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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)

**STIPULATION AND AGREEMENT OF
SETTLEMENT**

1 This stipulation and agreement of settlement (the “Stipulation”) is made and entered into
2 by and between (a) the Employees’ Retirement System of the State of Hawaii (“Hawaii ERS”) and
3 Greater Pennsylvania Carpenters’ Pension Fund (“Greater Pennsylvania”) (collectively,
4 “Class Representatives” or “Plaintiffs”), on behalf of themselves and the other members of the
5 Class (defined below), on the one hand, and (b) defendants Intuitive Surgical, Inc. (“Intuitive” or
6 the “Company”), and Gary S. Guthart, Marshall L. Mohr, and Lonnie M. Smith (collectively, the
7 “Individual Defendants,” and, together with Intuitive, the “Defendants”), on the other hand, by
8 and through their counsel of record in the above-captioned litigation pending in the United States
9 District Court for the Northern District of California (the “Court”). This Stipulation is intended
10 by the parties to fully, finally, and forever resolve, discharge, and settle the Released Claims
11 (defined below), upon and subject to the terms and conditions hereof and subject to the Court’s
12 approval.

13 **WHEREAS:**

14 A. All words or terms used herein that are capitalized shall have the meaning
15 ascribed to those words or terms as set forth herein and in ¶ 1 hereof entitled “Definitions.”

16 B. On April 26, 2013, a class action complaint was filed in the United States District
17 Court for the Northern District of California (the “Court”), styled *Abrams v. Intuitive Surgical,*
18 *Inc., et al.*, No. 5:13-cv-1920-EJD.

19 C. By Order dated November 18, 2013, the Court ordered that the case be
20 recaptioned as *In re Intuitive Surgical Securities Litigation*, Civil Action No. 5:13-cv-01920 (the
21 “Action”), and that any subsequently filed, removed, or transferred actions that arise out of the
22 subject matter of the Action be consolidated with the Action; appointed Hawaii ERS as Lead
23 Plaintiff in the Action; and approved Hawaii ERS’ selection of Labaton Sucharow LLP as Lead
24 Counsel in the Action.

25 D. On October 15, 2013, Plaintiffs filed and served the Amended Class Action
26 Complaint (the “Complaint”) asserting claims against all Defendants under Section 10(b) of the
27 Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder,
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1 and against the Individual Defendants under Sections 20(a) and 20A of the Exchange Act.
2 Among other things, the Complaint alleged that Defendants made materially false and
3 misleading statements and omissions concerning and the safety profile of da Vinci and
4 Intuitive's growth, revenues, income and products liability. The Complaint further alleged that
5 the price of Intuitive publicly traded common stock was artificially inflated as a result of
6 Defendants' allegedly false and misleading statements, and declined when the truth was
7 revealed.

8 E. On December 16, 2013, Defendants filed and served their motion to dismiss the
9 Complaint. On January 30, 2014, Plaintiffs filed and served their memorandum of law in
10 opposition to the motion to dismiss and, on February 28, 2014, Defendants filed and served their
11 reply papers. On August 21, 2014, the Court entered its Order that granted in part, and denied in
12 part, Defendants' motion. On October 14, 2014, Defendants filed a motion for leave to file a
13 motion for reconsideration. On October 22, 2014, the Court granted the motion and on
14 November 5, 2014, Defendants filed their motion for reconsideration. Plaintiffs opposed the
15 motion on November 19, 2014, and Defendants filed a reply on November 26, 2014. The Court
16 denied the motion for reconsideration on December 15, 2014, and lifted the discovery stay.

17 F. Discovery in the Action commenced promptly after the Court denied Defendants'
18 motion for reconsideration. Class Representatives, through Class Counsel, conducted a thorough
19 investigation relating to the claims, defenses, and underlying events and transactions that are the
20 subject of the Action. According to Class Counsel, this process included reviewing and
21 analyzing: (i) documents filed publicly by the Company with the U.S. Securities and Exchange
22 Commission ("SEC"); (ii) publicly available information, including press releases, news articles,
23 and other public statements issued by or concerning the Company and the Defendants; (iii)
24 research reports issued by financial analysts concerning the Company; (iv) other publicly
25 available information and data concerning the Company; (v) approximately 525,651 pages of
26 documents produced by Defendants during discovery and approximately 28,726 pages of
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1 documents produced by third-parties; and (vi) the applicable law governing the claims and
2 potential defenses.

3 G. Before reaching the agreement in principle to settle the Action, counsel for Class
4 Representatives and Defendants completed voluminous class, fact and expert discovery that
5 included: taking or defending approximately 24 depositions, including the depositions of Class
6 Representatives, the Individual Defendants, and 6 experts; and exchanging 13 expert reports
7 directed at Intuitive's compliance with FDA regulations, Defendants' alleged insider trading,
8 loss causation, and damages.

9 H. On September 1, 2015, Plaintiffs filed their motion to certify the Action as a class
10 action. On December 23, 2016, the Court granted Plaintiffs' motion, certifying a Class
11 consisting of "[a]ll persons or entities who purchased or acquired the publicly traded common
12 stock of Intuitive Surgical, Inc. during the period from February 6, 2012 through July 18, 2013,
13 inclusive, and who were damaged thereby. Excluded from the Class are (i) all Defendants; (ii)
14 members of the immediate families of individual defendants Guthart, Mohr, and Smith; (iii) any
15 subsidiaries and affiliates of Defendants; (iv) any person who is or was an officer or director of
16 Intuitive or any of Intuitive's subsidiaries or affiliates; (v) Defendants' directors' and officers'
17 liability insurance carriers, and any affiliates or subsidiaries thereof; (vi) Intuitive's employee
18 retirement and benefit plan(s); and (vii) the legal representatives, heirs, successors and assigns of
19 any such excluded person or entity." The Court also appointed Plaintiffs as "Class
20 Representatives" and Lead Counsel as "Class Counsel."

21 I. On January 5, 2017, Defendants petitioned the United States Court of Appeals for
22 the Ninth Circuit for permission to appeal the Order certifying the Class, pursuant to Fed. R. Civ.
23 P. 23(f). The petition was denied by Order dated October 30, 2017. Defendants' motion for
24 reconsideration was denied by Order dated November 22, 2017.

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

5 K. By Order entered March 12, 2018, the Court granted Class Representatives'
6 motion, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for approval of the
7 proposed form and content of notices to be disseminated to the Class, and approved the proposed
8 method for dissemination of these notices (the "Notice Order"). Among other things, the Notice
9 Order found that the form and content of Class notice met the requirements of Rule 23 and due
10 process, constituted the best notice practicable under the circumstances, and constituted due and
11 sufficient notice to all persons and entities entitled to receive notice.

12 L. Beginning on April 9, 2018, the Notice of Pendency of Class Action (the "Class
13 Notice") was mailed to potential Class Members, and on April 23, 2018, the Summary Notice of
14 Pendency of Class Action was published in the *Investor's Business Daily* and transmitted over
15 the *PR Newswire*.

16 M. Pursuant to the Court's order, the Class Notice provided Class Members with the
17 opportunity to request exclusion from the Class, explained that right, and set forth the deadline
18 and procedures for doing so. The Class Notice stated that it would be within the Court's
19 discretion whether to permit a second opportunity to request exclusion if there is a settlement.
20 The Class Notice informed Class Members that if they chose to remain a member of the Class,
21 they would "be bound by all past, present, and future orders and judgments in the Action,
22 whether favorable or unfavorable." The deadline for requesting exclusion from the Class
23 pursuant to the Class Notice was June 8, 2018. *See* ECF No. 285. Six persons and entities have
24 validly requested exclusion from the Class pursuant to the Class Notice.

25 N. On February 9, 2018, Defendants moved for summary judgment. Class
26 Representatives filed their opposition papers on March 23, 2018, and, on April 23, 2018,
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1 Defendants filed their reply papers. The motion remained pending when the parties agreed to
2 resolve the Action.

3 O. Trial of the Action was scheduled by the Court to begin on October 30, 2018.

4 P. On June 6, 2018, following extensive arm's-length negotiations, the Parties
5 reached an agreement in principle to settle the Action for \$42,500,000, subject to the execution
6 of formal settlement documents. This Stipulation (together with the exhibits hereto) constitutes
7 the final and binding agreement between the Parties.

8 Q. Defendants have denied and continue to deny any wrongdoing or that they have
9 committed any act or omission giving rise to any liability or violation of law, including the U.S.
10 securities laws. Defendants have denied and continue to deny each and every one of the claims
11 alleged by Class Representatives in the Action on behalf of the Class, including all claims in the
12 complaints filed in the Action. Defendants also have denied and continue to deny, *inter alia*, the
13 allegations that Class Representatives or Class Members have suffered damage, or were
14 otherwise harmed by the conduct alleged in the Action. Defendants have asserted and continue
15 to assert that their public statements during the Class Period contained no material misstatements
16 or omissions. Defendants have asserted and continue to assert that, at all times, they acted in
17 good faith and in a manner they reasonably believed to be in accordance with all applicable
18 rules, regulations, and laws. Nonetheless, Defendants have determined that it is desirable and
19 beneficial to them that the Action be settled in the manner and upon the terms and conditions set
20 forth in this Stipulation to avoid the further expense, inconvenience, and burden of this Action,
21 the distraction and diversion of personnel and resources, and to obtain the conclusive and
22 complete dismissal and/or release of this Action and Released Claims.

23 R. The Stipulation, whether or not consummated, any proceedings relating to any
24 settlement, or any of the terms of any settlement, whether or not consummated, shall in no event
25 be construed as, or deemed to be evidence of, an admission or concession on the part of the
26 Defendants, or any of them individually, with respect to any fact or matter alleged in the Action,
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1 or any claim of fault or liability or wrongdoing or damage whatsoever, or any infirmity in any
2 claim or defense that has been or could have been asserted.

3 S. Class Representatives believe that the claims asserted in the Action have merit
4 and that the evidence developed to date supports the claims asserted. However, Class
5 Representatives and Class Counsel recognize and acknowledge the expense and length of
6 continued proceedings necessary to prosecute the Action through summary judgment and trial
7 (and any possible appeals). Class Counsel and Class Representatives also have taken into
8 account the uncertain outcome and the risk of any litigation, especially in complex actions such
9 as the Action, as well as the difficulties and delays inherent in such litigation. Class Counsel
10 also are mindful of the inherent problems of proof and the possible defenses to the claims alleged
11 in the Action. Based on their evaluation, Class Representatives and Class Counsel believe that
12 the Settlement set forth in this Stipulation confers substantial monetary benefits upon the Class
13 and is in the best interests of the Class.

14 **NOW THEREFORE**, without any concession by Class Representatives that the Action
15 lacks merit, and without any concession by the Defendants of any liability, wrongdoing, fault, or
16 lack of merit in the defenses asserted, it is hereby **STIPULATED AND AGREED**, by and
17 among the parties to this Stipulation (“Parties”), through their respective attorneys, subject to
18 approval by the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that, in
19 consideration of the benefits flowing to the Parties hereto, all Released Claims and all Released
20 Defendants’ Claims, as against all Released Parties, shall be fully, finally, and forever
21 compromised, settled, released, discharged, and dismissed with prejudice, and without costs
22 (except as provided in the Stipulation), upon and subject to the following terms and conditions:

23 **DEFINITIONS**

24 1. As used in this Stipulation, the following terms shall have the meanings set forth
25 below. In the event of any inconsistency between any definition set forth below and any
26 definition in any other document related to the Settlement, the definition set forth below shall
27 control.

1 (a) “Action” means the civil action captioned *In re Intuitive Surgical*
2 *Securities Litigation*, 5:13-cv-01920-EJD, pending in the United States District Court for the
3 Northern District of California before the Honorable Edward J. Davila.

4 (b) “Alternative Judgment” means a form of final judgment that may be
5 entered by the Court but in a form other than the form of Judgment provided for in this
6 Stipulation and where none of the Parties hereto elects to terminate the Settlement by reason of
7 such variance. For the avoidance of doubt, a Party may elect to terminate the Settlement only for
8 the reasons explicitly set forth in this Stipulation. For the further avoidance of doubt, a decision
9 by the Court against any Party pursuant to 15 U.S.C. §78u-4(c) does not constitute a basis for a
10 Party to elect to terminate the Settlement.
11

12 (c) “Authorized Claimant” means a Class Member whose claim for recovery
13 from the Settlement has been allowed pursuant to the terms of the Stipulation and the Court-
14 approved Plan of Allocation.
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16 (d) “Claims Administrator” means the firm Garden City Group, LLC
17 retained, subject to Court approval, to administer the Settlement, including providing all notices
18 approved by the Court to Class Members, and processing proofs of claim.

19 (e) “Class” or “Class Member” means all persons or entities who purchased
20 or acquired the publicly traded common stock of Intuitive Surgical, Inc. during the period from
21 February 6, 2012 through July 18, 2013, inclusive, and who were damaged thereby. Excluded
22 from the Class are: (i) all Defendants; (ii) members of the immediate families of Individual
23 Defendants Guthart, Mohr, and Smith; (iii) any subsidiaries and affiliates of Defendants; (iv) any
24 person who is or was an officer or director of Intuitive or any of Intuitive’s subsidiaries or
25 affiliates; (v) Defendants’ directors’ and officers’ liability insurance carriers, and any affiliates or
26 subsidiaries thereof; (vi) Intuitive’s employee retirement and benefit plan(s); and (vii) the legal
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1 representatives, heirs, successors and assigns of any such excluded person or entity. Also
2 excluded from the Class shall be any person or entity that submitted a timely and valid request
3 for exclusion in connection with the Class Notice previously disseminated who has not opted
4 back into the Class or that timely submits a valid request for exclusion in connection with the
5 Settlement Notice (defined below), which is accepted by the Court.

6
7 (f) “Class Counsel” means Labaton Sucharow LLP.

8 (g) “Class Notice” means the notice of pendency of the Action previously
9 authorized by Order of the Court, which was mailed to Class Members beginning on April 9,
10 2018.

11 (h) “Class Period” means the period from February 6, 2012 through July 18,
12 2013, inclusive.

13 (i) “Court” means the United States District Court for the Northern District of
14 California.

15 (j) “Defendants” means Intuitive Surgical, Inc., Gary Guthart, Lonnie Smith,
16 and Marshall Mohr.

17 (k) “Defendants’ Counsel” means the law firms of Kecker, Van Nest & Peters
18 LLP and Gibson Dunn & Crutcher LLP.

19
20 (l) “Effective Date” means the date upon which the Settlement shall have
21 become effective, as set forth in ¶ 37 below.

22 (m) “Escrow Account” means the separate escrow account maintained at
23 Citibank, N.A., into which the Settlement Amount will be deposited for the benefit of the Class.

24 (n) “Escrow Agent” means Citibank, N.A.

25 (o) “Fee and Expense Application” means Class Counsel’s application, on
26 behalf of Plaintiffs’ Counsel, for an award of attorneys’ fees and payment of litigation expenses
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1 incurred in prosecuting the case, including any expenses of Class Representatives pursuant to 15
2 U.S.C. § 78u-4(a)(4) of the Private Securities Litigation Reform Act of 1995 (“PSLRA”).

3 (p) “Final” shall mean, with respect to the Court’s Judgment or Alternative
4 Judgment, the occurrence of either of the following (whichever is earlier): (i) if an appeal or
5 review is not sought by any Person from the Judgment or Alternative Judgment, the day
6 following the expiration of the time to appeal or petition from the Judgment or Alternative
7 Judgment; or (ii) if an appeal or review is sought from the Judgment or Alternative Judgment,
8 the day after such Judgment or Alternative Judgment is no longer subject to further judicial
9 review, including upon appeal or review by writ of certiorari. However, any appeal or
10 proceeding seeking subsequent judicial review pertaining solely to the Plan of Allocation, or to
11 the Court’s award of attorneys’ fees or expenses, shall not in any way delay or affect the time set
12 forth above for the Judgment or Alternative Judgment to become Final or otherwise preclude the
13 Judgment or Alternative Judgment from becoming Final.

14 (q) “Individual Defendants” means Gary Guthart, Lonnie Smith, and Marshall
15 Mohr.

16 (r) “Judgment” means the proposed judgment to be entered by the Court
17 approving the Settlement, substantially in the form attached hereto as Exhibit B.

