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29 **UNITED STATES DISTRICT COURT**
30 **NORTHERN DISTRICT OF CALIFORNIA**
31 **SAN JOSE DIVISION**

32 IN RE INTUITIVE SURGICAL
33 SECURITIES LITIGATION

34 Case No. 5:13-cv-01920-EJD (HRL)

35 **DECLARATION OF JONATHAN**
36 **GARDNER IN SUPPORT OF CLASS**
37 **REPRESENTATIVES' MOTION FOR**
38 **FINAL APPROVAL OF CLASS**
39 **ACTION SETTLEMENT AND PLAN**
40 **OF ALLOCATION AND CLASS**
41 **COUNSEL'S MOTION FOR AN**
42 **AWARD OF ATTORNEYS' FEES AND**
43 **PAYMENT OF EXPENSES**

44 Date: December 20, 2018
45 Time: 10:00 a.m.
46 Dept.: Courtroom 4, 5th Floor
47 Judge: Hon. Edward J. Davila

1 I, JONATHAN GARDNER, declare as follows pursuant to 28 U.S.C. §1746:

2 1. I am a partner of the law firm of Labaton Sucharow LLP (“Labaton Sucharow”),
3 which serves as court-appointed Class Counsel for Class Representatives Employees’ Retirement
4 System of the State of Hawaii (“Hawaii ERS”) and Greater Pennsylvania Carpenters’ Pension
5 Fund (“Greater Pennsylvania”) (collectively, “Plaintiffs” or “Class Representatives”).¹ I have
6 been actively involved throughout the prosecution and resolution of the Action, am familiar with
7 its proceedings, and have personal knowledge of the matters set forth herein based upon my
8 close supervision of the material aspects of the Action.

9 2. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, I submit this
10 declaration in support of Class Representatives’ Motion for Final Approval of Class Action
11 Settlement and Plan of Allocation as well as Class Counsel’s Motion for an Award of Attorneys’
12 Fees and Payment of Expenses. Both motions have the full support of the Class Representatives.
13 *See* Declaration of Elmira K.L. Tsang on behalf of Hawaii ERS and Declaration of James R.
14 Klein on behalf of Greater Pennsylvania, attached hereto as Exhibits 1 and 2 respectively.²

15 **I. PRELIMINARY STATEMENT**

16 3. The Class Representatives have succeeded in obtaining a very favorable recovery
17 for the certified Class in the amount of \$42,500,000, in cash. As set forth in the Stipulation, in
18 exchange for this payment, the proposed Settlement resolves all claims asserted by the Class
19 Representatives and the Class, which is the same Class that the Court previously certified in the
20 Action, and all Released Claims against the Released Defendant Parties.

21 4. This hotly contested case has been vigorously litigated for five years - from its
22 commencement in April 2013 through the execution of the Stipulation shortly before oral
23 argument on Defendants’ motion for summary judgment. The Settlement was achieved only
24 after Class Counsel, *inter alia*, as detailed herein: (i) conducted a wide-ranging investigation

25 _____
26 ¹ All capitalized terms not otherwise defined herein have the same meaning as that set forth
27 in the Stipulation and Agreement of Settlement, dated as of September 11, 2018 (the
“Stipulation”, ECF No. 298-1).

28 ² Citations to “Exhibit” or “Ex. ___” herein refer to exhibits to this Declaration. For clarity,
exhibits that themselves have attached exhibits will be referenced as “Ex. ___ - ___.” The first
numerical reference is to the designation of the entire exhibit attached hereto and the second
alphabetical reference is to the exhibit designation within the exhibit itself.

1 concerning the allegedly fraudulent misrepresentations/omissions made by Defendants;
2 (ii) prepared and filed a detailed amended class action complaint; (iii) researched and drafted an
3 opposition to Defendants' comprehensive motion to dismiss the complaint, after which the Court
4 entered an Order that granted in part, and denied in part, Defendants' motion; (iv) defeated
5 Defendants' motion for reconsideration of the decision on the motion to dismiss; (v) filed a
6 second amended class action complaint to conform the pleadings to the evidence and
7 successfully defeated Defendants' motion to dismiss the second amended complaint; (vi)
8 successfully moved for class certification and overcame Defendants' Rule 23(f) petition for
9 review of the certification order; (vii) engaged in extensive and diligent fact discovery, including
10 participating in 18 fact depositions and analyzing approximately 550,000 pages of discovery
11 documents produced by Defendants and third parties, including the FDA; (viii) engaged in
12 extensive expert discovery, including submission of opening and rebuttal reports from three of
13 the Class Representatives' experts, the review and analysis of reports submitted by Defendants'
14 three experts, and taking or defending six expert depositions; (ix) opposed Defendants' motion
15 for summary judgment seeking dismissal of the Action and prepared for oral argument; and (x)
16 engaged in trial preparation, including work with a jury focus group consultant and making
17 arrangements for trial accommodations. At the time the Settlement was reached, Class Counsel
18 had a deep understanding of the strengths and weaknesses of the Parties' positions.

19 5. As discussed below, according to the Class Representatives' damages expert,
20 maximum aggregate damages in the Action are approximately \$580 million, if pre-Class Period
21 gains are excluded and the Class Representatives prevailed on each of their claims and were able
22 to prove that all three of the remaining corrective disclosures were actionable and caused
23 damages. The \$42.5 million Settlement, therefore, represents a recovery of approximately
24 7.34% of the Class Representatives' expert's maximum estimated damages—a favorable
25 recovery that is well within the range of reasonableness, particularly in light of the
26 countervailing legal and factual arguments tenaciously pursued by Defendants and attendant
27 litigation risks. *See* Notice of Motion and Motion for Final Approval of Class Action Settlement
28

1 and Plan of Allocation and Memorandum of Points and Authorities in Support Thereof
2 (“Settlement Brief”), §I.B.2.

3 6. In deciding to settle, the Class Representatives and Class Counsel took into
4 consideration the significant risks associated with advancing the claims alleged in the operative
5 complaint, given the pending summary judgment motion, as well as the duration and complexity
6 of the legal proceedings, including *Daubert* motions directed at experts and trial, which remained
7 ahead. The Settlement was achieved in the face of staunch opposition by Defendants who would
8 have, had the Settlement not been reached, continued to raise serious arguments concerning,
9 among other things, materiality, scienter, loss causation and damages. In the absence of a
10 settlement, there was a very real risk that the Class could have recovered nothing or an amount
11 significantly less than the negotiated Settlement.

12 7. In addition to seeking approval of the Settlement, the Class Representatives seek
13 approval of the proposed Plan of Allocation. As discussed in further detail below and in the
14 Settlement Brief, the proposed Plan was developed by the Class Representatives’ damages
15 expert, and provides for the fair and equitable distribution of the Net Settlement Fund to Class
16 Members who submit Claim Forms that are approved for payment.

17 8. With respect to the Fee and Expense Application, as discussed in Class Counsel’s
18 Memorandum of Law in Support of Motion for an Award of Attorneys’ Fees and Payment of
19 Expenses (“Fee Brief”), the requested fee of 19% of the Settlement Fund is eminently fair to the
20 Class, and warrants the Court’s approval. This fee request is well within the range of fee
21 percentages frequently awarded in this type of action, below the benchmark established by the
22 Ninth Circuit, and well below the lodestar value of Plaintiffs’ counsel’s time dedicated to the
23 case. Class Counsel also seeks litigation expenses totaling \$1,988,789.66, plus the Class
24 Representatives’ reimbursement request, pursuant to the PSLRA, 15 U.S.C. § 78u-4(a)(4), of
25 \$58,854.18 in the aggregate.

26 **II. SUMMARY OF CLASS REPRESENTATIVES’ CLAIMS**

27 9. Intuitive Surgical, Inc. (“Intuitive” or the “Company”) is a market leader in
28 robotic-controlled surgery devices. Second Amended Complaint ¶39. The Company’s flagship

1 product is the da Vinci Surgical System (“da Vinci”), which consists of three or four robotic
2 arms, depending on the model, to perform minimally invasive surgery. *Id.* ¶2. A key component
3 of da Vinci is the Tip Cover of the Monopolar Curved Scissors tool (“MCS”), which the Class
4 Representatives allege was defective and created a risk of serious injury with every use. *Id.* ¶3.

5 10. The operative complaint in the Action, the Second Amended Complaint, asserts
6 violations of Section 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange
7 Act”) and Rule 10b-5 promulgated thereunder by Intuitive, and Gary S. Guthart, Marshall L.
8 Mohr, and Lonnie M. Smith (collectively, the “Individual Defendants,” and, together with
9 Intuitive, the “Defendants”). The Class Representatives allege that Intuitive and the Individual
10 Defendants violated Section 10(b) and 20(a) of the Exchange Act by making materially false and
11 misleading statements regarding the safety and efficacy of da Vinci and Intuitive’s compliance
12 with FDA regulations. The Class Representatives also allege that the Individual Defendants
13 violated Section 20(A) of the Exchange Act by profiting from the sale of Intuitive stock while in
14 possession of material nonpublic information. The Class Representatives further allege that
15 when news of the safety and regulatory issues concerning da Vinci was released to the public,
16 the price of Intuitive common stock declined and Class Members suffered damages as a result.

17 11. More specifically, the Second Amended Complaint alleges that during the Class
18 Period, Defendants failed to disclose defects associated with da Vinci that resulted in injury,
19 death, or heightened risk of injury or death primarily related to da Vinci’s “Tip Cover”
20 accessory. The Tip Cover is an insulating sleeve, inserted at the end of certain da Vinci
21 instruments, designed to prevent electricity from escaping in an unintended manner and burning
22 patients. The defect consisted of a risk of cracks or holes developing in the Tip Cover that
23 prevented it from properly insulating the metal instruments and instead allowed electricity or
24 sparks to escape. Among other things, the Class Representatives allege that Defendants failed to
25 disclose: (i) numerous adverse event reports, which resulted in the underreporting of serious
26 injuries and deaths related to da Vinci, (ii) the number and nature of products liability claims
27 brought against the Company, and (iii) three internal “recalls” that took place in October 2011.

28

1 12. Corrective information was allegedly released to the market on February 28, 2013
2 (toward the close of market hours), March 5, 2013 (prior to market open), and July 18, 2013
3 (after market close), impacting the market price of Intuitive common stock and allegedly
4 removing artificial inflation from the prices of the Company’s common stock on February 28-
5 March 1, 2013, March 5, 2013, and July 19, 2013.³

6 **III. RELEVANT PROCEDURAL HISTORY**

7 **A. Commencement of the Action and Appointment of**
8 **Lead Plaintiff and Lead Counsel**

9 13. The Action was commenced on April 26, 2013, by the filing of an initial
10 complaint in the United States District Court for the Northern District of California, alleging
11 violations of the federal securities laws. ECF No. 1. On June 25, 2013, two movants, including
12 Hawaii ERS, filed motions seeking appointment as lead plaintiff and for approval of their
13 selection of counsel. ECF Nos. 14-24. By Order dated November 18, 2013, and pursuant to the
14 provisions of the Private Securities Litigation Reform Act of 1995 (“PSLRA”), the Court
15 appointed Hawaii ERS as lead plaintiff and approved its selection of Labaton Sucharow to serve
16 as lead counsel for the proposed class. ECF No. 50.

17 **B. The Amended Complaint**

18 14. On October 15, 2013, lead plaintiff Hawaii ERS, along with named plaintiff
19 Greater Pennsylvania, filed the Amended Class Action Complaint (the “Complaint”) alleging
20 violations against Defendants of Sections 10(b) and 20(a) of the Exchange Act and violations of
21 Section 20A against the Individual Defendants. ECF No. 48.

22 15. The Complaint was the result of a significant effort by Class Counsel that
23 included, among other things, the review and analysis of: (i) press releases, news articles,
24 transcripts, and other public statements issued by or concerning the Company and the Individual
25 Defendants; (ii) research reports issued by financial analysts concerning Intuitive’s business;
26 (iii) reports filed publicly by Intuitive with the U.S. Securities and Exchange Commission (the

27 _____
28 ³ Plaintiffs had originally alleged additional corrective disclosures, however, as discussed
below, the Court rejected them in connection with the Order deciding the motion for class
certification.

1 “SEC”); (iv) news articles, media reports and other publications concerning the minimally
2 invasive robotic surgery industry and markets; (v) certain pleadings filed in other pending
3 litigation naming Intuitive as a defendant; (vi) other publicly available information and data
4 concerning Intuitive, its securities, and the markets therefor; and (vii) information provided by
5 economic experts regarding loss causation and damages. The investigation also included Class
6 Counsel’s in-house investigators locating numerous potential witnesses and interviewing 35
7 former employees of Intuitive, or others with relevant information, on a confidential basis.

8 16. Plaintiffs’ claims alleged in the Complaint centered on Defendants’ allegedly
9 false and misleading statements about the safety of da Vinci. As alleged in the Complaint, these
10 statements spanned the course of 14 months and arose within the Company’s filings with the
11 SEC, press releases, and quarterly earnings calls with investors. ¶¶182-269. According to the
12 Complaint, Defendants allegedly materially and misleadingly misrepresented da Vinci’s safety
13 profile, as well as Intuitive’s profitability, despite known safety risks and thousands of
14 unreported adverse events. The Class Period ended with the Company’s disclosure, on July 18,
15 2013, that it had received a Warning Letter from the FDA, including notice that the FDA would
16 need a follow-up inspection and that the Company’s responses to prior inspections were
17 inadequate. ¶¶38-126.

18 **C. Defendants’ Motion to Dismiss the Complaint**

19 17. Defendants filed a motion to dismiss the Complaint on December 16, 2013. ECF
20 No. 53. Defendants argued, among other things, that, Plaintiffs failed to: (i) allege with the
21 required specificity why any of the statements quoted in the Complaint were false, or identify
22 any legally required statement that was omitted; and (ii) plead the highly particularized
23 allegations of scienter required by Rule 9(b) of the Federal Rules of Civil Procedure. Regarding
24 the falsity of statements, Defendants argued that statements about the Company’s revenue
25 growth and da Vinci’s sales are not actionable, as they were “literally true.” Defendants also
26 argued that while the majority of the allegations in the Complaint focused on the FDA Warning
27 Letter, Plaintiffs did not allege that Intuitive concealed the Warning Letter and there was nothing
28 “secret” about the Warning Letter. Defendants also argued that several statements alleged in the

1 Complaint amounted to nothing more than vague and subjective expressions of corporate
2 optimism. Regarding scienter, Defendants argued that Plaintiffs' scienter allegations failed
3 because Plaintiffs did not demonstrate scienter as to each alleged misrepresentation or omission;
4 and the statements of confidential witnesses were not reliable. Defendants also argued that the
5 allegations regarding stock sales did not support a finding of scienter.

6 18. Plaintiffs filed an opposition to Defendants' motion to dismiss the Complaint on
7 January 30, 2014. ECF No 58. Plaintiffs argued that they had sufficiently alleged that
8 Defendants made materially false and misleading statements and omissions and that having
9 chosen to tout da Vinci's safety, efficacy, and promise, Defendants were obligated to do so
10 truthfully and fully. Plaintiffs also argued that concealing the severity of serious injuries and
11 deaths from the Tip Covers, as well as concealing the number of medical device reports
12 ("MDRs"), was false and misleading under relevant law within the Ninth Circuit. Plaintiffs
13 argued that Defendants' statements reporting Intuitive's financial results were materially
14 misleading because even accurate statements are misleading where they give investors a false
15 impression, as was the case here. Regarding Defendants' puffery arguments, Plaintiffs
16 contended that Defendants failed to establish that any of the statements alleged in the Complaint
17 were so vague that no reasonable investor would rely on them.

18 19. With respect to Defendants' scienter arguments, Plaintiffs argued that the
19 Warning Letter, which stated that Defendant Guthart knew of injuries and defects in 2010 and
20 2011, raised a strong inference of scienter and provided evidence that Defendants knew of the
21 defective Tip Covers. Plaintiffs also argued that Defendants' insider sales during the Class
22 Period were suspicious in terms of amount and percentages, as well as suspicious in terms of
23 their timing.

24 20. On February 28, 2014, Defendants filed a reply brief in further support of their
25 motion to dismiss the Complaint. ECF No. 62.

26 **D. The Court's Order on the Motion to Dismiss**

27 21. On August 21, 2014, the Court issued its Order Granting in Part and Denying in
28 part Defendants' Motion to Dismiss. *In re Intuitive Surgical Sec. Litig.*, 65 F. Supp. 3d 821

1 (N.D. Cal. 2014). The Court found that Plaintiffs sufficiently alleged the material and
2 misleading nature of statements concerning da Vinci's safety and efficacy. *Id.* at 832-35.
3 Specifically, the Court found, among other things, that "it is plausible that the reasonable
4 investor would find the existence of these numerous unreported MDRs to significantly alter the
5 total mix of information available and that Defendants' statements created an impression of da
6 Vinci's safety that materially differed from reality." *Id.* at 834. The Court granted the motion to
7 dismiss with respect to the statements concerning the Company's financial accounting reports,
8 risk factor disclosures, and FDA regulations. *Id.* at 835-37.

9 22. The Court also found that Plaintiffs sufficiently pled a strong inference of
10 scienter. *Id.* at 838. Taking a "holistic view of scienter" the Court held that Lead Plaintiff "has
11 pled facts that, when taken as true, show that Defendants knew that their statements regarding da
12 Vinci's safety benefits were false or misleading when said, and that Defendants had financial
13 motivation to maintain a misleading impressions of da Vinci's safety." *Id.* at 838-39.

14 23. On October 19, 2014, Defendants filed their Answer to the Complaint, denying
15 the Complaint's substantive allegations and raising 21 affirmative defenses. ECF No. 87.

16 **E. Defendants' Motion for Reconsideration**

17 24. On November 5, 2014, Defendants filed a motion for reconsideration of the
18 Court's order denying, in part, the motion to dismiss. ECF No. 93. Defendants argued that two
19 Ninth Circuit cases decided after the Parties' briefing on the motion to dismiss, *In re NVIDIA*
20 *Corp. Securities Litigation*, 768 F.3d 1046 (9th Cir. 2014) ("NVIDIA") and *Police Retirement*
21 *System of St. Louis v. Intuitive Surgical, Inc.*, 759 F.3d 1051 (9th Cir. 2014) ("PRS") rendered
22 both of the Court's conclusions that the statements regarding da Vinci's safety and efficacy were
23 actionable misrepresentations under the PSLRA, and that Plaintiffs had adequately alleged
24 scienter with respect to those statements, untenable. Plaintiffs filed a response to Defendants'
25 reconsideration motion on November 19, 2014 (ECF No. 96) and Defendants filed a reply brief
26 on November 26, 2014 (ECF No. 97). On December 15, 2014, the Court denied Defendants'
27 motion for reconsideration, stating that the decisions in *In re NVIDIA* or *PRS* do not change the
28 Court's evaluation of the issues. ECF No. 98.

1 **F. The Second Amended Complaint**

2 25. On November 2, 2016, Plaintiffs filed a motion for leave to file a second amended
3 complaint, to conform the pleading to the evidence obtained during discovery and to remove
4 certain allegations no longer being relied upon. ECF No. 185. Plaintiffs' motion was granted on
5 January 25, 2017 (ECF No. 212), and on January 26, 2017, Plaintiffs filed the Second Amended
6 Complaint (ECF No. 213).

7 26. The Second Amended Complaint, among other things, added evidence gathered
8 through discovery, including evidence from Intuitive's internal documents and the deposition
9 testimony of the Company's executives and gathered from the public domain since the filing of
10 the Complaint, including evidence from other litigations and the Company's SEC filings. The
11 Second Amended Complaint did not add any new claims, defenses, or theories.

12 **G. Motion to Dismiss the Second Amended Complaint**

13 27. Defendants filed a motion to dismiss the Second Amended Complaint on
14 February 9, 2017 (ECF No. 215), arguing that "both the law, and Plaintiffs' allegations have
15 changed significantly" and that, under *Omnicare, Inc. v. Laborers District Council Construction*
16 *Industry Pension Fund*, 135 S. Ct. 1318 (2015), Plaintiffs had failed to allege actionable
17 misstatements as the alleged misstatements were statements of opinion or belief and because
18 Intuitive had no duty to disclose all material information regarding safety. Defendants also
19 argued that Plaintiffs' scienter allegations were inadequate.

20 28. Plaintiffs filed their opposition to Defendants' motion to dismiss the Second
21 Amended Complaint on February 23, 2017. ECF No. 220. Plaintiffs argued that nothing about
22 the Supreme Court's decision in *Omnicare* undermined the sufficiency of the complaint.
23 Plaintiffs also argued that the complaint sufficiently pleaded falsity of the alleged material
24 misstatements and omissions, and that contrary to Defendants' arguments, Plaintiffs' allegations
25 regarding the safety and efficacy of da Vinci had not changed. Regarding scienter, Plaintiffs
26 argued that Defendants' challenges should fail because the scienter allegations were even
27 stronger than those in the Complaint.

28 29. Defendants filed their reply brief on March 2, 2017. ECF No. 222.

1 30. On September 29, 2017, the Court denied Defendants’ motion to dismiss the
2 Second Amended Complaint and discovery resumed. ECF No. 237. The Court held: “Upon
3 reexamination of the alleged statements with the benefit of the *Omnicare* decisions, the Court
4 reaffirms its prior determination that Plaintiffs’ allegations are sufficient at the pleading stage.”
5 *Id.* at 4. Regarding Defendant’s failure to disclose arguments, the Court held that there is no
6 duty to disclose all material information “as long as the omissions do not make the actual
7 statements misleading.” *Id.* at 5 (citing *In re Rigel Pharm’s., Inc. Sec. Litig.*, 697 F. 3d 869, 880
8 fn. 8 (9th Cir. 2012)). Here, however, “it is plausible that a reasonable investor would find the
9 omitted information regarding MDRs, corrective letters, and product liability suits, rendered the
10 statements of opinion misleading.” ECF No. 237 at 5.

11 31. The Court also found the Second Amended Complaint contains sufficient
12 allegations, when taken collectively, to give rise to a strong inference of scienter. *Id.* at 7. In
13 particular, the Court noted that Plaintiffs allege that Defendants communicated with the FDA
14 regarding injuries resulting from the da Vinci Tip Cover and that all of the Individual Defendants
15 attended internal meetings and received reports apprising them of the problems with the Tip
16 Cover and the rise in MDRs and adverse events. *Id.* The Court also held that the allegations
17 concerning the Individual Defendants’ stock sales, taken collectively with the allegations above,
18 also support a strong inference of scienter. *Id.* at 7-8.

19 **H. Plaintiffs’ Motion for Class Certification**

20 32. On September 1, 2015, Hawaii ERS and Greater Pennsylvania moved for
21 certification of the Class, for appointment as class representatives pursuant to Rules 23(a) and
22 23(b)(3), and for the appointment of Labaton Sucharow LLP as Class Counsel. ECF No. 123. In
23 connection with their motion, Plaintiffs filed an expert report on market efficiency by Chad
24 Coffman, CFA (ECF No. 126-2), who conducted a detailed event study concerning Intuitive’s
25 stock price drops and concluded that the market for Intuitive’s stock was efficient throughout the
26 Class Period.

