UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE GILAT SATELLITE NETWORKS, LTD.	CIVIL ACTION NO. CV-02-1510 (CPS) JURY TRIAL DEMANDED

AMENDED CONSOLIDATED CLASS ACTION COMPLAINT

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AMENDED CONSOLIDATED CLASS ACTION COMPLAINT

Lead Plaintiffs, individually and on behalf of all other persons similarly situated, by their undersigned attorneys, for their amended consolidated class action complaint (the "Amended Complaint"), allege the following upon information and belief, based upon the facts set forth below, which were obtained through an extensive investigation made by and through their attorneys. Lead Plaintiffs' investigation included, among other things: review and analysis of various public statements and filings made by Gilat Satellite Networks, Ltd. ("Gilat" or the "Company") and its senior officers with the Securities and Exchange Commission ("SEC"); review and analysis of filings made by Gilat and StarBand Communications, Inc. ("StarBand") in the United States Bankruptcy Court for the District of Delaware; reports of securities analysts concerning the Company; press releases, media reports, and other publicly available documents; internal email, invoices and accounts receivable detail from Gilat's Idan accounting system concerning the Company; and interviews with former employees of the Company knowledgeable about the conduct complained of herein.

NATURE OF THE ACTION

1. Lead Plaintiffs bring this federal securities class action on behalf of purchasers of Gilat securities between February 9, 2000 and May 29, 2002, inclusive (the "Class Period"), to recover the damages they incurred as a result of defendants' violations of the federal securities laws. During the Class Period, Gilat's Chief Executive Officer and Chairman, Yoel Gat ("Gat"), and its Chief Financial Officer, Yoav Leibovitch ("Leibovitch") (the "Individual Defendants") and Gilat (collectively "Defendants") engaged in a fraudulent scheme, a deceptive course of business, and the knowing or reckless dissemination of materially false and misleading information that injured purchasers of Gilat's stock during the Class Period by overstating Gilat's financial results in

violation of Generally Accepted Accounting Principles ("GAAP") and/or Gilat's own accounting policies. Additionally, Defendants knew or recklessly misrepresented the total amount of Gilat's monetary commitment to its failed joint venture, StarBand, while failing to timely disclose material problems which led to StarBand's demise, including faulty service, inadequate funding, and lack of a committed distribution partner.

2. Gilat is a provider of products and services for satellite-based communications networks. Gilat designs, develops, manufactures, markets and services products that enable end-to-end telecommunications and data networking solutions, as well as broadband Internet solutions, based on Very Small Aperture Terminal ("VSAT") satellite dishes, related central station (hub) equipment and software.

3. During the Class Period, Gilat distributed its products and services worldwide through a direct sales force, service providers, agents, joint ventures, alliances, and affiliated companies. As a means to market and sell its VSATs in the United States, in early 2000, Gilat established the joint venture, StarBand, formerly known as Gilat-to-Home, Inc., with Microsoft, EchoStar Communications ("EchoStar"), and ING. Gilat was the largest shareholder, owning 42.1% of outstanding shares. StarBand's purported services included two-way, always-on, high-speed Internet access via satellite to residential customers. To receive StarBand's services, customers first purchased satellite system equipment (VSATs) and then paid a monthly subscriber fee. Gilat manufactured and sold to StarBand the VSATs used to build its network.

4. Impressing investors and analysts with the meteoric speed of its revenue growth, Gilat went from reporting revenues of approximately $25 million per quarter in 1997 to reporting revenues reaching $174.6 million by the fourth quarter of 2000, as the following chart illustrates:

GILAT REVENUE NUMBERS
(in millions)

YR	Q1-Mar	Q2-Jun	Q3-Sep	Q4-Dec
2003	51.1	52.1	44.6	42.4
2002	**72.0**	51.6	43.3	41.8
2001	**100.3**	**118.3**	**81.4**	**89.0**
2000	**85.9**	**108.6**	**135.4**	**174.6**
1999	66.1	74.4	88.5	**108.9**
1998	31.1	34.6	40.0	49.7
1997	21.1	25.3	27.3	30.0

Source: Bloomberg L.P.
(Class Period quarters in bold)

5. Gilat's stock price soared in response to the Company's effusive announcements of new contracts won, a record-breaking result for 1999, and a purported 70% increase in "backlogged" sales to $300 million. Reacting to such a continuous stream of positive news, analysts enthusiastically recommended that investors buy the stock. On February 28, 2000, the day Gilat announced its 1999 year-end results, Gilat's stock traded at an astounding $160.50 per share.

6. Unbeknownst to the market, Gilat's impressive revenues in 1999, continuing through 2001, were fueled by knowing or reckless accounting practices that included: premature revenue recognition; boosting revenues with undisclosed related party income; failure to properly reserve for doubtful accounts; converting uncollectible accounts receivable into equity (and subsequently recording a capital loss); failing to write-off uncollectible accounts receivable as bad debts, and/or failing to timely do so. These actions were also in direct contravention of Defendant's publicly stated policy of preparing Gilat's financial statements in accordance with GAAP. The full extent of Gilat's accounting fraud was not revealed until Gilat filed its Form 20-F for 2001, on May 29, 2002.[1]

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[1] Because Gilat is a foreign corporation, it does not file quarterly financial reports on Form 10-Q. Its annual reporting, on Form 20-F, is required to be filed six months after its fiscal year-end.

7. Specifically, Gilat's financial statements were knowingly or recklessly prepared in violation of GAAP and/or Gilat's own accounting policies. The following are just a sample of the improper transactions:

a. Shipment of Products to Third-Party Warehouses Where They Were Stored Indefinitely, Pending Assurances of Payment.

According to Confidential Witness No.1 ("CW1"), a former Gilat Finance Division employee throughout the Class Period, Gilat recognized revenue upon shipment of goods shipped to and stored in third-party warehouses in Amsterdam, Hong Kong, Miami, Helsinki, and Manilla, even though Gilat retained control over the goods pending receipt of customer payment or adequate financial security, e.g., letter of credit ("LOC"). Some goods remained warehoused in excess of one year pending payment. See ¶¶***77(b); 81(b); 91(b); 101(b); 134(b); 159(b); and 169(b)*** for examples of such transactions;

b. Third-Party Warehouse Shipments Before Parties Reached Agreements.

According to CW1, Gilat improperly recognized revenue on goods shipped to third-party warehouses during contract negotiations, even though some of these "sales" were never finalized and the goods were never delivered. For example, in Q3 2000, Gilat recorded $15 million on a "sale" to Corporacion Novavision even though a deal was never reached -- warehousing the goods in Chicago and Miami for approximately one year before writing off the account. Then, Defendants knowingly or recklessly accounted for the loss as an expense embedded within fixed asset charges, rather than as a write-off of bad debt. See ¶¶ ***101(c)(ii)*** for details of the Corporacion Novavision "sale" and additional examples at ¶¶ ***101(c)(i)(iii) and 119(b)***.

c. Third-Party Warehouse Shipments Exceeding Customer Demand.

According to CW1, Gilat improperly recognized revenue upon shipments to warehouses where the customer did not yet want the goods, did not request shipment to a warehouse, and did not pay for warehousing. On a Q3 2000 "sale" of 1,000 VSAT units to Destiny Satellite Corporation -- which only wanted (and paid for) delivery of 88 VSATs -- Gilat immediately recognized revenue on the remaining 912 VSAT units. The goods were warehoused in the Phillippines for a year, until the Philippine Ports Authority moved to confiscate the goods as abandoned, and were later stored in a Hong Kong facility controlled by Gilat's affiliate, K-SAT. See ¶ ***101(e)*** for details of the Destiny transaction and an additional example at ¶***77(c)***.

d. Holding Quarters "Open" to Sweep in Revenue Earned The Following Quarter.

Every quarter, according to CW1, Gilat improperly recognized revenue on goods that were invoiced on the last day of, or just days prior to, the end of a quarter, but not shipped until the following quarter. CW 1 explained that Gilat's Logistics Department asked the forwarder to issue a separate air waybill without the flight date and time[2] to hide the fact that Gilat had not shipped the goods by quarter's-end. See ¶¶ ***81(a); 91(a); 101(a); 119(a); 134(a); 159(a); 169(a); and 179(a)*** for examples of these transactions.

2 When the goods were warehoused, as discussed above, the destination was also removed and/or changed.

Additional confidential witnesses confirm not only that Gilat booked sales when equipment had not yet been shipped to customers and no money had exchanged hands, but that it happened at the end of every quarter.

e. Shipments to Customers That Were Not Creditworthy.

Gilat improperly recognized revenue at time of shipment when collectibility was not reasonably assured without either cash payment or assurance of payment (e.g. Letter of Credit ("LOC")) to companies in emerging economies that Gilat knew were not creditworthy for the millions of dollars in accounts receivable reported. This not only violated GAAP but also violated Gilat's policy of requiring a LOC on sales to certain customers in countries with emerging economies (see Form 20-F, filed June 30, 2000). When CW1 told CFO Leibovitch, within days of the end of Q2 2000, that the sales department instructed the Logistics Department to ship goods without the required LOC, Leibovitch shrugged and did not correct the problem. See ¶¶ ***91(c); 101(d); and 119(c)*** for details on such "sales" that ultimately were not collected;

f. Round-Trip Transaction.

Gilat improperly recognized revenue from a "round-trip" transaction based on a circular flow of money by which Gilat recognized its own cash as revenue. According to CW1, Dell Marketing L.P. ("Dell") agreed to "purchase" $3 million in goods from Gilat contingent upon Gilat buying

7,800 computers from Dell with an "uplift" of $384.62 per unit. Not coincidentally, this "uplift" (surplus charge) amounted to $3 million dollars ($384.62 x 7,800) -- the same amount Dell owed Gilat for the test equipment it "purchased." Moreover, Dell was given a "right to return" the equipment if Gilat did not purchase 7,800 computers as agreed. See ¶ ***77(a)*** for additional details;

g. Consignment Sales.

On the last day of Q1 2000, Gilat improperly recognized revenue on 350 VSATs shipped to Destiny for resale to its customers, subject to the following terms: "Should Destiny not utilize the whole 350 SSA Remote Terminals, it shall have the option to return the same at the end of the term of payment and shall pay only for those remotes it has utilized." Since payment to Gilat was contingent upon Destiny reselling the VSATs to its customers, GAAP did not permit revenue recognition at the time of shipment. See ¶ ***81(c)*** for additional details.

h. Undisclosed Related-Party Sales Used to Boost Revenues.

Gilat violated SEC regulations and GAAP by failing to disclose that revenues were boosted by the following, material, related-party transactions:

i. rStar (formerly ZapMe!).

In 1999, Gilat sold $35.6 million worth of equipment to a related-party, rStar,[3] but recklessly failed to report the sale as such or to

[3] Specifically, in 1999, Gilat directly held a $2.5 million equity investment and officers and directors of Gilat held an additional $5 million equity investment in rStar. Further, Gat was an rStar stockholder and sat on its Board. By April 2004, Gilat completely acquired rStar.

disclose that a significant portion of these sales were included in Gilat's accounts receivable. In 2000, through Gat's retained "observer" status on rStar's Board of Directors, Gilat was aware of the fact that rStar's business was in trouble but kept the receivable on its books – even allowing the debt to balloon to $45 million. In 2001, when rStar was insolvent, Gilat swapped the massive debt for rStar equity and the very next quarter wrote off most of the "investment" as impaired goodwill -- converting bad debt into a capital loss. See ¶¶***88; 91(d); 101(f)(i); 119(d)(i); 134(c)(i); 143(a); 159(i); and 169(i)*** for additional details.

ii. Channel Master.

Defendants recklessly failed to disclose that tens of millions of dollars in equipment sales to Channel Master were, in reality, related-party sales to StarBand.[4] When StarBand purchased VSATs from Gilat, they were sent to Channel Master, a company which manufactured and mounted an antenna dish to the VSATs and then assembled, packaged and shipped the finished products to StarBand's customers. Gilat billed Channel Master, not StarBand, for these purchases – even though CFO Leibovitch received e-mails indicating that StarBand's payments flowed immediately through Channel Master to Gilat:

[4] StarBand was a related party by virtue of Gilat's ownership of 42.1% of its shares and Gilat's actual exercise of significant control over StarBand.

> Channel Master Assistant treasurer Jack Barry has instructed our bank's wire transfer department to be looking for the incoming wire on Thursday from StarBand in the amount of $3,172,606.04 and to immediately forward the same amount to Gilat upon receipt from StarBand. The wire will be sent to the same Gilat/Spacenet account that we have sent prior payments to unless Gilat otherwise instructs Jack. [Emphasis added].

Because Channel Master served as a middle-man, Defendants recklessly failed to disclose the amount of revenues, equipment sales, and accounts receivable attributable to related-party StarBand. See ¶¶ ***101(f)(ii); 119(d)(ii); 134(c)(ii); 143(a); 159(c)(ii); 169(c)(ii); and 179(b)(i)*** for additional details.

iii. K-SAT Satellite Networks, Inc.

As reported to the SEC in its 1999 Form 20-F, Gilat owned 39% of K-SAT, and Gat and another Gilat officer served on K-SAT's Board. In 2000, Gilat improperly recorded $5 million on a December 31, 2000 (the last day of 2000) "sale" to K-SAT while still in negotiations with the actual purchaser of the goods, CNTIC Euro-Asia Import & Export Co., Ltd. ("CNTIC"). Even though an agreement between Gilat and CNTIC was not executed until 2001, Gilat improperly invoiced and recognized revenue on goods destined for and "billed to" K-SAT – but never reported the transaction as a related-party sale. Moreover, revenue recognition was improper because the goods were not actually shipped to K-SAT until January 3, 2001. According to CW1, the goods were held by K-SAT until

May 2001, when contracted deliveries began. See ¶***119(d)(iii) and 143(a)*** for additional details.

iv. StarBand.

Beginning in Q1 2001, Starband was unable to make payments according to the stated terms of its equipment purchase contract with Gilat. Despite evidence that StarBand was unable to financially perform, Gilat improperly continued to recognize revenues based on accrual accounting and failed to write-off the tens of millions of dollars in impaired receivables or record a provision for probable bad debt. At the close of the Class Period, in May 2002, Gilat will admit i) the StarBand account receivable is worthless; and ii) the loss should have been recognized in 2001. See ¶¶ ***134(c)(iii); 159(b)(iii); 171(b)(iii); 181(b)(ii) and 187*** for details of this allegation.

8. In addition to the improper revenue recognition and accounting practices described in ¶¶6-7, Gilat was also engaged in a cover-up of StarBand's failure. StarBand reportedly accounted for approximately 25% of Gilat's annual revenue and was Gilat's primary supplier of product to the public. Consequently, both Defendants and analysts understood that news about StarBand's operations was a material component relied on by the market in setting the price of Gilat securities. As a UBS Warburg analyst noted, "In our opinion Gilat is 'betting' its future on two-way Internet access via satellite, and over the next 12-months the share price should be driven by the news flow and estimates regarding the success of the new company [StarBand]." This observation was not lost on Defendants, who desperately sought to raise money to fund StarBand's operations.

9. To convince the capital markets and private investors that StarBand was an attractive investment, Defendants falsely portrayed StarBand as a competitive and profitable provider of high-speed Internet access via satellite. For example, Defendants represented that StarBand service was "always on," rivaled the speed of cable and DSL access and was at least ten times faster than dial-up access, and that StarBand had solid distribution partners. See ¶¶***69, 71 73, 97, 156, 171,and 176*** for details of these allegations.

10. Defendants, however, failed to disclose that the StarBand service was never accepted in the marketplace. From its inception, StarBand did not provide Internet access as advertised and was not attracting customers. Beta testers and initial customers complained that the service was unreliable and slow. Customers canceled the service, often leaving an account balance. StarBand's primary distributor, Gilat's joint venture partner, EchoStar, refused to market the product. In fact, in mid-2001, EchoStar sought to purchase a competitor of StarBand that offered superior service. See ¶¶ ***61(a-g), 64, 65, 114(a-h), 172(a-f)*** for details of these allegations.

11. Defendants also failed to disclose that because of "product development problems" at Gilat, StarBand was not able to sell its Model 360 modem as planned in early 2001. As an interim measure, StarBand had launched operations with its Model 180 modem -- even though it required a "significantly greater subsidy" from StarBand and used more satellite transponder resources than the Model 360. When the launch of the Model 360 system was delayed due to development problems at Gilat, StarBand had to sell more Model 180 modems, resulting in higher costs that left it without resources for advertising and marketing and, ultimately, "contributed to [StarBand's] financial deterioration."[5]

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[5] See StarBand's Disclosure Statement Pursuant to 1125 of the Bankruptcy Code ("Disclosure Statement"), filed August 15, 2003, in the United States Bankruptcy Court for the District of Delaware, at 25.

12. StarBand's business plan required $250 million of funding in 2001 and an additional $500 million of funding to reach a break-even point.[6] Defendants determined that StarBand's fund-raising – originally to be accomplished with an initial public offering ("IPO") – was dependent upon an appearance of immediate success. Consequently, inflated related-party sales of equipment to StarBand served both to boost Gilat's revenues and to portray StarBand as a thriving company with high demand for Gilat's VSATs. Gat only admitted at the end of the Class Period that when StarBand halted VSAT purchases, it had "a lot of equipment" that was unsold.[7]

13. By the time Defendants formally withdrew StarBand's IPO on March 9, 2001, Gilat was already in serious financial trouble as a result of its improper revenue recognition practices. Because its "record" revenues each quarter had been based upon uncollectible accounts receivable, Gilat's negative cash flow from operations had grown to $124 million by the end of 2000. No longer able to afford to sell and store equipment it was not getting paid for, early in 2001, according to CW1, Gat decided Gilat was to become "cash oriented, not sales oriented." At the same time, StarBand was in dire need of substantial funds to resolve its myriad problems. According to Confidential Witness No. 2 ("CW 2"), StarBand's Sales Director from mid-2000 until late 2001, in March 2001, EchoStar (temporarily) stopped marketing StarBand's products altogether. Investors reacted negatively to Gilat's cancellation of the IPO: Shares slid $3.94 from the March 8, 2001, closing price of $35.63 to $31.69 at the close on March 9, 2001 – an 11% decline.

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6 Id. at 22.

7 See Gilat's May 14, 2002 conference call on Q1 2002, transcript produced and provided by Fair Disclosure Financial Network. See also Memorandum of Agreement dated February 22, 2000 between StarBand, Gilat and EchoStar that states equipment delivered to EchoStar will remain the inventory of StarBand (formerly known as G2H), Exhibit 10.5 to StarBand's Form S-1/A filed with the SEC on November 13, 2000.

14. On March 12, 2001, Defendants rocked the market with several inconsistent announcements. Although, as noted by one analyst (see ¶15, below), competitors in the sector had already "fallen by the wayside," due to cash "hemorrhage[s]," Gilat announced a 49% increase in revenues from 1999 to 2000, and Q4 2000 earnings per share ("EPS") of $0.82. However, Defendants also drastically revised Gilat's guidance for 2001 – reducing projected revenues by $100 million and EPS from $2.43 to $1.00 – and announced a "one-time" charge of $29.7 million. The juxtaposition of this divergent data did not sit well with analysts and investors, who understood the announcement to raise red flags about the veracity of Gilat's prior representations about its financial position (one that was overstated by accounting improprieties). Because Gilat operates, in part, on a multi-year contract business model, the sudden disappearance of $100 million in revenue for fiscal 2001 called into question the legitimacy of earlier-announced contract wins – and the revenue recognized thereon – as Gilat had a purported enormous $300 million sales backlog. Recognizing the adverse impact of the announcement would have on investors, Defendants conducted a conference call with analysts to, among other things, reassure the market about Gilat's financial condition. In particular, Defendants falsely assuaged worries about Gilat's cash flows by, inter alia, guaranteeing that Gilat's total financial exposure to StarBand would not exceed $75 million.

15. The market was stunned by Gilat's sudden about face,[8] with one analyst proclaiming to be "shell shocked." While another analyst group was "somewhat" surprised by the timing of the news, they commented that, "in hindsight," Gilat's "blowup almost seemed inevitable":

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[8] In November 2000, Gilat had hosted an analyst luncheon at which Defendants projected skyrocketing sales to continue in 2001. Also, management met with one analyst just weeks earlier and not only maintained 2001 guidance but touted a steep ramp-up in shipments. See ¶*__117__*.

> ...Gilat has shown an uncanny ability to report stable margins, while every other competitor hemorrhaged and fell by the wayside ... We believe the company's difficulties stem from two basic issues as opposed to the general economy excuse [given by management]: (1) prior wins aren't real enough to allow management to continue to work through backlog and (2) StarBand's inability to acquire funding will now make clear that earnings erosion is coming from the core and not just StarBand, a trend that would have been very hard to detect if StarBand had funds and could buy as many [Gilat] terminals as initially envisioned.

16. The announcements caused Gilat's stock price to plummet $17.75 per share -- from its close of $31.69 on (Friday) March 9, 2001, to $13.94 on March 12, 2001 -- a decline of 56.02%.

17. Still desperate for cash to fund both its own and StarBand's operations, Gilat attempted to secure private financing for StarBand. On July 11, 2001, Gilat proudly announced to the market that EchoStar had agreed to invest an addition $50 million in StarBand and to launch a "next generation" satellite. Following this good news, Gilat's stock price surged from $11.00 to $13.15, with 1.87 million shares trading – the largest single-day volume since March 14, 2001.

18. However, Defendants knowingly or recklessly failed to disclose that as part of this deal, StarBand's lenders terminated StarBand's ability to borrow the $37 million in funds remaining on its $150 million credit facility. See Disclosure Statement at 19-20. Thus, StarBand only raised a net $13 million from the announced $50 million EchoStar investment. See ¶ ***150*** for additional details.

19. Even though Defendants assured investors that Gilat's total financial exposure to StarBand would not exceed $75 million, Gilat secretly continued its contributions to StarBand even

after this cap was reached, through (what CW 3 described as) "off the book floats" and sham accounting, e.g. "sales" to Channel Master. See ¶¶ ***131(e) and 101(f)(ii)*** for additional details.

20. Another partial disclosure of Gilat's improper accounting practices came on October 2, 2001, when Gilat released its financial results for Q3 2001. The announcement of charges in the tens of millions for impaired capitalized lease receivables and an additional bad debt reserve of $10 million drove Gilat's stock price down from $5.38 to $3.32 per share.

21. In a May 14, 2002, press release announcing Q1 2002 results, Gilat finally admitted that StarBand was a failure and that Gilat's financial commitment to StarBand exceeded the promised $75 million cap. Gilat further revealed: pursuant to GAAP, StarBand losses should have been recognized in 2001; EchoStar had terminated its relationship with StarBand; and that Gilat's poor results were due to StarBand's failure.

22. On May 29, 2002, Gilat filed its 2001 Form 20-F which admitted, for the first time, the full extent of Gilat's uncollectible accounts receivable problem. Gilat increased its reserve for doubtful trade receivables by 3,584% – from $3,654,000 in 2000 to an astounding $134,614,000 in 2001, attributing $78 million to StarBand. In essence, Gilat erased previously recognized revenues of $131 million. On Friday, May 31, 2002, StarBand filed for bankruptcy protection. On June 3, 2002, Gilat's shares -- which had closed at $1.74 on May 28, 2002, before these two bleak announcements -- closed at $1.23, on heavy trading. Thus, in less than a week, Gilat's already-devastated share price dropped nearly 30%.

23. By July 22, 2002, Gilat's share price dropped below $1.00 and remained there for months. In October 2002, Gilat also filed a Chapter 11 bankruptcy to restructure $350 million of convertible notes. After Gilat emerged from bankruptcy, on April 13, 2003, Gat resigned as

Chairman and CEO. Gilat's stock at the time was a mere 24 cents per share -- a far cry from its Class Period high of $172.00 per share.

JURISDICTION AND VENUE

24. Jurisdiction is conferred by Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 (17 C.F.R. § 240.10b-5) promulgated under Section 10(b).

25. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. §§ 1391(b) and (c). Defendants transact business in this District, and many of the acts and transactions constituting violations of law as alleged herein, including the dissemination of materially false and misleading statements to the investing public, occurred in this District.

26. In connection with the acts, transactions, and conduct alleged herein, Defendants, both directly and indirectly, used the means and instrumentalities of interstate commerce, including the United States mails, interstate telephone communications, and the facilities of the national securities exchanges and markets.

PARTIES

27. Lead Plaintiffs Leumi PIA Sector Fund, Leumi PIA World Fund, and Leumi PIA Export Fund purchased Gilat common stock at artificially inflated prices during the Class Period, as set forth in previously-submitted certifications and were damaged thereby.

28. Defendant Gilat is organized under the laws of the country of Israel. Its principal executive offices are located at Yegia Kapayim Street, Daniv Park, Kiryat Arye, Petah Tikva, Israel. During the Class Period, the Company's common stock traded over the NASDAQ National Market System (the "NASDAQ") under the ticker symbol "GILTF."

29. Defendant Yoel Gat ("Gat") served as the Company's Chairman and Chief Executive Officer at all times relevant to this action. During the Class Period, Gat oversaw Gilat's day-to-day operations: CW1 stated that no deal was finalized or VSAT shipped without Gat's knowledge. Gat also served as chairman, and later co-chairman, of StarBand, and owned approximately 3.8% of StarBand's stock. During the Class Period, Gat signed the Company's 1999, 2000 and 2001 Annual Reports on Form 20-F.

30. Defendant Yoav Leibovitch ("Leibovitch") is a Certified Public Accountant and served as the Company's Vice President of Finance and Administration and Chief Financial Officer at all times relevant to this action. Leibovitch signed the Company's reports filed with the SEC on Form 6-K on March 3, 2000, August 29, 2000, May 17, 2001, August 16, 2001, October 16, 2001, and February 25, 2002.

31. During the Class Period, the Individual Defendants, as Gilat's officers and/or directors, were privy to confidential and proprietary information concerning Gilat, its operations, and business prospects. By reason of their positions with Gilat, the Individual Defendants had access to internal Company documents, reports, and other information, including, among other things, material, adverse, non-public, information concerning i) the Company, its accounting practices, and its growing uncollectible accounts receivable; ii) Gilat's various financial and business dealings with StarBand; iii) StarBand's revenue, and financial condition; iv) Gilat's financial commitment to StarBand; and v) EchoStar's commitment to StarBand. Moreover, Gilat describes the Defendants

as "key management" upon which their business success depends. See e.g. 2000 Form 20-F, filed July 2, 2001, at 7. As a result, the Individual Defendants were responsible for the truthfulness and accuracy of the public statements described herein.

32. The Individual Defendants, as Gilat's officers and/or directors, are "controlling persons" of the Company within the meaning of Section 20(a) of the Exchange Act. By reason of their positions with Gilat, they were able to and did, directly or indirectly, in whole or in material part, control the content of public statements issued by or on behalf of the Company, including statements to securities analysts and financial reporters. The Individual Defendants participated in and approved the issuance of such statements made throughout the Class Period, including the materially false and misleading statements identified herein. As such, the Individual Defendants are liable for the false and misleading statements pleaded herein, as each of those statements was "group-published" information, the result of the collective action of the Individual Defendants.

33. Gilat and the Individual Defendants (as officers and/or directors of a publicly-held company) had a duty to promptly disseminate truthful and accurate information with respect to the Company and StarBand, as well as Gilat's and StarBand's operations, revenue, and financial condition, to promptly correct any public statements issued by or on behalf of the Company that became false and misleading, and to disclose any adverse trends that would materially affect the present and future operating prospects of the Company.

34. Defendants' statements alleged below were materially false and misleading when made. Defendants had no reasonable or adequate basis to justify or support the statements identified below concerning, inter alia, the Company's and StarBand's operations and financial condition. The truth about the Company's financial condition and business prospects was knowingly or recklessly disregarded by Defendants, and was not completely disclosed until the end of the Class Period.

