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8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10  
11 NORADURA FRYDMAN, Individually and  
12 on Behalf of All Others Similarly Situated,

13 Plaintiff,

14 v.

15 SHORETEL, INC., SHANE ROBISON,  
16 DON JOOS, MARJORIE BOWEN, MARK  
17 BREGMAN, KENNETH DENMAN,  
18 CHARLES KISSNER, CONSTANCE  
19 SKIDMORE, and JOSEF VEJVODA,

20 Defendants.

Civil Action No. 17-cv-4865

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

**1. VIOLATIONS OF THE  
SECURITIES EXCHANGE ACT OF  
1934**

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1 Noradura Frydman (“Plaintiff”), by her undersigned attorneys, alleges upon personal  
2 knowledge with respect to herself, and upon information and belief based upon, *inter alia*, the  
3 investigation of counsel as to all other allegations herein, as follows:

4 **NATURE OF THE ACTION**

5 1. This action is brought as a class action by Plaintiff on behalf of herself and the other  
6 public holders of the common stock of ShoreTel, Inc. (“ShoreTel” or the “Company”) against  
7 ShoreTel and the members of the Company’s board of directors (collectively, the “Board” or  
8 “Individual Defendants,” and, together with ShoreTel, the “Defendants”) for their violations of  
9 Sections 14(e), 14(d)(4), and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”),  
10 15 U.S.C. §§ 78n(e), 78n(d)(4), 78t(a), and SEC Rule 14d-9, 17 C.F.R. 240.14d-9, in connection  
11 with the tender offer (“Tender Offer”) by Mitel Networks Corporation, through its subsidiaries,  
12 (“Mitel”) to purchase all of the issued and outstanding shares of ShoreTel common stock (the  
13 “Proposed Transaction”) for \$7.50 per share (the “Offer Price”).

14 2. On July 26, 2017, ShoreTel, entered into a definitive agreement and plan of merger  
15 (the “Merger Agreement”) with Mitel. On August 17, 2017, in order to convince ShoreTel  
16 stockholders to tender their shares, the Board authorized the filing of a materially incomplete and  
17 misleading Schedule 14D-9 Solicitation/Recommendation Statement (the “Recommendation  
18 Statement”) with the Securities and Exchange Commission (“SEC”). In particular, the  
19 Recommendation Statement contains materially incomplete and misleading information  
20 concerning ShoreTel’s financial projections and the valuation analyses performed by the  
21 Company’s financial advisor, J.P. Morgan Securities LLC (“J.P. Morgan”).

22 3. The Tender Offer is scheduled to expire on September 18, 2017 (the “Expiration  
23 Date”). It is imperative that the material information that has been omitted from the  
24 Recommendation Statement is disclosed to the Company’s stockholders prior to the forthcoming  
25 Expiration Date so they can properly determine whether to tender their shares.

26 4. For these reasons, and as set forth in detail herein, Plaintiff seeks to enjoin  
27 Defendants from closing the Tender Offer or taking any steps to consummate the Proposed  
28 Transaction, unless and until the material information discussed below is disclosed to ShoreTel

1 stockholders or, in the event the Proposed Transaction is consummated, to recover damages  
2 resulting from the Defendants' violations of the Exchange Act.

3 **JURISDICTION AND VENUE**

4 5. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange  
5 Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges  
6 violations of Section 14(e), 14(d)(4) and 20(a) of the Exchange Act.

7 6. Personal jurisdiction exists over each Defendant either because the Defendant  
8 conducts business in or maintains operations in this District, or is an individual who is either  
9 present in this District for jurisdictional purposes or has sufficient minimum contacts with this  
10 District as to render the exercise of jurisdiction over Defendant by this Court permissible under  
11 traditional notions of fair play and substantial justice.

12 7. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. §  
13 78aa, as well as under 28 U.S.C. § 1391, because: (i) the conduct at issue took place and had an  
14 effect in this District; (ii) ShoreTel maintains its primary place of business in this District; (iii) a  
15 substantial portion of the transactions and wrongs complained of herein, including Defendants'  
16 primary participation in the wrongful acts detailed herein, occurred in this District; and (iv)  
17 Defendants have received substantial compensation in this District by doing business here and  
18 engaging in numerous activities that had an effect in this District.

