

COTCHETT PITRE & MCCARTHY LLP
MARK C. MOLUMPY - # 168009
mmolumpy@cpmlegal.com
ALEXANDRA P. SUMMER - # 266485
asummer@cpmlegal.com
840 Malcolm Road
Suite 200
Burlingame, CA 94010
Telephone: 650 697 6000
Facsimile: 650 697 0577

KEKER, VAN NEST & PETERS LLP
JOHN W. KEKER - # 49092
jkeker@kvn.com
MICHAEL D. CELIO - # 197998
mcelio@kvn.com
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188

Additional counsel listed on signature page

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

PUBLIC SCHOOL TEACHERS' PENSION
AND RETIREMENT FUND OF
CHICAGO,

Plaintiff,

v.

GARY S. GUTHART, LONNIE M.
SMITH, ERIC H. HALVORSON, ALAN J.
LEVY, CRAIG H. BARRATT, AMAL M.
JOHNSON, MARK J. RUBASH, GEORGE
STALK, JR., MARSHALL L. MOHR,
SALVATORE J. BROGNA, AUGUSTO V.
CASTELLO, JEROME J. MCNAMARA,
MARK MELTZER, COLIN MORALES,
DAVID J. ROSA,

Defendants.

Case No. CIV-526930

STIPULATION OF SETTLEMENT

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

I. RECITALS

2. WHEREAS, Plaintiffs derivatively on Intuitive's behalf alleged claims against Defendants for damages involving purported breaches of fiduciary duties, misappropriation of information, and unjust enrichment during the period between 2011 and 2014;

4. WHEREAS, Plaintiffs, Defendants, and Intuitive participated in multiple in-person settlement conferences, a full-day in-person mediation session, and numerous telephonic settlement discussions;

6. WHEREAS, Plaintiffs believe that the Actions have substantial merit, and Plaintiffs' entry into the Stipulation and Settlement is not intended to be and shall not be construed as an admission or concession concerning the relative strength or merit of the claims

1 alleged in the Actions or of the defenses asserted by Defendants, as explained in more detail in
2 paragraphs 49–52 below;

3 7. WHEREAS, based on Plaintiffs’ Counsel’s exhaustive review and analysis of the
4 relevant facts, allegations, defenses, and controlling legal principles, Plaintiffs and their counsel
5 believe that the Settlement set forth in the Stipulation is fair, reasonable, and adequate, and
6 confers substantial benefits upon Intuitive and its stockholders, and based upon Plaintiffs’
7 Counsel’s evaluation, Plaintiffs have determined that the Settlement is in the best interests of
8 Intuitive and its stockholders and have agreed to settle the Actions upon the terms and subject to
9 the conditions set forth herein;

10 8. WHEREAS, Plaintiffs Counsel’s review and analysis included, without limitation,
11 investigation and discovery relating to the role of legal counsel that represented Intuitive in
12 connection with the Actions;

13 9. WHEREAS, Defendants expressly deny all assertions of wrongdoing or liability
14 arising out of the allegations in the Actions but nonetheless have decided to enter into this
15 Settlement based upon their determination that, for the for the reasons discussed below, it is in the
16 best interest of Defendants, Intuitive, and Intuitive Stockholders;

17 10. WHEREAS, Intuitive expressly denies (i) that any of the claims made in the
18 Actions with respect to the Company’s Officers and Directors have any merit, (ii) that pursuit of
19 any such claim would be in the best interest of the Company or its shareholders, and that (iii) the
20 Company’s policies and procedures as they existed at the time of the Relevant Period were in any
21 way inadequate or deficient, but nonetheless has decided to enter into this Settlement based upon
22 its determination that, for the for the reasons discussed below, it is in the best interest of Intuitive
23 and Intuitive Stockholders;

24 11. NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and
25 among the Plaintiffs (for themselves and derivatively on behalf of Intuitive), the Defendants, and
26 Intuitive, by and through their respective counsel, and subject to the approval of the State Court,
27 that the Actions and Released Claims shall be finally and fully compromised, settled, and
28 released, the Actions shall be dismissed with prejudice and with full preclusive effect to the

1 extent permitted by law, upon and subject to the terms and conditions of this Settlement, as set
2 forth below.

3 **II. DEFINITIONS**

4 12. As used in the Settlement, the following terms have the meanings specified below:

5 a) “Actions” means, collectively, the State Action, the Federal Action, and the
6 Delaware Action.

7 b) “Amended Complaint” means the Complaint filed by the State Plaintiff in
8 the State Court on August 1, 2014.

9 c) “Defendants” means Gary S. Guthart, Lonnie M. Smith, Eric H. Halvorson,
10 Alan J. Levy, Floyd D. Loop, Craig H. Barratt, Amal M. Johnson, Mark J. Rubash, George Stalk,
11 Jr., Marshal M. Mohr, Salvatore J. Brogna, Augusto V. Castello, Jerome J. McNamara, Mark
12 Meltzer, Colin Morales, and David J. Rosa.

13 d) “Defendants’ Counsel” means Keker, Van Nest & Peters, LLP (formerly
14 known as Keker & Van Nest, LLP).

15 e) “Delaware Action” means the action filed in Delaware Court captioned
16 *City of Plantation Police Officers’ Employees’ Retirement System v. Guthart, et al.*, CA No.,
17 9726-CB.

18 f) “Delaware Court” means the Delaware Chancery Court.

19 g) “Delaware Plaintiff” means City of Plantation Police Officers’ Employees’
20 Retirement System.

21 h) “Effective Date” means the date by which all of the following events have
22 occurred: (i) the State Court has approved the Settlement as described herein, following notice to
23 Intuitive Stockholders as provided herein; (ii) the State Court has entered the Final Order and
24 Judgment and dismissed the State Action with prejudice; (iii) the Federal Court has dismissed the
25 Federal Action with prejudice; (iv) the Delaware Court has dismissed the Delaware Action with
26 prejudice; and (v) the State Court, Federal Court and Delaware Court dismissals and Final Order
27 and Judgment have become Final.

28 i) “Federal Action” means the actions that were consolidated and styled as *In*

1 *re Intuitive Shareholders Derivative Litigation*, No. 14-cv-05151 (N.D. Cal.).

2 j) “Federal Court” means the United States District Court for the Northern
3 District of California.

4 k) “Federal Plaintiff” means Robert Berg.

5 l) “Federal Plaintiff’s Counsel” means The Weiser Law Firm, P.C. and
6 Bernstein Litowitz Berger & Grossmann, LLP.

7 m) “Final” means, with respect to an order of any court or tribunal (including,
8 without limitation, the Final Order and Judgment), that such order represents a binding
9 determination of all issues within its scope and has not been reversed, vacated, or modified in any
10 way and is no longer subject to appellate review. Without limitation, an order becomes “Final”
11 when: (i) no appeal has been filed and the time has passed for any notice of appeal to be timely
12 filed; or (ii) an appeal has been filed and an appellate court has affirmed the order or dismissed
13 the appeal, and the time for any reconsideration or further appellate review (to the extent such
14 further review is available) has passed. For purposes of this paragraph, an “appeal” shall include
15 appeals as of right, discretionary appeals, interlocutory appeals, and proceedings involving any
16 petition for a writ of certiorari or other writ that may be filed in any court or tribunal in
17 connection with the Actions. Any appeal or other proceeding pertaining to any order concerning
18 the issue of attorneys’ fees and expenses shall not in any way delay or preclude any order
19 (including, without limitation, the Final Order and Judgment) from becoming Final.

20 n) “Final Order and Judgment” means the Final Order and Judgment
21 Approving Settlement and Dismissing Action with Prejudice entered in the State Action, in the
22 form attached hereto as Exhibit D.

23 o) “Intuitive” or the “Company” means Intuitive Surgical, Inc.

24 p) “Intuitive’s Counsel” means Ramsey & Ehrlich LLP.

25 q) “Intuitive Stockholder” means any Person who owns Intuitive common
26 stock as of the date of the execution of this Stipulation of Settlement and/or who owns Intuitive
27 common stock as of the date of the Settlement Hearing, excluding the Defendants, members of
28 their immediate families, and their legal representatives, heirs, successors, or assigns, and any

entity in which Defendants have or had a controlling interest.

r) “MOU” means the Memorandum of Understanding executed on September 15, 2016.

s) “Notice” means the Notice of Hearing and Proposed Derivative Settlement in the form attached hereto as Exhibit B.

t) “Order” means the [Proposed] Order Setting Settlement Hearing and Approving Notice of Proposed Derivative Settlement in the form attached hereto as Exhibit A.

u) “Person” means an individual, corporation, limited liability corporation, professional corporation, partnership, limited partnership, limited liability partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees of any of the foregoing.

v) “Plaintiffs” means, collectively, the State Plaintiff, the Federal Plaintiff and the Delaware Plaintiff.

w) “Plaintiffs’ Counsel” means, collectively, any counsel who has appeared at any time for any of the Plaintiffs.

x) “Related Persons” means, with respect to each Defendant, the Defendant’s spouse, immediate family members, heirs, executors, personal or legal representatives, insurers, estate, or administrators, as well as any past, present, or future partnerships, trusts, joint ventures, or other entities in which the Defendant has a controlling interest, along with all related or affiliated entities, all agents, officers, directors, employees, partners, joint venturers, principals, or controlling stockholders thereof, and all predecessors, successors, divisions, and assigns thereof.

y) “Released Claims” means any and all claims or causes of action (including Unknown Claims), including, but not limited to, any claims for damages, injunctive relief, interest, attorneys’ fees, expert, or consulting fees, and any and all other costs, expenses, or liabilities whatsoever, that were or could have been asserted by Plaintiffs derivatively on behalf of Intuitive, Intuitive, or Intuitive’s Stockholders, or any of them, against the Released Persons

1 based upon or arising out of the facts, transactions, events, occurrences, disclosures, statements,
2 acts, omissions, failures to act, alleged mismanagement, misconduct, concealment,
3 misrepresentations, violation of law, sale of stock, or other matters that were or could have been
4 alleged in or encompassed by the Actions. For purposes of clarity, and without narrowing the
5 scope of the releases provided herein, “Released Claims” only include those claims that can be
6 released under applicable law and specifically does not release claims in the pending Securities
7 Class Action. Nothing set forth herein shall constitute a release by the Settling Parties of any
8 rights or obligations to enforce the terms of the Settlement.

9 z) “Released Persons” means, collectively, Defendants and each of their
10 Related Persons.

11 aa) “Relevant Period” means October 11, 2011 through July 18, 2013 as
12 defined in the Amended Complaint.

13 bb) “Securities Class Action” means the stockholder securities class action that
14 was consolidated and styled as *In re: Intuitive Surgical Securities Litigation*, Case No. 5:13-cv-
15 01920 (N.D. Cal.).

16 cc) “Settlement” means the settlement and compromise of the Actions as
17 provided for in this Stipulation of Settlement and also refers to the Stipulation itself.