Defendants, who were under a duty to disclose those facts, knowingly or recklessly misrepresented or concealed them during the Class Period.

35. Each of the Defendants knowingly or recklessly disregarded that the misleading statements and omissions complained of herein would adversely affect the integrity of the market for Gilat's securities, and would cause the price of Gilat's securities to become artificially inflated. Each of the Defendants acted knowingly or recklessly so as to perpetrate a fraud and deceit upon Lead Plaintiffs and the other members of the Class.

CLASS ACTION ALLEGATIONS

36. Lead Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased or otherwise acquired the publicly-traded securities of Gilat on the open market during the Class Period (the "Class"). Excluded from the Class are Defendants, members of the immediate family of each of the Individual Defendants, any subsidiary or affiliate of Gilat, the directors and senior officers of Gilat and its affiliates, or any entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors, and assigns of any excluded person. Plaintiffs are not asserting any claims against Gilat relating to Gilat's misrepresentations and omissions regarding its February 29, 2000 convertible note offering, other than against the Individual Defendants. This Amended Complaint is, therefore, in compliance with the terms of the bankruptcy injunction entered by the United States Bankruptcy Court for the District of Delaware.

37. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. During the Class Period, Gilat had more than 23 million shares of stock outstanding, owned by hundreds, if not thousands, of geographically dispersed stockholders.

38. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class, which predominate over questions that may affect individual Class members, include whether:

a. Defendants violated the Exchange Act;

b. Defendants misrepresented material facts;

c. Defendants' statements omitted material facts necessary to make the statements, in light of the circumstances under which they were made, not misleading;

d. Defendants knew or were reckless in disregarding that their statements were materially false and misleading;

e. the price of Gilat's publicly-traded securities was artificially inflated; and

f. Lead Plaintiffs and the Class sustained damages, and, if so, the appropriate measure of damages.

39. Lead Plaintiffs' claims are typical of those of the Class because Lead Plaintiffs and the Class sustained damages as a result of Defendants' wrongful conduct.

40. Lead Plaintiffs will adequately protect the interests of the Class and have retained counsel who are experienced in class-action securities litigation. Lead Plaintiffs have no interests that conflict with those of the Class.

41. Whereas common issues of fact and law predominate, a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

CONFIDENTIAL WITNESSES

42. Confidential Witness No. 1 ("CW1") is a former Gilat employee who worked in the Finance Division throughout the Class Period. CW1 has personal knowledge of Gilat's Idan accounting system, billing and collections, and invoicing and revenue recognition procedures.

43. Confidential Witness No. 2 ("CW 2") was the Director of Sales at StarBand from June 2000 until November 2001, whose responsibilities were to develop a sales organization, build national sales channels, and to manage corporate product launches. CW2 has knowledge of StarBand's product and services; level of marketing and sales activity; and StarBand's business relationship with EchoStar with respect to marketing and distributing StarBand's equipment and services.

44. Confidential Witness No. 3 ("CW 3") was a Vice President of Sales and Distribution at StarBand from September 2000 through June 2002, whose responsibilities included managing the flow of information between StarBand and its partners, including StarBand and EchoStar. CW3 has knowledge of StarBand's product, services, and the financial transactions between StarBand and Gilat.

45. Confidential Witness No. 4 ("CW4") was a senior accountant at SpaceNet, Inc. ("SpaceNet"), a Gilat subsidiary, from mid-1999 to November 2001. CW has knowledge of billing and collection activity, including the accounts receivable from companies that Gilat invested in, such as rStar.

46. Confidential Witness No. 5 ("CW5") was a program manager for Gilat Latin America between August 2000 and July 2001, whose responsibilities included the management of procurement, implementation, and installation efforts for VSAT technology satellite projects in the Latin American Region. CW5 has knowledge of product shipments and revenue recognition, and Gilat's investment in StarBand.

47. Confidential Witness No. 6 ("CW6") was a project and marketing manager for StarBand in 2001 and 2002. CW6 has knowledge of StarBand's operations, marketing efforts and business relationship with EchoStar.

48. Confidential Witness No. 7 ("CW 7") was a SpaceNet manager of Strategic Systems Planning and Development during the Class Period and western region director of Gilat Multimedia prior to the Class Period. CW7 has knowledge of the shipping and revenue recognition practices at Spacenet, and its accounts receivable, including the rStar account receivable.

49. Confidential Witness No. 8 ("CW 8") was a manager of integration and quality assurance at ZapMe!/rStar from August 2000 until the first quarter of 2001. CW8 has knowledge of rStar's business plan and the performance difficulties of Gilat's equipment.

50. Confidential Witness No. 9 ("CW 9") was a former Finance Division employee of Gilat Florida, Inc., a Gilat wholly owned subsidiary, from pre-Class Period until late 2001. CW 9 has knowledge of the billing and collecting activity.

51. Confidential Witness No. 10 ("CW 10") was former Gilat At-Home Latin America director of customer care from July 2000 to February 2001. CW 10 has knowledge of negotiations to sell equipment and service agreements to companies.

BACKGROUND ALLEGATIONS

Summary of Gilat's Accounting Fraud

52. At the outset of the Class Period, Gilat's core market was heavily concentrated in emerging economies such as Africa, Latin America, and Asia, and risky start-up ventures. Gilat pinned its hopes on its ambitious new StarBand joint venture to penetrate the lucrative United States consumer market. For such an expensive undertaking to be successful, Gilat itself had to appear to be successful and competitive. Prior to the commencement of the Class Period, this powerful motive

led Defendants to begin to engage in improper accounting practices, which resulted in artificially inflated revenues and sharply rising uncollectible accounts receivable.

53. A material portion of Gilat's Class Period revenues, earnings, and accounts receivable were improperly reported in violation of the following GAAP principles, alleged at ¶¶ ***193(a-k)***, including i) Financial Accounting Standards Board Statement Nos. ("FAS") 5, 48 and 57; ii) Statement of Financial Accounting Concepts Nos. ("CON") 2, 5 and 6; and iii) Accounting Research Bulletin No. ("ARB") 43. These misrepresentations also violated SEC regulations, alleged at ¶¶ ***193 (f,g)***, including, 17 C.F.R. §210.4-08(k)(1) and 17 C.F.R. §229.404(a). Specifically, in each quarter of the Class Period, as described in the chronology of Defendants' materially false and/or misleading statements, infra, Gilat's financial results from operations were artificially inflated due to one or more of the following: recognition of revenues earned in subsequent quarters; recognition of revenue when there was no final agreement between the parties; recognition of revenue in violation of GAAP and Gilat's own policies requiring evidence of collectibility; recognition of revenue in violation of GAAP where there was no delivery of goods to the customer; recognition of revenue on sham transactions which lacked substance (e.g., round-trip arrangements); recognition of revenues on contingent sales; failure to properly disclose related-party transactions; failure to timely write-off uncollectible accounts receivable or record a provision for probable bad debt; and converting debt to equity in order to mask bad debt losses as capital losses.

Summary of Defendants' Material Misrepresentations and Omissions Concerning the StarBand Joint Venture

54. In January 2000, Gilat announced a joint venture known as Gilat-to-Home ("GTH"), with partners EchoStar, Microsoft and ING. The venture was funded principally by Microsoft and EchoStar, each of which contributed $50 million dollars, while Gilat provided GTH's equipment.

As the 42.1% owner of GTH, Gilat appointed Gat as its chairman. In September 2000, before the service was commercially available, the name of the venture changed to StarBand.

55. StarBand created a satellite dish network using VSATs for two-way transmissions, allowing both Internet uploading/downloading and satellite television reception. The system included a VSAT or satellite dish mounted outside a customer's home, connected to a modem inside the home. The VSATs were positioned to link to a satellite on which StarBand leased space to send and receive signals for StarBand subscribers. StarBand's target market was rural areas where there was no DSL or other high-speed Internet access. StarBand claimed that if you could see the Southern sky, you could have high-speed Internet access.

56. StarBand generated revenue from customer subscriptions. Since the costs associated with providing StarBand's service were generally fixed, the more subscriptions StarBand received, the more sales and revenues increased. EchoStar was StarBand's primary distributor, selling the StarBand product/service directly to customers.

57. EchoStar provides satellite-delivered TV signals to consumers and small businesses across the United States. EchoStar's service is provided by the commonly known "Dish Network," using a one-way dish that receives TV signals but cannot transmit over the Internet. By using the StarBand dish, which permitted the bundling of services, customers could get <u>both</u> Internet service though StarBand <u>and</u> satellite television through EchoStar.

58. In early 2000, StarBand represented that it had initiated a ten-month pilot program during which thousands of customers would test its service. Although StarBand projected, in February and April 2000, that subscriber rates would reach 1 million by 2003 and 2.7 million by

2005, its consumer service was not launched until November 6, 2000, shortly after Gilat announced plans to raise $287.5 million for StarBand through an initial public offering of StarBand shares.[9]

59. Globes Online reported on October 12, 2000 "the [IPO] is part of an overall move by Gilat to increase its own company value. Gilat, which traded at a value of $2 billion at its peak, has been experiencing a protracted low, and is currently traded at a value of $1.5 billion."

60. On March 9, 2001, StarBand filed a Request for Withdrawal of Registration Statement, on SEC Form RW, citing "changed circumstances in the securities markets" as the reason for withdrawal of the IPO. As set forth in ¶¶ ***114(a-h)***, below, this statement was false and materially misleading: the IPO was withdrawn because critical problems with Gilat's VSATs and StarBand's service caused it not to live up to the "always on, faster than DSL and dial-up" representations made by Defendants throughout 2000.

61. StarBand never grew to a million-subscriber network by 2002-2003, as Defendants had projected. Because StarBand failed to raise hundreds of millions of IPO dollars, after March 2001, StarBand did not have adequate funds to correct these technical problems so that it could be marketed by EchoStar. Throughout the Class Period, StarBand failed to perform as represented:

a. An April 14, 2001, posting on "alt.satellite.starband newsgroup," declared StarBand a "technical disaster," that "can not achieve the speeds originally advertised ... Many StarBand users are surprised to learn gaming, VPM, dialpad, Netmeeting, PC Anywhere, Citrix, FTP, and many other Internet services do not work well, if at all, over satellite;"

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[9] Specifically, on October 11, 2000, StarBand filed an S-1 Registration Statement and Prospectus with the SEC which stated: "[w]e intend to use these net proceeds: to fund the continued growth of our business and operations and expand our subscriber base. . . ."

b. Another stated: "after reading dozens of postings here [alt.satellite.starband newsgroup] I am beginning to believe that Starband is next to useless";

c. An October 23, 2001, "alt.satellite.starband newsgroup," posting stated:

> StarBand is rife with problems. I've used it since the first of February 2001, and while the 180 was barely tolerable, the 360 fiasco began for me in July and continues to this day. . . . StarBand's DNS servers crash daily, and the NettGain2000 servers seem to lock connection frequently. . . . [U]ploads are WAY below advertises rates. . . . There is no way in hell that ANY 360 modem on the T-7 will get "up to 150 kbps on uploads;"

d. CW 3 confirmed the basis of the customers' unhappiness: engineers had identified many bugs, and 20% of StarBand's upgrade to its original modem – the Model 360 – had major software flaws that often required a long call with technical support personnel lasting (on average) about 90-120 minutes at $1.00 per minute;

e. David Trachtenberg, StarBand's President and Chief Marketing Officer, attempted to address the "360 fiasco," in an August 2001 e-mail to users:

> The high volume of current StarBand model 180 members upgrading to the StarBand model 360 and a software bug in the model 360 network, that has been identified and resolved, have all created higher than anticipated calls into our StarBand member service and support center. Unfortunately, if you have tried to call our customer service center you have more than likely experience higher than normal hold time and quite frankly a lot of frustration;

f. CW 2 stated that in November 2001 (approximately), EchoStar again ceased marketing StarBand products, in part because of a deal EchoStar was negotiating to acquire Hughes Electronics ("Hughes"), the parent company of DirecTV. Hughes competed directly with StarBand; and

g. An April 27, 2002, alt.satellite.starband newsgroup posting complained:

> Starband had never come close to providing that speed [its advertised upload speed] ... I can rarely complete an upload of any size over 500 KB, because starband inserts long pauses in the upload stream, and these pauses frequently get long enough to cause the server receiving the upload to time out and abort the upload.
>
> Overall, starband has been very disappointing to me. I download only occasionally, and I don't upload all that often either, but when I do, I don't want to have to make three or four attempts to upload a file. I expect it to go through the first time, with rare exceptions, and this just doesn't happen very often on starband. I've pretty much quit trying to upload via starband, since it's just as fast or faster on my dialup, and I almost never have an aborted upload via dialup. . . . Web pages don't load as reliably on starband as they do on dialup, and web browsing isn't much faster than on dialup, and it's frequently slower. At peak times, Starband is almost always slower than dialup web browsing.
>
> ... Starband is nowhere close to providing the level of service that they advertise .... In the near future, I'm going to drop starband.

62. After the IPO was withdrawn, StarBand was in need of additional financing to continue as a going concern. As alleged herein, this fact was confirmed by CW 3, StarBand CEO Trachtenberg, and EchoStar, among others. To quell increasing concern that, inter alia, StarBand would detrimentally affect Gilat's financial results, on March 12, 2001, in a conference with investors, Gat assured investors that in no event would Gilat's total financial exposure to StarBand exceed $75 million. This promise was repeated by Leibovitch two days later, in an article published by Globes Online. As set forth in ¶¶ ***101(f)(ii); 119(d)(ii); 127; 130; 131(a-e); 134(c)(ii); 159(c)(ii); 169(c)(ii); and 179(b)(ii)*** below, Defendants falsely made this guarantee knowing that they intended to fund StarBand beyond the $75 million limit and, in fact, went millions of dollars over the repeatedly-promised limit.

63. On July 11, 2001, Gilat announced that in exchange for its relinquishing control of StarBand to EchoStar, EchoStar agreed to provide an additional $50 million in financing and launch a new satellite for StarBand. However, the deal was not as Defendants represented: i) EchoStar had not "committed" to launch any satellite – a fact that was slowly disclosed by Defendants over the next four months, see ¶¶ ***149, 152, and 154***, below; and ii) an integral part of the EchoStar financing agreement was a release of the remaining $37 million of StarBand's credit facility – making the net benefit to StarBand only $13 million.

64. The reason EchoStar had not committed to launch a satellite for StarBand in July 2001, is that EchoStar was about to announce plans to merge with StarBand's largest competitor, Hughes Electronics. Although that deal ultimately did not go through, according to CW 3, EchoStar stopped marketing StarBand in November 2001. Defendants failed to disclose this material fact.

65. In April 2002, EchoStar revealed to The Wall Street Journal that it was no longer marketing StarBand. On May 24, 2002, StarBand sued EchoStar to obtain records for its 31,000 customers, claiming it was unable to bill customers until the records were turned over and that EchoStar owed StarBand an unspecified sum for past subscription fees collected on StarBand's behalf. One report estimated the fees owed at more than $2 million. One week later, StarBand filed bankruptcy.

DEFENDANTS' FALSE AND MISLEADING STATEMENTS DURING THE CLASS PERIOD

Gilat Touts Superior High Speed Internet Access

66. On February 9, 2000, after the market closed, Bloomberg reported on comments Gat made at the Merrill Lynch Satellite Services CEO Conference in New York. In the article, which

reported that Gilat was "in talks" with EchoStar "to provide broadband Internet services," Gat stated that Gilat planned to "begin offering its Internet services in the third quarter of [the] year," and to "bundle its Internet services with EchoStar's satellite television products." Although EchoStar declined to comment, Gat stated that "Gilat expects to have 1 M U.S. subscribers by 2003 . . . ."

67. Gat's statement that "Gilat expects to have 1 [million] U.S. subscribers by 2003" was materially false and misleading when made, and made with scienter, because Defendants lacked any reasonable basis in fact to make such a statement. StarBand had just begun its beta testing phase. Thus, Defendants were in no position to project: customer acceptance of Internet service which relies upon the transmittal of information via satellite; whether such service would be competitive with other modes of Internet access; whether StarBand could break into a United States market not previously served by Gilat; or whether the business was economically viable. In fact, as set forth in ¶¶ ***114(e-h)***, below, beta testers and early users of StarBand's services soon complained that StarBand did not deliver the promised high-speed access.

68. The market reacted positively to Gilat's false and misleading statements. Shares of Gilat common stock rose to $145.50 per share on February 10, 2000, from $136.50 per share at the close of trading on February 9, 2000, and to $160.12 per share on February 11, 2000.

69. On February 16, 2000, Gilat issued a press release announcing the formation of Gilat-To-Home (i.e., StarBand). In discussing the StarBand service, the Company touted StarBand's purported high speed, explaining that users could expect "internet access speeds up to 10 times faster then normal modem speeds, with burst rate considerably higher."

70. The statement concerning access speed was materially false and misleading when made, and made with scienter, because, as set forth in ¶***67***, above, Defendants lacked any reasonable basis in fact to make such a statement. In fact, as set forth in ¶¶ ***114(e-h)***, below, beta testers and

early users of StarBand's services soon complained that StarBand did not deliver the promised high-speed access.

71. On February 20, 2000, a Globes Online article discussed Gilat's negotiations with "additional strategic and financial investors" for investment into StarBand. The article repeated information about the service contained in Gilat's prior press release: "[Gilat-To-Home] will offer subscribers Internet connectivity via satellite communications at a speed 400 times higher than that of IDSN lines. In its press release, Gilat says its estimates the venture will have 2.7 million subscribers as soon as 2005."

72. The statement in the February 20th article that StarBand's speed would be "400 times higher than that of IDSN lines" was materially false and misleading when made, and made with scienter, because, as set forth in ¶***67***, above, Defendants lacked any reasonable basis in fact to make such a statement. In fact, as set forth in ¶¶ ***114(e-h)***, below, beta testers and early users of StarBand's services soon complained that StarBand did not deliver the promised high-speed access.

73. On February 23, 2000, the Company announced that EchoStar had agreed to join the StarBand venture with Gilat and Microsoft. In the press release, the Company again touted the purported Internet access speeds that users could expect from the service: "users can expect internet access speeds up to 10 times faster then normal modem speeds, with burst rates considerably higher."

74. The statement in the February 23rd press release concerning Internet access speed were materially false and misleading when made, and was made with scienter, because, as set forth in ¶***67***, above, Defendants lacked any reasonable basis in fact to make such a statement. In fact, as set forth in ¶¶ **114(e-h)**, below, beta testers and early users of StarBand's services soon complained that StarBand did not deliver the promised high-speed access.

75. The market reacted positively to Gilat's false statements of February 23, 2000. Shares of Gilat common stock rose to $168.25 per share from $160 per share at the close of trading on February 22, 2000. Trading volume on February 23, 2000 reached 548,300 shares, compared to 299,800 on the previous day.

Gilat Announces "Record" 1999 Revenues:
Unbeknownst to Investors, Reported
Growth at "Unprecedented Pace"
is Fueled by Improper Recognition of Revenue

76. On February 28, 2000, Gilat issued a press release announcing "record" results for 1999, emphasizing growth at unprecedented pace. The press release reported Gilat had assets of $685 million, including trade accounts receivable of $125 million and investments in companies and non-current receivables of $69.3 million, and further stated, in pertinent part:

> **Gilat Announces Record Results for 1999 and Proposes Three-for-One Stock Split**
>
> PETAH TIKVA, Israel--(BUSINESS WIRE)--February 28, 2000--Gilat Satellite Networks Ltd. (NASDAQ: GILTF) reported revenues for the year ended December 31, 1999 of US$337.9 million, an increase of 118 percent over 1998 sales of US$155.3 million. As announced on February 16, 2000, Gilat has recognized one-time charges to 1999 earnings in accordance with the November 1999 publication of Staff Accounting Bulletin No. 100 (SAB 100) of the Securities and Exchange Commission. After a one-time charge of US$38.8 million, Gilat reported net income of US$19.6 million, or US$0.92 per share. Excluding these charges, net income would have been US$58.4 million, or US$2.73 per share, an increase of 136 percent over the US$24.8 million (US$2.14 per share) reported for 1998.
>
> * * * *
>
> Gilat Chairman and CEO Yoel Gat remarked, "In 1999 Gilat's core business grew at an unprecedented pace, and the company has strengthened its position as the leader in VSAT technology. The opportunity in each segment of our business is immense and we are moving aggressively with the Gilat-To-Home initiative into international markets."

77. Gilat's financial results reported in the February 28, 2000, press release were materially false and misleading when made because they were the result of improper accounting

practices which inflated Gilat's reported revenues and/or overstated the Company's accounts receivable. Specifically, Gilat's 1999 financial results were inflated/overstated by:

a. Round-Trip/Contingent Transaction. As alleged in ¶*7(f)*, Gilat inflated revenues by recording approximately $3 million in revenue on a "round-trip" transaction with Dell. The transaction violated GAAP because there was no economic substance to the transaction from Gilat's perspective: Gilat paid Dell a surplus i.e. an "uplift" on computers purchased from Dell, which surplus was used by Dell to purchase equipment from Gilat. That Dell was using Gilat's own money to "buy" equipment from Gilat is shown by the following:

i. On June 30, 1999, the last day of Q2 1999, Gilat issued Invoice No. 6962 to "Dell Computer Metric 12", in the amount of $2,950,000. According to CW 1, Gilat's Idan accounting system used the date a sale was "invoiced" as the date on which revenue was recorded;

ii. The Dell purchase order ("P.O.") was fully contingent upon Spacenet (Gilat's wholly owned subsidiary) purchasing 7,800 computers. John Jonez, a VP and Controller at Dell, wrote an addendum to the P.O. that stated, in relevant part: "Gilat agrees that Dell will have the right to return the test equipment Dell has purchased and Dell will be entitled to a full refund for all monies paid if the actual number of PCs shipped by Dell to Spacenet customers does not conform to the forecasts provided by Spacenet in Spacenet's June purchase order

....This right to return equipment expires at the end of the 7,800 unit rollout per the June Purchase Order (P.O. D10720R) from Spacenet."

iii. A late-1999 e-mail from Bob Dowski, Spacenet's CFO, to Gilat's Finance Department described the mechanics of the round-trip transaction. Spacenet approached Dell to "purchase" (quotation marks in original) equipment in Q2 1999 and Dell issued a P.O. for the equipment on June 30, 1999. Spacenet issued a reciprocal P.O. to Dell.[10] Specifically, Spacenet ordered 7,800 computers, the price of which was inflated by an "uplift" of $384.62 per unit ($3,000,000 divided by 7,800 units). This "uplift" increased Spacenet's cost of purchasing a PC from approximately $700 to $1,100 per unit. Mr. Dowski explained that the "uplift" paid by Spacenet was to cover the full price of Dell purchasing Gilat's equipment, or, in the author's own words "paying us back" the $3 million. Further, to allay Dell's concerns about buying and paying for equipment from Gilat before Spacenet ordered and paid for all 7,800 units, Gilat allowed Dell to withhold payment to coincide with the number of computers ordered by Spacenet. Leibovitch was copied on Mr. Dowski's e-mail and responded to Mr. Dowski (also in late 1999) "Bob: Everything you described is correct..."

[10] Dowski's statement that Dell's June 30, 1999 purchase order "attached an addendum that referenced our June Purchase order (D10720R) ...," to wit, the addendum described in ¶77(a)(ii), is evidence that the orders were reciprocal.

In addition, Gilat should not have recognized revenue on the full amount of the invoice because the "sale" was a contingent sale, to wit, Dell was given a full right of return and did not have to keep or pay for any equipment, only the uplift paid to Dell on computers purchased by Spacenet. In fact, in May 2000, Dell exercised its right to terminate the deal indicating that it intended to return all of the equipment "purchased" paying only $476,000, based upon the $384.62 "uplift" paid on 1,238 PCs that Spacenet had actually purchased;

b. Shipment of Products to Third-Party Warehouses Where They Were Stored Indefinitely, Pending Assurances of Payment. As alleged in ¶***7(a)***, Gilat's 1999 revenues were inflated by recording revenues upon shipment of goods to third-party storage facilities when payment by customers for the goods was not reasonably assured. One such "sale" was made to Open Sky Zimbabwe on December 30, 1999 – a day before the end of the fiscal year – when Gilat issued Invoice No. 80865 to Open Sky Zimbabwe and recognized $1,844,369 in revenue. The terms of the shipment were "EXW" which, according to CW1, were the terms Gilat used for their very worst credit quality customers and the contract called for payment "via an irrevocable letter of Credit for the Entire Contract Sum." According to CW1, in order to recognize the revenue, Gilat paid to ship the goods to warehouse storage with Fritz Companies Inc. in Rotterdam, a freight forwarder, awaiting customer payment. Based on Gilat's Idan accounting system, the Open Sky Zimbabwe account was booked as a sale and a customer account receivable on December 30, 1999 in the amount of $1,844,369. By June 30, 2001 – eighteen months later – no payment had been received yet the account was still listed as an account receivable for the full amount. On October 31, 2001, almost two years after the "sale" was recorded, the unpaid for goods remained in storage with the freight forwarder with no delivery made to the customer and no delivery plans; and

c. Third-Party Warehouse Shipments Exceeding Customer Demand. As alleged in ¶*7(c)*, Gilat's 1999 revenues were inflated by recording revenues on shipments to third-party warehouses when the customer did not want or request shipment of the number of units shipped by Gilat. For example, on two "sales" to Embratel Empresa Brasileria ("Embratel"), Gilat recognized revenues of $1,250,000 on 500 VSATs, Invoice No. 6981, issued June 30, 1999, and revenues of $675,000 on 270 VSATs, Invoice No. 80112, issued September 26, 1999. According to CW1, Embratel was a network operator who was pressured to "buy" the 770 VSATs referenced in the two invoices -- goods it did not want or need -- in exchange for Gilat's agreement to swap some of Embratel's obsolete inventory of VSATs for Gilat's new VSATs. According to CW1, instead of shipping the 770 VSATs to Embratel, in Brazil, the 770 VSATs were stored in Miami, Florida.[11] Thereafter, Embratel never paid for or sought delivery of the 770 VSAT units that were in storage. According to CW1, as of June 30, 2001, two years after revenue on the initial invoice was recognized, Embratel still had not paid for the VSATs and the

[11] Invoice No. 80112 specifically states that goods are to be shipped to Fritz Companies Inc., in Miami Florida. An internal Gilat memo, dated August 28, 2000, confirms that the 770 VSATs invoiced to Embratel were stored in Miami Florida.

amount was still listed as an open account receivable on Gilat Florida's internal accounting reports. Moreover, the 770 VSATs were still stored in Miami on October 31, 2001, with no delivery or set schedule for delivery to Embratel.

