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

21 IN RE INTUITIVE SURGICAL  
 22 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  
8           C.     By Order entered December 23, 2016, the Court certified a Class of: all persons or  
9 entities who purchased or acquired the publicly traded common stock of Intuitive during the  
10 period from February 6, 2012 through July 18, 2013, inclusive (the “Class Period”), and who  
11 were damaged thereby (the “Class”). Excluded from the Class by definition are: (i) all  
12 Defendants; (ii) members of the immediate families of Individual Defendants Guthart, Mohr, and  
13 Smith; (iii) any subsidiaries and affiliates of Defendants; (iv) any person who is or was an officer  
14 or director of Intuitive or any of Intuitive’s subsidiaries or affiliates; (v) Defendants’ directors’  
15 and officers’ liability insurance carriers, and any affiliates or subsidiaries thereof; (vi) Intuitive’s  
16 employee retirement and benefit plan(s); and (vii) the legal representatives, heirs, successors and  
17 assigns of any such excluded person or entity. Also excluded from the Class is any person or  
18 entity that submitted a timely and valid request for exclusion in connection with the Notice of  
19 Pendency of Class Action (the “Class Notice”) previously disseminated who has not opted back  
20 into the Class. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and the Court’s  
21 Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner  
22 of Notice, and Setting Date for Hearing on Final Approval of Settlement, entered by the Court on  
23 October 4, 2018 (the “Preliminary Approval Order”), also excluded from the Class are those  
24 persons or entities that submitted timely and valid requests for exclusion pursuant to the  
25 Settlement Notice (defined below), which have been accepted by the Court. A list of all Class  
26 Members that have timely and validly sought exclusion is attached hereto as Exhibit A;  
27  
28

1 D. As of September 11, 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 December 20, 2018, at 10:00 a.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 November 29, 2018, that requests for  
26 exclusion from the Class were to be received by November 29, 2018, and that any requests to  
27 opt-back into the Class were to be received by November 29, 2018;

28

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

3 I. On November 15, 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 December 20, 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 September 11, 2018; and (ii) the Settlement Notice, which was filed with the Court  
14 on November 15, 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 no objections to the Settlement.

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

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

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

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

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

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

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

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

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

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

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

26 14. The administration of the Settlement, and the decision of all disputed questions of  
27 law and fact with respect to the validity of any claim or right of any Person to participate in the  
28 distribution of the Net Settlement Fund, shall remain under the authority of this Court.

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

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

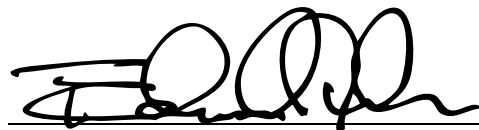
8           17.     The Parties are hereby directed to consummate the Stipulation and to perform its  
9 terms.

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

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

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

26  
27 Dated: December 20, 2018



HONORABLE EDWARD J. DAVILA  
UNITED STATES DISTRICT JUDGE



**EXHIBIT A**

<b>Count</b>	<b>Name</b>	<b>City</b>	<b>State</b>
1	Annaliese Cassarino	La Jolla	CA
2	Tova Marie Shergold	South Barrington	IL
3	Doreen Lichtman	Orchard Lake	MI
4	Charles H. Lasley, M.D.	Belleair Bluffs	FL
5	Anthony Fragale	Oreland	PA
6	Carla Breidenbach	Colorado Springs	CO
7	William B. Van Alstyne	San Carlos	CA
8	Alfred L. Coen	Northbrook	IL