

KEKER, VAN NEST & PETERS LLP

JOHN W. KEKER - # 49092
MICHAEL D. CELIO - # 197998
LAURIE CARR MIMS - # 241584
CODY S. HARRIS - # 255302
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188
mcelio@keker.com
lmims@keker.com
charris@keker.com

Attorneys for Defendants INTUITIVE SURGICAL, INC., LONNIE M. SMITH, GARY S. GUTHART, and MARSHALL L. MOHR

LABATON SUCHAROW LLP

JONATHAN GARDNER (*pro hac vice*)
MARK S. ARISOHN (*pro hac vice*)
SERENA P. HALLOWELL (*pro hac vice*)
MICHAEL P. CANTY (*pro hac vice*)
CHRISTINE M. FOX (*pro hac vice*)
THEODORE J. HAWKINS (*pro hac vice*)
140 Broadway
New York, NY 10005
Telephone: 212/907-0700
212/818-0477 (fax)
jgardner@labaton.com
marisohn@labaton.com
shallowell@labaton.com
mcanty@labaton.com
cfox@labaton.com
thawkins@labaton.com

Lead Counsel for Plaintiffs and the Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE INTUITIVE SURGICAL
SECURITIES LITIGATION

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

CLASS ACTION

~~PROPOSED~~ ORDER APPROVING
NOTICE AND SUMMARY NOTICE OF
PENDENCY OF CLASS ACTION

1 WHEREAS, by Order dated December 22, 2016, the Court certified the above-captioned
2 action (the “Action”) to proceed as a class action on behalf of a class consisting of all persons or
3 entities who purchased or acquired the publicly traded common stock of Intuitive Surgical, Inc.
4 (“Intuitive”) during the period from February 6, 2012 through July 18, 2013, inclusive, (the
5 “Class Period”) and who were damaged thereby (the “Class”). Excluded from the Class are: (i)
6 all Defendants; (ii) members of the immediate families of individual defendants Guthart, Mohr,
7 and Smith; (iii) any subsidiaries and affiliates of Defendants; (iv) any person who is or was an
8 officer or director of Intuitive or any of Intuitive’s subsidiaries or affiliates; (v) Defendants’
9 directors’ and officers’ liability insurance carriers, and any affiliates or subsidiaries thereof; (vi)
10 Intuitive’s employee retirement and benefit plan(s); and (vii) the legal representatives, heirs,
11 successors and assigns of any such excluded person or entity.

12 WHEREAS, Employees’ Retirement System of the State of Hawaii and Greater
13 Pennsylvania Carpenters’ Pension Fund (collectively “Class Representatives”) have moved the
14 Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an Order approving the
15 proposed form and content of notices to be disseminated to the Class, as well as the proposed
16 method for dissemination of these notices (the “Motion”);

17 WHEREAS, Defendants initially opposed the Class Representatives’ Motion only as to
18 the description of the claims in paragraph 5 of the long-form Notice of Pendency of Class Action,
19 and proposed instead that the parties use the Court’s description of the claims from the Court’s
20 September 29, 2017 order (Dkt. 237);

21 WHEREAS, at the March 8, 2018 hearing on the Motion, the Court proposed a
22 compromise description for paragraph 5 of the long-form Notice;

23 WHEREAS, the parties have agreed to use the Court’s proposed description for paragraph
24 5 of the long-form Notice, and have jointly submitted a revised long-form Notice incorporating
25 that description;

26 WHEREAS, the Court has reviewed the parties’ revised proposed Notice of Pendency of
27 Class Action and their proposed Summary Notice of Pendency of Class Action, and has found
28 good cause for entering the following Order:

1 1. The Motion is hereby GRANTED. The Court approves the form, substance and
2 requirements of the Notice of Pendency of Class Action jointly submitted by the parties, attached
3 hereto as Exhibit 1 (the “Notice”). The Court also approves the Summary Notice of Pendency of
4 Class Action submitted by the parties, attached hereto as Exhibit 2 (the “Summary Notice”)
5 (together with the Notice, the “Notices”).