19 **PARTIES**

20 8. Plaintiff is, and at all relevant times has been, a stockholder of ShoreTel.

21 9. Defendant ShoreTel is a Delaware corporation and maintains its headquarters at  
22 960 Stewart Drive, Sunnyvale, California 94085. ShoreTel's common stock trades on the  
23 NASDAQ under the ticker symbol "SHOR".

24 10. Individual Defendant Shane Robison is a director of ShoreTel and is the  
25 Chairman of the Board.

26 11. Individual Defendant Don Joos is a director of ShoreTel and is the President and  
27 Chief Executive Officer of the Company.

1 12. Individual Defendant Marjorie Bowen is, and has been at all relevant times, a  
2 director of the Company.

3 13. Individual Defendant Mark Bregman is, and has been at all relevant times, a  
4 director of the Company.

5 14. Individual Defendant Kenneth Denman is, and has been at all relevant times, a  
6 director of the Company.

7 15. Individual Defendant Charles Kissner is, and has been at all relevant times, a  
8 director of the Company.

9 16. Individual Defendant Constance Skidmore is, and has been at all relevant times, a  
10 director of the Company.

11 17. Individual Defendant Josef Vejvoda is, and has been at all relevant times, a director  
12 of the Company.

13 **CLASS ACTION ALLEGATIONS**

14 18. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 on behalf of herself  
15 and the other public stockholders of ShoreTel (the “Class”). Excluded from the Class are  
16 Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated  
17 with any Defendant.

18 19. This action is properly maintainable as a class action because:

19 a. The Class is so numerous that joinder of all members is impracticable. As  
20 of August 15, 2017, there were 69,034,351 shares of ShoreTel common stock outstanding,  
21 held by hundreds to thousands of individuals and entities scattered throughout the country.  
22 The actual number of public stockholders of ShoreTel will be ascertained through  
23 discovery;

24 b. There are questions of law and fact that are common to the Class that  
25 predominate over any questions affecting only individual members, including the  
26 following:

27 i) whether Defendants have misrepresented or omitted material  
28 information concerning the Proposed Transaction in the

1 Recommendation Statement, in violation of Sections 14(e) and  
2 14(d)(4) of the Exchange Act;

3 ii) whether the Individual Defendants have violated Section 20(a) of  
4 the Exchange Act; and

5 iii) whether Plaintiff and other members of the Class will suffer  
6 irreparable harm if compelled to tender their shares based on the  
7 materially incomplete and misleading Recommendation Statement.

8 c. Plaintiff is an adequate representative of the Class, has retained competent  
9 counsel experienced in litigation of this nature, and will fairly and adequately protect the  
10 interests of the Class;

11 d. Plaintiff's claims are typical of the claims of the other members of the Class  
12 and Plaintiff does not have any interests adverse to the Class;

13 e. The prosecution of separate actions by individual members of the Class  
14 would create a risk of inconsistent or varying adjudications with respect to individual  
15 members of the Class, which would establish incompatible standards of conduct for the  
16 party opposing the Class;

17 f. Defendants have acted on grounds generally applicable to the Class with  
18 respect to the matters complained of herein, thereby making appropriate the relief sought  
19 herein with respect to the Class as a whole; and

20 g. A class action is superior to other available methods for fairly and  
21 efficiently adjudicating the controversy.

22 **SUBSTANTIVE ALLEGATIONS**

23 **I. Mitel's Offer Price is Inadequate.**

24 20. ShoreTel, incorporated on January 18, 2007, is a provider of business  
25 communication solutions. The Company is engaged in the design, development, marketing, and  
26 sale of business communication solutions. The Company is focused on the small and medium sized  
27 businesses seeking a unified communications (UC) solution allowing them to communicate  
28 anytime, anyplace, and through any device they chose. The Company provides this to the market

1 through two solutions: ShoreTel Connect, its UC solution, and Contact Center offering and  
2 ShoreTel Summit, its platform for developers and integrators. ShoreTel Connect delivers a  
3 featured UC solution and applications, such as mobility, collaboration, and workgroups. ShoreTel  
4 Connect offers three different delivery models, including cloud, onsite, and hybrid. Connect Cloud  
5 provides a hosted voice solution to its customers. Connect OnSite provides its customers the ability  
6 to independently own and operate their equipment. Connect Hybrid enables its customers to use  
7 both its cloud and onsite offerings. Summit, its communications platform as a service (CPaaS)  
8 offering, delivers the option to either integrate communications into any application or workflow  
9 or to create a standalone business communications application.

