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Case No. 3438-

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

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| CHARLES HOKANSON, JOHN HOKANSON, FOYE STANIFORD, CHARLES SEITZ and ELIZABETH SEITZ | : | |
| Plaintiffs, | : | C.A. No.: |
| v. | : | |
| WILLIAM PETTY, M.D., TREVOR MOODY, BUZZ BENSON, MARC GALLETTI, CRAIG CORRANCE AND DAVID GRANT, Defendants, | : | |
| and, | : | |
| ALTIVA CORPORATION, Nominal Defendant. | : | |

**VERIFIED COMPLAINT**

The above-captioned plaintiffs, Charles Hokanson, John Hokanson, Foye Staniford, Charles Seitz and Elizabeth Seitz ("Plaintiffs"), by and through their undersigned counsel, Riley Riper Hollin & Colagreco, brings this action on their own behalf in their capacity as shareholders of defendant Altiva Corporation ("Altiva"), a Delaware corporation, against defendants William Petty, M.D., Trevor Moody, Buzz Benson, Marc Galletti, Craig Corrance and David Grant (collectively, "Defendants" or "the Board") and nominal defendant, Altiva, for certain equitable, declaratory and monetary relief, and alleges upon personal knowledge and information and belief as follows:

**NATURE OF ACTION**

1. This is an all too familiar squeeze out case. Plaintiffs are minority stockholders in Altiva, owning more than 3.5 percent interest in Altiva. The impending merger between Altiva

and Exactech et al., scheduled to close on January 2, 2008 (as defined in more detail below, the "Merger"), will operate to cancel all of Plaintiffs' common stock in Altiva and deprive them of any merger consideration whatsoever. Defendants comprise the board of directors of Altiva (hereinafter the "Board") and also own a controlling interest in Altiva. Defendants will all substantially benefit personally as a result of the Merger. Despite this conflict of interest, and in violation of their fiduciary duties, Defendants did nothing to sanitize the Board's deliberations from the taint of self interest. On information and belief, the Board failed to (i) establish a committee of independent directors to consider the Merger, (ii) obtain an opinion on the fairness of the Merger to Altiva's minority stockholders, and (iii) preclude self-interested directors from voting on the transaction. The Board's decision-making process concerning the Merger was unfair to the minority stockholders and particularly Plaintiffs.

2. Unfair also is the price of the Merger. The total Merger consideration is $15,420,503.00. The Board permitted the purchase value of the Merger to be capped at $25,000,000, which Altiva admits, represents less than 2.0X multiple of Altiva's trailing 12-month gross revenue. In today's market, comparable spine implant companies are commanding more than 4.0X trailing 12-month gross revenue.

3. The Merger price is especially unfair to Plaintiffs, who, through the sale of their company's assets to Altiva in 2003 allowed Altiva to reposition itself from a failing dental implant enterprise to the far more lucrative spinal fusion market. If not for that transaction, Altiva would have likely died on the vine and never found a merger partner.

4. For these reasons, the Merger cannot withstand entire fairness scrutiny. Defendants, therefore, have breached their fiduciary duties, both as directors and controlling stockholders, owed to Altiva's minority stockholders.

5. Accordingly, Plaintiffs are entitled to (among other things) rescissory damages to compensate them for the fair value of their Altiva stock.

**PARTIES**

6. Plaintiff, Charles Hokanson, is an adult individual residing at 1335 Merrybrook Road, Collegeville, Pennsylvania 19403. Mr. Charles Hokanson is and was at all times relevant hereto a stockholder of record of Altiva, owning 150,511 shares of Altiva common stock.

7. Plaintiff, John Hokanson, is an adult individual residing at 1737 Flagler Manor Circle, West Palm Beach, Florida 33411. Mr. John Hokanson is and was at all times relevant hereto a stockholder of record of Altiva, owning 200,681 shares of Altiva common stock.

8. Plaintiff, Foye Staniford, is an adult individual residing at 4707 Hidden Lane, Ft. Worth, Texas 76107. Mr. Foye Staniford is and was at all times relevant hereto a stockholder of record of Altiva, owning 100,340 shares of Altiva common stock.

9. Plaintiffs, Charles and Elizabeth Seitz, are adult individuals residing at 4508 Grandin Road, SW, Roanoke, Virginia 24018. Mr. and Mrs. Seitz, are and were at all times relevant hereto shareholders of record of Altiva, owning 50,170 shares of Altiva common stock.