18 (s) “Local Counsel” means Kerr & Wagstaffe LLP.

19 (t) “Net Settlement Fund” means the Settlement Fund less: (i) Court-awarded
20 attorneys’ fees and expenses; (ii) Notice and Administration Expenses; (iii) Taxes; and (iv) any
21 other fees or expenses approved by the Court.

22 (u) “Notice and Administration Expenses” means all costs, fees, and expenses
23 incurred in connection with providing notice to the Class and the administration of the
24 Settlement, including but not limited to: (i) providing notice of the pendency of the Action and
25 the Settlement by mail, publication, and other means to Class Members; (ii) receiving and
26 reviewing claims; (iii) applying the Plan of Allocation; (iv) communicating with Persons
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1 regarding the Settlement and claims administration process; (v) distributing the proceeds of the
2 Settlement; and (vi) fees related to the Escrow Account and investment of the Settlement Fund.

3 (v) "Person(s)" means any individual, corporation (including all divisions and
4 subsidiaries), general or limited partnership, association, joint stock company, joint venture,
5 limited liability company, professional corporation, estate, legal representative, trust,
6 unincorporated association, government or any political subdivision or agency thereof, and any
7 other business or legal entity, and, as applicable, their respective spouses, heirs, predecessors,
8 successors-in-interest, representatives, and assigns.

9 (w) "Plaintiffs" or "Class Representatives" means Employees' Retirement
10 System of the State of Hawaii and Greater Pennsylvania Carpenters' Pension Fund.

11 (x) "Plan of Allocation" means the Plan of Allocation for the Net Settlement
12 Fund, which shall be substantially in the form described in the Settlement Notice or any other
13 plan of distributing the Net Settlement Fund as shall be approved by the Court.

14 (y) "Preliminary Approval Order" means the proposed Order Granting
15 Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and
16 Setting Date for Hearing on Final Approval of Settlement, substantially in the form attached
17 hereto as Exhibit A.

18 (z) "Proof of Claim" or "Claim Form" means the Proof of Claim and Release
19 form for submitting a claim, which shall be substantially in the form attached as Exhibit 2 to
20 Exhibit A hereto.

21 (aa) "Released Claims" means all actions, suits, claims, demands, rights,
22 liabilities, damages, costs, restitution, rescission, interest, attorneys' fees, expert or consulting
23 fees, expenses, matters and issues known or unknown, contingent or absolute, suspected or
24 unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued
25 or unaccrued, apparent or unapparent, whether concealed or hidden, and causes of action of
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1 every nature and description, including both known claims and Unknown Claims, whether based
2 on federal, state, local, foreign, statutory or common law or any other law, rule or regulation,
3 including claims under the Securities Act of 1933 or the Securities Exchange Act of 1934 or the
4 securities laws of any state or territory, that have been or that might have been asserted by any
5 Releasing Plaintiff Party against any of the Released Defendant Parties, arising out of, relating
6 to, based upon, or in connection with: (a) any purchase, acquisition, sale, or holding of Intuitive
7 publicly traded common stock during the Class Period and (b) any facts, claims, matters,
8 allegations, activities, transactions, events, disclosures, representations, statements, acts, or
9 omissions or failures to act that were alleged, set forth, referred to, or that could have been
10 alleged in the Action, in the Second Amended Complaint, or in any complaint, against the
11 Released Defendant Parties. Released Claims does not include claims relating to the
12 enforcement of the Settlement.
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15 (bb) “Released Defendant Party” or “Released Defendant Parties” means
16 Defendants, and each of their respective past or present parents, subsidiaries, divisions,
17 affiliates, stockholders, officers, directors, insurers, employees, agents, attorneys, general or
18 limited partners, partnerships, limited liability companies, predecessors, successors, assigns,
19 heirs, trustees, administrators, and any of their legal representatives (and the predecessors, heirs,
20 executors, administrators, trustees, successors, immediate family members, purchasers, and
21 assigns of each of the foregoing), in their capacities as such.

22 (cc) “Released Defendants’ Claims” means all claims, demands, rights,
23 remedies, liabilities, costs, attorneys’ fees, expenses, and causes of action of every nature and
24 description whatsoever, including both known claims and Unknown Claims, whether arising
25 under federal, state, local, statutory, common or foreign law, or any other law, rule, or regulation,
26 that the Releasing Defendant Parties could have asserted against any of the Released Plaintiff
27 Parties that arise out of or relate in any way to the institution, prosecution, or settlement of the
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1 claims in the Action, except for claims relating to the enforcement of the Settlement. For the
2 avoidance of doubt, it shall not include any award issued pursuant to 15 U.S.C. §78u-4(c) should
3 the Court elect to make such an award.

4 (dd) “Released Parties” means the Released Defendant Parties and the
5 Released Plaintiff Parties.

6 (ee) “Released Plaintiff Party” or “Released Plaintiff Parties” means the Class
7 Representatives, the Class, Class Counsel, Local Counsel, and each of their respective past or
8 present trustees, officers, directors, partners, employees, contractors, auditors, principals, agents,
9 attorneys, predecessors, successors, assigns, insurers, parents, subsidiaries, general or limited
10 partners or partnerships, limited liability companies, heirs, trustees, administrators, and any of
11 their legal representatives (and the predecessors, heirs, executors, administrators, trustees,
12 successors, immediate family members, purchasers, and assigns of each of the foregoing), in
13 their capacities as such.

14 (ff) “Releasing Defendant Party” or “Releasing Defendant Parties” means
15 each and every Defendant, and each of their respective heirs, executors, trustees, administrators,
16 predecessors, successors, and assigns, in their capacities as such.

17 (gg) “Releasing Plaintiff Party” or “Releasing Plaintiff Parties” means each and
18 every Class Representative and Class Member (who is not otherwise properly excluded from the
19 Class), and each of their respective heirs, executors, trustees, administrators, predecessors,
20 successors, and assigns, in their capacities as such.

21 (hh) “Settlement” means the resolution of the Action in accordance with the
22 terms and provisions of the Stipulation.

23 (ii) “Settlement Amount” means the total principal amount of forty-two
24 million and five hundred thousand U.S. dollars (\$42,500,000) in cash.

1 (jj) "Settlement Fund" means the Settlement Amount and any interest earned
2 thereon.

3 (kk) "Settlement Hearing" means the hearing to be held by the Court to
4 determine whether (i) the Settlement is fair, reasonable, and adequate and should be approved,
5 (ii) the Plan of Allocation is fair, reasonable and adequate and should be approved, and (iii) Class
6 Counsel's request for an award of attorneys' fees and expenses should be approved.

7 (ll) "Settlement Notice" means the Notice of Proposed Class Action
8 Settlement and Motion for Attorneys' Fees and Expenses, which is to be mailed to Class
9 Members and which shall be substantially in the form attached as Exhibit 1 to Exhibit A hereto.

10 (mm) "Stipulation" means this Stipulation and Agreement of Settlement.

11 (nn) "Summary Notice" means the Summary Notice of Proposed Class Action
12 Settlement and Motion for Attorneys' Fees and Expenses for publication, which shall be
13 substantially in the form attached as Exhibit 3 to Exhibit A hereto.

14 (oo) "Taxes" means all federal, state, or local taxes of any kind on any income
15 earned by the Settlement Fund and the expenses and costs incurred in connection with the
16 taxation of the Settlement Fund (including, without limitation, interest, penalties and the
17 reasonable expenses of tax attorneys and accountants).

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

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

11 Class Representatives, other Class Members, or Defendants may hereafter discover facts, legal
12 theories, or authorities in addition to or different from those which any of them now knows or
13 believes to be true with respect to the subject matter of the Released Claims and the Released
14 Defendants' Claims, but Class Representatives and Defendants shall expressly, fully, finally, and
15 forever waive, compromise, settle, discharge, extinguish, and release, and each Class Member
16 shall be deemed to have waived, compromised, settled, discharged, extinguished, and released,
17 and upon the Effective Date and by operation of the Judgment or Alternative Judgment shall
18 have waived, compromised, settled, discharged, extinguished, and released, fully, finally, and
19 forever, any and all Released Claims and Released Defendants' Claims as applicable, known or
20 unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued, apparent or
21 unapparent, which now exist, or heretofore existed, or may hereafter exist, without regard to the
22 subsequent discovery or existence of such different or additional facts, legal theories, or
23 authorities. Class Representatives and Defendants acknowledge, and other Class Members by
24 operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown
25 Claims" in the definition of Released Claims and Released Defendants' Claims was separately
26 bargained for and was a material element of the Settlement.
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1 **SCOPE AND EFFECT OF SETTLEMENT**

2 2. The obligations incurred pursuant to the Stipulation are (a) subject to approval by
3 the Court and the Judgment (or Alternative Judgment), reflecting such approval, becoming Final;
4 and (b) in full and final disposition of the Action with respect to the Released Parties and any and
5 all Released Claims and Released Defendants' Claims.

6
7 3. Upon the Effective Date of the Settlement, each Class Representative and Class
8 Member (who is not otherwise properly excluded from the Class), on behalf of themselves and
9 each of the Releasing Plaintiff Parties, shall be deemed to have fully, finally, and forever waived,
10 released, discharged, covenanted not to bring, and dismissed each and every one of the Released
11 Claims against each and every one of the Released Defendant Parties and shall forever be barred
12 and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the
13 Released Claims against any and all of the Released Defendant Parties.

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15 4. Upon the Effective Date of the Settlement, Defendants, on behalf of themselves
16 and each of the Releasing Defendant Parties, shall be deemed to have fully, finally, and forever
17 waived, released, discharged, covenanted not to bring, and dismissed each and every one of the
18 Released Defendants' Claims against each and every one of the Released Plaintiff Parties and
19 shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining
20 any and all of the Released Defendants' Claims against any and all of the Released Plaintiff
21 Parties.
22

23 **THE SETTLEMENT CONSIDERATION**

24 5. In full settlement of the claims asserted in the Action against Defendants and in
25 consideration of the releases specified in ¶¶ 3-4, above, all of which the Parties agree are good
26 and valuable consideration, within ten (10) business days after the later of (i) entry of an order
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1 preliminarily approving the Settlement or (ii) receipt of complete and accurate payment
2 instructions and W-9 for the Settlement Fund from Class Counsel, Defendants shall deposit or
3 cause to be deposited by wire transfer \$10,000,000 into the Escrow Account. The remaining
4 \$32,500,000 shall be deposited or caused to be deposited by Defendants by wire transfer ten (10)
5 calendar days before the date set by the Court for the Settlement Hearing. Except for any
6 obligations pursuant to ¶ 52 below, Defendants shall have no obligation to pay any sum of any
7 kind or for any purpose other than the Settlement Amount.

8 6. With the sole exception of Defendants' obligation to secure payment of the
9 Settlement Amount into the Escrow Account as provided for in ¶ 5, Defendants and Defendants'
10 Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to:
11 (i) any act, omission, or determination by Class Counsel or the Claims Administrator, or any of
12 their respective designees, in connection with the administration of the Settlement or otherwise;
13 (ii) the management, investment, or distribution of the Settlement Fund to eligible Class
14 Members; (iii) the Plan of Allocation; (iv) the determination, administration, calculation, or
15 payment of any claims asserted against the Settlement Fund; (v) any loss suffered by, or
16 fluctuation in value of, the Settlement Fund; or (vi) the payment or withholding of any Taxes,
17 expenses, and/or costs incurred in connection with the taxation of the Settlement Fund,
18 distributions or other payments from the Escrow Account, or the filing of any federal, state, or
19 local returns.

20 7. Other than the obligation to cause the payment of the Settlement Amount pursuant
21 to ¶ 5, Defendants shall have no obligation to make any other payments into the Escrow Account
22 or to any Class Member pursuant to this Stipulation.

23 **USE AND TAX TREATMENT OF SETTLEMENT FUND**

24 8. The Settlement Fund shall be used: (i) to pay any Taxes; (ii) to pay Notice and
25 Administration Expenses, as authorized by this Stipulation; (iii) to pay any attorneys' fees and
26 expenses awarded by the Court pursuant to Class Counsel's Fee and Expense Application; (iv) to
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1 pay any other fees and expenses ordered by the Court; and (v) to pay the claims of Authorized
2 Claimants.

3 9. The Net Settlement Fund shall be distributed to Authorized Claimants as provided
4 in ¶¶ 21 - 33 hereof. The Net Settlement Fund shall remain in the Escrow Account before the
5 Effective Date. All funds held in the Escrow Account, and all earnings thereon, shall be deemed
6 to be in the custody of the Court (*in custodia legis*), and shall remain subject to the jurisdiction of
7 the Court until such time as the funds shall have been disbursed or returned, pursuant to the
8 terms of this Stipulation, and/or further order of the Court. The Escrow Agent shall invest funds
9 in the Escrow Account in instruments backed by the full faith and credit of the United States
10 Government (or a mutual fund invested solely in such instruments), or deposit some or all of the
11 funds in non-interest-bearing transaction account(s) that are fully insured by the Federal Deposit
12 Insurance Corporation (“FDIC”) in amounts that are up to the limit of FDIC insurance.
13 Defendants and Defendants’ Counsel shall have no responsibility for, interest in, or liability
14 whatsoever with respect to investment decisions executed by the Escrow Agent. All risks related
15 to the investment of the Settlement Fund shall be borne solely by the Settlement Fund and its
16 Escrow Agent.

17 10. After the Settlement Amount has been paid into the Escrow Account, the Parties
18 agree to treat the Settlement Fund as a “qualified settlement fund” within the meaning of Treas.
19 Reg. § 1.468B-1. In addition, Class Counsel shall timely make, or cause to be made, such
20 elections as necessary or advisable to carry out the provisions of this paragraph 10, including the
21 “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted
22 date. Such election shall be made in compliance with the procedures and requirements contained
23 in such regulations. It shall be the responsibility of Class Counsel to timely and properly prepare
24 and deliver, or cause to be prepared and delivered, the necessary documentation for signature by
25 all necessary parties, and thereafter take all such actions as may be necessary or appropriate to
26 cause the appropriate filing(s) to occur. Consistent with the foregoing:

1 (a) For the purposes of Section 468B of the Internal Revenue Code of 1986,
2 as amended, and Treas. Reg. § 1.468B promulgated thereunder, the “administrator” shall be
3 Class Counsel or their successors, who shall timely and properly file, or cause to be filed, all
4 federal, state, or local tax returns and information returns (together, “Tax Returns”) necessary or
5 advisable with respect to the earnings on the funds deposited in the Escrow Account (including
6 without limitation the returns described in Treas. Reg. § 1.468B-2(k)). Such Tax Returns (as
7 well as the election described above) shall be consistent with this subparagraph and in all events
8 shall reflect that all Taxes (including any estimated taxes, earnings, or penalties) on the income
9 earned on the funds deposited in the Escrow Account shall be paid out of such funds as provided
10 in subparagraph (c) of this paragraph 10.

11 (b) All Taxes shall be paid out of the Settlement Fund. In all events,
12 Defendants and Defendants’ Counsel shall have no liability or responsibility whatsoever for the
13 Taxes or the filing of any tax return or other document with the Internal Revenue Service or any
14 other state or local taxing authority. In the event any Taxes are owed by any of the Defendants
15 on any earnings on the funds on deposit in the Escrow Account, such amounts shall also be paid
16 out of the Settlement Fund.

17 (c) Taxes shall be treated as, and considered to be, a cost of administration of
18 the Settlement and shall be timely paid, or caused to be paid, by Class Counsel out of the
19 Settlement Fund without prior order from the Court, and Class Counsel shall be obligated
20 (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized
21 Claimants any funds necessary to pay such amounts (as well as any amounts that may be
22 required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). The Parties agree to cooperate with
23 Class Counsel, each other, and their tax attorneys and accountants to the extent reasonably
24 necessary to carry out the provisions of this paragraph 10.

25 11. This is not a claims-made settlement. After the Effective Date, Defendants,
26 and/or any other Person funding the Settlement on their behalf, shall have no interest in the
27 Settlement Fund or in the Net Settlement Fund, shall not have any right to the return of the
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1 Settlement Fund or any portion thereof for any reason, and shall not have liability should claims
2 made exceed the amount available in the Settlement Fund for payment of such claims.

