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9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION  
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14 IN RE UTSTARCOM, INC. ) Master File No. C-04-4908-JW(PVT)  
SECURITIES LITIGATION )  
15 )  
16 ) **UTSTARCOM DEFENDANTS'**  
 ) **STATEMENT REGARDING**  
 ) **PLAINTIFFS' MOTION FOR CLASS**  
 ) **CERTIFICATION AND THE SOFTBANK**  
17 This Document Relates to: ) **DEFENDANTS' OPPOSITION TO**  
 ) **PLAINTIFFS' MOTION FOR CLASS**  
18 ALL ACTIONS. ) **CERTIFICATION**  
 )  
19 )  
20 )

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22 Plaintiffs have moved to certify a plaintiff class in this action. The UTStarcom  
23 Defendants (UTStarcom, Inc., Hong Liang Lu, Michael J. Sophie, Ying Wu, and Thomas J. Toy)  
24 take no position on plaintiffs' motion because the UTStarcom Defendants have entered into a  
25 stipulation to settle all claims against them in this matter.

26 The UTStarcom Defendants seek to clarify two points. *First*, as part of the Stipulation of  
27 Settlement ("Stipulation"), the UTStarcom Defendants and the plaintiffs agreed to certification  
28 of a settlement class. By entering that agreement as part of the settlement, the UTStarcom

1 Defendants do not intend to indicate any opinion about the merits of plaintiffs' class certification  
2 motion or the Softbank Defendants' opposition. *Second*, if the settlement is not approved or  
3 otherwise fails to become effective, then the Stipulation provides that the settling parties will  
4 revert to their positions as of January 12, 2010. Accordingly, if the Settlement were to fail to  
5 become effective, the UTStarcom Defendants would reserve the right to oppose class  
6 certification at that time.

7 **A. Procedural Background**

8 On October 23, 2009, Plaintiffs filed a motion for class certification. *See* Docket Nos.  
9 325-30. Thereafter, the UTStarcom Defendants reached an agreement to settle Plaintiffs' claims.  
10 The Softbank Defendants are not parties to that settlement. The settling parties executed the  
11 Stipulation as of January 13, 2010. On April 1, 2010, Plaintiffs filed with this Court the  
12 Stipulation, the Motion for Preliminary Approval, and other papers in support of the Settlement.  
13 Docket Nos. 358-59. The Court has scheduled a hearing on the settling parties' request for  
14 preliminary approval of the Settlement on May 10, 2010.

15 By Order date February 17, 2010, the Court directed Plaintiffs to re-notice their motion  
16 for class certification. Due to the Settlement between the UTStarcom Defendants and Plaintiffs  
17 only the Softbank Defendants were required to respond to the renewed motion. Docket No. 343.  
18 Plaintiffs re-noticed their motion on February 26, 2010. Docket Nos. 346-51. On April 2, 2010,  
19 the Softbank Defendants filed their Opposition to Plaintiffs' Motion for Class Certification.  
20 Docket Nos. 364-67.

21 **B. The UTStarcom Defendants Take No Position on Class Certification Due to  
22 their Settlement Agreement**

23 The Stipulation of Settlement entered into between the UTStarcom Defendants and  
24 Plaintiffs defines a shareholder class solely for settlement purposes.<sup>1</sup> (*See* Stipulation of  
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27 <sup>1</sup> Pursuant to the Stipulation, the term "class" is defined as follows:  
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1 Settlement ¶ 1.3.) The settling parties are asking the Court to preliminarily approve the  
 2 Settlement. *See* Plaintiffs' Motion for Preliminary Approval of Settlement, Certification of a  
 3 Settlement Class, and Partial Payment of Expenses at 1, 7. Docket No. 359. The Stipulation  
 4 contemplates that, at the appropriate time, the settling parties will seek final approval of the  
 5 Settlement, certification of a class for settlement purposes, and entry of a final judgment and  
 6 order of dismissal with prejudice.

7 The Stipulation further provides that if the Settlement is not approved or otherwise fails  
 8 to become effective (*see id.* ¶ 1.7), the settling parties will revert to their positions as of January  
 9 12, 2010. (*See id.* ¶ 7.5.) In such event, the UTStarcom Defendants would reserve the right to  
 10 oppose class certification (as well as any other claims, defenses or positions, as appropriate).

11 Given their settlement with Plaintiffs, and the request that the Court certify a shareholder  
 12 class for settlement purposes only, the UTStarcom Defendants take no position with respect to  
 13 Plaintiffs' motion for class certification in the ongoing litigation with the remaining Softbank  
 14 Defendants, or the Softbank Defendants' Opposition to that Motion.

15  
 16 Dated: April 14, 2010

WILSON SONSINI GOODRICH & ROSATI  
 Professional Corporation

17  
 18 By: /s/ Terry T. Johnson

Terry T. Johnson

19  
 20 Attorneys for Defendants UTStarcom Inc.,  
 Hong Liang Lu, Michael J. Sophie, Ying Wu,  
 and Thomas Toy

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 23 \_\_\_\_\_  
 24 (...continued from previous page)

25 "Class" means all Persons (other than those Persons who timely and validly request  
 26 exclusion from the Class) who purchased UTStarcom publicly traded securities on the  
 27 open market between February 21, 2003 through and including October 12, 2007, and  
 28 were damaged thereby. Excluded from the Class are the Defendants and officers and  
 directors of UTStarcom, SoftBank Corporation, SoftBank America, Inc. or SoftBank  
 Holdings, Inc., as well as their families and affiliates.

Stipulation of Settlement, ¶ 1.3. Docket No. 359.

1 I, Nicole M. Healy, am the ECF User whose identification and password are being used  
2 to file the UTStarcom Defendants' Statement re Plaintiffs' Motion for Class Certification and the  
3 Softbank Defendants' Opposition to Plaintiffs' Motion for Class Certification.

4

5 Dated: April 14, 2010

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

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By: /s/ Nicole M. Healy  
Nicole M. Healy

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Attorneys for Defendants UTStarcom Inc., Hong  
Liang Lu, Michael J. Sophie, Ying Wu and Thomas  
Toy

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