

W E I T Z
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October 11, 2022

Via ECF and Hand Delivery

The Honorable Nicholas Garaufis
 United States District Court for the
 Eastern District of New York
 225 Cadman Plaza East, Room 1426 S
 Brooklyn, NY 11201

Re: *In Re: Exactech Polyethylene Orthopedic Products Liability Litigation*
 MDL No.: 3044

Dear Judge Garaufis:

I represent seventeen (17) plaintiffs with cases in suit involving the recalled Exactech knees and hips that have been transferred to you for MDL management. Since many of our cases were pending in the E.D.N.Y., I had filed the petition with the Judicial Panel on Multidistrict Litigation seeking an MDL in this District.

I hope it is not presumptuous for me to request that Your Honor conduct an initial conference as soon as practicable. There is a parallel state court consolidation in Gainesville, Florida, Alachua County before Judge Donna M. Keim. In that litigation, one case was filed as early as June 2021 (prior to the product recall) and the trial Judge there set a trial date in November 2023 for a case involving the GXL Hip liner, one of the recalled components at issue. (See August 31, 2022, Order Scheduling Pretrial Conference and Jury Trial attached herein as Exhibit 1). Accordingly, the litigation is somewhat more advanced and was formally consolidated on September 14, 2022, with

approximately 54 cases in suit to date. (See Order Coordinating Exactech Hip, Knee and Ankle Implant Cases attached herein as Exhibit 2).

An Order establishing an ESI Protocol was entered on September 20, 2022, as well as a Protective Order on September 27, 2022. (See Stipulated Order Re: Discovery of Electronically Stored Information and Protective Order attached herein as Exhibits 3 and 4). My firm and many of the lawyers with cases in this MDL have been in communication with the Florida lawyers, and the lawyers appointed to be co-lead counsel in the Florida consolidated action have reached out asking if the lawyers anticipated to be active in the MDL would be agreeable to sharing an electronic vendor to host the documents being produced in that litigation. It makes perfect economic sense to do so, but pivotal decisions on which vendor and cost sharing agreements need to be reached soon. Counsel for Exactech have also expressed a desire for the MDL to coordinate with the Florida litigation to avoid duplicative discovery. We believe coordination is often advisable while recognizing certain circumstances there can be reasons for differing. The Federal Judicial Center also recommends federal state coordination when appropriate. See <https://www.fjc.gov/sites/default/files/2014/Coordinating-Multijurisdiction-Litigation-FJC-2013.pdf>

However, until Your Honor appoints leadership in your new MDL, none of the lawyers have express authority to reach such an agreement on choice of vendors, or to agree to any of the other orders and discovery issues being addressed in Florida state court that involve many of the same issues we will be facing in the MDL. Thus, we respectfully request that Your Honor set a conference at your earliest convenience and an expedited procedure for selection of a Plaintiffs' Steering Committee and leadership counsel.

Respectfully Submitted,



Ellen Relkin

cc: Kim Schmid, Esq.
Katherine Handy, Esq.
Sheryl Bjork, Esq.
Erica Michelle Singer Mekles, Esq.
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All counsel of record in the MDL on annexed service list

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

IN RE: EXACTECH POLYETHYLENE
ORTHOPEDIC PRODUCTS LIABILITY
LITIGATION

MDL No. 3044

SERVICE LIST

George Wilson et al v. Exactech, Inc., E.D. Arkansas, C.A. No. 4:22-cv-00136

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Richard Reilly v. Exactech, Inc., et al, C.D. California, CA. No. 2:22-cv-04106

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***Daniel Carson v. Exactech, Inc. et al*, D. Colorado, C.A. No. 1:22-cv-00919**

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***Laqueisha Carolina v. Exactech, Inc., et al*, D. Colorado, CA. No. 1:22-cv-01511**

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***Faina Pravin v. Exactech Inc. et al*, D. Connecticut, C.A. No. 3:22-cv-00682**

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Clayton Wilder v. Exactech, Inc., et al, S.D. Indiana, CA. No. 1:22-cv-01237

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Geraldine Billups v. Exactech, Inc., E.D. Louisiana, C.A. No. 2:22-cv-01410

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Donald McBride et al v. Exactech, Inc. et al, D. Maryland, C.A. No. 1:22-cv-00615

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Robert Hodge Jr. et al v. Exactech, Inc. et al, D. Maryland, C.A. No. 1:22-cv-01026

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Rex Foxwell et al v. Exactech, Inc. et al, D. Maryland, C.A. No. 1:22-cv-01027

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Alice Laws et al v. Exactech, Inc. et al, D. Maryland, C.A. No. 1:22-cv-01206

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Debra Meneese v. Exactech, Inc. et al, E.D. Missouri, C.A. No. 4:22-cv-00546

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Annette Alberti et al v. Exactech, Inc., E.D. New York, C.A. No. 2:22-cv-00351

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***Jimmy Afzali v. Exactech, Inc. et al*, E.D. New York, C.A. No. 2:22-cv-03455**

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***Charles R. Cuneo et al v. Exactech, Inc. et al*, E.D. New York, C.A. No. 2:22-cv-03456**

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***Joti Allen v. Exactech, Inc., et al*, E.D. New York, C.A. No.: 2:22-cv-03867**

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Domenic Dellanno, et al v. Exactech, Inc., et al., E.D. New York, C.A. No.: 2:22-cv-04243

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Kevin Patterson v. Exactech, Inc., S.D. New York, C.A. No. 1:21-cv-06231

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James Burke v. Exactech, Inc. et al, S.D. New York, C.A. No. 1:22-cv-02086

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***Charles Agro v. Exactech, Inc. et al*, S.D. New York, C.A. No. 1:22-cv-02134**

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***Patricia Kreitzman v. Exactech, Inc. et al*, S.D. New York, C.A. No. 1:22-cv-04183**

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***Jacob Brickman v. Exactech, Inc., et al*, E.D. Pennsylvania, C.A. No. 2:22-cv-02339**

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***Willie Ann Oxendine v. Exactech, Inc. et al*, D. South Carolina, C.A. No. 3:22-cv-01231**

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***Melissa Davis v. Exactech, Inc. et al*, D. South Carolina, C.A. No. 3:22-cv-01236**

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***Lori Morrison et al v. Exactech Inc et al*, N.D. Texas, C.A. No. 3:22-cv-00880**

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Kevin Kenney, et al. v. Exactech, Inc., et al, N.D. Texas, C.A. No.: 3:22-cv-01554

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EXHIBIT 1

IN THE CIRCUIT COURT
OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

CASE NUMBER: 01-2021-CA-001555
Circuit Civil Division J

PHILLIP BRADLEY FREEZE
RACHEL KELLEY FREEZE,
Plaintiffs,

-vs-

EXACTECH INC,
Defendant.