18 dd) “Settlement Hearing” means the hearing or hearings at which the State
19 Court will review the adequacy, fairness, and reasonableness of the Settlement and the application
20 for attorneys’ fees and reimbursement of litigation expenses.

21 ee) “Settling Parties” means, collectively, each and all of the Plaintiffs (on
22 behalf of themselves, Intuitive, and its stockholders), Defendants, and Intuitive. “Settling Party”
23 means, individually, any of the Settling Parties.

24 ff) “State Action” means the action filed in State Court captioned *Public*
25 *School Teachers’ Pension and Retirement Fund of Chicago v. Gary S. Guthart, et al.*, Case No.
26 526930.

27 gg) “State Court” means the Superior Court of San Mateo County, California.

28 hh) “State Plaintiff” means Public School Teachers’ Pension and Retirement

1 Fund of Chicago.

2 ii) “State Plaintiff’s Counsel” means Cohen Milstein Sellers & Toll, PLLC
3 and Cotchett, Pitre & McCarthy, LLP.

4 jj) “Summary Notice” means the Summary Notice of Hearing and Proposed
5 Derivative Settlement in the form attached hereto as Exhibit C.

6 kk) “Unknown Claims” means any Released Claim(s) which Plaintiff,
7 Intuitive, or any Intuitive Stockholder does not know of or suspect to exist in his, her, or its favor
8 at the time of the release of the Released Persons, including claims which, if known by him, her,
9 or it, might have affected his, her, or its Settlement with and release of the Released Persons, or
10 might have affected his, her, or its decision not to object to this Settlement. Unknown Claims
11 include those claims in which some or all of the facts comprising the claim may be suspected, or
12 even undisclosed or hidden. With respect to any and all Released Claims, the Settling Parties
13 agree that upon the Effective Date, the Settling Parties expressly waive the provisions, rights, and
14 benefits conferred by or under California Civil Code section 1542, or any other law of the United
15 States, or any state or territory of the United States or any other state, sovereign, or jurisdiction, or
16 principle of common law, which is similar, comparable, or equivalent to §1542, which provides:

17 A general release does not extend to claims which the creditor does not know or
18 suspect to exist in his or her favor at the time of executing the release, which if
19 known by him or her must have materially affected his or her settlement with the
debtor.

20 The Settling Parties acknowledge, and each Intuitive Stockholder shall be deemed by operation of
21 the Final Order and Judgment to have acknowledged, that the foregoing waiver was separately
22 bargained for and agreed upon with the express intention of releasing Unknown Claims, and is a
23 key element of the Settlement of which this release is a part.

24 13. Capitalized terms not defined in the immediately preceding paragraph (including
25 its subparagraphs) shall have the definitions provided elsewhere in the Settlement.

26 **III. BACKGROUND**

27 14. To provide context for this Settlement, paragraphs 15–33 below briefly describe
28 the Actions, the procedural history of the Actions, and the settlement discussions regarding the

1 Actions. To avoid doubt, the Settling Parties hereby agree that paragraphs 15–33 do not
2 constitute material terms of the Settlement and shall not be read to alter any of the Settling
3 Parties’ rights or obligations under the Settlement.

4 **A. The Actions**

5 15. On February 21, 2014, State Plaintiff filed the State Action on behalf of Intuitive
6 (as a nominal defendant) and against the Defendants. State Plaintiff also filed a books and
7 records demand on Intuitive dated February 28, 2014. Intuitive produced certain documents in
8 response to the books and records demand.

9 16. On February 3, 2014, Robert Berg filed a stockholder derivative complaint on
10 behalf of Intuitive (as a nominal defendant) and against the Defendants. *Berg v. Guthart, et al.*,
11 Case No. 14-cv-00515 (N.D. Cal.). On March 21, 2014, City of Birmingham Relief and
12 Retirement System filed a similar stockholder derivative complaint on behalf of Intuitive (as a
13 nominal defendant) and against the Defendants. *City of Birmingham Relief and Ret. Sys. v.*
14 *Guthart, et al.*, No. 14-cv-1307 (N.D. Cal.). On July 30, 2014, the Federal Court entered an order
15 consolidating *Berg v. Guthart* and *City of Birmingham v. Guthart* into a single action (the Federal
16 Action) and appointing Berg the lead plaintiff in that action (the Federal Plaintiff).

17 17. On June 3, 2014, Delaware Plaintiff filed the Delaware Action on behalf of
18 Intuitive (as a nominal defendant) and against the Defendants for alleged violations of state law.

19 18. The Actions made similar allegations that Defendants breached their fiduciary
20 duties (by, among other things, purportedly failing to comply with certain FDA regulatory
21 guidelines and purportedly failing to address certain alleged product safety issues),
22 misappropriated information, and were unjustly enriched. The State Action involved additional
23 allegations that certain Defendants engaged in insider trading and/or corporate waste.

24 **B. Procedural History**

25 19. On March 26, 2014, Defendants removed the State Action to Federal Court, where
26 the Federal Action was pending.

27 20. On April 24, 2014, State Plaintiff filed a motion to remand the State Action to
28 State Court, which the Federal Court granted on June 25, 2014.

1 21. On July 9, 2014, Defendants filed a motion to stay the Delaware Action, which the
2 Delaware Court granted on August 7, 2014.

3 22. On August 1, 2014, State Plaintiff filed the Amended Complaint in the State
4 Action.

5 23. On August 13, 2014, Federal Plaintiff filed a verified amended consolidated
6 shareholder derivative complaint in the Federal Action.

7 24. On August 28, 2014, Defendants filed in the State Action a motion to stay and for
8 a bond pursuant to California Code § 800, resulting in an automatic stay of the State Action. The
9 State Court held a hearing on the motion on October 31, 2014. The State Court denied, in part,
10 Defendants' request for a stay of all proceedings, and permitted the State Action to proceed with
11 respect to "pleadings and pleading motions."

12 25. On September 12, 2014, the Defendants filed a motion to dismiss the Federal
13 Action, which the Federal Court denied on November 16, 2015.

14 26. On November 18, 2014, Defendants filed in the State Action a Petition for Writ of
15 Mandate ("Petition") under California Code of Civil Procedure Section 418.10(c), appealing the
16 State Court's Order of October 31, 2014 and seeking an immediate stay. On November 19, 2014,
17 the appellate court issued a stay pending resolution of the Petition. After briefing by Defendants
18 and State Plaintiff, on January 8, 2015, the appellate court denied Defendants' Petition.

19 27. On January 20, 2015, in the State Action, Defendants demurred to the Amended
20 Complaint. The State Court heard arguments on the demurrer on February 20, 2015 and by order
21 dated March 26, 2015 overruled the demurrer. Defendants filed their answer on April 27, 2015.
22 State Plaintiff demurred to Defendants' answer on May 11, 2015 pursuant to California Code of
23 Civil Procedure §§ 430.20(a) and 430.20(b). Prior to the State Court's resolution of State
24 Plaintiff's demurrer, Defendants filed an amended answer on June 9, 2015.

25 28. During fact discovery in the State Action, State Plaintiff and Defendants served
26 requests for production and other written discovery on each other and on non-parties. More than
27 720,000 pages of documents were produced. More than 25 depositions were conducted,
28 including Person Most Knowledgeable depositions and fact witness depositions.

1 29. Plaintiffs and Defendants also engaged in expert discovery in the State Action.
2 Plaintiffs and Defendants both retained an FDA expert, a corporate governance expert, and a
3 damages expert. All six experts were deposed during expert discovery.

4 30. Following denial of Defendants' Motion to Dismiss in the Federal Action,
5 Defendants provided Federal Plaintiff's Counsel with the documents previously produced in the
6 State Action and subsequently an agreement was reached among all counsel to coordinate
7 ongoing discovery in the State Action with the Federal Action. Federal Plaintiff's Counsel
8 subsequently assisted State Plaintiff's Counsel with depositions, additional discovery and trial
9 preparation.

10 31. After a number of depositions had concluded in the State Action, Plaintiffs and
11 Defendants reached an agreement that Federal Plaintiff and Delaware Plaintiff would intervene in
12 the State Action. On June 2, 2016, the Federal Court entered a consent order that stayed the
13 Federal Action in favor of the State Action. On April 29, 2016, Federal Plaintiff and Delaware
14 Plaintiff moved to intervene in the State Action. On May 23, 2016, the State Court granted
15 Federal Plaintiff's and Delaware Plaintiff's motion, but Delaware Plaintiff subsequently
16 voluntarily dismissed its action. Following discovery, Defendants and State Plaintiff filed
17 motions for summary judgment and/or adjudication. A hearing on the motions was held before
18 Judge Buchwald in the State Court on August 24, 2016.

19 32. Following the hearing on summary judgment and/or summary adjudication
20 motions, State Plaintiff and Defendants exchanged good faith exhibit lists, witness lists,
21 deposition designations, and filed motions *in limine*. The Actions settled on September 15, 2016,
22 the day before trial was scheduled to begin in the State Action.

23 **C. Settlement Negotiations**

24 33. Starting in 2015, the Settling Parties engaged in settlement discussions and
25 exchanged various proposals regarding the possible terms for a settlement. On September 18,
26 2015, the State Court held a settlement conference before Judge Dylina, which was unsuccessful.
27 On December 18, 2015, private mediation occurred, which also was unsuccessful. Further private
28 negotiations occurred at various times following the mediation. On July 25, 2016, the State Court

1 held another settlement conference before Judge Foiles, which again was unsuccessful. The
2 Settling Parties met for final settlement conference with Judge Foiles on September 12, 2016.
3 Although a settlement was not reached, private negotiations continued, and one day before trial in
4 the State Action was to begin, the Settling Parties agreed on the terms of a settlement and entered
5 into the MOU, which embodied the basic terms of their agreement. Under the MOU, the parties
6 attempted to negotiate privately attorneys' fees and expenses. When unsuccessful, they then
7 mediated the issue of attorneys' fees and expenses before Hon. Daniel Weinstein (Ret.).
8 Afterwards, the parties arbitrated the issue before a three-arbitrator panel at JAMS, consisting of
9 Robert Meyer, Esq., Hon. Read Ambler, and Hon. James Lambden (Ret.).

10 **IV. SETTLEMENT CONSIDERATION**

11 34. The consideration for the Settlement includes both monetary and non-monetary
12 components, as set forth below.

13 **A. Non-Monetary Consideration**

14 35. Within one-hundred twenty (120) days after the Effective Date, Intuitive shall
15 adopt the corporate governance measures set forth in paragraphs 36–43 below, which shall
16 remain in effect for at least three years following the Effective Date. This one-hundred twenty
17 (120) day deadline may be extended for good cause following good-faith discussions between the
18 Settling Parties. Intuitive acknowledges that, as the result of the State Action, the Settling Parties
19 agreed to the governance measures set forth herein as part of the terms of the Settlement.