10 21. The Offer Price is inadequate compensation for ShoreTel stockholders. Indeed, the  
11 \$7.50 Offer Price represents an 12% *discount* to ShoreTel's 52-week high trading price of \$8.56.  
12 Further, J.P. Morgan valued the Company at higher price than the Offer Price in every one of its  
13 various valuation analyses. J.P. Morgan calculated an implied present value per share of up to  
14 \$10.00, a 33% premium to the Offer Price.

15 22. Moreover, since the Offer Price was announced, multiple financial experts have  
16 downgraded the Company, and lowered their price targets. William Blair, Northland, Sidoti, and  
17 Lake Street all downgraded their outlook on ShoreTel based on the \$7.50 Offer Price coming in  
18 below their price targets. It is important to note that price targets are a predictive valuation of what  
19 a stock is worth on its own.<sup>1</sup> They do not account for premiums associated with a merger or  
20 takeover. A "take-out price", or the price that analysts predict in the event a merger or takeover,  
21 would include those premiums and be significantly higher.

22 23. Finally, during the course of the sales process, the Board received several offers for  
23 significantly higher value than the Offer Price.

24 24. In sum, the Offer Price appears to inadequately compensate ShoreTel stockholders  
25 for their shares. Given the market reaction, it appears that \$7.50 per share is not fair compensation  
26 for ShoreTel stockholders. It is therefore imperative that ShoreTel stockholders receive the  
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28 <sup>1</sup> See <http://www.investopedia.com/terms/p/pricetarget.asp>

1 material information that has been omitted from the Recommendation Statement, so that they can  
2 make a fully informed decision concerning whether to tender their shares.

3 **II. The Merger Agreement's Deal Protection Provisions Deter Superior Offers.**

4  
5 25. In addition to conducting an unreasonable sales process that resulted in an unfair  
6 Offer Price, the Individual Defendants agreed to certain deal protection provisions in the Merger  
7 Agreement that operate conjunctively to deter other suitors from submitting a superior offer for  
8 ShoreTel.

9 26. First, the Merger Agreement contains a no solicitation provision that prohibits the  
10 Company or the Individual Defendants from taking any affirmative action to obtain a better deal  
11 for ShoreTel stockholders. The Merger Agreement states that the Company and the Individual  
12 Defendants shall not:

13 (i) initiate, solicit, knowingly or overtly encourage or facilitate  
14 (including by providing information) the submission of any  
15 proposals, offers or inquiries regarding, or the making of any  
16 proposal or offer that relates to or could reasonably be expected to  
17 lead to, a Takeover Proposal, (ii) engage in, continue or otherwise  
18 participate in, knowingly encourage or facilitate any discussions or  
19 negotiations (including providing any data room access) regarding,  
20 or furnish to any other person any non-public information in  
21 connection with, or for the purpose of encouraging, a Takeover  
22 Proposal or (iii) enter into any letter of intent, memorandum of  
23 understanding, agreement in principle, merger agreement,  
24 acquisition agreement or other similar agreement providing for a  
25 Takeover Proposal.

26 27. Additionally, the Merger Agreement grants Mitel recurring and unlimited matching  
27 rights, which provides Mitel with: (i) unfettered access to confidential, non-public information  
28 about competing proposals from third parties which it can use to prepare a matching bid; and (ii)  
five business days to negotiate with ShoreTel, amend the terms of the Merger Agreement, and  
make a counter-offer in the event a superior offer is received.

29 28. The non-solicitation and matching rights provisions essentially ensure that a  
superior bidder will not emerge, as any potential suitor will undoubtedly be deterred from  
expending the time, cost, and effort of making a superior proposal while knowing that Mitel can

1 easily foreclose a competing bid. As a result, these provisions unreasonably favor Mitel, to the  
2 detriment of ShoreTel's public stockholders.