ORDER SCHEDULING PRETRIAL CONFERENCE AND JURY TRIAL
(With Expert Disclosure Schedule)
[Fla. R. Civ. P. 1.200, 1.440]

THIS ACTION is at issue according to Fla. R. Civ. P. 1.440, and is ready to be set for trial. Therefore, it is,

ADJUDGED that:

1. **PRETRIAL CONFERENCE**: Trial counsel for the parties and all parties representing themselves *pro se* are directed to appear before the undersigned Judge in Chambers, Room 416, 201 E University Avenue, Gainesville, Florida on **Monday, October 16, 2023 at 9:00am**, for a Pretrial Conference to be conducted under the provisions of Fla. R. Civ. P. 1.200. The time allotted for the conference is thirty (30) minutes.
2. **TRIAL DATE**: This action is set for Jury Trial on **Monday, November 06, 2023**, commencing at **9:00am**, before the undersigned Judge, or another judge assigned to conduct the trial, in Courtroom tba, Alachua County Family and Civil Justice Center, 201 E University Avenue, Gainesville, Florida. The time allotted for Jury Trial, including jury selection, is **10 days**. The attorneys and parties shall appear before the trial judge for the commencement of trial at **9:00 A.M. on Monday, November 06, 2023**, unless they are specifically notified otherwise.
3. **EXPERTS**: The following requirements shall govern the use of one or more experts whose testimony may be offered at trial.
 - a. Plaintiffs shall disclose the names and addresses of expert witnesses to be used at trial, **three**

- (3) available dates per witness for their depositions to be taken, together with said witnesses' curricula vitae and a reasonable description of said witnesses' anticipated testimony no later than **Thursday, March 16, 2023**.
- b. Plaintiffs shall make their experts available for deposition at a mutually agreed upon time and place no later than **Friday, May 19, 2023**.
- c. Defendants shall disclose the names and addresses of expert witnesses to be used at trial, **three (3) available dates per witness for their depositions to be taken**, together with said witnesses' curricula vitae and a reasonable description of said witnesses' anticipated testimony no later than **Friday, May 19, 2023**.
- d. Defendants shall make their experts available for deposition at a mutually agreed upon time and place no later than **Monday, July 03, 2023**.
- e. Plaintiffs shall disclose the names and addresses of rebuttal expert witnesses, if any, to be used at trial, together with said witnesses' curricula vitae and a reasonable description of said witnesses' anticipated testimony no later than **Monday, July 03, 2023**; and shall make said expert(s) available for deposition no later than **Thursday, August 17, 2023** the close of discovery.
4. **WITNESS LIST**: Not later than **August 17, 2023**, each party shall **file** and **serve** a complete list of witnesses who are expected to testify at trial, together with their last known addresses, telephone numbers, and a concise description of the subject matter of their testimonies. Retained expert witnesses shall be identified as such. Non-retained experts, from whom a party expects to elicit opinion testimony regarding standard of care, causation, or any matter beyond the scope of a fact witness, shall also be identified as such.
5. **EXHIBITS**: No later than **July 16, 2023**, each party shall **file** and **serve** a schedule of all exhibits and documentary evidence that the party will offer during trial.
6. **EXCLUSION OF EVIDENCE**: No witnesses, documents, exhibits, experts or other evidence shall be permitted to testify or be admitted into evidence if not disclosed as required by the foregoing schedule, except by consent of the parties or order of the Court.
7. **MEDIATION**: The attorneys and parties will schedule, conduct, and conclude mediation on or before **Thursday, August 24, 2023**.
8. **DISCOVERY**: ALL DISCOVERY PROCEDURES ALLOWED BY THE FLORIDA RULES OF CIVIL PROCEDURE, INCLUDING THE TAKING OF ALL DEPOSITIONS FOR USE AT TRIAL, SHALL BE COMPLETED NO LATER THAN **FORTY-FIVE (45) DAYS** BEFORE THE PRETRIAL CONFERENCE.
9. **ADMISSIBILITY CONFERENCE**: No later than **ten (10) days** before the Pretrial Conference, the parties shall meet and exhibit to each other all documentary and tangible

evidence, exhibits and visual aids to be used at trial, and shall specifically designate all portions of depositions intended to be offered or used at trial, and shall make a good faith effort to stipulate in writing as to the admissibility and use thereof. Stipulations may be conditioned on a showing at trial of such things as authenticity, relevance, foundation, and other predicates for admissibility.

10. **PLAINTIFF'S PRETRIAL STATEMENT**: No later than **ten (10) days** before the Pretrial Conference, Plaintiff(s) shall file and serve on all parties, and deliver a copy to the undersigned judge, a Pretrial Statement setting forth the following:

- a. A short statement of the case and the facts on which Plaintiff bases the cause(s) of action;
- b. An itemized statement of the special damages Plaintiff expects to prove;
- c. If the Defendant has filed a counterclaim, Plaintiff will comply with Defendant's instructions 11(a) and 11(b);
- d. A schedule of all exhibits and documentary evidence Plaintiff will offer during the trial;
- e. A complete list of witnesses to be used at trial, together with their current addresses and current telephone numbers;
- f. All stipulations regarding the authenticity, admissibility and use of exhibits and visual aids;
- g. A memorandum of law particularly applicable to this case, with copies of cited authority;
- h. Plaintiff's proposed jury instructions and verdict form.

11. **DEFENDANT'S PRETRIAL STATEMENT**: No later than **ten (10) days** before the Pretrial Conference, Defendant(s) shall file and serve on all parties, and deliver a copy to the undersigned judge, a Pretrial Compliance setting forth the following

- a. A statement of the facts constituting Plaintiff's cause(s) of action, including damages, which Defendant will admit;
- b. If Defendant has filed affirmative defenses, a statement of the facts on which Defendant bases such defenses;
- c. If Defendant has filed a counterclaim or cross-claim, Defendant will comply with Plaintiff's instructions 10(a) and 10(b);
- d. A schedule of all exhibits and documentary evidence Defendant will offer during the trial;
- e. A complete list of witnesses to be used at trial, together with their current addresses and current telephone numbers;
- f. All stipulations regarding the authenticity, admissibility and use of exhibits and visual aids;
- g. A memorandum of law particularly applicable to this case, with copies of cited authority;
- h. Defendant's proposed jury instructions and verdict form.

12. **MOTIONS**: ALL MOTIONS MUST BE FILED AND HEARD PRIOR TO THE PRETRIAL CONFERENCE, INCLUDING, TO THE EXTENT PRACTICABLE, ALL MOTIONS *IN LIMINE*, OBJECTIONS TO DEPOSITIONS AND EXHIBITS, AND DAUBERT MOTIONS. Motions filed after the Pretrial Conference will not be considered if they are based on any matter known to the movant at the time of the Pretrial Conference or of which the movant could

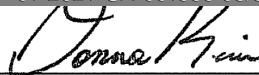
have known at that time through the exercise of reasonable diligence.

13. **SETTLEMENT CONFERENCE**: Within **forty-eight (48) hours** immediately before the Pretrial Conference, the parties shall meet or communicate via telephone and conduct good-faith settlement negotiations.
14. **OBJECTIONS TO EXHIBITS**: At the Pretrial Conference, the parties shall be fully prepared to advise the Court of the precise objection, if any, to each of the opposing party's exhibits.
15. **COMPLIANCE WITH SCHEDULE**: The times for compliance with the schedule stated in this Order may be extended only for good cause shown upon timely application.
16. **TIME LIMIT FOR TRIAL**: The time limits provided in this Order may be extended only for good cause shown upon timely application.
17. **CANCELLATION**: The trial shall not be canceled or postponed without a prior order of the Court for good cause shown. Each party shall notify the Court immediately, via email to the judicial assistant followed by a confirmatory telephone call/voice mail, in the event the trial should be canceled because the case has settled and/or been dismissed. In order to cancel the trial, the Court may require the parties to submit a written acknowledgment of their settlement agreement, or to appear on the scheduled trial date and announce their settlement on the record.
18. **BINDING EFFECT OF THIS ORDER**: During trial, the parties will be bound in all particulars by this Order and the Pretrial Order to be entered following the Pretrial Conference. Before being offered or used at trial, all depositions and exhibits shall be redacted or edited according to rulings made by the Court, including elimination of superfluous matter.
19. **SANCTIONS**: The failure of a party or an attorney to comply with this Order shall subject that party or attorney to such sanctions as the Court shall determine to be just and proper under the circumstances, such as the sanctions provided for in Rule 1.200(c), Florida Rules of Civil Procedure.
20. **DUTY TO INFORM COURT OF SETTLEMENT**: Plaintiff's counsel (or Defense counsel, if Plaintiff is pro se) shall immediately inform the Court of any settlement reached in this case. Notification required shall include the filing of a Notice of Settlement, through the e-portal, with a courtesy copy of that notice emailed to the undersigned's judicial assistant within three (3) business days of settlement. If the settlement occurs within 72 hours of trial, Plaintiff's counsel (or Defense counsel, if Plaintiff is pro se) shall immediately file the Notice of Settlement, send a courtesy copy to the judicial assistant, AND leave a telephone message for the presiding judge and for Court Administration. Failure to timely inform the Court of settlement of this cause may result in the imposition of sanctions, including, but not limited to:

requiring the parties and counsel to appear, in person, at the courthouse on the day scheduled for trial; the imposition of fines, fees or costs; the reporting of counsel to the applicable Professionalism Panel and/or the Florida Bar; and/or any other legal or equitable sanction, at the discretion of the presiding judge.