6 2. The proposed form and content of the Notice meet the requirements of Rule
7 23(c)(2)(B) as it clearly and concisely states in plain and easily understood language all of the
8 following: (a) the nature of the Action; (b) the definition of the certified Class; (c) the class
9 claims, issue or defenses; (d) a Class Member’s right to enter an appearance through an attorney
10 if the member so desires; (e) a Class Member’s right to be excluded from the Class; (f) the time
11 and manner for requesting exclusion; (g) and the binding effect of a judgment on Class Members
12 under Federal Rule of Civil Procedure 23(c)(3). The Notice, the Summary Notice, and the
13 method and schedule set forth below for notifying the Class of the pendency of the Action as a
14 class action meet the requirements of Rule 23 and of due process, constitute the best notice
15 practicable under the circumstances, and shall constitute due and sufficient notice to all persons
16 and entities entitled thereto.

17 3. The Court approves the retention of The Garden City Group, LLC as the
18 Administrator.

19 4. No later than ten (10) business days after entry of this Order, Intuitive shall use
20 reasonable efforts to, and at no cost to the Class, have its transfer agent provide or cause to be
21 provided to the Administrator shareholder records (consisting of the shareholder names and
22 addresses to the extent they exist) in electronic form, such as excel, identifying all persons or
23 entities who purchased or otherwise acquired the publicly traded common stock of Intuitive
24 during the period from February 6, 2012 through July 18, 2013, inclusive.

25 5. The Administrator shall cause the Notice, substantially in the form attached hereto
26 as Exhibit 1, to be mailed, by first-class mail, postage prepaid, not later than twenty (20) business
27 days from entry of this Order (“Notice Date”), to potential Class Members at the addresses set
28 forth in the records provided by Intuitive pursuant to paragraph 4 above or who may otherwise be

1 identified with reasonable effort. The Administrator shall use reasonable efforts to give notice to
2 nominee purchasers such as brokerage firms and other persons and entities who may have, for the
3 beneficial interest of any person or entity other than itself or themselves, purchased or acquired
4 Intuitive publicly traded common stock from February 6, 2012 through July 18, 2013. Such
5 nominees SHALL EITHER: (a) WITHIN SEVEN (7) CALENDAR DAYS of receipt of the
6 Notice, request from the Administrator sufficient copies of the Notice to forward to all such
7 beneficial owners and WITHIN SEVEN (7) CALENDAR DAYS of receipt of those Notices from
8 the Administrator forward them to all such beneficial owners; or (b) WITHIN SEVEN (7)
9 CALENDAR DAYS of receipt of the Notice, provide a list of the names and addresses of all such
10 beneficial owners to the Administrator and the Administrator is ordered to send the Notice
11 promptly to such identified beneficial owners. Nominees who elect to send the Notice to their
12 beneficial owners SHALL ALSO send a statement to the Administrator confirming that the
13 mailing was made and shall retain their mailing records for use in connection with any further
14 notices that may be provided in the Action. Upon full and timely compliance with these
15 directions, such nominees may seek reimbursement of their reasonable expenses actually incurred
16 by providing the Administrator with proper documentation supporting the expenses for which
17 reimbursement is sought.

18 6. Contemporaneously with the mailing of the Notice, the Administrator shall cause a
19 copy of the Notice to be posted on the webpage established for this lawsuit, from which Class
20 Members may download copies of the Notice.

21 7. The Administrator shall cause a copy of the Summary Notice, substantially in the
22 form attached hereto as Exhibit 2, to be published once in *Investor's Business Daily* and to be
23 transmitted over *PR Newswire* within fourteen (14) calendar days of the mailing of the Notice.

