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# [***Todd v. STAAR Surgical Co.***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5PT2-TDS1-F04C-T1TH-00000-00&context=)

United States District Court for the Central District of California

October 24, 2017, Decided; October 24, 2017, Filed

Case No. CV 14-5263 MWF (GJSx)

**Reporter**

2017 U.S. Dist. LEXIS 176183 \*

Edward Todd -v- STAAR Surgical Company, et. al.

**Prior History:** [*Todd v. STAAR Surgical Co., 2015 U.S. Dist. LEXIS 189237 (C.D. Cal., Aug. 21, 2015)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5NW9-SPY1-F04C-T24G-00000-00&context=)

**Core Terms**

Settlement, lead plaintiff, class member, Notice, parties, class action, attorneys', expenses, proposed settlement, securities, settlement fund, final judgment, fees and expenses, proceedings, discovery, final approval, reimbursement, Approving, negotiation, factors, terms, set forth, law firm, experienced, damages, awards, orders, class certification, litigation expenses, recoverable damages

**Counsel:** **[\*1]**For Edward Todd, Individually and on Behalf of All Others Similarly Situated, Plaintiff: Jeremy A Lieberman, Marc I Gross, Michael J Wernke, LEAD ATTORNEYS, PRO HAC VICE, Pomerantz LLP, New York, NY; Lionel Zevi Glancy, Robert Vincent Prongay, LEAD ATTORNEYS, Kevin F Ruf, Glancy Prongay and Murray LLP, Los Angeles, CA; Patrick V Dahlstrom, LEAD ATTORNEY, PRO HAC VICE, Pomerantz LLP, Chicago, IL.

For Staar Surgical Company, a Delaware corporation, Barry G. Caldwell, the President, Chief Executive Officer and a director of STAAR, Defendants: Dan E Marmalefsky, Kai S Bartolomeo, Morrison and Foerster LLP, Los Angeles, CA.

For John Santos, Defendant: Dan E Marmalefsky, LEAD ATTORNEY, Kai S Bartolomeo, Morrison and Foerster LLP, Los Angeles, CA.

**Judges:** Honorable MICHAEL W. FITZGERALD, United States District Judge.

**Opinion by:** MICHAEL W. FITZGERALD

**Opinion**

CIVIL MINUTES—GENERAL

**Proceedings (In Chambers)**: ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION [176] AND MOTION FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES [177]

Before the Court is Lead Plaintiff Edward Todd's Motion for Final Approval of Class Action Settlement and Plan of Allocation ("Settlement Motion"**[\*2]** (Docket No. 176)), and Motion for Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Fee Motion" (Docket No. 177)), both filed on September 11, 2017. On October 16, 2017, Lead Plaintiff filed a Notice of Non-Opposition and Reply in Further Support of the Settlement Motion and Fee Motion. ("Reply" (Docket No. 181)). On **October 23, 2017**, the Court held a hearing on the Settlement Motion and the Fee Motion. No objectors appeared at the hearing.

Having reviewed the briefs and considered the arguments presented at the hearing, the Court **GRANTS** the Settlement Motion. The proposed settlement is fair, reasonable, and adequate to serve the interests of the class members. The Court also **GRANTS** the Fee Motion. The requested attorneys' fees and costs constitute fair compensation for counsel's efforts and reimbursement for their expenses, and the incentive award requested is reasonable.

**I. BACKGROUND**

The Court discussed the background facts extensively in its previous Order Approving Preliminarily the Settlement of a Class Action ("Preliminary Approval Order"), filed July 11, 2017(Docket No. 175), and Order Granting Motion for Class Certification ("Class Certification Order"), filed**[\*3]** January 5, 2017. (Docket No. 168).

Lead Plaintiff Todd filed this security class action on behalf of investors who acquired STAAR securities between November 1, 2013 and June 30, 2014. (Second Amended Complaint ("SAC") ¶ 1 (Docket No. 88)). The SAC alleges violations of *sections 10(b)* and [*20(a) of the Securities Exchange Act of 1934*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP11-NRF4-44KS-00000-00&context=) arising from Defendants' statements that STAAR complied with FDA ***regulations***, when in fact, the FDA had observed serious compliance violations. (SAC ¶ 2). Lead Plaintiff alleges that these misleading statements artificially inflated the value of STAAR securities, which declined sharply once the FDA's investigation became public. (*Id.*).