DONE AND ORDERED on Wednesday, August 31, 2022.

01-2021-CA-001555 08/31/2022 03:12:21 PM



Donna M. Keim, Circuit Judge
01-2021-CA-001555 08/31/2022 03:12:21 PM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies have been furnished by U.S. Mail or via filing with the Florida Courts E-Filing Portal on Wednesday, August 31, 2022 to the following:

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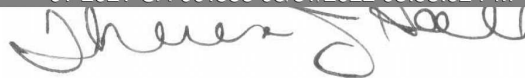
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01-2021-CA-001555 08/31/2022 03:53:02 PM



Theresa Hall, Judicial Assistant
01-2021-CA-001555 08/31/2022 03:53:02 PM

Under the Americans with Disabilities Act, if you are a person with a disability who needs any accommodation in order to participate in a proceeding, you are entitled to be provided with certain assistance at no cost to you. Please contact the ADA Coordinator at (352) 337-6237 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days. If you are hearing or voice impaired, call 1-800-955-8770 via Florida Relay Service.

EXHIBIT 2

IN THE CIRCUIT COURT
OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

EXACTECH MASTER CASE

CASE NO.: 01-2022-CA-2670

ORDER COORDINATING EXACTECH HIP, KNEE, AND ANKLE IMPLANT CASES

Pursuant to the Order Setting Hearing on Motion for Pre-Trial Coordination of all Exactech Cases, and good cause appearing, the Court hereby ORDERS that said Motion is GRANTED as follows:

1. Plaintiff and Defendants introduced this proposed coordination to the Court via joint motion.

2. **Coordination:** The Court agrees with the Parties that the coordination of cases arising out of the implantation of hip, knee, and ankle implants manufactured and sold by the Defendant is in the interest of efficiency, consistency, and judicial economy.

3. **Coordination Process:** The above-captioned case and all other related cases filed in the Eighth Judicial Circuit of Florida, in Alachua County, Florida involving Exactech hip, knee, and ankle implants, including those listed below, and any other such cases filed before or after the date of this Order, are hereby required to be coordinated consistent with this Order before the Honorable Donna M. Keim.

- a. The Clerk is directed to automatically transfer all such cases to this Court.
- b. To the extent any such case is not automatically transferred by the Clerk prior to the filing of any answer by Defendant, Defendant is required to file, along with any answer in such case, a “Notice to Clerk: Coordinated Action.” Such Notice should indicate the existence of this Coordinated proceeding, provide a

copy of this Order, and indicate that the Clerk is to transfer such case in accordance with this Order. Upon filing of such Notice, the Clerk in such case is directed to immediately transfer such case to this Court.

- c. Any litigant who believes a case was transferred or coordinated in error may move this Court for relief.

4. Pending cases to be coordinated:

No.	Case No.	Plaintiff	Filed Date	Judge	Division
1	2021 CA 001555	Freeze	6/08/21	Keim	J
2	2021 CA 003369	Drohan	11/22/21	Keim	J
3	2022 CA 000690	McGraw, Shultz, Higgenbotham	3/9/22	Keim	J
4	2022 CA 000715	Rosati	3/10/22	Keim	J
5	2022 CA 000983	Walker	4/1/22	Keim	J
6	2022 CA 000984	Simon	4/1/22	Keim	J
7	2022 CA 000985	Newman	4/1/22	Keim	J
8	2022 CA 000986	Bearb	4/1/22	Keim	J
9	2022 CA 000987	Davee	4/5/22	Keim	J
10	2022 CA 000988	Abshire	4/1/22	Keim	J
11	2022 CA 000990	Khanna	4/1/22	Keim	J
12	2022 CA 000992	Tullier	4/1/22	Keim	J
13	2022 CA 000993	Pearson	4/1/22	Keim	J
14	2022 CA 001042	Hoover	4/8/22	Keim	J
15	2022 CA 001238	McCoppin	4/22/22	Keim	J
16	2022 CA 001274	Irby, Mounts	4/27/22	Keim	J
17	2022 CA 001651	Brodbeck	6/2/22	Keim	J
18	2022 CA 001673	Elder	6/6/22	Keim	J
19	2022 CA 001776	Groth	6/15/22	Keim	J
20	2022 CA 001777	Romero	6/15/22	Keim	J
21	2022 CA 001778	Olivier	6/15/22	Keim	J
22	2022 CA 001779	Mayeux	6/15/22	Keim	J
23	2022 CA 001787	McManus	6/15/22	Keim	J
24	2022 CA 001788	Salas	6/15/22	Keim	J
25	2022 CA 001790	Allen	6/15/22	Keim	J
26	2022 CA 001800	Perry	6/15/22	Keim	J
27	2022 CA 001813	Domengeaux	6/16/22	Keim	J
28	2022 CA 001876	Dalomba	6/22/22	Keim	J
29	2022 CA 002041	Steele	7/11/22	Keim	J
30	2022 CA 002121	Brunson	7/18/22	Keim	J
31	2022 CA 002305	LeBlanc	7/29/22	Keim	J

32	2022 CA 002451	Checker	8/11/22	Keim	J
33	2022 CA 002452	Gola	8/11/22	Keim	J
34	2022 CA 002453	Greiner	8/11/22	Walker	J
35	2022 CA 002454	Gress	8/11/22	Keim	J
36	2022 CA 002455	Pulizzi	8/11/22	Keim	J
37	2022 CA 002456	Ryan	8/11/22	Keim	J
38	2022 CA 002457	Zurovchak	8/11/22	Keim	J
39	2022 CA 002525	Williams, Sr.	8/17/22	Keim	J
40	2022 CA 002652	Bretts	8/29/22	Keim	J
41	2022 CA 002659	Depew	8/31/22	Keim	J
42	2022 CA 002661	Karl	8/31/22	Keim	J
43	2022 CA 002662	Watkins	8/31/22	Keim	J
44	2022 CA 002670	Master Case No.	8/31/22	Keim	J
45	2022 CA 002696	Adams	8/31/22	Keim	J
46	2022 CA 002697	Arrington	8/31/22	Keim	J
47	2022 CA 002698	Aultman	8/31/22	Keim	J
48	2022 CA 002699	Daigle	8/31/22	Keim	J
49	2022 CA 002701	Granger	8/31/22	Keim	J
50	2022 CA 002702	Marceaux	8/31/22	Keim	J
51	2022 CA 002707	Karcher	9/2/22	Keim	J
52	2022 CA 002708	Donovan	9/2/22	Keim	J
53	2022 CA 002718	Miller	9/2/22	Keim	J
54	2022 CA 002746	Maurillo	9/2/22	Keim	J

5. **Master Docket:** The master caption and docket for the coordinated actions shall be styled as *Exactech Master Case v Exactech*, and assigned case number 01-2022-CA-002670. Each filed case shall continue to have its own caption and docket number.