24 8. Class Members shall be bound by all determinations, orders, and judgments in this
25 Action, whether favorable or unfavorable, unless such persons and entities request exclusion from
26 the Class in a timely and proper manner, as hereinafter provided. A Class Member wishing to
27 make such a request shall mail the request in written form by first class mail, postmarked no later
28 than sixty (60) calendar days after the Notice Date, to the address designated in the Notice. Such

1 request for exclusion shall clearly state that the Class Member “requests exclusion from the Class
2 in *In re Intuitive Surgical Sec. Litig.*, No. 13-cv-01920 (N.D. Cal.)” and must (i) state the name,
3 address and telephone number of the person or entity requesting exclusion; (ii) state the number
4 of shares of Intuitive common stock that the person or entity purchased, acquired, and/or sold
5 during the Class Period, as well as the dates and prices of each such purchase, acquisition and/or
6 sale; and (iii) be signed by the person or entity requesting exclusion or an authorized
7 representative. The request for exclusion shall not be effective unless it provides the required
8 information and is made within the time stated above, or the exclusion is otherwise accepted by
9 the Court.

10 9. Any Class Member who retains separate counsel in connection with this matter
11 must enter an appearance pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure, as set
12 out in the Notice, no later than sixty (60) calendar days after the Notice Date.

13 10. Within fifteen (15) business days following the expiration of the exclusion
14 deadline, Class Counsel shall file with the Court proof of mailing of the Notice, proof of
15 publication of the Summary Notice, and an affidavit setting forth a list of all persons and entities
16 who have requested exclusion from the Class.

17 11. This Order may be modified by the Court upon motion by either or both parties,
18 for good cause shown.

19 IT IS SO ORDERED.

20
21 Dated: March 12, 2018



22 Honorable Edward J. Davila
23 UNITED STATES DISTRICT JUDGE
24
25
26
27
28

Exhibit 1

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

NOTICE OF PENDENCY OF CLASS ACTION

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

A federal court has authorized this notice. It is not junk mail, an advertisement, or a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. IF YOU ARE A CLASS MEMBER, YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT. THIS NOTICE ADVISES YOU OF YOUR OPTIONS REGARDING THE CLASS ACTION.

PLEASE DO NOT CALL OR WRITE THE COURT. IF YOU HAVE ANY QUESTIONS AFTER READING THIS NOTICE, YOU SHOULD CONTACT THE ADMINISTRATOR OR CLASS COUNSEL, AS DISCUSSED FURTHER BELOW.

This Notice is being sent pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Northern District of California (the “Court”) to inform you of a class action lawsuit that is now pending in the Court under the above caption (the “Action”) against Intuitive and Gary S. Guthart (“Guthart”), Marshall L. Mohr (“Mohr”), and Lonnie M. Smith (“Smith,” collectively, the “Defendants”) and that the Action has been certified by the Court to proceed as a class action on behalf of the Class.

1. The “Class” certified by the Court consists of:

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

Excluded from the Class by definition 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.

2. This Notice is directed to you because you may be a member of the Class (“Class Member”). If you are a Class Member, your rights will be affected by this Action. If you are uncertain whether you are a Class Member, contact Class Counsel listed in paragraph __ below, or your own attorney.
3. This Notice is not an admission by Defendants or an expression of any opinion of the Court concerning the merits of the Action, or a finding by the Court that the claims asserted by the Class Representatives (as described in paragraph __ below) are valid. This Notice is intended solely to advise you of the pendency of the Action and of your rights in connection with it. There is no judgment, settlement, or monetary recovery at this time. Defendants have denied Class Representatives’ claims and contend that they are not liable for the alleged harm.
4. The Class definition is subject to change by Court order, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

OVERVIEW AND STATUS OF THIS ACTION

5. Plaintiffs allege that Intuitive and certain of its executives violated Section 10(b) and 20(a) of the Securities and Exchange Act of 1934 by making materially false and misleading statements regarding the safety and efficacy of the da Vinci surgical system and Intuitive’s compliance with FDA regulations. Plaintiffs also allege that Defendants violated Section 20(A) of the Exchange Act of 1934 by profiting from the sale of Intuitive stock while in possession of material nonpublic information. Among other things, Plaintiffs allege that Defendants failed to disclose information about the safety and efficacy of the da Vinci Surgical system.

Plaintiffs allege that when news of the safety and regulatory issues was released to the public, the price of Intuitive common stock declined and Class Members suffered damages as a result. Plaintiffs further allege that certain individual Defendants sold millions of dollars’ worth of Intuitive stock while in possession of the material nonpublic information discussed above.

