UTSI’s management and affairs through Son and its controlling ownership  
24 interest of UTSI stock. ¶29. SoftBank and UTSI also engaged in numerous related party  
25 transactions. UTSI repurchased millions of dollars of its stock from SoftBank, a majority of the  
26 Company’s broadband and international sales were to SoftBank affiliates and the companies  
27 invested together. ¶¶30-31, 200-02. SoftBank also invested with China Netcom, one of UTSI’s two  
28

1 largest China PAS customers. In short, Son both participated in the day-to-day affairs of UTSI and  
2 also had a long standing special relationship that went back to 1991 when the Company was created.

3 **b. The SAC Includes Numerous Facts that Considered**  
4 **Together Raise a Strong Inference that SoftBank Knew**  
5 **or was Deliberately Reckless in Not Knowing that the**  
6 **Statements were Materially False and Misleading**

7 The SAC includes numerous facts from corroborating sources that show the defendants –  
8 including SoftBank through Son – knew or were deliberately reckless in not knowing that their  
9 statements about UTSI’s financial results and business were materially false and misleading. The  
10 SoftBank defendants’ scienter is alleged on the basis of (1) SBA’s controlling ownership interest in  
11 UTSI, (2) the numerous related party transactions between UTSI and the SoftBank defendants, and  
12 (3) Son’s long-standing relationship with UTSI and his position on UTSI’s board as SBA’s designee.  
13 Most particularly, as explained in §III.A.3, SoftBank and Son knew that a majority of the \$600  
14 million of international revenue the defendants told investors UTSI would report in 2004 was the  
15 result of the sham Japan Telecom transaction that has spurred an investigation by the SEC including  
16 numerous depositions of the Company’s officers and others. ¶¶109-127. Son and the SoftBank  
17 defendants knew the transaction was bogus because UTSI purchased the revenue for itself by  
18 indirectly paying Japan Telecom at least \$150 million.

19 In addition, the SoftBank defendants falsely represented UTSI’s financial results were fairly  
20 presented in all material respects in accordance with GAAP and falsely assured investors they knew  
21 this because the Company had designed and maintained effective controls and procedures to ensure  
22 material information was made known to defendants Lu and Sophie during the period when UTSI  
23 reported its financial results. ¶¶66-70. UTSI has now admitted there were numerous material  
24 weaknesses in the all areas of the Company’s operations during the 32-month Class Period that  
25 caused the false financial reporting and the false Sarbanes-Oxley certifications. ¶¶71-88. *In re*  
26 *Lattice Semiconductor Corp. Sec. Litig.*, No. CV 04-1255-AA, 2006 U.S. Dist. LEXIS 262, at \*\*45-  
27 51 (D. Ore. Jan. 3, 2006) (“[T]he Sarbanes-Oxley certifications give rise to an inference of scienter  
28 because they provide evidence either that defendants knew about the improper journal entries and  
unreported sales credits that led to the over-reporting of revenues (because of the internal controls

1 they said existed) or, alternatively, knew that the controls they attested to were inadequate (because  
2 Hoyt had made unauthorized or improper entries that overrode the internal controls.”); *In re*  
3 *American Italian Pasta Co. Sec. Litig.*, No. 04-55665, 2006 U.S. Dist. LEXIS 40548, at \*21 (W.D.  
4 Mo. June 19, 2006) (“By signing the Sarbanes-Oxley certifications and the Annual Reports filed  
5 with the SEC, Webster indicated he had reviewed and was familiar with the underlying facts giving  
6 rise to those documents – meaning he was either aware of the improper accounting, was reckless  
7 with regard to the public reports of AIPC’s finances, or had not conducted any review and did not act  
8 in accordance with the certifications.”); *In re Oak Tech. Sec. Litig.*, No. 96-20552 SW, 1997 U.S.  
9 Dist. LEXIS 18503, at \*8 (N.D. Cal. Aug. 1, 1997) (citing *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d  
10 1541, 1548 (9th Cir. 1994)) (“plaintiff may explain why a statement is false or misleading by merely  
11 pointing to facts that were later revealed which, due to their nature, were necessarily in existence at  
12 the time the statement was made.”).

13 UTSI has restated its results twice so far and has restated every financial statement issued  
14 during the Class Period. ¶¶89-98. *In re Sipex Corp. Sec. Litig.*, No. C 05-00392 WHA, 2005 U.S.  
15 Dist. LEXIS 30854, at \*2 (N.D. Cal. Nov. 17, 2005) (“Sipex’s own public admission that its  
16 financial reports for the period in question should not be relied upon and would be “restated” meant  
17 that the as-issued reports were materially inaccurate under GAAP.”); *In re Cylink Sec. Litig.*, 178 F.  
18 Supp. 2d 1077, 1084 (N.D. Cal. 2001) (“the mere fact that the statements were restated at all  
19 supports such an inference [of scienter]”); *In re Daou Systems, Inc.*, 411 F.3d 1006, 1016 (9th Cir.  
20 2005) (“Violations of GAAP standards can also provide evidence of scienter.”).