- a. The Parties and Court will utilize this Master Docket for any pleadings, motions or other filings which relate to all cases or to issues shared among multiple cases.
 - i. Any document filed in the Master Docket that relates to all coordinated cases should:
 1. Identify the Master Docket Name and number in the style, and
 2. Include the notation that such filing relates to “All Cases.”

3. Such documents will be deemed filed in every coordinated case.
 - ii. If a document is filed in the Master Docket that relates to a group of specific cases, but not all cases, the Case Style should:
 1. Include the Master Docket name and number in the style, *and*
 2. Include the notation “Relates Specifically To” followed by the case numbers for the applicable cases.
 3. Such documents will be deemed filed in only the specifically identified cases.
 - b. Filings that relate solely to such individual cases should not be filed in the Master Docket and should instead be filed only in the captioned individual case impacted by the filing.

6. Case Management Conferences: This Court will conduct monthly, one-hour, Case Management Conferences pursuant to the below schedule. The parties shall appear by zoom via the zoom link below for all Case Management Conferences. The Court may amend this schedule as needed.

- a. <https://zoom.us/j/91883402255?pwd=Z1FncEpIVWU3SUhkekoreFdJQVQ3QT09>
Meeting ID: 918 8340 2255
Passcode: 715012
Telephone No. 786 635 1003

September 23, 2022, at 9:00 am
October 21, 2022, at 9:00 am
November 17, 2022, at 9:00 am
December 29, 2022, at 9:00 am
January 30, 2023, at 9:00 am
February 28, 2023, at 9:00 am
March 28, 2023, at 9:00 am
April 28, 2023, at 9:00 am

May 24, 2023, at 9:00 am
June 29, 2023, at 9:00 am
July 28, 2023, at 9:00 am
August 29, 2023, at 9:00 am
September 28, 2023, at 9:00 am
October 30, 2023, at 9:00 am
November 29, 2023, at 9:00 am
December 28, 2023, at 9:00 am

- b. Discovery and substantive Motions may be considered at a Case Management Conference as long as the Motion may be heard within the one hour allotted, the Motion contains a good faith certification, and the Motion is filed at least 20 days prior to the Case Management Conference. A response to the Motion is due 10 days after the date on which the underlying motion is served, unless the response date falls on a weekend, in which case the response is due the following business day. The Court may choose not to hear such a Motion at a Case Management Conference and may require the parties to schedule separate hearing time for such Motion. The parties shall deliver hard copies of all case law relied upon to the Court no later than 7 days prior to the Case Management Conference
- c. The Court recognizes that its guidance may be necessary on certain issues to avoid motion practice. The Parties are therefore required to provide to the Court, at least seven days prior to any Case Management Conference, an Agenda of items for discussion, including any motions ripe for the Court's determination. Issues not identified on the Agenda will not be considered by the Court. Motions that are not ripe for the Court's determination may not be listed on an Agenda. If the issue which the parties wish for the Court to

address involves argument as to opposing legal positions, then the issue shall be raised in a Motion with supporting legal memorandum.

- d. If no Agenda is provided to the Court at least seven days prior to any Case Management Conference, and the Court has not Ordered the Parties to appear at the Case Management Conference for any other reason, such Case Management Conference will be deemed unnecessary and will be cancelled.
- e. The Parties are directed to inform the Court as soon as practicable if any Case Management Conference should otherwise be cancelled.
- f. To the extent the parties wish to have a court reporter present for the Case Management Conference, they shall confer and agree on cost sharing associated with court reporter retention.

7. Plaintiff Leadership: The Court Orders the Plaintiffs in this coordinated litigation to appoint leadership counsel who will have authority to appear before this Court on behalf of all coordinated litigants. Notice of appointment of such leadership counsel must be filed no less than five days before the next Case Management Conference after entry of this Order.

8. Electronically-Stored Information (“ESI”):

- a. The Parties met and conferred on an ESI Protocol for use in this litigation and provided the Court with an ESI Protocol that is agreed upon except as to one issue: Whether PowerPoint files are to be produced natively. After reviewing the Parties’ proposed language and hearing arguments, the Court orders that PowerPoint files may be produced in .tiff format (non-natively) so long as Defendants identify, at the time of production, any PowerPoint files

containing animations. Plaintiffs may then request such PowerPoint files in native format.

- b. Consistent with the above ruling, the Parties are required to provide a Proposed Order on ESI Protocols within five days of this Order.

9. Protective Order:

- a. The Parties met and conferred on a Protective Order for use in this litigation and provided the Court with a Proposed Order with numerous areas of disagreement. The Court considered one such area of disagreement, namely whether the Protective Order should include provisions for both “Confidential” and “Highly Confidential” designations. After reviewing the Parties’ proposed language and hearing arguments, the Court orders that the Protective Order governing these coordinated cases will include a single level of confidentiality. The Parties may move the Court for leave for additional protection if needed.
- b. The Parties are otherwise directed to continue to meet and confer on the Protective Order in an attempt to resolve any identified disagreements that remain and to provide a Proposed Protective Order for the Court’s entry no later than five days prior to the next Case Management Conference. Any areas of disagreement that remain should be identified in similar fashion to what was previously provided to the Court. Such disagreements will be ripe for resolution by the Court at the next Case Management Conference.

10. Other Pre-Trial Orders: The Court is aware that the Parties have made significant efforts to agree on a variety of issues related to proposed orders regarding a pre-trial

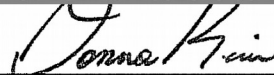
discovery process, scheduling order, mediation plan, and preservation order. The Parties are directed to continue to meet and confer to narrow any remaining disagreements ahead of the next Case Management Conference. All such proposed orders must be provided to the Court no less than 5 days before the next Case Management Conference, and thereafter shall be ripe for resolution by the Court at the next Case Management Conference.

11. Notice: Upon notification of the creation of the Exactech Master Case, all attorneys in the cases identified above shall file a notice of appearance in the Exactech Master Case for purposes of establishing an accurate e-service list in the master case. For any cases filed after the date of this order, upon receiving notification of the Exactech Master Case, counsel shall immediately file a notice of appearance in the Exactech Master Case which shall include the style and case number of the new case. In all Exactech cases filed after the entry of this Order by any counsel not served with this Order, counsel for Defendant shall file a “Notice of Master Case and Coordinating Order” contemporaneously with the filing of Defendant’s Answer or Notice of Appearance in the new case which shall 1. indicate the existence of this Coordinated proceeding, 2. provide a copy of this Order, and 3. notify new counsel of the requirement that they immediately file a Notice of Appearance in the Exactech Master Case.

12. First Trial: Phillip Bradley Freeze and Rachel Kelley Freeze vs. Exactech, Inc., has been scheduled for trial beginning Nov. 6, 2023.

DONE AND ORDERED in Chambers, Gainesville, Alachua County, Florida on this Wednesday, September 14, 2022.

01-2022-CA-002670 09/14/2022 03:54:45 PM



Donna M. Keim, Circuit Judge
01-2022-CA-002670 09/14/2022 03:54:45 PM

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the above has been e-filed through the e-portal and a copy of same has been provided to the below parties on this Wednesday, September 14, 2022.

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01-2022-CA-002670 09/14/2022 04:05:31 PM

A handwritten signature in black ink, appearing to read "Theresa Hall", is written over a horizontal line.

Theresa Hall, Judicial Assistant

01-2022-CA-002670 09/14/2022 04:05:31 PM

EXHIBIT 3

IN THE CIRCUIT COURT
OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

Exactech Master Case

Master Case No. 2022 CA 002670
Applies to All Cases

**STIPULATED ORDER RE: DISCOVERY OF ELECTRONICALLY
STORED INFORMATION**

1. PURPOSE

This Stipulated Order (“Order”) will govern the discovery and use of electronically stored information (“ESI”) in this case as a supplement to the Florida Rules of Civil Procedure and any other applicable orders and rules. The parties each reserve the right to seek exceptions, amendments, or modifications to this Order from the Court for good cause shown.

