UNITED STATES DISTRICT COURT

DISTRICT OF DELAWARE

__________________________________, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. ACUITY BRANDS, INC., VERNON J. NAGEL and RICHARD K. REECE, Defendants.	)	**CIVIL ACTION NO. __________** **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiff ___________________________ ("Plaintiff"), alleges the following based upon the investigation of Plaintiff's counsel, which included, among other things, a review of Defendants' public documents, conference calls and announcements, United States Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Acuity Brands, Inc. ("Acuity" or the "Company") and securities analysts' reports and advisories about the Company. 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 AND OVERVIEW

1. This is a federal class action on behalf of a class of all persons and entities, other than Defendants (defined herein) and their affiliates, who purchased or otherwise acquired Acuity securities between June 29, 2016, and April 3, 2017, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

2. Acuity is a provider of lighting and building management solutions for commercial, institutional, industrial, infrastructure, and residential applications. The Company's principal customers include electrical distributors, retail home improvement centers, electric utilities, and lighting showrooms. Acuity's lighting and building management solutions include luminaires, lighting controls, lighting components, controllers for various building systems (including HVAC, lighting, shades and access control), power supplies, and prismatic skylights.

3. On October 5, 2016, the Company released the first in a series of disappointing quarterly financial and operational reports to investors. During a conference call to discuss the Company's fourth quarter and full-year fiscal 2016 (year ended August 31, 2016) financial results, Defendant Vernon J. Nagel ("Nagel") explained that "[t]his year's presidential election in the US and events such as UK's referendum vote to exit the European Union continue to create uncertainty and volatility." Notwithstanding the disappointing nature of the Company's results, Defendant Nagel assured investors that management "remain[s] bullish regarding the company's prospects for continued profitable growth," and reiterated Acuity's targeted sales growth in the "mid-to-upper-single-digit range" and variable contribution margins in the "mid to upper 20% range." Additionally, Defendant Nagel represented to investors that Acuity was "on a path to almost quadruple [its 200,000 maintenance free beacon-enabled LED lighting fixtures] installed base by the end of calendar 2016." Following this news, shares of the Company's stock declined $12.01 per share, or over 4.7 percent, to close on October 5, 2016, at $242.99 per share, on unusually heavy trading volume.

4. Then, on January 9, 2017, the Company issued a press release to report financial and operational results for the first quarter fiscal 2017 (quarter ended November 30, 2016). During a conference call to discuss those results, Defendant Nagel represented that "[d]emand

softened in the back half of the quarter particularly for smaller projects apparently due to, what many of our customers are telling us, election jitters," and that profitability suffered from carrying excess employees during the quarter "with the anticipation of higher volumes" of sales than that actually generated. Additionally, Defendant Nagel disclosed that Acuity had fallen short of its previously announced target of selling 800,000 maintenance-free LED light-enabled beacons by the end of 2016 and, instead, had only sold 700,000 units. Again, however, Defendants attempted to assure investors during the conference call that management still "remain[s] bullish regarding the company's prospects for continued profitable growth." Additionally, Defendant Nagel stated that, while "variable contribution margin as a percentage of net sales was approximately 20%," management "continue[s] to target a current variable contribution margin on an incremental dollar of sales in the mid to upper 20% range over the course of fiscal 2017." Further, Defendant Nagel emphasized that the Company was "in the process of aligning [the Company's] supply chain cost structure to meet current demand," and that the "expectation is that [during] the second quarter we should start to see positive trends" that align demand with the Company's staffing. Following this additional news, shares of the Company's stock declined an additional $34.85 per share, or nearly 14.7 percent, to close on January 9, 2017, at $202.51 per share, again on unusually heavy trading volume.

5. Finally, on April 4, 2017, the Company issued a press release to report financial and operational results for the second quarter fiscal 2017 (quarter ended February 28, 2017). During a conference call to discuss those results, Defendant Nagel continued to blame "the impact of continued softness in demand for certain short cycle, small lighting projects," but acknowledged for the first time that demand softness "could potentially linger into the second half of 2017." Defendant Nagel further explained that continued overstaffing issues resulted in

the Company "carr[ying] a higher manufacturing cost structure into the quarter in anticipation of servicing a greater level of demand than actually occurred, impacting both gross profit and gross profit margin." Additionally, Defendant Nagel acknowledged that they he longer expected growth in the mid- to upper-single-digit range, but instead expected growth "in the low single digits in the second half of fiscal 2017." Similarly, Defendant Nagel admitted that Acuity's variable contribution margin for the quarter – rather than being in the mid- to upper-twenty percent range – was negative and that "given our results in the first half, [Acuity's] target range will be a challenge for us to achieve for the full year fiscal 2017." Following this disclosure, shares of the Company's stock fell an additional $30.13 per share, or over 14.7 percent, to close on April 4, 2017, at $173.93 per share, again on unusually heavy trading volume.

