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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

| | | |
|-------------------------------------|---|-----------------------------------|
| 15 In re UTSTARCOM, INC. SECURITIES |) | Master File No. C-04-4908-JW(PVT) |
| 16 LITIGATION |) | |
| _____) | | <u>CLASS ACTION</u> |
| 17 This Document Relates To: |) | STIPULATION OF SETTLEMENT |
| 18 |) | |
| 19 ALL ACTIONS. |) | |
| _____) | | |

1 This Stipulation of Settlement dated as of September 8, 2010 (the "Stipulation"), is made and
2 entered into by and among the following Settling Parties (as defined further in §IV hereof) to the
3 above-entitled Litigation: (i) the Lead Plaintiffs (on behalf of themselves and each of the Class
4 Members), by and through their counsel of record in the Litigation; and (ii) the SoftBank
5 Defendants, by and through their counsel of record in the Litigation. The Stipulation is intended by
6 the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as
7 defined herein), upon and subject to the terms and conditions hereof.

8 **I. THE LITIGATION**

9 On October 26, 2004, an action entitled *Smith v. Sophie, et al.*, CW04-541-EIL, was filed in
10 the United States District Court for the District of Idaho. That action was transferred to the United
11 States District Court for the Northern District of California (the "Court") on April 21, 2005.

12 On and after November 17, 2004, the following actions were filed in the Court as securities
13 class actions on behalf of purchasers of UTStarcom, Inc. ("UTStarcom") publicly traded securities
14 during defined periods of time.

| <i>CASE NAME</i> | <i>CASE NUMBER/ DATE FILED</i> |
|---|------------------------------------|
| <i>Joseph v. UTStarcom, Inc., et al.</i> | C-04-4908-JW November 17, 2004 |
| <i>Schwanz v. UTStarcom, Inc., et al.</i> | C-04-4991-JW November 24, 2004 |
| <i>Lebzetter v. UTStarcom, Inc., et al.</i> | C-04-5136 December 2, 2004 |
| <i>Tiemann v. UTStarcom, Inc., et al.</i> | C-04-5132 December 3, 2004 |

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21 These actions were consolidated under case number C-04-4908-JW(PVT) for all purposes by
22 an order filed March 15, 2005. The consolidated actions are referred to herein collectively as the
23 "Litigation." On March 15, 2005, the Court appointed Locals 302 and 612 of the International
24 Union of Operating Engineers-Employers Construction Industry Retirement Trust and Erwin
25 DeBruycker as Lead Plaintiffs.

26 The operative complaint in the Litigation is the Fourth Amended Consolidated Complaint for
27 Violations of the Federal Securities Laws (the "Complaint"), filed May 14, 2008. The Complaint
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1 alleges violations of §§10(b), 14(a), and 20(a) of the Securities Exchange Act of 1934 (“Exchange
2 Act”) and Rule 10b-5 promulgated thereunder on behalf of a class of purchasers of UTStarcom
3 publicly traded securities. As against the SoftBank Defendants, the Complaint alleges only a claim
4 for a violation of §20(a) of the Exchange Act.

5 **II. DEFENDANTS’ DENIALS OF WRONGDOING AND LIABILITY**

6 The SoftBank Defendants have denied and continue to deny each and all of the claims
7 alleged by the Lead Plaintiffs in the Litigation. The SoftBank Defendants expressly have denied and
8 continue to deny all charges of wrongdoing or liability against them arising out of any of the
9 conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation.
10 The SoftBank Defendants also have denied and continue to deny, *inter alia*, the allegations that the
11 they were control persons of UTStarcom, that the UTStarcom Defendants committed a primary
12 violation of the federal securities laws, that the Lead Plaintiffs or the Class have suffered damage,
13 that the prices of UTStarcom publicly traded securities were artificially inflated by reasons of
14 alleged misrepresentations, non-disclosures or otherwise, or that the Lead Plaintiffs or the Class were
15 harmed by the conduct alleged in the Complaint and the SoftBank Defendants believe that the
16 evidence developed to date supports their positions.

17 Nonetheless, the SoftBank Defendants have concluded that further conduct of the Litigation
18 could be protracted and expensive, and, based upon the cost and disruption of such continued
19 litigation, have determined that it is desirable that the Litigation be fully and finally settled in the
20 manner and upon the terms and conditions set forth in this Stipulation.

21 **III. CLAIMS OF THE LEAD PLAINTIFFS AND BENEFITS OF
22 SETTLEMENT**

23 The Lead Plaintiffs believe that the claims asserted in the Litigation have merit and that the
24 evidence developed to date supports the claims. However, the Lead Plaintiffs and their counsel
25 recognize and acknowledge the expense and length of continued proceedings necessary to prosecute
26 the Litigation against the SoftBank Defendants through trial and through appeals. The Lead
27 Plaintiffs and their counsel also have taken into account the uncertain outcome and the risk of any
28 litigation, especially in complex actions such as the Litigation, as well as the difficulties and delays

1 inherent in such litigation. The Lead Plaintiffs and their counsel also are mindful of the inherent
2 problems of proof under and possible defenses to the securities law violations asserted in the
3 Litigation. The Lead Plaintiffs and their counsel believe that the settlement set forth in the
4 Stipulation confers substantial benefits upon the Class. Based on their evaluation, the Lead Plaintiffs
5 and their counsel have determined that the settlement set forth in the Stipulation is in the best
6 interests of the Lead Plaintiffs and the Class.

