

**IN THE CIRCUIT COURT FOR THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR ALACHUA COUNTY, FLORIDA  
CIVIL DIVISION**

EXACTECH MASTER CASE,  
Plaintiffs,

CASE NO.: 01-2022-CA-2670

v.

EXACTECH, INC. and  
EXACTECH, U.S., INC.,  
Defendants.

RELATES SPECIFICALLY TO:

01-2022-CA-000983  
01-2022-CA-000984  
01-2022-CA-000985  
01-2022-CA-000986  
01-2022-CA-000987  
01-2022-CA-000988  
01-2022-CA-000990  
01-2022-CA-000992  
01-2022-CA-000993  
01-2022-CA-001776  
01-2022-CA-001778  
01-2022-CA-001779  
01-2022-CA-001787  
01-2022-CA-001788  
01-2022-CA-001790  
01-2022-CA-001800  
01-2022-CA-002305

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**ORDER DENYING DEFENDANT'S MOTIONS TO DISMISS  
BASED ON FORUM NON CONVENIENS**

THIS CAUSE came before the undersigned upon the Motions to Dismiss Based on Forum Non Conveniens filed by Defendants, Exactech, Inc. and Exactech U.S., Inc., in the above-referenced cases. Having reviewed the file, having heard argument of counsel, having considered the pleadings, having considered the legal authority submitted and being otherwise fully advised of the premises, it is hereby

**ORDERED AND ADJUGED** that the Motions to Dismiss Based on Forum Non Conveniens are **DENIED**. In support of this Court's determination, the Court finds as follows:

### **Applicable Standards of Review**

1. “Forum non conveniens is a common law doctrine addressing the problem that arises when a local court technically has jurisdiction over a suit but the cause of action may be fairly and more conveniently litigated elsewhere.” *Kinney Sys., Inc. v. Cont'l Ins. Co.*, 674 So. 2d 86, 87 (Fla. 1996), holding modified by *Cortez v. Palace Resorts, Inc.*, 123 So. 3d 1085 (Fla. 2013).

2. “This standard requires consideration of four factors: 1) whether an adequate alternative forum exists which has jurisdiction over the case; 2) all relevant private interests, keeping in mind the “strong presumption against disturbing plaintiffs’ initial forum choice”; 3) if the balance of private interests is in or near equipoise, whether relevant public interests tip the scale in favor of another forum; and 4) if the balance favors an alternative forum, the court must ensure that plaintiffs can bring suit in the alternative forum.” *Gallego Ochoa v. Topete Vargas*, 305 So. 3d 719, 722 (Fla. 3d DCA 2020).

3. “The decision to grant or deny the motion for dismissal rests in the sound discretion of the trial court.” Fla. R. Civ. P. 1.061(a).

4. “To be clear: any defendant seeking dismissal of a suit based upon Rule 1.061 *forum non conveniens* must support the motion by affidavit or other evidence offered under oath.” *Ground Improvement Techniques, Inc. v. Merchants Bonding Co.*, 707 So. 2d 1138, 1139 (Fla. 5th DCA 1998).

5. Defendants have not filed any affidavits in support of the motions to dismiss, nor is there any other relevant evidence in the record in the above-referenced cases. Without any supporting evidence, Defendants’ motions must be denied.

### **Available and Adequate Alternative Forum**

6. The first factor of the forum non conveniens analysis is whether there exists an adequate alternate forum that possesses jurisdiction over the whole case including all of the parties. Fla. R. Civ. P. 1.061(a)(1). To determine whether an adequate alternative forum exists, courts evaluate “both availability and adequacy.” *Ciba-Geigy Ltd. v. Fish Peddler, Inc.*, 691 So.2d 1111, 1115-17 (Fla. 4th DCA 1997).

7. “An alternate forum is inadequate where the available remedies are “clearly unsatisfactory” or where there is “no remedy at all.” *Abeid-Saba v. Carnival Corp.*, 184 So. 3d 593, 600 (Fla. 3d DCA 2016).

8. Defendants argue that state and/or federal courts in Louisiana would accept service of process from Plaintiffs in the above-referenced cases, as Plaintiffs are all residents of Louisiana, domiciled in Louisiana, underwent their original implant surgeries and subsequent revision surgeries in Louisiana, and received medical treatment in Louisiana.

