

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

EDWARD TODD, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

STAAR SURGICAL COMPANY, BARRY G. CALDWELL, and JOHN SANTOS

Defendants.

Case No. CV 14-5263 MWF (GJS)

**AMENDED
JUDGMENT APPROVING CLASS
ACTION SETTLEMENT AND
DISMISSING THIS ACTION WITH
PREJUDICE**

Plaintiff Edward Todd (“Lead Plaintiff”), on behalf of himself and the Class Members, Defendants STAAR Surgical Company, Barry G. Caldwell, and John Santos (“Defendants”) (with Plaintiff and Defendants collectively referred to herein as the “Parties”) have agreed to settle the above-captioned class action suit (the “Action”) on the terms and conditions set forth in the Settlement Agreement and Stipulation (this settlement process hereinafter referred to as the “Settlement”).

The Court has concurrently **GRANTED** the Motion for Final Approval of the Settlement and Plan of Allocation pursuant to Rule 23(e) of the Federal Rules of Civil Procedure (the “Settlement Motion”); also pending is Class Counsel’s Motion for Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Fee Motion”) and for the incentive award for the class representative.

In connection with the Settlement and the current Motions before the Court, the Court makes the following findings:

1 A. On January 5, 2017, the Court entered an Order Granting Motion for
2 Class Certification under Rule 23(a) and Rule 23(b)(3) and appointing Class
3 Counsel and the class representative.

4 B. On July 11, 2017, the Court entered an Order Approving Preliminarily
5 the Settlement of a Class Action and Approving Notice of Proposed Settlement and
6 Fairness Hearing (the “Preliminary Approval Order”), and directing that notice be
7 given to the Class Members of the proposed Settlement and of a Fairness Hearing.

8 C. In the Preliminary Approval Order, the Court approved the form and
9 content of the Notice of Proposed Class Action Settlement and Fairness Hearing
10 (“Notice”) directed to Members of the Class.

11 D. During the Notice period, July 11, 2017 through September 25, 2017,
12 the Settlement Administrator caused the Short Form Notice to be mailed to all
13 Members of the Class, made a Long Form Notice available, caused the Publication
14 Notice to be transmitted over GlobeNewswire and published in the Investor’s
15 Business Daily on July 24, 2017, and created a Settlement Website and a toll-free
16 number for Class Members. The Notices, Website, and toll-free number informed
17 members of the Settlement Class of the Settlement terms and that the Court would
18 consider the following issues at the Fairness Hearing: (i) whether the Court should
19 grant final approval to the Settlement; (ii) whether the Court should enter final
20 judgment dismissing the Action with prejudice; (iii) the amount of attorneys’ fees,
21 costs, and expenses, if any, to be awarded to Class Counsel; (iv) whether to approve
22 the payment of the Incentive Amount to the class representative and the amount of
23 the Incentive Amount; and (v) any objections by members of the Settlement Class
24 to any of the above that were timely and properly served in accordance with the
25 Preliminary Approval Order.

26 E. No Class Members chose to exclude themselves from the Settlement
27 by submitting timely and valid Opt-Out Forms, no objections to the Settlement the
28 amount of attorneys’ fees were sent to Class Counsel or filed with the Court.

1 F. On September 11, 2017, the Settlement Administrator filed with the
2 Court a declaration attesting to the mailing of the Notice to all Class Members and
3 the results of the Notice. On October 16, 2017 the Settlement Administrator filed
4 with the Court an updated declaration attesting to the results of the Notice.

5 G. In accordance with the Notice, a Fairness Hearing was held on October
6 23, 2017.

7 The Court having entered the Preliminary Approval Order, having heard
8 argument in support of the Settlement and the Fee Motion and request for the
9 Incentive Amount for the class representative, having reviewed all of the evidence
10 and other submissions presented with respect to the Settlement and the record of all
11 proceedings in this case, and having made the foregoing findings,

12 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

13 1. The Court has jurisdiction over the subject matter and personal
14 jurisdiction over the parties to the Action, including the Class Members.