3 **ATTORNEYS' FEES AND EXPENSES**

4 12. Class Counsel, on behalf of all Plaintiffs' Counsel, will file with the Court a Fee
5 and Expense Application. The Fee and Expense Application will seek the award of attorneys'
6 fees and the payment of litigation expenses incurred in prosecuting the Action, including
7 reimbursement to Class Representatives pursuant to the PSLRA, with earnings on such amounts
8 at the same rate and for the same periods as earned by the Settlement Fund. Defendants will not
9 comment on or take a position on Class Counsel's fee or litigation expense request. Any award
10 of attorneys' fees or litigation expenses shall be paid solely from the Settlement Fund.

11 13. The amount of attorneys' fees and expenses awarded by the Court is within the
12 sole discretion of the Court. Any attorneys' fees and expenses awarded by the Court shall be
13 payable from the Settlement Fund to Class Counsel immediately upon entry of the Judgment (or
14 Alternative Judgment) and the Order awarding such attorneys' fees and expenses, whichever is
15 later, notwithstanding the existence of any timely filed objections thereto or to the Settlement, or
16 potential for appeal therefrom, or collateral attack on the awarded fees and expenses, the
17 Settlement, or any part thereof. Class Counsel shall allocate any Court-awarded attorneys' fees
18 and expenses among Plaintiffs' Counsel.

19 14. Any payment of attorneys' fees and expenses pursuant to ¶¶ 12-13 above shall be
20 subject to Class Counsel's obligation to make refunds or repayments to the Settlement Fund of
21 any paid amounts, plus accrued earnings at the same net rate as is earned by the Settlement Fund,
22 if the Settlement is terminated pursuant to the terms of this Stipulation or fails to become
23 effective for any reason, or if, as a result of any appeal or further proceedings on remand or
24 successful collateral attack, the award of attorneys' fees and/or expenses is reduced or reversed
25 by final non-appealable court order. Class Counsel shall make the appropriate refund or
26 repayment in full no later than ten (10) business days after receiving notice of the termination of
27 the Settlement pursuant to this Stipulation, notice from a court of appropriate jurisdiction of the
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1 disapproval of the Settlement by final non-appealable court order, or notice of any reduction or
2 reversal of the award of attorneys' fees and/or expenses by final non-appealable court order. If
3 Class Counsel seeks payment of awarded attorneys' fees and/or litigation expenses before the
4 order awarding them has become final and non-appealable, or before the Effective Date of the
5 Settlement, Class Counsel shall provide a letter of credit in a form acceptable to Defendants,
6 which acceptance will not be unreasonably withheld, that will guarantee that if repayment is
7 required under this paragraph, and Class Counsel has not timely repaid, then the funds will
8 immediately be returned to the Settlement Fund, for repayment to (i) the Class, if the amount of
9 attorneys' fees is reduced on appeal or (ii) the funders in accordance with ¶ 45 below, if the
10 Settlement is terminated or will not reach its Effective Date.

11 15. With the sole exception of Defendants' obligation to pay the Settlement Amount
12 into the Escrow Account as provided for in ¶ 5, Defendants shall have no responsibility for, and
13 no liability whatsoever with respect to, any payment whatsoever to Class Counsel or Plaintiffs'
14 Counsel in the Action that may occur at any time.

15 16. Defendants shall have no responsibility for, and no liability whatsoever with
16 respect to, any allocation of any attorneys' fees or expenses among Class Counsel or Plaintiffs'
17 Counsel in the Action, or to any other Person who may assert some claim thereto, or any fee or
18 expense awards the Court may make in the Action.

19 17. Defendants shall have no responsibility for, and no liability whatsoever with
20 respect to, any attorneys' fees, costs, or expenses incurred by or on behalf of Class Members,
21 whether or not paid from the Escrow Account. The Settlement Fund will be the sole source of
22 payment from Defendants for any award of attorneys' fees and expenses ordered by the Court.

23 18. The procedure for and the allowance or disallowance by the Court of any Fee and
24 Expense Application are not part of the Settlement set forth in this Stipulation, and are separate
25 from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement
26 set forth in the Stipulation, and shall have no effect on the terms of this Stipulation or on the
27 validity or enforceability of this Settlement. The approval of the Settlement, and it becoming
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1 Final, shall not be contingent on the award of attorneys' fees and expenses, any award to Class
2 Representatives or Class Counsel, nor any appeals to such awards. Class Representatives and
3 Class Counsel may not cancel or terminate the Stipulation or the Settlement in accordance with
4 ¶¶ 38 - 43 or otherwise based on the Court's or any appellate court's ruling with respect to fees
5 and expenses in the Action.

6 **ADMINISTRATION EXPENSES**

7 19. Except as otherwise provided herein, the Net Settlement Fund shall be held in the
8 Escrow Account until the Effective Date.

9 20. Before the Effective Date of the Settlement, without further order of the Court,
10 Class Counsel may expend up to \$500,000 from the Settlement Fund to pay Notice and
11 Administration Expenses actually incurred. Additional sums for this purpose before the
12 Effective Date may be paid from the Settlement Fund upon approval of Defendants or order of
13 the Court. Taxes and fees related to the Escrow Account and investment of the Settlement Fund
14 may be paid as incurred, without further order of the Court. Before the Effective Date of the
15 Settlement, no funds shall be released from the Escrow Account without the joint approval of
16 Class Counsel and Defendants' Counsel. After the Effective Date, Taxes and Notice and
17 Administration Expenses may be paid as incurred, without approval of Defendants or further
18 order of the Court.

19 **DISTRIBUTION TO AUTHORIZED CLAIMANTS**

20 21. The Claims Administrator, subject to such supervision and direction of Class
21 Counsel and/or the Court as may be necessary or as circumstances may require, shall administer
22 and calculate the claims submitted by Class Members subject to the jurisdiction of the Court and
23 shall oversee distribution of the Net Settlement Fund to Authorized Claimants. Defendants and
24 Defendants' Counsel shall have no responsibility for (except as stated in ¶¶ 5 and 52 hereof),
25 interest in, or liability whatsoever with respect to the administration of the Settlement or the
26 actions or decisions of the Claims Administrator, and shall have no liability to the Class in
27 connection with such administration, including with respect to: (i) any act, omission, or
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1 determination by Class Counsel, the Escrow Agent, and/or the Claims Administrator, or any of
2 their respective designees or agents, in connection with the administration of the Settlement or
3 otherwise; (ii) the management or investment of the Settlement Fund or the Net Settlement Fund,
4 or the distribution of the Net Settlement Fund; (iii) the Plan of Allocation; (iv) the determination,
5 administration, calculation, or payment of any claims asserted against the Settlement Fund; (v)
6 any losses suffered by, or fluctuations in value of, the Settlement Fund; (vi) the payment or
7 withholding of any taxes, expenses, and/or costs incurred with the taxation of the Settlement
8 Fund or the filing of any federal, state, or local returns.

9 22. The Claims Administrator shall determine each Authorized Claimant's *pro rata*
10 share of the Net Settlement Fund based upon each Authorized Claimant's recognized loss, as
11 defined in the Plan of Allocation included in the Settlement Notice, or in such other plan of
12 allocation as the Court may approve.

13 23. Defendants have no role in the development of the Plan of Allocation. The Plan
14 of Allocation is a matter separate and apart from the Settlement, and any decision by the Court
15 concerning the Plan of Allocation shall not affect the validity or finality of the proposed
16 Settlement. The Plan of Allocation is not a necessary term of the Stipulation and it is not a
17 condition of the Stipulation that any particular plan of allocation be approved by the Court.
18 Class Representatives and Class Counsel may not cancel or terminate the Stipulation or the
19 Settlement in accordance with ¶ 38 or otherwise based on the Court's or any appellate court's
20 ruling with respect to the Plan of Allocation or any plan of allocation in the Action. Defendants
21 and Defendants' Counsel shall have no responsibility or liability for reviewing or challenging
22 claims, the allocation of the Net Settlement Fund, or the distribution of the Net Settlement Fund.

23 24. Upon the Effective Date and thereafter, and in accordance with the terms of the
24 Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court as
25 may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed
26 to Authorized Claimants.

1 25. If there is any balance remaining in the Net Settlement Fund (whether by reason
2 of tax refunds, uncashed checks or otherwise) after at least six (6) months from the date of initial
3 distribution of the Net Settlement Fund, Class Counsel shall, if feasible and economical,
4 redistribute such balance among Authorized Claimants who have cashed their checks in an
5 equitable and economic fashion. Redistributions shall be repeated until the balance in the Net
6 Settlement Fund is no longer feasible to distribute to Class Members. Any balance that still
7 remains in the Net Settlement Fund after re-distribution(s), which is not feasible or economical
8 to reallocate, after payment of Notice and Administration Expenses, Taxes, and attorneys' fees
9 and expenses, shall be contributed to non-sectarian, not-for-profit organization(s), to be
10 recommended by Class Counsel and approved by the Court.

11 **ADMINISTRATION OF THE SETTLEMENT**

12 26. Any Class Member who fails timely to submit a valid Proof of Claim
13 (substantially in the form of Exhibit 2 to Exhibit A) will not be entitled to receive any of the
14 proceeds from the Net Settlement Fund, except as otherwise ordered by the Court, but will
15 otherwise be bound by all of the terms of this Stipulation and the Settlement, including the terms
16 of the Judgment or Alternative Judgment to be entered in the Action and all releases provided for
17 herein, and will be barred from bringing any action against the Released Defendant Parties
18 concerning the Released Claims.

19 27. Class Counsel shall be responsible for supervising the administration of the
20 Settlement and disbursement of the Net Settlement Fund by the Claims Administrator. Class
21 Counsel shall have the right, but not the obligation, to advise the Claims Administrator to waive
22 what Class Counsel deem to be *de minimis* formal or technical defects in any Proof of Claim
23 submitted. Defendants and Defendants' Counsel shall have no liability, obligation or
24 responsibility for the administration of the Settlement, the allocation of the Net Settlement Fund,
25 or the reviewing or challenging of claims of Class Members.

26 28. For purposes of determining the extent, if any, to which a claimant shall be
27 entitled to be treated as an Authorized Claimant, the following conditions shall apply:
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1 (a) Each claimant shall be required to submit a Proof of Claim, substantially
2 in the form attached hereto as Exhibit 2 to Exhibit A, supported by such documents as are
3 designated therein, including proof of the claimant's status as a Class Member, proof of the
4 claimant's loss, and any other such other documents or proof as the Claims Administrator or
5 Class Counsel, in their discretion, may deem acceptable;

6 (b) All Proofs of Claim must be submitted by the date set by the Court in the
7 Preliminary Approval Order and specified in the Settlement Notice, unless such deadline is
8 extended by Class Counsel in their discretion or by Order of the Court. Any Class Member who
9 fails to submit a Proof of Claim by such date shall be barred from receiving any distribution from
10 the Net Settlement Fund or payment pursuant to this Stipulation (unless, by Order of the Court or
11 the discretion of Class Counsel, late-filed Proofs of Claim are accepted), but shall in all other
12 respects be bound by all of the terms of this Stipulation and the Settlement, including the terms
13 of the Judgment or Alternative Judgment and all releases provided for herein, and will be
14 permanently barred and enjoined from bringing any action, claim or other proceeding of any
15 kind against any Released Defendant Party. A Proof of Claim shall be deemed to be submitted
16 when mailed, if received with a postmark on the envelope and if mailed by first-class or
17 overnight U.S. Mail and addressed in accordance with the instructions thereon. In all other
18 cases, the Proof of Claim shall be deemed to have been submitted when actually received by the
19 Claims Administrator. Notwithstanding the foregoing, Class Counsel shall have the discretion
20 (but not the obligation) to accept for processing late-submitted claims so long as the distribution
21 of the Net Settlement Fund to Authorized Claimants is not materially delayed. Class Counsel
22 shall have no liability for their discretion in accepting late claims;

23 (c) Each Proof of Claim shall be submitted to and reviewed by the Claims
24 Administrator, under such supervision of Class Counsel as necessary, who shall determine in
25 accordance with this Stipulation the extent, if any, to which each claim shall be allowed;

26 (d) Proofs of Claim that do not meet the submission requirements may be
27 rejected. Before rejecting a Proof of Claim in whole or in part, the Claims Administrator shall
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1 communicate with the claimant in writing to give the claimant the chance to remedy any curable
2 deficiencies in the Proof of Claim submitted. The Claims Administrator, under such supervision
3 of Class Counsel, as necessary, shall notify, in a timely fashion and in writing, all claimants
4 whose claims the Claims Administrator proposes to reject in whole or in part for curable
5 deficiencies, setting forth the reasons therefor, and shall indicate in such notice that the claimant
6 whose claim is to be rejected has the right to a review by the Court if the claimant so desires and
7 complies with the requirements of subparagraph (e) below;

8 (e) If any claimant whose timely claim has been rejected in whole or in part
9 for curable deficiency desires to contest such rejection, the claimant must, within twenty (20)
10 calendar days after the date of mailing of the notice required in subparagraph (d) above, or a
11 lesser period of time if the claim was untimely, serve upon the Claims Administrator a notice and
12 statement of reasons indicating the claimant's grounds for contesting the rejection along with any
13 supporting documentation, and requesting a review thereof by the Court. If a dispute concerning
14 a claim cannot be otherwise resolved, Class Counsel shall thereafter present the request for
15 review to the Court.

16 29. Each claimant who submits a Proof of Claim shall be deemed to have submitted
17 to the jurisdiction of the Court with respect to the claimant's claim, including but not limited to,
18 all releases provided for herein and in the Judgment or Alternative Judgment, and the claim will
19 be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided
20 that such investigation and discovery shall be limited to the claimant's status as a Class Member
21 and the validity and amount of the claimant's claim. In connection with processing the Proofs of
22 Claim, no discovery shall be allowed on the merits of the Action or the Settlement.

23 30. Payment pursuant to the Stipulation and Plan of Allocation shall be deemed final
24 and conclusive against any and all Class Members. All Class Members whose claims are not
25 approved shall be barred from participating in distributions from the Net Settlement Fund, but
26 otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the
27 terms of the Judgment or Alternative Judgment to be entered in the Action and the releases
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1 provided for herein and therein, and will be barred from bringing any action against the Released
2 Defendant Parties concerning the Released Claims.

3 31. All proceedings with respect to the administration, processing and determination
4 of claims described by this Stipulation and the determination of all controversies relating thereto,
5 including disputed questions of law and fact with respect to the validity of claims, shall be
6 subject to the jurisdiction of the Court, but shall not in any event delay or affect the finality of the
7 Judgment or Alternative Judgment.

8 32. No Person shall have any claim of any kind against the Released Defendant
9 Parties or Defendants' Counsel with respect to the matters set forth in this section (*i.e.*, ¶¶ 26-
10 32) or any of its subsections, or otherwise related in any way to the administration of the
11 Settlement, including without limitation the processing of claims and distributions.

12 33. No Person shall have any claim against Class Representatives, Class Counsel, or
13 the Claims Administrator, or other Person designated by Class Counsel, based on the
14 distributions made substantially in accordance with the Stipulation and the Settlement contained
15 herein, the Plan of Allocation, or further order(s) of the Court.

16 **TERMS OF THE PRELIMINARY APPROVAL ORDER**

17 34. Concurrently with their application for preliminary approval by the Court of the
18 Settlement contemplated by this Stipulation and promptly upon execution of this Stipulation, and
19 no later than five (5) business days after the execution of the Stipulation, Class Counsel shall
20 apply to the Court for entry of the Preliminary Approval Order, which shall be substantially in
21 the form annexed hereto as Exhibit A. The Preliminary Approval Order will, *inter alia*,
22 preliminarily approve the Settlement, set the date for the Settlement Hearing, approve the form
23 of notice, and prescribe the method for giving notice of the Settlement to the Class.

24 35. Intuitive has previously provided Class Counsel with transfer records in electronic
25 searchable form and Class Counsel will provide those records to the Claims Administrator.

