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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 In re UTSTARCOM, INC. SECURITIES) Master File No. C-04-4908-JW(PVT)
LITIGATION)
19 _____) CLASS ACTION

20 This Document Relates To:) DATE: August 30, 2010
) TIME: 9:00 a.m.
21 ALL ACTIONS.) COURTROOM: The Honorable
James Ware
22 _____)

23
24 DECLARATION OF SHIRLEY H. HUANG IN SUPPORT OF PLAINTIFFS' MOTION FOR
(1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT; (2) APPROVAL OF THE
25 PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS; AND (3) LEAD COUNSEL'S
APPLICATION FOR ATTORNEYS' FEES AND EXPENSES AND PLAINTIFFS'
26 EXPENSES
27
28

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1 I, SHIRLEY H. HUANG, declare as follows:

2 1. I am an associate in the firm of Robbins Geller Rudman & Dowd LLP (“Robbins
3 Geller”), Lead Counsel for Plaintiffs in this action. I was actively involved in the prosecution of this
4 action (hereinafter, the “Litigation”), am familiar with its proceedings, and have personal knowledge
5 of the matters set forth herein based upon my participation in all material aspects of the Litigation.¹

6 2. I submit this declaration in support of Plaintiffs’ application, pursuant to Rule 23 of
7 the Federal Rules of Civil Procedure, for approval of: (a) the Stipulation for a cash settlement on
8 behalf of the Class of \$30 million (the “Settlement Amount”); (b) the proposed Plan of Allocation of
9 settlement proceeds; and (c) Lead Counsel’s application for attorneys’ fees and expenses² and
10 Plaintiffs’³ expenses.

11 **I. PRELIMINARY STATEMENT**

12 3. This case has been vigorously litigated from its commencement in November 2004
13 through the settlement with the UTStarcom, Inc. (“UTSI” or the “Company”) and certain officer and
14 director defendants (collectively “UTSI Defendants”)⁴ in January 2010, which was reached after

15 _____
16 ¹ Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the
17 Stipulation of Settlement dated as of January 13, 2010 (the “Stipulation”), previously filed with the
Court on April 1, 2010. Dkt. No. 358.

18 ² References to the “Class” or “Settlement Class” are to the Class certified by the Court for
19 settlement purposes only, defined as:

20 All Persons who purchased UTStarcom publicly traded securities on the open market
21 between February 21, 2003 through and including October 12, 2007, and were
22 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. Also excluded from the Class
are those Persons who timely and validly request exclusion from the Class.

23 [Proposed] Order Preliminarily Approving Settlement and Providing for Notice, ¶1. Dkt. No. 359-1.

24 ³ The lead plaintiffs in this action are Locals 302 and 612 of the International Union of
25 Operating Engineers-Employers Construction Industry Retirement Trust (the “Operating Engineers”)
and Erwin DeBruycker (“DeBruycker”). This Court appointed them class representatives along with
26 Robert Lee Weese on May 12, 2010. Dkt. No. 397.

27 ⁴ Plaintiffs continue to litigate this case against SoftBank Corporation (“SBC”), SoftBank
28 America, Inc. (“SBA”), and SoftBank Holdings, Inc. (“SBH”) (collectively “SoftBank Defendants”)
for violation of §20(a) claims.

1 several amendments to the consolidated complaint, numerous motions were briefed and argued and
2 substantial merits and class discovery was conducted. At every stage of the Litigation, counsel for
3 the UTSI Defendants asserted aggressive defenses and expressed their belief that the Class could not
4 prevail on the claims asserted. The settlement was not achieved until Plaintiffs, *inter alia*: (a)
5 amended their complaint for violation of the federal securities laws four times; (b) opposed three
6 motions to dismiss Plaintiffs' complaints; (c) conducted merits and class discovery, including
7 reviewing and analyzing over 4.3 million pages of documents produced by Defendants and another
8 1.3 million pages of documents from third parties to date; (d) assessed the risks of prevailing on their
9 claims at the summary judgment stage and at trial; and (e) prepared for and attended a mediation
10 session, followed by extensive post-mediation settlement discussions.

11 4. The settlement with the UTSI Defendants was negotiated with the assistance of a
12 respected mediator, the Honorable Edward A. Infante (Ret.), a former Chief Magistrate Judge of the
13 United States District Court, Northern District of California. A half-day settlement mediation
14 session was conducted by Judge Infante on September 14, 2009, in San Francisco, California.
15 Plaintiffs and the UTSI Defendants prepared comprehensive mediation briefs and expended
16 substantial efforts in connection with this mediation. Plaintiffs' counsel also made a PowerPoint
17 presentation at the mediation highlighting substantive evidence obtained in discovery. The Settling
18 Parties were unable to resolve this case during the course of this mediation, but over the course of
19 the next several months were able to resolve their differences and settle the matter.

20 5. This settlement is the product of hard-fought litigation and takes into consideration
21 the significant risks specific to the case. It was negotiated by experienced counsel for Plaintiffs and
22 the UTSI Defendants with a solid understanding of both the strengths and weaknesses of their
23 respective positions.

24 6. Plaintiffs believe that this settlement represents an excellent result for the Class,
25 especially under the circumstances of this case. Substantial fact discovery, investigation, motion
26 practice and legal research informed Plaintiffs that, while they believed their case was meritorious, it
27 also had weaknesses which had to be carefully evaluated in determining what course (*i.e.*, whether to
28 settle and on what terms, or to continue to litigate through summary judgment and a trial on the

1 merits) was in the best interests of the Class. As set forth in further detail below, despite the fact that
2 Plaintiffs' allegations and claims were arguably supported by legal authority, expert opinion and the
3 evidence, the specific circumstances involved here presented many uncertainties with respect to
4 Plaintiffs' ability to prevail if the case proceeded to summary judgment or trial. Moreover,
5 uncertainties regarding UTSI's financial condition made settlement with the UTSI Defendants a wise
6 choice.

7 7. The operative complaint in this action is against UTSI and certain of its officers and
8 directors for violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange
9 Act"), 15 U.S.C. §§78j(b), 78t(a) and Rule 10b-5 promulgated thereunder.⁵ The operative complaint
10 also alleges the SoftBank Defendants' liability under §20(a) of the Exchange Act. Plaintiffs
11 continue to litigate this action against the SoftBank Defendants.

12 8. Plaintiffs alleged that during the Class Period, the UTSI Defendants represented that
13 UTSI's financial results were fairly presented in all material respects and assured investors they had
14 a legitimate basis for those representations because they had designed, maintained, and evaluated the
15 Company's disclosure controls and procedures and concluded that they were adequate and effective.
16 Plaintiffs allege that, in reality, each of the UTSI Defendants knew that there were multiple
17 significant and recurring internal control weaknesses that caused the Company to overstate net
18 income by \$121.5 million from 2000-2005 by improperly: (i) recognizing \$400 million of revenue
19 on 84 sales transactions; (ii) failing to record \$26.7 million of stock compensation expenses; (iii)
20 failing to properly account for a related-party transaction and record a \$7.5 million impairment
21 charge; and (iv) failing to record a \$323 million impairment charge related to goodwill. ¶¶5-9, 22,
22 71-77, 80, 83, 112, 125-126, 129, 173, 215, 328, 357, 372.⁶ The Company restated its financial
23

24 ⁵ The officer and director defendants (collectively, the "Individual Defendants") are: Hong
25 Liang Lu ("Lu"), Chief Executive Officer ("CEO"), Michael J. Sophie ("Sophie"), Chief Financial
26 Officer ("CFO") until September 2005 and Chief Operating Officer ("COO") from September 2005
27 until April 2006, Ying Wu ("Wu"), CEO of UTStarcom China Company, Ltd. ("UTSI-China") until
28 June 2007, and Thomas J. Toy ("Toy"), a director of UTSI.

27 ⁶ Paragraph references (¶) herein refer to Plaintiffs' Fourth Amended Consolidated
28 Complaint for Violations of the Federal Securities Laws, filed on May 14, 2008. Dkt. No. 234. The

1 statements three times, and was investigated and then sued by the U.S. Securities and Exchange
2 Commission (“SEC”). Plaintiffs also allege that Lu and Sophie falsely represented that there was
3 “extraordinary strong demand” for the Company’s products, and that the Company’s billion-dollar
4 backlog provided “tremendous visibility” into the Company’s future results, when they knew there
5 was no reasonable basis for this financial guidance. ¶¶13, 142, 181. Plaintiffs allege that Lu and
6 Sophie knew their statements were false because, among other reasons, at the time they were made
7 there was a substantial shortfall in the Company’s higher-margin international sales and Lu and
8 Sophie knew the substantial shortfall in higher-margin international sales would prevent UTSI from
9 reporting gross margins in line with guidance. To address the shortfalls, the Company improperly
10 recognized millions of dollars in revenue, manipulated reserves and failed to record stock
11 compensation expenses so that UTSI would report earnings that met or exceeded guidance.

12 9. Proceeding with this Litigation through the summary judgment stage poses a number
13 of real and substantial risks for the Class. Plaintiffs must demonstrate to the Court that a genuine
14 issue of material fact exists with regard to each element of their securities fraud claims. This allows
15 both Plaintiffs and Defendants to present their strongest evidence to the Court. There was a
16 substantial risk that the Court would find the evidence proffered by Plaintiffs in support of loss
17 causation and/or scienter did not create a genuine issue of material fact. Even if Plaintiffs received a
18 favorable dispositive ruling at the summary judgment stage, Defendants would likely appeal such a
19 ruling, causing delays of months or possibly years.

20 10. Proceeding with this Litigation through trial also poses a number of real and
21 substantial risks for the Class, as discussed in more detail in §V. For example, there is a substantial
22 risk that a jury would not accept Plaintiffs’ contentions with respect to the complex accounting
23 elements at issue in the Litigation. There is also a substantial risk that Plaintiffs would not be able to
24 prove at trial that the UTSI Defendants acted with the required state of mind, knowledge or
25 deliberate recklessness. A defendant’s state of mind in a securities case is often the most difficult

26
27 summaries contained herein are derived from the allegations of this complaint as well as evidence
28 developed during discovery.

1 element of proof, and one which is rarely supported by direct evidence such as an admission. There
2 is also a substantial risk that, despite the use of testimony from respected experts, Plaintiffs would
3 not be able to prove loss causation at trial.

4 11. Plaintiffs' burden at trial would require the testimony of experts on accounting,
5 compliance, loss causation and damages. Even with experts who are among the most respected in
6 these fields, there could be no guarantee that Plaintiffs would prevail on liability and damages, as the
7 UTSI Defendants would likewise hire equally competent experts to counter Plaintiffs' experts'
8 theories.

9 12. Finally, even if Plaintiffs survived summary judgment and prevailed on any or all of
10 their claims at trial and were awarded damages, there was a substantial risk that the UTSI
11 Defendants would appeal any verdict or award. The appeals process could take years, during which
12 time the Class would receive no recovery. Further, any appeal would also create the risk of reversal,
13 in which case the Class would receive nothing after having prevailed on the claims at trial.

14 13. Most importantly, proceeding with this litigation poses a real risk that the UTSI
15 Defendants would not be able to satisfy any judgment or fund a settlement down the road given the
16 current financial condition of the Company. In June 2009, UTStarcom announced (and thereafter
17 began to implement) a major corporate restructuring program. This included, among other things, its
18 exit from non-core businesses, a move of its headquarters to Beijing, China, the outsourcing of its
19 manufacturing operations and a substantial reduction in the number of its employees. In December,
20 2009, UTStarcom announced the sale and leaseback of its manufacturing facility in Hangzhou,
21 China. In March of 2010, according to UTStarcom's Annual Report on Form 10-K, the Company
22 reported losses for the three years ending December 31, 2009, 2008, and 2007 of \$225,688,000,
23 \$150,316,000, and \$195,575,000, respectively. Aside from its financial condition, UTStarcom's
24 move to China presented potentially serious collection issues, even if a judgment were obtained in
25 favor of the Class. For all of these reasons, among others, the entire amount of the settlement is
26 funded by substantially all of the available insurance. Lead Counsel's pursuit of Plaintiffs' claims
27 has resulted in a substantial and certain recovery for the Class.

28

1 14. These issues and others were carefully considered by Plaintiffs and their counsel in
2 deciding to settle the Litigation for \$30 million. In reaching the determination to settle, Plaintiffs
3 and Lead Counsel have weighed the documentary evidence and legal authority supporting their
4 allegations against the documents and legal authority that the UTSI Defendants believe undercut
5 Plaintiffs' claims, as well as their characterizations and interpretations of the evidence in this case.

6 15. On balance, considering all the circumstances and risks the Settling Parties faced at
7 summary judgment and at trial, Plaintiffs concluded that settlement on the terms agreed upon was in
8 the best interests of the Class.