3 29. Moreover, the Merger Agreement provides that ShoreTel must pay Mitel a  
4 termination fee of \$24.5 million in the event the Company elects to terminate the Merger  
5 Agreement to pursue a superior proposal. The Merger Agreement also requires ShoreTel to  
6 reimburse Mitel for up to \$6 million in expenses under certain circumstances. The termination fee  
7 along with the reimbursement provision amount to an unreasonably high 5.9% of the total deal  
8 price. The termination fee provision further ensures that no competing offer will emerge, as any  
9 competing bidder would have to pay a naked premium for the right to provide ShoreTel  
10 stockholders with a superior offer.

11 30. Compounding matters, the Company's officers and directors entered into a *Tender*  
12 *Support Agreement* ("Support Agreement"), dated July 26, 2017, pursuant to which they have  
13 agreed, among other things, to tender their shares into the Offer, and not to transfer their shares  
14 that are subject to the Support Agreement. This Support Agreement virtually assures that no  
15 superior offer will emerge. Assigning the combined share power of the officers and directors to  
16 tender their shares makes it a near certainty that Tender Offer will consummate, and, therefore, is  
17 materially unfair to ShoreTel stockholders generally.

18 31. Ultimately, these preclusive deal protection provisions restrain the Company's  
19 ability to solicit or engage in negotiations with any third party regarding a proposal to acquire all  
20 or a significant interest in the Company.

21 32. Given that the preclusive deal protection provisions in the Merger Agreement  
22 impede a superior bidder from emerging, it is imperative that ShoreTel's stockholders receive all  
23 material information necessary to make a fully informed decision regarding whether to tender their  
24 shares.

25 **III. The Recommendation Statement Is Materially Incomplete and Misleading.**

26  
27 33. On August 17, 2017, Defendants filed the Recommendation Statement with the  
28 SEC. The Recommendation Statement has been disseminated to the Company's stockholders, and



1 solicits the Company's stockholders to tender their shares in the Tender Offer. The Individual  
2 Defendants were obligated to carefully review the Recommendation Statement before it was filed  
3 with the SEC and disseminated to the Company's stockholders to ensure that it did not contain any  
4 material misrepresentations or omissions. However, the Recommendation Statement  
5 misrepresents and/or omits material information that is necessary for the Company's stockholders  
6 to make an informed decision concerning whether to tender their shares, in violation of Sections  
7 14(e), 14(d)(4), and 20(a) of the Exchange Act.

8 34. First, the Recommendation Statement fails to disclose the unlevered free cash flow  
9 projections<sup>2</sup> for the individual business units prepared by management. ShoreTel discloses the total  
10 unlevered free cash flow projections, but fails to provide the breakdown of the of projections by  
11 each business unit as prepared by management and demonstrated in the Revenue projections.  
12 Additionally, J.P. Morgan explicitly utilized management's individual cashflow projections for the  
13 "Premise Business" in its *Sum-of-the-Parts Analysis*. See *Recommendation Statement 38*.

14 35. The omission of the above-referenced projections renders the financial projections  
15 included on pages 41-42 of the Recommendation Statement materially incomplete and misleading.  
16 If a recommendation statement discloses financial projections and valuation information, such  
17 projections must be complete and accurate. The question here is not the duty to speak, but liability  
18 for not having spoken enough. With regard to future events, uncertain figures, and other so-called  
19 soft information, a company may choose silence or speech elaborated by the factual basis as then  
20 known—but it may not choose half-truths.

21 36. With respect to J.P. Morgan's *Discounted Cash Flow Analysis*, the  
22 Recommendation Statement fails to disclose the following key components used in the analysis:  
23 (i) the inputs and assumptions underlying the calculation of the discount rate range of 8.5% to  
24

25  
26 <sup>2</sup> Unlevered free cash flows are used to determine a company's enterprise value. The unlevered  
27 free cash flow allows investors to ascertain the operating value of a company independent of its  
28 capital structure. This provides a greater degree of analytical flexibility and allows for a clearer  
picture of the value of the company overall. For this reason, unlevered free cash flows are routinely  
used to value a company, especially in merger contexts.

1 10.5%; (ii) the inputs and assumption underlying the selection of the perpetual growth rate range  
2 of 2.5% to 3.5%; and (iii) the actual range of terminal values calculated and utilized in the analysis.