7 **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

8 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the
9 Lead Plaintiffs (for themselves and the Class Members) and the SoftBank Defendants, by and
10 through their respective counsel or attorneys of record, that, subject to the approval of the Court, the
11 Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and
12 the Litigation shall be dismissed with prejudice, as to all Settling Parties, upon and subject to the
13 terms and conditions of the Stipulation, as follows.

14 **1. Definitions**

15 As used in the Stipulation the following terms have the meanings specified below:

16 1.1 “Authorized Claimant” means any Class Member whose claim for recovery has been
17 allowed pursuant to the terms of the Stipulation.

18 1.2 “Claims Administrator” means the firm of Gilardi & Co. LLC.

19 1.3 “Class” means all Persons who purchased or otherwise acquired UTStarcom
20 securities between February 21, 2003 and July 23, 2007, inclusive, and who did not sell such
21 acquired securities before October 23, 2003, who were damaged. Excluded from the Class are the
22 Defendants and officers and directors of UTStarcom, SoftBank Corporation, SoftBank America, Inc.
23 or SoftBank Holdings, Inc., as well as their families and affiliates. Also excluded from the Class are
24 those Persons who timely and validly requested exclusion from the Class.

25 1.4 “Class Member” or “Member of the Class” mean a Person who falls within the
26 definition of the Class as set forth in ¶1.3 above.

27 1.5 “Class Period” means the period commencing on February 21, 2003 through and
28 including July 23, 2007.

1 1.6 “Defendants” means the UTStarcom Defendants and the SoftBank Defendants.

2 1.7 “Effective Date,” or the date upon which this settlement becomes “effective,” means
3 three (3) business days after the date by which all of the events and conditions specified in ¶7.1 of
4 the Stipulation have been met and have occurred.

5 1.8 “Escrow Agent” means the law firm of Robbins Geller Rudman & Dowd LLP or its
6 successor(s).

7 1.9 “Final” means when the last of the following with respect to the Judgment approving
8 the Stipulation, substantially in the form of Exhibit B attached hereto, shall occur: (i) the expiration
9 of the time to file a motion to alter or amend the Judgment under Federal Rule of Civil Procedure
10 59(e) without any such motion having been filed; (ii) the time in which to appeal the Judgment has
11 passed without any appeal having been taken; and (iii) if a motion to alter or amend is filed or if an
12 appeal is taken, immediately after the determination of that motion or appeal so that it is no longer
13 subject to any further judicial review or appeal whatsoever, whether by reason of affirmance by a
14 court of last resort, lapse of time, voluntary dismissal of the appeal or otherwise in such a manner as
15 to permit the consummation of the settlement substantially in accordance with the terms and
16 conditions of this Stipulation. For purposes of this paragraph, an “appeal” shall include any petition
17 for a writ of certiorari or other writ that may be filed in connection with approval or disapproval of
18 this settlement, but shall not include any appeal which concerns only the issue of attorneys’ fees and
19 expenses, the Plan of Allocation of the Settlement Fund, as hereinafter defined, or the procedures for
20 determining Authorized Claimants’ recognized claims.

21 1.10 “Individual Defendants” means Hong Liang Lu, Michael J. Sophie, Ying Wu, and
22 Thomas J. Toy.

23 1.11 “Judgment” means the Final Judgment and Order of Dismissal With Prejudice to be
24 rendered by the Court, substantially in the form attached hereto as Exhibit B.

25 1.12 “Lead Counsel” means Robbins Geller Rudman & Dowd LLP.

26 1.13 “Lead Plaintiffs” means Locals 302 and 612 of the International Union of Operating
27 Engineers-Employers Construction Industry Retirement Trust and Erwin DeBruycker.

28 1.14 “Litigation” means the consolidated actions under case number C-04-4908-JW(PVT).

1 1.15 “Net Settlement Fund” means the Settlement Fund less any attorneys’ fees, costs, and
2 expenses, and any awards to Plaintiffs, provided for herein or approved by the Court and less notice
3 and administration costs, Taxes and Tax Expenses, and other Court-approved deductions.

4 1.16 “Person” means an individual, corporation, partnership, limited partnership,
5 association, joint stock company, estate, legal representative, trust, unincorporated association,
6 government or any political subdivision or agency thereof, and any business or legal entity and their
7 spouses, heirs, predecessors, successors, representatives, or assignees.

8 1.17 “Plaintiffs” means the Lead Plaintiffs and Robert Lee Weese.

