

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2018-004061-CA-01

SECTION: CA44

JUDGE: Alan Fine

**The Arbitrage Fund et al**

Plaintiff(s)

vs.

**William Petty et al**

Defendant(s)

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**ORDER: (1) PRELIMINARILY APPROVING SETTLEMENT OF CLASS ACTION; (2)  
SETTING SETTLEMENT FAIRNESS HEARING; AND (3) SETTING HEARING ON  
RULE 1.250 MOTION**

The Parties have applied for an order approving the proposed settlement (the “Settlement”) of the above-captioned action (the “Action”), determining certain other matters in connection with the Settlement and dismissing the Action with prejudice, in accordance with the terms and conditions of the Stipulation and Agreement of Compromise, Settlement and Release, entered into by the Parties and dated as of February 4, 2022 (the “Stipulation”).

NOW, upon consent of the Parties, after review and consideration of the Stipulation filed with this Court and the Exhibits annexed thereto, and after due deliberation,

**IT IS HEREBY ORDERED:**

1. **Definitions.** Except for the terms defined herein, the Court adopts and incorporates the definitions in the Stipulation for purposes of this Order.
2. **Rule 1.250(b) Hearing.** Prior to the Settlement Fairness Hearing described in Paragraph 3, and after notice to the Class of the motion to drop the Outside

Directors as defendants, a hearing (the “Rule 1.250(b) Hearing”) shall be held before this Court on April 25, 2022 at 2:00 p.m., either in person or remotely at the Court’s discretion, to determine whether to approve Plaintiff’s anticipated request to drop the Outside Directors as defendants prior to the entry of the Order and Final Judgment.

3. **Settlement Fairness Hearing.** A hearing (the “Settlement Fairness Hearing”) shall be held before this Court on April 25, 2022 at 2:15 p.m., either in person or remotely, at the Court’s discretion, to:
  - (a) determine whether the Settlement should be approved by the Court as fair, reasonable, adequate, and in the best interests of the Class;
  - (b) determine whether the proposed plan of allocation of the Net Common Fund should be approved by the Court as fair, reasonable and adequate;
  - (c) determine whether an Order and Final Judgment should be entered pursuant to the Stipulation;
  - (d) consider the application of Class Counsel for an award of attorneys’ fees and expenses, and the request for a Service Award to the Plaintiff; and
  - (e) rule on such other matters as the Court may deem appropriate.
4. **Court’s Prerogative to Reschedule the Settlement Fairness Hearing and/or the Rule 1.250(b) Hearing.** The Court reserves the prerogative to change the time and place of the Settlement Fairness Hearing and/or the Rule 1.250(b) Hearing. This includes the prerogative to hold the Settlement Fairness Hearing and/or the Rule 1.250(b) Hearing by remote means.
5. **Court’s Prerogative to Approve Settlement.** The Court reserves the prerogative to approve the Settlement at or after the Settlement Fairness Hearing with such modification(s) as may be consented to by the Parties and without further notice to the Class or potential Class Members.
6. **Notice Procedures.** Within fourteen (14) days after the date of this Order, Class

Counsel, through the Settlement Administrator, shall cause a notice of the Settlement Fairness Hearing and Rule 1.250(b) Hearing in substantially the form attached as Exhibit B to the Stipulation (the “Notice”) and the Claim Form, substantially in the form of Exhibit C to the Stipulation (together with the Notice, the “Notice Packet”) to be mailed by United States first class mail, postage pre-paid, to all holders of record of Exactech common stock as of January 12, 2018 as reflected in the records provided by the Company, at their last known address. All record holder in the Class who were not also beneficial owners shall be directed to, within seven (7) days of receipt of the Notice Packet either:

(a) provide to the Settlement Administrator the name and last known address of each person or organization for whom or which you purchased or otherwise acquired Exactech common stock (preferably in an MS Excel, .CSV, or .TXT format), setting forth (i) title/registration, (ii) street address, and (iii) city/state/zip;

(b) provide a computer-generated mailing label to the Settlement Administrator for each beneficial owner; or

(c) request from the Settlement Administrator additional copies of the Notice Packet, which will be provided free of charge, and within seven (7) calendar days of receipt of such copies send them by First-Class Mail directly to the beneficial owners of those Exactech shares and inform the Settlement Administrator in writing that the mailing was made as directed.