10. Nominal defendant, Altiva Corporation, is a private corporation organized under the laws of the State of Delaware, having its principal place of business at 9800-I Southern Pines Blvd., Charlotte, North Carolina 28273.

11. Defendant, William Petty, M.D. (hereinafter "Petty"), is an adult individual having an office location at 2320 North West 66th Court, Gainesville, Florida 32653. At all times relevant hereto, Petty was a director of Altiva.

12. Defendant, Buzz Benson, (hereinafter "Benson") is an adult individual having an office location at 50 South 6th Street, Suite 1390, Minneapolis, Minnesota 55402. At all times relevant hereto, Benson was a director of Altiva.

13. Defendant, Trevor Moody, (hereinafter "Moody") is an adult individual having an office location at 601 Union, Two Union Square, Suite 3200, Seattle, Washington 98101. At all times relevant hereto, Moody was a director of Altiva.

14. Defendant, Marc Galletti, (hereinafter "Galletti") is an adult individual having an office location at 3000 Sand Hill Road, Building 1, Suite 230, Menlo Park, California 94025. At all times relevant hereto, Galletti was a director of Altiva.

15. Defendant, Craig Corrance, (hereinafter "Corrance") is an adult individual having an office location at 9800-I Southern Pines Blvd., Charlotte, North Carolina 28273. Corrance is an officer of Altiva, presently the President and CEO.

16. Defendant, David Grant, (hereinafter "Grant") is an adult individual having an office location at 9800-I Southern Pines Blvd., Charlotte, North Carolina 28273. Grant is an officer of Altiva, presently the CFO.

17. Defendants Petty, Benson, Moody, Galletti, Corrance and Grant are collectively referred to as the Altiva Directors.

## JURISDICTION

18. This Court can exercise personal jurisdiction over nominal defendant Altiva because it is a Delaware corporation. This Court can exercise personal jurisdiction over the Altiva Directors as they are all directors of Altiva, a Delaware corporation, and because Defendants have all consented to service of process pursuant to 10 *Del. C.* § 3114, the Director's Consent statute.

19. This Court has subject matter jurisdiction over the claims alleged herein pursuant to 10 *Del. C.* § 341 and 10 *Del. C.* §§ 6501 *et seq.*

## FACTUAL BACKGROUND

### *Plaintiffs Enter the Spinal Devise and Implant Industry*

20. In or around 2001, Plaintiffs formed Vertebral Systems ("Vertebral"), a company created to enter the spinal devise and implant industry. In December 2001, for a purchase price of $1,500,000 Vertebral acquired from Surgical Dynamics certain assets, intellectual property and FDA approvals relating to the spine industry. Following this acquisition, in January 2002 Vertebral entered the market and began to build a distribution network for its spinal implants, with the aid and counsel of Dr. Walter Simmons of Texas, and Dr. Finn of Florida, both well known and highly respected spine surgeons.

21. In late 2002, then-CEO of Altiva, Jim Robson, contacted Vertebral concerning the possibility of a merger of the companies. At that time, Altiva was a struggling, bit player in the dental implant market. To save Altiva from impending financial ruin, Robson was determined transition Altiva from the dental implant market to burgeoning spinal implant industry. Robson touted his experience in the spine market, boasting the he was principally responsible for the development and sale of Acromed to DePuy for over $300,000,000. Robson expressed confidence that Altiva could achieve a similar level of success by entering into the spinal implant business and acquiring Vertebral's assets and technology.

22. In or around January 2003, following a period of negotiations, Altiva communicated a purchase price of $500,000 and a 5% stock interest in Altiva for title to all Vertebral assets and inventory. Vertebral refused this offer. By February 2003, Altiva had made a counter-offer which Vertebral again rejected. It appeared that a deal would not be reached.

23. In May 2003, Altiva sent Vertebral a letter, withdrawing its offer and terminating negotiations. The following month, however, at Altiva's initiation, the parties resumed negotiations regarding a potential asset sale.

***Vertebral Sells its Assets to Altiva***

24. These negotiations culminated in an agreement in which Vertebral would sell only certain assets to Altiva in exchange for $350,000 and a 3.5% ownership interest in Altiva. The transaction was consummated on August 29, 2003.