9 1.18 “Plan of Allocation” means a plan or formula of allocation of the Settlement Fund
10 whereby the Settlement Fund shall be distributed to Authorized Claimants after payment of expenses
11 of notice and administration of the settlement, Taxes and Tax Expenses, and such attorneys’ fees,
12 costs, expenses, and interest, as well as Plaintiffs’ expenses, if any, as may be awarded by the Court.
13 Any Plan of Allocation is not part of the Stipulation and neither the SoftBank Defendants nor their
14 Related Parties shall have any responsibility or liability with respect thereto.

15 1.19 “Related Parties” means each of a SoftBank Defendant’s past or present directors,
16 officers, employees, partners, insurers, co-insurers, reinsurers, controlling shareholders, attorneys,
17 accountants or auditors, personal or legal representatives, predecessors, successors, parents,
18 subsidiaries, divisions, joint ventures, assigns, spouses, heirs, related or affiliated entities, and any
19 entity in which a SofBank Defendant has a controlling interest.

20 1.20 “Released Claims” shall collectively mean any and all claims arising from the
21 purchase or acquisition of any UTStarcom securities during the Class Period and the acts, facts,
22 statements or omissions that were or could have been alleged in the Litigation. “Released Claims”
23 includes “Unknown Claims” as defined in ¶1.26 hereof.

24 1.21 “Released Persons” means each and all of the SoftBank Defendants and their Related
25 Parties.

26 1.22 “Settlement Amount” means Two Million Nine Hundred Thousand Dollars
27 (\$2,900,000) to be paid by wire transfer to the Escrow Agent pursuant to ¶2.1 of this Stipulation.

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1 1.23 “Settlement Fund” means the Settlement Amount plus all interest and accretions
2 thereto and which may be reduced by payments on deductions as provided herein or by Court order.

3 1.24 “Settling Parties” means, collectively, the SoftBank Defendants and the Plaintiffs on
4 behalf of themselves and the Members of the Class.

5 1.25 “SoftBank Defendants” means SoftBank Corporation, SoftBank America, Inc., and
6 SoftBank Holdings, Inc.

7 1.26 “Unknown Claims” means any Released Claims which any Plaintiff or Class Member
8 does not know or suspect to exist in his, her or its favor at the time of the release of the Released
9 Persons which, if known by him, her or it, might have affected his, her or its settlement with and
10 release of the Released Persons, or might have affected his, her or its decision not to object to this
11 settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that,
12 upon the Effective Date, the Plaintiffs shall expressly and each of the Class Members shall be
13 deemed to have, and by operation of the Judgment shall have, expressly waived the provisions,
14 rights, and benefits of California Civil Code §1542, which provides:

15 **A general release does not extend to claims which the creditor does not**
16 **know or suspect to exist in his or her favor at the time of executing the release,**
17 **which if known by him or her must have materially affected his or her**
18 **settlement with the debtor.**

19 The Plaintiffs shall expressly and each of the Class Members shall be deemed to have, and by
20 operation of the Judgment shall have, expressly waived any and all provisions, rights, and benefits
21 conferred by any law of any state or territory of the United States, or principle of common law,
22 which is similar, comparable or equivalent to California Civil Code §1542. The Plaintiffs and Class
23 Members may hereafter discover facts in addition to or different from those which he, she or it now
24 knows or believes to be true with respect to the subject matter of the Released Claims, but each
25 Plaintiff shall expressly and each Class Member, upon the Effective Date, shall be deemed to have,
26 and by operation of the Judgment shall have, fully, finally, and forever settled and released any and
27 all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent,
28 whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of
law or equity now existing or coming into existence in the future, including, but not limited to,

1 conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule,
2 without regard to the subsequent discovery or existence of such different or additional facts. The
3 Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the Judgment to
4 have acknowledged, that the foregoing waiver was separately bargained for and a key element of the
5 settlement of which this release is a part.

6 1.27 "UTStarcom" means UTStarcom, Inc.

7 1.28 "UTStarcom Defendants" means UTStarcom, Inc. and the Individual Defendants.

8 **2. The Settlement**

9 **a. The Settlement Fund**

10 2.1 The SoftBank Defendants shall transfer or cause to be transferred the Settlement
11 Amount to the Escrow Agent within 30 calendar days after preliminary approval of the settlement by
12 the Court, provided that if Lead Counsel have not provided the necessary payment information
13 before the Court grants preliminary approval, the 30 days shall not begin to run until Lead Counsel
14 provides the necessary payment information. If the entire Settlement Amount is not timely
15 transferred to the Escrow Agent, Lead Counsel may terminate the settlement by providing written
16 notice to counsel for the SoftBank Defendants. The SoftBank Defendants shall have no
17 responsibility or liability whatsoever under the terms of this settlement other than to pay the
18 Settlement Amount.

19 **b. The Escrow Agent**

20 2.2 The Escrow Agent shall invest the Settlement Amount deposited pursuant to ¶2.1
21 hereof in short term United States Agency or Treasury Securities or other instruments backed by the
22 Full Faith & Credit of the United States Government or an Agency thereof, or fully insured by the
23 United States Government or an Agency thereof, and shall reinvest the proceeds of these instruments
24 as they mature in similar instruments at their then-current market rates. All risks related to the
25 investment of the Settlement Fund shall be borne by the Settlement Fund.