20 **1. Insider Trading Policy Compliance**

21 36. Intuitive shall evaluate the Company's current Insider Trading Policy and make
22 recommendations to the Board of Directors for its improvement, including evaluation of
23 provisions to ensure compliance with insider trading regulations by the Company's Officers and
24 Directors. Prior to the Company submitting the revised Insider Trading Policy to the Board of
25 Directors, Plaintiffs shall have seven (7) days to review and, if desired, recommend suggested
26 changes to the revised Insider Trading Policy. To the extent there are any disagreements
27 concerning Plaintiffs' suggested changes, after a good-faith effort to resolve them, any such
28 disagreements shall be submitted to the State Court.

1 37. The revised Insider Trading Policy shall designate one or more senior members of
2 Intuitive's executive management to be responsible for implementing the new Insider Trading
3 Policy.

4 38. In the event that any Officer or Director of the Company is subject to a Final
5 judgment in an enforcement action taken by the United States Department of Justice or the United
6 States Securities and Exchange Commission for violation of insider trading laws related to
7 purchase or sale of Intuitive securities, the Company shall have the right to claw back the
8 proceeds of such insider trading from the Officer or Director against whom the Final judgment
9 was issued.

10 39. All Directors and Officers at the level of Executive Vice President or above shall
11 enter into Rule 10b5-1 plans.

12 **2. FDA Compliance Oversight**

13 40. During each quarterly meeting of the Company's Board of Directors, the
14 Company's senior-most quality officer, or his or her appointed designee, shall present to the
15 Board of Directors a summary of product quality matters and complaint trends derived from the
16 Company's Quarterly Review Board meeting or other appropriate data sources regarding product
17 quality and complaint trends. For purposes of reporting to the Board, the senior-most quality
18 officer shall ensure that Intuitive staff compiles for his or her review relevant information related
19 to product quality, including, for example, data regarding MDRs reported for the quarter. The
20 senior-most quality officer shall be responsible for ongoing compliance with product quality
21 matters and complaint trends at the organizational level. The Company's lead independent
22 director and Audit Committee chairperson shall have the ability to communicate with the senior-
23 most quality officer, as necessary, between quarterly board meetings.

24 41. During each quarterly meeting of the Company's Board of Directors, the
25 Company's senior-most regulatory officer, or his or her appointed designee, shall present to the
26 Board of Directors a summary of regulatory compliance matters, including compliance with FDA
27 regulations and procedures. For purposes of reporting to the Board, the senior-most regulatory
28 officer shall ensure that Intuitive staff compiles for his or her review relevant information related

1 to FDA regulatory compliance matters, including, for example, FDA inspection reports and
2 Warning Letters, if any. The senior-most regulatory officer shall be responsible for ongoing
3 regulatory compliance, including compliance with FDA regulations and procedures at the
4 organizational level. The Company's lead independent director and Audit Committee
5 chairperson shall have the ability to communicate with the senior-most regulatory officer, as
6 necessary, between quarterly board meetings.

7 **3. Whistle-Blower Policy/Ethics Hotline**

8 42. Intuitive shall maintain and publicize a formal whistle-blower policy for its
9 employees, including references to its ethics hotline.

10 43. Intuitive shall engage an independent third-party supplier to provide and monitor
11 its ethics hotline for Intuitive employees and other stakeholders. The contact information for this
12 hotline shall be posted by the Company in its Code of Business Conduct and Ethics, as well as in
13 prominent locations within the Company.

14 **B. Monetary Consideration**

15 44. Within thirty (30) days after the Effective Date, the Defendants, jointly or
16 severally, shall pay or cause to be paid fifteen million dollars (\$15,000,000) to Intuitive,
17 comprised of a cash payment to the Company of five million dollars (\$5,000,000) and the return
18 to the Company of Intuitive stock options such that the number of shares returned multiplied by
19 the market price of the shares as of the close of trading on September 15, 2016 (the date the
20 Settling Parties executed the MOU) equals ten million dollars (\$10,000,000). To avoid doubt, the
21 Settling Parties hereby agree that the price of a share of Intuitive stock as of the close of trading
22 on September 15, 2016 was six-hundred eighty-four dollars and nineteen cents (\$684.19).

23 **V. RELEASE OF CLAIMS**

24 45. Upon the Effective Date, Plaintiffs (acting on their own behalf and derivatively on
25 behalf of Intuitive), Intuitive, and each Intuitive Stockholder shall be deemed to have and by
26 operation of the Final Order and Judgment shall have fully, finally, and forever released,
27 relinquished, and discharged the Released Claims (including Unknown Claims) against the
28 Released Persons, and shall have covenanted not to sue the Released Persons with respect to all

1 such Released Claims, and shall be permanently barred and enjoined from instituting,
2 commencing, or prosecuting the Released Claims against the Released Persons. Nothing herein
3 shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the
4 Settlement.

5 46. Pending the Effective Date, Plaintiffs shall not commence, prosecute, instigate, or
6 in any way participate in any proceedings (other than the Actions) asserting any Released Claim
7 against any of the Released Persons.

8 47. Plaintiffs represent and warrant that they have not assigned any rights, claims, or
9 causes of action that were asserted or that could have been asserted in connection with, under, or
10 arising out of any claims being settled or released herein.

11 48. Upon the Effective Date, each of the Defendants and their Related Persons shall be
12 deemed to have fully, finally, and forever released, relinquished, and discharged Plaintiffs and
13 Plaintiffs' Counsel from all claims (including Unknown Claims), arising out of, relating to, or in
14 connection with the institution, prosecution, assertion, settlement, or resolution of the Federal
15 Action, the State Action, the Delaware Action, or the Released Claims. Nothing herein shall in
16 any way impair or restrict the rights of any Settling Party to enforce the terms of the Settlement.

17 **VI. NO ADMISSIONS OR CONCESSIONS**

18 49. The Settling Parties intend this Settlement to be a final and complete resolution of
19 all disputes between them with respect to the Actions. The Settlement comprises claims that are
20 contested and shall not be deemed an admission by any Settling Party as to the merits of any
21 claim, allegation, or defense. The Settling Parties further agree that the claims are being settled
22 voluntarily after consultation with competent legal counsel.

23 50. Plaintiffs believe that the claims in the Actions have substantial merit, and
24 Plaintiffs' entry into the Settlement is not intended to be and shall not be construed as an
25 admission or concession concerning the relative strength or merit of the claims alleged in the
26 Actions or of the defenses asserted by Defendants. However, Plaintiffs and Plaintiffs' Counsel
27 recognize and acknowledge the significant risk, expense, and length of continued proceedings
28 necessary to prosecute the Actions against the Defendants through trial and possible appeals.

1 Plaintiffs and Plaintiffs' Counsel also have taken into account the uncertain outcome and the risk
2 of any litigation, especially in complex cases such as the Actions, as well as the difficulties and
3 delays inherent in such litigation. Plaintiffs and Plaintiffs' Counsel also are mindful of the
4 inherent problems of proving their claims at trial, and the possible defenses to the claims alleged
5 in the Actions.

6 51. Defendants deny all the allegations of wrongdoing and claims of liability made by
7 Plaintiffs in the Actions or arising out of any of the conduct, statements, acts, or omissions that
8 are alleged, or that could have been alleged, in the Actions. Defendants deny, among other
9 allegations, the allegations that Plaintiffs, Intuitive, or its stockholders were harmed in any way or
10 have suffered any damages as a result of the conduct alleged in the Actions or otherwise.
11 Defendants assert that at all times they acted in good faith and in a manner that was in the best
12 interests of Intuitive and its stockholders. Defendants further contend that they have numerous
13 defenses to the allegations and claims in the various complaints filed in the Actions and that none
14 of the complaints have any merit. However, Defendants have concluded that further litigation of
15 the Actions would be protracted and expensive, and that it is desirable that the Actions be fully
16 and finally settled in the manner and upon the terms and conditions set forth in this Settlement.
17 Defendants also have taken into account the uncertainty and risks inherent in any litigation,
18 especially in complex cases like the Actions. Defendants have, therefore, determined that it is
19 desirable and beneficial that the Actions be settled in the manner and upon the terms and
20 conditions set forth in this Settlement.

21 52. Neither the Settlement nor any act performed or document executed pursuant to or
22 in furtherance of the Settlement: (i) is or may be deemed to be or may be used as an admission of,
23 or evidence of, the validity of any Released Claim or of any defense with respect to any Released
24 Claim, any allegation made in the Actions, or of any wrongdoing or liability of the Released
25 Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any
26 liability, fault, or omission of any of the Released Persons in any civil, criminal, or administrative
27 proceeding in any court, administrative agency, or other tribunal. Neither the Settlement nor any
28 act performed or document executed pursuant to or in furtherance of the Settlement shall be

admissible in any proceeding for any purpose except the enforcement of this Settlement by any of the Settling Parties, and except that the Released Persons may file the Settlement and/or the Final Order and Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

VII. NOTICE AND APPROVAL

53. Within seven (7) days after execution of the Settlement, the parties to the State Action shall jointly seek the State Court's entry of the Order attached hereto as Exhibit A.

54. Within seven (7) days after the State Court's entry of the Order attached hereto as Exhibit A, Intuitive shall cause a Notice, in the form attached hereto as Exhibit B, to be posted on its website for sixty (60) days. Plaintiffs' Counsel shall cause the Notice to be posted on their website for thirty (30) days. Intuitive and Plaintiffs' Counsel shall jointly arrange for a Summary Notice, in the form attached hereto as Exhibit C, to be published one time (at Intuitive's expense) in a financial publication with national circulation, such as *Investor's Business Daily*. Except for the notice to be posted and published pursuant to this paragraph, no party or its counsel shall issue any kind of public statement regarding the case or the Settlement, including but not limited to press releases of any kind. However, subject to the confidentiality order, nothing in this paragraph shall limit communications with Intuitive Stockholders prior to the Effective Date regarding the Settlement or the Actions, or limit in any way communications by the Settling Parties required by law.

55. As soon as practicable but no later than ninety (90) days after providing notice, or at such other time as the State Court may order, the Settling Parties shall appear before the State Court for the Settlement Hearing and to seek entry of the Final Order and Judgment.

56. Within seven (7) days after any further right to appeal has expired following entry of the Final Order and Judgment, the Federal and Delaware Plaintiffs shall request that the Federal Court and Delaware Court dismiss with prejudice the Federal Action and the Delaware Action. Plaintiffs and Plaintiffs' Counsel shall use their best efforts to take, or cause to be taken,

1 all actions, and to do, or cause to be done, all things necessary, proper, or advisable under
2 applicable laws, regulations, and agreements, to secure such dismissal with prejudice
3 expeditiously.

4 **VIII. ATTORNEYS' FEES AND COSTS**

5 57. Intuitive shall pay \$15,788,924.00 in fees and \$944,084.15 in expenses to
6 Plaintiffs' Counsel, subject to State Court approval. No other award for fees or expenses of any
7 kind to any party or counsel shall be sought or made in any forum, and the parties expressly
8 acknowledge that the payment set out in this paragraph is the sole and exclusive payment for fees
9 and expenses.