15 2. The forms and methods of notifying the Class of the Settlement and its
16 terms and conditions met the requirements of the United States Constitution
17 (including the Due Process Clause), Rule 23 of the Federal Rules of Civil
18 Procedure, Section 21D(a)(7) of the Exchange Act, 15 U.S.C. § 78u-4(a)(7), as
19 amended by the Private Securities Litigation Reform Act of 1995, and all other
20 applicable law and rules; constituted the best notice practicable under the
21 circumstances; and constituted due and sufficient notice to all persons and entities
22 entitled thereto of these proceedings and the matters set forth herein, including the
23 Settlement and Plan of Allocation, to all Persons entitled to such notice. No Class
24 Member is relieved from the terms of the Settlement, including the releases
25 provided for therein, based upon the contention or proof that such Class Member
26 failed to receive actual or adequate notice.

27 3. A full opportunity has been offered to the Class Members to object to
28 the proposed Settlement and to participate in the hearing thereon.

29 4. The notice provisions of the Class Action Fairness Act, 28 U.S.C. §
30 1715, were fully discharged and that the statutory waiting period has elapsed.

1 Thus, it is hereby determined that all members of the Class are bound by this Order
2 and Final Judgment.

3 5. The Settlement Amount is \$7 million (Seven Million Dollars).

4 6. The Court finally approves the Settlement in all respects as fair,
5 reasonable, adequate, and in the best interests of the Settlement Class pursuant to
6 Rule 23(e). The Settlement was not a product of fraud or collusion, and the Court
7 finds it satisfies Rule 23(e) after considering (i) the complexity, expense, and likely
8 duration of the Action; (ii) the stage of the proceedings and amount of discovery
9 completed; (iii) the factual and legal obstacles to prevailing on the merits; (iv) the
10 possible range of recovery; (v) the respective opinions of the parties, including
11 Lead Plaintiff, Class Counsel, Defendants, and Defendants' Counsel; and (vi) any
12 objections submitted by Class Members.

13 7. Lead Plaintiff and Defendants are directed to carry out the Settlement
14 in accordance with the terms and provision in the Stipulation.

15 8. All of the claims asserted in the Action by Lead Plaintiff and the other
16 Class Members against Defendants are hereby dismissed with prejudice. The
17 Parties shall bear their own costs and expenses, except as otherwise expressly
18 provided in the Stipulation.

19 9. The Releases set forth in the Stipulation, are expressly incorporated
20 herein in all respects. The Releases are effective as of the Effective Date.
21 Accordingly, this Court orders that: Lead Plaintiff and the Class Members hereby
22 release and forever discharge the Released Persons from any and all Released
23 Claims. Lead Plaintiff and the Class Members are hereby permanently and forever
24 enjoined from prosecuting, attempting to prosecute, or assisting others in the
25 prosecution of the Released Claims against the Released Persons, as set forth in the
26 Stipulation. For purposes of this Order and Final Judgment:

27 a. "Released Claims" means any and all claims, rights, demands,
28 obligations, damages, actions or causes of action, or liabilities
whatsoever, of every nature and description, including both known
claims and Unknown Claims, whether arising under federal, state,
common or foreign law or regulation, that arise out of or relate in

1 any way to the purchase or sale of STAAR Securities during the
2 Class Period and the acts, facts, statements, or omissions that were
3 or could have been alleged or asserted by Lead Plaintiff or any
4 member of the Class in the Action or in any other action in any
5 court or forum, except that the following are expressly excluded
6 from the definition of Released Claims: (i) all claims of any Person
7 who submits a request for exclusion from the Settlement, to the
8 extent that the Court grants any such request; and (ii) all claims to
enforce any of the terms of this Stipulation.

9 b. “Released Persons” means (i) Defendants; (ii) each of Defendants’
10 present and former parents, subsidiaries, divisions, departments,
11 affiliates, stockholders, officers, directors, employees, agents; and
12 (iii) any of their advisors, insurers, counsel, underwriters,
13 representatives (and the predecessors, successors, administrators
and assigns of each of the foregoing) in their capacities as such.

14 10. Accordingly, to the full extent provided by Section 21D(f)(7)(A) of the
15 Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. §78u-
16 4(f)(7)(A), and other applicable law, the Court hereby bars all Released Claims
17 against and by the Released Persons as provided herein and in the Stipulation.