On January 5, 2017, the Court certified a class of all investors who acquired STAAR securities between November 1, 2013 and June 30, 2014; appointed Todd as the Lead Plaintiff; and appointed Pomerantz LLP as class counsel. (Class Cert. Order at 21). On July 11, 2017, the Court preliminarily approved the Settlement Agreement. (Preliminary Approval Order at 1).

**II. THE SETTLEMENT**

The Proposed Settlement establishes a fund of $7 million for payment of attorneys' fees, class notice, and an incentive fee to Lead Plaintiff, with the remainder reserved**[\*4]** for payment of Class Members' claims. Class Members claim portions of the fund by timely submitting a proof of claim. (Preliminary Approval Order at 5).

In exchange for the payment described above, Class Members agree to release "any and all claims, rights, demands, obligations, damages, actions or causes of action, or liabilities whatsoever . . . that arise out of or relate in any way to the purchase or sale of STAAR Securities during the Class Period." (Preliminary Approval Order at 22).

Notice was provided to settlement Class Members in the manner approved by the Court in the Preliminary Approval Order. Short-form notices were sent via first-class mail to potential Class Members, and a summary notice was published in the *Globe Newswire* and *Investor's Business Daily*. Copies of the long-form notice and proof of claim were posted in downloadable form on a specially created settlement website. (Settlement Mot. at 7). Approximately 13,767 notice packets were mailed to potential Class Members. (Reply at 1).

Lead Plaintiff seeks an Incentive Award of $10,000. (Fee Mot. at 1). Class Counsel seeks fees in the amount of $1,750,000 or 25% of the Settlement Fund, and reimbursement of expenses**[\*5]** incurred in the amount of $216,239.71. (*Id.*).

**III. DISCUSSION**

**A. Final Approval of Class Action**

Before approving a class action settlement, *Rule 23 of the Federal Rules of Civil Procedure* requires the Court to determine whether the proposed settlement is fair, reasonable, and adequate. *Fed. R. Civ. P. 23(e)(2)*. "To determine whether a settlement agreement meets these standards, a district court must consider a number of factors, including: (1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement." *Staton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003)* (internal citation and quotation marks omitted) (applying the factors announced in [*Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3T7M-D1S0-0038-X3SM-00000-00&context=).

"The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." [*Officers for Justice v. Civil Serv. Comm'n, 688 F.2d 615, 625 (9th Cir. 1982)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-1XS0-003B-G3JG-00000-00&context=). "It is the settlement taken as a**[\*6]** whole, rather than the individual component parts, that must be examined for overall fairness, and the settlement must stand or fall in its entirety." *Staton, 327 F.3d at 960* (quoting [*Hanlon, 150 F.3d at 1026*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3T7M-D1S0-0038-X3SM-00000-00&context=)). "The involvement of experienced class action counsel and the fact that the settlement agreement was reached in arm's length negotiations, after relevant discovery had taken place create a presumption that the agreement is fair." [*Linney v. Cellular Alaska P'ship, Nos. C-96-3008 DLJ, C-97-0203 DLJ, C-97-0425 DLJ, C-97-0457 DLJ, 1997 U.S. Dist. LEXIS 24300, 1997 WL 450064, \*5 (N.D. Cal. July 18, 1997)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4SK0-7MP0-TXFP-C2ST-00000-00&context=), *aff'd*, [*151 F.3d 1234, 1234 (9th Cir. 1998)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3TFC-BHC0-0038-X2TM-00000-00&context=).

"In addition, the settlement may not be the product of collusion among the negotiating parties." [*In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 458 (9th Cir. 2000)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:40B1-VWX0-0038-X558-00000-00&context=).

The Proposed Settlement is the outcome of an arms-length negotiation conducted with the help of experienced mediator Michelle Yoshida of Phillips ADR. (Settlement Mot. at 6, 9). "The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." [*Satchell v. Fed. Express Corp., No. C 03 2878 SI, 2007 U.S. Dist. LEXIS 99066, 2007 WL 1114010, at \*4 (N.D. Cal. Apr. 13, 2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7XPM-G2V0-YB0M-N000-00000-00&context=). Moreover, Class Counsel are experienced securities class action litigators who recommend the Proposed Settlement as fair, reasonable, and adequate. (Settlement Mot. at 19). The Court is satisfied that the proposed settlement**[\*7]** is not the product of collusion between the parties. The arms-length nature of the negotiation resulting in the proposed settlement and the recommendation of experienced class action counsel supports final approval. *See* [*Linney, 1997 U.S. Dist. LEXIS 24300, 1997 WL 450064, at \*5*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4SK0-7MP0-TXFP-C2ST-00000-00&context=).