21 UTSI has admitted it did not have effective controls in place to ensure revenues were  
22 “completely and accurately recorded” and that UTSI improperly recognized millions of dollars of  
23 revenue in violation of GAAP from 2003-2005 because of secret side letter requirements that had not  
24 been fulfilled when the revenue was recognized. ¶¶96-98. *Lattice*, 2006 U.S. Dist. LEXIS 262, at  
25 \*\*45-51; *American Italian Pasta*, 2006 U.S. Dist. LEXIS 40548, at \*21; *Sipex*, 2005 U.S. Dist.  
26 LEXIS 30854, at \*2; *Cylink*, 178 F. Supp. at 1084; *GlenFed*, 42 F.3d at 1548.

27 Former UTSI employees stated they were directed to enter orders as accepted even though  
28 acceptance contingencies had not been satisfied and customer acceptance had not been received.

1 ¶¶100-01. *Daou*, 411 F.3d at 1015-16 (numbering each witness and describing job description and  
2 job responsibilities provides a “large degree of specificity” which “support[s] the probability that a  
3 person in the position occupied by the source would possess the information alleged”); *In re*  
4 *Cabletron Sys.*, 311 F.3d 11, 30 (1st Cir. 2002) (consistent witness accounts reinforce one another);  
5 *Bourjaily v. U.S.*, 483 U.S. 171, 179-80 (1987) (allegations more reliable and credible when based  
6 on information from corroborating sources); *U.S. v. Hernandez-Escarsega*, 886 F.2d 1560, 1566 (9th  
7 Cir. 1989) (based upon the “interlocking nature of their stories,” witness information should be  
8 treated as credible and reliable).

9 Defendants concealed until after the Class Period that the SEC was (and is) investigating  
10 UTSI’s financial disclosures during the Class Period, including the sham related party transaction  
11 between UTSI and SoftBank affiliate Japan Telecom. ¶¶109-27, 349. The recently disclosed  
12 investigations by the SEC and DOJ indicate the Company improperly recognized revenue on  
13 transactions that were procured by illegally bribing government officials in India and Mongolia in  
14 violation of the FCPA. *In re Syncor Int’l Corp. Sec. Litig.*, 327 F. Supp. 2d 1149, 1162 (C.D. Cal.  
15 2004) (“The Ninth Circuit has considered administrative investigations and settlements in evaluating  
16 scienter.”) (citing *America West*, 320 F.3d at 942)); *City of Monroe Employees Ret. Sys. v.*  
17 *Bridgestone Corp.*, 399 F.3d 651, 683 (6th Cir. 2005) (evidence of bribery indicative of scienter).

18 The fact that UTSI improperly recognized revenue over 11 quarters in violation of GAAP  
19 and the Company’s publicly reported accounting policy provides powerful indirect evidence of  
20 scienter. *Daou*, 411 F.3d at 1016 (“Violations of GAAP standards can also provide evidence of  
21 scienter.”); *In re McKesson HBOC, Inc. Sec. Litig.*, 126 F. Supp. 2d 1248, 1272-73 (N.D. Cal. 2000)  
22 (“[W]hen significant GAAP violations are described with particularity in the complaint, they may  
23 provide powerful indirect evidence of scienter. After all, books do not cook themselves.”); *Provenz*  
24 *v. Miller*, 102 F.3d 1478, 1486 (9th Cir. 1996) (scienter properly inferred where defendants violated  
25 GAAP and company’s own accounting policies).

26 In addition to the restatement of revenues, inventories and cost of sales, the defendants have  
27 acknowledged that UTSI could not test for goodwill impairment during the Class Period as required  
28 by GAAP and the Company recorded a \$323 million impairment charge after the Class Period to

1 write off 100% of goodwill. ¶¶128-34. *In re Terayon Commc'ns Sys., Inc.*, No. C 00-01967 MHP,  
2 2002 U.S. Dist. LEXIS 5502, at \*38 (N.D. Cal. Mar. 29, 2002) (massive charges to writedown  
3 intangible assets indicative of scienter); *In re Worldcom, Inc. Sec. Litig.*, 294 F. Supp. 2d 392, 416  
4 (S.D.N.Y. 2003); *Rothman v. Gregor*, 220 F.3d 81, 92 (2d. Cir. 2000) (magnitude of write-off is  
5 significant in supporting inference of fraud), *In re Scholastic Corp. Sec. Litig.*, 252 F.3d 63, 73 (2nd  
6 Cir. 2000) (size of post class period special charge supports inference of knowledge).