27 33. Defendants opposed the motion on the basis, among others, that Hawaii ERS and
28 Greater Pennsylvania were not typical of the proposed class since their investment advisors made

1 all decisions regarding the purchase or sale of Intuitive securities during the Class Period; and
2 that Hawaii ERS and Greater Pennsylvania were inadequate representatives given that they faced
3 unique defenses and may become preoccupied and distracted from representing the interests of
4 other unnamed class members.

5 34. Defendants also argued that Plaintiffs could not show that reliance could be
6 proven on a class wide basis. Defendants argued that they can rebut the presumption of reliance
7 because class members had actual knowledge of the allegedly omitted information, making
8 reliance impossible to prove classwide. Defendants argued that October 2011 customer letters
9 were widely publicized and were even posted on the websites of regulatory agencies in some of
10 the largest markets for the da Vinci system. Additionally, Defendants argued that information
11 about product liability lawsuits, unreported MDRs, and general information about the Tip Cover
12 were also publicly available. Defendants also noted that before the start of the Class Period, the
13 U.S. Patent and Trademark Office published a patent application for the redesigned Tip Cover.
14 The patent application described in detail the user-created safety issues associated with the
15 original Tip Cover and explained that problems can arise under certain circumstances. The
16 application was a publicly available government publication, and therefore, any class member
17 who was monitoring the Company's prospects would have learned of this information.

18 35. Defendants also argued that the alleged misrepresentations had no price impact on
19 Intuitive's stock price under *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398 (2014).
20 In connection with their opposition, Defendants submitted an expert report from Professor
21 Kenneth Lehn (ECF No. 135-39), who concluded that there were no statistically significant price
22 increases on six of the seven dates on which the Court found that Defendants may have made
23 false or misleading statements. Defendants also argued that there were no statistically significant
24 price decreases with respect to the first three alleged corrective disclosures – February 28, March
25 5, and April 18, 2013, and that such a lack of price impact rebuts any presumption that investors
26 relied on whatever new information might have been disclosed on those dates. In addition,
27 Defendants argued that Plaintiffs failed to provide any workable methodology for calculating
28 class-wide damages arising from Plaintiffs' liability theories.

1 36. Plaintiffs submitted their reply memorandum in further support of class
2 certification on November 16, 2015. ECF No. 140. Mr. Coffman submitted a rebuttal expert
3 report in connection with Plaintiffs' reply memorandum. ECF No. 141-13.

4 37. On January 21, 2016, the Court held oral argument on Plaintiffs' class
5 certification motion and on December 22, 2016, the Court issued an Order Certifying Plaintiff
6 Class. ECF No. 204. However, in its Order, the Court held that several of the corrective
7 disclosures could not be considered corrective of the alleged fraud, because they related to
8 financial results rather than safety issues. *Id.* at 26-27. The Court held that "Defendants have
9 successfully rebutted the presumption [of reliance] as to the release of financial information on
10 July 8, 2013 and July 18, 2013." *Id.* at 27. The Court also found that the April 18-19, 2013
11 financial results were not corrective and that the price drops were not statistically significant. *Id.*
12 at 26.

13 38. On January 5, 2017, Defendants filed a petition for permission to appeal the
14 Court's order certifying the Class pursuant to Rule 23(f). On October 30, 2017, after further
15 briefing, the Ninth Circuit denied Defendants' petition. Defendants' motion for reconsideration
16 was denied by Order dated November 22, 2017.

17 39. On January 12, 2017, the Class Representatives moved for leave to file a motion
18 for reconsideration of the Court's order on class certification, asking the Court to reconsider a
19 narrow component of the Order. ECF No. 227. The Court granted the motion for leave to file
20 and on April 3, 2017, the Class Representatives filed their motion for reconsideration. The Class
21 Representatives argued that when analyzing the majority of the alleged corrective disclosures in
22 this case—those on February 28, 2013, March 5, 2013, April 18-19, 2013, and July 18, 2013
23 (relating to the FDA Warning Letter)—the Court correctly based its decisions regarding "price
24 impact" upon the results of the event studies produced by the Parties' experts showing the impact
25 each corrective disclosure had on the Company's stock price at set statistical confidence levels,
26 pursuant to *Halliburton*. "However, when ruling on the July 8th and July 18th disclosures, the
27 Court departed from a price impact inquiry and instead held that the July disclosures were not
28 'corrective,'" notwithstanding the findings of statistical significant price declines and contrary to

1 *Halliburton*. *Id.* at 1. On April 17, 2017, Defendants filed their opposition to the Class
2 Representatives' motion for reconsideration. ECF No. 229. The Court denied the Class
3 Representatives' motion on September 29, 2017. ECF No. 237.

4 40. On March 9, 2018, the Class Representatives filed a renewed motion for
5 reconsideration, asking the court to reconsider its decision to remove the July 8th and July 18th
6 disclosures in light of recent causation principles articulated by the Ninth Circuit in
7 *Mineworkers' Pension Scheme v. First Solar Inc.*, No. 15-cv-17282, 2018 WL 626948 (9th Cir.
8 Jan. 31, 2018). ECF No. 257. The Class Representatives argued that the Ninth Circuit explicitly
9 endorsed the position this Court rejected in excluding the disclosures on causation grounds and
10 in so doing, the Ninth Circuit in *First Solar* clarified the broad standard of causation at issue in
11 securities cases. As such, the Class Representatives argued that with the benefit of *First Solar*,
12 the Court should reinstate the July disclosures of financial statements as corrective of omissions
13 related to safety. Defendants opposed the renewed motion on March 23, 2018, arguing that *First*
14 *Solar* is not controlling law because, among other reasons, it focuses solely on loss causation,
15 which cannot be considered during the class certification analysis. ECF No. 260. On June 6,
16 2018, the Court denied the Class Representatives' renewed motion. ECF No. 278.

17 **I. Class Notice**

18 41. On December 6, 2017, the Parties filed a joint motion to approve the Class Notice
19 and Summary Notice of Pendency of Class Action. ECF No. 245. Defendants opposed the
20 motion, in part, on December 20, 2017, seeking to modify certain language in the proposed Class
21 Notice. ECF No. 247.

22 42. On March 12, 2018, following oral argument on March 8, 2018, the Court
23 approved the Class Notice with modifications agreed to at the hearing. ECF No. 258.

24 43. Beginning with the initial mailing on April 9, 2018, the Class Notice was mailed
25 to over 171,555 potential Class Members. ECF No. 285 ¶6. The Class Notice notified potential
26 Class Members of, among other things: (i) the pendency of the Action against Defendants; (ii)
27 the Court's certification of the Action to proceed as a class action on behalf of the Court-certified
28

1 Class; and (iii) their right to request to be excluded from the Class by June 8, 2018, the effect of
2 remaining in the Class or requesting exclusion, and the requirements for requesting exclusion.

3 44. Six (6) valid requests for exclusion from the Class were received in connection
4 with the Class Notice. *See* Declaration Regarding (A) Mailing of the Settlement Notice and
5 Proof of Claim Form; (B) Publication of Summary Notice; and (C) Requests for Exclusion in
6 Connection with Settlement Notice (“Mailing Declaration”) (attached as Exhibit 3 hereto), ¶2;
7 ECF No. 285 at Ex. E. No institutional investors or pension funds requested exclusion, and, in
8 the aggregate, the exclusion requests represent 190 shares.

9 **IV. DISCOVERY**

10 45. The Class Representatives propounded detailed discovery requests and ultimately
11 reviewed and analyzed approximately 550,000 pages of documents produced by Defendants and
12 third parties; took or defended 18 depositions of fact witnesses, including four Class
13 Representative depositions; negotiated and resolved myriad discovery disputes (with the
14 assistance of the Court when necessary); took or defended six expert depositions; and exchanged
15 11 expert reports (three of which were exchanged in connection with class certification).

16 **A. Discovery Propounded on Defendants**

17 46. The Class Representatives served their first set of document requests on
18 Defendants on October 14, 2014. Thereafter, the Class Representatives served another three sets
19 of document requests on Defendants. The Class Representatives served their first set of
20 interrogatories on Defendants on March 12, 2015 and on the Individual Defendants on May 8,
21 2015. A second set of interrogatories on all Defendants was served on February 12, 2016. The
22 Class Representatives served their first set of Requests for Admission on Defendants on March
23 19, 2015, a second set of Requests for Admission on Defendants on February 12, 2016, and a
24 third set on August 26, 2016. In total, this discovery included four sets of document requests
25 containing 78 individual requests, two sets of interrogatories containing a total of 13 individual
26 interrogatories for Intuitive and 18 for the Individual Defendants, and three requests to admit
27 containing 104 requests for admission.
28

1 47. Over the span of many months, the Parties engaged in numerous meet-and-confer
2 conferences and exchanged letters, as to the scope and manner of the requested document
3 production, interrogatories, and requests for admission, including issues pertaining to search
4 terms and custodians for electronically stored information (“ESI”), production of documents in
5 related actions, and other disputes related to the requests. Through this effort, the Parties were
6 able to reach an understanding as to the appropriate scope of Defendants’ discovery on many
7 issues, with a few notable exceptions that required the Court’s assistance. *See infra* §IV.E.
8 (Discovery Disputes).

9 48. The Class Representatives conducted an efficient review of documents produced
10 by Defendants. Defendants began a rolling production of documents on or around February 20,
11 2015. To facilitate a cost and time-efficient document review process, all of the documents were
12 placed in an electronic database, using a platform called Relativity to organize the data. A team
13 of experienced attorneys reviewed and analyzed the production. These attorneys were focused
14 on reviewing Defendants’ document production for the purpose of preparing for depositions,
15 with many of them assisting in additional stages of deposition preparation, as well as providing
16 documents to support the Class Representatives’ opposition to Defendants’ summary judgment
17 motion, and trial preparation, including the Class Representatives’ jury focus group
18 presentations.

19 49. To efficiently focus on the most relevant documents, these attorneys used the
20 document platform’s software tools to analyze and search the data. The attorneys culled
21 documents based on legal issues, custodians, and relevant time periods, in order to narrow the
22 scope of the review universe. Once this initial set of documents was identified, the attorneys
23 conducted targeted searching through text, file names, document type (e.g., emails, memoranda,
24 SEC filings), dates, bates numbers, etc. to identify relevant, irrelevant, and hot documents for
25 additional review and to create collections of documents sorted by issue. Through experience
26 and their increasing familiarity with the documents, the review team identified additional swaths
27 of important documents, which were also run through the analytics and search functions to
28 derive the most significant documents for inclusion into deposition, and trial preparation.

1 50. The document review attorneys did not only review documents. They also
2 participated in frequent meetings with more senior attorneys to discuss important documents,
3 deposition preparation efforts, and case strategy. They assisted with the preparation of the Class
4 Representatives' response to Defendants' summary judgment motion. The document review
5 attorneys also had direct responsibility for selecting relevant documents for expert review and in
6 putting together binders of evidence for use at deposition. Two of the document review
7 attorneys also attended certain depositions.

8 **B. The Class Representatives' Depositions of Fact Witnesses**

9 51. Class Counsel conducted numerous fact witness depositions, in addition to the
10 four depositions of the Class Representatives, including depositions of the three Individual
11 Defendants. The depositions Class Counsel conducted included:

12 (a) Max Palumbo (Director of Information Security at Intuitive and 30(b)(6)
13 representative) on May 27, 2015, in San Francisco, California;

14 (b) Dave Rosa (Executive Vice President and Chief Commercial Officer) on
15 June 16, 2015 as a 30(b)(6) representative, in San Francisco, California *and* on August 19, 2016
16 in San Francisco, California;

17 (c) Salvatore Brogna (Executive Vice President of Product Operations at
18 Intuitive and 30(b)(6) representative) on June 19, 2015, in San Francisco, California *and* on July
19 29, 2016 in Palo Alto, California;

20 (d) Marshall Mohr (Senior Vice President and Chief Financial Officer) on
21 July 1, 2015, in San Francisco, California as a 30(b)(6) representative *and* on September 9, 2016
22 in San Francisco, California;

23 (e) Charles Endweiss (former Financial Planning & Analysis Manager at
24 Intuitive) on July 28 2015, in San Francisco, California;

25 (f) Richard Reeves (former Vice President of Regulatory Affairs) on July 13,
26 2016, in San Francisco, California;

27 (g) Noemi C. Esipinosa (former Vice President Legal Operations and
28 Assistant General Counsel at Intuitive) on July 21, 2016, in Palo Alto, California;

1 (h) Jane Clay (former Manager of Field Actions at Intuitive) on August 26,
2 2016, in San Francisco, California;

3 (i) Lonnie Smith (Chairman of the Board of Directors at Intuitive) on August
4 30, 2016, in San Francisco, California;

5 (j) Gary S. Guthart (Chief Executive Officer at Intuitive, Member of the
6 Board of Directors) on August 31, 2016, in San Francisco, California; and

7 (k) Tabitha Reed (Senior Manager Post Market Surveillance at Intuitive) on
8 September 9, 2016, in San Francisco, California.

9 52. Collectively, the depositions provided key evidence and insight into events during
10 the Class Period, however they also provided a preview of the difficulties of proving the Class
11 Representatives' case through adverse witnesses aligned with the Defendants.

12 **C. Discovery Propounded on Class Representatives**

13 53. Defendants also aggressively sought discovery from the Class Representatives.
14 Defendants' discovery requests led to the production of approximately 80,000 of pages of
15 documents, four depositions of Class Representatives' personnel, participation in multiple meet-
16 and-confer sessions, and contentious motion practice. Defendants served seven sets of document
17 requests on Hawaii ERS and Greater Pennsylvania. In all instances, the Class Representatives
18 objected on the basis that Defendants' discovery requests were exceedingly broad and sought
19 documents that were protected by various privileges and protections. As a result of the breadth
20 of Defendants' requests, the Parties engaged in extended meet-and-confer conferences to
21 negotiate the scope of the Class Representatives' production. While the Parties were able to
22 resolve many disputes, some required the assistance of the Court. *See infra* §IV.E. (Discovery
23 Disputes).

24 54. Defendants deposed (i) Brian Aburano, Deputy Attorney General for Hawaii
25 ERS, who testified as a Rule 30(b)(6) witness for Hawaii ERS, on September 15, 2015, in San
26 Francisco, California; (ii) Vijoy Chattergy, Chief Investment Officer at Hawaii ERS, on
27 September 23, 2015, in San Francisco, California; (iii) Wesley Machida, Director of Finance at
28 Hawaii ERS on September 25, 2015, in San Francisco, California; and (iv) James Klein,

1 Administrative Manager at Greater Pennsylvania, who testified as a Rule 30(b)(6) witness for
2 Greater Pennsylvania, on September 29, 2015 in San Francisco, California.

3 **D. Non-Party Discovery**

4 55. In addition to the documents collected from Defendants, Class Counsel also
5 issued 18 subpoenas for the production of documents on third parties that Class Counsel believed
6 had documentary evidence relevant to the claims in the Action. For example, the Class
7 Representatives sought documents from certain medical professors who were alleged to have
8 promoted da Vinci, despite growing safety concerns. Documents requested from these
9 professors included actual and proposed studies, evaluations, testing or review of the da Vinci or
10 any da Vinci accessories. The Class Representatives also sought documents from current and
11 former Tip Cover manufacturers to help the Class Representatives understand the safety
12 enhancements made to the Tip Cover during the Class Period and the reasons for those
13 enhancements. In total, approximately 28,726 pages of documents were produced by various
14 non-parties.

15 **E. Discovery Disputes**

16 56. As described above, discovery in this matter was both intense and voluminous.
17 The Parties held dozens of meet-and-confer sessions throughout discovery and were able to
18 resolve many disputes in the absence of Court intervention. On six occasions, however, the
19 Parties sought the assistance of the Court. All discovery matters were referred to Magistrate
20 Judge Lloyd.

21 57. On October 7, 2015, the Parties submitted Discovery Dispute Joint Report #1,
22 wherein Defendants were seeking investigative memoranda and notes related to the Class
23 Representatives' communications with a confidential witness. The Class Representatives argued
24 that the requested materials were protected by attorney work product privilege. On September
25 19, 2016, the Court denied the motion. ECF No. 173. On December 5, 2016, Defendants
26 renewed their request that the Class Representatives produce these investigative memoranda and
27 notes (ECF No. 199), which was denied by Magistrate Judge Lloyd on April 10, 2017. ECF No.
28 228.

1 58. On February 4, 2016, the Parties submitted Discovery Dispute Joint Report # 2,
2 wherein the Class Representatives were seeking the production of deposition transcripts in two
3 derivative actions, one which was also pending before the Court. ECF No. 153. Among other
4 things, the Class Representatives argued that the facts at issue in the derivative actions were
5 coextensive with and relevant to the instant securities litigation. Defendants argued that the
6 deposition transcripts did not yet exist, and that the Class Representatives' request was
7 overbroad. On September 27, 2016, Magistrate Judge Lloyd Corley granted the motion to
8 compel and ordered Defendants to produce the requested deposition transcripts of current and
9 former Intuitive employees, and directors and officers, who were represented by defense counsel.
10 ECF No. 175.

11 59. On March 4, 2016, the Parties submitted Discovery Dispute Joint Report # 3
12 which concerned the Class Representatives' request that Defendants produce two exemplars of
13 each relevant model of the Endowrist Monopolar Curved Scissors ("MCS") and the Tip Cover
14 accessory. ECF No. 158. Defendants argued that the requested items are not relevant to any of
15 the claims or defenses. On September 27, 2016, the Court denied the motion, noting however,
16 that "defendants shall produce the requested exemplars for use as trial demonstratives at least
17 two months prior to the start of trial." ECF No. 176.

18 60. The Parties submitted Discovery Dispute Joint Report # 4 on May 19, 2016. ECF
19 No. 170. This dispute concerned the Class Representatives' request for the production of certain
20 product quality documents and deposition exhibits used in litigation between Intuitive and its
21 product liability insurers. On October 12, 2016, Magistrate Judge Lloyd granted the motion as to
22 exhibits referenced in portions of transcripts produced by the Class Representatives, and denied
23 the motion as to the Class Representatives' request for certain product quality documents. ECF
24 No. 178.

25 61. Discovery Dispute Joint Report # 5, submitted to the Court on May 19, 2016,
26 concerned the Class Representatives' request to take an additional 16 depositions, in addition to
27 the ten depositions the Class Representatives are entitled to under the Federal Rules of Civil
28 Procedure. ECF No. 171. The Class Representatives argued that given the complexity of the

1 Action, it would be appropriate to allow more than ten depositions. Additionally, the Class
2 Representatives noted that four of the ten depositions would be taken up by the Individual
3 Defendants and the corporate 30(b)(6) representative. The Class Representatives provided the
4 Court with brief descriptions of the proposed additional deponents. Defendants argued that the
5 Class Representatives failed to make a particularized showing regarding the potential relevance
6 of the proposed deponents' testimony. Magistrate Judge Lloyd denied the motion on October 19,
7 2016. ECF No. 180.

8 **F. Expert Discovery**

9 62. In addition to the three expert reports prepared in connection with class
10 certification, in November 2016, the Class Representatives served Defendants with merits expert
11 reports from the following individuals in connection with formal expert discovery:

12 (a) Chad Coffman, CFA (materiality, damages, and loss causation expert);

13 (b) Thomas C. Knott (FDA regulatory expert who provided a report on the
14 Company's compliance with FDA regulations and the effectiveness of Intuitive's procedures for
15 handling adverse events caused by its medical devices); and

16 (c) H. Nejat Seyhun (professor of finance who provided a report on insider
17 trading and executive compensation).

18 63. Mr. Coffman prepared and served a 62-page report, along with exhibits totaling
19 another 43 pages, in which he opined, *inter alia* that: (i) the alleged misstatements and
20 omissions in this case were material; (ii) any news that revealed the concealed safety and
21 efficacy issues or disclosed how the revelation of such information impacted utilization of da
22 Vinci – and thus the financial impact of the misrepresentations and/or omissions – represents
23 corrective information; (iii) there was an economic link between the alleged misrepresentations
24 and omissions and the foreseeable investor losses that occurred on the remaining alleged
25 corrective disclosure events; and (iv) the allegedly corrective information caused the price of
26 Intuitive common stock to decline on each of the remaining alleged corrective disclosures.

27 64. Mr. Knott prepared and served a 78-page report, along with exhibits totaling
28 another 8 pages, in which he opined, *inter alia*, that had Defendants taken reasonable actions to

1 address the risk of harm associated with the use of the Tip Cover accessory, the applicable FDA
2 regulations would have mitigated the risk to health posed by da Vinci, and the safety issues
3 would be disclosed to the FDA and the public earlier; and that Defendants' failure to properly
4 report MDRs was unreasonable in light of FDA regulations.

5 65. Professor Seyhun prepared and served a 27-page report, along with exhibits
6 totaling another 87 pages, in which he opined, *inter alia*, that the Individual Defendants sold
7 large and suspicious amounts of Intuitive stock to benefit from the possession of adverse material
8 non-public information.

9 66. On December 13, 2016, Defendants served expert reports on the Class
10 Representatives from the following individuals:

11 (a) Laura B. Stamm (submitted a report responding to Mr. Coffman's report);

12 (b) Steven B. Boyles (provided his opinion on alleged insider trading by the
13 Individual Defendants, as well as executive compensation, and responded to the report of
14 Professor Seyhun); and

15 (c) Dr. David W. Feigal (provided his opinion on the Food, Drug, and
16 Cosmetics Act and FDA regulations and practices, and responded to the expert report of Mr.
17 Knott).

18 67. On February 8, 2017, the Class Representatives submitted a supplemental expert
19 report from Mr. Coffman on loss causation and damages. On December 1, 2017, Defendants
20 submitted a supplemental rebuttal report from Laura B. Stamm on loss causation and damages.

21 68. Following the exchange of expert reports, the Parties commenced expert
22 depositions in December 2017. The Parties took and defended six expert depositions.

23 69. The Class Representatives deposed Defendants' experts as follows:

24 (a) Mr. Boyes on December 11, 2017, in San Francisco, California;

25 (b) Ms. Stamm on December 14, 2017, in San Francisco, California; and

26 (c) Dr. Feigal on December 14, 2017, in San Francisco, California.

27 70. Defendants deposed the Class Representatives' experts as follows:

28 (a) Mr. Seyhun on December 1, 2017, in San Francisco, California;

- 1 (b) Mr. Coffman on December 12, 2017, in San Francisco, California; and
- 2 (c) Mr. Knott on December 12, 2017, in San Francisco, California.

3 71. The information relied on by the experts was extensive and wide-ranging. The
4 material also highlighted the Parties' dueling points of view and the contradictory information
5 that would be presented to the jury, assuming each of the experts survived likely *Daubert* and *in*
6 *limine* motions before trial.

