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15 **Lead Counsel for Lead Plaintiffs & the**  
16 **Class**

17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 **In re SHORETEL, INC. SECURITIES**  
20 **LITIGATION**

21 **CIVIL ACTION NO. 08-0271 -**  
22 **CRB**  
23 **CONSOLIDATED AMENDED**  
24 **CLASS ACTION COMPLAINT**  
25 **FOR VIOLATIONS OF**  
26 **FEDERAL SECURITIES LAWS**  
27 **CLASS ACTION**  
28 **JURY TRIAL DEMANDED**



1 5. In truth, leading up to the IPO, Defendants were so focused on generating revenue  
2 in advance of the IPO that Defendants encouraged pushy and irresponsible sales tactics and  
3 demanded that sales personnel make significant sales to keep their jobs.  
4

5 6. Directly contrary to the Company's representations in the Registration Statement,  
6 at the time of the IPO, the Company failed to disclose that it:

- 7 • was unable to complete shipments to its customers prior to their payment  
8 becoming due;
- 9 • booked all sales as revenue on the day the sales agreement was made, without  
10 regard to the fact that many customers would never pay;
- 11 • ignored that sales personnel were materially adjusting payment terms from the  
12 30 days written on Company contracts (and beyond the net 30 to 60 days  
13 represented in the prospectus and registration statement);
- 14 • granted credit to customers without regard to their creditworthiness;
- 15 • was not receiving payment from certain customers because those customers  
16 did not have the infrastructure ready to support ShoreTel's Systems, had not  
17 received their product at the time payment was due, and/or received more  
18 generous payment terms from their salesperson than the contract reflected;
- 19 • was exhausting its customer base to generate revenue in anticipation of the  
20 IPO and would be unable to maintain the reported customer demand;
- 21 • had materially understated its allowance for bad debt/doubtful accounts which  
22 caused them to report lower-than-actual expenses; and
- 23 • failed to account for millions of dollars in demonstration products, resulting in  
24 overstated inventory and lower-than-reported costs of sales.

25 7. According to multiple former employees of the Company, defendants van  
26 Overbeek (Former President and CEO) and Combs (current President and CEO) were extremely  
27 focused on bringing ShoreTel to an IPO to the extent that a former Vice President, Confidential  
28 Witness ("CW ) #1, reported that "everything about how the company was run had to do with  
pushing for the IPO.

8. Both defendants van Overbeek and Combs were growing increasingly impatient  
that the Company was unable to sustain a profitable business and thus pushed the Company

1 toward an IPO. According to a former communications employee, CW #2, the Company  
2 depleted \$100 million in investor capital prior to the IPO and was not generating enough profit to  
3 keep investors happy.

4 9. CW #1 reported that defendant Combs was “very pushy, driving for sales in  
5 ignorance of the result: that Company employees would generate sales at any cost including  
6 extending payments terms, granting credit regardless of credit worthiness, and selling to  
7 customers unable to support ShoreTel’s product.

8 10. Defendants’ eagerness to achieve an IPO led to their negligence in failing to  
9 discover the Company’s undisclosed material problems in existence at the time of the IPO. The  
10 due diligence investigation required of Defendants prior to the IPO was either grossly  
11 inadequate, or never occurred at all.

12 11. As a result, it was not until January 7, 2008, that investors learned the truth about  
13 the Company when Defendants announced that the problems which existed at the time of the  
14 IPO would result in extremely disappointing results for the second quarter of fiscal 2008  
15 (“2Q:08 ), the period ended December 31, 2007, including lower than expected revenues and  
16 higher than expected costs and expenses.

17 12. Following the publication of these disappointing results, the price of ShoreTel  
18 stock collapsed. ShoreTel shares fell over 50% in a single trading day - - plummeting from a  
19 close of over \$13.00 per share the prior trading day, to a close of \$6.02 per share on January 7,  
20 2008. ShoreTel also experienced exceptionally heavy trading volume of more than 6 million  
21 shares traded -- *over thirty times* the Company’s recent average daily trading volume.

#### 22 JURISDICTION AND VENUE

23 13. The claims asserted herein arise under §§11 and 15 of the Securities Act of 1933  
24 (the “Securities Act ) (15 U.S.C. §§ 77k and 77o). Jurisdiction is conferred by §22 of the  
25 Securities Act, (15 U.S.C. § 77v).

26 14. Venue is proper pursuant to §22 of the Securities Act , as the Company maintains  
27 its executive offices and principle place of business in this District, and/or the Individual  
28

1 Defendants and Underwriter Defendants conduct business in this district, and the wrongful  
2 conduct took place in, this District.