25. Only a short time later, on or about October 7, 2003, Plaintiffs received a letter issued to Altiva stockholders, which (i) announced its entry into the spine market, (ii) acknowledged that this was made possible by Altiva's acquisition of Vertebral's assets and technology, along with the surgical experience, technical expertise and prestige of the Simmons name and reputation and (iii) announced, as a consequence, that negotiations were underway with a potential corporate investor to provide greater funding for further development in the spine market.

26. Vital to Altiva's existence was its purchase of certain spine assets of Vertebral LLC in August of 2003 ("Vertebral-Altiva Transaction"). The Vertebral-Altiva Transaction allowed Altiva to transition from its failing dental implant business to the far more lucrative spinal fusion market. Indeed, at the time of the Vertebral-Altiva Transaction, Altiva was on the brink of financial ruin. If not for the Vertebral Shareholders and, specifically, Altiva's acquisition of Vertebral's Simmons Plate and Screw system, Exactech would not have been attracted to Altiva in the first place. Thus, the Vertebral Shareholders paved the way for the Merger.

*Altiva and Exactech execute a Securities Purchase Agreement*

27. In or around October 2003, less than 40 days following the Altiva acquisition of the Vertebral assets from the Plaintiffs, Exactech, Inc. ("Exactech"), a Florida corporation, entered into a Securities Purchase Agreement with Altiva in which Exactech invested $1 million in Altiva, and loaned Altiva $5 million in the form of loans convertible to Altiva Series C Preferred Stock.

28. In exchange for this financing, Altiva granted Exactech (the "Securities Purchase Agreement") an option permitting Exactech to purchase all outstanding shares of Altiva common stock, preferred stock and securities (the "Buy-Out Option"). The Buy-Out Option was exercisable in a three-year period, from October 29, 2005 to October 28, 2008.

29. The Securities Purchase Agreement provides that Exactech's purchase of Altiva would be based on a valuation of Altiva which could be no less than $25 million, plus any cash held by Altiva, less certain of its liabilities.

30. In addition to the Securities Purchase Agreement, Altiva and Exactech also executed a Stockholders' Agreement (the "Stockholders' Agreement"). The Stockholders' Agreement set forth the number of shares issued by Altiva for each series of Altiva stock and also stated a valuation for Altiva's stock. In particular, Section 3.4(a) of defines Altiva's valuation as follows:

> (a) "Altiva Valuation" means an amount equal to the Buyout Multiple multiplied by the Altiva Trailing Twelve Months Revenue as of the date of the Purchase Price is calculated (the "Calculation Date"), provided, in no event shall the Altiva Valuation be less than $25 million.

31. Significantly, Altiva did not inform Plaintiffs of the Securities Purchase Agreement or the Stockholders' Agreement. Plaintiffs were unaware of the terms of Exactech's

Buy-Out Option and, despite being stockholders of Altiva, were not given notice of the Stockholders' Agreement. Altiva's board of directors withheld the details of this transaction from Plaintiffs. Specifically, it is known that Defendant Grant was CFO of Altiva during 2003, and was intricately involved in both the Vertebral-Altiva Transaction and also the Altiva-Exactech Transaction. Despite Plaintiffs' ownership of 3.5% of Altiva stock, Plaintiffs were deprived of an opportunity to vote for or against the Securities Purchase Agreement or Stockholders' Agreement, and never furnished with copies of the Securities Purchase Agreement or Stockholders' Agreement. Indeed, Altiva even failed to inform Plaintiffs of the existence of these agreements, which would become the vehicles for squeezing them out.

32. Similarly, Plaintiffs were also excluded from the stock offerings provided for under Stockholders' Agreement, which had the negative effect of diluting Plaintiffs' ownership interest in Altiva.

33. In anticipation of the impending transactions with Exactech, the Altiva Board approved a measure to amend Altiva's Certificate of Incorporation to allow for an increase in the number of shares of Altiva stock. The Board then elicited stockholder approval of this proposed action via an written consent action.

34. Plaintiff Charles Hokanson signed the written consent on October 16, 2003.

35. Importantly, this consent action did not specifically reveal that, in the event Exactech exercised the Buy-Out Option, Altiva's holders of common stock would be squeezed out and receive no payout for their shares.