9 16. The settlement confers a substantial benefit on the Class and eliminates the significant
10 costs of continued discovery and the significant risks of an adverse result at summary judgment or
11 trial. It is respectfully submitted that the settlement should be approved as fair, reasonable and
12 adequate; the Plan of Allocation should be approved; Lead Counsel should be awarded attorneys'
13 fees of 24.5% of the Settlement Fund as well as \$700,000.00 in expenses; and Plaintiffs should be
14 awarded their expenses.

15 17. Lead Counsel prosecuted this action on a wholly contingent basis for more than five
16 years and advanced or incurred substantial litigation expenses. By doing so, Lead Counsel have long
17 borne the risk of an unfavorable result. They have not received any compensation for their
18 substantial effort; nor have they been finally awarded the expenses they seek. The vigorous nature
19 of the Litigation, which proceeded through numerous dispositive motions and motions for
20 reconsideration and discovery, has resulted in expenses of over \$700,000.00 as well as the
21 investment of over 18,000 hours of attorney and other professional time.

22 18. The fee application for 24.5% of the Settlement Fund is fair both to the Settlement
23 Class and Lead Counsel and warrants this Court's approval. This fee request is within the range of
24 fees frequently awarded in these types of actions and is entirely justified in light of the substantial
25 benefits conferred on the Class, the risks undertaken, the quality of representation, and the nature
26 and extent of legal services performed. Plaintiffs all support the award.

27 19. Lead Counsel also seeks the award of a portion (\$700,000.00) of the expenses
28 reasonably and necessarily incurred in prosecuting the Litigation. Through April 30, 2010, Lead

1 Counsel have incurred expenses in the aggregate of \$736,663.81. This amount includes, among
2 other things: (a) the fees and expenses of investigators, consultants and experts whose services Lead
3 Counsel required in the successful prosecution and resolution of this case; (b) photocopying,
4 imaging and printing hundreds of thousands of pages of documents; (c) online factual and legal
5 research; and (d) mediation fees. As illustrated by the discussion herein of Lead Counsel’s efforts
6 required to achieve this settlement, these expenses were reasonably and necessarily incurred to
7 obtain this result.

8 20. The following is a summary of the nature of the Class’s claims, the principal events
9 that occurred during the course of this Litigation, and the legal services provided by Lead Counsel.

10 **II. FACTUAL SUMMARY OF PLAINTIFFS’ CLAIMS**

11 21. This securities class action has been brought on behalf of investors who purchased or
12 acquired UTSI stock between February 21, 2003 and October 12, 2007 (the “Class Period”).

13 22. UTSI is an Alameda, California-based company that designs, manufactures and sells
14 wireless “limited mobility” telecommunications systems known as Personal Access Systems
15 (“PAS”). ¶2. During the Class Period a majority of the Company’s sales were to two service
16 providers in China: China Telecom and China Netcom. *Id.* The Company also reported
17 international sales, *i.e.*, sales outside of China, that generated substantially higher margins. ¶16.

18 23. Plaintiffs allege that the UTSI Defendants violated the federal securities laws by: (1)
19 representing that UTSI’s financial results were fairly presented in all material respects; (2) assuring
20 investors they had a legitimate basis for those representations because they had designed, maintained
21 and evaluated the Company’s disclosure controls and procedures⁷ and concluded they were adequate
22 and effective; and (3) representing that there was “extraordinary strong demand” for the Company’s
23

24 _____
25 ⁷ According to the Sarbanes-Oxley Act of 2002 (“SOX”), disclosure controls and procedures
26 include, without limitation, controls and procedures designed to ensure that information required to
27 be disclosed by an issuer in the reports that it files or submits under the Exchange Act is
28 accumulated and communicated to the issuer’s management, including its principal executive and
principal financial officers, or persons performing similar functions, as appropriate to allow timely
decisions regarding required disclosures. 17 C.F.R. §240.13a-15(e); 17 C.F.R. §240.15d-15(e).

1 products and that the Company’s billion-dollar backlog provided “tremendous visibility” into the
2 Company’s future results. ¶¶4, 10-19, 66-70, 142-392.

3 24. Plaintiffs allege that in reality, each of the UTSI Defendants knew – because they
4 were repeatedly told by UTSI’s auditors – that there were multiple, significant and recurring internal
5 control weaknesses that caused the Company to overstate net income by more than \$400 million
6 from 2000 to 2005 by improperly: (1) recognizing \$400 million of revenue on 84 sales transactions;
7 (2) failing to recover \$26.7 million of stock compensation expenses; (3) failing to properly account
8 for a related-party transaction and record a \$7.5 million impairment charge; and (4) failing to record
9 a \$323 million impairment charge related to goodwill. ¶¶5-9, 22, 71-77, 80, 83, 112, 125-126, 129,
10 173, 215, 328, 357, 372.

11 25. The Company has restated its financial statements three times, and the SEC
12 investigated and then sued UTSI, Lu and Sophie for books-and-records violations because they
13 failed to implement and maintain adequate internal controls and falsely certified that the Company’s
14 financial statements were accurate. ¶¶71-91. UTSI, Lu and Sophie settled the suit by agreeing to a
15 cease-and-desist order (“C&D Order”), and Lu and Sophie paid monetary fines of \$100,000 and
16 \$75,000, respectively. ¶¶8-9, 79.

17 26. Plaintiffs also allege that defendants Lu and Sophie represented there was
18 “extraordinary strong demand” for the Company’s products and that the Company’s billion-dollar
19 backlog provided “tremendous visibility” into the Company’s future results. ¶¶10-19, 142-392.
20 Plaintiffs allege that defendants Lu and Sophie knew these statements were false and that there was
21 no reasonable basis for their financial guidance because they knew: (1) China Telecom and China
22 Netcom were substantially reducing orders for PAS equipment by hundreds of millions of dollars in
23 2003 and 2004; (2) the reduced demand was reducing the profitability of PAS equipment sales; (3)
24 widespread operational problems described as pervasive and systemic by former UTSI employees
25 delayed the development and delivery of the Company’s products and caused the Company to
26 deliver and install defective products that delayed customer acceptance and increased the cost of the
27 backlogged sales; and (4) the significant internal control deficiencies precluded them from knowing
28

1 if UTSI was properly accounting for revenues, stock compensation expenses, related-party
2 transactions and goodwill. *Id.*

3 27. Plaintiffs allege that defendants Lu and Sophie repeatedly lowered guidance; UTSI
4 failed to report results in line with guidance and then subsequently restated and reduced its results
5 three times. Plaintiffs allege that on January 6, 2005, Lu and Sophie admitted they could not provide
6 accurate guidance for more than one quarter into the future – but were not even able to do that. ¶¶19.

7 28. Plaintiffs allege that all the Individual Defendants knew it was common for UTSI
8 salespeople to supplement contracts with side letters that precluded revenue recognition. *See e.g.*,
9 ¶¶83, 100. On June 1, 2006, the Company disclosed it was restating its financial results because it
10 improperly recognized \$50 million of international revenue between 2003 and 2005. ¶83.

11 29. Plaintiffs allege that the Individual Defendants knew that China sales contracts
12 contained non-standard terms, including free software upgrade provisions, precluding revenue
13 recognition, and were repeatedly told by UTSI’s auditors to more carefully scrutinize non-standard
14 terms in China contracts and to record revenue accordingly. ¶¶83, 100. On October 10, 2007,
15 however, the Company reported that it was again restating its financial statements. ¶¶89, 103, 108,
16 215. The Company improperly recognized at least \$366 million of revenue between 2000 and 2005
17 on 78 sales. ¶¶83, 89, 103.

18 30. Plaintiffs also allege that the UTSI Defendants concealed that they backdated stock
19 option grant dates. When these were ultimately disclosed the Company restated its financial
20 statements and recorded an additional \$26.7 million of stock compensation expenses between 1998
21 and 2005. ¶112.

22 31. Plaintiffs allege that defendants Lu, Sophie and Wu knew that a company called
23 MDC Holdings Limited (“MDC”) was a related party, failed to disclose multi-million-dollar related-
24 party transactions between UTSI and MDC and failed to consolidate MDC and record a \$7.5 million
25 impairment charge in 4Q03. ¶¶40, 72, 125, 127, 173, 215. On April 13, 2005, the Company
26 disclosed it was restating its financial results and recording the impairment charge. *Id.*

27 32. Plaintiffs allege that defendants Lu, Sophie and Wu knew agents of the Company
28 violated the Foreign Corrupt Practices Act (“FCPA”) by bribing foreign government officials and

1 also caused UTSI to spend millions of dollars on “training programs” in the United States that were
2 attended by representatives of the Company’s largest customer in China. ¶¶7, 105-111.

3 33. Plaintiffs allege that defendants Lu and Sophie caused UTSI to participate in a
4 contrived \$1.2 billion transaction with SoftBank – at SoftBank’s insistence – so SoftBank did not
5 have to record \$900 million of promotional expenses on its books. ¶¶290, 292-293, 340.
6 Defendants Lu and Sophie then told investors UTSI would report \$600 million of international
7 revenue in 2004 knowing that \$220 million of the revenue associated with the \$1.2 billion
8 transaction could not be recognized until 2005 because it was tied to a contract that included a
9 component for promotional services that had not been delivered. *Id.*

10 34. Plaintiffs allege that Class Members purchased UTSI stock at artificially inflated
11 prices caused by the UTSI Defendants’ false and misleading statements and omissions while the
12 Individual Defendants and other insiders sold more than \$58 million of their stock holdings when the
13 price was at its peak. ¶¶20, 135-138. Plaintiffs allege the Company also raised \$475 million by
14 selling 12.1 million shares of its stock at \$39.25 per share shortly after Sophie assured investors
15 there was no plan to do so. ¶¶20, 193, 200, 205, 220. Plaintiffs allege Class Members were damaged
16 when the stock price declined after a series of partial disclosures that revealed some but not all of the
17 Company’s true financial condition. ¶¶21, 140, 179-180, 191-192, 203-204, 222-223, 234-235, 246-
18 247, 264-265, 298-299, 315-316, 330-331, 348-349, 360-361, 375-376, 391-397.

19 **III. PROCEDURAL HISTORY**

20 **A. Plaintiffs’ Consolidated Complaint**

21 35. In November and December 2004, four separate securities class action complaints
22 were filed in the United States District Court for the Northern District of California, each naming
23 UTSI and certain of its officers and directors as defendants.⁸ On January 14, 2005, the Operating
24 Engineers and DeBruycker, the UTStarcom Investors Group, the Ostroff Group, the Stonefield

25
26 ⁸ See *Lawrence Joseph v. UTStarcom, Inc., et al.*, No CV-04-4908 (filed November 17, 2004);
27 *Keith D. Schwanz v. UTStarcom, Inc., et al.*, No. CV-04-4991 (filed November 24, 2004); *Jeffrey D.*
Lebzetter v. UTStarcom, Inc., et al., No. CV-04-5136 (filed December 3, 2004); and *Carla Tiemann*
v. UTStarcom Inc., et al., No. CV-04-5132 (filed December 3, 2004).

1 Group, Paul M. Bochner, and a group of three investors, Sam Brott, Raymond Ferrari and Levon
2 Chakmakian, filed motions to be appointed as lead plaintiff.⁹ Dkt. Nos. 7, 12, 19, 20, 22, 29. On
3 March 16, 2005, the Court consolidated all four actions into a single action, No. C-04-04908-JW.
4 Dkt. No. 57. In the same order, the Court appointed the Operating Engineers as Lead Plaintiff, and
5 Robbins Geller as Lead Counsel.¹⁰ *Id.*

6 36. On June 30, 2005, Plaintiffs filed their Consolidated Complaint for Violations of the
7 Federal Securities Laws (“CC”) against UTSI, Lu, Sophie, Howard Kwock (“Kwock”), Shao-Ning J.
8 Chou (“Chou”), Gerald S. Soloway (“Soloway”), William Huang (“Huang”), Wu and Toy, alleging
9 claims arising under §§10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§78j(b), 78t(a), and Rule
10 10b-5 promulgated thereunder by the SEC, 17 C.F.R. §240.10b-5. Dkt. No. 65. All discovery in the
11 matter was stayed pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”). A
12 corrected consolidated complaint was filed on July 1, 2005 to fix certain minor errors. Dkt. No. 66.
13 Plaintiffs generally alleged in the CC that defendants made false and misleading statements about
14 UTSI’s future business prospects and that they knew the Company would not report gross margins in
15 line with their guidance. Plaintiffs alleged the Company’s July 27, 2004 disclosure of disappointing
16 2Q04 gross margins and the September 20, 2004 disclosure that UTSI was lowering international
17 revenue guidance by more than \$200 million demonstrated that defendants knew their statements
18 were false and misleading. Plaintiffs also alleged that defendants knew UTSI’s financial reporting
19 controls were not adequate and effective as represented and that the restatement of the Company’s
20 2003 financial statements announced by UTSI on April 13, 2005 established the ineffectiveness of
21 UTSI’s financial reporting controls. In addition, Plaintiffs alleged that defendants concealed this

24 ⁹ The Stonefield Group, Paul M. Bochner, Sam Brott, Raymond Ferrari, and Levon
25 Chakmakian, subsequently withdrew their motions on February 8, February 9, and February 16,
2005, respectively. Dkt. Nos. 42, 43, 49.