7 **V. DEFENDANTS' SUMMARY JUDGMENT MOTION**

8 72. On February 9, 2018, Defendants moved for summary judgment, challenging the
9 Class Representatives' evidence of loss causation and materiality, and seeking dismissal of the
10 Action. ECF No. 252. Defendants included a lengthy statement of undisputed facts in support
11 of their motion. ECF No. 252-1.

12 73. In their motion, Defendants argued, principally, that there are no disputed facts
13 that support the Class Representatives' loss causation theory because the undisputed facts show
14 that the remaining three alleged corrective disclosures revealed nothing new about anything the
15 Class Representatives' claim was concealed from investors and, as a result, any drop in stock
16 price corresponding with those disclosures could not, as a matter of law, have been caused by the
17 alleged fraud. For example, Defendants argued that the February 28, 2013 Bloomberg articles,
18 reporting a regulatory investigation of the da Vinci system, did nothing more than announce an
19 FDA survey that led to no regulatory action against the Company. They also argued that the
20 March 5, 2013 Bloomberg article, reporting the number of deaths and lawsuits that had occurred
21 over 14 months, did nothing more than repackage publicly available information. And, that the
22 announcements and comments on July 18, 2013, that the Company had received a Warning
23 Letter from the FDA, including notice that the FDA needed a follow-up inspection, that the
24 Company's responses to prior inspections had been inadequate, and a Class II recall of the Tip
25 Cover, as well as reduction in 2013 sales guidance, revealed no information that Defendants had
26 allegedly concealed.

27
28

1 74. Defendants also argued that the undisputed facts show that investors were aware
2 of the allegedly concealed information before and during the Class Period, thereby negating the
3 allegedly concealed information's materiality.

4 75. On March 23, 2018, the Class Representatives filed their opposition to
5 Defendants' motion for summary judgment. ECF No. 259-4. The Class Representatives also
6 filed a responsive separate statement of facts in opposition to Defendants' summary judgment
7 motion. ECF No. 259-6. In opposing Defendants' summary judgment motion, the Class
8 Representatives argued that the motion should be denied because Defendants cannot show, as a
9 matter of law, that there is no dispute of material facts regarding the cause of the stock drops at
10 issue. The Class Representatives argued, among other things, that each of the three corrective
11 disclosures contained new information relevant to the risk profile of the da Vinci surgical system
12 and that each disclosure is traceable to the very facts allegedly concealed by Defendants'
13 omissions. For example, the Class Representatives argued that the February 28, 2013
14 Bloomberg articles that disclosed the existence of an FDA safety probe were corrective because
15 they related directly to Defendants' omission of material safety information about the
16 Company's product – including the fact that the Tip Cover was defective and that the Company
17 was underreporting MDRs. With respect to the July 18, 2013 Warning Letter, the Class
18 Representatives argued that the Court already had ruled that "Defendants' argument that the
19 Warning Letter revealed nothing new to the market . . . is unpersuasive." ECF No. 204 at 28.

20 76. The Class Representatives also argued that Defendants' truth on the market
21 defense fails because, among other reasons, whether the market understood the full truth prior to
22 the alleged corrective disclosures is a fact question for a jury to determine.

23 77. On April 23, 2018, Defendants submitted a reply brief in further support of their
24 summary judgment motion, expanding on their argument that there is no evidence of loss
25 causation because none of the alleged corrective disclosures actually corrected the alleged
26 misrepresentations, and that there are no triable issues regarding materiality because the
27 allegedly concealed information was previously disclosed to and understood by the public. ECF
28 No. 273.

1 78. The Parties were preparing to argue the summary judgment motion when they
2 agreed to settle the Action.

3 79. Trial was scheduled to begin on October 30, 2018. In connection with the
4 impending trial, the Class Representatives retained and began working with a jury consultant to
5 conduct jury focus exercises.

6 **VI. RISKS FACED BY CLASS REPRESENTATIVES IN THE ACTION**

7 80. Based on publicly available information and documents obtained through
8 counsel's investigation and the extensive fact and expert discovery conducted in the Action,
9 Class Counsel believes that it has adduced substantial evidence to support the Class
10 Representatives' and the Class's claims and was prepared to proceed to trial. However, Class
11 Counsel also realizes that the Class Representatives and Class faced considerable risks and
12 defenses in continuing to litigate. The Class Representatives and their counsel carefully
13 considered these risks during the months leading up to the Settlement and throughout the
14 settlement discussions with Defendants.

15 81. Using a rigorous event study and a well-recognized trading model, Mr. Coffman
16 has estimated maximum aggregate damages for the Class to be approximately \$580 million,
17 assuming pre-Class Period gains are netted and that the Class Representatives were to prevail on
18 *all* of their claims, including *all three* remaining alleged corrective disclosures. Accordingly, the
19 proposed Settlement represents a recovery of approximately 7.34% of that maximum amount.
20 Defendants of course disputed, even if liability were to be proven, the amount that the Class was
21 allegedly damaged, and would have argued that damages were significantly less, if any.
22 Moreover, if Defendants' arguments prevailed at summary judgment or trial (including
23 Defendants' loss causation contentions for any or all of the three remaining alleged disclosures),
24 the Class's damages would be severely or completely diminished. The recovery achieved here
25 falls well within the range of reasonableness that courts regularly approve in similar
26 circumstances, and is significantly greater than the median and average reported settlement
27 amounts in securities class actions in 2017 (\$5 million and \$18.2 million, respectively). *See*
28

1 Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons, Securities Class Action Settlements –
2 2017 Review and Analysis, at 3 (Cornerstone Research 2018), Ex. 4.

3 82. In agreeing to settle, Class Representatives and Class Counsel weighed, among
4 other things, this substantial certain cash benefit to Class Members against: (i) the uncertainty of
5 prevailing on some or all of the claims at trial and the difficulties and challenges involved in
6 proving scienter, loss causation, materiality, and damages; (ii) the uncertainties inherent in
7 Defendants’ outstanding summary judgment motion, which could result in the termination of the
8 Action, no recovery for the Class, and a lengthy appellate process; (iii) the fact that, even if the
9 Class Representatives prevailed at summary judgment and trial, any monetary recovery could
10 have been less than the Settlement Amount; and (iv) the delays that would follow even a
11 favorable jury finding, including a contested claims process and appeals to the Ninth Circuit and
12 beyond.

13 **A. Risks in Proving Loss Causation, Materiality, and Damages**

14 83. Here, as evidenced by Defendants’ summary judgment briefing, Defendants
15 tenaciously contested the Class Representatives’ ability to establish loss causation, and thus
16 liability. In this regard, there were significant risks that the Court would find that the Class
17 Representatives failed to establish liability or damages as a matter of law at summary judgment,
18 that Defendants would ultimately succeed in *Daubert* challenges to the Class Representatives’
19 experts’ analyses, or—if the Court were to permit the claims to proceed to trial—that a jury (or
20 appeals court) would rule against the Class Representatives on loss causation and damages
21 grounds. While the Class Representatives and Class Counsel believe they advanced strong
22 arguments on the merits, they nonetheless acknowledge that Defendants’ arguments and counter-
23 evidence posed very credible threats to the Class Representative’s ability to ultimately succeed.
24 If the Court or a jury were to find that any of the alleged corrective disclosures identified in the
25 Second Amended Complaint were not actionable corrective disclosures, the potential recovery
26 for the Class would be significantly diminished.

27 84. Defendants would undoubtedly continue argue, as they did on summary
28 judgment, that the three remaining “corrective” disclosures do not actually correct any of the

1 allegedly false statements. For example, Defendants would argue that nothing in the February
2 28, 2013 Bloomberg article – announcing that the FDA was surveying surgeons at several
3 hospitals regarding da Vinci and any complications they have may have encountered – corrected
4 any alleged omissions regarding a purported defect or supposed internal recalls. Defendants
5 would also argue that the Class Representatives’ argument that news of the FDA survey was a
6 partial corrective disclosure had been rejected by the Ninth Circuit in a line of cases ruling that
7 an announcement of an investigation, standing alone, is insufficient to establish loss causation.

8 85. Defendants would also have continued to argue that the March 5, 2013
9 Bloomberg article, which reported on allegations from two personal injury lawsuits that had been
10 filed against Intuitive as well as other lawsuits filed against the Company, did not reveal
11 anything new to the market, because this information was all publicly available. Accordingly,
12 the accompanying stock drop cannot be evidence of loss causation. The Class Representatives
13 would have continued to counter that the article assisted investors in understanding da Vinci’s
14 safety by aggregating and analyzing public sources such as lawsuits, MDRs, academic literature,
15 and conducting interviews with practitioners in the field, and that, therefore, the article added
16 additional fraud related information, showing that the baseline safety of da Vinci was not what
17 Defendants purported it to be.

18 86. Regarding the July 18, 2013 Warning Letter where the Company announced, on
19 July 18, 2013, that it received a Warning Letter from the FDA, Defendants would have argued
20 that the Warning Letter revealed no information that Defendants had allegedly concealed, and
21 accordingly, the Class Representatives cannot establish loss causation based on the stock price
22 movement on July 18-19, 2013. Defendants would have argued that the only “new” information
23 revealed on July 18, 2013, was the existence of a Warning Letter (the contents of which were not
24 made public until July 31, 2013). Defendants would have noted that since the July 18
25 announcement revealed only the receipt of the letter itself, which the Class Representatives do
26 not allege Defendants concealed, the announcement cannot qualify as a corrective disclosure,
27 and the accompanying stock drop cannot be a basis for proving loss causation.

28

1 87. The elimination of even one of these alleged disclosures would have considerably
2 reduced damages, leaving the Class Representatives to seek significantly less than \$580 million.

3 88. Additionally, as Defendants had in their summary judgment motion, they would
4 have continued to assert the “truth on the market defense,” arguing that each piece of allegedly
5 concealed information was actually publicly available to the market. For example, Defendants
6 would have argued that the Class Representatives’ claim that Defendants failed to disclose that
7 the Company sent letters in October 2011 to all da Vinci customers regarding the proper use of
8 the Tip Cover, was immaterial because the letters were in fact widely publicized before the first
9 allegedly misleading statement was made on February 6, 2012. Additionally, Defendants would
10 have argued that a Citron Research analyst report, published on December 19, 2012, discussed
11 the “gathering storm of legal liability accruing to the company” due to the Company’s alleged
12 failure to disclose the risks associated with da Vinci. Defendants would also argue that another
13 Citron Report, published on January 17, 2013, discussed pending litigation against Intuitive
14 arising from the risks associated with its robot instruments. While the Class Representatives
15 would advance a number of arguments in response, including that the allegedly concealed
16 information did not receive adequate exposure and was essentially impossible for an investor to
17 aggregate and understand, there is no certainty as to how the Court or a jury would come out on
18 this issue.

19 89. Regarding damages, Defendants would also continue to dispute Mr. Coffman’s
20 methodologies, arguing, among other things, that he failed to conduct an adequate analysis to
21 determine which of the challenged statements were material to the market and he did not
22 determine which corrective disclosures corrected any particular prior statements.

23 90. As mentioned, Mr. Coffman estimated maximum aggregate damages to be
24 approximately \$580 million, if the Class Representatives were to prevail on all of their claims.
25 Of course Defendants would argue that damages in the Action are much smaller, or none at all.
26 If Defendants prevailed at summary judgment on their argument that the Class Representatives
27 could not establish loss causation, then the Class would have recovered nothing at all after five
28 years of litigation.

1 91. Moreover, to recover any damages at trial, Class Representatives would have to
2 prevail at many stages in the litigation – namely, Defendants’ pending summary judgment
3 motion, anticipated *Daubert* motions, and then at trial. Even if the Class Representatives
4 prevailed at those stages, appeals would likely follow. At each turn, there would be significant
5 risks attendant to the continued prosecution of the Action, and no guarantee that further litigation
6 would have resulted in a higher recovery, or any recovery at all.

7 **B. Risks in Proving Scienter**

8 92. Even beyond these substantial challenges to loss causation, materiality, and
9 damages, Defendants would hold the Class Representatives to their burden of proof on all other
10 elements of securities fraud, and establishing the Class’s claims would require the jury to make
11 complicated assessments of credibility on several complex and hotly contested factual
12 disagreements, including that Defendants had an intent to deceive or otherwise acted with
13 recklessness nearing such intent. Although scienter was not at issue on summary judgment,
14 Defendants would very well marshal counter evidence at trial.

15 93. Regarding the alleged insider trading of each of the Individual Defendants,
16 Defendants would seek to put forth expert testimony arguing, among other things, that the sales
17 of the Individual Defendants followed 10b5-1 trading plans that were entered into one year
18 before any of the alleged corrective disclosures and were consistent with SEC requirements and
19 Company insider trading policies. Defendants would also argue that Defendants Mohr and
20 Guthart approved a stock repurchase plan prior to the Class Period, which negates any finding of
21 scienter because it tends to show that they believed the share price would rise in the future. With
22 respect to knowledge of the allegedly concealed information, Defendants would likely continue
23 to press that the Class Representatives cannot prove that they knew facts contrary to each alleged
24 misrepresentation or omission. For instance, Defendants maintained that the July 2013 FDA
25 Warning Letter was not known to them ahead of time and was not kept “secret.”

26 94. The Class Representatives would counter with evidence showing that Defendants,
27 among other things, exchanged many detailed communications with the FDA discussing the
28 serious problems with, and injuries resulting from, the Tip Cover, as well as documents and

1 testimony establishing that all of the Individual Defendants regularly attended internal meetings
2 and received specific reports apprising them of the sharp rise in MDRs and adverse events, as
3 well as the Tip Cover issues affecting patients.

4 95. While the Class Representatives would put forth evidence and expert opinion to
5 support their claims, there is no certainty about which side a jury would credit.

6 **C. Risks Attendant at Trial**

7 96. In addition to the specific liability risks discussed above and the typical
8 uncertainties attendant to placing complex securities fraud issues before a jury, a trial of this case
9 presented its own unique hurdles. Given the complex scientific nature of the claims, the Class
10 Representatives intended to rely heavily on their FDA expert. Complex and subtle scientific
11 evidence, presented through multiple dueling experts' testimony, would have been needed to
12 establish falsity, materiality, scienter, and loss causation and there was no certainty that the jury,
13 or the Court at summary judgment, would have credited the Class Representatives' experts'
14 views over those of Defendants.

15 97. Further, at the time the Settlement was reached, the Parties had not yet filed
16 *Daubert* motions, where Defendants would undoubtedly seek to exclude all or most of the
17 testimony that the Class Representatives intended to offer through their experts. Had Defendants
18 prevailed in excluding any of this testimony, the presentation of many aspects of the Class
19 Representatives' case would have been severely hampered.

20 98. Even if the Class Representatives were successful in obtaining a jury verdict on
21 all or part of their claims, it was a foregone certainty that a jury verdict would have been just the
22 beginning of a long and arduous post-trial and appellate process. Given the novelty of the issues
23 concerning materiality, loss causation, damages, and the duties attendant under Section 10(b), an
24 appellate process, with the possibility of reversal, presented a real risk to the Class of obtaining a
25 recovery.

26 **VII. SETTLEMENT NEGOTIATIONS**

27 99. Beginning in the Spring of 2018, the Parties began initial discussions concerning
28 the possibility of a negotiated resolution of the case. Given the Parties' familiarity with the

1 claims and defenses, the approaching trial date, and well-informed views on the value of the
2 claims given their litigation for five years, a third-party mediator was not retained. Counsel
3 engaged in frank discussions about what continued litigation would hold.

4 100. As a result of these arm's-length discussions between counsel, the Parties reached
5 an agreement in principle to settle the Action on June 6, 2018, which was memorialized in a
6 term sheet, after additional negotiations, on August 14, 2018.

7 101. The Parties thereafter memorialized the final terms of the Settlement in the
8 Stipulation, which was executed by the Parties on September 11, 2018, and filed with the Court
9 that same day (ECF No. 298-1), along with the Class Representatives' motion and supporting
10 memorandum of points and authorities seeking preliminary approval of the Settlement (ECF No.
11 297).⁴

12 102. As documented in the Stipulation, in exchange for payment of the Settlement
13 Amount, upon the Effective Date of the Settlement, Class Representatives and the Class, which
14 is the same as the class previously certified by the Court, will forever release all Released Claims
15 against the Released Defendant Parties and the Action will be dismissed with prejudice.
16 Released Claims are essentially all claims that were brought or that could have been brought in
17 the Action or any forum arising out of the allegations and the purchase of Intuitive common
18 stock during the Class Period. *See* Stipulation ¶1(aa), ¶3. The release language was carefully
19 tailored and is very typical of that used in numerous other securities class action settlements. It
20 provides Defendants with "complete peace" from collateral re-litigation of the claims in the
21 Action. Also upon the Effective Date of the Settlement, the Defendants will forever release all
22 Released Defendants' Claims against the Released Plaintiff Parties. Released Defendants'

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25 ⁴ Contemporaneously with executing the Stipulation, as referenced in ¶39(a), the Parties also
26 executed a Confidential Supplemental Agreement Regarding Requests for Exclusion, which
27 governs the circumstances under which Defendants can terminate the Settlement if a certain
28 threshold of exclusion requests are received. It is typical to keep such agreements confidential so
that potential opt outs do not use them to leverage additional recoveries for themselves, at the
expense of the class. If the termination threshold is ultimately reached, notice will be filed with
the Court before the Settlement Hearing. The term sheet, Stipulation, and Supplemental
Agreement are the only agreements between the Parties in connection with the Settlement.

1 Claims are essentially all claims related to the institution, prosecution, or settlement of the
2 claims. *See* Stipulation ¶1(cc), ¶4.

3 **VIII. CLASS REPRESENTATIVES' COMPLIANCE WITH PRELIMINARY**
4 **APPROVAL ORDER AND REACTION OF THE CLASS**

5 103. Pursuant to the Preliminary Approval Order, the Court appointed the notice
6 administrator, Garden City Group LLC, which was recently acquired by Epiq Class Action &
7 Claims Solutions, Inc., ("GCG") as the Claims Administrator and instructed GCG to disseminate
8 copies of the Notice of Proposed Class Action Settlement and Motion for Attorneys' Fees and
9 Expenses and Proof of Claim (collectively the "Claim Packet") by mail and to publish the
10 Summary Notice of Proposed Class Action Settlement and Motion for Attorneys' Fees and
11 Expenses.

12 104. The Settlement Notice, attached as Exhibit B to the Mailing Declaration, provides
13 potential Class Members with information about the terms of the Settlement and, among other
14 things: their right to again opt-out of the Class; their right to opt-back into the Class (for those
15 who previously requested exclusion in connection with the Class Notice); their right to object to
16 any aspect of the Settlement, the Plan of Allocation, or the Fee and Expense Application; and the
17 manner for submitting a Claim Form to be eligible for a payment from the net proceeds of the
18 Settlement. The Settlement Notice also informs Class Members of Class Counsel's intention to
19 apply for an award of attorneys' fees of no more than 19% of the Settlement Fund and for
20 payment of litigation expenses in an amount not to exceed \$2,500,000.

21 105. As detailed in the Mailing Declaration, on October 15, 2018, GCG began mailing
22 Claim Packets to potential Class Members as well as banks, brokerage firms, and other third
23 party nominees whose clients may be Class Members. Ex. 3 ¶¶3-8. To disseminate the
24 Settlement Notice, GCG used the names and addresses of potential Class Members from the
25 mailing file that GCG had compiled in connection with the Class Notice, plus banks, brokers,
26 and other nominees were ordered in the Preliminary Approval Order to provide any additional
27 names and addresses that they had not previously provided. *Id.* ¶¶4-5. In total, to date, GCG has
28

1 mailed 233,036 Claim Packets to potential nominees and Class Members by first-class mail,
2 postage prepaid. *Id.* ¶8.⁵

3 106. On October 22, 2018, GCG caused the Summary Notice to be published in
4 *Investor's Business Daily* and to be transmitted over the *PR Newswire* for dissemination across
5 the internet. *Id.* ¶9 and Exhibits C and D attached thereto.

6 107. GCG also maintains and posts information regarding the Settlement on a
7 dedicated website established for the Action, www.IntuitiveSurgicalSecuritiesLitigation.com, to
8 provide Class Members with information, including downloadable copies of the Claim Packet
9 and the Stipulation. *Id.* ¶10.

10 108. Defendants mailed notice of the Settlement pursuant to the Class Action Fairness
11 Act, 28 U.S.C. §1715.

12 109. Pursuant to the terms of the Preliminary Approval Order, the deadline for Class
13 Members to submit objections to the Settlement, the Plan of Allocation, or the Fee and Expense
14 Application, or to request exclusion from the Class is November 29, 2018. To date, no
15 objections to the Settlement have been received and the Claims Administrator has received one
16 request for exclusion in connection with the Settlement Notice. *Id.* ¶14.

17 110. Class Counsel will respond to any future objections and provide a full report on
18 the exclusion requests in its reply papers, which are due on December 13, 2018.

19 **IX. PLAN OF ALLOCATION**

20 111. Pursuant to the Preliminary Approval Order, and as set forth in the Settlement
21 Notice, all Class Members who wish to participate in a future distribution of the Settlement
22 proceeds must submit a valid Claim Form, including all required information, no later than
23 December 6, 2018. As provided in the Settlement Notice, after the deduction of Court-awarded
24 attorneys' fees and expenses, Notice and Administration Expenses, and applicable Taxes, the
25 balance of the Settlement Fund (the "Net Settlement Fund") will be distributed according to the
26 plan of allocation approved by the Court (the "Plan of Allocation").

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⁵ As is standard in securities class actions, personal email addresses of potential class
members were not requested (or provided) from the Company's transfer agent or nominees.

1 112. The proposed Plan of Allocation, which was set forth in full in the Settlement
2 Notice (Ex. 3-B at 9-12), is designed to achieve an equitable and rational distribution of the Net
3 Settlement Fund. Class Counsel’s damages expert developed the Plan of Allocation after careful
4 consideration of the Class’s theories of liability and damages, and Class Counsel believes that
5 the plan provides a fair and reasonable method to equitably distribute the Net Settlement Fund
6 among Authorized Claimants.

7 113. The Plan of Allocation provides for distribution of the Net Settlement Fund
8 among Authorized Claimants on a *pro rata* basis based on their “Recognized Losses,” calculated
9 according to the Plan’s formulas, which are consistent with the Class Representatives’ theories of
10 liability and damages under the Exchange Act. These formulas consider the amount of alleged
11 artificial inflation in the prices of Intuitive’s publicly traded common stock, as quantified by Mr.
12 Coffman. Mr. Coffman analyzed the movement in the prices of Intuitive’s common stock and
13 took into account the portion of the price drops allegedly attributable to the alleged fraud.

14 114. Claimants will be eligible for a payment based on when they purchased, held, or
15 sold their Intuitive stock. The Court-approved Claims Administrator, under Class Counsel’s
16 direction, will calculate claimants’ Recognized Losses using the transactional information
17 provided in their Claim Forms. Claims may be submitted to the Claims Administrator through
18 the mail, online using the case website, or for large investors with thousands of transactions
19 through email to GCG’s electronic filing team. (Neither the Parties nor the Claims
20 Administrator independently have claimants’ transactional information.) The Class
21 Representatives’ losses will be calculated in the same manner.