1 **TERMS OF THE JUDGMENT**

2 36. If the Settlement contemplated by this Stipulation is approved by the Court, Class
3 Counsel shall request that the Court enter a Judgment substantially in the form annexed hereto as
4 Exhibit B. The Parties shall take no position on the other side’s compliance with Federal Rule of
5 Civil Procedure 11 absent a specific request or order by the Court. As required by the Private
6 Securities Litigation Reform Act, 15 U.S.C. § 78u-4(c)(1), the proposed Judgment will contain
7 the following finding, in order to fully conclude the Action:

8 The Court finds that during the course of the Action, the Parties and their
9 respective counsel at all times complied with the requirements of Rule 11 of the
10 Federal Rules of Civil Procedure. ‘

11
12 The Settlement is in no way contingent upon the Court’s ultimate findings regarding the Parties’
13 compliance with Rule 11.

14 **EFFECTIVE DATE OF SETTLEMENT**

15 37. The Effective Date of this Settlement shall be the first business day on which all
16 of the following shall have occurred or been waived:

- 17 (a) entry of the Preliminary Approval Order, which shall be in all material
18 respects substantially in the form set forth in Exhibit A annexed hereto;
19 (b) payment of the Settlement Amount into the Escrow Account pursuant to ¶
20 5;
21 (c) approval by the Court of the Settlement, following notice to the Class and
22 the Settlement Hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and
23 (d) a Judgment, which shall be in all material respects substantially in the
24 form set forth in Exhibit B annexed hereto, will have been entered by the Court and will have
25 become Final; or in the event that an Alternative Judgment will have been entered, the
26 Alternative Judgment will have become Final.
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1 **WAIVER OR TERMINATION**

2 38. Defendants and Class Representatives shall have the right to terminate the
3 Settlement and the Stipulation by providing written notice of their election to do so
4 (“Termination Notice”), through counsel, to all other Parties hereto within fourteen (14) calendar
5 days of: (i) the Court’s final non-appealable refusal to enter the Preliminary Approval Order in
6 any material respect; (ii) the Court’s final non-appealable refusal to approve this Stipulation or
7 any material part of it; (iii) the Court’s final non-appealable refusal to enter the Judgment in any
8 material respect or an Alternative Judgment; or (iv) the date upon which the Judgment or
9 Alternative Judgment is modified or reversed in any material respect by a Final order of the
10 Court, the United States Court of Appeals, or the Supreme Court of the United States. For the
11 avoidance of doubt, Class Representatives shall not have the right to terminate the Settlement
12 due to any decision, ruling, or order relating to the Fee and Expense Application or any plan of
13 allocation, or relating to the Court’s findings pursuant to 15 U.S.C. § 78u-4(c)(1).

14 39. In addition to the foregoing, Defendants shall also have the right to withdraw
15 from the Settlement in the event the Termination Threshold (defined below) has been reached.

16 (a) Simultaneously herewith, Defendants’ Counsel and Class Counsel are
17 executing a confidential Supplemental Agreement Regarding Requests for Exclusion
18 (“Supplemental Agreement”). The Supplemental Agreement sets forth certain conditions under
19 which Defendants shall have the option to terminate the Settlement and render the Stipulation
20 null and void in the event that requests for exclusion from the Class in connection with the
21 Settlement Notice exceed certain agreed-upon criteria (the “Termination Threshold”). The
22 Parties agree to maintain the confidentiality of the Supplemental Agreement, which shall not be
23 filed with the Court unless a dispute arises as to its terms, or as otherwise ordered by the Court,
24 nor shall the Supplemental Agreement otherwise be disclosed unless ordered by the Court. If
25 submission of the Supplemental Agreement is required for resolution of a dispute or is otherwise
26 ordered by the Court, the Parties will use their best reasonable efforts to have the Supplemental
27 Agreement submitted to the Court *in camera* or under seal.

1 (b) In the event of a termination of the Settlement pursuant to the
2 Supplemental Agreement, the Stipulation shall become null and void and of no further force and
3 effect, with the exception of the provisions of ¶¶ 45 – 46, which shall continue to apply.

4 40. The Preliminary Approval Order, attached hereto as Exhibit A, shall provide that
5 requests for exclusion shall be received no later than twenty-one (21) calendar days before the
6 Settlement Hearing (“Notice Date”). Upon receiving any request for exclusion pursuant to the
7 Settlement Notice, Class Counsel shall promptly, and no later than fifteen (15) calendar days
8 before the Settlement Hearing, notify Defendants’ Counsel of such request for exclusion and
9 provide copies of such request for exclusion and any documentation accompanying it by email.

10 41. In addition to all of the rights and remedies that Class Representatives have under
11 the terms of this Stipulation, Class Representatives shall also have the right to terminate the
12 Settlement in the event that the Settlement Amount has not been paid in the time period provided
13 for in ¶ 5 above, by providing written notice of the election to terminate to all other Parties’
14 counsel and, thereafter, there is a failure to pay the Settlement Amount within fourteen (14)
15 calendar days of such written notice.

16 42. If, before the Settlement becomes Final, any Defendant files for protection under
17 the Bankruptcy Code or any similar law or a trustee, receiver, conservator, or other fiduciary is
18 appointed under Bankruptcy, or any similar law, and in the event of the entry of a final order of a
19 court of competent jurisdiction determining the transfer of money or any portion thereof to the
20 Settlement Fund by or on behalf of such Defendant to be a preference, voidable transfer,
21 fraudulent transfer or similar transaction and any portion thereof is required to be returned, and
22 such amount is not promptly deposited into the Settlement Fund by others, then, at the election of
23 Class Representatives, the Parties shall jointly move the Court to vacate and set aside the release
24 given and the Judgment or Alternative Judgment entered in favor of that Defendant or all
25 Defendants, and that Defendant or all Defendants, Class Representatives and the members of the
26 Class shall be restored to their litigation positions as of June 7, 2018. All releases and the
27 Judgment or Alternative Judgment as to other Defendants shall remain unaffected.

1 43. If an option to withdraw from and terminate this Stipulation and Settlement arises
2 under any of ¶¶ 38 - 42 above: (i) neither Defendants nor Class Representatives (as the case may
3 be) will be required for any reason or under any circumstance to exercise that option; and (ii) any
4 exercise of that option shall be made in good faith, but in the sole and unfettered discretion of
5 Defendants or Class Representatives, as applicable, but in a manner consistent with the
6 Settlement.

7 44. With the exception of the provisions of ¶¶ 45 - 46 which shall continue to apply,
8 in the event the Settlement is terminated as set forth herein or cannot become effective for any
9 reason, then the Settlement shall be without prejudice, and none of its terms shall be effective or
10 enforceable except as specifically provided herein; the Parties shall be deemed to have reverted
11 to their respective litigation positions in the Action as of June 7, 2018; and, except as specifically
12 provided herein, the Parties shall proceed in all respects as if this Stipulation and any related
13 order had not been entered. In such event, this Stipulation, and any aspect of the discussions or
14 negotiations leading to this Stipulation shall not be admissible in this Action and shall not be
15 used against or to the prejudice of Defendants or against or to the prejudice of Class
16 Representatives, in any court filing, deposition, at trial, or otherwise.

17 45. In the event the Settlement is terminated or fails to become effective for any
18 reason, any portion of the Settlement Amount previously paid, together with any earnings
19 thereon, less any Taxes paid or due, less Notice and Administration Expenses actually incurred
20 and paid or payable from the Settlement Amount, shall be returned to the Person(s) that made the
21 deposit(s) within five (5) business days after written notification of such event and the provision
22 of appropriate payments instructions to Class Counsel. At the request of Defendants' Counsel,
23 the Escrow Agent or their designees shall apply for any tax refund owed on the amounts in the
24 Escrow Account and pay the proceeds, after any deduction of any fees or expenses incurred in
25 connection with such application(s), of such refund to the Person(s) that made the deposits or as
26 otherwise directed.

NO ADMISSION

1
2 46. Except as set forth in ¶ 47 below, this Stipulation, whether or not consummated,
3 and whether or not approved by the Court, and any discussion, negotiation, proceeding, or
4 agreement relating to the Stipulation, the Settlement, and any matter arising in connection with
5 settlement discussions or negotiations, proceedings, or agreements, shall not be offered or
6 received against or to the prejudice of the Parties or their respective counsel, for any purpose
7 other than in an action to enforce the terms hereof, and in particular:

8 (a) do not constitute, and shall not be offered or received against or to the
9 prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any
10 presumption, concession, or admission by Defendants with respect to the truth of any allegation
11 by Class Representatives and the Class, or the validity of any claim that has been or could have
12 been asserted in the Action or in any litigation, including but not limited to the Released Claims,
13 or of any liability, damages, negligence, fault or wrongdoing of Defendants or any person or
14 entity whatsoever;

15 (b) do not constitute, and shall not be offered or received against or to the
16 prejudice of Defendants as evidence of a presumption, concession, or admission of any fault,
17 misrepresentation, or omission with respect to any statement or written document approved or
18 made by Defendants, or against or to the prejudice of Class Representatives, or any other
19 member of the Class as evidence of any infirmity in the claims of Class Representatives, or the
20 other members of the Class;

21 (c) do not constitute, and shall not be offered or received against or to the
22 prejudice of Defendants, Class Representatives, any other member of the Class, or their
23 respective counsel, as evidence of a presumption, concession, or admission with respect to any
24 liability, damages, negligence, fault, infirmity, or wrongdoing, or in any way referred to for any
25 other reason against or to the prejudice of any of the Defendants, Class Representatives, other
26 members of the Class, or their respective counsel, in any other civil, criminal, or administrative
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1 action or proceeding, other than such proceedings as may be necessary to effectuate the
2 provisions of this Stipulation;

3 (d) do not constitute, and shall not be construed against Defendants, Class
4 Representatives, or any other member of the Class, as an admission or concession that the
5 consideration to be given hereunder represents the amount that could be or would have been
6 recovered after trial; and

7 (e) do not constitute, and shall not be construed as or received in evidence as
8 an admission, concession, or presumption against Class Representatives, or any other member of
9 the Class that any of their claims are without merit or infirm or that damages recoverable under
10 the Second Amended Complaint would not have exceeded the Settlement Amount.

11 47. Notwithstanding ¶ 46 above, the Parties, and their respective counsel, may file
12 this Stipulation and/or the Judgment or Alternative Judgment in any action that may be brought
13 against them in order to support a defense or counterclaim based on principles of *res judicata*,
14 collateral estoppel, release, statute of limitations, statute of repose, good-faith settlement,
15 judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar
16 defense or counterclaim, or to effectuate any liability protection granted them under any
17 applicable insurance policy. The Parties may file this Stipulation and/or the Judgment or
18 Alternative Judgment in any action that may be brought to enforce the terms of this Stipulation
19 and/or the Judgment or Alternative Judgment. All Parties submit to the jurisdiction of the Court
20 for purposes of implementing and enforcing the Settlement.

21 **MISCELLANEOUS PROVISIONS**

22 48. All of the exhibits to the Stipulation, and the Supplemental Agreement are
23 material and integral parts hereof and are fully incorporated herein by this reference.

24 49. The Parties intend the Settlement to be the full, final, and complete resolution of
25 all claims asserted or that could have been asserted by the Parties with respect to the Released
26 Claims and Released Defendants' Claims. The Parties agree that the amount paid and the other
27 terms of the Settlement were negotiated at arm's-length and in good faith by the Parties and their
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1 respective counsel and reflect a settlement that was reached voluntarily based upon adequate
2 information and after consultation with experienced legal counsel.

3 50. The Parties shall, in good faith, endeavor to communicate the terms of the
4 Settlement, if at all, in a manner that is respectful of the fact that no final adjudication was
5 determined by a court or a jury.

6 51. This Stipulation, its exhibits, and the Supplemental Agreement constitute the
7 entire agreement among the Parties concerning the Settlement as against the Defendants, and no
8 representation, warranty, or inducement has been made by any Party concerning this Stipulation
9 and its exhibits other than those contained and memorialized in such documents. This
10 Stipulation, along with its exhibits and the Supplemental Agreement may not be modified or
11 amended, nor may any of its provisions be waived, except by a writing signed by counsel for the
12 Parties hereto.

13 52. Defendants shall be responsible for and shall pay for, at no cost to the Class,
14 timely service of any notice that might be required pursuant to the Class Action Fairness Act, 28
15 U.S.C. § 1715.

16 53. The headings herein are used for the purpose of convenience only and are not
17 meant to have legal effect.

18 54. The administration and consummation of the Settlement as embodied in this
19 Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the
20 purpose of entering orders providing for awards of attorneys' fees and any expenses, and
21 implementing and enforcing the terms of this Stipulation.

22 55. The waiver by one Party of any breach of this Stipulation by any other Party shall
23 not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

24 56. Nothing in the Stipulation, or the negotiations relating thereto, is intended to or
25 shall be deemed to constitute a waiver of any applicable privilege or immunity, including,
26 without limitation, attorney-client privilege, joint defense privilege, or work product protection.

1 57. Unless otherwise provided, the Parties may agree to reasonable extensions of time
2 to carry out any of the provisions of this Stipulation without further order of the Court.

3 58. All designations and agreements made, or orders entered during the course of the
4 Action relating to the confidentiality of documents or information shall survive this Stipulation.

5 59. This Stipulation may be executed in one or more counterparts. All executed
6 counterparts and each of them shall be deemed to be one and the same instrument. Signatures
7 sent by facsimile or via e-mail in pdf format shall be deemed originals.

8 60. This Stipulation shall be binding when signed, subject to the Settlement reaching
9 its Effective Date pursuant to ¶ 37 and the provisions for termination set forth in ¶¶38-45.

10 61. This Stipulation shall be binding upon, and inure to the benefit of, the successors
11 and assigns of the Parties. The replacement of counsel for any Party shall in no way impact this
12 Stipulation and replacement counsel shall carry out any and all obligations as if they had been
13 counsel at all times.

14 62. The construction, interpretation, operation, effect, and validity of this Stipulation,
15 and all documents necessary to effectuate it, shall be governed by the laws of the State of
16 California without regard to conflicts of laws, except to the extent that federal law requires that
17 federal law govern.

18 63. This Stipulation shall not be construed more strictly against one Party than
19 another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel
20 for one of the Parties, it being recognized that it is the result of arm's-length negotiations among
21 the Parties, and all Parties have contributed substantially and materially to the preparation of this
22 Stipulation.

23 64. All counsel and any other person executing this Stipulation and any of the
24 exhibits hereto, or any related Settlement document, warrant and represent that they have the full
25 authority to do so, and that they have the authority to take appropriate action required or
26 permitted to be taken pursuant to the Stipulation to effectuate its terms, without requiring
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1 additional consent, approval, or authorization of any other Person, board, entity, tribunal, or
2 other regulatory or governmental authority.

3 65. The Parties and their respective counsel agree to cooperate fully with one another
4 in promptly applying for preliminary approval by the Court of the Settlement and for the
5 scheduling of a hearing for consideration of final approval of the Settlement, the Plan of
6 Allocation and Class Counsel's Fee and Expense Application, and to agree promptly upon and
7 execute all such other documentation as reasonably may be required to obtain final approval by
8 the Court of the Settlement. Class Counsel shall be responsible for primary drafting of the
9 motions for preliminary and final approval, and shall provide drafts of such motions and
10 supporting declarations and exhibits at least three (3) business days before any such filing. Class
11 Counsel shall consider Defendants' comments regarding such motions in good faith, and the
12 Parties agree to meet and confer with respect to any disagreements.

13 66. Except as otherwise provided herein, each Party shall bear its own costs.
14

15 **IN WITNESS WHEREOF**, the Parties have caused this Stipulation to be executed, by
16 their duly authorized attorneys, as of September 11, 2018.

