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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

\_\_\_\_\_, Individually and on  
Behalf of All Others Similarly  
Situating,  
  
Plaintiff,  
  
vs.  
  
ACUTUS MEDICAL, INC., VINCE  
BURGESS and DAVID H. ROMAN,  
  
Defendants.

) Case No. \_\_\_\_\_  
) CLASS ACTION  
) COMPLAINT FOR VIOLATIONS OF  
) THE FEDERAL SECURITIES LAWS  
)  
) DEMAND FOR JURY TRIAL

\_\_\_\_\_

1 Plaintiff \_\_\_\_\_ (“plaintiff”), individually and on behalf of all others  
2 similarly situated, by and through plaintiff’s attorneys, alleges the following upon  
3 information and belief, except as to those allegations concerning plaintiff, which are  
4 alleged upon personal knowledge. Plaintiff’s information and belief is based upon,  
5 among other things, the investigation conducted by plaintiff’s counsel, which  
6 includes, without limitation, the review and analysis of: (i) filings made by Acutus  
7 Medical, Inc. (“Acutus” or the “Company”) with the U.S. Securities and Exchange  
8 Commission (“SEC”); (ii) media reports, press releases, and securities analyst  
9 reports issued by or about the Company; and (iii) other publicly available reports  
10 and information concerning Acutus. Plaintiff believes that substantial additional  
11 evidentiary support will exist for the allegations set forth herein after a reasonable  
12 opportunity for discovery.

13 **NATURE OF THE ACTION**

14 1. This is a securities class action on behalf of all purchasers of Acutus  
15 common stock between May 13, 2021 and November 11, 2021, inclusive (the “Class  
16 Period”), seeking to pursue remedies under the Securities Exchange Act of 1934 (the  
17 “Exchange Act”) against Acutus, Vince Burgess and David H. Roman.

18 **JURISDICTION AND VENUE**

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

22 3. Venue is proper in this District pursuant to §27 of the Exchange Act.  
23 The acts and transactions giving rise to the violations of law complained of occurred  
24 in part in this District, including the dissemination of false and misleading statements  
25 into this District, and Acutus maintains its principal executive offices in the District.

26 4. In connection with the acts and conduct alleged in this complaint,  
27 defendants, directly or indirectly, used the means and instrumentalities of interstate  
28 commerce, including, but not limited to, the mails and interstate wire and telephone

1 communications. In addition, the Company's common stock trades on The Nasdaq  
2 Global Select Market ("NASDAQ"), a national securities market.

### 3 **PARTIES**

4 5. Plaintiff \_\_\_\_\_ purchased Acutus common stock during the  
5 Class Period, as set forth in the Certification attached hereto and incorporated herein  
6 by reference, and suffered damages.

7 6. Defendant Acutus is an arrhythmia management company focused on  
8 improving the diagnosis and treatment of cardiac arrhythmias. Defendant Acutus is  
9 based in Carlsbad, California and its common stock trades on NASDAQ under the  
10 ticker symbol "AFIB."

11 7. Defendant Vince Burgess ("Burgess") served, at all relevant times, as  
12 Acutus' President, Chief Executive Officer ("CEO") and Director.

13 8. Defendant David H. Roman ("Roman") served, at all relevant times, as  
14 Acutus' Chief Financial Officer ("CFO").

15 9. Defendants Burgess and Roman are referred to herein as the "Individual  
16 Defendants." During the Class Period, the Individual Defendants ran the Company  
17 as hands-on managers overseeing Acutus' operations and finances and made the  
18 materially false and misleading statements described herein. The Individual  
19 Defendants had intimate knowledge about core aspects of Acutus' financial and  
20 business operations. They were also intimately involved in deciding which  
21 disclosures would be made to investors by Acutus.

### 22 **SUBSTANTIVE ALLEGATIONS**

#### 23 **Background**

24 10. Acutus designs and manufactures a range of tools for catheter-based  
25 ablation procedures and markets and sells its products to hospitals and  
26 electrophysiologists that treat patients with arrhythmias.

27 11. The Company's primary product is its AcQMap imaging and mapping  
28 system, which consists of a console, workstation, proprietary software algorithms,

1 and a single-use catheter that contains ultrasound transducers and electrodes which  
2 collect the data required to create a comprehensive map of a patient’s cardiac  
3 anatomy and electrical propagation pathways and patterns.

4 12. Acutus also sells a portfolio of electrophysiology products to  
5 complement its AcQMap System, including a suite of access devices, its transseptal  
6 crossing device, and product lines of disposal diagnostic and, in its European  
7 markets, ablation catheters.

8 13. To date, the Company’s revenue has predominantly been derived from  
9 the sale of disposable products, principally catheters and related access sheaths, and,  
10 to a lesser extent, transseptal crossing tools, ablation catheters and other accessories.

11 14. To gain a market foothold, Acutus initially lent its first-generation  
12 AcQMap console and workstation to users free of charge to facilitate the sale of its  
13 disposable products. In late 2019, Acutus began to install its second generation  
14 AcQMap console and workstation products with potential purchasers under  
15 evaluation arrangements. Pursuant to these agreements, Acutus places the AcQMap  
16 console and workstation with potential customers free of charge for a specified  
17 period. The Company then attempted to sell the console and workstation to the  
18 potential customers in exchange for a cash payment, or a contractual commitment to  
19 purchase a minimum amount of its disposable products. During the evaluation  
20 period, Acutus retained ownership of the AcQMap system and had the right to  
21 remove the equipment at its discretion.

22 15. In May 2020, the Company entered into bi-lateral distribution  
23 agreements (the “Bi-Lateral Distribution Agreements”) with Biotronik SE & Co. KG  
24 (“Biotronik”), a multi-national cardiovascular biomedical research and technology  
25 company headquartered in Berlin, Germany. Pursuant to the Bi-Lateral Distribution  
26 Agreements, the Company markets Biotronik’s suite of diagnostic and ablation  
27 catheters in Europe, and Biotronik markets the AcQMap System in Europe and  
28 certain other international markets.

1           16. With limited revenues to date, the Company has financed its operations  
2 via capital raising activities. In August 2020, Acutus completed its initial public  
3 offering, selling over 10.1 million shares to the investing public at \$18 per share and  
4 generating over \$182 million in gross offering proceeds.