7 Defendants have also acknowledged UTSI did not maintain effective controls over  
8 inventories and costs of sales, restated inventories and cost of sales and increased reserves during  
9 and after the Class Period. ¶¶135-40. They also acknowledged UTSI did not maintain effective  
10 controls over the recording of accrued expenses and increased warranty reserves after the Class  
11 Period. ¶¶141-48. *Lattice*, 2006 U.S. Dist. LEXIS 262, at \*\*45-51; *American Italian Pasta*, 2006  
12 U.S. Dist. LEXIS 40548, at \*21; *Sipex*, 2005 U.S. Dist. LEXIS 30854, at \*2; *Cylink*, 178 F. Supp. at  
13 1084; *GlenFed*, 42 F.3d at 1548.

14 Defendants have admitted the Company's disclosure controls and procedures are still  
15 ineffective today because so many remediation measures are required. ¶¶84-88. The resignations of  
16 Lu and Sophie, the restatement, the hiring of numerous additional accounting personnel and the  
17 numerous other "remediation initiatives" taken to improve the Company's financial reporting  
18 controls raise a strong inference of scienter. *Sipex*, 2005 U.S. Dist. LEXIS 30854, at \*3-4.

19 In addition, defendants were at least deliberately reckless in falsely representing there was  
20 "extraordinary demand" for the Company's PAS equipment when they knew China Telecom and  
21 China Netcom had substantially reduced orders, there was excess capacity on existing PAS networks  
22 from billions of dollars of previous deployments that saturated the market and that PAS subscriber  
23 growth rates were declining. ¶¶156-72; *Nursing Home Pension Fund, Local 144 v. Oracle Corp.*,  
24 380 F.3d 1226, 1230 (9th Cir. 2004) ("The most direct way to show both that a statement was false  
25 when made and that the party making the statement knew that it was false is via contemporaneous  
26 reports or data, available to the party, which contradict the statement.").

27 Defendants falsely represented the Company's backlog of PAS equipment orders provided  
28 them with tremendous visibility into UTSI's future results - including gross margins - when they

1 knew the undisclosed operational problems were delaying shipments and deployments and  
2 increasing the costs of the backlogged sales. ¶¶158-62; *Oracle*, 380 F.3d at 1230. The witness  
3 accounts and the Company's admissions establish the delivery delays, additional costs and delays in  
4 receiving customer acceptance. *See e.g.*, ¶¶71-88, 104-05, 108; *Daou*, 411 F.3d at 1015-16;  
5 *Cabletron*, 311 F.3d at 30; *Bourjaily*, 483 U.S. at 179-80; *Hernandez-Escarsega*, 886 F.2d at 1566.

6 Further, the PAS equipment gross margins reported by UTSI were substantially less than  
7 what they told investors. During UTSI's 1/22/04 conference call, Lu and Sophie stated the \$1.06  
8 billion backlog gave them "tremendous visibility for 2004," and that as a result gross margins would  
9 be 30-32%. ¶¶161, 260. But gross margins on PAS equipment sales declined to 28% in 2Q04 and  
10 further to 25% in 3Q04. ¶¶162, 264(c). Because the PAS equipment backlog was \$1.06 billion when  
11 defendants provided the gross margin guidance, they either knew gross margins would be less than  
12 the guidance provided or knew the backlog did not provide "tremendous visibility into 2004." *Id.*

13 The SAC explains how defendants falsely represented that gross margins on handset sales  
14 would improve from the introduction of (1) PAS handsets with lower-cost internally designed ASICs  
15 and (2) internally designed and manufactured CDMA handsets. ¶¶6, 173-99; *Oracle*, 380 F.3d at  
16 1230. The witness accounts establish there were undisclosed problems with the development of both  
17 handsets that delayed their introduction and the Company reported declining sales and gross margins  
18 on handset sales throughout the Class Period. ¶¶6, 173-99; *Daou*, 411 F.3d at 1015-16, *Cabletron*,  
19 311 F.3d at 30; *Bourjaily*, 483 U.S. at 179-80; *Hernandez-Escarsega*, 886 F.2d at 1566.

20 Son and SoftBank also knew about the declining China PAS market because China Telecom  
21 and China Netcom generated 85%-98% of UTSI's sales and because SoftBank invested with China  
22 Netcom. ¶¶32, 57; *In re Read-Rite Corp. Sec. Litig.*, 335 F.3d 843, 848 (9th Cir. 2003).

