

**CIRCUIT COURT OF FLORIDA
ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY**

THE ARBITRAGE FUND, on behalf of itself
and all other similarly situated shareholders of
EXACTECH, INC.,

Plaintiff,

v.

WILLIAM PETTY, BETTY PETTY, DAVID
PETTY, PRIMA INVESTMENTS, INC.,
PRIMA INVESTMENTS, L.P., JAMES G.
BINCH, ANDREW KRUSEN, JR.,
WILLIAM B. LOCANDER, RICHARD C.
SMITH, and FERN S. WATTS,

Defendants.

Complex Business Litigation Section

Case No. 2018-004061

Section: CA 44

CLASS REPRESENTATION

**STIPULATION AND AGREEMENT OF
COMPROMISE, SETTLEMENT AND RELEASE**

This Stipulation and Agreement of Compromise, Settlement and Release (with the exhibits attached hereto, the “Stipulation”), dated February 4, 2022 is entered into by and between (i) The Arbitrage Fund (“Plaintiff”), individually and on behalf of the Class in the Action; (ii) William Petty, David Petty, Betty Petty, Prima Investments, Inc., and Prima Investments, Limited Partnership (the “Petty Defendants”); (iii) solely for the purposes of Paragraphs 1, 6, 7, 8, 13, 14, 15, 23, 24, 25, 26, 27, 28 and 35-53 below, James G. Binch, Andrew Krusen, Jr., William B. Locander, Richard C. Smith, and Fern S. Watts (the “Outside Directors” and, collectively with the Petty Defendants, “Defendants”), and, solely for the purposes of Paragraphs 2-6, 15, 25, 29, 30, 41, 44-47, 49, 51-53, Exactech, Inc. (“Exactech,” or the “Company”), which is not a party to the Action. This Stipulation is intended to fully and finally compromise, resolve, discharge, and settle the Released Claims, as defined herein, subject to the terms and conditions set for below (the “Settlement”). Plaintiff and Defendants submit this stipulation to the Court for approval.

INDEX OF EXHIBITS TO THIS STIPULATION

<u>Exhibit</u>	<u>Title</u>
Exhibit A	[Proposed] Order: (1) Preliminarily Approving Settlement of Class Action; (2) Setting Settlement Fairness Hearing; and (3) Setting Hearing on Rule 1.250 Motion
Exhibit B	Notice of Pendency and Proposed Settlement of Class Action and Motion for Attorneys’ Fees and Expenses
Exhibit B-1	Proposed Plan of Allocation of Net Common Fund
Exhibit C	Proof of Claim and Release Form
Exhibit D	Summary Notice of Pendency and Proposed Settlement of Class Action and Motion for Attorneys’ Fees and Expenses
Exhibit E	[Proposed] Order and Final Judgment
Exhibit F	Motion for Approval to Drop Party Defendants
Exhibit F-1	[Proposed] Order Approving the Dropping of Party Defendants

RECITALS AND SUMMARY OF KEY SETTLEMENT TERMS

In consideration for the full and final release, settlement and discharge of any and all Released Claims against the Released Persons (hereinafter defined), the Parties have agreed to the consideration of Five Million Six Hundred Thousand Dollars (\$5,600,000). Authorized Claimants (as defined below) will therefore be eligible to participate in a common fund of \$5,600,000 plus any interest earned thereon (the “Common Fund”). Specifically, after certain costs and fees are deducted from the Common Fund as outlined below or as otherwise ordered by the Court, any Class Members who submit valid claims (“Authorized Claimants”) shall be paid a *pro rata* amount for each share of common stock in Exactech beneficially owned by them as of January 12, 2018 from the remaining fund (the “Net Common Fund”).

The Settlement represents the culmination of nearly one year of settlement negotiations, which began in earnest following the Court’s order certifying the Class and which included a virtual mediation session before an experienced mediator.

All Defendants have vigorously denied, and continue to vigorously deny, any wrongdoing or liability with respect to all claims asserted in the Action, including that they committed any violation of law or breaches of fiduciary duty, or aided and abetted the commission of any breach of fiduciary duty, that they have acted improperly in any way, that they have any liability or owe any damages of any kind to Plaintiff and the Class and maintain they are entering into this Stipulation solely because they consider it desirable that the Action be settled and dismissed with prejudice in order to eliminate the burden, inconvenience, expense, risk, and distraction of further litigation and finally put to rest and terminate all the claims which were or could have been asserted against them in the Action.

Plaintiff maintains it brought the claims in good faith, has vigorously prosecuted them and continues to believe that the claims have substantial factual and legal merit, but believes that,

considering the risks of litigation, the terms contained in this Stipulation will provide significant and substantial benefits to the Class of Exactech's Unaffiliated Shareholders which, under the circumstances, represent fair, reasonable, and adequate consideration for the Settlement, and are in the best interests of all of the Class Members. The entry by Plaintiff into this Stipulation is not an admission as to the lack of any merit of any claims asserted in the Action.

All Parties recognize the time and expense that would be incurred by further litigation of the Action and the uncertainties inherent in such litigation.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by the Parties, subject to the final approval of the Court and in consideration of the mutual promises and performances set forth herein, that the Action shall be fully and finally settled, compromised, dismissed on the merits with prejudice, and the claims asserted therein enjoined, and the Released Claims shall be fully and finally settled, compromised, enjoined, and dismissed as to the Released Persons, in the manner and upon the terms and conditions set forth herein.

DEFINITIONS

1. The following capitalized terms used in this Stipulation shall have the meanings specified below, with the capitalized terms defined and used above retaining their meaning but restated below for purposes of clarity:

a. "Action" shall mean the class action filed in Circuit Court for the Eleventh Judicial District, in and for Miami-Dade County, *The Arbitrage Fund v. William Petty, et al.*, 2018-004061.

b. "Authorized Claimant" shall mean a Class Member who is eligible for a payment from the Net Common Fund and submits a Claim Form that complies with the instructions in the Notice or is otherwise accepted by the Settlement Administrator.

c. “Complaint” shall mean the Class Action Complaint filed February 12, 2018.

d. “Claim Form” shall mean the Court-approved fillable form, or completed form as context may dictate, upon which Claimant may submit, or shall have submitted, a claim for payment from the Net Common Fund, substantially in the form of **Exhibit “C”** hereto, or in such other form as the Settlement Administrator may accept or the Court may direct.

e. “Claimant” shall mean a person or entity who or which submits a Claim Form, or another document unambiguously purporting to make a claim for payment from the Net Common Fund, to the Settlement Administrator, regardless of whether that person or entity is a Class Member or is eligible for payment from the Net Common Fund, and regardless of whether the Claim Form is valid or accepted by the Settlement Administrator.

f. “Class” shall mean the Class as defined in the Court’s November 16, 2020 Order certifying the Class:

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.

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).

g. “Class Member” shall mean a person or entity fitting the definition in Paragraph 1(f) above.

h. “Class Counsel” shall mean Entwistle & Cappucci LLP, a law firm with offices in Austin, Texas and New York, New York (“Entwistle & Cappucci”) and Labaton Sucharow LLP, a law firm with offices in, *inter alia*, Wilmington, Delaware and New York, New York (“Labaton Sucharow”);

i. “Class Liaison Counsel” shall mean Gray Robinson P.A., a law firm with offices in, among other places, Orlando, Florida and Miami, Florida.

j. “Common Fund” shall mean the Settlement Amount of Five Million Six Hundred Thousand Dollars (\$5,600,000), plus any interest earned thereon.

k. “Common Fund Account” shall mean the account which shall be maintained by the Common Fund Escrow Agent and into which the Settlement Amount shall be deposited. The funds deposited into the Common Fund Account shall be invested in instruments backed by the full faith and credit of the United States Government or an agency thereof, or in an account fully insured by the United States Government an agency thereof or in a combination of such instruments and account.

l. “Common Fund Escrow Agent” means Entwistle & Cappucci LLP or its successor(s).

m. “Confidentiality Agreement” shall mean the Stipulation and Order Governing the Production and Exchange of Confidential Information that was entered in the Action on March 20, 2019.

n. “Court” shall mean the Circuit Court for the Eleventh Judicial District, in and for Miami-Dade County, Florida.

o. “Defendants” shall mean, collectively, (i) the Petty Defendants, defined below as William Petty, David Petty, Betty Petty, Prima Investments, Inc., Prima Investments, L.P. and (ii) the Outside Directors, defined below as James G. Binch, Andrew Krusen, Jr., William B. Locander, Richard C. Smith, and Fern S. Watts.

p. “Defendants’ Counsel” shall mean the counsel of record for the Defendants.

q. “Distribution Date” means the date on which payments are sent to Authorized Claimants pursuant to Paragraph 2(c) below.

r. “Effective Date” shall mean the first date by which all of the conditions and events specified in Paragraphs 11 and 12 of this Stipulation have been met and have occurred.

s. “Fee and Expense Award” means an award to Class Counsel of attorneys’ fees and expenses comprised of payment from the Common Fund Account in an amount to be approved by the Court and in full satisfaction of any and all claims for attorneys’ fees and expenses that have been, could have been, or could be asserted by Class Counsel or any other counsel or Class Member.

t. “Final,” when referring to the Judgment, means (i) entry of the Order and Final Judgment, and (ii) if there is an objection to the Settlement, the expiration of any time for appeal or review of the Judgment, or, if any appeal is filed and not dismissed or withdrawn, issuance of a decision upholding the Judgment on appeal is in all materials respects filed, which is no longer subject to review on appeal or other review, and the expiration of the time for the filing of any petition for re-argument, appeal, or review of the Judgment, or any order affirming the Judgment; provided, however, that any disputes or appeals relating solely to the amount, payment, or allocation of attorneys’ fees and expenses and/or any Service Award shall have no effect on finality for purposes of determining the date on which the Judgment becomes Final and shall not

otherwise prevent, limit, or otherwise affect the Judgment, or prevent, limit, delay, or hinder entry of the Judgment.

u. “Final Court Approval” shall mean the Court’s entry of an Order and Final Judgment substantially in the form of **Exhibit E** hereto.

v. “Merger” shall mean the transaction pursuant to which certain entities affiliated with TPG Capital, L.P. (“TPG”) acquired the outstanding common stock of Exactech (other than some of the Shares held by the Rollover Investors) for \$49.25 per share.

w. “Merger Agreement” shall mean the Agreement and Plan of Merger, dated October 22, 2017, as amended December 3, 2017, which documented the terms of the Merger.

x. “Net Common Fund” means the Settlement Amount and any interest earned thereon, less the Fee and Expense Award, the Service Awards, Taxes, and the Notice and Administration Costs, and any other costs or fees approved by the Court.

y. “Notice” shall mean the Court-approved document providing notice by mail of the pendency of this Action as a class action and of the Settlement, substantially in the form of **Exhibit B** hereto, or in such other form as the Court may direct,

z. “Notice and Administration Costs” means all costs and expenses associated with providing notice of the pendency of this Action as a class action and of the Settlement, processing, distributing, and disbursing the Net Common Fund, and administering the Settlement, which costs shall be paid out of the Common Fund Account.

aa. “Notice Packet” shall mean the Court-approved Notice together with the Court-approved fillable Claim Form.

bb. “Order and Final Judgment” shall mean the “Order and Final Judgment” substantially in the form of **Exhibit E** hereto.

cc. “Outside Directors” means James G. Binch, Andrew Krusen, Jr., William B. Locander, Richard C. Smith, and Fern S. Watts.

dd. “Parties” means, collectively, (1) Plaintiff, (2) Defendants, and (3) for the purposes of Paragraphs 2-6, 15, 25, 29, 30, 41, 44-47, 49 and 51-53, Exactech.

ee. “Plaintiff” means The Arbitrage Fund.

ff. “Preliminary Approval Order” shall mean an Order of the Court which, at least, sets a date for the Settlement Fairness Hearing and approves the form and method of giving notice to the Class of the pendency of this Action as a class action and of the settlement, which the Parties will request the Court issue substantially in the form of the [Proposed] Order: (1) Preliminarily Approving Settlement of Class Action; (2) Setting Settlement Fairness Hearing; and (3) Setting Hearing on Rule 1.250 Motion, attached hereto as **Exhibit A** hereto.

gg. “Released Claims” shall mean any and all Unknown Claims and any and all other claims, demands, rights, actions, or causes of action, liabilities, damages, losses, obligations, judgments, suits, fees, expenses, costs, matters, and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, matured or unmatured, that have been, could have been, or in the future can or might be asserted in the Action or in any court, tribunal, or proceeding (including, but not limited to, any claims arising under federal, state, foreign, or common law relating to alleged fraud, breach of any duty, negligence, the federal securities laws, and any state disclosure law) by or on behalf of any members of the Class, based on or relating to his, her or its ownership of Exactech common stock (whether individual, class, derivative, representative, legal, equitable, or any other type of claim in any other capacity) which have arisen, could have arisen, arise now or hereafter arise out of or relate in any manner to the allegations, facts, events, acquisitions,

matters, acts, occurrences, statements, representations, misrepresentations, omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved or set forth in, or referred to or otherwise related in any way to: (i) the Merger; (ii) the adequacy of the consideration to be paid to Exactech shareholders in connection with the Merger; (iii) the fiduciary obligations, if any, of the Defendants or Released Persons, including, but not limited to, in connection with the Merger; (iv) the negotiations in connection with the Merger; (v) the events and analyses related to or conducted in connection with the Merger; (vi) the disclosures or disclosure obligations of any of the Defendants or Released Persons in connection with the Merger; (vii) the ownership of Exactech stock; (viii) the Petty Defendants' actions as Board members, shareholders, and/or officers of Exactech at any point in time from the inception of Exactech until the consummation of the Merger or (ix) the negotiation, execution, or approval of the Stipulation, or the Settlement; provided, however, that the Released Claims shall not include any claims to enforce the Stipulation.