22 115. Once the Claims Administrator has processed all submitted claims and provided
23 claimants with an opportunity to cure deficiencies or challenge rejection determinations,
24 payment distributions will be made to eligible Authorized Claimants using checks and, in some
25 instances, wire transfers. After an initial distribution, if there is any balance remaining in the Net
26 Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) after at least
27 six (6) months from the date of initial distribution, Class Counsel will, if feasible and
28 economical, re-distribute the balance among Authorized Claimants who have cashed their

1 checks. Re-distributions will be repeated until the balance in the Net Settlement Fund is no
2 longer economically feasible to distribute. *See* Ex. 3-B at 11. Any balance that still remains in
3 the Net Settlement Fund after re-distribution(s), which is not economical to reallocate, after
4 payment of any outstanding Notice and Administration Expenses or Taxes, shall be donated in
5 equal amounts to the Bay Area Legal Aid and the Consumer Federation of America, as directed
6 by the Court at the preliminary approval hearing.

7 116. To date, there have been no objections to the proposed Plan of Allocation.

8 117. In sum, the proposed Plan of Allocation, developed by the Class Representatives'
9 damages expert, was designed to fairly and rationally allocate the Net Settlement Fund among
10 Authorized Claimants. Accordingly, Class Counsel respectfully submits that the proposed Plan
11 of Allocation is fair, reasonable, and adequate and should be approved.

12 **X. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES**

13 118. For its significant efforts on behalf of the Class, Class Counsel is applying for
14 compensation from the Settlement Fund on a percentage basis. As explained in Class Counsel's
15 Fee Brief, courts within the Ninth Circuit recognize that the percentage method is the appropriate
16 method of fee recovery and the prevailing method of determining attorneys' fees in the Ninth
17 Circuit.

18 119. Consistent with the Settlement Notice, Class Counsel seeks, on behalf of all
19 Plaintiffs' Counsel, a fee award of 19% of the Settlement Fund.⁶ Class Counsel also requests
20 payment of expenses incurred in connection with the prosecution of the Action from the
21 Settlement Fund in the amount of \$1,988,789.66, plus the Class Representatives' request for
22 \$58,854.18 pursuant to the PSLRA. Class Counsel submits that, for the reasons discussed below
23 and in the accompanying Fee Brief, such awards would be reasonable and appropriate under the
24 circumstances before the Court.

25 _____
26 ⁶ Class Counsel was assisted in this case by Local Counsel, Kerr & Wagstaffe LLP, and
27 attorney Anthony Takitani and The Thornton Law Firm, which provided additional legal
28 assistance to Hawaii ERS (collectively "Plaintiffs' Counsel"). Any attorneys' fees awarded by
the Court to Class Counsel will be allocated by Class Counsel to other Plaintiffs' Counsel. No
other law firms will share in the attorneys' fees awarded by the Court and the payments to Kerr
& Wagstaffe, Mr. Takitani and the Thornton Law Firm will not increase the attorneys' fees
deducted from the Settlement Fund in any way.

1 **A. The Class Representatives Support the Fee and Expense Application**

2 120. Both Hawaii ERS and Greater Pennsylvania, each a sophisticated institutional
3 investor, played a central role in monitoring and participating in the Action, including, among
4 other things, reviewing pleadings, motions and other court filings; participating in the discovery
5 process, including producing documents and being deposed; and participating in frequent
6 conference calls and/or in person meetings with Class Counsel. *See* Ex. 1 ¶5 and Ex. 2 ¶5.
7 Hawaii ERS also attended oral argument on the motion for certification of the Class. *See* Ex. 1
8 ¶5.

9 121. The Class Representatives have evaluated and fully support the Fee and Expense
10 Application. *See* Ex. 1 ¶¶8-9 and Ex 2 ¶¶8-9. In coming to this conclusion, the Class
11 Representatives considered the recovery obtained as well as Class Counsel’s substantial effort in
12 obtaining the recovery. Particularly in light of the considerable risks of litigation, the Class
13 Representatives agreed to allow Class Counsel to apply for 19% of the Settlement Fund. *See id.*
14 The 19% request is based on a pre-settlement retainer agreement with Hawaii ERS, given the
15 stage of the litigation, and is lower than the fee agreement entered into with Greater
16 Pennsylvania. It is also below the Ninth Circuit’s benchmark.

17 **B. The Favorable Settlement Achieved**

18 122. Courts have consistently recognized that the result achieved is a major factor to be
19 considered in making a fee award. *See* Fee Brief, §I.C.1. Here, as described above, the
20 \$42,500,000 settlement is a very favorable result, particularly when considered in view of the
21 substantial risks and obstacles to recovery if the Action was to continue through a decision on
22 summary judgment, to trial, and through likely post-trial motions and appeals.

23 123. As set forth in detail above, the recovery obtained for the Class was the result of
24 thorough and diligent prosecutorial and investigative efforts, and complicated and arduous
25 motion practice. As a result of this Settlement, thousands of Class Members will benefit and
26 receive compensation for their losses and avoid the very substantial risk of no recovery in the
27 absence of a settlement.

28

1 **C. The Risks and Unique Complexities of Contingent Class Action Litigation**

2 124. This Action presented substantial challenges from the outset of the case. The
3 specific complexities and risks the Class Representatives faced in proving Defendants' liability
4 and damages are detailed in paragraphs 80 to 98, above. These case-specific risks are in addition
5 to the more typical risks accompanying securities class action litigation, such as the fact that this
6 Action is governed by stringent PSLRA requirements and case law interpreting the federal
7 securities laws and was undertaken on a contingent basis. Here, there was no restatement,
8 Company admission, or parallel governmental or criminal proceeding, which would have aided
9 the Class or Class Counsel in proving elements of the case, like materiality and scienter.

10 125. From the outset, Class Counsel understood that it was embarking on a complex,
11 expensive, and lengthy litigation with no guarantee of ever being compensated for the substantial
12 investment of time and money the case would require. In undertaking that responsibility, Class
13 Counsel was obligated to ensure that sufficient resources were dedicated to the prosecution of the
14 Action, and that funds were available to compensate staff and to cover the considerable costs that
15 a case such as this requires. With an average lag time of several years for these cases to
16 conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid
17 on an ongoing basis. Indeed, Class Counsel received no compensation during the five year
18 course of the Action but has dedicated 41,749.30 hours of time for a lodestar of \$21,502,439.00
19 and has incurred \$1,988,789.66 in expenses in prosecuting the Action for the benefit of the
20 Class.

21 126. Class Counsel bore the risk that no recovery would be achieved (or that a
22 judgment could not be collected, in whole or in part). Even with the most vigorous and
23 competent of efforts, success in contingent-fee litigation, such as this, is never assured. Class
24 Counsel knows from experience that the commencement of a class action does not guarantee a
25 settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the
26 facts and theories that are needed to sustain a complaint or win at trial, or to convince
27 sophisticated defendants to engage in serious settlement negotiations at meaningful levels. Class
28 Counsel is aware of many hard-fought lawsuits in which, because of the discovery of facts

1 unknown when the case was commenced, or changes in the law during the pendency of the case,
2 or a decision of a judge or jury following a trial on the merits, excellent professional efforts of
3 members of the plaintiffs' bar produced no fee for counsel.

4 127. Federal appellate reports are filled with opinions affirming dismissals with
5 prejudice in securities cases. The many appellate decisions affirming summary judgment and
6 directed verdicts for defendants show that surviving a motion to dismiss is not a guarantee of
7 recovery. *See, e.g., In re Oracle Corp., Sec. Litig.*, 627 F.3d 376 (9th Cir. 2010); *In re Silicon*
8 *Graphics Sec. Litig.*, 183 F.3d 970 (9th Cir. 1999); *Phillips v. Scientific-Atlanta, Inc.*, 489 F.
9 App'x 339 (11th Cir. 2012); *In re Smith & Wesson Holding Corp. Sec. Litig.*, 669 F.3d 68 (1st
10 Cir. 2012); *McCabe v. Ernst & Young, LLP*, 494 F.3d 418 (3d Cir. 2007); *In re Digi Int'l Inc.*
11 *Sec. Litig.*, 14 F. App'x 714 (8th Cir. 2001); *Geffon v. Micrion Corp.*, 249 F.3d 29 (1st Cir.
12 2001).

13 128. Successfully opposing a motion for summary judgment is also not a guarantee
14 that plaintiffs will prevail at trial. Indeed, while only a few securities class actions have been
15 tried before a jury, several have been lost in their entirety, such as *In re JDS Uniphase Securities*
16 *Litigation*, Case No. C-02-1486 CW (EDL), slip op. (N.D. Cal. Nov. 27, 2007), litigated by
17 Labaton Sucharow, or partially lost, such as *In re Clarent Corp. Securities Litigation*, Case
18 No. C-01-3361 CRB, slip op. (N.D. Cal. Feb. 16, 2005).

19 129. Even plaintiffs who succeed at trial may find their verdict overturned on appeal.
20 *See, e.g., Glickenhous & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing
21 and remanding jury verdict of \$2.46 billion after 13 years of litigation on loss causation grounds
22 and error in jury instruction under *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S.
23 Ct. 2296 (2011)); *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1998) (reversing
24 plaintiffs' jury verdict for securities fraud); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th
25 Cir. 1997) (reversing \$81 million jury verdict and dismissing case with prejudice); *Anixter v.*
26 *Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained
27 after two decades of litigation). And, the path to maintaining a favorable jury verdict can be
28 arduous and time consuming. *See, e.g., In re Apollo Grp., Inc. Sec. Litig.*, Case No. CV-04-

1 2147-PHX-JAT, 2008 WL 3072731 (D. Ariz. Aug. 4, 2008), *rev'd*, No. 08-16971, 2010 WL
2 5927988 (9th Cir. June 23, 2010) (trial court tossing unanimous verdict for plaintiffs, which was
3 later reinstated by the Ninth Circuit Court of Appeals) and judgment re-entered (*id.*) after denial
4 by the Supreme Court of the United States of defendants' Petition for Writ of Certiorari (*Apollo*
5 *Grp. Inc. v. Police Annuity & Benefit Fund*, 131 S. Ct. 1602 (2011)).

6 130. Losses such as those described above are exceedingly expensive for plaintiff's
7 counsel to bear. The fees that are awarded in successful cases are used to cover enormous
8 overhead expenses incurred during the course of litigations and are taxed by federal, state, and
9 local authorities.

10 131. Courts have repeatedly held that it is in the public interest to have experienced
11 and able counsel enforce the securities laws and regulations pertaining to the duties of officers
12 and directors of public companies. Vigorous private enforcement of the federal securities laws
13 and state corporation laws can only occur if private plaintiffs can obtain some parity in
14 representation with that available to large corporate defendants. If this important public policy is
15 to be carried out, courts should award fees that will adequately compensate private plaintiffs'
16 counsel, taking into account the enormous risks undertaken with a clear view of the economics of
17 a securities class action.

18 132. As discussed in detail above, this case was fraught with significant risk factors
19 concerning liability and damages. Were this Settlement not achieved, and even if the Class
20 Representatives prevailed at trial, the Class Representatives and Class Counsel faced potentially
21 years of costly and risky appellate litigation against Defendants, with ultimate success far from
22 certain and the prospect of no recovery significant. Class Counsel therefore respectfully submits
23 that based upon the considerable risk factors present, this case involved a very substantial
24 contingency risk to counsel.

25 **D. The Work of Plaintiffs' Counsel and the Lodestar Cross-Check**

26 133. The work undertaken by Plaintiffs' Counsel in investigating and prosecuting this
27 case, and arriving at the present Settlement in the face of serious hurdles, has been time-
28 consuming and challenging. As explained above, counsel conducted a comprehensive

1 investigation into the Class’s claims; researched and prepared two amended complaints; briefed
2 two thorough oppositions to Defendants’ motions to dismiss the complaints, including a motion
3 for reconsideration; moved for certification of the Class and overcame Defendants’ Rule 23(f)
4 petition and motion for reconsideration; engaged in extremely thorough discovery efforts that led
5 to obtaining more than approximately 550,000 pages of discovery documents from Defendants
6 and third-parties; took or defended 24 depositions; exchanged 11 expert reports; opposed
7 Defendants’ summary judgment motion seeking dismissal of the Action; and began trial
8 preparations.

9 134. At all times throughout the pendency of the Action, Plaintiffs’ Counsel’s efforts
10 were driven and focused on advancing the litigation to bring about the most successful outcome
11 for the Class, whether through settlement or trial, by the most efficient means possible.

12 135. Attached hereto are declarations from Plaintiffs’ counsel, which are submitted in
13 support of the request for an award of attorneys’ fees and payment of litigation expenses. *See*
14 Declaration of Jonathan Gardner Filed on Behalf of Labaton Sucharow LLP in Support of
15 Application for Award of Attorneys’ Fees and Expenses (attached as Exhibit 5 hereto); and the
16 Declaration of James M. Wagstaffe Filed on Behalf of Kerr & Wagstaffe LLP in Support of
17 Application for Award of Attorneys’ Fees and Expenses (attached as Exhibit 6 hereto).

18 136. Included with these declarations are schedules that summarize the time of each
19 firm (including by category of work conducted), as well as the expenses incurred by category
20 (the “Fee and Expense Schedules”).⁷ The attached declarations and the Fee and Expense
21 Schedules report the amount of time spent by each attorney and professional support staff of
22 Plaintiffs’ counsel and the “lodestar” calculations, *i.e.*, their hours multiplied by their hourly
23 rates. *See* Exs. 5 and 6. As explained in each declaration, they were prepared from
24 contemporaneous time records regularly prepared and maintained by the respective firms. Kerr
25 & Wagstaffe’s legal fees have been partially advanced by Labaton Sucharow. *See* Ex. 6 ¶9.

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27
28 ⁷ Attached hereto as Exhibit 7 is a summary table of the lodestars and expenses of Plaintiffs’
counsel. Kerr & Wagstaffe did not incur any expenses for which it seeks reimbursement. *See*
Ex. 6 ¶8.

1 137. The hourly rates of Plaintiffs' counsel here range from \$700 to \$975 for partners,
2 \$700 per hour for of counsels, \$375 to \$675 for associates, and \$335 to \$435 per hour for the
3 attorneys that assisted with document review and deposition preparation. *See* Exs. 5-A and 6-A.
4 It is respectfully submitted that the hourly rates for attorneys and professional staff included in
5 these schedules are reasonable and customary for this type of complex commercial litigation.
6 Exhibit 8, attached hereto, is a table of hourly rates for defense firms compiled by Labaton
7 Sucharow from fee applications submitted by such firms nationwide in bankruptcy proceedings
8 in 2017. The analysis shows that across all types of attorneys, Plaintiffs' counsel's rates are
9 consistent with, or lower than, the firms surveyed.

10 138. Plaintiffs' counsel have collectively expended 41,813.90 hours in the prosecution
11 and investigation of the Action through September 30, 2018. *See* Ex. 7. The resulting collective
12 lodestar is \$21,548,609.00, which does not include any time that will necessarily be spent from
13 this date forward administering the Settlement, preparing for and attending the Settlement
14 Hearing, and assisting class members. *Id.* Pursuant to a lodestar "cross-check," applied within
15 the Ninth Circuit, the requested fee of 19% of the Settlement Fund (or \$8,075,000) results in a
16 *fractional* "multiplier" of 0.37 on the lodestar. Accordingly, Class Counsel is only seeking
17 approximately 37% of lodestar.

18 **E. The Skill Required and Quality of the Work**

19 139. Class Counsel Labaton Sucharow is among the most experienced and skilled
20 securities litigation law firms in the field. The expertise and experience of its attorneys are
21 described in Exhibit 5-D annexed hereto.

22 140. Since the passage of the PSLRA, Labaton Sucharow has been approved by courts
23 to serve as lead counsel in numerous notable securities class actions throughout the United
24 States, and has taken three of the approximately 21 post PSLRA securities class actions to trial.
25 Here, Labaton Sucharow attorneys have devoted considerable time and effort to this case,
26 thereby bringing to bear many years of collective experience. For example, Labaton Sucharow
27 has served as lead counsel in a number of high profile matters: *In re Am. Int'l Grp., Inc. Sec.*
28 *Litig.*, No. 04-8141 (S.D.N.Y.) (representing the Ohio Public Employees Retirement System,

1 State Teachers Retirement System of Ohio, and Ohio Police & Fire Pension Fund and reaching
2 settlements of \$1 billion); *In re HealthSouth Corp. Sec. Litig.*, No. 03-1501 (N.D. Ala.)
3 (representing the State of Michigan Retirement System, New Mexico State Investment Council,
4 and the New Mexico Educational Retirement Board and securing settlements of more than \$600
5 million); *In re Countrywide Sec. Litig.*, No. 07-5295 (C.D. Cal.) (representing the New York
6 State and New York City Pension Funds and reaching settlements of more than \$600 million); *In*
7 *re Schering-Plough Corp. / ENHANCE Securities Litigation*, Civil Action No. 08-397 (DMC)
8 (JAD) (D.N.J.) (representing Massachusetts Pension Reserves Investment Management Board
9 and reaching a settlement of \$473 million). *See* Ex. 5-D.

10 **XI. CLASS COUNSEL'S REQUEST FOR LITIGATION EXPENSES**

11 141. Class Counsel seeks payment from the Settlement Fund of \$1,988,789.66 in
12 litigation expenses reasonably and necessarily incurred in connection with prosecuting the claims
13 against Defendants. The Settlement Notice informs the Class that Class Counsel will apply for
14 payment of litigation expenses of no more than \$2,500,000. *See* Ex. 3-B at 1, 7. The amounts
15 requested are below this cap. To date, no objection to Class Counsel's request for expenses has
16 been raised.

17 142. As set forth in the Fee and Expense Schedules, Class Counsel has incurred a total
18 of \$1,988,789.66 in litigation expenses in connection with the prosecution of the Action. *See* Ex.
19 5-C. As attested to, these expenses are reflected on the books and records maintained by
20 Labaton Sucharow. These books and records are prepared from expense vouchers, check
21 records, and other source materials and are an accurate record of the expenses incurred. These
22 expenses are set forth in detail in Class Counsel's declaration, which identifies the specific
23 category of expense – e.g., testifying and consulting expert fees, travel costs, online/computer
24 research, litigation support, duplicating, telephone, and postage expenses.

25 143. A significant component of Class Counsel's expenses is the cost of testifying and
26 consulting experts, which totals \$1,188,565.43 or 60% of total expenses. As noted above, Class
27 Counsel retained Mr. Coffman to opine on market efficiency, in connection with the Class
28 Representatives' class certification motion. Mr. Coffman submitted two reports in connection

1 with class certification. Mr. Coffman was also retained, later on in the litigation, to submit a
2 merits expert report on materiality, causation, and the amount of damages suffered by the Class,
3 and to help develop a fair and reasonable Plan of Allocation. Class Counsel also retained
4 Thomas C. Knott, an FDA regulatory expert who provided a report on the Company's
5 compliance with FDA regulations and the effectiveness of Intuitive's procedures for handling
6 adverse events caused by its medical devices, and H. Nejat Seyhun, a professor of finance who
7 provided a report on insider trading and executive compensation. Each of these experts were
8 deposed and assisted with crafting arguments countering the Defendants' four experts. Class
9 Counsel also retained consulting experts in the fields of damages, FDA regulation and medical
10 devices, robotic surgery, and jury analysis. These professionals were essential to the prosecution
11 of the Action.

12 144. Class Counsel was required to work late hours and travel in connection with this
13 Action and incurred costs related to working meals, lodging, trial accommodations, and
14 transportation, which total \$247,805.08 or 12% of aggregate expenses. The travel involved
15 numerous appearances before the Court, attending approximately 24 depositions, and other trips
16 related to meeting with witnesses or the Class Representatives. Any first class airfare was
17 reduced to economy rates.

18 145. Class Counsel also seeks \$174,840.30 (9% of total expenses) relating to litigation
19 support services, such as the costs associated with electronic discovery and independent counsel
20 for confidential witnesses. Expenses totaling \$90,139.18 (5% of total expenses) were also
21 incurred in connection with court-reporting and the 24 depositions taken in the case.

22 146. Computerized research totals \$73,870.71 or 4% of total expenses. These are the
23 charges for computerized factual and legal research services, including LexisNexis, Westlaw,
24 Courtlink, Thompson, and PACER. These services allowed counsel to perform media searches
25 on Intuitive, obtain analysts' reports and financial data for Intuitive, and conduct legal research.

26 147. The other expenses for which Class Counsel seeks payment are the types of
27 expenses that are necessarily incurred in litigation and routinely charged to clients billed by the
28

1 hour. These expenses include, among others, duplicating costs, long distance telephone and
2 conference call charges, filing fees, and postage and delivery expenses.

3 148. All of the litigation expenses incurred, which total \$1,988,789.66, were necessary
4 to the successful prosecution and resolution of the claims against Defendants.

5 149. In view of the complex nature of the Action, the expenses incurred were
6 reasonable and necessary to pursue the interests of the Class. Accordingly, it is respectfully
7 submitted that the expenses incurred by Class Counsel should be paid in full from the Settlement
8 Fund.

9 **XII. CLASS REPRESENTATIVES' REIMBURSEMENT**
10 **PURSUANT TO THE PSLRA**

11 150. Additionally, in accordance with 15 U.S.C. §78u-4(a)(4), the Class
12 Representatives Hawaii ERS and Greater Pennsylvania seek reimbursement of their reasonable
13 costs and expenses (including lost wages) incurred in connection with their work representing
14 the Class in the aggregate amount of \$58,854.18. The amount of time and effort devoted to this
15 Action by each of the Class Representatives is detailed in the accompanying Declaration of
16 Elmira K.L. Tsang on behalf of Hawaii ERS and Declaration of James R. Klein on behalf of
17 Greater Pennsylvania, attached hereto as Exhibits 1 and 2. Hawaii ERS seeks \$49,754.18 in
18 connection with the 339.40 hours it dedicated to the litigation, and Greater Pennsylvania seeks
19 \$9,100 in connection with the 80 hours it dedicated to the litigation. *Id.* Class Counsel
20 respectfully submits that the amounts requested by Class Representatives are consistent with
21 Congress's intent, as expressed in the PSLRA, of encouraging institutional investors to take an
22 active role in commencing and supervising private securities litigation.

23 151. As discussed in the Fee Brief and in the Class Representatives' supporting
24 declarations, the Class Representatives have been committed to pursuing the Class's claims since
25 they became involved in the litigation back in 2013. As large institutional investors, the Class
26 Representatives have actively and effectively fulfilled their obligations as representatives of the
27 Class, complying with all of the many demands placed upon them during the litigation and
28 settlement of the Action, and providing valuable assistance to Class Counsel. For instance, the

1 Class Representatives engaged in time-consuming discovery efforts and searches to locate and
2 produce documents responsive to Defendants' discovery requests. Ex. 1 ¶5; Ex. 2 ¶5. In
3 addition, the Class Representatives prepared for, and testified at, four depositions in connection
4 with the class certification motion. *Id.* These efforts required employees of the Class
5 Representatives to dedicate time and resources to the Action that they would have otherwise
6 devoted to their regular duties.