All reasonable costs incurred in identifying potential Class Members and notifying them of the Settlement, including the dissemination of the Notice, shall be paid out of the Common Fund Account, and shall not be repaid to Defendants or their payors in the event the Settlement does not become effective. Within fourteen (14) calendar days after the date of this Order, Class Counsel shall cause to be published over *PR Newswire* and in *Investor's Business Daily*, or via substantially similar media, an advertisement or press release, substantially in the form

attached as Exhibit D to the Stipulation, summarizing the Class definition and stating the Settlement Amount, the time date and location of the Settlement Fairness Hearing and the Rule 1.250 Hearing, and the deadlines: (a) to object to the Settlement, the proposed plan of allocation, the dropping of the Outside Directors, and/or Class Counsel's request for fees and expenses, including the request for a Service Award to Plaintiff; (b) to request exclusion from the Class; and (c) to submit a Claim Form.

7. **Approval of Notice.** The form and method of notice provided for herein is the best notice practicable and constitutes due and sufficient notice of the Settlement Fairness Hearing and Rule 1.250(b) Hearing to all persons entitled to receive such a notice. Class Counsel shall, at least seven (7) calendar days prior to the Rule 1.250(b) Hearing, file with the Court the appropriate declaration with respect to the preparation and mailing of the Notice Packet.

8. **Class.** The Class was previously certified by this Court on November 16, 2020.

The Class is defined as follows:

All Unaffiliated Shareholders who held Exactech common stock shares as of January 12, 2018 and were entitled to vote those shares in favor or against the Merger Agreement with TPG on February 13, 2018, excluding Defendants and all members of their immediate families and excluding Rollover Investors [defined and individually listed herein] and all members of their immediate families.

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The "Rollover Investors" are: William Petty; David Petty; Betty Petty; Prima Investments, L.P; Miller Holdings, LLC, a Florida limited liability company 100% owned by Gary Miller (Exactech's co-founder and Exactech's current EVP of Research and Development) with his wife and children; Bruce Thompson (Exactech's SVP of Strategic Initiatives); Joel C. Phillips (Exactech's CFO); Donna Edwards, (Exactech's VP of Legal); Chris Roche (Exactech's Director of Engineering); and Steve Szabo (Exactech's VP of Marketing).

Plaintiff has been certified as representative of the Class, and Entwistle & Cappucci LLP and Labaton Sucharow LLP have been approved as Class Counsel.

9. **Optional Exclusion from the Class.** Pursuant to Rule 1.220(d)(2), any person who files a statement with the Court asking to be excluded from the Class, within fifty-six (56) calendar days after the date of this Order and in compliance with the requirements set forth below, and in the Notice, shall be excluded from the Class and shall not be bound by any Judgment in this matter. To be effective, the statement must include (a) an unambiguous request for exclusion from the Class, (b) the legal name of the person or entity requesting exclusion, (c) the country and state of residence or incorporation of the person or entity requesting exclusion and (d) a statement of the number of shares the person or entity requesting exclusion held as of the close of business on January 12, 2018. The Court reserves jurisdiction to determine the sufficiency of any such request for exclusion. No person or entity who or which requests exclusion from the Class shall be entitled to object to any aspect of the Settlement or the request for attorneys' fees and expenses or be entitled to any distribution from the Net Common Fund. In the event that the Settlement does not become effective, and the Parties return to litigation, the persons and entities who have timely and validly requested exclusion will nevertheless be excluded from the Class going forward.

10. **Stay of Proceedings.** All proceedings in the Action and in any related actions that may be brought before this Court, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order from the Court.

11. **Appearance at Settlement Fairness Hearing or the Rule 1.250(b) Hearing and Objections.** Any Class Member who objects to the Settlement, the proposed Order and Final Judgment to be entered in the action, the proposed plan of

allocation, Class Counsel's application for attorneys' fees, reimbursement of expenses, or the requested Service Award to Plaintiff, and/or Plaintiff's request to drop the Outside Directors as defendants, or who otherwise wishes to be heard, may appear in person or by his or her attorney at the Settlement Fairness Hearing and/or the Rule 1.250(b) Hearing and present any evidence or argument that may be proper and relevant; provided, however, that, except for good cause shown, no person shall be heard and no papers, briefs, pleadings or other documents submitted by any person shall be considered by the Court unless not later than twenty-one (21) calendar days prior to the Rule 1.250(b) Hearing such person files with the Court and serves upon counsel listed below: (a) proof of his, her or its membership in the Class; (b) a written notice of intention to appear; (c) a statement of such person's objection(s) to any matters before the Court; (d) the grounds for such objections and the reasons that such person desires to appear and be heard as well as all documents or writings such person desires the Court to consider, and (e) a statement indicating the number of times in the past three years the objector and/or his counsel has objected to a class action settlement, listing each one by name of case, jurisdiction, and docket number and outcome of the objection. Such filings shall be also served upon the following counsel:

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*Attorney for the Class*

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*Attorney for the Petty Defendants*

– and –

Joseph C. Coates, III, Esq.