3 **THE PARTIES**

4 **Plaintiffs**

5 15. Court appointed Lead Plaintiffs Loren Swanson and Art Landesman purchased  
6 shares of ShoreTel common stock pursuant and/or traceable to the Company's materially untrue  
7 and misleading Registration Statement and Prospectus issued by Defendants in connection with  
8 the July 2007 IPO.

9 **Corporate Defendant**

10 16. Defendant ShoreTel is a Delaware corporation founded in 1996 and  
11 headquartered in Sunnyvale, California. ShoreTel and its subsidiaries provide switch-based  
12 Internet protocol telecommunications systems primarily for domestic enterprises. ShoreTel  
13 enables companies to integrate all communications (voice, data, and messaging) with their  
14 business processes. ShoreTel is headquartered in Sunnyvale, California, and has regional offices  
15 in the United Kingdom, Sydney, Australia and Munich, Germany. The Company sells its  
16 systems through a network of 470 channel partners.

17 **Individual Defendants**

18 17. The individuals identified as defendants in subparagraphs (a) - (i) below, are  
19 referred to collectively herein as the "Individual Defendants. The Individual Defendants are  
20 each liable for the untrue statements and omissions contained in the Registration Statement, as  
21 alleged herein, both because they are responsible for making such statements as signatories to the  
22 Registration Statement, and because those statements were "group-published" information. The  
23 Individual Defendants include the following:

24 (a) Defendant John W. Combs ("Combs") was Chairman of the Board of  
25 Directors, Chief Executive Officer, and President and Co-Founder of ShoreTel at the time of the  
26 IPO. Defendant Combs signed the materially untrue and misleading Registration Statement.  
27  
28

1 (b) Defendant Michael E. Healy ("Healy") was the Company's Chief  
2 Financial Officer at the time of the IPO. Defendant Healy signed the materially untrue and  
3 misleading Registration Statement.

4 (c) Defendant Edwin Basart ("Basart") is a Founder of the Company, was its  
5 Chief Technology Officer and a member of the Board of Directors of ShoreTel at the time of the  
6 IPO. Defendant Basart signed the materially untrue and misleading Registration Statement.

7 (d) Defendant Mark F. Bregman ("Bregman") was a director of the Company  
8 at the time of the IPO. Defendant Bregman signed the materially untrue and misleading  
9 Registration Statement.

10 (e) Defendant Gary J. Daichendt ("Daichendt") was a director of the  
11 Company at the time of the IPO. Defendant Daichendt signed the materially untrue and  
12 misleading Registration Statement.

13 (f) Defendant Kenneth D. Denman ("Denman") was a director of the  
14 Company at the time of the IPO. Defendant Denman signed the materially untrue and  
15 misleading Registration Statement.

16 (g) Defendant Charles D. Kissner ("Kissner") was a director of the Company  
17 at the time of the IPO. Defendant Kissner signed the materially untrue and misleading  
18 Registration Statement

19 (h) Defendant Thomas van Overbeek ("Overbeek") was a director of the  
20 Company at the time of the IPO. Defendant Overbeek signed the materially untrue and  
21 misleading Registration Statement. Prior to becoming a director with the Company, van  
22 Overbeek served as the CEO and President of ShoreTel from February 2002 to July 2004 and as  
23 a consultant to ShoreTel from December 2001 to February 2002.

24 (i) Defendant Edward F. Thompson ("Thompson") was a director of the  
25 Company at the time of the IPO. Defendant Thompson signed the materially untrue and  
26 misleading Registration Statement.

27 **Underwriter Defendants**

1 18. In connection with the IPO, defendants Lehman Brothers, Inc. (“Lehman Bros. )  
2 and J.P. Morgan Securities, Inc. (“J.P. Morgan ) acted as the Lead Underwriters of the Offering  
3 – each distributing over 2.7 million shares of ShoreTel stock to investors and initiating the first  
4 public market for ShoreTel shares (not including 1.185 million shares sold to underwriters  
5 pursuant to an oversubscription option).

6 19. In connection with the IPO, the Lead Underwriters were paid at least \$0.665 per  
7 share in connection with the sale – each reaping over \$1.8 million in gross fees (excluding  
8 additional fees earned pursuant to the oversubscription option).

9 **MATERIALLY UNTRUE & MISLEADING STATEMENTS AND OMISSIONS**  
10 **IN THE REGISTRATION STATEMENT**

11 **Materially Untrue and Misleading Statements Regarding the Company’s Growth**

12 20. The Registration Statement portrayed ShoreTel as a company that had  
13 experienced -- and was continuing to experience -- significant growth in revenues, earnings,  
14 gross margins, and other positive key financial and operational metrics. It reported Company  
15 revenues that had more than tripled in just two years. In this regard, the Registration Statement  
16 stated, in part, the following:

17 **We have experienced significant growth in recent periods, with our**  
18 **total revenue growing from \$18.8 million for 2004 to \$61.6 million for**  
19 **2006.** This growth in revenue has largely been driven by **increased**  
20 **demand for IP telecommunications systems from new enterprise**  
21 **customers,** as well as sales of additional products to our installed  
22 enterprise customer base.

