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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION

C 07 46057

17 SECURITIES AND EXCHANGE COMMISSION,  
18 Plaintiff,  
19 vs.  
20 CHAUNCEY SHEY,  
21 Defendant.

Case No.

COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER RELIEF

SI

22 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

23 SUMMARY OF THE ACTION

24 1. This case involves unlawful insider trading in the stock of UTStarcom, Inc.  
25 ("UTStarcom" or "the Company") by defendant Chauncey Shey, a co-founder and former officer  
26 and director of the company. Shey misappropriated confidential information about UTStarcom's  
27 disappointing financial results from a senior executive of the Company, and avoided nearly a  
28 half million dollars in trading losses by liquidating his shares before the news became public.

29 2. On Saturday, October 1, 2005, the day after UTStarcom's third quarter ended,  
30 Shey learned from a senior executive of UTStarcom that the Company had a significant revenue  
31 shortfall for the third quarter. Shortly after speaking with the UTStarcom executive, Shey

1 emailed his brokers to begin the process of liquidating his UTStarcom stock holdings.  
2 Immediately after the market opened Monday morning, Shey began selling UTStarcom stock.  
3 At the same time, Shey's wife – whom he called shortly after learning about the revenue shortfall  
4 – also began selling UTStarcom from several family accounts. When UTStarcom disclosed the  
5 bad news later that week, the Company's stock price declined over 25%. By misappropriating  
6 the confidential information and selling before the announcement, Shey avoided trading losses of  
7 \$420,226.

8 3. Defendant Shey's conduct constituted illegal insider trading under the federal  
9 securities laws. The Commission seeks a court order requiring that Shey disgorge his ill-gotten  
10 gains plus prejudgment interest, imposing a civil money penalty, and permanently enjoining  
11 Shey from future securities fraud.

#### 12 JURISDICTION AND VENUE

13 4. The Commission brings this action pursuant to Section 20(b) of the Securities Act  
14 [15 U.S.C. § 77t(b)] and Sections 21(d), 21(e) and 21A of the Exchange Act [15 U.S.C. §§  
15 78u(d), 78u(e) and 78u-1].

16 5. This Court has jurisdiction over this action pursuant to Section 22(a) of the  
17 Securities Act [15 U.S.C. § 77v(a)] and Sections 21(e), 21A and 27 of the Exchange Act [15  
18 U.S.C. §§ 78u(e), 78u-1 and 78aa].

19 6. Defendant Shey, directly or indirectly, made use of the means or instrumentalities  
20 of interstate commerce, or of the mails, or of the facilities of a national securities exchange in  
21 connection with the transactions, acts, practices and courses of business alleged herein.

22 7. Venue in this District is proper pursuant to Section 22(a) of the Securities Act [15  
23 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because Defendant  
24 Shey transacts business within the Northern District of California.

25 8. Intradistrict assignment to the San Francisco Division is proper pursuant to Civil  
26 L.R. 3-2(c) because a substantial part of the events or omissions which give rise to this action  
27 occurred in the County of Alameda.  
28

1 **DEFENDANT**

2 9. Defendant Chauncey Shey, age 49, is a US citizen who resides in Shanghai,  
3 China. Shey is a co-founder and former officer and director of UTStarcom.

4 **RELEVANT ENTITY**

5 10. UTStarcom, Inc. is a Delaware corporation that designs, manufactures, and sells  
6 telecommunications equipment. Its principal place of business in the U.S. is Alameda,  
7 California. UTStarcom's common stock is registered with the Commission pursuant to Section  
8 12(g) of the Exchange Act and is listed on the NASDAQ Global Select Market under the symbol  
9 "UTSI."

10 **STATEMENT OF FACTS**

11 **A. Shey Had A Relationship Of Trust And Confidence With A Co-Founder and**  
12 **Senior Executive of UTStarcom**

13 11. Shey co-founded UTStarcom in 1995, and served as the Executive Vice President of  
14 UTStarcom from 1995 to 1999 and as a director of UTStarcom from 1995 to 2002.

15 12. Throughout the relevant period, Shey served as the CEO of Softbank China Venture  
16 Capital, a Chinese firm that managed a venture capital fund owned in part by UTStarcom. Shey's  
17 primary contact at UTStarcom concerning the venture fund was a senior executive with whom Shey  
18 had co-founded the Company. As part of this relationship, Shey and the UTStarcom executive  
19 shared confidential business information and continued to maintain a relationship of trust and  
20 confidence.

21 **B. The UTStarcom Executive Learned During The Third Quarter Of 2005 That**  
22 **UTStarcom Was Struggling To Meet Its Previously-Announced Financial**  
23 **Guidance**

24 13. In May 2005, UTStarcom announced that it had entered into a major deal for the  
25 sale of IPTV network equipment (i.e. a system to deliver video content to televisions via the  
26 Internet). UTStarcom included \$40 million of projected revenue from this sale in its financial  
27 guidance to securities analysts for the third quarter ending September 30, 2005.

28 14. By August of 2005, performance problems with the IPTV network had arisen and  
the major customer refused to provide a final acceptance of the product. Such acceptance was

1 required before UTStarcom could recognize revenue from the sale. If the network's problems could  
2 not be fixed by the end of September, UTStarcom would have difficulty attaining the revenue  
3 guidance for the quarter that it had provided to investors.

