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STULL, STULL & BRODY  
Jules Brody  
Aaron Brody  
6 East 45th Street  
New York, New York 10017  
Telephone: 212-687-7230

POMERANTZ HAUDEK BLOCK  
GROSSMAN & GROSS LLP  
Marc I. Gross  
100 Park Avenue, 26th Floor  
New York, New York 10017  
Telephone: 212-661-1100

KAPLAN, KILSHEIMER & FOX LLP  
Frederic S. Fox  
Joel B. Strauss  
805 Third Avenue, 22nd Floor  
New York, New York 10022  
Telephone: 212-687-1980

Co-Lead Counsel for Plaintiffs

KANTROWITZ, GOLDHAMER & GRAIFMAN  
Gary S. Graifman (GSG 2276)  
210 Summit Avenue  
Montvale, New Jersey 07645  
Telephone: 201-391-7000

Plaintiffs' Liaison Counsel

[Additional Counsel Listed on Signature Page]

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WILLIAM T. WALSH  
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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

IN RE NICE SYSTEMS, LTD  
SECURITIES LITIGATION

Master File No. 2:01 CV 737  
(Judge Greenaway)

CLASS ACTION

This Document Relates To:

ALL ACTIONS

DEMAND FOR JURY TRIAL

**CONSOLIDATED AMENDED CLASS ACTION COMPLAINT**

1. This is a securities fraud class action on behalf of persons who purchased American Depository Shares ("ADS's") of NICE Systems, Ltd. ("NICE" or the "Company") between November 3, 1999 and February 7, 2001 (the "Class Period"). Defendants are NICE, an Israeli based

company, and certain of its top officers and directors for violations of the federal securities laws arising out of defendants' dissemination of materially false and misleading statements concerning the Company's financial results for the third and fourth fiscal quarters and year-ended December 31, 1999 and the first three quarters of fiscal 2000.

2. Defendants perpetrated a massive fraud on the investing public. Over a period of more than fifteen months, defendants repeatedly published materially false financial statements and earnings reports regarding NICE. These statements grossly inflated the Company's true financial performance by, among other things, inflating sales figures, resulting in the price of NICE securities being artificially inflated during the Class Period and, as detailed herein, allowing for certain executives of the Company to reap more than \$10 million in proceeds by selling their NICE stock at artificially inflated prices. These statements were made in knowing and purposeful violation or reckless disregard of controlling revenue recognition requirements of Generally Accepted Accounting Principles ("GAAP") and the disclosure requirements of the federal securities laws. These false financial statements and earnings reports were included, as discussed elsewhere herein, in the Company's regular, periodic filings with the SEC, as well as in Company press releases and other public statements.

3. The magnitude of the fraud is illustrated, in part, in the following charts which compare financial figures as originally reported by the Company with restated figures which reflect the Company's true results of operations:

**OVERSTATED NET INCOME DURING 1999**

(\$ Figures in Millions)

	<b>1999 3<sup>rd</sup> Quarter-Ended 09/30/99</b>	<b>1999* 4<sup>th</sup> Quarter-Ended 12/31/99</b>	<b>1999* Full Year-Ended 12/31/99</b>
Originally Reported	\$5.73	\$7.10	\$20.30
Restated	\$5.32	\$3.90	\$16.00
Increase (Decrease)	\$(0.40)	\$(3.20)	\$(4.30)
% Overstated	7.7%	82%	27%

**OVERSTATED NET INCOME DURING 2000**

(\$ Figures in Millions)

	<b>2000 1<sup>st</sup> Quarter Ended 03/31/00</b>	<b>2000** 2<sup>nd</sup> Quarter Ended 06/30/00</b>	<b>2000 3<sup>rd</sup> Quarter Ended 09/30/00</b>
Originally Reported	\$6.00	\$6.90	\$8.10
Restated	\$2.98	\$4.30	\$6.17
Increase (Decrease)	\$(3.02)	\$(2.60)	\$(1.93)
% Overstated	101%	60%	31%

4. The crux of the fraud was simple. Defendants made arrangements with one of NICE's primary distributors in the United States, Stevens Communications, Inc. (hereinafter referred to as "Stevens" or "SCI") whereby NICE shipped millions of dollars of NICE product to Stevens on "consignment." Accordingly, title and risk of loss to the NICE product remained with NICE and it

\* Excludes \$5.2 million one-time charge related to the December 1999 acquisition by NICE of STS Software Ltd.

\*\* Excludes \$6.8 million one-time charge related to the April 2000 acquisition by NICE of Centerpoint

was agreed, in writing, that Stevens was under no obligation to pay for the product unless and until Stevens sold the products to an end-user. GAAP strictly prohibits the recognition of revenue on consignment shipments and revenue must not be recognized by a consignor unless and until the product is sold by the consignee. Defendants knowingly or recklessly disregarded this basic tenet of GAAP in their quest to artificially inflate NICE's reported revenues and earnings.

5. By engaging in their fraudulent scheme of "cooking the books," defendants portrayed, and indeed touted, NICE as a company whose revenues and net income were growing at a substantially greater pace than what was in fact the case, resulting in defendants being able to falsely portray the Company as one which consistently beat Wall Street's earnings estimates and further resulting in the price of NICE ADS's trading in the United States, and its ordinary shares trading in Israel, being artificially inflated. Seeking to take advantage of the artificial inflation of NICE stock prices, during the Class Period certain executives of NICE who are defendants herein collectively sold (as detailed at ¶67 below) at least 199,330 NICE ordinary shares trading in Israel on the Tel-Aviv Stock Exchange at the artificially inflated prices, reaping proceeds of at least \$10.8 million, thereby selling most, if not all, of their respective holdings of NICE stock. Defendants also used the artificially inflated ADS's to purchase other companies here in the United States. Indeed, in April 2000, NICE acquired Centerpoint Solutions, Inc. ("Centerpoint") for \$3 million in cash and up to 200,000 NICE ADS's and in December 2000 Nice acquired certain assets of Illinois based Stevens for approximately \$10.5 million in cash and up to 426,745 NICE ADS's.

6. Faced with coming clean on their own or being exposed by others who learned of their scheme, defendants shocked the market when NICE disclosed on February 8, 2001 that it was

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Solutions, Inc.

revising downward its estimate of results for the quarter ended December 31, 2000 and would restate downward revenues and related earnings for 1999 and the first three quarters of 2000 because, among other things, NICE improperly recognized revenues on consignment shipments to Stevens. The market's reaction to the news was swift and severe with the price of NICE ADS's plummeting almost 30% on heavy trading to \$13.10, down from the prior day closing price of \$18.50.

### **JURISDICTION AND VENUE**

7. The claims asserted herein arise under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("1934 Act"), 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5. Jurisdiction is conferred by Section 27 of the 1934 Act, 15 U.S.C. §78aa.

8. Venue is proper here pursuant to Section 27 of the 1934 Act. NICE, although headquartered in Israel, maintains extensive operations in the United States. Its United States headquarters is in Secaucus, New Jersey and many of the acts and transactions giving rise to the violations of law complained of occurred here.

### **THE PARTIES**

9. Adrian Byrne, Dresdnerbank Investment Management, E.H. Tepe Co., Inc. and Afikim Management were, by Order of the Court dated May 21, 2001, appointed Lead Plaintiffs (the "Lead Plaintiffs") pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 ("Exchange Act"). Each of the Lead Plaintiffs and the members of the Class they seek to represent purchased ADS's of NICE at artificially inflated prices and suffered damages.

10. (a) Defendant NICE is a business entity organized under the laws of the country of Israel, where it is headquartered. Its ordinary shares have been listed on the Tel-Aviv Stock Exchange in Israel since 1991;

(b) Seeking to raise capital through the United States securities markets, NICE arranged for an initial public offering of its ADS's on the NASDAQ National Market in January 1996. NICE raised approximately \$20 million in the initial offering. In July 1997, the Company raised approximately another \$100 million from a secondary public offering of its ADS's in the United States;

(c) NICE ADS's have traded on the NASDAQ National Market in the United States since the initial public offering in 1996. According to the Company's filing with the Securities and Exchange Commission ("SEC") on Form 20-F for the year ended December 31, 1999, as of December 31, 1999, approximately 68.1% of the Company's outstanding ordinary shares were held by holders of record in the United States of NICE ADS's. Other than the NICE ADS's which trade on the NASDAQ, NICE shares trade on no other stock exchange outside of Israel.