18 11. The Court further orders that, as of the Effective Date, each of
19 Defendants, including any and all of his/her/its successors in interest or assigns,
20 hereby releases and forever discharges any and all Released Defendants’ Claims, to
21 the extent they relate to the subject matter of this Action or its prosecution thereof,
22 against Lead Plaintiff, any of the Class Members, and any of their counsel,
including Plaintiff’s Counsel. For purposes of this Order and Final Judgment:

23 c. “Released Defendants’ Claims” means all claims, demands, rights,
24 remedies, liabilities, and causes of action of every nature and
25 description whatsoever, whether based on federal, state, local,
26 statutory, or common law, or any other law, rule, or regulation,
27 including both known and Unknown Claims, that: (i) have been or
28 could have been asserted in the Action by any of the Released
Persons or the successors and assigns of any of them, against the

1 Lead Plaintiff or any of his attorneys; and (ii) arise out of or relate
2 in any way to the institution, prosecution, or Settlement of this
3 Action or the Released Claims, including but not limited to all
4 claims for malicious prosecution or sanctions. “Released
5 Defendants’ Claims” does not include claims to enforce any of the
6 terms of this Stipulation or any claims by the Released Persons
7 against any Person listed on Exhibit A hereto.

8 12. Plaintiff’s Counsel are awarded attorneys’ fees in the amount of
9 \$1,750,000 and expenses, including experts’ fees and expenses, in the amount of
10 \$216,239.71, such amounts to be paid from out of the Gross Settlement Fund no
11 later than five (5) business days following the entry of this Order. Lead Plaintiff’s
12 Counsel shall thereafter be solely responsible for allocating the Attorneys’ Fees and
13 Expenses among Plaintiff’s Counsel in a manner in which Lead Plaintiff’s Counsel
14 in good faith believe reflects the contributions of such counsel to the initiation,
15 prosecution, and resolution of the Action. If, and when, as a result of any appeal
16 and/or further proceedings on remand, or successful collateral attack, the foregoing
17 Attorneys’ Fees and Expense award is overturned or lowered, or if the Settlement is
18 terminated or is not approved by the Court, or if there is an appeal and any order
19 approving the Settlement does not become Final and binding upon the Class, then,
20 within thirty (30) calendar days after receiving notice from Settling Defendants’
21 Counsel of such an order from a court of appropriate jurisdiction, each Plaintiff’s
22 Counsel law firm shall refund to the Gross Settlement Fund such fees and expenses
23 previously paid to them from the Gross Settlement Fund plus interest thereon at the
24 same rate as earned on the Gross Settlement Fund in an amount consistent with
25 such reversal or modification. Each Plaintiff’s Counsel law firm receiving
26 attorneys’ fees and litigation costs and expenses, as a condition of receiving such
27 fees and expenses, on behalf of itself and each partner and/or shareholder of it,
28 (including the law firm and its partners and/or shareholders) shall be subject to the
 jurisdiction of the Court for the purpose of enforcing this Stipulation, and each shall
 be liable for repayment of the attorneys’ fees and litigation costs and expenses
 allocated to it, including all amounts paid as referral fees to other law firms, as well
 as accrued interest thereon. Upon application of STAAR or Defendants’ Counsel,

1 the Court may summarily issue orders, including, without limitation, judgments and
2 attachment orders and may make appropriate findings of or sanctions for contempt
3 against any of Plaintiff's Counsel law firm or any of its partners and/or
4 shareholders should such Plaintiff's Counsel law firm fail timely to repay fees and
5 expenses pursuant to this Paragraph 8.

6 13. Lead Plaintiff is awarded the sum of \$10,000, as reasonable costs and
7 expenses directly relating to the representation of the Class as provided in 15
8 U.S.C. § 78u-4(a)(4), such amounts to be paid from out of the Gross Settlement
9 Fund no later than five (5) business days following the entry of this Order.

10 14. The Court hereby finds that the proposed Plan of Allocation is a fair
11 and reasonable method to allocate the Net Settlement Fund among Class Members.

12 15. The Court finds that all parties and their counsel have complied with
13 each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all
14 proceedings herein.