***Exactech Executes the Buy-Out Option***

36. In or around December 2007, Plaintiffs learned, by pure happenstance, of Exactech's intention to execute its Buy-Out Option to purchase all outstanding Altiva stock.

37. In fact, Altiva and Exactech have entered into a Plan of Merger (the "Merger Agreement") wherein Altiva and Exactech Spine, Inc. (a wholly owned subsidiary of Exactech) will merge with Altiva being the surviving entity and becoming a wholly owned subsidiary of Exactech.

38. It was not until December 17, almost two weeks after the agreement and vote by written consent of the majority shareholders that the Plaintiffs were formally apprised of the pending merger by Altiva. They were never notified of the shareholders' vote, nor given an opportunity to participate in this action. The delay in notification left the Plaintiffs only two weeks, during the holiday season, to react to protect their interests. The absence of notice and delay in notification speaks to the bad faith of the Directors and Officers of Altiva.

39. Defendants comprise the board of directors of Altiva and also own a controlling interest in Altiva. Defendants will all substantially benefit personally as a result of the Merger. Despite this conflict of interest, and in violation of their fiduciary duties, Defendants did nothing to sanitize the Board's deliberations from the taint of self interest. On information and belief, the Board failed to (i) establish a committee of independent directors to consider the Merger, (ii) obtain an opinion on the fairness of the Merger to Altiva's minority stockholders, and (iii) preclude self-interested directors from voting on the transaction. The Board's decision-making process concerning the Merger was unfair to the minority stockholders and particularly Plaintiffs.

40. Unfair also is the price of the Merger. The total Merger consideration is $15,420,503.00. The Board permitted the purchase value of the Merger to be capped at $25,000,000, which Altiva admits, represents less than 2.0X multiple of Altiva's trailing 12-

month gross revenue. In today's market, comparable spine implant companies are commanding more than 4.0X trailing 12-month gross revenue.

41. The Merger price is especially unfair to Plaintiffs, who, through the sale of their company's assets to Altiva in 2003 allowed Altiva to reposition itself from a failing dental implant enterprise to the far more lucrative spinal fusion market. If not for that transaction, Altiva would have likely died on the vine and never found a merger partner. Upon information and belief, following Exactech's investment in Altiva, Defendant Petty was appointed to Altiva's board of directors. Petty was also on Exactech's board of directors at this time. Plaintiffs believe that Petty participated in negotiating the Merger, occupying both sides of the transaction. Plaintiffs also believe that Altiva did not appoint a disinterested committee to conduct the merger negotiations and to protect Altiva's stockholders from unfairness and self-dealing.

42. The total Merger consideration is approximately $15.4 million. As a result, Plaintiffs will not receive any payment for their 3.5% interest in Altiva, despite the cancellation of Plaintiffs' shares. Plaintiffs believe that no independent valuation of Altiva was performed prior to the execution of the Merger Agreement. In fact, the purchase price represents only a fraction of Altiva's present-day value.

43. Following Exactech's 2003 investment in Altiva, Exactech controlled enough voting stock that, when combined with the original members of Altiva, a vote on the merger was never taken.

***Demand Futility***

44. Since the Vertebral-Altiva Transaction, Defendants have willfully and knowingly ignored and concealed transactions and agreements engaged in by Altiva. In the Altiva-Exactech

Transaction, Defendants have ensured that they will prosper, while all the Altiva common-stock shareholders will be left with nothing.

45. Plaintiffs notified Altiva, specifically David Grant, by letter dated December 21, 2007, of the Board's breaches of fiduciary duties. To date, Defendants have not chosen to abandon the Merger nor have Defendants recognized the harm being done to Altiva by way of the impending Merger.

46. To the extent pre-suit demand would be required with respect to any of the Counts alleged below, demand upon the Board would be futile because:

a. Defendants, comprising the Board and officers of Altiva, are interested parties in the transactions that form the basis of this Complaint, precluding them from exercising independent business judgment;

b. The challenged transactions were not the product of the valid exercise of business judgment; and

c. Defendants cannot be expected to sue themselves on behalf of Altiva.

**COUNT I—BREACH OF FIDUCIARY DUTIES OF LOYALTY AND GOOD FAITH**

47. Plaintiffs incorporate the preceding paragraphs by reference as though stated herein at length.

48. The Defendants, as directors, officers and majority shareholders, owe fiduciary duties of loyalty and good faith to Altiva and its shareholders, including Plaintiffs.

