

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DAVID LUCESCU, Individually and On Behalf of All Others Similarly Situated,	:	Civil Action No.
	:	
Plaintiff,	:	CLASS ACTION COMPLAINT FOR
	:	VIOLATIONS OF FEDERAL SECURITIES
vs.	:	LAWS
	:	
MIKE ZAFIROVSKI and PAVI BINNING,	:	
	:	
Defendants.	:	
	:	

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Plaintiff has alleged the following based upon the investigation of Plaintiff's counsel, which included a review of United States Securities and Exchange Commission ("SEC") filings by Nortel Networks Corporation ("Nortel" or the "Company"), as well as regulatory filings and reports, securities analysts' reports and advisories about the Company, press releases and other public statements issued by the Company, and media reports about the Company, and Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE ACTION**

1. This is a federal class action on behalf of purchasers of the securities of Nortel between May 2, 2008 and September 17, 2008, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

### **JURISDICTION AND VENUE**

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act [15 U.S.C. §§78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder by the SEC [17 C.F.R. §240.10b-5].

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and Section 27 of the Exchange Act [15 U.S.C. §78aa].

4. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. §1391(b), as many of the acts and practices complained of herein occurred in substantial part in this District.

5. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

## **PARTIES**

6. Plaintiff David Lucescu, as set forth in the accompanying certification, incorporated by reference herein, purchased the securities of Nortel during the Class Period and has been damaged thereby.

7. Nortel supplies end-to-end networking products and solutions that help organizations enhance and simplify communications. Nortel is not named in this action as a Defendant because it and its core operating subsidiaries filed for bankruptcy protection in January 2009.

8. (a) Defendant Mike Zafirovski (“Zafirovski”) served as Nortel’s Chief Executive Officer and President during the Class Period.

(b) Defendant Pavi Binning (“Binning”) served as Nortel’s Chief Financial Officer during the Class Period.

(c) Defendants Zafirovski and Binning are collectively referred to herein as the “Individual Defendants.”

9. Because of the Individual Defendants’ positions with the Company, they had access to the adverse undisclosed information about the Company’s business, operations, operational trends, financial statements, markets and present and future business prospects via access to internal corporate documents (including the Company’s operating plans, budgets and forecasts and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith.

10. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in the Company’s public filings, press releases and other publications as alleged herein is the collective action of the narrowly defined group of Defendants identified above. Each of the above officers of Nortel, by

virtue of their high-level positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, growth, financial statements, and financial condition, as alleged herein. Said Defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

11. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was, and is, traded on the New York Stock Exchange (“NYSE”) and the Toronto Stock Exchange (“TSE”), and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to disseminate promptly accurate and truthful information with respect to the Company’s financial condition and performance, growth, operations, financial statements, business, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company’s publicly-traded common stock would be based upon truthful and accurate information. The Individual Defendants’ misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

12. The Individual Defendants participated in the drafting, preparation, and/or approval of the various public, shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of

their Board membership and/or executive and managerial positions with Nortel, each of the Individual Defendants had access to the adverse undisclosed information about Nortel's business prospects and financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about Nortel and its business issued or adopted by the Company materially false and misleading.

13. The Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Each Individual Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Individual Defendants is responsible for the accuracy of the public reports and releases detailed herein and is therefore primarily liable for the representations contained therein.

14. Each of the Defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Nortel common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding Nortel's business, operations, management and the intrinsic value of Nortel common stock; and (ii) caused Plaintiff and other members of the Class to purchase Nortel common stock at artificially inflated prices.

### **CLASS ACTION ALLEGATIONS**

15. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased the securities of Nortel during the Class Period, inclusive, and who were damaged thereby. Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of

their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

16. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Nortel common shares were actively traded on the NYSE and TSE. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Nortel or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

17. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

18. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

19. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Nortel; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

20. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

### **SUBSTANTIVE ALLEGATIONS**

21. Nortel supplies end-to-end networking products and solutions that help organizations enhance and simplify communications. These organizations range from small businesses to multi-national corporations involved in all aspects of commercial and industrial activity, to federal, state and local government agencies and the military.

22. The Class Period commences on May 2, 2008. On that date, Nortel issued a press release announcing its financial results for the first quarter of 2008. According to the press release, the Company's first quarter results "demonstrated continued progress against the Company's turnaround strategy. Strong operational progress in margins combined with steady revenue growth kept Nortel on track to meet full year goals." Defendant Zafirovski commented on the announcement, stating, in pertinent part, as follows:

Nortel had a strong first quarter, driven by the completion of a contract in our LG-Nortel joint venture and continued improvements in gross and operating margins. Nortel's operating margin, a critical measure of our plan's traction, expanded for the seventh consecutive quarter year over year, recording a 512 bps improvement to 4.7 percent. . . We expect to achieve our full year guidance and we continue to make solid progress against the strategy to turn around the company. Our relentless focus on execution and our determination to deliver value to customers is strengthening the foundation upon which to build our performance over the balance of 2008 and beyond.