23 (emphasis added).

24 21. In truth, rather than a dramatic increase in demand, CW #3, a former sales  
25 employee, reported that “there was intense pressure to sell at the Company in an effort to please  
26 investors and generate revenue for the IPO. In this regard, CW #3 reported, the Company offered  
27 customers “significant discounts that were “questionable according to former employees who  
28 worked at the Company during the relevant time period.

29 22. CW #4 reported that because of intense pressure from Defendants, Company sales  
30 staff sold phone systems to customers whose countries and/or businesses lacked the

1 infrastructure necessary to support the systems by enticing them with steep discounts and  
2 extended payment terms. Sales personnel were so aggressive that customers were often left with  
3 systems that they were unable to use, let alone pay for.

4 23. As a result of forceful sales tactics, the Company experienced exaggerated growth  
5 as it exhausted its customer base to book sales prior to the IPO. Each of the foregoing factors  
6 were reasonably likely to have a material adverse effect on ShoreTel's operating results and was  
7 necessary for a proper understanding and evaluation of the Company's operating performance  
8 and an informed investment decision.

9 **Materially Untrue Statements Regarding the Company's Actual Payment Terms &**  
10 **Associated Revenue Recognition Practices**

11 24. Consistent with GAAP, Defendants stated, in part:

12 **Payment terms generally range from net 30 to net 60 days. In the**  
13 **event payment terms are extended materially from our standard**  
14 **business practices, the fees are deemed not to be fixed or determinable**  
15 **and revenue is recognized when the payments become due.**

16 (emphasis added).

17 25. GAAP permits the recognition of revenue only if the following criteria are met:  
18 (i) persuasive evidence of an arrangement exists; (ii) delivery has occurred; (iii) the vendor's fee  
19 is fixed or determinable; and collectability is probable. SEC's Staff Accounting Bulletin  
20 ("SAB") No. 104. Moreover, in order for revenue to be recognized, it must be earned and  
21 realized or realizable. Concepts Statement No. 5, Recognition and Measurement in Financial  
22 Statements of Business Enterprises, ¶83. Revenues are earned when the reporting entity has  
23 substantially accomplished what it must do to be entitled to the benefits represented by the  
24 revenues. *Id.* Revenues are realizable when related assets received or held are readily  
25 convertible to known amounts of cash or claims to cash. Concepts Statement No. 5, ¶83. If  
26 collectability is not reasonably assured, revenues should be recognized on the basis of cash  
27 received. Concepts Statement No. 5, ¶84g; see also Accounting Research Bulletin No. 43  
28

1 ("ARB 43"), (June 1943) Ch. 1A, ¶1; Accounting Principles Board Opinion No. 10 ("APB 10")  
2 Omnibus Opinion-1966 (December 1966) ¶12. If payment is subject to a significant  
3 contingency, revenue recognition is improper. Statement of Financial Accounting Standards No.  
4 5 ("SFAS 5"), Accounting for Contingencies (March 1975).

6 26. Nevertheless, ShoreTel's IPO Registration Statement failed to disclose the fact  
7 that sales personnel were materially extending payment terms, and that the Company booked  
8 sales as revenue as soon as an agreement was made with the customer, regardless of the  
9 customer's ability, or intention, to pay. Contrary to the statements in the Registration Statement,  
10 regarding payment terms (*see* ¶24 above), CW #4 reported that sales personnel engaged in a  
11 pattern and practice to orally extend payment terms beyond net 30 to 60 days to book sales and  
12 generate commission.

13 27. When payment became due under the sales contracts, usually at net 30 days,  
14 customers were contacted for nonpayment and were shocked to hear that payment was due.  
15 Customers purchased ShoreTel systems prior to having the infrastructure to support such systems  
16 merely to take advantage of steep discounts and were promised by sales personnel that the  
17 payment terms would not apply to them. Many customers had not yet received their complete  
18 systems when contacted for full payment.

19 28. Indeed, according to CW #4, a former employee working in the Company's credit  
20 department, several customers owed approximately \$500,000 to ShoreTel at the time of the IPO  
21 and were well past their 30-day payment obligation. These customers gave no sign that they  
22 indeed to pay and other customers outwardly refused to pay.

23 29. Despite these facts, according to CW #4, the employee responsible for obtaining  
24 payment from these customers, s/he was not permitted to recall the goods, and instead was  
25 instructed by Defendants to continue to press for payment, regardless of the customers' desire or  
26 intention to pay. Keeping a razor-sharp focus on achieving the goal of an IPO, Defendants  
27 turned a blind eye to the fact that sales personnel were succumbing to Defendants' pressure to  
28

1 meet sales metrics by offering unauthorized extensions on payment terms, as weekly sales  
2 meetings revealed.