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

6. The Action was commenced on April 26, 2013. On November 18, 2013, the Court issued an Order appointing the Employees’ Retirement System of the State of Hawaii (“Hawaii ERS”), as lead plaintiff pursuant to the Private Securities Litigation Reform Act of 1995. In the same Order, the Court approved lead plaintiff’s selection of Labaton Sucharow LLP as lead counsel for the Class.

7. On September 1, 2015, Plaintiffs filed a motion for class certification. Following briefing on the motion and oral argument, on December 22, 2016, the Court issued an Order granting the class certification motion, certifying the Class as defined above, appointing lead plaintiff Employees' Retirement System of the State of Hawaii and named-plaintiff Greater Pennsylvania Carpenters' Pension Fund as "Class Representatives," and appointing lead counsel as "Class Counsel."¹
8. The operative complaint in the Action, the Second Amended Consolidated Complaint ("Complaint"), was filed on January 26, 2017.
9. On February 9, 2017, Defendants moved to dismiss the Complaint. On September 29, 2017, the Court issued an Order denying Defendants' motion to dismiss in its entirety.
10. Fact discovery concluded on September 30, 2016. Expert discovery concluded on December 15, 2017. A trial date in this Action has been set for October 30, 2018.

YOUR RIGHTS AS A CLASS MEMBER

11. A class action is a type of lawsuit in which one or several individuals or entities prosecute claims on behalf of all members of a group of similarly situated persons and entities (*i.e.*, the class) to obtain monetary or other relief for the benefit of the entire group. Class actions avoid the necessity of each member of a class having to file his, her, or its own separate lawsuit to obtain relief. Class actions are used to decide legal and factual issues that are common to all members of a class.
12. If you purchased or acquired shares of the publicly traded common stock of Intuitive during the period from February 6, 2012 through July 18, 2013, inclusive, and were damaged thereby, and you are not excluded from the Class by definition (*see* paragraph __, above), you are a member of the Class. If you are a member of the Class, you have the right to decide whether to remain a member of the Class.
13. If you wish to be excluded from the Class, you must request exclusion in accordance with the procedure set forth in paragraph __ below. ***If you want to remain a member of the Class, you do not need to do anything at this time other than to retain your documentation reflecting your transactions and holdings in Intuitive common stock, as discussed in paragraph __ below.*** If you do nothing, and you are a member of the Class, you will stay in the Class. Your decision is important for the following reasons:
 - a. **If you remain a member of the Class**, you will be bound by all past, present and future orders and judgments in the Action, whether favorable or unfavorable. If any money is awarded to the Class, either through a settlement with Defendants or

¹ On January 5, 2017, Defendants filed, before the United States Court of Appeals for the Ninth Circuit, a Petition Pursuant to F.R.C.P. 23(f) for Permission to Appeal the District Court's Order Granting Class Certification. On October 30, 2017, the Ninth Circuit denied the petition.

a judgment of the Court after a trial, you may be eligible to receive a share of that award. However, if you remain a member of the Class, you may not pursue a lawsuit on your own behalf with regard to any of the issues in this Action. Pursuant to Rule 23(e)(4) of the Federal Rules of Civil Procedure, it is within the Court's discretion whether to allow a second opportunity to request exclusion from the Class if there is a settlement or judgment in the Action after a trial.

As a member of the Class, you will be represented by Class Counsel. You will not be personally responsible for Class Counsel's attorneys' fees or costs. Class Counsel have agreed to represent the Class on a contingent fee basis, which means that they will be awarded fees and costs by the Court only if they succeed in obtaining a recovery from one or more Defendants. Attorneys' fees and costs for Class Counsel, if approved by the Court, would be paid from the settlement or judgment, if any, obtained on behalf of the Class.

You may also elect to be represented by counsel of your own choosing. If you do retain separate counsel, you will be responsible for your attorney's fees and expenses and your attorney must enter an appearance on your behalf by filing a Notice of Appearance with the Court and mailing it to Class Counsel at the addresses set forth in paragraph __ below **on or before** _____, **2018**.