6. The Complaint alleges that, throughout the Class Period, Defendants failed to disclose material adverse facts about the Company's financial well-being, business relationships, and prospects. Specifically, Defendants: (i) concealed known trends negatively impacting sales of the Company's products; and (ii) overstated the Company's ability to achieve profitable sales growth. As a result of the foregoing, Defendants lacked a reasonable basis for their positive statements about Acuity's current and future business and financial prospects.

7. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class Members suffered damages.

JURISDICTION AND VENUE

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

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

10. Venue is proper in this District pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b).

11. In connection with the acts, conduct and other wrongs alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce.

PARTIES

12. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein, purchased Acuity securities at artificially inflated prices during the Class Period and has been damaged thereby.

13. Defendant Acuity is a Delaware corporation with its principal executive offices located at 1170 Peachtree Street, N.E., Suite 2300, Atlanta, Georgia. Acuity may be served via its registered agent, Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware.

14. Defendant Nagel was, at all relevant times, the Company's President, Chief Executive Officer ("CEO"), and Chairman of the Board of Directors.

15. Defendant Richard K. Reece ("Reece") was, at all relevant times, the Company's Chief Financial Officer ("CFO").

16. Defendants Nagel and Reece are collectively referred to hereinafter as the "Individual Defendants." The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of Acuity's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, i.e., the market. Each Individual Defendant was provided with copies of

the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, each of these Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and misleading.

SUBSTANTIVE ALLEGATIONS

Materially False and Misleading Statements Issued During the Class Period

17. On June 29, 2016, the Company issued a press release to report its financial and operational results for the third quarter fiscal 2016 (quarter ended May 31, 2016). Therein the Company reported "record third quarter results for net sales, net income, and diluted earnings per share." Specifically, for the quarter the Company reported net sales of $851.5 million, operating profit of $121.0 million, net income of $74.0 million, and diluted EPS of $1.69. Commenting on the Company's quarterly financial and operational results, Defendant Nagel stated:

> We were extremely pleased with our achievement of record third quarter results. These results are even more impressive when one considers that we continued to invest in our strong sales growth and areas with significant future growth potential, including the expansion of our solid state luminaire and controls portfolio as well as our building management, software, and Internet of Things solutions. Adjusted gross profit margin was 44.5 percent, a quarterly record, and represented an increase of 130 basis points over prior year's third quarter, while adjusted operating profit margin of 17.2 percent increased 140 basis points over last year's third quarter. The integration of recent acquisitions, which include Distech Controls, Juno Lighting and Geometri, continues to go well. We believe our record third quarter results reflect our ability to provide customers with truly differentiated value from our industry-leading portfolio of innovative lighting and building automation solutions along with superior service.

18. With respect to the Company's outlook, Acuity's June 29, 2016 press release contained the following statements from Defendant Nagel:

> The U.K. referendum vote to exit the European Union has created a great deal of uncertainty and generated significant volatility in the global financial markets. This uncertainty and volatility have the potential to affect consumer and business sentiment which could negatively impact global economic activity. This notwithstanding, we remain bullish regarding the Company's prospects for continued future profitable growth. Third-party forecasts issued in recent months as well as key leading indicators suggest that the growth rate for the North American lighting market, which includes renovation and retrofit activity and comprises over 97 percent of the Company's revenues, will be in the mid-to-upper single digit range for the remainder of fiscal 2016 with expectations that overall demand in our end markets will continue to experience solid growth over the next several years. Our order rates through the month of June reflect this favorable trend. We expect to continue to outperform the growth rates of the markets we serve by executing our strategies focused on growth opportunities for new construction and renovation projects, expansion into underpenetrated geographies and channels, and growth from the continued introduction of new lighting and building automation solutions as part of our integrated, tiered solutions strategy.

19. The statements contained in ¶¶ 17 and 18 were materially false and misleading when made because Defendants were: (i) concealing known trends negatively impacting sales of the Company's products; and (ii) overstating the Company's ability to achieve profitable sales growth. As a result of the foregoing, Defendants lacked a reasonable basis for their positive statements about Acuity's current and future business and financial prospects.