26 2.3 The Escrow Agent shall not disburse the Settlement Fund except as provided in the
27 Stipulation, by an order of the Court, or with the written agreement of counsel for SoftBank
28 Defendants.

1 2.4 Subject to further order(s) and/or directions as may be made by the Court, or as
2 provided in the Stipulation, the Escrow Agent is authorized to execute such transactions as are
3 consistent with the terms of the Stipulation.

4 2.5 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia*
5 *legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such
6 funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

7 2.6 Without further order of the Court, the Settlement Fund may be used by Lead Counsel
8 to pay reasonable costs and expenses, up to a limit of \$300,000.00, actually incurred in connection
9 with providing notice to the Class, locating Class Members, soliciting claims, assisting with the
10 filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants,
11 processing Proof of Claim and Release forms, and paying escrow fees and costs, if any.

12 **c. Taxes**

13 2.7 (a) The Settling Parties and the Escrow Agent agree to treat the Settlement Fund
14 as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. In
15 addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out
16 the provisions of this ¶2.7, including the “relation-back election” (as defined in Treas. Reg. §1.468B-
17 1) back to the earliest permitted date. Such elections shall be made in compliance with the
18 procedures and requirements contained in such regulations. It shall be the responsibility of the
19 Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature
20 by all necessary parties, and thereafter to cause the appropriate filing to occur.

21 (b) For the purpose of §1.468B of the Internal Revenue Code of 1986, as
22 amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow
23 Agent. The Escrow Agent shall timely and properly file all informational and other tax returns
24 necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns
25 described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the election described in ¶2.7(a)
26 hereof) shall be consistent with this ¶2.7 and in all events shall reflect that all Taxes (including any
27 estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out
28 of the Settlement Fund as provided in ¶2.7(c) hereof.

1 (c) All (a) Taxes (including any estimated Taxes, interest or penalties) arising
2 with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that
3 may be imposed upon the SoftBank Defendants or their counsel with respect to any income earned
4 by the Settlement Fund for any period during which the Settlement Fund does not qualify as a
5 “qualified settlement fund” for federal or state income tax purposes (“Taxes”), and (b) expenses and
6 costs incurred in connection with the operation and implementation of this ¶2.7 (including, without
7 limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and
8 expenses relating to filing (or failing to file) the returns described in this ¶2.7) (“Tax Expenses”),
9 shall be paid out of the Settlement Fund; in all events the SoftBank Defendants and their counsel
10 shall have no liability or responsibility for the Taxes or the Tax Expenses. The Settlement Fund
11 shall indemnify and hold each of the SoftBank Defendants and their counsel harmless for Taxes and
12 Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification).
13 Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of
14 the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund
15 without prior order from the Court and the Escrow Agent shall be authorized (notwithstanding
16 anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds
17 necessary to pay such amounts including the establishment of adequate reserves for any Taxes and
18 Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg.
19 §1.468B-2(1)(2)); neither the Defendants nor their counsel are responsible nor shall they have any
20 liability therefor. The parties hereto agree to cooperate with the Escrow Agent, each other, and their
21 tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this
22 ¶2.7.

23 (d) For the purpose of this ¶2.7, references to the Settlement Fund shall include
24 both the Settlement Fund and any earnings thereon.

25 **d. Termination of Settlement**

26 2.8 In the event that the Stipulation is not approved or the Stipulation is terminated,
27 canceled, or fails to become effective for any reason, the Settlement Fund (including accrued
28 interest), less expenses paid, incurred or due and owing in connection with the settlement provided

1 for herein, shall be refunded pursuant to written instructions from counsel to the SoftBank
2 Defendants (in accordance with ¶7.3 herein).

3 **3. Preliminary Approval Order and Settlement Hearing**

4 3.1 Promptly after execution of the Stipulation, the Settling Parties shall submit the
5 Stipulation together with its Exhibits to the Court and shall apply for entry of an order (the
6 “Preliminary Approval Order”), substantially in the form of Exhibit A attached hereto, requesting,
7 *inter alia*, the preliminary approval of the settlement set forth in the Stipulation, and approval for the
8 mailing of a settlement notice (the “Notice”) and publication of a summary notice, substantially in
9 the forms of Exhibits A-1 and A-3 attached hereto. The Notice shall include the general terms of the
10 settlement set forth in the Stipulation, the proposed Plan of Allocation, the general terms of the Fee
11 and Expense Application, as defined in ¶6.1 hereof, and the date of the Settlement Hearing as
12 defined below.

13 3.2 Lead Counsel shall request that after notice is given, the Court hold a hearing (the
14 “Settlement Hearing”) and approve the settlement of the Litigation as set forth herein. At or after the
15 Settlement Hearing, Lead Counsel also will request that the Court approve the proposed Plan of
16 Allocation and the Fee and Expense Application and the Plaintiffs’ request for reimbursement of
17 expenses, if any.