3 37. These key inputs are material to ShoreTel stockholders, and their omission renders  
4 the summary of J.P. Morgan's Discounted Cash Flow Analysis incomplete and misleading. As a  
5 highly-respected professor explained in one of the most thorough law review articles regarding the  
6 fundamental flaws with the valuation analyses bankers perform in support of fairness opinions, in  
7 a discounted cash flow analysis a banker takes management's forecasts, and then makes several  
8 key choices "each of which can significantly affect the final valuation." Steven M. Davidoff,  
9 *Fairness Opinions*, 55 Am. U.L. Rev. 1557, 1576 (2006). Such choices include "the appropriate  
10 discount rate, and the terminal value..." *Id.* As Professor Davidoff explains:

11 There is substantial leeway to determine each of these, and any  
12 change can markedly affect the discounted cash flow value. For  
13 example, a change in the discount rate by one percent on a stream of  
14 cash flows in the billions of dollars can change the discounted cash  
15 flow value by tens if not hundreds of millions of dollars.... This issue  
16 arises not only with a discounted cash flow analysis, but with each  
17 of the other valuation techniques. This dazzling variability makes it  
18 difficult to rely, compare, or analyze the valuations underlying a  
19 fairness opinion unless full disclosure is made of the various inputs  
in the valuation process, the weight assigned for each, and the  
rationale underlying these choices. The substantial discretion and  
lack of guidelines and standards also makes the process vulnerable  
to manipulation to arrive at the "right" answer for fairness. This  
raises a further dilemma in light of the conflicted nature of the  
investment banks who often provide these opinions.

20 *Id.* at 1577-78.

21 38. With respect to J.P. Morgan's *Sum-of-the-Parts Analysis*, the Recommendation  
22 Statement also fails to disclose the following key components used in the analysis: (i) the  
23 forecasted unlevered free cash flows for ShoreTel's Premise Business from the start of fiscal year  
24 2018 through the end of fiscal year 2027 calculated based upon management's forecasts for the  
25 fiscal years 2018 through 2020, and based upon extrapolations by management for the fiscal years  
26 2021 through 2027; (ii) ShoreTel's net cash balance; (iii) the value per Share of ShoreTel's net  
27 cash balance as of June 30, 2017; (iv) the reasoning behind the decision to use a multiple valuation  
28

1 for the “Hosted Business” and a DCF valuation for the “Premise Business”; (v) the inputs and  
2 assumptions underlying the selected multiple range of 2.0x to 3.0x revenue for the Hosted  
3 Business; (vi) the impact of the adjustments and exclusions made to fiscal 2018 revenue on the  
4 overall valuation; and (vii) the inputs and assumptions underlying the calculation of the 9.5%  
5 discount rate. As with the Discounted Cash Flow Analysis, this valuation analysis was performed  
6 by the Company’s financial advisor, heavily relied on by stockholders, and is expected to represent  
7 a clear and accurate state of the Company’s finances. Thus, in summarizing the analysis in the  
8 Recommendation Statement, the Company must be completely transparent with the information  
9 provided. The failure to include this valuable information renders the summary of the analysis set  
10 forth in the Recommendation Statement materially incomplete and misleading.

11 39. In the *Other Information* section, J.P. Morgan reviewed equity research analysts’  
12 price targets; however, the Recommendation Statement fails to disclose the individual price targets  
13 reviewed and utilized in the analysis. The omission of these individual targets renders the  
14 corresponding summary materially misleading. A fair summary of price targets requires the  
15 disclosure of the individual targets observed from each equity research analyst; merely providing  
16 the range is insufficient, as stockholders are unable to assess whether the banker summarized  
17 fairly, or, instead, provided only the figures that best present the price targets in light of the Offer  
18 Price, i.e. as low as possible.

19 40. Finally, the Recommendation Statement fails to disclose the number of shares, or  
20 percentage of shares, collectively owned by the Company’s officers and directors that have been  
21 pledged in the Support Agreement. This information is critical to stockholders, and its omission  
22 renders the description provided materially misleading.

23 41. In sum, the omission of the above-referenced information renders statements in the  
24 Recommendation Statement materially incomplete and misleading in contravention of the  
25 Exchange Act. Absent disclosure of the foregoing material information prior to the expiration of  
26 the Tender Offer, Plaintiff and the other members of the Class will be unable to make a fully-  
27 informed decision regarding whether to tender their shares, and they are thus threatened with  
28 irreparable harm, warranting the injunctive relief sought herein.