hh. "Released Persons" shall mean Defendants, Exactech, Osteon Holdings, L.P., Osteon Merger Sub, Inc., and TPG, as well as their respective families, associates, affiliates, or subsidiaries, and each and all of their respective past, present, or future officers, directors, stockholders, agents, representatives, employees, attorneys, financial or investment advisors, advisors, consultants, accountants, investment bankers, commercial bankers, trustees, engineers, agents, insurers, co-insurers and reinsurers, heirs, executors, personal or legal representatives, estates, administrators, predecessors, affiliates, subsidiaries, parents, members, general or limited partners, principals, controlling shareholders, successors, and assigns, whether or not any such Released Persons were named as parties, served with process, or appeared in the Action.

ii. “Releasers” shall mean Plaintiff and all other Class Members, for themselves and each of their present or past predecessors, predecessors in interest, successors, successors in interest, parents, subsidiaries, affiliates, custodians, agents, attorneys, assignees, representatives, heirs, executors, estates, trustees, assigns, administrators, members, associates, partners, principals, employees, officers, legal representatives, managing directors, and directors in their capacities as such. Any person or entity who or which is excluded from the Class pursuant to Rule 1.220(d)(2) Fla. R. Civ. P. shall not be Releasers.

jj. “Rollover Investor,” shall mean the entities and individuals defined as such in Paragraph 1(f).

kk. “Rule 1.250(b) Hearing” shall mean the hearing, immediately prior to, or as soon prior to as the Court may permit, the Settlement Fairness Hearing, at which the Court shall consider the motion to approve Plaintiff’s request to drop the Outside Directors as defendants in the Action.

ll. “Service Award” shall mean an award not to exceed Ten Thousand Dollars (\$10,000.00) to be paid, subject to Court approval, from the Common Fund Account to Plaintiff.

mm. “Settlement” means the settlement contemplated by and set forth in this Stipulation.

nn. “Settlement Administrator” shall mean the administrator retained by Class Counsel on behalf of the Class with the approval of the Court to administer (i) dissemination of the Notice, and (ii) distribution of the Net Common Fund.

oo. “Settlement Amount” means a total of Five Million Six Hundred Thousand (\$5,600,000) in cash, which will be deposited on behalf of Defendants into the Common Fund Account upon the conditions set forth in, and in accordance with, this Stipulation.

pp. “Settlement Fairness Hearing” means the hearing that the Court shall hold to decide whether: (i) the Settlement should be approved as fair, reasonable, and adequate; (ii) a judgment approving the Settlement should be entered in accordance with the terms of the Stipulation; (iii) the proposed plan of allocation should be approved as fair, reasonable and adequate, (iv) an award of attorneys’ fees and expenses should be paid to Class Counsel, and in what amount; and (v) a Service Award should be paid to Plaintiff and in what amount.

qq. “Settlement Website” shall mean the website maintained by the Settlement Administrator dedicated to the Settlement.

rr. “Share” means a share of Exactech common stock prior to the Merger.

ss. “Share Not Voted For” means a Share of Exactech common stock that was not counted as a vote for the Merger, including Shares voted “Against”, shares not voted and Shares voted “Abstain.”

tt. “Share Voted For” means a Share that was counted as a vote for the Merger.

uu. “Unaffiliated Shareholder” shall mean a beneficial owner of Exactech common stock (prior to the Merger) who is not a Rollover Investor.

vv. “Taxes” means all federal, state, or local taxes of any kind on any income earned by the Common Fund and the expenses and costs incurred in connection with the taxation of the Common Fund (including, without limitation, interest, penalties and the reasonable expenses of tax attorneys and accountants).

ww. “Third DCA” shall mean the Florida Third District Court of Appeal.

xx. “Unknown Claims” means any claim, cause of action, damage or harm which the Plaintiff and/or any Class Members do not know or suspect to exist at the time of the release of the Released Persons which, if known by him, her or it, might have affected his, her or

its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date, Plaintiff shall expressly, and each of the Releasors shall be deemed to have, and by operation of the Judgment shall have, waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of California Civil Code § 1542, as amended, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the Effective Date, Plaintiff and each of the Releasors shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or international law or foreign law, which is similar, comparable, or equivalent to California Civil Code § 1542. Plaintiff and the Releasors may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Plaintiff shall expressly have and each Releasor, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims and Unknown Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed or hereafter may exist, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Parties

acknowledge, and the Releasors shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material element of the Settlement of which this Release is a part.

yy. “Weighted Claim Value” means the value assigned to an Authorized Claimant’s claim for the purpose of calculating the Authorized Claimant’s *pro-rata* share of payment from the Net Common Fund (see Ex. B-1 hereto).

SETTLEMENT CONSIDERATION

2. **Common Fund.** As a result of the pendency of the Action and the efforts of Plaintiff and Class Counsel in prosecuting the Action, Defendants have agreed to the creation of the Common Fund into which Exactech will pay or cause to be paid the Settlement Amount of Five Million Six Hundred Thousand Dollars (\$5,600,000) for the benefit of the Class.

a. **Deposit.** Exactech shall pay or cause to be paid the Settlement Amount of \$5,600,000 into the Common Fund Account on behalf of Defendants within thirty (30) calendar days after the Court’s entry of the Preliminary Approval Order. Apart from the payment of the Settlement Amount in accordance with this paragraph, Defendants, Exactech, and their legal representatives, heirs, successors-in-interest, transferees, assignees, associates, and affiliates shall have no further monetary obligations to Plaintiff, the Class Members, or Class Counsel in connection with the Settlement.

b. **Administration and Obligation.** The Common Fund shall be administered by the Common Fund Escrow Agent and shall be used to pay the following: (i) the *pro rata* share of the Net Common Fund Settlement Amount to Authorized Claimants, (ii) the Fee and Expense Award, (iii) the Service Award, (iv) Taxes, and (v) Notice and Administration Costs. Any unclaimed amounts shall be disbursed consistent with Paragraph 2(d) below.

c. **Initial Distribution.** Following the Effective Date, and the deadline to submit claims, the Net Common Fund shall be distributed by the Settlement Administrator to Authorized Claimants (after being transferred by the Common Fund Escrow Agent to the Settlement Administrator). The Net Common Fund shall be allocated among Authorized Claimants *pro rata* according to their Weighted Claim Values as described in Exhibit B-1 hereto or pursuant to such other plan of allocation as the Court may direct. Any Class Member who does not submit a Claim Form within 134 days after the date of this Order, shall forfeit the right to said monies. Likewise, any Authorized Claimant who does not accept payment within 120 days of the Distribution Date, by, for example, failing to cash a check sent to the address listed on their Claim Form or rejecting a wire transfer sent according to instructions they provide to the Settlement Administrator, shall forfeit the right to said monies.

d. **Further Disposition of Funds Remaining in the Common Fund Account.** Following the initial distribution, any funds remaining in the Common Fund Account (for example, funds allocated to checks that were not cashed) shall be re-distributed *pro rata* to Authorized Claimants who accepted their share of the initial distribution. If such re-distribution is not economically practicable, Class Counsel may contribute the remaining amount to a non-sectarian, not-for-profit charitable organization serving the public interest: (1) if less than \$2,000, as designated by Class Counsel in their sole discretion: or (2) if more than \$2,000, as designated by Class Counsel and approved by the Court. There shall be no reversion of settlement funds to the Defendants or their payors.

RELEASE

3. Upon the Effective Date, Plaintiff and all other Releasors shall be deemed to, and by operation of the Order and Final Judgment shall fully, finally, and forever release, relinquish, discharge, and dismiss with prejudice, on the merits and without costs, the Action and any and all

of the Released Claims against any and all of the Released Persons; provided, however, that Plaintiff shall retain the right to enforce the terms of this Stipulation and Settlement.

4. Upon the Effective Date, Plaintiff and all other Releasors shall be deemed to, and by operation of the Order and Final Judgment shall, be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, or other forum of any kind, any and all of the Released Claims against any and all of the Released Persons (whether or not they submit a Claim Form or receive a payment from the Net Common Fund); provided, however, that Plaintiff shall retain the right to enforce the terms of this Stipulation and Settlement.

5. Upon the Effective Date, the Released Persons, and anyone claiming through or on behalf of any of them, shall be deemed to, and by operation of the Judgment shall fully, finally and forever release, relinquish and discharge any and all claims against Plaintiff and all other Class Members who have not been excluded from the Class, and their agents and attorneys, including but not limited to the Class Counsel, including partners, principals, associates and/or employees of same, and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, in their capacities as such, from any and all claims, liabilities, complaints, allegations or sanctions, known or unknown (the "Claims Released Against Plaintiff"), arising out of, or relating in any way, directly or indirectly, to their investigation, preparation, initiation, filing, prosecution, litigation, resolution, or settlement of the Action and the Released Claims, provided, however, that the Released Persons shall retain the right to enforce the terms of this Stipulation and Settlement. Defendants and the Released Persons shall be barred and enjoined from ever asserting the Claims Released Against Plaintiff before any forum, authority or venue whatsoever.

6. The Settlement is intended to extinguish all Released Claims and Claims Released Against Plaintiff, and, consistent with such intentions, Plaintiff, Defendants, each of the Releasers, and the Released Persons shall waive their rights to the extent permitted by state law, federal law, foreign law, or principle of common law that might otherwise have the effect of limiting the releases set forth above, with the exception of their right to enforce this Settlement.

DISMISSAL OF PENDING APPEALS

7. The Court has certified the Class pursuant to Florida Rule of Civil Procedure 1.220 as defined in Paragraph 1(f) above. Defendants appealed the Court's order certifying this Class. Immediately following the execution of this Stipulation, Plaintiff and Defendants shall inform the Third DCA of its existence and execution and request that the Third DCA relinquish jurisdiction to the Court to allow the Court to consider preliminary and then final approval of the Settlement. Within four (4) business days after the conditions set forth in Paragraph 12(a) and (b) have occurred, Defendants shall move to dismiss their pending appeals of the Court's order granting class certification (20-1871, 20-1872).

ORDER REGARDING PROPOSED SETTLEMENT, SETTLEMENT FAIRNESS HEARING AND NOTICE THEREOF

8. As soon as practicable following the execution of this Stipulation, Plaintiff's motion for preliminary approval shall be submitted to the Court together with the proposed Preliminary Approval Order, in the form annexed hereto as Exhibit A: (a) preliminarily approving the Settlement pursuant to Florida Rule of Civil Procedure 1.220 *et. seq.*; (b) approving the form and manner of giving notice of the pendency of this Action as a class action and the Settlement; (c) scheduling a Settlement Fairness Hearing for the purpose of (i) determining whether the Settlement and dismissal of the Action on the terms set forth herein, and the proposed plan of allocation, and the entry of the Order and Final Judgment, should be approved as fair, reasonable,

adequate, and in the best interests of the Class, and (ii) considering Class Counsel's request for an award of attorneys' fees and expenses and Service Award to Plaintiff in accordance with the provisions of Paragraphs 26-34, below; and (d) scheduling a Rule 1.250(b) Hearing to determine whether the Outside Directors may be dropped as defendants prior to the entry of the Order and Final Judgment. Such Preliminary Approval Order shall provide that the Settlement Administrator shall be responsible for disseminating the Notice, substantially in the form of Exhibit B hereto, to potential members of the Class and their nominees, advising them of the claims asserted in the Action and the proposed Settlement thereof, and of the Settlement Fairness Hearing and their rights in connection herewith. All costs associated with providing notice shall be paid out of the Common Fund Account.

NOTICE AND ADMINISTRATION COSTS

9. The Notice and Administration Costs incurred shall be paid out of the Common Fund Account. In the event the Effective Date does not occur, Notice and Administration Costs incurred shall not be repaid to the Defendants or their payors. To enable the mailing of the Notice, the Company has provided to Class Counsel a list of shareholders of record of all shares entitled to vote in connection with the February 13, 2018 Shareholder Vote, together with their last known addresses. Class Counsel shall supervise the Settlement Administrator in affecting notice pursuant to the Preliminary Approval Order, including mailing of the Notice Packet and publication of an advertisement or press release substantially in the form of **Exhibit D** hereto via *PR Newswire* and *Investor's Business Daily* and the maintenance of the Settlement Website via which members of the public may access electronic copies of the Stipulation, Notice, Claim Form, Preliminary Approval Order and other important documents and information related to the Settlement.

TERMS OF ORDER AND FINAL JUDGMENT

10. If the Settlement is approved by the Court, Plaintiff and the Petty Defendants shall request that the Court enter the Order and Final Judgment, substantially in the form of **Exhibit E** hereto, approving the dismissal of the Action with prejudice and the releases provided herein.