15 16. Neither this Order and Final Judgment, the Preliminary Approval
16 Order, the Stipulation (including the exhibits and Supplemental Agreement
17 thereto), the Memorandum of Understanding, nor any of the negotiations,
18 documents or proceedings connected with them shall be:

- 19 a. referred to or used against the Released Persons or against Lead
20 Plaintiff or the Class as evidence of wrongdoing by anyone;
- 21 b. construed against the Released Persons or against Lead Plaintiff or
22 the Class as an admission or concession that the consideration to be
23 given hereunder represents the amount which could be or would
24 have been recovered after trial;
- 25 c. construed as, or received in evidence as, an admission, concession
26 or presumption against the Class or any of them, that any of their
27 claims are without merit or that damages recoverable under the
28 Complaint would not have exceeded the Settlement Amount; or
- d. used or construed as an admission of any fault, liability or
wrongdoing by any person or entity, or offered or received in
evidence as an admission, concession, presumption or inference
against any of the Released Persons in any proceeding other than

1 such proceedings as may be necessary to consummate or enforce
2 the Stipulation.

3 17. Notwithstanding the foregoing Paragraph 16, the Settling Parties and
4 other Released Persons may file or refer to this Order and Final Judgment, the
5 Stipulation, Preliminary Approval Order, and/or any Claim Form: (a) to effectuate
6 the liability protections granted hereunder or thereunder, including without
7 limitation, to support a defense or counterclaim based on principles of *res judicata*,
8 collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any
9 theory of claim preclusion or issue preclusion or similar defense or counterclaim;
10 (b) to obtain a judgment reduction under applicable law; (c) to enforce any
11 applicable insurance policies and any agreements relating thereto; or (d) to enforce
12 the terms of the Stipulation and/or this Order and Final Judgment.

13 18. Exclusive jurisdiction is hereby retained over the Parties for all matters
14 relating to the Action, including the administration, interpretation, effectuation or
15 enforcement of the Stipulations, Settlement, Preliminary Approval Order, and this
16 Order and Final Judgment, and including any application for fees and expenses
17 incurred in connection with administering and distributing the Settlement proceeds
18 to the Class Members.

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

21 20. There is no just reason for delay in the entry of this Order and Final
22 Judgment and immediate entry by the Clerk of the Court is directed pursuant to
23 Rule 54(b) of the Federal Rules of Civil Procedure.

24 21. The finality of this Order and Final Judgment shall not be affected, in
25 any manner, by any appeals concerning the Attorneys' Fees and Expenses awarded
26 herein, the Compensatory Award to Lead Plaintiff, or the Plan of Allocation.

27 22. In the event that the Settlement does not become Final and effective in
28 accordance with the terms and conditions set forth in the Stipulation, then the
Stipulation, except as otherwise provided in Section L.6 therein, including any
amendment(s) thereto, the Preliminary Approval Order, except for Paragraphs 26-

1 28 and 31 thereof, and this Order and Final Judgment, except for Paragraphs 8, 12,
2 and 18-20 shall be rendered null and void of no further force or effect, and all
3 Parties shall be deemed to have reverted *nunc pro tunc* to their respective status
4 prior to the execution of the Memorandum of Understanding between the Parties
5 dated May 12, 2017 (the “MOU”), and the Parties shall proceed in all respects as if
6 the MOU and the Stipulation had not been executed and the related orders had not
7 been entered, without prejudice in any way from the negotiation, fact, or terms of
8 the Settlement, and preserving all of their respective claims and defenses in the
9 Action, and shall revert to their respective positions in the Action.

10 23. In the event the Settlement does not become Final and effective in
11 accordance with the terms and conditions set forth in the Stipulation, the Escrow
12 Agent shall refund the Gross Settlement Fund, less amounts already expended for
13 Notice and Administration Expenses pursuant to the terms of the Stipulation, to
14 STAAR’s Insurance Carriers within ten (10) business days thereafter. At the
15 request of any Defendants or Lead Plaintiff, the Escrow Agent or the Escrow
16 Agent’s designee shall apply for any tax refund owed to the Gross Settlement Fund
17 and pay the percentage of the proceeds of the tax refund, after deduction of any fees
18 and expenses incurred in connection with such application(s) for refund, to
19 STAAR.

20 24. All agreements made and orders entered during the course of this
21 Action relating to the confidentiality of information shall survive this Settlement
22 and be binding on the Parties, including but not limited to the Stipulated Protective
23 Order on Confidentiality filed on or about June 10, 2016 (ECF No. 154, 154-1)..

24 DATED: October 23, 2017



25 MICHAEL W. FITZGERALD
26 United States District Judge
27
28