78. Defendants acted with scienter when they issued the February 28, 2000, press release that they knew or recklessly disregarded contained the false and/or misleading representations/omission specified above. Evidence of Defendants' scienter includes the following:

a. Round-Trip/Contingent Transaction. As alleged in ¶*77(a)(iii)*, CFO Leibovitch acknowledged in late 1999 that Dowski's e-mail – which clearly described the Q2 1999 "sale" to Dell as both wholly contingent and lacking in economic substance – was accurate. Additionally, in correspondence informing Dowski of the return of Gilat's equipment, in May 2000, Dell's Jonez indicated that no further uplift charges would be assessed on future computer purchases by Spacenet, i.e., acknowledging that Spacenet would return to paying the customary price of only $700 per computer ordered. This letter confirms that the "uplift" denoted no value relating to the computers purchased and was nothing but a surplus charge to facilitate the round-trip transaction;

b. Shipment of Products to Third-Party Warehouses Where They Were Stored Indefinitely, Pending Assurances of Payment. Defendants knew or recklessly disregarded that GAAP does not permit the recognition of revenue when there is no delivery of goods to the customer or if there is no reasonable assurance of collectibility of the account receivable. Several additional facts support a finding of scienter:

i. As evidenced by Gilat's use of shipping destination "EXW"[12] and the requirement for payment by Letter of Credit, Gilat knew that the customer was not creditworthy and collection of the account was not probable;

ii. The reason the goods were delivered to the warehouse and not to the customer was because Gilat knew the customer was not creditworthy and collection of the account was not probable without retaining control of the goods;

iii. According to CW 1, Gilat had the freight forwarder issue a separate Airway Bill that changed and/or removed the destination when it stated the goods were shipped for storage to a freight forwarder warehouse and not directly to the customer;

iv. As evidenced by the invoice date at the end of the quarter, the only reason that Gilat shipped the goods to the freight forwarder warehouse prior to receipt of payment from a customer that was not considered creditworthy was to be able to report revenue;

v. According to CW1, Gilat retained title to and control of the goods by not giving the customer the necessary paperwork to retrieve them from storage because Gilat knew that once the goods were released

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[12] While the shipping terms "EXW" simply means that the buyer bears all costs and risks in transporting the goods, according to CW1, Gilat specifically used this shipping term with customers that it considered to be of the worst credit quality.

to the customer, collection would be very difficult as the customer was located in an emerging economy country; and

vi. Gat and Leibovitch knew or were reckless in not knowing about such shipments to warehouses on sales for which collection was not reasonably assured because, according to CW1, Gilat was paying steep warehouse storage fees because "customers never paid for the warehouse storage." Moreover, according to CW1, every check or wire transfer had to be signed by two of Gilat's top three executives: Yoel Gat, CEO; Amiram Levinberg, COO; and Yoav Leibovitch, CFO. Therefore, either defendant Gat or Leibovitch, or both, had to sign the checks and/or wire transfers to pay for warehoused goods and therefore knew of or recklessly disregarded the alarming quantities of goods that were undelivered and stored in third-party freight forwarder warehouses – information they were charged with monitoring.

c. Third Party Warehouse Shipments Exceeding Customer Demand. Defendants violated GAAP by recognizing revenue upon shipment directly to a warehouse when the customer did not request shipment to a warehouse, was not paying for such storage, and there was no delivery or schedule for delivery. Scienter is also evident because, as alleged in ¶***78(b)(vi)*** above, Gilat was paying steep warehouse storage fees and either or both Gat or Leibovitch had to sign the checks and/or wire transfers to pay for warehoused goods.

79. Gilat's stock price rose to $160.50 per share at the February 28, 2000, market close.

Q1 2000: Another Record Quarter of Revenue is Announced

80. On May 15, 2000, Gilat issued a press release announcing "record results" for the first quarter of 2000, with Gat praising the "solid results." The press release reported Gilat generated revenues of $86 million in Q1 2000 and had assets of $1.1 billion, including trade accounts receivable of $129 million and investments in companies and non-current receivables of $104 million. The press release stated, in pertinent part:

> **Gilat Satellite Networks Reports Record Results for the First Quarter of 2000**
>
> PETAH TIKVA, Israel--(BUSINESS WIRE)--May 15, 2000--Gilat Satellite Networks Ltd. (NASDAQ: GILTF) today announced revenues of US$86 million for the first quarter ended March 31, 2000, an increase of 30 percent over revenues of US$66.1 million for the same period in 1999. Net income was US$6.5 million ($0.28 per share).
>
> Gilat Chairman and Chief Executive Officer Yoel Gat said, "Gilat continues to deliver solid results while providing its shareholders with participation in the tremendous growth opportunity of Gilat-To-Home."

81. Gilat's financial results reported in the May 15, 2000, press release were materially false and misleading when made because they were the result of improper accounting practices which inflated Gilat's reported revenues and/or overstated the Company's accounts receivable. Specifically, Gilat's Q1 2000 financial results were inflated/overstated by:

a. Holding Quarters Open. As alleged in ¶***7(d)***, in violation of GAAP and Gilat's stated revenue recognition policy, Gilat inflated revenue by recording revenues on a number of shipments that had not yet occurred at the end of the quarter. First, on March 29, 2000, just two days before the end of fiscal Q1 2000, Gilat issued Invoice Nos. 81522, 81531, and 81532 to Power Access, a Panama company, for sales totaling $2,547,000. Next, on March 30, 2000, the next-to-last day of the quarter, Gilat issued Invoice Nos. 81573, 81579, and 81564 to National Stock Exchange, in India, for sales totaling $2,232,500. Again, on March 30 and March 31, 2000, Gilat issued Invoice Nos. 81562 and 81583 to Open Joint Stock Co., Kazaktelec (Kazakhstan) respectively, for sales totaling $2,099,957. According to CW1, Gilat entered the date of invoices as the date of revenue recognition in the Idan accounting system, however, the goods referenced on invoice nos. 81573, 81579, 81564, and 81562 were not shipped until April 3, 2000; the goods referenced on invoice nos. 81522, 81531, and 81532 were not shipped until April 5, 2000; and the goods referenced in invoice no. 81583 were not shipped until April 8, 2000. Therefore it was improper to recognize revenue on these sales in Q1 2000 as delivery had not occurred until Q2 2000;

b. Shipment of Products to Third-Party Warehouses Where They Were Stored Indefinitely, Pending Assurances of Payment. As generally alleged in ¶***7(a)***, Gilat inflated revenues, in violation of GAAP, by recording revenues on shipments to third-party warehouses on goods that were not released to the customer due to collectibility concerns. Specifically, as set forth above, on March 29, 2000, Gilat issued three invoices -- covering a total sale of 1,000 VSATs -- to Power Access, a Panama company setting up a network in Costa Rica. Gilat immediately recognized revenue on the date of invoices in the following amounts: Invoice No. 81522 -- $850,000; Invoice No. 81531 -- $1,357,600; and Invoice No. 81532 -- $339,400. According to CW 1, only

215 VSATs were delivered to Power Access. The remaining 785 VSATs were shipped for storage to AEI, in Miami, Florida, pending receipt of customer payment or financial assurances. CW 1 further stated that the 785 VSATs remained in storage for over a year, until at least October 31, 2001, without delivery or a set schedule for delivery of the goods. A year later, as of March 31, 2001, Gilat's Idan accounting system showed that Power Access had not paid for any of the goods; and

c. Consignment Sales. As alleged in ¶***7(g)***, Gilat inflated revenues, in violation of GAAP, by recording revenues on shipments that were subject to the "buyer" having the right to return goods it did not resell, i.e., consigned goods. One such transaction was a Q1 2000 sale to Destiny Satellite Corp. ("Destiny"). Specifically, on March 30, 2000, the next-to-last day of the quarter, Gilat issued Invoice No. 81569, in the amount of $1,504,962, and shipped 350 VSATs to Destiny. Gilat recognized the full invoice amount as revenue on March 30, 2000. Destiny was a network operator who resold Gilat's VSATs to its customers who, in turn, paid Destiny a monthly service fee. The Destiny agreement expressly stated "Should Destiny not utilize the whole 350 SSA Remote Terminals, it shall have the option to return the same at the end of the term of payment and only pay for those remotes it has utilized." Therefore, the sale was entirely contingent upon Destiny reselling the 350 VSATs to its customers. According to CW1, Destiny only resold 50 VSATs and returned 300 VSATs to Gilat without paying for them. The recognition of revenue on the full invoice amount is a direct violation of both

GAAP and Gilat's stated revenue recognition policy, to wit: "The Company does not grant rights of return." See Gilat's 2000 Form F-20, filed July 2, 2001, at F-18.

82. Defendants acted with scienter when they issued the May 15, 2000 press release which they knew or recklessly disregarded contained the material false representations and omissions specified above. Evidence of Defendants' scienter includes the following:

a. Holding Quarters Open. Defendants reported revenue on goods that had not yet been shipped, knowing or recklessly disregarding that this violated GAAP and Gilat's stated revenue recognition policy. See Gilat's 1999 Form 20-F, filed June 30, 2000, at F-13. Moreover, as previously alleged in ¶***7(d)***, confidential witnesses confirm that these were not isolated incidents. CW7 stated that not only did Gilat book sales when equipment had not yet been shipped to customers and no money had exchanged hands, but that it happened at the end of every quarter. Similarly, CW5 recalled transactions where revenues were booked prematurely before the product had been shipped and believed that this was a prevalent practice. Finally, according to CW1, to facilitate this improper revenue recognition, Gilat requested that the forwarder prepare a separate air waybill without the date of shipment to obfuscate the fact that the shipments had not occurred before the end of the quarter;

b. Shipment of Products to Third-Party Warehouses Where They Were Stored Indefinitely, Pending Assurances of Payment. Defendants acted with scienter, for the reasons alleged in ¶***78(b)(ii-vi)*** above; and

c. <u>Consignment Sales</u>. The sale was made at the end of the quarter and Defendants knew or recklessly disregarded that reporting revenue on the Destiny transaction was in violation of GAAP and its own revenue recognition policy.

83. Analysts took note of the press release. A May 15, 2000, Salomon Smith Barney report was impressed with Gilat's results, noting that revenues were in line with estimate and EPS beat Defendants' estimate by $0.02.

84. The market reacted positively to Gilat's material false statements and omissions. Shares of Gilat's common stock closed at $72.75 per share, compared to $71 per share at the close of trading on May 12, 2000 (the previous trading day), on heavy trading volume of 411,000 shares. On May 16, 2000, Gilat shares climbed even higher to $81.75 per share, closing at $81.25 per share, on even heavier trading volume of 426,200 shares.

85. On May 22, 2000, Gilat filed a Form 6-K with the SEC which was signed by Leibovitch and which attached the press release of May 15, 2000, announcing Gilat's financial results for Q1 2000. The Form 6-K was materially false and misleading for the reasons stated in **¶<u>*81(a)-(c)*</u>** and Defendants acted with scienter for the reasons stated in **¶<u>*82(a)-(c)*</u>**

Gilat Files 1999 Form 20-F with SEC
Repeating Previously Announced Record Revenues

86. On June 30, 2000, Gilat filed its 1999 Form 20-F with the SEC, repeating the previously announced record breaking results in 1999. In addition to repeating the false and misleading revenues and assets previously announced on February 28, 2000, Gilat made the additional following misrepresentations and/or omissions:

a. "Backlog. In 1999, we received orders for over 70,000 interactive VSAT units. Our interactive VSAT orders for 1999 are more than twice the orders received for interactive VSATs in 1998. The 1999 year-end backlog for equipment sales and revenues from multi-year service contracts for our VSAT products was over $300 million, an increase of more than 70% from the 1998 backlog of $175 million...." (Form 20-F at 24); and

b. "Revenues from sales of products were recognized upon shipment to the customer...."(id. at F-13).

87. The above-quoted statements were materially false and misleading when made because:

a. For the reasons alleged in ¶***77(a)-(c)***, Gilat's 1999 reporting of its revenues, sales and assets were materially false and misleading; and

b. Gilat's backlog of $300 million was not based on firm orders. According to CW 1, Gilat's reported backlog was based on "things imagined and thought of and not final purchase orders."

88. The Form 20-F was also materially misleading because Gilat failed to disclose, as required by SEC rules and GAAP, that $36.5 million in revenues was booked on transactions with a related party, rStar, and a significant portion of this revenue had been recorded in Gilat's accounts receivable balances. Specifically:

a. Gilat had been a shareholder of rStar's since 1998. See Gilat's Tender Offer Statement, filed with the SEC on Form SC TO-T, Offer to Purchase, Ex. 99.A.1.A, on October 17, 2000, at 15;

b. Gilat paid $2.5 million for its shares. Id.;

c. "Certain" officers and directors of Gilat, including Gat, were also rStar stockholders and had paid $3.9 million for their shares;[13]

[13] According to rStar's Form 10-Q for Q3 1999, filed December 3, 1999, at 8, stockholders "associated" with Gilat bought a total of $5 million of shares in rStar's IPO in October 1999, paying $10.23 per share. Thus, the 382,273 shares retained by the officers and directors at the time of the tender offer, represents an investment of approximately $3.9 million dollars (382,273 x

d. Gat had been a director on the board of both Gilat and rStar at the time the long-term, multi-million dollar equipment, installation, maintenance and transponder space agreement with Spacenet was signed Id.; and

e. Gilat had financed "a portion" of these sales. Id. Plaintiff is informed and believes and, based upon later statements of rStar's total debt to Gilat (e.g., $45 million by the end of 2000), alleges that all or most of these sales to rStar had been financed and were unpaid at the end of Q4 1999.

89. Defendants acted with scienter when they filed Gilat's 1999 Form 20-F which they knew or recklessly disregarded contained the false and/or misleading representations/omission specified above. Evidence of Defendants' scienter includes the following:

a. Plaintiffs incorporate by reference all allegations in ¶***77-78*** with regard to the February 28, 2000 press release announcing 1999 earnings;

b. Defendants knew or recklessly disregarded that the backlog was an important metric by which investors were judging Gilat's future revenue prospects and it was therefore with knowledge or reckless disregard for the truth that they based backlog on anything other than firm orders.[14] The backlog was a factor analysts used in judging the Company's performance as illustrated by Jonathan Half, with UBS Warburg, who noted in his December 7, 2000 report "Gilat does not release quarterly backlog figures, however, at the meeting with investors held in NY last week the company disclosed that the

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$10.23). When Gat sought to rejoin the Board, his holdings of 100,000 shares were disclosed. rStar Form PRER-14A, filed with the SEC on January 15, 2002, at 75.

[14] Barron's Dictionary of Finance and Investment Terms (5th ed.), at 41, defines a backlog as "the value of unfilled orders with a manufacturing company. Whether the firm's backlog is rising or falling is a clue to its future sales and earnings."

backlog was at record levels. At the end of 1999, Gilat disclosed that it had a backlog of $300 million (excluding StarBand);" and

c. Defendants knew or were reckless in not knowing that failure to disclose that a significant portion of Gilat's "record" revenue in 1999 was derived from a related party, rStar, was a violation of SEC regulations and GAAP. Gat, who executed the Form 20-F for Gilat, sat on the Boards of both rStar and Gilat at the time the lucrative contract was signed. Both defendant Gat, and defendant Leibovitch, a Certified Public Accountant, knew that the market would view this significant amount of revenue as suspect given the fact that the Gilat had invested $2.5 million in equity prior to rStar signing the contract and that Gilat's officers and directors had invested twice that amount in October, 1999. In addition, Gilat was a "sponsor" of rStar and, as such, represented a source of significant revenue to this development stage company with minimal revenues. See rStar1999 Form 10-K, March 30, 2000. Moreover, the fact that a significant portion of the sales were recorded in Gilat's purported accounts receivable balances would also have caused investors to question the quality of the revenue, providing the defendants with an additional motive not to disclose the amount of sales recorded as an account receivable.

Q2 2000: Accounting Improprieties Boost Revenues to New Heights As Gilat Announces Another Record Quarter

90. On August 14, 2000, Gilat issued a press release announcing another quarter of "record results." The press release reported Gilat had assets of $1.1 billion, including trade accounts

receivable of $121 million and investments in companies and non-current receivables of $127 million, and further stated, in pertinent part:

Gilat Reports Record Results for The Second Quarter and First Half of 2000

> PETAH TIKVA, Israel--(BUSINESS WIRE)--Aug. 14, 2000--Gilat Satellite Networks Ltd. (NASDAQ:GILTF) today announced revenues of US$108.6 million for the second quarter ended June 30, 2000, an increase of 46 percent over revenues of US$74.4 million for the second quarter 1999. Net income was US$9.1 million (US$0.38 per share).
>
> Revenues for the six months ended June 30, 2000 were US$194.5 million, an increase of 38 percent over the first half of 1999, when the company had revenues of US$140.5 million. Net income was US$15.6 million (US$0.65 per share).

91. Gilat's financial results reported in the August 14, 2000, press release were materially false and misleading when made because they were the result of the improper accounting practices which inflated Gilat's reported revenues and/or overstated the Company's accounts receivable. Specifically, Gilat's Q2 2000 financial results were inflated/overstated by:

a. Holding Quarters Open. As alleged in ¶ ***7(d)***, Gilat inflated revenues by recording revenue on shipments that had not yet occurred at the end of the quarter in violation of GAAP and Gilat's stated revenue recognition policy. For example, on June 29, 2000, the next to last day of the quarter, Gilat issued Invoice No. 82253 to GTH-USA for $650,000 and on June 30, 2000, the last day of the quarter, Gilat issued invoice No. 82264 to JSC Comincom for $558,750. According to CW1, Gilat entered the invoice date as the date for revenue recognition into Gilat's Idan accounting system, however, the goods were not shipped until July 3, 2000. Therefore it was improper to recognize revenue in Q2 2000 as delivery had not occurred until Q3 2000.

b. <u>Shipment of Products to Third-Party Warehouses Where They Were Stored Indefinitely, Pending Assurances of Payment</u>. As alleged in ¶ <u>***7(a)***</u>, in violation of GAAP, Gilat inflated revenues by recording revenues on shipments to third-party warehouses for goods that were not released to the following two customers due to collectibility concerns:

i. Invoice Nos. 82220 and 82249, for a total of $2,540,020 for a hub and 1,000 VSATs, were issued and recognized as revenue on June 29, 2000, a day before the quarter ended, without receipt of any payment. According to CW1, only the hub, valued at $649,400, was sent to the customer while the 1,000 VSATs were stored and warehoused at AEI in Miami, Florida pending customer payment or a LOC. According to CW1 the customer made a few payments in late 2000 and early 2001, totaling $653,000. However, the 1,000 VSATs remained stored in Miami, Florida until at least October 31, 2001, with no delivery to the customer or set schedule for delivery. Gilat's Idan accounting system confirms CW 1's account:

(a) Vant-Brazil account receivable was entered on June 29, 2000, in the amount of $2,540,020;

(b) No payment was received until December 2000 -- six months after revenues in the full amount of both invoices were recognized;

(c) The December 2000 payment was only for $503,000 -- less than the value of the hub shipped to the customer months earlier. This confirms Gilat's initial assessment of the customer's lack of creditworthiness;

(d) Only one additional payment, in the amount of $150,000, was received in January 2001; and

(e) The outstanding account balance of $2,322,780 (which included an additional invoice billed in August 2000) was written off on May 7, 2001, almost a year after the revenue and account receivable was recorded.

ii. Sales totaling $8,028,583 (Invoice Nos. 82232-36,82240, 82254, and 82257-58) were invoiced to China National Instruments for the Xin-Jiang network on June 29, 2000, on the next-to-last day of the quarter, and recognized as revenue. According to CW1, the Xin-Jiang goods were shipped to Hong Kong and were stored in a third-party warehouse with no set schedule for delivery because Gilat was waiting for an advance payment prior to releasing the goods to the customer. Gilat's records show that as of July 25, 2000, a month after shipment to the warehouse, negotiations were still ongoing as to payment and financing terms. According to CW1, after a payment of $1.2 million was made on November 24, 2000, only then did Gilat have the goods transferred (by train) to the customer.

c. Shipments to Customers That Were Not Creditworthy. As alleged in ¶ ***7(e)***, in violation of GAAP and Gilat's stated policy, Gilat inflated revenues by recording revenue at time of shipments to customers that Gilat knew were not creditworthy and collectibility was not reasonably assured. According to CW1, on June 28, 2000, Gilat invoiced, shipped, and recognized revenues of $2,505,614 on goods sent to Shanghai Tontru (Invoice Nos. 82195-82198). According to CW1, it was a violation of Gilat's stated, and internal, policy for these goods to have been shipped to the customer without a LOC, as the customer was in China and considered of risky credit quality. CW1 stated that the sales department shipped the goods without a LOC to meet sales quotas. An internally-prepared listing of accounts receivable for Gilat Israel shows the Shanghai Tontru account was still unpaid as of January 1, 2001.

d. Boosting Revenues with Related-Party Transactions. As alleged in ¶¶ ***(7)(h)(i), 88***, Gilat violated GAAP and SEC regulations by not disclosing revenues and accounts receivable attributed to transactions with related-party rStar:

i. By the end of fiscal 1999, rStar had made $35.6 million in purchases from Gilat. CW 7 indicated that purchases ultimately reached between $45 and 60 million. Upon information and belief and based upon later statements of rStar's total debt to Gilat (e.g., $45 million by the end of 2000) all or most of these purchases had not been paid for by the end of Q2 2000 and that a material amount of this massive account receivable was already past due and should have been written off as bad debt or disclosed as a probable bad debt and a reserve taken. Further, any sales to rStar in Q2 2000 should not have been recorded on a basis of accrual accounting but recorded only when cash was received because collectibility of the account receivable was not reasonably assured;

ii. By June 2000, rStar's financial prospects were poor. Adverse legislation and pressure on advertisers had seriously impaired its revenue model which was based on collecting revenue from advertising in schools. rStar had reported a net operating loss of $14.4 million in Q2 2000. See rStar's Form 10-Q, filed with the SEC on August 21, 2000. According to Gilat, "[i]n June 2000, rStar began discussing with Gilat potential changes in its traditional education business and the ability to reposition rStar ... in an effort to improve its financial performance." See Gilat Form F-4, filed October 11, 2001;

iii. rStar's financial difficulties and erratic payments to Gilat are confirmed by confidential witnesses. According to CW 7, rStar was required to make monthly payments to Gilat, but paid or did not pay "depending on their mood;" and

iv. CW 4 called the receivables from companies that Gilat had invested in "garbage debt" that were "not providing revenue." rStar was one such company.[15] CW4 added that these accounts receivables were carried on the books well past the Company's170-180 day "past due."

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[15] In an October 17, 2000, Tender Offer Statement, filed on Form SC TO-T, at Ex. (a)(1)(A), Gilat disclosed that it owned 500,000 shares of rStar since February 1999.

92. Defendants acted with scienter when they issued the August 14, 2000 press release which they knew or recklessly disregarded contained the materially false and/or misleading representations/omission specified above. In addition to the fact that the sales specifically referenced above occurred during the last days of the quarter -- as Gilat pushed to meet projected revenue figures and analyst and market expectations -- evidence of Defendant's scienter includes the following:

a. Holding Quarters Open. Defendants acted with scienter, for the reasons alleged in ¶***82(a)***;

b. Shipment of Products to Third-Party Warehouses Where They Were Stored Indefinitely, Pending Assurances of Payment. Defendants acted with scienter, for the reasons alleged in ¶ ***78(b)(ii-vi)***;

c. Shipments to Customers That Were Not Creditworthy. Defendants' reckless reporting of revenue on "sales" to customers that they knew were not creditworthy and collection of the account receivable was not reasonably assured violated GAAP and Gilat's own policy not to ship goods to certain customers in emerging economies without a LOC because of the heightened collection risk. Further, when CW 1 complained to Leibovitch, within days of the end of Q2 2000, about such sales in violation of Company policy, Leibovitch simply shrugged and did not correct the problem; and

d. Boosting Revenues with Related-Party Transactions. Defendants knew or recklessly disregarded that it was misleading and a violation of GAAP not to disclose or write off the rStar account as an impaired asset or record a provision for probable bad debt, and that any revenue recognition should have been based upon receipt of cash. Defendant Gat directly knew of rStar's precarious financial condition because he had an "observer's" seat on rStar's Board of Directors[16] and, according to CW 1, Gat's personal involvement in collecting payment from rStar made him aware of the difficulties described by CW4 and CW7. Further, Defendants knew that rStar's business was operating at a loss and that in June 2000 rStar and Gilat began discussing rStar's need to "improve its financial performance."

93. The market reacted positively to Gilat's false statements of August 14, 2000. Shares of Gilat common stock rose to a high of $82.25 per share that day, closing at $79.63 per share, compared to $79.25 per share at the close of trading on August 11, 2000, the previous trading day. Trading volume on August 14, 2000 reached 334,700 shares, compared to180,100 on August 11th.

94. Analysts took note and John B. Coates, IV, from Salomon Smith Barney reported on August 15, 2000: "GILTF:EPS of $0.38 Beat Estimates; Outlook Remains Bright" concluding "In short, a strong quarter on an operating basis."

95. On August 29, 2000, Gilat filed a Form 6-K which was signed by Leibovitch and which attached the press release of August 14, 2000, repeating Gilat's financial results for Q2 2000. The Form 6-K was materially false and misleading for the reasons stated in ¶***91(a)-(d)*** and Defendants acted with scienter for the reasons stated in ¶***92(a)-(d)***

96. The market reacted positively to Gilat's 6-K of August 29, 2000. Shares of Gilat common stock again rose, to a high of $79.38 per share that day, closing at $77.56 per share,

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[16] Defendant Gat retained observer rights on rStar's Board, after his resignation in October 1999. See rStar's Form DEF14A, filed on April 21, 2000.

compared to $76 per share at the close of trading on August 28, 2000, the immediately previous trading day.

Mindful of Gilat's Need
for a Successful StarBand IPO,
Gilat Touts StarBand's Technology

97. On September 11, 2000, Gilat announced over the Business Wire that Gilat-To-Home had changed its name to StarBand Communications. In discussing the service, David Trachtenberg, President and Chief Marketing Officer of the StarBand, touted the purported benefits of the StarBand service, stating: "With StarBand, consumers . . . will have their first opportunity to enjoy an always-on, two-way, high-speed Internet experience." Trachtenberg described the StarBand service as "Internet access without the constraints of a cable or telephone wire." Later in the release, Trachtenberg explained that this meant that users could "[bypass] the congestion of cable and telephone lines."

98. The market reacted positively to Gilat's false statements of September 11, 2000. Shares of Gilat common stock rose to a high of $76.50 per share that day, closing at $73.50 per share, compared to $72 per share at the close of trading on September 8, 2000, the previous trading day.

99. The statements in the September 11th press release concerning "always-on" Internet access without the constraints of cable and telephone lines – that is, congestion – were materially false and misleading when made, and were made with scienter, because, as set forth in ¶***67***, above, Defendants lacked any reasonable basis in fact to make such a statement. In fact, as set forth in ¶¶ ***61(a-g) and 114(e-h)***, Defendants were aware that beta testers of StarBand's services were already complaining that StarBand did not deliver the promised high-speed access

Q3 2000: Gilat Announces
Another "Record" Quarter

100. On November 13, 2000, Gilat issued a press release announcing another quarter of "record results" for the quarter ending September 30, 2000. Defendant Gat touted the "company's solid financial performance" and "technology leadership." The press release reported Gilat had assets of $1.1 billion, including trade accounts receivable of $150 million and investments in companies and non-current receivables of $138 million, and further stated, in pertinent part:

> **Gilat Reports Record Results for the Third Quarter and First Nine Months of 2000**
>
> PETAH TIKVA, Israel--(BUSINESS WIRE)--Nov. 13, 2000--Gilat Satellite Networks Ltd. (Nasdaq: GILTF), a worldwide leader in satellite networking technology, today reported its third quarter results for the period ending September 30, 2000.
>
> Revenues for the third quarter were US$135.4 million, an increase of 53 percent over revenues of US$88.5 million for the third quarter 1999. Net income was US$14.0 million (US$0.57 per share).
>
> Revenues for the nine months ended September 30, 2000 were US$329.9 million, an increase of 44 percent over the same period in 1999, when the company had revenues of US$229.0 million. Net income was US$29.7 million (US$1.23 per share).
>
> Gilat Chairman and Chief Executive Officer Yoel Gat remarked, "The Company's solid financial performance continues to be driven by our technology leadership and focus on developing ever larger markets for our products. With the continued growth of satellite enterprise networks and rural telephony - as well as the large-scale rollout of high-speed consumer Internet satellite systems - there is increased focus on our industry and our Company."