<u>The Truth Slowly Emerges</u>

20. On October 5, 2016, the Company issued a press release to report its financial and operational results for the fourth quarter and full-year fiscal 2016 (year ended August 31, 2016). Therein the Company reported "record fourth quarter and full-year results for net sales, net income, and diluted earnings per share." Specifically, for the quarter the Company reported net sales of $925.5 million, operating profit of $135.1 million, net income of $82.9 million, and quarterly diluted EPS of $1.89. For full-year fiscal 2016, the Company reported net sales of $3.29 billion, operating profit of $475.2 million, net income of $290.8 million, and diluted

EPS of $6.63. Commenting on the Company's fourth quarter and full-year fiscal 2016 financial and operational results, Defendant Nagel stated:

> We were very pleased with our achievement of record fourth quarter and full-year results. These results are even more impressive when one considers that we continued to invest in our strong sales growth and areas with significant future growth potential, including the expansion of our solid state luminaire and controls portfolio as well as our building management, software, and Internet of Things solutions. Fourth quarter's adjusted gross profit margin of 43.5 percent represented an increase of 120 basis points over prior year's fourth quarter, while adjusted operating profit margin of 16.9 percent increased 60 basis points over last year's fourth quarter. We believe our record fourth quarter and full-year results reflect our ability to provide customers with truly differentiated value from our industry-leading portfolio of innovative lighting and building management solutions along with superior service.
>
> … During the fourth quarter, we made the decision to accelerate certain actions to streamline our supply chain, enhance our customer service and drive productivity. These actions included, among others, the closure of a manufacturing facility and the transfer of certain production to alternate locations in order to free up additional capacity for future growth and to better leverage our overall supply chain. These actions overlapped with the ramping-up of a new manufacturing facility and the addition of a new paint line. The combination of these actions created labor shortages in certain locations which negatively impacted production and shipments and resulted in cancelled orders as well as added costs. We estimate these short-term labor issues resulted in cancelled orders and lost contribution margin on more than $25 million of net sales and caused us to incur additional overtime and other costs in excess of $2 million in the quarter. The actions implemented during the fourth quarter are expected to have significant benefits to our business as we go forward. While the impact of these labor issues is mostly behind us, we may experience some modest carry over effect into our first quarter although we do not expect it to have a material impact on our results.

21. With respect to the Company's outlook, Acuity's October 5, 2016 press release contained the following statements from Defendant Nagel:

> We remain bullish regarding the Company's prospects for continued future profitable growth. We expect the growth rate for lighting and energy management solutions in the North American market, which includes renovation and retrofit activity and comprises over 97 percent of the Company's revenues, will be in the mid-to-upper single digit range for fiscal 2017 based on third-party forecasts and other key leading indicators. Our order rates through the month of September reflect this favorable trend. Additionally, we believe that overall demand in our end markets will continue to experience solid growth over the next

> several years. We expect to continue to outperform the growth rates of the markets we serve by executing our strategies focused on growth opportunities for new construction and renovation projects, expansion into underpenetrated geographies and channels, and growth from the continued introduction of new lighting and building management solutions as part of our integrated, tiered solutions strategy.

22. Also on October 5, 2016, Acuity and its senior executive officers – including the Individual Defendants – held a conference call to discuss the Company's financial and operational results. During that conference call, Defendant Nagel noted that Acuity's "results could have been even greater" and explained that "[t]his year's presidential election in the US and events such as UK's referendum vote to exit the European Union continue to create uncertainty and volatility." Notwithstanding the disappointing nature of the Company's financial and operational results, Defendant Nagel assured investors that management "remain[s] bullish regarding the company's prospects for continued profitable growth" and reiterated Acuity's targeted sales growth in the "mid-to-upper-single-digit range" and variable contribution margins in the "mid to upper 20% range." Additionally, Defendant Nagel represented to investors that Acuity was "on a path to almost quadruple [its 200,000 maintenance free beacon-enabled LED lighting fixtures] installed base by the end of calendar 2016."

23. Following the partial disclosures contained in ¶¶ 20 – 22, shares of the Company's stock declined $12.01 per share, or over 4.7 percent, to close on October 5, 2016, at $242.99 per share, on unusually heavy trading volume.

24. However, as detailed below, Defendants continued to mislead investors. Accordingly, the statements contained in ¶¶ 20 – 22 were materially false and misleading when made for the same reasons as those detailed in ¶ 19, *supra*.