3 30. In contrast to the representations in the Registration Statement and in disregard of  
4 the fact that sales personnel were materially extending payment terms, the Company booked  
5 sales as revenue as soon as an agreement was made with the customer, regardless of the  
6 customer's ability, or intention, to pay. Indeed, at the time of the IPO, several customers each  
7 owed approximately \$500,000 to ShoreTel and were well past their 30-day payment obligation.  
8 These customers gave no sign that they intended to pay and other customers outwardly refused to  
9 pay. Accordingly, the Registration Statement included materially inflated operating results, as a  
10 result recognizing revenue when collectability was not reasonably assured.

11 **Materially Untrue Statements & Omissions Regarding the Company's Issuance of Credit**  
12 **& Associated Revenue Recognition**

13 31. In explaining the Company's revenue recognition practice, Defendants addressed  
14 its issuance of credit to channel partners, stating, in part:

15 We assess the ability to collect from channel partners based on a number  
16 of factors, including creditworthiness and past transaction history. **If the**  
17 **channel partner is not deemed creditworthy, we defer all revenue**  
18 **from the arrangement until payment is received and all other revenue**  
19 **recognition criteria have been met.**

20 (emphasis added).

21 32. In truth, credit was granted freely and without regard to customers' credit  
22 worthiness. Many of ShoreTel's delinquent customers had credit lines that were depleted or  
23 frozen because they placed large orders and refused to pay. Though the Company's policy had  
24 been to review customers' credit on a semi-annual and annual basis, certain of the Company's  
25 customers had not had their credit reviewed for years. According to CW #4, attempts by an  
26 employee to get credit records for customers were shut down by Company executives who  
27 directed the employee to extend credit "without question. The Company continued to book all  
28 of its agreements as sales the day the sale was made – regardless of customers' creditworthiness  
or sales personnel's extension of payment terms. The Company's practice was simple: extend  
credit to any customer willing to buy and book revenues immediately.

1 **Materially Untrue and Misleading Statements and Omissions Regarding the Company’s**  
2 **Monitoring of Key Financial Metrics**

3 33. The Registration Statement also reported that Defendants “monitor a number of  
4 key metrics to help forecast growth, establish budgets, measure the effectiveness of sales and  
5 marketing efforts and measure operational effectiveness. Such metrics included initial and  
6 repeat sales orders, deferred revenue, gross margin, and operating expense management.

7 34. In truth, however, CW #1 and CW #2 both reported that former ShoreTel CFO  
8 John Finegan was not in control of or able to monitor the Company’s financials. According to  
9 CW #1, when approached by a marketing executive about nonpayment of vendors, Finegan was  
10 defensive and showed financial records suggesting that checks to the vendors had gone out, but  
11 in fact, they had not. In such cases, vendors did not receive payment until roughly a month after  
12 Finegan was questioned.

13 35. In addition, the Company was unable to reasonably forecast its growth or measure  
14 its effectiveness of sales and marketing efforts as evidenced by the untrue and misleading  
15 statements and omissions regarding its financial results and growth discussed in ¶¶20-23, above  
16 and the Company’s failure to reach its own guidance or analyst’s expectations for sales for  
17 2Q:08.

18 36. Further, the Company’s inability to track financial metrics also led the Company  
19 to under-allocate funds for its allowance for doubtful accounts (*see* ¶¶38-42 below) and to fail to  
20 write off costs of sales associated with shipping demonstration and loaner phones for free (*see*  
21 ¶¶43-45 below) – both caused the Company to materially understate expenses.

22 37. Though the Company demoted Finegan to Vice President of Finance two months  
23 prior to the IPO, Defendants failed to disclose in its Registration Statement that the Company  
24 faced inherent financial problems as a result of Finegan’s mismanagement.

25 **Defendants Materially Understated the Accounts Receivable Allowance**

26 38. Concerning the Company’s allowance for doubtful accounts, Defendants reported  
27 an allowance of \$256,000 for the period ending March 31, 2007 and stated that:

28 We review our allowance for doubtful accounts on a quarterly basis by assessing  
individual accounts receivable that materially exceed due dates. Risk assessment

1 for these accounts includes historical collections experience with the specific  
2 account and with our similarly situated accounts coupled with other related credit  
3 factors that may evidence a risk of default and loss to us. **Accordingly, the**  
4 **amount of this allowance will fluctuate based upon changes in revenue levels,**  
5 **collection of specific balances in accounts receivable and estimated changes**  
6 **in channel partner credit quality or likelihood of collection.**

7 (emphasis added).