Moreover, consideration of the *Hanlon* factors dictates final approval of the proposed settlement:

**1. Strength of Plaintiff's case and risk, expense, complexity, and likely duration of further litigation**

When assessing the strength of a plaintiff's case, the court does not reach "any ultimate conclusions regarding the contested issues of fact and law that underlie the merits of this litigation." [*In re Wash. Pub. Power Supply Sys. Sec. Litig., 720 F. Supp. 1379, 1388 (D. Ariz. 1989)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4N-BF50-0054-40T6-00000-00&context=). Lead Plaintiff acknowledges that, despite the strength of his case, continued litigation of this action would present risks both as to maintaining class action status and ultimately prevailing with a finding liability. (Settlement Mot. at 10-15).

Lead Plaintiff recognizes that securities class actions in particular are difficult and uncertain to litigate. (Settlement Mot. at 10). Securities class actions are typically complex and expensive. (*Id.* at 14). If the parties were to proceed with further litigation, Lead Plaintiff acknowledges that significant party and judicial resources would**[\*8]** be expended in extensive deposition and expert discovery, further motion practice, trial, and likely appeals following trial. (*Id.* at 14-15).

Lead Plaintiff also recognizes the high standard for proving fraud, especially the elements of scienter, causation, and damages. (*Id.* at 11-12). For example, as Lead Plaintiff suggests, Defendants would likely challenge scienter by arguing that they were unaware of any significant FDA violations at the time they made their representations of compliance, and that, to the extent Defendants were aware of the violations, Defendants did not believe the violations were significant or that Defendants would not be able to resolve them easily. (*Id.* at 12).

The Court finds that this factor weighs in favor of final approval of the Proposed Settlement.

**2. Amount offered in settlement**

The Court concludes the $7 million in cash offered in the Proposed Settlement is fair and reasonable. The Court looks at "the complete package taken as a whole, rather than the individual component parts" in making this determination. [*Officers for Justice, 688 F.2d at 628 (9th Cir. 1982)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-1XS0-003B-G3JG-00000-00&context=). Class Counsel engaged a consultant to estimate the potentially recoverable damages in this action, and that consultant estimated that the maximum recoverable damages if Lead Plaintiff**[\*9]** prevailed on all claims and overcame all defenses would be $36 million. (Settlement Mot. at 16). The $7 million amount offered in the Proposed Settlement therefore represents almost 20% of the maximum recoverable damages. This is significantly greater than the 7.3% median settlement recovery as a percentage of estimated damages in securities class actions in 2016 where estimated damages were less than $50 million (*Id.* at 17 (citing "Securities Class Action Settlements: 2016 Review and Analysis," at 8, Figure 7)). *See also* [*In re Cendant Corp. Litig., 264 F.3d 201, 240 (3d Cir. 2001)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:43VV-5SP0-0038-X08R-00000-00&context=) (observing that typical recoveries in securities class actions range from 1.6% to 14% of total losses).

Considering the risk that, if this litigation were to continue, Lead Plaintiff would not prevail on all claims and overcome all defenses, it is likely that the recoverable damages would ultimately be less than $36 million. Moreover, continued litigation would result in considerable additional expenses.

The Court therefore finds this factor weighs in favor of final settlement approval.

**3. Extent of discovery completed and stage of the proceedings**

This factor requires the Court to evaluate whether "the parties have sufficient information to make an informed decision about settlement."**[\*10]** [*Linney, 151 F.3d at 1239*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3TFC-BHC0-0038-X2TM-00000-00&context=). Lead Plaintiff contends that the parties have engaged in substantial discovery, including, *inter alia*, review of tens of thousands of documents, extensive deposition preparation, collaboration with experts regarding FDA ***regulations***. (Settlement Mot. at 18). The parties engaged in extensive adversarial motion practice, including regarding class certification and discovery disputes. The parties also researched, prepared, and drafted comprehensive mediation briefs. (*Id.* at 18-19). The Court concludes the parties had ample information with which to make informed settlement decisions. This factor weighs in favor final settlement approval.