7 152. The efforts expended by the Class Representatives during the course of the Action
8 are precisely the types of activities courts have found support reimbursement to class
9 representatives, and support the Class Representatives' request for reimbursement.

10 **XIII. THE REACTION OF THE CLASS TO THE FEE AND EXPENSE** 11 **APPLICATION**

12 153. As mentioned above, consistent with the Preliminary Approval Order, a total of
13 233,036 Settlement Notices have been mailed to potential Class Members advising them that
14 Class Counsel would seek an award of attorneys' fees not to exceed 19% of the Settlement Fund,
15 and payment of expenses in an amount not greater than \$2,500,000. *See* Ex. 3 ¶8. Additionally,
16 the Summary Notice was published in *Investor's Business Daily* and disseminated over *PR*
17 *Newswire*. *Id.* ¶9. The Settlement Notice has also been available on the case website maintained
18 by the Claims Administrator (*id.* ¶10) and on Labaton Sucharow's website.⁸

19 154. While the deadline set by the Court for Class Members to object to the requested
20 fees and expenses has not yet passed, to date no one has objected to the fee or expense request.
21 Class Counsel will respond to any objections that may be received in its reply papers, which are
22 due December 13, 2018.

23 **XIV. MISCELLANEOUS EXHIBITS**

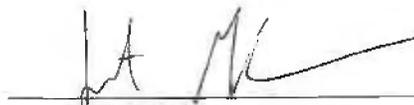
24 155. Attached hereto as Exhibit 9 is a compendium of unreported cases, in alphabetical
25 order, cited in the accompanying Fee Brief.

26
27
28 ⁸ The Class Representatives' motion for approval of the Settlement and Class Counsel's
motion for an award of attorneys' fees and expenses will also be posted on the case website and
Labaton Sucharow's website.

1 **XV. CONCLUSION**

2 156. In view of the significant recovery for the Class and the substantial risks of this
3 litigation, as described above and in the accompanying memorandum of law, the Class
4 Representatives and Class Counsel respectfully submit that the Settlement should be approved as
5 fair, reasonable, and adequate and that the proposed Plan of Allocation should likewise be
6 approved as fair, reasonable, and adequate. In view of the significant recovery in the face of
7 substantial risks, the quality and amount of work performed, the contingent nature of the fee, and
8 the standing and experience of Class Counsel, as described above and in the accompanying
9 memorandum of law, Class Counsel respectfully submits that a fee in the amount of 19% of the
10 Settlement Fund be awarded, that litigation expenses in the amount of \$1,988,789.66 be paid,
11 and that the Class Representatives be reimbursed \$58,854.18 (in the aggregate), pursuant to the
12 PSLRA.

13 I declare under penalty of perjury that the foregoing is true and correct. Executed on
14 November 15, 2018.

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17 JONATHAN GARDNER

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CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2018, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I will mail the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Service List, if any.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 15, 2018

/s/ Jonathan Gardner
JONATHAN GARDNER

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15 **Manual Notice List**

16 The following is the list of attorneys who are not on the list to receive e-mail notices for this case
17 (who therefore require manual noticing). You may wish to use your mouse to select and copy
18 this list into your word processing program in order to create notices or labels for these
19 recipients.

- 20 • **(No manual recipients)**
- 21
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- 23
- 24
- 25
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Exhibit 1

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16 *Lead Counsel for Plaintiffs and the Class*

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN JOSE DIVISION**

20 IN RE INTUITIVE SURGICAL
21 SECURITIES LITIGATION

Case No. 5:13-cv-01920-EJD (HRL)

**DECLARATION ON BEHALF OF
EMPLOYEES' RETIREMENT SYSTEM
OF THE STATE OF HAWAII IN
SUPPORT OF (I) FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
(II) CLASS COUNSEL'S MOTION FOR
ATTORNEYS' FEES AND EXPENSES**

Date: December 20, 2018
Time: 9:00 a.m.
Dept.: Courtroom 4, 5th Floor
Judge: Hon. Edward J. Davila

1 I, Elmira K.L. Tsang, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746:

2 1. I am a Deputy Attorney General at the Department of the Attorney General for the
3 State of Hawaii. I represent the Employees' Retirement System of the State of Hawaii ("Hawaii
4 ERS"), one of two Court-appointed Class Representatives in the above-captioned class action
5 (the "Action"). I respectfully submit this declaration in support of (i) Class Representative
6 Greater Pennsylvania Carpenters' Pension Fund ("Greater Pennsylvania") and Hawaii ERS's
7 (collectively, "Plaintiffs" or "Class Representatives") motion for final approval of the proposed
8 class action Settlement and approval of the proposed Plan of Allocation; and (ii) Class Counsel's
9 motion for an award of attorneys' fees and payment of expenses, including approval of Hawaii
10 ERS's request to recover the reasonable costs it incurred in connection with its representation of
11 the Class in the prosecution of this litigation, pursuant to the Private Securities Litigation Reform
12 Act of 1995 ("PSLRA").
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15 2. I am aware of and understand the requirements and responsibilities of a
16 representative plaintiff in a securities class action, including those set forth in the PSLRA. I have
17 knowledge of the matters set forth in this Declaration, as I have been directly involved in
18 monitoring and overseeing the prosecution of the Action, as well as the negotiations leading to
19 the Settlement, and I could and would testify competently to these matters. Prior to his
20 retirement on or about July 31, 2017, former Deputy Attorney General Brian Aburano was
21 primarily responsible for overseeing this Action and I regularly met with him to receive updates
22 regarding the prosecution of this Action. After Mr. Aburano retired, I became responsible for
23 overseeing this Action.
24

25 3. On November 18, 2013, the Court issued an order appointing Hawaii ERS as lead
26 plaintiff and approving its selection of Labaton Sucharow LLP as Lead Counsel for the proposed
27 class. ECF No. 50. On October 15, 2013, Plaintiffs filed the Amended Class Action Complaint,
28

1 which added Greater Pennsylvania as a named plaintiff in the litigation. ECF No. 48.

2 4. By order dated December 22, 2016, the Court certified the Action as a class action
3 and appointed Greater Pennsylvania and Hawaii ERS as Class Representatives. ECF No. 204.

4 **I. HAWAII ERS'S OVERSIGHT OF THE LITIGATION**

5 5. Throughout the litigation, Hawaii ERS received periodic status reports from Class
6 Counsel on case developments; participated in discovery; reviewed significant court filings; and
7 participated in frequent discussions with counsel concerning the prosecution of the Action, the
8 strengths and weaknesses to the claims, and the negotiations leading to the potential settlement.

9 In particular, during the course of the Action, Hawaii ERS: (a) regularly communicated and met
10 with counsel regarding the posture and progress of the case; (b) communicated with Greater
11 Pennsylvania; (c) reviewed and/or discussed all significant pleadings, motions, and briefs filed in
12 the Action; (d) reviewed and/or discussed all significant decisions in the Action; (e) coordinated
13 Hawaii ERS's document production and other discovery responses; (f) communicated with
14 Hawaii ERS's investment managers responsible for its investments in Intuitive stock; (g)
15 travelled from Hawaii to San Jose, California for the class certification motion hearing; (h)
16 traveled to San Francisco for three depositions; (i) consulted with counsel regarding settlement
17 negotiations; and (j) evaluated and approved the proposed Settlement.

18 **II. APPROVAL OF THE SETTLEMENT**

19 6. Through staff members' active participation in the Action, Hawaii ERS was kept
20 informed of the progress of the settlement negotiations in this litigation, and conferred with Class
21 Counsel regarding the parties' respective positions.

22 7. Based on staff members' involvement throughout the prosecution and resolution
23 of the claims asserted in the Action, Hawaii ERS believes that the Settlement provides a very
24 favorable recovery for the Class, particularly in light of the risks of continued litigation. Hawaii
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1 ERS believes that the proposed Settlement is fair, reasonable, and adequate to the Class and
2 strongly endorses approval of the Settlement by the Court.

3 **III. CLASS COUNSEL'S MOTION FOR AN AWARD OF**
4 **ATTORNEYS' FEES AND PAYMENT OF EXPENSES**

5 8. Hawaii ERS believes that Class Counsel's request for an award of attorneys' fees
6 of 19% of the Settlement Fund (\$8,075,000) is fair and reasonable in light of the substantial work
7 Class Counsel performed on behalf of the Class. Hawaii ERS has evaluated Class Counsel's
8 request by considering the amount and quality of the work performed, the recovery obtained for
9 the Class, and the risks of the Action.

10 9. Hawaii ERS further believes that the litigation expenses being requested by Class
11 Counsel are reasonable and represent expenses necessary for the prosecution and resolution of
12 the claims in the Action.

13 10. Hawaii ERS understands that reimbursement of a class representative's
14 reasonable costs and expenses is authorized under the PSLRA, 15 U.S.C. § 78u-4(a)(4). For this
15 reason, in connection with Class Counsel's request for payment of litigation expenses, Hawaii
16 ERS is seeking reimbursement for the costs that it incurred directly related to its representation
17 of the Class in the Action.

18 11. I am a Deputy Attorney General at the Department of the Attorney General for the
19 State of Hawaii and personally worked 62.5 hours during the pendency of the Action during
20 which I reviewed and discussed pleadings and briefs; discussed the Action with staff members
21 and counsel; oversaw discovery responses; obtained approval of the Board of the Hawaii Public
22 Employment Retirement System for the proposed Settlement; and attended oral argument in
23 connection with class certification. In my capacity as Deputy Attorney General, I provide legal
24 support to Hawaii ERS and advised them on this Action. My federally approved billing rate, as
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1 a Deputy Attorney General for the State of Hawaii, is \$147.36 per hour. Therefore, the value of
2 the time I spent on this case is \$9,210.00.

3 12. Brian Aburano, a former Deputy Attorney General at the Department of the
4 Attorney General for the State of Hawaii, personally worked 235.7 hours in connection with this
5 litigation, during which he reviewed and discussed pleadings and briefs; discussed the Action
6 with staff members, counsel and Greater Pennsylvania; oversaw discovery responses; flew to
7 San Francisco, California and provided deposition testimony on behalf of Hawaii ERS. As a
8 former Deputy Attorney General, Mr. Aburano's duties were the same as mine, as stated above.
9 Mr. Aburano's federally approved billing rate, as a Deputy Attorney General for the State of
10 Hawaii, is \$147.36 per hour. Therefore, the value of the time Mr. Aburano spent on this case is
11 \$34,732.75.
12

13 13. Diane Kishimoto, Deputy Attorney General at the Department of the Attorney
14 General for the State of Hawaii, dedicated at least 1.2 hours to the Action. This was time she did
15 not spend conducting Hawaii ERS's usual business. Her federally approved billing rate is
16 \$147.36 and the total cost of her time is \$176.83.
17

18 14. Additionally, other representatives of Hawaii ERS outside of the Attorney
19 General's office performed work in connection with the Action. They primarily helped to
20 respond to discovery requests and assisted in Hawaii ERS's efforts to compile and provide
21 responsive information.
22

- 23 a. Vijoy Chattergy, Chief Investment Officer of Hawaii ERS, dedicated at least 20
24 hours to the Action, primarily in connection with appearing for a deposition in
25 San Francisco, California. His effective hourly rate is \$172.68, based on his
26 annual salary and benefits, and the total cost of his time is \$3,453.60.
27
28

Exhibit 2

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28 *Lead Counsel for Plaintiffs and the Class*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE INTUITIVE SURGICAL
SECURITIES LITIGATION

Case No. 5:13-cv-01920-EJD (HRL)

**DECLARATION ON BEHALF OF
GREATER PENNSYLVANIA
CARPENTERS' PENSION FUND IN
SUPPORT OF (I) FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
(II) CLASS COUNSEL'S MOTION FOR
ATTORNEYS' FEES AND EXPENSES**

Date: December 20, 2018
Time: 9:00 a.m.
Dept.: Courtroom 4, 5th Floor
Judge: Hon. Edward J. Davila

1 I, James R. Klein, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746:

2 1. I am the Administrator of Greater Pennsylvania Carpenters' Pension Fund
3 ("Greater Pennsylvania" or the "Fund"). As Administrator, I participate in and oversee decisions
4 regarding the administration of the Fund, which is one of two Court-appointed Class
5 Representatives in the above-captioned class action (the "Action"). I respectfully submit this
6 declaration in support of (i) the motion of Class Representative Employees' Retirement System
7 of the State of Hawaii ("Hawaii ERS") and Greater Pennsylvania (collectively, "Plaintiffs" or
8 "Class Representatives") for final approval of the proposed class action Settlement and approval
9 of the proposed Plan of Allocation; and (ii) Class Counsel's motion for an award of attorneys'
10 fees and payment of expenses, including approval of Greater Pennsylvania's request to recover
11 the reasonable costs it incurred in connection with its representation of the Class in the
12 prosecution of this litigation, pursuant to the Private Securities Litigation Reform Act of 1995
13 ("PSLRA").
14
15

16 2. I am aware of and understand the requirements and responsibilities of a
17 representative plaintiff in a securities class action, including those set forth in the PSLRA. I have
18 knowledge of the matters set forth in this Declaration, as I have been directly involved in
19 monitoring and overseeing the prosecution of the Action, as well as the negotiations leading to
20 the Settlement, and I could and would testify competently to these matters.
21

22 3. On November 18, 2013, the Court issued an order appointing Hawaii ERS as lead
23 plaintiff and approving its selection of Labaton Sucharow LLP as Lead Counsel for the proposed
24 class. ECF No. 50. On October 15, 2013, Plaintiffs filed the Amended Class Action Complaint,
25 which added Greater Pennsylvania as a named plaintiff in the litigation. ECF No. 48.

26 4. By order dated December 22, 2016, the Court certified the Action as a class action
27 and appointed Greater Pennsylvania and Hawaii ERS as Class Representatives. ECF No. 204.
28

1 **I. GREATER PENNSYLVANIA’S OVERSIGHT OF THE LITIGATION**

2 5. Throughout the litigation, Greater Pennsylvania received periodic status reports
3 from Class Counsel on case developments; participated in discovery; reviewed significant court
4 filings; and participated in discussions with counsel concerning the prosecution of the Action, the
5 strengths and weaknesses to the claims, and the negotiations leading to the potential settlement.
6 In particular, during the course of the Action, Greater Pennsylvania: (a) regularly communicated
7 with counsel regarding the posture and progress of the case; (b) communicated with Hawaii
8 ERS; (c) reviewed and/or discussed all significant pleadings, motions, and briefs filed in the
9 Action; (d) reviewed and/or discussed all significant decisions in the Action; (e) coordinated
10 Greater Pennsylvania’s document production and other discovery responses; (f) communicated
11 with Greater Pennsylvania’s investment managers responsible for its investments in Intuitive
12 stock; (g) traveled to San Francisco for a deposition; (i) consulted with counsel regarding
13 settlement negotiations; and (j) evaluated and approved the proposed Settlement.
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15

16 **II. APPROVAL OF THE SETTLEMENT**

17 6. Through my active participation in the Action, Greater Pennsylvania was kept
18 informed of the progress of the settlement negotiations in this litigation, and conferred with Class
19 Counsel regarding the parties’ respective positions.

20 7. Based on my involvement throughout the prosecution and resolution of the claims
21 asserted in the Action, Greater Pennsylvania believes that the Settlement provides a very
22 favorable recovery for the Class, particularly in light of the risks of continued litigation. Greater
23 Pennsylvania believes that the proposed Settlement is fair, reasonable, and adequate to the Class
24 and strongly endorses approval of the Settlement by the Court.
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1 **III. CLASS COUNSEL’S MOTION FOR AN AWARD OF**
2 **ATTORNEYS’ FEES AND PAYMENT OF EXPENSES**

3 8. Greater Pennsylvania believes that Class Counsel’s request for an award of
4 attorneys’ fees of 19% of the Settlement Fund (\$8,075,000) is fair and reasonable in light of the
5 substantial work Class Counsel performed on behalf of the Class. Greater Pennsylvania has
6 evaluated Class Counsel’s request by considering the amount and quality of the work performed,
7 the recovery obtained for the Class, and the risks of the Action.

8 9. Greater Pennsylvania further believes that the litigation expenses being requested
9 by Class Counsel are reasonable and represent expenses necessary for the prosecution and
10 resolution of the claims in the Action.

11 10. Greater Pennsylvania understands that reimbursement of a class representative’s
12 reasonable costs and expenses is authorized under the PSLRA, 15 U.S.C. § 78u-4(a)(4). For this
13 reason, in connection with Class Counsel’s request for payment of litigation expenses, Greater
14 Pennsylvania is seeking reimbursement for the costs that it incurred directly related to its
15 representation of the Class in the Action.

16 11. The time that my colleagues and I devoted to the representation of the Class in
17 this Action was time that we otherwise would have spent on other work for Greater
18 Pennsylvania, and thus, represented a cost to the Fund. Accordingly, Greater Pennsylvania seeks
19 reimbursement in the amount of \$9,100.00.

20 12. I personally dedicated approximately 70 hours to the prosecution of the Action
21 during which I reviewed and discussed pleadings and briefs; discussed the Action with staff
22 members, counsel and Hawaii ERS; oversaw discovery responses; evaluated and approved the
23 proposed Settlement; and was deposed in San Francisco, California. This was time that I did not
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1 spend conducting the Fund's usual business. My effective hourly rate is \$120.00 per hour.¹
2 Therefore, the value of the time I spent on this case is \$8,400.00.

3 13. Additionally, Michael Swiderski, the Fund's Controller, performed work in
4 connection with the Action at my direction. He helped respond to discovery requests and
5 assisted in the Fund's efforts to compile and provide responsive information and performed other
6 necessary tasks at my direction. In total, Mr. Swiderski dedicated at least 10 hours to this Action
7 on behalf of the Fund. This was time that he did not spend conducting the Fund's usual business.
8 Mr. Swiderski's effective hourly rate is \$70.00 per hour.² The total cost of his time is \$700.00.

9
10 14. Consequently, Greater Pennsylvania seeks reimbursement in the amount of
11 \$9,100.00, which represents the cost of the 80 hours that its representatives devoted to
12 supervising and participating in the litigation.

13
14 **IV. CONCLUSION**

15 15. In conclusion, Greater Pennsylvania was closely involved throughout the
16 prosecution and settlement of the claims in this Action, strongly endorses the Settlement as fair,
17 reasonable and adequate, and believes that the Settlement represents a significant recovery for
18 the Class. Greater Pennsylvania respectfully requests that the Court approve (i) Class
19 Representatives' motion for final approval of the proposed Settlement and Plan of Allocation;
20 and (ii) Class Counsel's motion for an award of attorneys' fees and payment of expenses,
21 including Greater Pennsylvania's request for reimbursement of the reasonable costs it incurred in
22 prosecuting the Action on behalf of the Class.
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27 _____
¹ This hourly rate is based upon salary, benefits, and related taxes.

28 ² This hourly rate is based upon salary, benefits, and related taxes.

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I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Executed this 2ND day of November, 2018.



JAMES R. KLEIN

EXHIBIT 3

1 **KERR & WAGSTAFFE LLP**
JAMES M. WAGSTAFFE (95535)
2 IVO LABAR (203492)
101 Mission Street, 18th Floor
3 San Francisco, CA 94105-1727
Telephone: (415) 371-8500
4 Fax: (415) 371-0500
wagstaffe@kerrwagstaffe.com
5 labar@kerrwagstaffe.com

6 *Local Counsel for Plaintiffs and the Class*

7 **LABATON SUCHAROW LLP**
JONATHAN GARDNER (*pro hac vice*)
8 SERENA P. HALLOWELL (*pro hac vice*)
MICHAEL P. CANTY (*pro hac vice*)
9 CHRISTINE M. FOX (*pro hac vice*)
THEODORE J. HAWKINS (*pro hac vice*)
10 ALEC T. COQUIN (*pro hac vice*)
140 Broadway
11 New York, NY 10005
Telephone: 212/907-0700
12 212/818-0477 (fax)
jgardner@labaton.com
13 shallowell@labaton.com
mcanty@labaton.com
14 cfox@labaton.com
thawkins@labaton.com
15 acoquin@labaton.com

16 *Lead Counsel for Plaintiffs and the Class*

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN JOSE DIVISION

20
21 IN RE INTUITIVE SURGICAL
SECURITIES LITIGATION
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Case No. 5:13-cv-01920-EJD (HRL)

**DECLARATION REGARDING (A)
MAILING OF THE SETTLEMENT
NOTICE AND PROOF OF CLAIM
FORM; (B) PUBLICATION OF
SUMMARY NOTICE; AND (C)
REQUESTS FOR EXCLUSION IN
CONNECTION WITH SETTLEMENT
NOTICE**

Dept.: Courtroom 4
Judge: Hon. Edward J. Davila

1 I, Brian Stone, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746:

2 1. I am a Senior Project Manager for Epiq Class Action and Claims Solutions, Inc.
3 (“Epiq”), and formerly Assistant Director of Operations at Garden City Group, LLC (“GCG”),¹
4 located at 1985 Marcus Avenue, Suite 200, Lake Success, New York 11042. Pursuant to this
5 Court’s October 4, 2018 Order Granting Preliminary Approval of Class Action Settlement,
6 Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of
7 Settlement (the “Preliminary Approval Order”) (ECF No. 304), GCG was authorized to act as the
8 Claims Administrator in connection with the Settlement of the above-captioned action (the
9 “Action”).² (GCG was also previously appointed² by the Court to act as the Administrator in
10 connection with notice of the pendency of the Action). The following statements are based on
11 my personal knowledge of the facts set forth herein and, if called on to do so, I could and would
12 testify competently thereto.
13
14

15 2. As more fully described in the Affidavit Regarding Mailing of Notice of
16 Pendency of Class Action and Receipt of Requests for Exclusion Submitted Pursuant to Court
17 Order Dated March 12, 2018 (ECF No. 285) (the “Class Notice Affidavit”), GCG previously
18 conducted a mailing campaign in which it mailed the Notice of Pendency of Class Action (the
19 “Class Notice”) to potential Class Members (the “Class Notice Mailing”). The Class Notice
20 notified potential Class Members that the Action was pending and provided them with the
21 opportunity to request exclusion from the Class. Six valid requests for exclusion were received
22 in connection with the Class Notice, five of which were noted in the Class Notice Affidavit. The
23 sixth exclusion request was originally marked deficient, but has since been cured. *See* Exhibit A
24 hereto.
25
26

27 ¹ GCG was acquired by Epiq on June 15, 2018 and is now continuing operations as part of Epiq.

28 ² All capitalized terms not otherwise defined in this document shall have the meaning ascribed to them in the Stipulation and Agreement of Settlement, dated September 11, 2018 (the “Stipulation”).