101. Gilat's financial results reported in the November 11, 2000, press release were materially false and misleading when made because they were the result of the improper accounting practices which inflated Gilat's reported revenues and/or overstated the Company's accounts receivable. Specifically, Gilat's Q3 2000 financial results were inflated/overstated by:

a. Holding Quarters Open. As alleged in ¶ ***7(d)***, in violation of GAAP and Gilat's stated revenue recognition policy, Defendants inflated revenue by recording revenues on shipments that had not yet occurred at the end of the quarter. For example, on September 28, 2000, two days before the end of quarter, Gilat recorded a sale to related-party, StarBand and issued Invoice Nos. 200533, 200560, and 200562 -- totaling $1,708,000. The same day, Gilat issued Invoice Nos. 200564 and 200517 to PT Stimec Elcom, totaling $1,050,000. According to CW1, Gilat entered the invoice date as the date for revenue recognition into Gilat's Idan accounting system, however, the goods covered by these invoices were not shipped until October 1, 2000 and October 3, 2000. Therefore it was improper to recognize revenue in Q3 2000 as delivery had not occurred until Q4 2000;

b. Shipment of Products to Third-Party Warehouses Where They Were Stored Indefinitely, Pending Assurances of Payment. As alleged in ¶ ***7(a)***, in violation of GAAP, Gilat inflated revenues by recording revenues on shipments made to third-party warehouses for goods that were not released to the customer due to collectibility concerns. Specifically, in Q3 2000, Gilat improperly recognized revenue on the goods invoiced and shipped to PT Stimec Elcom, an Indonesian company (described in subpart (a) above) because the goods were not sent to the customer. The air waybills specifically state that the goods are "For Storage in Amsterdam." According to CW1, these goods were held in storage at AEI in Amsterdam, with no delivery to the customer or set schedule for delivery, until the customer paid for the goods many months later, in early 2001. Similarly, on September 28, 2000, Gilat issued Invoice No. 200524, for goods totaling $770,000 to TATEM Telecom, a customer located in the Democratic Republic of the

Congo. The air waybill, dated September 29, 2000, specifically states "For Storage in Amsterdam." According to CW1, the goods were stored pending customer payment, which was supposed to be by LOC. According to CW1, the customer was ultimately unable to qualify for a LOC, and although the buyer did make a $50,000 payment on February 12, 2001, the balance of $720,000 was never paid. Further, the goods remained stored in Amsterdam until at least October 31, 2001, without delivery to the customer or a set delivery schedule. According to CW1, sometime thereafter, Gilat released the goods to the customer, informing the customer that it could pay the balance of $720,000 whenever it could;

c. Third Party Warehouse Shipments Before Parties Reached Agreements. As alleged in ¶***7(b)***, Gilat inflated revenues in violation of GAAP by recording revenues on shipments to third-party warehouses before negotiations were complete and the sale was final, e.g. the earnings process was not complete. In Q3 2000, Gilat recognized revenue on the following three transactions:

   i. Gilat began contract negotiations with Peterwell Network Systems ("Peterwell") in June 2000. On July 1, 2000, Defendants invoiced, shipped, and recognized revenues of $1,030,000 -- all before contract negotiations were complete. According to CW 1, the goods were shipped to third-party storage at Fritz Companies in Helsinki where they remained until at least October 31, 2001 with no delivery or set schedule for delivery. Gilat's internal e-mails and drafts of the contract, show that the Peterwell negotiations were still ongoing as late as September 26, 2000. Moreover, according to CW 1, the negotiations eventually fell apart and the deal was never finalized. Gilat's internal records show that the Peterwell account was listed as an account receivable still unpaid as of March 31, 2001. CW 1 confirmed that the account was never paid;

ii. On September 28, 2000, Gilat invoiced and recognized revenue on $15 million in sales (as reflected in Invoices Nos.200543, 200545, 200546, 200548, 200549, 200551, 200552-4 and 200550) to Corporacion Novavision S.Del RL ("Novavision"), a customer in Mexico. The air waybill shows that $6 million of the goods were shipped to Chicago "For Storage in Ord,"[17] and the remaining goods were shipped to Florida "For Storage in Miami." According to CW1, this deal was never finalized; the goods were never delivered to the customer; and the customer never paid. This is confirmed by an entry in Gilat's Idan accounting system for Corporacion Novavision's account (Account No. 2112050), which shows that the $15 million account was finally written off on September 30, 2001 – a full year after the revenue was first recognized. According to CW 1, the sizable loss was embedded within fixed asset charges; and

iii. CW 10 stated that in July 2000, in a meeting with management, he was shown financial figures which included $5 million in revenue

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[17] "ORD" is the international location identifier for Chicago's O'Hare International Airport.

from a contract with UOL, a phone company in Brazil. Based on this meeting, it appeared to CW 10 that the deal had been closed and that was how management represented the deal to him. Based on that understanding, CW10 traveled to Brazil and met with UOL management. Only then did he learn that the deal was far from closed and that negotiations were ongoing.

d. Shipments to Customers That Were Not Creditworthy. As alleged in ¶ ***7(e)***, in violation of GAAP and Gilat's stated policy, Defendants inflated revenues by recording revenue at time of shipment to customers that Gilat knew were not creditworthy and collectibility was not reasonably assured. According to CW 9, in either Q3 or Q4 2000 Gilat recognized substantial revenues on a sale to a highly-risky credit quality customer, Equus Gaming Company, L.P. ("Equus"). Although Defendants touted the Equus deal in a press release on May 15, 2000, there was far less to it than meets the eye. CW 1 explained that Gilat had invoiced and recorded revenue of $3,066,276 on the Equus account but that the customer only paid $1,000,000 because the customer's business plan had failed. According to CW 1, Equus, a company operating in the Carribean, Central and South America, planned to install a network in Columbia and Puerto Rico for betting on video horse races; however, the video part (not sold by Gilat) did not work. The deal was to be for $8 million, but Equus eventually only requested a hub and 100 VSATs. Thus, the final deal ended up being worth less than half of the original amount. While Equus did make a $1 million payment and took delivery of some goods, it never took delivery on the remaining VSATs -- which had initially been shipped straight to storage in Miami, Florida -- or paid the rest of its account receivable of $2,281,740. CW 9 confirmed CW 1's account that Gilat recognized substantial revenues on a multi-million sale to Equus -- even though a limited amount was ever collected;

e. Third Party Warehouse Shipments Exceeding Customer Demand. As alleged in ¶*7(c)*, Gilat inflated revenues in violation of GAAP by recording revenues on shipments to third-party warehouses when the customer did not want the goods and/or was not ready for delivery. Specifically, on September 20, 2000, Gilat received a purchase order from Destiny, a network operator in the Phillipines, for 1,000 VSATs. However, Destiny only wanted immediate delivery of 88 VSATs. Regardless, on September 21, 2000, Gilat recognized all the revenue and shipped all 1,000 VSATs, issuing two separate invoices for the goods: Invoice No. 200409 in the amount of $2,736,000 for 912 VSATs and Invoice No. 200411 in the amount of $319,000 for 88 VSATs. Destiny only picked up the 88 VSATs covered by Invoice No. 200411, leaving the other 912 VSATs in storage. Internal Gilat e-mails written by and among Gilat management on May 17, 2001 confirm that Destiny had not paid and did not intend to pay their account receivable for the 912 VSATs. Several months later, in July 2001, Leibovitch decided to have the goods moved to a storage facility controlled by Gilat's affiliate K-SAT in Hong Kong. Leibovitch sent a letter to Emelito V. Villaruz, the District Collector of Customs at Manila International Container Port, which stated: "The aforesaid shipments should have been sent to K-SAT c/o Sankyu Air (Hong Kong) Ltd., *where our storage facilities are located*" [emphasis added] and gave authority for "re-exportation" of the goods to Hong Kong. On September 21, 2001, the Republic of the Phillippines, Bureau of Customs, responded, indicating that although the shipment had been unclaimed for so long that it had been declared abandoned and confiscated, now that Gilat had paid all duties and taxes it could now re-export the goods; and

f. Boosting Revenues with Related-Party Transactions. As alleged in ¶ ***7(h)***, Gilat violated GAAP and SEC regulations with their related-party transactions. In Q3 2000, Gilat's financial results were false and misleading with regard to the following related-party revenues and account receivable:

i. rStar.

(a) Collectibility highly improbable: By October 2000, rStar's situation had deteriorated to the point that rStar decided "it would no longer accept or present paid commercial messages directed at students ... " effectively terminating its primary revenue source.[18] This was clearly a material subsequent event -- not a decision reached overnight -- which, combined with increasing operating losses,[19] made Gilat's collection of the account receivable improbable. In addition, CW7 and

[18] See, e.g., rStar, Preliminary Proxy Soliciting Materials, filed on Form PreR14A, on January 15, 2002.

[19] See, rStar's Q3 2000 Form 10-Q filed with the SEC on November 14, 2000 at 4, which discloses a $20 million loss from operations.

CW4 confirm that the rStar account was overdue and rStar made irregular payments. Gilat violated GAAP by not writing off all or part of the massive rStar account receivable or recording a provision for probable bad debt; and

(b) Gilat also violated GAAP by recognizing $22 million of purported additional sales to rStar during the first nine months of 2000. See Gilat's Tender Offer, filed October 17, 2000, Ex. 99.A.1.A., Offer to Purchase, at 15. Upon information and belief a substantial portion of the new sales were not paid for, causing the rStar account receivable to grow to $45 million by the end of 2000.

ii. Channel Master. As alleged in ¶¶***7(h)(ii) and 19*** above, in violation of GAAP Gilat used the Channel Master account to hide sales to and accounts receivable from StarBand. The Channel Master scheme began on September 27, 2000, when Gilat began shipments of VSATs to Channel Master "c/o StarBand." Even though Gilat shipped VSATs to Channel Master at the request of StarBand – the owner of the equipment -- Gilat billed Channel Master for the equipment. Based on Gilat's Idan accounting system, in Q3 2000 alone, Channel Master was billed over $2 million in equipment. (This amount quickly grew to $18.7 million by February 20, 2001.) Leibovitch knew of and participated in this scheme. An e-mail dated

December 26, 2001, from Mike Poe, to John Dillon-StarBand, Yaron Suher-Gilat Israel and Leibovitch stated, in pertinent part:

> Channel Master Assistant Treasurer Jack Barry has instructed our bank's wire transfer department to be looking for the incoming wire on Thursday from StarBand in the amount of $3,172,606.04 <u>and to immediately forward the same amount to Gilat upon receipt from StarBand</u>. The wire will be sent to the same Gilat/Spacenet account that we have sent prior payments to unless Gilat otherwise instructs Jack. [Emphasis added].

Because the Channel Master account was used by Gilat to hide the amount of debt StarBand owed to Gilat, it corroborates CW3's statement that Gilat floated debt above and beyond what they represented publicly - and that the debt was "more than the $78 million."

102. Defendants acted with scienter when they issued the November 11, 2000 press release which they knew or recklessly disregarded contained false and/or misleading representations/omission specified above. Evidence of Defendant's scienter includes the following:

a. <u>Holding Quarters Open</u>. Defendants acted with scienter for the reasons alleged in ¶***<u>82(a)</u>***;

b. <u>Shipment of Products to Third-Party Warehouses Where They Were Stored Indefinitely, Pending Assurances of Payment</u>. Defendants acted with scienter as alleged in ¶ ***<u>78(b)(ii-vi)</u>***;

c. <u>Third Party Warehouse Shipments Before Parties Reached Agreements</u>. As to each of these transactions, Defendants acted with scienter because as alleged in ¶***<u>78(b)(vi)</u>***, Gilat was paying steep warehouse storage fees and either Gat or Liebovitch had to sign the checks and/or wire transfers to pay for warehoused goods. Additionally, Defendants knew or recklessly disregarded that recognition of revenue on goods shipped to a third-party warehouse pending finalization of negotiations violated GAAP when there was no delivery or schedule for delivery. Specifically, CW1 stated that no deal was finalized or VSAT shipped without Gat's knowledge, therefore he was aware of these VSAT shipments prior to finalization of negotiations. Additional evidence of scienter with respect to the Novavision transaction includes:

i. The Novavsion transaction was a $15 million deal. This transaction accounted for 11% of Gilat's reported revenues of $135.4 million for the quarter. Therefore, top management knew: the status of ongoing negotiations; that negotiations had fallen through; that the goods were stored in a third-party warehouse controlled by Gilat; and that the account receivable for $15 million had not been, nor would be, collected. Alternatively, if top management did not know these facts, then it was materially misleading for them to allow recognition of revenue from the Novavision transactions because they had recklessly disregarded their duty to monitor the progress of a transaction which was reported as a material portion of Gilat's financial results for the quarter;

ii. Scienter is further shown as Gilat concealed this bad debt write off as a charge embedded within fixed asset charges taken a year later, in Q3 2001, rather than attributing the loss to bad debt expense.[20]

d. Shipments to Customers That Were Not Creditworthy. Defendants acted with scienter for the reasons alleged in ¶***92(c)***. Specifically, Equus was a thinly capitalized company with an untried business idea of servicing remote locations in Columbia and Puerto Rico. Indeed, before the goods were even shipped to the warehouse the deal had already shrunk from $8 million to $3 million. Furthermore, these shipments took place after CW1 had complained to Leibovitch about the shipments in Q2 2000 which had been made without the LOC required by Gilat's own accounting policy;

e. Third-Party Warehouse Shipments Exceeding Customer Demand. Defendants acted with scienter for the reasons alleged in ¶***78(c)***; and

f. Boosting Revenues with Related Party Transactions. Scienter allegations with regard to related party transactions:

i. rStar. Defendants acted with scienter for the reasons alleged in in ¶***91(d)(ii) and 92(d)***, and because Defendants knew or recklessly disregarded a material subsequent event e.g. that in October 2000 rStar had decided "it would no longer accept or present paid commercial messages directed at students..." thereby eliminating its planned source of revenues. Moreover, Gat had "observer" status on

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[20] The significance of burying this $15 million bad debt loss as a fixed asset charge is underscored by the fact that, in Q3 2001, Defendants reported that Gilat's total bad debt expense was only $10 million. See Gilat's October 2, 2001 Press Release.

rStar's Board, and, according to CW 1, Gat was personally involved in collecting the rStar receivable; and

ii. Channel Master. Defendants knew or recklessly disregarded that billing Channel Master for StarBand's equipment purchases boosted Gilat's revenues and hid the amount of related-party revenue and debt from StarBand. Moreover, Gilat began using Channel Master as a conduit for StarBand sales just as the critical StarBand IPO was announced. Finally, Leibovitch was aware of the scheme.

103. Analysts again took note of Gilat's performance and on November 13, 2000, Salomon Smith Barney's John B. Coates reported: "Gilat reported strong results that beat our expectations. EPS of $0.57 beat our estimate (and Consensus) of $0.54...." concluding "We strongly recommend that investors purchase Gilat's stock at these levels because: 1) the company continues to generate growth rates of 50%-plus, is earnings-positive..."

104. The market reacted positively to Gilat's various false statements of November 13, 2000. Shares of Gilat common stock rose to a high of $51.88 per share that day, closing at $48.50, compared to $43.06 per share at the close of trading on November 10, 2000, the previous trading day.

105. On November 16, 2000, Gilat filed with the SEC its Form 6-K, which was signed by Leibovitch and which attached the press release of August 14, 2000, announcing Gilat's earnings for Q3 2000. The Form 6-K was materially false and misleading for the reasons stated in ¶***101(a)-(f)*** and Defendants acted with scienter for the reasons stated in ¶***102(a)-(f)***

Gilat Hosts Analyst Luncheon
Maintains Aggressive Sales Guidance

106. On November 15, 2000, Gilat hosted an Analyst Luncheon in New York during which both Gat and Leibovitch were speakers. Defendants gave an elaborate presentation including financial charts which were filed with the SEC on December 4, 2000 and are attached hereto as Exhibit "A." Defendant Leibovitch's statements concerning Gilat's past financial results were materially false and misleading when made because of the various accounting improprieties which inflated revenues and accounts receivable, as alleged in ¶¶ ***77; 81; 87(b); 91; and 101***, above. Defendants statements were made with scienter, for the reasons set forth in ¶¶***78; 82; 89(b); 92; and 102***, above.

107. Following the luncheon, Marc E. Nabi of Merrill Lynch, wrote on November 20, 2000, in part:

> Gilat Satellite Networks held an investor luncheon in New York on November 15, 2000 to outline the company's strategic focus and to discuss its expected financial model for 2001. In our opinion, holding this presentation was a move in the right direction for Gilat with regard to attracting US investors and making its business plan clear to the investment community. We believe that Gilat is making significant progress in executing on its core VSAT and enterprise broadband strategy. During this meeting, Gilat's management also maintained [emphasis in original] its 2001 EPS projections. We continue to rate Gilat intermediate-term Buy and long-term Buy, and reiterate our 2001 year-end price objective of $116 per share. We continue to view Gilat as one of our top picks, as it is trading at a significant discount to our price objective.

108. Analysts were impressed by Defendants' materially false and misleading presentation at the luncheon:

a. On November 20, 2000, based on guidance provided at the Analysts Luncheon, Salomon Smith Barney's John B. Coates wrote: "The bottom line is that, at the high end of management's guidance, we reach our previous estimate of $2.70. Specifically, we expect revenues of $675 million....," concluding, "[i]n short, we see a high-quality, earnings-positive company and an attractive investment opportunity at these levels. We reiterate our Buy (1H) rating;" and

b. On January 31, 2001, Vijay Jayant of Morgan Stanley Dean Witter wrote "Fundamentals Remain strong into 2001. Increase in core VSAT sales coupled with incremental revenues from sales to consumer initiatives could drive top and bottom line 30-35%. Free cash flow expected in 3Q" and "Expectations for 2001. Management has guided the Street for 2001 as follows... Revenues of $675 million."

To Support The IPO, Gilat Prematurely Launched StarBand Service In November 2000 – Only To Withdraw The IPO In Early March, After StarBand Stumbled Badly

109. Defendants employed a three-pronged attack to support StarBand's IPO. Coinciding with Gilat's reporting of Q3 2000 results and the upbeat presentation at their Analysts' Luncheon, on November 6, 2000, StarBand announced the commencement of its commercial service. The press release issued that day stated, in relevant part:

StarBand Communications Launches Nation's First Consumer Two-Way High Speed Internet Service Via Satellite

Consumers Across the U.S. Are Asked to "Just Look Up"sm

McLean, Va., November 6, 2000 - StarBand Communications Inc. today announced the launch of the nation's first consumer focused high-speed, always-on, two-way Internet service via satellite.

Despite the high-speed Internet revolution promised with the introduction of broadband service, approximately 55 million households still do not have access to cable modem or DSL technology. The StarBandsm service is now available to virtually every household in the Continental United States with a view of the southern sky.

"We are excited to bring the reality of high-speed Internet service to the millions of Americans across the country who have been denied access because their homes are located in neighborhoods not served by DSL or cable," said Zur Feldman, Co-Chairman and Chief Executive Officer of StarBand Communications. "Thanks to the innovative technology provided to us from Gilat Satellite Networks, Consumers no longer have to worry about how far away they live from the telephone company's central office or if their cable company has upgraded the cable in their neighborhood. All they have to do is look up. If they can see the southern sky, they can get StarBand service."

" 'Just Look Up' is the flagship trademark of StarBand's launch advertising campaign," said David Trachtenberg, StarBand's President and Chief Marketing Officer. "This brand campaign will be launching next week in selected cities in outdoor media and radio as well as in national print. The message we are communicating to subscribers is clear: if you have been waiting for high-speed Internet, your wait is over."

StarBand can now be ordered at selected DISH Network™ retailers and at Microsoft® Internet Centers at RadioShack® stores throughout the Continental U.S. Consumers have the choice of a StarBand-ready Compaq® personal computer from RadioShack or the StarBand Model 180™, a "satellite modem," available through the DISH Network retailers and ready to connect to an existing personal computer through a USB port. Although consumers cannot purchase DISH network services at RadioShack stores, StarBand antennas purchased through either channel are equipped to provide consumers with a one-dish solution for both high-speed Internet service and 500 video channels from DISH Network.

110. Following the commercial launch of the StarBand service, it became clear to Defendants that undisclosed problems with the 180 modem were so severe that it was necessary to delay accepting new orders until the technical problems, which had existed throughout beta testing, could be resolved.

111. Consequently, as reported by the Globes Online, on December 17, 2000, StarBand posted the following false and misleading statement on the Website: "Dear Visitor. Due to the overwhelming nationwide response for the StarBand High-Speed Two-way, Internet service, we have temporarily suspended accepting advance orders . . ." However, it was technical problems, not "overwhelming" demand, that caused the service to freeze or crawl at speeds as slow as those of dial-up modems.

112. Its premature introduction marred by numerous serious problems, on March 9, 2001, StarBand announced that it was withdrawing its plan to offer shares of its common stock to the public, citing "changed circumstances in the securities markets." See StarBand, Form RW, filed March 9, 2001.

113. In a March 12, 2001, Gilat press release, Gat reiterated the reason the IPO was withdrawn: "On March 9, 2001, StarBand Communications withdrew its initial public offering filing at the United States Securities & Exchange Commission, in response to the weak financial markets."

114. Defendants' statement was false and/or materially misleading at the time it was made because Defendants knew or recklessly disregarded that the IPO was pulled due to myriad problems with both StarBand's product, e.g., it was not "always on," it was not "ten times faster than dial-up," and it sales channel, e.g., EchoStar ceased marketing StarBand, many EchoStar dealers did not stock StarBand equipment:

a. CW 2 stated that in March 2001 EchoStar ceased marketing StarBand. As a result of this sales moratorium, which continued until April 2001, StarBand's sales numbers dropped dramatically. CW 3 confirmed the moratorium and indicated that EchoStar stopped selling StarBand because its dishes were out of alignment;

b. CW 2 also indicated that from November 2000 until the IPO was withdrawn (and, indeed, until July 2001) sales of StarBand were fairly flat -- only 80 to 90 new customers were added each day;

c. CW 3 stated that StarBand's product was not ready for the market when it was released in November 2000. Sales began with the inefficient Model 180 modem instead of the Model 360 modem (as originally planned), which had encountered development problems;

d. CW 3 also indicated that StarBand had problems with its customer service and help desk;

e. Beta testers of the StarBand service stated in October 2000 that StarBand could not achieve download speeds as advertised. One beta tester reported that the advertised download speed "better be a typo;"

f. Customers complained (throughout the Class Period) that StarBand did not function as it was supposed to: images would not download at the advertised "high speed" rates; images froze; and, at times, StarBand would crash due to heavy usage by existing subscribers;

g. According to a posting on the comp.os.linux.networking newsgroup by a StarBand customer in January 25, 2001, StarBand was a "sham" that did not function as advertised:

> StarBand boldly advertises that its two-way always-on system is ten times faster than dial-up. In truth, the system rarely exceeds the speed of dial-up and often is down completely. While web browsing and downloads can be rather delightful during off-peak hours, most other applications (Netscape, Napster, ftp, ICQ, AIM, email, news servers, firewalls) run unacceptably slow or don't run at all. A particular problem is SSL – or the secure web protocols used for banking or other monetary transactions. StarBand is currently incompatible with these pages making it impossible to use online banking, stock trading, online transactions and related matters.
>
> StarBand says in the fine print of its advertising that it expects to maintain minimum download speeds of 150 kps and upload speeds of 50 kps. In truth, these should be considered maximum speeds. During peak hours (5pm to 11pm) the system generally runs slower than dial-up. Following a full

> month of promises from StarBand, they have yet to implement a fix.

This same StarBand customer also stated that StarBand had "prolonged outages" and poor customer service, and that customer service had even admitted that all they "ever say is '[we're] trying to fix it.' Occasionally an exhausted customer service rep will confide that their system just wasn't ready for a public debut and may never function properly." According to this customer, the reason given by StarBand for outages and slow speeds was "network congestion." The customer noted that if network congestion was really a problem when there were relatively few customers, "[StarBand] will always be worse than dial-up during peak-hours (5pm to 11pm). This is in addition to the fact that it generally takes well over an hour on hold just to get these unsatisfying tid-bits of customer service information;"and

h. A January 25, 2001, article by Robert X. Cringely, entitled, "E.T. Phone Home," (http://www.pbs.org/cringely/pulpit/pulpit20010125.html) gives StarBand a mixed review. While the author, a rural user, praised the service as faster than IDSL, he described various difficulties encountered obtaining and using StarBand's products and service:

> "Once I started hearing commercials for Starband satellite Internet, I knew I had to give it a try ... The only problem was finding a Starband dealer who would actually sell me the thing.
>
> [M]y best option when I started looking seemed to be buying from the Dish Network, which was already my satellite TV company.
>
> <u>Intending to buy Starband and actually buying StarBand are very different things. On the Dish</u>

Network Web site there is a list of Starband dealers, most of whom have never installed a system and many of whom have never even heard of Starband. Nobody seems to know how this list of dealers was compiled. Finally, though, I found ... a dealer who had participated in the Starband beta test. This dealer was 60 miles away and had no units to install, but at least he had heard of Starband. My name went on the waiting list.

> Six weeks later, my name reached the top of the list and my system was installed ... My $125 installation took a total of 13 hours over two days! Who is making money here? The biggest problem once the dish itself was installed, was configuring the PC. Or, rather PCs, since we went through three before finding one that could actually talk with the Starband modem.
>
> * * * *
>
> But once we got it talking to a PC, it worked nearly as advertised. I say "nearly" because the speeds aren't as high as Starband claims. Starband acknowledges this and says it is adding transponder capacity and speeds will improve ... Like a cable modem, this is shared bandwidth, so speeds drop in the evening when people are home cruising the Net. They also drop in heavy rain ... [Emphasis supplied].

115. Defendants' misrepresentation of the reason the StarBand IPO was withdrawn was made with scienter because Defendants, who had been issuing press releases concerning StarBand and its progress towards commercialization since February 2000, were aware of the results of beta testing of StarBand's service and the many problems encountered as the service was launched with the Model 180 modem instead of the Model 360 modem (which was experiencing development problems at Gilat). Moreover, as Gilat had a 42.1% ownership interest in StarBand and representation on StarBand's Board of Directors – including Gat, its Chairman/Co-Chairman – Defendants were aware of the actual reason the IPO was withdrawn. Alternatively, Defendants made the statements recklessly disregarding these facts even though StarBand was central to Gilat's plans

to penetrate the United States market and, therefore, Defendants were required to carefully monitor StarBand's progress.

116. At the close of the market on Friday, March 9, 2001, Gilat's shares were down $3.94 from the previous day's close. However, in light of StarBand's perceived importance to Gilat's success, Gilat's share price suffered less than it would have had Gilat publicly admitted that the IPO was withdrawn because StarBand was seriously flawed.

4Q 2000: Gilat Makes a Partial Corrective Disclosure And Stuns Market By Announcing Asset Impairment Charges and Slashing Guidance

117. Well after the close of fiscal 2000, Gilat management had a meeting in Philadelphia with, among others, Salomon Smith Barney's John Coates. Following this meeting, on February 8, 2001, Coates wrote, in pertinent part:

> **HIGHLIGHTS FROM MANAGEMENT MEETING**
>
> -- Gilat continues to generate business in its core unit. We expect management to announce recent contract wins when the company reports on March 12.
>
> –The core business has incremental growth opportunities in 2001. Rural telephony and casual dining segments continue to generate demand for data networking services.
>
> * * * *
>
> --- Gilat is on a steep ramp-up with shipments. The company shipped 90k units in 1999, an estimated 125k in 2000, and plans to ship 400k in 2001. The increase reflects expects sales to the consumer broadband unit.
>
> * * * *
>
> --- Q4 2000 and full year 2001 guidance remain unchanged....
>
> * * * *
>
> **CONCLUSION:**
>
> Gilat is one of our top picks and is an excellent way to play demand for data networking and consumer broadband equipment...