(d) NICE also maintains a significant presence in the United States through several wholly-owned subsidiaries, including but not limited to NICE Systems, Inc., a corporation organized and existing under the laws of the State of New Jersey. NICE Systems, Inc., located in Secaucus, New Jersey, serves as the Company's North American headquarters. During 1999 and 2000, more than 50% of the Company's reported worldwide sales were from purported sales to customers in North America, while only approximately 1.5% and 3% of the Company's reported 1999 and 2000 worldwide sales, respectively, were from sales to customers in Israel;

(e) Throughout the Class Period, NICE, through its top executives, some of whom are defendants herein, periodically held press conferences in the United States to tout the Company and its products and regularly met in person and by teleconference with stock analysts in the United States to discuss the Company's business. As a result of these meetings and what defendants,

including Levin and Yanai, told securities analysts about the Company's financial condition, securities analysts, as alleged herein, published favorable reports about the Company; and

(f) NICE describes itself as a global provider of integrated digital recording and quality management solutions. NICE's solutions help customers improve their business by effectively recording, storing, evaluating and managing voice communications, call data, desktop screens and video. NICE serves the business needs of multiple markets, primarily financial institutions, customer contact centers, air traffic control (ATC) sites, public safety centers, and closed circuit television (CCTV) security installations. NICE also develops and provides voice recording and communications intelligence (COMINT) systems for government agencies.

11. (a) Defendant Benjamin Levin ("Levin") served as chairman of the board and CEO of NICE from 1998 until January 2001. A co-founder and director, Levin previously served as president of the Company from its inception in 1986 to 1998. Levin did not serve as NICE's President and CEO from May 1, 2000 through May 30, 2000, during which time Moshe Ronen served in such positions. After the abrupt resignation of Moshe Ronen on or about May 30, 2000, Levin resumed his CEO position and duties on May 31, 2000. Levin resigned as CEO of NICE effective January 2001. On February 8, 2001, the same day NICE announced the need to restate its financial statements, Levin announced that he was also resigning his position as Chairman of NICE's Board of Directors. Among other statements detailed herein, defendant Levin signed NICE's false Report on Form 20-F for the Company's fiscal year ended December 31, 1999, which was filed with the SEC on or about May 26, 2000 (the "1999 Form 20-F"), signed a Letter to Shareholders included in the Company's 1999 Annual Report (the "Letter to Shareholders") which reiterated the false financial results for 1999 which were included in the 1999 Form 20-F and was quoted in virtually all

of the Company's press releases concerning its earnings. Throughout the Class Period, Levin also met periodically with stock analysts in the United States and elsewhere to discuss the Company's business. Additionally, as detailed at ¶67 below, during the Class Period, while in possession of materially adverse information about the Company which was unknown to the public, Levin sold at least 80,000 NICE ordinary shares, nearly half the NICE stock he owned at the beginning of the Class Period, at artificially inflated prices for proceeds of approximately \$4.3 million;

(b) Defendant Yuval Yanai ("Yanai") was NICE's Senior Vice President and Chief Financial Officer from April 1998 until he left the Company in December 2000. In such capacity, he was directly responsible for and intimately involved in the financial reporting of the Company and was aware of the materially adverse information complained of herein concerning the Company and its financial reports. Yanai also met periodically during the Class Period with stock analysts in the United States and elsewhere to discuss the Company's business;

(c) Defendant Mordechai Golan ("Golan") was a co-founder of NICE and served as a director of the Company from 1988 until his resignation as a director on or about October 31, 2000. Golan also served as the Company's Chief Operating Officer from 1997 to January 2000 and as NICE's President from 1998 to January 2000. From January 2000 until his resignation from the Company on or about October 31, 2000, Golan served as the Company's Chief Technology Officer. Golan signed the materially false and misleading Letter to Shareholders and knew of or recklessly disregarded the adverse information complained of herein. Additionally, as detailed at ¶67 below, during the Class Period, while in possession of materially adverse information about the Company which was unknown to the public, Golan sold at least 50,000 NICE ordinary shares, 85% of the

NICE stock he owned at the beginning of the Class Period, at artificially inflated prices for proceeds of approximately \$2.6 million;

(d) Defendant Avraham Lazar ("Lazar") was a co-founder of NICE and served as a director of the Company from 1991 until his resignation from the Company on February 15, 2001. From 1997 until his resignation, Lazar served as the Company's Senior Vice President of Marketing and Sales. In such capacity, Lazar knew of or recklessly disregarded the adverse information complained of herein. As detailed at ¶67 below, during the Class Period, while in possession of materially adverse information about the Company, which was unknown to the public, Lazar sold at least 47,624 NICE ordinary shares, 85% of the NICE stock he owned at the beginning of the Class Period, at artificially inflated prices for proceeds of approximately \$2.4 million; and

(e) Defendant David Ben-Zeev ("Ben-Zeev") served as Secretary of the Company from 1991 to February 2000 and was appointed as a director in February 2000. He also served as the Company's Senior Vice President of Strategic Planning from 1997 until his resignation from such position on January 16, 2001. In such capacity, Ben-Zeev knew of or recklessly disregarded the adverse information complained of herein. Ben-Zeev signed the Company's Report on Form 6-K which was filed with the SEC on or about December 9, 1999. He resigned from the Board of Directors of the Company on February 14, 2001. As detailed at ¶67 below, during the Class Period, while in possession of materially adverse information about the Company which was unknown to the public, Ben-Zeev sold at least 21,706 NICE ordinary shares, 100% of the NICE stock he owned at the beginning of the Class Period, at artificially inflated prices for proceeds of approximately \$1.4 million.

12. The parties listed in ¶11(a)-(e) are collectively referred to as the "Individual Defendants." They, along with NICE, are liable for the false statements pleaded herein. It is appropriate to treat defendants as a group for pleading purposes and to presume that the false and misleading information conveyed in the Company's public filings, press releases and other public statements detailed herein were the collective actions of the Individual Defendants. The following facts, among others, support the application of the group pleading doctrine here:

(a) All of the Individual Defendants, by virtue of their high-level positions with the Company, were directly involved in, or were kept apprised of, the day-to-day operations of the Company;

(b) As a result of their positions at the Company, all of the Individual Defendants were also privy to confidential, proprietary information concerning the Company, its operations and its finances;

(c) All of the Individual Defendants: (i) were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements alleged herein; (ii) knew or were reckless in failing to know that false and misleading statements were being issued regarding the Company; and (iii) approved or ratified those statements; and

(d) Each Individual Defendant had the ability and opportunity to prevent the issuance of those public statements or to cause them to be corrected.

13. As officers, directors and/or controlling persons of a company that issued securities to the public, the Individual Defendants were obligated to: (a) disseminate promptly accurate and truthful information with respect to the Company's operations, business, markets, management, earnings and present and future business prospects; (b) correct any previously issued statements from

any source that had become materially misleading or untrue; and (c) disclose any trends that the Individual Defendants knew would materially affect the present and future operating results of NICE so that the market price of the Company's publicly-traded ADS's would be based upon truthful and accurate information.

14. Under rules and regulations promulgated by the SEC under the Exchange Act, particularly Item 303 of Regulation S-K, the Individual Defendants also were obligated to disclose, *inter alia*, all trends, demands or uncertainties that were reasonably likely to impact NICE's: (a) liquidity; (b) capital resources; or (c) net sales, revenue or income. The Individual Defendants were also obligated under Item 303 to disclose all reasons why the Company's previously reported financial information would not be indicative of its future operating results.

15. The Individual Defendants, by reason of their participation in the day to day affairs and positions at NICE were controlling persons of NICE. These controlling persons are liable under Section 20(a) of the 1934 Act.

#### **PLAINTIFFS' INVESTIGATION**

16. Plaintiffs' allegations set forth herein are based on a thorough investigation, conducted by and through their attorneys, of all reasonably available sources of information, including, but not limited to, publicly available relevant information, in order to obtain information necessary to plead plaintiffs' claims with particularity. The nature and scope of plaintiffs' efforts to obtain the information needed to plead with particularity included, among other things:

(a) Reviewing NICE's filings with the SEC during the relevant time period, including, but not limited to, the Company's 1999 Form 20-F and amendments thereto; the Company's periodic Reports on Form 6-K during and subsequent to the Class Period;

(b) Reviewing filings made by NICE in Israel pursuant to Israeli laws and/or rules and regulations of the Tel-Aviv Stock Exchange;

(c) Reviewing the Company's press releases and other publicly disseminated statements made by the Company during or that relate to the relevant time period;

(d) Reviewing reports, articles and discussions concerning the Company and the subject matter of this Complaint contained in the print and electronic media and computer databases; and

(e) Reviewing reports of securities analysts and investor advisory services.