8 39. Statement of Financial Accounting Standards (“SFAS ) No. 5, provides that an  
9 estimated loss from a loss contingency “shall be accrued by a charge to income if: (i)  
10 information available prior to issuance of the financial statements indicated that it is probable  
11 that an asset had been impaired or a liability had been incurred at the date of the financial  
12 statements; and (ii) the amount of the loss can be reasonably estimated. SFAS No. 5 also  
13 requires that financial statements disclose contingencies when it is at least reasonably possible  
14 (*i.e.*, greater than a slight chance) that a loss may have been incurred. The disclosure shall  
15 indicate the nature of the contingency and shall give an estimate of the possible loss or a range of  
16 loss, or state that such an estimate cannot be made.

17 40. The SEC considers the disclosure of loss contingencies to be so important to an  
18 informed investment decision that it promulgated Regulation S-X, which provides that, although  
19 disclosures in interim period financial statements may be abbreviated and need not duplicate the  
20 disclosure contained in the most recent audited financial statements, “where material  
21 contingencies exist, disclosure of such matters shall be provided even though a significant  
22 change since year end may not have occurred. 17 C.F.R. § 210.10-01.

23 41. In addition, Concepts Statement No. 5, states “[a]n expense or loss is recognized  
24 if it becomes evident that previously recognized future economic benefits of an asset have been  
25 reduced or eliminated . . . .  
26  
27  
28

1           42. Despite SEC and GAAP reporting requirements and in contrast to Defendants'  
2 statements concerning allowance for doubtful accounts (*see* ¶38 above) and their ability to  
3 monitor key financial metrics, the Company materially understated its allowance for bad debts in  
4 its Registration Statement. Despite the fact that Accounts Receivable had *increased* over 60%  
5 from the period ending June 30, 2006, the Company *decreased* its allowance for bad debt by  
6 over 30%. Generally, as sales grow, the frequency of nonpayment will increase and so too  
7 should the allowances made for such doubtful accounts. Defendants' decision to decrease its  
8 allocation for doubtful accounts was negligent in light of the dramatic increase in accounts  
9 receivable, especially with regard to the risk factors present at the time of the IPO including  
10 aggressive sales tactics, customers' surprise when asked to pay within 30 days, and the  
11 Company's issuance of credit without regard to creditworthiness.

12           **Materially Untrue and Misleading Statements and Omissions Regarding Accounting for**  
13           **Demonstration Products and Loaners**

14           43. The Company also omitted from the Registration Statement material information  
15 regarding its use of demonstration products, stating, in relevant part:

16           The marketing allowance can also be used by the channel partners to purchase  
17 demonstration products from us at greater than the standard discount for products  
18 sold to channel partners. Such discounts provided to the channel partners are  
19 recorded as a reduction of revenue upon shipment of the demonstration units.

20           44. In truth, a number of ShoreTel products were given as "temporary demonstration  
21 products and/or loaners from 2002 through 2007. However, ShoreTel failed to request that these  
22 systems be returned and never charged customers for keeping products.

23           45. The basic tenets of GAAP state that an expense or loss is recognized if it becomes  
24 evident that previously recognized future economic benefits of an asset have been reduced or  
25 eliminated. Because these demonstration units were often unaccounted for, the Company's  
26 inventory was overstated and its costs of sales were understated. The Registration Statement  
27 failed to disclose this millions of dollars of unaccounted for equipment that had never been  
28

1 invoiced or written-off as a loss. Accordingly, the financial position and operating results  
2 contained in ShoreTel's Registration Statement were materially untrue and misleading.

3 **The Company's Untrue and Misleading Statements and Omissions Regarding its Growth**  
4 **and Allowances Violate of GAAP and SEC rules**

5 46. ShoreTel was required to furnish information required by Item 303 of SEC  
6 Regulation S-K in its Registration Statement. Regarding the Company's results of operations,  
7 Item 303 required ShoreTel to:

8  
9 [d]escribe any known trends or uncertainties that have had or that the registrant  
10 reasonably expects will have a material favorable or unfavorable impact on net  
sales or revenues or income from continuing operations.

11 47. The Instructions to Paragraph 303(a) further state:

12 The discussion and analysis shall focus specifically on material events and  
13 uncertainties known to management that would cause reported financial  
14 information not to be necessarily indicative of future operating results . . .

15 48. In addition, the SEC has indicated (in Interpretive Release No. 34-26831), that  
16 registrants should employ the following two-step analysis in determining when a known trend or  
17 uncertainty is required to be included in the disclosure:

18 A disclosure duty exists where a trend, demand, commitment, event or uncertainty  
19 is both presently known to management and is reasonably likely to have a  
20 material effect on the registrant's financial condition or results of operations.