5 **Defendants' Fraudulent Scheme**

6           17. As detailed herein, throughout the Class Period defendants  
7 misrepresented: (i) their ability to grow and scale Acutus' business; (ii) Acutus'  
8 strategy regarding AcQMap system placements; and (iii) the ability of Acutus to  
9 improve commercial execution in the United States, including through the expansion  
10 and training of sales staff to "ensure" adequate customer account support, which  
11 defendants claimed would be a major growth driver.

12           18. However, unbeknownst to investors, at the same time defendants spoke  
13 positively about Acutus' business, the Company was then being adversely impacted  
14 by severe adverse sales trends. Specifically, Acutus was experiencing lower-than-  
15 expected rates of adoption at a large number of locations where AcQMap consoles  
16 and workstations had been placed under evaluation arrangements. These adverse  
17 sales trends were primarily due to two factors: (i) Acutus had placed AcQMap  
18 systems at locations that were haphazardly selected rather than at ones that were  
19 targeted to achieve high trial-to-paid conversion rates as represented, or pursuant to  
20 a predetermined marketing strategy; and (ii) contrary to defendants' representations,  
21 Acutus placed systems at locations where the Company did not possess the  
22 infrastructure necessary to educate and support medical service providers on the  
23 operation of the Company's complex AcQMap systems.

24           19. Defendants' materially false and misleading statements and omissions  
25 of material fact caused Acutus common stock to trade at artificially inflated prices  
26 during the Class Period.

27  
28

1           20. Defendants knowingly or recklessly engaged in the materially false and  
2 misleadingly conduct alleged herein to facilitate the Company’s access to much-  
3 needed capital on favorable terms.

4           21. As of March 30, 2021, the Company had accumulated a deficit totaling  
5 \$390.2 million and possessed cash and short-term marketable securities of \$95.5  
6 million. Given that the Company’s operations had consumed \$85.2 million in cash  
7 during the 12 months ended December 31, 2020 and an additional \$26.3 million  
8 during the 3 months ended March 31, 2021, the Company was in desperate need of  
9 cash. In this context, and with the price Acutus common stock artificially inflated,  
10 defendants conducted a secondary offering of Acutus shares to provide the Company  
11 with the working capital necessary to support its operations and to help fund the  
12 growth and development of its business.

13           22. On July 12, 2021, Acutus filed with the SEC a Form S-1 registration  
14 statement (the “Form S-1”) offering to sell to the public 6.325 million common  
15 shares (the “secondary offering”), which was declared effective on July 14, 2021.  
16 The next day, Acutus filed with the SEC a prospectus for the secondary offering (the  
17 “Prospectus,” together with the Form S-1, the “Registration Statement”).

18           23. Thereafter, Acutus sold 6.325 million common shares in the secondary  
19 offering (including the full exercise of the underwriters’ over-allotment option) at  
20 \$14 per share, raising over \$88 million in gross offering proceeds.

21           24. Shortly after the secondary offering, on November 11, 2021, Acutus  
22 announced that it had slashed its 2021 revenue guidance due, in part, to a strategic  
23 decision by defendants during the third quarter of 2021 to relocate approximately  
24 **20%** of AcQMap systems installations under then-existing evaluation arrangements  
25 in order to address meaningfully lower-than-expected product adoption. Further,  
26 contrary to defendants’ representations during the Class Period, defendants revealed  
27 that Acutus needed to relocate AcQMap systems that had been placed in improper  
28 locations, thereby negatively impacting customer uptake.

1           25. In response to these revelations, the price of Acutus common stock  
2 plummeted more than **45%** in a single day on abnormally heavy trading volume.

3                   **MATERIALLY FALSE AND MISLEADING STATEMENTS AND**  
4                   **OMISSIONS ISSUED DURING THE CLASS PERIOD**

5           26. The Class Period begins on May 13, 2021. After the close of trading  
6 on May 12, 2021, Acutus issued a press release announcing its operating results for  
7 its first fiscal quarter ended March 31, 2021. The press release highlighted the  
8 Company’s progress on key strategic initiatives, including commercial execution,  
9 with defendant Burgess stating, in pertinent part, as follows:

10                   *“We are pleased with the progress on several key strategic*  
11                   *initiatives, including improved revenue performance and commercial*  
12                   *execution, the initiation of our US ablation therapy IDE clinical trial,*  
13                   *and new product introductions. In the face of regional COVID-19*  
14                   *headwinds, our commercial teams are driving accelerated uptake for*  
15                   *our complete guided ablation solutions globally.”*

16           27. That same day, Acutus held a conference call with investors and  
17 securities analysts hosted by the Individual Defendants to discuss the Company’s  
18 financial performance. As part of their prepared remarks, defendants stated that they  
19 were “keenly focused” on the Company’s commercial execution. Defendants also  
20 emphasized their ability to grow and scale the business via a strategy to be more  
21 targeted with AcQMap system placements. Defendants further represented that  
22 improved commercial execution in the United States would be a major growth driver  
23 for Acutus, with the expansion and training of sales staff “ensuring” adequate  
24 customer account support.

25           28. For example, as part of his prepared remarks, defendant Burgess stated,  
26 in pertinent part, as follows:

27                   [Burgess:] Lastly, *we continue to grow and scale the business*  
28                   *as well as launch an impressive array of new products. Operational*  
29                   *excellence will become increasingly important as a driver for the*  
30                   *company. We are better aligning our production volumes and*  
31                   *inventory with end market demand as well as driving improved yields*  
32                   *for key product lines. David will discuss these dynamics in more detail*  
33                   *later in the call, but I want to underscore the importance of our*  
34                   *operations and manufacturing efforts to the long-term strength of the*  
35                   *business.*

1 \* \* \*

2 We exited the quarter with a good backlog and have seen  
3 placements pick up with 4 net new installations already completed as  
4 of April 30, equaling our net additions in all of Q1. *Importantly, many  
5 of the new system placements so far in 2021 are at major academic  
6 and high-volume community institutions, consistent with our strategy  
7 to be more targeted with capital placements.*

