

1 TERRY T. JOHNSON, State Bar No. 121569 (tjohnson@wsgr.com)  
 2 BORIS FELDMAN, State Bar No. 128838 (boris.feldman@wsgr.com)  
 3 BAHRAM SEYEDIN-NOOR, State Bar No. 203244 (bnoor@wsgr.com)  
 4 WILSON SONSINI GOODRICH & ROSATI  
 5 650 Page Mill Road  
 6 Palo Alto, CA 94304-1050  
 7 Telephone: (650) 493-9300  
 8 Facsimile: (650) 565-5100

Attorneys for Defendants

9 COUGHLIN STOIA GELLER  
 10 RUDMAN & ROBBINS LLP  
 11 CHRISTOPHER P. SEEFER, State Bar No. 201197 (cseefer@csgrr.com)  
 12 SHIRLEY H. HUANG, State Bar No. 206854 (shuang@csgrr.com)  
 13 100 Pine Street, Suite 2600  
 14 San Francisco, CA 94111  
 15 Telephone: (415) 288-4545  
 16 Facsimile: (415) 288-4534

Attorneys for Lead Plaintiffs

[Additional counsel and parties listed on signature page]

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

17 IN RE UTSTARCOM, INC. ) Master File No. C-04-4908-JW(PVT)  
 18 SECURITIES LITIGATION )  
 19 ) ~~PROPOSED~~ STIPULATED  
 20 ) PROTECTIVE ORDER

21 This Document Relates to: )  
 22 ALL ACTIONS. )  
 23 )  
 24 )  
 25 )

1 **PROTECTIVE ORDER**

2 1. PURPOSES AND LIMITATIONS

3 Disclosure and discovery activity in this action are likely to involve production of  
4 confidential, proprietary, or private information for which special protection from public  
5 disclosure and from use for any purpose other than this litigation would be warranted.  
6 Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated  
7 Protective Order. The Parties acknowledge that this Order does not confer blanket protections on  
8 all disclosures or responses to discovery and that the protection it affords extends only to the  
9 limited information or items that are entitled under the applicable legal principles to treatment as  
10 confidential. The parties further acknowledge, as set forth in Section 10, below, that this  
11 Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil  
12 Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will  
13 be applied when a party seeks permission from the court to file material under seal.

14 2. DEFINITIONS

15 2.1 Party: any party to this action, including all of its officers, directors,  
16 employees, consultants, retained experts, and outside counsel (and their support staff).

17 2.2 Disclosure or Discovery Material: all items or information, regardless of the  
18 medium or manner generated, stored, or maintained (including, among other things, testimony,  
19 transcripts, or tangible things) that are produced or generated in disclosures or responses to  
20 discovery in this matter.

21 2.3 “Confidential” Information or Items: information (regardless of how  
22 generated, stored or maintained) or tangible things that qualify for protection under standards  
23 developed under Fed.R.Civ.P. 26(c).

24 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:  
25 extremely sensitive “Confidential” Information or Items whose disclosure to another Party or non-  
26 party would create a substantial risk of serious injury that could not be avoided by less restrictive  
27 means.  
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1                   2.5     Receiving Party: a Party that receives Disclosure or Discovery Material  
2 from a Producing Party.

3                   2.6     Producing Party: a Party or non-party that produces Disclosure or  
4 Discovery Material in this action.

5                   2.7     Designating Party: a Party or non-party that designates information or items  
6 that it produces in disclosures or in responses to discovery as “Confidential” or “Highly  
7 Confidential – Attorneys’ Eyes Only.”

8                   2.8     Protected Material: any Disclosure or Discovery Material that is designated  
9 as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

10                  2.9     Outside Counsel: attorneys who are not employees of a Party but who are  
11 retained to represent or advise a Party in this action.

12                  2.10    House Counsel: attorneys who are employees of a Party.

13                  2.11    Counsel (without qualifier): Outside Counsel and House Counsel (as well as  
14 their support staffs).

15                  2.12    Expert: a person with specialized knowledge or experience in a matter  
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
17 witness or as a consultant in this action and who is not a past or a current employee of a Party or  
18 of a competitor of a Party’s and who, at the time of retention, is not anticipated to become an  
19 employee of a Party or a competitor of a Party’s. This definition includes a professional jury or  
20 trial consultant retained in connection with this litigation.

21                  2.13    Professional Vendors: persons or entities that provide litigation support  
22 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
23 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
24 subcontractors.

25                  3.     SCOPE

26                  The protections conferred by this Stipulation and Order cover not only Protected Material  
27 (as defined above), but also any information copied or extracted there from, as well as all copies,  
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1 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by  
2 parties or counsel to or in court or in other settings that might reveal Protected Material.