17. Except as alleged in this Complaint, the underlying information relating to defendants' misconduct and the particulars thereof are not available to plaintiffs and the public, and lie exclusively within the possession and control of defendants and insiders of NICE, thus preventing plaintiffs from further detailing defendants' misconduct.

**MATERIALLY FALSE AND MISLEADING  
STATEMENTS DURING THE CLASS PERIOD**

18. Throughout the Class Period, defendants engaged in a fraudulent scheme to inflate the revenues and earnings of NICE by entering into written agreements with Stevens whereby NICE shipped to Stevens, and Stevens accepted, NICE products on consignment. Accordingly, Stevens was under no obligation to pay for such products unless and until Stevens sold the products to end-users. Nevertheless, NICE, in clear violation of GAAP and SEC rules, recognized and recorded revenues on these consignment shipments. Defendants engaged in this scheme to give NICE the appearance of being a high-growth company, thereby increasing its stock price and allowing

defendants to sell a majority of their NICE holdings at artificially inflated prices. Consistent with this scheme, defendants caused to be issued the following materially false and misleading statements.

19. On November 3, 1999, NICE issued a press release concerning its results of operations for its fiscal third quarter of 1999, ended September 30, 1999. The press release stated, in part:

NICE Systems Ltd. (Nasdaq: NICE), a leading global provider of digital recording and quality management solutions, today reported third quarter 1999 revenues rose 55 percent to a record high of \$32.0 million compared with \$20.6 million for the third quarter of 1998. Net income also reached a record high of \$5.7 million, compared with \$1.5 million in the same quarter of last year.

Diluted earnings per share for the quarter were \$0.46 on 12.5 million average weighted number of shares outstanding, as compared with \$0.13 on 11.8 million shares for the third quarter of last year.

Commenting on the earnings announcement, Levin was quoted as saying, in part:

Our third quarter performance was driven by increased sales in the US contact center market. The growth derived mainly from this market, and in particular from quality management.

20. Following the Company's aforementioned press release, Lior Bregman, an analyst with CIBC World Markets Corp., issued a report concerning NICE on November 4, 1999 which stated, in part:

We are reiterating our Strong Buy rating on the shares following the release of 3Q99 earnings. The company's just-reported results exceeded expectations, representing an acceleration that is likely to continue in the foreseeable future.

\* \* \*

The company exceeded both consensus earnings and revenues estimates for the quarter. 3Q99 EPS of \$0.46 increased 262% compared to last year and 11% sequentially.

Other Wall Street analysts had similarly issued favorable ratings on NICE after the Company's November 3, 1999 press release, taking note of the Company's ability to beat analysts' earnings estimates.

21. The November 3, 1999 press release and the materially false results of operations and financial statements contained therein was included in the Company's Report on Form 6-K, filed with the SEC on or about December 9, 1999. Defendant Ben-Zeev signed the Form 6-K on behalf of the Company.

22. This press release was materially false and misleading. In fact, contrary to the Company's press release, NICE's true net income for the quarter was actually \$5.3 million, and not the \$5.7 million reported, meaning that NICE had overstated net income by nearly 8%. This material overstatement was caused primarily by the improper recognition of revenue on consignment shipments of NiceLog and other products to Stevens in violation of GAAP and as more fully described at ¶¶61-63. But for the material overstatement of revenues and net income, the Company's reported earnings would have been significantly below Wall Street expectations, as more fully described at ¶68.

23. As more fully described at ¶67 below, after release of the aforementioned false financial results, on December 7, 1999, defendants Levin, Golan and Lazar collectively sold 100,000 NICE ordinary shares in Israel, at artificially inflated prices, for collective proceeds of approximately \$4.4 million. Upon information and belief, for the period of at least twenty-three months prior to the December 7, 1999 sales, defendants Levin and Lazar had not sold any NICE stock and, during the same period, defendant Golan had sold only a fraction of the number of shares he sold during the Class Period.

24. On February 16, 2000, NICE issued a press release entitled, "NICE Systems Announces Record Fiscal Year and Fourth Quarter 1999" (emphasis added). The press release stated, in part:

NICE Systems Ltd. (NASDAQ: NICE), a leading global provider of digital recording and quality management solutions, today reported that 1999 revenues increased 36 percent to a record \$123.6 million, compared with \$91 million in 1998. Net income for the year, excluding one-time charges, reached \$20.3 million, or \$1.65 per share (diluted), compared with net income of \$13.5 million, excluding one-time charges, or \$1.12 per share (diluted) for the previous year.

For the fourth quarter, revenues increased 56 percent to an all-time high of \$36.6 million, compared with \$23.4 million for the same quarter of 1998. Net income for the quarter, net of a one-time charge of \$5.2 million resulting from the acquisition of STS Software Ltd., reached \$7.1 million or \$0.56 per share (diluted) compared with net income of \$2.1 million or \$0.19 per share (diluted) for the fourth quarter of 1998.

25. In the same press release, NICE noted that its gross profit margins were improving and touted that the Company's DSO's were declining, stating:

The gross profit margin continued to improve, reaching 58.2 percent. Operating profit also improved, reaching 16.4 percent. Operating activities continued to generate cash, and DSO (days sales outstanding) sharply declined to 116 days. (Emphasis added).

26. Commenting on the record fourth quarter and 1999 results, NICE chairman, Benny Levin, was quoted in the same press release, stating:

These results reflect the strongest quarter and best year ever for NICE.... Sales to this market have increased substantially, particularly in North America with sales to the US and Canada generating 60 percent of our overall revenues in the fourth quarter.... (Emphasis added).

27. Once again, Wall Street analysts took note of the Company's ability to not only meet, but beat, earnings estimates. By way of example, after the Company's February 16, 2000 press release, Tim Luke of Lehman Brothers noted in his report of the same date:

This morning, global call center recording leader NICE Systems delivered impressive 4Q99 results that featured extremely strong revenue growth, up 56% YoY to \$36.6 million vs. our estimate of \$34.5 million. EPS was \$0.56, ahead of our estimate of \$0.53 and the consensus estimate of \$0.54.

Luke rated the stock a "Buy."

28. The February 16, 2000 press release and materially false results of operations and financial statements contained therein were included in the Company's Report on Form 6-K, filed with the SEC on or about March 13, 2000.

29. The February 16, 2000 press release was materially false and misleading. In fact, contrary to defendants representations, NICE's revenue for the quarter ended December 31, 1999 was actually \$31.9 million, meaning that revenues were overstated by nearly 15% more than originally reported. Moreover, excluding the one-time charge of \$5.2 million relating to the STS Software acquisition, NICE's actual net income for the quarter was actually only \$3.90 million and not \$7.10 million, meaning that NICE had overstated net income by 82%. Additionally, and contrary to defendants' representations, for the full year-ended December 31, 1999, NICE's true revenues were actually \$117 million, over 5% less than what NICE reported and net income<sup>1</sup> for the year was actually \$16 million and not \$20.30 million, meaning that NICE had overstated its true net income by more than 27%. These material overstatements were caused primarily by the improper recognition of material amounts of revenue on consignment shipments to Stevens of NiceLog and other products in violation of GAAP, and as more fully described at ¶¶61-63. But for the material overstatement of revenues and net income, the Company's reported earnings would have been significantly below Wall Street expectations, as more fully described at ¶68.

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<sup>1</sup> Excluding the \$5.2 million one-time charge related to the December 1999 acquisition by NICE of STS

30. On February 23, 2000, NICE issued a press release announcing its acquisition of CenterPoint Solutions, Inc., a company based in Denver, Colorado. The press release stated, in part:

NICE Systems Ltd. (Nasdaq: NICE) today announced it has signed a definitive agreement to acquire CenterPoint Solutions, Inc., an application developer of Web-enabled solutions for statistical tracking, digital recording and automated customer surveys for contact centers.

\* \* \*

Subject to the closing of the deal, NICE will acquire all the stock of CenterPoint Solutions for approximately \$3 million in cash and up to 200,000 NICE American Depository Shares (ADSSs), representing ordinary shares of NICE. The deal is expected to be closed by next month. (Emphasis added).