18 **4. Releases**

19 4.1 Upon the Effective Date, as defined in ¶1.7 hereof, the Plaintiffs shall, and each of the
20 Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally,
21 and forever released, relinquished, and discharged all Released Claims against the Released Persons,
22 whether or not such Class Member executes and delivers the Proof of Claim and Release or shares in
23 the Settlement Fund.

24 4.2 Any Proof of Claim and Release executed by a Class Member shall release all
25 Released Claims against the Released Persons and shall be substantially in the form contained in
26 Exhibit A-2 attached hereto.

27 4.3 Upon the Effective Date, all Class Members and anyone claiming through or on
28 behalf of any of them, will be forever barred and enjoined from commencing, instituting, prosecuting

1 or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration
2 tribunal, or administrative forum, asserting the Released Claims against any of the Released Persons.

3 4.4 Upon the Effective Date, as defined in ¶1.7 hereof, each of the Released Persons shall
4 be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released,
5 relinquished, and discharged each and all of the Plaintiffs, Class Members, and Lead Counsel from
6 all claims (including Unknown Claims) arising out of, relating to, or in connection with the
7 institution, prosecution, assertion, settlement or resolution of the Litigation or the Released Claims.
8 Notwithstanding the foregoing, neither this Stipulation nor the Judgment shall be deemed a waiver or
9 release of, and shall not preclude the Released Persons from asserting, any claims not barred by ¶4.5
10 herein, and otherwise permitted by any applicable federal or state statute or common law, against
11 any person or entity, including claims against the UTStarcom Defendants, their present or former
12 officers, directors, partners and employees, either in the form of a cross-claim, counterclaim, third-
13 party complaint, or other form, filed in the Litigation or by a separately-filed action; provided,
14 however, that the finality of the settlement shall not be conditioned on any ruling by the Court on
15 any claims asserted by the Released Persons against the UTStarcom Defendants.

16 4.5 To the extent permitted by applicable laws, including Section 21D(f)(7)(A) of the
17 Securities Exchange Act of 1934, codified at 15 U.S.C. §78u-4(f)(7)(A), all Persons shall be
18 enjoined and barred from commencing or continuing any action against the SoftBank Defendants,
19 seeking, as damages, indemnity, contribution, or otherwise, the recovery of all or part of any liability
20 or settlement which such persons (i) paid, (ii) were obligated to pay or agreed to pay, or (iii) may
21 become obligated to pay to the Class, as a result of such persons' liability for or participation in any
22 acts, facts, statements or omissions that were or could have been alleged in the Litigation. Any
23 Person whose claims are so barred shall be entitled to appropriate judgment credits or reductions.
24 Furthermore, notwithstanding the foregoing, nothing in this Stipulation shall apply to, bar or
25 otherwise affect any claim for insurance coverage by any SoftBank Defendant.

26 4.6 The SoftBank Defendants agree that they will, so long as the UTStarcom Defendants
27 provide a release with the same scope, provide a full and complete release of all claims against the
28 UTStarcom Defendants and any of its/their partners, principals, officers or directors, to the extent

1 they arise out of the claims in the Complaint, including, but not limited to, claims for contribution,
2 indemnity, malpractice, negligence or otherwise arising under federal or state laws.

3 **5. Administration and Calculation of Claims, Final Awards, and**
4 **Supervision and Distribution of the Settlement Fund**

5 5.1 The Claims Administrator, subject to such supervision and direction of the Court as
6 may be necessary or as circumstances may require, shall administer and calculate the claims
7 submitted by Class Members and shall oversee distribution of the Net Settlement Fund to Authorized
8 Claimants.

9 5.2 The Settlement Fund shall be applied as follows:

10 (a) to pay all the costs and expenses reasonably and actually incurred in
11 connection with providing notice, locating Class Members, soliciting Class claims, assisting with the
12 filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants,
13 processing Proof of Claim and Release forms, and paying escrow fees and costs, if any;

14 (b) to pay the Taxes and Tax Expenses described in ¶2.7 hereof;

15 (c) after entry of the Judgment, to pay counsel to the plaintiffs attorneys' fees and
16 expenses (the "Fee and Expense Award"), and to reimburse the Plaintiffs for their expenses, if and to
17 the extent allowed by the Court; and

18 (d) after the Effective Date, to distribute the balance of the Settlement Fund (the
19 "Net Settlement Fund") to Authorized Claimants as allowed by the Stipulation, the Plan of
20 Allocation, or the Court.

21 5.3 After the Effective Date, and in accordance with the terms of the Stipulation, the Plan
22 of Allocation, or such further approval and further order(s) of the Court as may be necessary or as
23 circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants,
24 subject to and in accordance with the following sub-sections 5.4-5.9.

