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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

20 DARIAN ADEL, Individually and on Behalf
 21 of All Others Similarly Situated,

22 Plaintiff,

23 v.

24 INTUITIVE SURGICAL, INC., LONNIE M.
 25 SMITH, GARY S. GUTHART, SALVATORE J.
 26 BROGNA, AUGUSTO V. CASTELLO, JEROME
 27 J. McNAMARA, MARK J. MELTZER,
 28 MARSHALL L. MOHR, COLIN MORALES and
 DAVID J. ROSA,

Defendants.

No.

13 2.

CLASS ACTION

**COMPLAINT FOR VIOLATION OF
 THE FEDERAL SECURITIES LAWS**

DEMAND FOR JURY TRIAL

FILED BY FAX

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1 Plaintiff Darian Adel ("Plaintiff"), individually and on behalf of all others similarly
2 situated, by Plaintiff's undersigned attorneys, for Plaintiff's complaint, alleges the following
3 based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and upon the
4 investigation conducted by and through Plaintiff's attorneys, which included, among other
5 things, a review of Intuitive Surgical, Inc.'s ("Intuitive" or the "Company") press releases,
6 Securities and Exchange Commission ("SEC") filings, analyst reports, media reports and other
7 publicly disclosed reports and information about the defendants. Plaintiff believes that
8 substantial evidentiary support will exist for the allegations set forth herein after a reasonable
9 opportunity for discovery.
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12 NATURE OF THE ACTION

13 1. This is a securities class action on behalf of all purchasers of the common stock
14 of Intuitive between October 19, 2011 and April 18, 2013, inclusive (the "Class Period"),
15 against Intuitive and certain of its officers and/or directors for violations of the Securities
16 Exchange Act of 1934 (the "1934 Act").
17

18 2. Defendant Intuitive manufactures robotic surgical systems, most notably the da
19 Vinci Surgical System. The da Vinci Surgical System allows surgery to be performed remotely
20 using robotic manipulators. The Company's common stock is listed on the Nasdaq and forms
21 part of the Nasdaq-100 and S&P 500 indexes.
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23 3. In 2000, the same year Intuitive common stock first became publicly listed, the
24 U.S. Food and Drug Administration ("FDA") approved the use of the da Vinci Surgical System
25 for general laparoscopic surgery, which can be used to address gallbladder disease and
26 gastroesophageal disease. In 2001, the FDA approved use of the system for prostate surgery.
27 The FDA has subsequently approved the system for thoracoscopic surgery, cardiac procedures
28 performed with adjunctive incisions, and gynecologic procedures. Intuitive now dominates the

1 robot-surgery field, as it is the only company whose system is cleared in the United States for
2 soft tissue procedures that include general surgery, prostate operations and gynecological
3 surgery.

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5 4. Throughout the Class Period, defendants issued a series of materially false and
6 misleading statements highlighting the purported safety and effectiveness of the Company's da
7 Vinci Surgical System, while concomitantly announcing quarter after quarter of record financial
8 results. Sales of Intuitive's robots, priced at \$1.5 million each, have helped make Intuitive one
9 of the hottest stocks in health care, growing 61% since the end of February 2010 to a market
10 value of \$21.7 billion by March 2013. Due in large part to what the public has recently learned
11 were disreputable and unsafe sales practices, the number of U.S. procedures done with the
12 robots grew to approximately 367,000 in 2012, up from 292,000 in 2011 and 228,000 in 2010.
13 As a result of defendants' efforts to conceal significant safety and efficacy problems with the da
14 Vinci Surgical System – which were exacerbated by the Company's disreputable sales practices
15 – and false statements concerning the Company's business metrics and financial prospects,
16 Intuitive stock traded at artificially inflated prices during the Class Period, reaching a Class
17 Period high of nearly \$595 per share in intraday trading by April 18, 2012. Meanwhile, with the
18 price of Intuitive stock soaring, nearly every senior executive of Intuitive cashed in, collectively
19 selling close to 410,000 shares of their personally held Intuitive stock into the open market at
20 fraud-inflated prices during the Class Period, *reaping more than \$218.6 million* in proceeds.

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24 5. The true facts, which were known or recklessly disregarded by defendants but
25 concealed from the investing public during the Class Period, were as follows:

26 (a) defects in the da Vinci Surgical System had caused a substantial number
27 of patient injuries resulting in adverse incident reports prior to and during the Class Period;
28

1 (b) not all of these adverse incident reports were being reported to the FDA,
2 exposing the Company to significant regulatory risk and potential criminal sanctions;

3 (c) Intuitive knew, based on the receipt and review of adverse incident
4 reports and its executive's knowledge of the then-ongoing discussions with the FDA during the
5 Class Period that there was a substantial risk that the FDA might limit or restrict sales and
6 marketing of the da Vinci Surgical System;
7

8 (d) Intuitive was engaging in sales practices that violated community
9 standards and their own protocol agreed upon with the FDA, further exposing the Company to
10 criminal and civil sanctions;
11

12 (e) Intuitive was exposed to hundreds of millions of dollars in potential civil
13 liability to injured and deceased patients and their families;

14 (f) Intuitive failed to properly reserve for potential liability to civil litigants;
15
16 and

17 (g) as a result, defendants lacked a reasonable basis to make positive
18 statements about the safety and effectiveness of the da Vinci Surgical System, the Company's
19 business metrics and its Class Period financial results and outlook.

20 6. On February 28, 2013, the FDA sent a letter to surgeons participating in the FDA
21 sponsored Medical Product Safety Network ("MedSun"), asking them to provide information
22 about medical complications associated with use of the da Vinci Surgical System. The FDA
23 indicated that the survey was prompted by an "increase in [the] number of reports" of "adverse
24 events" involving the da Vinci Surgical System. On this news, the price of Intuitive stock,
25 which had opened at \$573.44 per share that morning, plummeted on unusually high trading
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1 volume, closing down more than 10% at \$509.89 per share, after trading below \$493 per share
2 in intraday trading.