3 4. DURATION

4 Even after the termination of this litigation, the confidentiality obligations imposed by this  
5 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
6 otherwise directs.

7 5. DESIGNATING PROTECTED MATERIAL

8 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
9 Party or non-party that designates information or items for protection under this Order must take  
10 care to limit any such designation to specific material that qualifies under the appropriate  
11 standards. A Designating Party must take care to designate for protection only those parts of  
12 material, documents, items, or oral or written communications that qualify – so that other portions  
13 of the material, documents, items, or communications for which protection is not warranted are  
14 not swept unjustifiably within the ambit of this Order.

15 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
16 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to  
17 unnecessarily encumber or retard the case development process, or to impose unnecessary  
18 expenses and burdens on other parties), expose the Designating Party to sanctions.

19 If it comes to a Party's or a non-party's attention that information or items that it  
20 designated for protection do not qualify for protection at all, or do not qualify for the level of  
21 protection initially asserted, that Party or non-party must promptly notify all other parties that it is  
22 withdrawing the mistaken designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
24 Order (see, e.g., second paragraph of Section 5.2(a), below), or as otherwise stipulated or ordered,  
25 material that qualifies for protection under this Order must be clearly so designated before the  
26 material is disclosed or produced.

27 Designation in conformity with this Order requires:  
28

1 (a) for information in documentary form (apart from transcripts of  
2 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend  
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” on each  
4 page that contains protected material. If only a portion or portions of the material on a page  
5 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)  
6 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level  
7 of protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
8 ATTORNEYS’ EYES ONLY”).

9 A Party or non-party that makes original documents or materials  
10 available for inspection need not designate them for protection until after the inspecting Party has  
11 indicated which material it would like copied and produced. During the inspection and before the  
12 designation, all of the material made available for inspection shall be deemed “HIGHLY  
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the  
14 documents it wants copied and produced, the Producing Party must determine which documents,  
15 or portions thereof, qualify for protection under this Order, then, before producing the specified  
16 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or  
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) on each page that contains  
18 Protected Material. If only a portion or portions of the material on a page qualifies for protection,  
19 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
20 markings in the margins) and must specify, for each portion, the level of protection being asserted  
21 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

22 (b) for testimony given in deposition or in other pretrial or trial  
23 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the  
24 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,  
25 and further specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL –  
26 ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of  
27 testimony that is entitled to protection, and when it appears that substantial portions of the  
28 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the

1 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to  
2 have up to 20 days to identify the specific portions of the testimony as to which protection is  
3 sought and to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY  
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that  
5 are appropriately designated for protection within the 20  
6 days shall be covered by the provisions of this Stipulated Protective Order.

7 Transcript pages containing Protected Material must be separately bound by  
8 the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or  
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-  
10 party offering or sponsoring the witness or presenting the testimony.

11 (c) for information produced in some form other than documentary, and  
12 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of  
13 the container or containers in which the information or item is stored the legend  
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only  
15 portions of the information or item warrant protection, the Producing Party, to the extent  
16 practicable, shall identify the protected portions, specifying whether they qualify as  
17 “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
19 to designate qualified information or items as “CONFIDENTIAL” or “HIGHLY  
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” does not, standing alone, waive the  
21 Designating Party’s right to secure protection under this Order for such material. If material is  
22 appropriately designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
23 ATTORNEYS’ EYES ONLY” after the material was initially produced, the Receiving Party, on  
24 timely notification of the designation, must make reasonable efforts to assure that the material is  
25 treated in accordance with the provisions of this Order.

## 26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s  
28 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary

1 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
2 waive its right to challenge a confidentiality designation by electing not to mount a challenge  
3 promptly after the original designation is disclosed.

4           6.2     Meet and Confer. A Party that elects to initiate a challenge to a Designating  
5 Party's confidentiality designation must do so in good faith and must begin the process by  
6 conferring directly (in voice-to-voice dialogue; other forms of communication are not sufficient)  
7 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis  
8 for its belief that the confidentiality designation was not proper and must give the Designating  
9 Party an opportunity to review the designated material, to reconsider the circumstances, and, if no  
10 change in designation is offered, to explain the basis for the chosen designation. A challenging  
11 Party may proceed to the next stage of the challenge process only if it has engaged in this meet  
12 and confer process first.

13           6.3     Judicial Intervention. A Party that elects to press a challenge to a  
14 confidentiality designation, after considering the justification offered by the Designating Party,  
15 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule  
16 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the  
17 challenge. Each such motion must be accompanied by a competent declaration that affirms that  
18 the movant has complied with the meet and confer requirements imposed in the preceding  
19 paragraph and that sets forth with specificity the justification for the confidentiality designation  
20 that was given by the Designating Party in the meet and confer dialogue.