25. On January 9, 2017, the Company issued a press release to report its financial and operational results for the first quarter fiscal 2017 (quarter ended November 30, 2016). Therein

the Company reported "record first quarter net sales, net income, and diluted earnings per share." Specifically, for the quarter the Company reported net sales of $851.2 million, operating profit of $126.6 million, net income of $81.7 million, and quarterly diluted EPS of $1.86. Commenting on the Company's quarterly financial and operational results, Defendant Nagel stated:

> We were pleased to deliver record first quarter financial performance and we believe the Company continued to meaningfully outperform the overall growth rate of our end-markets while investing in areas with significant growth potential, including the expansion of our solid state luminaire and lighting controls portfolio as well as our building management and Internet of Things software platform. Initial industry data suggests that the overall lighting market grew very modestly during our first quarter. Nonetheless, we still grew our legacy sales volume 10 percent in the quarter. Our adjusted gross profit margin of 42.4 percent declined 100 basis points compared with the prior year. The decline was due primarily to weaker than expected net sales volume. Other less significant factors included higher manufacturing costs, primarily related to short-term production challenges related to new product introductions, a rise in quality costs, and expected increases in certain employee wages and benefits. Our adjusted operating profit margin of 16.8 percent declined 30 basis points compared with the prior year. Excluding the impact of acquisitions, our variable contribution margin as a percentage of net sales was approximately 20 percent, below our current annual target of a mid-to-upper 20 percent range, primarily due to the impact of less than anticipated net sales and the continued investment in additional headcount to support our Tier 3 and 4 solutions. All in all, we had a solid quarter given market conditions."

26. With respect to the Company's outlook, Acuity's January 9, 2017 press release contained the following statements:

> Mr. Nagel commented, "We believe the softness in demand over the last quarter or so was due to temporary circumstances that for the most part have passed; however, some softness could linger into the second quarter. Our December order activity continues to reflect growth albeit at a slower pace than we experienced over the previous several quarters. Long-term fundamental drivers of the markets we serve still seem to be intact and positive, while independent third-party forecasts and leading indicators continue to suggest positive growth rates for our fiscal 2017. Therefore, we have not meaningfully changed our previous expectations that the fiscal 2017 growth rate for lighting and energy management solutions in the North American market, which includes renovation and retrofit activity, will be in the mid-to-upper single digit range. Similar to prior years, the second fiscal quarter, typically our weakest quarter, is expected to once again be influenced by normal seasonality and the potential for year-end inventory rebalancing by certain customers. Additionally, we believe that overall demand

> in our end markets will continue to experience solid growth over the next several years, and we remain bullish regarding the Company's prospects for continued future profitable growth. We expect to continue to outperform the growth rates of the markets we serve by executing our strategies focused on growth opportunities for new construction and renovation projects, expansion into underpenetrated geographies and channels, and growth from the continued introduction of new lighting and building management solutions as part of our integrated, tiered solutions strategy."
>
> Recent changes in the U.S. political landscape have produced a great amount of rhetoric and debate regarding a wide range of policy options with respect to monetary, regulatory, tax, and trade, amongst others, that may be pursued by the new administration. Any policy changes implemented may have a positive or negative consequence on the Company's financial performance depending on how the changes would influence many factors, including business and consumer sentiment. While management is proactively identifying and evaluating potential contingency options under various certain policy scenarios, it is to [*sic*] early to comment or speculate at this time on the potential ramification of these endless scenarios.

27. Also on January 9, 2017, Acuity and its senior executive officers – including the Individual Defendants – held a conference call to discuss the Company's quarterly financial results. During that conference call Defendant Nagel represented that "[d]emand softened in the back half of the quarter particularly for smaller projects apparently due to, what many of our customers are telling us, election jitters," and that profitability suffered from carrying excess employees during the quarter "with the anticipation of higher volumes" of sales than that actually generated. Additionally, Defendant Nagel disclosed that Acuity had fallen short of its previously announced target of selling 800,000 maintenance-free LED light-enabled beacons by the end of 2016 and, instead, had only sold 700,000 units.