3 7. Then, on March 5, 2013, *Bloomberg* ran an expose disclosing that its review of
4 pleadings in at least ten lawsuits filed against Intuitive during the prior 14 months and FDA
5 adverse incident reports had uncovered that robotic surgical systems made by Intuitive had been
6 linked to at least 70 deaths in informal incident reports sent to the FDA since 2009. On this
7 news, the price of Intuitive stock, which had closed the previous evening at \$541.32 per share,
8 again plummeted on unusually high trading volume, closing down approximately 3% at \$525.72
9 per share, after trading as low as \$514 per share in intraday trading.
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12 8. On March 14, 2013, the president of the American Congress of Obstetricians and
13 Gynecologists ("ACOG"), Dr. James Breeden, issued a statement contending that, among other
14 things, "[r]obotic surgery is not the only or the best minimally invasive approach for
15 hysterectomy," and "there is no good data proving that robotic hysterectomy is even as good as
16 – let alone better – than existing, and far less costly, minimally invasive alternatives." As
17 reported by *Bloomberg* the next day, March 15, 2013, "Robotic surgery for hysterectomies
18 doesn't improve outcomes and shouldn't be the first choice for most women, a doctors' group
19 said, sending Intuitive Surgical Inc. (ISRG) to its lowest value in almost 14 months,"
20 emphasizing that the ACOG, "which represents 56,000 U.S. physicians, said expertise with
21 Intuitive's da Vinci robot system is limited and surgeons learning the new technology may have
22 higher rates of complications." Once again, the price of Intuitive stock, which had closed at
23 \$509.33 per share on March 13, 2013, plummeted on unusually high trading volume between
24 March 14th and 15th, closing down approximately 10% at \$459.44 per share on March 15,
25 2013.
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1 9. On March 20, 2013, Massachusetts' Quality and Patient Safety Division of the
2 Executive Office of Health and Human Services issued an advisory, which stated, in part, that
3 "[o]ver the last two years, the Quality and Patient Safety Division . . . has received an increasing
4 number of Safety and Quality Review . . . reports of patient complications associated with robot
5 assisted surgery."

7 10. Finally, on April 18, 2013, CNBC's Investigations, Inc. broadcast an expose on
8 the da Vinci Surgical System consisting of interviews with, among others, doctors, lawyers, and
9 patients who have filed lawsuits against Intuitive claiming they suffered injury while being
10 operated on by surgeons using the da Vinci Surgical System.

12 11. During the broadcast, CNBC referenced the FDA's MAUDE database, which
13 contains voluntary reports by manufacturers concerning adverse events involving medical
14 devices, including reports of injuries and deaths associated with use of the da Vinci Surgical
15 System. A former Intuitive employee, interviewed by CNBC during the show on condition of
16 anonymity, stated that she recalled instances of da Vinci-related complications that were not
17 reported in MAUDE, and contended that the MAUDE database is "significantly understated in
18 terms of [da Vinci-related] complications." Concurring was Dr. Martin Makary, a prominent
19 surgeon with the Johns Hopkins School of Medicine and an international expert on patient
20 safety, who shared with CNBC details of a study he co-authored entitled "Underreporting of
21 Robotic Surgery Complications." The study contends there is "massive underreporting" of
22 robotic surgery complications. In particular, the report states that "[i]n the case of Intuitive . . .
23 some incidents [involving the da Vinci system] that have resulted in serious injury and death
24 were never reported or were reported late."
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12. In response to this news, the price of Intuitive stock closed down \$8.62 per share on April 19, 2013. Indeed, since February 27, 2013, the day before the FDA announced its MedSun survey, Intuitive stock has *fallen nearly 19% – or \$110.25 per share* – from its Class Period high on account of the above news, falling from \$595 per share to a close of \$484.75 per share on April 19, 2013, *resulting in market capitalization losses of over \$4.4 billion.*

JURISDICTION AND VENUE

13. The claims asserted herein arise under §§10(b) and 20(a) of the Securities Exchange Act of 1934 (“1934 Act”), 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5. Jurisdiction is conferred by §27 of the 1934 Act, 15 U.S.C. §78aa.

14. Venue is proper in this District pursuant to §27 of the Exchange Act and 28 U.S.C. §1391(b), as the Company is headquartered in this District and the alleged misconduct was transacted in and emanated from this District.

PARTIES

15. Plaintiff Darian Adel purchased Intuitive common stock as set forth in the attached Certification, which is incorporated herein by reference, and was damaged thereby.

16. Defendant Intuitive manufactures robotic surgical systems.

17. Defendant Lonnie M. Smith (“Smith”) is, and was throughout the Class Period, the Chairman of Intuitive’s Board of Directors and an executive of the Company. Defendant Smith previously served as Intuitive’s Chief Executive Officer (“CEO”) between June 1997 and January 2010. Defendant Smith sold the following 202,422 shares of Intuitive stock during the Class Period at inflated prices, receiving *more than \$106.3 million* in proceeds:

DATE	NUMBER OF SHARES SOLD	PRICE	SELLING PROCEEDS
25-Oct-2011	15,000	\$419.71	\$6,295,650
20-Apr-2012	17,500	\$575.09	\$10,064,075
24-Jul-2012	5,000	\$473.18	\$2,365,900
24-Jul-2012	12,500	\$473.18	\$5,914,750
22-Oct-2012	17,500	\$543.29	\$9,507,575
20-Nov-2012	23,949	\$536.67	\$12,852,710
21-Nov-2012	13,551	\$534.63	\$7,244,771
21-Nov-2012	2,906	\$534.63	\$1,553,635
23-Nov-2012	20,899	\$536.87	\$11,220,046
26-Nov-2012	21,164	\$534.34	\$11,308,772
27-Nov-2012	25,031	\$528.15	\$13,220,123
27-Nov-2012	1,422	\$528.15	\$751,029
03-Dec-2012	1,000	\$525.98	\$525,980
04-Mar-2013	2,000	\$549.50	\$1,099,000
04-Mar-2013	1,500	\$539.50	\$809,250
04-Mar-2013	634	\$537.50	\$340,775
04-Mar-2013	300	\$543.50	\$163,050
04-Mar-2013	6,800	\$541.50	\$3,682,200
04-Mar-2013	45	\$550.50	\$24,773
04-Mar-2013	6,200	\$542.50	\$3,363,500
04-Mar-2013	2,766	\$536.50	\$1,483,959
04-Mar-2013	500	\$546.50	\$273,250
04-Mar-2013	4,255	\$540.50	\$2,299,828
TOTAL	202,422		\$106,364,600

18. Defendant Gary S. Guthart ("Guthart") is, and was throughout the Class Period, Intuitive's President and CEO. Defendant Guthart sold the following 16,000 shares of Intuitive stock during the Class Period at inflated prices, receiving *more than \$8.7 million* in proceeds:

DATE	NUMBER OF SHARES SOLD	PRICE	SELLING PROCEEDS
20-Apr-2012	1,312	\$575.04	\$754,452
20-Apr-2012	1,500	\$574.98	\$862,470
20-Apr-2012	688	\$575.04	\$395,628
24-Jul-2012	2,000	\$473.47	\$946,940
26-Jul-2012	1,500	\$490.00	\$735,000
22-Oct-2012	1,000	\$545.63	\$545,630
22-Oct-2012	2,000	\$544.48	\$1,088,960
22-Oct-2012	1,500	\$542.98	\$814,470

25-Jan-2013	1,500	\$577.67	\$866,505
25-Jan-2013	1,000	\$578.07	\$578,070
25-Jan-2013	2,000	\$577.57	\$1,155,140
TOTAL	16,000		\$8,743,265