8 Turning to procedure volumes and utilization. We continue to  
9 see a wide standard deviation across accounts and geographies. *In the  
10 United States, we saw progressive improvement in utilization per  
11 system per month, with March utilization rates about 50% above those  
12 we saw in January with the COVID impact on procedure volumes  
13 moderating. We do see some lingering COVID impacts as it relates lab  
14 access for medical device vendors, thus limiting some of our ability to  
15 train both physicians as well as our own mappers.*

16 29. Similarly, during his prepared remarks, defendant Roman reassured  
17 investors that Acutus was “keenly focused” on “commercial execution” and  
18 “ensuring . . . the right level of account coverage,” stating, in pertinent part, as  
19 follows:

20 All that said, *we are keenly focused on* the variables that we can  
21 control, such as *commercial execution*, product launches and  
22 manufacturing. As a result, we expect to see continued sequential  
23 improvement in the second quarter and project sales to range between  
24 \$3.8 million and \$5 million. Based on current trends and planned  
25 internal initiatives, we continue to anticipate a more meaningful step-  
26 up in Q3 and Q4.

27 On our last earnings call, we outlined 5 key factors to support  
28 this growth throughout the year, and I’d like to give you an update on  
each of these drivers. The first is the timing of capital sales and  
conversions. *We have several evaluations that are reaching  
completion. Our teams are working to convert these into capital sales  
leases or catheter utilization deals.*

29 \* \* \*

30 *Lastly, we continue to expect improved commercial execution  
31 in the U.S. to be a major driver. We are strengthening and expanding  
32 our team, investing in critical training resources and ensuring we  
33 have the right level of account coverage.* With the first quarter now  
34 complete, and taking into account our second quarter guidance, we  
35 reiterate our view that 2021 revenue will be heavily weighted to the  
36 back half of the year, reflecting the aforementioned drivers and the  
37 well-documented headwinds we experienced entering the year. Putting  
38 this all together, we continue to project full year revenue to be in a range  
of \$22 million to \$30 million.





1           31. The statements referenced in ¶¶26-30 above were materially false and  
2 misleading in that they misrepresented and omitted to state facts necessary in order  
3 to make the statements contained therein not misleading, which were then known to,  
4 or recklessly disregarded by defendants as follows:

5           (a) that a material percentage of the AcQMap systems under  
6 evaluation had been randomly installed at sites with little, if any, consideration given  
7 to whether the healthcare providers at the selected locations were likely to adopt, or  
8 desire, the Company's products;

9           (b) that a material percentage of the AcQMap systems under  
10 evaluation had been installed in locations where the Company did not possess the  
11 infrastructure necessary to appropriately educate, train and support medical service  
12 providers on the system's operations;

13           (c) that as a result of (a) and (b) above, defendants were in the  
14 process of designing a strategic plan to terminate and relocate approximately 20%  
15 of then-existing AcQMap systems evaluation arrangements;

16           (d) that the Company's MD&A was materially false and misleading  
17 and failed to disclose that the termination and relocation of approximately 20% of  
18 existing AcQMap systems evaluation arrangements was reasonably likely to have a  
19 material adverse effect on the Company's 2021 financial results; and

20           (e) that the Company's risk factor discussions were materially false  
21 and misleading and made reference to *potential* risks without disclosing that such  
22 risks were then-*existing* or adequately describing the specific nature of the risks then  
23 facing the Company.

24           32. On May 13, 2021, Acutus filed with the SEC its Form 10-Q for the  
25 quarter ended March 31, 2021 (the "Q1 Form 10-Q"), signed by the Individual  
26 Defendants, who attested to the document's accuracy and completeness. The  
27 MD&A in the Q1 Form 10-Q represented, in pertinent part, as follows:  
28

1 **Factors Affecting Our Performance**

2 There are a number of factors that have impacted, and we believe  
3 will continue to impact, or that we expect to impact, our results of  
4 operations and growth. These factors include:

- 5 • **Market Acceptance.** The growth of our business will  
6 depend substantially on our ability to increase our installed  
7 base. . . .
- 8 • **Commercial Organization Size and Effectiveness.** As of  
9 March 31, 2021, our commercial organization consisted of  
10 88 individuals with substantial applicable medical device,  
11 sales and clinical experience, including sales managers,  
12 sales representatives and mappers. . . . The rate at which  
13 we grow our commercial organization and the speed at  
14 which newly hired personnel become effective can impact  
15 our revenue growth or our costs incurred in anticipation of  
16 such growth.
- 17 • **Strategic Partnerships and Acquisitions.** We have in the  
18 past, and may in the future, enter into strategic  
19 partnerships and acquire complementary businesses,  
20 products or technologies. . . .
- 21 • **Continued Investment in Innovation.** Our business  
22 strategy relies significantly on innovation to develop and  
23 introduce new products and to differentiate our products  
24 from our competitors.
- 25 \* \* \*
- 26 • **Product and Geographic Mix; Timing.** Our financial  
27 results, including our gross margins, may fluctuate from  
28 period to period due to a variety of factors, including:  
average selling prices; production volumes; the cost of  
direct materials; the timing of customer orders or medical  
procedures and the timing and number of system  
installations; the number of available selling days in a  
particular period, which can be impacted by a number of  
factors such as holidays or days of severe inclement  
weather in a particular geography; the mix of products sold  
and the geographic mix of where products are sold; the  
level of reimbursement available for our products;  
discounting practices; manufacturing costs; product  
yields; headcount; and cost-reduction strategies. . . .
- **Regulatory Approvals/Clearances and Timing and  
Efficiency of New Product Introductions.** We received  
FDA clearance of our AcQCross family of universal  
transseptal crossing devices in April 2021. . . .
- **Competition.** Our industry is intensely competitive,  
subject to rapid change and significantly affected by new

1 product introductions and other market activities of  
2 industry participants. . . .

- 3 • **COVID-19 Pandemic.** Beginning in early March 2020,  
4 the COVID-19 pandemic and the measures imposed to  
5 contain this pandemic disrupted and are expected to  
6 continue to impact our business. . . .