23 When defendants began to reveal in 7/04 and 9/04 that sales from China PAS sales would  
24 decline in 2005, they falsely represented sales of the Company's recently developed broadband  
25 products outside of China would be \$600 million in 2004. ¶¶7, 280-81. But defendants knew there  
26 were problems with the quality of the quality of UTSI's new broadband product offerings,  
27 particularly the iAN-8000 Multi-Service Access Node equipment and the mVision TVoIP  
28 equipment. *Id.* The witness accounts, the reasons for the goodwill impairment charge (challenges

1 with broadband product quality), and the recording of a \$9 million warranty reserve after the Class  
2 Period related to continual product repair issues with the iAN-8000 and NetRing equipment sold to  
3 SoftBank confirm the product problems. ¶¶108, 115, 133, 142-48. Son and SoftBank  
4 unquestionably knew about them because just about all of the Company's broadband sales outside of  
5 China were to SoftBank. ¶¶30, 200-02. Indeed, the witnesses said SoftBank demanded that it  
6 approve all products delivered due to quality problems in the past and the defendants admitted that  
7 UTSI was unable to recognize \$40 million of revenue on a sale of mVision equipment to SoftBank  
8 because it had not completed all elements of the contract. ¶115, 349.

9 Given Son's long standing special relationship with UTSI, SoftBank's and Son's controlling  
10 ownership interest in the Company, SoftBank's investments with China Netcom and the fact that  
11 SoftBank and its affiliates were engaging in numerous related party transactions with UTSI, it is  
12 implausible that SoftBank did not know about the undisclosed adverse information that made  
13 defendants' statements materially false and misleading.

14 **3. The Principal Purpose and Effect of the Japan Telecom**  
15 **Transaction was to Create the False Appearance of Revenue**  
16 **from the Sale of UTSI's Products Outside of China in**  
17 **Furtherance of a Scheme to Defraud**

18 Section 10(b) prohibits, in pertinent part, "any person, directly or indirectly, . . . [t]o use or  
19 employ, in connection with the purchase or sale of any security ... any manipulative or deceptive  
20 device or contrivance in contravention of such rules and regulations as the Commission may  
21 prescribe." *Simpson*, 2006 U.S. App. LEXIS 16556, at \*15 (citing 15 U.S.C. §78j(b)). Thus, it is  
22 unlawful for any person "to employ any device, scheme, or artifice to defraud" or "to engage in any  
23 act, practice, or course of business which operates or would operate as a fraud or deceit upon any  
24 person." *Id.* (citing 17 CFR § 240.10b-5(a) & (c)).

25 Indeed, the Supreme Court has held that a non-speaking actor who engages in a "scheme to  
26 defraud" has used or employed a deceptive device within the meaning of §10(b). *Id.* at \*19 (citing  
27 *SEC v. Zandford*, 535 U.S. 813, 821-22 (2002)). To be liable for a "scheme to defraud," "each  
28 defendant [must have] committed a manipulative or deceptive act in furtherance of the scheme." *Id.*  
at \*\*20-21 (citing *Cooper v. Pickett*, 137 F.3d 616, 624 (9th Cir. 1997)). Conduct that constitutes a

1 manipulative or deceptive act in furtherance of a scheme to defraud includes “engaging in a  
2 transaction whose principal purpose and effect is to create a false appearance of revenue.” *Id.* at  
3 \*21. Participation in a fraudulent transaction by itself, however, is insufficient to qualify the  
4 defendant as a “primary violator” if the deceptive nature of the transaction or scheme was not an  
5 intended result, at least in part, of the defendant’s own conduct. *Id.* Therefore, to be liable as a  
6 primary violator of §10(b) for participation in a “scheme to defraud,” the defendant must have  
7 engaged in conduct that had the principal purpose and effect of creating a false appearance of fact in  
8 furtherance of the scheme. *Id.*

9         The SAC alleges the principal purpose and effect of the Japan Telecom transaction was to  
10 create the false appearance of revenue from the sale of UTSI’s products outside of China and that the  
11 false appearance of revenue was the intended result, at least in part, of SoftBank’s own conduct.  
12 ¶¶109-27. *Simpson*, 2006 U.S. App. LEXIS 16556, at \*\*29-30 (in any complex securities fraud  
13 there are likely to be multiple violators) (citing *Central Bank, N.A. v. First Interstate Bank, N.A.*, 511  
14 U.S. 164, 191 (1994)). The Japan Telecom transaction was a sham because (1) the companies had  
15 never before entered into a transaction of this purported magnitude, (2) the transaction was created to  
16 mitigate the impact on UTSI’s stock price (and therefore the value of SoftBank’s UTSI stock) that  
17 defendants knew would decline sharply when the Company reported disappointing 2Q04 results on  
18 7/27/04, (3) UTSI was purportedly required to provide “sales promotion activities” – which it  
19 admittedly had never done before - to generate customers for Japan Telecom, (4) the purported  
20 amount of the transaction increased from \$290 million to \$534 million due to the addition of the  
21 sales promotion activities even though the contract specified that UTSI was to perform them for no  
22 additional consideration, and (5) UTSI indirectly paid Japan Telecom at least \$150 million in 1Q05  
23 to purportedly exit the sales promotion activities when the Company reported \$271.3 million of  
24 revenue and disclosed a massive restructuring and a substantial decline in China PAS revenues.  
25 These allegations state a claim by showing UTSI purchased revenue for itself by indirectly paying  
26 Japan Telecom at least \$150 million. Indeed, in addition to this suit, the transaction is being  
27 investigated by the SEC.