CONDITIONS OF SETTLEMENT

11. The consummation of the Settlement is subject to: (a) Final Court Approval of the Settlement; (b) Court approval of a complete release of the Released Claims against the Released Persons and the Claims Released Against Plaintiff; (c) the inclusion in the Order and Final Judgment of a provision enjoining all Releasers from asserting any of the Released Claims in any forum; (d) dismissal with prejudice of the Action and the running of the time to appeal from the Order and Final Judgment and the dismissal with prejudice of the Action; and (e) the dismissal of the pending appeals of the Court's November 16, 2020 Order. In the event any of these conditions are not met or waived, this Stipulation shall be null and void and of no force and effect and this Stipulation shall not be deemed to prejudice in any way the respective positions of Plaintiff and Defendants with respect to the Action.

**APPROVAL OF SETTLEMENT, DISAPPROVAL,
CANCELLATION OR TERMINATION OF STIPULATION**

12. The Settlement is effective when each of the following conditions have been fulfilled:

- (a) Final Court Approval of the Settlement and Stipulation and entry of the Order and Final Judgment substantially in the form of Exhibit E hereto, which approves in all material respects: (i) the dismissal with prejudice of any and all claims made in the Action; and (ii) the releases provided for in the Stipulation;
- (b) either (i) expiration of the time to appeal or otherwise seek review of the Order and Final Judgment, as defined herein, without any appeal having been taken or review sought, or (ii) if an appeal is taken or review sought, the expiration of five days after an appeal or review shall have been

dismissed or finally determined by the highest court before which such an appeal or review is sought and which affirms the material terms of the Settlement and/or Order and Final Judgment and the denial of (or the expiration of the time for seeking) further judicial review, provided that proceedings or appeals regarding solely an application for attorneys' fees and expenses or the Service Award shall not affect or delay the effectiveness of the Settlement; and

- (c) The appeals currently pending in the Third District Court of Appeals have been dismissed.

13. If (a) the Court does not enter the Order and Final Judgment in substantially the form of Exhibit E hereto, (b) the Court enters the Order and Final Judgment, but, on or following appellate review, the Order and Final Judgment is modified or reversed in any material respect, (c) any of the other conditions of Paragraphs 11 and 12 above are not satisfied, or (d) Defendants exercise their right pursuant to Paragraph 14, below, this Stipulation shall be cancelled and terminated unless counsel for each of the Parties, within ten business days from receipt of such ruling or event, agrees in writing with counsel for the other Parties to proceed with this Stipulation and Settlement, including only with such modifications, if any, as to which all other Parties in their sole judgment and discretion may agree. For purposes of this Paragraph, an intent to proceed shall not be valid unless it is expressed in a signed writing. Neither a modification by the Court nor a reversal on appeal of the amount of fees and expenses awarded by the Court to Class Counsel or the Service Award to Plaintiff shall be deemed a material modification of the Order and Final Judgment or this Stipulation and shall not provide grounds for terminating the Settlement.

14. Simultaneously herewith, Defendants' Counsel and Class Counsel are executing a confidential Supplemental Agreement Regarding Requests for Exclusion ("Supplemental Agreement"). The Supplemental Agreement sets forth certain conditions under which Defendants shall have the right, in their sole discretion, to terminate the Settlement and render this Stipulation null and void in the event that Class Members' requests for exclusion from the Class exceed a

certain agreed-upon threshold (the “Termination Threshold”). Prior to Defendants’ exercise of a right to terminate the Settlement, the Parties shall have an opportunity to seek retraction of any request of a Class Member to be excluded from the Class, as set forth in the Supplemental Agreement. The Supplemental Agreement also sets forth the conditions under which such a retraction right is triggered. The Parties agree to maintain the confidentiality of the Supplemental Agreement, which shall not be filed with the Court unless a dispute arises as to its terms, or as otherwise ordered by the Court, nor shall the Supplemental Agreement otherwise be disclosed unless ordered by the Court. If submission of the Supplemental Agreement is required for resolution of a dispute or is otherwise ordered by the Court, the Parties will undertake to have the Termination Threshold submitted to the Court in camera or under seal. In the event of a termination of this Settlement pursuant to the Supplemental Agreement, this Stipulation shall become null and void and of no further force and effect.

15. If the Effective Date does not occur, or if this Stipulation is canceled or terminated pursuant to its terms:

- (a) all of the Parties to this Stipulation shall be deemed to have reverted to their respective litigation status as of December 21, 2021, and they shall proceed in all respects as if this Stipulation had not been executed and the related orders had not been entered, and in that event all of their respective claims and defenses as to any issue in the Action shall be restored to their status as of December 21, 2021; and
- (b) all monies in the Common Fund Account, including interest earned, will be refunded to the persons or entities who or which made payments thereinto. The Notice and Administration Costs incurred prior to termination will in no event

be repaid, and as such, will be effectively borne by Defendants and/or the payor(s) on their behalf.

COMMON FUND ESCROW AGENT

16. The Common Fund Escrow Agent shall invest the Common Fund in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or any agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates.

17. The Common Fund Escrow Agent shall not disburse the Common Fund, except as provided in the Stipulation, or by an order of the Court, or with written consent from counsel for the Defendants.

18. All funds held by the Common Fund Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court and shall remain subject to the jurisdiction of the Court, until such time as these funds are distributed pursuant to the Stipulation or any further order of the Court.

19. Before the Effective Date and after the Settlement Amount is deposited into the Common Fund Account, the Common Fund Escrow Agent may withdraw up to an initial One Hundred Fifty Thousand Dollars (\$150,000.00) from the Common Fund Account (the “Withdrawn Funds”), without any further consent from Defendants or an order from the Court, to pay (a) costs and expenses to the Settlement Administrator reasonably and actually incurred in connection with providing notice, locating Class Members, communicating with potential Class Members, administering and distributing the Net Common Fund to Authorized Claimants, (b) Taxes, and (c) escrow fees and costs. Any of the Withdrawn Funds that have been used by the Common Fund Escrow Agent to pay such costs and expenses will not be returned to Defendants, including in the event this Stipulation is cancelled and/or terminated for any reason; any Withdrawn Funds not yet

used shall be returned to Defendants. Costs that have been reasonably and actually incurred but not yet paid as of the date of termination will be withdrawn and paid to the Settlement Administrator in due course and not returned to Defendants.

TAXES

20. At all times, the Parties and the Common Fund Escrow Agent agree to treat the Common Fund as a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. In addition, the Common Fund Escrow Agent shall timely make elections as necessary or advisable to carry out the Stipulation, including, if necessary, the “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)(2)) back to the earliest permitted date. These elections shall be made in compliance with the procedures and requirements contained in the Treasury regulations promulgated under § 1.468B of the Internal Revenue Code of 1986, as amended (the “Code”). The Common Fund Escrow Agent is responsible for timely and properly preparing and delivering the necessary documentation for signature by all necessary parties and, thereafter, for causing the appropriate filing to occur.

21. For the purpose of § 1.468B of the Code and the Treasury regulations promulgated thereunder, the Common Fund Escrow Agent shall be designated as the “administrator” of the Common Fund. The Common Fund Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Common Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). These returns shall reflect that all Taxes (including any estimated Taxes, interest, or penalties) on the income earned by the Common Fund shall be paid in accordance with Paragraph 22 below.

22. The following shall be paid out of the Common Fund: (a) all Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Common Fund, including any Taxes or tax detriments that may be imposed on the Released Persons with

respect to any income earned by the Common Fund for any period during which the Common Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes; and (b) all expenses and costs incurred in connection with the operation of the Common Fund, including, without limitation, expenses incurred by tax attorneys or accountants and the mailing and distribution costs and expenses related to filing (or failing to file) the returns (the “Tax Expenses”). In no event shall the Released Persons have any responsibility for, or liability with respect to, the Taxes or Tax Expenses. The Common Fund shall indemnify and hold all Released Persons harmless for the Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification.) Further, the Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Common Fund and shall be timely paid by the Common Fund Escrow Agent out of the Common Fund without further consent from Defendants or an order from the Court. The Common Fund Escrow Agent shall be obligated (notwithstanding anything to the contrary in the Stipulation) to withhold from distribution to Authorized Claimants any funds necessary to pay these amounts, including the establishment of adequate reserves for the Taxes or Tax Expenses, as well as any amount that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2). The Parties agree to cooperate with the Common Fund Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out this section of the Stipulation.

NO ADMISSION OF WRONGDOING

23. Defendants have denied, and continue to deny, that they committed, or aided and abetted in the commission of, any violation of law or engaged in any of the alleged wrongful acts, and expressly maintain that they diligently and scrupulously complied with their fiduciary and other legal duties. Defendants maintain they are entering into the Stipulation solely because the proposed Settlement would eliminate the burden, expense and risk of further litigation.

24. Plaintiff and its attorneys maintain they brought the Action in good faith and believe that the claims asserted in the Action have substantial legal merit, but nevertheless acknowledge that Defendants would continue to assert legal and factual defenses to such claims and believe that the terms of the Settlement are fair, reasonable, adequate, and in the best interest of all Class Members.

25. This Stipulation, whether or not consummated, and any proceedings taken pursuant to it:

- a. shall not be offered or received against any of the Released Persons as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by any of the Released Persons with respect to the truth of any fact alleged in the Action by Plaintiff or any member of the Class or the validity of any claim or defense that has been or could have been asserted in the Action or in any action, or of any liability, negligence, fault, or wrongdoing of any of the Released Persons;
- b. shall not be offered, or received against Plaintiff or any member of the Class as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by Plaintiff or any member of the Class with respect to any lack of truth, strength, or merit of any claim that has been or could have been asserted in the Action or in any action, or with respect to any liability, negligence, fault, or wrongdoing of the Released Persons, or with respect to any alleged infirmity in the claims of Plaintiff and the Class; and

- c. shall not be offered or received against any party to the Action as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that the Parties may refer to the Stipulation to effectuate its terms or in any action to effectuate the Settlement.

ATTORNEYS' FEES AND EXPENSES

26. Defendants acknowledge that Class Counsel have a claim for attorneys' fees and reimbursement of expenses in the Action based upon the benefits that the Action and the Settlement have provided, and will provide, to the Class. Plaintiff intends to apply to the Court for an award of attorneys' fees and reimbursement of reasonable costs out of the Common Fund. Defendants have agreed not to oppose in any way, or encourage any other party to oppose, Plaintiff's application to the Court for an award, out of the Common Fund Account, of reasonable attorneys' fees up to \$1,500,000 and for reimbursement of expenses incurred not to exceed \$200,000. The Parties agree that any award of attorneys' fees and costs shall, subject to Court approval, be paid exclusively out of the Common Fund and shall not add to or increase the Settlement Amount.

27. The approval of attorneys' fees and expenses in any amount shall be in the sole discretion of the Court and shall not be a condition of the Settlement of the Action or the entry of an order and judgment dismissing the claims asserted therein with prejudice. Any order or proceedings relating to such application for fees and expenses, or any appeal from any order

relating thereto or reversal or modification thereof, shall not operate to terminate the Settlement or affect the release of the Released Claims. Neither the Effective Date nor the finality of the Settlement shall be conditioned on any ruling by the Court or any other court concerning Class Counsel's application for attorneys' fees and/or expenses.

28. Payment of any Court-awarded attorneys' fees and expenses shall be made out of the Common Fund Account by the Common Fund Escrow Agent to Entwistle & Cappucci LLP as paying agent for all Class Counsel and Class Liaison Counsel, within ten calendar days of the entry of an order by the Court awarding them. Entwistle & Cappucci LLP shall distribute said attorneys' fees to Labaton Sucharow LLP and Gray Robinson P.A. at its sole discretion. Defendants shall have no responsibility, obligation or liability regarding the distribution of attorneys' fees and costs amongst Class Counsel.

29. In the event (a) the Effective Date does not occur, (b) the Stipulation is canceled or terminated pursuant to its terms, (c) the Settlement otherwise does not become Final for any reason, or (d) the Fee and Expense Award is disapproved, reduced, reversed, or otherwise modified as a result of any further proceedings including any successful collateral attack (by operation of a final, non-appealable order), then Counsel receiving said portions of attorneys' fees and costs shall, within ten (10) calendar days after receiving notice of any of these events, return to the Common Fund Account, as applicable, either the entirety of the Fee and Expense Award distributed from the Common Fund or the amount by which the Fee and Expense Award has been reduced.

30. Class Counsel shall not make or assist any other counsel in making an application for an award of fees or expenses from Defendants in any jurisdiction related to the Action or any of the Released Claims.

31. Defendants shall not be required to bear any other expenses, costs, damages, or fees alleged or incurred by Plaintiff, any Class Member, or by any of their attorneys, experts, advisors, agents, or representatives. Defendants shall have no responsibility for, and no liability with respect to, the allocation of fees or expenses awarded by the Court.

32. Defendants will not seek an award of their attorneys' fees incurred in the defense of this action from Plaintiff or the Class.

SERVICE AWARD

33. Plaintiff will apply for a Service Award of Ten Thousand dollars (\$10,000) from the Common Fund to compensate it for the time and effort expended participating and assisting Class Counsel in the Action which, as will be set forth more fully in Plaintiff's submission to the Court prior to final approval, include responding to Defendants' requests for production of documents and interrogatories, and preparing for and attending the deposition of its portfolio manager.

34. Following any order by the Court granting the request for a Service Award, and seven (7) calendar days following the Effective Date, the Common Fund Escrow Agent shall disburse the Service Award to Plaintiff. The disposition of the request for a Service Award and payment of a Service Award is not a material term of the Settlement, and it is not a condition of the Stipulation that the application is granted. The request for a Service Award may be considered separately from the Stipulation. Any disapproval or modification of the requested Service Award by the Court or on appeal shall not affect or delay the enforceability of the Stipulation, provide any of the Parties with the right to terminate the Settlement, or affect or delay the binding effect or finality of the Judgment. Final resolution of the request for a Service Award shall not be a condition to the dismissal of the Action.