7 In addition, we may experience meaningful variability in our  
8 quarterly revenue and gross profit/loss as a result of a number of factors,  
9 including, but not limited to: inventory write-offs and write-downs;  
10 costs, benefits and timing of new product introductions; the availability  
11 and cost of components and raw materials; and fluctuations in foreign  
12 currency exchange rates. Additionally, we may experience quarters in  
13 which our costs and operating expenses, in particular our research and  
14 development expenses, fluctuate depending on the stage and timing of  
15 product development.

16 While certain of these factors may present significant  
17 opportunities for us, they all pose significant risks and challenges that  
18 we must address. See the section titled “Risk Factors” for more  
19 information.

20 33. The risk factor section in the Q1 Form 10-Q made reference to the  
21 Company’s Form 10-K for the year ended December 31, 2020 and represented, in  
22 pertinent part, as follows:

23 As of the date of this Quarterly Report on Form 10-Q, there have  
24 been no material changes from the risk factors disclosed in our annual  
25 report on Form 10-K for the year ended December 31, 2020, as filed  
26 with the SEC on March 19, 2021.

27 34. The statements referenced in ¶¶32-33 above were materially false and  
28 misleading in that they misrepresented and omitted to state facts necessary in order  
to make the statements contained therein not misleading, which were then known to,  
or recklessly disregarded by defendants as follows:

(a) that a material percentage of the AcQMap systems under  
evaluation had been randomly installed at sites with little, if any, consideration given  
to whether the healthcare providers at the selected locations were likely to adopt, or  
desire, the Company’s products;

(b) that a material percentage of the AcQMap systems under  
evaluation had been installed in locations where the Company did not possess the

1 infrastructure necessary to appropriately educate, train and support medical service  
2 providers on the system's operations;

3 (c) that as a result of (a) and (b) above, defendants were in the  
4 process of designing a strategic plan to terminate and relocate approximately 20%  
5 of then-existing AcQMap systems evaluation arrangements;

6 (d) that the Company's MD&A was materially false and misleading  
7 and failed to disclose that the termination and relocation of approximately 20% of  
8 existing AcQMap systems evaluation arrangements was reasonably likely to have a  
9 material adverse effect on the Company's 2021 financial results; and

10 (e) that the Company's risk factor discussions were materially false  
11 and misleading and made reference to *potential* risks without disclosing that such  
12 risks were then-*existing* or adequately describing the specific nature of the risks then  
13 facing the Company.

14 35. On July 15, 2021, Acutus filed the Prospectus for the Registration  
15 Statement, which incorporated by reference and thereby restated the materially false  
16 and misleading Q1 Form 10-Q.

17 36. On August 12, 2021, Acutus issued a press release announcing its  
18 operating results for its second fiscal quarter ended June 30, 2021. The press release  
19 highlighted the Company's purportedly improved utilization and product uptake,  
20 with defendant Burgess stating, in pertinent part, as follows:

21 "We are pleased with the momentum in our business during the  
22 second quarter, especially in our direct segments which grew nearly  
23 45% sequentially as compared to the first quarter of 2021 . . . .  
24 ***Improved utilization and accelerated new product uptake both***  
25 ***contributed to strong results in the quarter*** while capital sales were  
26 relatively stable compared to the first quarter of 2021. ***Our US business***  
27 ***led overall performance***, while our UK and Europe teams continued to  
28 drive solid execution amidst ongoing regional COVID-19 disruptions.  
Beyond financial results, we are making great progress advancing  
several high priority R&D programs as well as clinical trials and  
regulatory approvals, including – as announced earlier this week – the  
approval and launch of our groundbreaking AcQMap 8 software suite  
with advanced imaging algorithms. The recent HRS meeting further  
underscored our opportunity to transform the field of electrophysiology  
for patients, physicians, and healthcare systems. With our recent capital

1 raise, we are well-positioned to accelerate critical investments in our  
2 business.”

3 37. That same day, Acutus held a conference call with investors and  
4 securities analysts hosted by the Individual Defendants to discuss the Company’s  
5 financial performance. As part of his prepared remarks, defendant Burgess provided  
6 an update on the Company’s key strategic priorities, claiming substantial progress  
7 had been made in AcQMap installations and stating, in pertinent part, as follows:

8 . . . During today’s call, *I will provide an update on our key*  
9 *strategic priorities as well as some recent clinical, commercial and*  
10 *market developments.* I will also comment on our second quarter  
11 results and provide some thoughts on external market dynamics.

12 \* \* \*

13 *Over the past several months, we have seen ongoing*  
14 *improvements across our 3 strategic pillars: technology and*  
15 *innovation leadership, commercial execution and operational*  
16 *excellence.* These improvements are reflected in our second quarter  
17 financial results as well as in recent product approvals and clearances,  
18 R&D, program development and physician engagement.

19 \* \* \*

20 Now turning to our results during the second quarter. We  
21 generated revenue of \$4.7 million compared to \$1.1 million in Q2 of  
22 2020 and compared to \$3.6 million in Q1 of 2021. Year-over-year  
23 growth was driven by higher procedure volumes globally and increased  
24 capital equipment revenue, while procedure volumes and disposable  
25 revenues accounted for sequential growth in the quarter. *We increased*  
26 *the worldwide installed base of second-generation AcQMap consoles*  
27 *to 68 at the end of Q2, up from 57 at the end of Q1, bringing the total*  
28 *installed base of AcQMap 8 consoles to 70 as of June 30, 2021, versus*  
*62 at the end of last quarter. We exited the quarter with a strong*  
*funnel and expect to see continued growth in our installed base*  
*through the rest of the year.*

As discussed previously, *we continue to focus not only on*  
*growing our installed base, but also targeting the right accounts for*  
*sustainable utilization. During the second quarter, we saw these*  
*efforts take hold with several new customers now performing*  
*procedure volumes within the top quartile of utilization. At these*  
*same accounts, we saw active reorder rates during both exiting Q2 as*  
*well as here early in Q3.*

38. As a part of his prepared remarks, defendant Roman provided the  
Company’s outlook for the balance of 2021, stating, in pertinent part, as follows:

1 Looking to the remainder of 2021, I would like to provide some  
2 further detail regarding our outlook for the rest of the year. ***For the full***  
3 ***year, we are maintaining our guidance range and expect revenue to***  
4 ***be in a range of \$22 million to \$30 million.*** We recognize the wide  
5 range in this outlook for the second half of the year. ***This largely relates***  
6 ***to the variables in the external environment as well as the extent to***  
7 ***which our business is influenced by capital orders and***  
8 ***conversions. . . .***

9 As it relates to the phasing of sales through the back half of the  
10 year, we would ***expect a disproportionate weighting to the fourth***  
11 ***quarter.*** This is largely tied to the potential for short-term COVID  
12 disruptions, some enhanced seasonality due to extended vacations and  
13 time away from the hospital in several key centers and geographies and  
14 the resulting impact and timing of reorder rates and new system  
15 installations. Based on the electric procedure volume patterns observed  
16 in 2020, we think it is very reasonable to expect any procedure volume  
17 disruption to prove transient. We will provide further updates during  
18 investor conferences and our third quarter earnings call in November.

19 39. During the question-and-answer session of the conference call, when  
20 asked what gave defendants confidence that Acutus was on track to achieve its stated  
21 2021 financial guidance, defendant Roman highlighted new account placements,  
22 new product adoption and increased utilization. The following exchange is  
23 illustrative:

24 [Saran Baskar, JPMorgan Chase & Co:] This is Saran on from  
25 Robbie's team. The color ***on the guidance*** there, I just want to dig into  
26 that a little bit. So, if I look at the midpoint, \$26 million in sales for the  
27 full year versus about 8 -- just over \$8 million in the first half. ***What***  
28 ***are you seeing right now in the quarter that gives you the confidence***  
29 ***that either utilization or new placements can get you to the lower end***  
30 ***or the midpoint of that guidance?*** I mean ***what are you seeing so far***  
31 ***that gives you that confidence?***

32 [Roman:] Sure. Let me just frame that a little bit. If I look at  
33 the year-to-date drivers -- and the way I think about that is, ***the***  
34 ***improvement in our revenue*** from the fourth quarter to the first quarter  
35 and the first quarter to the second quarter -- ***what the drivers of that***  
36 ***were, as I said, new account placements, new product adoption and***  
37 ***increased utilization.*** As I look at each of those -- let me start with new  
38 account openings. ***We opened a number of accounts very late in the***  
39 ***second quarter,*** what I would describe as really the last week of the  
40 second quarter. And those accounts where we opened late, ***we are***  
41 ***seeing very strong uptake in utilization.***

42 \* \* \*

43 ***At the same token, those new accounts that we opened at the***  
44 ***end of the second quarter really had no contribution to second***  
45 ***quarter revenue, and we should see the contribution of those***

1 *sequentially start to increase in Q3 versus Q2 as well.* And then the  
2 last piece of the puzzle here, and this is a very important variable, both  
3 in Q2 and for the rest of the year is, how we execute against capital  
4 conversions. And just to remind you and everybody on the call, well,  
5 the increase in our installed base is not necessarily reflective of a capital  
6 sale. Remember, we place systems under evaluation and later aim to  
7 convert those to a capital sale. *So we have a number of systems coming*  
8 *up for evaluation in – where that evaluation has completed, where we*  
9 *expect to convert those to capital. We already have converted – we*  
10 *already have seen conversions here in the third quarter.*

11 40. Later during the conference call, when asked about system installations  
12 and relocations, defendant Roman stated that Acutus was “focus[ed] . . . on finding  
13 the absolute right accounts,” so the Company “will probably have *some* removals,”  
14 yet failed to disclose that Acutus was planning to terminate and relocate 20% of  
15 then-existing AcQMap systems installations, with dire financial repercussions for  
16 the Company, as reflected in the following exchange:

17 [William John Plovanic, Analyst – Canaccord Genuity Corp.:]  
18 Great. *I’d like to focus on the system placement pipeline.* First, just  
19 with the new COO coming on and kind of getting the CRM going, and  
20 then *you’ve made some commentary regarding focusing on the right*  
21 *accounts. I want to make sure that we don’t get lost and concerned if*  
22 *maybe the installed base numbers are different in the next couple of*  
23 *quarters because you’re shifting systems around in the field, I wanted*  
24 *to ask that question.*

25 And *how should we think about that?* And then from  
26 unproductive accounts to potentially productive accounts. And then  
27 secondly, as you talk about that new installed pipeline, you have a lot  
28 of systems out there that are getting ready or kind of hitting that a 6 to  
12-month time frame where there’s some decisions to be made. And  
how should we really think about the capital as we exit this year and  
into next year, especially when you think about the lease versus the sale  
programs?

29 [Roman:] . . . The capital contribution to our business, Bill, will  
30 become more significant here in the second half of the year and on a  
31 go-forward basis. . . . And the reason for that is exactly what you  
32 pointed out, which is *we have a number of evaluations that are coming*  
33 *to expiration. And we will be in a position to convert those to capital*  
34 *commitment deals or cash sales.*

35 \* \* \*

36 On your first question *about the pace of installs and the strategy*  
37 *around identifying productive accounts and moving systems around,*  
38 *we are actively doing that.* There is very little value to us and actually,  
anyone in the ecosystem, the patient or us having a system in a site that  
doesn’t make sense. And that can be the result of the physician



1 champion has left. *It can be the result of the fact that we, quite*  
2 *frankly, in our early commercial launch did not tick the right*  
3 *accounts into which to install these systems or there can be a variety*  
4 *of other factors at play.*

5 *So we will look to move systems around*, bring them back here,  
6 upgrade them *and redeploy them into the field*. In the second quarter,  
7 as I said, we added 8 net installations to the installed base. *We will*  
8 *probably have some removals here in the back half of the year. So*  
9 *that could impact the pace of the increase in the installed base.* I  
10 would certainly expect to see the installed base higher on December 31  
11 and where it was on June 30. But *our focus is really on finding the*  
12 *absolute right accounts*. And without – I don't want to go into the  
13 revenue numbers, that one account, in particular, is ordered here in July,  
14 but it is really a reflection of getting accounts to the point where they're  
15 doing multiple procedures a week and that driving consistent utilization  
16 and reorder rates.