21                     The burden of persuasion in any such challenge proceeding shall be on the  
22 Designating Party. Until the Court rules on the challenge, all parties shall continue to afford the  
23 material in question the level of protection to which it is entitled under the Producing Party's  
24 designation.

25           7.     ACCESS TO AND USE OF PROTECTED MATERIAL

26           7.1     Basic Principles. A Receiving Party may use Protected Material that is  
27 disclosed or produced by another Party or by a non-party in connection with this case only for  
28 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be

1 disclosed only to the categories of persons and under the conditions described in this Order. When  
2 the litigation has been terminated, a Receiving Party must comply with the provisions of Section  
3 11 (FINAL DISPOSITION), below.

4 Protected Material must be stored and maintained by a Receiving Party at a  
5 location and in a secure manner that ensures that access is limited to the persons authorized under  
6 this Order.

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
8 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may  
9 disclose any information or item designated CONFIDENTIAL only to:

10 (a) the Receiving Party’s Outside Counsel of record in this action which  
11 has signed the “Agreement to Be Bound by Protective Order” that is attached hereto as Exhibit A,  
12 as well as employees and professional vendors of said Counsel to whom it is reasonably necessary  
13 to disclose the information for this litigation;

14 (b) the officers, directors, and employees (including House Counsel) of  
15 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
16 signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

17 (c) experts (as defined in this Order) of the Receiving Party to whom  
18 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be  
19 Bound by Protective Order” (Exhibit A);

20 (d) the Court and its personnel;

21 (e) court reporters and their staffs to whom disclosure is reasonably  
22 necessary for this litigation and who have signed the “Agreement to Be Bound by Protective  
23 Order” (Exhibit A);

24 (f) during their depositions, witnesses in the action to whom disclosure  
25 is reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order”  
26 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal  
27 Protected Material must be separately bound by the court reporter and may not be disclosed to  
28 anyone except as permitted under this Stipulated Protective Order; and



1 (g) the author of the document or the original source of the information..

2 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
3 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by  
4 the Designating Party, a Receiving Party may disclose any information or item designated  
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

6 (a) the Receiving Party’s Outside Counsel of record in this action which  
7 has signed the “Agreement to Be Bound by Protective Order” that is attached hereto as Exhibit A,  
8 as well as employees and professional vendors of said Counsel to whom it is reasonably necessary  
9 to disclose the information for this litigation;

10 (b) Experts (as defined in this Order) to whom disclosure is reasonably  
11 necessary for this litigation and who have signed the “Agreement to Be Bound by Protective  
12 Order” (Exhibit A);

13 (c) the Court and its personnel;

14 (d) court reporters and their staffs to whom disclosure is reasonably  
15 necessary for this litigation and who have signed the “Agreement to Be Bound by Protective  
16 Order” (Exhibit A); and

17 (e) the author of the document or the original source of the information.

18 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
19 OTHER LITIGATION

20 If a Receiving Party is served with a subpoena or an order issued in other litigation that  
21 would compel disclosure of any information or items designated in this action as  
22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the  
23 Receiving Party must so notify the Designating Party, in writing (by e-mail or fax, if possible)  
24 immediately and in no event more than three court days after receiving the subpoena or order.  
25 Such notification must include a copy of the subpoena or court order.

26 The Receiving Party also must immediately inform in writing the Party who caused the  
27 subpoena or order to issue in the other litigation that some or all the material covered by the  
28 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must

1 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that  
2 caused the subpoena or order to issue.

3 The purpose of imposing these duties is to alert the interested parties to the existence of  
4 this Protective Order and to afford the Designating Party in this case an opportunity to try to  
5 protect its confidentiality interests in the court from which the subpoena or order issued. The  
6 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its  
7 confidential material – and nothing in these provisions should be construed as authorizing or  
8 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
11 Material to any person or in any circumstance not authorized under this Stipulated Protective  
12 Order, the Receiving Party must immediately: (a) notify in writing the Designating Party of the  
13 unauthorized disclosures; (b) use its best efforts to retrieve all copies of the Protected Material; (c)  
14 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
15 Order; and (d) request such person or persons to execute the “Acknowledgment and Agreement to  
16 Be Bound” that is attached hereto as Exhibit A.

17 10. FILING PROTECTED MATERIAL

18 Without written permission from the Designating Party or a court order secured after  
19 appropriate notice to all interested persons, a Party may not file in the public record in this action  
20 any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
21 with Civil Local Rule 79-5.

