



FILED
ALAMEDA COUNTY

DEC 16 2011

CLERK OF THE SUPERIOR COURT
By C. W. [Signature] Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

**RICHARD LARDNER, EDDIE
POWERS JR., BILL GILES, on behalf
of themselves and all persons similarly
situated,**

Plaintiff,

v.

**SMITH & NEPHEW, INC., a Delaware
Corporation and DOES 1 through 50,**

Defendants.

Case No. RG11599266

**ASSIGNED FOR ALL PURPOSES TO:
JUDGE WINIFRED SMITH**

**ORDER FOR FINAL APPROVAL AND
JUDGMENT**

Complaint Filed: October 12, 2011

This matter came before this Court on the parties' Motion for Final Approval of Settlement ("Final Approval Motion").

WHEREAS, a putative class action is pending before the Court entitled *Richard Lardner, et al. v. Smith & Nephew, Inc., et al.* Case No. RG11599266.

1 WHEREAS, the Court has received and reviewed the Stipulation for Settlement entered
2 into between the Named Plaintiffs on behalf of the putative Class Members, on the one hand, and
3 Defendant, on the other hand, (the "Stipulation"), and has considered the terms of the proposed
4 settlement set forth therein (the "Settlement");

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6 WHEREAS, all terms contained herein shall have the same meanings as set forth in the
7 Stipulation, except where otherwise defined herein;

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9 WHEREAS, on or about August 5, 2016, the Court entered an Order preliminarily
10 approving the Settlement of this action, approving the form and method of notice, and setting a
11 date and time for a fairness hearing to consider whether the Settlement should be finally approved
12 by the Court as fair, adequate, and reasonable (the "Preliminary Approval Order");

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

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17 WHEREAS, the Court has received the declaration of Stephen Gomez attesting to the
18 mailing of the Notice in substantial accordance with the Preliminary Approval Order;

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20 WHEREAS, no objections to the Settlement have been filed with the Court;

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22 WHEREAS, the Court, having conducted a final fairness hearing on December 2, 2016
23 (the "Fairness Hearing"), and having considered the arguments presented, all papers filed and all
24 proceedings had therein;

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26 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

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28 1. The Court has jurisdiction over the subject matter of this action, all members of the
Settlement Class, and Defendant.

1 2. In accordance with governing law and the requirements of due process, all members of
2 the Settlement Class have been given proper and adequate notice of the Settlement. Based upon
3 the evidence submitted by the parties, the Settlement Agreement, the arguments of counsel, and all
4 the files, records and proceedings in this case, the Court finds that the Notice and notice
5 methodology implemented pursuant to the Settlement Agreement and the Court's Preliminary
6 Approval Order (a) constituted the best practicable notice under the circumstances; (b) constituted
7 notice that was reasonably calculated under the circumstances, to apprise members of the
8 Settlement Class of the pendency of the litigation, their right to object to the Settlement, and their
9 right to appear at the Fairness Hearing; (c) were reasonable and constituted due, adequate and
10 sufficient notice to all persons entitled to notice; and (d) met all applicable requirements of law.

11
12 3. The Settlement Agreement in this action warrants final approval pursuant to applicable
13 law because it is fair, adequate, and reasonable to those it affects, and resulted from vigorously
14 contested litigation, including the significant exchange of class-related data and other documents,
15 depositions, discovery related to mediation, numerous damages assessments, and extensive good-
16 faith arm's-length negotiations between the parties, including private mediation, and is in the
17 public interest considering the following factors:

- 18
19 A the strength of the plaintiff's case;
20 B the risk, expense, complexity and likely duration of further litigation;
21 C the risk of maintaining class action status throughout the trial;
22 D the amount offered in settlement;
23 E the extent of discovery completed, and the stage of the proceedings;
24 F the experience and views of counsel; and
25 G the reaction of the class members to the proposed settlement.
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1 *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993). Settlements
2 that follow sufficient discovery and genuine arms-length negotiation are presumed
3 fair. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

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5 4. The Final Approval Motion is hereby GRANTED, and the Settlement Agreement is
6 hereby APPROVED as fair, reasonable, and adequate. The Parties are directed to consummate the
7 Settlement Agreement in accordance with its terms.

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

10 6. The Court APPROVES a service award to Class Representative Richard Lardner in the
11 amount of \$10,000.00 and service awards to Class Representatives Eddie Powers, Jr. and Bill
12 Giles in the amount of \$5,000.00 each.

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14 7. The Court APPROVES payment of Attorneys' Fees in the amount of one hundred and
15 forty-three thousand, five hundred and fifty dollars (\$143,550.00) and reimbursement of costs in
16 the amount of \$ 11,070.56 to Class Counsel. Ten percent of the amount awarded as attorneys fees
17 shall be held in an interest-bearing account pending submission and approval of a final compliance
18 status report following completion of the distribution process.

19
20 8. The Class Settlement Amount, the service awards to the Class Representatives and
21 Attorneys' Fees and Costs Amount shall be distributed in accordance with the terms of the
22 Settlement Agreement and any further Orders of this Court.

23 9. In consideration of the Class Settlement Amount, and for other good and valuable
24 consideration, each of the Releasing Class Members shall, by operation of this Judgment, have
25 fully, finally, and forever released, relinquished, and discharged all Released Claims against
26 Defendants in accordance with the terms of the Settlement Agreement.

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28 10. This Judgment is the Final Judgment in the suit as to all Released Claims.

1 11. Without affecting the finality of this Judgment in any way, this Court retains
2 jurisdiction over (a) implementation of the Settlement and the terms of the Settlement Agreement;
3 (b) distribution of the Class Settlement Amount, the service payments to the Class Representative
4 and other Class Members, and the Attorneys' Fees and Costs Amount; and (c) all other
5 proceedings related to the implementation, interpretation, administration, consummation, and
6 enforcement of the terms of the Stipulation and/or the Settlement, and the administration of
7 Claims by Settlement Class Members. The time to appeal from this Judgment shall commence
8 upon its entry.
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10 12. A compliance hearing shall be held on APRIL 20, 2017 at 9:00 A.m.
11 to confirm that the terms of the Settlement and this Order have been followed.

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

14 14. Plaintiff's Counsel will post notice of this Order and related Judgment for 30 days on
15 their website in compliance with CRC 3.771(b).
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17 **IT IS SO ORDERED.**

18 Dated this 2 day of December, 2016.
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21 Judge of the Superior Court Of Alameda County
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