

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

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

In re UTSTARCOM, INC. SECURITIES	)	Master File No. C-04-4908-JW(PVT)
LITIGATION	)	
_____	)	<u>CLASS ACTION</u>
This Document Relates To:	)	[PROPOSED] FINAL JUDGMENT AND
	)	ORDER OF DISMISSAL WITH PREJUDICE
ALL ACTIONS.	)	
_____	)	EXHIBIT B

1 This matter came before the Court for hearing pursuant to the Order Preliminarily Approving  
2 Settlement and Providing for Notice (“Order”) dated \_\_\_\_\_, 2010, on the application of the  
3 parties for approval of the settlement set forth in the Stipulation of Settlement dated as of January 13,  
4 2010 (the “Stipulation”). Due and adequate notice having been given to the Class as required in said  
5 Order, and the Court having considered all papers filed and proceedings had herein and otherwise  
6 being fully informed in the premises and good cause appearing therefore, IT IS HEREBY  
7 ORDERED, ADJUDGED, AND DECREED that:

8 1. This Judgment incorporates by reference the definitions in the Stipulation, and all  
9 terms used herein shall have the same meanings as set forth in the Stipulation, unless otherwise set  
10 forth herein.

11 2. This Court has jurisdiction over the subject matter of the Litigation and over all  
12 parties to the Litigation, including all Members of the Class.

13 3. The Court hereby finally certifies a Class for settlement purposes only defined as: All  
14 Persons (other than those Persons who timely and validly requested exclusion from the Class, as set  
15 forth in Exhibit 1 hereto) who purchased UTStarcom publicly traded securities on the open market  
16 between February 21, 2003 through and including October 12, 2007, and were damaged thereby.  
17 Excluded from the Class are the Defendants and officers and directors of UTStarcom, SoftBank  
18 Corporation, SoftBank America, Inc. or SoftBank Holdings, Inc., as well as their families and  
19 affiliates.

20 4. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby approves the  
21 settlement set forth in the Stipulation and finds that:

22 (a) said Stipulation is, in all respects, fair, reasonable, and adequate and in the  
23 best interest of the Class;

24 (b) there was no collusion in connection with the Stipulation;

25 (c) the Stipulation was the product of informed, arm’s-length negotiations among  
26 competent, able counsel; and

27  
28

1 (d) the record is sufficiently developed and complete to have enabled the Lead  
2 Plaintiffs and the UTStarcom Defendants to have adequately evaluated and considered their  
3 positions.

4 5. Accordingly, the Court authorizes and directs implementation and performance of all  
5 the terms and provisions of the Stipulation, as well as the terms and provisions hereof. The Court  
6 hereby dismisses the Litigation and all Released Claims of the Class with prejudice as to the  
7 UTStarcom Defendants, without costs as to any Settling Party, except as and to the extent provided  
8 in the Stipulation and herein.

9 6. Upon the Effective Date hereof, the Plaintiffs shall, and each of the Class Members  
10 shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever  
11 released, relinquished, and discharged all Released Claims against the Released Persons, whether or  
12 not such Class Member executes and delivers the Proof of Claim and Release or shares in the  
13 Settlement Fund.

14 7. All Class Members are hereby forever barred and enjoined from prosecuting any of  
15 the Released Claims against any of the Released Persons.

16 8. Upon the Effective Date hereto, each of the Released Persons shall be deemed to  
17 have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished,  
18 and discharged each and all of the Plaintiffs, Class Members, and Lead Counsel from all claims  
19 (including Unknown Claims) arising out of, relating to, or in connection with the institution,  
20 prosecution, assertion, settlement or resolution of the Litigation or the Released Claims.  
21 Notwithstanding the foregoing, this Judgment shall not be deemed a waiver or release of, and shall  
22 not preclude the Released Persons from asserting, any claims not barred by ¶9 herein, and otherwise  
23 permitted by any applicable federal or state statute or common law, against any person or entity,  
24 including claims against the Non-Settling Defendants, their present or former officers, directors,  
25 partners and employees, either in the form of a cross-claim, counterclaim, third-party complaint, or  
26 other form, filed in the Litigation or by a separately-filed action.