22 11. FINAL DISPOSITION

23 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
24 after the final termination of this action, each Receiving Party must either destroy or return all  
25 Protected Material to the Producing Party. As used in this subdivision, “all Protected Material”  
26 includes all copies, abstracts, compilations, summaries or any other form of reproducing or  
27 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,  
28 the Receiving Party must submit a written certification to the Producing Party (and, if not the same

1 person or entity, to the Designating Party) by the sixty day deadline that identifies (by category,  
2 where appropriate) all the Protected Material that was returned or destroyed and that affirms that  
3 the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms  
4 of reproducing or capturing any of the Protected Material. Notwithstanding this provision,  
5 Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal  
6 memoranda, correspondence or attorney work product, even if such materials contain Protected  
7 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
8 this Protective Order as set forth in Section 4 (DURATION), above.

9 12. INADVERTENT PRODUCTION OF PRIVILEGED MATERIAL

10 Each party shall make efforts that are “reasonably designed” to protect its  
11 privileged materials. *See Gomez v. Vernon*, 255 F.3d 1118, 1131-32 (9th Cir. 2001). What  
12 constitutes efforts that are reasonably designed to protect privileged materials depends on the  
13 circumstances; the law does not require “strenuous or Herculean efforts,” just “reasonable efforts.”  
14 *See, e.g., Hynix Semiconductor, Inc. v. Rambus, Inc.* 2008 WL 350641, \*1–\*2 (ND Cal., Feb. 2,  
15 2008); *see also*, FED.R.CIV.PRO. 26(f)(3) advisory committee’s notes to 2006 amendments  
16 (discussing the substantial costs and delays that can result from attempts to avoid waiving  
17 privilege, particularly when discovery of electronic information is involved). When a particular  
18 Rule 34 request requires a production or inspection that is too voluminous, expedited or  
19 complex (such as certain electronic productions) to allow for an adequate preproduction  
20 review, the parties may enter into non-waiver agreements for that particular production. If the  
21 requesting party is unwilling to enter into such an agreement, the Producing Party may move the  
22 court for a non-waiver order.

23 In the event that, despite reasonable efforts, a Producing Party discovers it has  
24 inadvertently produced privileged materials, then within 30 calendar days the Producing Party  
25 shall notify the Receiving Party that the document(s) or materials should have been withheld on  
26 grounds of privilege. After the Receiving Party receives this notice from the Producing Party  
27 under this paragraph, the Receiving Party shall not disclose or release the inadvertently produced  
28 material to any person or entity pending resolution of the Producing Party’s claim of privilege.

1 The parties shall hold a meet and confer, as defined in Civil Local Rule 1-5(n), as soon as  
2 reasonably possible after a notice of inadvertent production. If the Producing Party and Receiving  
3 Party agree that the inadvertently produced material is privileged, and was disclosed despite  
4 efforts by the Producing Party that were 'reasonably designed' to protect the materials, then the  
5 Receiving Party shall return or certify the destruction of all copies (including summaries) of such  
6 material. If no agreement is reached, then within 10 court days after the meet and confer, the  
7 Producing Party must seek a ruling from this court to establish that the material is privileged and  
8 that the Producing Party did not waive the privilege by inadvertently producing the material. If  
9 the Producing Party seeks such a ruling, the Receiving Party shall not disclose or release the  
10 inadvertently produced material to any person or entity pending the court's ruling on the  
11 Producing Party's motion.

12 13. MISCELLANEOUS

13 13.1 Right to Further Relief. Nothing in this Order abridges the right of any  
14 person to seek its modification by the Court in the future.

15 13.2 Right to Assert Other Objections. By stipulating to the entry of this  
16 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
17 producing any information or item on any ground not addressed in this Stipulated Protective  
18 Order. Similarly, no Party waives any right to object on any ground to the use in evidence of any  
19 of the material covered by this Protective Order.  
20

21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

22 Dated: May 12, 2009

Respectfully Submitted,

23 WILSON SONSINI GOODRICH & ROSATI  
24 Professional Corporation

25 By: /s/ BAHRAM SEYEDIN-NOOR  
26 BAHRAM SEYEDIN-NOOR

27 Attorneys for Defendants  
28 UTSTARCOM, INC., HONG LIANG LU,  
MICHAEL J. SOPHIE, YING WU, THOMAS  
J. TOY

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Dated: May 12, 2009

SULLIVAN & CROMWELL LLP

By: /s/ JASON DE BRETTEVILLE  
JASON DE BRETTEVILLE

Attorneys for Defendants  
SOFTBANK HOLDINGS, INC.  
SOFTBANK AMERICA, INC. AND  
SOFTBANK CORPORATION

Dated: May 12, 2009

COUGHLIN STOIA GELLER RUDMAN &  
ROBBINS LLP

By: /s/ CHRIS SEEFER  
CHRIS SEEFER

Attorneys for Plaintiffs

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 5/12/09

  
The Honorable Patricia V. Trumbull  
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on \_\_\_\_\_, 2009 in the case of *In re UTStarcom, Inc. Securities Litigation*, Case No. C-04-4908-JW(PVT). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]