UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JEFFRY BROWN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. ACUTUS MEDICAL, INC., VINCE BURGESS and DAVID H. ROMAN, Defendants.	Case No. **'22CV206 JO KSC** CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS DEMAND FOR JURY TRIAL

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

NATURE OF THE ACTION

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

JURISDICTION AND VENUE

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

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

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

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

PARTIES

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

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

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

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

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

SUBSTANTIVE ALLEGATIONS

Background

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

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

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

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

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

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

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

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

Defendants' Fraudulent Scheme

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

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

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

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

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

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

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

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

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

MATERIALLY FALSE AND MISLEADING STATEMENTS AND OMISSIONS ISSUED DURING THE CLASS PERIOD

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

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

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

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

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

* * *

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

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

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

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

On our last earnings call, we outlined 5 key factors to support 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***.

* * *

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

30. During the question-and-answer session of the conference call, when asked about 2021 guidance and system placements, defendant Burgess stated that "most of our accounts are kind of up and running pretty close to normal operations" and that "we would probably move a few consoles around" but "I think we're on track now." The following exchange is illustrative:

> [Robert Justin Marcus – Analyst, JPMorgan Chase & Co:] Just wanted to start, ***as we think about guidance for the rest of the year***, 2Q probably came in just a hair lower than where The Street was thinking. Placements in first quarter were a bit lower. ***It's still calling for a pretty meaningful acceleration in third quarter and fourth quarter***.
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> So I'd say, ***a, what gives you confidence that sales can accelerate like that*** in third and fourth quarter? And what kind of environment is that assuming?
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> And then, ***b, how should we think about the balance of what you're assuming for new system placements and then utilization of system placements*** to get to those revenue numbers?
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> [Burgess:] So in terms of the environment that's all kind of predicated on, I think we're kind of assuming, as we get into the back half of the year in the U.S., we're looking at an environment that approaches normalcy. So the – really, the lingering thing we're seeing primarily on the East Coast and kind of Northern Midwest is some continued friction in terms of access to labs. So we can bring one person in versus one person plus a mapper trainee or something like that. But other than that, I mean, ***I think most of our accounts are kind of up and running pretty close to normal operations***.
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> * * *
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> ***In terms of systems placements***, I mean, I think the models have it pretty well that I've seen most recently, have it pretty well right in terms of what we think we can do in terms of placements. Q1, in the prior call when we talked about how we were thinking about Q1, ***I tried to get across that with the targeting that we were really focusing in on*** and with adding Duane and really thinking about where we place our systems, ***the types of physicians we want to be working with at this phase of our evolution, I kind of had the sense that we would probably move a few consoles around, and it might be a little bit lighter than the rest of the year in terms of placements***. And then as we came into Q2, things would start to ramp up again.
>
> And as I mentioned in my prepared comments, I think our net new adds in April alone in terms of installed base equal to Q1. ***So I think we're on track now. Just Q1 was just a little light, almost intentionally***. We really wanted to make sure everything we installed was in the right place, the expectations were set properly, and we have the right docs identified.

31. The statements referenced in ¶¶26-30 above were materially false and 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 infrastructure necessary to appropriately educate, train and support medical service providers on the system's operations;

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

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

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

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

Factors Affecting Our Performance

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

- ***Market Acceptance***. The growth of our business will depend substantially on our ability to increase our installed base. . . .

- ***Commercial Organization Size and Effectiveness***. As of March 31, 2021, our commercial organization consisted of 88 individuals with substantial applicable medical device, sales and clinical experience, including sales managers, sales representatives and mappers. . . . The rate at which we grow our commercial organization and the speed at which newly hired personnel become effective can impact our revenue growth or our costs incurred in anticipation of such growth.

- ***Strategic Partnerships and Acquisitions.*** We have in the past, and may in the future, enter into strategic partnerships and acquire complementary businesses, products or technologies. . . .

- ***Continued Investment in Innovation***. Our business strategy relies significantly on innovation to develop and introduce new products and to differentiate our products from our competitors.

* * *

- ***Product and Geographic Mix; Timing***. Our financial results, including our gross margins, may fluctuate from 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

> product introductions and other market activities of industry participants. . . .
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> - ***COVID-19 Pandemic.*** Beginning in early March 2020, the COVID-19 pandemic and the measures imposed to contain this pandemic disrupted and are expected to continue to impact our business. . . .
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> In addition, we may experience meaningful variability in our quarterly revenue and gross profit/loss as a result of a number of factors, including, but not limited to: inventory write-offs and write-downs; costs, benefits and timing of new product introductions; the availability and cost of components and raw materials; and fluctuations in foreign currency exchange rates. Additionally, we may experience quarters in which our costs and operating expenses, in particular our research and development expenses, fluctuate depending on the stage and timing of product development.
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> While certain of these factors may present significant opportunities for us, they all pose significant risks and challenges that we must address. See the section titled "Risk Factors" for more information.