17 41. As defendants knew or recklessly disregarded, the statements  
18 referenced in ¶¶35-40 above were materially false and misleading and/or omitted  
19 material information for the reasons set forth in ¶34.

20 42. On August 13, 2021, Acutus filed with the SEC its Form 10-Q for the  
21 second quarter ended June 30, 2021 (the "Q2 Form 10-Q"), signed by the Individual  
22 Defendants.

23 43. The Q2 Form 10-Q repeated, in all material respects, the statements set  
24 forth in the Q1 Form 10-Q, as detailed in ¶¶32-33 above, and was materially false  
25 and misleading and/or omitted material information for the reasons set forth in ¶34.

### 26 **POST CLASS PERIOD EVENTS**

27 44. After the market closed on November 11, 2021, the last day of the Class  
28 Period, Acutus announced its financial results for the third quarter ended September  
30, 2021 ("Q3 2021"). The Company reported revenues during the period of just  
\$4.6 million, which missed Wall Street estimates by nearly 20%. Acutus also  
slashed its 2021 sales guidance from a range of \$22 to \$30 million to a range of \$17  
to \$17.5 million, a **34% decline** at the midpoint. As a result, the Company was now  
tracking a **full year behind** the financial trajectory defendants had provided during  
the Class Period. Acutus blamed the lower-than-expected financial performance and  
guidance, in substantial part, on the adoption of the Company's new

1 commercialization strategy focused on system relocations, sales training and system  
2 utilization.

3 45. During the conference call held with investors and securities analysts  
4 to discuss the Company's Q3 2021 financial results, defendants revealed that Acutus  
5 had removed and repositioned approximately 20% of the AcQMap systems under  
6 evaluation arrangements during the quarter. Defendants admitted that these systems  
7 had been experiencing below-target utilization and that the need to relocate such a  
8 large portion of the Company's installed base would inhibit Acutus' growth and  
9 ability to scale. For example, defendant Burgess stated, in pertinent part, as follows:

10 We ended the quarter with an installed base of 71 AcQMap systems.  
11 During the quarter *we made the strategic decision to remove and*  
12 *reposition certain systems with below target utilization* or where key  
physician users had relocated to a new geography.

13 As we focus our commercial strategy, *we are also looking to*  
14 *optimize console placement. Targeting the right accounts where we*  
15 *can drive higher adoption will allow us to optimize utilization of our*  
16 *cash and human resources.* This does not mean that we won't  
continue to grow our installed base. *That simply means that we will*  
17 *be extraordinarily disciplined in where we make the considerable*  
18 *investment to install a new system.*

19 \* \* \*

20 The external environment has proven a major headwind and the impact  
21 that the pandemic has had on procedure volumes, hospital access,  
22 recruiting and new technology adoption has been more severe than  
23 expected. At the same time, *we have not fully executed on our own*  
24 *internal initiatives.*

25 *We recognize this as a management team and are responding*  
26 *accordingly. In the U.S., we have centered our business around what*  
27 *we call Power Pods, which are regions where we have a high*  
28 *concentration of accounts, utilization, and correspondingly Acutus*  
*representation.* This has led to our strong performance in the  
Southeastern and Southwestern United States. The U.K. and parts of  
Central Europe take on a similar profile with strength in concentrated  
areas.

Going forward, the key is to replicate and expand this model.  
*This strategy* will drive long-term success and deeper account  
penetration, but *will also likely take longer to scale than we had*  
*initially anticipated.*

1 46. Defendant Burgess continued by admitting to a host of previously  
2 undisclosed execution failures in the Company's placement of AcQMaps, stating, in  
3 pertinent part, as follows:

4 ***In the U.S., we have centered our business around what we call Power***  
5 ***Pods, which are regions where we have a high concentration of***  
6 ***accounts, utilization, and correspondingly Acutus representation.***  
7 This has led to our strong performance in the Southeastern and  
8 Southwestern United States. The U.K. and parts of Central Europe take  
9 on a similar profile with strength in concentrated areas.

10 ***Going forward, the key is to replicate and expand this model.***  
11 ***This strategy will drive long-term success and deeper account***  
12 ***penetration, but will also likely take longer to scale than we had***  
13 ***initially anticipated.***

14 \* \* \*

15 This is a complicated business, and ***you've got to get everything right***  
16 ***in order to convert a physician and gain their regular utilization and***  
17 ***start to ramp.*** I think the first issue I focused on is ***some of the hospitals***  
18 ***we targeted early on were profiled expertly, and we knew very well***  
19 ***who we were working with,*** and what their procedural approach was  
20 going to be, and how well we could and did fit in with their workflow  
21 and their philosophy around ablate and our diagnosis.

22 And we've had great results there. We have tens of physicians  
23 and hospitals where we're seeing really nice uptake and regular  
24 utilization. And some of the ***other places we targeted,*** I think we just –  
25 ***#1, we might have missed the boat in terms of physician profiling and***  
26 ***understanding the match of where we were in our journey in terms of***  
27 ***refinement of all the different procedural nuances and approaches***  
28 ***and also where they were, kind of we're we meeting them where they***  
were. Were we installing in centers that wanted to stay with a standard  
kind of anatomical approach to their ablations. Or are we going into  
centers that didn't really accept that, that was necessarily good enough?  
And where those doctors and centers really committed to learning –  
getting up the learning curve of a new technology in order to hopefully  
provide better outcomes and faster procedures.

\* \* \*

So as we think about the Power Pod, if you have that table side  
person who also has account management skills and you pair them up  
with a rockstar mapper or therapy manager . . . .

. . . . [Y]ou can be very, very effective. But ***I think we***  
***understaffed that team initially.*** The second thing is that the way to  
scale this is to where, ***I think, rather than kind of pock mark the***  
***country with Pods here and there, it's going to be more cost-effective***  
***to the extent possible that you kind of radius or radiate out from those***  
***initial Power Pods.***

1           And if you look at the history of our brethren in this industry, the  
2 leaders in this business, that's very much how they evolved over time  
3 over the last decade – 2 decades as well is they really deployed a Pod  
4 strategy. I think we should have come to the sooner, but we are where  
5 we are, and we are now stopping on the accelerator to scale that  
6 approach.