31. On May 3, 2000, NICE issued a press release entitled, "NICE Systems 1Q2000 Revenues Up 42 Percent to \$37.5 Million, Increased Demand Across All Market Segments." That release stated, in part:

NICE Systems Ltd. (NASDAQ: NICE) today reported first quarter 2000 revenues rose 42 percent to \$37.5 million compared with \$26.5 million for the first quarter of 1999. Net income increased by almost 100 percent to \$6.0 million compared with \$3.1 million for the same quarter of last year.

Diluted earnings per share for the quarter were up 63 percent to \$0.44 on 13.7 million weighted average number of shares outstanding, compared with \$0.27 on 11.8 million shares for the first quarter of 1999. Basic earnings per share for the quarter were \$0.51 on 12.0 million weighted average number of shares outstanding, compared with \$0.28 on 11.3 million shares for the first quarter of 1999.

NICE Systems' chairman, Benny Levin, said, "We are very pleased with these excellent results and are encouraged by the increased demand for our products across all market segments, particularly in mainland Europe, the UK, and North America. We have continued to strengthen our leadership position in the fast growing contact center market, are seeing increased demand from the financial trading sector and have secured our dominance of the air traffic control sector with important new contracts."

\* \* \*

Levin concluded, "The strong momentum generated in Q1 combined with our strengthened partnerships with Lucent Technologies and IPC Information Systems, new alliance with Philips Business Communications, new strategic relationships with Clarify and other key CRM-customer relationship management vendors, recent acquisition of CenterPoint Solutions and the development of our Voice over IP technology and other multimedia applications, provides an excellent starting point for 2000." (Emphasis added.)

32. As in the past, Wall Street analysts again noticed the Company's apparent ability to beat their earnings estimates. And, by way of example, the very next day analysts from Lehman Brothers and Chase H&Q issued reports with "Buy" ratings for NICE, while noting that the Company had beaten their earnings estimates for the first quarter of 2000.

33. The May 3, 2000 press release, and the false results of operations and financial statements contained therein, was included in the Company's Report on Form 6-K, filed with the SEC on or about June 15, 2000.

34. This press release was materially false and misleading. In fact, contrary to defendants' press release, NICE's true revenues for the quarter were actually \$32.9 million, or 13% less than the reported \$37.5 million, and net income for the quarter was not the \$6 million reported but, rather, \$2.98 million, meaning that NICE had overstated net income by more than 100%. Thus, NICE's net income had in fact declined when compared to the same quarter of the prior year, and not increased almost 100% as defendants falsely stated. This material overstatement was caused primarily by the improper recognition of material amounts of revenue on consignment shipments of NiceLog and other products to Stevens in violation of GAAP, and as more fully described at ¶¶61-

63. And, but for the material overstatement of revenues and net income, the Company's reported earnings would have been significantly below Wall Street expectations, as more fully described at

¶68.

35. By way of example of how defendants' materially false and misleading earnings reports caused the price of NICE securities to be artificially inflated, within two days of the aforementioned materially false and misleading May 3, 2000 press release, the price of NICE ADS's rose nearly 9%, from a closing price on May 3, 2000 of \$62.50 per ADS to a high on May 5, 2000 of \$68 per ADS.

36. As delineated at ¶67 below, shortly after the false and misleading May 3, 2000 press release, between May 7 and May 21, 2000, defendants Levin, Lazar and Golan sold off a huge percentage of their respective NICE stock holdings at artificially inflated prices, for proceeds of approximately \$6.38 million.

37. On or about May 26, 2000, NICE filed its 1999 Form 20-F with the SEC. The 1999 Form 20-F repeated the fourth quarter and year-end 1999 results of operations previously announced by NICE on February 16, 2000. Additionally, with respect to its revenue recognition practices, defendants represented in the Management's Discussion and Analysis section of the 1999 Form 20-F that:

Revenues from NiceLog and other recording and quality management products are generally recognized upon shipment to customers when no significant vendor obligations remain. Generally, the Company does not have any significant obligations after shipment.

\* \* \*

NICE's Consolidated Financial Statements are stated in dollars and prepared in accordance with U.S. GAAP. (Emphasis added).

The defendants also represented in Notes to the Company's financial statements incorporated into the 1999 Form 20-F that, with respect to revenue recognition, the Company was in compliance with SOP 97-2.

38. As more fully described at ¶¶61-63, the Company's aforementioned statements concerning its revenue recognition policies were materially false and misleading. In fact, in violation of GAAP (including SOP 97-2), SEC rules and the Company's stated revenue recognition policy, NICE improperly recorded revenues on consignment shipments of NiceLogs and other products to Stevens.

39. A "Letter to the Shareholders" signed by defendants Levin and Golan, included in the Company's 1999 Annual Report stated:

We are pleased to report an excellent year. Steady increases in revenues, gross and operating margins, net income and earnings per share (EPS) were generated by high profile sales to the US contact center market, reinforced by continued success in established markets. Revenues for 1999 were \$123.6 million, as compared with \$91 million in 1998. Net income, excluding the one-time charge related to our acquisition of STS Software Systems, totaled \$20.3 million, as compared with \$13.5 million in 1998 (net of the one-time charge in 1998 related to the acquisition of IBS and the Company's relocation to new premises). Earnings per share were \$1.65 (diluted) as compared with \$1.12 (diluted) in 1998 (both net of one-time charges).

40. As set forth in ¶29, the Company's financial results for the fourth quarter and year-ended December 31, 1999, as disclosed in the Company's press release issued on February 16, 2000 and repeated in the 1999 Form 20-F, were materially false and misleading.

41. On May 31, 2000, NICE announced that Moshe Ronen, who had just joined the Company as President and Chief Executive Officer on May 1, 2000, had resigned from the Company due to "a different view of management responsibilities." According to the press release, defendant Levin re-assumed the position of President and CEO of NICE.

42. On August 2, 2000, NICE issued a press release entitled, "NICE Systems 2Q00 Revenues Up 50 Percent to a Record High of \$42.9 Million, Net Income Increased 60 Percent Before One-time Charge." The press release stated, in part:

NICE Systems Ltd. (NASDAQ:NICE), a worldwide leader of multimedia recording solutions, applications and related professional services for business interaction management, today reported second quarter revenues rose 50 percent to a record high of \$42.9 million compared with \$28.5 million for the second quarter of 1999. Earnings per share for the quarter were \$0.50, before a one-time charge, compared with earnings per share of \$0.36 for the second quarter of 1999.

Net income rose 60 percent to \$6.9 million from \$4.3 million for the same quarter last year, excluding a one-time charge related to the acquisition of CenterPoint Solutions' in-process technology. Including the one-time charge of \$6.8 million, net income for the quarter was \$0.1 million.

\* \* \*

NICE Systems' chairman and chief executive officer, Benny Levin, said, "We are pleased with our excellent top and bottom line results for the quarter. NICE's sales to the high-end contact center and financial trading markets show solid and continuous growth. Our growth continues to be driven by an increasing number of global customers who select NICE for our worldwide presence, support and professional services.

\* \* \*

Levin concluded, "Our strong results continue to reflect the growing demand in each of our key market segments and our ability to capitalize on global customer opportunities." (Emphasis added).

43. Almost immediately after the Company issued the aforementioned earnings release, Wall Street analysts, once again, noted the Company's apparent ability to beat their earnings estimates. For example, Tim Luke of Lehman Brothers, in his report dated August 3, 2000, reiterated his "Buy" rating on NICE, noting that in announcing EPS of \$0.50, NICE "handily beat the \$0.48 consensus estimate."

44. The August 2, 2000 press release, and the materially false results of operations and financial statements contained therein, were included in the Company's Report on Form 6-K, filed with the SEC on or about December 7, 2000.

45. This press release was materially false and misleading. In fact, the Company's revenues for the quarter were actually \$39.2 million, more than 9% less than the \$42.9 million reported and net income<sup>2</sup> for the quarter ended June 30, 2000 was not \$6.90 million, but actually only \$4.3 million, indicating no growth from earnings in the comparable quarter of the prior year and meaning that the Company had overstated net income for the quarter by 60%. This material overstatement was caused primarily by the improper recognition of material amounts of revenue on consignment shipments to Stevens of NiceLog and other NICE products in violation of GAAP, as more fully described at ¶¶61-63. Once again, but for the material overstatement of revenues and net income, the Company's reported earnings would have been significantly below Wall Street expectations, as more fully described at ¶68.

