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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TANNER TROSPER, on behalf of himself,
individually, and all others similarly
situated,

Plaintiffs,

v.

STRYKER CORPORATION, et al.,

Defendants.

Case No. 13-CV-00607 LHK

**ORDER GRANTING FINAL
APPROVAL TO CLASS ACTION
SETTLEMENT AND GRANTING
MOTION FOR REPRESENTATIVE
PLAINTIFF AWARD**

Dkt. Nos. 85 & 86

This matter came before the Court on Plaintiffs’ Motion for Final Approval of Settlement (“Final Approval Motion”).

WHEREAS, a class action is pending before the Court in *Trosper, et al. vs. Howmedica Osteonics Corporation, et al.*, 13-CV-00607 LHK;

WHEREAS, the Court has received and reviewed the Settlement Agreement entered into between the Representative Plaintiff and the Class Members, on the one hand, and Defendants, on the other hand, and has considered the terms of the proposed settlement set forth therein (the “Settlement”);

WHEREAS, all terms contained herein shall have the same meanings as set forth in the

1 Settlement Agreement, unless otherwise defined herein;

2 WHEREAS, on June 25, 2015, the Court entered an order granting preliminary approval
3 of the Settlement, approving the form and method of notice, and setting a date and time for a
4 fairness hearing to consider whether the Settlement should be finally approved by the Court
5 pursuant to Rule 23(e) of the Federal Rules of Civil Procedure as fair, adequate, and reasonable
6 (the "Preliminary Approval Order");

7 WHEREAS, the Preliminary Approval Order further directed that all members of the
8 Settlement Class be given notice of the Settlement and of the date for the final fairness hearing;

9 WHEREAS, the Court has received the declaration of Abigail Schwartz attesting to the
10 mailing of the Notice in substantial accordance with the Preliminary Approval Order;

11 WHEREAS, the Court notes that there have been no objections to the Settlement; and

12 WHEREAS, the Court having conducted a final fairness hearing on October 8, 2015 (the
13 "Fairness Hearing"), and having considered the arguments presented, all papers filed, and all
14 proceedings had therein;

15 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

16 1. The Court has jurisdiction over the subject matter of this action, all members of
17 the Settlement Class, and Defendants.

18 2. In accordance with Rule 23 of the Federal Rules of Civil Procedure and the
19 requirements of due process, all members of the Settlement Class have been given proper and
20 adequate notice of the Settlement. Based upon the evidence submitted by the parties; the
21 Settlement Agreement; the arguments of counsel; and all the files, records, and proceedings in
22 this case, the Court finds that the Notice and notice methodology implemented pursuant to the
23 Settlement Agreement and the Court's Preliminary Approval Order (a) constituted the best
24 practicable notice under the circumstances; (b) constituted notice that was reasonably calculated,
25 under the circumstances, to apprise members of the Settlement Class of the pendency of the
26 litigation, their right to object to the Settlement, and their right to appear at the Fairness Hearing;

1 (c) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to
2 notice; and (d) met all applicable requirements of Rule 23 of the Federal Rules of Civil
3 Procedure and any other applicable law.

4 3. The Settlement Agreement in this action warrants final approval pursuant to Rule
5 23(e) of the Federal Rules of Civil Procedure because it is fair, adequate, and reasonable;
6 resulted from vigorously contested litigation, including meaningful discovery, motions practice
7 and additional merits discovery; and is the product of extensive good-faith arm's length
8 negotiations between the parties. The Court finds that the following factors, which the Court
9 must consider in evaluating whether to grant final approval of a class action settlement, weigh in
10 favor of approval:

- 11 (a) the strength of the plaintiffs' case;
- 12 (b) the risk, expense, complexity, and likely duration of further litigation;
- 13 (c) the risk of maintaining class action status throughout the trial;
- 14 (d) the amount offered in settlement;
- 15 (e) the extent of discovery completed, and the stage of the proceedings;
- 16 (f) the experience and views of counsel;
- 17 (g) the presence of a governmental participant; and
- 18 (h) the reaction of the class members to the proposed settlement.

19 *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993).

20 4. The Final Approval Motion is hereby GRANTED, and the Settlement Agreement
21 is hereby APPROVED as fair, reasonable, and adequate for the Class Members. The Parties are
22 directed to consummate the Settlement Agreement in accordance with its terms.

23 5. The Court APPROVES payment of the Class Settlement Amount in accordance
24 with the terms of the Settlement Agreement.

25 6. The Court APPROVES payment of Attorney's Fees in the amount of
26 \$750,000.00, and Costs in the amount of \$70,032.31 to Class Counsel, as detailed in the Order
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1 Granting Motion for Attorney's Fees issued contemporaneously herewith.

2 7. The Court APPROVES payment of an incentive award to the Representative
3 Plaintiff in the amount of \$7,500. The Court finds that Representative Plaintiff took actions to
4 preserve the interests of the class, that the class benefitted, that Representative Plaintiff spent
5 time and effort in litigating the case, and that Representative Plaintiff states reasonable fears of
6 workplace retaliation. *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). On the basis of
7 the length of this case, the volume of discovery, and the fact that Representative Plaintiff was
8 deposed on multiple occasions, Representative Plaintiff spent a significant amount of time and
9 effort in helping counsel litigate this case.

10 8. The allocation plan is hereby APPROVED as being fair, adequate, and
11 reasonable. The Class Settlement Amount, Representative Plaintiff Incentive Award, and
12 Attorney's Fees and Costs Amount shall be distributed in accordance with the terms of the
13 Settlement Agreement and any further orders of this Court.

14 9. The litigation is DISMISSED WITH PREJUDICE and without costs to any
15 Party, other than as specified in the Settlement Agreement and this Order.

16 10. In consideration of the Class Settlement Amount, and for other good and
17 valuable consideration, each of the Releasing Class Members shall, by operation of this
18 Judgment, have fully, finally, and forever released, relinquished, and discharged all Class
19 Member Released Claims against Defendants in accordance with the terms of the Settlement
20 Agreement and as Released Claims are defined in the Settlement, shall have covenanted not to
21 sue Defendants with respect to all such Released Claims, and shall be permanently barred and
22 enjoined from instituting, commencing, prosecuting, or asserting any such Class Member
23 Released Claim against Defendants.

24 11. This Judgment is the Final Judgment in the suit as to all Class Member Released
25 Claims.

26 12. Without affecting the finality of this Judgment in any way, this Court retains
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1 jurisdiction over (a) implementation of the Settlement and the terms of the Settlement
2 Agreement; (b) distribution of the Class Settlement Amount, the Representative Plaintiff
3 Incentive Award, and the Attorney's Fees and Costs Amount; and (c) all other proceedings
4 related to the implementation, interpretation, administration, consummation, and enforcement of
5 the terms of the Settlement Agreement and/or the Settlement, and the administration of Claims
6 by Settlement Class Members.


7 13. In the event that the Settlement Effective Date does not occur, this Judgment
8 shall be rendered null and void and shall be vacated, *nunc pro tunc*, and without prejudice to the
9 status quo ante rights of the Representative Plaintiff, Class Members, and Defendants.

10 14. This Court finds that there is no just reason for delay and expressly directs
11 Judgment and immediate entry by the Clerk of the Court.

12 15. The Clerk shall close the file.

13 **IT IS SO ORDERED.**

14 Dated: October 9, 2015

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17 Lucy H. Koh
18 United States District Judge
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