1 **MAILING OF THE SETTLEMENT NOTICE AND PROOF OF CLAIM FORM**

2 3. Pursuant to the Preliminary Approval Order, GCG (now as part of Epiq)
3 disseminated the Notice of Proposed Class Action Settlement and Motion for Attorneys’ Fees
4 and Expenses (the “Settlement Notice”) and the Proof of Claim and Release (the “Proof of
5 Claim”) and, collectively with the Settlement Notice, the “Claim Packet”) to potential Class
6 Members. A copy of the Claim Packet is attached hereto as Exhibit B.
7

8 4. GCG created a mailing file consisting of 123,556 names and addresses compiled
9 as a result of the Class Notice Mailing. On October 15, 2018, Claim Packets were disseminated
10 to those 123,556 potential Class Members by first-class mail. In addition, 45,779 Claim Packets
11 were sent to three nominees (banks, brokers, and other institutions that hold securities in “street
12 name”) on behalf of beneficial owners and referred to herein as “Nominees”) that had requested
13 Class Notices be sent to them in bulk for forwarding to their beneficial owner clients.
14

15 5. On October 15, 2018, Claim Packets were also mailed to 1,755 Nominees listed in
16 GCG’s proprietary nominee database. As in most class actions of this nature, the majority of
17 potential Class Members are beneficial purchasers whose securities are held in “street name” -
18 *i.e.*, the securities are purchased by brokerage firms, banks, institutions and other third-party
19 nominees in the name of the nominee, on behalf of the beneficial purchasers. GCG maintains a
20 proprietary database with names and addresses of the largest and most common U.S. banks,
21 brokerage firms, and nominees, including national and regional offices of certain nominees (the
22 “Nominee Database”).³ The Settlement Notice included a statement, consistent with the Court’s
23 Preliminary Approval Order, explaining that if the Nominees had previously submitted names
24 and addresses in connection with the Class Notice Mailing, they need not provide that
25 information again unless they have additional names and addresses of potential Class Members
26
27

28 ³ While this Nominee Database was substantially the same as the database used for the Class Notice Mailing, GCG continuously updates its Nominee Database with new addresses when they are received, and eliminates duplicate or obsolete addresses when identified (as brokers merge or go out of business).

1 to provide to GCG. The statement also explained that Nominees who previously elected to mail
2 the Class Notice directly to Class Members now had to mail Claim Packets provided by GCG to
3 those Class Members. The Nominees were further instructed that if they had additional names
4 and addresses, or required additional bulk mailings, they were to provide that information to
5 GCG within seven calendar days of receipt of the Claim Packet.
6

7 6. Since October 15, 2018, GCG has received an additional 21,775 names and
8 addresses of potential Class Members from individuals or Nominees. GCG promptly sent a
9 Claim Packet to each such name and address. In addition, during this same time period, GCG
10 received requests from Nominees for 39,861 Claim Packets to be forwarded directly by the
11 Nominees to potential Class Members. GCG promptly provided the requested Claim Packets to
12 the Nominees.
13

14 7. In total, 6,213 Claim Packets have been returned to GCG as undeliverable.

15 8. In the aggregate, to date, GCG has mailed 233,036 Claim Packets to Nominees
16 and potential Class Members. This includes 310 Claim Packets that were returned as
17 undeliverable and then re-mailed to updated addresses provided by the U.S. Postal Service.
18

19 **PUBLICATION OF SUMMARY NOTICE**

20 9. Pursuant to the Court's Preliminary Approval Order, GCG's Notice & Media
21 Team caused the Summary Notice of Proposed Class Action Settlement and Motion for
22 Attorneys' Fees and Expenses (the "Summary Notice") to be published on October 22, 2018, in
23 *Investor's Business Daily* ("IBD"). Attached hereto as Exhibit C is the affidavit of Rodney
24 Taylor, attesting to publication of the Summary Notice in IBD. On October 22, 2018, the
25 Summary Notice was also transmitted over the internet using *PR Newswire*. Attached hereto as
26 Exhibit D is a Confirmation Report for the PR Newswire, attesting to that issuance.
27
28

1 **WEBSITE AND TELEPHONE HELPLINE**

2 10. On October 15, 2018, GCG, in coordination with Class Counsel, updated the
3 website designated for the Action (www.IntuitiveSurgicalSecuritiesLitigation.com), with
4 information regarding the Settlement, including important dates and deadlines (the “Settlement
5 Website”). The homepage of the Settlement Website contains a general overview of the Action.
6 Visitors to the Settlement Website can download a copy of the Settlement Notice, Proof of
7 Claim, Stipulation and other court documents. Visitors to the Settlement Website can also
8 complete and submit a Proof of Claim through the Settlement Website. The Settlement Website
9 became accessible on April 9, 2018 (in connection with the Class Notice), and as noted above,
10 was updated with information regarding the Settlement on October 15, 2018. The Settlement
11 Website is accessible 24 hours a day, seven days a week.
12

13 11. GCG established a toll-free Interactive Voice Response (“IVR”) system to
14 accommodate potential Class Members. This system became operational on April 9, 2018 (in
15 connection with the Class Notice), and was updated on October 15, 2018, with information about
16 the Settlement. As of November 13, 2018, GCG has received a total of 335 calls.
17

18 12. GCG also established an email address,
19 info@intuitivesurgicalsecuritieslitigation.com, to allow potential Class Members to obtain
20 information about the Action and/or request a Claim Packet.
21

22 13. The website, toll-free telephone helpline, and email address were set forth in the
23 Claim Packet and the Summary Notice.

24 **REPORT ON REQUESTS TO OPT BACK INTO THE CLASS**
25 **OR FOR EXCLUSION**

26 14. As described in the Settlement Notice, potential Class Members were again
27 notified that they could elect to exclude themselves from the Class (under certain circumstances
28 described in Question 10 of the Settlement Notice) or request to opt-back into the Class (if they

1 previously submitted a request for exclusion in connection with the Class Notice, as described in
2 Question 12 of the Settlement Notice). Written requests must be received by November 29,
3 2018, and be submitted to *In re Intuitive Surgical Securities Litigation*, c/o GCG, P.O. Box
4 10359, Dublin, OH 43017-0359. From the mailing of the Settlement Notice through November
5 13, 2018, GCG has received one request for exclusion, attached as Exhibit E, and has not
6 received any requests to opt-back into the Class from potential Class Members who had
7 previously submitted a request for exclusion.
8

9
10 I declare under penalty of perjury, under the laws of the United States, that the foregoing
11 is true and correct.

12 Executed on November 13, 2018, in Lake Success, New York.

13
14 

15 BRIAN STONE
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EXHIBIT A

Please exclude me from the class in re
Intuitive Surgical Securities Litigation, No.
5:13-cv-01920-EJD.



DOREN LICHTMAN



ORCHARD LAKE, MI. 48324



Thanks,

Doren Lichtman

In re Intuitive Surgical Securities Litigation

c/o GCG

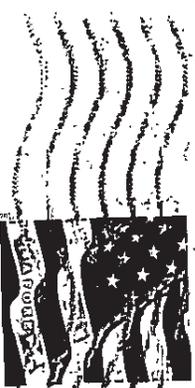
P.O. Box 10359

Dublin, OH 43017-0359

IMPORTANT COURT PAPERS ENCLOSED
Forwarding Service Requested

REGISTERED MAIL PERM 310

POSTAGE WILL BE PAID BY ADDRESSEE



In re Intuitive Surgical Securities Litigation

c/o GCG

P.O. Box 10359

Dublin, OH 43017-0359

43017-0359



In re Intuitive Surgical Securities Litigation
c/o GCG
P.O. Box 10359
Dublin, OH 43017-0359



June 29, 2018

Doreen Lichtman
[Redacted]
Orchard Lake, MI 48324

NOTICE OF DEFICIENT REQUEST FOR EXCLUSION

Dear Ms. Lichtman:

We are the Administrator in the certified securities class action, *In re Intuitive Surgical Securities Litigation*, Case No. 5:13-cv-01920-EJD (N.D. Cal). We have received your correspondence requesting exclusion from the Class in connection with the Notice of Pendency of Class Action ("Class Notice") in the referenced action. We are writing to inform you that your request is deficient because it does not comply with the instructions in the Class Notice approved by the Court. Those instructions require that you **state the number of shares of Intuitive Surgical, Inc. common stock that you purchased and sold during the Class Period from February 6, 2012 through July 18, 2013, inclusive, as well as the dates and prices of each such purchase, acquisition, and sale.** If you no longer have documents with your transactional information, you can request them from your broker. We do not have information about your transactions.

This information is needed in order to determine that you are a Class Member. If you **DID NOT purchase** Intuitive common stock during the period from **February 6, 2012 through July 18, 2013**, YOU ARE NOT A CLASS MEMBER AND DO NOT NEED TO REQUEST EXCLUSION. This case will not impact you.

If you are a Class Member, in order to be excluded from the Class, you must provide us with your transactional information. **If you do not correct your request, and you did purchase stock during the Class Period, you will remain a member of the Class and will be bound by all orders and judgments in the case.**

The missing information is needed by July 19, 2018. You may provide us with the information by mail, addressed to *In re Intuitive Surgical Securities Litigation*, c/o GCG, P.O. Box 10359 Dublin, OH 43017-0359 or by e-mail to info@IntuitiveSurgicalSecuritiesLitigation

If you have questions, please call (844) 850-7746.

Sincerely, I bought 10 shares for \$4,984.00 on 7-20-2012
I sold 10 shares for 4,689.90 on 7-23-2012

Please fulfill my request for exclusion.
Thanks,
Doreen Lichtman
Administrator
Intuitive Surgical Securities Litigation

Irving Lichtman
Orchard Lake, MI 48324-2351

*See substantive surgical documents attached
c/o E.C.E., P.O. Box 10359
Dublin, OH 43017-0359*

METROPLEX MI 480
05 JUL 2018 PM 1 L



43017-035959

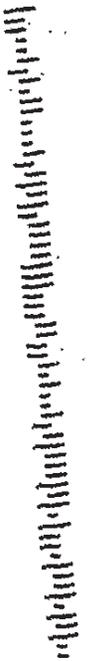


EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE INTUITIVE SURGICAL
SECURITIES LITIGATION

Case No. 5:13-cv-01920-EJD (HRL)

NOTICE OF PROPOSED CLASS ACTION
SETTLEMENT AND MOTION FOR
ATTORNEYS' FEES AND EXPENSES

If you purchased or acquired the publicly traded common stock of Intuitive Surgical, Inc. during the period from February 6, 2012 through July 18, 2013, inclusive (the "Class Period"), you may be entitled to receive money from a class action settlement.

A Federal Court authorized this notice. This is not a solicitation from a lawyer.

This Settlement Notice describes important rights you may have and what steps you must take if you wish to participate in the Settlement or wish to be excluded from the Class. ***This notice is different from the Notice of Pendency of Class Action ("Class Notice"), which you might have received in the Spring of 2018 alerting you to the fact that the Class had been certified.***

- The Settlement, if approved by the Court, will provide **\$42,500,000** (on average approximately \$1.78 per allegedly damaged share before the deduction of Court-approved fees and expenses) in cash for the benefit of the Class (described below).¹
- The Settlement resolves claims by the Employees' Retirement System of the State of Hawaii ("Hawaii ERS") and Greater Pennsylvania Carpenters' Pension Fund ("Greater Pennsylvania") (collectively, "Class Representatives" or "Plaintiffs"), in a class action against Intuitive Surgical, Inc. ("Intuitive" or the "Company"), and Gary S. Guthart, Marshall L. Mohr, and Lonnie M. Smith (collectively, the "Individual Defendants," and, together with Intuitive, the "Defendants").
- Class Representatives claim that Defendants made materially false and misleading statements and omissions concerning the safety and efficacy of the da Vinci Surgical System and the Company's growth, revenues, income and products liability. The complaint in the Action further alleged that the price of Intuitive publicly traded common stock was artificially inflated as a result of the allegedly false and misleading statements, and declined when the truth was allegedly revealed. Defendants deny all of the Class Representatives' allegations and further deny that they did anything wrong. Defendants also deny that the Class Representatives or the Class suffered damages or that the price of Intuitive common stock was artificially inflated by reasons of alleged misrepresentations, nondisclosures or otherwise. The Court did not decide in favor of either the Class or Defendants.
- Class Counsel, on behalf of Plaintiffs' counsel, will ask the Court for no more than \$8,075,000 in attorneys' fees (19% of the Settlement Fund) and up to \$2,500,000 in litigation expenses, which will include a reimbursement request for the Class Representatives pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA"). If approved by the Court, these amounts (totaling on average approximately \$0.44 per allegedly damaged share) will be deducted from the \$42,500,000 Settlement.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made only if the Court approves the Settlement and after any appeals are resolved. Please be patient.
- **If you are a Class Member, your legal rights will be affected by this Settlement whether you act or do not act. Please read this Settlement Notice carefully.**

¹ All capitalized terms not defined in this Settlement Notice have the meanings provided in the Stipulation and Agreement of Settlement, dated as of September 11, 2018 (the "Stipulation"), which can be viewed at www.intuitivesurgicalsecuritieslitigation.com.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A PROOF OF CLAIM FORM BY DECEMBER 6, 2018	The <u>only</u> way to get a payment. (See Question 8 below.)
OPT-BACK INTO THE CLASS BY SUBMITTING A REQUEST BY NOVEMBER 29, 2018	If you previously submitted a request for exclusion from the Class in connection with the previously mailed Class Notice and now want to be part of the Class in order to receive a payment, you must follow the steps for "Opting-Back Into the Class." (See Question 12 below.)
EXCLUDE YOURSELF BY NOVEMBER 29, 2018	You will get no payment. This is the only option that, assuming your claim is timely brought, might allow you ever to bring or be part of any other lawsuit against the Defendants and the other Released Defendant Parties concerning the Released Claims. (See Question 10 below.)
OBJECT BY NOVEMBER 29, 2018	Write to the Court about why you do not like the Settlement, the Fee and Expense Application, or the proposed Plan of Allocation. (See Question 15 below.)
GO TO A HEARING ON DECEMBER 20, 2018	Ask to speak in Court about the Settlement. (See Question 18 below.)
DO NOTHING	Get no payment AND give up your rights to bring your own individual action.

Identification of Attorneys' Representatives

Class Representatives and the Class are being represented by Labaton Sucharow LLP, Court-appointed Class Counsel. Any questions regarding the Settlement should be directed to Jonathan Gardner, Labaton Sucharow LLP, 140 Broadway, New York, NY 10005, (888) 219-6877, www.labaton.com, settlementquestions@labaton.com. **Please do not contact the Court regarding this notice.**

BASIC INFORMATION

1. Why did I get this Settlement Notice?

The Court authorized that this Settlement Notice be sent to you because you or someone in your family may have purchased or acquired the publicly traded common stock of Intuitive from February 6, 2012 through July 18, 2013, inclusive.

If this description applies to you or someone in your family, you have a right to know about the proposed Settlement of this class action lawsuit, and about all of your options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, an administrator appointed by the Court will make the payments that the Settlement allows.

This Settlement Notice explains the lawsuit, the Settlement, Class Members' legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of this Action is the United States District Court for the Northern District of California (the "Court"), and the case is known as *In re Intuitive Surgical Securities Litigation*, Civil Action No. 5:13-cv-01920-EJD (N.D. Cal.) (the "Action"). The Action is assigned to the Honorable Edward J. Davila, United States District Judge.

The Court did not decide in favor of either Class Representatives or Defendants. Instead, they have agreed to a settlement. For Class Representatives, the principal reason for the Settlement is the certain benefit of a substantial cash recovery for the Class, in contrast to the risk that the Court may grant, in whole or in part, some or all of Defendants' pending motion for summary judgment, the uncertainty of being able to prove the allegations at a jury trial, and the difficulties and delays inherent in such litigation (including any appeals).

For Defendants, who deny all allegations of wrongdoing or liability whatsoever and deny that any Class Members were damaged, the principal reason for entering into the Settlement is to bring to an end the substantial burden, expense, uncertainty, and risk of further litigation.

2. What is this lawsuit about? What has happened so far?

Class Representatives allege that Intuitive and certain of its executives violated Sections 10(b) and 20(a) of the Securities and Exchange Act of 1934 (the “Exchange Act”) by making materially false and misleading statements regarding the safety and efficacy of the da Vinci Surgical System and Intuitive’s compliance with FDA regulations. Class Representatives also allege that Defendants violated Section 20(A) of the Exchange Act by profiting from the sale of Intuitive stock while in possession of material nonpublic information. Among other things, Class Representatives allege that Defendants failed to disclose information about the safety and efficacy of the da Vinci Surgical System. Class Representatives further allege that when news of the safety and regulatory issues was released to the public, the price of Intuitive common stock declined and Class Members suffered damages as a result.

Defendants deny all of Class Representatives allegations and further deny that they did anything wrong. Defendants also deny that Class Representatives or the Class suffered damages or that the price of Intuitive common stock was artificially inflated by reasons of alleged misrepresentations, nondisclosures or otherwise.

The Action was commenced on April 26, 2013. On November 18, 2013, the Court issued an Order appointing Hawaii ERS as lead plaintiff pursuant to the PSLRA. In the same Order, the Court approved lead plaintiff’s selection of Labaton Sucharow LLP as lead counsel.

On October 15, 2013, Hawaii ERS and named-plaintiff Greater Pennsylvania filed the Amended Class Action Complaint (the “Complaint”). On December 16, 2013, Defendants filed their motion to dismiss the Complaint, which triggered a stay of discovery under the PSLRA. On January 30, 2014, Plaintiffs filed their memorandum of law in opposition to the motion to dismiss and, on February 28, 2014, Defendants filed their reply papers. On August 21, 2014, the Court entered an Order that granted in part, and denied in part, Defendants’ motion to dismiss. On October 14, 2014, Defendants filed a motion for leave to file a motion for reconsideration. On October 22, 2014, the Court granted the motion and on November 5, 2014, Defendants filed their motion for reconsideration. Plaintiffs opposed the motion on November 19, 2014, and Defendants filed a reply on November 26, 2014. The Court denied the motion for reconsideration on December 15, 2014, and lifted the PSLRA discovery stay.

On September 1, 2015, Plaintiffs filed a motion for class certification. On December 23, 2016, following briefing on the motion and oral argument, the Court entered an Order granting the class certification motion, certifying the Class as defined below, appointing Plaintiffs as “Class Representatives,” and appointing lead counsel as “Class Counsel.” On January 5, 2017, Defendants filed, in the United States Court of Appeals for the Ninth Circuit, a Petition Pursuant to F.R.C.P. 23(f) for Permission to Appeal the District Court’s Order Granting Class Certification. On October 30, 2017, the Ninth Circuit denied the petition. Defendants’ motion for reconsideration was denied by Order dated November 22, 2017.

On January 26, 2017, Class Representatives filed a Second Amended Class Action Complaint (“Second Amended Complaint”) to conform the pleadings to the evidence. On February 9, 2017, Defendants moved to dismiss the Second Amended Complaint and discovery was stayed pursuant to the PSLRA. Class Representatives opposed Defendants’ motion on February 23, 2017, and Defendants filed reply papers on March 2, 2017. The Court denied the motion to dismiss the Second Amended Complaint on September 29, 2017, and discovery resumed.

By Order entered March 12, 2018, the Court granted Class Representatives’ motion, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for approval of the proposed form and content of notices of pendency to be disseminated to the Class. Beginning on April 9, 2018, the Class Notice was mailed to potential Class Members, and on April 23, 2018, the Summary Notice of Pendency of Class Action was published in *Investor’s Business Daily* and transmitted over *PR Newswire*. The Class Notice informed investors of the class action, their right to be excluded from the Class, the requirements for requesting exclusion, and of a June 8, 2018 deadline for seeking exclusion.

On February 9, 2018, Defendants moved for summary judgment. Class Representatives filed their opposition papers on March 23, 2018, and, on April 23, 2018, Defendants filed their reply papers. The motion was pending when the Parties agreed to a settlement in principle. Trial of the Action was scheduled by the Court to begin on October 30, 2018.

Class Representatives, through Class Counsel, have conducted a thorough investigation of the claims, defenses, and underlying events and transactions that are the subjects of the Action. This process included reviewing and analyzing: (i) documents filed publicly by the Company with the U.S. Securities and Exchange Commission; (ii) publicly available information, including press releases, news articles, and other public statements issued by or concerning the Company and the Defendants; (iii) research reports issued by financial analysts concerning the Company; (iv) other publicly available information and data concerning the Company; (v) approximately 525,651 pages of documents produced by Defendants during discovery and approximately 28,726 pages of documents produced by third-parties; and (vi) the applicable law governing the claims and potential defenses.

Counsel for Class Representatives and Defendants have also completed voluminous class, fact, and expert discovery that included: taking or defending approximately 24 depositions, including the depositions of Class Representatives, the Individual Defendants, and 6 experts; and exchanging 13 expert reports directed at Intuitive’s compliance with FDA regulations, Defendants’ insider trading, loss causation, and damages.

On June 6, 2018, following extensive arm’s-length negotiations, the Parties reached an agreement in principle to settle the Action for \$42,500,000, subject to the execution of formal settlement documents.

3. Why is this a class action?

In a class action, one or more persons or entities (in this case, Class Representatives), sue on behalf of people and entities that have similar claims. Together, these people and entities are a class, and each is a class member. Bringing a case, such as this one, as a class action allows the Court to resolve many similar claims of persons and entities that might be economically too small to bring as individual actions. One court resolves the issues for all class members at the same time, except for those who exclude themselves, or “opt-out,” from the class.

WHO IS IN THE SETTLEMENT**4. How do I know if I am part of the Class?**

The Court has certified the following Class, subject to certain exceptions identified below:

All persons or entities who purchased or acquired the publicly traded common stock of Intuitive Surgical, Inc. during the period from February 6, 2012 through July 18, 2013, inclusive, and who were damaged thereby.

Check your investment records or contact your broker to see if you purchased or acquired the publicly traded common stock of Intuitive during the period from February 6, 2012 through July 18, 2013, inclusive.

5. Are there exceptions to being included?

Yes. Some people are excluded from the Class by definition. Excluded from the Class are: (i) all Defendants; (ii) members of the immediate families of Individual Defendants Guthart, Mohr, and Smith; (iii) any subsidiaries and affiliates of Defendants; (iv) any person who is or was an officer or director of Intuitive or any of Intuitive’s subsidiaries or affiliates; (v) Defendants’ directors’ and officers’ liability insurance carriers, and any affiliates or subsidiaries thereof; (vi) Intuitive’s employee retirement and benefit plan(s); and (vii) the legal representatives, heirs, successors, and assigns of any such excluded person or entity.

Also excluded from the Class are Class Members who submitted timely and valid requests for exclusion in connection with the previously mailed Class Notice and Class Members who submit timely and valid requests for exclusion from the Class in accordance with the procedures set forth in Question 10 below.