26 ¹⁰ Robbins Geller Rudman & Dowd LLP has previously been known as Lerach Coughlin Stoia
27 Geller Rudman & Robbins LLP (at the time of its appointment in this matter), and Coughlin Stoia
Geller Rudman & Robbins LLP.

1 adverse information and: (1) sold \$58 million of their UTSI stock; and (2) caused the Company to
2 sell 12.1 million shares of stock in January 2004 for \$475 million.

3 **B. Plaintiffs' First Amended Consolidated Complaint**

4 37. The parties stipulated to allow Plaintiffs to file an amended consolidated complaint,
5 and on July 26, 2005, Plaintiffs filed a First Amended Consolidated Complaint for Violations of the
6 Federal Securities Laws ("FAC") that added Banc of America Securities LLC ("Banc of America")
7 and the SoftBank Defendants as defendants. Dkt. No. 70.

8 38. Before the stipulated October 10, 2005 deadline for defendants to file their motion to
9 dismiss the FAC, on October 7, 2010, Plaintiffs filed an *ex parte* application for the Court to stay
10 briefing on their motion to dismiss. Dkt. No. 85. UTSI had announced the previous day that it
11 missed its 3Q05 revenue and profits guidance, was evaluating possible asset impairment charges,
12 and had received a notice of a formal inquiry by the SEC. The announcement precipitated a
13 significant plunge in the stock price. Plaintiffs sought a stay on the briefing for the motion to
14 dismiss the FAC so that they could file an amended complaint that would expand the class period to
15 encompass the ongoing financial reporting issues revealed by the Company's announcement and the
16 forthcoming release of its financial results. The Court granted the *ex parte* application.

17 **C. Plaintiffs' Second Amended Consolidated Complaint and Defendants'
18 Motion to Dismiss**

19 39. On November 23, 2005, Plaintiffs filed a motion for leave to amend the FAC to
20 extend the end of the class period to October 6, 2005 as a result of the Company's October 6, 2005
21 disclosure that: (1) UTSI would not report 3Q05 results in line with guidance; (2) UTSI might record
22 an asset impairment charge; and (3) UTSI had received a notice of formal inquiry from the SEC.
23 Dkt. No. 93. Defendants opposed the motion on December 20, 2005 (Dkt. No. 102), and a hearing
24 was held on February 13, 2006. On March 1, 2006, the Court issued an order granting the motion to
25 amend. Dkt. No. 118.

26 40. As a result, on April 13, 2006, Plaintiffs filed the Second Amended Consolidated
27 Complaint ("SAC"), which alleged a class period of February 21, 2003 to October 6, 2005 against
28 UTSI and the individual defendants Lu, Sophie, Kwock, Chou, Soloway, Huang, Wu and Toy, Banc

1 of America and the SoftBank Defendants. Dkt. No. 118. Plaintiffs also added allegations about
2 improper revenue recognition based on the Company's March 16, 2006 disclosure that it improperly
3 recognized revenue on a transaction with a customer in India that would require UTSI to restate its
4 financial statements. Plaintiffs also added Gennadiy Sherman ("Sherman") and Robert Lee Weese
5 ("Weese") as named plaintiffs because they purchased stock during the extended portion of the class
6 period (September 21, 2004 to October 6, 2005). Plaintiffs' allegations otherwise remained the
7 same.

8 41. As explained in Plaintiffs' April 13, 2006 notice of compliance with the Court's
9 March 1, 2006 Order granting leave to file the amended complaint, Plaintiffs' revisions also included
10 shortening the complaint to less than 150 pages by removing certain descriptive portions and
11 excerpts from Company filings, and clarifying the connection between certain false statements and
12 the facts underlying them. Dkt. No. 123.

13 42. On May 1, 2006, UTSI and the then-named individual defendants filed a motion
14 asking the Court to require Plaintiffs to republish notice and to reopen the lead plaintiff selection
15 process based on the new allegations in the SAC and the extended class period. Dkt. No. 125. The
16 SoftBank Defendants joined in the motion. Dkt. No. 128. Plaintiffs opposed the motion on May 15,
17 2006 (Dkt. No. 130), and the Court heard the motion on June 9, 2006. On June 26, 2006, the Court
18 denied Defendants' motion. Dkt. No. 153.

19 43. On June 2, 2006, UTSI and then-named individual defendants filed a motion to
20 dismiss the SAC on the grounds that Plaintiffs did not comply with Rule 8, had failed to plead with
21 particularity how UTSI's alleged false statements were false when made, and failed to identify all
22 the facts on which the allegations were based. Dkt. Nos. 140, 146, 149. They also argued that the
23 SAC had failed to raise a strong inference of scienter, and that many of the misstatements Plaintiffs
24 identified were accompanied by safe harbor warnings, and were thus protected. Defendants Banc of
25 America and the SoftBank Defendants filed separate motions to dismiss, making similar arguments.
26 Dkt. Nos. 146, 149. Specifically, Banc of America argued that the SAC failed to plead facts giving a
27 strong inference of actual intent or deliberate recklessness, and failed to provide any factual support
28 for plaintiffs' allegations. Banc of America further argued that the SAC did not contain facts pled

1 with sufficient particularity that Banc of America had made any misleading statements concerning
2 UTSI's operations and financial results. The SoftBank Defendants presented similar arguments in
3 their joint motion to dismiss, and added that the complaint had not attributed a single act, statement
4 or event to any of the SoftBank entities, and the Plaintiffs had not pled sufficient facts for their
5 control liability claim under §20(a).¹¹

6 44. Plaintiffs opposed the motions to dismiss on July 21, 2006. Dkt. Nos. 155, 156.
7 Plaintiffs also voluntarily dismissed Banc of America from the case in light of the Ninth Circuit's
8 decision in *Simpson v. AOL Time Warner, Inc.*, 452 F.3d 1040 (9th Cir. 2006). Dkt. No. 159.

9 45. On March 20, 2007, the Court issued an order granting Defendants' motions to
10 dismiss without a hearing, but permitted Plaintiffs to amend the SAC. Dkt. No. 181. In its order, the
11 Court addressed only the structure and length of the complaint, and instructed Plaintiffs to include in
12 its amended complaint certain specific headings it identified, including *inter alia*: (1) each alleged
13 false or misleading statement, including the date of the statement and the identity of the statement's
14 author; (2) the facts which revealed that the statement was false or misleading; (3) scienter, including
15 the factual basis for scienter; and (4) loss causation, including the date, nature, and extent of the loss.

16 **D. Plaintiffs' Third Amended Consolidated Complaint and Defendants'**
17 **Motion to Dismiss**

18 46. On May 25, 2007, Plaintiffs filed the Third Amended Consolidated Complaint
19 ("TAC") that alleged the same class period (February 21, 2003 to October 6, 2005). Dkt. No. 186.
20 Plaintiffs added allegations about the \$50 million international revenue restatement disclosed by
21 UTSI in May and June 2006 and the stock options backdating restatement disclosed by the Company
22 in November 2006 and February 2007. Plaintiffs structured the TAC to conform with the guidance
23 provided in the Court's March 20, 2007 order.

24
25
26 ¹¹ Only SoftBank America, Inc. and SoftBank Holdings filed the motion to dismiss. SoftBank
27 Corporation had not been served with the complaint at that time since counsel for SoftBank
28 Corporation insisted that SBC be served in Japan. SBC was properly served subsequently and has
answered to the operative complaint. *See* Dkt. No. 271.

1 47. Defendants filed motions to dismiss the TAC on July 13, 2007. Dkt. Nos. 189, 194.
2 UTSI argued that the TAC again violated Rule 8 and the Court’s orders concerning the structure and
3 length of the TAC, and presented similar arguments to their prior motions to dismiss. Specifically,
4 UTSI and the Individual Defendants argued that the TAC failed to plead loss causation, including for
5 claims based on the stock-options grants, that the TAC failed to plead the factual basis of the
6 allegations, and that the accounting allegations did not meet the pleading requirements of the
7 PSLRA. Further, UTSI and the individual defendants again argued that many of the statements were
8 protected by the safe harbor provisions of the PSLRA. The SoftBank Defendants, raised similar
9 arguments to those they had raised in their prior motion to dismiss. Specifically, the SoftBank
10 Defendants argued that no false statements could be attributed to any of the SoftBank entities and
11 that the group pleading presumption was inapplicable. The SoftBank Defendants further argued that
12 Plaintiffs had failed to allege facts supporting a compelling inference of scienter.

13 48. On the same day, the UTSI Defendants and the SoftBank Defendants filed motions to
14 strike the TAC on the basis that it did not conform with Rule 8 pleading requirements and the
15 Court’s March 1, 2006 and March 20, 2007 Orders. Dkt. Nos. 190, 193. Plaintiffs filed their
16 opposition to Defendants’ motion to dismiss the TAC and motions to strike on August 21, 2007.
17 Dkt. Nos. 196, 197, 198. Defendants filed reply briefs on September 27, 2007. Dkt. Nos. 209, 210,
18 216, 217.

19 49. The Court heard the motions to dismiss and the motions to strike on October 29,
20 2007, and issued an order on March 14, 2008 granting Defendants’ motions to dismiss but also
21 permitting Plaintiffs to amend the TAC. Dkt. No. 232. The Court’s order again addressed the length
22 and structure of the TAC, and prohibited the use of extensive cross-referencing in future complaints.
23 *Id.* The Court also denied as moot Defendants’ motions to strike. *Id.*

24 **E. Plaintiffs’ Fourth Amended Consolidated Complaint and Defendants’**
25 **Motions to Dismiss**

26 50. On May 14, 2008, Plaintiffs filed the Fourth Amended Consolidated Complaint
27 (“4AC”) and extended the end of the class period to October 12, 2007, based on the Company’s
28 disclosures in July and October 2007 that it would restate its financial statements for the third time.

1 Dkt. No. 234. Plaintiffs added allegations from the lawsuit filed against Lu and Sophie by the SEC
2 on May 1, 2008. Plaintiffs also added allegations about the \$350 million China revenue restatement
3 and that the Company's auditors repeatedly told Defendants there was a problem with side letters
4 and non-standard contract terms that were the causes of the \$50 million revenue restatement and the
5 \$350 million China revenue restatement. Plaintiffs dropped the Exchange Act §10(b) claim against
6 the SoftBank Defendants in light of the U.S. Supreme Court decision in *Stoneridge Inv. Partners,
7 LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148 (2008), limiting claims against individuals and entities
8 that did not make any of the alleged false statements, but continued to claim that the SoftBank
9 Defendants violated §20(a). Plaintiffs also dropped the claims against individual defendants Kwock,
10 Chou, Huang and Soloway because of the Court's comments at the hearing on Defendants' motion
11 to dismiss the TAC and because they did not make the statements alleged to be false and
12 misleading.¹²

13 51. On June 13, 2008, the UTSI and SoftBank Defendants filed objections to the 4AC,
14 arguing that it included the stock options allegations that the Court had ruled should be stricken, and
15 that the 4AC still did not comply with Rule 8 and the Court's orders concerning its length and
16 structure. Dkt. Nos. 237, 239. Plaintiffs filed a response to Defendants' objections on June 18,
17 2008. Dkt. No. 240.

18 52. On July 24, 2008, the Court overruled Defendants' objections to the 4AC, finding that
19 Plaintiffs had met the length and structural requirements the Court had required in its previous
20 orders. Dkt. No. 242. Further, the Court ruled that Plaintiffs' inclusion of certain stock options
21 allegations did not violate any Court order, and were more appropriately addressed in a motion to
22 strike.

23 53. On September 8, 2008, the UTSI and SoftBank Defendants filed motions to dismiss
24 the 4AC and the UTSI Defendants also filed a motion to strike the allegations related to the stock
25 options backdating because they were the subject of another case then pending in the Northern
26

27 ¹² The remaining defendants were therefore the UTSI Defendants and the SoftBank Defendants.
28

1 District of California before Judge Illston. Dkt. Nos. 257, 258, 271. The arguments in Defendants’
2 motions to dismiss were substantially similar to those presented in their prior motions; *i.e.* that: (i)
3 Plaintiffs had not pled that the alleged false statements were actually false when made; (ii) the 4AC
4 failed to plead a strong inference of scienter; (iii) UTSI’s projections which had failed to materialize
5 were not actionable, and protected by the safe harbor rules; (iv) the 4AC failed to plead the basis for
6 the allegations; and (v) the allegations failed to demonstrate loss causation. Plaintiffs opposed the
7 motions to dismiss and the motion to strike on October 24, 2008. Dkt. Nos. 276, 277. Defendants
8 replied on November 21, 2008. Dkt. Nos. 280, 281, 285.

