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12 and Josef Vejvoda

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO

13  
14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

17 DAVID H. SIMONSON, Individually and on  
Behalf of All Others Similarly Situated,

18 Plaintiff,

19 v.

20 SHORETEL, INC., SHANE ROBISON, DON  
21 JOOS, MARJORIE BOWEN, MARK  
22 BREGMAN, KENNETH DENMAN,  
23 CHARLES KISSNER, CONSTANCE  
24 SKIDMORE, JOSEF VEJVODA, MITEL US  
HOLDINGS, INC., SHELBY ACQUISITION  
CORPORATION, and MITEL NETWORKS  
CORPORATION,

25 Defendants.

Case No.: 17-cv-4931-WHA

**STIPULATION AND ~~PROPOSED~~  
ORDER VOLUNTARILY DISMISSING  
ACTION AS MOOT PURSUANT TO  
FED. R. CIV. P. 41(a)(1)(A)(ii)**

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**STIPULATION OF DISMISSAL**

1  
2 WHEREAS, on August 27, 2017, Plaintiff David H. Simonson filed the above-captioned  
3 action (the “Simonson Action”);

4 WHEREAS, five other substantially similar actions have been filed in this Court, styled  
5 *Scarantino v. ShoreTel, Inc., et al.*, Case No. 4:17-cv-04857-YRG (the “Scarantino Action”),  
6 *Frydman v. ShoreTel, Inc., et al.*, Case No. 4:17-cv-04865-BLF (the “Frydman Action”), *Mozev v.*  
7 *ShoreTel, Inc., et al.*, Case No. 4:17-cv-04888-HSG (the “Mozev Action”), *Herrera v. ShoreTel,*  
8 *Inc., et al.*, Case No. 3:17-cv-04988-WHO (the “Herrera Action”), and *De Angelis v. ShoreTel,*  
9 *Inc., et al.*, Case No. 3:17-cv-05091-WHO (the “De Angelis Action”), all of which are collectively  
10 referred to with the Simonson Action as the “Actions”;

11 WHEREAS, the Actions challenged disclosures made in connection with the proposed  
12 acquisition of ShoreTel, Inc. (“ShoreTel”), by Mitel Networks Corporation and its subsidiaries  
13 (collectively, “Mitel”), pursuant to a definitive agreement and plan of merger filed with the United  
14 States Securities and Exchange Commission (“SEC”) on or around July 26, 2017 (the  
15 “Transaction”);

16 WHEREAS, the Actions asserted claims for, *inter alia*, Defendants’ alleged violations of  
17 Sections 14 and 20(a) of the Securities Exchange Act of 1934 in ShoreTel’s Solicitation/  
18 Recommendation Statement (the “Solicitation Statement”), filed with the SEC on or around  
19 August 17, 2017;

20 WHEREAS, Defendants deny that Plaintiffs have asserted any meritorious claim, deny that  
21 the Solicitation Statement contained any misstatement or omission, and deny that any further  
22 information is required under any federal or state law;

23 WHEREAS, on September 8, 2017, ShoreTel filed an amendment to the Solicitation  
24 Statement that included certain additional information relating to the Transaction that addressed  
25 and mooted claims regarding the sufficiency of the disclosures in the Solicitation Statement as  
26 alleged in the Actions (the “Supplemental Disclosures”);

27 WHEREAS, Plaintiff Simonson’s counsel believes they may assert a claim for a fee in  
28 connection with the prosecution of the Simonson Action and the issuance of the Supplemental

1 Disclosures, and have informed Defendants of their intention to petition the Court for such a fee if  
2 their claim cannot be resolved through negotiations between counsel for Plaintiffs in the Actions  
3 and Defendants (the “Fee Application”);

4 WHEREAS, for the sake of judicial economy and the convenience of all parties, counsel  
5 for plaintiffs in all of the Actions have coordinated their efforts and intend to file any Fee  
6 Application jointly in the Scarantino Action, which was the first-filed of the Actions;

7 WHEREAS, all of the Defendants in the Actions reserve all rights, arguments and  
8 defenses, including the right to oppose any potential Fee Application and the right to dispute  
9 which Court should address any Fee Application;

10 WHEREAS, no class has been certified in the Actions;

11 WHEREAS, for the avoidance of doubt, no compensation in any form has passed directly  
12 or indirectly to Plaintiff Simonson or his attorneys and no promise, understanding, or agreement to  
13 give any such compensation has been made, nor have the parties had any discussions concerning  
14 the amount of any mootness fee application;

15 NOW, THEREFORE, subject to the approval of the Court, the parties stipulate and agree  
16 as follows:

17 1. The Simonson Action is dismissed, all claims asserted therein are dismissed with  
18 prejudice as to Plaintiff only, and all claims on behalf of the putative class are dismissed without  
19 prejudice.

20 2. Because the dismissal is with prejudice as to Plaintiff only, and not on behalf of a  
21 putative class, notice of this dismissal is not required.

22 3. If a Fee Application becomes necessary, Plaintiff Simonson’s counsel may seek a  
23 fee by joining in the Fee Application to be filed in the Scarantino Action where the Court will  
24 retain jurisdiction, as appropriate, for the Fee Application.

25 4. This Stipulation, and any Order thereon, are made without prejudice to any right,  
26 position, claim or defense any party may assert with respect to the Fee Application, which  
27 includes the Defendants’ right to oppose the Fee Application and the right to dispute which Court  
28 should address any Fee Application.

1 Dated: September 22, 2017

LEVI & KORSINSKY, LLP

2  
3 By /s/ Rosemary M. Rivas  
Rosemary M. Rivas

4 Attorneys for Plaintiff David H. Simonson

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6 Dated: September 22, 2017

FENWICK & WEST LLP

7  
8 By /s/ Kevin P. Muck  
Kevin P. Muck

9 Attorneys for Defendants ShoreTel, Inc., Shane  
10 Robison, Don Joos, Marjorie Bowen, Mark  
11 Bregman, Kenneth Denman, Charles Kissner,  
12 Constance Skidmore and Josef Vejvoda

13 Dated: September 22, 2017

PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP

14  
15 By /s/ Andrew Gordon  
Andrew Gordon

16 Attorneys for Defendants Mitel US Holdings, Inc.,  
17 Shelby Acquisition Corporation and Mitel Networks  
18 Corporation

19  
20 \* \* \*

21 Pursuant to Civil Local Rule 5-1(i)(3), all signatories concur in the filing of this  
22 stipulation.

23 Dated: September 22, 2017

24  
25 /s/ Kevin P. Muck  
26 Kevin P. Muck

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**PROPOSED ORDER**

Pursuant to the foregoing stipulation, IT IS HEREBY ORDERED that:

1. The Simonson Action is dismissed, all claims asserted therein are dismissed with prejudice as to Plaintiff only, and all claims on behalf of the putative class are dismissed without prejudice.

2. Because the dismissal is with prejudice as to Plaintiff only, and not on behalf of a putative class, notice of this dismissal is not required.

3. If a Fee Application becomes necessary, Plaintiff Simonson's counsel may seek a fee by joining in the Fee Application to be filed in the Scarantino Action, where the Court will retain jurisdiction, as appropriate, for the Fee Application.

4. This Stipulation, and any Order thereon, are made without prejudice to any right, position, claim or defense any party may assert with respect to the Fee Application, which includes the Defendants' right to oppose the Fee Application and the right to dispute which Court should address any Fee Application.

Dated: September 22, 2017.



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The Honorable William H. Alsup  
United States District Judge

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