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

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

34. The statements referenced in ¶¶32-33 above were materially false and 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

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

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

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

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

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

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

> "We are pleased with the momentum in our business during the second quarter, especially in our direct segments which grew nearly 45% sequentially as compared to the first quarter of 2021 . . . . ***Improved utilization and accelerated new product uptake both contributed to strong results in the quarter*** while capital sales were relatively stable compared to the first quarter of 2021. ***Our US business led overall performance***, while our UK and Europe teams continued to 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

raise, we are well-positioned to accelerate critical investments in our business."

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

> . . . During today's call, ***I will provide an update on our key strategic priorities as well as some recent clinical, commercial and market developments***. I will also comment on our second quarter results and provide some thoughts on external market dynamics.
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> ***Over the past several months, we have seen ongoing improvements across our 3 strategic pillars: technology and innovation leadership, commercial execution and operational excellence***. These improvements are reflected in our second quarter financial results as well as in recent product approvals and clearances, R&D, program development and physician engagement.
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> * * *
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> Now turning to our results during the second quarter. We generated revenue of $4.7 million compared to $1.1 million in Q2 of 2020 and compared to $3.6 million in Q1 of 2021. Year-over-year growth was driven by higher procedure volumes globally and increased capital equipment revenue, while procedure volumes and disposable revenues accounted for sequential growth in the quarter. ***We increased the worldwide installed base of second-generation AcQMap consoles to 68 at the end of Q2, up from 57 at the end of Q1, bringing the total 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:

> Looking to the remainder of 2021, I would like to provide some further detail regarding our outlook for the rest of the year. ***For the full year, we are maintaining our guidance range and expect revenue to be in a range of $22 million to $30 million***. We recognize the wide range in this outlook for the second half of the year. ***This largely relates to the variables in the external environment as well as the extent to which our business is influenced by capital orders and conversions***. . . .
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> As it relates to the phasing of sales through the back half of the year, we would ***expect a disproportionate weighting to the fourth quarter***. This is largely tied to the potential for short-term COVID disruptions, some enhanced seasonality due to extended vacations and time away from the hospital in several key centers and geographies and the resulting impact and timing of reorder rates and new system installations. Based on the electric procedure volume patterns observed in 2020, we think it is very reasonable to expect any procedure volume disruption to prove transient. We will provide further updates during investor conferences and our third quarter earnings call in November.

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

> [Saran Baskar, JPMorgan Chase & Co:] This is Saran on from Robbie's team. The color ***on the guidance*** there, I just want to dig into that a little bit. So, if I look at the midpoint, $26 million in sales for the full year versus about 8 -- just over $8 million in the first half. ***What are you seeing right now in the quarter that gives you the confidence that either utilization or new placements can get you to the lower end or the midpoint of that guidance***? I mean ***what are you seeing so far that gives you that confidence***?
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> [Roman:] Sure. Let me just frame that a little bit. If I look at the year-to-date drivers – and the way I think about that is, ***the improvement in our revenue*** from the fourth quarter to the first quarter and the first quarter to the second quarter – ***what the drivers of that were, as I said, new account placements, new product adoption and increased utilization***. As I look at each of those – let me start with new account openings. ***We opened a number of accounts very late in the second quarter***, what I would describe as really the last week of the second quarter. And those accounts where we opened late, ***we are seeing very strong uptake in utilization***.
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> ***At the same token, those new accounts that we opened at the end of the second quarter really had no contribution to second quarter revenue, and we should see the contribution of those***

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

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

> [William John Plovanic, Analyst – Canaccord Genuity Corp.:] Great. ***I'd like to focus on the system placement pipeline***. First, just with the new COO coming on and kind of getting the CRM going, and then ***you've made some commentary regarding focusing on the right accounts. I want to make sure that we don't get lost and concerned if maybe the installed base numbers are different in the next couple of quarters because you're shifting systems around in the field***, I wanted to ask that question.
>
> And ***how should we think about that***? And then from unproductive accounts to potentially productive accounts. And then secondly, as you talk about that new installed pipeline, you have a lot 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?
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> [Roman:] . . . The capital contribution to our business, Bill, will become more significant here in the second half of the year and on a go-forward basis. . . . And the reason for that is exactly what you pointed out, which is ***we have a number of evaluations that are coming to expiration. And we will be in a position to convert those to capital commitment deals or cash sales***.
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> On your first question ***about the pace of installs and the strategy around identifying productive accounts and moving systems around, 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