28

1           SoftBank knew through Son that UTSI's stock price would decline because the Company  
2 was going to lower gross margin guidance and report disappointing 2Q04 results on 7/27/04,  
3 including further declines in gross margins, significant declines in PAS subscriber growth rates, the  
4 failure of China Telecom and China Netcom to increase orders for PAS equipment to expand  
5 network capacity, and supply chain problems that prevented the Company from delivering products  
6 and recognizing revenue. ¶¶275-77. To mitigate the expected decline, SoftBank and UTSI created  
7 the sham Japan Telecom transaction and falsely assured investors gross margins would increase in  
8 the second half of 2004 from \$600 million of higher margin international revenue. ¶281. SoftBank  
9 had a powerful motive to engage in the scheme. SoftBank owned 14,651,630 shares of UTSI stock  
10 and the price of the stock had declined from a Class Period high of \$45.36 on 8/21/03 to \$17.85 on  
11 7/28/04. As a result, the value of SoftBank's UTSI stock declined by \$403 million.

12           The fact that the Japan Telecom transaction was not consistent with either defendants'  
13 normal course of business – UTSI and SoftBank had never before entered into a transaction  
14 anywhere close to the size of the purported \$534 million Japan Telecom transaction – also indicates  
15 that SoftBank's intent, at least in part, was to create the false appearance of revenue from sales of  
16 UTSI's broadband products outside of China. *Simpson*, 2006 U.S. App. LEXIS 16556, at \*26  
17 (“Conduct that is consistent with the defendants' normal course of business would not typically be  
18 considered to have the purpose and effect of creating a misrepresentation.”).

19           The SoftBank defendants' fraudulent intent is also supported by the fact that the positive  
20 representations about international revenue were made before the equipment was ever delivered to  
21 Japan Telecom. Two former UTSI employees said that Japan Telecom insisted that it approve the  
22 quality of all equipment before it was accepted for deployment because UTSI had delivered poor  
23 quality products to SoftBank in the past. ¶115. The witnesses also stated significant quality issues  
24 with the equipment were discovered after UTSI began delivering the equipment in 9/04. *Id.* Despite  
25 UTSI's poor track record and the requirement that Japan Telecom had to approve the equipment  
26 before acceptance, SoftBank through Son permitted UTSI to represent that international revenues  
27 would increase in 2004.

28

1 The fact that a related party transaction with a SoftBank affiliate was not identified as the  
2 source for the purported increase in international revenue also indicates SoftBank's intent was to  
3 create the false appearance of revenue. Neither SoftBank nor Japan Telecom was mentioned during  
4 the 7/27/04 conference call when UTSI CEO Lu and CFO Sophie assured investors international  
5 revenues would be \$600 million in 2004. Moreover, SoftBank knew through Son that UTSI failed to  
6 report the related party transaction in its 2Q04 Form 10-Q filed on 8/16/04 as required by SEC  
7 regulations. ¶114.

8 SoftBank required terms to protect itself from delivery delays and product problems. The  
9 8/20/04 contract confirms UTSI assumed all of the risk for delays in delivery or product defects.  
10 ¶¶115-16. Japan Telecom had the sole right to determine when delivery of the equipment was  
11 complete and the contract required UTSI to (1) pay Japan Telecom for any delivery delays, (2) repair  
12 or replace any defective equipment or refund the price, and (3) comply with Japan Telecom's quality  
13 assurance standards. ¶116.

14 The amount of the transaction suspiciously increased from \$290 million to \$534 million due  
15 to the purported addition of "sales promotion activities" that UTSI was to perform for no additional  
16 consideration. ¶¶117-18. Moreover, the purported sales promotion activities were not consistent  
17 with UTSI's normal course of business. Indeed, in its 1Q05 Form 10-Q, UTSI admitted the  
18 Company had "not provided these activities in the past." ¶121; *Simpson*, 2006 U.S. App. LEXIS  
19 16556, at \*26.

20 The \$150 million UTSI indirectly paid to Japan Telecom to purportedly exit the sales  
21 promotion activities and the reported gross margin on the transaction also indicate the transaction  
22 was a sham. On 9/20/04, defendants stated the revenue on the Japan Telecom transaction could not  
23 be recognized until 2Q05 or 3Q05 because of the promotional services added to the contract. ¶¶123,  
24 294. But the revenue was recognized in 1Q05 after UTSI purportedly paid \$150 million to Japan  
25 Telecom distributors to exit the promotional services aspect of the deal. ¶119. As a result, the  
26 revenue was reported in 1Q05 when the Company also disclosed a massive restructuring, further  
27 substantial declines in China PAS revenues, further declines in PAS handset gross margins and  
28 additional delays in the introduction of the ASIC PAS handsets and the CDMA handsets. ¶330.