49. The fiduciary duties of loyalty and good faith owed by Defendants require them to act in good faith, in the best interests of Altiva and its shareholders, and preclude Defendants from favoring their own interests over those of Plaintiffs.

50. Defendants breached their fiduciary duties of loyalty and good faith to Plaintiffs by failing to exercise business judgment, engaging in unfair processes and entering into the Merger Agreement with Exactech without determining the fair-market value of Altiva or disclosing all aspects of the merger to Plaintiffs.

51. As a result of these breaches of the fiduciary duties of loyalty and good faith, Plaintiffs, as minority shareholders, have sustained significant economic injuries for which Plaintiffs seek appropriate judicial relief, including, but not limited to, the recovery of monetary damages in an amount to be determined at trial. Furthermore, because Defendants personally benefited by virtue of their breaches of fiduciary duties, Plaintiffs also seek disgorgement and forfeiture of all ill-gotten gains and other benefits obtained by Defendants, while acting in violation of their duties to Plaintiffs.

## COUNT II—BREACH OF THE FIDUCIARY DUTY OF CARE

52. Plaintiffs incorporate the preceding paragraphs by reference as though stated herein at length.

53. Defendants, as directors, officers and majority shareholders, owe Plaintiffs, as minority shareholders, a fiduciary duty to exercise care in managing its affairs. Defendants have repeatedly breached this obligation.

54. Defendants entered into a Securities Purchase Agreement wherein they failed to reasonably set forth a mechanism to accurately account Altiva's fair market value.

55. Defendants failed to appoint an independent agency to calculate Altiva's value prior to entering into the Securities Purchase Agreement.

56. Defendants failed to exclude Petty from all negotiations with Exactech despite his interest in both Altiva and Exactech.

57. Defendants failed to notify the shareholders of Altiva regarding the Securities Purchase Agreement, the Stockholders' Agreement or the Merger Agreement with Exactech.

58. As a result, Plaintiffs have suffered significant economic injuries for which Plaintiffs seek appropriate judicial relief, including, but not limited to, the recovery of monetary damages in an amount to be determined at trial.

## COUNT III—DECLARATORY JUDGMENT

59. Plaintiffs incorporate the preceding paragraphs by reference as though stated herein at length.

60. As already alleged, Defendants failed to exercise business judgment when agreeing to the terms of the Merger by utilizing an inherently unfair process and agreeing upon an unfair price.

61. The Merger is an interested transaction agreed upon by Altiva's Board which is populated by self-interested directors and preferred shareholders, collectively holding a controlling interest in Altiva.

62. Defendants took no prophylactic measures to protect Altiva or Plaintiffs from any unfair process or price agreed to by the self-interested Board.

63. The claims and issues which form the basis of this cause of action constitute an actual controversy and are ripe for judicial determination.

64. Plaintiffs request that this Court declare that the Altiva-Exactech Transaction and Merger are unfair to Altiva and Plaintiffs.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court award Plaintiffs the following relief:

(a) entering judgment in favor of Plaintiffs and against Defendants;

(b) declaring that Defendants breached their fiduciary duties of loyalty, good faith and care to Plaintiffs;

(c) declaring that the Altiva-Exactech Transaction and Merger is unfair;

(d) awarding Plaintiffs compensatory and consequential damages attributable to Defendants' breaches of fiduciary duties or other improper conduct;

(e) awarding Plaintiffs rescissory damages resulting from Defendants' breaches of fiduciary duties or other improper conduct;

(f) ordering Defendants to disgorge and forfeit to Plaintiffs all ill-gotten gains and other benefits obtained by them;

(g) awarding Plaintiffs all the reasonable legal costs associated with prosecuting this action, including attorneys' fees, accountants' and experts' fees, costs and expenses;

(h) awarding Plaintiffs pre-judgment and post-judgment interest; and

(i) awarding Plaintiffs such other equitable relief as may be just and proper.

Respectfully submitted,

**RILEY RIPER HOLLIN & COLAGRECO**

By: /s/ John G. Harris
John G. Harris (I.D. No. 4017)
1201 N. Orange Street
One Commerce Center, 3rd Floor
Wilmington, Delaware 19801
Telephone: (302) 655-1140

Attorney for Plaintiffs

Dated: December 31, 2007