THE OUTSIDE DIRECTORS TO BE DROPPED

35. Plaintiff and the Outside Directors shall file a joint motion to approve Plaintiff's request to drop the Outside Directors from the Action pursuant to Rule 1.250(b), Fla. R. Civ. P., substantially in the form of **Exhibit F** hereto within seven (7) days after both of the following conditions have been met:

- a. The Court has granted preliminary approval of the Settlement; and
- b. The Settlement Amount has been deposited into the Common Fund Account.

The Petty Defendants shall not oppose that joint motion. Plaintiff's motion for preliminary approval of the Settlement will request that the Court set a time and date for the Rule 1.250(b) Hearing as part of its Preliminary Approval Order, even though the anticipated motion shall not have been filed, so that such time and date can be stated in the Notice. Plaintiff shall request that the Court set the Rule 1.250(b) Hearing immediately prior to, or as soon prior to as the Court may permit, the Settlement Fairness Hearing, but no less than seventy-four (74) days after the date of the Preliminary Approval Order. The Parties shall use reasonable efforts to obtain the Court's approval of this motion prior to the entry of the Order and Final Judgment, but only after notice to the Class of the intention to drop the Outside Directors as defendants to the Action is provided in the Notice.

STAY PENDING FINAL COURT APPROVAL

36. Pending the occurrence of the Effective Date, the Parties agree to stay the proceedings in the Action and to stay and not initiate any other proceedings against each other, other than those incident to the Settlement itself. This includes the proceedings before the Court and the proceedings related to Defendants' pending interlocutory appeals in the Third DCA, other

than proceedings on which the Parties may agree, such as the contemplated agreed motion to relinquish jurisdiction, incident to this Stipulation.

MISCELLANEOUS PROVISIONS

37. The Parties to this Stipulation (a) acknowledge that it is their intent to consummate this Stipulation and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the Stipulation, including in the event of any appeal from entry of the Order and Final Judgement.

38. The Parties intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the members of the Class against the Released Persons with respect to the Released Claims. Accordingly, each Party agrees not to assert in any forum that the Action was brought or defended by any other Party in bad faith or without reasonable basis. The Parties agree that the Settlement was negotiated at arms' length in good faith and reflects a settlement that was reached voluntarily based upon adequate information and sufficient discovery after consultation with experienced legal counsel.

39. The Outside Directors, to the extent they are not otherwise bound by certain provisions of this stipulation, shall not object to those provisions as applied among the other Parties or take any action to frustrate the obligations imposed, or benefits conferred, upon other Parties by those provisions.

40. All of the Exhibits attached to the Stipulation are material and integral parts of the Stipulation and shall be incorporated by reference as though fully set forth herein.

41. This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Parties or their successors-in-interest.

42. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any provisions of the Stipulation.

43. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

44. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for (i) awards of attorneys' fees and/or reimbursement of expenses to Class Counsel, (ii) the Service Award, and (iii) enforcement of the terms of this Stipulation.

45. The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any prior or subsequent breach of this Stipulation.

46. This Stipulation and the Supplemental Agreement incorporated by reference herein constitute the entire agreement among the Parties hereto concerning the Settlement of the Action and no representations, warranties, or inducements have been made by any Party hereto concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

47. This Stipulation shall be binding upon the Parties (including all members of the Class), and inure to the benefit of their successors, assigns, executors, administrators, heirs and legal representatives, provided, however, that no assignment by any Party shall operate to relieve such Party of its obligations hereunder.

48. Plaintiff and Class Counsel represent and warrant that none of Plaintiff's claims or causes of action in the Action have been assigned, encumbered, or in any manner transferred in whole or in part.

49. To the extent permitted by law, all agreements made and orders entered during the course of the Action relating to the confidentiality of documents or information (including the Confidentiality Agreement) shall survive this Stipulation. Nothing in this Stipulation, the Settlement, the negotiations relating thereto, or the process and content of discovery is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity including, without limitation, the attorney-client privilege or work product immunity.

50. This Stipulation shall not be construed more strictly against one party than another by virtue of the fact that this Stipulation, or any part of it, may have been prepared by counsel for one or several of the Parties, it being recognized that this Stipulation is the result of arms' length negotiations between the Parties, all of which have contributed substantially and materially to the preparation of this Stipulation.

51. All counsel and any other person or entity executing this Stipulation, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

52. This Stipulation may be executed in one or more counterparts and may be executed by signature transmitted by facsimile, or by a .pdf/.tif image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

53. The Stipulation, Settlement, and any disputes arising out of or relating in any way to the Stipulation or Settlement, whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws of the State of Florida, without regard to conflicts of law principles. Any action or proceeding to enforce any of the terms of the Stipulation or Settlement, or any other action or proceeding among the Parties arising out of or relating in any way to the

Stipulation of the settlement (a) shall be brought, heard, and determined exclusively in the Court, which shall retain jurisdiction over the Parties and all such disputes, provided that, in the event subject matter jurisdiction is unavailable in the Court, then any such action or proceeding shall be brought, heard and determined exclusively in any other state or federal court sitting in Miami-Dade County, Florida; and (b) shall not be litigated or otherwise pursued in any forum or venue other than the Court, or, if subject matter jurisdiction is unavailable in the Court, then in any forum or venue other than any other state or federal court sitting in Miami-Dade County, Florida. Each Party: (a) consents to personal jurisdiction in any such action brought in this Court, but not in any other action; (b) consents to services of process by registered mail on such Party or such Party's agent; (c) waives any objection to venue in the Court and any claim that the Court or the State of Florida is an inconvenient forum; and (d) EXPRESSLY WAIVES ANY RIGHT TO DEMAND A JURY TRIAL AS TO ANY DISPUTE DESCRIBED IN THIS PARAGRAPH.

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[Signatures to Settlement Agreement on Following Pages]

The Arbitrage Fund

By its attorneys:



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Exactech, Inc.

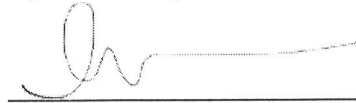
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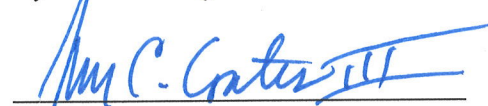
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Exactech, Inc.

By its attorney:

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Exhibit A

CIRCUIT COURT OF FLORIDA
ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY

THE ARBITRAGE FUND, on behalf of itself
and all other similarly situated shareholders of
EXACTECH, INC.,

Plaintiff,

v.

WILLIAM PETTY, BETTY PETTY, DAVID
PETTY, PRIMA INVESTMENTS, INC.,
PRIMA INVESTMENTS, L.P., JAMES G.
BINCH, ANDREW KRUSEN, JR.,
WILLIAM B. LOCANDER, RICHARD C.
SMITH, and FERN S. WATTS,

Defendants.

Complex Business Litigation Section

Case No. 2018-004061

Section: CA 44

CLASS REPRESENTATION

**[PROPOSED] 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 _____, 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 this ___ day of _____, 2022, that:

1. **Definitions.** Except for the terms defined herein, the Court adopts and incorporates the definitions in the Stipulation for purposes of this Order.

2. **Settlement Fairness Hearing.** A hearing (the “Settlement Fairness Hearing”) shall be held before this Court on _____, 2022 at ____:_____, 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.

3. **Rule 1.250(b) Hearing.** Prior to the Settlement Fairness Hearing, 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 _____, 2022 at ____:_____, 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.

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 B-2** 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.

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:

Andrew J. Entwistle, Esq.
ENTWISTLE & CAPPUCCI LLP
500 West 2nd Street, Suite 1900-16

Austin, Texas 78701
Telephone: (512) 710-5960
Facsimile: (212) 894-7272

Attorney for the Class

– and –

Jerry R. Linscott, Esq.
BAKER & HOSTETLER LLP
200 South Orange Avenue SunTrust Center
Suite 2300
Orlando, Florida 32801
Telephone: 407-649-4024
Facsimile: 407-841-0168

Attorney for the Petty Defendants

– and –

Joseph C. Coates, III, Esq.
GREENBERG TRAURIG, P.A.
777 South Flagler Drive, Suite 300 E
West Palm Beach, FL 33401
Telephone: (561) 650.7900

Attorney for the Outside Directors

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 an 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.

Dated: _____, 2022

BY ORDER OF THE COURT

Honorable Alan Fine
Circuit Court Judge

Exhibit B

**CIRCUIT COURT OF FLORIDA
ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY**

THE ARBITRAGE FUND, on behalf of itself
and all other similarly situated shareholders of
EXACTECH, INC.,

Plaintiff,

v.

WILLIAM PETTY, BETTY PETTY, DAVID
PETTY, PRIMA INVESTMENTS, INC.,
PRIMA INVESTMENTS, L.P., JAMES G.
BINCH, ANDREW KRUSEN, JR.,
WILLIAM B. LOCANDER, RICHARD C.
SMITH, and FERN S. WATTS,

Defendants.

Complex Business Litigation Section

Case No. 2018-004061

Section: CA 44

CLASS REPRESENTATION

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF
CLASS ACTION AND MOTION FOR ATTORNEYS' FEES AND EXPENSES**

TO: All shareholders of Exactech, Inc. ("Exactech") as of January 12, 2018:

The Court Authorized This Notice. This is Not a Solicitation from a Lawyer.

This Notice is given pursuant to Rule 1.220 of the Florida Rules of Civil Procedure and by Order of the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida (the "Court"). The purpose of this Notice is to inform you that, among other things: (1) a Class has been certified in the above-captioned action (the "Action"), of which you may be a member, (2) you may ask the Court to exclude you from the Class by filing a statement with the Court by _____, and (3) a settlement has been reached in the Action, which will create a Common Fund from which you may be entitled to receive payment, if you are a Class Member and you complete the enclosed Claim Form and do not ask the Court to exclude you. This Notice is also to inform you that, if you are a Class Member and you do not ask the Court to exclude you from the Class, you may object to the Settlement, or any aspect of the Settlement, including the proposed plan of allocation, Plaintiff's request to drop certain defendants from this Action prior to Judgment, Class Counsel's request for an award of attorneys' fees and reimbursement of litigation expenses and Plaintiff's request for a Service Award.

**RECEIPT OF THIS NOTICE DOES NOT NECESSARILY MEAN YOU ARE A
CLASS MEMBER. CHECK YOUR INVESTMENT RECORDS**

Court-appointed Class Representative, The Arbitrage Fund (“Plaintiff”), on behalf of the Class, has reached a proposed settlement in the amount of \$5,600,000 in cash that will resolve all claims against all defendants (the “Settlement”) in the above-captioned class action (the “Action”).

The Settlement resolves all claims in the Action that the defendants breached their fiduciary duties and/or aided and abetted breaches of fiduciary duties, avoids the costs and risks of continuing the Action, pays money to former Exactech shareholders, and releases the defendants and other Released Persons from liability.

This Notice explains important rights you may have, including your possible receipt of cash from the Settlement. Although you are not required to respond to this Notice, if you are a Class Member, your legal rights will be affected whether or not you act. Please read this Notice carefully!

The Court in charge of the Action still has to decide whether to approve the Settlement including the payment of the Settlement Amount into the Common Fund, the dismissal of all claims in an agreed-upon proposed judgment, the proposed plan of allocation, and the dropping of certain defendants prior to judgment. Payments will be made if and only if the Court approves the Settlement and only after any appeals are resolved. Please be patient.

THE CERTIFIED CLASS

By order dated November 16, 2021 (“the Certification Order”), the Court certified this action to proceed as a class action on behalf of the Class described herein. The Arbitrage Fund has been designated as “Class Representative” to represent the Class. 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.

* * *

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).

The defendants have appealed the Certification Order to the Third District Court of Appeals and that appeal remains pending. The Defendants have agreed to dismiss their appeals as part of the Settlement, if the Settlement is approved.

DEFENDANTS

The defendants are: William Petty, David Petty, Betty Petty, Prima Investments, Inc., and Prima Investments, Limited Partnership (the “Petty Defendants”) and James G. Binch, Andrew Krusen, Jr., William B. Locander, Richard C. Smith, and Fern S. Watts (the “Outside Directors,” and, collectively with the Petty Defendants, “Defendants”).

Under the terms of the Settlement, the claims against the Petty Defendants will be dismissed by the Court in its Order and Final Judgment. Also subject to Court approval, and following a separate hearing, the Outside Directors will be dropped as defendants prior to the Judgment.

FACTUAL AND PROCEDURAL HISTORY OF THE LITIGATION

On October 23, 2017, Exactech announced that it had entered into an Agreement and Plan of Merger with Osteon Holdings, L.P. and Osteon Merger Sub, Inc., affiliates of TPG Capital, L.P. (collectively “TPG”) under which TPG would take Exactech private at a deal price of \$42.00 per share. That is, the Unaffiliated Shareholders of Exactech would receive \$42.00 for each share they held (certain “Rollover Investors” would maintain some of their ownership interest in the new, private entity). As set forth more fully in the Company’s January 16, 2018 definitive proxy statement, on December 3, 2017, Exactech announced an amendment of the Merger Agreement, raising the deal price to \$49.25 per share and also increasing the amount of rollover equity that would be maintained by certain of the Rollover Investors. On January 8, 2018, Exactech revealed that that amendment had been a response to a competing bid by another potential acquirer at a proposed deal price of \$49.00. On February 13, 2018, a special meeting of the shareholders was held. Shareholders as of close of business on January 12, 2018 were entitled to vote. The Merger was approved in a final shareholder vote.