9 **F. The Court’s March 27, 2009 Order Denying Defendants’ Motions to**
10 **Dismiss the 4AC**

11 54. On March 27, 2009, the Court denied Defendants’ motions to dismiss and upheld the
12 4AC. Dkt. No. 302. The Court also granted the UTSI Defendants’ motion to strike the backdating
13 allegations. In its order, the Court concluded that the allegations sufficiently pled facts showing why
14 the alleged false statements may have been false when made. The Court also found that Plaintiffs
15 had sufficiently pled that the UTSI Defendants may have had no basis for their optimistic financial
16 predictions, and that they had been aware of undisclosed facts that undermined the accuracy of their
17 financial guidance. Further, with respect to scienter, the Court concluded that the \$400 million in
18 restated revenues supported an inference of scienter, as did the allegations of Generally Accepted
19 Accounting Principles (“GAAP”) violations. Similarly, the Court found that the magnitude of the
20 problems related to UTSI’s impairment charges gave rise to a strong inference of scienter. The
21 Court added that the inference of scienter was bolstered by the allegations that the UTSI Defendants
22 were made aware of the internal control problems related to revenue recognition. Finally, the Court
23 pointed out that the proximity of the timing between the resignations of several of the Individual
24 Defendants and the various restatements and SEC investigations supported an inference of scienter,
25 as did the trading by the Individual Defendants of their UTSI stock while UTSI’s stock price was at
26 its maximum and while they were alleged to have been aware of undisclosed information that would
27 have negatively affected the stock price. The Court also upheld the 4AC with respect to the control
28

1 claims against the SoftBank Defendants. The Court found that the 4AC sufficiently pled that the
2 SoftBank Defendants had the power to, and did, direct the affairs of UTSI.

3 55. On May 8, 2009, Defendants filed answers to the 4AC in which they denied
4 Plaintiffs' substantive allegations. Dkt. Nos. 310, 311, 312, 313.

5 **G. Plaintiffs' Motion to Relate Cases – *Rudolph***

6 56. On September 20, 2007, Plaintiffs filed a motion to relate another case filed in the
7 Northern District of California on September 4, 2007 pursuant to local rules. Dkt. No. 203. That
8 case, *Peter Rudolph v. UTStarcom, Hong Liang Lu, Michael Sophie, Thomas Toy & Francis Barton*
9 (*"Rudolph"*), No. C-07-4578-SI (N.D. Cal. Sept. 4, 2007), contained allegations of stock option
10 backdating by certain individuals at UTSI for the period July 24, 2002 through September 4, 2007.
11 Plaintiffs argued that the cases overlapped because they concerned substantially the same parties
12 over the same time period, and because it appeared that there would be an unduly burdensome
13 duplication of labor and expense, or conflicting results, if the cases were conducted before different
14 judges.

15 57. Plaintiff in the *Rudolph* action, James R. Bartholomew (*"Bartholomew"*), opposed
16 Plaintiffs' motion.

17 58. On November 30, 2007, the Court denied Plaintiffs' motion to relate the cases on the
18 basis that the stock options backdating claims were sufficiently distinct, and would result in different
19 loss causation theories and class periods.

20 59. On August 25, 2008, the UTSI Defendants similarly moved to relate the *Rudolph*
21 case, just as the Plaintiffs had done one year earlier. Dkt. No. 245. Defendants argued that because
22 the Court had allowed the stock options backdating claims Plaintiffs had included in the 4AC, which
23 were largely duplicative to those at issue in *Rudolph*, the two cases should be joined.

24 60. On September 5, 2008, the Court again denied the motion to relate the *Rudolph* case.
25 Dkt. No. 256.

26 61. On September 4, 2008, Bartholomew filed a motion to intervene in this action to
27 strike the options backdating allegations, and concurrently filed a motion to strike the allegations
28 related to options backdating from the 4AC. Dkt. Nos. 252, 253. On December 24, 2008, Plaintiffs

1 opposed the motions. Dkt. Nos. 289, 290. In its March 27, 2009 order denying the motion to
2 dismiss, described *supra*, the Court denied Bartholomew's motions to intervene and to strike the
3 options backdating allegations. Dkt. No. 302.

4 **H. Fact Discovery**

5 **1. Discovery Overview**

6 62. Following its denial of the UTSI and SoftBank Defendants' motions to dismiss on
7 April 29, 2009, the Court entered a scheduling order governing discovery and set the close of
8 discovery for July 12, 2010. Dkt. No. 308.

9 63. On May 28, 2009, the parties submitted a joint stipulation to the Court seeking a
10 revised schedule for briefing the motion to certify the class in light of the parties' efforts to settle the
11 case, and to schedule a mediation. Dkt. No. 320. The parties subsequently amended their stipulation
12 on June 12, 2009 to seek a complete stay on discovery pending the September mediation. Dkt. No.
13 321. The Court entered the stipulation on July 2, 2009, and set the hearing on the plaintiffs' Motion
14 for Class Certification for January 25, 2010, with briefing to be conducted through October,
15 November, and December, 2009. Dkt. No. 323.

16 **2. Plaintiffs' Discovery Requests**

17 64. On April 3, 2009, following the Court's denial of the Defendants' motions to dismiss,
18 Plaintiffs initiated discovery by serving their First Set of Requests for Production of Documents to
19 the UTSI and SoftBank Defendants. Plaintiffs' document requests on the UTSI Defendants
20 contained 101 requests, and sought documents regarding all aspects of their claims, including: (i)
21 drafts and final versions of all press releases, SEC filings and other public statements; (ii) documents
22 concerning government investigations and lawsuits; (iii) documents concerning the resignations and
23 terminations of UTSI personnel; (iv) documents concerning the Company's financial reporting and
24 restatements of UTSI's financial statements; (v) documents concerning UTSI's disclosure controls
25 and procedures; (vi) documents concerning demand for UTSI's products, its backlog, and its
26 guidance; (vii) documents concerning problems with the quality of UTSI's products; (viii)
27 documents concerning the Company's relationship with SoftBank, including documents related to
28 the transaction between UTSI and Japan Telecom; (ix) documents concerning UTSI board of

1 director meetings, committee meetings, and management meetings; (x) documents concerning
2 communications with wall street analysts and shareholders; (xi) general corporate documents; and
3 (xii) documents concerning UTSI's initial disclosures, affirmative defenses, insurance policies, and
4 document preservation. UTSI served their objections to Plaintiffs' requests on June 3, 2009. The
5 UTSI Defendants objected to all of Plaintiffs' requests, but indicated they would produce documents
6 to most of the requests subject to their objections.

7 65. On April 3, 2009, Plaintiffs also served their First Set of Interrogatories on the UTSI
8 Defendants, consisting of 13 interrogatories seeking information on UTSI's originally reported and
9 restated quarterly and annual revenues, stock compensation expenses, net income, as well as
10 information about its backlog, accounts receivable, and other financial information. The UTSI
11 Defendants served their responses and objections to the interrogatories on June 3, 2009.

12 66. Throughout the subsequent months, Lead Counsel and counsel for the UTSI
13 Defendants met and conferred regarding the timing and scope of Plaintiffs' discovery requests, and
14 the sufficiency of UTSI's responses.

15 67. Pursuant to the parties' agreement reached through the extensive meet and confer
16 effort, the UTSI Defendants began producing responsive documents on May 1, 2009, prior to serving
17 their objections and responses. In separate productions dated May 13 and 28, July 6, 7 and 15,
18 August 3, 7 and 14, October 5 and 7, November 12 and 23, 2009, March 4, 2010 and May 21, 2010,
19 Plaintiffs received over 4.7 million pages of documents in both hard copy and electronic format.
20 The bulk of the documents produced by UTSI were documents the Company had already provided to
21 the SEC as part of its investigation. The productions also included thousands of pages of testimony
22 that were part of the SEC's investigation. Lead Counsel and document reviewers under their direct
23 supervision spent hundreds of hours reviewing and analyzing these documents for information which
24 supported, or undermined, Plaintiffs' claims. Many of these documents were crucial to substantiate
25 Plaintiffs' case at the September 2009 mediation and the allegations set forth in the 4AC.

26 68. Also on April 3, 2009, Plaintiffs noticed a 30(b)(6) deposition of UTSI. In light of
27 the parties' subsequent agreement to mediate the case, the parties agreed to postpone the 30(b)(6)
28 deposition pending the parties' mediation efforts.

1 69. On September 16, 2009, following the parties' unsuccessful mediation before
2 Magistrate Judge Infante, Lead Counsel and counsel for the UTSI Defendants engaged in a further
3 telephonic meet and confer lasting well over an hour covering a wide range of issues pertaining to
4 the UTSI Defendants' document productions and their responses and objections to the document
5 requests and interrogatories. Plaintiffs followed this discussion with a 12-page letter on September
6 23, 2009, outlining many of the issues discussed, including *inter alia*: (i) the timing of production of
7 the documents the UTSI Defendants agreed to produce; (ii) whether the UTSI Defendants would
8 produce responsive documents to requests for which they had not indicated one way or the other
9 they would produce; (iii) the voluminous illegible documents in the UTSI Defendants' productions;
10 (iv) identifying the dozens of custodians from the UTSI Defendants' document productions and
11 initial disclosures whose e-mails Plaintiffs sought to obtain; (v) documents sought by Plaintiffs
12 related to specific UTSI transactions; and (vi) discussing each interrogatory propounded by Plaintiffs
13 and addressing the UTSI Defendants' objections and responses. The UTSI Defendants responded
14 with a letter on October 7, 2009.

15 70. In the two months following the parties' mediation, the UTSI Defendants did not
16 produce any responsive documents. Plaintiffs wrote Defendants a 16-page letter on November 6,
17 2009, outlining the continuing issues with respect to the UTSI Defendants' productions, and
18 demanding immediate production of responsive documents. On November 11, 2009 the parties held
19 another meet and confer, which was summarized in a letter from Plaintiffs on November 13, 2009.
20 Plaintiffs agreed to work with the UTSI Defendants on a timeline for the production of documents
21 responsive to specific requests, as well as to narrow certain requests, and were able to resolve several
22 other contentious issues. The parties exchanged additional letters concerning document productions
23 on November 18, November 20 and December 2, 2009, as well as e-mail correspondence on
24 November 30 and December 1, 2009. The parties met and conferred by telephone several additional
25 occasions as well concerning the UTSI Defendants' document production, including on November
26 18 and December 1, 2009.

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1 **3. Plaintiffs’ Discovery Requests to Third Parties**

2 71. On April 3, 2009, Plaintiffs also served six subpoenas for documents on third parties.
3 Plaintiffs served a document request on the SEC, seeking documents related to its multiple
4 investigations and cease and desist proceedings against UTSI. Plaintiffs also served a document
5 request on the U.S. Department of Justice similarly seeking documents concerning its investigation
6 into UTSI concerning violations of the FCPA. Plaintiffs served a subpoena on Banc of America,
7 seeking information on Banc of America’s purchase of UTSI common stock in January 2003.
8 Plaintiffs also served subpoenas on DSSI, LLC (“DSSI”) and Passave, Inc. (“Passave”), two
9 companies with whom UTSI conducted business, seeking information on the nature of their financial
10 and service transactions, and, in the case of Passave, on the lawsuit it filed against UTSI. Over the
11 course of the following months, Plaintiffs worked diligently to obtain documents from these third
12 parties, and exchanged dozens of letters and e-mails with counsel for each third party. Each of the
13 third parties filed objections to the subpoenas, and presented a unique set of circumstances to which
14 Plaintiffs had to respond.

15 72. Plaintiffs’ efforts obtaining documents from Passave illustrate the difficulties and
16 delays Plaintiffs experienced getting documents from nearly every third party subpoenaed.
17 Plaintiffs’ communications with counsel for Passave to obtain relevant documents spanned several
18 months and involved extensive e-mail and telephone correspondence. The subpoena on Passave
19 required production by April 20, 2009. On May 7, 2009, after several attempts by counsel for
20 Plaintiffs to contact Passave, counsel for Passave requested an extension to respond to the subpoena
21 to May 14, 2009, which Plaintiffs agreed to. On May 12, 2009, counsel for Passave again contacted
22 Plaintiffs requesting an additional extension. Plaintiffs granted the extension, but made clear that
23 their expectation was that Passave would produce documents by that date, and not simply objections
24 and responses. Then, in a telephone conversation on May 19, 2009, Passave indicated for the first
25 time that it would not produce any responsive documents. In a lengthy responsive letter, Plaintiffs
26 explained Passave’s obligations under the federal rules regarding third party subpoenas, and offered
27 to exclude certain publicly available documents and other categories of documents to lighten
28 Passave’s burden. In response to Plaintiffs’ letter, Passave agreed to reconsider its position, and on

1 July 24, 2009, after the exchange of countless telephone calls, e-mails, and letters over a four month
2 period, Passave finally produced a handful of relevant documents.