25 5.4 Within ninety (90) days after the mailing of the Notice or such other time as may be
26 set by the Court, each Person claiming to be an Authorized Claimant, and who has not already done
27 so in connection with the settlement with the UTStarcom Defendants, shall be required to submit to
28 the Claims Administrator a completed Proof of Claim and Release, substantially in the form of

1 Exhibit A-2 attached hereto, signed under penalty of perjury and supported by such documents as are
2 specified in the Proof of Claim and Release.

3 5.5 Except as otherwise ordered by the Court, all Class Members who fail to timely
4 submit a valid Proof of Claim and Release, if they have not already done so, within such period, or
5 such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from
6 receiving any payments pursuant to the Stipulation and the settlement set forth herein, but will in all
7 other respects be subject to and bound by the provisions of the Stipulation, the releases contained
8 herein, and the Judgment. Notwithstanding the foregoing, Lead Counsel shall have the discretion to
9 accept late-submitted claims for processing by the Claims Administrator so long as the distribution
10 of the Settlement Fund is not materially delayed thereby.

11 5.6 The Net Settlement Fund shall be distributed to the Authorized Claimants
12 substantially in accordance with the Plan of Allocation set forth in the Notice and approved by the
13 Court. If there is any balance remaining in the Net Settlement Fund after six (6) months from the
14 initial date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed
15 checks or otherwise), Lead Counsel shall, if feasible, reallocate such balance among Authorized
16 Claimants in an equitable and economic fashion; provided, however, that no Authorized Claimant
17 shall, considering this settlement and the prior partial settlement with the UTStarcom Defendants, be
18 entitled to any payment in excess of its actual loss. Thereafter, any balance which still remains in
19 the Net Settlement Fund shall be donated, without attribution to any firm or party, to an appropriate
20 non-profit organization to be mutually agreed by Lead Counsel and counsel for the SoftBank
21 Defendants and approved by the Court.

22 5.7 The SoftBank Defendants and their Related Parties shall have no responsibility for,
23 interest in, or liability whatsoever with respect to the distribution of the Net Settlement Fund, the
24 Plan of Allocation, the determination, administration, or calculation of claims, the payment or
25 withholding of Taxes, or any losses incurred in connection therewith. No person shall have any
26 claim of any kind against the SoftBank Defendants or their Related Parties with respect to the
27 matters set forth in ¶5 hereof; and the Class Members, the Plaintiffs, and Lead Counsel release the
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1 SoftBank Defendants and their Related Parties from any and all liability and claims arising from or
2 with respect to the investment or distribution of the Settlement Fund.

3 5.8 No Person shall have any claim against the Plaintiffs, Lead Counsel or the Claims
4 Administrator, or any other Person designated by Lead Counsel based on the distributions made
5 substantially in accordance with the Stipulation and the settlement contained herein, the Plan of
6 Allocation, or further order(s) of the Court.

7 5.9 It is understood and agreed by the Settling Parties that any proposed Plan of
8 Allocation of the Net Settlement Fund including, but not limited to, any adjustments to an
9 Authorized Claimant's claim set forth therein, is not a part of the Stipulation and is to be considered
10 by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy
11 of the settlement set forth in the Stipulation, and any order or proceeding relating to the Plan of
12 Allocation shall not operate to terminate or cancel the Stipulation or affect the finality of the Court's
13 Judgment approving the Stipulation and the settlement set forth therein, or any other orders entered
14 pursuant to the Stipulation.

15 **6. Lead Plaintiffs' Counsel's Attorneys' Fees and Expenses**

16 6.1 Lead Counsel may submit an application or applications (the "Fee and Expense
17 Application") for distributions to Lead Counsel from the Settlement Fund for: (a) an award of
18 attorneys' fees; plus (b) expenses incurred in connection with prosecuting the Litigation, plus any
19 interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by
20 the Settlement Fund (until paid) as may be awarded by the Court. Lead Counsel reserve the right to
21 make additional applications for fees and expenses incurred.

22 6.2 The fees and expenses, as awarded by the Court, shall be paid to Lead Counsel, as
23 ordered, immediately after the Court executes an order awarding such fees and expenses and enters
24 the Judgment. Lead Counsel may thereafter allocate the attorneys' fees among other plaintiffs'
25 counsel in a manner in which they in good faith believe reflects the contributions of such counsel to
26 the initiation, prosecution, and resolution of the Litigation.

27 6.3 In the event that the Effective Date does not occur, or the Judgment or the order
28 making the Fee and Expense Award is reversed or modified, or the Stipulation is canceled or

1 terminated for any other reason, and in the event that the Fee and Expense Award has been paid to
2 any extent, then such of plaintiffs' counsel who have received any portion of the Fee and Expense
3 Award shall within five (5) business days from receiving notice from the SoftBank Defendants'
4 counsel or from a court of appropriate jurisdiction, refund to the Settlement Fund such fees and
5 expenses previously paid to them from the Settlement Fund plus interest thereon at the same rate as
6 earned on the Settlement Fund in an amount consistent with such reversal or modification. Each
7 such plaintiffs' counsel's law firm receiving fees and expenses, as a condition of receiving such fees
8 and expenses, on behalf of itself and each partner and/or shareholder of it, agrees that the law firm
9 and its partners and/or shareholders are subject to the jurisdiction of the Court for the purpose of
10 enforcing the provisions of this paragraph. Without limitation, plaintiffs' counsel agree that the
11 Court may, upon application of SoftBank Defendants and notice to Lead Counsel, summarily issue
12 orders including, but not limited to, judgments and attachment orders, and may make appropriate
13 findings of or sanctions for contempt, should such law firm fail timely to repay fees and expenses
14 pursuant to this ¶6.3.