**COUNT I**

**(Against All Defendants for Violation of Section 14(e) of the Exchange Act)**

42. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

43. Section 14(e) of the Exchange Act provides that it is unlawful “for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading...” 15 U.S.C. §78n(e).

44. Defendants have issued the Recommendation Statement with the intention of soliciting ShoreTel stockholders to tender their shares. Each of the Defendants reviewed and authorized the dissemination of the Recommendation Statement, which fails to provide material information regarding ShoreTel’s financial projections and the valuation analyses performed by J.P. Morgan.

45. In so doing, Defendants made untrue statements of fact and/or omitted material facts necessary to make the statements made not misleading. Each of the Individual Defendants, by virtue of their roles as officers and/or directors, were aware of the omitted information but failed to disclose such information, in violation of Section 14(e). The Individual Defendants were therefore reckless, as they had reasonable grounds to believe material facts existed that were misstated or omitted from the Recommendation Statement, but nonetheless failed to obtain and disclose such information to stockholders although they could have done so without extraordinary effort.

46. The Individual Defendants were privy to and had knowledge of the projections for the Company and the details concerning J.P. Morgan’s valuation analyses. The Individual Defendants were reckless in choosing to omit material information from the Recommendation Statement, despite the fact that such information could have been disclosed without unreasonable efforts.

47. The misrepresentations and omissions in the Recommendation Statement are material to Plaintiff and the Class, who will be deprived of their right to make an informed decision

1 regarding whether to tender their shares if such misrepresentations and omissions are not corrected  
2 prior to the Expiration Date. Plaintiff and the Class have no adequate remedy at law. Only through  
3 the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from  
4 the immediate and irreparable injury that Defendants' actions threaten to inflict.

5 **COUNT II**

6 **(Against all Defendants for Violations of Section 14(d)(4) of the Exchange Act and SEC**

7 **Rule 14d-9,17 C.F.R. § 240.14d-9)**

8  
9 48. Plaintiff incorporates each and every allegation set forth above as if fully set forth  
10 herein.

11 49. Section 14(d)(4) of the Exchange Act and SEC Rule 14d-9 promulgated thereunder  
12 require full and complete disclosure in connection with tender offers. Specifically, Section  
13 14(d)(4) provides that:

14 Any solicitation or recommendation to the holders of such a security  
15 to accept or reject a tender offer or request or invitation for tenders  
16 shall be made in accordance with such rules and regulations as the  
Commission may prescribe as necessary or appropriate in the public  
interest or for the protection of investors.

17 50. SEC Rule 14d-9(d), which was adopted to implement Section 14(d)(4) of the  
18 Exchange Act, provides that:

19 Information required in solicitation or recommendation. Any  
20 solicitation or recommendation to holders of a class of securities  
21 referred to in section 14(d)(1) of the Act with respect to a tender  
22 offer for such securities shall include the name of the person making  
such solicitation or recommendation and the information required  
23 by Items 1 through 8 of Schedule 14D-9 (§ 240.14d-101) or a fair  
and adequate summary thereof.

24 51. In accordance with Rule 14d-9, Item 8 of a Schedule 14D-9 requires a Company's  
25 directors to:

26 Furnish such additional information, if any, as may be necessary to  
27 make the required statements, in light of the circumstances under  
28 which they are made, not materially misleading.

1 52. The Recommendation Statement violates Section 14(d)(4) and Rule 14d-9 because  
2 it omits material facts, including those set forth above, which omissions render the  
3 Recommendation Statement false and/or misleading.

4 53. Defendants knowingly or with deliberate recklessness omitted the material  
5 information identified above from the Recommendation Statement, causing certain statements  
6 therein to be materially incomplete and therefore misleading. Indeed, Defendants undoubtedly  
7 reviewed the omitted material information in connection with approving the Proposed Transaction.

8 54. The misrepresentations and omissions in the Recommendation Statement are  
9 material to Plaintiff and the Class, who will be deprived of their right to make an informed decision  
10 regarding whether to tender their shares if such misrepresentations and omissions are not corrected  
11 prior to the Expiration Date. Plaintiff and the Class have no adequate remedy at law. Only through  
12 the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from  
13 the immediate and irreparable injury that Defendants' actions threaten to inflict.

14 **COUNT III**

15 **(Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act)**

16  
17 55. Plaintiff incorporates each and every allegation set forth above as if fully set forth  
18 herein.