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12. **Failure to Object.** Unless the Court otherwise directs, no person shall be entitled to object to the approval of the Settlement, any judgment entered thereon, the proposed plan of allocation, the adequacy of the representation of the Class by Plaintiff and Class Counsel, any award of attorneys' fees and expenses, any Service Award, or the dropping of the Outside Directors as defendants prior to Judgment, or otherwise be heard, except by serving and filing a timely, written objection and supporting papers and documents as prescribed in Paragraph 11. Any person who fails to object in the manner described above shall be deemed to have waived the right to object (including any right of appeal) and shall be forever barred from raising such objection in this or in any other action or proceeding.
13. **Filing of Documents in Support of Settlement.** No later than thirty-five (35) calendar days prior to the Rule 1.250(b) Hearing, Class Counsel shall file a motion in support of Final Approval of the Settlement. Any reply to any objections shall be filed seven (7) calendar days before the Rule 1.250(b) Hearing.
14. **Termination of Settlement.** If the Settlement, including any amendment made in accordance with the Stipulation, is not approved by the Court or shall not become effective for any reason whatsoever, then the Settlement and any actions taken or to be taken in connection therewith (including this Order and any judgment entered herein), as well as the Stipulation, shall be terminated and shall become void and of no further force and effect, except for the payment of Taxes and Notice and Administration Costs. In that event, neither the Stipulation nor any provision contained therein, nor any action undertaken pursuant thereto, nor the negotiation thereof shall be deemed and admission as evidence in this or any other action or proceeding.



15. **No Admissions by the Parties.** The Stipulation, and any negotiations, statements, or proceedings in connection therewith, shall not be construed or deemed evidence of, a presumption, concession or admission by any Released Person or any other person of any fault, liability, or wrongdoing as to any facts or claims alleged or asserted in the Action or otherwise, or that Plaintiff, the Class, or any shareholders of Exactech, or any other person, has suffered any damage attributable in any manner to any Released Person. The Stipulation and any negotiations, statements or proceedings in connection therewith, shall not be offered or admitted in evidence or referred to, interpreted, construed, invoked, or otherwise used by any person for any purpose in the Action or any proceeding related to the Released Claims, except as may be necessary to enforce or obtain Final Court Approval or Court approval of any aspect of the Settlement.

16. **Key Deadlines.** The following table sets and summarizes deadlines for events contemplated by this Order. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to potential Class Members.

Event	Deadline/Date
Exactech to provide Class Counsel with the names and addresses of holders of record as of close of business on January 12, 2018.	Completed
Settlement Administrator to mail Notice Packets to holders of record at the addresses provided.	Within fourteen (14) calendar days after the date of this Order
Brokers and Nominees to request copies of Notice Packets for beneficial owners, or to provide names and addresses of beneficial owners to the Settlement Administrator.	Within seven (7) days after receiving the Notice Packet
Last day for Plaintiff and Class Counsel to file motions for final approval of the settlement, and award of fees and expenses.	Thirty-five (35) days before the Settlement Fairness Hearing.
Last day for Class Members to file a statement with the Court requesting exclusion from the Class	Fifty-six (56) calendar days after the date of this Order.

Last day for Class Members to object to the Settlement, the plan of allocation, the dropping of the Outside Directors, or the request for an award of fees and expenses and/or the request for a Service Award.	Twenty-one (21) calendar days before the Rule 1.250(b) Hearing.
Last day for Plaintiff to respond to any objections.	Seven (7) calendar days before the Rule 1.250(b) Hearing.
Last day for Class Members to submit a Claim Form. (Postmarked By)	One hundred thirty-four (134) calendar days after the date of this Order.

**DONE and ORDERED** in Chambers at Miami-Dade County, Florida on this 20th day of February, 2022.

2018-004061-CA-01 02-20-2022 6:12 AM  


2018-004061-CA-01 02-20-2022 6:12 AM

Hon. Alan Fine

**CIRCUIT COURT JUDGE**

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

**Electronically Served:**

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**Physically Served:**