7           47. On this news, the price of Acutus common stock plummeted **45%** to  
8 close at \$3.64 per share on November 12, 2021 on very heavy trading volume of  
9 over 5.7 million shares traded.

10           48. On January 19, 2022, Acutus announced that the Company was  
11 undergoing a significant corporate restructuring that would involve a planned  
12 reduction in the Company's workforce and additional cost-saving measures  
13 designed to cut Company expenses by over \$23 million and substantially reduce the  
14 Company's quarterly cash burn rate.

15           49. By January 28, 2022, the price of Acutus common stock closed at less  
16 than \$2 per share, **85% below** the secondary offering price just six months before.

17           50. The market for Acutus common stock was open, well-developed and  
18 efficient at all relevant times. As a result of defendants' materially false and  
19 misleading statements and omissions as alleged herein, Acutus common stock traded  
20 at artificially inflated prices during the Class Period. Plaintiff and other members of  
21 the Class (defined below) purchased Acutus common stock relying upon the  
22 integrity of the market price of Acutus common stock and market information  
23 relating to Acutus, and have been damaged thereby.

24           51. During the Class Period, defendants materially misled the investing  
25 public, thereby inflating the price of Acutus common stock, by publicly issuing false  
26 and misleading statements and omitting to disclose material facts necessary to make  
27 defendants' statements, as set forth herein, not false and misleading. Defendants'  
28 Class Period misrepresentations were materially false and misleading in that they  
failed to disclose material adverse information and misrepresented the truth about  
the Company, its business and operations, as alleged herein.



1           54. The fraudulent scheme described herein could not have been  
2 perpetrated during the Class Period without the knowledge and complicity of, or at  
3 least the reckless disregard by, personnel at the highest levels of the Company,  
4 including the Individual Defendants. Given their executive level positions with  
5 Acutus, the Individual Defendants controlled the contents of Acutus' public  
6 statements during the Class Period. The Individual Defendants were each provided  
7 with or had access to the information alleged herein to be false and/or misleading  
8 prior to or shortly after its issuance and had the ability and opportunity to prevent its  
9 issuance or cause it to be corrected. Because of their positions and access to material  
10 non-public information, the Individual Defendants knew or recklessly disregarded  
11 that the adverse facts specified herein had not been disclosed to and were being  
12 concealed from the public and that the positive representations that were being made  
13 were false and misleading.

14           55. Indeed, the AcQMap systems are the Company's most important  
15 products, and the Individual Defendants stated that they were "keenly focused" on  
16 the very issues that plaintiff alleges they failed to disclose regarding the placement  
17 and commercialization of the AcQMap systems. As a result, each of the Individual  
18 Defendants was responsible for the accuracy of Acutus' corporate statements and is,  
19 therefore, responsible and liable for the representations contained therein.

20           56. Plaintiff also alleges that scienter of the Individual Defendants (who, as  
21 executive officers of the Company, knew or recklessly ignored facts related to the  
22 core operations of Acutus) can be imputed to Acutus. The adverse developments at  
23 issue impacted the Company's most important source of revenue.

24           57. Further evidencing their scienter, defendants timed the secondary  
25 offering so that it was priced before the adverse information about the Company was  
26 revealed to the market to facilitate the secondary offering and create artificial  
27 demand for the common shares sold therein, as well to maximize the amount of  
28 money the Company could raise in the secondary offering. The Company raised

1 over \$88 million in gross proceeds from the sale of Acutus common stock in the  
2 secondary offering.

3 58. Defendants' scienter is also underscored by the certifications of the  
4 Individual Defendants mandated by the Sarbanes-Oxley Act of 2002, which  
5 acknowledged their responsibility to investors for establishing and maintaining  
6 controls to ensure that material information about Acutus was made known to them  
7 and that the Company's disclosure controls were operating effectively.

### 8 **NO SAFE HARBOR**

9 59. The statutory safe harbor provided for forward-looking statements  
10 under the Private Securities Litigation Reform Act of 1995 does not apply to any of  
11 the false statements alleged herein. The statements alleged to be false and  
12 misleading herein all relate to then-existing facts and conditions. In addition, to the  
13 extent certain of the statements alleged to be false may be characterized as forward-  
14 looking, they were not adequately identified as "forward-looking statements" when  
15 made and there were no meaningful cautionary statements identifying important  
16 factors that could cause actual results to differ materially from those in the  
17 purportedly forward-looking statements. In the alternative, to the extent that the  
18 statutory safe harbor is determined to apply to any forward-looking statements  
19 pleaded herein, defendants are liable for those false forward-looking statements  
20 because at the time each of those forward-looking statements was made, the speaker  
21 had actual knowledge that the forward-looking statement was materially false or  
22 misleading, and/or the forward-looking statement was authorized or approved by an  
23 executive officer of Acutus who knew that the statement was false when made.

### 24 **CLASS ACTION ALLEGATIONS**

25 60. Plaintiff brings this action as a class action pursuant to Federal Rules of  
26 Civil Procedure 23(a) and (b)(3) on behalf of a Class consisting of all those who  
27 purchased Acutus common stock between May 13, 2021 and November 11, 2021,  
28 inclusive, and were damaged thereby (the "Class"). Excluded from the Class are

1 defendants, the officers and directors of the Company, at all relevant times, the  
2 members of their immediate families and their legal representatives, heirs,  
3 successors or assigns, and any entity in which defendants have or had a controlling  
4 interest.

5         61. The members of the Class are so numerous that joinder of all members  
6 is impracticable. Throughout the Class Period, Acutus common stock was actively  
7 traded on the NASDAQ. While the exact number of Class members is unknown to  
8 plaintiff at this time and can only be ascertained through appropriate discovery,  
9 plaintiff believes that there are thousands of members in the proposed Class.  
10 Millions of Acutus common shares were traded publicly during the Class Period on  
11 the NASDAQ. As of November 8, 2021, there were approximately 28 million  
12 Acutus common shares outstanding. Record owners and other members of the Class  
13 may be identified from records maintained by Acutus or its transfer agent and may  
14 be notified of the pendency of this action by mail, using the form of notice similar  
15 to that customarily used in securities class actions.