10 58. The timing of Intuitive's payment of fees and expenses as set forth in the
11 preceding paragraph was decided by Hon. Daniel Weinstein (Ret), applying Paragraph 6 of the
12 MOU, prior to July 24, 2017. Such payment shall be allocated among Plaintiffs' Counsel at the
13 sole discretion of State Plaintiffs' Counsel, based on the contributions and benefit to the Actions
14 provided by Plaintiffs' Counsel. The Released Persons shall have no responsibility for, and no
15 liability whatsoever with respect to, the allocation of such fees and litigation expenses among
16 Plaintiffs' Counsel.

17 59. Except as otherwise provided herein, each of the Settling Parties shall bear its own
18 costs and expenses.

19 **IX. MODIFICATION AND TERMINATION OF SETTLEMENT**

20 60. The Settlement may be modified or amended only by a writing signed by or on
21 behalf of all Settling Parties or their respective successors-in-interest.

22 61. If for any reason the Effective Date does not occur, or the Settlement is cancelled,
23 terminated, or otherwise fails to become Final for any reason, including, without limitation, in the
24 event that the Final Order and Judgment is reversed or vacated following any appeal taken
25 therefrom, then the Settling Parties shall be restored to their respective positions in the Actions as
26 of the date of the execution of this Settlement. The terms and provisions of this Settlement shall
27 be null and void and shall have no further force and effect with respect to the Settling Parties and
28 neither the existence of this Settlement (nor any negotiations preceding this Settlement nor any

1 acts performed pursuant to, or in furtherance of the Settlement) shall be used in any manner for
2 any purpose in any subsequent proceeding in the Actions or in any other action or proceeding
3 (other than to enforce any terms of the Settlement remaining in effect); and any Final Order and
4 Judgment or other order entered in accordance with the terms of this Settlement shall be treated as
5 vacated, *nunc pro tunc*.

6 62. If the State Court does not enter the Final Order and Judgment in the form of
7 Exhibit D hereto, or if the State Court enters the Final Order and Judgment and appellate review
8 is sought and, on such review, the Final Order and Judgment is vacated, modified, or reversed,
9 then this Settlement shall be cancelled and terminated, unless all Settling Parties who are
10 adversely affected thereby, in their sole discretion within thirty (30) days from the date of the
11 mailing of such ruling to such Settling Party, provide written notice to all other Settling Parties of
12 their intent to proceed with the Settlement under the terms of the Final Order and Judgment as
13 modified by the State Court or on appeal. Such notice may be provided on behalf of Plaintiffs
14 and Intuitive Stockholders by State Plaintiff's Counsel. No Settling Party shall have any
15 obligation to proceed under any terms other than in the form provided and agreed to herein;
16 provided, however, that no order concerning any fee and expense application, or any modification
17 or reversal on appeal of such order, shall constitute grounds for cancellation or termination of this
18 Settlement by any Settling Party.

19 **X. CONSTRUCTION AND ENFORCEMENT**

20 63. The Settlement and the exhibits attached hereto constitute the entire agreement
21 among the Settling Parties and supersede all prior and contemporaneous oral and written
22 agreements and discussion. No representations, warranties, or inducements have been made to
23 any of the Settling Parties concerning the Settlement or its exhibits other than the representations,
24 warranties, and covenants contained and memorialized in such documents. It is understood by
25 the Settling Parties that, except for the matters expressly represented herein, the facts or law with
26 respect to which this Settlement is entered into may turn out to be other than or different from the
27 facts now known to each party or believed by such party to be true; each Settling Party therefore
28 expressly assumes the risk of the facts or law turning out to be so different, and agrees that this

1 Settlement shall be in all respects effective and not subject to termination by reason of any such
2 different facts or law.

3 64. The exhibits to this Settlement are material and integral parts hereof and are fully
4 incorporated herein by this reference, provided that, in the event that a conflict or inconsistency
5 exists between the terms of this Settlement and the terms of any exhibit hereto, the terms of this
6 Settlement shall prevail.

7 65. In construing the Settlement, no presumption shall be made against any Settling
8 Party on the basis that it was the drafter of the Settlement or any provision thereof.

9 66. The Settlement and the exhibits attached hereto shall be considered to have been
10 negotiated, executed, and delivered, and to be wholly performed, in the State of California, and
11 the rights and obligations of the Settling Parties shall be construed and enforced in accordance
12 with, and governed by, the internal, substantive laws of the State of California without giving
13 effect to the State of California's choice of law principles.

14 67. Any disagreement regarding the administration or terms of the Settlement shall be
15 submitted to the State Court. Each side shall bear its own fees and expenses in connection with
16 any such dispute.

17 68. The State Court shall retain jurisdiction with respect to enforcement of the terms of
18 the Settlement, and the Settling Parties and their counsel submit to the jurisdiction of the State
19 Court solely for purposes of enforcing the Settlement.

20 69. This Settlement shall be binding upon, and inure to the benefit of, the successors
21 and assigns of the Settling Parties and the Released Persons.

22 **XI. TIMING, EXECUTION, AND OTHER PROVISIONS**

23 70. The Settling Parties: (i) acknowledge that it is their intent to consummate this
24 Settlement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and
25 implement the terms and conditions of the Settlement promptly.

26 71. All time periods set forth in the Settlement shall be computed in calendar days
27 unless otherwise expressly provided. In computing any period of time prescribed or allowed, the
28 day, event, or default from which the designated period of time begins to run shall not be

1 included. The last day of the period so computed shall be included, unless it is a Saturday, a
2 Sunday or a California or federal legal holiday, or, when the act to be done is the filing of a paper
3 in a court, a day on which the office of the clerk is inaccessible, in which event the period shall
4 run until the end of the next day that is not one of the aforementioned days.

5 72. By mutual agreement in writing, the Settling Parties may permit whatever
6 reasonable extensions of time are necessary to carry out any of the provisions of this Settlement.

7 73. All orders and agreements made during the course of the Actions that relate to
8 confidentiality of information shall survive this Settlement.

9 74. Each counsel or other Person executing the Settlement or any documents prepared
10 in furtherance of the Settlement on behalf of any Settling Party hereby warrants that such Person
11 has the full authority to do so.

12 75. The Settlement may be executed in one or more counterparts, including by
13 signature transmitted by facsimile or e-mailed PDF files. Each counterpart, when so executed,
14 shall be deemed to be an original, and all such counterparts together shall constitute the same
15 instrument. A complete set of counterparts, either originally executed or copies thereof, shall be
16 filed with the State Court.

1 IN WITNESS WHEREOF, the Settling Parties have caused the Stipulation to be executed
2 by their duly authorized attorneys.

3 Dated: August 8th, 2017

4 **COHEN MILSTEIN SELLERS & TOLL, PLLC**

5 By: Carol V. Gilden
6 Carol V. Gilden
7 190 South LaSalle Street, Suite 1705
8 Chicago, IL 60603
9 Tel.: (312) 357-0370
10 Fax: (312) 357-0369
11 cgilden@cohenmilstein.com

12 Richard A. Speirs
13 **COHEN MILSTEIN SELLERS & TOLL PLLC**
14 88 Pine Street, 14th Floor
15 New York, New York 10005
16 Tel.: (212) 838-7797
17 Fax: (212) 838-7745
18 rspeirs@cohenmilstein.com

19 Steven J. Toll
20 Elizabeth Aniskevich
21 **COHEN MILSTEIN SELLERS & TOLL PLLC**
22 1100 New York Avenue NW Suite 500
23 Washington, DC 20005
24 Tel.: (202) 408-4600
25 Fax: (202) 408-4699
26 stoll@cohenmilstein.com
27 eaniskevich@cohenmilstein.com

28 **COTCHETT, PITRE & McCARTHY, LLP**

By: _____
Mark C. Molumphy (SBN 168009)
Alexandra Summer
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Tel.: (650) 697-6000
Fax: (650) 697-0577
mmolumphy@cpmlegal.com

*Lead Counsel for Plaintiff Public School Teachers'
Pension and Retirement Fund of Chicago*

1 IN WITNESS WHEREOF, the Settling Parties have caused the Stipulation to be executed
2 by their duly authorized attorneys.

3 Dated: August 8, 2017

COHEN MILSTEIN SELLERS & TOLL, PLLC

4 By: _____

5 Carol V. Gilden
6 190 South LaSalle Street, Suite 1705
7 Chicago, IL 60603
8 Tel.: (312) 357-0370
9 Fax: (312) 357-0369
cgilden@cohenmilstein.com

10 Richard A. Speirs
11 **COHEN MILSTEIN SELLERS & TOLL PLLC**
12 88 Pine Street, 14th Floor
13 New York, New York 10005
14 Tel.: (212) 838-7797
15 Fax: (212) 838-7745
rspeirs@cohenmilstein.com

16 Steven J. Toll
17 Elizabeth Aniskevich
18 **COHEN MILSTEIN SELLERS & TOLL PLLC**
19 1100 New York Avenue NW Suite 500
20 Washington, DC 20005
21 Tel.: (202) 408-4600
22 Fax: (202) 408-4699
stoll@cohenmilstein.com
eanskevich@cohenmilstein.com

COTCHETT, PITRE & McCARTHY, LLP

23 By: _____

24 Mark C. Molumphy (SBN 168009)
25 Alexandra Summer
26 840 Malcolm Road, Suite 200
27 Burlingame, CA 94010
28 Tel.: (650) 697-6000
Fax: (650) 697-0577
mmolumphy@cpmlegal.com

*Lead Counsel for Plaintiff Public School Teachers'
Pension and Retirement Fund of Chicago*

1 Robert Schubert
2 **SCHUBERT JONCKHEER KOLBE LLP**
3 3 Embarcadero Center #1650
4 San Francisco, CA 94111
5 Tel.: (415) 788-4220
6 Fax: (415) 788-0161
7 rschubert@schubertlawfirm.com

8 *Additional Counsel for Plaintiff Public School*
9 *Teachers' Pension and Retirement Fund of Chicago*

10 **WEISER LAW FIRM**

11 By: Robert Weiser / H.
12 Robert Weiser
13 12707 High Bluff Drive, Suite 200
14 San Diego, CA 92130
15 Tel.: (858) 794-1441
16 Fax: (858) 794-1450
17 jmf@weiserlawfirm.com

18 **RYAN & MANISKAS, LLP**

19 By: _____
20 Richard A. Maniskas
21 995 Old Eagle School Road, Suite 311
22 Wayne, PA 19087
23 Tel.: (484) 588-5516
24 Fax: (484) 450-2582
25 rmaniskas@rmclasslaw.com

26 *Counsel for Plaintiff, Robert Berg*

27 **BERNSTEIN LITOWITZ BERGER &**
28 **GROSSMANN LLP**

By: _____
David L. Wales
1251 Avenue of the Americas, 44th Flr.
New York, NY 10020
Tel.: (212) 554-1409
Fax: (212) 554-
davidw@blbglaw.com