3 73. Negotiations with the SEC were similarly drawn-out. After significant initial back-
4 and-forth communications between Plaintiffs and the SEC spanning several weeks following service
5 of Plaintiffs' subpoena, the SEC took the position that any responsive documents it possessed were
6 protected by the law enforcement privilege. Plaintiffs responded to this assertion of privilege with a
7 detailed 12-page letter on May 8, 2009, explaining why the privilege was not appropriate, and
8 demanding production of the documents. Over five months filled with extensive follow-up e-mails,
9 letters and telephone calls elapsed before the SEC finally responded with a letter on September 14,
10 2009, indicating that certain responsive transcripts of SEC testimony would be made available for
11 Plaintiffs' review and copying at the SEC offices. On September 17 and 22, and October 1, 8 and
12 12, 2009, the SEC did produce some documents.

13 74. Lead Counsel experienced similarly protracted communications with counsel for
14 PricewaterhouseCoopers ("PwC") before receiving any documents responsive to their subpoena.
15 PwC originally agreed to provide all the documents it had already provided to the SEC, consisting of
16 2004-2005 workpapers and certain management letters. After several telephone conversations and
17 many pages of letter correspondence, the scope of PwC's production was expanded to include
18 several more years of relevant workpapers. PwC ultimately produced nearly 50,000 pages of
19 documents in several productions through May and June 2009, and Plaintiffs were able to obtain
20 additional PwC workpapers directly from counsel for UTSI.

21 75. Obtaining documents from DSSI, a company that had entered into several
22 transactions with UTSI involving problematic products, also presented difficulties for Plaintiffs, in
23 part as a result of DSSI's insolvency. Ultimately, however, DSSI did produce a handful of
24 responsive documents on or about August 19, 2009.

25 76. Banc of America responded to Plaintiffs' subpoena on April 8, 2009, and despite its
26 extensive objections, agreed to provide responsive documents.

27 77. In April 2009, Plaintiffs served an additional 18 subpoenas on third party securities
28 firms that analyzed UTSI, including Banc of America, Jefferies & Co., Inc., Deutsche Bank

1 Securities, Inc., Thomas Weisel Partners LLC, ThinkEquity LLC, Credit Suisse Securities (USA)
2 LLC, Wachovia Securities, LLC, Kaufman Bros., LP, Merrill Lynch & Co., Inc., Oppenheimer &
3 Co., Inc., Pacific Growth Equities, LLC, CIBC World Markets Corp., Piper Jaffray & Co.,
4 Prudential Financial, Inc., Morgan Stanley & Co., Inc., JPMorgan Chase & Co., WR Hambrecht and
5 Morgan Smith Barney LLC. Plaintiffs also served a similar subpoena on Barclays Capital, Inc. for
6 the purpose of obtaining documents from Lehman Brothers. In all of their subpoenas, Plaintiffs
7 sought a wide range of information including analyst reports and internal research reports concerning
8 UTSI, as well as communications with UTSI customers concerning UTSI's business. Through the
9 ensuing months, Lead Counsel corresponded extensively by phone, e-mail, and letter with counsel
10 for each of the third parties in their effort to obtain relevant documents.

11 78. On June 3, 2009, Plaintiffs served a subpoena on Accenture Ltd. seeking documents
12 related to its consulting and other professional services it performed for UTSI. Per the direction of
13 its counsel, Plaintiffs subsequently re-sent the subpoena to a second Accenture entity, Accenture
14 LLP on June 9, 2009, but Accenture LLP claimed it did not have responsive documents.

15 79. Plaintiffs served a similar subpoena on Deloitte LLP on June 5, 2009 since it was
16 retained to address some of UTSI's internal control issues. After considerable meet and confer
17 efforts with counsel for Deloitte LLP, Deloitte LLP finally produced responsive documents on
18 September 2 and 9, 2009.

19 80. On September 23, 2009, Plaintiffs served a subpoena on Orrick Herrington &
20 Sutcliffe ("Orrick") seeking documents related to its investigation of UTSI. In February 2007,
21 Orrick had been retained by the UTSI Audit Committee to investigate issues pertaining to side letter
22 agreements and nonstandard contract terms that had been prevalent at UTSI. As with many of the
23 other third parties from whom Plaintiffs sought documents, Orrick's response was slow and
24 contentious. Eventually, Orrick did produce a few thousand pages of documents related to their
25 investigations that led to certain UTSI restatements on February 26, 2010.

26 81. Although most of the third parties objected in some form to the subpoenas, Plaintiffs
27 ultimately obtained approximately 1.3 million pages of documents from these third parties as of the
28 time the settlement was reached.

1 **4. The UTSI Defendants' Discovery Requests Propounded to**
2 **Plaintiffs**

3 82. On May 6, 2009, the UTSI Defendants propounded their First Set of Document
4 Requests and Interrogatories on Weese, DeBruycker, Sherman, and the Operating Engineers. After
5 consultation with each of the plaintiffs, Lead Counsel served responses and objections to the
6 Operating Engineers and DeBruycker's interrogatories and document requests on June 5, 2009, and
7 for Weese on July 1, 2009. In the subsequent weeks, Lead Counsel engaged in several meet and
8 confer sessions with counsel for Defendants regarding Plaintiffs' responses and objections. On July
9 14, October 21, 23 and 30, 2009, Operating Engineers, DeBruycker, and Weese, produced
10 responsive documents.

11 83. Plaintiffs and the UTSI Defendants also engaged in extensive telephonic meet and
12 confers, and exchanged several letters concerning the UTSI Defendants' discovery requests and
13 Plaintiffs' responses to them. On September 21, 2009, the UTSI Defendants sent a letter to Lead
14 Counsel concerning the objections and responses to the UTSI Defendants' discovery requests.
15 Plaintiffs' counsel responded with a 12-page letter on September 30, 2009, detailing why Plaintiffs'
16 responses to the UTSI Defendants' document requests and interrogatories were adequate, and how
17 they had exceeded in every way the responses the UTSI Defendants had provided to Plaintiffs'
18 discovery requests. Among the issues addressed by plaintiffs' letter were: (i) the impropriety of the
19 UTSI Defendants' efforts to obtain discovery concerning Plaintiffs confidential witnesses; (ii) the
20 UTSI Defendants' premature demand for information on the experts Plaintiffs intended to use; (iii)
21 the overly broad interrogatory demanding information on the Operating Engineers' participation in
22 civil actions over the past fifty years; and (iv) the difference in the relevant time period for
23 production of documents from Defendants versus the Plaintiffs.

24 84. On September 29, 2009, the UTSI Defendants propounded its Second Set of
25 Document Requests and Second Set of Interrogatories to the Operating Engineers, and its Second Set
26 of Interrogatories to Weese.

27 85. The UTSI Defendants also noticed the depositions of each Plaintiff on May 7, 2009,
28 and, after several subsequent meet and confers to determine scheduling and the scope of the

1 depositions, counsel for the UTSI Defendants took full day depositions on October 26, October 28,
2 and November 4, 2009 of the Operating Engineers, DeBruycker, and Weese, respectively.
3 Plaintiffs' total responsive documents numbered nearly 30,000 (772 from DeBruycker, 480 from
4 Weese, and 27,243 from the Operating Engineers).

5 **5. Clawback Agreements**

6 86. On April 23, 2010, Plaintiffs and the UTSI Defendants submitted to the Court a joint
7 stipulation regarding non-waiver of protected material governing the protection of inadvertently
8 produced privileged material by the UTSI Defendants pursuant to the cooperation provisions of the
9 Stipulation of Settlement. Dkt. No. 381. Plaintiffs and the SoftBank Defendants submitted a similar
10 joint stipulation. Dkt. Nos. 383, 388-1. The purpose of these clawback agreements, which were the
11 result of extensive discussions between counsel for the parties, was to facilitate expedited discovery
12 from the Defendants while providing additional protection in the case of documents produced which
13 are subject to valid privilege claims. Although the Court has not entered the agreements as an order,
14 the agreements went into effect upon their signature.

15 **6. Disputes Concerning UTSI's Privilege Log**

16 87. On October 7, 2009, the UTSI Defendants produced several voluminous privilege
17 logs for their productions in response to plaintiffs' First Set of Requests for Production of
18 Documents. The privilege logs contained 4,238 pages with over 31,000 entries. Plaintiffs spent
19 considerable time and effort reviewing the logs and evaluating the assertions of privilege. Plaintiffs
20 sent the UTSI Defendants a lengthy letter on December 9, 2009, detailing the issues with respect to
21 the logs, including *inter alia*: (i) the claims of attorney-client privilege over routine, non-privileged
22 communications between employees interacting over the ordinary course of business; (ii) the UTSI
23 Defendants' claims of attorney-client privilege over documents already disclosed to third parties;
24 (iii) the UTSI Defendants' descriptions that failed to provide adequate grounds for the privilege
25 asserted; and (iv) the UTSI Defendants' withholding of documents based on the work product
26 doctrine for documents that were not created or generated in anticipation of litigation. The parties
27 met and conferred on the privilege issues on several occasions and were continuing to confer the
28 privilege issues as the parties were engaging in settlement discussions.

1 **7. Disputes Concerning the UTSI and SoftBank Defendants’**
2 **Answers and Motion to Strike Affirmative Defenses**

3 88. The UTSI and SoftBank Defendants served their answers to the 4AC on May 8, 2009.
4 Dkt. Nos. 310, 311, 312, 313. On May 21, 2009, Plaintiffs sent a lengthy letter to the UTSI
5 Defendants outlining their answer’s deficiencies under Fed. R. Civ. P. 8 and 11, including: (i) its
6 failure to admit truthful averments in the complaint; (ii) its improper use of “Document Speaks for
7 Itself” to avoid admitting allegations; (iii) its failure to make a reasonable inquiry into the Individual
8 Defendants’ and other UTSI executive’s sales of UTSI stock; and (iv) its improper and misplaced
9 affirmative defenses. On July 2, 2009, the Court entered an order granting a joint stipulation which
10 set a deadline for Plaintiffs’ motion to strike Defendants’ answers by October 30, 2009 subject to the
11 parties’ agreement to another deadline. Dkt. No. 323. On October 29, 2009, the parties agreed to
12 extend the deadline until February 26, 2010, in order to accommodate the parties’ ongoing
13 settlement discussions and the briefing schedule for Plaintiffs’ motion for class certification. In light
14 of Plaintiffs’ settlement with the UTSI Defendants, they did not file a motion to strike the UTSI
15 Defendants’ answers.

16 **I. Protective Order**

17 89. Throughout April and May, 2009, the parties spent substantial time negotiating the
18 terms of a proposed protective order that would govern the confidential treatment of evidence
19 produced in this case. The parties exchanged multiple drafts of a proposed order and held multiple
20 telephonic meet and confers concerning disputed language. The parties filed a [Proposed] Stipulated
21 Protective Order on May 5, 2009. Dkt. No. 309. On May 11, 2009, the Court entered an order
22 requiring the insertion of language concerning the handling of inadvertently produced documents.
23 Dkt. No. 315. The parties complied with the Court’s order, and on May 12, 2009, the parties filed a
24 revised proposed protective order, which the Court signed on the same day. Dkt. Nos. 316, 317.

25 **IV. INVESTIGATORS, CONSULTANTS, AND EXPERTS**

26 **A. Investigators**

27 90. In the post-PSLRA era, the use of investigators to gather detailed, fact-specific
28 information from percipient witnesses is necessary in drafting the type of highly particularized

1 complaints mandated by the pleading standards of the PSLRA. Plaintiffs' counsel retained
2 experienced private investigators from L.R. Hodges & Associates, Ltd. to perform investigative and
3 consulting services relating to the Litigation. The tasks performed by the investigators, at the
4 direction of counsel included, *inter alia*, identifying, locating, and interviewing former UTSI
5 employees, and other potentially knowledgeable witnesses. The investigators interviewed several
6 dozens of potential witnesses as well as discussed their findings and research with counsel. The
7 4AC referenced 21 confidential witnesses who were located and interviewed by the investigators and
8 provided corroborative information to plaintiffs' counsel in order to plead a securities fraud case that
9 meets the stringent pleading standard of the PSLRA. This investigation also significantly aided
10 counsel in identifying potential deponents, evaluating the strengths and weaknesses of Plaintiffs'
11 case, and ultimately, settling the Litigation with the UTSI Defendants. In sum, the efforts of the
12 private investigators were integral in achieving this outstanding settlement on behalf of the Class.

13 **B. Forensic Accounting Consultants**

14 91. The complexity and nature of this litigation required Plaintiffs' counsel to seek
15 forensic accounting assistance to review numerous accounting documents produced by Defendants
16 and third parties, to assist in requesting discovery, and in preparing and taking depositions in the
17 case. A host of important accounting issues were raised by the facts of this litigation, including
18 UTSI's accounting for historical financial performance. These complex accounting issues
19 necessitated a detailed examination of the documents produced by UTSI, PwC, and third parties as
20 well as UTSI's initial and restated financial reports filed with the SEC relevant to the Class Period.
21 In order to conduct effective discovery and properly prepare this case, Plaintiffs' counsel relied on
22 forensic accounting assistance provided by in-house forensic accountants. Forensic accountant
23 expertise was necessary in the preparation of the complaints and other pleadings as well as assisted
24 in preparing attorneys for depositions and compiling documentary evidence to support Plaintiffs'
25 allegations. To this end, the forensic accountants, *inter alia*, reviewed many boxes of documents,
26 audit work papers, and e-mails along with research of authoritative literature.