17
18 **LABATON SUCHAROW LLP**

19
20 By: 

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MARK S. ARISOHN (*pro hac vice*)

SERENA P. HALLOWELL (*pro hac vice*)

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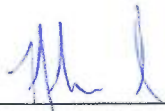
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27 *Lead Counsel for Plaintiffs and the Class*

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Marshall L. Mohr*

Exhibit A

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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)

CLASS ACTION

[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, APPROVING
FORM AND MANNER OF NOTICE,
AND SETTING DATE FOR HEARING
ON FINAL APPROVAL OF
SETTLEMENT

1 WHEREAS, as of September 11, 2018, Class Representatives Employees’ Retirement
2 System of the State of Hawaii (“Hawaii ERS”) and Greater Pennsylvania Carpenters’ Pension
3 Fund (“Greater Pennsylvania”) (collectively, “Class Representatives”), on behalf of themselves
4 and each of the members of the certified Class, on the one hand, and defendants Intuitive
5 Surgical, Inc. (“Intuitive” or the “Company”) and Gary S. Guthart (“Guthart”), Marshall L. Mohr
6 (“Mohr”), and Lonnie M. Smith (“Smith”) (collectively, the “Individual Defendants” and with
7 Intuitive, the “Defendants”), on the other hand, entered into a Stipulation and Agreement of
8 Settlement (the “Stipulation”) in the Action, which is subject to review under Rule 23 of the
9 Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the
10 terms and conditions of the Settlement of this Action; and

11 WHEREAS, by Order entered December 23, 2016, the Court certified a Class of: all
12 persons or entities who purchased or acquired the publicly traded common stock of Intuitive
13 during the period from February 6, 2012 through July 18, 2013, inclusive (the “Class Period”),
14 and who were damaged thereby (the “Class”). Excluded from the Class by definition are: (a) all
15 Defendants; (b) members of the immediate families of Individual Defendants Guthart, Mohr, and
16 Smith; (c) any subsidiaries and affiliates of Defendants; (d) any person who is or was an officer
17 or director of Intuitive or any of Intuitive’s subsidiaries or affiliates; (e) Defendants’ directors’
18 and officers’ liability insurance carriers, and any affiliates or subsidiaries thereof; (f) Intuitive’s
19 employee retirement and benefit plan(s); and (g) the legal representatives, heirs, successors and
20 assigns of any such excluded person or entity. Also excluded from the Class is any person or
21 entity that submitted a timely and valid request for exclusion in connection with the Notice of
22 Pendency of Class Action (the “Class Notice”) previously disseminated who has not opted back
23 into the Class. Also excluded from the Class shall be any person or entity that seeks exclusion
24 by timely submitting a valid request for exclusion in connection with the Settlement Notice
25 (defined below), which is accepted by the Court pursuant to the requirements set forth below;

26 WHEREAS, pursuant to this Court’s Order entered March 12, 2018, the Class Notice was
27 mailed to potential members of the Class to notify them of, among other things: (a) the Action

1 pending against the Defendants; (b) the Court’s certification of the Action as a class action on
2 behalf of the certified Class; (c) the effect of remaining in the Class on any person or entity that
3 falls within the definition of the Class (“Class Members”) (including that Class Members will be
4 bound by all past, present, and future orders and judgments in the Action, whether favorable or
5 unfavorable); and (d) the right of Class Members to request exclusion from the Class, the
6 requirements for requesting exclusion, and the effect of exclusion;

7 WHEREAS, the Court has reviewed and considered the Stipulation and the
8 accompanying exhibits;

9 WHEREAS, the Parties to the Stipulation have consented to the entry of this order; and

10 WHEREAS, all capitalized terms used in this order that are not otherwise defined herein
11 have the meanings defined in the Stipulation;

12 NOW, THEREFORE, IT IS HEREBY ORDERED, this _____ day of _____,
13 2018 that:

14 1. The Court has reviewed the Stipulation and preliminarily finds the Settlement set
15 forth therein to be fair, reasonable and adequate, subject to further consideration at the
16 Settlement Hearing described below.

17 2. A hearing (the “Settlement Hearing”) pursuant to Rule 23(e) of the Federal Rules
18 of Civil Procedure is hereby scheduled to be held before the Court on _____, 2018,
19 at __:____ __.m. for the following purposes:

20 (a) to determine whether the Settlement is fair, reasonable and adequate, and
21 should be approved by the Court;

22 (b) to determine whether the Final Order and Judgment (“Judgment”) as
23 provided under the Stipulation should be entered;

24 (c) to determine whether the Plan of Allocation is fair, reasonable and
25 adequate, and should be approved by the Court;

26 (d) to consider Class Counsel’s motion for an award of attorneys’ fees and
27 expenses; and

1 (e) to rule upon such other matters as the Court may deem appropriate.

2 3. The Court reserves the right to approve the Settlement with or without
3 modification and with or without further notice to the Class of any kind. The Court further
4 reserves the right to enter the Judgment approving the Settlement regardless of whether it has
5 approved the Plan of Allocation or awarded attorneys' fees and/or expenses. The Court may also
6 adjourn the Settlement Hearing or modify any of the dates herein without further notice to
7 members of the Class.

8 4. The Court approves the form, substance and requirements of the Notice of
9 Proposed Class Action Settlement and Motion for Attorneys' Fees and Expenses (the
10 "Settlement Notice") and the Proof of Claim and Release form ("Proof of Claim"), substantially
11 in the forms annexed hereto as Exhibits 1 and 2, respectively.

12 5. The Court approves the retention of Garden City Group LLC as the Claims
13 Administrator. The Claims Administrator shall cause the Settlement Notice and the Proof of
14 Claim, substantially in the forms annexed hereto, to be mailed, by first-class mail, postage
15 prepaid, on or before ten (10) calendar days after entry of this Preliminary Approval Order
16 ("Notice Date"), to all Class Members who can be identified with reasonable effort, including by
17 using the mailing records obtained in connection with the Class Notice.

18 6. In the previously disseminated Class Notice, brokers and other nominees
19 ("Nominees") were advised that if, for the beneficial interest of any person or entity other than
20 themselves, they purchased Intuitive publicly traded common stock during the Class Period they
21 must either: (i) request from the administrator sufficient copies of the Class Notice to forward to
22 all such beneficial owners, and forward them to all such beneficial owners; or (ii) provide a list
23 of the names and addresses of all such beneficial owners to the administrator.

24 (a) For Nominees who previously chose the first option (*i.e.*, elected to mail
25 the Class Notice directly to beneficial owners), the Claims Administrator shall forward the same
26 number of Claim Packets to such Nominees, and the Nominees SHALL, WITHIN SEVEN (7)
27 CALENDAR DAYS of receipt of the Claim Packets, mail them to the beneficial owners.

28

1 Unless the Nominee has identified additional beneficial owners whose names and addresses
2 **WERE NOT** previously provided to the Claims Administrator, such Nominees need not take
3 any further action;

4 (b) For Nominees who previously chose the second option (*i.e.*, provided a
5 list of names and addresses of beneficial holders to the Claims Administrator), the Claims
6 Administrator shall promptly mail a copy of the Claim Packet to each of the beneficial owners
7 whose names and addresses the Nominee previously supplied. Unless the Nominee has
8 identified additional beneficial owners whose names and addresses **WERE NOT** previously
9 provided to the Claims Administrator, such Nominees need not take any further action;

10 (c) For Nominees that have identified additional beneficial owners who
11 **WERE NOT** previously identified in connection with the Class Notice, such Nominees
12 SHALL EITHER: (i) WITHIN SEVEN (7) CALENDAR DAYS of receipt of the Claim Packet,
13 provide a list of the names and addresses of all such additional beneficial owners to the Claims
14 Administrator, or (ii) WITHIN SEVEN (7) CALENDAR DAYS of receipt of the Claim Packet,
15 request from the Claims Administrator sufficient copies of the Claim Packet to forward to all
16 such additional beneficial owners which the Nominee SHALL, WITHIN SEVEN (7)
17 CALENDAR DAYS of receipt of the Claim Packets from the Claims Administrator, mail to the
18 beneficial owners;

19 (d) Nominees who elect to send the Claim Packet to their beneficial owners
20 SHALL ALSO send a statement to the Claims Administrator confirming that the mailing was
21 made and SHALL RETAIN their mailing records for use in connection with any further notices
22 that may be provided in the Action;

23 (e) Upon full and timely compliance with this Order, Nominees who mail the
24 Claim Packets to beneficial owners, or who provide additional names and addresses of
25 beneficial owners to the Claims Administrator, may seek reimbursement of their reasonable
26 expenses actually incurred in complying with this Order by providing the Claims Administrator
27 with proper documentation supporting the expenses for which reimbursement is sought. Such

1 properly documented expenses incurred by Nominees in compliance with the terms of this
2 Order shall be paid from the Settlement Fund, with any disputes as to the reasonableness or
3 documentation of expenses subject to review by the Court.

4 7. Class Counsel shall, at least fourteen (14) calendar days before the Settlement
5 Hearing, file with the Court proof of mailing of the Settlement Notice and Proof of Claim.

6 8. The Court approves the form of the Summary Notice of Proposed Class Action
7 Settlement and Motion for Attorneys' Fees and Expenses ("Summary Notice"), substantially in
8 the form annexed hereto as Exhibit 3, and directs that Class Counsel shall cause the Summary
9 Notice to be published in *Investor's Business Daily* and be transmitted over *PR Newswire* within
10 fourteen (14) calendar days of the Notice Date. Class Counsel shall, at least fourteen (14)
11 calendar days before the Settlement Hearing, file with the Court proof of publication of the
12 Summary Notice.

13 9. The form and content of the notice program described herein, and the methods set
14 forth herein of notifying the Class of the Settlement and its terms and conditions, meet the
15 requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the
16 Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities
17 Litigation Reform Act of 1995, and due process, constitute the best notice practicable under the
18 circumstances, and shall constitute due and sufficient notice to all persons and entities entitled
19 thereto.

20 10. In order to be eligible to receive a distribution from the Net Settlement Fund, in
21 the event the Settlement is effected in accordance with the terms and conditions set forth in the
22 Stipulation, each claimant shall take the following actions and be subject to the following
23 conditions:

24 (a) A properly executed Proof of Claim, substantially in the form annexed
25 hereto as Exhibit 2, must be submitted to the Claims Administrator, at the address indicated in
26 the Settlement Notice, postmarked or electronically submitted no later than fourteen (14)
27 calendar days before the Settlement Hearing. Such deadline may be further extended by Court

1 order or by Class Counsel in their discretion. Each Proof of Claim shall be deemed to have
2 been submitted when postmarked (if properly addressed and mailed by first-class or overnight
3 mail, postage prepaid). Any Proof of Claim submitted in any other manner shall be deemed to
4 have been submitted when it was actually received by the Claims Administrator. Any Class
5 Member who does not timely submit a Proof of Claim within the time provided for shall be
6 barred from sharing in the distribution of the Net Settlement Fund, unless otherwise ordered by
7 the Court or allowed by Class Counsel, but shall remain bound by all determinations and
8 judgments in this Action concerning the Settlement, as provided by paragraph 12 of this order.
9 Notwithstanding the foregoing, Class Counsel shall have the discretion (but not the obligation)
10 to accept for processing late-submitted claims so long as the distribution of the Net Settlement
11 Fund to Authorized Claimants is not materially delayed. Class Counsel shall have no liability
12 for their discretion in accepting late claims.

13 (b) The Proof of Claim submitted by each claimant must satisfy the
14 following conditions, unless otherwise allowed pursuant to the Stipulation: (i) it must be
15 properly completed, signed and submitted in a timely manner in accordance with the provisions
16 of the preceding subparagraph; (ii) it must be accompanied by adequate supporting
17 documentation for the transactions reported therein, in the form of broker confirmation slips,
18 broker account statements, an authorized statement from the broker containing the transactional
19 information found in a broker confirmation slip, or such other documentation as is deemed
20 adequate by the Claims Administrator with such supervision by Class Counsel as necessary;
21 (iii) if the person executing the Proof of Claim is acting in a representative capacity, a
22 certification of her current authority to act on behalf of the Class Member must be included in
23 the Proof of Claim; and (iv) the Proof of Claim must be complete and contain no material
24 deletions or modifications of any of the printed matter contained therein and must be signed
25 under penalty of perjury.

26 (c) As part of the Proof of Claim, each claimant shall submit to the
27 jurisdiction of the Court with respect to the claim submitted.

1 11. Any Class Member may enter an appearance in this Action, at his, her or its own
2 expense, individually or through counsel of his, her or its own choice. If any Class Member does
3 not enter an appearance, he, she or it will be represented by Class Counsel.

4 12. Class Members shall be bound by all orders, determinations and judgments in this
5 Action, whether favorable or unfavorable, unless such Persons either timely and validly
6 requested exclusion in connection with the Class Notice, or request exclusion from the Class in a
7 timely and proper manner, as hereinafter provided, or as otherwise allowed by the Court.

8 (a) A Class Member wishing to make such an exclusion request shall mail
9 the request in written form by first-class mail to the address designated in the Settlement Notice
10 for such exclusions, such that it is received no later than twenty-one (21) calendar days before
11 the Settlement Hearing. Such request for exclusion must state the name, address and telephone
12 number of the Person seeking exclusion, must state that the sender requests to be “excluded
13 from the Class in *In re Intuitive Surgical Securities Litigation*, No. 13-cv-01920 (N.D. Cal.)”
14 and must be signed by such Person. Such Persons requesting exclusion are also directed to state
15 the information requested in the Settlement Notice, including, but not limited to: the date(s),
16 price(s), and number(s) of shares of all purchases and acquisitions and sales of Intuitive publicly
17 traded common stock during the Class Period. The request for exclusion shall not be effective
18 unless it provides the required information and is made within the time stated above, or the
19 exclusion is otherwise accepted by the Court or the Parties.

20 13. Any Person that has requested exclusion from the Class in connection with the
21 Class Notice may elect to opt-back into the Class. By opting back into the Class, such Person
22 shall be eligible to submit a Proof of Claim for payment from the Net Settlement Fund. Any
23 such Person who wishes to opt-back into the Class must either, individually or through counsel,
24 request to opt-back into the Class in writing to the Claims Administrator within the time and in
25 the manner set forth in the Settlement Notice, which provides that any such request to opt-back
26 into the Class must be mailed or delivered such that it is received no later than twenty-one (21)
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1 calendar days before the Settlement Hearing, at the address set forth in the Settlement Notice.
2 Each request to opt-back into the Class must: (a) provide the name, address and telephone
3 number of the person or entity requesting to opt-back into the Class; (b) state that such person or
4 entity “requests to opt-back into the Class in *In re Intuitive Surgical Securities Litigation*, No.
5 13-cv-01920 (N.D. Cal.)”; and (c) be signed by the person or entity requesting to opt-back into
6 the Class or an authorized representative.

7 14. Class Members who have requested exclusion from the Class, and who do not
8 opt-back into the Class, shall not be eligible to receive any payment out of the Net Settlement
9 Fund as described in the Stipulation and Settlement Notice.

10 15. The Court will consider any Class Member’s objection to the Settlement, the Plan
11 of Allocation, and/or the application for an award of attorneys’ fees or expenses only if such
12 Class Member has (a) served by hand or by mail his, her or its written objection and supporting
13 papers, such that they are received on or before twenty-one (21) calendar days before the
14 Settlement Hearing, and mailed to Class Counsel, Jonathan Gardner, Labaton Sucharow LLP,
15 140 Broadway, New York, NY 10005, and Defendants’ Counsel Representative, Michael D.
16 Celio, Gibson Dunn & Crutcher LLP, 1881 Page Mill Road, Palo Alto, CA 94304; and (b) filed
17 said objections and supporting papers with the Clerk of the Court, United States District Court
18 for the Northern District of California, Robert F. Peckham Federal Building & United States
19 Courthouse, 280 South 1st Street, Room 2112, San Jose, CA 95113. Any Class Member who
20 does not make his, her, or its objection in the manner provided for in the Settlement Notice shall
21 be deemed to have waived such objection and shall forever be foreclosed from making any
22 objection to any aspect of the Settlement, to the Plan of Allocation, or to the request for
23 attorneys’ fees and expenses, unless otherwise ordered by the Court, but shall otherwise be
24 bound by the Judgment to be entered and the releases to be given. The Court will consider all
25 proper objections even if a Class Member does not attend the Settlement Hearing. However,
26 Persons wishing to be heard orally in opposition to the approval of the Settlement, the Plan of
27 Allocation, and/or the application for an award of attorneys’ fees and other expenses are required

1 to indicate in their written objection their intention to appear at the Settlement Hearing. Persons
2 who intend to object to the Settlement, the Plan of Allocation, and/or the application for an
3 award of attorneys' fees and expenses and desire to present evidence at the Settlement Hearing
4 must include in their written objections the identity of any witnesses they may call to testify and
5 exhibits they intend to introduce into evidence at the Settlement Hearing. Class Members do not
6 need to appear at the hearing or take any other action to indicate their approval.