> champion has left. ***It can be the result of the fact that we, quite frankly, in our early commercial launch did not tick the right accounts into which to install these systems or there can be a variety of other factors at play***.
>
> ***So we will look to move systems around***, bring them back here, upgrade them ***and redeploy them into the field***. In the second quarter, as I said, we added 8 net installations to the installed base. ***We will probably have some removals here in the back half of the year. So that could impact the pace of the increase in the installed base***. I would certainly expect to see the installed base higher on December 31 and where it was on June 30. But ***our focus is really on finding the absolute right accounts***. And without – I don't want to go into the revenue numbers, that one account, in particular, is ordered here in July, but it is really a reflection of getting accounts to the point where they're doing multiple procedures a week and that driving consistent utilization and reorder rates.

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

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

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

POST CLASS PERIOD EVENTS

44. After the market closed on November 11, 2021, the last day of the Class 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

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

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

> We ended the quarter with an installed base of 71 AcQMap systems. During the quarter ***we made the strategic decision to remove and reposition certain systems with below target utilization*** or where key physician users had relocated to a new geography.
>
> As we focus our commercial strategy, ***we are also looking to optimize console placement. Targeting the right accounts where we can drive higher adoption will allow us to optimize utilization of our cash and human resources***. This does not mean that we won't continue to grow our installed base. ***That simply means that we will be extraordinarily disciplined in where we make the considerable investment to install a new system***.
>
> * * *
>
> The external environment has proven a major headwind and the impact that the pandemic has had on procedure volumes, hospital access, recruiting and new technology adoption has been more severe than expected. At the same time, ***we have not fully executed on our own internal initiatives***.
>
> ***We recognize this as a management team and are responding accordingly. In the U.S., we have centered our business around what we call Power Pods, which are regions where we have a high 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***.

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

> ***In the U.S., we have centered our business around what we call Power Pods, which are regions where we have a high 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***.
>
> * * *
>
> This is a complicated business, and ***you've got to get everything right in order to convert a physician and gain their regular utilization and start to ramp***. I think the first issue I focused on is ***some of the hospitals we targeted early on were profiled expertly, and we knew very well who we were working with***, and what their procedural approach was going to be, and how well we could and did fit in with their workflow and their philosophy around ablate and our diagnosis.
>
> And we've had great results there. We have tens of physicians and hospitals where we're seeing really nice uptake and regular utilization. And some of the ***other places we targeted***, I think we just – #1, ***we might have missed the boat in terms of physician profiling and understanding the match of where we were in our journey in terms of refinement of all the different procedural nuances and approaches 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***.

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

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

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

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

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

51. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Acutus common stock, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Defendants' 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.

52. At all relevant times, the material misrepresentations and omissions particularized in this complaint directly or proximately caused, or were a substantial contributing cause of, the damages sustained by plaintiff and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about Acutus' business and operations. These material misstatements and omissions had the cause and effect of creating in the marketplace an unrealistically positive assessment of Acutus, its business and financial prospects, thus causing the price of the Company's common stock to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in plaintiff and other members of the Class purchasing Acutus common stock at artificially inflated prices, thus causing the damages complained of herein. As a result of defendants' wrongful acts and omissions, plaintiff and the Class purchased Acutus common stock at artificially inflated prices and suffered significant losses and were damaged thereby.

ADDITIONAL SCIENTER ALLEGATIONS

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

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

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

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

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

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

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

NO SAFE HARBOR

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

CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

LOSS CAUSATION

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

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

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

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

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

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

APPLICABILITY OF PRESUMPTION OF RELIANCE

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

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

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

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

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

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

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

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

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

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.

79. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of Acutus common stock during the Class Period.

COUNT II

For Violation of §20(a) of the Exchange Act Against the Individual Defendants

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

81. During the Class Period, the Individual Defendants acted as controlling persons of Acutus within the meaning of §20(a) of the Exchange Act.

82. By virtue of their positions as officers and/or directors of Acutus, and/or their beneficial ownership of Acutus common stock, the Individual Defendants had the power and authority to, and did, cause Acutus to engage in the wrongful conduct.

83. The Individual Defendants were provided with or had unlimited access to the Company's internal reports, press releases, public filings, and other statements alleged by plaintiff to be misleading prior to or shortly after these statements were issued, and had the ability to prevent the issuance of the statements or cause them to be corrected. In particular, the Individual Defendants had direct involvement in and responsibility over the day-to-day operations of the Company and, therefore, are presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein.

84. As a direct and proximate result of Individual Defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of the Company's common stock during the Class Period.

85. By reason of such wrongful conduct, the Individual Defendants are liable pursuant to §20(a) of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment as follows:

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

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

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

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

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: February 15, 2022