27 92. The forensic accountants also helped to analyze UTSI's SEC filings, press releases,
28 financial statements, and accounting records, including documents provided by UTSI, PwC, and

1 third parties as well as UTSI's application of GAAP and SEC guidelines. Forensic accounting
2 assistance was also used by counsel to narrow the scope of documents to be imaged and targeting
3 key witnesses for deposition.

4 **C. Loss Causation and Market Efficiency Expert**

5 93. Jane Nettesheim is a financial economist and vice president of Stanford Consulting
6 Group, Inc. Since 1990, Ms. Nettesheim has served as a consultant and testifying expert in the areas
7 of market efficiency, materiality, causation and damages in many securities class actions. She was
8 retained to provide consulting services regarding issues related to market efficiency, materiality, and
9 loss causation in this matter. Ms. Nettesheim based her opinions on her professional experience as
10 well as, *inter alia*, a review of: (i) the 4AC; (ii) UTSI's public filings with the SEC; (iii) press
11 releases issued by UTSI; (iv) securities analyst reports regarding UTSI and its industry issued during
12 the relevant time period; (v) contemporaneous media reports regarding UTSI and its industry issued
13 during the relevant time period; (vi) price and volume data for UTSI common stock and options, as
14 well as for industry and marked indices; (vii) UTSI common stock ownership by reporting
15 institutions during the Class Period; (viii) short interest in UTSI common stock during the Class
16 Period; (ix) articles, court decisions, and other relevant public information; and (x) a review of
17 evidence produced by Defendants and third parties.

18 94. Ms. Nettesheim specifically opined that the market in which UTSI common stock and
19 options traded was impersonal, open, well developed, and efficient. She also concluded that the
20 alleged false and misleading statements contained information that a reasonable investor would have
21 wanted to consider prior to making an investment decision and caused UTSI's common stock to
22 trade at artificially inflated prices during the Class Period. Ms. Nettesheim concluded that when the
23 truth was partially disclosed on October 23, 2003, July 27 and September 20, 2004, January 6,
24 March 31, May 5, August 2, October 2005, and July 24, 2007, Class Members suffered damages.
25 Ms. Nettesheim met several times with Lead Counsel to discuss her opinions and prepare for her
26 deposition. She authored two reports in this Litigation in connection with the two class certification
27 motions filed in November 2009 and February 2010, and submitted declarations related to class
28 certification. Her central expert report totaled 71 pages, with over 900 pages of supporting exhibits

1 and summaries. She also sat for a day long deposition. Ms. Nettesheim's services in these
2 proceedings were necessary and contributed materially to the benefits achieved by the proposed
3 Settlement Class.

4 **D. Class Certification Proceedings**

5 95. In its initial scheduling order on April 29, 2009, the Court scheduled the motion for
6 class certification as follows: motion due July 10, 2009; opposition due August 7, 2009; and reply
7 due September 4, 2009. Dkt. No. 308. The hearing on the motion for class certification was to be
8 held on September 21, 2009. *Id.* On May 28, 2009, however, the parties filed a stipulation seeking
9 to delay the briefing on the motion for class certification so that the parties could engage in
10 settlement discussions without the cost and time involved in the class certification process. Dkt. No.
11 320. The Court entered a revised schedule for briefing on the motion for class certification on July
12 2, 2009 as follows: motion due October 23, 2009; opposition due November 20, 2009; and reply due
13 December 18, 2009. Dkt. No. 323. The Court scheduled a revised hearing date for the motion on
14 January 25, 2010. *Id.*

15 96. Following the parties' unsuccessful mediation on September 14, 2009, Plaintiffs filed
16 their motion for class certification, along with supporting documents, on October 23, 2009, seeking
17 an order certifying the Litigation as a class action pursuant to Rule 23(a) and 23(b)(3) and appointing
18 Lead Plaintiffs the Operating Engineers, DeBruycker, and plaintiff Weese as the Class
19 representatives. Dkt. No. 325.

20 97. Also on October 23, 2009, Plaintiffs filed a motion to withdraw Gennadiy Sherman as
21 a named plaintiff, and Defendants did not oppose. Dkt. No. 324. The Court granted the motion on
22 October 29, 2009. Dkt. No. 331.

23 98. In connection with their anticipated opposition to Plaintiffs' motion for class
24 certification, Defendants took the depositions of Lead Plaintiffs the Operating Engineers,
25 DeBruycker, and plaintiff Weese, on October 26, 28, and November 4, 2009, respectively.

26 99. On November 12, 2009, the parties submitted a stipulation to the Court seeking to
27 extend the time for Defendants to oppose the motion for class certification, and Plaintiffs to reply,
28 so that the parties could continue to engage in settlement negotiations. Dkt. No. 332. On December

1 15, 2009, the parties submitted another stipulation, this time asking the Court to stay briefing on
2 class certification altogether pending the parties' ongoing settlement negotiations. Dkt. No. 339.
3 The Court entered the December 15, 2009 stipulation as an order on December 18, 2009. Dkt. No.
4 340.

5 100. In light of the Settling Parties' successful settlement negotiations, UTSI did not file
6 an opposition brief to the motion for class certification.

7 101. In connection with their opposition to the Plaintiffs' motion for class certification, the
8 SoftBank Defendants conducted the expert deposition of Jane D. Nettesheim on March 26, 2010.
9 Following a stipulation to extend the briefing schedule for their opposition, the SoftBank Defendants
10 filed an opposition to Plaintiffs' motion on April 2, 2010. Dkt. No. 364. In their opposition brief,
11 the SoftBank Defendants argued that none of the putative Class representatives was typical of the
12 Class, that the claims of the Class representatives were atypical, and that the Class definition must
13 exclude any investors who purchased and sold their stock before any corrective disclosures were
14 made. Plaintiffs filed a reply brief on April 23, 2010. Dkt. No. 380. The Court heard the motion on
15 May 10, 2010, and in an order dated May 12, 2010, granted Plaintiffs' motion for class certification,
16 and appointed the Operating Engineers, DeBruycker and Weese as the class representatives. Dkt.
17 No. 397.

18 **V. THE STRENGTHS AND WEAKNESSES OF THE CASE**

19 102. Based on publicly available documents, discovery obtained from Defendants, their
20 own investigation and their consultation with experts, Plaintiffs believed that they had adduced and
21 would continue to adduce substantial evidence to support their claims. They also realized, however,
22 that they faced considerable risks and defenses as the case proceeded. Some of the most serious
23 risks are discussed in the following paragraphs. Plaintiffs carefully considered these risks during the
24 months leading up to the settlement and during their settlement discussions with the UTSI
25 Defendants.

26 103. As an initial matter, prevailing on their claims would undoubtedly have required
27 Plaintiffs to survive a motion for summary judgment. Summary judgment posed a number of real
28 and substantial risks for the Class. Plaintiffs would have to demonstrate to the Court that a genuine

1 issue of material fact exists with regard to each element of their securities claims. Summary
2 judgment allows both plaintiffs and defendants to present their strongest evidence before the Court.
3 There was a substantial risk that the Court would find evidence proffered by Plaintiffs in support of
4 loss causation and/or scienter inadequate to create a genuine issue of material fact. Of course, even
5 if Plaintiffs received a favorable ruling on summary judgment, Defendants would likely seek
6 reconsideration of such a ruling, or, if the ruling was dispositive, would appeal.

7 104. If Plaintiffs were to proceed to trial, there would be a substantial risk that the
8 evidence in support of the highly technical aspects of Plaintiffs' accounting allegations would not
9 convince a jury to find in the Class's favor. Plaintiffs believe that the evidence supports their
10 allegations and would present highly trained accounting professionals as expert witnesses who
11 would testify accordingly. However, there is no guarantee that a jury comprised of lay people – who
12 would likely possess little accounting or financial expertise – would be persuaded by this testimony.
13 In that event, the Class would recover nothing.

14 105. In addition, there was a substantial risk that Plaintiffs might not be able to prove loss
15 causation at trial. A private plaintiff who claims securities fraud must prove that the defendants'
16 fraud caused an economic loss. Loss causation can be proved with evidence of a stock price decline
17 when the facts revealing the Company's true financial condition are disclosed. To establish loss
18 causation, "the plaintiff must demonstrate a causal connection between the deceptive acts that form
19 the basis for the claim of securities fraud and the injury suffered" by plaintiffs. *In re Gilead Scis.*
20 *Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (citation omitted), *cert. denied*, *Gilead Scis., Inc. v.*
21 *St. Clare*, ___ U.S. ___, 129 S. Ct. 1993 (2009).

22 106. Plaintiffs believe that at trial, and through expert testimony, they would be able to
23 demonstrate loss causation as to each of UTSI's challenged statements throughout the Class Period.
24 However, Plaintiffs recognize that the UTSI Defendants might be able to set forth expert testimony
25 demonstrating the absence of a causal link between the various stock drops and those disclosures.
26 As a result, the UTSI Defendants would likely argue that Plaintiffs could not prove the loss
27 causation, and the damage elements of the case.

28

1 107. Moreover, there was a substantial risk that Plaintiffs would not be able to prove
2 scienter at trial, *i.e.*, that the UTSI Defendants acted with knowledge or with deliberate recklessness
3 in violation of federal securities laws. State of mind in a securities case is often the most difficult
4 element of proof and one which is rarely supported by direct evidence such as an admission. Thus, it
5 was quite possible that Plaintiffs would depose all Defendants and those with knowledge about the
6 case and yet adduce insufficient evidence to satisfy their burden of proof on this issue at trial.
7 Notwithstanding these difficulties of proof, Plaintiffs believe that among other things, the three
8 restatements, the multiple SEC investigations, and the Individual Defendants' sales of UTSI stock
9 are strong indicators of scienter. Further, as the Court pointed out in its March 27, 2009 denial of
10 Defendants' motion to dismiss, the close timing of Defendants' resignations from UTSI to the
11 restatements and SEC investigations is also a strong indication of scienter. However, the SEC
12 investigation was resolved without a finding of fraud and a jury might agree with the SEC that there
13 was none.

14 108. Furthermore, for Plaintiffs to meet their burden at trial would require the testimony of
15 multiple experts in financial accounting, loss causation and damages. Even with experts who are
16 among the most respected in these fields, there could be no guarantee that Plaintiffs would prevail on
17 liability and damages, as the UTSI Defendants would likewise hire equally competent experts to
18 counter Plaintiffs' experts' theories. Indeed, the trial of this case is likely to hinge as much on the
19 testimony of experts as on fact witnesses, which always presents a substantial risk of a party
20 prevailing not because of the merits but because of a jury's assessment of one party's expert or
21 experts. These issues would require substantial and complex expert testimony and there was a risk
22 that a jury would have a more positive impression of the UTSI Defendants' experts.

23 109. Even if Plaintiffs prevailed on liability on any or all of their claims and were awarded
24 all of their damages, there was the significant risk that the UTSI Defendants would appeal the verdict
25 and award. The appeals process would likely span several years, during which time the Class would
26 receive no distribution on any damage award. In addition, an appeal of any verdict would carry with
27 it the risk of reversal, in which case the Class would receive no distribution despite having prevailed
28 on the claims at trial.

1 110. Finally, even if Plaintiffs prevailed, there is a real possibility in this case that the
2 UTSI Defendants would not be able to respond in damages by the time the case got resolved at trial.
3 Specifically, the Company has been having going concerns since early 2009 as noted above in ¶13,
4 has substantial losses for the last three years and is moving most, if not all, of its operations to China.

5 111. In summary, there were multiple procedural hurdles as well as significant merit-based
6 risks involved in proceeding with this matter, each of which was carefully considered by Lead
7 Counsel and Plaintiffs in making the determination to settle with the UTSI Defendants on the agreed
8 terms.

9 **VI. SETTLEMENT NEGOTIATIONS AND TERMS OF THE SETTLEMENT**

10 112. The parties agreed to a mediation to be held on September 14, 2009, before the
11 Honorable Edward A. Infante (Ret.). Plaintiffs spent substantial time preparing a comprehensive
12 mediation statement that included reviewing all relevant discovery. The September 14, 2009
13 mediation lasted approximately three hours. During the mediation, Judge Infante spent considerable
14 time conferring with counsel for Plaintiffs and Defendants both separately and in joint sessions. The
15 parties were adamant about their respective positions and were unable to reach an agreement.
16 Plaintiffs firmly believed that even in light of the risks outlined in the preceding section, the strength
17 of their case rendered inadequate the amounts offered at the time by the UTSI Defendants to settle.

18 113. Following the September mediation, the parties resumed their discovery efforts, while
19 continuing to explore resolution of the case. Counsel for UTSI Defendants and Plaintiffs made
20 tremendous efforts in November and December 2009 to reach a mutually acceptable resolution, and
21 continued to negotiate the key terms of the settlement throughout December 2009 and January 2010,
22 with a Memorandum of Understanding signed in January 2010.