7 16. Pending final determination of whether the Settlement should be approved, Class
8 Representatives, all Class Members, and each of them, and anyone who acts or purports to act on
9 their behalf, shall not institute, commence or prosecute any action which asserts Released Claims
10 against the Released Defendant Parties.

11 17. As provided in the Stipulation, before the Effective Date, Class Counsel may pay
12 the Claims Administrator fees and costs associated with giving notice to the Class and the review
13 of claims and administration of the Settlement in an amount up to \$500,000.00 (five hundred
14 thousand dollars and zero cents) out of the Settlement Fund without further approval from the
15 Court.

16 18. All papers in support of the Settlement, Plan of Allocation, and Class Counsel's
17 request for an award of attorneys' fees and expenses shall be filed with the Court and served on
18 or before thirty-five (35) calendar days before the Settlement Hearing. Any reply papers are to
19 be filed with the Court and served no later than seven (7) calendar days before the Settlement
20 Hearing.

21 19. The passage of title and ownership of the Settlement Fund to the Escrow Agent in
22 accordance with the terms and obligations of the Stipulation is approved. No person who is not a
23 Class Member or Class Counsel shall have any right to any portion of, or to any distribution of,
24 the Settlement Fund unless otherwise ordered by the Court or otherwise provided in the
25 Stipulation. Should the Settlement not reach its Effective Date, including by termination, the
26 ownership of the Settlement Fund shall immediately revert to the funders in accordance with the
27 provisions of the Stipulation without any further action by the Court.

1 20. All funds held in escrow shall be deemed and considered to be in *custodia legis* of
2 the Court, and shall remain subject to the jurisdiction of the Court until such time as such funds
3 shall be disbursed pursuant to the Stipulation and/or further order of the Court.

4 21. Neither Defendants nor their counsel shall have any responsibility for the Plan of
5 Allocation or any application for attorney’s fees or expenses submitted by Class Counsel or
6 Class Representatives, and such matters shall be considered separately from the fairness,
7 reasonableness and adequacy of the Settlement.

8 22. If the Settlement fails to become effective as defined in the Stipulation or is
9 terminated, then, in any such event, the Stipulation, including any amendment(s) thereof, except
10 as expressly provided in the Stipulation, and this Preliminary Approval Order shall be null and
11 void, of no further force or effect, and without prejudice to any Party, and may not be introduced
12 as evidence or used in any actions or proceedings by any person or entity against the Parties, and
13 the Parties shall be deemed to have reverted to their respective litigation positions in the Action
14 as of June 7, 2018.

15 23. The Court retains exclusive jurisdiction over the Action to consider all further
16 matters arising out of or connected with the Settlement.

17 24. The Court’s orders entered during this Action relating to the confidentiality of
18 information shall survive this Settlement.

19
20 Dated: _____, 2018

HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

Exhibit A-1

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**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

EXHIBIT A-1

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

4 *A Federal Court authorized this Notice. This is not a solicitation from a lawyer.*

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

- 10 • The Settlement, if approved by the Court, will provide **\$42,500,000** (on
11 average approximately \$1.78 per allegedly damaged share before the
12 deduction of Court-approved fees and expenses) in cash for the benefit of the
13 Class (described below).¹
- 14 • The Settlement resolves claims by the Employees’ Retirement System of the
15 State of Hawaii (“Hawaii ERS”) and Greater Pennsylvania Carpenters’
16 Pension Fund (“Greater Pennsylvania”) (collectively, “Class Representatives”
17 or “Plaintiffs”), in a class action against Intuitive Surgical, Inc. (“Intuitive” or
18 the “Company”), and Gary S. Guthart, Marshall L. Mohr, and Lonnie M.
19 Smith (collectively, the “Individual Defendants,” and, together with Intuitive,
20 the “Defendants”).
- 21 • Class Representatives claim that Defendants made materially false and
22 misleading statements and omissions concerning the safety and efficacy of the
23 da Vinci surgical system and the Company’s growth, revenues, income and
24 products liability. The complaint in the Action further alleged that the price of
25 Intuitive publicly traded common stock was artificially inflated as a result of
26 the allegedly false and misleading statements, and declined when the truth was
27 allegedly revealed. Defendants deny all of the Class Representatives’
28 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

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

\$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.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A PROOF OF CLAIM FORM BY _____, 2018	The <u>only</u> way to get a payment. (<i>See</i> Question ___ below.)
OPT-BACK INTO THE CLASS BY SUBMITTING REQUEST BY _____, 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.” (<i>See</i> Question ___ below.)
EXCLUDE YOURSELF BY _____, 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. (<i>See</i> Question ___ below.)
OBJECT BY _____, 2018	Write to the Court about why you do not like the Settlement, the Fee and Expense Application, or the proposed Plan of Allocation. (<i>See</i> Question ___ below.)
GO TO A HEARING ON _____, 2018	Ask to speak in Court about the Settlement. (<i>See</i> Question ___ below.)
DO NOTHING	Get no payment AND give up your rights to bring your own individual action.

1 **Identification of Attorneys' Representatives**

2 Class Representatives and the Class are being represented by Labaton Sucharow LLP,
3 Court-appointed Class Counsel. Any questions regarding the Settlement should be directed to
4 Jonathan Gardner, Labaton Sucharow LLP, 140 Broadway, New York, NY 10005, (888) 219-
5 6877, www.labaton.com, settlementquestions@labaton.com. **Please do not contact the Court**
6 **regarding this notice.**

7 **BASIC INFORMATION**

8 **1. Why did I get this Settlement Notice?**

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

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

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

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

23 The Court did not decide in favor of either the Class or the Defendants. Instead, they
24 have agreed to a settlement. For Class Representatives, the principal reason for the Settlement is
25 the certain benefit of a substantial cash recovery for the Class, in contrast to the risk that the
26 Court may grant, in whole or in part, some or all of Defendants' pending motion for summary
27

1 judgment, the uncertainty of being able to prove the allegations at a jury trial, and the difficulties
2 and delays inherent in such litigation (including any appeals).

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

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

7
8 Class Representatives allege that Intuitive and certain of its executives violated Section
9 10(b) and 20(a) of the Securities and Exchange Act of 1934 (the “Exchange Act”) by making
10 materially false and misleading statements regarding the safety and efficacy of the da Vinci
11 surgical system and Intuitive’s compliance with FDA regulations. Class Representatives also
12 allege that Defendants violated Section 20(A) of the Exchange Act by profiting from the sale of
13 Intuitive stock while in possession of material nonpublic information. Among other things,
14 Class Representatives allege that Defendants failed to disclose information about the safety and
15 efficacy of the da Vinci Surgical system. Class Representatives further allege that when news of
16 the safety and regulatory issues was released to the public, the price of Intuitive common stock
17 declined and Class Members suffered damages as a result.

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

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

25 On October 15, 2013, Hawaii ERS and named-plaintiff Greater Pennsylvania filed the
26 Amended Class Action Complaint (the “Complaint”). On December 16, 2013, Defendants filed
27 their motion to dismiss the Complaint, which triggered a stay of discovery under the PSLRA.
28

1 On January 30, 2014, Plaintiffs filed their memorandum of law in opposition to the motion to
2 dismiss and, on February 28, 2014, Defendants filed their reply papers. On August 21, 2014, the
3 Court entered an Order that granted in part, and denied in part, Defendants' motion to dismiss.
4 On October 14, 2014, Defendants filed a motion for leave to file a motion for reconsideration.
5 On October 22, 2014, the Court granted the motion and on November 5, 2014, Defendants filed
6 their motion for reconsideration. Plaintiffs opposed the motion on November 19, 2014, and
7 Defendants filed a reply on November 26, 2014. The Court denied the motion for reconsideration
8 on December 15, 2014, and lifted the PSLRA discovery stay.

9 On September 1, 2015, Plaintiffs filed a motion for class certification. On December 23,
10 2016, following briefing on the motion and oral argument, the Court entered an Order granting
11 the class certification motion, certifying the Class as defined below, appointing Plaintiffs as
12 "Class Representatives," and appointing lead counsel as "Class Counsel." On January 5, 2017,
13 Defendants filed, in the United States Court of Appeals for the Ninth Circuit, a Petition Pursuant
14 to F.R.C.P. 23(f) for Permission to Appeal the District Court's Order Granting Class
15 Certification. On October 30, 2017, the Ninth Circuit denied the petition. Defendants' motion
16 for reconsideration was denied by Order dated November 22, 2017.

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

24 By Order entered March 12, 2018, the Court granted Class Representatives' motion,
25 pursuant to Rule 23 of the Federal Rules of Civil Procedure, for approval of the proposed form
26 and content of notices of pendency to be disseminated to the Class. Beginning on April 9, 2018,
27 the Class Notice was mailed to potential Class Members, and on April 23, 2018, the Summary
28

1 Notice of Pendency of Class Action was published in the *Investor's Business Daily* and
2 transmitted over *PR Newswire*. The Class Notice informed investors of the class action, their
3 right to be excluded from the Class, the requirements for requesting exclusion, and of a June 8,
4 2018 deadline for seeking exclusion.

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

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

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

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

3. Why is this a class action?

In a class action, one or more persons or entities (in this case, the 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, 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

1 who submit timely and valid requests for exclusion from the Class in accordance with the
2 procedures set forth in Question 10 below.

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

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

10 **THE SETTLEMENT BENEFITS — WHAT YOU GET**

11 **7. How much will my payment be?**

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

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

22 You can calculate your recognized loss in accordance with the formulas shown below in
23 the Plan of Allocation. It is unlikely that you will receive a payment for all of your recognized
24 loss. See the Plan of Allocation of Net Settlement Fund on pages ___ for more information on
25 your recognized loss.
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**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 (____) ____-____.

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 _____, 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

1 that were alleged, set forth, referred to, or that could have been alleged in the Action, in the
2 Second Amended Complaint, or in any complaint, against the Released Defendant Parties.
3 Released Claims does not include claims relating to the enforcement of the Settlement.

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

11 **“Unknown Claims”** means any and all Released Claims that Class Representatives or
12 any other Class Member does not know or suspect to exist in his, her, or its favor at the time of
13 the release of the Released Defendant Parties, and any and all Released Defendants’ Claims that
14 any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release
15 of the Released Plaintiff Parties, which if known by him, her, or it might have affected his, her,
16 or its decision(s) with respect to the Settlement, including the decision to object to the terms of
17 the Settlement or to exclude himself, herself, or itself from the Class. With respect to any and all
18 Released Claims and Released Defendants’ Claims, the Parties stipulate and agree that, upon the
19 Effective Date, Class Representatives and Defendants shall expressly, and each other Class
20 Member shall be deemed to have, and by operation of the Judgment or Alternative Judgment
21 shall have, to the fullest extent permitted by law, expressly waived and relinquished any and all
22 provisions, rights and benefits conferred by any law of any state or territory of the United States,
23 or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code §
24 1542, which provides:

25
26 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
27 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**
28 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST

1 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
2 **WITH THE DEBTOR.**

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

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

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

24 **EXCLUDING YOURSELF FROM THE CLASS**

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

27 ² If you are not sure whether you did, please call the Claims Administrator at (844) 850-
28 7746.

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

11 **10. How do I exclude myself from the Class?**

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

19 *In re Intuitive Surgical Securities Litigation*
20 Claims Administrator
21 c/o GCG
22 P.O. Box 10359
23 Dublin, OH 43017-0359

24 Your exclusion request must comply with these requirements in order to be valid. If you
25 ask to be excluded, you will not receive any payment from the Net Settlement Fund, and you
26 cannot object to the Settlement.
27
28

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

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

8 **OPTING-BACK INTO THE CLASS**

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

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

16 In order to opt-back into the Class, you, individually or through counsel, must submit a
17 written "Request to Opt-Back into the Class" to the Claims Administrator, addressed as follows:
18 *In re Intuitive Surgical Securities Litigation*, c/o GCG, P.O. Box 10359, Dublin, OH 43017-
19 0359. This request must be **received no later than** _____, **2018**. Your Request to Opt-
20 Back into the Class must (i) state the name, address, and telephone number of the person or
21 entity requesting to opt-back into the Class; (ii) state that such person or entity "requests to opt-
22 back into the Class in *In re Intuitive Surgical Securities Litigation*, No. 13-cv-01920 (N.D.
23 Cal.); and (iii) be signed by the person or entity requesting to opt-back into the Class or an
24 authorized representative.

25 **Please note:** Opting-back into the Class **does not mean** that you will automatically be
26 entitled to receive proceeds from the Settlement. If you wish to be eligible to participate in the
27 distribution of proceeds from the Settlement, you are also required to submit the Proof of Claim
28 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

1 Court about your objection. You can ask the Court not to approve the Settlement, however you
2 cannot ask the Court to order a larger settlement; the Court can only approve or deny this
3 Settlement. If the Court denies approval, the settlement payments will not be sent out and the
4 Parties will return to the posture they were in before the settlement was agreed to. If you would
5 like the Court to consider your views, you must file a proper objection within the deadline, and
6 according to the following procedures.

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

19
20 **The Court**

21 Clerk of the Court
22 United States District Court for the Northern District of California
23 Robert F. Peckham Federal Building & United States Courthouse
24 280 South 1st Street, Room 2112
25 San Jose, CA 95113

26 **Class Counsel**

27 LABATON SUCHAROW LLP
Jonathan Gardner, Esq.
140 Broadway
New York, NY 10005

26 **Defendants' Counsel Representative**

27 GIBSON DUNN & CRUTCHER LLP
Michael D. Celio, Esq.
1881 Page Mill Road
Palo Alto, CA 94304

1 You do not need to attend the Settlement Hearing to have your written objection
2 considered by the Court. However, any Class Member who has complied with the procedures
3 set out in this Question 15 and below in Question 18 may appear at the Settlement Hearing and
4 be heard, to the extent allowed by the Court, either in person or through an attorney, arranged at
5 his, her, or its own expense.
6

7 **16. What is the difference between objecting and excluding?**

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

11 **You can object *only* if you stay in the Class.**

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

14 **THE SETTLEMENT HEARING**

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

17 The Court will hold the Settlement Hearing on _____, 2018 at _____.m., in
18 Courtroom 4, 5th Floor of the Robert F. Peckham Federal Building & United States Courthouse,
19 280 South 1st Street, San Jose, CA 95113.

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

26 You should be aware that the Court may change the date and time of the Settlement
27 Hearing without another notice being sent to Class Members. If you want to attend the hearing,
28

1 you should check with Class Counsel beforehand to be sure that the date and/or time has not
2 changed, periodically check the Court’s website at www.cand.uscourts.gov, or periodically
3 check the case-specific website at www.intuitivesurgicalsecuritieslitigation.com to see if the
4 Settlement Hearing stays as calendared or is changed.

5 **18. May I speak at the Settlement Hearing?**

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

16 **IF YOU DO NOTHING**

17 **19. What happens if I do nothing at all?**

18 If you do nothing and you are a member of the Class, you will receive no money from
19 this Settlement and you will be precluded from starting a lawsuit, continuing with a lawsuit, or
20 being part of any other lawsuit against Defendants and the other Released Defendant Parties
21 concerning the Released Claims. To share in the Net Settlement Fund, you must submit a Claim
22 Form (*see* Question 8). To start, continue, or be a part of any other lawsuit against Defendants
23 and the other Released Defendant Parties concerning the Released Claims in this case, you must
24 exclude yourself from the Class (*see* Question 10).
25

26 **GETTING MORE INFORMATION**

27 **20. Are there more details about the proposed Settlement?**

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

6 You may review the Stipulation or documents filed in the case at the Office of the Clerk
7 of the United States District Court for the Northern District of California, Robert F. Peckham
8 Federal Building & United States Courthouse, 280 South 1st Street, Room 2112, San Jose, CA
9 95113, on weekdays (other than court holidays) between 9:00 a.m. and 4:00 p.m. Subscribers to
10 PACER, a fee-based service, can also view the papers filed publicly in the Action through the
11 Court’s on-line Case Management/Electronic Case Files System at <https://www.pacer.gov>.