**4. Experience and views of Lead Counsel**

Lead Plaintiff's counsel has extensive securities class action litigation experience, and has resolved dozens of complex securities cases. (Declaration of Michael J. Wernke ¶ 102, Exs. 5-A , 5-B (Docket Nos. 178, 178-5)). Counsel conducted detailed discovery in the course of this action, and engaged in extensive mediated negotiations before ultimately reaching and recommending this Proposed Settlement. (*Id.* at ¶¶ 103). This factor weighs in favor of final settlement approval.

**5. Reaction of the class members to the proposed settlement [\*11]**

No Class Members have objected to or opted out of the Proposed Settlement, and no Class Members have objected to the proposed award of attorneys' fees and expenses. (Reply at 1-2). The deadline for filing any objections was September 25, 2017. (*Id.*). "It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." [*Nat'l Rural Telecomm'cns Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 528-29 (C.D. Cal. 2004)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4CPC-TGR0-0038-Y35K-00000-00&context=); *see also* [*Churchill Vill., L.L.C. v. GE, 361 F.3d 566, 577 (9th Cir. 2004)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4BY5-1GP0-0038-X1R8-00000-00&context=) (affirming settlement with 45 objections out of 90,000 notices sent).

**B. Plan of Allocation**

The Plan of Allocation was approved in the Preliminary Order. The Plan distributes the settlement proceeds on a *pro rata* basis, calculating a Claimant's relative loss proximately caused by Defendants' alleged conduct, based on factors such as when and at what price the Claimant purchased and sold STAAR common stock. (Settlement Mot. at 24-25). "[P]lans that allocate money depending on the timing of purchases and sales of the securities at issue are common." [*In re Datatec Sys., Inc. Sec. Litig., 2007 U.S. Dist. LEXIS 87428, 2007 WL 4225828, at \*5 (D.N.J. Nov. 28, 2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4R7N-4W30-TXFR-F287-00000-00&context=).

The proposed Plan of Allocation was fully described in the notices mailed to the Class, and no Class Members have objected. (Settlement Mot. at 24-25). The plan was formulated**[\*12]** in consultation with an independent damages expert. (*Id.*).

The Court concludes the Plan of Allocation is fair, reasonable, and adequate.

**C. Attorney's Fees and Reimbursement of Litigation Expenses**

In the Ninth Circuit, there are two primary methods to calculate attorney's fees: the lodestar method and the percentage-of-recovery method. [*In re Online DVD-Rental* ***Antitrust*** *Litig., 779 F.3d 934, 949 (9th Cir. 2015)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5FD3-M3P1-F04K-V0S8-00000-00&context=) (citation omitted). "The lodestar method requires 'multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.'" *Id.* (citation omitted).

"Under the percentage-of-recovery method, the attorneys' fees equal some percentage of the common settlement fund; in this circuit, the benchmark percentage is 25%." *Id.* (citation omitted). However, the "benchmark percentage should be adjusted, or replaced by a lodestar calculation, when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors." [*Six Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-59P0-003B-54V5-00000-00&context=). "The Ninth Circuit has identified a number of factors that may be relevant in determining if the award is reasonable:**[\*13]** (1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by class counsel; and (6) the awards made in similar cases." [*Martin v. AmeriPride Services, Inc., No. 08cv440-MMA (JMA), 2011 U.S. Dist. LEXIS 61796, 2011 WL 2313604, at \*8 (S.D. Cal. June 9, 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:532G-D3X1-F04C-T14D-00000-00&context=) (citing [*Vizcaino v. Microsoft Corp., 290 F.3d 1043, at 1048-50 (9th Cir. 2002))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:45V7-7TV0-0038-X2PF-00000-00&context=). The choice of "the benchmark or any other rate must be supported by findings that take into account all of the circumstances of the case." [*Vizcaino, 290 F.3d at 1048*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:45V7-7TV0-0038-X2PF-00000-00&context=).

Class Counsel seeks fees in the amount of $1,750,000, or 25% of the $7 million settlement fund. (Fee Mot. at 1). The Court sees no reason to depart from the Ninth Circuit's 25% benchmark. This fee amount is reasonable and fair, especially considering the excellent recovery $7 million represents. (*Id.* at 9.-10). As discussed above, the risks of an inferior award — if any — if the parties were to continue litigation are high. Maintaining class action status, as well as ultimately obtaining a finding of liability, remains uncertain. (*Id.* at 11-14). Class Counsel exercised considerable skill in the litigation of the motion for class certification and substantial discovery (including discovery disputes), and they did so against experienced, highly skilled opposing counsel and on an entirely**[\*14]** contingent basis. (*Id.* at 15-18).