118. On March 12, 2001, just weeks after having reassured investors and maintained guidance, Gilat issued a press release announcing financial results for Q4 2000 and fiscal 2000. While Defendants proudly announced that 2000 revenues had increased 49% over 1999, they

nevertheless stunned the market with asset impairment charges and revised guidance for 2001. The press release reported Gilat had assets of $1.3 billion, including trade accounts receivable of $187 million and investments in companies and non-current receivables of $173 million. Seeking to reassure investors, the company reported that the backlog continued to be strong at $300 million, and further stated, in pertinent part:

Gilat Reports Fourth Quarter and Annual Results 2000, Updates 2001 Guidance Business Editors 2001-03-12 08:57 (New York)

> PETAH TIKVA, Israel--(BUSINESS WIRE)--March 12, 2001--Gilat Satellite Networks Ltd. (Nasdaq:GILTF), a worldwide leader in satellite networking technology, today reported its results for the quarter and year ending December 31, 2000. In addition, the Company presented revised guidance for 2001 in response to the current economic slowdown affecting technology products and services.
>
> The Company reported revenues for the year ended December 31, 2000 of US$504.6 million, an increase of 49 percent over 1999 sales of US$337.9 million. Gilat recognized several one-time charges to 2000 earnings resulting from acquisition-related expenses and acquired in-process research and development. In addition, Gilat has recorded a one-time charge related to the impairment of investments in other companies. After these one-time charges of US$29.7 million, Gilat reported net income of US$19.4 million, or US$.81 per share.
>
> Excluding these charges, net income was US$49.1 million, or US$2.04 per share.
>
> Revenues for the fourth quarter ended December 31, 2000 were US$174.6 million, an increase of 60 percent over the US$108.9 million result for the same period in 1999. Reflecting the one-time charges described above, the Company reported a loss of US$(10.2) million, or US$(.44) per share. Excluding these charges, earnings were US$19.4 million or $US.82 per share.
>
> The 2000 year-end backlog for equipment sales and revenues from multi-year service contracts for the Company's VSAT (Very Small Aperture Terminal) products was over $300 million, not including prospective orders from the MCI WorldCom/United States Postal Service contract or StarBand Communications.
>
> The Company also announced that its guidance for 2001 results will be below its previous expectation. The Company now expects total year revenue will be approximately $575 million, and expects net income to be approximately $25 million or $1.00 per share. Gilat said that its revised guidance for the year is primarily the result of slowed decision-making with regard to technology purchases by U.S. and

> international customers, and tighter access to the equity markets, both of which delay order flow into the company. The Company also announced for the first time its expectation that 2002 results would generate total year revenues of $675 million and net income of approximately $50 million or $2.00 per share.
>
> Gilat Chairman and CEO Yoel Gat stated, "Like other businesses in the technology sector, Gilat is facing challenging economic conditions which have impacted the Company in terms of reduced or delayed orders from our target segments. We are taking aggressive measures throughout the Company to address the current market conditions. Given the strength of our competitive position in the awards we are announcing today, we continue to be confident in the long-term prospects of our products and our Company."

119. The financial results reported in the March 12, 2001 press release and reason for the revised guidance were materially false and misleading when made. Gilat's financial results for fiscal 2000 were the product of the Company's undisclosed improper accounting practices which improperly inflated Gilat's reported revenue and overstated the Company's accounts receivable. A direct result of result of these practices was that the Company was operating at an excess of a hundred million in negative cash flow. The Company could no longer afford to sell, ship and store equipment that it was not getting paid for. Specifically:

a. Holding Quarters Open. As alleged in ¶ ***7(d)***, in violation of GAAP and Gilat's stated revenue recognition policy, Gilat inflated revenue by recording revenues on shipments that had not yet occurred by the end of fiscal 2000. For example, on December 31, 2000, the last day of fiscal 2000, Gilat issued Invoice Nos. 201302 and 201285 to StarBand, for goods totaling $1,754,000; Invoice Nos. 201307, 201137, and 201266 to RGC in Ukraine, for goods totaling $1,566,527; and Invoice No. 201323 to Century Digital Enterprises (a/k/a CSU) in China, for goods totaling $1,609,600. According to CW1, Gilat entered the invoice date as the date of revenue recognition into Gilat's Idan accounting system, however, invoiced goods were not shipped by year-end 2000. Specifically, the goods covered by Invoice Nos. 201307, 201137, 201266, and 201323 were shipped on January 4, 2001; the goods covered by Invoice No. 201302 were shipped on January 3, 2001; and the goods covered by Invoice No. 201285 was shipped on January 1, 2001. Therefore it was improper to recognize revenue on these sales in 2000 as delivery had not occurred until 2001. An additional transaction, described in greater detail in subsection (d)(iii) below, was also recorded in 2000 even though shipment did not occur until 2001. Specifically, the shipment to K-SAT did not take place until January 3, 2001, even though Gilat recognized the revenue on December 31, 2000, the date invoiced. Therefore it was improper to recognize revenue in 2000 when delivery had not occurred until 2001;

b. Third Party Warehouse Shipments Before Parties Reached Agreements. As alleged in ¶ ***7(b)***, Gilat inflated revenues in violation of GAAP by recording revenues on shipments to third-party warehouses before negotiations were complete and the sale was final, e.g. the earnings process was not complete. On December 27, 2000, while Gilat was still in negotiations with I-QUBE, a company in the Philippines, Gilat invoiced and shipped goods covered by Invoice Nos. 201238, 201224, and 201219, totaling $1,055,100. That Gilat recognized revenues on these invoices is evidenced by a January 2001 listing of Gilat's open accounts receivable which reflects an I-QUBE open account receivable in the amount of $1,055,100. CW 1 stated that these goods were warehoused in the Phillippines until late 2001, with no delivery or set schedule for delivery. An internal Gilat e-mail dated August 1, 2001, from

CW 1 to the forwarder agent in the Philippines (Fritz Companies), explains that I-QUBE did not take delivery of the goods because "they did not want to accept the goods unless they raised capital from new shareholders, (something they failed to do), they did not show any interest in getting the goods and finally the deal was canceled." According to CW 1, after the goods were not picked up by the customer, they became subject to confiscation by Philippines Customs, almost a year later. A letter dated August 29, 2001 from Gilat to Atty Bangcoy, Philippines customs, states Gilat had "intended" the goods to be shipped to "our storage facility in HK, until such moment that the contract with the intended customer in the Phillippines will be finalized and signed;"

c. Shipments to Customers That Were Not Creditworthy. As alleged in ¶***7(e)***, Gilat inflated revenues by recording revenue at time of shipment to customers that Gilat knew were not creditworthy and collectibility was not reasonably assured. According to CW 1, Gilat invoiced, shipped, and recognized revenue during the Q4 2000 on goods to Chinese customers that were shipped prior to receipt of LOCs, in violation of Gilat's stated, and internal, policy. Specifically, Beijing Jingxin Hero was shipped goods that totaled $2,134,000 (Invoice Nos. 200626, 201229, and 201261) and Century Digital Enterprises was shipped goods totaling $2,717,290 (Invoice Nos. 200625 and 201323). According to CW1, Century Digital Enterprises never paid Gilat anything and Beijing Jingxin Hero only paid a total of $160,000, a fraction of the "sale" and receivable recorded. According to CW1, the only reason the sales department shipped the goods without having a LOC was to meet sales quotas;

d. Boosting Revenues with Related-Party Transactions. As alleged in ¶ ***7(h)***, Gilat inflated revenues by recording revenues on undisclosed related-party transactions. In Q4 2000, Gilat's financial results were false and misleading with regard to the following related-party revenues and account receivable:

i. rStar. While Gilat finally stopped recognizing new revenue on the rStar account in Q4 2000, Gilat continued to violate GAAP by failing to recognize $45 million in bad debt losses or record a provision for probable bad debt. As previously alleged in ¶***101(f)(i)***, by October 2000, rStar had decided that it was abandoning its primary means of revenue generation;

ii. Channel Master. In violation of GAAP Gilat used the Channel Master account to hide the extent that Gilat was inflating revenues on sales to its affiliate StarBand and mask the amount of debt that StarBand owed to Gilat. Based on Gilat's Idan accounting system, during the fourth quarter of 2000, Gilat recognized revenue of $11,360,825 for equipment "sales" to Channel Master on behalf of StarBand. By the end of Q4 2000, the Channel Master account receivable soared to $12.6 million; and

iii. K-SAT Satellite Networks, Inc. ("K-SAT") is an affiliate company to which Gilat shipped goods in order to record revenue prematurely, i.e., in advance of the completion of contract negotiations with the actual customer. According to CW 1, at the end of 2000, Gilat was still in negotiations with the CNTIC Euro-Asia Import & Export Co., Ltd. of the People's Republic of China ("CNTIC") for $5 million in goods and services for the Heibei SSA Network ("Heibei"). According to CW1, rather than wait to finalize the sale, to ship the goods, and to recognize the revenue, on December 31, 2000, the last day of 2000, Gilat issued Invoice Nos. 201288 and 201286, on goods totaling $2,750,000, "billed to" K-SAT in Hong Kong.[21] The freight forwarding company, Flying Cargo Int'l Transport, shipped the goods to K-SAT in Hong Kong. The real-party-in-interest, CNTIC/Heibei, did not execute a contract with Gilat until April 25, 2001, which provided a delivery schedule of 1600 VSATs over two quarters, beginning on May 7, 2001 and ending on August 31, 2001. Contrary to the terms of the parties' agreement, the goods remained parked in a warehouse controlled by K-SAT in Hong Kong until at least October 31, 2001.

e. Reason for Revised Guidance. Defendants and Gat, in particular, blamed the "challenging economic conditions" for the revised guidance when in fact it was the cumulative impact of the Company's improper accounting practices:

i. While Gilat had reported rising revenues for a number of quarters, the Company was operating at a serious negative cash flow that had

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[21] As of December 31, 2000, K-SAT only maintained liquidity as a result of shareholder loans -- of which $5 million came from Gilat. See K-SAT's Form BC 51-901F, filed on May 22, 2001 (available online on SEDAR) and Gilat's 2000 Form 20-F, filed July 2, 2001.

reached $124 million at the end of 2000. See Form 20-F, filed July 2, 2001, at F-8;

ii. CW 1 indicated that early in 2001, Gat announced the Company was to shift its emphasis, to become a "cash oriented, not sales oriented" company. In fact, during the time Gilat was "sales oriented," it aggressively recognized revenue in violation of both GAAP and its own policies and failed to timely write off or disclose bad debt on these accounts receivable; and

iii. Moreover, Defendants had been relying upon substantial sales to StarBand, to be paid for with the anticipated IPO funds, to boost Gilat's 2001 revenues. Once the IPO was withdrawn, StarBand was no longer a likely source of significant sales.

120. Defendants acted with scienter when they issued the March 12, 2001 press release which they knew or recklessly disregarded contained the false and/or misleading representations/omission specified above. Evidence of Defendants' scienter includes the following:

a. Holding Quarters Open. Defendants acted with scienter for the reasons alleged in ¶ ***82(a)***;

b. Third Party Warehouse Shipments Before Parties Reached Agreements. Defendants acted with scienter for the reasons alleged in ¶ ***102(c)***;

c. Shipments to Customers That Were Not Creditworthy. Defendants acted with scienter for the reasons alleged in ¶ ***92(c)***. Furthermore, these shipments took place after CW1 had complained to Leibovitch about earlier shipments to customers in China (in Q2 2000) which were made without the letter of credit required by Gilat's own accounting policy;

d. Boosting Revenues with Related Party Transactions. Scienter with regard to related party transactions is demonstrated by the following:

i. rStar. Defendants acted with scienter for the reasons alleged in ¶***91(d)(ii) and 92(d)***. CW7 and CW4 confirmed that payments from rStar were irregular and long overdue. Moreover, Gat had "observer" status on rStar's Board, and, according to CW 1, Gat was personally involved in collecting the rStar receivable.

ii. Channel Master. Defendants acted with scienter for the reasons alleged in ¶***102(f)(ii)***; and

iii. K-SAT Satellite Networks, Inc. Defendants utilized Gilat-affiliate K-SAT, to record revenue on the CNTIC/Heibei transaction prior to negotiations being complete with the customer. Furthermore, this related-party transaction was not disclosed, as required by GAAP and SEC regulations, when Gilat filed its 2000 Form 20-F on July 2, 2001. Defendant Gat's scienter is further shown by his board seat on K-SAT[22] during the time of this transaction and Gilat's cozy relationship with K-SAT, including funding a loan to provide liquidity for operations. See n. 19, supra.

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[22] K-SAT is a Vancouver Stock Exchange-traded company. This information is disclosed in its public regulatory filings, which can be located online on SEDAR (the Canadian equivalent of EDGAR). See, e.g., Quarterly and Year End Report, filed on BC Form 50-901F, May 22, 2001 (indicating that Gat was a director of KSAT in 2000).

e. Reason for Revised Guidance. For the reasons alleged above in ¶***119(e)***, Defendants understood that management could not continue to operate Gilat with their past business practices of purportedly selling product and yet not having a valid and collectible account receivable. Therefore, once their gambit to raise funding for StarBand failed, Defendants had to pull back from past improper revenue recognition practices that had resulted in uncollectible accounts receivable and materially inflated the market price of Gilat's stock price. Defendants also knew or recklessly disregarded that without funding, StarBand would not be able to mask Gilat's core business erosion or continue to hide the core technical problems with their product that was causing problems with their main distribution partner, EchoStar.

121. On March 13, 2001, Gilat filed with the SEC a Form 6-K, which was signed by Leibovitch and which attached the press release of March 12, 2001, announcing Gilat's financial results for the fourth quarter of 2000 and repeating the false and misleading statements. The Form 6-K was materially false and misleading for the reasons stated in ¶***119(a)-(e)*** and Defendants acted with scienter for the reasons stated in ¶***120(a)-(e)***

122. Analysts were stunned by the dramatically revised downward guidance and charges announced as recent guidance at Gilat's Analyst Luncheon on November 15, 2000 was for strong revenue growth and EPS in 2001 and 2002. Further, Gilat's management had met with analysts in Philadelphia as recently as February 2001 and touted strong core growth in 2001.

123. On March 12, 2001, Defendants conducted a conference call with investors and securities analysts in which they discussed, among other things, StarBand's and Gilat's financial results. To quell investors' concerns about StarBand's future, Gat stated "at this point in time we're

expanding into new distribution channels in Q2." Similarly, to allay cash flow concerns, Gat made a series of guarantees concerning Gilat's financial commitment to StarBand:

a. "We're going to limit the Gilat full financial exposure to StarBand to $75 million. So that everything that we will do, including a bridge loan, <u>Gilat financial exposure will be limited to $75 million</u>." [Emphasis supplied];

b. "But at the end of the day as I'm standing here as the CEO of Gilat and understand the exposure to Gilat and as much as I'm very committed to StarBand, Gilat would come up and say this is it. <u>I mean we put $75 million and won't invest beyond that</u>. That's the only risk that you'll see in Gilat's financing of the deal." [Emphasis supplied]; and

c. "[T]he <u>$75 million is full exposure</u>, not just for [a] bridge loan, it's <u>for everything</u>." [Emphasis supplied].

124. However, analysts at the conference call focused on the announced charges and dramatically revised guidance for Gilat and were, as one analyst stated "shell-shocked." William Kidd with C.E. Unterberg, Towbin, wrote his reaction on March 13, 2001, stating, in pertinent part:

> Although we too were caught somewhat by surprise, like many things in hindsight, Gilat's blowup almost seemed inevitable. The difficulty was in picking when. For years, Gilat has shown an uncanny ability to report stable margins, while every other competitor hemorrhaged and fell by the wayside.
>
> * * * *
>
> ...We believe the company's difficulties stem from two basic issue opposed to the general economy excuse: (1) prior wins aren't real enough to allow management to continue working through backlog and (2) StarBand's inability to acquire funding will now make it clear that earnings erosion is coming from the core product and not just StarBand, a trend that would have been very hard to detect if StarBand had funds and could buy as many terminals as initially envisioned. On this specific issue, we have always been troubled by the quality of Gilat's reporting and have identified this risk, our inability to decipher between core and StarBand problems, on numerous earlier dates.

125. Like this analyst, investors interpreted the $100 million reduction in revenue guidance as an implicit admission that prior contract wins were not "real enough." As explained in ¶14, above, once Gilat erased expected revenues for Fiscal 2001, investors perceived that earlier revenues may not have been "real" either. (In fact, Gilat had a negative operating cash flow of $124 million, and its current trade receivables alone had reached $188 million.[23]) The reduction of projected 2001 revenues by $100 million, however, did not inform the investing public that, among other things, Gilat's 1999 and 2000 revenues had been materially inflated due to Defendants' improper revenue recognition practices alleged herein, and that Gilat continued to employ such practices in 2001. Defendants were compelled to make a partial disclosure at this time because they knew that they could not sustain Gilat's purported revenue growth once they were unable to access the proceeds from the StarBand IPO as a major revenue source in 2001. Coming on the heels of the StarBand IPO withdrawal the previous week, the stock price fell hard following the March 12, 2001 announcements, dropping from $31.69 at the close on March 9, 2001 to $13.94 at the close on March 12, 2001, a 56.02% fall in one day, on trading volume of 7,822,200 shares. Despite this partial disclosure, Defendants failed to disclose the magnitude and nature of the securities fraud that Defendants had perpetrated and were continuing to perpetrate on the market.

126. Moreover, Gat's statements during the conference call on March 12, 2001, concerning Q2 2001 expansion into distribution channels were materially misleading when made because, as alleged in ¶¶ ***114(a), and 172(a,b)***, EchoStar had stopped shipping StarBand product/service because of VSAT alignment problems. According to CW No. 3, this problem, which took several weeks to resolve, and EchoStar's response thereto, negatively affected sales and subscribership. Because

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[23] Exclusive of long term receivables; receivables from capital leases; and receivables from related parties. See Gilat's 2000 Form 20-F filed with the SEC on July 2, 2001 at F-4.

EchoStar was StarBand's primary distributor, Defendants knew or were reckless in not knowing that until the dispute was resolved, StarBand's overall distribution would not be expanding.

127. Just two days later, in an interview with the Globes Online, Leibovitch stated that Gilat's future was not tied to StarBand's, assuring investors that keeping StarBand alive would be a joint effort by Gilat, EchoStar, Microsoft, and ING-Barings. Leibovitch reiterated Gat's promise that Gilat was prepared to abandon StarBand after investing $75 million, if necessary:

> If we really don't manage to raise money and our exposure reaches a maximum of $75 million, including loans from shareholders, we will reconsider, even if it means StarBand will raise money without us. We'll meet and decide what to do. We promised the investors yesterday that Gilat would not increase its exposure in its own name, so that they wouldn't fear that Gilat would go under. [Emphasis supplied].

128. Defendants' statements were false and/or materially misleading when made because, Defendants did not include the balance on the Channel Master account. Gilat's account information for Channel Master – the middle-man for sales to StarBand – indicates that by March 8, 2001, just days before the statements were made, Channel Master (actually StarBand) owed Gilat $19.8 million. To put this amount into perspective, Gilat's open accounts receivable listing as of the end of February 2001 indicates that the Channel Master account balance of $18.3 million is Gilat Israel's second largest account receivable -- second only to the StarBand account.

129. Defendants' statements were made with scienter because they knew or recklessly failed to include the Channel Master accounts receivable in their calculation of Gilat's total financial exposure to StarBand. Indeed, the Channel Master account appears to have been created to avoid revealing Gilat's true exposure to StarBand.

130. During an August 13, 2001, conference call, Gat admitted that Gilat's exposure to StarBand had already reached at least $75 million. Specifically, in the five months since Gat and Leibovitch each assured investors that Gilat's total exposure -- "everything" -- to StarBand would

not exceed $75 million, Gat revealed that StarBand's "long-term receivable," i.e., "everything that is more than a year away that we expect to collect," had "grown significantly over the last quarter [Q2 2001]," to $65 million, but that "the account receivable and the other receivable" had gone down "to some extent." When asked about Gilat's exposure to StarBand by the end of Q3 2001, Gat completely redefined "exposure" – from "everything that we will do," specifically including loans and various forms of accounts receivable -- to absolute losses:

> With regard to exposure . . . we think that dollar exposure is collectible now and there is a deal in place with regard to how we are going to collect it. So we think our exposure at this point in time is pretty much zero . . . [T]he $75 million exposure is expected to be repaid over a period of time. And that is why we think that as much as currently is in the account receivable in both current and long-term, we don't think that we are exposed to that amount. We are just going to be paid over time.

131. Former employees confirmed that Gilat contributed funds to StarBand far in excess of its $75 million promised "maximum" exposure. For example:

a. CW 5 indicated that during Q1 2001 Gilat "buried virtually all of its cash reserves as investment in [StarBand];"

b. During CW 6's employment at StarBand, in 2001 and 2002, StarBand constantly needed cash infusions to stay afloat. CW 6 stated that StarBand was never profitable and its employees knew that Gilat was making cash infusions;

c. CW 2 indicated that StarBand was cash strapped before the EchoStar cash infusion announced in July 2001 and could not have continued to exist without support from EchoStar or Gilat;

d. CW 2 indicated that StarBand was carrying between $75 and $80 million of bad debts on its own books, which Gilat eventually absorbed and wrote off; and

e. CW 3 indicated that off-the-book floats between Gilat and StarBand occurred throughout CW 3's employment at StarBand, specifically confirming that Gilat repeatedly loaned money to StarBand "above and beyond what they represented publicly." This included not only straight debt, but also additional product debt, forward shipment exchanges, and the sale of product below cost.

132. On May 14, 2002, Defendants partially disclosed that Gilat's total "exposure" to StarBand -- even under Defendants' new definition -- exceeded $75 million. In its report of operating results for Q1 2002, Gilat blamed its losses for the quarter on StarBand, stating that Gilat was creating a $78 million reserve related to a receivable from StarBand. In addition, according to a Monthly Operating Report for the Month of March 2003, filed in StarBand's bankruptcy proceeding, StarBand owed Gilat a pre-petition amount of $83.4 million. As explained elsewhere, plaintiffs are informed and believe that the amount was much higher than even the $83.4 million StarBand admitted was owed including all or most of the Channel Master debt.

Q1 2001: Gilat Announces More Unexpected Charges

133. On May 14, 2001, Gilat issued a press release reporting financial results for Q1 2001. In addition to stating that Gilat held assets of $1.2 billion, including trade accounts receivable of $197 million and investments in companies and non-current receivables of $214 million, Defendants announced new charges -- this time increasing bad debt reserves by $20 million. Nevertheless, Defendants sought to reassure investors by maintaining guidance for the balance of 2001. The press release further stated, in pertinent part:

> **Gilat Reports First-Quarter 2001 Results, Maintains 2001 Guidance, and Announces Consumer Wholesale Agreements in Latin America and Europe**

PETAH TIKVA, Israel--(BUSINESS WIRE)--May 14, 2001--Gilat Satellite Networks Ltd. (Nasdaq:GILTF), a worldwide leader in satellite networking technology, today reported its results for the quarter ended March 31, 2001.
The Company reported revenues for the first quarter of US$100.3 million, an increase of 17 percent over the US$85.9 million result for the same period in 2000. In addition to the previously announced restructuring charge-which totaled US$28 million-the Company also reported taking a charge to increase bad debt reserves by US$20 million, due to financial uncertainties impacting certain customers, including vertical market customers. Including these charges, Gilat recorded a first-quarter net loss of US$58.6 million, or US$(2.51) per share.

At this point in the second quarter, and based upon improving visibility for the second half of the year, the Company maintained its guidance for the balance of 2001, with revenues estimated at $125 million, $150 million and $200 million, and earnings per share at $0.15, $0.33 and $0.65, respectively for second, third, and fourth quarters.

Gilat Chairman and CEO Yoel Gat stated, "As the result of further analysis of our Company, our receivables, and our focus markets, we are taking charges today which we believe are required, due to the continuing industry and market challenges. We believe today's significant restructuring leaves us more competitively positioned and ready to capitalize on the improving conditions in our markets."

134. The financial results reported in the May 14, 2001 press release were materially false and misleading when made. Specifically, Defendants knew or recklessly disregarded that Gilat's revenues were the product of improper accounting practices, which although curtailed, still improperly inflated Gilat's reported revenue and overstated the Company's accounts receivable. Further, the charges for bad debt reserves were insufficient. Specifically, the foregoing report of financial results was false and misleading because:

a. Holding Quarters Open. As alleged in ¶ ***7(d)***, in violation of GAAP and Gilat's stated revenue recognition policy, Gilat inflated revenue by recording revenues on shipments that had not yet occurred by the end of Q1 2001. Specifically, on March 29 and 30, 2001, the next-to-last and last day of the quarter, Gilat issued Invoice Nos. 202015 and 201979 to Global Telecom

(PTY) LTD, in Namibia, for goods totaling $5,979,138 and Invoice Nos. 201988 and 201997 to PT. Kurongkor Utama, in Indonesia, for goods totaling $1,013,592. According to CW1, Gilat entered the invoice date as the date of revenue recognition into Gilat's Idan accounting system, however, the goods were not shipped until, at the earliest, April 2001. Specifically, Invoice Nos.201979 and 202015 were shipped on April 4, 2001 and Invoice Nos. 201988 and 201997 were shipped on April 1, 2001. Therefore it was improper to recognize revenue in Q1 2001 as delivery had not occurred until Q2 2001;

b. Shipment of Products to Third-Party Warehouses Where They Were Stored Indefinitely, Pending Assurances of Payment. As alleged in ¶ ***7(a)***, in violation of GAAP, Gilat recorded revenues on shipments to third-party warehouses on goods that were not released to the customer due to collectibility concerns. Specifically, in Q1 2001, Gilat improperly recognized revenue on goods shipped to Global Telecom PTY LTD totaling $5,979,138 – Invoice Nos. 201979 and 202015, discussed above. The invoice terms were "EXW" -- indicating that the buyer is responsible for all shipping and transportation charges. According to CW 1, "EXW" denoted that Gilat considered the customer to be of the very worst credit quality. In this instance, however, Gilat paid for the shipping in order to recognize revenue. However, these goods were not delivered to the customer but were stored in a South Africa warehouse pending receipt of payment. According to CW1, these goods remained stored in South Africa until at least October

31, 2001, with no delivery to the customer or set schedule for delivery. Moreover, the account receivable remained unpaid as late as May 2002. CW1 explained that Namibia is a very poor country and this was a large purchase; Gilat wanted to make sure it was paid before releasing the equipment. More than one year after the "sale," that had not happened;

c. Boosting Revenues with Related-Party Transactions. As alleged in ¶ ***7(h)***, Gilat inflated revenues by recording revenues on undisclosed related party transactions. In Q1 2001, Gilat's financial results were false and misleading with regard to the following related party transactions:

   i. rStar. By June 2000, and certainly no later than October 2000, Gilat's account receivable from rStar – which was allowed to balloon to $45 million -- had become impaired and should have been written off as bad debt or a provision for probable bad debt should have been recorded as alleged in ¶¶ ***91(d) and 101(f)(i)***;

   ii. Channel Master. In violation of GAAP Gilat used the Channel Master account to hide the extent that Gilat was recording revenues on sales to StarBand and to mask the total amount of debt that StarBand owed to Gilat, as alleged in ¶***101(f)(ii)***. Based on Gilat's Idan accounting system, during Q1 2001, Gilat recognized revenue on $7,895,150 in equipment sales to Channel Master for the benefit of and on behalf of StarBand and the Channel Master account receivable was $18.7 million as of March 31, 2001; and

iii. StarBand. Beginning in 2001, StarBand was unable to make payments according to the stated terms set forth in its contract with Gilat. Therefore, it was reasonably probable that the account receivable was impaired. Gilat's Idan accounting system shows that there was no payment made during Q1 2001 on StarBand's equipment receivable account balance of $31.1 million. The Master Agreement By and Among Starband Communications Inc. and Gilat Satellite Networks Ltd. and Spacenet Inc., dated as of September 29, 2000, provided that payments be made "no later than one (1) business day prior to the end of the quarter in which the Equipment, services, or other items were delivered...." [Emphasis added]. See StarBand's Registration Statement, Form S-1, filed October 11, 2000. Even though such payments had not been made in Q1 2001 (at least), in violation of GAAP, Defendants failed to write off the account as impaired or to record a provision for bad debt. Nor did Defendants stop recognizing StarBand revenues on accrual accounting basis, also in violation of GAAP. To the contrary, Gilat recognized an additional $16.5 million in StarBand revenues during Q1 2001. Plaintiffs allege that this was not the only account receivable that StarBand owed to Gilat due to improper floats of debt and inadequate GAAP disclosures, as alleged in ¶ ***131(e), 101(f)(ii) and 193(h)***.

d. Bad Debt Charges. Based on the pervasive and significant evidence of accounts receivable balances related to improperly and/or prematurely recognized revenue, or accounts that had become impaired e.g. rStar and StarBand, the $20 million bad debt charge was grossly inadequate. This is corroborated by CW 1 who stated that Gilat's bad debt problem was in excess of $50 million on overdue accounts receivable in Q1 2001 excluding the rStar and StarBand accounts -- which amounted to more than $76 million.