6. What if I am still not sure if I am included?

If you are still not sure whether you are included in the Class, you can ask for free help. You can call the Claims Administrator toll-free at (844) 850-7746, send an e-mail to the Claims Administrator at info@intuitivesurgicalsecuritieslitigation.com, or write to the Claims Administrator, *In re Intuitive Surgical Securities Litigation*, c/o GCG, P.O. Box 10359, Dublin, OH 43017-0359. Or you can fill out and return the Claim Form described in Question 8 to see if you qualify.

THE SETTLEMENT BENEFITS — WHAT YOU GET**7. How much will my payment be?**

In exchange for the Settlement and the release of the Released Claims against the Released Defendant Parties, Defendants have agreed to fund a \$42,500,000 settlement fund, which will earn interest and will be distributed, after the deduction of Court-approved fees and expenses, among all Class Members who submit valid Claim Forms that are found to be entitled to a distribution from the Net Settlement Fund (“Authorized Claimants”).

If you are an Authorized Claimant entitled to a payment, your share of the Net Settlement Fund will depend on several things, including: how many Class Members timely send in valid Claim Forms; the total amount of recognized losses of other Class Members; how many shares of Intuitive common stock you purchased; the prices and dates of those purchases; and the prices and dates of any sales.

You can calculate your recognized loss in accordance with the formulas shown below in the Plan of Allocation. It is unlikely that you will receive a payment for all of your recognized loss. See the Plan of Allocation of Net Settlement Fund on pages 9-12 for more information on your recognized loss.

**HOW YOU RECEIVE A PAYMENT:
SUBMITTING A PROOF OF CLAIM FORM****8. How can I receive a payment?**

To qualify for a payment, you must submit a timely and valid Claim Form. A Claim Form is included with this Settlement Notice. If you did not receive a Claim Form, you can obtain one on the internet at the website:

www.intuitivesurgicalsecuritieslitigation.com. You can also ask for a Claim Form by calling the Claims Administrator toll-free at (844) 850-7746.

Please read the instructions carefully, fill out the Claim Form, include all the documents the form requests, sign it, and mail or submit it to the Claims Administrator so that it is **postmarked or electronically submitted no later than December 6, 2018.**

9. What am I giving up to receive a payment or stay in the Class?

Unless you exclude yourself, or previously excluded yourself, you are staying in the Class, and that means that upon the “Effective Date,” you will release all “Released Claims,” including “Unknown Claims,” as defined below, against the “Released Defendant Parties.”

“**Released Claims**” means all actions, suits, claims, demands, rights, liabilities, damages, costs, restitution, rescission, interest, attorneys’ fees, expert or consulting fees, expenses, matters and issues known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, whether concealed or hidden, and causes of action of every nature and description, including both known claims and Unknown Claims, whether based on federal, state, local, foreign, statutory or common law or any other law, rule or regulation, including claims under the Securities Act of 1933 or the Securities Exchange Act of 1934 or the securities laws of any state or territory, that have been or that might have been asserted by any Releasing Plaintiff Party against any of the Released Defendant Parties, arising out of, relating to, based upon, or in connection with: (a) any purchase, acquisition, sale, or holding of Intuitive publicly traded common stock during the Class Period and (b) any facts, claims, matters, allegations, activities, transactions, events, disclosures, representations, statements, acts, or omissions or failures to act that were alleged, set forth, referred to, or that could have been alleged in the Action, in the Second Amended Complaint, or in any complaint, against the Released Defendant Parties. Released Claims does not include claims relating to the enforcement of the Settlement.

“**Released Defendant Party**” or “**Released Defendant Parties**” means Defendants, and each of their respective past or present parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, employees, agents, attorneys, general or limited partners, partnerships, limited liability companies, predecessors, successors, assigns, heirs, trustees, administrators, and any of their legal representatives (and the predecessors, heirs, executors, administrators, trustees, successors, immediate family members, purchasers, and assigns of each of the foregoing), in their capacities as such.

“**Unknown Claims**” means any and all Released Claims that Class Representatives or any other Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendant Parties, and any and all Released Defendants’ Claims that any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiff Parties, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement, including the decision to object to the terms of the Settlement or to exclude himself, herself, or itself from the Class. With respect to any and all Released Claims and Released Defendants’ Claims, the Parties stipulate and agree that, upon the Effective Date, Class Representatives and Defendants shall expressly, and each other Class Member shall be deemed to have, and by operation of the Judgment or Alternative Judgment shall have, to the fullest extent permitted by law, expressly waived and relinquished any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Class Representatives, other Class Members, or Defendants may hereafter discover facts, legal theories, or authorities in addition to or different from those which any of them now knows or believes to be true with respect to the subject matter of the Released Claims and the Released Defendants’ Claims, but Class Representatives and Defendants shall expressly, fully, finally, and forever waive, compromise, settle, discharge, extinguish, and release, and each Class Member shall be deemed to have waived, compromised, settled, discharged, extinguished, and released, and upon the Effective Date and by operation of the Judgment or Alternative Judgment shall have waived, compromised, settled, discharged, extinguished, and released, fully, finally, and forever, any and all Released Claims and Released Defendants’ Claims as applicable, known or unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, which now exist, or heretofore existed, or may hereafter exist, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. Class Representatives and Defendants acknowledge, and other Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims and Released Defendants’ Claims was separately bargained for and was a material element of the Settlement.

Please consult the Stipulation, filed with the Court and posted at www.intuitivesurgicalsecuritieslitigation.com, for additional defined terms.

The “Effective Date” will occur when an Order entered by the Court approving the Settlement becomes final and not subject to appeal. If you remain a member of the Class, all of the Court’s orders will apply to you and legally bind you.

EXCLUDING YOURSELF FROM THE CLASS

If you already submitted a valid and timely request for exclusion in connection with the Class Notice, you do not need to do so again.²

If you **did not** previously submit a request for exclusion and **do not** want a payment from this Settlement, but you want to keep any right you may have to sue or continue to sue Defendants and the other Released Defendant Parties on your own concerning the Released Claims, then you must take steps to remove yourself from the Class. This is called excluding yourself or “opting out.” **Please note: if you decide to exclude yourself because you want to bring your own lawsuit to pursue claims alleged in the Action, you should consult with an attorney to discuss whether your individual claim would be time-barred by the applicable statutes of limitations or repose.** Also, Defendants may terminate the Settlement if Class Members who purchased in excess of a certain amount of shares of Intuitive common stock seek exclusion from the Class.

10. How do I exclude myself from the Class?

To exclude yourself from the Class, you must mail a signed letter stating that you request to be “excluded from the Class in *In re Intuitive Surgical Securities Litigation*, No. 13-cv-01920 (N.D. Cal.)” You cannot exclude yourself by telephone or e-mail. Your letter must state the date(s), price(s), and number(s) of shares of all purchases, acquisitions, and sales of Intuitive common stock during the period from February 6, 2012 through July 18, 2013. Your letter must include your name, mailing address, telephone number, e-mail address, and signature. You must submit your exclusion request so that it is **received no later than November 29, 2018** to:

In re Intuitive Surgical Securities Litigation
c/o GCG
P.O. Box 10359
Dublin, OH 43017-0359

Your exclusion request must comply with these requirements in order to be valid. If you ask to be excluded, you will not receive any payment from the Net Settlement Fund, and you cannot object to the Settlement.

11. If I do not exclude myself, can I sue Defendants and the other Released Defendant Parties for the same thing later?

No. Unless you properly exclude yourself, you remain in the Class and you give up any rights to sue Defendants and the other Released Defendant Parties for any and all Released Claims. If you have a pending lawsuit, **speak to your lawyer in that case immediately.** You must exclude yourself from this Class to continue your own lawsuit. Remember, the exclusion deadline is **November 29, 2018.**

OPTING-BACK INTO THE CLASS

12. What if I previously requested exclusion in connection with the Class Notice and now want to be eligible to receive a payment from the Settlement? How do I opt-back into the Class?

If you previously submitted a request for exclusion from the Class in connection with the Class Notice, you may opt-back into the Class and be eligible to receive a payment from the Settlement. If you are not certain whether you previously submitted a request for exclusion, please contact the Claims Administrator at (844) 850-7746 for assistance.

In order to opt-back into the Class, you, individually or through counsel, must submit a written “Request to Opt-Back into the Class” to the Claims Administrator, addressed as follows: *In re Intuitive Surgical Securities Litigation*, c/o GCG, P.O. Box 10359, Dublin, OH 43017-0359. This request must be **received no later than November 29, 2018.** Your Request to Opt-Back into the Class must (i) state the name, address, and telephone number of the person or entity requesting to opt-back into the Class; (ii) state that such person or entity “requests to opt-back into the Class in *In re Intuitive Surgical Securities Litigation*, No. 13-cv-01920 (N.D. Cal.)”; and (iii) be signed by the person or entity requesting to opt-back into the Class or an authorized representative.

² If you are not sure whether you did, please call the Claims Administrator at (844) 850-7746.

Please note: Opting-back into the Class **does not mean** that you will automatically be entitled to receive proceeds from the Settlement. If you wish to be eligible to participate in the distribution of proceeds from the Settlement, you are also required to submit the Claim Form that is being distributed with this Settlement Notice. See Question 8, above.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court ordered the law firm of Labaton Sucharow LLP to represent all Class Members. These lawyers are called Class Counsel. You will not be separately charged for these lawyers. The Court will determine the amount of Class Counsel's fees and expenses, which will be paid from the Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Class Counsel has been prosecuting the Action on a contingent basis and has not been paid for any of its work. Class Counsel, on behalf of itself and other Plaintiffs' counsel, will seek an attorneys' fee award of no more than 19% of the Settlement Fund, which will include accrued interest. Class Counsel was assisted in this case by Local Counsel, Kerr & Wagstaffe LLP; and attorney Anthony Takitani and The Thornton Law Firm, which provided additional legal assistance to Hawaii ERS (collectively "Plaintiffs' Counsel"). Any attorneys' fees awarded by the Court to Class Counsel will be allocated by Class Counsel to other Plaintiffs' Counsel. Class Counsel will also seek payment of litigation expenses incurred by Plaintiffs' Counsel in the prosecution of this Action of no more than \$2,500,000, plus accrued interest, which will include an application in accordance with the PSLRA for the reasonable costs and expenses (including lost wages) of the Class Representatives directly related to their representation of the Class. Any attorneys' fees and expenses awarded by the Court will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or any part of it.

15. How do I tell the Court that I do not like something about the proposed Settlement?

If you are a Class Member, you can object to the Settlement or any of its terms, the proposed Plan of Allocation, and/or the Fee and Expense Application. You may write to the Court about your objection. You can ask the Court not to approve the Settlement, however you cannot ask the Court to order a larger settlement; the Court can only approve or deny this Settlement. If the Court denies approval, the Settlement payments will not be sent out and the Parties will return to the posture they were in before the Settlement was agreed to. If you would like the Court to consider your views, you must file a proper objection within the deadline, and according to the following procedures.

To object, you must send a signed letter stating that you object to the proposed Settlement in *In re Intuitive Surgical Securities Litigation*, No. 13-cv-01920 (N.D. Cal.). You must (i) include your name, address, telephone number, e-mail address, and signature; (ii) identify the date(s), price(s), and number(s) of shares of Intuitive common stock purchased, acquired, and sold; (iii) state the reasons why you object to the Settlement and which part(s) of the Settlement you object to; and (iv) include any legal support and/or evidence, to support your objection. Unless otherwise ordered by the Court, any Class Member who does not object in the manner described in this Settlement Notice will be deemed to have waived any objection and shall be forever foreclosed from making any future objection. Your objection must be submitted to the Court either by mailing the objection to the Clerk of the Court at the address below or by filing the objection in person at the location below, and mailed to Class Counsel and Defendants' Counsel, so that it is **received on or before November 29, 2018**:

<u>The Court</u>	<u>Class Counsel</u>	<u>Defendants' Counsel Representative</u>
Clerk of the Court United States District Court for the Northern District of California Robert F. Peckham Federal Building & United States Courthouse 280 South 1st Street, Room 2112 San Jose, CA 95113	LABATON SUCHAROW LLP Jonathan Gardner, Esq. 140 Broadway New York, NY 10005	GIBSON DUNN & CRUTCHER LLP Michael D. Celio, Esq. 1881 Page Mill Road Palo Alto, CA 94304

You do not need to attend the Settlement Hearing to have your written objection considered by the Court. However, any Class Member who has complied with the procedures set out in this Question 15 and below in Question 18 may appear at the Settlement Hearing and be heard, to the extent allowed by the Court, either in person or through an attorney, arranged at his, her, or its own expense.

16. What is the difference between objecting and excluding?

Objecting is telling the Court that you do not like something about the proposed Settlement, Plan of Allocation, or Fee and Expense Application. You can still recover from the Settlement, and you will still be bound by the Settlement and any Court order in this Action. **You can object only if you stay in the Class.**

Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

THE SETTLEMENT HEARING

17. When and where will the Court decide whether to approve the proposed Settlement?

The Court will hold the Settlement Hearing on **December 20, 2018 at 10:00 a.m.**, in Courtroom 4, 5th Floor of the Robert F. Peckham Federal Building & United States Courthouse, 280 South 1st Street, San Jose, CA 95113.

At this hearing, the Court will consider (i) whether the Settlement is fair, reasonable, and adequate, and should be finally approved; (ii) whether the proposed Plan of Allocation is fair, reasonable, and adequate; and (iii) the application of Class Counsel for an award of attorneys' fees and payment of litigation expenses. The Court will take into consideration any written objections filed in accordance with the instructions in Question 15. We do not know how long it will take the Court to make these decisions.

You should be aware that the Court may change the date and time of the Settlement Hearing without another notice being sent to Class Members. If you want to attend the hearing, you should check with Class Counsel beforehand to be sure that the date and/or time has not changed, periodically check the Court's website at www.cand.uscourts.gov, or periodically check the case-specific website at www.intuitivesurgicalsecuritieslitigation.com to see if the Settlement Hearing stays as calendared or is changed.

18. May I speak at the Settlement Hearing?

You may ask the Court for permission to speak at the Settlement Hearing. To do so, you must submit a statement that it is your intention to appear in "*In re Intuitive Surgical Securities Litigation*, No. 13-cv-01920 (N.D. Cal.)." Persons who intend to object to the Settlement, the Plan of Allocation, or Class Counsel's Fee and Expense Application, and desire to present evidence at the Settlement Hearing, must also include in their objections (prepared and submitted in accordance with the answer to Question 15 above) the identity of any witness they may wish to call to testify and any exhibits they intend to introduce into evidence at the Settlement Hearing. You may not speak at the Settlement Hearing if you excluded yourself from the Class or if you have not provided written notice of your objection and/or intention to speak at the Settlement Hearing in accordance with the procedures described in Questions 10, 15, and 18.

IF YOU DO NOTHING

19. What happens if I do nothing at all?

If you do nothing and you are a member of the Class, you will receive no money from this Settlement and you will be precluded from starting a lawsuit, continuing with a lawsuit, or being part of any other lawsuit against Defendants and the other Released Defendant Parties concerning the Released Claims. To share in the Net Settlement Fund, you must submit a Claim Form (see Question 8). To start, continue, or be a part of any other lawsuit against Defendants and the other Released Defendant Parties concerning the Released Claims in this case, you must exclude yourself from the Class (see Question 10).

GETTING MORE INFORMATION

20. Are there more details about the proposed Settlement?

This Settlement Notice summarizes the proposed Settlement. More details are in the Stipulation. Class Counsel's motions in support of final approval of the Settlement, the request for attorneys' fees and litigation expenses, and approval of the proposed Plan of Allocation will be filed with the Court no later than November 15, 2018 and available from Class Counsel, the Claims Administrator, or the Court, pursuant to the instructions below.

You may review the Stipulation or documents filed in the case at the Office of the Clerk of the United States District Court for the Northern District of California, Robert F. Peckham Federal Building & United States Courthouse, 280 South 1st Street, Room 2112, San Jose, CA 95113, on weekdays (other than court holidays) between 9:00 a.m. and 4:00

p.m. Subscribers to PACER, a fee-based service, can also view the papers filed publicly in the Action through the Court's on-line Case Management/Electronic Case Files System at <https://www.pacer.gov>.

You can also get a copy of the Stipulation and other case documents by calling the Claims Administrator toll free at (844) 850-7746; writing to the Claims Administrator at *In re Intuitive Surgical Securities Litigation*, c/o GCG, P.O. Box 10359, Dublin, OH 43017-0359; or visiting the websites: www.intuitivesurgicalsecuritieslitigation.com or www.labaton.com where you will find answers to common questions about the Settlement, can download copies of the Stipulation or Claim Form, and locate other information.

Please do not Call the Court with Questions about the Settlement.

PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND

A. Preliminary Matters

The Settlement Amount and the interest it earns is the "Settlement Fund." The Settlement Fund, after deduction of Court-approved attorneys' fees and expenses, Notice and Administration Expenses, Taxes, and any other fees or expenses approved by the Court is the "Net Settlement Fund." The Net Settlement Fund will be distributed to members of the Class who timely submit valid Claim Forms that show a Recognized Claim according to the Plan of Allocation (the "Plan of Allocation" or "Plan") approved by the Court. The Plan of Allocation set forth below is the Plan that is being proposed by Class Representatives and Class Counsel to the Court for approval. The Court may approve this Plan of Allocation or modify it without additional notice to the Class. Any order modifying the Plan will be posted on the case website at: www.intuitivesurgicalsecuritieslitigation.com and at www.labaton.com.

The objective of this Plan of Allocation is to equitably distribute the Net Settlement Fund among Authorized Claimants who suffered economic losses as a result of the alleged violations of the federal securities laws during the Class Period (February 6, 2012 through July 18, 2013) that the Court found viable. To design this Plan, Class Counsel has conferred with their damages expert. This Plan is intended to be generally consistent with an assessment of, among other things, the damages that Class Counsel and Class Representatives believe were recoverable in the Action. The Plan of Allocation, however, is not a formal damages analysis and the calculations made pursuant to the Plan are not intended to be estimates of, nor indicative of, the amounts that Class Members might have been able to recover after a trial. An individual Class Member's recovery will depend on, for example (i) the total number and value of claims submitted; (ii) when the Class Member purchased or acquired Intuitive publicly traded common stock; and (iii) whether and when the Class Member sold his, her, or its shares of Intuitive common stock.

This Plan of Allocation generally measures the amount of loss that a Class Member can claim for purposes of making *pro rata* allocations of the Net Settlement Fund to Authorized Claimants. For losses to be compensable damages under the federal securities laws, the disclosure of the allegedly misrepresented information must be the cause of the decline in the price of Intuitive common stock. In this case, Class Representatives allege that Defendants issued false statements and omitted material facts from February 6, 2012 through July 18, 2013, inclusive (the Class Period), which artificially inflated the price of Intuitive common stock. It is alleged that the corrective information released to the market on February 28, 2013 (toward the close of market hours), March 5, 2013 (prior to market open), and July 18, 2013 (after market close) impacted the market price of Intuitive common stock in a statistically significant manner and removed the alleged artificial inflation from the prices of the common stock on February 28-March 1, 2013, March 5, 2013, and July 19, 2013. Accordingly, in order to have a compensable loss, Intuitive common stock must have been purchased or otherwise acquired during the Class Period and held through at least one of the alleged corrective disclosures listed above.

Because the Net Settlement Fund is less than the total losses alleged to be suffered by Class Members, the formulas described below for calculating Recognized Losses are not intended to estimate the amount that will actually be paid to Authorized Claimants. Rather, these formulas provide the basis on which the Net Settlement Fund will be distributed among Authorized Claimants on a *pro rata* basis. An Authorized Claimant's "Recognized Claim" shall be the amount used to calculate the Authorized Claimant's *pro rata* share of the Net Settlement Fund. The *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of the Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

Defendants, their respective counsel, and all other Released Defendant Parties will have no responsibility or liability for the investment of the Settlement Fund, the distribution of the Net Settlement Fund, the Plan of Allocation, or the payment of any claim. Class Representatives, Class Counsel, and anyone acting on their behalf likewise will have no liability for their reasonable efforts to execute, administer, and distribute the Settlement.

B. Calculation of Recognized Loss Amounts

For purposes of determining whether a claimant has a "Recognized Claim," purchases, acquisitions, and sales of Intuitive common stock will first be matched on a First In/First Out ("FIFO") basis as set forth below.

The Claims Administrator will calculate a "Recognized Loss Amount" as set forth below for each purchase or acquisition of Intuitive publicly traded common stock during the Class Period from February 6, 2012 through July 18, 2013, inclusive, that is listed in the Claim Form and for which adequate documentation is provided. To the extent that the calculation of a claimant's Recognized Loss Amount results in a negative number, that number shall be set to zero.

For each share of Intuitive common stock purchased or otherwise acquired during the Class Period and sold before the close of trading on July 18, 2013, an “Out of Pocket Loss” will be calculated. Out of Pocket Loss is defined as the purchase price (excluding all fees, taxes, and commissions) minus the sale price (excluding all fees, taxes, and commissions). To the extent that the calculation of the Out of Pocket Loss results in a negative number, that number shall be set to zero.

The sum of a claimant’s Recognized Loss Amounts will be the claimant’s “Recognized Claim.”

For each share of Intuitive common stock purchased or acquired from February 6, 2012 through and including July 18, 2013 and:

1. Sold before the release of corrective information on February 28, 2013 (at 3:54 PM EST),³ the Recognized Loss Amount for each such share shall be zero.
2. Sold after the release of corrective information on February 28, 2013 (at 3:54 PM EST), and before the close of trading on July 18, 2013, the Recognized Loss Amount for each such share shall be **the lesser of:**
 - a. the dollar artificial inflation applicable to each such share on the date of purchase/acquisition as set forth in **Table 1** below minus the dollar artificial inflation applicable to each such share on the date of sale as set forth in **Table 1** below; or
 - b. the Out of Pocket Loss.
3. Sold after the close of trading on July 18, 2013, and before the close of trading on October 17, 2013, the Recognized Loss Amount for each such share shall be **the least of:**
 - a. the dollar artificial inflation applicable to each such share on the date of purchase/acquisition as set forth in **Table 1** below; or
 - b. the actual purchase/acquisition price of each such share minus the average closing price from July 19, 2013, up to the date of sale as set forth in **Table 2** below; or
 - c. the Out of Pocket Loss.
4. Held as of the close of trading on October 17, 2013, the Recognized Loss Amount for each such share shall be **the lesser of:**
 - a. the dollar artificial inflation applicable to each such share on the date of purchase/acquisition as set forth in **Table 1** below; or
 - b. the actual purchase/acquisition price of each such share minus \$ 383.30.⁴

C. Additional Provisions

Publicly traded Intuitive common stock is the only security eligible for recovery under the Plan of Allocation. With respect to Intuitive common stock purchased or sold through the exercise of an option, the purchase/sale date of the Intuitive common stock is the exercise date of the option and the purchase/sale price is the exercise price of the option.