On February 12, 2018, Plaintiff filed a Class Action Complaint in state court in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the “Court”) alleging four counts of breach of fiduciary duty and one count of aiding and abetting captioned *The Arbitrage Fund, et al. v. William Petty, et al.*, No. 2018-004061-CA-01. Plaintiff alleged, among other things, that the Petty Defendants and the Company’s Outside Directors breached their fiduciary duties to Exactech’s public shareholders (the Unaffiliated Shareholders) by allowing Company insiders (the Rollover Investors) to exchange some of their shares in Exactech for equity in the post-transaction private company, an opportunity that was not offered or afforded to the Unaffiliated Shareholders.

On February 21, 2018, Plaintiff moved for Class Certification.

The Court held an initial case management conference on May 4, 2018, at which time the Court set briefing deadlines for then-pending and anticipated motions, which are summarized below.

The Petty Defendants filed a Motion to Transfer Venue to Alachua County on April 12, 2018 in which the Outside Directors joined. After full briefing and a hearing on the motion, the Court denied Defendants’ Motion on June 6, 2018. Defendants subsequently appealed to the Third District Court of Appeal (“Third DCA”). On January 25, 2019, following full briefing on the

appeal, oral argument was heard in the Third DCA before Judges Fernandez, Lindsey and Hendon. The Third DCA affirmed the Court's decision *per curiam* on February 13, 2019.

The Petty Defendants and the Outside Director Defendants each filed a motion to dismiss on April 25, 2018. Plaintiff filed a consolidated opposition to Defendants' motions to dismiss on May 25, 2018. Defendants filed replies on June 25, 2018. The Court heard argument on the motions on August 1, 2018. On September 17, 2021 the Court denied the Outsider Directors' motion to dismiss. The Court has not ruled on the Petty Defendants' motion to dismiss.

Defendants took discovery related to Plaintiff's motion for class certification in August, September and October of 2018, including two sets of requests for production of documents, two sets of interrogatories, and a full-day deposition of Plaintiff's portfolio manager. The Court ordered that merits discovery be stayed until its resolution of the then-pending motion for class certification.

On November 15, 2018, Defendants filed their oppositions to Plaintiff's motion for class certification. Plaintiff filed its reply in further support of class certification on December 6, 2018, together with supporting affidavits by Plaintiff's Treasurer and Plaintiff's outside expert economist. Defendants moved to strike Plaintiff's supporting affidavits on December 20, 2018, which Plaintiff opposed on December 20, 2018. The Court held an evidentiary hearing on January 9, 2019, at which it admitted Plaintiff's affidavits into evidence and took the motion for class certification under advisement. On April 1, 2019, the Court denied Plaintiff's motion for class certification and dismissed all claims after concluding that the claims were derivative and, therefore, Plaintiff lacked standing to prosecute them. Plaintiff timely appealed that order to the Third DCA. On July 22, 2020, following full briefing and argument before Judges Salter, Hendon and Lobree, the Third DCA held Plaintiff had standing to pursue direct claims based on one of the harms alleged in the Complaint (the Unaffiliated Shareholders' inability to retain any stock in the new post-closing entity), reversed the dismissal of the claims and remanded for the trial court to consider the Rule 1.220 factors as to whether the Class should be certified. On remand, after further briefing, on November 16, 2020, the trial court certified the following Class:

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.

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 served document requests and interrogatories on Defendants on December 17, 2020. Defendants served objections and responses to Plaintiff's document requests, and objections and answers to Plaintiff's interrogatories on September 27, 2021, after several extensions to allow the parties to focus on, variously, then-ongoing settlement negotiations and the pending appeals, discussed in the following paragraphs.

The Petty Defendants and the Outside Director Defendants appealed the Court's order certifying the Class. The two appeals have been fully briefed, consolidated for the purposes of traveling together and oral argument, and remain pending. On December 22, 2021, Plaintiff and Defendants jointly requested that the Third DCA re-calendar the oral argument on these appeals, to allow them time to draft and execute the Stipulation.

On February __, 2022, a Stipulation and Agreement of Compromise, Settlement and Release ("Stipulation") was executed, which memorialized all of the terms of the proposed Settlement. The Stipulation provides for, among other things, the release of all claims asserted in the Action and other Released Claims against all Defendants and other Released Persons. Plaintiff also agreed to drop the Outside Directors as defendants prior to judgment. As is standard in class action settlements such as this, Plaintiff and the Defendants separately agree the Defendants have the right to terminate the Settlement if Class Members who collectively held, in the aggregate, a certain number of Shares as of the January 12, 2018 Record Date request exclusion from (or "opt-out of") the Class.

On _____, 2022, the Court preliminarily approved the Settlement and issued the Preliminary Approval Order: (i) authorizing this Notice; (ii) setting a Settlement Fairness Hearing for _____ at ____ AM/PM; and (iii) setting a hearing on a contemplated unopposed motion to drop the Outside Directors pursuant to Rule 1.250(b) Fla. R. Civ. P. prior to the entry of final judgment for _____ at ____ AM/PM. [These hearings will be held either in person or remotely, at the Court's discretion]. The time and date of the hearings, and any changes if it is rescheduled, will be posted on the Settlement Website, www._____.

STATEMENT OF CLASS RECOVERY

Subject to Court approval, Plaintiff, on behalf of the Class, has agreed to settle all claims asserted in the Action, or that could have been asserted, in exchange for a payment of \$5,600,000 in cash (the "Settlement Amount") to be deposited into an interest-bearing escrow account (the "Common Fund Account"). Class Members who do not request exclusion from the Class and timely submit Claims Forms that are approved by the Settlement Administrator ("Authorized Claimants") will receive their *pro rata* share of the Net Common Fund, after deduction of Court-approved attorneys' fees and expenses, Taxes, and Notice and Administration Costs. It is anticipated that such Class Members will receive \$0.17 per Share Voted For the Merger and \$0.68 per Share Not Voted For the Merger.

STATEMENT OF POTENTIAL OUTCOME OF THE CASE

The Parties do not agree on whether Plaintiff would have prevailed on the merits of its claims against the Defendants, nor do they agree on the amount of damages per share that might be recoverable if Plaintiff were to prevail on the claims against the Defendants. Defendants deny that they have any liability whatsoever for any of the claims that Plaintiff alleged in its complaint; specifically, Defendants deny that they breached any fiduciary duties and deny that Plaintiff or the other Class Members are entitled to any additional consideration in exchange for their shares of Exactech stock.

IDENTIFICATION OF CLASS COUNSEL

Plaintiff and the Class are being represented by (i) Entwistle & Cappucci LLP, a law firm with offices in Austin, TX and New York, NY; (ii) Labaton Sucharow LLP, a law firm with offices in, among other places, New York, NY and Wilmington, DE; and (iii) Gray Robinson, P.A., a law firm with offices in, among other places, Orlando, Florida and Miami, Florida. Entwistle & Cappucci LLP and Labaton Sucharow LLP are, collectively, court-appointed Class Counsel, and Gray Robinson, P.A. is Court-Appointed Class Liaison Counsel. Any questions regarding the Settlement should be directed to Brendan J. Brodeur, Esquire of Entwistle & Cappucci LLP at (212) 894-7200.

Class Counsel were appointed to represent all Class Members. The Court will determine the amount of Class Counsel's fees and expenses. You will not be separately charged for these lawyers. Any fees and expenses awarded by the Court will be paid from the Common Fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

WHY IS THERE A SETTLEMENT?

The Court did not decide in favor of Plaintiff or the Defendants. The Settlement will end all the claims against the Defendants in the Action and avoid the uncertainties and costs of further litigation and any future trial. Exactech shareholders as of January 12, 2018 who were entitled to vote on the Merger will be able to receive substantial certain compensation, compared to the risk that no recovery or a smaller recovery might be achieved at trial or following pre-trial motions, or on appeal, years in the future. Settlement was reached after almost four years of hard-fought litigation. Plaintiff, through Class Counsel, conducted an extensive investigation of the claims and underlying events and transactions relating to the Action. Class Counsel and Plaintiff participated in protracted and hard-fought arms'-length negotiations, including a mediation session before an experienced mediator, prior to entering into the Settlement. Class Counsel and Plaintiff believe that Settlement is advisable because it will avert several risks, including the (a) risk of losing the Action, (b) risk of a smaller recovery than achieved in the Settlement, (c) risks on appeal even if the case is won on the trial court level, and (d) risk of the passage of time, possibly years, before any recovery is monetized, especially if an award is appealed. For the Defendants, who deny all allegations of liability and deny that any Class Members were damaged, the principal reason for the Settlement is to eliminate the burden, expense, uncertainty, and risk of further litigation. The Settlement should not be seen as an admission or concession on the part of the Defendants about any of the claims, their fault or liability for damages.

WHO IS ENTITLED TO SETTLEMENT FUNDS?

Class Members who do not exclude themselves from (opt-out of) the Class and who submit valid Claim Forms and sufficient documentation will be deemed “Authorized Claimants” and will be entitled to receive a portion of the settlement funds. The Court determined that everyone who fits the following description, is a member of the Class, or “Class Member”:

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.

* * *

The “Rollover Investors” are: William Petty; David Petty; Betty Petty; Prima Investments, Limited Partnership; 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).

CAN I EXCLUDE MYSELF FROM THE CLASS?

Yes. You may request exclusion from the Class by filing a statement with the Court asking to be excluded no later than _____ [56 days after the Preliminary Approval Order]. To be effective, your 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. Please note that, if 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.

HOW AND WHEN WILL I RECEIVE PAYMENT

The Court will hold a hearing on _____, 2022 at _____ AM/PM, to decide whether to, among other things, approve the Settlement. If the Court approves the Settlement, there may still be appeals which would delay payment. Following the Court’s approval, the resolution of any appeals, the submission deadline for claims and the calculation of each Authorized Claimant’s *pro-rata* share, the Settlement Administrator will distribute the Net Common Fund among the Authorized Claimants in accordance with the proposed plan of allocation attached as Exhibit ___ hereto, or such other plan of allocation as the Court may direct.

WHAT CLASS MEMBERS ARE GIVING UP IF THE SETTLEMENT IS APPROVED

Unless you exclude yourself, you will stay in the Class, which means that as of the date that the Settlement becomes effective under the terms of the Stipulation (the “Effective Date”), you will forever give up and release all “Released Claims” (as defined below) against the “Released Persons” (as defined below). You will not in the future be able to bring a case asserting any Released Claim against the Released Persons.

- (a) “Released Claims” mean any and all Unknown Claims and any and all other claims, demands, rights, actions, or causes of action, liabilities, damages, losses, obligations, judgments, suits, fees, expenses, costs, matters, and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, matured or unmatured, that have been, could have been, or in the future can or might be asserted in the Action or in any court, tribunal, or proceeding (including, but not limited to, any claims arising under federal, state, foreign, or common law relating to alleged fraud, breach of any duty, negligence, the federal securities laws, and any state disclosure law) by or on behalf of any members of the Class, based on or relating to his, her or its ownership of Exactech common stock (whether individual, class, derivative, representative, legal, equitable, or any other type of claim in any other capacity) which have arisen, could have arisen, arise now or hereafter arise out of or relate in any manner to the allegations, facts, events, acquisitions, matters, acts, occurrences, statements, representations, misrepresentations, omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved or set forth in, or referred to or otherwise related in any way to: (i) the Merger; (ii) the adequacy of the consideration to be paid to Exactech shareholders in connection with the Merger; (iii) the fiduciary obligations, if any, of the Defendants or Released Persons, including, but not limited to, in connection with the Merger; (iv) the negotiations in connection with the Merger; (v) the events and analyses related to or conducted in connection with the Merger; (vi) the disclosures or disclosure obligations of any of the Defendants or Released Persons in connection with the Merger; (vii) the ownership of Exactech stock; (viii) the Petty Defendants’ actions as Board members, shareholders, and/or officers of Exactech at any point in time from the inception of Exactech until the consummation of the Merger or (ix) the negotiation, execution, or approval of the Stipulation, or the Settlement; provided, however, that the Released Claims shall not include any claims to enforce the Stipulation.
- (b) “Released Persons” shall mean Defendants, Exactech, Osteon Holdings, L.P., Osteon Merger Sub, Inc., and TPG, as well as their respective families, associates, affiliates, or subsidiaries, and each and all of their respective past, present, or future officers, directors, stockholders, agents, representatives, employees, attorneys, financial or investment advisors, advisors, consultants, accountants, investment bankers, commercial bankers, trustees, engineers, agents, insurers, co-insurers and reinsurers, heirs, executors, personal or legal representatives, estates, administrators, predecessors, affiliates, subsidiaries, parents, members, general or limited partners, principals, controlling shareholders, successors, and assigns,

whether or not any such Released Persons were named as parties, served with process, or appeared in the Action.