27 9. To the extent permitted by applicable laws, including Section 21D(f)(7)(A) of the  
28 Securities Exchange Act of 1934, codified at 15 U.S.C. §78u-4(f)(7)(A), upon the Effective Date, all

1 Persons are enjoined and barred from commencing or continuing any action against the UTStarcom  
2 Defendants, seeking, as damages, indemnity, contribution, or otherwise, the recovery of all or part of  
3 any liability or settlement which such persons (i) paid, (ii) were obligated to pay or agreed to pay, or  
4 (iii) may become obligated to pay to the Class, as a result of such persons' liability for or  
5 participation in any acts, facts, statements or omissions that were or could have been alleged in the  
6 action captioned *In re UTStarcom, Inc. Securities Litigation*. Any Person whose claims are so  
7 barred shall be entitled to appropriate judgment credits or reductions. Furthermore, notwithstanding  
8 the foregoing, nothing in this Judgment shall apply to, bar or otherwise affect any claim of right to  
9 indemnification between UTStarcom and any present or former officer or director of UTStarcom, or  
10 any claim for insurance coverage by any UTStarcom Defendant.

11       10. The Notice of Pendency and Proposed Settlement of Class Action given to the Class  
12 was the best notice practicable under the circumstances, including the individual notice to all  
13 Members of the Class who could be identified through reasonable effort. Said notice provided the  
14 best notice practicable under the circumstances of those proceedings and of the matters set forth  
15 therein, including the proposed settlement set forth in the Stipulation, to all Persons entitled to such  
16 notice, and said notice fully satisfied the requirements of Federal Rule of Civil Procedure 23 and the  
17 requirements of due process.

18       11. Any Plan of Allocation submitted by Lead Counsel or any order entered regarding  
19 any attorneys' fee and expense application shall in no way disturb or affect this Final Judgment and  
20 shall be considered separate from this Final Judgment.

21       12. Neither the Stipulation nor the settlement contained therein, nor any act performed or  
22 document executed pursuant to or in furtherance of the Stipulation or the settlement: (a) is or may be  
23 deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim,  
24 or of any wrongdoing or liability of the UTStarcom Defendants or their respective Related Parties, or  
25 (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or  
26 omission of any of the UTStarcom Defendants or their respective Related Parties in any civil,  
27 criminal or administrative proceeding in any court, administrative agency or other tribunal. The  
28 UTStarcom Defendants and/or their respective Related Parties may file the Stipulation and/or the

1 Judgment from this action in any other action that may be brought against them in order to support a  
2 defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith  
3 settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar  
4 defense or counterclaim.

5 13. Without affecting the finality of this Judgment in any way, this Court hereby retains  
6 continuing jurisdiction over: (a) implementation of this settlement and any award or distribution of  
7 the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund;  
8 (c) hearing and determining applications for attorneys' fees, interest, and expenses in the Litigation;  
9 and (d) all parties hereto for the purpose of construing, enforcing, and administering the Stipulation.

10 14. The Court finds that during the course of the Litigation, the Settling Parties and their  
11 respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure  
12 11.

13 15. In the event that the settlement does not become effective in accordance with the  
14 terms of the Stipulation, or the Effective Date does not occur, or in the event that the Settlement  
15 Fund, or any portion thereof, is returned to the UTStarcom Defendants' Insurers, then this Judgment  
16 shall be rendered null and void to the extent provided by and in accordance with the Stipulation and  
17 shall be vacated and, in such event, all orders entered and releases delivered in connection herewith  
18 shall be null and void to the extent provided by and in accordance with the Stipulation.

19 16. Without further order of the Court, the Settling Parties may agree to reasonable  
20 extensions of time to carry out any of the provisions of the Stipulation.

21 17. There is no reason for delay in the entry of this Final Judgment and Order of  
22 Dismissal with Prejudice and immediate entry by the Clerk of the Court is expressly directed  
23 pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

24 IT IS SO ORDERED.

25  
26 DATED: \_\_\_\_\_  
27 THE HONORABLE JAMES WARE  
28 UNITED STATES DISTRICT JUDGE

1 Submitted by:

2 ROBBINS GELLER RUDMAN  
3 & DOWD LLP  
4 PATRICK J. COUGHLIN  
5 KEITH F. PARK

6 \_\_\_\_\_  
7 KEITH F. PARK

8 655 W. Broadway, Suite 1900  
9 San Diego, CA 92101  
10 Telephone: 619/231-1058  
11 619/231-7423 (fax)

12 ROBBINS GELLER RUDMAN  
13 & DOWD LLP  
14 SHAWN A. WILLIAMS  
15 SHIRLEY H. HUANG  
16 DANIEL J. PFEFFERBAUM  
17 PHILLIP G. FREEMON  
18 100 Pine Street, Suite 2600  
19 San Francisco, CA 94111  
20 Telephone: 415/288-4545  
21 415/288-4534 (fax)

22 Lead Counsel for Plaintiffs  
23  
24  
25  
26  
27  
28