135. Defendants acted with scienter when they issued the May 14, 2001 press release which they knew or recklessly disregarded contained the false and/or misleading representations/omission specified above. Evidence of Defendants' scienter includes the following:

a. Holding Quarters Open. Defendants acted with scienter for the reasons alleged in ¶ ***82(a)***;

b. Shipment of Products to Third-Party Warehouses Where They Were Stored Indefinitely, Pending Assurances of Payment. Defendants acted with scienter for the reasons alleged in ¶ ***78(b)***;

c. Boosting Revenues with Related Party Transactions. Scienter with regard to related party transactions:

i. rStar. Defendants acted with scienter for the reasons alleged in ¶***91(d)(ii) and 92(d)***. Scienter is also evidenced by the fact that the rStar receivable represented a material portion of Gilat's revenues for fiscal 2000 -- 8.9% of reported revenues.

ii. Channel Master. Defendants acted with scienter for the reasons alleged in ¶***102(f)(ii)***; and

iii. StarBand. Defendants knew or were reckless in not knowing that it was a violation of GAAP and misleading to continue to accrue revenue on StarBand sales and not to report that the account receivable from StarBand was impaired.

(a) Defendants were motivated to hide the problems with StarBand because StarBand was a material investment made by Gilat's top management in an effort to break into the United States market;

(b) Defendants were motivated to hide StarBand's financial woes so as not to alarm investors who were recently guaranteed that Gilat would limit its exposure to StarBand to $75 million;

(c) Because of StarBand's critical importance to Gilat and Gat's service as a StarBand director, Gat and Leibovitch, as top management, were certainly aware of the lack of StarBand payments;

(d) For the same reason, Defendants knew or were reckless in not knowing that among other factors, technical problems with the StarBand service as alleged in ¶ ***61(a-d,g) and 114(c,e-h)***, caused customers to default on payments; and

(e) Because Gilat's Model 360 modem was experiencing development problems and the Model 180 modem was not as cost-efficient, as alleged in ¶11, Defendants knew that cost overruns and the added expense of providing service made the StarBand account even more a collection risk.

d. <u>Bad Debt Charges</u>. For the reasons alleged in ***¶134(d)*** above, the Defendants Gat and Leibovitch knew or recklessly disregarded that Gilat had a significant number of overdue accounts receivable and that $20 million in charges were grossly in adequate under the dire existing circumstances.

136. On May 17, 2001, Gilat filed with the SEC its Form 6-K, which was signed by Leibovitch and which attached the press release of May 14, 2001, announcing Gilat's earnings for the Q1 2001, and including the relevant financial statements. The Form 6-K was materially false and misleading for the reasons stated in ***¶134(a)-(d)*** and Defendants acted with scienter for the reasons stated in ***¶135(a)-(d)***.

137. The provisions in the May 14, 2001, earnings release and May 17, 2001, Form 6-K concerning Gilat's $20 million increase in bad debt reserves, though a partial disclosure, were materially false and misleading as alleged above in ***¶134(d)*** and made with scienter as alleged in ***¶135(d)***.

138. On May 14, 2001, when Gilat issued its press release confirming its 2001 estimates, Gat stated that StarBand would be able to raise as much cash for growth as previously estimated:

> The significant improvement in the business model economics makes Gilat optimistic about StarBand's ability to raise the necessary capital through new equity investments. With proven technology, and expanded distribution and markets, StarBand now is fulfilling its vision of offering high-speed Internet to virtually everyone in North America.

139. The market reacted positively to Gilat's false statements of May 14, 2001. Shares of Gilat common stock rose to $13.15 per share, from $12.27 per share at the close of trading on May 11, 2001, the previous trading day. Trading volume on May 14, 2001 reached 1,135,800 shares, compared to 262,500 shares on May 11, 2001.

140. Defendants' statement that "StarBand is now fulfilling its vision of offering high-speed Internet to virtually everyone in North America," was false and misleading when made and lacked any reasonable basis in fact because Defendants knew, or were reckless in not knowing, and failed to disclose:

a. Following the withdrawal of the IPO, Defendants were unable to raise any money, whether privately or through the capital markets. Indeed, according to CW No. 3, Gat knew of these problems due to his active involvement in StarBand's efforts to secure financing;

b. StarBand's technology was not "proven" to be reliable. As alleged above, the StarBand service suffered from debilitating problems that affected new subscribership and caused existing customers to terminate their subscriptions;

c. EchoStar ceased distributing StarBand's service during March and April 2001, temporarily crippling StarBand's marketing;

d. According to CW No. 5, during the first quarter 2001, Gilat "buried virtually all of its cash reserves as investment in [StarBand];"

e. According to CW No. 6, there was a constant need for cash infusions in order to keep StarBand afloat in 2001 and 2002. Additionally, CW No. 6 stated that StarBand was never profitable, and that the employees of StarBand knew Gilat was making cash infusions.

July 2, 2001: Gilat Files Annual Report for Fiscal 2000 -- More Than Six Months After Year-End

141. On July 2, 2001, Gilat filed its Annual Report on Form 20-F for the year ended December 31, 2000. The 2000 20-F, which was signed by Gat, repeated the financial statements reported in the Company's March 12, 2001, earnings release alleged above.

142. Accordingly, the 2000 20-F was materially false and misleading for the reasons stated above in ¶***81; 91; 101; and 119*** and because it contained the following material misrepresentations and/or omissions:

i. The consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States ("US GAAP").[24] Form 20-F at F-15;

ii. Revenues from product sales are recognized when shipment has occurred, persuasive evidence of an arrangement exists, the vendor's fee is fixed or determinable, no future obligation exists and collectibility is probable. The Company does not grant rights of return. Id. at F-18;

iii. Backlog. In 2000, we received orders for over 134,000 interactive VSAT units. Our interactive VSAT orders for 2000 are approximately double the orders received for interactive VSATs in 1999. The 2000 year-end backlog for equipment sales and revenues

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[24] Similarly, in 1999, Gilat had falsely represented that its financial statements complied with GAAP by stating that the financial statements complied with Israeli GAAP which was specifically said to differ from US GAAP only as explained in notes 7 and 15f to the Consolidated Financial Statements. Notes 7 and 15f simply address accounting for severance pay and earnings per share calculations. Therefore, revenue recognition and related party transactions would be presumed by reasonable investors to comply with US GAAP in 1999. See Gilat's 1999 Form 20-F, filed with the SEC on June 30, 2000.

from multi-year service contracts for our VSAT products was approximately $300 million, similar to the 1999 year-end backlog.... Id. at 35; and

iv. The Form 20-F omitted material information on related-party transactions.

143. The foregoing statements and/or omission from Gilat's Form 20-F were false and/or misleading for the following reasons:

a. Compliance with US GAAP and Revenue Recognition Policy. For all the reasons alleged in ¶¶***81; 91; 101; and 119*** Gilat's 2000 financial reporting did not comply with US GAAP or SEC regulations for related-party disclosures (e.g. rStar, Channel Masters, K-Sat); US GAAP for revenue recognition; or US GAAP for loss contingencies or Gilat's stated revenue recognition policy.

b. Backlog. The year-end backlog for equipment sales and revenues from multi-year service contracts for our VSAT products was approximately $300 million, similar to 1999 year-end backlog. According to CW 1, Gilat's reported backlog was based on "things imagined and thought of and not final purchase orders" and was material to the market as alleged in ¶***87(b) and 89(b)***.

144. Defendants acted with scienter when they filed Gilat's 2000 Form 20- F which they knew or were reckless in not knowing contained the false and/or misleading representations/omission specified above. Evidence of Defendant's scienter includes the follow:

145. Plaintiffs incorporate by reference all the reasons stated in ¶ ***82; 92; 102; and 120*** with regard to 2000 revenue recognition practices, impaired accounts receivable, and omitted related party transactions;

a. Defendants knowingly or recklessly stated Gilat's financial reporting was in accordance with US GAAP when there were material accounting and reporting violations of GAAP of which Defendants were aware, e.g., Leibovitch doing nothing after being told that Gilat was shipping goods without first receiving a letter of credit or other form of payment from customers from whom collection was not probable; Gat knowing about rStar's poor financial condition, attending board meetings at both companies, being personally involved in collection efforts for rStar – and yet not writing off the receivable or providing a provision for probable bad debt; and

b. Defendants weakened Gilat's stated accounting policy concerning customers who were poor credit risks:

a. Gilat's Form 20-F filed with the SEC on June 30, 2000, at F-35, discloses its policy of obtaining a LOC as a *requirement* of the sale as follows:

> ...In respect of certain sales to customers in emerging economies, the Company requires letters of credit... [emphasis added];

b. Gilat's Form 20-F filed with the SEC on July 2, 2001, at F-19, discloses a new, weakened, policy as follows:

> ...The Group performs ongoing credit evaluation of its customers and obtains letter of credit from certain receivables...

Even if Gilat could retroactively change its publicly stated accounting policy for fiscal 2000 more than six months after year-end – which it cannot -- the transactions complained of above still do not meet the even looser standards adopted by Gilat; and

c. Defendants knowingly or recklessly stated a backlog that was not based on firm orders.

146. The negative effects of the partial disclosures of various charges to the market were mitigated by Gilat's false statements/omissions specified above. The market price of Gilat common stock fell only to $11.67 per share that day, after having reached a high of $12.35 per share, compared to the previous closing price of $12 per share on June 29, 2001, the immediately previous trading day.

July 11, 2001: Defendants Boost Gilat's Sagging Share Price With Two Materially False and Misleading Announcements

147. On July 11, 2001, Gilat announced over the Business Wire that it expected its revenues and gross margin to be substantially in line with previously announced guidance for Q2 2001. It stated in relevant part:

> The Company reported that its revenues and gross margin are expected to approximate previously announced guidance. Operating income is expected to be US $3 to $5 million. The Company will record non-operating expenses that include: a) financial expenses; b) share in losses of associated companies; c) expenses associated with the acceleration of long-term receivable payment; and d) a one-time charge related to the impairment of investments in other companies. After these charges of US $15 to $18 million, Gilat expects to report a loss of US $10 to $15 million, or approximately US $0.42 to $0.63 cents per share.

Defendant Gat was quoted in the press release as stating:

> We are pleased that the strong efforts of the Company to meet our projected revenue target, despite the difficult economic environment, resulted in revenues substantially

> in line with announced projections. The success was the result of traditional cross-company efforts to meet core business sales projections and the Company's confidence in its core market. Revenues were close to projected targets despite the fact that the financial state of StarBand during the quarter did not allow for any substantial consumer sales to StarBand. With the resolution of the StarBand financing announced separately today, we see strong growth prospects in consumer sales for Gilat moving forward. Certain one time items will affect EPS as announced, but will serve the Company's growth prospects especially in light of better than expected cash reserves.

148. Defendants' statement that Gilat's revenues were "substantially in line with announced projections," was materially false and misleading for the reasons set forth in ¶¶ ***159*** below. Gilat fell short of its Q2 2001 revenue targets, even though financial results were boosted by accounting improprieties. Defendants' statement was made with scienter for the reasons set forth in ¶***160*** below.

149. Also on July 11, 2001, StarBand, Gilat, and EchoStar issued a press release entitled "Echostar Assumes Controlling Equity Stake in Starband." The joint press release prominently announced that the "Agreement includes <u>additional $50 million investment and commitment to launch next generation satellite</u>," and stated, in relevant part:

> McLean, Va., Littleton, Colo., and Petah Tikva, Israel - July 11, 2001 - StarBand Communications Inc., EchoStar Communications Corporation (Nasdaq: DISH) and Gilat Satellite Networks Ltd. (Nasdaq: GILTF) today announced that EchoStar has increased its equity stake in StarBand to a 32 percent ownership position, which will increase to 60 percent upon commencement of the construction of StarBand's next generation satellite. EchoStar, the parent company of DISH Network™, the nation's fastest-growing pay television provider, is an original investor and one of the largest distribution channels for StarBand — the nation's first two-way, always-on, high-speed satellite-delivered Internet service. This agreement continues EchoStar's strategy to offer a complete bundled package of Internet, programming and interactive television services to its more than 6 million U.S. DISH Network customers.
>
> <u>In exchange for its increased equity stake, EchoStar will invest an additional $50 million in cash in StarBand. EchoStar has also made a commitment to launch a next generation satellite</u> that will serve the growing consumer demand for high-speed Internet access and improve cost efficiencies for both companies. Gilat will provide EchoStar with proprietary satellite design technology and the engineering expertise

> necessary to construct and operate the satellite, which will be uniquely suited for two-way, high-speed Internet access. Construction of the satellite is expected to begin by the end of this year.
>
> "We are very excited that EchoStar has reinforced its commitment to StarBand with increased funding and critical infrastructure investment," said Zur Feldman, StarBand's co-chairman and CEO. "EchoStar's DISH Network is a company that provides StarBand with strong distribution, satellite expertise, attractive product bundling opportunities and first-hand knowledge about how to grow quickly and efficiently."
>
> Feldman continued, "EchoStar's financial commitment, together with the recently released StarBand Model 360™ satellite modem, will allow us to build on our momentum and enable StarBand to focus on delivering the high-speed Internet revolution to all U.S. consumers, no matter where they live."
>
> "This is an important milestone for StarBand, EchoStar and Gilat," said Yoel Gat, Gilat's chairman and CEO. "It highlights EchoStar's commitment to satellite-delivered high-speed Internet. It also reinforces Gilat's global strategy to provide the most advanced VSAT technology on a wholesale basis to the consumer and SOHO markets through StarBand in North America and through other operators throughout the world."
>
> * * * *
>
> EchoStar will have four out of seven seats on the StarBand Board of Directors, and Gilat Satellite Networks Ltd. will have the three remaining board seats.
>
> * * * *
>
> StarBand, EchoStar and Gilat's boards of directors have approved the transaction. The transaction is subject to customary regulatory approval ... [Emphasis supplied].

150. The repeated representations in the press release that EchoStar would provide "an additional $50 million in funding to StarBand" were materially misleading when made because Defendants failed to disclose that as part of the EchoStar private placement deal, StarBand agreed to amend its pre-existing $150 million bank financing arrangements to "terminate its ability to borrow from the $37 million remaining available from the Credit Facility." See StarBand's Disclosure Statement at 19-20. Thus, Defendants failed to disclosed that EchoStar's "additional $50 million investment" only resulted in a net of $13 million in funding for StarBand.

151. Defendants material omissions were made with scienter because defendants knew or recklessly disregarded that the market was nervous about StarBand's funding -- and that a net gain

of only $13 million would have been seen as grossly inadequate funding to continue operations. This is evidenced by:

a. Gat and Leibovitch's promises in mid-March 2001 that once Gilat reached its financial exposure limit of $75 million, StarBand would have to look elsewhere for funding;

b. The final quoted statement, which indicated that the deal had already received approval from each of the three respective Boards of Directors and only awaited "customary regulatory approval." Defendants recklessly failed to disclose that the lenders on StarBand's standing $150 million credit facility would need to approve of a proposed change of control over StarBand;

c. Defendants were aware that financing for StarBand was of upmost importance to the market, as revealed in the wording of the other press release issued by Gilat on July 11, 2001: "<u>With the resolution of the StarBand financing</u> announced separately today, we see strong growth prospects in consumer sales for Gilat moving forward ...." [Emphasis added]. Indeed, a Merrill Lynch Capital Markets research report dated the same day explained the importance of the $50 million cash infusion into StarBand for Gilat:

> Liquidity concerns reduced. This transaction provides StarBand with much needed funding. In turn, this decreases the likelihood that Gilat would be forced to consolidate StarBand onto its financial statements, which we had previously cited as one of the risks for Gilat.

152. The press release also falsely and/or misleadingly indicated that in exchange for Gilat ceding control of StarBand to EchoStar, EchoStar was not only giving StarBand a desperately needed cash infusion, but that EchoStar "made a commitment to launch a next generation satellite"

for StarBand. Having negotiated this three-way deal at arms' length, and having already obtained approval from all three Boards of Directors, Defendants knew or recklessly disregarded that EchoStar's "commitment" was not etched in stone as represented. In fact, Defendants knew or recklessly disregarded that the deal could change pending, inter alia, StarBand's lenders' review.

153. The market reacted positively to the July 11, 2001 announcement. Shares of Gilat common stock rose to a high of $13.20 per share that day, closing at $13.15 per share, 19% higher than the $11 per share closing price on July 10, 2001. Trading volume on July 11, 2001 reached 1,872,500 shares, compared to only 213,200 the previous day.

154. On August 6, 2001, three weeks after EchoStar's renewed commitment to StarBand was announced, EchoStar made a blockbuster $30.4 billion offer to purchase Hughes Electronics ("Hughes"), one of Gilat's biggest competitors in the supply of satellite dishes. During a conference call held August 13, 2001, Defendants assured investors that "EchoStar has committed to build a new satellite..." Further, when asked about the potential impact of a successful EchoStar-Hughes merger on StarBand and Gilat, Gat responded:

> I want to say it is going to be neutral to positive. I don't see how it could be negative ... I think that EchoStar has made a strong commitment to StarBand in the form of $100 million plus a commitment to deploy satellites. [Emphasis supplied].

When asked what percentage of StarBand Gilat was to own following the new EchoStar transaction, Gat responded "20-22% after everything, including the $60 [sic] million and the new satellite and everything else." Defendants' statements about EchoStar's commitment to deploy a new satellite were materially false and misleading, and made with scienter, for the reasons set forth in ¶¶***149-152*** above.

155. EchoStar's commitments were duly noted by investors and analysts. A Morgan Stanley Dean Witter research report on October 4, 2001 explained the importance of EchoStar's

increased involvement in StarBand: "From Gilat's perspective, this lessens the risk surrounding its $75 million account receivable owed by StarBand."

156. In a Globes Online article dated October 29, 2001, entitled "Lifeline or Hangman's noose for Gilat?," it was reported that during an October 2, 2001, conference call, Defendants called into question the certainty of EchoStar's commitment to launch a satellite. When Globes Online suggested that EchoStar may have "an escape clause," Leibovitch suddenly equivocated: "By the end of the year EchoStar will undertake irreversible commitments to build the satellite, which will upgrade StarBand's entire activity."

157. Finally, on November 12, 2001, when the Company's stock had already lost most of its value, Defendants finally admitted there was never any commitment by EchoStar to launch a satellite for StarBand:

> Q: [C]ould you just remind us when it is that – the timing of the satellite that EchoStar had committed to provide for StarBand, when might that be start [sic] for construction?
>
> A: . . . But the way the agreement is written right now, they should make their decision and commit by the end of '01.
>
> In my mind even if they don't decide to do it at the end of the year which I hope they will, it doesn't mean they wouldn't want to do it.
>
> I want to say one thing, you know, for sure. EchoStar has two things they've got a new satellite which has been launched in September . . . that has a lot of capacity that could be available for StarBand. And again, hopefully and we have no actually not any type of commitment but hopefully . . .
>
> [Second,] their access to the PanAmSat space segment could prove to be very beneficial for StarBand because they now have access to many more transponders that could be used for that service as well.
>
> . . . I think that there's an integration process that will take place and it will be a while before there's going to be complete answers for those questions.

Q2 2001: Gilat Falls Short of Estimates

158. On August 13, 2001, Gilat issued a press release announcing financial results for Q2 2001, seeking to reassure investors that the company had returned to profitability and of EchoStar's "deepening commitment" to StarBand. The press release reported Gilat had assets of $1.2 billion, including trade accounts receivable of $176 million and investments in companies and non-current receivables of $271 million. The press release stated, in pertinent part:

> **Gilat Reports Results for the Second Quarter and First Half of 2001**
>
> PETAH TIKVA, Israel--(BUSINESS WIRE)--Aug. 13, 2001--Gilat Satellite Networks Ltd. (Nasdaq: GILTF) today announced revenues of US$118.3 million for the second quarter ended June 30, 2001, compared to revenues of US$108.6 million for the second quarter of 2000. Net loss was US$14.7 million (US$ (0.63) per share).
>
> Revenues for the six months ended June 30, 2001 were US$218.6 million, compared to the first half of 2000, when the Company recorded revenues of US$194.5 million. Net loss was US$73.4 million (US$ (3.14) per share).
>
> Gilat Chairman and Chief Executive Officer Yoel Gat said, "It is satisfying to report that, during this quarter, we have taken important strides forward. We are pleased with EchoStar's deepening commitment to StarBand Communications, thus enabling StarBand to reestablish its momentum. We returned our Company to positive operating income and achieved a better than expected cash position. All of these measures, combined with our favorable operating results for the second quarter, were achieved despite continued market weakness." strong efforts of the Company to meet our projected revenue target, despite the difficult economic environment, resulted in revenues substantially in line with announced projections

159. The financial results reported in the August 13, 2001 press release were materially false and misleading were made. Gilat's financial results were the product of the Company's improper accounting practices, which, although curtailed, still improperly inflated Gilat's reported revenue and overstated the Company's accounts receivable. Specifically, the foregoing press release was false and misleading because:

a. Holding Quarters Open and Third Party Warehouse Shipments. As alleged in ¶ ***7(d)***, Gilat inflated revenue by recording revenues on shipments that had not yet occurred at the end of the quarter in violation of GAAP and Gilat's stated revenue recognition policy. For example, on June 26 and 28, 2001, during the last few days of Q2 2001, Gilat issued Invoice Nos. 202585, 202545 and 202604 to ISKRA R&D Corporation, in Russia, for goods totaling $1,634,148 and Invoice Nos. 202570, 202569, and 202622 to SIRENA-International Technol, in Russia, for goods totaling $2,100,020. According to CW 1, Gilat entered the invoice date as the date of revenue recognition into Gilat's Idan accounting system, however, the goods were not shipped until at least July 2001. Specifically, Invoice Nos.202622, 202570, and 202569 were shipped on July 7 and July 8, 2001. The goods covered by Invoices Nos. 202585, 202545, and 202604 were shipped on July 2, 2001. Therefore it was improper to recognize revenue on these sales in Q2 2001 as delivery had not occurred until Q3 2001;

b. Shipment of Products to Third-Party Warehouses Where They Were Stored Indefinitely, Pending Assurances of Payment. As alleged in ¶ ***7(a)***, in violation of GAAP, Gilat inflated revenues by recording revenues on shipments to third-party warehouses on goods that were not released to the customer due to collectibility concerns. Specifically, the goods sold to SIRENA- International Technol were sent to third-party storage as set forth in instructions to a forwarder, NK Trans Yunitek, from Gilat on July 5, 2001: "we declair [sic] that the goods under Gilat invoices 202570, 202569, and

202622 supposed to be stored in Amsterdam and not to be shipped to Moscow" signed by Liah Shalev, Export Department; [Emphasis supplied.]

c. Boosting Revenues with Related-Party Transactions. As alleged in ¶ ***7(h)***, Gilat violated GAAP and SEC regulations by engaging in undisclosed related-party transactions. In Q2 2001, Gilat's financial results were false and misleading with regard to the following related-party revenues and account receivable:

i. rStar. By June 2000, and certainly no later than October 2000, Gilat's $45 million dollar related party account receivable from rStar was probably impaired and it was therefore misleading and a violation of GAAP not to write off the account receivable as bad debt or record a provision for probable bad debt. Instead Gilat decided to mask the bad debt by "swapping" the account receivable for equity in rStar -- an insolvent company that was trading for pennies[25] and subject to delisting by NASDAQ for violating minimum share price ($1.00) and net tangible asset requirements ($4 million). The "swap" took place on May 21, 2001, and was described in an rStar press release as an exchange of 19 million shares of rStar's common stock for "full satisfaction of the company's $45 million capital lease obligations and other accrued liabilities..." The press release deemed the transaction an increase in rStar's net tangible assets by $45

---

[25] Gilat extinguished the $45 million debt for 19 million shares -- far fewer shares than could be obtained at market price for rStar.

million which enabled rStar to be in compliance with minimum net tangible assets requirement by virtue of the debt for equity exchange. See "rStar Corp. Cites May 2001 $45 million Boost to Equity," dated July 31, 2001. The exchange effectively converted a $45 million uncollectible account receivable into an equity investment in rStar – and allowed the Gilat affiliate, in which Gat and other officers and directors of Gilat held an equity interest, to avoid being delisted. However, at the time the "swap" occurred on May 21, 2001, rStar was already insolvent.[26] After the "swap" Gilat's bad debt loss from the $45 million account receivable was then an impaired investment on Gilat's balance sheet, which Gilat promptly wrote off the next quarter, i.e., Q3 2001, as impaired goodwill;

ii. Channel Master. In violation of GAAP Gilat used the Channel Master account to hide the extent that Gilat was boosting revenues on sales to StarBand and masking the amount of debt that StarBand owed to Gilat, as alleged in ¶***101(f)(ii)***. Based on Gilat's Idan accounting system, at the close of Q2 2001, the Channel Master account receivable was $18.8 million; and

iii. StarBand. At the beginning of 2001, the StarBand equipment trade account was probably impaired and it should have been written off or a provision for probable bad debt recorded. Furthermore, since StarBand was unable to make payments according to the parties'

[26] See rStar's Q1 2001 Form 10-Q, filed May 21, 2001.

contractual terms, any revenue recognized should have been on a cash basis as alleged in ¶***<u>134(c)(iii)</u>***. Further, there were other facts known or recklessly disregarded by defendants such as technical problems with the StarBand service that caused customers to default on payments and terminate the service, and that caused EchoStar to suspend marketing on a number of occasions – all of which impaired the StarBand accounts receivable, as alleged in ¶ ***<u>61(a,c-e,g), 114(a,c,e-h), and 172(a-b,e)</u>***. Regardless, in violation of GAAP, StarBand did not write-off the account, record a provision for probable bad debt, or stop recognizing revenue based on accrual accounting. Gilat's Idan accounting system shows that the StarBand account for equipment sales had only a single, negligible, payment of $161,792 on April 15, 2001 and no other payments during the first six months of 2001 on an outstanding account balance of $35,162,769. Moreover, during Q2 2001 Gilat recognized an additional $3,993,442 of revenue on new receivables recorded.

160. Defendants acted with scienter when they issued the August 13, 2001 press release which they knew or were reckless in not knowing contained false and/or misleading representations/omission specified above. Evidence of Defendant's scienter includes the follow:

a. <u>Holding Quarters Open</u>. Defendants acted with scienter for the reasons alleged in ¶ ***<u>82(a)</u>***;

b. Shipment of Products to Third-Party Warehouses Where They Were Stored Indefinitely, Pending Assurances of Payment. Defendants acted with scienter for the reasons alleged in ¶ ***78(b)(ii-vi)***;

c. Boosting Financials with Related-Party Transactions. Scienter with regard to related party transactions:

i. rStar.