4 15. When the fiscal quarter ended on September 30, 2005, UTStarcom had failed to  
5 complete the services necessary to fix the IPTV network. The UTStarcom executive was aware at  
6 that time that, as a result, the Company would not be able to recognize revenue for the transaction  
7 and would thus fail to meet its financial guidance for the third quarter. The executive also knew by  
8 September 30, 2005 that UTStarcom planned to pre-announce its disappointing third quarter  
9 financial results the following week.

10 **C. They Learned During the Third Quarter of 2005 That UTStarcom Needed**  
11 **Additional Income, And Then They Learned Material Nonpublic Information**  
12 **About The Company's Revenue Shortfall On October 1, 2005**

13 16. Around the same time that the UTStarcom executive learned about the potential  
14 revenue shortfall, he told Shey that UTStarcom urgently needed to generate additional income in  
15 the third quarter. He asked Shey to prepare a proposal for the majority owner of the venture fund  
16 to buy out UTStarcom's stake. Shey prepared a proposal estimating that UTStarcom's stake in  
17 the fund was worth \$41 million.

18 17. Despite his efforts, Shey was unable to complete a sale of UTStarcom's stake in  
19 the venture fund during the third quarter.

20 18. On Saturday afternoon, October 1, 2005, Shey arrived in Chicago for a series of  
21 business meetings. Shortly after checking into his hotel, Shey had several telephone calls with  
22 the UTStarcom executive. During these calls, Shey learned material nonpublic information  
23 about the Company's revenue shortfall.

24 **D. Shey And His Wife Sold UTStarcom Stock Based On Material Nonpublic**  
25 **Information That They Misappropriated From The UTStarcom Executive**

26 19. Later in the evening of October 1, shortly after his conversations with the  
27 UTStarcom executive, Shey placed several phone calls to his wife in Shanghai. Then Shey and  
28 his wife both took steps to sell UTStarcom stock.

1           20.     After Shey talked to his wife on October 1, Shey emailed his stock broker to  
2 begin the process of liquidating his UTStarcom stock holdings.

3           21.     On the morning of Monday, October 3 – three minutes after the market opened –  
4 Shey began selling his UTStarcom stock. Between October 3 and October 6, 2005, Shey sold  
5 596,449 shares of UTStarcom stock, generating proceeds of several million dollars. Shey  
6 contacted his brokers many times each day, sometimes asking them to act more quickly.

7           22.     Also on the morning of October 3 – fifteen minutes after the market opened –  
8 Shey's wife contacted her family's stock broker and instructed him to sell all of the UTStarcom  
9 stock in accounts of three of her family members. These sales generated additional proceeds of  
10 over \$130,000.

11          23.     Shey's final sale was less than an hour before UTStarcom made the pre-  
12 announcement on October 6, 2005.

13          24.     After the close of the market on October 6, 2005 – and less than an hour after  
14 Shey's last sale liquidating his UTStarcom stock holdings – UTStarcom issued a press release  
15 announcing that it would fail to meet financial guidance for the third quarter because it could not  
16 recognize \$40 million from its projected sale of IPTV network equipment. (The Company also  
17 announced at that time that it may have to incur asset impairment charges of an unspecified  
18 amount, and that the SEC had opened a formal investigation into the Company's prior financial  
19 disclosures.)

20          25.     The following day, UTStarcom's stock price fell more than 26 percent on trading  
21 volume more than eight times the Company's daily average.

22          26.     Shey avoided trading losses of \$420,226 by selling his UTStarcom stock and  
23 directing his wife to sell stock before the Company's pre-announcement of its revenue shortfall.

24          27.     Shey's sales of UTStarcom stock (including the sales by his wife) were based on  
25 material nonpublic information that Shey misappropriated from the UTStarcom executive in  
26 violation of duties of trust and confidence that Shey owed to the executive.

27          28.     Shey knew, or was reckless in not knowing, that the information he received from  
28 the UTStarcom executive regarding UTStarcom's revenue shortfall was material and nonpublic.



1                    necessary in order to make the statements made, in the light of the  
2                    circumstances under which they were made, not misleading; and  
3                    c)        engaged in acts, practices, or courses of business which operated or would  
4                    operate as a fraud or deceit upon other persons  
5 in connection with the purchase or sale of securities, by the use of means or instrumentalities of  
6 interstate commerce, of the mails, or the facilities of a national securities exchange.

7                    35.        By reason of the foregoing, defendant violated, and unless restrained and enjoined  
8 will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5  
9 thereunder [17 C.F.R. § 240.10b-5].

10                    **PRAYER FOR RELIEF**

11                    WHEREFORE, the Commission respectfully requests that this Court:

12                    **I.**

13                    Permanently enjoin defendant from directly or indirectly violating Section 17(a) of the  
14 Securities Act [15 U.S.C. § 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]  
15 and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder;

16                    **II.**

17                    Order defendant to disgorge the ill-gotten gains derived from the unlawful trading alleged  
18 herein, plus prejudgment interest;

19                    **III.**

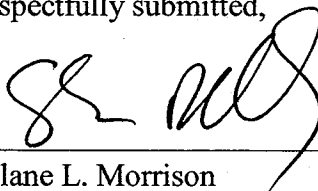
20                    Order defendant to pay a civil monetary penalty under Section 21A of the Exchange Act  
21 [15 U.S.C. § 78u-1]; and  
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IV.

Grant such other relief as this Court may deem just and appropriate.

Respectfully submitted,



Dated: September 6, 2007

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