Counsel for City of Plantation Police Officers'
Employees Retirement System

1 Robert Schubert
2 **SCHUBERT JONCKHEER KOLBE LLP**
3 3 Embarcadero Center #1650
4 San Francisco, CA 94111
5 Tel.: (415) 788-4220
6 Fax: (415) 788-0161
7 rschubert@schubertlawfirm.com

8 *Additional Counsel for Plaintiff Public School*
9 *Teachers' Pension and Retirement Fund of Chicago*

10 **WEISER LAW FIRM**

11 By: _____
12 Robert Weiser
13 12707 High Bluff Drive, Suite 200
14 San Diego, CA 92130
15 Tel.: (858) 794-1441
16 Fax: (858) 794-1450
17 jmf@weiserlawfirm.com

18 **RYAN & MANISKAS, LLP**
19 By: _____
20 Richard A. Maniskas
21 995 Old Eagle School Road, Suite 311
22 Wayne, PA 19087
23 Tel.: (484) 588-5516
24 Fax: (484) 450-2582
25 rmaniskas@rmclasslaw.com

26 *Counsel for Plaintiff, Robert Berg*

27 **BERNSTEIN LITOWITZ BERGER &**
28 **GROSSMANN LLP**

By: _____
David L. Wales
1251 Avenue of the Americas, 44th Flr.
New York, NY 10020
Tel.: (212) 554-1409
Fax: (212) 554-
davidw@blbglaw.com

Counsel for City of Plantation Police Officers'
Employees Retirement System

1 Robert Schubert
2 **SCHUBERT JONCKHEER KOLBE LLP**
3 3 Embarcadero Center #1650
4 San Francisco, CA 94111
5 Tel.: (415) 788-4220
6 Fax: (415) 788-0161
7 rschubert@schubertlawfirm.com

8 *Additional Counsel for Plaintiff Public School*
9 *Teachers' Pension and Retirement Fund of Chicago*

10 **WEISER LAW FIRM**

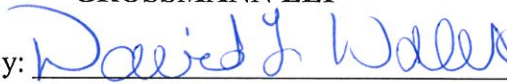
11 By: _____
12 Robert Weiser
13 12707 High Bluff Drive, Suite 200
14 San Diego, CA 92130
15 Tel.: (858) 794-1441
16 Fax: (858) 794-1450
17 jmf@weiserlawfirm.com

18 **RYAN & MANISKAS,LLP**

19 By: _____
20 Richard A. Maniskas
21 995 Old Eagle School Road, Suite 311
22 Wayne, PA 19087
23 Tel.: (484) 588-5516
24 Fax: (484) 450-2582
25 rmaniskas@rmclasslaw.com

26 *Counsel for Plaintiff, Robert Berg*

27 **BERNSTEIN LITOWITZ BERGER &**
28 **GROSSMANN LLP**

By: 
David L. Wales
1251 Avenue of the Americas, 44th Flr.
New York, NY 10020
Tel.: (212) 554-1409
Fax: (212) 554- 1444
davidw@blbglaw.com

Counsel for City of Plantation Police Officers'
Employees Retirement System

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

KEKER, VAN NEST & PETERS, LLP

By: Michael Celio /csH

Michael Celio
633 Battery Street
San Francisco, CA 94111X
Tel.: (415) 391-5400
Fax: (415) 391-

Counsel for Defendants

RAMSEY & ERLICH, LLP

By: Ismail Ramsey

Ismail Ramsey
803 Hearst Avenue
Berkeley, CA 94710
Tel.: (510) 548-3600
Fax: (510) 291-3060

Counsel for Intuitive Surgical, Inc.

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

PUBLIC SCHOOL TEACHERS' PENSION
AND RETIREMENT FUND OF
CHICAGO,

Plaintiff,

v.

GARY S. GUTHART, LONNIE M.
SMITH, ERIC H. HALVORSON, ALAN J.
LEVY, CRAIG H. BARRATT, AMAL M.
JOHNSON, MARK J. RUBASH, GEORGE
STALK, JR., MARSHALL L. MOHR,
SALVATORE J. BROGNA, AUGUSTO V.
CASTELLO, JEROME J. MCNAMARA,
MARK MELTZER, COLIN MORALES,
DAVID J. ROSA,

Defendants

-and-

INTUITIVE SURGICAL, INC.,

Nominal Party.

Case No. CIV-526930

**[PROPOSED] ORDER SETTING
SETTLEMENT HEARING AND
APPROVING NOTICE OF PROPOSED
DERIVATIVE SETTLEMENT**

WHEREAS, the Settling Parties have made an application for an order: (i) setting a hearing to consider (a) approval of a settlement of the above-captioned shareholder action (the "State Action") in accordance with the Stipulation of Settlement dated August 8, 2017 (the "Settlement"); (b) dismissal of the State Action with prejudice, upon the terms and conditions set forth in the Settlement; and (c) an award of attorneys' fees and reimbursement of litigation expenses for Plaintiffs' Counsel; and (ii) approving the form and content of the Notice of Hearing and Proposed Derivative Settlement (the "Notice") and Summary Notice of Hearing and Proposed Derivative Settlement (the "Summary Notice"), attached to the Settlement as Exhibits B and C, respectively, for publication;

WHEREAS, the Court has read and considered the Settlement and the exhibits attached thereto;

1 WHEREAS, the Settlement appears to be the product of serious, informed, non-collusive
2 negotiations and falls within the range of reasonableness of a settlement that ultimately could be
3 granted approval by the Court; and

4 WHEREAS, the Settling Parties have consented to the entry of this Order;

5 NOW THEREFORE, IT IS HEREBY ORDERED that:

6 1. Except for the terms defined herein, the Court adopts and incorporates the
7 definitions in the Settlement for purposes of this Order.

8 2. Because the Court finds the terms of the Settlement to be within the range of
9 reasonableness of a settlement that ultimately could be granted approval by the Court, a hearing
10 (the "Settlement Hearing") will be held before the Court on October 20, 2017 at 9:00 a.m. in
11 Department 10, Courtroom 8D, located at 400 County Center Redwood City, CA 94063 to:

12 i) Determine whether the Settlement should be approved as fair, reasonable,
13 and adequate and in the best interests of Intuitive and all Intuitive Stockholders;

14 ii) Determine whether the State Action should be dismissed and with
15 prejudice;

16 iii) Determine whether Plaintiffs' Counsel's application for an award of
17 attorneys' fees and reimbursement of litigation expenses, in an amount of \$16,733,008.15, should
18 be granted; and

19 iv) Rule on such other matters as the Court may deem appropriate.

20 3. The Court reserves the right to adjourn the Settlement Hearing or any adjournment
21 thereof, including the consideration of the application for an award of attorneys' fees and
22 reimbursement of litigation expenses, without further notice of any kind other than oral
23 announcement at the Settlement Hearing or any adjournment thereof, and retains jurisdiction over
24 the State Action to consider all further applications arising out of or connected with the proposed
25 Settlement.

26 4. The Court reserves the right to approve the Settlement at or after the Settlement
27 Hearing with such modification(s) to the Settlement as may be consented to by the Settling
28 Parties and without further notice to Intuitive Stockholders.

1 5. Within seven (7) days of entry of this order, Intuitive shall cause the Notice, in the
2 form attached to the Stipulation of Settlement as Exhibit B, to be posted on its website for sixty
3 (60) days. Plaintiffs' Counsel shall cause the Order and Notice to be posted on their website for
4 thirty (30) days. Intuitive and Plaintiffs' Counsel shall jointly arrange for the Summary Notice, in
5 the form attached to the Stipulation of Settlement as Exhibit C, to be published one time (at
6 Intuitive's expense) in a financial publication with national circulation, such as *Investor's*
7 *Business Daily*.

8 6. The form and method of notice provided in the preceding paragraph is the best
9 notice practicable, constitutes due and sufficient notice of the Settlement Hearing to all persons
10 entitled to receive such a notice, and meets the requirements of all applicable law. Counsel for
11 Intuitive shall file with the Court an appropriate affidavit with respect to the preparation and
12 publication of the Notice and Summary Notice no later than twenty-eight (28) calendar days
13 before the Settlement Hearing.

14 7. All proceedings in the State Action, except for those activities and proceedings
15 relating to the Settlement, are hereby stayed and suspended until further order of this Court.

16 8. Plaintiffs shall serve and file their brief and supporting papers in support of the
17 application for an award of attorneys' fees and reimbursement of litigation expenses no later than
18 twenty-eight (28) calendar days before the Settlement Hearing.

19 9. Any current Intuitive Stockholders may object and/or appear and show cause, if
20 he, she, or it has any concern, why the Settlement should not be approved as fair, reasonable, and
21 adequate, why the Final Order and Judgment should not be entered thereon, or why the
22 application for an award of attorneys' fees and reimbursement of litigation expenses should not
23 be approved. If any current Intuitive Stockholders wants to submit any papers, briefs or other
24 documents objecting to the Settlement, not later than fourteen (14) calendar days prior to the
25 Settlement Hearing, the stockholder must file with the Clerk of the Court a written objection to
26 the Settlement setting forth: (i) the Intuitive Stockholder's name, legal address, and telephone
27 number; (ii) proof of ownership of Intuitive common stock by the Intuitive Stockholder, currently
28 and throughout the relevant period, including the number of shares of Intuitive common stock and

1 the date of purchase; (iii) a detailed statement of the Intuitive Stockholder's specific position with
2 respect to the matters to be heard at the Settlement Hearing, including a statement of each
3 objection being made; (iv) the grounds for each objection or the reasons for the Intuitive
4 Stockholder's desiring to appear and to be heard; (v) written notice of whether the Intuitive
5 Stockholder intends to appear at the Settlement Hearing; and (vi) copies of any papers the
6 Intuitive Stockholder intends to submit to the Court.

7 10. If any current Intuitive Stockholder files a written objection, such stockholder
8 must also simultaneously serve copies of such notice, proof, statement, and documentation,
9 together with copies of any other papers or briefs such stockholder files with the Court upon each
10 of the following:

11 Clerk of the Court

12 SUPERIOR COURT OF CALIFORNIA
13 400 County Center
14 Redwood City, CA 94063

15 Counsel for State Plaintiff

16 Richard A. Speirs, Esq.
17 COHEN MILSTEIN SELLERS & TOLL
18 88 Pine Street
19 New York, NY 10005

20 and

21 Mark C. Molumphy, Esq.
22 COTCHETT PITRE & MCCARTHY LLP
23 840 Malcolm Road, Suite 200
24 Burlingame, CA 94010

25 Counsel for Defendants

26 Michael D. Celio
27 KEKER, VAN NEST & PETERS, LLP
28 633 Battery Street
San Francisco, CA 94111

Counsel for Intuitive

Ismail Ramsey
RAMSEY & EHRLICH LLP
803 Hearst Avenue
Berkeley, CA 94710

1 11. The Settling Parties have the right, but are not required to, submit a response to
2 any objections to the Settlement not later than seven (7) calendar days prior to the Settlement
3 Hearing.