(a) Defendants knew or recklessly disregarded that its rStar account receivable was probably impaired by Q2 2001;

(b) Defendants knew or recklessly disregarded that it violated GAAP not to record a probable bad debt for its rStar account receivable;

(c) Defendants converted the impaired account receivable into equity in rStar thus hiding from investors additional losses from bad debt; and

(d) Gilat, Gat, and other Gilat officers and directors, stockholders of rStar, were motivated by their desire to prevent rStar from being delisted by NASDAQ.

ii. Channel Master. Defendants acted with scienter for the reasons alleged in ¶***102(f)(ii)***; and

iii. StarBand. Defendants acted with scienter for the reasons alleged in ¶***135(c)(iii)***.

161. While Gilat achieved the low end of its own projections, it fell short of analysts' revenue expectations by $6.7 million and EPS by $0.03 per share. However, investors' reactions

were tempered by Gilat's various false statements of August 13, 2001, contained in its press release (¶¶***158-159***) and conference call (¶***154***). The market price of Gilat common stock fell only to $12.61 per share that day, after having reached a high of $12.97 per share, compared to the previous closing price of $12.80 per share on August 10, 2001, the immediately previous trading day.

162. On August 16, 2001, Gilat filed its Form 6-K, which was signed by Leibovitch and attached the press release of August 13, 2001, announcing Gilat's earnings for Q2 2001, and included the relevant financial statements. The Form 6-K was materially false and misleading for the reasons stated in ¶***159(a)-(c)*** and Defendants acted with scienter for the reasons stated in ¶***160(a)-(c)***

163. Gat's statement that Gilat achieved positive operating income was materially false and misleading when made because Gilat would not have had a operating $3 million profit had it complied with GAAP with respect to the transactions set forth ¶***159***, above.

GILAT'S PARTIAL DISCLOSURE OF THE TRUTH

Q3 2001: Hundreds of Millions in Charges Announced, Including $57 Million Impairment to Investments and Non-Current Receivables and $10 million in Bad Debt Expense

164. On the afternoon of October 2, 2001, Gilat pre-announced Q3 2001 results, warning that revenues would fall below previously announced guidance and charges to assets would exceed $200 million dollars. The press release stated, in pertinent part:

> **Gilat Satellite Networks Announces Revenues Below Guidance for Third Quarter, Provides Information on Charges and Revises Guidance for the Fourth Quarter**
>
> PETAH TIKVA, Israel – (BUSINESS WIRE) – October 2, 2001, Gilat Satellite Networks Ltd., (Nasdaq: GILTF), a worldwide leader in satellite Networking technology, today announced that financial results for the third quarter will be below previously announced guidance and previded information on financial charges for the quarter ending September 30, 2001.

* * * *

> The Company reported that its revenues for the third quarter are expected at over US$80 million, driven primarily from core enterprise and telephony business. Revenues from the consumer segment were minimal, primarily due to the fact that the previously announced US$50 million funding from EchoStar Communications to StarBand closed only at the end of the quarter. In addition, third quarter revenues were negatively affected by the tragic events of September 11, 2001, which postponed certain transactions that were expected to close during the quarter. The Company will record non-cash, one-time charges that include: a) an impairment of assets, primarily goodwill, of approximately US$80 million; b) an inventory write-off and mark-down of approximately US$70 million mainly as a result of excess inventory; c) the impairment of investments and capital leases relating to vertical market customers of approximately US$57 million; and d) bad debt reserve of approximately US$10 million reflecting deteriorating market conditions. In addition, the Company will record a restructuring charge of approximately US$30 million. After these charges, Gilat expects to report a loss of approximately US$267 million, or approximately US$11.40 per share.
>
> Gilat Chiarman and CEO Yoel Gat stated, "While we did not meet our projected revenue target for the quarter, we did achieve a majority of our core business revenue target despite a very difficult economic environment and reduced corporate infrastructure spending. The EchoStar / StarBand transaction only closed at the end of the quarter thus preventing any significant sales to the consumer segment in the U.S. during the quarter. . . ."
>
> * * * *
>
> Gat added, "Visibility at this point of time prevents us from providing long-term guidance, however, we believe that next quarter we will achieve revenues of approximately US$90 million and a net loss of US$10 million or US$0.43 per share. This revenue figure relates primarily to core business, which could be increased by consumer market sales in the U.S. and other parts of the world. Based on the above, we have decided to adjust our balance sheet and have taken the decisive measures necessary to prevent future additional one-time balance sheet related charges. In addition, we will align the size of the company and its expense structure to reflect revised expected revenues. We believe that with an adjusted balance sheet, the completion of the StarBand financing, a strong focus on our core business and approximately US$90 million in cash, Gilat will continue to be a leader in the VSAT markets."

165. The day of the announcement, October 2nd, Gilat's stock closed at $5.38 per share, on volume of 206,200 shares. The following day, October 3rd, Gilat's stock closed at $3.32 per share, on volume of 3,926,800 shares, down <u>38%</u> from the day before.

166. The representations in the October 2, 2001, announcement concerning Gilat's $10 million increase in bad debt reserves, though a partial disclosure, was materially false and misleading

because defendants knew or recklessly disregarded that all of the transactions resulting in improper revenue recognition, alleged herein, required Gilat to create a reserve far in excess of the $10 million announced. Defendants, however, failed to disclose the complete truth that Gilat's financial statements continued to be materially false or misleading due to the improper revenue recognition alleged herein.

167. The October 2, 2001, representations were made with scienter because for the reasons set forth herein the defendants knew or recklessly disregarded that all of the transactions that resulted in improper revenue recognition required a far greater loss reserve.

168. On November 12, 2001, Gilat issued a press release that announced its financial results for the quarter ended September 30, 2001. The press release repeated the abysmal results disclosed on October 2, 2001. Defendant Gat sought to reassure investors that the write-offs taken would prevent any additional charges for the foreseeable future. The press release also stated that Gilat had assets of $944 million; trade accounts receivable of $132 million; and investments in companies and non-current receivables of $163 million. The press release state, in pertinent part:

> **Gilat Reports Third-Quarter 2001 Results**
>
> PETAH TIKVA, Israel--(BUSINESS WIRE)--Nov. 12, 2001-- Significant core-business and broadband market agreements announced in United States, Brazil, India and United Kingdom Gilat Satellite Networks Ltd. (Nasdaq: GILTF), a worldwide leader in satellite networking technology, today reported its third-quarter results for the period ending September 30, 2001.
>
> Revenues for the third quarter were US$81.4 million. As previously announced, the Company recorded one-time charges of approximately US$246 million. Including these charges, loss for the first three months was US$267 million (US$(11.42) per share).
>
> Revenues for the nine months ended September 30, 2001 were US$300 million, compared to revenues of US$329.9 million for the same period in 2000. Including the one-time charges noted above, loss for the first nine months was US$340 million (US$(14.56) per share).

"We expect the write-offs we announced last month will prevent additional one-time, non-cash balance sheet charges for the foreseeable future, thus unburdening the Company and enabling growth.

169. The financial results reported in the November 12, 2001, press release were materially false and misleading when made. Gilat's financial results were the product of improper accounting practices, which although curtained, improperly inflated Gilat's reported revenue, overstated the Company's accounts receivable and understated bad debt reserves. Specifically, the foregoing press release was false and misleading because:

a. Holding Quarters Open and Third Party Warehouse Shipments. As alleged in ¶ ***7(d)***, Gilat inflated revenue by recording revenues on shipments that had not yet occurred at the end of the quarter in violation of GAAP and Gilat's stated revenue recognition policy. For example, between September 28 through September 29, 2001, the last few days of the quarter, Gilat issued Invoice Nos. 203339 and 203305 to StarBand, a related party, for goods totaling $1,300,000; Invoice Nos. 203335, 203284, and 203288 to OJSC Kazakhtelecom, in Kazakhstan, for goods totaling $1,343,990; Invoice Nos. 203313-4 to Brithol Michcoma Company Ltd., in Mozambique, for goods totaling $692,300; and Invoice No. 203312 to Thai Army, Thailand, for goods totaling $780,419.70. According to CW 1, Gilat entered the invoice date as the date of revenue recognition into Gilat's Idan accounting system, however, the goods were not shipped until at least October 2001. Specifically, Invoice Nos. 203313-14, 203284, 203288 and 203305 were shipped on October 1, 2001. The goods covered by Invoices Nos. 203339 and 203335 were not shipped until October 3, 2001. Finally, Invoice No.

203312 was shipped on October 11, 2001. Therefore it was improper to recognize revenue on these sales in Q3 2001 as delivery had not occurred until Q4 2001;

b. Shipment of Products to Third-Party Warehouses Where They Were Stored Indefinitely, Pending Assurances of Payment. As alleged in ¶ ***7(a)***, in violation of GAAP, Gilat inflated revenues on the transactions with the two customers described in the prior subparagraph by recording revenues on shipments which went directly to third-party warehouses due to collectibility concerns. The sale to Brithol Michcoma Company Ltd. should not have been recognized as revenue in Q3 2001 as the goods were sent to third-party storage. Gilat's instructions on the AirWaybill stated "For Storage in Danzas AEI Dirk Hartogweg 14 5928 LV Venlo - Attn:Emiel Jakobs." Similarly, the sale to OJSC Kazakhelecom should not have been recognized as Q3 2001 revenue on invoice nos. 203288 and 203335 because again Gilat's instructions on the AirWaybill were to deliver the items to the same storage facility: "For Storage in Danzas AEI Dirk Hartogweg 14 5928 LV Venlo - Attn:Emiel Jakobs;"

c. Boosting Revenues with Related Party Transactions. As alleged in ¶ ***7(h)***, Gilat violated GAAP and SEC regulations by failing to disclose revenues recorded on undisclosed related-party transactions. Gilat's financial results were false and misleading with regard to the following related-party revenues and account receivable:

i. rStar. Gilat finally wrote off the value of the $45 million rStar account receivable - not as bad debt expense - but rather as a goodwill impairment to its newly acquired equity investment in rStar. Masking bad debt, first as an investment in Q2 2001 and then as a goodwill write off in Q3 2001, fifteen months after it first became impaired, is misleading and is a violation of GAAP. See Gilat's 2001 Form 20-F, filed May 31, 2002 at F-13: "In September 2001, the Company wrote off goodwill and other intangible assets related to rStar in an amount of $78.8 million..."

ii. Channel Master. In violation of GAAP, Gilat recorded sales to Channel Master to hide the extent that Gilat was boosting revenues on sales to StarBand and masking the amount of debt that StarBand owed to Gilat, as alleged in ¶***101(f)(ii)***. Based on Gilat's Idan accounting system, at the end of Q3 2001, the Channel Master account receivable was $9,367,365.

iii. StarBand. At the beginning of 2001, it was probable that the StarBand equipment trade account was impaired and, in accordance with GAAP, should have been written off, or a provision for probable bad debt recorded. Furthermore, under these circumstances, GAAP requires that accrual basis revenue recognition should have ended, as StarBand was not paying the account off and unable to make payments in accordance with contractual terms as alleged in ¶***134(c)(iii)***. Further, there were other facts known or recklessly disregarded by defendants such as technical problems with the StarBand service, which caused customers to default on payments and terminate the service, and that caused EchoStar to suspend marketing on a number of occasions – all of which impaired the StarBand accounts receivable. See ¶¶ ***61(a,c-e,g), 114(a,c,e-h), and 172(a-b,e)***. Regardless, in violation of GAAP, StarBand did not write-off the account or record a provision for probable bad debt. Gilat's Idan accounting system shows that the StarBand account for equipment sales had only a single, payment of $1.6 million in Q3 2001, on an account balance of $33.5 million. Plaintiffs note that this was not the only account receivable that StarBand owed to Gilat. See, e.g., ¶¶ ***101(f)(ii);130*** above.

d. Failure to Timely Write Off Bad Debt. As explained in ¶***101(e)*** above, by May 2001, Gilat employees concluded that Destiny would not pay for or take possession of 912 VSATs Gilat shipped to storage in the Philippines -- allowing Gilat to record Q3 2000 revenue on a 1,000-VSAT sale when Destiny only wanted 88 VSATs. Rather than write off the account receivable, in Q3 2001, Leibovitch had the goods shipped to an affiliate, K-SAT, for storage in Hong Kong, thereby perpetuating the improper revenue recognition.

170. Defendants acted with scienter when they issued the November 12, 2001 press release which they knew or were reckless in not knowing contained false and/or misleading representations/omission specified above. Evidence of Defendants' scienter includes the following:

a. Holding Quarters Open. Defendants acted with scienter for the reasons alleged in ¶ ***82(a)***;

b. Shipment of Products to Third-Party Warehouses Where They Were Stored Indefinitely, Pending Assurances of Payment. Defendants acted with scienter for the reasons alleged in ¶ ***78(b)(ii-vi)***;

c. Boosting Revenues With Related Party Transactions. Scienter with regard to related party transactions:

i. rStar. Defendants knowingly or recklessly violated GAAP to mask Gilat's loss on the rStar account receivable as a goodwill impairment charge. This last step was the culmination of Defendants' reckless reporting of revenue and failure to report bad debt losses that were incurred during 2000.

ii. Channel Master. Defendants acted with scienter for the reasons alleged in ¶***102(f)(ii)***; and

iii. StarBand. Defendants acted with scienter for the reasons alleged in ¶***135(c)(iii)***;

d. Failure to Timely Write Off Bad Debt. CFO Leibovitch knew that Destiny would not pay for the 988 VSATs shipped in September 2000; therefore, he should have written off the bad debt rather than moved the goods to another storage location. Leibovitch's conduct violated GAAP.

171. On November 12, 2001, Defendants conducted a conference call with investors and securities analysts to discuss the reported financial results for Q3 2001. At that time Gat admitted that even though EchoStar had no firm commitment to launch a satellite for StarBand, EchoStar was

nevertheless committed to StarBand in the near-term by default: "[I]n the next, for several future, six quarters or so, absolutely the next year . . . the only alternative for EchoStar is StarBand and even beyond that . . . ."

172. Gat's statement concerning EchoStar's commitment to StarBand was materially false and misleading. Gat recklessly disregarded, at least the following events which occurred, starting in Q3 2001, which Gat was either aware of, in light of his position on the StarBand Board or recklessly failed to monitor:

a. According to testimony given in StarBand's bankruptcy proceeding by David Trachtenberg, StarBand's President and Chief Marketing Officer, StarBand filed its bankruptcy "as a direct result of EchoStar's actions." In particular, from July 2001 until EchoStar officially ended its relationship with StarBand the following year, EchoStar was not aggressively marketing StarBand products. Trachtenberg testified that EchoStar: complained to StarBand about technical issues; never supported StarBand; "interfered with the distribution of StarBand's product;""never allowed any advertising and in fact discouraged advertising of the StarBand product;""never incented their sales distribution channel to sell the StarBand product."

b. Also according to Trachtenberg, starting in July 2001, EchoStar refused to distribute StarBand's product until StarBand met certain operational matrices. Specifically, EchoStar required StarBand to improve "the up time of the network, the grade of service and customer service, the number of complaints we received due to operational difficulties, etcetera." After three months of trying to comply, in October or November StarBand met with EchoStar to determine if StarBand complied so that EchoStar's dealers would start selling StarBand;

c. In court papers filed by StarBand against EchoStar, StarBand attributes the Q3 2001 escalation of EchoStar's obstructive behavior to EchoStar's decision to acquire StarBand's competitor, Hughes, in August 2001;

d. CW2 recalled that in approximately November 2001, EchoStar ceased marketing StarBand products because of the deal it was negotiating with Hughes;

e. CW6 concluded that EchoStar CEO Charles Ergen changed his mind about EchoStar's investment in Gilat after looking at StarBand's numbers and concluded that it was impossible for StarBand to ever become profitable at any level; and

f. See also ¶ ***149, 152, and 154***, above discussing false statements regarding satellite "commitment."

173. Gat's statement on November 12, 2001 that write-offs taken in the quarter would prevent additional charges for the foreseeable future was materially false and misleading for the reasons stated in ¶***134(d)*** and the ongoing improper and/or prematurely recognized revenue and evidence of impaired accounts receivable as alleged in ¶¶***159 and 169***. Defendants knew or recklessly disregarded that Gilat had a significant number of overdue accounts receivable and that additional write-offs would be necessary to comply with GAAP.

174. Investors had a positive reaction to Gilat's false statements of November 12, 2001, made in the press release and conference call. Shares of Gilat common stock rose to $2.51 per share, from $2.12 per share at the close of trading on November 9, 2001, the preceding trading day.

Trading volume on November 12, 2001 reached 2,324,800 shares, compared to 137,000 on the previous trading day.

175. On November 19, 2001, Gilat filed a Form 6-K which was signed by Leibovitch and which attached the press release of November 12, 2001, announcing Gilat's financial results for Q3 2001. The Form 6-K was materially false and misleading for the reasons stated in ¶***169(a)-(d)*** and Defendants acted with scienter for the reasons stated in ¶***170(a)-(d)***

176. On December 6, 2001, the Globes Online conducted an interview with Gat, in which many issues concerning Gilat, StarBand, and EchoStar were discussed. Regarding EchoStar's commitment to StarBand, Gat stated:

> One of EchoStar chairman and CEO Charles Ergen's strongest arguments in favor of approving the merger [with Hughes] is that only by merger the two networks can he achieve massive, high-speed Internet penetration in all the remote areas of the US. That prognosis was based on EchoStar's use of Gilat's working system.

177. Gat's statement concerning EchoStar's commitment to StarBand was materially false and misleading for the reasons alleged in ¶¶ ***61(f), 114(a,h), 150, 152, and 172(a-e)*** above. Moreover, Gat knew that his statement was false in light of the meeting he had with, among others, Charles Ergen. According to CW3, Gat met with Charles Ergen, Feldman and Tracy Friedlander (Gilat General Counsel) in or about late November 2001, in a 4 ½ hour meeting, to discuss, among other things, StarBand's subscribership, financial condition, problems with the service, and EchoStar's commitment to the venture.

Q4 2001: Gilat Reports Results in Line with Expectations

178. On February 19, 2002 , Gilat announced its financial results for the quarter and year ended December 31, 2001. The press release stated Gilat's assets were $931 million; trade accounts receivable were $131 million and investments; non-current receivables were $10 million; and, for

the first time, disclosed the amount of investment in companies and non-current receivables as $141 million separately. The press release stated in pertinent part:

> **Gilat Announces 2001 Fourth-quarter, Full-year Results**
>
> PETAH TIKVA, Israel--(BUSINESS WIRE)--Feb. 19, 2002--Gilat Satellite Networks Ltd.(Nasdaq: GILTF): Fourth-quarter 2001 Results in Line With Expectations Company announces new orders in United States, Latin America, Asia
>
> Gilat Satellite Networks Ltd. (Nasdaq: GILTF), a worldwide leader in satellite networking technology, today reported its results for the quarter and year ending December 31, 2001.
>
> Revenues for the fourth quarter ended December 31, 2001 were US$89 million. The Company's net loss for the quarter was US$(10.9) million or US$(0.47) per share. The Company also reported that it used US$3.8 million in cash during the quarter, beating expectations.
>
> Revenues for the year ended December 31, 2001 were US$389 million. Including charges previously announced in 2001, the Company reported a net loss of US$(351) million, or US$(15.03) per share.
>
> The consolidated results for the fourth quarter and full year 2001 include, for the first time, consolidation of rStar Corporation (Nasdaq: RSTR), with which the previously announced transaction is expected to close in the second-quarter 2002. The Company expects that the consolidation of rStar's results will have a negligible effect going forward from the second quarter 2002 and will reclassify certain equity-loss and expense items for the first three quarters of 2001 to reflect the rStar transaction.
>
> The Company also recorded a prepayment of US$3.4 million arising out of an agreement reached with the Israeli Office of the Chief Scientist (OCS) for the early payment of all royalties arising from future sales with respect to previous OCS grants to the Company. This amount is payable over five years. This agreement will enable Gilat to participate in a new OCS program under which it will be eligible to receive future research and development grants without any royalty repayment obligations.
>
> As of today, core business backlog for equipment sales and revenues from multi-year service contracts for the Company's VSAT products totaled more than US$230 million, which does not include future orders under its United States Postal Service contract. Gilat Chairman and Chief Executive Officer Yoel Gat said, "Results for the quarter are in line with expectations. Our approach has resulted in better-than-expected cash flow for the quarter, improving our financial position and stability. We are continuing to align our cost structure and expect strong deal flow going forward in 2002. In all, we are in a favorable position to benefit from what we expect will be improving global economic conditions in 2002."

179. The financial results reported in the February 19, 2002 press release were materially false and misleading when made. Gilat's financial results were the product of improper accounting practices which, although curtailed, improperly inflated Gilat's reported revenue and overstated the Company's accounts receivable and that the charges to bad debt reserves were insufficient. Specifically, the foregoing press release was false and misleading because:

a. Holding Quarters Open. As alleged in ¶***7(d)***, in violation of GAAP and Gilat's stated revenue recognition policy, Gilat inflated revenue by recording revenues on shipments that had not yet occurred at the end of 2001. For example, on December 31, 2001, the last day of the year, Gilat issued Invoice Nos. 203317 to GT&T-Belguim, for goods totaling $654,800; and Invoice no. 203915 to Ethiopian Telecommunication Co., for goods totaling $501,250. According to CW1, Gilat entered the invoice date as the date of revenue recognition into Gilat's Idan accounting system, however, the goods were not shipped until January 2002. Specifically, Invoice Nos. 203917 and 203915 were not shipped until January 3, 2002. As none of the goods were shipped prior to the end of the year, it was improper to recognize revenue in 2001 as delivery had not occurred until 2002.;

b. Boosting Revenues with Related Party Transactions. As alleged in ¶ ***7(h)***, in violation of both GAAP and SEC regulations, Gilat boosted revenues by failing to disclose revenues recorded on related-party transactions. In Q4 2001, Gilat's financial results were false and misleading with regard to the following related party revenues and account receivable:

i. Channel Master. In violation of GAAP Gilat recorded sales to Channel Master to hide the extent that Gilat was boosting revenues on sales to StarBand and masking the amount of debt that StarBand owed to Gilat, as alleged in ¶ ***101(f)(ii)***. As of December 31, 2001, the Channel Master account receivable was at least $3.1 million and possibly as high as $3.8 million, based on Gilat's Idan accounting system as of December 19, 2001 and internal email dated December 26, 2001; and

ii. StarBand. At the beginning of 2001, the StarBand equipment trade account receivable was probably impaired and, according to GAAP, should have been written off or a provision for bad debt recorded for the reasons alleged in ¶ ***134(c)(iii)***. Regardless, in violation of GAAP, StarBand did not write-off the account or record a provision for probable bad debt. In fact, just three months later, in a May 14, 2002, press release, Defendants admit that Gilat had $78 million in impaired StarBand receivables; that the receivables were impaired in 2001; and that Gilat should have recognized a charge in Q4 2001.[27]

180. Defendants acted with scienter when they issued the February 19, 2002, press release which they knew or were reckless in not knowing contained false and/or misleading representations/omission specified above. Evidence of Defendant's scienter includes the following:

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[27] However, even that statement was false and misleading: The StarBand account had become impaired at the beginning of 2001 -- not just in Q4 2001 as Gilat belatedly admitted.

a. Holding Quarters Open. Defendants acted with scienter for the reasons alleged in ¶ ***82(a)***;

b. Boosting Revenues with Related Party Transactions. Scienter with regard to related party transactions:

i. Channel Master. Defendants acted with scienter for the reasons alleged in ¶ ***102(f)(ii)***; and

ii. StarBand. Defendants acted with scienter for the reasons alleged in ¶***135(c)(iii)***.

181. On February 25, 2002, Gilat filed a Form 6-K which was signed by Leibovitch and which attached the press release of February 19, 2002, announcing Gilat's financial results for Q4 2001. The Form 6-K was materially false and misleading for the reasons stated in ¶***179(a)-(b)*** and Defendants acted with scienter for the reasons stated in ¶***180(a)-(b)***

182. On April 5, 2002, The Wall Street Journal reported that EchoStar was terminating its relationship with StarBand. The article stated in pertinent part:

> EchoStar Communications Corp., dealing a fresh blow to efforts to provide Internet access via satellites, has stopped marketing such services to its satellite-television subscribers. . . .
>
> By abruptly backing away from StarBand Communications Inc., a money-losing joint venture with Israel's Gilat Satellite Networks Ltd. which so far has managed to attract barely 40,000 U.S. subscribers, EchoStar has further clouded the prospects of one of the last remaining consumer-oriented projects offering Internet connections via space. After complaining for months about the high costs and poor subscriber growth in its Internet-access business, the Littleton, Colo., satellite-broadcaster decided it no longer will bear the risk or the cost of being a wholesaler of StarBand's equipment and services.
>
> * * * *
>
> At the same time, Mr. Ergen also has put on a lower priority a proposed $300 million joint venture with Gilat and Europe's SES Global SA originally aimed at boosting capacity for Internet connections. The venture could have doubled EchoStar's stake in struggling StarBand to about 60%.
>
> * * * *

> EchoStar, which already has written off roughly two-thirds of its $100 million investment in StarBand, said the venture's former structure "wasn't economical and [it] didn't see a clear path to make it economical." [Emphasis added].

183. Far from being abrupt, EchoStar's decision to completely walk away from the StarBand joint venture was a long time coming. According to an article in the Globes Online, published on April 7, 2002, EchoStar CEO Ergen had been complaining "for months about Starband's high costs and poor subscriber growth." [Emphasis added]. As alleged above, this point was confirmed by CW 3. Additionally, as alleged in ¶¶ ***114(a,h), and 172(a-b)***, above, because of technical and customer service problems, EchoStar decided to temporarily stop distributing StarBand between March and April 2001; following a lengthier cessation (for the same reasons), from August until November, 2001, that decision became permanent.

GILAT'S FULL DISCLOSURE OF THE TRUTH

184. On May 14, 2002, Gilat announced over the Business Wire its results for Q1 2002. This was Gilat's first announcement of quarterly results following EchoStar's disassociation from StarBand. In the release, the Company blamed its losses on StarBand and revealed that it had even exceeded its promised $75 million "exposure" limit to StarBand (see ¶¶ ***123***):

> The Company also announced it is creating a reserve in the amount of $78 million related to a receivable from StarBand Communications Inc. This first-type event is a non-cash adjustment and will be reflected retroactively in results from the fourth quarter of 2001, in accordance with Financial Accounting Standard No. 5, Accounting for Contingencies. Recent developments in StarBand's relationship with one of its shareholders and commercial partners requires this accounting treatment due to the effect on StarBand's marketing efforts and cash flow.
>
> Despite exceeding its expected $75 million cap on its StarBand investment by at least the fourth quarter of 2001, Gilat did not sever its ties to its failing joint venture, but only after Echostar withdrew its financial support did the Company finally admit the truth about its bond to StarBand namely, as Defendants admitted in the press release: "Gilat remains committed to the success of StarBand . . . ." [Emphasis added.]

185. In an effort to mitigate the negative effect of Gilat's disclosure that its balance sheet "exposure" to StarBand did in fact exceed the $75 million cap, Gat touted the Company's success in forming new partnerships with Europe's most respected companies and stated that Gilat will have a positive cash flow in the second quarter. Specifically, Gat stated:

> Efforts to maintain solid deal flow and to cut our expenses yielded a positive effect on our operating results – enabling us to meet our operating cost reduction goal for the quarter. We expect that this effort will result in positive cash flow in the second quarter.
>
> Gat added, "The quarter also yielded another significant Company milestone, our new partnership with SES GLOBAL and Alcatel Space – two of Europe's most highly respected companies. This partnership creates a powerful new company in Europe and is an endorsement of Gilat's technology."

186. Additionally, to further detract from Gilat's announcement of its increased exposure to StarBand, the Company issued a press release over the Business Wire, announcing, "Gilat's Spacenet Subsidiary Announces First Wave of Contracts for Its New Connexstar Business-grade Satellite Broadband Service." Gilat stated that:

> [Gilat's] U.S. subsidiary, Spacenet Inc., has signed the first group of contracts for its Connexstar(sm) broadband service.
> With more than a dozen customers and three resellers announced today, Spacenet has firm commitments to deploy Connexstar at nearly 2,000 sites over the coming year – with many more expected as these customers and resellers fulfill the terms of their three-year Connexstar contracts.