Class Counsel also seeks reimbursement of expenses in the amount of $216,239.71. (Fee Mot. at 21). Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters. *See* [*Harris v. Marhoefer, 24 F.3d 16, 19 (9th Cir. 1994)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6590-003B-P4TK-00000-00&context=). Approximately 67%, or $144,803.01 of the total expenses relate to expenses for experts and consultants, an important part of litigation involving technical FDA ***regulation*** issues. Approximately 4.2%, or $9,033.35 of the total expenses relate to mediation fees. The remaining $62,403.35 relates to necessary travel, filing fees, investigator fees, and document storage and maintenance fees. (Wernke Decl. ¶¶ 132-135, Exs. 5-A, 5-B). Attorneys routinely bill clients for such expenses, and it is therefore appropriate to allow Class Counsel to recover these costs from the settlement fund.

Class Members were notified that Class Counsel would seek fees of up to 25% of the settlement amount, and reimbursement of litigation expenses up to $350,000. No Class Members have objected to the requested fee or expenses. (Fee Mot. at 20-21).

Accordingly, the Court finds that Class Counsel's fee and expenses request is fair and reasonable.

**D. Incentive Awards**

Lead**[\*15]** Plaintiff seeks an Incentive Award of $10,000 in connection with his lost time in his representation of the Class. (Fee Mot. at 23). "[N]amed plaintiffs . . . are eligible for reasonable incentive payments" as part of a class action settlement. *Staton, 327 F.3d at 977 (9th Cir. 2003)*. When evaluating the reasonableness of an incentive award, courts may consider factors such as "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, . . . the amount of time and effort the plaintiff expended in pursuing the litigation . . . and reasonabl[e] fear[s of] workplace retaliation." *Id.*

The Fee Motion cites to numerous cases in which service awards of $10,000 or more are found reasonable. (Fee Mot. at 24 (citing, *e.g.,* [*In re Veritas Software Corp. Sec. Litig., 396 Fed. App'x 815, 816 (3d Cir. 2010)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:515K-FXG1-652R-1000-00000-00&context=) ($15,000 awarded to each lead plaintiff); [*Buccellato v. AT&T Operations, Inc., 2011 U.S. Dist. LEXIS 111361, 2011 WL 4526673, at \*4 (N.D. Cal. June 30, 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:8396-TJ61-652H-7300-00000-00&context=) ($20,000 awarded to lead plaintiff); [*In re Xcel Energy, Inc. Sec., Deriv. & ERISA Litig., 364 F. Supp. 2d 980, 1000 (D. Minn. 2005)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4FYC-34T0-TVVP-N2JG-00000-00&context=) (awarding $100,000 to lead plaintiffs because of "the important policy role [lead plaintiffs] play in the enforcement of the federal securities laws on behalf of persons other than themselves"))). In light of the extensive caselaw supporting a $10,000 incentive award, and the significant time and effort Lead Plaintiff expended to support this litigation (including reviewing**[\*16]** and commenting on the complaints and significant briefs, traveling to Los Angeles to prepare and sit for deposition, and communicating with counsel to oversee the litigation) (Fee Mot. at 23), the Court finds the award of $10,000 appropriate.

**IV. CONCLUSION**

The Court **GRANTS** the Settlement Motion and the Fee Motion.

The Court awards Class Counsel $1,750,000 in fees and $216,239.71 costs, to be paid from the settlement fund. The Court awards Lead Plaintiff Edward Todd an incentive payment of $10,000.

A separate judgment will issue.

IT IS SO ORDERED.

**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**[\*17]** 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:

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

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

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

D. During the Notice period, July 11, 2017 through .50September 25, 2017, the Settlement Administrator caused the Short Form Notice to be mailed to all Members of the Class, made a Long Form**[\*18]** Notice available, caused the Publication Notice to be transmitted over GlobeNewswire and published in the Investor's Business Daily on July 24, 2017, and created a Settlement Website and a toll-free number for Class Members. The Notices, Website, and toll-free number informed members of the Settlement Class of the Settlement terms and that the Court would consider the following issues at the Fairness Hearing: (i) whether the Court should grant final approval to the Settlement; (ii) whether the Court should enter final judgment dismissing the Action with prejudice; (iii) the amount of attorneys' fees, costs, and expenses, if any, to be awarded to Class Counsel; (iv) whether to approve the payment of the Incentive Amount to the class representative and the amount of the Incentive Amount; and (v) any objections by members of the Settlement Class to any of the above that were timely and properly served in accordance with the Preliminary Approval Order.