If a Class Member has more than one purchase/acquisition or sale of Intuitive common stock during the Class Period, all purchases/acquisitions and sales shall be matched on a FIFO basis. Class Period sales will be matched first against any holdings at the beginning of the Class Period and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

Purchases or acquisitions and sales of Intuitive shares shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt or grant by gift, inheritance, or operation of law of shares during the Class Period shall not be deemed a purchase, acquisition, or sale of shares for the calculation of a

³ In the event that documentation does not exist setting forth the exact time of purchase and/or sale, the price at which the purchase and/or sale took place shall serve as a proxy for determining whether the transaction occurred before or after the release of the allegedly corrective information. Shares purchased or sold on February 28, 2013 at any price less than \$569.23 shall be deemed to have occurred after 3:54 PM EST for purposes of this Plan of Allocation.

⁴ Pursuant to Section 21D(e)(1) of the Exchange Act, “in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market.” Consistent with the requirements of the Exchange Act, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of Intuitive common stock during the “90-day look-back period,” July 19, 2013 through October 17, 2013. The mean (average) closing price for Intuitive common stock during this 90-day look-back period was \$383.30.

Recognized Claim, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of such shares unless (i) the donor or decedent purchased or otherwise acquired such shares during the Class Period; (ii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such shares; and (iii) it is specifically so provided in the instrument of gift or assignment.

In accordance with the Plan of Allocation, the Recognized Loss Amount on any portion of a purchase or acquisition that matches against (or "covers") a "short sale" is zero. The Recognized Loss Amount on a "short sale" that is not covered by a purchase or acquisition is also zero. In the event that a claimant has an opening short position in Intuitive common stock at the start of the Class Period, the earliest Class Period purchases or acquisitions shall be matched against such opening short position in accordance with the FIFO matching described above and any portion of such purchases or acquisition that covers such short sales will not be entitled to recovery. In the event that a claimant newly establishes a short position during the Class Period, the earliest subsequent Class Period purchase or acquisition shall be matched against such short position on a FIFO basis and will not be entitled to a recovery.

The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment is \$10.00 or greater. If the prorated payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

Payment according to this Plan of Allocation will be deemed conclusive against all Authorized Claimants. Recognized Claims will be calculated as defined herein by the Claims Administrator and cannot be less than zero.

Distributions to eligible Authorized Claimants will be made after claims have been processed. After an initial distribution of the Net Settlement Fund, if there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise) after at least six (6) months from the date of initial distribution of the Net Settlement Fund, Class Counsel shall, if feasible and economical, redistribute such balance among Authorized Claimants who have cashed their checks in an equitable and economic fashion, after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses. These redistributions shall be repeated until the balance in the Net Settlement Fund is no longer feasible to distribute to Authorized Claimants. Any balance that still remains in the Net Settlement Fund after re-distribution(s), which is not feasible or economical to reallocate, after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, shall be donated in equal amounts to Bay Area Legal Aid and Consumer Federation of America.

Payment pursuant to the Plan of Allocation or such other plan as may be approved by the Court shall be conclusive against all Authorized Claimants. No person shall have any claim against Class Representatives, Class Counsel, their damages expert, Claims Administrator, or other agent designated by Class Counsel, arising from determinations or distributions to claimants made substantially in accordance with the Stipulation, the Plan of Allocation approved by the Court, or further orders of the Court. Class Representatives, Defendants, their respective counsel, and all other Released Parties shall have no responsibility for or liability whatsoever for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the Plan of Allocation, or the determination, administration, calculation, or payment of any Claim Form or non-performance of the Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

Each claimant is deemed to have submitted to the jurisdiction of the United States District Court for the Northern District of California with respect to his, her, or its claim.

TABLE 1**Intuitive Common Stock Artificial Inflation
for Purposes of Calculating Purchase and Sale Inflation**

Transaction Date	Artificial Inflation Per Share
February 6, 2012 – February 28, 2013 until 3:54 PM EST	\$56.69
February 28, 2013 after 3:54 PM EST – March 4, 2013	\$35.39
March 5, 2013 – July 18, 2013	\$13.58

TABLE 2**Intuitive Common Stock Closing Price and Average Closing Price
July 19, 2013 – October 17, 2013**

Date	Closing Price	Average Closing Price between July 19, 2013 and Date Shown	Date	Closing Price	Average Closing Price between July 19, 2013 and Date Shown
7/19/2013	\$392.67	\$392.67	9/4/2013	\$387.32	\$388.10
7/22/2013	\$395.91	\$394.29	9/5/2013	\$384.44	\$387.99
7/23/2013	\$394.62	\$394.40	9/6/2013	\$384.69	\$387.90
7/24/2013	\$383.96	\$391.79	9/9/2013	\$384.90	\$387.82
7/25/2013	\$375.33	\$388.50	9/10/2013	\$376.97	\$387.52
7/26/2013	\$382.29	\$387.46	9/11/2013	\$376.50	\$387.23
7/29/2013	\$391.00	\$387.97	9/12/2013	\$372.68	\$386.86
7/30/2013	\$385.82	\$387.70	9/13/2013	\$375.00	\$386.56
7/31/2013	\$388.00	\$387.73	9/16/2013	\$375.07	\$386.28
8/1/2013	\$392.46	\$388.21	9/17/2013	\$373.96	\$385.99
8/2/2013	\$393.65	\$388.70	9/18/2013	\$372.50	\$385.68
8/5/2013	\$393.63	\$389.11	9/19/2013	\$369.98	\$385.32
8/6/2013	\$392.93	\$389.41	9/20/2013	\$374.69	\$385.08
8/7/2013	\$389.94	\$389.44	9/23/2013	\$370.83	\$384.77
8/8/2013	\$394.62	\$389.79	9/24/2013	\$363.89	\$384.33
8/9/2013	\$391.87	\$389.92	9/25/2013	\$367.31	\$383.97
8/12/2013	\$388.58	\$389.84	9/26/2013	\$368.39	\$383.66
8/13/2013	\$385.60	\$389.60	9/27/2013	\$367.46	\$383.33
8/14/2013	\$385.94	\$389.41	9/30/2013	\$376.27	\$383.19
8/15/2013	\$383.73	\$389.13	10/1/2013	\$372.40	\$382.99
8/16/2013	\$378.33	\$388.61	10/2/2013	\$369.60	\$382.73
8/19/2013	\$384.95	\$388.45	10/3/2013	\$360.94	\$382.33
8/20/2013	\$385.45	\$388.32	10/4/2013	\$364.28	\$382.00
8/21/2013	\$386.90	\$388.26	10/7/2013	\$380.99	\$381.98
8/22/2013	\$390.14	\$388.33	10/8/2013	\$381.23	\$381.97
8/23/2013	\$390.09	\$388.40	10/9/2013	\$389.16	\$382.09
8/26/2013	\$391.69	\$388.52	10/10/2013	\$387.21	\$382.18
8/27/2013	\$386.22	\$388.44	10/11/2013	\$390.18	\$382.31
8/28/2013	\$387.44	\$388.41	10/14/2013	\$401.68	\$382.63
8/29/2013	\$384.60	\$388.28	10/15/2013	\$390.21	\$382.75
8/30/2013	\$386.52	\$388.22	10/16/2013	\$401.33	\$383.05
9/3/2013	\$385.17	\$388.13	10/17/2013	\$399.13	\$383.30

SPECIAL NOTICE TO SECURITIES BROKERS AND NOMINEES

In the previously mailed Class Notice, you were advised that if, for the beneficial interest of any person or entity other than yourself, you purchased Intuitive common stock during the period from February 6, 2012 through July 18, 2013, inclusive, you must either: (1) request from the Claims Administrator sufficient copies of the Class Notice to forward to all such beneficial owners, and forward them to all such beneficial owners; or (2) provide a list of the names and addresses of all such beneficial owners to the Claims Administrator.

If you chose the first option, *i.e.*, you elected to mail the Class Notice directly to beneficial owners, you were advised that you must retain the mailing records for use in connection with any further notices that may be provided in the Action. If you elected this option, the Claims Administrator will forward the same number of Settlement Notices and Proof of Claim and Release forms (together, the "Claim Packet") to you to send to the beneficial owners **WITHIN SEVEN (7) CALENDAR DAYS** of receipt of the Claim Packets. If you require more copies than you previously requested, please contact the Claims Administrator at (844) 850-7746 and let them know how many additional Claim Packets you require. You must mail the Claim Packets to the beneficial owners **WITHIN SEVEN (7) CALENDAR DAYS** of your receipt of the packets.

If you chose the second option, the Claims Administrator will send a copy of the Claim Packet to the beneficial owners whose names and addresses you previously supplied. Unless you have identified additional beneficial owners whose names you did not previously provide, **you need do nothing further at this time**. If you believe that you have identified additional beneficial owners **whose names you did not previously provide** to the Claims Administrator, you must either (a) **WITHIN SEVEN (7) CALENDAR DAYS** of receipt of this Claim Packet, provide a list of the names and addresses of all such beneficial owners to the Claims Administrator at *In re Intuitive Surgical Securities Litigation*, c/o GCG, P.O. Box 10359, Dublin, OH 43017-0359 or (b) **WITHIN SEVEN (7) CALENDAR DAYS** of receipt of this Claim Packet, request from the Claims Administrator sufficient copies of the Claim Packet to forward to all such beneficial owners which you shall, **WITHIN SEVEN (7) CALENDAR DAYS** of receipt of the Claim Packet from the Claims Administrator, mail to the beneficial owners. If you elect to send the Claim Packet to beneficial owners you shall also send a statement to the Claims Administrator confirming that the mailing was made and shall retain your mailing records for use in connection with any further notices that may be provided in the Action.

Upon full and timely compliance with these directions, you may seek reimbursement of your reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Settlement Notice and the Claim Form may also be obtained from the website for this Action, www.intuitivesurgicalsecuritieslitigation.com, or by calling the Claims Administrator at (844) 850-7746.

All communications concerning the foregoing should be addressed to the Claims Administrator:

In re Intuitive Surgical Securities Litigation
c/o GCG
P.O. Box 10359
Dublin, OH 43017-0359
Phone: (844) 850-7746
info@intuitivesurgicalsecuritieslitigation.com
www.intuitivesurgicalsecuritieslitigation.com

Dated: October 15, 2018

BY ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**Must be
Postmarked or
Submitted Online
No Later Than
December 6, 2018**

In re Intuitive Surgical Securities Litigation
c/o GCG
P.O. Box 10359
Dublin, OH 43017-0359
(844) 850-7746
info@intuitivesurgicalsecuritieslitigation.com
www.intuitivesurgicalsecuritieslitigation.com

ISG



Claim Number:

Control Number:

PROOF OF CLAIM AND RELEASE

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Important - This form should be completed *IN CAPITAL LETTERS* using *BLACK* or *DARK BLUE* ballpoint/fountain pen. Characters and marks used should be similar in the style to the following:

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z 1 2 3 4 5 6 7 0



PART I - CLAIMANT IDENTIFICATION

Claimant or Representative Contact Information:

The Claims Administrator will use this information for all communications relevant to this claim (including the check, if eligible for payment). If this information changes, you MUST notify the Claims Administrator in writing at the address above.

Claimant Name(s) (as you would like the name(s) to appear on the check, if eligible for payment):

Grid for Claimant Name(s)

Street Address:

Grid for Street Address

City: **Last 4 digits of Claimant SSN/TIN:¹**

Grid for City and Last 4 digits of Claimant SSN/TIN

State: **Zip Code:** **Country (if Other than U.S.):**

Grid for State, Zip Code, and Country

Name of the Person you would like the Claims Administrator to Contact Regarding this Claim (if different from the Claimant Name(s) listed above):

Grid for Name of the Person to Contact

Daytime Telephone Number:

Evening Telephone Number:

Grid for Daytime and Evening Telephone Numbers

Email Address (Email address is not required, but if you provide it you authorize the Claims Administrator to use it in providing you with information relevant to this claim.)

Grid for Email Address

NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the mandatory electronic filing requirements and file layout, you may visit the settlement website at www.intuitivesurgicalsecuritieslitigation.com or you may email the Claims Administrator's electronic filing department at eClaim@choosegcg.com. Any file not in accordance with the required electronic filing format will be subject to rejection. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email to that effect after processing your file with your claim numbers and respective account information. Do not assume that your file has been received or processed until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the electronic filing department at eClaim@choosegcg.com to inquire about your file and confirm it was received and acceptable.

To view GCG's Privacy Notice, please visit <http://www.choosegcg.com/privacy>

¹ The last four digits of the taxpayer identification number (TIN), consisting of a valid Social Security Number (SSN) for individuals or Employer Identification Number (EIN) for business entities, trusts, estates, etc., and telephone number of the beneficial owner(s) may be used in verifying this claim.



PART II - INSTRUCTIONS

I. GENERAL INSTRUCTIONS

1. To recover as a Class Member based on your claims in the action entitled *In re Intuitive Surgical Securities Litigation*, Civil Action No. 5:13-cv-01920-EJD (the "Action"), YOU MUST MAIL OR SUBMIT ONLINE A COMPLETED PROOF OF CLAIM AND RELEASE FORM ("CLAIM FORM"), ACCOMPANIED BY COPIES OF THE DOCUMENTS REQUESTED HEREIN, **ON OR BEFORE DECEMBER 6, 2018, ADDRESSED AS FOLLOWS:**

In re Intuitive Surgical Securities Litigation
c/o GCG
P.O. Box 10359
Dublin, OH 43017-0359
(844) 850-7746

info@intuitivesurgicalsecuritieslitigation.com
www.intuitivesurgicalsecuritieslitigation.com

2. Submission of this Claim Form, however, does not assure that you will share in the proceeds of the Settlement of the Action.

3. If you are a Class Member and have not timely and validly requested exclusion from the Class, **you are bound by the terms of any judgment entered in the Action, including the releases provided therein, WHETHER OR NOT YOU SUBMIT A CLAIM FORM.**

II. CLAIMANT IDENTIFICATION

If you purchased or acquired the publicly traded common stock of Intuitive Surgical, Inc. ("Intuitive") during the period from February 6, 2012 through July 18, 2013, inclusive (the "Class Period"), use Part I of this form entitled "Claimant Identification" to list the claimant name, mailing address, and account information if relevant (such as for a claim submitted on behalf of an IRA, Trust, or estate account). Please list the most current claimant or account name as you would like the information to appear on a check, if eligible for payment. Please also provide a telephone number and/or e-mail address, as the Claims Administrator may need to contact you with questions about the claim submitted. **If your Claimant Identification information changes, please notify the Claims Administrator in writing at the address above.**

All joint purchasers must sign this Claim Form. If you are acting in a representative capacity on behalf of a Class Member (for example, as an executor, administrator, trustee, or other representative), you must submit evidence of your current authority to act on behalf of that Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents or other documents which provide you with the authority to submit the claim. Please also indicate your representative capacity under your signature on page 5 of this Claim Form.

III. IDENTIFICATION OF TRANSACTIONS

Use Part III of this form entitled "Schedule of Transactions in Intuitive Publicly Traded Common Stock" to supply all required details of your transaction(s). Neither the Claims Administrator, the Defendants, nor the Class Representatives have access to your transactional information. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

On the schedules, provide all of the requested information with respect to **all of your** purchases or acquisitions of Intuitive publicly traded common stock, and **all of your sales** of Intuitive publicly traded common stock, whether such transactions resulted in a profit or a loss. You must also provide the amount of Intuitive publicly traded common stock you held at the close of trading on October 17, 2013. Failure to report all such transactions may result in the rejection of your claim.

List each transaction separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day, and year of each transaction you list.

The date of covering a "short sale" is deemed to be the date of purchase of Intuitive common stock. The date of a "short sale" is deemed to be the date of sale of Intuitive common stock.

COPIES OF BROKER CONFIRMATIONS OR OTHER DOCUMENTATION OF YOUR TRANSACTIONS SHOULD BE ATTACHED TO YOUR CLAIM. **FAILURE TO PROVIDE THIS DOCUMENTATION COULD DELAY VERIFICATION OF YOUR CLAIM OR RESULT IN REJECTION OF YOUR CLAIM.**



PART III - SCHEDULE OF TRANSACTIONS IN INTUITIVE PUBLICLY TRADED COMMON STOCK

A. BEGINNING HOLDINGS: State the number of shares of Intuitive publicly traded common stock held at the beginning of trading on **February 6, 2012**.

<input type="text"/>					
Shares					

B. PURCHASES/ACQUISITIONS: Separately list each and every purchase or acquisition of Intuitive publicly traded common stock from the opening of trading on **February 6, 2012** through and including the close of trading **July 18, 2013**. (Must be documented.)

Date(s) of Purchase or Acquisition List Chronologically (Month/Day/Year)	Number of Shares Purchased/Acquired	Purchase Price Per Share	Total Purchase Price (Excluding fees, taxes, and commissions)
<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

C. PURCHASES/ACQUISITIONS DURING "90-DAY LOOKBACK PERIOD": State the total number of shares of Intuitive publicly traded common stock you purchased/acquired from **July 19, 2013** through and including the close of trading on **October 17, 2013**.²

<input type="text"/>					
Shares					

D. SALES: Separately list each and every sale/disposition of Intuitive publicly traded common stock from after the opening of trading on **February 6, 2012** through and including the close of trading on **October 17, 2013**. (Must be documented.)

Date(s) of Sale List Chronologically (Month/Day/Year)	Number of Shares Sold	Sale Price Per Share	Total Sale Price (Excluding fees, taxes, and commissions)
<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

E. ENDING HOLDINGS: State the total number of shares of Intuitive publicly traded common stock you held as of the close of trading on **October 17, 2013**. (Must be documented.)

<input type="text"/>					
Shares					

² **Please note:** Information requested with respect to your purchases/acquisitions of Intuitive publicly traded common stock from July 19, 2013 through and including the close of trading on October 17, 2013 is needed in order for the Claims Administrator to balance your claim; purchases during this period, however, are not eligible under the Settlement and will not be used for purposes of calculating your Recognized Claim pursuant to the Plan of Allocation.

IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS
YOU **MUST** PHOTOCOPY THIS PAGE AND CHECK THIS BOX
IF YOU DO NOT CHECK THIS BOX THESE ADDITIONAL PAGES WILL **NOT** BE REVIEWED



PART IV - SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS

1. I (We) submit this Claim Form under the terms of the Stipulation and Agreement of Settlement described in the Settlement Notice and available at www.intuitivesurgicalsecuritieslitigation.com. I (We) also submit to the jurisdiction of the United States District Court, Northern District of California, with respect to my (our) claim as a Class Member.

2. I (We) further acknowledge that, upon the Effective Date of the Settlement, I will (we will) be bound by and subject to the terms of any judgment that may be entered in the Action, including the release of the Released Claims as against the Released Defendant Parties. I (We) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so. I (We) have not submitted any other claim covering the same purchases or sales of Intuitive publicly traded common stock during the relevant periods and know of no other person having done so on my (our) behalf.

3. I (We) hereby warrant and represent that I (we) have included information about all of my (our) purchases of Intuitive publicly traded common stock which took place from February 6, 2012 through October 17, 2013, and all of my (our) sales of common stock during this period, as well as the number of shares held by me (us) at the close of trading on October 17, 2013.

4. I (We) declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of _____ in _____, _____.
(Month/Year) (City) (State/Country)

Signature of Claimant

Print Name of Claimant

Date

Signature of Joint Claimant, if any

Print Name of Joint Claimant, if any

Date

If claimant is other than an individual, or is not the person completing this form, the following also must be provided:

Signature of Person Completing Form

Print Name of Person Completing Form

Date

Capacity of person(s) signing, e.g., Beneficial Purchaser,
Executor or Administrator

REMINDER CHECKLIST

**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.
THANK YOU FOR YOUR PATIENCE.**

1. Please sign above.
2. Remember to attach copies of supporting documentation.
3. **Do not send** originals of certificates or other documentation as they will not be returned.
4. Keep a copy of your Claim Form and all supporting documentation for your records.
5. If you desire an acknowledgment of receipt of your Claim Form, please send it Certified Mail, Return Receipt Requested.
6. If you move, please send your new address to the address below.
7. **Do not use red pen or highlighter** on the Claim Form or supporting documentation.

**THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR, IF MAILED, POSTMARKED NO LATER THAN
DECEMBER 6, 2018, ADDRESSED AS FOLLOWS:**

In re Intuitive Surgical Securities Litigation
c/o GCG
P.O. Box 10359
Dublin, OH 43017-0359
(844) 850-7746
info@intuitivesurgicalsecuritieslitigation.com
www.intuitivesurgicalsecuritieslitigation.com

EXHIBIT C

INVESTOR'S BUSINESS DAILY®

Affidavit of Publication

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Name of Publication: IBD Weekly
 Address: 12655 Beatrice Street
 City, State, Zip: Los Angeles, CA 90066
 Phone #: 310.448.6700
 State of: California
 County of: Los Angeles

I, Rodney Taylor for the publisher of IBD Weekly, published in the city of Los Angeles, state of California, county of Los Angeles hereby certify that the attached notice(s) for Intuitive Surgical Securities was printed in said publication on the following date(s):

OCTOBER 22, 2018

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 22nd day of October, 2018, by

R Taylor, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature Richard C. Brand II (Seal)



SMALL-CAP GROWTH FUNDS VS. BIG-CAP GROWTH FUNDS. Performance comparison table with columns for Fund Name, Rating, and % Change.

GROWTH FUNDS VS. VALUE FUNDS. Performance comparison table with columns for Fund Name, Rating, and % Change.

Small table with columns for Fund Name, Rating, and % Change.

Small table with columns for Fund Name, Rating, and % Change.



Top Growth Funds Last 3 Months (All Total Returns). Table listing fund names, performance metrics, and % change.

Top Growth Funds Last 26 Months (All Total Returns). Table listing fund names, performance metrics, and % change.

Table listing various fund names and their performance metrics.

Table listing various fund names and their performance metrics.

U.S. Stock Fund Cash Position High (100%) 6.2% Low (0%) 2.5%. Table with columns for Fund Name, Rating, and % Change.

Table listing various fund names and their performance metrics.

Table listing various fund names and their performance metrics.

Table listing various fund names and their performance metrics.

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN JOSE. IN RE INTUITIVE SURGICAL SECURITIES LITIGATION. Case No. 5:13-cv-01920-EJD (HRL). SUMMARY NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND MOTION FOR ATTORNEYS' FEES AND EXPENSES.

EQUITIES LEADERS SUMMIT. The Biggest Gathering Of Buy Side Heads of Equity Trading In The US. December 05 - 07, 2018 | National Doral Golf Resort, Miami. Includes list of confirmed sponsors like BIDS, citi, CODA, DASH, Fidessa, INSTINET, IPREO, Jane Street, LUMINEX, pragma, THOMSON REUTERS, tradeinformatics, Tradeweb, UBS.

EXHIBIT D

PR Newswire: Press Release Distribution Confirmation for Labaton Sucharow LLP. ID#2271187-1-1

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Mon 10/22/2018 6:00 AM

To: DL-GCGBuyers <GCGBuyers@epiqglobal.com>; Ollivier, Tammy <tammy.Ollivier@epiqglobal.com>;

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