46. On October 4, 2000, NICE announced that Lauri A. Hanover would replace defendant Yanai as the Company's Senior Vice President and CFO effective December 2000.

47. On November 1, 2000, NICE issued a press release entitled, "NICE Systems 3Q00 Revenues and EPS Reach a Record High." The press release stated, in part:

NICE Systems (Nasdaq: NICE), a worldwide leader of multimedia digital recording solutions, applications and related professional services for business interaction management, today reported a 46 percent increase in Q3 revenues to reach a record high of \$46.6 million compared with \$32.0 million for the third quarter of 1999. Earnings per share for the quarter were \$0.58 compared with earnings per share of \$0.46 in the third quarter of 1999.

Net income rose 42 percent to \$8.1 million from \$5.7 million for the same quarter last year. Gross margin was 58.6 percent, as compared with 57.9 percent for the same quarter of 1999. Operating income rose 56 percent to \$6.8 million from \$4.3 million for Q3 1999.

NICE Systems' chairman and chief executive officer, Benny Levin, said, "We are

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<sup>2</sup> Excluding \$6.8 million one-time charge related to the April 2000 acquisition by NICE of Centerpoint.

pleased to announce another strong quarter. We're seeing continued progress in our CEM (Customer Experience Management) business, with sales to the contact center market increasing by approximately 15 percent from the previous quarter." (Emphasis added).

48. The November 1, 2000 press release, and the materially false results of operations and financial statements contained therein, was included in the Company's Report on Form 6-K, filed with the SEC on or about December 7, 2000.

49. On November 1, 2000, NICE also issued a press release announcing its intention to acquire the part of Stevens that dealt with NICE products. According to the release:

NICE Systems (Nasdaq: NICE), a worldwide leader of multimedia digital recording solutions, applications and related professional services, today announced that it is expanding the customer and support services of its Customer Experience Management (CEM) division through the acquisition of certain assets and liabilities of Stevens Communications, Inc (SCI).

"This purchase represents an opportunity for NICE significantly expand our customer service organization in North America and strengthen our relationship with major customers," said Yuval Ofek, president of NICE's CEM division.

As part of the acquired assets, NICE will integrate SCI employees, specializing in NICE's products, into the company's CEM division in North America. In addition, SCI sales and service contracts with NICE customers will be assigned to NICE.

"We are pleased to add the new people to our growing organization. Stevens' people have gained significant experience selling, installing, supporting and consulting on NICE systems and applications over the last several years," Ofek added. "This additional support and consulting staff will enable us to meet the growing demand in both the US and international markets and help us deliver the high levels of support and service that our customers have come to expect."

Stevens Communications will continue to provide contact center customers with other technological solutions and services.

Subject to the closing of the deal, NICE will acquire the above mentioned assets of Stevens Communications for approximately \$10.5 million in cash and up to 426,852 NICE American Depositary Shares (ADSs), representing ordinary shares of NICE, of which 225,839 are contingent on achieving the agreed upon objectives. The deal is

expected to be closed by next month. (Emphasis added).

50. On November 1, 2000, NICE also held a conference call for analysts, money and portfolio managers, institutional investors and large NICE shareholders in which NICE management discussed the Company's Q3 2000 results, its business and its prospects. Several NICE executives were introduced as being present on behalf of NICE including, but not limited to, defendants Levin and Yanai. During the course of the call, Levin reiterated the results of operations for the quarter ended September 30, 2000, which were included in the Company's November 1, 2000 press release. Moreover, during the call, Levin noted that although days sales outstanding had increased to 145 days, he attributed such increase to the increasing number of large global deals or deals requiring longer integration. This was false because, as Levin and the other defendants knew, days sales outstanding was increasing because the Company was improperly recognizing revenues on consignment shipments to Stevens for which payment was not due unless and until Stevens sold the products it received on consignment to an end-user.

51. The Company's November 1, 2000 earnings release and representations in the conference call with analysts regarding Q3 2000 earnings were materially false and misleading. In fact, the Company's revenues for the quarter were actually \$44.7 million and net income for the quarter ended September 30, 2000 was not \$8.1 million but actually \$6.17 million, meaning that NICE had overstated net income by more than 30%. The overstatement was caused primarily by the improper recognition of material amounts of revenue on consignment shipments to Stevens of NiceLog and other products in violation of GAAP, as more fully described at ¶¶61-63. And, as throughout the Class Period, but for the material overstatement of revenue and net income, the

Company's reported earnings would have been significantly below Wall Street expectations, as more fully described at ¶68.

52. Following the Company's November 1, 2000 press release and conference call, on November 2, 2000, C.E. Untergerg, Towbin's, stock analyst Herbert Tinger rated NICE a "strong buy," noting in his report "EPS of \$0.58 versus \$0.46 [in the comparable quarter of the prior year] was \$0.01 better than both [C.E. Untergerg's] estimate and the Street consensus." Moreover, Tinger stated that the third quarter 2000 results marked "the Company's sixth straight quarter of beating expectations." In fact, the restatement revealed that the Company's true EPS for the third fiscal quarter of 2000 and 1999 was \$0.44 and \$0.42, respectively.

53. On December 7, 2000, NICE announced that it had "completed the acquisition of certain assets and liabilities of Stevens Communications." According to Yuval Ofek, president of NICE's Customer Experience Management ("CEM") division:

I am delighted that we have completed the integration of Stevens Communications assets into the company. Stevens' people have extensive selling, installing, and consulting experience on NICE solutions that will enable us to meet the growing demand for our CEM (Customer Experience Management) technology platform and business strategy in North America. This acquisition represents an important step in our commitment to deliver the high levels of support and service that our customers have come to expect."

54. On December 28, 2000, NICE issued a press release regarding its anticipated fourth quarter 2000 results. The release stated, in part:

NICE Systems (Nasdaq: NICE - news), a worldwide leader of multimedia digital recording solutions, applications and related professional services for business interaction management, today announced that fourth quarter 2000 revenues will be below market expectations. Revenues in the fourth quarter are expected to be approximately \$39 to \$40 million. As a result, the Company expects to report a net loss of \$0.06 to \$0.00 per share on a diluted basis, excluding charges related to the previously announced acquisition of certain assets of Stevens Communications Inc.

Benny Levin, NICE's Chairman and CEO, said, "Like many other companies, we are seeing weakness in the telecommunications and IT sectors of the market. It now appears that a number of our blue-chip customers will postpone orders, which were expected to close in the quarter, due to internal budget considerations. We are obviously disappointed with the impact of this slowdown on our Q4 results. However, we remain vigorously confident in our long-term growth opportunities."

The Company plans to report final results for the fourth quarter and fiscal year 2000 on February 21, 2001. Management is re-evaluating the outlook for 2001 and intends to provide additional details and further guidance prior to that date.

55. These representations were materially false and misleading because they failed to disclose that the Company's financial results for fiscal 1999 and the first three quarters of fiscal 2000 were overstated by material amounts due to the improper recognition of revenue on consignment shipments to Stevens of NiceLog and other products. In addition, the release failed to disclose that Q400 results would be materially less than \$39-40 million, in large part because defendants knew that NICE would not be able to continue to improperly recognize revenues on consignment shipments to Stevens.

#### THE TRUTH REVEALED

56. Fearing exposure by others of their scheme, and in an attempt to put the best spin on things, defendants caused NICE to make the following announcement on February 8, 2001, which shocked the market and stated, in part, as follows:

NICE Systems (NASDAQ:NICE - news), a worldwide leader of multimedia digital recording solutions, applications and related professional services for business interaction management, announced today that it is updating its estimate of Q4 2000 revenue and related net loss and will be restating certain prior periods based on a detailed analysis performed in the course of the yearend closing process.

This analysis included the determination of the appropriate timing of revenue recognition relating to sales to Stevens, the distributor whose assets were acquired by NICE in the fourth quarter. Specifically, during the yearend closing process,

documents came to the attention of management indicating that sales to Stevens should have been treated as "consignment" sales and the revenue recognized only upon sale to the final customer. This requires a reduction of \$6.2 million in 1999 revenue, from \$123.6 million to \$117.4 million. Of the \$6.2 million, \$4.4 million has been recognized in 2000. In turn, \$6.6 million in revenue from Stevens in 2000 cannot be recognized. The net effect on year 2000 revenue is \$2.2 million.