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

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

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

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

27  
28



1 (b) whether statements made by defendants to the investing public  
2 during the Class Period omitted and/or misrepresented material facts about the  
3 business and operations of Acutus;

4 (c) whether the price of Acutus common shares was artificially  
5 inflated during the Class Period; and

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

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

#### 14 **LOSS CAUSATION**

15 66. During the Class Period, as detailed herein, defendants engaged in a  
16 scheme to deceive the market and a course of conduct that artificially inflated the  
17 prices of Acutus common stock and operated as a fraud or deceit on purchasers of  
18 Acutus common stock. When defendants' prior misrepresentations and fraudulent  
19 conduct were disclosed and became apparent to the market, the price of Acutus  
20 common stock declined significantly as the prior artificial inflation came out of the  
21 price of Acutus common stock.

22 67. By concealing from investors the adverse facts detailed herein,  
23 defendants presented a misleading picture of Acutus' business, prospects and  
24 operations. Defendants' false and misleading statements had the intended effect and  
25 caused the price of Acutus common stock to trade at artificially inflated levels  
26 throughout the Class Period, reaching as high as \$18 per share on June 7, 2021.  
27 Following the adverse revelations detailed herein, the price of Acutus common stock  
28

1 fell to less than \$2 per share on January 28, 2022 – nearly **90%** below the Class  
2 Period high.

3 68. As a result of their purchases of Acutus common stock at artificially  
4 inflated prices during the Class Period, plaintiff and the other Class members  
5 suffered economic loss, *i.e.*, damages, under the federal securities laws.

6 69. When the truth about the Company was revealed to the market, the price  
7 of Acutus common stock fell significantly. The decline removed the inflation from  
8 the price of Acutus common stock, causing real economic loss to investors who had  
9 purchased Acutus common stock during the Class Period. The decline in the price  
10 of Acutus common stock when the corrective disclosure came to light was a direct  
11 result of the nature and extent of defendants’ fraudulent misrepresentations being  
12 revealed to investors and the market. The timing and magnitude of the price decline  
13 in Acutus common stock negate any inference that the loss suffered by plaintiff and  
14 the other Class members was caused by changed market conditions, macroeconomic  
15 or industry factors, or Company-specific facts unrelated to defendants’ fraudulent  
16 conduct.

17 70. The economic loss, *i.e.*, damages, suffered by plaintiff and the other  
18 Class members was a direct result of defendants’ fraudulent scheme to artificially  
19 inflate the price of Acutus common stock and the subsequent significant decline in  
20 the value of Acutus common stock when defendants’ prior misrepresentations and  
21 other fraudulent conduct were revealed.

22 **APPLICABILITY OF PRESUMPTION OF RELIANCE**

23 71. At all relevant times, the market for Acutus common stock was an  
24 efficient market for the following reasons, among others:

25 (a) Acutus common stock met the requirements for listing, and was  
26 listed and actively traded on the NASDAQ, a highly efficient and automated market;

27 (b) according to the Company’s Form 10-Q filed with the SEC on  
28 November 12, 2021, Acutus had approximately 28 million common shares

1 outstanding as of November 8, 2021, demonstrating a very active and broad market  
2 for Acutus common stock;

3 (c) as a regulated issuer, Acutus filed periodic public reports with  
4 the SEC and NASDAQ;

5 (d) Acutus regularly communicated with public investors via  
6 established market communication mechanisms, including regular disseminations of  
7 press releases on the national circuits of major newswire services, the Internet and  
8 other wide-ranging public disclosures; and

9 (e) Acutus was followed by securities analysts employed by major  
10 brokerage firms who wrote reports which were distributed to the sales force and  
11 certain customers of their respective brokerage firms. Each of these reports was  
12 publicly available and entered the public marketplace.

13 72. As a result of the foregoing, the market for Acutus common stock  
14 promptly digested current information regarding Acutus from publicly available  
15 sources and reflected such information in the price of Acutus common stock. Under  
16 these circumstances, all purchasers of Acutus common stock during the Class Period  
17 suffered similar injury through their purchase of Acutus common stock at artificially  
18 inflated prices, and a presumption of reliance applies.

19 73. A presumption of reliance is also appropriate in this action under the  
20 Supreme Court's holding in *Affiliated Ute Citizens v. United States*, 406 U.S. 128  
21 (1972), because plaintiff's claims are based, in significant part, on defendants'  
22 material omissions. Because this action involves defendants' failure to disclose  
23 material adverse information regarding their business and operations, positive proof  
24 of reliance is not a prerequisite to recovery. All that is necessary is that the facts  
25 withheld be material in the sense that a reasonable investor might have considered  
26 them important in making investment decisions. Given the importance of  
27 defendants' material misstatements and omissions set forth above, that requirement  
28 is satisfied here.

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**COUNT I**

**For Violation of §10(b) of the Exchange Act and Rule 10b-5  
Against All Defendants**

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

75. During the Class Period, defendants disseminated or approved the false or misleading 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.

76. Defendants violated §10(b) of the Exchange Act and Rule 10b-5 in that they, directly and indirectly, by the use of the means or instrumentality of interstate commerce, the mails or the facility of a national securities exchange:

- (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 plaintiff and others similarly situated in connection with their purchases of Acutus common stock during the Class Period.

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

78. By virtue of the foregoing, defendants have violated §10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.



1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiff prays for judgment as follows:

3 A. Determining that this action is a proper class action, designating  
4 plaintiff as Lead Plaintiff and certifying plaintiff as a Class representative under Rule  
5 23 of the Federal Rules of Civil Procedure and plaintiff’s counsel as Lead Counsel;

6 B. Awarding compensatory damages in favor of plaintiff and the other  
7 Class members against all defendants, jointly and severally, for all damages  
8 sustained as a result of defendants’ wrongdoing, in an amount to be proven at trial,  
9 including interest thereon;

10 C. Awarding plaintiff and the Class their reasonable costs and expenses  
11 incurred in this action, including counsel fees and expert fees; and

12 D. Awarding such other and further relief as the Court may deem just and  
13 proper.

14 **JURY DEMAND**

15 Plaintiff demands a trial by jury.  
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