28. Again, however, Defendants attempted to assure investors during the January 9, 2017 conference call that management still "remain[s] bullish regarding the company's prospects for continued profitable growth." Additionally, Defendant Nagel stated that, while "variable contribution margin as a percentage of net sales was approximately 20%," management "continue[s] to target a current variable contribution margin on an incremental dollar of sales in

the mid to upper 20% range over the course of fiscal 2017." Further, Defendant Nagel emphasized that the Company was "in the process of aligning [the Company's] supply chain cost structure to meet current demand," and that the "expectation is that [during] the second quarter we should start to see positive trends" that align demand with the Company's staffing.

29. Following the disclosures contained in ¶¶ 25 – 28, shares of the Company's stock declined an additional $34.85 per share, or nearly 14.7 percent, to close on January 9, 2017, at $202.51 per share, again on unusually heavy trading volume.

30. However, as detailed below, Defendants continued to mislead investors. Accordingly, the statements contained in ¶¶ 25 – 28 were materially false and misleading when made for the same reasons as those detailed in ¶ 19, *supra*.

31. On April 4, 2017, the Company issued a press release to report its financial and operational results for the second quarter fiscal 2017 (quarter ended February 28, 2017). Specifically, for the quarter the Company reported net sales of $804.7 million, operating profit of $108.0 million, net income of $67.3 million, and quarterly EPS of $1.53. Commenting on the Company's quarterly financial and operational results, Defendant Nagel stated:

> Acuity Brands continued to deliver sales growth while initial industry data suggests that the North American lighting market declined modestly during our fiscal second quarter, reflecting continued weakness in smaller, short-cycle projects. Additionally, sales in certain international markets, including Europe and Mexico, were down year-over-year, reducing our overall net sales by approximately 1 percentage point compared with the year-ago period. Our adjusted gross profit margin of 41.7 percent declined 180 basis points compared with the prior year, primarily due to higher manufacturing expenses resulting from increased wages and benefits, inbound freight costs, and quality costs. Like last quarter, we carried a higher manufacturing cost structure into the quarter in anticipation of servicing a greater level of demand than occurred. This higher cost structure negatively impacted both gross profit dollars and margin. Adjusted selling, distribution & administrative ("SD&A") expenses declined 80 basis points year-over-year and represented 26.3 percent of net sales in the second quarter of fiscal 2017 compared with prior year's 27.1 percent. Even though demand was subdued, we have continued to invest in areas we believe have

> longer-term growth potential. These areas include, among others, the expansion of our lighting and building management solutions portfolios, as well as our Internet of Things software platform that provides customers with a smart infrastructure which enables endless possibilities to enhance the utilization of their space through better human interaction and greater asset and employee productivity. Additionally, we continued to add associates to support these intelligent Tier 3 and 4 solutions. The cost of these investments was largely offset by lower variable incentive compensation, which yielded a modest $1.0 million year-over-year increase in adjusted SD&A expenses. Our adjusted operating profit margin of 15.4 percent declined 100 basis points compared with the prior year.

32. With respect to the Company's outlook, Acuity's April 4, 2017 press release contained the following statements from Defendant Nagel:

> Even though the growth rate of lighting solutions in the North American market in the first half of our fiscal 2017 was lower than anticipated, we continue to see significant long-term growth opportunities. Current quoting activity remains favorable and both short and long-term fundamental drivers of the markets we serve remain positive. Further, third-party forecasts suggest that the softness in market demand that began in the third calendar quarter of 2016 and continued through our second quarter may persist through the remainder of our fiscal 2017. These forecasts indicate that the North American lighting market should return to growth in fiscal 2018. We expect to continue to outperform the growth rates of the markets we serve by executing our strategies focused on growth opportunities for new construction and renovation projects, expansion into underpenetrated geographies and channels, and growth from the continued introduction of new lighting and building management solutions as part of our integrated, tiered solutions strategy. Based on various leading indicators and our focused investments in key strategic areas, we remain bullish regarding the Company's prospects for continued future profitable growth.

33. Also on April 4, 2017, Acuity and its senior executive officers – including the Individual Defendants – held a conference call to discuss the Company's quarterly financial results. During that conference call, Defendant Nagel explained the Company's disappointing quarterly results by continuing to blame "the impact of continued softness in demand for certain short cycle, small lighting projects," but acknowledged for the first time that demand softness "could potentially linger into the second half of 2017." Defendant Nagel further explained that continued overstaffing issues resulted in the Company "carr[ying] a higher manufacturing cost

structure into the quarter in anticipation of servicing a greater level of demand than actually occurred, impacting both gross profit and gross profit margin."