21 49. These requirements are intended to provide, in one section of a filing, material  
22 historical and prospective disclosure enabling investors to assess the financial condition and  
23 results of operations of the Company, with particular emphasis on the registrant's prospects for  
24 the future. As the Securities Act Release No. 6711 states:

25 The Commission has long recognized the need for a narrative explanation of the  
26 financial statements, because a numerical presentation and brief accompanying  
27 footnotes alone may be insufficient for an investor to judge the quality of earnings  
28 MD&A is intended to give the investor an opportunity to look at the company

1 through the eyes of management by providing both a short and long-term analysis  
2 of the business of the company . . .

3 50. “It is the responsibility of management to identify and address those key variables  
4 and other qualitative and quantitative factors which are peculiar to and necessary for an  
5 understanding and evaluation of the individual company. Securities Act Release No. 6349,  
6 supra n. 5, at 964.

7  
8 51. Nonetheless, ShoreTel’s IPO Registration Statement failed to disclose that the  
9 Company’s increases in revenue were not sustainable, because of, among other things, the  
10 Company offering customers “significant discounts to accelerate revenues. It also failed to  
11 discuss the Company’s problematic reduction in its allowance for bad debt despite apparent  
12 trends in accounts receivable growth and Defendants’ liberal granting of high-risk credit.

13  
14 **THE TRUE FINANCIAL AND OPERATIONAL CONDITION OF THE COMPANY IS**  
15 **BELETEDLY DISCLOSED**

16 52. On January 7, 2008, the Company announced that it “fell short of [its]  
17 expectations as Defendants revealed that “sales to new customers declined and reported  
18 results for the second quarter of fiscal quarter ended December 31, 2007 that were well below  
19 plan. On that day, Defendants revealed that the Company would post revenues almost 20%  
20 lower than analysts’ consensus estimates and millions below their previously issued guidance for  
21 the quarter. At that time, Defendants first revealed that sales to new customers were  
22 substantially lower than expected, and that sales to existing customers were not sufficient to  
23 offset these declines.

24 53. These belated revelations evidenced Defendants’ prior misrepresentation of  
25 ShoreTel’s business prospects. As investors and the market ultimately learned, the Company’s  
26 prior business prospects had been overstated as were the Company’s results of operations.

27 54. As this adverse information became known to investors, the prior artificial  
28 inflation was immediately eliminated from ShoreTel’s share price, and shareholders were  
damaged as a result of this related share price decline. Over six million shares of ShoreTel

1 traded, more than 20 times the average daily trading volume, while the stock plummeted over  
2 50% from a close of \$13.00 per share the prior trading day, to a close of \$6.02 per share on  
3 January 7, 2008.

4 **ADDITIONAL ALLEGATIONS REGARDING**  
5 **THE INDIVIDUAL DEFENDANTS**

6 55. Each of the Individual Defendants, by virtue of their high-level positions with the  
7 Company (as well as those high-level positions with the Company's subsidiaries and affiliates),  
8 directly participated in the management of the Company, was directly involved in the day-to-day  
9 operations of the Company at the highest levels, and was privy to confidential proprietary  
10 information concerning the Company and its business, operations, products, growth, financial  
11 statements, and financial condition, as alleged herein. Accordingly, the Individual Defendants  
12 were also involved in drafting, producing, reviewing and/or disseminating the untrue and  
13 misleading statements and information alleged herein, and approved or ratified these statements,  
14 in violation of the federal securities laws.

15 56. As officers and controlling persons of a publicly-held company whose common  
16 stock was, and is, registered with the SEC pursuant to the Exchange Act, and was traded on the  
17 New York Stock Exchange (the "NYSE"), and governed by the provisions of the federal  
18 securities laws, the Individual Defendants each had a duty to disseminate accurate and truthful  
19 information with respect to the Company's financial condition and performance, growth,  
20 operations, financial statements, business, products, markets, management, earnings and present  
21 and future business prospects, and to correct any previously-issued statements that had become  
22 materially misleading or untrue, so that the market price of the Company's publicly-traded  
23 common stock would be based upon truthful and accurate information. The Individual  
24 Defendants' misrepresentations and omissions made in connection with the issuance of common  
25 stock violated these specific requirements and obligations.

26 57. The Individual Defendants, because of their positions of control and authority as  
27 officers and/or directors of the Company, were able to and did control the content of the various  
28 SEC filings, press releases and other public statements pertaining to the Company at the time of  
the Offering. Each Individual Defendant was provided with copies of the documents alleged

1 herein to be misleading prior to or shortly after their issuance and/or had the ability and/or  
2 opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the  
3 Individual Defendants is responsible for the accuracy of the public reports and releases detailed  
4 herein and are therefore primarily liable for the representations contained therein.