STATEMENT OF ATTORNEYS' FEES AND LITIGATION EXPENSES SOUGHT

Class Counsel and Class Liaison Counsel have not received any payment for their services in pursuing the claims against the Defendants on behalf of the Class, nor have they been reimbursed for their litigation expenses. At the Settlement Fairness Hearing described below, or at such other time as the Court may order, Class Counsel will ask the Court to award them, from the Common Fund, attorneys' fees of up to, and no more than, One Million, Five Hundred Thousand Dollars (\$1,500,000), plus interest from the date of funding at the same rate as earned by the Common Fund, and to reimburse them for their actual out-of-pocket litigation expenses specific to this Action, such as the cost of experts, transcripts and court costs, mediator costs, online legal and factual research resources (such as Westlaw and Bloomberg), and the cost of travel, that they have incurred in pursuing the Action. The request for reimbursement of expenses will not exceed \$200,000. Class Counsel's requests for an award of attorneys' fees and reimbursement of expenses will include all fees payable to, and all expenses incurred by, Class Liaison Counsel. Class Counsel's overall request for reimbursement of expenses will also include a request for a Service Award to the former Exactech shareholder who served as Plaintiff and Class Representative in an amount that will not exceed \$10,000. Accordingly, all legal fees, reimbursed expenses, and service awards combined shall in no event exceed One Million, Seven Hundred Thousand Dollars (\$1,700,000) plus any interest earned thereon, out of the Common Fund of Five Million, Six Hundred Thousand Dollars (\$5,600,000), plus any interest earned thereon, less costs of notice and administration and Taxes.

WHAT TO DO IN THE EVENT YOU DO NOT LIKE SOMETHING ABOUT THE PROPOSED SETTLEMENT

If you are a Class Member and you do not exclude yourself from (opt out of) the Class, you can object to any part of the Settlement, including the proposed plan of allocation, the dropping of the Outside Directors as defendants in the Action prior to Judgment, the application by Class Counsel for attorneys' fees and reimbursement of expenses and/or the Service Award to Plaintiff. If you would like to object, you must write to the Court setting out your objection, giving reasons why you think the Court should not approve any part or all of the Settlement, or Class Counsel's request for fees and expenses. To object, you must, not later than _____ [twenty-one (21) calendar days prior to the Rule 1.250(b) Hearing], file with the Court and serve upon counsel listed below: (a) proof of your membership in the Class; (b) a statement of your objection(s) to any matters before the Court; (c) the grounds for such objections and the reasons that you desire to appear and be heard as well as all documents or writings you desire the Court to consider; (d) a statement indicating the number of times in the past three years you (or your counsel) have objected to a class action settlement, listing each one by name of case, jurisdiction, and docket number and outcome of the objection; and (e) if you wish to be heard at the Settlement Fairness Hearing or the Rule 1.250(b) Hearing, a written notice of intention to appear. Such filings shall be served upon the following counsel:

Andrew J. Entwistle, Esq.
ENTWISTLE & CAPPUCCI LLP
500 West 2nd Street, Suite 1900-16

Austin, Texas 78701
Telephone: (512) 710-5960
Facsimile: (212) 894-7272

Attorney for the Class

– and –

Jerry R. Linscott, Esq.
BAKER & HOSTETLER LLP
200 South Orange Avenue SunTrust Center
Suite 2300
Orlando, Florida 32801
Telephone: 407-649-4024
Facsimile: 407-841-0168

Attorney for the Petty Defendants

– and –

Joseph C. Coates, III, Esq.
GREENBERG TRAUERIG, P.A.
777 South Flagler Drive, Suite 300 E
West Palm Beach, FL 33401
Telephone: (561) 650.7900

Attorney for the Outside Directors

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.

The Court will hold a Settlement Fairness Hearing at _____ AM/PM on _____ 2022, in Courtroom ____ of the Circuit Court of the Eleventh Judicial Circuit, 73 W. Flagler Street, Miami, Florida 33130. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court also will consider the applications for attorneys' fees and reimbursement of expenses and Service Award for Plaintiff. The Court will take into consideration any written objections filed in accordance with the instructions set out above. We do not know how long it will take the Court to make these decisions.

Prior to conducting the Settlement Fairness Hearing, the Court will hold a Rule 1.250(b) Hearing at _____ AM/PM on _____ 2022, in Courtroom ____ of the Circuit Court of the Eleventh Judicial Circuit, 73 W. Flagler Street, Miami, Florida 33130 to consider whether the Outside Directors may be dropped as defendants in the Action prior to the entry of the Judgment approving the Settlement.

THE SETTLEMENT FAIRNESS HEARING IS WHERE THE COURT WILL DECIDE WHETHER TO APPROVE THE PROPOSED SETTLEMENT; THE RULE 1.250(b)

HEARING IS WHERE THE COURT WILL DECIDE WHETHER TO APPROVE PLAINTIFF'S REQUEST TO DROP THE OUTSIDE DIRECTORS AS DEFENDANTS IN THE ACTION PRIOR TO JUDGMENT

You do not need to attend either the Settlement Fairness Hearing or the Rule 1.250(b) Hearing. Class Counsel will answer any questions the Court may have and present all timely objections. But you are welcome to come at your own expense. If you validly submit an objection, it will be considered by the Court. You do not have to come to Court to talk about it.

If you file an objection, you may ask the Court for permission to speak at the Settlement Fairness Hearing or Rule 1.250(b) Hearing. To do so, you must include with your objection a statement that it is your "notice of intention to appear." Persons who object and want to present evidence at the Settlement Fairness Hearing or the Rule 1.250(b) Hearing must also include in their written objection the identity of any witness they may call to testify and exhibits they intend to introduce at either hearing. You cannot speak at either the Settlement Fairness Hearing or the Rule 1.250(b) Hearing if you exclude yourself from the Class or if you have not provided written notice of your intention to speak at either of the hearings according to the procedures described above.

You should also be aware that the Court may change the date and time of the Settlement Fairness Hearing and/or the Rule 1.250(b) Hearing (discussed below) without another notice being sent to Class Members. If you want to come to the hearing, you should check the Settlement Website (www._____) to see if the hearing date and time has changed.

ADDITIONAL PROVISIONS

If you are a Class Member and you submit an eligible claim postmarked by _____ [134 days after the Preliminary Approval Order], you will receive your *pro rata* share of the Net Common Fund, after deduction of Court-approved attorneys' fees and expenses, Taxes, and Notice and Administration costs, if the Court approves the Settlement, and you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants and the Released Persons about the Released Claims in this case (see definitions above). Any Authorized Claimant who does not accept payment after 120 days after payment is sent, for example, failing to cash a settlement check, shall forfeit the right to said monies and the amount shall be distributed to other Authorized Claimant or contributed to a charitable organization.

If you are a Class Member and you do nothing, you will not receive any payment from the Net Common Fund, but you still will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants and the Released Persons about the Released Claims in this case.

If you request exclusion from ("opt out of") the Class, you will not be entitled to object to any aspect of the Settlement, and you will not receive any payment from the Net Common Fund, but you will not be bound by the releases negotiated by Plaintiff and Class Counsel, so you will retain any rights you may have to pursue the Released Claims.

This Notice summarizes the proposed Settlement. More details are in the Stipulation, dated February ___, 2022, which is available on the Settlement Website (www._____), along

with other important documents. You may also review the Stipulation filed with the Court and all other documents filed in the Action during business hours at the Clerk of the Court's Office, Circuit Court of the Eleventh Judicial Circuit, 73 W. Flagler Street, Room 133, Miami, Florida 33130. You can call the Settlement Administrator within the U.S. and Canada: xxx-xxx-xxxx, or outside the U.S. and Canada: xxx-xxx-xxxx; call Class Counsel: Brendan J. Brodeur, Esquire, of Entwistle Cappucci at (212) 894-7200; write to Settlement Administrator, c/o _____ and ask for copies of this Notice and/or the Stipulation.

Please Do Not Call the Court, Defendants, Defendants' Counsel, or Exactech or TPG with Questions About the Settlement.

If you change your address, or if this Notice was not mailed to your correct address, you should immediately send written notice to the Settlement Administrator at: Exactech Shareholder Litigation Settlement, c/o _____.

SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

If you held shares of Exactech Common stock for the beneficial interest of a person or organization other than yourself as of January 12, 2018, WITHIN SEVEN (7) CALENDAR DAYS OF YOUR RECEIPT OF THIS NOTICE, you are directed to 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. If you choose to follow alternative procedure "(c)" above, the Court has directed that, upon such mailing, you shall send a statement to the Settlement Administrator confirming that the mailing was made as directed. You are entitled to reimbursement from the Common Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expenses and the cost of the ascertaining the names and addresses of beneficial owners. Those expenses will be paid after request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Settlement Administrator: _____ Phone within the U.S. and Canada: xxx-xxx-xxxx; phone outside the U.S. and Canada: xxx-xxx-xxxx Fax: xxx-xxx-xxxx or at _____.com.

DO NOT TELEPHONE THE CLERK OF THE COURT OR THE CLERK'S OFFICE.

DATED: _____

BY ORDER OF THE COURT CIRCUIT
COURT OF THE ELEVENTH JUDICIAL
CIRCUIT, MIAMI-DADE COUNTY,
FLORIDA

Exhibit B-1

Proposed Plan of Allocation of Net Common Fund

The Net Common Fund shall be distributed *pro rata* among Authorized Claimants based on their Weighted Claim Values, which depends on the number of Shares they held and how they voted those Shares. However, if an Authorized Claimant would receive less than \$5.00 in the distribution, the Authorized Claimant will not be entitled to receive payment from the Net Common Fund, as the costs associated with the processing of such payments may equal or exceed the benefit the payment would provide.

Each Claimant's Weighted Claim Value shall be equal to:

the number of Shares the Authorized Claimant held at close of business on January 12, 2018 that were voted "FOR" the Merger, multiplied by \$0.20

PLUS

the number of Shares the Authorized Claimant held at close of business on January 12, 2018 that were not voted "FOR" the Merger (including Shares voted "AGAINST," Shares not voted and Shares voted "ABSTAIN"), multiplied by \$0.80.

Exhibit C

**CIRCUIT COURT OF FLORIDA
ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY**

THE ARBITRAGE FUND, on behalf of itself
and all other similarly situated shareholders of
EXACTECH, INC.,

Plaintiff,

v.

WILLIAM PETTY, BETTY PETTY, DAVID
PETTY, PRIMA INVESTMENTS, INC.,
PRIMA INVESTMENTS, L.P., JAMES G.
BINCH, ANDREW KRUSEN, JR.,
WILLIAM B. LOCANDER, RICHARD C.
SMITH, and FERN S. WATTS,

Defendants.

Complex Business Litigation Section

Case No. 2018-004061

Section: CA 44

CLASS REPRESENTATION

PROOF OF CLAIM AND RELEASE FORM

I. GENERAL INSTRUCTIONS

1. To recover as a member of the Class based on your claims in the action entitled *The Arbitrage Fund, on behalf of itself and all other similarly situated shareholders of Exactech, Inc., v. William Petty, et al.*, Case No. 2018-004061 (Miami-Dade County) (the “Action”), you must complete and, on page ____ below, sign this Proof of Claim and Release form (“Claim Form”). If you fail to submit a timely and properly addressed (as explained in Paragraph 3 below) Claim Form, your claim may be rejected and you may not receive any recovery from the Common Fund created in connection with the proposed Settlement. Submission of this Claim Form, however, does not assure that you will share in the proceeds of the Settlement of the Action.¹

¹ All capitalized terms that are not defined herein have the meanings given them in the Stipulation and Agreement of Settlement, dated [], 2022, available at www._____.

2. THIS CLAIM FORM MUST BE SUBMITTED ONLINE AT WWW. _____ NO LATER THAN _____, 2022 OR, IF MAILED, BE POSTMARKED NO LATER THAN _____, 2022, ADDRESSED AS FOLLOWS:

Exactech Shareholder Litigation
c/o _____
P.O. Box _____
____ CITY, STATE ZIP
www. _____

3. If you are a member of the Class and you do not timely request exclusion in response to the Notice dated _____, 2022, you are bound by and subject to all of the terms of the Stipulation and Agreement of Compromise, Settlement and Release, and all of the terms of the Judgment and orders entered in the Action, including all releases provided therein, and will be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind asserting any Released Claim against any Released Person, WHETHER OR NOT YOU SUBMIT A CLAIM FORM OR RECEIVE A PAYMENT.

II. CLAIMANT IDENTIFICATION

4. If you beneficially owned shares of Exactech Inc. common stock as of January 12, 2018 and were entitled to vote those shares on the proposed Merger with an affiliate of TPG Capital, L.P., (“TPG”) and you are not a member of the immediate family of any Defendant or Rollover Investor, and you have not filed a statement with the Court requesting exclusion from the Class, you are a member of the Class. If you owned your Exactech Stock through a third party, such as a brokerage firm, you are the beneficial owner and the third party is the record owner. If you beneficially owned shares of Exactech common stock as of January 12, 2018 but someone else was entitled to vote those shares (for example, pursuant to a securities lending or voting rights agreement), you are not a member of the Class.

5. Use **Part I** of this form entitled “Claimant Identification” to identify each beneficial owner of Exactech common stock that forms the basis of this claim, as well as the owner of record

if different. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL OWNERS OR THE LEGAL REPRESENTATIVE OF SUCH OWNERS.