2. COOPERATION

The parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout the matter.

3. E-DISCOVERY LIAISONS

Each party will identify an E-discovery Liaison who will be primarily responsible for meeting and conferring on issues concerning ESI. Each E-discovery Liaison will:

- I. be knowledgeable about the party’s e-discovery efforts;
- II. be, or have reasonable access to those who are familiar with the party’s electronic systems and capabilities in order to explain those systems and answer relevant questions; and
- III. be, or have reasonable access to those who are knowledgeable about the technical aspects of e-discovery, including electronic document storage, organization, and

format issues, and relevant information retrieval technology, including search methodology.

Each party will notify the other of any changes of its designated E-discovery Liaison.

4. MEET-AND-CONFER

The parties have and will continue to meet-and-confer to discuss and attempt to reach an agreement on the appropriate scope and limitations of ESI to be produced. The parties will discuss possible options for ensuring an efficient discovery process, such as the possible use of search terms or technology assisted review, the possible use of testing and sampling, relevant date ranges, possible custodians that may have potentially discoverable information, any obstacles to accessing and producing ESI, information demonstrative of adequate quality controls, and the timing of productions.

5. ESI SEARCH

Electronic discovery shall be produced to the requesting party in a commercially reasonable manner or in the manner kept in the Producing Party's ordinary course of business, whichever is less burdensome and economical for the Producing Party. The parties will discuss and attempt to reach an agreement on search methodologies with the goal of limiting the scope of review for production, minimizing the need for motion practice, and facilitating production in accordance with the deadlines set by the Court or agreed upon by the parties. No responsive document shall be intentionally withheld from production, or, if claimed to be privileged, not logged as such, solely on the basis that it was not within an agreed-upon custodial or non-custodial data source, or did not contain an agreed-upon search term, or was otherwise not identified as responsive by TAR or any other identification process hereunder.

I. Search Terms:

1. If search terms are used by a producing party to identify responsive documents and information, the producing party will provide a list of proposed search terms to the requesting party. Within 21 days after receiving the producing party's terms, the requesting party shall identify in writing any challenges to that list, identifying specific search terms it believes should be searched or not searched, or request a meet and confer for same. If the requesting party does not provide such notice within the time specified, no additional search terms will be required for the referenced data sets. The parties will meet and confer regarding additional terms proposed by the requesting party. No search term will be added to the list if it generates an unreasonable number of nonresponsive documents or creates an undue burden. If the producing party claims that a term generates an unreasonable amount of hits or an undue burden, it will share the specific metrics behind their claim, for example sharing the number of documents that hit on a term and the number of hits with families. In addition, the producing party agrees to tell the requesting party if any of their suggested hits generate less than 100 hits per term exclusive of family members. The parties agree to meet and confer regarding the application of additional terms if the Receiving Party timely identifies such terms and can show that the previous terms were inadequate.
2. If a party disputes a specific term or terms as being overly broad, the producing party may choose to review a statistically valid sample (using a

benchmark of 98% confidence level with an error rate of 2%) of documents from that term, or terms, to determine if the term is accurately returning documents. The producing party agrees to share the results of that review and any responsive documents located during such sample review, which results may be used by the parties to modify the specific term in dispute.

3. If the parties are unable to resolve disputes over search terms through the meet and confer process, the parties will submit the dispute to the Court in the form of a joint discovery letter.
4. The producing party agrees to quality check the data that does not hit on any terms (the Null Set). If responsive documents are found during the Null Set review, the producing party agrees to produce the responsive documents. The parties agree to continue to meet and confer as to the parameters of such a null set review.

II. Technology Assisted Review (TAR): Prior to using predictive coding/technology-assisted-review solely for the purpose of identifying or culling the documents to be reviewed or produced, the producing party will notify the opposing party with ample time to meet and confer in good faith regarding a mutually agreeable protocol for the use of such technologies or alternatives. This discussion will include:

1. The vendor being used to manage the application of the technology, if any;
2. The method(s) used to derive the seed or exemplar set, if a seed set is being used. The requesting party also reserves the right to submit

exemplar documents that the producing party will use as part of their exemplar or training set. The producing party reserves their right to object to Plaintiff exemplars;

3. The method for validating the computer decisions;
4. The party employing TAR agrees to a goal of 85% stabilization rate for its process, meaning that of a hundred random documents sampled from the reviewable set, 85% would be accurately coded by the computer. If the 85% stabilization rate is not reasonably achievable, the parties agree to meet and confer to adjust this number. The Parties agree that if they cannot come to agreement on any of the terms above, they will seek court guidance.

6. READILY SEGREGABLE DOCUMENTS

ESI or categories of ESI that are easily identifiable and segregable shall be collected without the use of search terms or other agreed-upon advanced search methodology (e.g., analytics, predictive coding, technology assisted review). This shall include responsive ESI that is kept together in the normal course of business (e.g., regulatory files, design history files, etc.)

The producing party will indicate which categories of ESI will be produced with and without the use of search terms or other advanced search methodology.

7. ESI PRODUCTION

a. The parties agree that attending to issues relating to form of production at the outset of discovery facilitates the efficient and cost-effective conduct of discovery. Appendix A sets forth technical specifications that the parties propose to govern the form of production of ESI in this litigation, absent other agreement by the parties. Among other things, the proposed

technical specifications provide that a party need not produce ESI in more than one form in cases wherein this ESI protocol is entered, unless otherwise agreed to in limited circumstances (as contemplated in the technical specifications). The parties agree to produce in native format all Excel, Access, csv or other data files and audio/video files and to produce all other file types in TIFF as set forth in Appendix A. For any PowerPoint files, Defendants must identify, at the time of production, any files containing animations. Plaintiffs may then request such PowerPoint files in native format. For good cause, a requesting party may request the production of specifically identified documents in a format other than as specified in this Protocol. The parties shall thereafter meet and confer, and the producing party shall not unreasonably deny such requests. The parties agree to use their best efforts not to degrade the searchability of documents as part of the document production process.

- i. A producing party may deduplicate a production vertically (*i.e.*, within individual custodians) or horizontally (*i.e.*, across different custodians).
- ii. A producing party may also choose to produce only the most inclusive e-mail threads and eliminate non-inclusive threads where the non-inclusive thread is completely encompassed in the inclusive thread. If a thread has unique documents attached, that thread will be considered non-inclusive.
 - i. With any such produced e-mails, the metadata for each suppressed e-mail is to be produced in “other” fields, as detailed in the Appendix A.

b. The parties recognize that certain, limited ESI may not be amenable to the proposed technical specifications and/or may not be producible in a reasonable TIFF format. The parties will meet and confer in good faith to reach agreement regarding such documents and the appropriate form of production, and will seek Court intervention if necessary.

8. REDACTIONS

a. Privacy and Security of Information

i. Documents and ESI produced in this case may include Personally Identifiable Information (“PII”) of its/their customers and/or employees, and protected health information, or other information subject to federal, state, or foreign Data Protection Laws. At the Producing Party’s discretion, such PII may be redacted from produced documents or produced in unredacted form subject to a claim of confidentiality.