5 **ADDITIONAL ALLEGATIONS REGARDING**  
6 **THE UNDERWRITER DEFENDANTS**

7 58. Like the Individual Defendants, it is also appropriate to treat the Underwriter  
8 Defendants as a group for pleading purposes and to presume that the untrue, misleading, and  
9 incomplete information conveyed in the Company's public filings, press releases, and other  
10 publications as alleged herein are the collective actions of the narrowly defined group of  
11 defendants identified above. Moreover, because of the Underwriter Defendants' positions, they  
12 each had access to the adverse undisclosed information about the Company's business,  
13 operations, products, operational trends, financial statements, markets and present and future  
14 business prospects *via* access to internal corporate documents (including the Company's  
15 operating plans, budgets and forecasts and reports of actual operations compared thereto),  
16 conversations and connections with other corporate officers and employees, attendance at  
17 management and Board of Directors meetings and committees thereof and via reports and other  
18 information provided to them in connection therewith.

19 **NO SAFE HARBOR**

20 59. The statutory safe harbor provided for forward-looking statements under certain  
21 circumstances does not apply to any of the untrue statements of material fact or material  
22 omissions pleaded in this complaint. The vast majority of the specific statements pleaded herein  
23 were not identified as "forward-looking statements in the Prospectus and/or Registration  
24 Statement.

25 60. To the extent there were any forward-looking statements, there were no  
26 meaningful cautionary statements identifying important factors that could cause actual results to  
27 differ materially from those in the purportedly forward-looking statements.  
28

1 61. Alternatively, to the extent that the statutory safe harbor does apply to any  
2 forward looking statements pleaded herein, Defendants are liable for those untrue forward-  
3 looking statements because at the time each of those statements was made, the forward-looking  
4 statement was authorized and/or approved by an executive officer of the Company.

5 **CLASS ACTION ALLEGATIONS**

6 62. This is a class action on behalf of all persons who purchased ShoreTel shares, or  
7 traceable stock, pursuant to the July 2007 Registration Statement (the "Class"), excluding  
8 defendants. The Class period ends on January 7, 2008 when the true facts were fully revealed.  
9 Class members are so numerous that joinder of them all is impracticable.

10 63. Common questions of law and fact predominate and include whether Defendants:  
11 (i) violated the Securities Act; (ii) whether the Registration Statement contained materially  
12 untrue and misleading statements and omissions concerning, among other things, the Company's  
13 ability to complete shipments to customers before payment became due; the Company's practice  
14 of booking sales as revenue regardless of customers' ability or intention to pay; net payment  
15 terms and associated revenue recognition policies; grant of customer credit; Company growth  
16 and demand for ShoreTel's products; the Company's allowance for bad debt/doubtful accounts;  
17 and its accounting for demonstration and loaner products; and (iii) the extent of and appropriate  
18 measure of damages.

19 64. Plaintiffs' claims are typical of those of the Class. Like the Class, Plaintiffs  
20 invested in ShoreTel common stock during the Class Period when it was overvalued because of  
21 the Registration Statement's failure to disclose that the Company would not be able to sustain  
22 growth and was unable to monitor key financial metrics.

23 65. Prosecution of individual actions would create a risk of inconsistent adjudications.  
24 Plaintiffs will adequately protect the interests of the Class. A class action is superior to other  
25 available methods for the fair and efficient adjudication of this controversy.

26 **CLAIMS FOR RELIEF**

27 **COUNT I**

28 **For Violations of §11 of the Securities Act Against ShoreTel**

1 66. Plaintiffs incorporate each and every allegation above as if stated herein.

2 67. On or about July 3, 2007, issuer ShoreTel completed an IPO of 9.085 million  
3 shares of ShoreTel common stock priced at \$9.50 per share, for total proceeds of at least \$86  
4 million.

5 68. Each of the statements alleged herein relating to ShoreTel's prospects and  
6 financial results made in the Registration Statement were materially untrue and/or misleading  
7 when issued. The true but concealed facts were that ShoreTel was not operating according to  
8 plan and that the Company would be unable to sustain its levels of growth because discounts  
9 provided to customers were causing accelerated sales. Further, the Company would be unable to  
10 collect payment from a number of these customers even though their sales had already been  
11 booked as revenue. These adverse conditions had already severely and adversely affected results  
12 of the Company prior to the IPO and would continue to hinder the Company in the foreseeable  
13 near-term.

14 69. ShoreTel is absolutely liable for the material misstatements and omissions in the  
15 registration statement and prospectus issued by it.

16 70. Less than three years elapsed from the time that the securities upon which this  
17 Count is brought were sold to the public to the time of the filing of this action. Less than one  
18 year elapsed from the time when Plaintiffs discovered or reasonably could have discovered the  
19 facts upon which this Count is based to the time of the filing of this action.