4 12. Any current Intuitive Stockholders who does not make his, her, or its objection in
5 the manner and within the time prescribed above shall be deemed to have waived the right to
6 object (including the right to appeal) and shall forever be barred, in this proceeding or in any
7 other proceeding, from raising such objection(s), but shall otherwise be bound by the Final Order
8 and Judgment to be entered and the releases to be given.

9 13. The Court may, for good cause, extend any of the deadlines set forth in this Order
10 without further notice to current Intuitive Stockholders.

11 IT IS SO ORDERED.

12
13 _____
14 Date

Hon. Gerald J. Buchwald

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

PUBLIC SCHOOL TEACHERS' PENSION
AND RETIREMENT FUND OF
CHICAGO,

Plaintiff,

v.

GARY S. GUTHART, LONNIE M.
SMITH, ERIC H. HALVORSON, ALAN J.
LEVY, CRAIG H. BARRATT, AMAL M.
JOHNSON, MARK J. RUBASH, GEORGE
STALK, JR., MARSHALL L. MOHR,
SALVATORE J. BROGNA, AUGUSTO V.
CASTELLO, JEROME J. MCNAMARA,
MARK MELTZER, COLIN MORALES,
DAVID J. ROSA,

Defendants

-and-

INTUITIVE SURGICAL, INC.

Nominal Party.

Case No. CIV-526930

**SUMMARY NOTICE OF HEARING AND
PROPOSED DERIVATIVE
SETTLEMENT**

TO ALL CURRENT SHAREHOLDERS OF INTUITIVE SURGICAL, INC.

("Intuitive" or the "Company"): If you are a record holder and/or beneficial owner of the common stock of Intuitive Surgical, Inc. as of August 9, 2017, you are hereby notified of the proposed settlement and dismissal of the above-captioned shareholder action (the "State Action"), along with shareholder derivative litigation pending in the United States District Court for the Northern District of California entitled *Berg v. Guthart, et. al.*, Case No. 5:14-cv-515 (EJD) (the "Federal Action"), and the shareholder derivative litigation pending in the Delaware Chancery Court entitled *City of Plantation Police Officers' Employees' Retirement System v. Guthart, et al.*, Case No. 9726-CB (the "Delaware Action") (collectively, the "Actions"), subject to Court approval, as provided in the Stipulation of Settlement ("Settlement")¹ filed in the Superior Court of the State

¹ Capitalized terms not otherwise defined shall have the definitions set forth in the Settlement.

1 of California for the County of San Mateo. A hearing (the “Settlement Hearing”) will be held on
2 October 20, 2017, at 9:00 a.m. before the Honorable Gerald J. Buchwald at the Superior Court of
3 the State of California for the County of San Mateo, 400 County Center, Redwood City,
4 California 94063, Dept. 10, Courtroom 8D to determine, among other things, (i) whether the
5 Settlement should be approved as fair, reasonable, and adequate; (ii) whether the State Action
6 should be dismissed and with prejudice; and (iii) whether Plaintiffs’ Counsel’s application for an
7 award of attorneys’ fees and reimbursement of litigation expenses, in an amount of
8 \$16,733,008.15, to be paid by Intuitive, should be granted.

9 **IF THE SETTLEMENT IS APPROVED, THE RIGHTS OF INTUITIVE**
10 **STOCKHOLDERS TO PURSUE THE CLAIMS ASSERTED IN THE ACTIONS ON**
11 **BEHALF OF INTUITIVE, WHICH ARE BEING RELEASED PURSUANT TO THE**
12 **SETTLEMENT, WILL BE AFFECTED.**

13 To resolve the Actions, the Settling Parties have agreed to the following terms:
14 (i) Defendants’ payment of \$15,000,000 to Intuitive, comprised of a cash payment to the
15 Company of \$5,000,000 and the return to the Company of Intuitive stock options such that the
16 number of shares returned multiplied by the market price of the shares as of the close of trading
17 on September 15, 2016 (the date the Settling Parties executed the Memorandum of
18 Understanding) equals \$10,000,000;² and (ii) Intuitive’s adoption of certain Governance
19 Measures for a period of no less than three years from the Effective Date. In addition, Intuitive
20 will pay attorneys’ fees and litigation expenses to Plaintiffs’ Counsel in the Actions, in the
21 amount of \$16,733,008.15.

22 As a current Intuitive shareholder, you have the right to attend the Settlement Hearing and
23 comment on or object to the proposed Settlement and/or the application for an award of attorneys’
24 fees and reimbursement of litigation expenses. Any objections to the proposed Settlement and/or
25 the application for attorneys’ fees and litigation expenses must be filed with the Court and
26 delivered to Plaintiff’s Lead Counsel, Defendants’ Counsel, and Intuitive’s Counsel by October 6,
27

28 ² The Settling Parties agree that the price of a share of Intuitive stock as of the close of trading on
September 15, 2016 was six-hundred eighty-four dollars and nineteen cents (\$684.19).

2017, in accordance with procedures set by the Court.

For information regarding the proposed Settlement, an inquiry may be made to Plaintiff's

Lead Counsel:

Richard A. Speirs
COHEN MILSTEIN SELLERS & TOLL PLLC
88 Pine Street, 14th Floor
New York, New York 10005
Tel.: (212) 838-7797
Fax: (212) 838-7745
rspeirs@cohenmilstein.com

Mark C. Molumphy
COTCHETT, PITRE & McCARTHY, LLP
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Tel.: (650) 697-6000
Fax: (650) 697-0577
mmolumphy@cpmlegal.com

This Summary Notice provides only a summary of matters regarding the Actions and the proposed Settlement. A detailed notice (the "Notice") describing the Actions, the proposed Settlement, the rights of Intuitive shareholders with respect to the proposed Settlement, the application for attorneys' fees and reimbursement of litigation expenses, and the procedures for any objections thereto, along with copies of the Settlement and other documents filed in the litigation, can be obtained at Plaintiff's Lead Counsel's websites: www.cohenmilstein.com or www.cpmlegal.com.

**PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE REGARDING
THIS SUMMARY NOTICE**

EXHIBIT C

1
2 SUPERIOR COURT OF THE STATE OF CALIFORNIA
3 IN AND FOR THE COUNTY OF SAN MATEO

4 PUBLIC SCHOOL TEACHERS' PENSION
5 AND RETIREMENT FUND OF
6 CHICAGO,

7 Plaintiff,

8 v.

9 GARY S. GUTHART, LONNIE M.
10 SMITH, ERIC H. HALVORSON, ALAN J.
11 LEVY, CRAIG H. BARRATT, AMAL M.
12 JOHNSON, MARK J. RUBASH, GEORGE
13 STALK, JR., MARSHALL L. MOHR,
14 SALVATORE J. BROGNA, AUGUSTO V.
15 CASTELLO, JEROME J. MCNAMARA,
16 MARK MELTZER, COLIN MORALES,
17 DAVID J. ROSA,

18 Defendants

19 -and-

20 INTUITIVE SURGICAL, INC.

21 Nominal Party.

Case No. CIV-526930

**NOTICE OF HEARING AND PROPOSED
DERIVATIVE SETTLEMENT**

22 **TO ALL CURRENT SHAREHOLDERS OF INTUITIVE SURGICAL, INC.**

23 (“Intuitive” or the “Company”): If you are a record holder and/or beneficial owner of the common
24 stock of Intuitive Surgical, Inc. as of August 9, 2017, please read this notice carefully and in its
25 entirety. Your rights may be affected. This notice relates to a proposed settlement and dismissal
26 of shareholder derivative litigation and contains important information regarding your rights.

27 Your rights may be affected by legal proceedings in this action (the “State Action”).

28 If the Court approves the settlement and dismissal of the State Action, Intuitive
Stockholders may be forever barred from contesting the proposed settlement and from pursuing
the Released Claims (defined below). The State Action is not “class action” litigation. Thus,
there is no common fund upon which you can make a claim for a monetary payment.

The Court has made no findings or determinations respecting the merits of the State
Action. The summary of the background and circumstances of the settlement below does not

1 constitute the findings of the Court. It is based on representations made to the Court by counsel
2 for the Settling Parties.

3 **PLEASE TAKE NOTICE** that the State Action, as well as certain related shareholder
4 derivative actions, are being settled on the terms set forth in a Stipulation of Settlement dated
5 August 8, 2017 (the “Settlement”).¹

6 **I. SUMMARY OF THE ACTIONS**

7 The proposed Settlement resolves multiple shareholder derivative actions pending in
8 California state court, California federal court, and Delaware state court, as explained below.

9 On February 21, 2014, the Public School Teachers’ Pension and Retirement Fund of
10 Chicago (“State Plaintiff”) filed the State Action, *Public School Teachers’ Pension and*
11 *Retirement Fund of Chicago v. Gary S. Guthart, et al.*, Case No. 526930, in this court (“State
12 Court”) on behalf of Intuitive (as a nominal defendant) and against various defendants. Those
13 Defendants, all current or former Officers and/or Directors of Intuitive, are: Gary S. Guthart,
14 Lonnie M. Smith, Eric H. Halvorson, Alan J. Levy, Floyd D. Loop, Craig H. Barratt, Amal M.
15 Johnson, Mark J. Rubash, George Stalk, Jr., Marshal M. Mohr, Salvatore J. Brogna, Augusto V.
16 Castello, Jerome J. McNamara, Mark Meltzer, Colin Morales, and David J. Rosa (collectively,
17 “Defendants”).

18 On February 3, 2014, Robert Berg filed a stockholder derivative action, *Berg v. Guthart,*
19 *et al.*, Case No. 14-cv-00515 (N.D. Cal.), in the United States District Court for the Northern
20 District of California (“Federal Court”) on behalf of Intuitive (as a nominal defendant) and
21 against the Defendants. On March 21, 2014, City of Birmingham Relief and Retirement System
22 filed a similar stockholder derivative action, *City of Birmingham Relief and Ret. Sys. v. Guthart,*
23 *et al.*, No. 14-cv-1307 (N.D. Cal.), in Federal Court on behalf of Intuitive (as a nominal
24 defendant) and against the Defendants. On July 30, 2014, the Federal Court entered an order
25 consolidating *Berg v. Guthart* and *City of Birmingham v. Guthart* into a single action, *In re*

26
27 ¹ This notice should be read in conjunction with the Settlement, which has been filed with the
28 Court and is available on its website, <https://odyportal-ext.sanmateocourt.org/portal-external>. All
capitalized terms in this notice have the same definitions as those in the Settlement (provided that,
in the event of any inconsistency, the definitions in the Settlement control).

1 *Intuitive Shareholders Derivative Litigation*, No. 14-cv-05151 (N.D. Cal.) (“Federal Action”),
2 and appointing Mr. Berg the lead plaintiff in that action (the Federal Plaintiff).