In addition to a complete review of revenue, the Company also implemented SAB101. As a result of all these factors, revised revenue for the first three quarters of 2000 is expected to be as follows: \$34 million instead of \$37.5 million, \$39 million instead of \$42.9 million, and \$45 million instead of \$46.6 million, respectively. Finally, NICE estimates that revenue for all of 2000 will be \$154 million and Q4 revenue will be approximately \$36 million. On December 28th, the Company announced that Q4 2000 revenue was expected to be \$39 to \$40 million.

The Company indicated that it will take some additional time to calculate the related adjustments required to each period's net income, and the revised figures will be available when final audited results for Q4 and full year 2000 are announced. NICE also announced that Benny Levin has resigned as Chairman, but remains as a director of the Company. The Board of Directors expects to name a new chairman shortly. (Emphasis added).

57. This stunning disclosure caused the price of NICE ADS's to decline almost 30% in one day on heavy trading volume to \$13.10 per ADS.

58. Shortly after the restatement announcement, on February 14, 2001, defendant Ben-Zeev resigned from the Company and on February 15, 2001, defendant Lazar resigned from the Company. As detailed at ¶67 below, during the Class Period Ben-Zeev and Lazar had sold most, if not all, of their NICE ordinary shares on the Tel-Aviv Stock Exchange at artificially inflated prices for proceeds of approximately \$1.4 million and \$2.4 million, respectively.

59. On July 23, 2001, NICE announced that Levin would not be included on the slate of people the Company's Board of Directors was recommending as directors to shareholders at the Company's next annual shareholder meeting.

60. Each of the statements made by defendants between November 3, 1999 and February 7, 2001 were materially false or misleading when issued. The true facts, which were known to or recklessly disregarded by defendants, were:

(a) NICE's reported results for the third and fourth quarters and year-end fiscal 1999 and the first three quarters of fiscal 2000 were materially false and misleading and achieved primarily by the improper recognition of millions of dollars of revenues on consignment shipments of NICE products to Stevens;

(b) NICE's apparent ability to consistently beat Wall Street earnings estimates for the Company was the result of the improper revenue recognition practices alleged herein; and

(c) NICE's ability to meet even the originally projected and then downgraded results of operations for the fourth quarter of 2000, ended December 31, 2000 was contingent upon improperly recognizing millions of dollars of revenues on consignment shipments to Stevens.

#### **THE VIOLATIONS OF GAAP AND SEC REGULATIONS**

61. The deceptive accounting practices described herein were perpetrated in clear violations of GAAP and SEC Rules and Regulations. GAAP as those principles recognized by the accounting profession as the conventions, rules and procedures necessary to define accepted accounting practiced at a particular time.

62. SEC Regulation S-X (17 C.F.R. and §210.4-01(a)(1)) states that financial statements filed with the SEC which are not prepared in compliance with GAAP are presumed to be misleading and inaccurate, despite footnote or other disclosure. Regulation S-X requires that interim financial statements must also comply with GAAP, with the exception that interim financial statements need

not include disclosure which would be duplicative of disclosures accompanying annual financial statements (17 C.F.R. §210.10-01(a)).

63. Due to the accounting improprieties described above, the Company presented its financial results and statements in a manner which violated GAAP, including the following fundamental accounting principles:

(a) The principle that financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit and similar decisions (FASB Statement of Concepts No. 1, ¶34);

(b) The principle that financial reporting should provide information about the economic resources of an enterprise, the claims to those resources and effects of transactions, events and circumstances that change resources and claims to those resources (FASB Statement of Concepts No. 1, ¶40);

(c) The principle that financial reporting should be reliable in that it represents what it purports to represent (FASB Statement of Concepts No. 2, ¶¶58-59);

(d) The principle of completeness, which means that nothing is left out of the information that may be necessary to insure that it validly represents underlying events and conditions (FASB Statement of Concepts No. 2, ¶79);

(e) The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered (FASB Statement of Concepts No. 2, ¶¶95, 97);

(f) The principle that revenues and related earnings should not be recognized until earned and that expenses should be recognized in the period incurred. (FASB Statement of Concepts No. 5); and

(g) The principle that revenues on sale of product should not be recognized by a seller if the obligation of the buyer of such product is contingent upon resale of the product by the buyer. (See Statement of Financial Accounting Standards No. 48 – Revenue Recognition When Right of Return Exists ¶¶6(b) and 22) and AICPA Statement of Position (“SOP”) 97-2 at ¶30.

### SCIENTER

#### A. Defendants’ Improper Recognition of Revenues on Consignment Sales

64. Defendants have admitted that NICE’s financial statements for the third and fourth quarters and year-ended 1999 and the first three quarters of 2000 required restatement because the Company improperly recognized millions of dollars of revenues on “consignment” shipments to Stevens. A strong inference that defendants knew or recklessly disregarded that NICE was wrongfully recognizing revenues on the consignment shipments to Stevens is evidenced from:

(a) A consignment arrangement, by definition, requires a meeting of the minds of the consignor and consignee to enter such an arrangement, especially, as in this case, when the arrangement involved millions of dollars of NICE product;

(b) The consignment arrangements between NICE and Stevens were embodied in written agreements which documented and evidenced the nature and exact terms of the consignment arrangement. The written nature of the agreements reflect the fact that defendants deliberately and knowingly set out to improperly inflate the Company’s reported revenues and earnings through the arrangement with Stevens;

(c) The wrongful recognition of revenue on the consignment shipments to Stevens not only violated a basic tenet of GAAP and SEC rules but also the Company's own stated revenue recognition policy which prohibited the recognition of revenue when there were still significant vendor obligations (*i.e.*, Stevens did not have to take title to or pay for NICE product shipped to it on consignment unless and until Stevens sold such product to an end user);

(d) The wrongful recognition of revenue on the consignment shipments to Stevens caused the Company's days sales outstanding ("DSO"), a statistic the Company previously touted as declining (*see* ¶25) to increase materially and dramatically. Indeed, DSO had increased from 116 days as of December 31, 1999 to 145 days as of September 30, 2000, representing a 25% increase in just nine months. This dramatic increase in DSO and its impact on the Company and its cash flow was known by defendants;

(e) NICE's wrongful recognition of revenue for consignment shipments had a material impact upon and, indeed, caused NICE's reported results to be materially overstated;

(f) Given the importance and magnitude of these consignment transactions to NICE's financial position and the fact that these arrangements were reflected in written agreements and/or other documents and made with one of, if not the most, important distributors of NICE products in North America, it is reasonable to infer that each of the Individual Defendants, given their respective positions at the Company and involvement in its day-to-day affairs and/or financial reporting, knew of or recklessly disregarded the consignment shipments to Stevens and the impact recording revenues on such shipments would have on NICE's reported earnings; and

(g) But for the improper recognition of revenue on the consignment shipments to Stevens, NICE's reported earnings would have consistently fallen below Wall Street estimates for every quarter reported on during the Class Period. (See ¶68).

**B. Defendants' Efforts to Deflect Blame from Themselves**

65. Further evidence of defendants' scienter can be inferred from the fact that in connection with the February 8, 2001 announcement of the restatement, defendants disingenuously sought to blame the restatements on the need to implement SAB 101. SAB 101 presumably referred to SEC Staff Accounting Bulletin No. 101, which was issued on or about December 3, 1999. Contrary to the impression defendants' press release may have given, implementation of SAB 101 should not have caused NICE to restate its financial statements, because it did not change accounting rules that existed at the time of its issuance. Indeed, the SAB itself noted that it was "not intended to change current guidance in accounting literature." The Fact Sheet issued by the SEC concerning SAB 101 reiterated this point by noting that:

This SAB does not change any of the accounting profession's existing rules on revenue recognition.

In fact, in discussing Revenue Recognition, SAB 101 specifically states, citing to long-standing provisions of GAAP, that:

Products delivered to a consignee pursuant to a consignment arrangement are not sales and do not qualify for revenue recognition [by the consignor] until a sale [by the consignee] occurs.

The reference to implementation of SAB 101 as a reason for the restatement was an attempt by defendants to give the false impression that the restatement was due to changes in GAAP interpretations by the SEC, rather than the Company's persistent and purposeful (or, at the very least,

reckless) violations of long-standing GAAP pronouncements prohibiting the recognition of revenue on consignment shipments.