19 56. The Individual Defendants acted as controlling persons of ShoreTel within the  
20 meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as  
21 officers and/or directors of ShoreTel, and participation in and/or awareness of the Company's  
22 operations and/or intimate knowledge of the incomplete and misleading statements contained in  
23 the Recommendation Statement, they had the power to influence and control and did influence and  
24 control, directly or indirectly, the decision making of the Company, including the content and  
25 dissemination of the various statements that Plaintiff contends are materially incomplete and  
26 misleading.

27 57. Each of the Individual Defendants was provided with or had unlimited access to  
28 copies of the Recommendation Statement by Plaintiff to be misleading prior to the date the

1 Recommendation Statement was issued, and had the ability to prevent the issuance of the false and  
2 misleading statements or cause the statements to be corrected.

3 58. In particular, each of the Individual Defendants had direct and supervisory  
4 involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had  
5 the power to control or influence the particular transactions giving rise to the Exchange Act  
6 violations alleged herein, and exercised the same. The Recommendation Statement at issue  
7 contains the unanimous recommendation of each of the Individual Defendants that stockholders  
8 tender their shares in the Tender Offer. They were thus directly involved in preparing this  
9 document.

10 59. In addition, as the Recommendation Statement sets forth, and as described herein,  
11 the Individual Defendants were involved in negotiating, reviewing, and approving the merger  
12 agreement. The Recommendation Statement purports to describe the various issues and  
13 information that the Individual Defendants reviewed and considered. The Individual Defendants  
14 participated in drafting and/or gave their input on the content of those descriptions.

15 60. By virtue of the foregoing, the Individual Defendants have violated Section 20(a)  
16 of the Exchange Act.

17 61. As set forth above, the Individual Defendants had the ability to exercise control  
18 over and did control a person or persons who have each violated Section 14(e), 14(d)(4) and Rule  
19 14d-9 by their acts and omissions as alleged herein. By virtue of their positions as controlling  
20 persons, these Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct  
21 and proximate result of Individual Defendants' conduct, Plaintiff and the Class will be irreparably  
22 harmed.

23 62. Plaintiff and the Class have no adequate remedy at law. Only through the exercise  
24 of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate  
25 and irreparable injury that Defendants' actions threaten to inflict.

26 **RELIEF REQUESTED**

27 WHEREFORE, Plaintiff demands injunctive relief in her favor and in favor of the Class  
28 and against the Defendants jointly and severally, as follows:

1 A. Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff  
2 as Class Representative and her counsel as Class Counsel;

3 B. Preliminarily and permanently enjoining Defendants and their counsel, agents, employees  
4 and all persons acting under, in concert with, or for them, from proceeding with, consummating,  
5 or closing the Proposed Transaction, unless and until Defendants disclose the material information  
6 identified above which has been omitted from the Recommendation Statement;

7 C. Rescinding, to the extent already implemented, the Merger Agreement or any of the terms  
8 thereof, or granting Plaintiff and the Class rescissory damages;

9 D. Directing the Defendants to account to Plaintiff and the Class for all damages suffered as  
10 a result of their wrongdoing;

11 E. Awarding Plaintiff the costs and disbursements of this action, including reasonable  
12 attorneys' and expert fees and expenses; and

13 F. Granting such other and further equitable relief as this Court may deem just and proper.

14 **JURY DEMAND**

15  
16 Plaintiff demands a trial by jury.

17  
18 DATED: August 22, 2017

Respectfully submitted,

19 /s/ David E. Bower  
David E. Bower

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21 **OF COUNSEL**

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**MONTEVERDE & ASSOCIATES PC**

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*Counsel for Plaintiff*

27 *Counsel for Plaintiff*  
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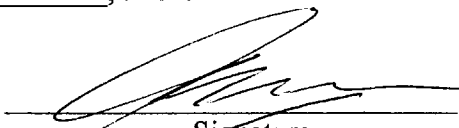
**CERTIFICATION OF PROPOSED LEAD PLAINTIFF**

I, NOR ADURA FRYDMAN ("Plaintiff"), declare, as to the claims asserted under the federal securities laws, that:

1. Plaintiff has reviewed a draft of the complaint and has authorized the filing of a complaint substantially similar to the one reviewed.
2. Plaintiff selects Monteverde & Associates PC and any firm with which it affiliates for the purpose of prosecuting this action as my counsel for purposes of prosecuting my claim against defendants.
3. Plaintiff did not purchase the security that is the subject of the complaint at the direction of Plaintiff's counsel or in order to participate in any private action arising under the federal securities laws.
4. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
5. Plaintiff sets forth in the attached chart all the transactions in the security that is the subject of the complaint during the class period specified in the complaint.
6. In the past three years, Plaintiff has not sought to serve nor has served as a representative party on behalf of a class in an action filed under the federal securities laws, unless otherwise specified below.
7. Plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

I declare under penalty of perjury under the laws of the United States that the foregoing information is correct to the best of my knowledge.

Signed this 17 day of August, 2017.

  
Signature



JS-CAND 44 (Rev. 06/17)

### CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
**NORADURA FRYDMAN**

(b) County of Residence of First Listed Plaintiff Queens County, NY  
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
 David E. Bower of Monteverde & Associates PC  
 600 Corporate Pointe, Suite 1170 Culver City, CA 90230 Tel: (310)446-6652

**DEFENDANTS**  
 SHORETEL, INC., SHANE ROBISON, DON JOOS, MARJORIE BOWEN, MARK BREGMAN, KENNETH DENMAN, CHARLES KISSNER, CONSTANCE SKIDMORE, and JOSEF VEJVODA

County of Residence of First Listed Defendant Santa Clara County, CA  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	<b>PERSONAL INJURY</b>	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act
120 Marine	310 Airplane	690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	<b>LABOR</b>	<b>PROPERTY RIGHTS</b>	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	710 Fair Labor Standards Act	820 Copyrights	410 Antitrust
150 Recovery of Overpayment of Veteran's Benefits	330 Federal Employers' Liability	720 Labor/Management Relations	830 Patent	430 Banks and Banking
151 Medicare Act	340 Marine	740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	751 Family and Medical Leave Act	840 Trademark	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	790 Other Labor Litigation	<b>SOCIAL SECURITY</b>	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	791 Employee Retirement Income Security Act	861 HIA (1395ff)	480 Consumer Credit
190 Other Contract	360 Other Personal Injury	<b>IMMIGRATION</b>	862 Black Lung (923)	490 Cable/Sat TV
195 Contract Product Liability	362 Personal Injury -Medical Malpractice	462 Naturalization Application	863 DIWC/DIWW (405(g))	<input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange
196 Franchise	<b>CIVIL RIGHTS</b>	465 Other Immigration Actions	864 SSID Title XVI	890 Other Statutory Actions
<b>REAL PROPERTY</b>	440 Other Civil Rights		865 RSI (405(g))	891 Agricultural Acts
210 Land Condemnation	441 Voting		<b>FEDERAL TAX SUITS</b>	893 Environmental Matters
220 Foreclosure	442 Employment		870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act
230 Rent Lease & Ejectment	443 Housing/Accommodations		871 IRS—Third Party 26 USC § 7609	896 Arbitration
240 Torts to Land	445 Amer. w/Disabilities—Employment			899 Administrative Procedure Act/Review or Appeal of Agency Decision
245 Tort Product Liability	446 Amer. w/Disabilities—Other			950 Constitutionality of State Statutes
290 All Other Real Property	448 Education			
	<b>PRISONER PETITIONS</b>			
	463 Alien Detainee			
	510 Motions to Vacate Sentence			
	530 General			
	535 Death Penalty			
	<b>OTHER</b>			
	540 Mandamus & Other			
	550 Civil Rights			
	555 Prison Condition			
	560 Civil Detainee—Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation—Transfer
- 8 Multidistrict Litigation—Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. §§ 78n(e), 78n(d)(4), 78t(a)

Brief description of cause:

Shareholder Class Action under Securities Exchange Act of 1934

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$

CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S), IF ANY** (See instructions):

JUDGE Hon. Yvonne Gonzalez Rogers

DOCKET NUMBER 4:17-cv-04857

**IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**

(Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND

SAN JOSE

EUREKA-MCKINLEYVILLE

DATE 08/22/2017

SIGNATURE OF ATTORNEY OF RECORD



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: ShoreTel Proxy Statement Missing Information Concerning Merger](#)

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