(1) Any PII redaction based on federal, state, or foreign Data Protection Laws requires the concurrent production of metadata identifying the basis for each redaction or a redaction log provided within 30 days of the production. For example, if a foreign Data Protection Law or any other privacy obligation is alleged to apply, the specific law or obligation must be cited.

ii. Irrelevant attachments to relevant documents may be withheld from production. Irrelevant information contained within relevant documents may be withheld from production if such information is both irrelevant and confidential business information which, if known by the Receiving Party, would be damaging to the Producing Party’s business interests. This subparagraph does not provide the Producing Party with blanket authority to redact all irrelevant information as that would create inefficiencies, increase litigation costs, and could render documents illegible or unusable.

- iii. All such redactions shall be clearly marked on the document or slipsheet, ensuring the reason for the redaction is made clear (e.g., “non-responsive material redacted” or “PII redacted”).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: September 13, 2022

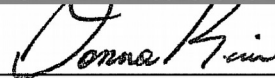
By: */s/ Ilyas Sayeg*
Counsel for Plaintiffs

By: */s/ Jodi Munn Schebel*
Counsel for Defendants

PURSUANT TO STIPULATION AND FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DONE AND ORDERED in Chambers, Gainesville, Alachua County, Florida on this Tuesday, September 20, 2022.

01-2022-CA-002670 09/20/2022 08:05:17 AM



Donna M. Keim, Circuit Judge
01-2022-CA-002670 09/20/2022 08:05:17 AM

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the above has been e-filed through the e-portal and a copy of same has been provided to the below parties on this Tuesday, September 20, 2022.

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mpowell@mctlaw.com
lwilliams@mctlaw.com

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01-2022-CA-002670 09/20/2022 08:09:28 AM



Theresa Hall, Judicial Assistant
01-2022-CA-002670 09/20/2022 08:09:28 AM

Appendix A

Technical Specifications for Production

To the extent it is possible, each production of data should be consistent with earlier productions meaning that the format of images, the bates label format and metadata field order should remain the same.

PRODUCTION OF DOCUMENTS ORIGINATING AS PAPER

Paper documents should be produced in such a fashion as to identify the location where the documents were located or stored and, where applicable, the natural person in whose possession they were found.

For documents that have originated in paper format that the producing party chooses to produce in electronic form after scanning, the following specifications should be used for their production. The producing party may also choose to produce paper in paper format. The production of paper in paper format should mimic the physical form that the documents were kept in the normal course of business, including physical bindings, post it notes or other physical specifics.

- Images should be produced as black and white single page TIFF group IV format imaged at 300dpi.
- Each filename must be unique and match the Bates number of the page. The filename should not contain any blank spaces and should be zero padded (for example ABC00000001).
- If documents are stored in a file folder, binder or other container, the cover, spine and/or label should be scanned as the first page of the document.
- If the document has post-it notes or other removable markings or tags, the document should be scanned first with the post-it note or marking in place and then a second time with the post-it note or marking removed.
- Media may be delivered on CDs, DVDs, or External USB hard drives. Each media volume should have its own unique name and a consistent naming convention (for example ZZZ001 or SMITH001).
- Each delivery should be accompanied by an image cross reference file that contains document breaks.
- A delimited text file that contains available fielded data should also be included and at a minimum include Beginning Bates Number, Ending Bates Number, Custodian and Number of Pages. The delimiters for that file should be:

Field Separator, ASCII character 020: “¶”
Quote Character, ASCII character 254 “”
Multi-Entry Delimiter, ASCII character 059: “;”

- To the extent that documents have been run through an Optical Character Recognition (OCR) Software in the course of reviewing the documents for production, full text should also be delivered for each document. Text should be delivered on a document level in an appropriately formatted text file (.txt) that is named to match the first bates number of the document.
- A text cross reference load file should also be included with the production delivery that lists the beginning bates number of the document and the relative path to the text file for that document on the production media.

PRODUCTION OF EMAIL AND ELECTRONIC DOCUMENTS

Electronic documents should be produced in such fashion as to identify the location (i.e., the network file folder, hard drive, back-up tape or other location) where the documents are stored and, where applicable, the natural person in whose possession they were found (or on whose hardware device they reside or are stored). If the storage location was a file share or work group folder, that should be specified as well.

The Parties will make reasonable efforts to ensure that all Documents and ESI they produce are legible. If a copy is not legible and it is possible to produce a legible copy, such a legible copy will be produced (subject to relevant general and specific objections) within five (5) business days of a request from a receiving Party, or as mutually agreed upon by the Parties. But if no legible copy can be made, then the original will be made available for inspection and copying within ten (10) business days of a request from a receiving Party, or as mutually agreed upon by the Parties.

- Attachments, enclosures, and/or exhibits to any parent documents should also be produced and proximately linked to the respective parent documents containing the attachments, enclosures, and/or exhibits.
- If an attached file is connected or references another file with a hyperlink as opposed to embedded to the original file, the referenced file should be retrieved and included as if the file were directly attached. Links should not be broken, and their referenced files should not be separated for production purposes. To the extent the linked files are part of a standard signature block or other non-substantive, pre-formatted email template, like a company’s website, the links do not need to be retrieved or produced.
- Each file should be named with a unique Bates Number and the files confidentiality designation. The filename should not contain any blank spaces and should be zero padded (for example ABC00000001-CONFIDENTIAL).

- If the parties have the ability to redact files natively, then they should do so. If the parties do not have the ability to redact natively, the files should be converted to either TIFF or PDF format, and redacted before production.
- Provide a delimited text file (using the delimiters detailed above) containing the following extracted metadata fields where they exist in the file being produced:

Beginning Production Number
Ending Production Number
Beginning Attachment Range
Ending Attachment Range
Custodian
Other Custodian (custodians who had duplicate copies of the document but were deduplicated using horizontal deduplication)
Other File Path (location path of deduplicated versions of the produced file)
Confidentiality Designation
Original Location Path
Email Folder Path
Document Type
Redacted (the reason a document contains a redaction, i.e., Privileged, HIPAA, PII)
File Name
File Size
Page Count
Title (from the document properties)
Hash Value
Date Last Modified
Date Created
Date Last Accessed
Date Sent
Other Date Sent (Date Sent information from suppressed e-mail chains)
Date Received
Other Date Received (Date Received information from suppressed e-mail chains)
Author (either email or lose file)
Other From (Author information from suppressed e-mail chains)
Recipients
Other Recipients (Recipient information from suppressed e-mail chains)
Copies
Other Copies (Copies information from suppressed e-mail chains)
Blind Copies
Other Blind Copies (Blind Copies information from suppressed e-mail chains)
Email Subject
Email Importance
Path to Native File
Production Volume

- Extracted full text (not OCR text) should also be delivered for each electronic document. The extracted full text should be delivered on a document level according to the specifications above similar to paper documents.
- Foreign language text files and metadata should be delivered with the correct encoding to enable the preservation of the documents' original language.

PRODUCTION OF DATABASES AND OTHER STRUCTURED DATA

Where possible, the producing party will produce structured data in Excel format to the extent such format will not decrease the usability of the data. To the extent that the conversion will degrade the usability, or should the limits of Excel cause the data to be truncated, the parties agree to meet and confer regarding an alternative production format.

The production of structured data should also identify the source of the data, and should be formatted so that each column of data has a column header. Explanations of headers should be provided upon request.

EXHIBIT 4

IN THE CIRCUIT COURT
OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

Exactech Master Case

Master Case No. 2022 CA 002670
Applies to All Cases

PROTECTIVE ORDER

By approval of this Court, to preserve, protect and maintain the confidentiality of certain confidential, commercial and/or proprietary documents and information produced or to be produced in this litigation (“Litigation”), the terms of this Protective Order are as follows:

1. **The Sunshine in Litigation Act:** Should a party or the Court raise the applicability of the Sunshine in Litigation Act, the parties agree that the provisions of the Act will supersede the terms of this Protective Order.