**C. The Magnitude and Pervasiveness of the Restated Financial Reports**

66. As illustrated in the charts at ¶3 and as described *supra*, NICE's reported results of operations throughout the Class Period were materially false and misleading. Indeed, as illustrated in the charts at ¶3, quarterly results were consistently overstated by material amounts, sometimes by more than 100%. The reported results were illusory and a function of the fraud complained of herein. The significant restatements of NICE's results concede the materiality and pervasiveness of the misstatements, and bolster the strong inference of scienter.

**ADDITIONAL ALLEGATIONS OF SCIENTER  
CONCERNING DEFENDANTS' MOTIVATION**

**A. Insider Sales During the Class Period**

67. Certain of the Individual Defendants were also motivated to participate in the fraud because they were able to significantly benefit from the resulting inflation in price of NICE's stock, including its ordinary shares traded on the Tel-Aviv Stock Exchange. The insider sales by virtually all of the Individual Defendants were unusual in timing and amount. Indeed, for almost two years prior to the Class Period, and perhaps longer, defendants Levin, Lazar and Ben-Zeev had not sold any NICE stock and Golan had sold only a small amount of his NICE holdings during that period. Moreover, the magnitude of these defendants' sales, as a percentage of their respective NICE holdings going into the Class Period (ranging from 49% to 100%), is a very strong indication that these defendants knew that the price of NICE ordinary shares and corresponding ADS's was

artificially inflated and therefore sought to "cash out" before their scheme was exposed. At least the following sales, which are summarized below, were made during the Class Period:

Name	Date	No. of NICE Ordinary Shares Sold	Approx. Price Per Share (U.S. \$'s)	Approx. Proceeds from Sale (U.S. \$'s)	Total	% of NICE Stock Sold*
Benjamin Levin	12/07/99	40,000	\$44	\$1,760,000		49%
	05/07/00	8,600	\$65	\$559,000		
	05/08/00	9,200	\$65	\$598,000		
	05/11/00	22,200	\$66	\$1,465,200		
					<b>\$4,382,200</b>	
Avraham Lazar	12/07/99	30,000	\$44	\$1,320,000		85%
	05/07/00	4,300	\$65	\$279,500		
	05/08/00	4,800	\$65	\$312,000		
	05/11/00	900	\$65	\$58,500		
	05/15/00	1,124	\$65	\$73,060		
	05/17/00	2,000	\$65	\$130,000		
	05/21/00	3,000	\$65	\$195,000		
08/03/00	1,500	\$71	\$106,500			
					<b>\$2,474,560</b>	
Mordechai Golan	12/07/99	30,000	\$44	\$1,320,000		85%
	05/07/00	8,600	\$65	\$559,000		
	05/08/00	9,200	\$65	\$598,000		
	05/11/00	2,200	\$65	\$143,000		
					<b>\$2,620,000</b>	
David Ben-Zeev	05/07/00	1,900	\$65	\$123,500		100%
	05/08/00	1,800	\$65	\$117,000		
	05/11/00	506	\$65	\$32,890		
	05/11/00	17,500	\$65	\$1,137,500		
					<b>\$1,410,890</b>	
<b>Total Proceeds</b>					<b>\$10,887,650</b>	

\* Represents the percentage of NICE stock owned at the beginning of the Class Period, which was sold during the Class Period.

**B. Cooking the Books to Meet Analysts' Estimates**

68. It was important to NICE's growth story to meet the expectations of Wall Street analysts for the Company's revenues and earnings on a quarterly basis. In addition to the other motivating factors discussed herein, the defendants falsified NICE's earnings during the Class Period to create the illusion that NICE was not only meeting Wall Street expectations, but beating them on a consistent basis. Indeed, as illustrated by the following chart, had defendants not engaged in the fraudulent scheme to improperly recognize revenues on consignment shipments, NICE's reported earnings would have consistently fallen materially below Wall Street estimates:

**Earnings Per Share ("EPS")\*\***  
**Wall Street Estimates vs. Originally Reported by NICE vs. Restated**

	Q3:99 (09/30/99)	Q4:99 (12/31/99)	Q1:00 (03/31/00)	Q2:00 (06/30/00)	Q3:00 (09/30/00)
Consensus Wall Street Estimates for EPS	\$0.43	\$0.54	\$0.42	\$0.48	\$0.57
Originally Reported EPS	\$0.46	\$0.56	\$0.44	\$0.50	\$0.58
Restated or True EPS	\$0.42	\$0.30	\$0.22	\$0.31	\$0.44

**C. Need to Maintain an Artificially Inflated Stock Price to Fund Acquisitions**

69. Yet another motive for defendants' scheme was their need to maintain an artificially high price for the Company's stock so it could be used in connection with corporate acquisitions. Indeed, during the Class Period, NICE ADS's, which were trading at artificially inflated prices, were

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\*\* Excludes other special charges, such as one-time acquisition charges.

used as a substantial part of the consideration paid by NICE to accomplish two acquisitions – Centerpoint and Stevens.

### CLASS ACTION ALLEGATIONS

70. Lead Plaintiffs bring this action as a class action, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), on behalf of themselves and a class consisting of all persons who purchased NICE ADS's between November 3, 1999 and February 7, 2001 (the "Class Period") and who were damaged thereby (the "Class"). Excluded from the Class are defendants, officers and directors of the Company, members of the immediate families of such officers and directors as well as officers and directors of subdivisions and/or affiliates of the corporate defendant.

71. As noted on the Company's 1999 Form 20-F, as of December 31, 1999, there were more than 11 million ordinary shares of the Company's stock outstanding and approximately 68% of NICE's ordinary shares were held in the form of NICE ADS's. NICE ADS's were actively traded on the NASDAQ National Market, an open and efficient market, during the Class Period. Because persons who purchased NICE ADS's during the Class Period number at least in the hundreds and are believed to be located throughout the country, joinder of all such class members is impracticable.

72. There are questions of law and fact common to all class members which predominate over any questions affecting only individual class members, including:

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

(b) Whether documents, press releases and/or statements disseminated to the investing public and the investors in NICE ADS's during the Class Period omitted and/or misrepresented material facts about the business and financial condition of the Company;

(c) Whether defendants made materially misleading statements during the Class Period about the business and financial condition of the Company;

(d) Whether the defendants acted knowingly and/or recklessly in making materially false statements and omitting material facts about the business and financial condition of the Company;

(e) Whether the market price of NICE ADS's was artificially inflated during the Class Period due to the non-disclosures and/or material misrepresentations complained of herein; and

(f) Whether the members of the Class have suffered damages and, if so, what is the proper measure of damages.

73. Plaintiffs' claims are typical of all class members' claims. Plaintiffs have selected counsel experienced in class and securities litigation and will fairly and adequately protect the interests of the Class. Plaintiffs have no interests antagonistic to those of the Class.

74. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages suffered by individual class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for members of the Class to individually seek redress for the wrongful conduct alleged.

75. Plaintiffs know of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a class action.

**COUNT I:**

**For Violations Of Section 10(b) Of  
The Exchange Act and Rule 10b-5 Against Defendants**

76. Plaintiffs repeat and reallege each and every allegation contained in the above paragraphs, as if fully set forth herein. Throughout the Class Period, defendants, singly and in

concert, directly or indirectly, engaged in a common plan, scheme and course of conduct described herein, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and a course of business which operated as a fraud upon plaintiffs and the other members of the class; made various false statements of material facts and omitted to state material facts to make the statements made, in light of the circumstances in which they were made, not misleading; and employed manipulative or deceptive devices and contrivances in connection with the sale of NICE ADS's.

77. The purpose and effect of the defendants' plan, scheme and course of conduct was to artificially inflate and maintain the market price of NICE ADS's and corresponding ordinary shares.

78. The Individual Defendants, as senior officers and/or directors of NICE, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive plaintiffs and the other members of the class, or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements made by them or other NICE personnel to the SEC, plaintiffs, and other members of the class.

79. As a result of the foregoing, the market price of NICE ADS's (and corresponding ordinary shares) was artificially inflated during the Class Period. In ignorance of the falsity of the reports and statements, and the deceptive and manipulative devices and contrivances employed by the defendants, plaintiffs and the other members of the class relied, to their damage, on the reports and statements described above and/or the integrity of the market price of NICE ADS's during the Class Period in purchasing the ADS's at prices which were artificially inflated as a result of the defendants' false and misleading statements.