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

F. On September**[\*19]** 11, 2017, the Settlement Administrator filed with the Court a declaration attesting to the mailing of the Notice to all Class Members and the results of the Notice. On October 16, 2017 the Settlement Administrator filed with the Court an updated declaration attesting to the results of the Notice.

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

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

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

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

2. The forms and methods of notifying the Class of the Settlement and its terms and conditions met the requirements of the United States Constitution (including the *Due Process Clause*), *Rule 23 of the Federal Rules of Civil Procedure*, [*Section 21D(a)(7) of the Exchange Act, 15 U.S.C. § 78u-4(a)(7)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GJ41-NRF4-428J-00000-00&context=), as amended by the Private Securities Litigation Reform Act of 1995, **[\*20]** and all other applicable law and rules; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled thereto of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation, to all Persons entitled to such notice. No Class Member is relieved from the terms of the Settlement, including the releases provided for therein, based upon the contention or proof that such Class Member failed to receive actual or adequate notice.

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

4. The notice provisions of the Class Action Fairness Act, [*28 U.S.C. § 1715*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GRX1-NRF4-428T-00000-00&context=), were fully discharged and that the statutory waiting period has elapsed. Thus, it is hereby determined that all members of the Class are bound by this Order and Final Judgment.

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

6. The Court finally approves the Settlement in all respects as fair, reasonable, adequate, and in the best interests of the Settlement Class pursuant to *Rule 23(e)*. The Settlement was not a product of fraud or collusion,**[\*21]** and the Court finds it satisfies *Rule 23(e)* after considering (i) the complexity, expense, and likely duration of the Action; (ii) the stage of the proceedings and amount of discovery completed; (iii) the factual and legal obstacles to prevailing on the merits; (iv) the possible range of recovery; (v) the respective opinions of the parties, including Lead Plaintiff, Class Counsel, Defendants, and Defendants' Counsel; and (vi) any objections submitted by Class Members.

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

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

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

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

b. "Released Persons" means (i)**[\*23]** Defendants; (ii) each of Defendants' present and former parents, subsidiaries, divisions, departments, affiliates, stockholders, officers, directors, employees, agents; and (iii) any of their advisors, insurers, counsel, underwriters, representatives (and the predecessors, successors, administrators and assigns of each of the foregoing) in their capacities as such.

10. Accordingly, to the full extent provided by [*Section 21D(f)(7)(A) of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. §78u-4(f)(7)(A)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GJ41-NRF4-428J-00000-00&context=), and other applicable law, the Court hereby bars all Released Claims against and by the Released Persons as provided herein and in the Stipulation.

11. The Court further orders that, as of the Effective Date, each of Defendants, including any and all of his/her/its successors in interest or assigns, hereby releases and forever discharges any and all Released Defendants' Claims, to the extent they relate to the subject matter of this Action or its prosecution thereof, 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:

c. "Released Defendants' Claims" means all claims, demands, rights, remedies, liabilities, and**[\*24]** causes of action of every nature and description whatsoever, whether based on federal, state, local, statutory, or common law, or any other law, rule, or ***regulation***, including both known and Unknown Claims, that: (i) have been or could have been asserted in the Action by any of the Released Persons or the successors and assigns of any of them, against the Lead Plaintiff or any of his attorneys; and (ii) arise out of or relate in any way to the institution, prosecution, or Settlement of this Action or the Released Claims, including but not limited to all claims for malicious prosecution or sanctions. "Released Defendants' Claims" does not include claims to enforce any of the terms of this Stipulation or any claims by the Released Persons against any Person listed on Exhibit A hereto.