3 Finally, on June 3, 2014, the City of Plantation Police Officers’ Employees’ Retirement
4 System (“Delaware Plaintiff”) filed an action, *City of Plantation Police Officers’ Employees’*
5 *Retirement System v. Guthart, et al.*, CA No., 9726-CB (“Delaware Action”), in Delaware
6 Chancery Court (“Delaware Court”) on behalf of Intuitive (as a nominal defendant) and against
7 the Defendants for alleged violations of state law. Collectively, these derivative lawsuits are
8 referred to as the “Actions” and the plaintiffs in the Actions are referred to as the “Plaintiffs.”

9 In each of the Actions, Plaintiffs sought to recover, on Intuitive’s behalf, damages
10 purportedly sustained by the Company for the period between 2011 and 2014 in connection with
11 alleged breaches of fiduciary duty by Defendants, allegedly misleading statements and/or
12 omissions by Defendants, and certain stock transactions by Defendants. Following motion
13 practice, the Federal Action and Delaware Action were stayed, while the State Action proceeded
14 to discovery and trial.

15 During discovery in the State Action, State Plaintiff and Defendants served requests for
16 production and other written discovery on each other and on non-parties. More than 720,000
17 pages of documents were produced, and more than 30 depositions were conducted, including
18 depositions of experts on the FDA, corporate governance, and damages. Federal Plaintiff’s
19 Counsel assisted State Plaintiff’s Counsel with depositions and other discovery. After a number
20 of depositions in the State Action, Plaintiffs and Defendants reached an agreement that Federal
21 Plaintiff and Delaware Plaintiff would intervene in the State Action. The State Court approved
22 this intervention, but Delaware Plaintiff subsequently dismissed its action in the State Case.

23 Following discovery, Defendants and State Plaintiff filed motions for summary judgment
24 and/or adjudication. A hearing on the motions was held before Judge Buchwald in the State
25 Court on August 24, 2016. The Actions settled the day before trial was scheduled to begin in the
26 State Action.

II. SUMMARY OF SETTLEMENT NEGOTIATIONS AND TERMS

A. Settlement negotiations

Starting in 2015, Plaintiffs, Defendants, and Intuitive (collectively, the “Settling Parties”) engaged in settlement discussions and exchanged various proposals regarding the possible terms for a settlement. On September 18, 2015, the State Court held a settlement conference before Judge Dylina, which was unsuccessful. On December 18, 2015, private mediation occurred, which also was unsuccessful. On July 25, 2016, the State Court held another settlement conference before Judge Foiles, which again was unsuccessful. The Settling Parties met for final settlement conference with Judge Foiles on September 12, 2016. Although a settlement was not reached, private negotiations continued, and one day before trial in the State Action was to begin, the Settling Parties agreed on the terms of a settlement and entered into a Memorandum of Understanding, which embodied the basic terms of their agreement. Under the MOU, the parties attempted to negotiate privately attorneys’ fees and expenses. When unsuccessful, they then mediated the issue of attorneys’ fees and expenses before Hon. Daniel Weinstein (Ret.). Afterwards, the parties arbitrated the issue before a three-arbitrator panel at JAMS, consisting of Robert Meyer, Esq., Hon. Read Ambler, and Hon. James Lambden (Ret.).

B. Settlement terms

The Settlement includes both non-monetary and monetary components. Specifically, Intuitive will adopt certain corporate governance measures, which shall remain in place for at least three years, and the Defendants will pay money and return certain stock options to Intuitive. In addition, Intuitive will pay attorneys’ fees and litigation expenses to Plaintiffs’ Counsel in the amount of \$16,733,008.15. Intuitive believes that, prior to the Actions, it had in place robust corporate governance measures.

1. Corporate governance measures

a. Insider Trading Policy compliance

Intuitive will evaluate the Company’s current Insider Trading Policy and make recommendations to the Board of Directors for its improvement, including evaluation of provisions to ensure compliance with insider trading regulations by the Company’s Officers and

1 Directors. Prior to the Company submitting the revised Insider Trading Policy to the Board,
2 Plaintiffs shall have seven (7) days to review and, if desired, recommend suggested changes to the
3 revised Insider Trading Policy. To the extent there are any disagreements concerning Plaintiffs'
4 suggested changes, after a good faith effort to resolve them, any such disagreements shall be
5 submitted to the State Court. Intuitive will ensure that the revised Insider Trading Policy
6 designates one or more senior members of Intuitive's executive management to be responsible for
7 implementing the new Insider Trading Policy.

8 Intuitive will ensure that, in the event that any Officer or Director of the Company is
9 subject to a final judgment in an enforcement action taken by the United States Department of
10 Justice or the United States Securities and Exchange Commission for violation of insider trading
11 laws, the Company has the right to claw back the proceeds of such insider trading from the
12 Officer or Director against whom the final judgment was issued.

13 Finally, Intuitive shall ensure that all Directors and Officers at the level of Executive Vice
14 President or above enter into Rule 10b5-1 plans.

15 **b. FDA compliance oversight**

16 Intuitive will ensure that during each quarterly meeting of the Board of Directors, the
17 Company's senior-most quality officer (or an appointed designee) presents to the Board a
18 summary of product quality matters and complaint trends derived from the Company's Quarterly
19 Review Board meeting or other appropriate data sources regarding product quality and complaint
20 trends. The senior-most quality officer will be responsible for ongoing compliance with product
21 quality matters and complaint trends at the organizational level.

22 Intuitive also will ensure that during each quarterly meeting of the Board, the Company's
23 senior-most regulatory officer (or an appointed designee) presents to the Board a summary of
24 regulatory compliance matters, including compliance with FDA regulations and procedures. The
25 senior-most quality officer will be responsible for ongoing regulatory compliance, including
26 compliance with FDA regulations and procedures at the organizational level.

27 **c. Whistle-Blower Policy/Ethics Hotline**

28 Intuitive will maintain and publicize a formal whistle-blower policy for its employees,

1 including references to its ethics hotline. Intuitive also will engage an independent third-party
2 supplier to provide and monitor its ethics hotline for Intuitive employees and other stakeholders.
3 The contact information for this hotline will be posted by the Company in its Code of Business
4 Conduct and Ethics, as well as in prominent locations within the Company.

5 **2. Cash payment and stock option return**

6 The Defendants will pay \$15,000,000 to Intuitive, comprised of a cash payment to the
7 Company of \$5,000,000 and the return to the Company of Intuitive stock options such that the
8 number of shares returned multiplied by the market price of the shares as of the close of trading
9 on September 15, 2016 (the date the Settling Parties executed the Memorandum of
10 Understanding) equals \$10,000,000. The price of a share of Intuitive stock as of the close of
11 trading on September 15, 2016 was \$684.19.

12 **III. REASONS FOR THE SETTLEMENT**

13 **A. Why did the Plaintiffs agree to settle?**

14 Plaintiffs believe that the Actions have merit, and Plaintiffs' entry into the Settlement is
15 not an admission concerning the relative merit of the claims and defenses in the Actions.
16 However, Plaintiffs and Plaintiffs' Counsel recognize the significant risk, expense, and time
17 necessary to prosecute the Actions through trial and possible appeals. Plaintiffs and Plaintiffs'
18 Counsel also have taken into account the uncertain outcome and the risk of any litigation,
19 especially in complex cases such as the Actions, as well as the difficulties and delays inherent in
20 such litigation. Plaintiffs and Plaintiffs' Counsel also are mindful of the inherent problems of
21 proving their claims at trial, and the possible defenses to the claims alleged in the Actions.

22 **B. Why did the Defendants agree to settle?**

23 Defendants deny all the allegations of wrongdoing and claims of liability made by
24 Plaintiffs and assert that at all times they acted in good faith and in a manner that was in the best
25 interests of Intuitive and its stockholders. However, Defendants have concluded that further
26 litigation of the Actions would be protracted and expensive and that fully and finally settling the
27 Actions is desirable. Defendants also have taken into account the uncertainty and risks inherent
28 in any litigation, especially in complex cases like the Actions. Defendants have, therefore,

determined that it is beneficial that the Actions be settled.

IV. YOUR RIGHTS AS A SHAREHOLDER

If you are a current Intuitive Stockholder, YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THE STATE ACTION.

As detailed in the Settlement at ¶ 12(y), the Settlement, once approved by the Court, provides for the release of certain claims. These claims are defined in the Settlement as follows:

“Released Claims” means any and all claims or causes of action (including Unknown Claims), including, but not limited to, any claims for damages, injunctive relief, interest, attorneys’ fees, expert, or consulting fees, and any and all other costs, expenses, or liabilities whatsoever that were or could have been asserted by Plaintiffs derivatively on behalf of Intuitive, Intuitive, or Intuitive’s Stockholders, or any of them, against the Released Persons based upon or arising out of the facts, transactions, events, occurrences, disclosures, statements, acts, omissions, failures to act, alleged mismanagement, misconduct, concealment, misrepresentations, violation of law, sale of stock, or other matters that were or could have been alleged in or encompassed by the Actions. For purposes of clarity, and without narrowing the scope of the releases provided herein, “Released Claims” only include those claims that can be released under applicable law and specifically does not release claims in the pending Securities Class Action. Nothing set forth herein shall constitute a release by the Settling Parties of any rights or obligations to enforce the terms of the Settlement.

Each Intuitive Stockholder is hereby placed on notice that the Settlement, if approved, is intended to foreclose his or her ability to seek legal or equitable relief from Defendants or Intuitive (and certain defined affiliated persons) relating to the issues alleged or the facts and circumstances set forth in the Actions, subject to the qualifications above. If you are an Intuitive Stockholder and have questions concerning the scope of the release, or its impact, you are encouraged to seek independent legal advice.

If you are an Intuitive Stockholder, you have certain rights in connection with the approval of the Settlement, as explained below.

A. Your right to attend the Settlement Hearing

On October 20, 2017 at 9:00 a.m., a hearing (the “Settlement Hearing”) will be held before the Superior Court, San Mateo County, the Honorable Gerald J. Buchwald, Department 10, Courtroom 8D, located at 400 County Center, Redwood City, CA 94063 to determine, among other things: (i) whether the Settlement should be approved as fair, reasonable, and adequate; (ii) whether the State Action should be dismissed and with prejudice; and (iii) whether Plaintiffs’

1 Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses, in
2 the amount of \$16,733,008.15 to be paid by Intuitive, should be granted.

3 Any current Intuitive Stockholder may, but is not required to, appear in person at the
4 Settlement Hearing. **CURRENT INTUITIVE STOCKHOLDERS WHO HAVE NO**
5 **OBJECTION TO THE SETTLEMENT DO NOT NEED TO APPEAR AT THE**
6 **SETTLEMENT HEARING OR TAKE ANY OTHER ACTION.**

7 The Court has the right to change the Settlement Hearing date or time without further
8 notice. If you are planning to attend the Settlement Hearing, you should confirm the date and
9 time before going to the Court.