2. The terms and conditions of this Order shall govern documents, depositions, deposition exhibits, discovery responses, written material, electronic data, and all other tangible items, produced in whatever format (e.g., hard copy, electronic, digital, etc.) and on whatever media (e.g., hard copy, videotape, computer diskette, CD-ROM, DVD, by secure electronic transmission, hard drive or otherwise), given or exchanged by and among any and all of the parties and non-parties to this Litigation in connection with discovery or voluntary exchange of information in this Litigation (“Discovery Material”).

3. The term “Designating Party” as used herein shall mean the person or party who produces the Discovery Material or the party who chooses to designate Discovery Material produced by or originating with any non-party.

4. Discovery Material produced by the Designating Party in this case and labeled “CONFIDENTIAL” shall be designated as follows:

- a. The Designating Party shall have the right to designate any Discovery Material as “CONFIDENTIAL” to the extent that it believes in good faith that such Discovery Material contains or reflects confidential, commercially sensitive, proprietary, or privileged information or which is protected by a right to privacy or any other applicable privilege or right related to confidentiality or privacy under Florida Law. (“Confidential Material”).
- b. Mass, indiscriminate, global, or routinized designations and designation challenges are prohibited. Counsel for a Designating Party has an obligation to review Designations to ensure that there is a good faith basis for each Designation. If it comes to a Designating Party’s attention that information or items that it designated for protection do not qualify for protection that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation. Counsel for Challenging Party has an obligation to ensure there is a good faith basis for each Designation Challenge.

5. Confidential Material shall be designated by the Designating Party placing the legend “CONFIDENTIAL” on each page of the document containing Confidential Material prior to production. The Designating Party shall employ reasonable efforts to ensure that substantive content of any document is not obscured through the application of such legend.

- a. With respect to documents produced by a non-party, either party may designate such documents as Confidential Material by (i) placing the legend “Confidential” on each page containing Confidential Material after

receiving the production from the non-party or the party who directly receives the production from the non-party; or (ii) identifying in writing, by bates number, the documents to be treated as Confidential Material. The failure of a non-party to designate a document it produces as Confidential Material shall in no way affect the right of either party to so designate the document.

- b. With respect to depositions or hearings, designation of the transcript or a portion of the transcript (including exhibits) that contains Confidential Material shall be made by a statement on the record during the course of the deposition or hearing as to which portion(s) are being designated or by a statement in writing sent to all counsel of record within thirty (30) business days after receipt of the certified transcript, in which the Designating Party shall identify which portions of the transcript (by page and line designations) contain Confidential Material. The parties may modify this procedure for any particular deposition or hearing through agreement on the record at such deposition or hearing, without further court order.

6. **Use at Trial:** Except for trial, Confidential Material shall be used, shown, or disclosed only as provided in this Order. However, nothing in this Order shall limit a Party's use or disclosure of its, his, or her own information designated as Confidential Material. The use of Confidential Information at trial shall not be governed by this Order.

7. **Challenge to Confidentiality Designation:** A Party receiving Discovery Material shall not be obligated to challenge its designation as Confidential Material under this Order at the

time the designation is made, and a failure to do so shall not preclude a subsequent challenge thereto. If any party elects to challenge the designation of any Discovery Material as Confidential Material, such party (“Challenging Party”) shall do so in good faith and must begin the process through notice provided in writing to counsel for the Designating Party identifying the challenged documents with specificity, including Bates-number where available, and identifying the basis for each challenge. After receipt of this written notification, the Producing Party will have an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain, in writing within fourteen (14) days of receiving such a challenge, the basis of the designation. If that does not resolve the dispute over the designation:

- a. The Challenging Party must file a Notice of Challenged Information with the Court identifying by Bates number the specific documents being challenged, with a short description of the document and the basis for the challenge to each. The Challenging Party will use its best efforts to consolidate challenges into as few notices as practicable to save resources both for the Parties and the Court.
- b. Within fourteen (14) days of the Notice of Challenged Information, the Producing Party must file a Motion to Protect Confidentiality and specify, if any, which documents are no longer being maintained as confidential.
- c. Within seven (7) days of the Motion for Protect Confidentiality, the Challenging Party must file an opposition and specify, if any, which documents are no longer being challenged as confidential.

- d. Within seven (7) days, the Producing Party may file a reply and specify, if appropriate, which documents are no longer being maintained as confidential.
- e. The burden of proof as to a designation of Confidential Information rests on the Designating Party to demonstrate that such designation is proper.
- f. Challenged document(s) will continue to be treated as designated pending:
 - (a) determination by the Court as to the confidential status, including as to any appellate remedies; or
 - (b) withdrawal of the designation in writing by the Designating Party.

8. Confidential Material and any copies thereof shall be maintained as confidential by the persons authorized to receive the documents pursuant to Paragraph 9, and shall be used only for prosecuting, defending, or attempting to settle any Exactech medical device claim involving a hip, knee, or ankle implant, subject to the limitations set forth herein.

9. Information designated as Confidential Material may be disclosed only to the following qualified persons:

- a. Exactech's in-house attorneys working on this matter, including those working under their supervision and direction;
- b. The parties in this Litigation, including their present officers, directors and employees deemed necessary to aid counsel in the prosecution or defense of this Litigation;
- c. The Parties' counsel of record in this Litigation, and attorneys, paralegals and other support staff employed by such counsel who are assisting in the conduct of this Litigation;

- d. Professional vendors and other persons providing litigation support services to any party to this litigation or its counsel, including translators, photocopying, data processing and hosting, document review, graphic production, jury research, or trial preparation services;
- e. Experts or non-attorney consultants (and employees of such experts or consultants) retained by any party or attorney to assist with the Litigation, provided that no disclosure shall be made to any expert or consultant who is a current employee of a competing manufacturer or distributor of hip, ankle, or knee implants.
- f. the Court, court personnel, including stenographers, and the jury in this Litigation;
- g. Court reporters or videographers involved in a deposition in this matter;
- h. Any mediator, facilitator or special master and their direct staff agreed upon by the parties;
- i. Noticed or subpoenaed witnesses (and their counsel) at any deposition or trial in this Litigation or in preparation for their testimony at deposition or trial;
- j. Custodians, authors, and recipients of an item of Confidential Material;
- k. In the case of Confidential Material produced by or originating with a non-party, the non-party who produced such Material;
- l. Counsel in this coordinated proceeding may share confidential documents produced by Exactech with: (1) other counsel in this coordinated proceeding; and (2) counsel with cases coordinated in any related Federal

Multi-District Litigation. No other sharing of Exactech's confidential information shall be permitted without first obtaining written permission from Exactech.

- m. Any other persons to whom the Designating Party agrees after meeting and conferring, or to whom the Court specifically allows disclosure after application by the party seeking such disclosure and an opportunity to reply by the Designating Party.

10. Persons identified in Paragraphs 9(d), (e), (g), (h), (i), (j), (k), (l), and (m) above shall not be granted access to Confidential Material, as permitted herein, until such persons have read this Order and agreed to be bound by its provisions by signing the Agreement to Maintain Confidentiality attached hereto as Exhibit A or testify on the record at a deposition or hearing that they have read and agree to be bound by the terms of this Protective Order. Counsel for the party providing such persons who are required to sign Exhibit A with access to Confidential Material shall be responsible for maintaining copies of the Agreement to Maintain Confidentiality executed by them along with a record of documents provided to each such person(s). Except as to privileged information, the Designating Party may move this court for disclosure of the names of witnesses to whom Confidential Material was shown, along with a record of documents provided, upon a showing of good cause of a violation of this Protective Order.