The press release provided the Company's "Outlook," stating, in pertinent part, as follows:

Nortel reiterates its financial outlook for the full year 2008, and continues to expect:

- Revenue to grow in the low single digits compared to 2007
- Gross Margin to be about the business model target of 43 percent of revenue
- Operating Margin as a percentage of revenue to increase by about 300 basis points compared to 2007

23. On May 21, 2008, Nortel issued a press release reconfirming its full year Outlook and stating, in pertinent part, as follows:

- Revenue to grow in the low single digits compared to 2007
- Gross Margin to be about the business model target of 43 percent of revenue
- Operating Margin as a percentage of revenue to increase by about 300 basis points compared to 2007

24. That same day, Nortel issued a press release announcing that its principal direct operating subsidiary, Nortel Networks Limited, had commenced a proposed \$500 million offering of 10.75% senior unsecured notes due 2016 in the United States to qualified institutional buyers.

25. On May 28, 2008, Nortel issued a press release announcing that it had completed a \$675 million senior notes offering and used the proceeds to redeem \$675 million in outstanding principal of 4.25% convertible senior notes due September 1, 2008.

26. On June 11, 2008, Nortel issued a press release announcing that it would be holding a day-long conference in Toronto with the investment community to “provide an update on the company’s transformation.” The press release “reconfirmed” the Company’s Outlook and stated, in pertinent part, as follows:

Executives will review the achievements of the past two years to build the operational and execution capabilities required to compete and win in a rapidly changing market. Of note, they will discuss how this fundamental phase of the transformation was accomplished while delivering consistent margin improvements that go against industry trends. The Nortel team will also explain how this

strengthened foundation, along with the company's growing market relevance, will be leveraged to capture profitable new revenue opportunities in growth segments of the market.

27. During the Class Period, Defendants held conference calls and meetings with analysts and investors to discuss the Company's earnings and operations. During these calls and presentations, Defendants made numerous materially false and misleading statements concerning Nortel's business.

28. The statements referenced above in ¶¶22, 23, 26 and 27 were each materially false and misleading when made because they failed to disclose and/or misrepresented the following adverse facts, among others:

(a) that demand for the Company's products was declining as carriers cut back their capital expenditures and other customers deferred purchase decisions;

(b) that the Company's financial results were materially overstated as the Company was failing to properly write-down its goodwill;

(c) that the Company's restructuring was not meeting with success as the Company was struggling to cut costs and improve profitability; and

(d) as a result of the foregoing, Defendants lacked a reasonable basis for their positive statements about the Company, its business, operations, earnings and prospects.

29. On August 1, 2008, Nortel issued a press release announcing its financial results for the second quarter of 2008. Defendant Zafirovski commented on the results, stating, in pertinent part, as follows:

Nortel's financial performance in the first half of 2008 has been consistent and disciplined. We have achieved our objectives and are on track to meet our targets for the year. . . In the second quarter, the company focused on the work at hand and improved productivity, stepped-up cost reduction activities and enhanced margin performance. We delivered gross margin of 43.1%, the seventh consecutive quarter of year-over-year improvement, and management operating margin of 4.3%, the eighth consecutive quarter of year-over-year improvement.

**We continue to see strong customer momentum in key growth areas of our business.** In recent months, we've signed a comprehensive global managed services telepresence agreement with Deloitte, have secured approximately 20 wins for our innovative 40G offering, and earlier this week signed on as the official network infrastructure partner for the London 2012 Olympic and Paralympic Games. . . In the second half, faced with a challenging business environment, we will continue our focus on execution and on delivering accelerated growth in key segments in order to achieve our financial objectives for the year.

[Emphasis added.]

The press release provided the Company's Outlook, stating, in pertinent part, as follows:

Nortel faces a challenging business environment with increasing risk due to general macro-economic weakness, continuing competitive pressures and potential of further reduced capex spending by key North American CDMA customers.

Accelerated growth in Nortel's Enterprise and Metro Ethernet businesses in the second half and the expected completion of wireless contracts in the fourth quarter, representing approximately \$350 million of previously deferred revenue, are key to the company achieving its financial objectives for this year.

Nortel reiterates its financial outlook for the full year 2008, and continues to expect:

- Revenue to grow in the low single digits compared to 2007
- Gross Margin to be about the business model target of 43 percent of revenue
- Management Operating Margin as a percentage of revenue to increase by about 300 basis points compared to 2007

30. Following this press release, the price of Nortel stock declined from \$7.64 per share to \$6.52 per share. Defendants, however, continued to conceal the scope and severity of the problems at Nortel and its operations.