6. All joint owners must sign this claim. Executors, administrators, guardians, conservators, and trustees must complete and sign this claim on behalf of persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

III. IDENTIFICATION OF HOLDINGS AND VOTING OR NON-VOTING

7. Use **Part II** of this form entitled “Holdings and Voting or Non-Voting” to supply all required details of your holdings in Exactech Common Stock as of January 12, 2018 and how you voted, or that you did not vote, on the Merger. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

8. Copies of broker confirmations or other documentation of your holdings and how you voted on the Merger must be attached to your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

9. **NOTICE REGARDING ELECTRONIC FILES:** Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. (This is different than the online claim portal on the Settlement website.) All such claimants **MUST** submit a manually signed paper Claim Form whether or not they also submit electronic copies, unless the Settlement Administrator waives this requirement in writing. If you wish to submit your claim electronically, you must contact the Settlement Administrator at (____) ____-____ to obtain the required file layout. No electronic files will be

considered to have been properly submitted unless the Settlement Administrator issues to the claimant a written acknowledgment of receipt and acceptance of electronically submitted data.

PART I – CLAIMANT IDENTIFICATION

The Settlement Administrator will use this information for all communications regarding this Claim Form. If this information changes, you MUST notify the Settlement Administrator in writing at the address above. Complete names of all persons and entities must be provided.

Beneficial Owner's First Name	MI	Beneficial Owner's Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Co-Beneficial Owner's First Name	MI	Co-Beneficial Owner's Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Entity Name (if claimant is not an individual)		
<input type="text"/>		
Representative or Custodian Name (if different from Beneficial Owner(s) listed above)		
<input type="text"/>		
Address1 (street name and number)		
<input type="text"/>		
Address2 (apartment, unit, or box number)		
<input type="text"/>		
City	State	ZIP/Postal
Code	<input type="text"/>	<input type="text"/>
Foreign Country (only if not USA)		Foreign County (only if not USA)
<input type="text"/>		<input type="text"/>
Social Security Number (last four digits only)		Taxpayer Identification Number (last four digits only)
<input type="text"/> - <input type="text"/> - <input type="text"/>		OR <input type="text"/> - <input type="text"/>
Telephone Number (home)		Telephone Number (work)
<input type="text"/> - <input type="text"/> - <input type="text"/>		<input type="text"/> - <input type="text"/> - <input type="text"/>
Email address		
<input type="text"/>		
Account Number (if filing for multiple accounts, file a separate Claim Form for each account)		
<input type="text"/>		
Claimant Account Type (check appropriate box):		
<input type="checkbox"/>	Individual (includes joint owner accounts)	<input type="checkbox"/> Pension Plan <input type="checkbox"/> Trust
<input type="checkbox"/>	Corporation	<input type="checkbox"/> Estate
<input type="checkbox"/>	IRA/401K	<input type="checkbox"/> Other _____ (please specify)

**PART II – JANUARY 12, 2018 HOLDINGS AND VOTING OF
EXACTECH COMMON STOCK**

10. I/we beneficially owned _____ shares of Exactech common stock as of the close of business on January 12, 2018 that we were entitled to vote on the Merger with TPG on February 13, 2018. These shares were:

- Voted “For” the Merger
- Voted “Against” the Merger
- Voted “Abstain” with respect to the Merger
- Not Voted in connection with the February 13, 2018 Shareholder Vote (but I/we were entitled to vote).
- I/we do not know and have been unable to learn despite my/our best efforts, whether or how these shares were voted in connection with the February 13, 2018 Shareholder Vote (but I/we were entitled to vote).

11. My/Our broker, or other holder of record of these shares was:

12. As documentation of my/our holdings as of January 12, 2018, I/we are submitting herewith:

- Statement(s) from my broker, custodian bank or other financial institution
- Receipt(s) / Confirmation(s) related to my vote in the merger
- Other (explain): _____

13. As documentation of how I/we voted our shares in connection with the February 13, 2018 Shareholder Vote, I/we are submitting herewith:

- Receipt(s) related to my vote in the merger
- Instructions to my broker or owner of record directing the voting of my/our shares
- Only the Declaration on Page ___ hereto, signed by me/us under penalty of perjury.
- Other (explain): _____

PART III – SUBMISSION TO JURISDICTION AND ACKNOWLEDGMENTS

14. By signing and submitting this Claim Form, the claimant(s) or the person(s) acting on behalf of the claimant(s) certify(ies) that: I (We) submit this Claim Form under the terms of the accompanying Notice. I (We) also submit to the jurisdiction of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the “Court”) with respect to my (our) claim as (a) Class Member(s) and for purposes of enforcing the releases set forth herein. I (We) further acknowledge that I (we) will be bound by and subject to the terms of the Judgment and any orders entered in connection with the Settlement in the Action, including the releases set forth therein. I (We) agree to furnish additional information to the Settlement Administrator to support this claim, such as voting records, if required to do so. I (We) have not submitted any other claim covering the same shares of Exactech common stock during the Class Period and know of no other person having done so on my (our) behalf.

PART IV – RELEASES, WARRANTIES, AND CERTIFICATION

15. I (We) hereby warrant and represent that I am (we are) a Class Member as defined in the Notice, that I am (we are) not excluded from the Class, that I am (we are) not an Outside Director or a Rollover Investor (as defined in the Notice) or a member of the immediate family of an Outside Director or Rollover Investor.²

16. As a Class Member, I (we) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally, and forever compromise, settle, release, resolve, relinquish, waive, discharge, and dismiss with prejudice, and without costs, the Released Claims as to each and all of the Released Parties (as these terms are defined in the accompanying Notice). This release shall be of no force or effect unless and until the Court approves the Settlement and it becomes effective on the Effective Date.

17. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

18. I (We) hereby warrant and represent that I (we) have included information about all of my (our) holdings of Exactech common stock as of January 12, 2018 and my (our) votes on the Merger.

19. I (We) certify that I am (we are) NOT subject to backup tax withholding. (If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the prior sentence.)

² 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). The Outside Directors are James G. Binch, Andrew Krusen, Jr., William B. Locander, Richard C. Smith, and Fern S. Watts.

I (We) declare under penalty of perjury under the laws of the United States of America that all of the foregoing information supplied by the undersigned is true and correct.

Executed this _____ day of _____, 2022

Signature of Claimant

Type or print name of Claimant

Signature of Joint Claimant, if any

Type or print name of Joint Claimant

Signature of person signing on behalf of Claimant

Type or print name of person signing on behalf of Claimant

Capacity of person signing on behalf of Claimant, if other than an individual (*e.g.*, Administrator, Executor, Trustee, President, Custodian, Power of Attorney, etc.)

REMINDER CHECKLIST:

1. Please sign this Claim Form.
2. DO NOT HIGHLIGHT THE CLAIM FORM OR YOUR SUPPORTING DOCUMENTATION.
3. Attach only copies of supporting documentation as these documents will not be returned to you.
4. Keep a copy of your Claim Form for your records.
5. The Settlement Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. **Your claim is not deemed submitted until you receive an acknowledgment postcard.** If you do not receive an acknowledgment postcard within 60 days, please call the Settlement Administrator toll free at XXX-XXX-XXXX.
6. If you move after submitting this Claim Form please notify the Settlement Administrator of the change in your address, otherwise you may not receive additional notices or payment.

Exhibit D

Entwistle & Cappucci LLP and Labaton Sucharow LLP Announce a Notice of Pendency and Proposed Settlement of Class Action in The Arbitrage Fund v. Petty, et al.

Florida/February _____, 2022/

**CIRCUIT COURT OF FLORIDA
ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY**

THE ARBITRAGE FUND, on behalf of
itself and all other similarly situated
shareholders of EXACTECH, INC.,

Plaintiff,

v.

WILLIAM PETTY, BETTY PETTY,
DAVID PETTY, PRIMA INVESTMENTS,
INC., PRIMA INVESTMENTS, L.P.,
JAMES G. BINCH, ANDREW KRUSEN,
JR., WILLIAM B. LOCANDER, RICHARD
C. SMITH, and FERN S. WATTS,

Defendants.

Complex Business Litigation Section

Case No. 2018-004061

Section: CA 44

CLASS REPRESENTATION

**SUMMARY NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF
CLASS ACTION AND MOTION FOR ATTORNEYS' FEES AND EXPENSES**

To: All individuals and entities that held **Exactech, Inc.** ("Exactech" or the "Company") common stock shares as of January 12, 2018 and were entitled to vote those shares in favor or against the Merger Agreement with affiliates of TPG Capital, L.P. on February 13, 2018, excluding Defendants and all members of their immediate families and excluding Rollover Investors (those shareholders entitled to receive equity in the new, privately held company) and all members of their immediate families (as defined fully in the Notice, the "Class").

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the Circuit Court of the Eleventh Judicial Circuit of Florida, Miami-Dade County, that Plaintiff The Arbitrage Fund, on behalf of itself and all members of the certified Class, and defendants William Petty, David Petty, Betty Petty, Prima Investments, Inc., Prima Investments, L.P., James G. Binch, Andrew Krusen, Jr., William B. Locander, Richard C. Smith, and Fern S. Watts (collectively, "Defendants"), have reached a proposed settlement of the claims in the above-captioned class action (the "Action") in the amount of \$5,600,000 (the "Settlement").

A hearing will be held before the Honorable Alan Fine, on _____, at _____.m. in Courtroom _____ of the Dade County Courthouse, 73 West Flagler ST, Miami, FL 33130 (the “Settlement Fairness Hearing”) to determine whether the Court should: (i) approve the proposed Settlement as fair, reasonable and adequate; (ii) dismiss the Action with prejudice as provided in the Stipulation and Agreement of Compromise, Settlement and Release, dated _____ (“Stipulation”); (iii) approve the proposed plan of allocation for distribution of the proceeds of the Settlement (the “Net Common Fund”) among Authorized Claimants and (iv) approve Class Counsel’s Fee and Expense Application.

A hearing will also be held before the Honorable Alan Fine, on _____, at _____.m. in Courtroom _____ of the Dade County Courthouse, 73 West Flagler ST, Miami, FL 33130 (the “Rule 1.250(b) Hearing”) to determine whether certain defendants (Exactech’s Outside Directors) may be dropped from the case prior to the entry of Final Judgment.

The Court may change the date of the Settlement Fairness Hearing and/or the Rule 1.250(b) Hearing, or hold either or both remotely, without providing another notice. You do NOT need to participate at the Settlement Fairness Hearing to receive a distribution from the Net Common Fund.

IF YOU ARE A MEMBER OF THE CLASS, YOUR RIGHTS WILL BE AFFECTED BY THE PROPOSED SETTLEMENT AND YOU MAY BE ENTITLED TO A MONETARY PAYMENT.

If you have not yet received a full Notice and Claim Form, you may obtain copies of these documents by visiting the website for the Settlement, _____, or by contacting the Settlement Administrator at:

[]

Inquiries, other than requests for information about the status of a claim, may also be made to Class Counsel:

ENTWISTLE & CAPPUCCI LLP

Brendan J. Brodeur, Esq.
230 Park Avenue, 3rd Floor
New York, NY 10169
212-894-7200

If you are a Class Member, to be eligible to share in the Distribution of the Net Common Fund, you must submit a Claim Form *postmarked or submitted online no later than* _____. If you are a Class Member and do not timely submit a valid Claim Form, you will not be eligible to share in the Distribution of the Net Common Fund, but you will nevertheless be bound by all of the terms of the Stipulation, and all of the terms of any judgments or orders entered by the Court relating to the Settlement, whether favorable or unfavorable.

If you are a Class Member and wish to exclude yourself from the Class, you must file with the Court a written request for exclusion in accordance with the instructions set forth in the Notice *no later than* _____. If you properly exclude yourself from the Class, you will not be bound by

any judgments or orders entered by the Court relating to the Settlement, whether favorable or unfavorable, and you will not be eligible to share in the Distribution of the Net Common Fund.

Any objections to the proposed Settlement, Class Counsel's Fee and Expense Application and/or the proposed plan of allocation must be filed with the Court, either by mail or in person, and be mailed to counsel for the Parties in accordance with the instructions in the Notice, such that they are *received no later than* _____.

**PLEASE DO NOT CONTACT THE COURT, DEFENDANTS OR
DEFENDANTS' COUNSEL REGARDING THIS NOTICE.**

BY ORDER OF THE COURT

CIRCUIT COURT OF FLORIDA
ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY

Exhibit E

**CIRCUIT COURT OF FLORIDA
ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY**

THE ARBITRAGE FUND, on behalf of itself
and all other similarly situated shareholders of
EXACTECH, INC.,

Plaintiff,

v.

WILLIAM PETTY, BETTY PETTY, DAVID
PETTY, PRIMA INVESTMENTS, INC.,
PRIMA INVESTMENTS, L.P., JAMES G.
BINCH, ANDREW KRUSEN, JR.,
WILLIAM B. LOCANDER, RICHARD C.
SMITH, and FERN S. WATTS,

Defendants.

Complex Business Litigation Section

Case No. 2018-004061

Section: CA 44

CLASS REPRESENTATION

[PROPOSED] ORDER AND FINAL JUDGMENT

The above-captioned action having come on for hearing, as noticed, on _____
_____, 2022, at ____:_____.m., pursuant to the Order of this Court, dated _____
_____, 2022 (the “Preliminary Approval Order”), to consider and determine the matters set forth
in the Preliminary Approval Order; and due and sufficient notice having been given as directed in
the Preliminary Approval Order; and all persons having any objection to the proposed settlement
(the “Settlement”) or the request for attorneys’ fees and expenses and request for incentive award,
described in the Settlement Notice having been given an opportunity to present such objections to
the Court; the Court having heard and considered the matter, including all papers filed in
connection therewith, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Order and Final Judgment incorporates by reference the definitions in the Stipulation and Agreement of Compromise, Settlement, and Release executed by the parties on _____ 2022 and filed with the Court (the “Stipulation”), and all terms used herein shall have the same meanings as set forth in the Stipulation.