15 6.4 The procedure for and the allowance or disallowance by the Court of any applications
16 by any plaintiffs' counsel for attorneys' fees and expenses, or the expenses of the Plaintiffs, to be
17 paid out of the Settlement Fund, are not part of the settlement set forth in the Stipulation, and are to
18 be considered by the Court separately from the Court's consideration of the fairness, reasonableness,
19 and adequacy of the settlement set forth in the Stipulation, and any order or proceeding relating to
20 the Fee and Expense Application, or the Plaintiffs' expense application, or any appeal from any
21 order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the
22 Stipulation, or affect or delay the finality of the Judgment approving the Stipulation and the
23 settlement of the Litigation set forth therein.

24 6.5 The SoftBank Defendants and their Related Parties shall have no responsibility for
25 any payment of attorneys' fees and expenses to plaintiffs' counsel, which shall be limited to payment
26 out of the Settlement Fund in such amounts as the Court may order.

27 6.6 The SoftBank Defendants and their Related Parties shall have no responsibility for
28 the allocation among plaintiffs' counsel, and/or any other Person who may assert some claim thereto,

1 of any Fee and Expense Award that the Court may make in the Litigation, and the SoftBank
2 Defendants and their Related Parties take no position with respect to such matters.

3 **7. Conditions of Settlement, Effect of Disapproval, Cancellation or**
4 **Termination**

5 7.1 The Effective Date of the Stipulation shall be conditioned on the occurrence of all of
6 the following events:

7 (a) the SoftBank Defendants have timely paid or caused to be paid the Settlement
8 Amount, as required by ¶2.1 hereof;

9 (b) the Court has entered the Preliminary Approval Order, as required by ¶3.1
10 hereof;

11 (c) the Court has entered the Judgment, or a judgment substantially in the form of
12 Exhibit B attached hereto; and

13 (d) the Judgment has become Final, as defined in ¶1.9 hereof.

14 7.2 Upon the occurrence of all of the events referenced in ¶7.1 hereof, any and all
15 remaining interest or right of the SoftBank Defendants in or to the Settlement Amount, if any, shall
16 be absolutely and forever extinguished. If it becomes clear that all of the conditions specified in ¶7.1
17 hereof cannot or will not be met, then the Stipulation shall be canceled and terminated subject to
18 ¶7.3 hereof unless Lead Counsel and counsel for the SoftBank Defendants mutually agree in writing
19 to proceed with the Stipulation.

20 7.3 Unless otherwise ordered by the Court, in the event the Stipulation shall terminate, or
21 be canceled, or shall not become effective for any reason, within five (5) business days after written
22 notification of such event is sent by counsel for the SoftBank Defendants or Lead Counsel to the
23 Escrow Agent, the Settlement Fund (including accrued interest), less expenses which have either
24 been disbursed pursuant to ¶¶2.6 and 2.7 hereof, or are determined to be chargeable to the Settlement
25 Fund, shall be refunded by the Escrow Agent pursuant to written instructions from the SoftBank
26 Defendants' counsel. At the request of counsel for the SoftBank Defendants, the Escrow Agent or
27 its designee shall apply for any tax refund owed on the Settlement Fund and pay the proceeds, after
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1 deduction of any fees or expenses incurred in connection with such application(s) for refund, at the
2 written direction of counsel to the SoftBank Defendants.

3 7.4 In the event that the Stipulation is not approved by the Court or the settlement set
4 forth in the Stipulation is terminated or fails to become effective in accordance with its terms, the
5 Settling Parties shall be restored to their respective positions in the Litigation as of September 7,
6 2010. In such event, the terms and provisions of the Stipulation, with the exception of ¶¶1.1-1.28,
7 2.6, 2.7, 6.2-6.3, 7.3-7.5, and 8.3 hereof, shall have no further force and effect with respect to the
8 Settling Parties and shall not be used in this Litigation or in any other proceeding for any purpose,
9 and any judgment or order entered by the Court in accordance with the terms of the Stipulation shall
10 be treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of
11 any order of the Court concerning the Plan of Allocation or the amount of any attorneys' fees, costs,
12 expenses, and interest awarded by the Court to any of plaintiffs' counsel or expenses to the Plaintiffs
13 shall constitute grounds for cancellation or termination of the Stipulation.