31. Then, on September 17, 2008, Nortel issued a press release announcing its "preliminary view on certain third quarter results." According to the press release, "the Company is experiencing significant pressure as Carrier customers cut back their capital expenditures further than previously expected and certain Enterprise and Metro Ethernet customers defer new IT and

optical investments.” With respect to Nortel’s third quarter results and the Company’s Outlook, the press release stated, in pertinent part, as follows:

As a result, the Company currently expects revenues in the third quarter of 2008 of about \$2.3 billion. Third quarter gross margin is currently expected to be approximately 39 percent of revenue primarily as a result of a product delivery delay into the fourth quarter and customer mix within the Carrier business. Third quarter operating expense (SG&A and R&D) is currently expected to be \$60 million less than the second quarter 2008 level.

In the context of the foregoing, the Company has revised its full year 2008 outlook (a) and now currently expects:

- Revenue to decline between two and four percent compared to 2007
- Gross Margin of approximately 42 percent of revenue
- Management Operating Margin as a percentage of revenue to improve 125 to 175 basis points compared to 2007

The Company also announced that it was engaging in a “comprehensive review” of Nortel’s business and that “planning” was “underway for further restructuring and other cost reduction initiatives. . .”

32. In response to the Company’s announcement, the price of Nortel stock declined from \$5.30 per share to \$2.68, on heavy trading volume.

33. On November 10, 2008, Nortel issued a press release announcing its financial results for the third quarter of 2008, the period ending September 30, 2008. Among other things, the Company reported that it would be taking a charge of \$3.21 billion to write-down goodwill and deferred tax asset, “driven by changes in assumptions and lower growth projections in the current environment.”

34. On January 14, 2009, Nortel issued a press release announcing that it and certain of its operating subsidiaries would seek protection under the Companies’ Creditors Arrangement Act

(“CCAA”) in Canada and that certain of the Company’s U.S. subsidiaries had filed voluntary petitions in the United States under Chapter 11 of the U.S. Bankruptcy Code.

35. The market for Nortel securities was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, Nortel common stock traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Nortel common stock relying upon the integrity of the market price of Nortel common stock and market information relating to Nortel, and have been damaged thereby.

36. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of Nortel common stock, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make Defendants’ statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, as alleged herein.

37. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused, or were a substantial contributing cause of, the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false or misleading statements about Nortel’s business, prospects and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Nortel and its business, prospects and operations, thus causing the Company’s common stock to be overvalued and artificially inflated at all relevant times. Defendants’ materially false and misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing

the Company's common stock at artificially inflated prices, thus causing the damages complained of herein.

### **Additional Scienter Allegations**

38. As alleged herein, Defendants acted with scienter in that Defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of their receipt of information reflecting the true facts regarding Nortel, their control over, and/or receipt and/or modification of Nortel's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Nortel, participated in the fraudulent scheme alleged herein.

### **Applicability of Presumption of Reliance: Fraud on the Market Doctrine**

39. At all relevant times, the market for Nortel common stock was an efficient market for the following reasons, among others:

(a) Nortel stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;

(b) As a regulated issuer, Nortel filed periodic public reports with the SEC and the NYSE;

(c) Nortel regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the

national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) Nortel was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

40. As a result of the foregoing, the market for Nortel common stock promptly digested current information regarding Nortel from all publicly available sources and reflected such information in Nortel's stock price. Under these circumstances, all purchasers of Nortel common stock during the Class Period suffered similar injury through their purchase of Nortel common stock at artificially inflated prices and a presumption of reliance applies.

#### **NO SAFE HARBOR**

41. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Nortel who knew that those statements were false when made.

## **FIRST CLAIM**

### **Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants**

42. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

43. During the Class Period, Defendants disseminated or approved the materially false and misleading statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

44. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's common stock during the Class Period.

45. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Nortel common stock. Plaintiff and the Class would not have purchased Nortel common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by Defendants' misleading statements.

46. As a direct and proximate result of these Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their purchases of Nortel common stock during the Class Period.

## **SECOND CLAIM**

### **Violation of Section 20(a) of the Exchange Act Against the Individual Defendants**

47. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

48. The Individual Defendants acted as controlling persons of Nortel within the meaning of Section 20(a) of the Exchange Act as alleged herein. By reason of their positions as officers and/or directors of Nortel, and their ownership of Nortel stock, the Individual Defendants had the power and authority to cause Nortel to engage in the wrongful conduct complained of herein. By reason of such conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

(a) Determining that this action is a proper class action, designating Plaintiff as Lead Plaintiff and certifying Plaintiff as a Class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

(b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other and further relief as the Court may deem just and proper.

### **JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED: May 18, 2009

COUGHLIN STOIA GELLER  
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