

**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 18 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 5 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 THE 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 (the "Exchange Act") by making materially false and misleading statements regarding the safety and efficacy of the da Vinci surgical system and Intuitive's compliance with FDA regulations. Plaintiffs also allege that defendants violated Section 20(A) of the Exchange Act by profiting from the sale of Intuitive stock while in possession of material nonpublic information. Among other things, 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 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.

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, lead plaintiff Hawaii ERS and named plaintiff Greater Pennsylvania Carpenters' Pension Fund ("Greater Pennsylvania") 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 Hawaii ERS and named plaintiff Greater Pennsylvania 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 1, 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 15 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 14 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 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 18 below **on or before June 8, 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

¹ On January 5, 2017, Defendants filed, before the United States Court of Appeals for the Ninth Circuit, a Petition for Permission to Appeal Pursuant to Rule 23(f) from an Order Granting Class Certification. On October 30, 2017, the Ninth Circuit denied the petition.

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 15 through 17 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 June 8, 2018**, to:

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

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 June 8, 2018**. Your Notice of Appearance must also be mailed to Class Counsel: Serena Hallowell, Esq., Labaton Sucharow LLP, 140 Broadway, New York, NY 10005, **on or before June 8, 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 GCG
P.O. Box 10359
Dublin, OH 43017-0359

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, GCG, at the address in paragraph 21 above or by calling the Administrator toll free at (844) 850-7746, 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.intuitivesurgicalsecuritieslitigation.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 GCG, P.O. Box 10359, Dublin, OH 43017-0359. 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.intuitivesurgicalsecuritieslitigation.com, or by calling the Administrator toll free at (844) 850-7746.

Dated: April 9, 2018

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