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

18 **Please do not Call the Court with Questions about the**
19 **Settlement.**

20 **PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND**

21 **A. Preliminary Matters**

22 The Settlement Amount and the interest it earns is the “Settlement Fund.” The
23 Settlement Fund, after deduction of Court-approved attorneys’ fees and expenses, Notice and
24 Administration Expenses, Taxes, and any other fees or expenses approved by the Court is the
25 “Net Settlement Fund.” The Net Settlement Fund will be distributed to members of the Class
26 who timely submit valid Claim Forms that show a Recognized Claim according to the Plan of
27 Allocation (the “Plan of Allocation” or “Plan”) approved by the Court. The Plan of Allocation
28

1 set forth below is the Plan that is being proposed by the Class Representatives and Class Counsel
2 to the Court for approval. The Court may approve this Plan of Allocation or modify it without
3 additional notice to the Class. Any order modifying the Plan will be posted on the case website
4 at: www.intuitivesurgicalsecuritieslitigation.com, and at www.labaton.com.

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

18 This Plan of Allocation generally measures the amount of loss that a Class Member can
19 claim for purposes of making *pro rata* allocations of the Net Settlement Fund to Authorized
20 Claimants. For losses to be compensable damages under the federal securities laws, the
21 disclosure of the allegedly misrepresented information must be the cause of the decline in the
22 price of Intuitive common stock. In this case, Class Representatives allege that Defendants
23 issued false statements and omitted material facts from February 6, 2012 through July 18, 2013,
24 inclusive (the Class Period), which artificially inflated the price of Intuitive common stock. It is
25 alleged that the corrective information released to the market on February 28, 2013 (toward the
26 close of market hours), March 5, 2013 (prior to market open), and July 18, 2013 (after market
27 close) impacted the market price of Intuitive common stock in a statistically significant manner
28

1 and removed the alleged artificial inflation from the prices of the common stock on February 28-
2 March 1, 2013, March 5, 2013, and July 19, 2013. Accordingly, in order to have a compensable
3 loss, Intuitive common stock must have been purchased or otherwise acquired during the Class
4 Period and held through at least one of the alleged corrective disclosures listed above.

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

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

19 **B. Calculation of Recognized Loss Amounts**

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

23 The Claims Administrator will calculate a "Recognized Loss Amount" as set forth below
24 for each purchase or acquisition of Intuitive publicly traded common stock during the Class
25 Period from February 6, 2012 through July 18, 2013, inclusive, that is listed in the Claim Form
26 and for which adequate documentation is provided. To the extent that the calculation of a
27

1 claimant's Recognized Loss Amount results in a negative number, that number shall be set to
2 zero.

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

9 The sum of a claimant's Recognized Loss Amounts will be the claimant's "Recognized
10 Claim."

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

- 13 A. 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.
- 14 B. Sold after the release of corrective information on February 28, 2013 (at 3:54 PM EST),
15 and before the close of trading on July 18, 2013, the Recognized Loss Amount for each
such share shall be *the lesser of*:
- 16 1. the dollar artificial inflation applicable to each such share on the date of
17 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
 - 18 2. the Out of Pocket Loss.
- 19 C. Sold after the close of trading on July 18, 2013, and before the close of trading on
20 October 17, 2013, the Recognized Loss Amount for each such share shall be *the least of*:
- 21 1. the dollar artificial inflation applicable to each such share on the date of
purchase/acquisition as set forth in **Table 1** below; or
 - 22 2. the actual purchase/acquisition price of each such share *minus* the average closing
23 price from July 19, 2013, up to the date of sale as set forth in **Table 2** below; or

24 _____
25 ³ In the event that documentation does not exist setting forth the exact time of purchase
26 and/or sale, the price at which the purchase and/or sale took place shall serve as a proxy for
27 determining whether the transaction occurred before or after the release of the allegedly
28 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.

1 3. the Out of Pocket Loss.

2 D. Held as of the close of trading on October 17, 2013, the Recognized Loss Amount for
each such share shall be *the lesser of*:

3 1. the dollar artificial inflation applicable to each such share on the date of
4 purchase/acquisition as set forth in **Table 1** below; or

5 2. the actual purchase/acquisition price of each such share *minus* \$ 383.30.⁴

6 **C. Additional Provisions**

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

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

16 Purchases or acquisitions and sales of Intuitive shares shall be deemed to have occurred
17 on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt
18 or grant by gift, inheritance, or operation of law of shares during the Class Period shall not be
19 deemed a purchase, acquisition, or sale of shares for the calculation of a Recognized Claim, nor
20 shall the receipt or grant be deemed an assignment of any claim relating to the

21 _____
22 ⁴ Pursuant to Section 21D(e)(1) of the Exchange Act, “in any private action arising under
23 this title in which the plaintiff seeks to establish damages by reference to the market price of a
24 security, the award of damages to the plaintiff shall not exceed the difference between the
25 purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security
26 and the mean trading price of that security during the 90-day period beginning on the date on
27 which the information correcting the misstatement or omission that is the basis for the action is
28 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.

1 purchase/acquisition of such shares unless (i) the donor or decedent purchased or otherwise
2 acquired such shares during the Class Period; (ii) no Proof of Claim was submitted by or on
3 behalf of the donor, on behalf of the decedent, or by anyone else with respect to such shares; and
4 (iii) it is specifically so provided in the instrument of gift or assignment.

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

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

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

22 Distributions to eligible Authorized Claimants will be made after claims have been
23 processed. After an initial distribution of the Net Settlement Fund, if there is any balance
24 remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or
25 otherwise) after at least six (6) months from the date of initial distribution of the Net Settlement
26 Fund, Class Counsel shall, if feasible and economical, redistribute such balance among
27 Authorized Claimants who have cashed their checks in an equitable and economic fashion, after
28

1 payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses.
2 These redistributions shall be repeated until the balance in the Net Settlement Fund is no longer
3 feasible to distribute to Authorized Claimants. Any balance that still remains in the Net
4 Settlement Fund after re-distribution(s), which is not feasible or economical to reallocate, after
5 payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, shall
6 be donated to a non-sectarian, not-for-profit organization(s), to be recommended by Class
7 Counsel and approved by the Court.

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

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

21
22 **TABLE 1**

23 **Intuitive Common Stock Artificial Inflation
24 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

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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

1 to all such beneficial owners which you shall, **WITHIN SEVEN (7) CALENDAR DAYS** of
2 receipt of the Claim Packet from the Claims Administrator, mail to the beneficial owners. If you
3 elect to send the Claim Packet to beneficial owners you shall also send a statement to the Claims
4 Administrator confirming that the mailing was made and shall retain your mailing records for use
5 in connection with any further notices that may be provided in the Action.

6 Upon full and timely compliance with these directions, you may seek reimbursement of
7 your reasonable expenses actually incurred, by providing the Claims Administrator with proper
8 documentation supporting the expenses for which reimbursement is sought. Copies of this
9 Settlement Notice and the Claim Form may also be obtained from the website for this Action,
10 www.intuitivesurgicalsecuritieslitigation.com, or by calling the Claims Administrator at (844)
11 850-7746.

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

14 *In re Intuitive Surgical Securities Litigation*
15 Claims Administrator
16 c/o GCG
17 P.O. Box 10359
18 Dublin, OH 43017-0359
19 Phone: (844) 850-7746
20 info@intuitivesurgicalsecuritieslitigation.com
21 www.intuitivesurgicalsecuritieslitigation.com

22 Dated: _____, 2018

23 BY ORDER OF THE UNITED STATES
24 DISTRICT COURT FOR THE
25 NORTHERN DISTRICT OF
26 CALIFORNIA

Exhibit A-2

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Lead Counsel for Plaintiffs and the Class

21 **UNITED STATES DISTRICT COURT**
22 **NORTHERN DISTRICT OF CALIFORNIA**
23 **SAN JOSE DIVISION**

24 IN RE INTUITIVE SURGICAL
25 SECURITIES LITIGATION

Case No. 5:13-cv-01920-EJD (HRL)
PROOF OF CLAIM AND RELEASE
EXHIBIT A-2

1 **I. GENERAL INSTRUCTIONS**

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

7 *In re Intuitive Surgical Securities Litigation*
8 Claims Administrator
9 c/o GCG
10 P.O. Box 10359
11 Dublin, OH 43017-0359
12 Phone: (844) 850-7746
13 info@intuitivesurgicalsecuritieslitigation.com
14 www.intuitivesurgicalsecuritieslitigation.com

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

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

20 **II. CLAIMANT IDENTIFICATION**

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

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

8 **III. IDENTIFICATION OF TRANSACTIONS**

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

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

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

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

25 **COPIES OF BROKER CONFIRMATIONS OR OTHER DOCUMENTATION OF YOUR**
26 **TRANSACTIONS SHOULD BE ATTACHED TO YOUR CLAIM. FAILURE TO PROVIDE**
27

1 **THIS DOCUMENTATION COULD DELAY VERIFICATION OF YOUR CLAIM OR**
2 **RESULT IN REJECTION OF YOUR CLAIM.**

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

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PART I: CLAIMANT IDENTIFICATION

Last Name	M.I.	First Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Last Name (Co-Beneficial Owner)	M.I.	First Name (Co-Beneficial Owner)
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="radio"/> IRA <input type="radio"/> Joint Tenancy <input type="radio"/> Employee <input type="radio"/> Individual <input type="radio"/> Other _____ (specify)		
Company Name (Beneficial Owner - If Claimant is not an Individual) or Custodian Name if an IRA		
<input type="text"/>		
Trustee/Asset Manager/Nominee/Record Owner's Name (If Different from Beneficial Owner Listed Above)		
<input type="text"/>		
Account#/Fund# (Not Necessary for Individual Filers)		
<input type="text"/>		

Social Security Number	or	Taxpayer Identification Number
<input type="text"/> - <input type="text"/> - <input type="text"/>		<input type="text"/> - <input type="text"/>
Telephone Number (Primary Daytime)		Telephone Number (Alternate)
<input type="text"/> - <input type="text"/> - <input type="text"/>		<input type="text"/> - <input type="text"/> - <input type="text"/>
Email Address		
<input type="text"/>		

MAILING INFORMATION

Address		
<input type="text"/>		
Address		
<input type="text"/>		
City	State	Zip Code
<input type="text"/>	<input type="text"/>	<input type="text"/>
Foreign Province	Foreign Postal Code	Foreign Country Name/Abbreviation
<input type="text"/>	<input type="text"/>	<input type="text"/>

1 **PART II: SCHEDULE OF TRANSACTIONS IN INTUITIVE PUBLICLY TRADED**
2 **COMMON STOCK**

- 3 A. **BEGINNING HOLDINGS** - State the number of shares of Intuitive publicly traded
4 common stock held at the beginning of trading on **February 6, 2012**. (Must be
5 documented). _____
- 6 B. **PURCHASES/ACQUISITIONS DURING CLASS PERIOD** - List each and
7 every purchase or acquisition of Intuitive publicly traded common stock from the
8 opening of trading on **February 6, 2012** through and including the close of trading
9 **July 18, 2013**. (Must be documented).

Trade Date Month Day Year	Number of Shares Purchased	Price Per Share	Total Purchase Price
1. _____	1. _____	1. _____	1. _____
2. _____	2. _____	2. _____	2. _____
3. _____	3. _____	3. _____	3. _____

- 12
- 13 C. **PURCHASES/ACQUISITIONS DURING "90-DAY LOOKBACK PERIOD"** –
14 State the total number of shares of Intuitive publicly traded common stock you
15 purchased/acquired from **July 19, 2013** through and including the close of trading on
16 **October 17, 2013**.¹ _____
- 17 B. **SALES**– Separately list each and every sale/disposition of Intuitive publicly traded
18 common stock from after the opening of trading on **February 6, 2012** through and
19 including the close of trading on **October 17, 2013**. (Must be documented.)

Trade Date Month Day Year	Number of Shares Sold	Sales Price Per Share	Total Sales Price
1. _____	1. _____	1. _____	1. _____
2. _____	2. _____	2. _____	2. _____
3. _____	3. _____	3. _____	3. _____

- 22 C. **ENDING HOLDINGS** – State the total number of shares of Intuitive publicly
23 traded common stock you held as of the close of trading on **October 17, 2013**.
24 (Must be documented.) _____

25 _____

26 ¹ **Please note:** Information requested with respect to your purchases/acquisitions of Intuitive
27 publicly traded common stock from July 19, 2013 through and including the close of trading on
28 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.

1 **IV. SUBMISSION TO JURISDICTION OF COURT AND**
2 **ACKNOWLEDGMENTS**

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

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

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

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

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

23
24 _____
Signature of Claimant

24 _____
Signature of Joint Claimant, if any

25
26 _____
Print Name of Claimant

26 _____
Print Name of Joint Claimant, if any

1 (Capacity of person(s) signing, *e.g.*, Beneficial Purchaser, Executor or Administrator)
2

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

5 Reminder Checklist:

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

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

17 *In re Intuitive Surgical Securities Litigation*
18 Claims Administrator
19 c/o GCG
20 P.O. Box 10359
21 Dublin, OH 43017-0359
22 Phone: (844) 850-7746
23 info@intuitivesurgicalsecuritieslitigation.com
24 www.intuitivesurgicalsecuritieslitigation.com
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Exhibit A-3

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

10 *Local Counsel for Plaintiffs and the Class*

11 **LABATON SUCHAROW LLP**
12 JONATHAN GARDNER (*pro hac vice*)
13 MARK S. ARISOHN (*pro hac vice*)
14 SERENA P. HALLOWELL (*pro hac vice*)
15 MICHAEL P. CANTY (*pro hac vice*)
16 CHRISTINE M. FOX (*pro hac vice*)
17 THEODORE J. HAWKINS (*pro hac vice*)
18 ALEC T. COQUIN (*pro hac vice*)
19 140 Broadway
20 New York, NY 10005
21 Telephone: 212/907-0700
22 212/818-0477 (fax)
23 jgardner@labaton.com
24 marisohn@labaton.com
25 shallowell@labaton.com
26 mcanty@labaton.com
27 cfox@labaton.com
28 thawkins@labaton.com
acoquin@labaton.com

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)

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

EXHIBIT A-3

1 **TO: ALL PERSONS AND ENTITIES THAT, DURING THE PERIOD FROM**
2 **FEBRUARY 6, 2012 THROUGH JULY 18, 2013, INCLUSIVE, PURCHASED**
3 **OR ACQUIRED SHARES OF THE PUBLICLY TRADED COMMON STOCK OF**
4 **INTUITIVE SURGICAL, INC.**

5 YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District
6 Court for the Northern District of California, that Class Representatives Employees' Retirement
7 System of the State of Hawaii and Greater Pennsylvania Carpenters' Pension Fund, on behalf of
8 themselves and the certified Class, and Intuitive Surgical, Inc., Gary S. Guthart, Marshall L.
9 Mohr, and Lonnie M. Smith (collectively, the "Defendants"), have reached a settlement in the
10 above-captioned action (the "Action") in the amount of \$42,500,000 in cash (the "Settlement
11 Amount") that, if approved by the Court, will resolve all claims in the Action.¹

12 A hearing will be held before the Honorable Edward J. Davila of the United States
13 District Court for the Northern District of California in Courtroom 4, 5th Floor, Robert F.
14 Peckham Federal Building & United States Courthouse, 280 South 1st Street, San Jose, CA
15 95113 at __:__ __.m. on _____, 2018 to, among other things, determine whether
16 (1) the Settlement should be approved by the Court as fair, reasonable, and adequate; (2) the Plan
17 of Allocation for distribution of the Settlement Amount, and any interest thereon, less Court-
18 awarded attorneys' fees, Notice and Administration Expenses, Taxes, and any other costs, fees,
19 or expenses approved by the Court (the "Net Settlement Fund") should be approved as fair,
20 reasonable, and adequate; and (3) to approve the application of Class Counsel for an award of
21 attorneys' fees of no more than 19% of the Settlement Fund (or up to \$8,075,000) and payment
22 of expenses of no more than \$2,500,000 from the Settlement Fund, which will include the
23 expenses of Class Representatives pursuant to the Private Securities Litigation Reform Act of
24 1995. The Court may change the date of the Settlement Hearing without providing another
25 notice. You do NOT need to attend the Settlement Hearing in order to receive a distribution
26 from the Net Settlement Fund.