- b. **If you choose to be excluded from the Class**, you will not be bound by any past, present, or future orders and judgments in this Action, nor will you be eligible to share in any recovery that might be obtained in this Action. You will retain any right you have to individually pursue claims, if any, that you may have against Defendants with respect to the claims asserted in the Action. ***Please note, if you decide to exclude yourself from the Class, you may be time-barred from asserting the claims covered by the Action by a statute of repose and your claims could be dismissed.*** Please refer to paragraphs __ through __ below if you would like to be excluded from the Class.
14. Members of the Class will be eligible to participate in any recovery that might be obtained in the Action. While this Notice is not intended to suggest any likelihood that members of the Class will recover any money, should there be a recovery, Class Members will be required to submit a claim form demonstrating their membership in the Class and documenting their sales, purchases and/or holdings of Intuitive common stock, and their resulting damages. ***For this reason, please be sure to keep all records of your transactions and holdings in Intuitive common stock. DO NOT mail them to Class Counsel or the Administrator at this time.*** No money or benefits are available now and there is no guarantee that money or benefits will be obtained. If they are, Class Members will be notified regarding how to obtain a share.

HOW TO BE EXCLUDED FROM THE CLASS

15. If you wish to be excluded from the Class, you must specifically request exclusion in accordance with the following procedures. To exclude yourself from the Class, you must send a letter by first-class mail stating that you “request exclusion from the Class in *In re Intuitive Surgical Securities Litigation, No. 5:13-cv-01920-EJD*.” Your request must: (i) state the name, address and telephone number of the person or entity requesting exclusion, and, in the case of entities, the name and telephone number of the appropriate contact person; (ii) state the number of shares of Intuitive common stock that the person or entity requesting exclusion purchased/acquired and/or sold during the Class Period (*i.e.*, from February 6, 2012 through July 18, 2013, inclusive), as well as the dates, number of shares, and prices of each such purchase/acquisition and sale; and (iii) be signed by the person or entity requesting exclusion or an authorized representative, accompanied by proof of authorization. You must mail your exclusion request, ***postmarked by no later than _____, 2018***, to:

In re Intuitive Surgical Securities Litigation
c/o _____
P.O. Box _____
_____, _____

You cannot exclude yourself from the Class by telephone or by e-mail, and a request for exclusion shall not be effective unless it contains all the information called for by this paragraph and is postmarked by the date stated above, or is otherwise accepted by the Court.

16. If your request for exclusion complies with the requirements set forth above, the Court will exclude you from the Class, you will not be bound by any orders or judgments in this Action, and you will not be eligible to share in any recovery that might be obtained in this Action.
17. Do not request exclusion from the Class if you wish to participate in this Action as a member of the Class.

CLASS COUNSEL

18. As a member of the Class, you will be represented by Class Counsel, who are:

Jonathan Gardner, Esq.
Serena Hallowell, Esq.
LABATON SUCHAROW LLP
140 Broadway
New York, NY 10005
(888) 219-6877

19. If you want to be represented by your own lawyer, you may hire one at your own expense. If you do retain your own lawyer, such counsel must enter an appearance on your behalf by filing a Notice of Appearance with the Clerk of the Court at the United

States District Court for the Northern District of California, San Jose Courthouse, Courtroom 4 - 5th Floor 280 South 1st Street, San Jose, CA 95113, **on or before** _____, **2018**. Your Notice of Appearance must also be mailed to Class Counsel: Serena Hallowell, Labaton Sucharow LLP, 140 Broadway, New York, NY 10005, **on or before** _____, **2018**.

20. As noted above, unless you elect to retain your own personal lawyer, if you remain in the Class, you will not have any direct obligations to pay the costs of the litigation. If there is a recovery by the Class, all costs and expenses of the Action, including Class Counsel's attorneys' fees and costs, will be paid from that recovery in an amount approved by the Court.