12. Plaintiff's Counsel are awarded attorneys' fees in the amount of $7 million and expenses, including experts' fees and expenses, in the amount of $350,000, such amounts to be paid from out of the Gross Settlement Fund no later than five (5) business days following the entry of this Order. Lead Plaintiff's Counsel shall thereafter be solely responsible for allocating the Attorneys' Fees and Expenses among**[\*25]** Plaintiff's Counsel in a manner in which Lead Plaintiff's Counsel in good faith believe reflects the contributions of such counsel to the initiation, prosecution, and resolution of the Action. If, and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the foregoing Attorneys' Fees and Expense award is overturned or lowered, or if the Settlement is terminated or is not approved by the Court, or if there is an appeal and any order approving the Settlement does not become Final and binding upon the Class, then, within thirty (30) calendar days after receiving notice from Settling Defendants' Counsel of such an order from a court of appropriate jurisdiction, each Plaintiff's Counsel law firm shall refund to the Gross Settlement Fund such fees and expenses previously paid to them from the Gross Settlement Fund plus interest thereon at the same rate as earned on the Gross Settlement Fund in an amount consistent with such reversal or modification. Each Plaintiff's Counsel law firm receiving attorneys' fees and litigation costs and expenses, as a condition of receiving such fees and expenses, on behalf of itself and each partner and/or shareholder**[\*26]** of it, (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, the Court may summarily issue orders, including, without limitation, judgments and attachment orders and may make appropriate findings of or sanctions for contempt against any of Plaintiff's Counsel law firm or any of its partners and/or shareholders should such Plaintiff's Counsel law firm fail timely to repay fees and expenses pursuant to this Paragraph 8.

13. Lead Plaintiff is awarded the sum of $10,000, as reasonable costs and expenses directly relating to the representation of the Class as provided in [*15 U.S.C. § 78u-4(a)(4)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GJ41-NRF4-428J-00000-00&context=), such amounts to be paid from out of the Gross Settlement Fund no later than five (5) business days following the entry of this Order.

14. The Court hereby finds that the proposed Plan of Allocation is a fair and reasonable method to allocate the Net Settlement**[\*27]** Fund among Class Members.

15. The Court finds that all parties and their counsel have complied with each requirement of [*Rule 11 of the Federal Rules of Civil Procedure*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YT-00000-00&context=) as to all proceedings herein.

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

a. referred to or used against the Released Persons or against Lead Plaintiff or the Class as evidence of wrongdoing by anyone;

b. construed against the Released Persons or against Lead Plaintiff or the Class as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial;

c. construed as, or received in evidence as, an admission, concession or presumption against the Class or any of them, that any of their claims are without merit or that damages recoverable under the 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,**[\*28]** presumption or inference against any of the Released Persons in any proceeding other than such proceedings as may be necessary to consummate or enforce the Stipulation.

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

18. Exclusive jurisdiction is hereby retained over the Parties for all matters relating to the Action, including the administration, interpretation, effectuation or enforcement of the Stipulations, Settlement, Preliminary Approval Order,**[\*29]** and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the Settlement proceeds to the Class Members.

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

20. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is directed pursuant to [*Rule 54(b) of the Federal Rules of Civil Procedure*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2421-6N19-F161-00000-00&context=).

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

22. In the event that the Settlement does not become Final and effective in 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 26-28 and 31 thereof, and this Order and Final Judgment, except for Paragraphs 8, 12, and 18-20 shall be rendered null and void of no further force or effect, and**[\*30]** all Parties shall be deemed to have reverted *nunc pro tunc* to their respective status prior to the execution of the Memorandum of Understanding between the Parties dated May 12, 2017 (the "MOU"), and the Parties shall proceed in all respects as if the MOU and the Stipulation had not been executed and the related orders had not been entered, without prejudice in any way from the negotiation, fact, or terms of the Settlement, and preserving all of their respective claims and defenses in the Action, and shall revert to their respective positions in the Action.

23. In the event the Settlement does not become Final and effective in accordance with the terms and conditions set forth in the Stipulation, the Escrow Agent shall refund the Gross Settlement Fund, less amounts already expended for Notice and Administration Expenses pursuant to the terms of the Stipulation, to STAAR's Insurance Carriers within ten (10) business days thereafter. At the request of any Defendants or Lead Plaintiff, the Escrow Agent or the Escrow Agent's designee shall apply for any tax refund owed to the Gross Settlement Fund and pay the percentage of the proceeds of the tax refund, after deduction of any fees and**[\*31]** expenses incurred in connection with such application(s) for refund, to STAAR.

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

DATED: October 23, 2017

/s/ Michael W. Fitzgerald

MICHAEL W. FITZGERALD

United Stated District Judge

**End of Document**