23 114. On February 12, 2010, the parties submitted a joint case management statement
24 pursuant to the Court's December 18, 2009 Order staying class certification briefing. Dkt. No. 342.
25 On February 17, 2010, the Court entered a scheduling order requiring plaintiffs to renote their
26 motion for class certification by February 26, 2010, with the SoftBank Defendant's opposition due
27 March 26, 2010, plaintiffs' reply due April 16, 2010, and a Court hearing on May 10, 2010. Dkt.
28 No. 343. The Court also extended the close of all discovery to October 15, 2010. *Id.*

1 115. Plaintiffs and the UTSI Defendants submitted the Stipulation of Settlement to the
2 Court on April 1, 2010, as well as a motion for preliminary approval of partial settlement,
3 certification of a settlement class, and partial payment of expenses. Dkt. Nos. 358, 359. On April
4 19, 2010, the SoftBank Defendants opposed the motion for preliminary approval of partial settlement
5 on the grounds that the proposed settlement class should not be certified prior to adjudication of the
6 motion for certification of the Litigation class. Dkt. No. 374. Plaintiffs and the UTSI Defendants
7 filed a response to the SoftBank Defendants' opposition on April 26, 2010, and argued that the
8 certification of a settlement class would not prejudice the SoftBank Defendants' opposition to
9 certification of the Litigation class. Dkt. No. 384.

10 116. The Court heard argument on the motion for preliminary approval of partial
11 settlement on May 10, 2010, and on May 13, 2010 issued an order preliminarily approving the
12 partial settlement, providing for notice to the class and setting a final approval hearing for August
13 30, 2010. Dkt. No. 399.

14 117. The insurers for the UTSI Defendants will pay \$30 million cash to the Class,
15 consisting of all persons who purchased or otherwise acquired the securities of UTSI during the
16 period February 21, 2003 through and including October 12, 2007. Excluded from the Settlement
17 Class are the Defendants and officers and directors of UTSI, SoftBank Corporation, SoftBank
18 America, Inc., or SoftBank Holdings, Inc., as well as their families and affiliates. Also excluded
19 from the Settlement Class are those persons who timely and validly request exclusion from the
20 Settlement Class. In addition to the cash payment, the UTStarcom Defendants have agreed to
21 continue to produce non-privileged documents and provide testimony in connection with the
22 ongoing prosecution of the Litigation against the SoftBank Defendants.

23 118. Patrick J. Coughlin led the settlement negotiations for Plaintiffs. He has years of
24 experience in the prosecution and resolution of complex class actions. Boris Feldman led the
25 defense team for the UTStarcom Defendants. All defense counsel's credentials in the defending
26 class actions are similarly unquestionable.

27 119. Lead Counsel are actively engaged in complex civil litigation, particularly the
28 litigation of securities class actions. Plaintiffs believe that Lead Counsel's reputation as attorneys

1 who will zealously carry a meritorious case through the trial and appellate levels as well as the
2 aggressive litigation of this case put Plaintiffs in a strong position in settlement negotiations with the
3 UTSI Defendants and their insurance carriers.

4 120. The Stipulation resulted from vigorous arm's-length negotiations. In the estimation
5 of Lead Counsel, the compromise embodied in the Stipulation with the UTSI Defendants represents
6 a successful partial resolution of a complex and risky class action.

7 121. Upon approval of the Stipulation by the Court and entry of a judgment that becomes a
8 final judgment, and upon satisfaction of the other conditions to the settlement, the Settlement Fund
9 will pay for certain administrative expenses, including the cost of providing notice to the Class; the
10 cost of publishing newspaper notice; payment of taxes assessed against the income earned by the
11 Settlement Fund; costs associated with the processing of claims submitted; and will pay Lead
12 Counsel's fees and expenses. The balance of the Settlement Fund (the "Net Settlement Fund") will
13 be distributed according to the Plan of Allocation (described below) to Class Members who submit
14 valid, timely Proof of Claim forms.

15 **VII. THE SETTLEMENT IS IN THE BEST INTERESTS OF THE CLASS AND**
16 **WARRANTS APPROVAL**

17 122. While Plaintiffs believe they could have prevailed on the merits of the case, the UTSI
18 Defendants were just as adamant that Plaintiffs would fail. There was a very real risk, as discussed
19 in detail above, that Plaintiffs would not prevail at the summary judgment stage or at trial. Had
20 Plaintiffs successfully reached a trial, Plaintiffs faced the risk that the jury would not be convinced
21 by the evidence presented in support of Plaintiffs' complex financial fraud allegations, that Plaintiffs
22 would not convince a jury that the UTSI Defendants acted with the requisite scienter or demonstrate
23 loss causation. There was also the very real risk that even if Plaintiffs prevailed at trial, the UTSI
24 Defendants would appeal, which would take years to resolve and bore the risk of reversal. Most
25 important, there was a very substantial risk that even if Plaintiffs obtained a favorable verdict, the
26 UTSI Defendants would not be in a position to pay by the time the case resolved at trial, given the
27 financial state of the Company.
28

1 123. Having considered the foregoing, and evaluating the UTSI Defendants' likely
2 defenses at trial, it is the informed judgment of Plaintiffs and Lead Counsel, based upon all
3 proceedings to date and their extensive experience in litigating shareholder class actions, that the
4 proposed settlement of this matter before this Court is fair, reasonable and adequate, and in the best
5 interests of the Class.

6 **VIII. THE PLAN OF ALLOCATION**

7 124. Pursuant to the Order Preliminarily Approving Settlement and Providing for Notice
8 and as set forth in the Notice of Pendency and Proposed Settlement of Class Action, all Class
9 Members who wish to participate in the distribution of the Net Settlement Fund must submit a
10 proper Proof of Claim and Release form.

11 125. If approved, the Plan of Allocation will govern how the proceeds of the Net
12 Settlement Fund will be distributed among Class Members who submit valid Proof of Claim and
13 Release forms. To the extent there are sufficient funds in the Net Settlement Fund, each Class
14 Member who submits a valid, timely Proof of Claim and Release form ("Authorized Claimant") will
15 receive an amount equal to the Authorized Claimant's claim. If, however, as is more likely, the
16 amount in the Net Settlement Fund is not sufficient to permit payment of the total claims of each
17 Authorized Claimant, then each Authorized Claimant shall be paid the percentage that each
18 Authorized Claimant's claim bears to the total of the claims of all Authorized Claimants. Payment
19 in this manner shall be deemed conclusive against all Authorized Claimants.

20 126. A claim will be calculated based on the following inflation per share amounts for
21 Class Period common stock purchases and sales as well as the statutory PSLRA 90-day look back
22 amount of \$3.45:

Inflation Period	Inflation per Share
February 21, 2003 – April 16, 2003	\$1.17
April 17, 2003 – October 23, 2003	\$3.91
October 24, 2003 – January 22, 2004	\$9.98
January 23, 2004 – July 27, 2004	\$10.03
July 28, 2004 – September 17, 2004	\$2.64
September 20, 2004 – October 26, 2004	\$1.22
October 27, 2004 – January 6, 2005	\$8.40

Inflation Period	Inflation per Share
January 7, 2005 – February 8, 2005	\$4.43
February 9, 2005 – March 30, 2005	\$4.57
March 31, 2005 – May 5, 2005	\$3.60
May 6, 2005 – August 2, 2005	\$1.08
August 3, 2005 – October 6, 2005	\$2.49
October 7, 2005 – February 9, 2006	\$0.44
February 10, 2006 – July 23, 2007	\$0.77
July 24, 2007 – October 12, 2007	\$0.00

COMMON STOCK

(a) For shares of UTStarcom common stock ***purchased on or between February 21, 2003 through July 23, 2007***, the recovery per share shall be as follows:

(i) If sold on or between February 21, 2003 through July 23, 2007, the recovery per share shall be the lesser of: (a) the inflation per share at the time of purchase less the inflation per share at the time of sale; (b) the difference between the purchase price and the selling price; and (c) the difference between the purchase price per share and \$3.45 per share.

(ii) If retained at the end of July 23, 2007, and sold before October 19, 2007, the recovery per share shall be the lesser of: (a) the inflation per share at the time of purchase; (b) the difference between the purchase price and the selling price; and (c) the difference between the purchase price per share and the average closing price per share from July 24, 2007, up to the date of sale as set forth in the table below.

(iii) If retained on October 19, 2007, or sold thereafter, the recovery per share shall be the lesser of: (a) the inflation per share at the time of purchase; and (b) the difference between the purchase price per share and \$3.45 per share.

(b) For shares of UTStarcom common stock ***purchased on or between July 24, 2007 through October 12, 2007***, the recovery per share shall be \$0.

90-Day Look Back Table

Date	Closing Price	Average Closing Price
7/24/2007	\$3.88	\$3.88
7/25/2007	\$3.70	\$3.79
7/26/2007	\$3.38	\$3.65
7/27/2007	\$3.29	\$3.56

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Date	Closing Price	Average Closing Price
7/30/2007	\$3.10	\$3.47
7/31/2007	\$3.22	\$3.43
8/1/2007	\$3.55	\$3.45
8/2/2007	\$3.53	\$3.46
8/3/2007	\$3.35	\$3.44
8/6/2007	\$3.15	\$3.42
8/7/2007	\$2.73	\$3.35
8/8/2007	\$2.64	\$3.29
8/9/2007	\$2.62	\$3.24
8/10/2007	\$2.67	\$3.20
8/13/2007	\$2.94	\$3.18
8/14/2007	\$2.78	\$3.16
8/15/2007	\$2.75	\$3.13
8/16/2007	\$3.33	\$3.15
8/17/2007	\$3.18	\$3.15
8/20/2007	\$3.11	\$3.15
8/21/2007	\$3.04	\$3.14
8/22/2007	\$2.97	\$3.13
8/23/2007	\$2.92	\$3.12
8/24/2007	\$2.82	\$3.11
8/27/2007	\$2.91	\$3.10
8/28/2007	\$2.75	\$3.09
8/29/2007	\$2.70	\$3.07
8/30/2007	\$2.78	\$3.06
8/31/2007	\$3.04	\$3.06
9/4/2007	\$3.07	\$3.06
9/5/2007	\$3.18	\$3.07
9/6/2007	\$3.25	\$3.07
9/7/2007	\$3.08	\$3.07
9/10/2007	\$2.80	\$3.07
9/11/2007	\$2.70	\$3.05
9/12/2007	\$2.72	\$3.05
9/13/2007	\$2.65	\$3.03
9/14/2007	\$2.69	\$3.03
9/17/2007	\$3.09	\$3.03
9/18/2007	\$3.45	\$3.04
9/19/2007	\$3.71	\$3.05
9/20/2007	\$4.06	\$3.08
9/21/2007	\$3.73	\$3.09
9/24/2007	\$3.66	\$3.11
9/25/2007	\$3.53	\$3.12
9/26/2007	\$3.77	\$3.13
9/27/2007	\$3.71	\$3.14
9/28/2007	\$3.66	\$3.15
10/1/2007	\$3.81	\$3.17
10/2/2007	\$4.05	\$3.18
10/3/2007	\$4.31	\$3.21
10/4/2007	\$4.36	\$3.23

Date	Closing Price	Average Closing Price
10/5/2007	\$4.32	\$3.25
10/8/2007	\$4.04	\$3.26
10/9/2007	\$4.99	\$3.29
10/10/2007	\$4.93	\$3.32
10/11/2007	\$4.64	\$3.35
10/12/2007	\$4.53	\$3.37
10/15/2007	\$4.56	\$3.39
10/16/2007	\$4.58	\$3.41
10/17/2007	\$4.80	\$3.43
10/18/2007	\$4.42	\$3.45
10/19/2007	\$3.85	\$3.45

CALL OPTIONS

(a) For call options on UTStarcom common stock purchased from February 21, 2003 through July 23, 2007, and

(i) **held** at the end of any of the following days: April 16, 2003, October 23, 2003, January 22, 2004, July 27, 2004, September 17, 2004, October 26, 2004, January 6, 2005, February 8, 2005, March 30, 2005, May 5, 2005, August 2, 2005, October 6, 2005, February 9, 2006, and/or July 23, 2007, the claim per call option is the difference between the price paid for the call option less the proceeds received upon the settlement of the call option contract;

(ii) **not held** at the end of any of the following days: April 16, 2003, October 23, 2003, January 22, 2004, July 27, 2004, September 17, 2004, October 26, 2004, January 6, 2005, February 8, 2005, March 30, 2005, May 5, 2005, August 2, 2005, October 6, 2005, February 9, 2006, and/or July 23, 2007, the claim per call option is \$0.

(b) For call options on UTStarcom common stock **written from February 21, 2003 through July 23, 2007**, the claim per call option is \$0.