9. Had their arguments been supported by evidence, Defendants likely would have prevailed in their argument that an adequate alternative forum existed which possessed jurisdiction over the Plaintiffs’ whole case.

### **Private Interest Factors**

10. The second factor of the forum non conveniens analysis is whether “all relevant factors of private interest favor the alternate forum, weighing in the balance a strong presumption against disturbing plaintiffs’ initial forum choice”. Fla. R. Civ. P. 1.061(a)(2).

11. An analysis of the private interests generally involves four concerns: “access to evidence, access to witnesses, enforcement of judgments, and the practicalities and expenses associated with the lawsuit.” *Cortez v. Palace Resorts, Inc.*, 123 So. 3d 1085, 1092 (Fla. 2013).

12. “[T]he proper focus of the forum non conveniens inquiry and the analysis of the private interest factors is not to decide where the best location for bringing suit would be, but rather to analyze whether, after affording a strong presumption to the plaintiff's choice of forum and considering the balance of private conveniences, it is in the interest of Florida's courts to use their inherent power to decline to exercise jurisdiction over the dispute because Florida is an *inconvenient* forum.” *Id.* at 1097.

13. Defendants state that the majority of the witnesses, including Plaintiffs, Plaintiffs’ spouses, treating medical providers, and third-party witnesses, all live and work in Louisiana. Defendants argue that it will be difficult and unnecessarily expensive to propound written discovery, conduct depositions, and compel live testimony at trial involving these Louisiana residents if the case remains based in Florida.

14. Even if Defendants’ arguments had been supported by evidence, Defendants fail to show that they will suffer prejudice from an inability to access evidence and witnesses. Defendants also fail to demonstrate that they would be incapable of enforcing a Florida judgment in Louisiana.

15. The expenses and practicalities of basing the lawsuit in Florida allegedly being greater and more complex than if the lawsuit was based in Louisiana does not overcome the strong presumption against disturbing Plaintiffs’ choice of forum. Therefore, Defendants’ motions to dismiss must be denied.

#### **Public Interest Factors**

16. The third factor of the forum non conveniens analysis is whether “the court further finds that factors of public interest tip the balance in favor of trial in the alternate forum”. Fla. R. Civ. P. 1.061(a)(3).

17. The focus of the public interest factors is ‘whether the case has a general nexus with the forum sufficient to justify the forum’s commitment of judicial time and resources to it.’ *Kinney*, 674 So.2d at 92. Factors to be considered include (1) whether the retention of jurisdiction would be unduly burdensome to the community; (2) whether there is little or no public interest in the dispute; and (3) whether foreign law will predominate if jurisdiction is retained. *Id.*

18. Contrary to Defendants’ arguments, Florida has great public interest in the above-referenced cases. Defendants’ headquarters and primary place of business is Alachua County, Florida. The products at issue were allegedly designed and manufactured in Florida. Furthermore, the majority of Defendants’ employees are alleged to be Florida residents.

19. Even if Defendants’ arguments were supported by evidence, Defendants have failed to establish Louisiana has a more compelling interest in the subject controversy. Therefore, Defendants’ motions to dismiss must be denied.

#### **Reinstatement in the Alternative Forum**

20. The final factor of the forum non conveniens analysis requires the trial court to ensure “that plaintiffs can reinstate their suit in the alternate forum without undue inconvenience or prejudice”. Fla. R. Civ. P. 1.061(a)(4).

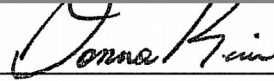
21. Defendants stipulated on the record that they would not contest personal jurisdiction in Louisiana. Although no evidence was presented, it appears that no statutes of limitations have run in the above-referenced cases. Therefore, Defendants have established that reinstatement in the alternative forum is possible without undue inconvenience or prejudice.

## Conclusion

For the foregoing reasons, Defendants' Motions to Dismiss Based on Forum Non Conveniens in the above-referenced cases are **DENIED**. Defendants shall have twenty (20) days to respond to the operative complaint in the above-referenced cases.

**DONE AND ORDERED** in Gainesville, Alachua County, Florida on this Monday, November 14, 2022.

01-2022-CA-002670 11/14/2022 04:30:02 PM



Donna M. Keim, Circuit Judge  
01-2022-CA-002670 11/14/2022 04:30:02 PM

## CERTIFICATE OF SERVICE

A copy of the foregoing order was served on the below parties on this Monday, November 14, 2022, to the following:

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