19. Defendant Salvatore J. Brogna ("Brogna") is, and was throughout the Class Period, Intuitive's Senior Vice President, Product Development. Defendant Brogna sold the following 39,042 shares of Intuitive stock during the Class Period at inflated prices, receiving *more than \$18.3 million* in proceeds:

DATE	NUMBER OF SHARES SOLD	PRICE	SELLING PROCEEDS
01-Dec-2011	3,000	\$424.67	\$1,274,010
01-Dec-2011	7,656	\$424.67	\$3,251,274
01-Dec-2011	1,250	\$424.67	\$530,838
01-Dec-2011	9,167	\$424.67	\$3,892,950
01-Mar-2012	1,250	\$510.12	\$637,650
01-Mar-2012	1,000	\$510.12	\$510,120
01-Mar-2012	1,094	\$510.12	\$558,071
01-Mar-2012	1,250	\$510.12	\$637,650
01-Jun-2012	1,250	\$511.78	\$639,725
01-Jun-2012	1,094	\$511.78	\$559,887
01-Jun-2012	1,000	\$511.78	\$511,780
04-Sep-2012	1,250	\$490.25	\$612,813
03-Dec-2012	2,187	\$528.75	\$1,156,376
03-Dec-2012	1,250	\$528.75	\$660,938
03-Dec-2012	2,000	\$528.75	\$1,057,500
01-Mar-2013	1,000	\$553.00	\$553,000
01-Mar-2013	1,094	\$553.00	\$604,982
01-Mar-2013	1,250	\$553.00	\$691,250
TOTAL	39,042		\$18,340,813

20. Defendant Augusto V. Castello ("Castello") is, and was throughout the Class Period, Intuitive's Senior Vice President, Product Operations. Defendant Castello sold the following 26,250 shares of Intuitive stock during the Class Period at inflated prices, receiving nearly *\$15.1 million* in proceeds:

DATE	NUMBER OF SHARES SOLD	PRICE	SELLING PROCEEDS
20-Apr-2012	5,000	\$575.13	\$2,875,650
20-Apr-2012	5,000	\$575.34	\$2,876,700
20-Apr-2012	6,250	\$575.17	\$3,594,813
20-Apr-2012	5,000	\$575.21	\$2,876,050
20-Apr-2012	5,000	\$575.29	\$2,876,450
TOTAL	26,250		\$15,099,663

21. Defendant Jerome J. McNamara ("McNamara") is, and was throughout the Class Period, Intuitive's Executive Vice President, Worldwide Sales and Marketing. Defendant McNamara sold the following 55,625 shares of Intuitive stock during the Class Period at inflated prices, receiving *more than \$31.5 million* in proceeds:

DATE	NUMBER OF SHARES SOLD	PRICE	SELLING PROCEEDS
21-Oct-2011	1,536	\$420.00	\$645,120
21-Oct-2011	231	\$418.50	\$96,674
20-Apr-2012	10,000	\$575.11	\$5,751,100
20-Apr-2012	10,000	\$575.08	\$5,750,800
20-Apr-2012	10,000	\$575.06	\$5,750,600
20-Apr-2012	9,144	\$575.03	\$5,258,074
22-Oct-2012	6,250	\$543.54	\$3,397,125
28-Jan-2013	8,464	\$574.03	\$4,858,590
TOTAL	55,625		\$31,508,083

22. Defendant Mark Meltzer ("Meltzer") is, and was throughout the Class Period, Intuitive's Senior Vice President, General Counsel. Defendant Meltzer sold the following 27,500 shares of Intuitive stock during the Class Period at inflated prices, receiving *more than \$15.2 million* in proceeds:

DATE	NUMBER OF SHARES SOLD	PRICE	SELLING PROCEEDS
20-Apr-2012	1,500	\$575.30	\$862,950
20-Apr-2012	2,000	\$575.21	\$1,150,420
24-Jul-2012	2,000	\$474.05	\$948,100
13-Aug-2012	2,000	\$510.02	\$1,020,040
22-Oct-2012	2,000	\$543.59	\$1,087,180
22-Oct-2012	5,000	\$550.00	\$2,750,000

22-Oct-2012	375	\$543.88	\$203,955
25-Jan-2013	1,875	\$577.60	\$1,083,000
25-Jan-2013	5,000	\$577.93	\$2,889,650
25-Jan-2013	125	\$577.60	\$72,200
25-Jan-2013	3,000	\$577.61	\$1,732,830
TOTAL	27,500		\$15,228,010

23. Defendant Marshall L. Mohr ("Mohr") is, and was throughout the Class Period, Intuitive's Senior Vice President and Chief Financial Officer ("CFO"). Defendant Mohr sold the following 27,400 shares of Intuitive stock during the Class Period at inflated prices, receiving nearly *\$15.3 million* in proceeds:

DATE	NUMBER OF SHARES SOLD	PRICE	SELLING PROCEEDS
30-Apr-2012	200	\$586.50	\$117,300
30-Apr-2012	500	\$585.50	\$292,750
30-Apr-2012	400	\$583.50	\$233,400
30-Apr-2012	300	\$584.50	\$175,350
30-Apr-2012	1,200	\$583.50	\$700,200
30-Apr-2012	200	\$584.50	\$116,900
30-Apr-2012	400	\$585.50	\$234,200
30-Apr-2012	400	\$584.50	\$233,800
30-Apr-2012	700	\$581.50	\$407,050
30-Apr-2012	700	\$581.50	\$407,050
30-Apr-2012	200	\$582.50	\$116,500
30-Apr-2012	600	\$583.50	\$350,100
30-Apr-2012	300	\$582.50	\$174,750
30-Apr-2012	1,000	\$581.50	\$581,500
30-Apr-2012	400	\$585.50	\$234,200
30-Apr-2012	300	\$580.50	\$174,150
30-Apr-2012	500	\$586.50	\$293,250
30-Apr-2012	400	\$586.50	\$234,600
30-Apr-2012	100	\$580.50	\$58,050
25-Jul-2012	3,300	\$478.58	\$1,579,314
22-Oct-2012	3,300	\$543.22	\$1,792,626
22-Oct-2012	4,000	\$543.02	\$2,172,080
28-Jan-2013	1,200	\$574.57	\$689,484
28-Jan-2013	3,600	\$574.57	\$2,068,452
28-Jan-2013	3,200	\$574.12	\$1,837,184
TOTAL	27,400		\$15,274,240

24. Defendant Colin Morales ("Morales") is, and was throughout the Class Period, Intuitive's Senior Vice President, Customer Support Group. Defendant Morales sold the following 4,760 shares of Intuitive stock during the Class Period at inflated prices, receiving *more than \$2.3 million* in proceeds:

DATE	NUMBER OF SHARES SOLD	PRICE	SELLING PROCEEDS
07-Feb-2012	260	\$492.55	\$128,063
07-Feb-2012	4,500	\$492.99	\$2,218,455
TOTAL	4,760		\$2,346,518

25. Defendant David J. Rosa ("Rosa"), is and was throughout the Class Period, Intuitive's Senior Vice President, Emerging Technologies and Procedures. Defendant Rosa sold the following 11,000 shares of Intuitive stock during the Class Period at inflated prices, receiving over *\$5.7 million* in proceeds:

DATE	NUMBER OF SHARES SOLD	PRICE	SELLING PROCEEDS
03-Feb-2012	5,000	\$493.59	\$2,467,950
26-Oct-2012	6,000	\$538.70	\$3,232,200
TOTAL	11,000		\$5,700,150

26. Defendants Smith, Guthart, Brogna, Castello, McNamara, Meltzer, Mohr, Morales and Rosa are referred to herein as the "Individual Defendants." The Individual Defendants are liable for the false statements pleaded herein, as those statements are "group-published" information for which they are responsible.

BACKGROUND TO THE CLASS PERIOD

27. The research that eventually led to the development of the da Vinci Surgical System was performed in the late 1980s at non-profit research institute SRI International ("SRI") (formerly Stanford Research Institute) and was funded by the National Institutes of

1 Health. Prior to joining Intuitive, defendant Guthart was part of the core team developing
2 foundation technology for computer-enhanced surgery at SRI.

3
4 28. After being rejected by the Guidant Corporation, one of the nation's largest
5 biotechnology development firms, SRI's intellectual property was acquired by various investors
6 and a new company named Intuitive Surgical Devices, Inc. was founded. Intuitive began
7 marketing the da Vinci Surgical System in Europe in 1999, while awaiting FDA approval in the
8 United States.

9
10 29. The Company raised \$46 million in an initial public offering ("IPO") in 2000.
11 That same year, the FDA approved the use of the da Vinci Surgical System for general
12 laparoscopic surgery, which can be used to address gallbladder disease and gastroesophageal
13 disease. In 2001, the FDA approved the use of the system for prostate surgery. The FDA has
14 subsequently approved the system for thoracoscopic surgery, cardiac procedures performed
15 with adjunctive incisions, and gynecologic procedures. Intuitive now dominates the robot-
16 surgery field as it is the only company whose system is cleared in the United States for soft
17 tissue procedures that include general surgery, prostate operations and gynecological surgery.

18
19 30. Sales of Intuitive's robots, priced at \$1.5 million each, have helped make
20 Intuitive one of the hottest stocks in health care, growing 61% since the end of February 2010 to
21 a market value of \$21.7 billion by March 2013. The number of U.S. procedures done with the
22 robots grew to approximately 367,000 in 2012, up from 292,000 in 2011 and 228,000 in 2010.
23 In addition to the costs of acquiring the da Vinci Surgical System, there are ongoing
24 maintenance contracts plus expenditures for instruments used during surgery.
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**MATERIALLY FALSE AND MISLEADING
STATEMENTS ISSUED DURING THE CLASS PERIOD**

31. The Class Period commences on October 19, 2011. On the prior evening of October 18, 2011, after the close of trading, Intuitive issued a press release announcing its third quarter 2011 financial results for the fiscal quarter ended September 30, 2011. The press release stated in pertinent part as follows:

Intuitive Surgical . . . , the industry leader in surgical robotics, today reported third quarter of 2011 revenue of ***\$447 million, up 30%*** compared with \$344 million for the third quarter of 2010. ***Third quarter of 2011 revenue growth was driven by continued robotic procedure adoption and higher da Vinci Surgical System sales.***

Third quarter of 2011 instruments and accessories revenue increased 38% to \$176 million from \$128 million in the third quarter of 2010. The growth in instruments and accessories revenue was primarily driven by growth in da Vinci surgical procedures of approximately 30%. Third quarter of 2011 systems revenue was \$199 million, an increase of 25%, compared to \$160 million during the third quarter of 2010. The growth in third quarter 2011 systems revenue was driven by sales of 133 da Vinci Surgical Systems compared to 105 system sales during the same period last year. Third quarter of 2011 services revenue increased 25% to \$72 million from \$57 million during the third quarter of 2010, reflecting growth in the installed base of da Vinci Surgical Systems.

Third quarter of 2011 operating income increased 35% to \$179 million from \$132 million during the third quarter of 2010. Operating results for the third quarter of 2011 included \$35 million of non-cash stock-based compensation expense compared with \$30 million for the third quarter of 2010.

Third quarter of 2011 net income increased 41% to \$122 million, or \$3.05 per diluted share, from \$87 million, or \$2.14 per diluted share for the third quarter of 2010.

* * *

Commenting on the announcement, Dr. Gary Guthart, President and CEO of Intuitive Surgical, said, "We are pleased with the growth in da Vinci procedures and the performance of our team in the quarter."

[Emphasis added.]

32. Later in the day on October 18, 2011, Intuitive held an earnings conference call providing additional positive statements about the safety, efficacy and sales of the Company's

1 da Vinci Surgical System, its third quarter 2011 financial results and raising its guidance for
2 fiscal 2011, stating the Company then saw revenue growth of as much as 23% compared with
3 an earlier target of 21%.

4
5 33. On this news the price of Intuitive stock spiked, closing up 9% to \$417.62 per
6 share, the highest price since the Company's June 2000 IPO.

7 34. On October 19, 2011, Intuitive filed its third quarter 2011 quarterly financial
8 report on Form 10-Q with the SEC that confirmed the same quarterly financial results. The
9 Form 10-Q was signed by defendant Mohr and certified as to accuracy by defendants Guthart
10 and Mohr. As to "Contingencies," the Form 10-Q stated in pertinent part that though Intuitive
11 was "a party to various . . . legal actions that arose in the ordinary course of its business, . . .
12 [t]he Company [did] not believe that any of these other legal actions [would] have a material
13 adverse impact on its business, financial position or results of operations." Neither the reported
14 third quarter 2011 financial results nor the Form 10-Q disclosed or properly reserved for
15 Intuitive's potential liability to patients, regulators and investors for civil judgments,
16 criminal/regulatory fines and penalties or related investor losses.