11. A party producing documents ("Producing Party"), whether or not such documents contain Confidential Material, may produce documents in this litigation that contain Personally Identifying Information ("PII") of certain individuals. While a Producing Party may but is not required to redact PII, redacting certain PII may be unduly burdensome, and thus such

Party may choose to not redact PII in all documents produced. The parties agree that any PII contained in documents produced in this litigation shall be treated as containing Confidential Material, pursuant to the terms of this Order and that a failure to redact PII shall not be construed as a waiver by the parties of their position that PII is and will be considered Confidential in this case.

12. All documents that are filed with the court containing any portion of Confidential Material or information taken from any Confidential Material shall be filed under seal by following the protocols for sealing in this Court.

- a. The Party filing the motion containing “Confidential” Material (hereafter referred to as “underlying motion”) is required to file the confidential information under seal in accordance with the trial court’s administrative rules regarding the sealing of records until such time as the Court addresses and rules on the designation as set forth in subparagraph (b), if at all.
- b. To the extent any Party or other entity challenges whether such information should be treated as confidential or should otherwise be sealed from the public, the Designating Party shall have the burden of justifying that the Materials should be sealed.
- c. Except for good cause, the Parties agree not to oppose motions to seal under this Paragraph.

13. The production of documents or information containing Confidential Material that should have been designated as such, but were not when initially produced, shall not be deemed a waiver in whole or in part of the Designating Party’s claims of confidentiality. In the event

that a party produces a document without a confidentiality designation as permitted by this Order, such party shall, within ten (10) business days of the discovery of the disclosure, notify the other parties in writing and provide a replacement production for the document and an overlay with the new confidentiality designation in the appropriate metadata field. The party receiving such notice shall promptly certify destruction of the improperly designated document, including all copies thereof. The production of such document does not constitute a waiver of any claim of confidentiality unless otherwise ordered by the Court.

14. If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any Confidential Material, that party must promptly notify in writing the Designating Party unless prohibited by law from doing so. Such notification shall include a copy of the subpoena or court order; promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order; and cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Confidential Material may be affected. If the Designating Party timely seeks a protective order, the party served with the subpoena or court order shall not produce any Confidential Material before a determination by the court from which the subpoena or order issued, unless the party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection of its Confidential Material, and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party to disobey a lawful directive from another court.

15. If Confidential Material is disclosed to any person other than in the manner authorized by this Order, the party responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the Designating Party, and without

prejudice to the rights and remedies of the Designating Party, make every effort to retrieve the improperly disclosed material and to prevent further unauthorized disclosure on its own part or on the part of the recipient of such information or material.

16. If a Producing Party discloses information in connection with the pending litigation that the party thereafter claims to be privileged or protected by the attorney-client privilege or attorney work product protection or any other applicable privilege (“Identified Materials”), the disclosure of the Identified Materials shall not constitute or be deemed a waiver or forfeiture of any claim of privilege or work product protection that such party would otherwise be entitled to assert with respect to the Identified Materials and its subject matter in this proceeding or in any other federal or state proceeding.

17. The Parties will adhere to the following procedures with regard to the production of Identified Materials, should that occur:

- a. After the Producing Party discovers that Identified Materials have been produced, the Producing Party shall reasonably notify the Receiving Party, in writing, of the production. Such notice will provide a privilege log for the identified materials.
- b. After such notice is provided, the Identified Materials and all copies of those materials shall be destroyed or deleted, on request of the Producing Party. If the Receiving Party has any notes or other work product reflecting the contents of the Identified Materials, the Receiving Party will not review or use those materials unless a court later designates the Identified Materials as not privileged or protected.

- c. The Identified Materials shall be deleted from any systems used to house the documents, including document review databases, e-rooms and any other location that stores the documents. The Receiving Party may make no use of the Identified Materials during any aspect of this matter or any other matter, including in depositions or at trial, unless the documents have been designated by a court as not privileged or protected.
- d. The contents of the Identified Materials shall not be disclosed to anyone who was not already aware of the contents of them before the notice was made. The Receiving Party must take reasonable steps to retrieve the Identified Materials if the Receiving Party disclosed the Identified Materials before being notified.
- e. Nothing in this Order limits or otherwise modifies an attorney's ethical responsibilities with respect to the review or disclosure of privileged information.
- f. The Party destroying the Identified Materials may move the Court for an order compelling production of some or all of the Identified Material destroyed, but the basis for such motion may not be based on the fact or circumstances of the production.

18. No provision of this Protective Order shall constitute a concession by any Party that any documents are subject to protection by the attorney-client privilege, the work product doctrine or any other potentially applicable privilege or doctrine. No provision of this Protective Order is intended to waive or limit in any way either Party's right to contest any privilege claims

that may be asserted with respect to any of the documents produced except to the extent set forth herein.

19. This Order, insofar as it restricts the communication and use of Confidential Material, shall continue to be binding throughout and after the conclusion of this Litigation, including any appeals.

20. This Order may not be waived, modified, abandoned, or terminated, in whole or part, except by an instrument in writing signed by the Parties, or by order of the Court. If any provision of this Order shall be held invalid for any reason whatsoever, the remaining provisions shall not be affected thereby.

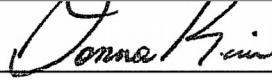
21. Within 90 calendar days of the final determination of this Litigation, through reasonable efforts, all Confidential Material, including all hard and electronic copies, derivations, and summaries thereof, shall be destroyed or deleted, with a written certification of such secure destruction or deletion provided to the Designating Party or third party. This includes the secure destruction or deletion of Confidential Material provided to any person, including independent experts. Confidential Material that may exist on any back up media must also be destroyed or deleted within 90 calendar days of the final determination of this Litigation.

- a. For purposes of this provision, the “final determination of this Litigation” shall mean the later of: (a) the date of a jury verdict or bench trial order in the last pending case filed by any particular law firm; (b) the day after an appeal of right is due for filing, if not filed in the last pending case filed by any particular law firm; (c) the day after a settlement in the last pending case file by any particular law firm.”

22. For good cause, any Party may seek, by written agreement or motion, relief beyond that which is contemplated in this stipulation.

DONE AND ORDERED in Chambers, Gainesville, Alachua County, Florida on this Tuesday, September 27, 2022.

01-2022-CA-002670 09/27/2022 03:44:18 PM



Donna M. Keim, Circuit Judge
01-2022-CA-002670 09/27/2022 03:44:18 PM

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the above has been e-filed through the e-portal and a copy of same has been provided to the below parties on this Tuesday, September 27, 2022.

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the above has been e-filed through the e-portal and a copy of same has been provided to the below parties on this Tuesday, September 27, 2022.

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01-2022-CA-002670 09/27/2022 04:11:18 PM



Theresa Hall, Judicial Assistant
01-2022-CA-002670 09/27/2022 04:11:18 PM

Exhibit A – Agreement to Maintain Confidentiality

I hereby acknowledge that I will be receiving Confidential Material pursuant to the terms of a Confidentiality Stipulation and Protective Order entered by the Court in the action entitled _____ . I have been given a copy of, and have read and understand, the Confidentiality Stipulation and Protective Order and I agree to be bound by the terms and conditions of that Order. I understand that (1) I am to make no copies of any such Confidential Material except as necessary for use in the above-captioned actions, and (2) such Confidential Material and any copies thereof must remain in my custody until I have completed my assigned duties, whereupon they are to be returned to counsel who provided me with such Confidential Material. I agree not to disseminate any information derived from such Confidential Material to anyone, or disclose any such information, except for the purposes of the above-captioned action or as permitted by the attached Protective Order or by further order of the Court. I agree that my signature below submits me to the jurisdiction of the Circuit Court for the Eighth Judicial Circuit Court in and for Alachua County, Florida, in the above captioned case and binds me to the provisions of the Protective Order, including to all promises undertaken in the Order, as if originally agreed by me.

Signature: _____

Print Name: _____

Date: _____