2. The Court has jurisdiction over the subject matter of the Action and over all parties to the Action who have appeared therein.

3. The Notice and the method of its dissemination is hereby determined to have been fair, reasonable, and adequate notice under the circumstances and in full compliance with Florida law and the requirements of due process under the United States Constitution and other applicable laws.

4. The Court affirms its certification of the Class, 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.

* * *

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).

5. [Pursuant to Rule 1.220(d)(2), also excluded from the Class are the persons and entities listed on Exhibit 1 hereto, who the Court finds have requested such exclusion in substantial compliance with the requirements for requesting exclusion as set forth in the Notice].

6. The Court hereby approves the Settlement set forth in the Stipulation and finds that the Settlement is in all respects fair, reasonable, adequate, and in the best interests of the Class.

7. The Released Claims as against the Released Persons are hereby DISMISSED WITH PREJUDICE, with each party to bear his, her, or its own costs (except as otherwise provided in this Order and Final Judgment or the Stipulation). Upon the Effective Date:

a. Plaintiff and all other Releasers shall be deemed to, and, by operation of this Order and Final Judgment, do fully, finally, and forever release, relinquish, discharge, and dismiss with prejudice, on the merits and without costs, the Action and any and all of the Released Claims against any and all of the Released Persons; provided, however, that Plaintiff shall retain the right to enforce the terms of this Stipulation and Settlement.

b. Plaintiff and all other Releasers shall be deemed to, and, by operation of this Order and Final Judgment, are forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, or other forum of any kind, any and all of the Released Claims against any and all of the Released Persons (whether or not they submit a Claim Form or receive a payment from the Net Common Fund); provided, however, that Plaintiff shall retain the right to enforce the terms of this Stipulation and Settlement.

c. All Released Persons, and anyone claiming through or on behalf of any of them, shall be deemed to, and, by operation of the Judgment, do fully, finally and forever release, relinquish and discharge any and all claims against Plaintiff and all other Class Members who have not been excluded from the Class, and their agents and attorneys, including but not limited to the Class Counsel, including partners, principals, associates and/or employees of same, and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, in

their capacities as such, from any and all claims, liabilities, complaints, allegations or sanctions, known or unknown (the “Claims Released Against Plaintiff”), arising out of, or relating in any way, directly or indirectly, to their investigation, preparation, initiation, filing, prosecution, litigation, resolution, or settlement of the Action and the Released Claims, provided, however, that the Released Persons shall retain the right to enforce the terms of this Stipulation and Settlement. Defendants and the Released Persons shall be barred and enjoined from ever asserting the Claims Released Against Plaintiff before any forum, authority or venue whatsoever.

d. “Released Claims” means any and all Unknown Claims and any and all other claims, demands, rights, actions, or causes of action, liabilities, damages, losses, obligations, judgments, suits, fees, expenses, costs, matters, and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, matured or unmatured, that have been, could have been, or in the future can or might be asserted in the Action or in any court, tribunal, or proceeding (including, but not limited to, any claims arising under federal, state, foreign, or common law relating to alleged fraud, breach of any duty, negligence, the federal securities laws, and any state disclosure law) by or on behalf of any members of the Class, based on or relating to his, her or its ownership of Exactech common stock (whether individual, class, derivative, representative, legal, equitable, or any other type of claim in any other capacity) which have arisen, could have arisen, arise now or hereafter arise out of or relate in any manner to the allegations, facts, events, acquisitions, matters, acts, occurrences, statements, representations, misrepresentations, omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved or set forth in, or referred to or otherwise related in any way to: (i) the Merger; (ii) the adequacy of the consideration to be paid to Exactech shareholders in connection with the Merger; (iii) the fiduciary obligations,

if any, of the Defendants or Released Persons, including, but not limited to, in connection with the Merger; (iv) the negotiations in connection with the Merger; (v) the events and analyses related to or conducted in connection with the Merger; (vi) the disclosures or disclosure obligations of any of the Defendants or Released Persons in connection with the Merger; (vii) the ownership of Exactech stock; (viii) the Petty Defendants' actions as Board members, shareholders, and/or officers of Exactech at any point in time from the inception of Exactech until the consummation of the Merger or (ix) the negotiation, execution, or approval of the Stipulation, or the Settlement; provided, however, that the Released Claims shall not include any claims to enforce the Stipulation.

e. "Released Persons" means Defendants, Exactech, Osteon Holdings, L.P., Osteon Merger Sub, Inc., and TPG, as well as their respective families, associates, affiliates, or subsidiaries, and each and all of their respective past, present, or future officers, directors, stockholders, agents, representatives, employees, attorneys, financial or investment advisors, advisors, consultants, accountants, investment bankers, commercial bankers, trustees, engineers, agents, insurers, co-insurers and reinsurers, heirs, executors, personal or legal representatives, estates, administrators, predecessors, affiliates, subsidiaries, parents, members, general or limited partners, principals, controlling shareholders, successors, and assigns, whether or not any such Released Persons were named as parties, served with process, or appeared in the Action.

f. "Releasers" means Plaintiff and all other Class Members, for themselves and each of their present or past predecessors, predecessors in interest, successors, successors in interest, parents, subsidiaries, affiliates, custodians, agents, attorneys, assignees, representatives, heirs, executors, estates, trustees, assigns, administrators, members, associates, partners, principals, employees, officers, legal representatives, managing directors, and directors in their

capacities as such. [The persons and entities who or which are listed in Exhibit 1 hereto have been excluded from the Class at their request and are not Releasers.]

8. Separate orders shall enter regarding the plan of allocation of the Net Common Fund, and on Class Counsel's motion for an award of attorneys' fees, reimbursement of litigation expenses and a Service Award to Plaintiff. Without in any way affecting the finality of this Order and Final Judgment, this Court shall retain jurisdiction for the purpose of entering such orders and such other orders as may be necessary to implement and enforce the terms of the Stipulation

9. Nothing contained herein shall be construed to release, discharge, extinguish or otherwise compromise any claims, potential claims, duties, obligations or rights that Defendants or any insurer may have or owe under or relating to any policy of liability or other insurance.

10. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

11. The Clerk of the Court shall enter this Order and Final Judgment.

IT IS SO ORDERED this _____ day of _____, 2022.

ENTER:

Honorable Alan Fine

EXHIBIT 1
PERSONS AND ENTITIES EXCLUDED FROM THE CLASS AT THEIR REQUEST

Exhibit F

**CIRCUIT COURT OF FLORIDA
ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY**

THE ARBITRAGE FUND, on behalf of itself
and all other similarly situated shareholders of
EXACTECH, INC.,

Plaintiff,

v.

WILLIAM PETTY, BETTY PETTY, DAVID
PETTY, PRIMA INVESTMENTS, INC.,
PRIMA INVESTMENTS, L.P., JAMES G.
BINCH, ANDREW KRUSEN, JR.,
WILLIAM B. LOCANDER, RICHARD C.
SMITH, and FERN S. WATTS,

Defendants.

Complex Business Litigation Section

Case No. 2018-004061

Section: CA 44

CLASS REPRESENTATION

MOTION FOR APPROVAL TO DROP PARTY DEFENDANTS

Plaintiff, The Arbitrage Fund, on behalf of itself and all other similarly situated shareholders of Exactech, Inc., and Defendants, James G. Binch, Andrew Krusen, Jr., William B. Locander, Richard C. Smith, and Fern S. Watts (collectively, the “Outside Directos”)³, hereby jointly move and stipulate as follows:

1. This case has been resolved by a Stipulation of Settlement (“Stipulation”) which will require approval by the Court Rule 1.220 et seq. Fla. R. Civ. P. For good and valuable consideration and as a necessary component of the Stipulation, Plaintiff has agreed, also subject to Court approval, to drop the Outside Directors as defendants prior to the entry of Judgment.

³ Capitalized terms not defined herein have the meaning assigned to them in the Stipulation and Agreement of Compromise, Settlement and Release, dated _____.

2. In the event the Settlement is cancelled and/or terminated for any reason, or the Effective Date otherwise does not occur, the parties hereto stipulate and agree that each and every one of the Outside Directors will be added and named anew as defendants in this case. In such event, the Outside Directors hereby individually and collectively each and all waive all affirmative defenses of the statute of limitations, laches, or any other temporally based defense to their joinder and/or service as named defendants in this action.

3. [In accordance with Fla. R. Civ. P. 1.220(e), Plaintiff and the Outside Directors request that the Court set a hearing to consider this motion after _____ [74 days after the Preliminary Approval Order], to allow time to provide notice of this motion to Class Members. Plaintiff requests that such hearing be set as soon as possible prior to the Settlement Fairness Hearing, for the convenience of any Class Members who wish to attend both hearings and for out-of-state Class Counsel] [OR][By order dated _____, 2022 (the Preliminary Approval Order), the Court set a hearing for this motion, which the Parties advised was forthcoming) (therein, the “Rule 1.250(b) Hearing”). That hearing is set for _____ .]

WHEREFORE, Plaintiff and the Outside Directors move this Court [to hold a hearing on this motion on [seventy-four (74) days after the entry of the Preliminary Approval Order] or as soon thereafter as they may be heard and prior to the Settlement Fairness Hearing and], enter an Order approving Plaintiff’s request to drop the Outside Directors as defendants in this action with all parties to bear their own costs and attorneys’ fees, prior to entering Judgment.

A proposed order is appended hereto as Exhibit 1.

GRAYROBINSON, P.A.

/s/

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GREENBERG TRAURIG, P.A.

/s/

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Attorneys for The Outside Directors

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on _____, 2022, a true and correct copy of the foregoing Notice of Service has been uploaded to the Clerk’s e-Portal which will send electronic notification to: Joseph C. Coats, III, Esq. (coatesj@gtlaw.com; hernandezt@gtlaw.com; flservice@gtlaw.com); Gina Shlaferman, Esq. (shlafermang@gtlaw.com); Jerry R. Linscott, Esq. (jlinscott@bakerlaw.com; mrios@bakerlaw.com; orlbakerdocket@bakerlaw.com); Julie Singer Brady, Esq. (jsinger@bakerlaw.com; rpeter@bakerlaw.com); and Maureen B. Soles, Esq. (msoles@bakerlaw.com; smmcoy@bakerlaw.com).

/s/
David S. Oliver

Exhibit F-1

**CIRCUIT COURT OF FLORIDA
ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY**

THE ARBITRAGE FUND, on behalf of itself
and all other similarly situated shareholders of
EXACTECH, INC.,

Plaintiff,

v.

WILLIAM PETTY, BETTY PETTY, DAVID
PETTY, PRIMA INVESTMENTS, INC.,
PRIMA INVESTMENTS, L.P., JAMES G.
BINCH, ANDREW KRUSEN, JR.,
WILLIAM B. LOCANDER, RICHARD C.
SMITH, and FERN S. WATTS,

Defendants.

Complex Business Litigation Section

Case No. 2018-004061

Section: CA 44

CLASS REPRESENTATION

[PROPOSED] ORDER APPROVING THE DROPPING OF PARTY DEFENDANTS

Plaintiff, The Arbitrage Fund, on behalf of itself and all other similarly situated shareholders of Exactech, Inc., and Defendants, James G. Binch, Andrew Krusen, Jr., William B. Locander, Richard C. Smith, and Fern S. Watts (collectively, the “Outside Directors” and together with Plaintiff, the “Movants”), have applied for an order (the “Motion”) approving the Movants’ Motion to drop the Outside Directors as defendants in the above-captioned action (the “Action”).

NOW, upon consent of the Movants, after review and consideration of the Motion, Stipulation, and Exhibits annexed thereto filed with this Court, after holding a hearing on _____, and after due deliberation,

IT IS HEREBY ORDERED this ___ day of _____, 2022, that:

1. Except for the terms defined herein, the Court adopts and incorporates the definitions in the Stipulation and Agreement of Compromise, Settlement, and Release executed by

the parties on _____ 2022 and filed with the Court (the “Stipulation”), and all terms used herein shall have the same meanings as set forth in the Stipulation.

2. The Court has jurisdiction over the subject matter of the Action and over all parties to the Action who have appeared therein.

3. The Notice and the method of its dissemination is hereby determined to have been fair, reasonable, and adequate notice under the circumstances and in full compliance with Florida law and the requirements of due process under the United States Constitution and other applicable laws.

4. The dropping of the Outside Directors as defendants prior to the entry of judgment is a negotiated term of the Settlement, which Settlement, if approved, will provide substantial benefits to the Class.

5. The dropping of the Outside Directors as defendants prior to the entry of judgment will not prejudice the Class, in light of their agreement to be added anew if the Settlement is cancelled and/or terminated for any reason, or the Effective Date otherwise does not occur, and their waiver of temporally based defenses such as laches and any applicable statutes of limitation.

THEREFORE, the Court hereby **GRANTS** the Motion to drop the Outside Directors as defendants in this action with all parties to bear their own costs and attorneys’ fees. In the event the Settlement does not become effective, each and every one of the Outside Directors shall be added and named anew as Defendants in this case.

Dated: _____, 2022

Honorable Alan Fine
Circuit Court Judge