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19 35. On January 19, 2012, Intuitive issued a press release announcing its fourth
20 quarter and fiscal 2011 financial results for the quarter and fiscal year ended December 31,
21 2011. The press release stated in pertinent part as follows:

22
23 Intuitive Surgical . . . , the industry leader in surgical robotics, today
24 reported fourth quarter of 2011 **revenue of \$497 million, up 28%** compared with
25 \$389 million for the fourth quarter of 2010. **Fourth quarter of 2011 revenue**
26 **growth was driven by continued robotic procedure adoption and higher da Vinci Surgical System sales.**

27 Fourth quarter of 2011 instruments and accessories revenue increased 30%
28 to \$196 million from \$151 million in the fourth quarter of 2010. The growth in
instruments and accessories revenue was primarily driven by growth in da Vinci
surgical procedures of approximately 27%. Fourth quarter of 2011 systems
revenue was \$225 million, an increase of 27%, compared with \$178 million

during the fourth quarter of 2010. The growth in fourth quarter 2011 systems revenue was driven by sales of 152 *da Vinci* Surgical Systems compared with 124 system sales during the same period last year. Fourth quarter of 2011 service revenue increased 24% to \$75 million from \$61 million during the fourth quarter of 2010, reflecting growth in the installed base of *da Vinci* Surgical Systems. ***Fourth quarter of 2011 operating income increased to \$200 million*** from \$154 million in the fourth quarter of 2010. Operating results for the fourth quarter of 2011 included \$35 million of non-cash stock-based compensation expense compared with \$30 million for the fourth quarter of 2010.

* * *

Fourth quarter of 2011 net income was \$151 million, or \$3.75 per diluted share, compared with \$121 million, or \$3.02 per diluted share for the fourth quarter of 2010.

Revenue for the year ended December 31, 2011 totaled ***\$1,757 million, increasing 24%*** from \$1,413 million for the year ended December 31, 2010. ***Net income for the year ended December 31, 2011 was \$495 million, or \$12.32 per diluted share***, compared to net income of \$382 million, or \$9.47 per diluted share for the year ended December 31, 2010.

* * *

Commenting on the announcement, Dr. Gary Guthart, President and CEO of Intuitive Surgical, said, "We are pleased with our fourth quarter performance. These results reflect continued da Vinci procedure adoption, highlighted by strong growth in our US gynecology business, and a focus on execution by our commercial and product operations teams."

[Emphasis added.]

36. Later in the day on January 19, 2012, Intuitive held an earnings conference call providing additional positive statements about the safety, efficacy and sales of the Company's *da Vinci* Surgical System and its fourth quarter and fiscal 2011 financial results.

37. On February 6, 2012, Intuitive filed its 2011 annual financial report on Form 10-K with the SEC that confirmed the same quarterly and fiscal year financial results reported above. The Form 10-K was signed by defendants Guthart, Mohr, Smith and each of the Company's directors, and was certified as to accuracy by defendants Guthart and Mohr. As to "Contingencies," the Form 10-K stated in pertinent part that though Intuitive was "a party to

various . . . legal actions that arose in the ordinary course of its business, . . . [t]he Company [did] not believe that any of these other legal actions [would] have a material adverse impact on its business, financial position or results of operations.” Neither the reported fourth quarter/fiscal year 2011 financial results nor the Form 10-K disclosed or properly reserved for Intuitive’s potential liability to patients, regulators and investors for civil judgments, criminal/regulatory fines and penalties or related investor losses.

38. On March 1, 2012, Intuitive filed its annual proxy statement to shareholders for use in voting at the 2012 annual shareholder meeting. As to “Board Responsibilities,” the 2012 proxy statement stated in pertinent part:

The Board’s primary responsibility is to seek to maximize long-term stockholder value. . . . In fulfilling the Board’s responsibilities, directors have full access to the Company’s management, external auditors and outside advisors. With respect to the Board’s role in risk oversight of the Company, the Board of Directors discusses the Company’s risk exposures and risk management of various parts of the business, including appropriate guidelines and policies to minimize business risks and major financial risks and the steps management has undertaken to control them.

[Emphasis added.]

39. On April 17, 2012, Intuitive issued a press release announcing its first quarter 2012 financial results for the quarter ended March 30, 2012. The press release stated in pertinent part as follows:

Intuitive Surgical . . . , the industry leader in surgical robotics, today reported first quarter of 2012 revenue of **\$495 million, up 28%** compared with \$388 million for the first quarter of 2011. **First quarter of 2012 revenue growth was driven by continued robotic procedure adoption and higher da Vinci Surgical System sales.**

First quarter of 2012 instruments and accessories revenue increased 32% to \$208 million from \$157 million in the first quarter of 2011. The growth in instruments and accessories revenue is the result of growth in da Vinci surgical procedures and the introduction of new products. Procedure growth of approximately 29% primarily reflects higher US gynecologic procedures, US general surgery procedures and international urologic procedures.

1 First quarter of 2012 systems revenue was \$207 million, an increase of
2 24%, compared with \$167 million during the first quarter of 2011. The growth in
3 first quarter 2012 systems revenue was driven by sales of 140 da Vinci Surgical
4 Systems compared with 120 system sales during the same period last year. First
5 quarter of 2012 service revenue increased 27% to \$81 million from \$64 million
6 during the first quarter of 2011, reflecting growth in the installed base of da Vinci
7 Surgical Systems.

8 ***First quarter of 2012 operating income increased to \$193 million*** from
9 \$148 million in the first quarter of 2011. Operating results for the first quarter of
10 2012 included \$34 million of non-cash stock-based compensation expense
11 compared with \$32 million for the first quarter of 2011.

12 ***First quarter of 2012 net income was \$144 million, or \$3.50 per diluted***
13 ***share***, compared with \$104 million, or \$2.59 per diluted share for the first quarter
14 of 2011.

15 Intuitive ended the first quarter of 2012 with \$2,371 million in cash, cash
16 equivalents and investments, reflecting an increase of \$199 million during the
17 quarter.

18 ***Commenting on the announcement, Dr. Gary Guthart, President and***
19 ***CEO of Intuitive Surgical, said, "In the first quarter, we are pleased with the***
20 ***growing use of da Vinci, the acceptance of our new products and the financial***
21 ***performance that follows."***

22 [Emphasis added.]

23 40. Later in the day on April 17, 2012, Intuitive held an earnings conference call
24 providing additional positive statements about the safety, efficacy and sales of the Company's
25 da Vinci Surgical System and its first quarter 2012 financial results.

26 41. On April 19, 2012, Intuitive filed its quarterly financial report on Form 10-Q
27 with the SEC that confirmed the same quarterly financial results. The 10-Q was signed by
28 defendant Mohr and certified as to accuracy by defendants Guthart and Mohr. As to
"Contingencies," the Form 10-Q stated in pertinent part that though Intuitive was "a party to
various . . . legal actions that arose in the ordinary course of its business, . . . [t]he Company
[did] not believe that any of these other legal actions [would] have a material adverse impact on

1 its business, financial position or results of operations.” Neither the reported first quarter 2012
2 financial results nor the Form 10-Q disclosed or properly reserved for Intuitive’s potential
3 liability to patients, regulators and investors for civil judgments, criminal/regulatory fines and
4 penalties or related investor losses.
5

6 42. On July 19, 2012, Intuitive issued a press release announcing its second quarter
7 2012 financial results for the quarter ended June 30, 2012. The press release stated in pertinent
8 part as follows:
9

10 Intuitive Surgical . . . , the industry leader in surgical robotics, today reported
11 second quarter of 2012 revenue of ***\$537 million, up approximately 26%***
12 compared with \$426 million for the second quarter of 2011. ***Second quarter of***
2012 revenue growth was driven by continued adoption of da Vinci surgery
procedures and higher daVinci Surgical System sales.