187. That same day, May 14, on a conference call with investors, Gat blamed most of the "challenges in 1Q" as related to StarBand. Gat admitted that StarBand had a negative impact on Gilat's cash and blamed Gilat's lower bottom line due to "accounting for StarBand." In addition to failing to receive revenues from StarBand via sales of equipment and service to StarBand, Gat disclosed that Gilat did not receive the initial payment from the long-term debt of $75 million, which Gilat expected in the first quarter Additionally, Defendant Gat explained that approximately $2.7 million was expensed on the equity line and had affected Gilat's earnings by $2.7 million, requiring

Gilat to take a reserve for the StarBand receivable, which came out to be $7-8 million by the end of Q4 2001. Only after accounting for all of these expenses and reserves did the Company have no current balance sheet exposure to StarBand. See StarBand's Monthly Operating Report, March 2003.

188. Defendant Gat further disclosed that Gilat might have some continuing exposure to StarBand beyond the $78 million that it wrote-down for the quarter:

> Q: Does Gilat have any other exposure part in the receiver write-off that you are contemplating? Any other exposure to StarBand that we are not aware of?
>
> A: Yes and this is primarily Gilat's signs [sic] of some of the transponder leases for StarBand because we signed it before StarBand was in existence . . . . So we are signed on those transponders and so far that has been something paid currently by StarBand. We are renegotiating that agreement. . . . That is the only exposure. It is again limited to a few million dollars. We are trying to negotiate our way through an arrangement, which will go out of that as well.

189. Two weeks later, on May 29, 2002, Gilat issued its 2001 Form 20-F. Finally, Gilat revealed that it had increased its provision for doubtful accounts from a mere $2.4 million expense in 1999 and $3.7 million expense in 2000 to a staggering expense of $134.6 million in 2001 – an eye-popping increase of $130 million, or 3,537%. The magnitude of this charge demonstrates that Gilat had materially understated its bad debt provision/expense charged against income in 1999 and 2000, as alleged herein. See Gilat's 2001 Form 20-F at F-46. Defendants' accounting improprieties also had the effect of materially overstating operating income and accounts receivable Gilat reported in 1999 and 2000, thereby materially inflating the price of Gilat's securities and misleading investors during the Class Period.

190. Similarly telling is the ratio of bad debt allowance to gross current trade receivables during 1999 and 2000, which remained constant at about 4% for each year. Given the sales Gilat

made to fledgling, under-capitalized entities, this figure was grossly low. Bad debt expense as a percentage of sales was also low, coming in at approximately 1% for both years.

191. Recognizing the significance of this information, Gilat's already-devastated shares dropped upon the filing of Gilat's 2001 20-F with the SEC. On May 29, 2002, the date of that filing, Gilat's stock price closed at $1.70, on volume of 78,600 shares. The following day, May 30, Gilat's stock closed at $1.64 per share, on volume of 104,100 shares.

GILAT VIOLATED THE REQUIREMENTS OF GAAP
IN CONNECTION WITH GILAT'S CLASS PERIOD SEC FILINGS

192. GAAP are those principles recognized by the SEC and the accounting profession as the conventions, rules, and procedures necessary to define proper accounting practice at a particular time. SEC Regulation S-X (17 C.F.R. § 210.4-01(a)(1)) requires that financial statements filed with the SEC be prepared in conformity with GAAP, and those that are not in conformity with GAAP are presumed to be misleading and inaccurate, despite footnotes or other disclosures.

193. Among other provisions of GAAP, Defendants violated the following provisions relating to revenue recognition, uncollectible receivables, and allowances for doubtful accounts, and related party disclosures. Specifically, Defendants violated the following GAAP principles:

a. Statement of Financial Accounting Concepts No. 5, ("CON 5") ¶ 83 states that revenue should not be recognized until *realized or realizable and earned*. CON 5, ¶83(b), describes the concept of "earned" in relevant part as follows:

> Revenues are not recognized until earned. An entity's revenue-earning activities involve delivering or producing goods, rendering services, or other activities that constitute its ongoing major or central operations, and revenues are considered to have been earned when the entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues…. [emphasis added].

CON 5, further states, at ¶84(a):

> The two conditions (being realized or realizable and being earned) are usually met by the time product or merchandise is delivered or services are rendered to customers, and revenues from manufacturing and selling activities and gains and losses from sales of other assets are commonly recognized at time of sale (usually meaning delivery).

Finally, CON 5, ¶84(g) states:

> If collectibility of assets received for product, services, or other assets is doubtful, revenues and gains may be recognized on the basis of cash received. [emphasis added].

b. Accounting Research Bulletin No. 43, ("ARB 43") Ch. 1, ¶1, states:

> Profit is deemed to be realized when a sale in the ordinary course of business is effected, unless the circumstances are such that the collection of the sale price is not reasonable assured. [emphasis added].

c. Statement of Financial Accounting Concepts No. 6, Elements of Financial Statements, ("CON 6") ¶ 139, which states that a transaction should be recorded in the period it relates.

d. Statement of Financial Accounting Concepts No. 2, Qualitative Characteristics of Accounting Information, ("CON 2") ¶¶ 59, 62, 63 and 160 which stand for the principles of reliability and representational faithfulness, stating a transaction should "represent what it purports to represent"

> [a]ccounting information is reliable to the extent that users can depend on it to represent the economic conditions or events that it purports to represent"; and " representational faithfulness is correspondence or agreement between a measure or description and the phenomenon it purports to represent.

And, ¶ 160:

> [t]he quality of reliability, and, in particular, of representational faithfulness leaves no room for accounting representations that subordinates substance to form.

e. Statement of Financial Accounting Standards No. 48, Revenue Recognition When Right of Return Exists ("FAS 48"), ¶6, which states that "revenue from the sales transaction shall be recognized at time of sale only if <u>all</u> of the following conditions are met: [emphasis in original].....b. "The buyer has paid the seller, or the buyer is obligated to pay the seller and the obligation is not contingent on resale of the product."

f. SEC Staff Accounting Bulletin No. 101 - Revenue Recognition in Financial Statements ("SAB 101") which is an interpretive summary of existing GAAP principles on revenue recognition, states that all of the following criteria must be met in order for revenue to be recognized:

   i. Persuasive evidence of an arrangement exists,

   ii. Delivery has occurred or services have been rendered,

   iii. The seller's price to the buyer is fixed or determinable, and

   iv. Collectibility is reasonably assured.

g. Moreover, SAB 101 states that in order to recognize revenue, when delivery has not occurred, in some limited circumstances, all of the following criteria must be met:

   i. The risks of ownership must have passed to the buyer;

ii. The customer must have made a fixed commitment to purchase the goods, preferably in written documentation;

iii. The buyer, not the seller, must have requested that the transaction be on a bill and hold basis. The buyer must have a substantial business purpose for ordering the goods on a bill and hold basis;

iv. There must be a fixed schedule for delivery of the goods. The date for delivery must be reasonable and must be consistent with the buyer's business purpose (e.g., storage periods are customary in the industry);

v. The seller must not have retained any specific performance obligations such that the earning process is not complete;

vi. The ordered goods must have been segregated from the seller's inventory and not be subject to being used to fill other orders; and

vii. The equipment [product] must be complete and ready for shipment.

h. Gilat also violated Statement of Financial Accounting Standards No. 57 Related Party Disclosures ("FAS 57"), ¶2, which requires the following disclosure for material related party transactions:

i. The nature of the relationship of the related parties;

ii. A description of the transactions, including amounts and other pertinent information necessary for an understanding of the effects of the related party transactions, for each period in which an income statement is presented (related party transaction of no or nominal amounts must also be disclosed);

iii. The dollar amount of the transactions for each period in which an income statement is presented; also, the effects of any change in terms between the related parties from terms used in prior periods; and

iv. If not apparent in the financial statements, (a) the terms of the related party transactions, (b) the manner of settlement of related party transactions, and (c) the amount due to or from related parties.

i. 17 C.F.R. 210.4-08(k)(1) expressly requires: "related party transactions should be identified and the amounts stated on the face of the balance sheet, income statement, or statement of cash flows" [emphasis added];

j. 17 C.F.R. 229.404(a) requires a description of transactions in which any of the following persons had, or will have, a direct or indirect material interest...."(1) any director or executive officer of the registrant" [emphasis added];

k. Statement of Financial Accounting Standards No. 5, Accounting for Contingencies ("FAS 5"), provides guidance on when to record loss contingencies, such as those arising from collectible accounts receivable. FAS 5 ¶ 8 states, in relevant part, as follows:

> An estimated loss from a loss contingency . . . shall be accrued by a charge to income if both of the following conditions are met:

a. Information available prior to issuance of the financial statements indicates that it is probable that an asset had been impaired or a liability had been incurred at the date of the financial statements. It is implicit in this condition that it must be probable that one or more future events will occur confirming the fact of the loss, and

b. The amount of loss can be reasonably estimated.

FAS 5 ¶22 provides:

> The assets of an enterprise may include receivables that arose from credit sales, loans, or other transactions. The conditions under which receivables exist usually involve some degree of uncertainty about their collectibility, in which case a contingency exists as defined in paragraph 1. Losses from uncollectible receivables shall be accrued when both conditions in paragraph 8 are met. Those conditions may be considered in relation to individual receivables or in relation to groups of similar types of receivables. If the conditions are met, accrual shall be made even though the particular receivables that are uncollectible may not be identifiable.

Gilat violated GAAP by not recognizing losses from probable impaired accounts receivable or providing an adequate allowance for Gilat's doubtful accounts on probable uncollectible accounts receivable;

Further, FAS5 ¶84 states:

[D]isclosure of a contingency <u>shall be made</u> when there is at least a <u>reasonable possibility</u> that a loss or an additional loss may have been incurred. The disclosure shall indicate the nature of the contingency and shall give an estimate of the possible loss or range of loss or state that such an estimate cannot be made. [emphasis added.]

Att a minimum, Gilat was required to disclose the nature and amount of the contingency related to the collectibility of the rStar (formerly ZapMe!), StarBand, and the many other accounts receivables alleged herein to be the result of improper revenue recognition, when it was at least reasonably possible that such losses had been incurred.

194. Defendants violated the above-stated and/or other GAAP principles, and/or SAB 101 by improperly inflating revenues in the following ways:

a. Shipment of Products to Third-Party Warehouses Where They Were Stored Indefinitely, Pending Assurances of Payment

Gilat's recognition of revenue upon shipments of goods to a third-party warehouse, as to which delivery was withheld until the customer paid or was able to provide financial assurances violated CON 2, 5 and SAB 101 because there was no delivery of goods to the customer; collectibility was not reasonably assured; and there was no set schedule of delivery to the customer. According to CW1, the reason that Gilat shipped the goods to the warehouse and not directly to the customer was because Gilat knew there were collectibility concerns with the customer. Regardless of the form of shipping terms, in substance the goods were not delivered to the customer as they were warehoused. The transactions described in ¶¶***77(b); 81(b); 91(b); 101(b); 134(b); 159(b); and 169(b)***, above, violated this applicable GAAP;

b. Third Party Warehouse Shipments Before Parties Reached Agreements

Gilat's recognition of revenue on goods shipped to a third-party warehouse before contract negotiations were final violated CON 2, 5 and SAB 101 because there was no delivery of goods to the customer; the "sale" was not yet final with fixed or determinable terms; collection of the sales price was not certain; and there was no set schedule for delivery of goods. Regardless of the form of shipping terms, in substance the goods were not delivered as they were warehoused. The transactions described in ¶¶***101(c) and 119(b)***, above, violated this applicable GAAP;

c. Third Party Warehouse Shipments Exceeding Customer Demand

Gilat's recognition of revenue on goods shipped to a third-party warehouse in excess of the customers' demands violated CON 2, 5 and SAB 101 because the customer had not requested shipment of the goods; there was no set schedule for delivery of the goods to the customer; and the warehousing was not done at the request of the customer. Regardless of the form of shipping terms, in substance the goods were not delivered to the customer as they were warehoused. The transactions described in ¶¶***77(c) and 101(e)***, above, violated this applicable GAAP;

d. Holding Quarters "Open" to Sweep in Revenue Earned in the Following Quarter

Gilat's stated policy is that "revenue is recognized when shipment has occurred...." See, e.g., Gilat's 2000 Form 20-F, filed July 2, 2001. Therefore, Gilat's recognition of revenues on goods that had been invoiced but had not yet been shipped violated CON 5 and 6, because the transactions were not recorded in the period in which they occurred and, thus, the revenues had not been earned and SAB 101, because delivery had not yet occurred. The transactions described in ¶¶***81(a); 91(a); 101(a); 119(a); 134(a); 159(a); 169(a); and 179(a)***, above, violated this applicable GAAP;

e. Shipments to Customers That Were Not Creditworthy

Gilat's recognition of revenue upon shipment of goods to customers it knew were not creditworthy and collectibility was uncertain and not reasonably assured violated CON 5; SAB 101, and ARB 43. Additionally, by its own accounting policy, Gilat expressly acknowledged that such a collection risk existed on sales to certain companies in emerging economies. See Gilat's 1999 Form 20-F, filed June 30, 2000, at F-35: "....In respect of certain sales to customers in emerging economies, the Company requires Letters of Credit...." According to CW 1, this risk was exacerbated by violations of Gilat's stated policy of obtaining LOCs from these customers prior to shipment – violations which Leibovitch was told about (by CW 1) but did not correct. The transactions described in ¶¶ ***91(c); 101(d); and 119(c)***, above, violated this applicable GAAP;

f. Round-Trip Transactions.

A "round-trip" transaction violates CON 2 because there is no exchange of value and no economic substance to the transaction yet Gilat recorded revenues as if there had been. The Dell transaction described in ¶*77(a)* above, violated this applicable GAAP;

g. Consignment Sales.

Gilat improperly recognized revenue on consignment sales in violation of CON 5, FAS 48, SAB 101, and Gilat's stated policy of not granting rights of return. See Gilat's 2000 Form 20-F, filed July 2, 2001, at F-18. See transaction described in ¶ ***81(c).***

h. Undisclosed Related-Party Sales Used to Boost Revenues.

"[T]ransactions involving related parties cannot be presumed to be carried out on an arm's-length basis, as the requisite conditions of competitive, free-market dealings may not exists." FAS 57, ¶3. Gilat violated GAAP by failing to describe material aspects and amounts of related party revenues and accounts receivables with respect to its transactions with StarBand, rStar, Channel Master and K-SAT. Gilat's inadequate disclosure of related-party transactions also violates SEC regulations. See 17 C.F.R. §210.4-08(k)(1) and 17 C.F.R. §229.404(a). rStar and StarBand transactions also violated CON 5, ARB 43, and FAS 5 because it was probable that the accounts receivable were impaired and either the account should have been written off or a provision for bad debt recorded. Further, as collectibility of account receivable was not reasonably assured, revenues in later quarters should have been recognized on a basis of cash received. Finally, the transactions with Channel Master violated CON 2 as the transaction did not represent what it purported to represent. The transactions described in ***¶¶88; 91(d); 101(f)(i); 119(d)(i)(iii); 134(c)(i)(iii); 143(a); 159(c)(i)(iii); 169(c)(i)(iii); and 179(b)(ii)***, above, violated this applicable GAAP;

195. Gilat also inflated earnings during the Class Period by failing to write-off accounts receivable when it was probable they were uncollectible and by failing

to record an adequate allowance for doubtful accounts. FAS 5 advises that a loss shall be recognized if information indicates that it is probable that an asset has become impaired. Despite Defendants' knowledge that it was probable that accounts receivable arising from many of the improper "sales" described above had become impaired, and that Gilat's allowance for doubtful account was inadequate, these losses were not timely recognized. Instead, Gilat recorded them in one fell swoop, when it reported its allowance for doubtful accounts had suddenly risen by $131 million over the course of fiscal 2001.

FRAUDULENT SCHEME AND COURSE OF BUSINESS

196. Each Defendant is liable for (a) making false statements and (b) failing to disclose adverse facts known to him about Gilat.

197. Defendants' fraudulent scheme and course of business, which operated as a fraud or deceit on purchasers of Gilat's publicly-traded securities, was a success, as it (a) deceived the investing public regarding Gilat's prospects and business; (b) artificially inflated the prices of Gilat's publicly-traded securities; and (c) caused Lead Plaintiffs and other members of the Class to purchase Gilat's publicly-traded securities at inflated prices.

APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD-ON-THE-MARKET DOCTRINE

198. At all relevant times, the market for Gilat securities was efficient for the following reasons, among others:

a. Gilat securities met the requirements for listing, and were listed and actively traded, on the Nasdaq, a highly efficient market;

b. As a regulated issuer, Gilat filed periodic public reports with the SEC;

c. Gilat securities were followed by securities analysts employed by major brokerage firms who wrote reports that 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.

d. Gilat regularly issued press releases that were carried by national newswires. Each of these releases was publicly available and entered the public marketplace.

199. As a result, the market for Gilat securities promptly digested current information with respect to Gilat from all publicly-available sources and reflected such information in the price of Gilat's securities. Under these circumstances, all purchasers of Gilat securities during the Class Period suffered similar injury through their purchase of securities at artificially inflated prices and a presumption of reliance applies.

NO STATUTORY SAFE HARBOR

200. 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 statements referred to historical or existing conditions. The specific statements pleaded herein were not identified as "forward-looking statements" when made. Nor was it stated with respect to any of the statements forming the basis of this Complaint that actual results "could differ

materially from those projected." 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 Gilat and was known by each of the Defendants that those statements were false when made.

ADDITIONAL SCIENTER ALLEGATIONS

201. As alleged herein, Defendants acted with scienter in that they knew or recklessly disregarded that the above-referenced statements issued or disseminated by Gilat and StarBand were materially false and/or misleading; knew or recklessly disregarded that such statements would be issued or disseminated to the investing public; and knowingly participated in the issuance or dissemination of such statements or documents as primary violators of the federal securities laws. As set forth above in detail, the Individual Defendants participated in the fraudulent scheme alleged herein by virtue of: (a) their receipt of information reflecting the true facts regarding Gilat, its financial condition, its revenue recognition practices, and its accounting for bad debt or doubtful accounts; StarBand, its financial condition, as well as StarBand's business and operations; and EchoStar's commitment to StarBand; and (b) their control over, and/or their associations with and within the

Company, rStar, K-SAT and/or StarBand, which made them privy to confidential proprietary information concerning Gilat, StarBand, rStar and/or K-SAT.

Motive and Opportunity
Using Inflated Revenues and Hiding Truth to Raise Financing

202. Defendants were motived to inflate Gilat's revenues and hide its bad debts as alleged herein throughout as they needed public and private financing to fund the operations of Gilat and StarBand. Investors pay more for a company's stock that has high revenues and earning power. Similarly, increasing revenues and assets convey an impression of good credit quality to lenders. Therefore, by reporting inflated revenues and failing to write off uncollectible debts, the defendants represented Gilat as an attractive investment to both investors and lenders during the Class Period.

203. From inception, Gilat repeatedly relied upon public and private investors for financing, raising over three quarters of a billion dollars between 1993 and 2000 through private and public equity, debt offerings, and bank credit facilities. During the Class Period, Defendants raised $350 million from a private offering of convertible subordinated notes in February 2000 and an additional $108 million from a bank in December 2000. <u>See</u> 2000 Form 20-F, filed July 2, 2001, at 15, 48.

204. Further, defendants were specifically motivated to engage in the fraudulent scheme alleged herein in order to secure the financing necessary to fund StarBand's operations so that Gilat could enter the lucrative United States consumer market. As alleged above, Gilat's withdrawal of StarBand's IPO in March 2001 thereby deprived Gilat of an expected $287.5 million. As subsequently revealed in StarBand's bankruptcy proceeding, StarBand's initial business plan required $250

million of funding in 2001 and an additional $500 million of funding to reach break-even point. Although StarBand then retained Morgan Stanley to help it secure private funding, Feldman and others "were on the road show for weeks and weeks," with no success. As David C. Trachtenberg, the President of StarBand, stated in his testimony: "We were not a very attractive company to be giving money to."

205. As StarBand's Chairman (and later Co-Chairman), Gat was aware of EchoStar's repeated refusals to market StarBand, which compounded Gilat's inability to raise money. Witnesses have said that because of StarBand's technical and customer service problems, EchoStar, which handled StarBand's distribution and billing, refused to market StarBand from March to April 2001 and again from August until November 2001 (and thereafter). Finally, in March 2002, EchoStar not only stopped marketing and selling StarBand altogether; it refused to turn over its billing records to permit StarBand to bill its retail subscribers directly. According to Trachtenberg, the revenue impact on StarBand was substantial, $1.5 million a month, and ultimately led to StarBand's bankruptcy in May 2002. In the words of Zur Feldman, StarBand simply "ran out of money."

206. In this precarious financial situation, Defendants were reluctant, throughout the Class Period, to reveal the truth about StarBand – that because of significant technical difficulties, the failure of EchoStar to market the product, and inadequate financing, StarBand was unable to attract anything approaching the number of subscribers it was publicly projecting. Before March 2001 that truth would have put the planned IPO in even greater jeopardy; afterward it would have made the replacement financing for which Defendants were desperate completely

impossible. Thus, Defendants – including Defendant Gat, who personally owned 3.8% of StarBand – had every incentive to conceal StarBand's failures and its desperate need for cash.

Actual Knowledge and/or Reckless Disregard of Truth that Statements were False and Misleading

A. Pervasive Reckless Inflation of Revenues and Failure to Write-off Bad Debts

207. In addition to the substantial evidence alleged herein above, the Individual Defendants recklessly disregarded that Gilat was improperly accounting for revenues and failing to write off bad debts and that therefore the statements they were making to the market through press releases, interviews, and SEC filings during the Class Period were false and misleading for the following reasons:

a. According to CW 1, Gilat was well aware of its problem with uncollectible accounts receivable by late 1999 when CEO Leibovitch stated to CW1 "collecting accounts receivable was becoming a big problem;"

b. According to CW 1, Gat attended quarterly meetings with CW1 to discuss unpaid accounts receivable on all accounts that were greater that $500K; At these meetings, Gat was given written materials showing: name of the customer; total debt owing; aging of debt; and collection plan. (The materials would include accounts receivable from all Gilat entities.) Many large account receivables were simply not discussed as they were considered uncollectible.

c. According to CW 1, Gat was personally involved in the collecting of the accounts receivable from both rStar and StarBand because they were "large or difficult" customers;

d. According to CW 1, Gat was very involved in the daily operations of Gilat and "Gat knew every single VSAT that left Gilat." In fact, due to the nature of Gilat's business, the company had relatively few customers. Thus, when a customer made a purchase it was generally for a significant amount of money that often required high-level contract negotiations. This lends credence to CW 1's statement;

e. According to CW 1, Gilat paid for all warehouse storage fees; "customers never paid for the warehouse storage." Moreover, according to CW1, every check or wire transfer had to be signed by two of Gilat's top three executives: Yoel Gat, CEO; Amiram Levinberg, COO; and Yoav Leibovitch, CFO. Therefore, either Gat or Leibovitch, or both, had to sign the checks and/or wire transfers to pay for warehoused goods and therefore had actual knowledge or recklessly disregarded that large quantities of goods were not delivered to customers and instead stored in third-party warehouses.

f. According to CW 1, Gat created a culture at Gilat that was very aggressive by setting unrealistic sales quotas for each quarter. As alleged above, CW1 stated that this way of thinking did not change until early in 2001 when CW1 attended a Marketing & Operations meeting during which Gat told employees that they were going to become a "cash oriented, not sales oriented" company. In addition to the allegations set forth above, according to CW 1, as a result of Gat setting unrealistically high sales quotas and creating a company with a sales aggressive culture, Gilat engaged in the following misconduct:

i. When Gilat entered invoices into the Idan accounting system, the date of the invoice was entered as the date of sale <u>and</u> the date when revenue was improperly recognized as alleged herein; and

ii. Product was invoiced and shipped to customers prior to obtaining LOCs in order to recognize the revenue. CW 1 stated this was done because it could take months to obtain a LOC for customers in poor countries and, Erez Antebi, Vice President of Marketing and General Manager for Asia, Africa and the Pacific Rim, who was under pressure to meet sales quotas, would have the product shipped without a LOC. CW 1 stated that Antebi did this because he knew that trying to get a LOC would cause delays and reduce the overall chance of a sale. Defendant

Leibovitch was aware of this practice, as alleged in ¶ ***92(c)***.

B. Coverup of StarBand's Failure

208. As explained in more detail above, Defendants had actual knowledge or recklessly disregarded StarBand's technology problems, inadequate funding, cost overruns, lack of committed distribution channels, and inadequate funds to advertise and market their services and therefore the statements that they made to the market through their press releases, interviews, and SEC filings during the Class Period were materially false and misleading. In addition to the facts alleged above, Defendants' reckless disregard for the truth or falsity of their statements is demonstrated by the following facts:

a. According to CW2, StarBand was cash strapped before the EchoStar investment, and could not have continued to exist without support from EchoStar or Gilat;

b. According to CW2, StarBand was carrying between $75 and $80 million of bad debts on its books, which Gilat eventually wrote off on its own books;

c. According to CW2, StarBand was installing only 80-90 customers a day from November 2000, when the service first became available, through July 2001;

d. According to CW3, Feldman discussed most matters requiring his authorization with Gat;

e. According to CW3, during his employ, CW3 and Gat met every Wednesday night for coffee to discuss, among other things, the market for StarBand's product/service, acceptance of the StarBand product/service, and the number of units installed during the week;

f. According to CW3, Defendant Gat was involved with, and helped prepare, StarBand's subscription/installation forecasts;

g. According to CW3, Defendant Gat was very involved with StarBand's efforts to secure financing during the Class Period;

FIRST CAUSE OF ACTION

For Violation of Section 10(b) of the 1934 Act And Rule 10b-5 Against All Defendants

209. Lead Plaintiffs incorporate paragraphs 1-208 by reference, as if set forth herein.

210. During the Class Period, Defendants disseminated or approved the false statements specified above, which they knew or recklessly 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.

211. Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that they:

a. employed devices, schemes, and artifices to defraud;

b. made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

c. engaged in acts, practices, and a course of business that operated as a fraud or deceit upon Lead Plaintiffs and others similarly situated in connection with their purchases of Gilat publicly traded securities during the Class Period.

212. Lead Plaintiffs and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Gilat publicly-traded securities from the Company at artificially inflated prices. Lead Plaintiffs and the Class would not have purchased Gilat publicly-traded securities 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' false and misleading statements.

213. As a direct and proximate result of Defendants' wrongful conduct, Lead Plaintiffs and the other members of the Class suffered damages in connection with their purchases of Gilat publicly-traded securities during the Class Period.

SECOND CAUSE OF ACTION

For Violation of Section 20(a) Of the 1934 Act Against the Individual Defendants

214. Lead Plaintiffs incorporate paragraphs 1-213 by reference, as if set forth herein.

215. The Individual Defendants acted as controlling persons of Gilat within the meaning of Section 20(a) of the Exchange Act. By reason of their positions as officers and/or directors of Gilat, and their ownership of Gilat securities, the Individual Defendants had the power and authority to cause, and did cause, Gilat to

engage in the wrongful conduct complained of herein. By reason of such conduct, the Individual Defendants and Gilat are liable pursuant to Section 20(a) of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, Lead Plaintiffs pray for judgment as follows:

A. Declaring this action to be a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding Lead Plaintiffs and the members of the Class compensatory damages;

C. Awarding Lead Plaintiffs and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' fees, expert witness fees, and other costs;

D. Awarding such other relief as this Court may deem just and proper.

JURY DEMAND

Lead Plaintiffs demand a trial by jury.

Dated: August 25, 2004

COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.

___/s/__________________________
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