27 _____
28 ¹ The complete terms of the Settlement are in the Stipulation and Agreement of Settlement, dated
September __, 2018, which can be viewed at www.intuitivesurgicalsecuritieslitigation.com.

1 IF YOU ARE A MEMBER OF THE CLASS, **YOUR RIGHTS WILL BE AFFECTED**
2 **BY THE SETTLEMENT** AND YOU MAY BE ENTITLED TO SHARE IN THE NET
3 SETTLEMENT FUND. If you have not yet received the full Notice of Proposed Class Action
4 Settlement and Motion for Attorneys' Fees and Expenses (the "Settlement Notice") and a Proof
5 of Claim and Release form ("Claim Form"), you may obtain copies of these documents by
6 contacting the Claims Administrator or visiting its website:

7 *In re Intuitive Surgical Securities Litigation*
8 Claims Administrator
9 c/o GCG
10 P.O. Box 10359
11 Dublin, OH 43017-0359
12 Phone: (844) 850-7746
13 info@intuitivesurgicalsecuritieslitigation.com
14 www.intuitivesurgicalsecuritieslitigation.com

15 Inquiries may also be made to Class Counsel:

16 Labaton Sucharow LLP
17 Jonathan Gardner, Esq.
18 140 Broadway
19 New York, NY 10005
20 Tel: (888) 219-6877
21 www.labaton.com
22 settlementquestions@labaton.com

23 If you are a Class Member, to be eligible to share in the distribution of the Net Settlement
24 Fund, you must submit a Claim Form postmarked or electronically submitted *no later than*
25 _____, **2018**. If you are a Class Member and do not timely submit a valid Claim
26 Form, you will not be eligible to share in the distribution of the Net Settlement Fund, but you
27 will nevertheless be bound by any judgments or orders entered by the Court in the Action.

28 If you previously submitted a valid and timely request for exclusion from the Class in
connection with the Notice of Pendency of Class Action ("Class Notice") and you wish to
remain excluded, no further action is required. However if you did not, to exclude yourself from
the Class now, you must submit a written request for exclusion in accordance with the
instructions set forth in the Settlement Notice such that it is *received no later than*

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_____, 2018. If you are a Class Member and do not exclude yourself from the Class, **you will be bound** by any judgments or orders entered by the Court in the Action.

If you previously submitted a request for exclusion from the Class in connection with the Class Notice but you want to *opt-back* into the Class now for the purpose of being eligible to receive a payment from the Net Settlement Fund, you may do so. In order to opt-back into the Class, you must submit a request in writing such that it is *received no later than* _____, 2018, in accordance with the instructions set forth in the Settlement Notice.

Any objections to the Settlement, Plan of Allocation, and/or application for attorneys' fees and payment of expenses must be filed with the Court and mailed to counsel in accordance with the instructions set forth in the Settlement Notice so that they are *received no later than* _____, 2018.

PLEASE DO NOT CONTACT THE COURT, DEFENDANTS, OR DEFENDANTS' COUNSEL REGARDING THIS NOTICE.

Dated: _____, 2018

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

Exhibit B

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

17 *Lead Counsel for Plaintiffs and the Class*

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

22 IN RE INTUITIVE SURGICAL
23 SECURITIES LITIGATION

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

CLASS ACTION

[PROPOSED] FINAL ORDER AND
JUDGMENT

1 **WHEREAS:**

2 A. A class action is pending in this Court entitled *In re Intuitive Surgical Securities*
3 *Litigation*, Case No. 5:13-cv-01920-EJD (HRL) (the “Action”);

4 B. Defendants in the Action are Intuitive Surgical, Inc. (“Intuitive” or the
5 “Company”) and Gary S. Guthart (“Guthart”), Marshall L. Mohr (“Mohr”), and Lonnie M. Smith
6 (“Smith”) (collectively, the “Individual Defendants” and with Intuitive, the “Defendants”);

7 C. By Order entered December 23, 2016, the Court certified a Class of: all persons or
8 entities who purchased or acquired the publicly traded common stock of Intuitive during the
9 period from February 6, 2012 through July 18, 2013, inclusive (the “Class Period”), and who
10 were damaged thereby (the “Class”). Excluded from the Class by definition are: (i) all
11 Defendants; (ii) members of the immediate families of Individual Defendants Guthart, Mohr, and
12 Smith; (iii) any subsidiaries and affiliates of Defendants; (iv) any person who is or was an officer
13 or director of Intuitive or any of Intuitive’s subsidiaries or affiliates; (v) Defendants’ directors’
14 and officers’ liability insurance carriers, and any affiliates or subsidiaries thereof; (vi) Intuitive’s
15 employee retirement and benefit plan(s); and (vii) the legal representatives, heirs, successors and
16 assigns of any such excluded person or entity. Also excluded from the Class is any person or
17 entity that submitted a timely and valid request for exclusion in connection with the Notice of
18 Pendency of Class Action (the “Class Notice”) previously disseminated who has not opted back
19 into the Class. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and the Court’s
20 Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner
21 of Notice, and Setting Date for Hearing on Final Approval of Settlement, entered by the Court on
22 _____, 2018 (the “Preliminary Approval Order”), also excluded from the Class are those
23 persons or entities that submitted timely and valid requests for exclusion pursuant to the
24 Settlement Notice (defined below), which have been accepted by the Court. A list of all Class
25 Members that have timely and validly sought exclusion is attached hereto as Exhibit A;
26
27
28

1 D. As of _____, 2018, Class Representatives Employees' Retirement System
2 of the State of Hawaii ("Hawaii ERS") and Greater Pennsylvania Carpenters' Pension Fund
3 ("Greater Pennsylvania") (collectively, "Class Representatives"), on behalf of themselves and
4 each of the members of the certified Class, on the one hand, and Defendants, on the other hand,
5 entered into a Stipulation and Agreement of Settlement (the "Stipulation") in the Action;

6 E. Pursuant to the Preliminary Approval Order, the Court scheduled a hearing for
7 _____, 2018, at ____: ____ .m. (the "Settlement Hearing") to, among other things: (i)
8 determine whether the proposed Settlement of the Action on the terms and conditions provided
9 for in the Stipulation is fair, reasonable, and adequate, and should be approved by the Court; and
10 (ii) determine whether a judgment as provided for in the Stipulation should be entered;

11 F. Also pursuant to the Preliminary Approval Order, the Court ordered that the
12 Notice of Proposed Class Action Settlement and Motion for Attorneys' Fees and Expenses (the
13 "Settlement Notice") and a Proof of Claim and Release form ("Proof of Claim"), substantially in
14 the forms attached to the Preliminary Approval Order as Exhibits 1 and 2, respectively, be
15 mailed by first-class mail, postage prepaid, on or before ten (10) calendar days after the date of
16 entry of the Preliminary Approval Order ("Notice Date") to all potential Class Members who
17 could be identified through reasonable effort, and that a Summary Notice of Proposed Class
18 Action Settlement and Motion for Attorneys' Fees and Expenses (the "Summary Notice"),
19 substantially in the form attached to the Preliminary Approval Order as Exhibit 3, be published
20 in *Investor's Business Daily* and transmitted over *PR Newswire* within fourteen (14) calendar
21 days of the Notice Date;

22 G. The Settlement Notice and the Summary Notice advised potential Class Members
23 of the date, time, place, and purpose of the Settlement Hearing. The Settlement Notice further
24 advised that any objections to the Settlement were required to be filed with the Court and served
25 on counsel for the Parties such that they were received by _____, 2018, that requests for
26 exclusion from the Class were to be received by _____, 2018, and that any requests to opt-
27 back into the Class were to be received by _____, 2018;

1 H. The provisions of the Preliminary Approval Order as to notice were complied
2 with;

3 I. On _____, 2018, Class Representatives moved for final approval of the
4 Settlement, as set forth in the Preliminary Approval Order. The Settlement Hearing was duly
5 held before this Court on _____, 2018, at which time all interested Persons were afforded
6 the opportunity to be heard; and

7 J. This Court has duly considered Class Representatives' motion, the affidavits,
8 declarations, memoranda of law submitted in support thereof, the Stipulation, and all of the
9 submissions and arguments presented with respect to the proposed Settlement;

10 NOW, THEREFORE, after due deliberation, IT IS ORDERED, ADJUDGED AND
11 DECREED that:

12 1. This Judgment incorporates and makes a part hereof: (i) the Stipulation filed with
13 the Court on _____, 2018; and (ii) the Settlement Notice, which was filed with the Court
14 on _____, 2018. Capitalized terms not defined in this Judgment shall have the meaning
15 set forth in the Stipulation.

16 2. This Court has jurisdiction over the subject matter of the Action and over all
17 parties to the Action, including all Class Members.

18 3. The Court finds that the mailing and publication of the Settlement Notice,
19 Summary Notice, and Proof of Claim: (i) complied with the Preliminary Approval Order; (ii)
20 constituted the best notice practicable under the circumstances; (iii) constituted notice that was
21 reasonably calculated to apprise Class Members of the effect of the Settlement, of the Plan of
22 Allocation, of Class Counsel's request for an award of attorney's fees and payment of litigation
23 expenses incurred in connection with the prosecution of the Action, of Class Members' right to
24 object, seek exclusion from, and/or opt-back into the Class, and of their right to appear at the
25 Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all Persons entitled to
26 receive notice of the proposed Settlement; and (v) satisfied the notice requirements of Rule 23 of
27 the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process
28

1 Clause), and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7),
2 as amended by the Private Securities Litigation Reform Act of 1995.

3 4. In accordance with Federal Rule of Civil Procedure 23, excluded from the Class
4 are the persons and entities listed in Exhibit A to this Judgment, who are excluded pursuant to
5 request.

6 5. [There have been _____ objections to the Settlement, which have been
7 considered by the Court and are hereby overruled.]

8 6. In light of the benefits to the Class, the complexity, expense, and possible
9 duration of further litigation against Defendants, the risks of establishing liability and damages,
10 the costs of continued litigation, the Court hereby fully and finally approves the Settlement as set
11 forth in the Stipulation in all respects, and finds that the Settlement is, in all respects, fair,
12 reasonable and adequate, and in the best interests of the Class. This Court further finds the
13 Settlement set forth in the Stipulation is the result of arm's-length negotiations between
14 experienced counsel representing the interests of the Class and Defendants, all of whom had a
15 firm understanding of the factual and legal issues in dispute.

16 7. The Second Amended Consolidated Complaint, filed on January 26, 2017 (the
17 "Second Amended Complaint") is dismissed in its entirety, with prejudice, and without costs to
18 any Party, except as otherwise provided in the Stipulation.

19 8. The Court finds, as required by the Private Securities Litigation Reform Act, 15
20 U.S.C. § 78u-4(c)(1), that during the course of the Action, the Parties and their respective
21 counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil
22 Procedure.

23 9. Upon the Effective Date of the Settlement, each Class Representative and Class
24 Member (who is not otherwise properly excluded from the Class), on behalf of themselves and
25 each of the Releasing Plaintiff Parties, shall be deemed to have fully, finally, and forever waived,
26 released, discharged, covenanted not to bring, and dismissed each and every one of the Released
27 Claims against each and every one of the Released Defendant Parties and shall forever be barred
28

1 and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the
2 Released Claims against any and all of the Released Defendant Parties.

3 10. Upon the Effective Date of the Settlement, Defendants, on behalf of themselves
4 and each of the Releasing Defendant Parties, shall be deemed to have fully, finally, and forever
5 waived, released, discharged, covenanted not to bring, and dismissed each and every one of the
6 Released Defendants' Claims against each and every one of the Released Plaintiff Parties and
7 shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining
8 any and all of the Released Defendants' Claims against any and all of the Released Plaintiff
9 Parties.

10 11. Notwithstanding paragraphs 9 and 10 above, nothing in this Judgment shall bar
11 any action by any of the Parties to enforce or effectuate the terms of the Stipulation or this
12 Judgment.

13 12. Each Class Member, whether or not the Class Member executes and delivers a
14 Claim Form, is bound by this Judgment, including, without limitation, the release of claims
15 provided for herein. [The Persons listed on Exhibit A hereto are excluded from the Class
16 pursuant to request and are not bound by the terms of the Stipulation or this Judgment.]

17 13. This Judgment and the Stipulation, whether or not consummated, and whether or
18 not approved by the Court, and any discussion, negotiation, proceeding, or agreement relating to
19 the Stipulation, the Settlement, and any matter arising in connection with settlement discussions
20 or negotiations, proceedings, or agreements, shall not be offered or received against or to the
21 prejudice of the Parties or their respective counsel, for any purpose other than in an action to
22 enforce the terms hereof, and in particular:

23 (a) do not constitute, and shall not be offered or received against or to the
24 prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any
25 presumption, concession, or admission by Defendants with respect to the truth of any allegation
26 by Class Representatives and the Class, or the validity of any claim that has been or could have
27 been asserted in the Action or in any litigation, including but not limited to the Released Claims,
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1 or of any liability, damages, negligence, fault or wrongdoing of Defendants or any person or
2 entity whatsoever;

3 (b) do not constitute, and shall not be offered or received against or to the
4 prejudice of Defendants as evidence of a presumption, concession, or admission of any fault,
5 misrepresentation, or omission with respect to any statement or written document approved or
6 made by Defendants, or against or to the prejudice of Class Representatives, or any other
7 member of the Class as evidence of any infirmity in the claims of Class Representatives, or the
8 other members of the Class;

9 (c) do not constitute, and shall not be offered or received against or to the
10 prejudice of Defendants, Class Representatives, any other member of the Class, or their
11 respective counsel, as evidence of a presumption, concession, or admission with respect to any
12 liability, damages, negligence, fault, infirmity, or wrongdoing, or in any way referred to for any
13 other reason against or to the prejudice of any of the Defendants, Class Representatives, other
14 members of the Class, or their respective counsel, in any other civil, criminal, or administrative
15 action or proceeding, other than such proceedings as may be necessary to effectuate the
16 provisions of the Stipulation;

17 (d) do not constitute, and shall not be construed against Defendants, Class
18 Representatives, or any other member of the Class, as an admission or concession that the
19 consideration to be given hereunder represents the amount that could be or would have been
20 recovered after trial; and

21 (e) do not constitute, and shall not be construed as or received in evidence as
22 an admission, concession, or presumption against Class Representatives, or any other member of
23 the Class that any of their claims are without merit or infirm or that damages recoverable under
24 the Second Amended Complaint would not have exceeded the Settlement Amount.
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1 14. The administration of the Settlement, and the decision of all disputed questions of
2 law and fact with respect to the validity of any claim or right of any Person to participate in the
3 distribution of the Net Settlement Fund, shall remain under the authority of this Court.

4 15. In the event that the Settlement does not become effective in accordance with the
5 terms of the Stipulation, then this Judgment shall be rendered null and void to the extent
6 provided by and in accordance with the Stipulation and shall be vacated, and in such event, all
7 orders entered and releases delivered in connection herewith shall be null and void to the extent
8 provided by and in accordance with the Stipulation.

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

11 17. The Parties are hereby directed to consummate the Stipulation and to perform its
12 terms.

13 18. A separate order shall be entered regarding Class Counsel's motion for an award
14 of attorneys' fees and payment of expenses. A separate order shall be entered regarding the Plan
15 of Allocation set forth in the Notice. Such orders shall in no way disturb or affect this Judgment
16 and shall be considered separate from this Judgment.

17 19. The Court's orders entered during this Action relating to the confidentiality of
18 information shall survive this Settlement.

19 20. Without affecting the finality of this Judgment in any way, this Court hereby
20 retains continuing jurisdiction over: (i) all Parties for the purpose of construing, enforcing and
21 administering the Settlement and this Judgment; (ii) the implementation and administration of
22 the Settlement; (iii) the allowance, disallowance or adjustment of any Settlement Class
23 Member's claim on equitable grounds; (iv) hearing and determining applications for attorneys'
24 fees, costs, interest and payment of expenses in the Action; (v) any motion to approve the Plan of
25 Allocation; and (vi) the Class Members for all matters relating to the Action. There is no just
26 reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is
27 expressly directed.
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Dated: _____, 2018

HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

EXHIBIT A

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