13 Second quarter of 2012 instruments and accessories revenue increased
14 30% to \$224 million from \$172 million in the second quarter of 2011. The growth
15 in instruments and accessories revenue is the result of growth in *da Vinci* surgical
16 procedures and the introduction of new products. Procedure growth of
17 approximately 26% primarily reflects higher US gynecologic procedures, US
general surgery procedures and international urologic procedures, partially offset
by a decline in US prostatectomy procedures.

18 Second quarter of 2012 systems revenue was \$229 million, an increase of
19 23%, compared with \$187 million during the second quarter of 2011. The growth
20 in second quarter 2012 systems revenue was driven by sales of 150 *da Vinci*
21 Surgical Systems compared with 129 system sales during the same period last
22 year. Second quarter of 2012 service revenue increased 23% to \$83 million from
\$68 million during the second quarter of 2011, reflecting growth in the installed
base of *da Vinci* Surgical Systems.

23 ***Second quarter of 2012 operating income increased to \$225 million*** from
24 \$168 million in the second quarter of 2011. Operating results for the second
25 quarter of 2012 included \$33 million of non-cash stock-based compensation
expense compared with \$35 million for the second quarter of 2011.

26 ***Second quarter of 2012 net income was \$155 million, or \$3.75 per***
27 ***diluted share***, compared with \$117 million, or \$2.91 per diluted share, for the
second quarter of 2011.

28 * * *

1 *Commenting on the announcement, Dr. Gary Guthart, President and*
 2 *CEO of Intuitive Surgical, said, "Our solid second quarter revenue and*
 3 *earnings performance is the result of robust US gynecologic and general*
 4 *surgery procedure growth offset by pressure in Europe and US prostatectomy."*

5 [Emphasis added.]

6 43. Later in the day on July 19, 2012, Intuitive held an earnings conference call
 7 providing additional positive statements about the safety, efficacy and sales of the Company's
 8 da Vinci Surgical System and its second quarter 2012 financial results.

9 44. On July 23, 2012, Intuitive filed its quarterly financial report on Form 10-Q with
 10 the SEC that confirmed the same quarterly financial results. The 10-Q was signed by defendant
 11 Mohr and certified as to accuracy by defendants Guthart and Mohr. As to "Contingencies," the
 12 Form 10-Q stated in pertinent part that though Intuitive was "a party to various . . . legal actions
 13 that arose in the ordinary course of its business, . . . [t]he Company [did] not believe that any of
 14 these other legal actions [would] have a material adverse impact on its business, financial
 15 position or results of operations." Neither the reported second quarter 2012 financial results nor
 16 the Form 10-Q disclosed or properly reserved for Intuitive's potential liability to patients,
 17 regulators and investors for civil judgments, criminal/regulatory fines and penalties or related
 18 investor losses.

19 45. On September 18, 2012, Intuitive filed a Current Report on Form 8-K with the
 20 SEC announcing that on September 14, 2012, an article was published in the *Modesto Bee*
 21 entitled "More Surgeries at Modesto Hospitals Being Done via Remote Control." Intuitive's
 22 Form 8-K stated that the "article contained information about the estimated number of single
 23 incision surgeries that have been performed since January, 2012 and cited Intuitive Surgical Inc.
 24 ('the Company') as the source of information," and that, "[t]his was an unauthorized disclosure
 25 26
 27
 28

by a field employee in violation of Company policy.” The Company in no way negated the content of the article, and in so doing adopted the article, which stated in pertinent part as follows:

Fewer complications

Robotic systems are the newest wave, enabling doctors to perform surgeries with smaller incisions and giving them tools to see and work with complex tissues in the body. Proponents say robotic-assisted surgeries result in less blood loss, shorter hospital stays and fewer complications for patients.

Intuitive Surgical, the company that makes the da Vinci robot, said about 4,000 of the single-incision surgeries have been done since the system was launched in January. The newer version of da Vinci makes it possible to remove a gallbladder through the navel because of the flexibility of the rods that hold the forceps and scissors.

A common laparoscopic procedure for gallbladders leaves the patient with four small scars on the abdomen.

More than 700 robotic-assisted surgeries have been performed at Doctors Medical Center, which purchased a da Vinci surgical system in 2007 and has more than 10 doctors using the system. ***Memorial paid \$2 million for a newer version of da Vinci that supports single-incision operations and has more advanced imaging.***

* * *

At Memorial, seven surgeons use da Vinci for prostate surgery, hysterectomies, colon and general surgeries. And more are going through the training.

Dr. Kathleen Eve said she first thought surgical robots were a gimmick and waste of money, ***but she was won over when she started training with the system this year.***

“For a fact, the surgeon can see much better inside the patient and use the robots’ hands like hands are supposed to work,” she said.

During her career, Eve has done laparoscopic procedures in which long instruments and scopes are inserted through small incisions in the patient, eliminating the need for large incisions. Laparoscopy also reduces blood loss and scarring for patients, but some doctors compare it to operating with chopsticks.

Greater range of motion

1 *Advocates say robotic systems give surgeons a sharper view of the*
2 *patient's anatomy and provide instruments with a greater range of motion to*
3 *grab, cut and suture tissue.*

4 * * *

5 The robots don't perform the surgery. Rather, the surgeon sits at a console
6 about eight feet from the operating table. Hovering over the patient is a four-
7 armed robot holding an endoscopic camera and flexible rods with surgical tools at
8 the tips.

9 Once the camera and rods are inserted through ports in the patient's
10 abdomen, the surgeon looks into the high-resolution viewer and handles the
11 master controls – similar to playing with an Xbox. The system interprets the
12 surgeon's hand movements, translating them into movements of the grabbers and
13 scissors inside the patient.

14 *Under the surgeon's command, the robot does the cutting and suturing*
15 *with more precision. The jointed instruments, able to rotate 560 degrees, are far*
16 *more flexible than the human wrist, making it easier for the surgeon to work in*
17 *tight spots.*

18 *Doctors said robotics eliminate some of the physical demands of more*
19 *conventional surgery. Eve said the long-shafted instruments used in laparoscopic*
20 *the camera in place or making difficult cuts.*

21 "It's like a big game of Twister all over the patient's bedside," she said.