PLEASE KEEP YOUR ADDRESS CURRENT

21. In order to make sure that you receive any further notices in this Action, you are requested to mail notice of any changes in your address to:

In re Intuitive Surgical Securities Litigation

c/o _____

P.O. Box _____

_____, _____ - _____

22. If this Notice was forwarded to you by the postal service, or if it was otherwise sent to you at an address that is not current, you should immediately contact the Administrator, _____, at the address in paragraph __ above or by calling the Administrator toll free at () ____-____, and provide them with your correct address. If the Administrator does not have your correct address, you may not receive any future notices.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

23. This Notice only provides a summary of the lawsuit and the claims asserted by Class Representatives. For more detailed information regarding the Action, including a copy of the Complaint, you may contact Class Counsel or visit www._____.com.

PLEASE DO NOT CALL OR WRITE THE COURT.

NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

24. If, during the period from February 6, 2012 through July 18, 2013, inclusive, you purchased or acquired Intuitive publicly traded common stock for the beneficial interest of persons or organizations other than yourself, you must either: (i) within seven (7) calendar days of receipt of this Notice, request from the Administrator sufficient copies of the Notice to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notices forward them to all such beneficial owners; or (ii) within seven (7) calendar days of receipt of this Notice, provide a list of the names and addresses of all such beneficial owners to the Administrator at *In re Intuitive Surgical Securities Litigation*, c/o _____, P.O. Box _____, _____ - _____. If you choose the first option, you must send a statement to the Administrator confirming that the mailing was timely made and **you must retain your mailing records for use in connection with any future notices that may be provided in the Action.** If you choose the second option, the Administrator will send a copy of the Notice to the beneficial owners. Upon full and timely compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred by providing the Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice may also be obtained from the website maintained by the Administrator, www._____.com, or by calling the Administrator toll free at (____)____-_____.

Dated: _____, 2017

BY ORDER OF THE COURT:
United States District Court for the
Northern District of California

Exhibit 2

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

SUMMARY NOTICE OF PENDENCY OF CLASS ACTION

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

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Northern District of California that the above-captioned action (the “Action”) has been certified to proceed as a class action on behalf of the Class as defined above. **Please note:** at this time, there is no judgment, settlement or monetary recovery. A trial date in this Action has not been set.

IF YOU ARE A MEMBER OF THE CLASS, YOUR RIGHTS WILL BE AFFECTED BY THIS ACTION. A full printed Notice of Pendency of Class Action (the “Notice”) is currently being mailed to known potential Class Members. If you have not yet received the full printed Notice, you may obtain a copy of the Notice by downloading it from www._____.com or by contacting the Administrator at:

In re Intuitive Surgical Securities Litigation

c/o _____

P.O. Box _____

_____, _____
() - -

Inquiries, other than requests for the Notice, may be made to the following representatives of Class Counsel:

Jonathan Gardner, Esq.
Serena Hallowell, Esq.
LABATON SUCHAROW LLP
140 Broadway
New York, NY 10005
(888) 219-6877

If you are a Class Member, you have the right to decide whether to remain a member of the Class or to “opt-out” of it (also called requesting exclusion). ***If you want to remain a member of the Class, you do not need to do anything at this time other than to retain your documentation reflecting your transactions and holdings in Intuitive common stock.*** If you are a Class Member and do not opt-out from the Class, you will be bound by the proceedings in this Action, including all past, present, and future orders and judgments of the Court, whether

favorable or unfavorable. **If you move, or if the Notice was mailed to an old or incorrect address, please send the Administrator written notification of your new address.**

If you ask to be excluded from the Class, you will not be bound by any order or judgment of this Court in this Action, however you will not be eligible to receive a share of any money that might be recovered for the benefit of the Class. You will retain any right you have to individually pursue claims, if any, that you may have against the Defendants with respect to the claims asserted in the Action. ***Please note, if you decide to opt-out from the Class, you may be time-barred from asserting the claims covered by the Action by a statute of repose and your claims could be dismissed.*** To opt-out from the Class, you must submit a written request for exclusion postmarked no later than _____, 2018, in accordance with the instructions set forth in the full printed Notice. Pursuant to Rule 23(e)(4) of the Federal Rules of Civil Procedure, it is within the Court's discretion whether to allow a second opportunity to request exclusion from the Class in the event there is a settlement or judgment in the Action.

Further information regarding this notice may be obtained by contacting the Administrator as provided above.

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

BY ORDER OF THE COURT:
United States District Court for the
Northern District of California