1 The Company reported a 57% gross margin on the Japan Telecom transaction compared to  
2 an 11.4% gross margin on sales to unrelated parties. Those results told investors that UTSI made  
3 \$154 million by selling Japan Telecom approximately \$117 million of broadband inventory for  
4 \$271.3 million. But the \$150 million payment was not recorded as a cost of the sale. The \$150  
5 million payment, its timing and the fact it was not included in cost of sales indicate the sales  
6 promotion activities were fabricated to conceal UTSI had purchased revenue for itself by indirectly  
7 paying Japan Telecom at least \$150 million. *Simpson*, 2006 U.S. App. LEXIS 16556, at \*5  
8 (describing as fraudulent, transactions where the company recorded revenues from its receipt of  
9 monies that came from the company's own cash reserves).

10 The SEC's formal investigation of the transaction also supports plaintiffs' allegations that the  
11 defendants knew it was a sham transaction and that the \$271.3 million of revenue recognized in  
12 1Q05 was improper. *Syncor*, 327 F. Supp. 2d at 1162 ("The Ninth Circuit has considered  
13 administrative investigations and settlements in evaluating scienter.") (citing *Am. West*, 320 F.3d at  
14 942)). In fact, CW7 stated the SEC was investigating UTSI for several months before the Company  
15 disclosed the investigation on 10/6/05, that the SEC had deposed at least 15 UTSI employees by  
16 6/05 and was extremely focused on the Japan Telecom transaction, matters involving revenue  
17 recognition (including how UTSI determined the amount of revenue to be recognized) and who at  
18 the Company talks to Wall Street. ¶109.

19 In short, everything about the Japan Telecom transaction was suspicious. The timing of the  
20 transaction, the amount, the terms, the increase in the amount due to services UTSI was required to  
21 perform for no additional consideration, the \$150 million payment and the timing of the payment  
22 and recognition of the revenue.

23 Moreover, the facts in this case against SoftBank are stronger and more persuasive than the  
24 facts against the business partner defendants in *Simpson*. Whereas the business partners in *In re*  
25 *Homestore.com, Inc. Sec. Litig.*, 252 F. Supp. 2d 1018, 1039 (C.D. Cal. 2003) did not have any  
26 "special relationship" with Homestore, SoftBank and Son did have a special relationship with UTSI  
27 through their controlling ownership interest in the Company's stock, Son's membership on the UTSI  
28 board of directors and the numerous related party transactions between UTSI and various SoftBank

1 entities.<sup>5</sup> Indeed, as the district court stated in *Homestore*, “Significantly, these are exactly the types  
 2 of ‘secondary actors’ the Supreme Court envisioned as potential ‘primary violators’ in Central  
 3 Bank.” 252 F. Supp. 2d at 1039. In addition, the district court noted that the primary architects of  
 4 the scheme were the officers of Homestore who designed and carried out the schemes to defraud. *Id.*  
 5 at 1040. Here too, the officers of UTSI and SoftBank – through Son and its controlling interest of  
 6 UTSI’s stock – engineered and executed the sham Japan Telecom transaction to create the false  
 7 appearance of revenues from sales of the Company’s products outside of China.

8 **B. SoftBank is Liable as a Control Person Under Section 20(a) Because It**  
 9 **Admittedly Had the Ability to Significantly Influence UTSI**  
 10 **Irrespective of the Desires of UTSI’s Other Stockholders and**  
 11 **Directors**

12 Section 20(a) imposes joint and several liability on any “person who, directly or indirectly,  
 13 controls any person liable” for securities fraud, “unless the controlling person acted in good faith and  
 14 did not directly or indirectly induce” the violations. 15 U.S.C. §78t(a); *Daou*, 411 F.3d at 1030. To  
 15 prove a *prima facie* case under §20(a), “a plaintiff must prove: (1) ‘a primary violation of federal  
 16 securities law’ and (2) ‘that the defendant exercised actual power or control over the primary  
 17 violator.’” *Am. West*, 320 F.3d at 945 (citation omitted). As explained above, the SAC sufficiently  
 18 alleges a primary violation of the federal securities laws against SoftBank. Further, as explained in  
 19 Plaintiff’s opposition to the UTStarcom defendants’ motion to dismiss, the SAC sufficiently alleges  
 20 a primary violation of the federal securities laws against the UTStarcom defendants.