34. Finally, during the April 4, 2017 conference call, Defendant Nagel acknowledged that he no longer expected growth in the mid- to upper-single-digit range, but instead expected growth "in the low single digits in the second half of fiscal 2017." Similarly, Defendant Nagel admitted that Acuity's variable contribution margin for the quarter – rather than being in the mid- to upper-twenty percent range – was negative and that "given our results in the first half, [Acuity's] target range will be a challenge for us to achieve for the full year fiscal 2017."

35. Following the disclosures contained in ¶¶ 31 – 34, shares of the Company's stock declined an additional $30.13 per share, or over 14.7 percent, to close on April 4, 2017, at $173.93 per share, again on unusually heavy trading volume.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

36. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased Acuity securities during the Class Period (the "Class"). Excluded from the Class are Defendants, and directors and officers of Acuity and their families and affiliates.

37. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. According to the Company's Form 10-K filed with the SEC on October 27, 2016, Acuity had over 44 million shares of stock outstanding, owned by thousands of persons.

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

(a) Whether the Securities Exchange Act was violated by Defendants;

(b) Whether Defendants omitted and/or misrepresented material facts;

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

(d) Whether Defendants knew or recklessly disregarded that their statements were false and misleading;

(e) Whether the prices of Acuity securities were artificially inflated; and

(f) The extent of damage sustained by Class members and the appropriate measure of damages.

39. Plaintiff's claims are typical of those of the Class because Plaintiff and the Class sustained damages from Defendants' wrongful conduct.

40. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

41. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

LOSS CAUSATION/ECONOMIC LOSS

42. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic loss suffered by Plaintiff and the Class. The price of Acuity's securities significantly declined when the misrepresentations made to the market, and/or the information

alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses. As a result of their purchases of Acuity securities during the Class Period, Plaintiff and other members of the Class suffered economic loss, i.e., damages, under the federal securities laws.

SCIENTER ALLEGATIONS

43. During the Class Period, Defendants had both the motive and opportunity to commit fraud. Defendants also had actual knowledge of the misleading nature of the statements they made or acted in reckless disregard of the true information known to them at the time. In so doing, Defendants participated in a scheme to defraud and committed acts, practices, and participated in a course of business that operated as a fraud or deceit on purchasers of Acuity's securities during the Class Period.

Applicability of Presumption of Reliance: Fraud on the Market Doctrine

44. Plaintiff will rely upon the presumption of reliance established by the fraud-on-the-market doctrine in that, among other things:

(a) Defendants made public misrepresentations or failed to disclose material facts during the Class Period;

(b) The omissions and misrepresentations were material;

(c) The Company's securities traded in an efficient market;

(d) The misrepresentations alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and

(e) Plaintiff and other members of the Class purchased Acuity securities between the time Defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed, without knowledge of the misrepresented or omitted facts.

45. At all relevant times, the market for Acuity securities was efficient for the following reasons, among others: (i) as a regulated issuer, Acuity filed periodic public reports with the SEC; and (ii) Acuity regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the major news wire services and through other wide-ranging public disclosures, such as communications with the financial press, securities analysts and other similar reporting services.

NO SAFE HARBOR

46. Defendants' verbal "Safe Harbor" warnings accompanying its oral forward-looking statements ("FLS") issued during the Class Period were ineffective to shield those statements from liability.

47. Defendants are also liable for any false or misleading FLS pleaded because, at the time each FLS was made, the speaker knew the FLS was false or misleading and the FLS was authorized and/or approved by an executive officer of Acuity who knew that the FLS was false. None of the historic or present tense statements made by Defendants were assumptions underlying or relating to any plan, projection or statement of future economic performance, as they were not stated to be such assumptions underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by Defendants expressly related to or stated to be dependent on those historic or present tense statements when made.

<u>FIRST CLAIM</u>
Violation of Section 10(b) of the Exchange Act and Rule 10b-5
<u>Promulgated Thereunder Against All Defendants</u>

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

49. During the Class Period, Acuity and the Individual Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase Acuity securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants took the actions set forth herein.

50. Acuity and the Individual Defendants: (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Acuity securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons.

<u>SECOND CLAIM</u>
Violation of Section 20(a) of
<u>the Exchange Act Against the Individual Defendants</u>

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

52. The Individual Defendants acted as controlling persons of Acuity within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level

positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

53. In particular, each of the Individual Defendants had direct and supervisory involvement in 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, and exercised the same.

54. As set forth above, Acuity and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of these Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

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

(a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;

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

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

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

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.