14 7.5 If the Effective Date does not occur, or if the Stipulation is terminated pursuant to its
15 terms, neither the Plaintiffs nor any of their counsel shall have any obligation to repay any amounts
16 actually and properly disbursed pursuant to ¶2.6. In addition, any expenses already incurred
17 pursuant to ¶2.6 hereof at the time of such termination or cancellation but which have not been paid,
18 shall be paid by the Escrow Agent in accordance with the terms of the Stipulation prior to the
19 balance being refunded in accordance with ¶¶2.8 and 7.3 hereof.

20 **8. Miscellaneous Provisions**

21 8.1 The Settling Parties: (a) acknowledge that it is their intent to consummate this
22 agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement
23 all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the
24 foregoing terms and conditions of the Stipulation.

25 8.2 The Settling Parties intend this settlement to be a final and complete resolution of all
26 disputes between them with respect to the Litigation. The settlement compromises claims which are
27 contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or
28 defense. The Final Judgment will contain a finding that, during the course of the Litigation, the

1 parties and their respective counsel at all times complied with the requirements of Federal Rule of
2 Civil Procedure 11. The Settling Parties agree that the Settlement Amount and the other terms of the
3 settlement were negotiated in good faith by the Settling Parties, and reflect a settlement that was
4 reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve
5 their right to rebut, in a manner that such party determines to be appropriate, any contention made in
6 any public forum that the Litigation was brought or defended in bad faith or without a reasonable
7 basis.

8 8.3 Neither the Stipulation nor the settlement contained therein, nor any act performed or
9 document executed pursuant to or in furtherance of the Stipulation or the settlement: (a) is or may be
10 deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim,
11 or of any wrongdoing or liability of the SoftBank Defendants; or (b) is or may be deemed to be or
12 may be used as an admission of, or evidence of, any fault or omission of any of the SoftBank
13 Defendants in any civil, criminal or administrative proceeding in any court, administrative agency or
14 other tribunal. The SoftBank Defendants may file the Stipulation and/or the Judgment in any action
15 that may be brought against them in order to support a defense or counterclaim based on principles
16 of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any
17 other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

18 8.4 All agreements made and orders entered during the course of the Litigation relating to
19 the confidentiality of information shall survive this Stipulation.

20 8.5 All of the Exhibits to the Stipulation are material and integral parts hereof and are
21 fully incorporated herein by this reference.

22 8.6 The Stipulation may be amended or modified only by a written instrument signed by
23 or on behalf of all Settling Parties or their respective successors-in-interest.

24 8.7 The Stipulation and the Exhibits attached hereto constitute the entire agreement
25 among the parties hereto and no representations, warranties or inducements have been made to any
26 party concerning the Stipulation or its Exhibits other than the representations, warranties, and
27 covenants contained and memorialized in such documents. Except as otherwise provided herein,
28 each party shall bear its own costs.

1 8.8 Lead Counsel, on behalf of the Class, is expressly authorized by the Lead Plaintiffs to
2 take all appropriate action required or permitted to be taken by the Class pursuant to the Stipulation
3 to effectuate its terms and also are expressly authorized to enter into any modifications or
4 amendments to the Stipulation on behalf of the Class which they deem appropriate.

5 8.9 Each counsel or other Person executing the Stipulation or any of its Exhibits on
6 behalf of any party hereto hereby warrants that such Person has the full authority to do so.

7 8.10 The Stipulation may be executed in one or more counterparts. All executed
8 counterparts and each of them shall be deemed to be one and the same instrument. A complete set of
9 executed counterparts shall be filed with the Court.

10 8.11 The Stipulation shall be binding upon, and inure to the benefit of, the successors and
11 assigns of the parties hereto.

12 8.12 The Court shall retain jurisdiction with respect to implementation and enforcement of
13 the terms of the Stipulation, and all parties hereto submit to the jurisdiction of the Court for purposes
14 of implementing and enforcing the settlement embodied in the Stipulation.

15 8.13 This Stipulation and the Exhibits hereto shall be considered to have been negotiated,
16 executed and delivered, and to be wholly performed, in the State of California, and the rights and
17 obligations of the parties to the Stipulation shall be construed and enforced in accordance with, and
18 governed by, the internal, substantive laws of the State of California without giving effect to that
19 State's choice-of-law principles.

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1 IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed, by
2 their duly authorized attorneys, dated as of September 8, 2010.

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INC. and SOFTBANK CORPORATION

1 I, KEITH F. PARK, am the ECF User whose ID and password are being used to file this
2 Stipulation of Settlement. In compliance with General Order 45, X.B., I hereby attest that Robert A.
3 Sacks has concurred in this filing.

4 I certify under penalty of perjury under the laws of the United States of America that the
5 foregoing is true and correct. Executed on October 8, 2010.

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s/ Keith F. Park

Keith F. Park

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on October 8, 2010, I authorized the electronic filing of the foregoing
3 with the Clerk of the Court using the CM/ECF system which will send notification of such filing to
4 the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I
5 caused to be mailed the foregoing document or paper via the United States Postal Service to the non-
6 CM/ECF 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 October 8, 2010.

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

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

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