80. The Individual Defendants knew of or recklessly disregarded the fraud detailed herein. They knew that NICE's financial statements were fraudulent and not consistent with GAAP. Because of their positions with the Company, they controlled and/or possessed the power and authority to control the contents of the financial statements, press releases and presentations to securities analysts and thereby the investing public. The defendants prepared or were provided with copies of the Company's press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected.

81. Each of the defendants is liable as a primary violator, for making materially false and misleading statements, and for participating in a fraudulent scheme that operated as a fraud or deceit on purchasers of NICE ADS's during the Class Period. The defendants pursued a fraudulent scheme in furtherance of their common goal, i.e., inflating the price of NICE ADS's by making materially false and misleading statements and concealing material adverse information. The fraudulent scheme was designed to and did: (i) deceive the investing public, including plaintiffs and members of the class; (ii) artificially inflate the price of NICE ADS's (and ordinary shares) during the Class Period; (iii) allow NICE to acquire other companies using its artificially inflated ADS's as currency; (iv) cause plaintiffs and members of the class to purchase Nice ADS's at inflated prices; and (v) reap millions of dollars in proceeds from sale of NICE stock at artificially inflated prices.

82. Had plaintiffs and the other members of the class known of the material adverse information which the defendants did not disclose, they would not have purchased NICE ADS's at the artificially inflated prices that they did.

83. As a result of the wrongful conduct alleged herein, plaintiffs and other members of the class have suffered damages in an amount to be established at trial.

**COUNT II**

**For Violation Of Section 20(a)  
Of The Securities Exchange Act  
Against the Individual Defendants**

84. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

85. The Individual Defendants, by virtue of their positions as officers and/or directors of NICE and their specific acts, were controlling persons of NICE within the meaning of Section 20(a) of the Exchange Act.

86. Each of these defendants' positions made them privy to, and provided them with actual knowledge of, the material facts which NICE concealed from plaintiffs and the other members of the class during the Class Period.

87. These defendants had the power, authority and influence, and exercised the same, to cause NICE to engage in the unlawful conduct and practices complained of herein by causing NICE to disseminate the false and misleading information referred to above.

88. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act. As a direct and proximate result of these defendants' wrongful conduct, plaintiffs and the other members of the class suffered damages in connection with their purchase of NICE ADS's during the Class Period.

**PRAYER FOR RELIEF**

WHEREFORE, Lead Plaintiffs, on behalf of themselves and the Class they seek to represent, pray for judgment as follows:

- A. Declaring this action to be a class action properly maintained pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- B. Declaring and determining that the defendants violated the federal securities laws by reason of their conduct as alleged herein;
- C. Awarding plaintiffs and other members of the Class damages against the defendants, jointly and severally and/or to the extent allowed by law, together with interest thereon for all losses and injuries suffered as a result of the acts complained of herein;
- D. Awarding plaintiffs and other members of the Class costs and expenses of this litigation, including reasonable attorneys' fees, accountants' fees and experts' fees and other costs and disbursements; and
- E. Awarding plaintiffs and other members of the Class such other relief as may be just and proper.

**JURY DEMAND**

Plaintiffs demand a trial by jury.

DATED: August 20, 2001

KANTROWITZ, GOLDHAMER & GRAIFMAN

By: 

GARY S. GRAIFMAN

Gary S. Graifman (GSG 2276)  
210 Summit Avenue  
Montvale, NJ 07645  
Telephone: 201-391-7000

Plaintiffs' Liaison Counsel

**KAPLAN, KILSHEIMER & FOX LLP**

Frederic S. Fox  
Joel B. Strauss  
805 Third Avenue, 22nd Floor  
New York, NY 10022  
Telephone: 212-687-1980

**STULL, STULL & BRODY**

Jules Brody  
Aaron Brody  
6 East 45th Street  
New York, NY 10017  
Telephone: 212-687-7230

**POMERANTZ HAUDEK BLOCK**

**GROSSMAN & GROSS LLP**  
Marc I. Gross  
100 Park Avenue, 26th Floor  
New York, NY 10017  
Telephone: 212-661-1100

Co-Lead Counsel for Plaintiffs

**HANZMAN CRIDEN CHAYKIN & ROLMICK**

Michael Criden  
220 Alhambra Circle, Suite 400  
Coral Gables, FL 33134  
Telephone: 305-357-9000

**LAW OFFICES OF LIONEL Z. GLANCY**

Lionel Z. Glancy  
Tracy L. Thrower  
1801 Avenue of the Stars, Suite 311  
Los Angeles, CA 90067  
Telephone: 310-201-9150

## DEKEL-SABO LAW OFFICE

Jacob Sabo

Twin Towers I, 33 Jabotinsky Street

Ramat-Gan 52511

Post Office Box 21119

Tel-Aviv, Israel 61210

Telephone: 011-972-36-13-33-21

## LAW OFFICES OF BRUCE G. MURPHY

Bruce G. Murphy

265 Llwyd's Lane

Vero Beach, FL 32963-3252

Telephone: 561-231-4202

## ABRAHAM &amp; PASKOWITZ

Laurence D. Paskowitz

Jeffrey S. Abraham

60 East 42<sup>nd</sup> Street, Suite 4700

New York, NY 10165

Telephone: 212-692-0555

EPSTEIN, FITZSIMMONS, BROWN, RINGLE,  
GIOIA & JACOBS, P.C.

Michael E. Gogal (MG 4261)

Andrew R. Jacobs (AJ 6271)

Post Office Box 901

245 Green Village Road

Chatham Township, NJ 07928

Telephone: 973-593-4900

## BERNSTEIN LIEBHARD &amp; LIFSHITZ, LLP

Robert J. Berg (RB 8542)

Michael S. Egan (ME 9554)

2050 Center Avenue

Fort Lee, NJ 07024

Telephone: 201-592-3201

WOLF HALDENSTEIN ADLER FREEMAN  
& HERZ LLP

Fred T. Isquith  
Gregory M. Nespole  
270 Madison Avenue  
New York, NY 10016  
Telephone: 212-545-4600

KIRBY McINERNEY & SQUIRE, LLP

Ira M. Press  
Mark A. Strauss  
830 Third Avenue, 10<sup>th</sup> Floor  
New York, NY 10022  
Telephone: 212-371-6600

MILBERG WEISS BERSHAD HYNES  
& LERACH LLP

Steven G. Schulman  
Samuel H. Rudman  
One Pennsylvania Plaza  
New York, NY 10119  
Telephone: 212-594-5300

WEISS & YOURMAN

Joseph H. Weiss  
551 Fifth Avenue  
New York, NY 10176  
Telephone: 212-682-3025

LITE DEPALMA GREENBERG & RIVAS, LLC

Allyn Z. Lite (AL 6774)  
Joseph J. DePalma (JD 7697)  
Two Gateway Center, 12<sup>th</sup> Floor  
Newark, NJ 07102-5003  
Telephone: 973-623-3000

WOLF POPPER LLP

Marian P. Rosner  
Michael A. Schwartz  
845 Third Avenue  
New York, NY 10022  
Telephone: 212-759-4600

LOCKRIDGE GRINDAL NAUEN  
& HOLSTEIN P.L.L.P.  
Richard A. Lockridge  
Karen M. Hanson  
2200 Washington Square Boulevard  
100 Washington Avenue South  
Minneapolis, MN  
Telephone: 612-339-6900

KALIKMAN AND MASNIK  
Peter L. Masnik (PM 6876)  
30 Washington Avenue  
Haddonfield, NJ 08033  
Telephone: 856-428-5222

BERGER & MONTAGUE, P.C.  
Sherrie R. Savett  
Jacob A. Goldberg  
1622 Locust Street  
Philadelphia, PA 19103  
Telephone 215-875-3000

MARC S. HENZEL, ESQ.  
210 West Washington Square, 3<sup>rd</sup> Floor  
Philadelphia, PA 19106  
Telephone: 215-625-9999

BERMAN DEVALERIO & PEASE, LLP  
Jeffrey Block  
One Liberty Square  
Boston, MA 02109  
Telephone: 617-542-8300

SCHIFFRIN & BARROWAY  
Mark Topaz  
3 Bala Plaza East  
Bala Cynwyd, PA 19004  
Telephone: 610-667-7706

CAULEY GELLER BOWMAN & COATES, LLP

Jonathan Stein

Paul Geller

One Boca Place

2255 Glades Road, Suite 421A

Boca Raton, FL 33431

Telephone: 561-750-3000

Plaintiffs' Counsel