10 **B. Your right to object to the settlement**

11 You have the right to object to any aspect of the proposed Settlement. You must object in
12 writing, and you may request to be heard at the Settlement Hearing. **IF YOU OBJECT, THEN**
13 **YOU MUST COMPLY WITH THE PROCEDURES BELOW.**

14 **1. You must make detailed objections in writing.**

15 Any objections must be submitted in writing and must contain the following information:

- 16 1. your name, legal address, and telephone number;
- 17 2. proof of ownership of Intuitive common stock, currently and throughout the relevant
18 period, including the number of shares of Intuitive common stock and the date of purchase;
- 19 3. a detailed statement of your specific position with respect to the matters to be heard at
20 the Settlement Hearing, including a statement of each objection being made;
- 21 4. the grounds for each objection or the reasons for your desiring to appear and to be
22 heard;
- 23 5. written notice of whether you intend to appear at the Settlement Hearing; and
- 24 6. copies of any papers you intend to submit to the Court.

25 The Court will not consider any objection that does not substantially comply with the
26 above requirements.

27 **2. You must timely deliver your written objections.**

28 You must timely deliver the written objections described above to the Court, Plaintiffs'

1 Counsel, Defendants' Counsel, and Intuitive's Counsel.

2 Your written objections and any associated materials must be on file with the Clerk of the
3 Court no later than October 6, 2017. The Clerk's address is:

4 Clerk of the Court
5 SUPERIOR COURT OF CALIFORNIA
6 400 County Center
7 Redwood City, CA 94063

8 Your written objections and any associated materials also must be delivered to Plaintiffs'
9 Counsel, Defendants' Counsel, and Intuitive's Counsel so they are received no later than October
6, 2017. Counsel's addresses are:

10 Mark C. Molumphy, Esq.
11 COTCHETT PITRE & MCCARTHY LLP
12 840 Malcolm Road, Suite 200
Burlingame, CA 94010
Counsel for State Plaintiff

Michael D. Celio
KEKER, VAN NEST & PETERS LLP
633 Battery Street
San Francisco, CA 94111
Counsel for Defendants

13 Richard A. Speirs, Esq.
14 COHEN MILSTEIN SELLERS & TOLL
15 PLLC
16 88 Pine Street, 14th Floor
New York, NY 10005
Counsel for State Plaintiff

Ismail Ramsey
RAMSEY & EHRLICH LLP
803 Hearst Avenue, Berkeley, CA 94710
Counsel for Intuitive

17 The Court will not consider any objection that is not timely filed with the Court or not
18 timely delivered to Plaintiffs' Counsel and Defendants' counsel. If you fail to object or otherwise
19 request to be heard in the manner prescribed above, you will waive the right to object to any
20 aspect of the Settlement or otherwise request to be heard (including the right to appeal), and you
21 will be forever barred from raising such objection or request to be heard in this or any other
22 related action or proceeding, but shall otherwise be bound by the judgment entered and the
23 releases given.

24 **PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE REGARDING**
25 **THIS NOTICE**
26
27
28

EXHIBIT D

1
2 SUPERIOR COURT OF THE STATE OF CALIFORNIA
3 IN AND FOR THE COUNTY OF SAN MATEO

4 PUBLIC SCHOOL TEACHERS' PENSION
5 AND RETIREMENT FUND OF
6 CHICAGO,

7 Plaintiff,

8 v.

9 GARY S. GUTHART, LONNIE M.
10 SMITH, ERIC H. HALVORSON, ALAN J.
11 LEVY, CRAIG H. BARRATT, AMAL M.
12 JOHNSON, MARK J. RUBASH, GEORGE
13 STALK, JR., MARSHALL L. MOHR,
14 SALVATORE J. BROGNA, AUGUSTO V.
15 CASTELLO, JEROME J. MCNAMARA,
16 MARK MELTZER, COLIN MORALES,
17 DAVID J. ROSA,

18 Defendants.

Case No. CIV-526930

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING
SETTLEMENT AND DISMISSING
ACTION WITH PREJUDICE**

19 This matter came before the Court on _____, 2017 at a hearing (the
20 "Settlement Hearing") held on the application of the parties to the above-captioned action (the
21 "State Action") for approval of a proposed settlement set forth in a Stipulation of Settlement
22 dated _____, 2017 (the "Settlement").

23 Due notice of the Settlement Hearing having been given in accordance with the Order of
24 this Court dated _____, 2017; the respective parties having appeared by their attorneys of
25 record; the attorneys for the respective parties having been heard; an opportunity to be heard
26 having been given to all other persons requesting to be heard; the Court having reviewed and
27 considered all documents, evidence, objections (if any), and arguments presented in support of or
28 against the Settlement; and the entire matter of the proposed Settlement having been heard and
considered by the Court; the Court being fully advised of the premises and good cause appearing
therefore, enters this Final Order and Judgment.

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

1 1. This Final Order and Judgment incorporates by reference the provisions of and
2 definitions in the Settlement. All capitalized terms used herein shall have the same meanings as
3 set forth in the Settlement (in addition to those capitalized terms defined herein); in the case of a
4 conflict, the definitions in the Settlement shall control.

5 2. The Court has jurisdiction over the subject matter of the State Action, including all
6 matters necessary to effectuate the Settlement, and over all Settling Parties, for purposes of
7 implementing and enforcing the Settlement and entering this Final Order and Judgment.

8 3. The Court finds that the Summary Notice published in _____ and the
9 Notice posted on Intuitive's website and Plaintiffs' Counsel's website(s) constituted the best
10 notice practicable under the circumstances to all persons entitled to such notice, and said notices
11 fully satisfied the requirements of California law and due process under the Constitution of the
12 United States and other applicable law.

13 4. The Court finds that the Settlement is the result of arm's-length negotiations
14 between experienced counsel and is fair, reasonable, adequate, and in the best interests of
15 Intuitive and all Intuitive Stockholders.

16 5. The Court finally approves the Settlement in all respects and orders the Settling
17 Parties to perform the terms of the Settlement to the extent the Settling Parties have not already
18 done so.

19 6. The Settling Parties, the Released Persons, and all Intuitive Stockholders are
20 hereby bound by the terms of the Settlement.

21 7. All Intuitive Stockholders who have not made their objections to the Settlement in
22 the manner provided in the Notice and Summary Notice are deemed to have waived any objection
23 by appeal, collateral attack, or otherwise.

24 8. The State Action and all claims contained therein, as well as all of the Released
25 Claims, are hereby dismissed with prejudice pursuant to the terms of the Settlement. The Settling
26 Parties are to bear their own costs, except as otherwise provided in the Settlement.

27 9. Upon the Effective Date, Plaintiffs (acting on their own behalf and derivatively on
28 behalf of Intuitive), Intuitive, and each Intuitive Stockholder shall be deemed to have and by

1 operation of this Final Order and Judgment shall have fully, finally, and forever released,
2 relinquished, and discharged the Released Claims (including Unknown Claims) against the
3 Released Persons, and shall have covenanted not to sue the Released Persons with respect to all
4 such Released Claims, and shall be permanently barred and enjoined from instituting,
5 commencing, or prosecuting the Released Claims against the Released Persons. Nothing herein
6 shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the
7 Settlement.

8 10. Upon the Effective Date, each of the Defendants and their Related Persons shall be
9 deemed to have fully, finally, and forever released, relinquished, and discharged Plaintiffs and
10 Plaintiffs' Counsel from all claims (including Unknown Claims), arising out of, relating to, or in
11 connection with the institution, prosecution, assertion, settlement, or resolution of the Federal
12 Action, the State Action, the Delaware Action, or the Released Claims. Nothing herein shall in
13 any way impair or restrict the rights of any Settling Party to enforce the terms of the Settlement.

14 11. Pending the Effective Date, Plaintiffs shall not commence, prosecute, instigate, or
15 in any way participate in any proceedings (other than the Actions) asserting any Released Claim
16 against any of the Released Persons.

17 12. Neither the Settlement nor any act performed or document executed pursuant to or
18 in furtherance of the Settlement: (i) is or may be deemed to be or may be used as an admission of,
19 or evidence of, the validity of any Released Claim or of any defense with respect to any Released
20 Claim, any allegation made in the Actions, or of any wrongdoing or liability of the Released
21 Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any
22 liability, fault, or omission of any of the Released Persons in any civil, criminal, or administrative
23 proceeding in any court, administrative agency, or other tribunal. Neither the Settlement nor any
24 act performed or document executed pursuant to or in furtherance of the Settlement shall be
25 admissible in any proceeding for any purpose except the enforcement of this Settlement by any of
26 the Settling Parties, and except that the Released Persons may file the Settlement and/or this Final
27 Order and Judgment in any action that may be brought against them in order to support a defense
28 or counterclaim based on principles of res judicata, collateral estoppel, release, good faith

1 settlement, judgment bar, or reduction, or any other theory of claim preclusion or issue preclusion
2 or similar defense or counterclaim.

3 13. Any disagreement regarding the administration or terms of the Settlement shall be
4 submitted to the State Court. Each side shall bear its own fees and expenses in connection with
5 the resolution of any such dispute. This Court shall retain jurisdiction with respect to
6 implementation and enforcement of the terms of the Settlement, and the Settling Parties and their
7 counsel shall submit to the jurisdiction of this Court solely for purposes of implementing and
8 enforcing the Settlement.

9 14. If for any reason the Effective Date does not occur, or the Settlement is cancelled,
10 terminated, or otherwise fails to become Final for any reason, the Settling Parties shall be restored
11 to their respective positions in the Actions as of the date of the execution of the Settlement. The
12 terms and provisions of the Settlement shall be null and void and shall have no further force and
13 effect with respect to the Settling Parties and neither the existence of the Settlement (nor any
14 negotiations preceding the Settlement nor any acts performed pursuant to, or in furtherance of the
15 Settlement) shall be used in any manner for any purpose in any subsequent proceeding in the
16 Actions or in any other action or proceeding (other than to enforce any terms of the Settlement
17 remaining in effect); and this Final Order and Judgment or other order entered in accordance with
18 the terms of the Settlement shall be treated as vacated, *nunc pro tunc*.

19 15. The Court hereby approves the award of attorneys' fees and costs to Plaintiffs'
20 Counsel in the amount of \$_____ to be paid by Intuitive and finds that the amount of the
21 award is fair and reasonable.

22 16. The Court finds that the Settling Parties and their respective counsel at all times
23 complied with the requirements of California Code of Civil Procedure § 128.7 and all other
24 similar laws.

25 17. Any appeal or other proceeding pertaining to any order concerning the issue of
26 attorneys' fees and expenses shall not in any way delay or preclude any order (including, without
27 limitation, this Final Order and Judgment) from becoming Final.
28

1 18. All agreements made and orders entered during the course of the State Action
2 relating to the confidentiality of information shall survive the Settlement.

3 19. This Final Order and Judgment is a final, appealable judgment and should be
4 entered forthwith by the Clerk dismissing the State Action with prejudice.

5 IT IS SO ORDERED.

6
7 _____
8 Date

Hon. Gerald J. Buchwald