21 “Control” is defined as “the possession, direct or indirect, of the power to direct or cause the  
 22 direction of the management and policies of a person, whether through the ownership of voting  
 23 securities, by contract, or otherwise.” *Am. West*, 320 F.3d at 945 (emphasis in original omitted);

---

24 <sup>5</sup> The district court reasoned incorrectly that a “special relationship” was necessary because it  
 25 was unaware of any case since *Central Bank*, 511 U.S. 164, where the court “held that outside  
 26 business partners, no matter how involved they were in fraudulent transactions with a corporation,  
 27 can be liable in a private action brought by the public shareholders of that company.” *Homestore*,  
 28 252 F. Supp. 2d at 1038. The Ninth Circuit rejected that narrow and incorrect ruling by holding that  
 any defendant that “engaged in conduct that had the principal purpose and effect of creating a false  
 appearance of fact in furtherance of the scheme” would be liable. *Simpson*, 2006 U.S. App. LEXIS  
 16556, at \*21-22.

1 citation omitted). Thus, contrary to SoftBank’s contentions (SoftBank Mem. at 13-14), it is not  
2 necessary to show actual participation, the exercise of actual power or “culpable participation.”  
3 *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1575 (9th Cir. 1990); *see also Cylink*, 178 F. Supp.  
4 2d at 1089 (holding unnecessary to allege defendants “actually participated in the wrongful conduct  
5 or exercised actual power to be derivatively liable under section 20(a)”) (citing *Howard*, 228 F.3d at  
6 1065). “Whether [the defendant] is a controlling person is an intensely factual question, involving  
7 scrutiny of the defendant’s participation in the day-to-day affairs of the corporation and *the*  
8 *defendant’s power to control corporate actions.*” *Howard*, 228 F.3d at 1065 (emphasis added;  
9 citation omitted);

10           SoftBank’s contention that the allegation it had the power and authority to cause UTSI to  
11 engage in wrongful conduct is “unsupported by any facts” and “wild supposition” is incredible.  
12 SoftBank Mem. at 13-15. That contention ignores the repeated admissions by UTSI and Son that  
13 SoftBank’s ownership of UTSI’s stock and its designation of Son on the Company’s board of  
14 directors gave SoftBank the ability to significantly influence UTSI. ¶29.

15           SOFTBANK America Inc., acting through its designees on the Board of Directors  
16 and through its ownership of voting securities, will have the ability to exercise  
17 significant influence over our actions irrespective of the desires of our other  
18 stockholders or directors.

19           Seefer Decl., Ex. 4. That allegation alone is sufficient to allege control. *Am. West*, 320 F.3d at 945-  
20 46 (allegations that defendant had shareholder relationship with company, was the company’s largest  
21 shareholder, and had power to elect members to the board sufficient to establish prima facie showing  
22 of control.).

23           Moreover, the numerous transactions between SoftBank and UTSI show that SoftBank  
24 exercised its power. SoftBank caused UTSI to purchase 6 million of its UTSI shares in 8/02 for  
25 \$72.9 million and 8 million of its UTSI shares in 3/03 for \$139.6 million. ¶29. It used its power to  
26 create the false appearance of revenue by structuring the sham Japan Telecom transaction with built-  
27 in protections for itself. ¶¶109-27.

28           In addition, as SBA’s designee on the UTSI board of directors, Son signed the Company’s  
2002 and 2003 Form 10-K reports which signified he had read the Form 10-Ks and attested they

1 were accurate. *Howard*, 228 F.3d at 1061. Son’s signing of the Form 10-Ks shows he had authority  
2 over the process of preparing and releasing UTSI’s financial statements which the Ninth Circuit has  
3 held to be sufficient to allege control. *Id.* at 1066 (“we find that Hui’s actual authority over the  
4 preparation and presentation to the public of the financial statements is sufficient to make out a  
5 prima facie case.”).

6 **C. Plaintiffs Can and Should Be Permitted to Amend the Complaint to**  
7 **Comply with Guidance from the Court, if Necessary**

8 While plaintiffs believe their existing Complaint is sufficient to state a claim for securities  
9 fraud, they are also prepared to amend the Complaint if defendants’ motions are granted in whole or  
10 in part to address any concerns identified by the Court. Therefore, if the Court is inclined to grant  
11 defendants’ motions to dismiss in whole or in part, plaintiffs request up to 45 days from the entry of  
12 the Court’s Order to file an amended complaint. *See Eminence Capital, LLC v. Aspeon, Inc.*, 316  
13 F.3d 1048, 1051 (9th Cir. 2003) (leave to amend should be granted liberally); *United States ex rel.*  
14 *Lee v. SmithKline Beecham, Inc.*, 245 F.3d 1048, 1053-54 (9th Cir. 2001) (reversible error to deny  
15 leave to amend to provide particularity).

16 **IV. CONCLUSION**

17 For the reasons set forth above, plaintiffs respectfully request that SoftBank’s motion to  
18 dismiss be denied in its entirety.