22 *Gonzalez said it is advantageous to use the robot for "retraction" – or*
23 *holding tissue aside while he operates deep in the pelvis. Holding retractors*
24 *during a three-hour operation is physically exhausting, he said.*

25 *Getting a clearer view*

26 *One of the benefits for patients is the imaging system that highlights the*
27 *targeted area when fluorescent dye is injected, said JoAnn Adkins, interim*
28 *surgical services manager for Memorial.*

29 *It gives the surgeon a clearer view of nerves and blood vessels to avoid*
30 *during the operation. Adkins said there are lower rates of incontinence and*
31 *erectile dysfunction among prostate cancer patients who had robotic surgery. . .*

32 * * *

33 *The FDA gave approval for the da Vinci system in 2000, and there now*
34 *are 2,132 surgical robots in hospitals worldwide for performing cardiac,*
35 *thoracic, gynecologic, pediatric and general surgeries. Despite their growing*

1 use, robotic assisted procedures represent a small percentage of surgeries at
 2 Doctors in Modesto, which is looking to purchase the newer version of da Vinci, a
 3 spokeswoman said.

4 *"I think it is going to be the wave of the future," Gonzalez said. "There
 5 is a lot of technology that will allow us to do surgery that is safer for patients."*

6 [Emphasis added.]

7 46. On October 16, 2012, Intuitive issued a press release announcing its third quarter
 8 2012 financial results for the quarter ended September 30, 2012. The press release stated in
 9 pertinent part as follows:

10 Intuitive Surgical . . . , the industry leader in surgical robotics, today reported
 11 third quarter of 2012 revenue of **\$538 million, up approximately 20%** compared
 12 with \$447 million for the third quarter of 2011. **Third quarter of 2012 revenue
 13 growth was driven by continued adoption of da Vinci surgery procedures and
 14 higher da Vinci Surgical System sales.**

15 Third quarter of 2012 instruments and accessories revenue increased 24%
 16 to \$218 million from \$176 million in the third quarter of 2011. The growth in
 17 instruments and accessories revenue is the result of growth in *da Vinci* surgical
 18 procedures and the introduction of new products. Third quarter procedure growth
 19 of approximately 22% reflected US gynecologic and general surgery growth,
 20 partially offset by a decline in US prostatectomy procedures and slower growth in
 21 European procedures.

22 Third quarter of 2012 systems revenue was \$232 million, an increase of
 23 17%, compared with \$199 million during the third quarter of 2011. The growth in
 24 third quarter 2012 systems revenue was driven by sales of 155 *da Vinci* Surgical
 25 Systems compared with 133 system sales during the same period last year. Third
 26 quarter of 2012 service revenue increased 22% to \$88 million from \$72 million
 27 during the third quarter of 2011, reflecting growth in the installed base of *da Vinci*
 28 Surgical Systems.

Third quarter of 2012 operating income increased to \$211 million from
 \$179 million in the third quarter of 2011. Operating results for the third quarter of
 2012 included \$47 million of non-cash stock-based compensation expense
 compared with \$35 million for the third quarter of 2011.

Third quarter of 2012 net income was \$183 million, or \$4.46 per diluted
 share, compared with \$122 million, or \$3.05 per diluted share, for the third
 quarter of 2011. Included in net income are one-time tax benefits of
 approximately \$38 million, including reserve reversals associated with the lapse
 of statutes of limitations.

* * *

Commenting on the announcement, Dr. Gary Guthart, President and CEO of Intuitive Surgical, said, "Our third quarter highlighted both market strengths and significant headwinds. Procedures came in below our expectations, driven by conditions in Europe and changes in prostate cancer detection and treatment. On the positive side, acceptance of da Vinci general and gynecologic surgery continues to grow."

[Emphasis added.]

47. Later in the day on October 16, 2012, Intuitive held an earnings conference call providing additional positive statements about the safety, efficacy and sales of the Company's da Vinci Surgical System and its third quarter 2012 financial results.

48. On October 18, 2012, Intuitive filed its quarterly financial report on Form 10-Q with the SEC that confirmed the same quarterly financial results. The 10-Q was signed by defendant Mohr and certified as to accuracy by defendants Guthart and Mohr. As to "Contingencies," the Form 10-Q stated in pertinent part that though Intuitive was "a party to various . . . legal actions that arose in the ordinary course of its business, . . . [t]he Company [did] not believe that any of these other legal actions [would] have a material adverse impact on its business, financial position or results of operations." Neither the reported third quarter 2012 financial results nor the Form 10-Q disclosed or properly reserved for Intuitive's potential liability to patients, regulators and investors for civil judgments, criminal/regulatory fines and penalties or related investor losses.

49. On January 22, 2013, Intuitive issued a press release announcing its fourth quarter and fiscal year 2012 financial results for the quarter and fiscal year ended December 31, 2012. The press release stated in pertinent part as follows:

Intuitive Surgical . . . , the industry leader in surgical robotics, today reported fourth quarter of 2012 revenue of **\$609 million, up approximately 23%** compared with \$497 million for the fourth quarter of 2011. **Fourth quarter of**

2012 revenue growth was driven by continued adoption of da Vinci surgery procedures and higher da Vinci Surgical System sales.

Fourth quarter of 2012 instruments and accessories revenue increased 29% to \$254 million from \$196 million in the fourth quarter of 2011. The growth in instruments and accessories revenue is the result of growth in *da Vinci* surgical procedures and the introduction of new products. *da Vinci* surgical procedures grew approximately 25% in the fourth quarter of 2012 compared to the fourth quarter of 2011, driven primarily by U.S. gynecology and general surgery growth, and partially offset by a decline in U.S. prostatectomy procedures.

Fourth quarter of 2012 systems revenue was \$265 million, an increase of 18%, compared with \$225 million during the fourth quarter of 2011. The growth in fourth quarter of 2012 systems revenue was driven by sales of 175 *da Vinci* Surgical Systems compared with sales of 152 systems during the same period last year. Fourth quarter of 2012 service revenue increased 20% to \$91 million from \$75 million during the fourth quarter of 2011, reflecting growth in the installed base of *da Vinci* Surgical Systems.

Fourth quarter of 2012 operating income increased to \$248 million from \$200 million in the fourth quarter of 2011. Operating results for the fourth quarter of 2012 included \$38 million of non-cash stock-based compensation expense compared with \$35 million for the fourth quarter of 2011.

* * *

Fourth quarter of 2012 net income was \$175 million, or \$4.25 per diluted share, compared with \$151 million, or \$3.75 per diluted share, for the fourth quarter of 2011.

Revenue for the year ended December 31, 2012 totaled ***\$2,179 million, increasing 24%*** from \$1,757 million for the year ended December 31, 2011. ***Net income for the year ended December 31, 2012 was \$657 million, or \$15.98 per diluted share***, compared to net income of \$495 million, or \$12.32 per diluted share, for the year ended December 31, 2011.

