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Denman, Charles Kissner, Constance Skidmore
12 and Josef VeJVoda

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16

17 ARMANDO HERRERA, Individually and on
Behalf of All Others Similarly Situated,

18 Plaintiff,

19 v.

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

25 Defendants.
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Case No.: 17-cv-4988-WHO

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

1 **STIPULATION OF DISMISSAL**

2 WHEREAS, on August 28, 2017, Plaintiff Armando Herrera filed the above-captioned
3 action (the “Herrera 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”), *Mozee v.*
7 *ShoreTel, Inc., et al.*, Case No. 4:17-cv-04888-HSG (the “Mozee Action”), *Simonson v. ShoreTel,*
8 *Inc., et al.*, Case No. 3:17-cv-04931-WHA (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 Herrera 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 Herrera’s counsel believes they may assert a claim for a fee in
28 connection with the prosecution of the Herrera 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 Herrera 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 Herrera 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 Herrera’s counsel may seek a fee
23 by joining in the Fee Application to be filed in the Scarantino Action where the Court will retain
24 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.

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Dated: September 21, 2017

WOLF HALDENSTEIN ADLER FREEMAN &
HERZ, LLP

By /s/ Rachele R. Rickert
Rachele R. Rickert

Attorneys for Plaintiff Armando Herrera

Dated: September 21, 2017

FENWICK & WEST LLP

By /s/ Kevin P. Muck
Kevin P. Muck

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

Dated: September 21, 2017

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

By /s/ Andrew Gordon
Andrew Gordon

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

* * *

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

Dated: September 21, 2017

/s/ Kevin P. Muck
Kevin P. Muck

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ORDER

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

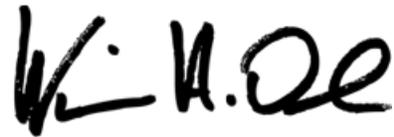
1. The Herrera Action is dismissed, all claims asserted therein are dismissed with prejudice as to Plaintiff only, and all claims on behalf of the putative class are dismissed without prejudice.

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 Herrera’s counsel may seek a fee by filing, jointly with counsel for plaintiffs in the other Actions, a Fee Application in this action, and the Court will retain jurisdiction, as appropriate, for that joint 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



The Honorable William H. Orrick
United States District Judge