19 DATED: July 21, 2006

Respectfully submitted,

20 LERACH COUGHLIN STOIA GELLER  
21 RUDMAN & ROBBINS LLP  
22 KIMBERLY EPSTEIN  
23 CHRISTOPHER P. SEEFER  
24 SHIRLEY H. HUANG

25 \_\_\_\_\_  
26 /s/  
27 CHRISTOPHER P. SEEFER

28 100 Pine Street, Suite 2600  
San Francisco, CA 94111  
Telephone: 415/288-4545  
415/288-4534 (fax)

Lead Counsel for Plaintiffs

T:\CasesSF\UTStarcom\OMD00032369.doc

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I further certify that I caused this document to be forwarded to the following designated Internet site at: <http://securities.lerachlaw.com/>.

\_\_\_\_\_  
/s/  
CHRISTOPHER P. SEEFER  
  
LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
100 Pine Street, 26th Floor  
San Francisco, CA 94111  
Telephone: 415/288-4545  
415/288-4534 (fax)  
  
E-mail: [CSeefer@lerachlaw.com](mailto:CSeefer@lerachlaw.com)

## Mailing Information for a Case 5:04-cv-04908-JW

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Patricia I. Avery**  
pavery@wolfpopper.com
- **Eric J. Belfi**  
ebelfi@labaton.com ElectronicCaseFiling@labaton.com
- **Patrick J. Coughlin**  
patc@lerachlaw.com e\_file\_sf@lerachlaw.com
- **STEPHANIE L. DIERINGER, ESQ**  
sldieringer@hulethharper.com office@hulethharper.com
- **Kimberly C. Epstein**  
kimcor@lerachlaw.com e\_file\_sf@lerachlaw.com;mariam@lerachlaw.com
- **Boris Feldman**  
boris.feldman@wsgr.com ncarvalho@wsgr.com;bhickman@wsgr.com
- **Vincent P. Finigan, Jr**  
vfinigan@morganlewis.com
- **Cheryl W. Foug**  
cfoug@wsgr.com bhickman@wsgr.com
- **Lionel Z. Glancy**  
info@glancylaw.com
- **Michael M. Goldberg**  
info@glancylaw.com
- **Scott Christensen Hall**  
halls@sullcrom.com herediak@sullcrom.com
- **Shirley H. Huang**  
shirleyh@lerachlaw.com e\_file\_sd@lerachlaw.com;e\_file\_sf@lerachlaw.com
- **Terry T. Johnson**  
tjohnson@wsgr.com  
fgallardo@wsgr.com;mevenson@wsgr.com;cfoug@wsgr.com;calendar@wsgr.com
- **Amanda Lenore Kosowsky**  
amanda.kosowsky@cwt.com

- **Michael John Lawson**  
michael.lawson@morganlewis.com rluke@morganlewis.com
- **William S. Lerach**  
e\_file\_sd@lerachlaw.com
- **Elizabeth P. Lin**  
elin@milbergweiss.com crosete@milbergweiss.com
- **Gregory A Markel**  
gregory.markel@cwt.com
- **Rachele R. Rickert**  
rickert@whafh.com
- **Darren J. Robbins**
- **Amie Danielle Rooney**  
rooneya@sullcrom.com
- **Robert A. Sacks**  
sacksr@sullcrom.com
- **Christopher Paul Seefer**  
chriss@lerachlaw.com  
e\_file\_sd@lerachlaw.com;e\_file\_sf@lerachlaw.com;KiyokoF@lerachlaw.com
- **Ronit Setton**  
ronit.setton@cwt.com
- **Bahram Seyedin-Noor**  
bnoor@wsgr.com rlustan@wsgr.com
- **Sylvia Sum**  
sylvias@lerachlaw.com e\_file\_sd@lerachlaw.com;e\_file\_sf@lerachlaw.com
- **Olga A. Tkachenko**  
otkachenko@wsgr.com
- **Jason de Bretteville**  
debrettevillej@sullcrom.com powelllj@sullcrom.com

## Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

**Paul T. Curley**  
Murray Frank & Sailer LLP

275 Madison Avenue  
Suite 801  
New York, NY 10016

**Philip H. Gordon**  
Gordon Law Offices  
623 West Hays  
Boise, ID 83702-5512

**Christopher J. Keller**  
Goodkind Labaton Rudoff & Sucharow LLP  
100 Park Avenue  
New York, NY 10017

**Dale MacDiarmid**  
Glancy Binkow & Goldberg LLP  
1801 Avenue of the Stars, Suite 311  
Los Angeles, CA 90067

**Ronit Sutton's**  
Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, NY 10281

**Inna Zatulovsky**  
Morgan Lewis & Bockius LLP  
One Market, Spear Street Tower  
San Francisco, Ca 94105