20 71. By reason of the conduct herein alleged, the ShoreTel violated §11 of the  
21 Securities Act.

22 **COUNT II**

23 **For Violations of §11 of the Securities Act Against the Individual Defendants**

24 72. Plaintiffs incorporate each and every allegation above as if stated herein.

25 73. The Individual Defendants each signed ShoreTel's Registration Statement with  
26 the SEC and distributed the Registration Statement/Prospectus to investors.

27 74. The Individual Defendants owed to the purchasers of the stock, including  
28 Plaintiffs and the Class, the duty to make a reasonable and diligent investigation of the

1 statements contained in the Registration Statement and Prospectus at the time it became  
2 effective, to assure that those statements were true and that there was no omission to state  
3 material facts required to be stated in order to make the statements contained therein not  
4 misleading.

5 75. The officers and directors of ShoreTel were signatories to the Registration  
6 Statement. By virtue of the material misrepresentations contained in the Registration Statement  
7 and Prospectus, Plaintiffs and the Class have been damaged.

8 76. Less than three years elapsed from the time that the securities upon which this  
9 Count is brought were sold to the public to the time of the filing of this action. Less than one  
10 year elapsed from the time when Plaintiffs discovered or reasonably could have discovered the  
11 facts upon which this Count is based to the time of the filing of this action.

12 77. By reason of the conduct herein alleged, each of the Individual Defendants  
13 violated §11 of the Securities Act.

### 14 **COUNT III**

#### 15 **For Violations of §11 of the Securities Act Against the Underwriter Defendants**

16 78. Plaintiffs incorporate each and every allegation above as if stated herein.

17 79. The Underwriter Defendants each permitted their names to be included on the  
18 cover of the Prospectus as the Underwriters.

19 80. The Underwriter Defendants owed to the purchasers of the stock, including  
20 Plaintiffs and the Class, the duty to make a reasonable and diligent investigation of the  
21 statements contained in the Registration Statement and Prospectus at the time it became  
22 effective, to assure that those statements were true and that there was no omission to state  
23 material facts required to be stated in order to make the statements contained therein not  
24 misleading.

25 81. The Underwriter Defendants were responsible for the preparation of the  
26 Prospectus and the Registration Statement. By virtue of the material misrepresentations  
27 contained in the Registration Statement and Prospectus, Plaintiffs and the Class have been  
28 damaged.

1 82. Less than three years elapsed from the time that the securities upon which this  
2 Count is brought were sold to the public to the time of the filing of this action. Less than one  
3 year elapsed from the time when Plaintiffs discovered or reasonably could have discovered the  
4 facts upon which this Count is based to the time of the filing of this action.

5 83. By reason of the conduct herein alleged, each of the Underwriter Defendants  
6 violated §11 of the Securities Act.

7 **COUNT IV**

8 **For Violations of §15 of the Securities Act Against the Individual Defendants**

9 84. Plaintiffs repeat and re-allege each and every allegation contained above.

10 85. This Count is brought pursuant to §15 of the 1933 Act against the Individual  
11 Defendants.

12 86. Each of these Individual Defendants was a control person of ShoreTel by virtue of  
13 his or her position as a director and/or senior officer of ShoreTel or as a result of its large equity  
14 interest. The defendants each had a series of direct and/or indirect business and/or personal  
15 relationships with other directors, officers, and/or major shareholders of ShoreTel.

16 87. Each of the Individual Defendants is liable for violating §15 of the 1933 Act  
17 based on their ability to control ShoreTel, which violated §11 of the 1933 Act as alleged in  
18 Count I above. This ability stems from their management positions and/or ability to control those  
19 persons in management positions, access to information regarding ShoreTel's operations and/or  
20 financial condition, ability to cause and direct the dissemination of that information, and/or the  
21 ability to prevent the issuance of, correct, or cause to be corrected, the misleading statements in  
22 the Registration Statement and Prospectus.

23 88. The Individual Defendants, by reason of their stock ownership and/or positions  
24 with ShoreTel, were controlling persons of the Company and are liable under §15 of the  
25 Securities Act.

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**PRAYER**

**WHEREFORE**, Plaintiffs pray for judgment as follows: declaring this action to be a proper class action; awarding damages, including interest; and such other relief as the Court may deem proper.

**JURY TRIAL DEMANDED**

Plaintiffs hereby demand a trial by jury.

Dated: June 27, 2008

by:  /s/ Kim E. Miller

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**Additional counsel for Lead Plaintiffs and  
the Class**

**DECLARATION OF SERVICE**

I hereby certify that this Amended Complaint was filed through the ECF system on June 27, 2008 and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants.

/s/ Kim E. Miller