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

NO. C 04-04908 JW

In re UTStarcom, Inc. Securities Litigation

**ORDER GRANTING DEFENDANTS'
MOTIONS TO DISMISS WITH LEAVE
TO AMEND**

_____ /

Presently before the Court are motions to dismiss and motions to strike Plaintiffs' Third Amended Consolidated Complaint by Defendants UTStarcom Inc. and Softbank Inc. (See Docket Item Nos.189, 190, 193, 194.) The Court conducted a hearing on October 29, 2007. Based on the papers submitted to date and oral arguments of counsel, the Court GRANTS Defendants' motions to dismiss with leave to amend.

The first Complaint in this case was filed on November 17, 2004. (See Docket Item No. 1.) The Complaint was 25 pages long. The Court then consolidated several related cases and appointed Lead Plaintiffs. Lead Plaintiffs filed a Consolidated Complaint on July 1, 2005. (See Docket Item No. 66.) The Consolidated Complaint was 86 pages long. With Defendants' consent, Plaintiffs filed a First Amended Consolidated Complaint on July 26, 2005. (See Docket Item No. 70.) The First Amended Consolidated Complaint became 211 pages long. Plaintiffs then sought leave to file a Second Amended Complaint and submitted their Proposed Second Amended Complaint ("PSAC ")

United States District Court
For the Northern District of California

1 for consideration. The Court granted Plaintiffs leave to amend over Defendants' opposition. (See
2 Docket Item No. 118.)

3 In granting leave to amend, the Court noted that the proposed PSAC "raises serious concerns
4 of puzzle-style pleading and length, in which Plaintiffs apparently expect Defendants and the Court
5 to sort out and pair each statement with a supposedly relevant true fact. (Id., citations omitted.)
6 The Court directed Plaintiffs to limit the Second Amended Complaint to no more than 150 pages.
7 To reduce the page length, the Court suggested Plaintiffs: 1) shorten the background section by
8 excluding portions detailing the objective history of the telecommunications industry in China; 2)
9 refrain from including sections of the Securities Exchange Act verbatim and refrain from
10 summarizing provisions of the Sarbanes-Oxley Act; 3) exclude Defendants' signed certifications, in
11 their entirety, pursuant to § 302 of the Sarbanes-Oxley Act; and 4) cite only the relevant portions of
12 lengthy SEC Forms filed by Defendants.

13 With respect to the puzzle-style pleading, the Court stated that Plaintiffs could not rely solely
14 on internal cross-references to show how statements are misleading, thereby forcing Defendants to
15 root through hundreds of prior paragraphs to decipher Plaintiffs' claims. The Court directed
16 Plaintiffs to ensure that the internal cross-references correctly pair the allegedly misleading
17 statement with the reasons the statement is misleading. The Court further directed Plaintiffs to
18 provide *short* and *concise* paragraphs in compliance with Rule 8 supporting the strong inference of
19 scienter.

20 Plaintiffs filed the Second Amended Complaint ("SAC ") on April 13, 2006. Despite the
21 Court's Order, the Second Amended Complaint was 155 pages long, with an additional 112 pages of
22 exhibits. The Second Amended Complaint contained the same puzzle style pleading and vague
23 allegations as in the Proposed Second Amended Complaint. On March 20, 2007, the Court
24 dismissed the Second Amended Complaint with leave to amend. The Court outlined a structure for
25 Plaintiffs to follow which would allow the Court to properly evaluate their claims on the merits.
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1 That format included separate sections for each allegedly false statement and clear allegations
2 regarding the authors of the statements and their basis for scienter.

3 Plaintiffs filed the Third Amended Complaint (“TAC”) on May 25, 2007. (hereafter,
4 “TAC, Docket Item No. 186.) The Third Amended Complaint is 178 pages long, with an
5 additional 124 pages of exhibits. In addition to violating the 150 page limitation, the Third
6 Amended Complaint continues to use unintelligible puzzle-style pleadings with vague identification
7 to Defendants responsible for the alleged unlawful conduct. For example, Plaintiffs attribute every
8 allegedly false statement to one or two individual Defendants by name and then to “other” or “all
9 Defendants because the statement was in a group published document. (See e.g., TAC ¶¶ 201, 218,
10 240, 263.) Plaintiffs’ allegations regarding the “true” facts frequently cross-reference multiple
11 paragraphs in other sections, requiring the reader to read anywhere from 16-25 pages of earlier text
12 to find the allegedly true statements. (See e.g., TAC ¶¶ 200, 217, 224, 239, 246, 262, 286, 304, 333,
13 348, 358.) Similarly, the scienter allegations make no distinction amongst the various Defendants
14 and require the reader to read through 17-44 pages of previous text to understand why Defendants
15 knew the statements were false. (See e.g., TAC ¶¶ 204, 228, 250, 333, 335-343, 390, 425, 479.)
16 The cross-references make it difficult to align the alleged misstatements with alleged bases for
17 scienter.

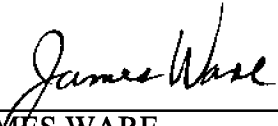
18 Accordingly, the Court GRANTS Defendants’ Motions to Dismiss with leave to amend.
19 Plaintiffs shall file their Fourth Amended Complaint on or before **May 14, 2008**. The Fourth
20 Amended Complaint shall be consistent with this Order and previous Orders of the Court. Failure
21 to adhere to the Court’s admonition regarding pleading with particularity may result in sanctions,
22 including a Rule 41(b) dismissal for lack of prosecution. See Fed. R. Civ. P. 41(b).

23 In light of this Order, Defendants are relieved from having to file an answer to the Fourth
24 Amended Complaint pending the Court’s determination of whether Plaintiffs are in compliance.
25 However, Defendants shall file an objection, if any, to the form of Plaintiffs’ Fourth Amended
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1 Complaint on or before **June 13, 2008**. The Court sets a further Case Management Conference for
2 **June 23, 2008 at 10 A.M.**

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4 Dated: March 14, 2008



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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20 **Dated: March 14, 2008**

Richard W. Wieking, Clerk

21
22 **By: /s/ JW Chambers**
Elizabeth Garcia
Courtroom Deputy