PUT OPTIONS

(a) For put options on UTStarcom common stock written from February 21, 2003 through July 23, 2007, and

(i) **not closed out** at the end of any of the following days: April 16, 2003, October 23, 2003, January 22, 2004, July 27, 2004, September 17, 2004, October 26, 2004, January 6, 2005, February 8, 2005, March 30, 2005, May 5, 2005, August 2, 2005, October 6, 2005,

1 February 9, 2006, and/or July 23, 2007, the claim per put option is the difference between the price
2 paid upon settlement of the put option contract less the initial proceeds received upon the sale of the
3 put option contract;

4 (ii) ***closed out*** at the end of any of the following days: April 16, 2003,
5 October 23, 2003, January 22, 2004, July 27, 2004, September 17, 2004, October 26, 2004, January
6 6, 2005, February 8, 2005, March 30, 2005, May 5, 2005, August 2, 2005, October 6, 2005,
7 February 9, 2006, and/or July 23, 2007, the claim per put option is \$0.

8 (b) For put options on UTStarcom common stock ***purchased from February 21,***
9 ***2003 through July 23, 2007,*** the claim per put option is \$0.

10 Note: In the case where the option was exercised for UTStarcom common stock, the amount
11 paid, or proceeds received, upon the settlement of the option contract equals the intrinsic value of the
12 option using UTStarcom common stock's closing price on the date the option was exercised.

13 Note: The combined recovery for the put/call options shall not exceed 3% of the Net
14 Settlement Fund.

15 127. The date of purchase or sale is the "contract" or "trade" date as distinguished from the
16 "settlement" date.

17 128. For Class Members who held shares at the beginning of the Class Period or made
18 multiple purchases or sales during the Class Period, the first-in, first-out ("FIFO") method will be
19 applied to such holdings, purchases, and sales for purposes of calculating a claim. Under the FIFO
20 method, sales of shares during the Class Period will be matching, in chronological order, first against
21 shares held at the beginning of the Class Period. The remaining sales of shares during the Class
22 Period will then be matched, in chronological order, against shares purchased during the Class
23 Period.

24 129. A Class Member will be eligible to receive a distribution from the Net Settlement
25 Fund only if a Class Member had a net loss, after all profits from transactions in UTSI securities
26 during the Class Period are subtracted from all losses. However, the proceeds from sales of stock
27 which have been matched against stock held at the beginning of the Class Period will not be used in
28

1 the calculation of such net loss. No distributions will be made to Class Members who would
2 otherwise receive less than \$10.00.

3 130. The Court will reserve jurisdiction to allow, disallow, or adjust the claim of any Class
4 Member on equitable grounds.

5 131. This proposed Plan of Allocation is based on widely accepted economic principles,
6 was formulated in consultation with Plaintiffs' materiality and damages expert, and is intended to be
7 a fair way to divide the Net Settlement Fund for distribution among Class Members. The Plan of
8 Allocation is based on Plaintiffs' damage theory of the case and eliminates, to the extent possible,
9 the effects on UTStarcom's stock price of market forces unrelated to the alleged misrepresentations
10 and omissions. In addition, it simplifies claims administration with attendant reduced cost to the
11 Class. Finally, the proposed Plan of Allocation is designed to fairly and rationally allocate the
12 proceeds of the Net Settlement Fund among Class Members in accordance with the relative damages
13 suffered by purchasers during different time periods.

14 **IX. LEAD COUNSEL'S APPLICATION FOR ATTORNEYS' FEES IS**
15 **REASONABLE**

16 **A. The Requested Fee of 24.5% of the Settlement Fund is Fair and**
17 **Reasonable, is Consistent with Percentages Routinely Awarded by**
18 **Courts, is Amply Justified by the Specific Facts and Circumstances in**
19 **This Case and is Supported by the Plaintiffs**

20 **1. Nature and Extent of Litigation**

21 132. The prosecution of this action required Lead Counsel and their paraprofessionals to
22 perform 18,634.80 hours of work and incur over \$700,000.00 in expenses.

23 133. This case was vigorously litigated and settled only after Lead Counsel had, *inter alia*:
24 (i) successfully opposed Defendants' motions to dismiss the 4AC; (ii) aggressively sought discovery
25 from Defendants and third parties; (iii) reviewed and analyzed over 4 million pages of documents
26 produced by Defendants and third parties; (iv) consulted with accounting consultants regarding the
27 UTSI Defendants' GAAP compliance and revenue recognition policies; (v) consulted with experts in
28 materiality, market efficiency, loss causation and damages; (vi) prepared for and attended a
mediation session; and (vii) assessed the risks of prevailing on their claims at trial. These efforts and
others on the part of Lead Counsel are described in detail throughout this declaration.

1 134. For our extensive efforts on behalf of the Class, Lead Counsel is applying for
2 compensation from the Settlement Fund on a percentage basis. The percentage method is the
3 appropriate method of fee recovery because, among other things, it aligns the lawyers' interest in
4 being paid a fair fee with the interest of the class in achieving the maximum recovery in the shortest
5 amount of time required under the circumstances.

6 **B. The Requested Fee Is Reasonable**

7 135. Lead Counsel requests a fee of 24.5% of the Settlement Fund. As set forth in the
8 accompanying memorandum in support of Plaintiffs' application for award of attorneys' fees and
9 expenses, numerous courts have applied the percentage-of-recovery method in awarding fees in
10 "common fund" cases. The percentage sought is merited in this case in light of the effort required
11 and the results obtained.

12 **1. The Time Expended**

13 136. Through April 30, 2010, Lead Counsel expended a total of 18,634.80 hours in
14 attorney and paraprofessional time in litigating this case and obtaining this partial settlement. The
15 resulting lodestar is \$7,942,822.00. The requested fee represents a 7% discount from the lodestar.

16 **2. The Support of the Class Representatives**

17 137. Plaintiffs actively monitored the Litigation and consulted with Lead Counsel during
18 the course of settlement negotiations. Representatives Malcolm Auble, as chairman of the board of
19 trustees of the Operating Engineers, DeBruycker, and Weese, who each spent considerable time and
20 effort fulfilling their duties and responsibilities in this case, including reviewing briefs, answering
21 discovery requests and consulting with counsel concerning the merits of this Litigation. They all
22 support Lead Counsel's requested fee. *See* Declarations of Plaintiffs Operating Engineers,
23 DeBruycker, and Weese, filed herewith.

24 **3. The Excellent Settlement Achieved**

25 138. The \$30 million cash settlement was achieved as a result of extensive and creative
26 prosecutorial and investigative efforts, and contentious and complicated motions practice and
27 settlement negotiations, as detailed herein. As a result of this settlement, thousands of Class
28

1 Members will benefit and receive compensation for their losses and avoid the very substantial risk of
2 no recovery in the absence of a settlement.

3 **4. The Risk of Contingent Class Action Litigation**

4 139. This declaration and the motion in support of the proposed settlement and the fee
5 application describe the substantial risks of this Litigation. Those same difficulties also constituted
6 risks that counsel might never be paid for their efforts.

7 140. There are numerous cases where class counsel in contingent fee cases such as this,
8 after expenditures of thousands of hours and significant expenses, have received no compensation
9 whatsoever. Class counsel who litigate cases in good faith and receive no fees whatsoever are often
10 the most diligent members of the plaintiffs' bar. The fact that defendants and their counsel know
11 that the leading members of the plaintiffs' bar are actually able to, and will, go to trial even in high-
12 risk cases gives rise to meaningful settlements in actions such as this. The losses suffered by class
13 counsel in other actions where insubstantial settlement offers are rejected, and class counsel
14 ultimately receives little or no fee, should not be ignored. Lead Counsel knows from personal
15 experience that despite the most vigorous and competent of efforts, attorneys' success in contingent
16 litigation, such as this, is never assured.

17 141. Because the fee to be awarded in this matter is entirely contingent, the only certainty
18 from the outset was that there would be no fee without a successful result, and that such a result
19 would be realized only after a lengthy and difficult effort.

20 142. Lawsuits such as this are exceedingly time consuming and expensive to litigate
21 successfully. Those unfamiliar with the efforts required to litigate class actions often focus on the
22 aggregate fees awarded but ignore the fact that those fees are used to fund enormous overhead
23 expenses incurred during the course of many years of litigation, are taxed by federal, state, and local
24 authorities, used to fund the massive expenses of other contingent cases prosecuted by plaintiffs'
25 counsel and to pay the monthly salaries of the firms' attorneys and staff, and when reduced to a
26 bottom line, are far less imposing to each individual firm involved than the gross fee awarded
27 appears.

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1 143. As discussed in greater detail above, this case was fraught with significant risk factors
2 concerning liability. Plaintiffs' success was by no means assured. Defendants disputed whether
3 Plaintiffs could even establish liability and would no doubt contend, as the case proceeded to expert
4 discovery, that even if liability existed, the amount of damages was substantially lower than
5 Plaintiffs alleged. Were this settlement not achieved, and even if Plaintiffs prevailed at trial,
6 Plaintiffs faced potentially years of costly and risky appellate litigation against Defendants, with
7 ultimate success far from certain. It is also possible that a jury could have found no liability or no
8 damages. Lead Counsel is entitled to 24.5% of the Settlement Fund because of the risk factors
9 involved in this case.

10 **5. The Diligent Prosecution of This Case**

11 144. A 24.5% fee is also warranted in light of the extensive efforts on the part of Lead
12 Counsel, as outlined above, that were required to produce this partial settlement. Lead Counsel and
13 their in-house professionals spent substantial time on the case, *inter alia*, conducting discovery,
14 reviewing and analyzing documents, consulting with experts, drafting five complaints and
15 comprehensive memoranda of law concerning the motions to dismiss and motion for class
16 certification, making court appearances, and engaging in extensive settlement discussions.

17 **6. The Complexity of This Action's Factual and Legal Questions**

18 145. Courts have recognized that the novelty and difficulty of the issues in a case are
19 significant factors to be considered in making a fee award. As demonstrated by the discussion above
20 of the contested issues in the Litigation, this case involved difficult issues of fact and law regarding
21 the Defendants' states of mind, proper financial reporting and GAAP compliance and loss causation.

22 **7. The Contingent Nature of the Case and the Financial Burden 23 Carried by Lead Counsel**

24 146. A determination of a fair fee must include consideration of the contingent nature of
25 the fee, the financial burden carried by Lead Counsel and the difficulties that were overcome in
26 obtaining the settlement.

27 147. Lead Counsel fully assumed the risk of an unsuccessful result. Thus, counsel should
28 be fairly compensated for their efforts. Lead Counsel have received no compensation for their

1 services during the course of this Litigation and have incurred very significant expenses in litigating
2 for the benefit of the Class. Any fee or expense award to Lead Counsel has always been at risk and
3 completely contingent on the result achieved.

4 148. Lead Counsel's efforts were performed on a wholly-contingent basis, in the face
5 of significant risk and determined opposition. Under these circumstances, it necessarily follows
6 that we are entitled to the award of a reasonable percentage fee based on the benefit conferred
7 and the common fund obtained. Under all of the circumstances present here, a 24.5% fee plus
8 \$700,000.00 in expenses is fair and reasonable.

9 **X. CONCLUSION**

10 149. For all of the foregoing reasons, Lead Counsel respectfully request the Court to
11 approve the settlement, the Plan of Allocation of settlement proceeds, and the fee and expense
12 application and award Lead Counsel 24.5% of the Settlement Fund plus \$700,000.00 in expenses,
13 plus the interest earned thereon at the same rate and for the same period as that earned on the
14 Settlement Fund until paid.

15 I declare under penalty of perjury under the law of the United States of America that the
16 foregoing is true and correct. Executed this ___th day of June, 2010, at San Francisco, California.

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18 _____
SHIRLEY H. HUANG
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1 I, KEITH F. PARK, am the ECF User whose ID and password are being used to file this
2 Declaration of Shirley H. Huang in Support of Plaintiffs' Motion for (1) Final Approval of Class
3 Action Settlement; (2) Approval of the Plan of Allocation of Settlement Proceeds; and (3) Lead
4 Counsel's Application for Attorneys' Fees and Expenses and Plaintiffs' Expenses. In compliance
5 with General Order 45, X.B., I hereby attest that Shirley H. Huang concurred in this filing.

6 I certify under penalty of perjury under the laws of the United States of America that the
7 foregoing is true and correct. Executed on June 18, 2010.

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s/ Keith F. Park
KEITH F. PARK

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619/231-7423 (fax)
E-mail: keithp@rgrdlaw.com

1 CERTIFICATE OF SERVICE

2 I hereby certify that on June 18, 2010, I electronically filed the foregoing with the Clerk of
3 the Court using the CM/ECF system which will send notification of such filing to the e-mail
4 addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have
5 mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF
6 participants indicated on the attached Manual Notice List.

7 I further certify that I caused this document to be forwarded to the following Designated
8 Internet Site at: <http://securities.stanford.edu>.

9 I certify under penalty of perjury under the laws of the United States of America that the
10 foregoing is true and correct. Executed on June 18, 2010.

11 s/ Keith F. Park
12 KEITH F. PARK

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