* * *

Commenting on the announcement, Dr. Gary Guthart, President and CEO of Intuitive Surgical, said, "We are pleased with our fourth quarter procedure performance and revenue growth. Our results reflect expanding da Vinci Surgical System use across a broadening array of procedures and strong execution by our team."

[Emphasis added.]

1 50. Later in the day on January 22, 2013, Intuitive held an earnings conference call
2 providing additional positive statements about the safety, efficacy and sales of the Company's
3 da Vinci Surgical System and its fourth quarter and fiscal year 2012 financial results.

4
5 51. On February 4, 2013, Intuitive filed its 2012 annual report on Form 10-K with
6 the SEC, which confirmed the same quarterly and fiscal financial results reported above. The
7 Form 10- K was signed by defendants Guthart, Mohr, Smith and each of the Company's
8 directors, and was certified as to accuracy by defendants Guthart and Mohr. As to
9 "Contingencies," the Form 10-K stated in pertinent part that though Intuitive was "a party to
10 various . . . legal actions that arose in the ordinary course of its business, . . . [t]he Company
11 [did] not believe that any of these other legal actions [would] have a material adverse impact on
12 its business, financial position or results of operations." Neither the reported fourth
13 quarter/fiscal year 2012 financial results nor the Form 10-K disclosed or properly reserved for
14 Intuitive's potential liability to patients, regulators and investors for civil judgments,
15 criminal/regulatory fines and penalties or related investor losses.

16
17
18 52. On March 6, 2013, Intuitive filed its annual proxy statement to shareholder for
19 use in voting at the 2013 annual shareholder meeting. As to "Board Responsibilities," the 2013
20 proxy statement stated in pertinent part:

21
22 *The Board's primary responsibility is to seek to maximize long-term*
23 *stockholder value. . . . In fulfilling the Board's responsibilities, directors have*
24 *full access to the Company's management, external auditors and outside*
25 *advisors. With respect to the Board's role in risk oversight of the Company, the*
26 *Board of Directors discusses the Company's risk exposures and risk*
management of various parts of the business, including appropriate guidelines
and policies to minimize business risks and major financial risks and the steps
management has undertaken to control them.

27 [Emphasis added.]
28

1 53. On March 13, 2013, Intuitive issued a press release entitled "Intuitive Surgical
2 Comments on Medical Device Reporting Practices." The press release stated in pertinent part as
3 follows:
4

5 In response to general inquiries regarding a recent rise in Medical Device
6 Reports (MDR) filed by Intuitive Surgical, *the company explained that the noted*
7 *rise does not reflect a change in product performance but rather a change in*
8 *MDR reporting practices.*

9 *In September 2012, Intuitive Surgical revised its MDR practices,*
10 *resulting in increased reports of device malfunction MDRs, the vast majority of*
11 *which were related to instruments and not to systems. None of these device*
12 *malfunction MDRs involved reportable injuries or deaths.*

13 *"We self-identified the reporting issue, notified the FDA and revised our*
14 *practices," said Dave Rosa, Senior Vice President, Emerging Procedures and*
15 *Technologies, Intuitive Surgical.*

16 MDRs can be found in the FDA's MAUDE database, which is updated by
17 FDA regularly. The most common type of report filed under the company's
18 revised MDR practices involves instrument cable breaks. These cable breaks
19 render the instrument non-functional and require an instrument change, which can
20 be accomplished quickly.

21 *The company also made an administrative change in how MDRs*
22 *previously reported as adverse events were subcategorized. This change has not*
23 *increased the total number of adverse event reports.* This will result in an
24 increase in events in the "serious injury" subcategory and a corresponding
25 decrease in the "other" subcategory. *Total adverse event rates have remained low*
26 *and in line with historical trends.*

27 [Emphasis added.]

28 54. With the price of Intuitive stock plummeting, on March 20, 2013, the Intuitive
Board of Directors authorized the Company to repurchase an additional \$1 billion worth of the
Company's outstanding common stock in order to buttress the stock price.

 55. On April 18, 2013, Intuitive issued a press release announcing its first quarter
2013 financial results for the quarter ended March 30, 2013. The press release stated in
pertinent part as follows:

1 Intuitive Surgical . . . the industry leader in surgical robotics, today
2 reported first quarter of 2013 revenue of **\$611 million, up approximately 23%**
3 **compared with \$495 million for the first quarter of 2012. First quarter of 2013**
4 **revenue growth was driven by continued growth of da Vinci surgery procedures**
5 **and higher da Vinci Surgical System sales.**

6 **First quarter of 2013 net income was \$189 million, or \$4.56 per diluted**
7 **share, compared with \$144 million, or \$3.50 per diluted share, for the first quarter**
8 **of 2012.**

9 **"We are pleased with our first quarter revenue and earnings growth.**
10 **Despite a concerted effort by vocal critics of robotic surgery, support remains**
11 **strong among patients, surgeons and hospitals," said Dr. Gary Guthart,**
12 **President and CEO of Intuitive Surgical. "da Vinci Surgery has clinically**
13 **proven benefits in offering a minimally invasive option to a broader group of**
14 **patients than traditional technologies."**

15 First quarter of 2013 instruments and accessories revenue increased 26%
16 to \$261 million from \$208 million in the first quarter of 2012. The growth in
17 instruments and accessories revenue is the result of growth in *da Vinci* surgical
18 procedures and increased utilization of new products. *da Vinci* surgical
19 procedures grew approximately 18% in the first quarter of 2013 compared to the
20 first quarter of 2012, driven primarily by growth in general surgery, U.S.
21 gynecology and international urology procedures, partially offset by a decline in
22 U.S. prostatectomy procedures. The first quarter of 2013 contained one fewer
23 surgical operating day due to a Leap Year day in 2012. Excluding the impact of
24 Leap Year, procedure growth was approximately 20%.

25 First quarter of 2013 systems revenue was \$256 million, an increase of
26 24%, compared with \$207 million during the first quarter of 2012. The growth in
27 first quarter of 2013 systems revenue was driven by sales of 164 *da Vinci* Surgical
28 Systems compared with sales of 140 systems during the same period last year.
First quarter of 2013 service revenue increased 17% to \$94 million from \$81
million during the first quarter of 2012, reflecting growth in the installed base of
da Vinci Surgical Systems.

First quarter of 2013 operating income increased to \$251 million from
\$193 million in the first quarter of 2012. Operating results for the first quarter of
2013 included \$38 million of non-cash stock-based compensation expense
compared with \$34 million for the first quarter of 2012.

[Emphasis added.]

56. As a result of defendants' efforts to conceal significant safety problems with the
da Vinci Surgical System and their false statements concerning the Company's business metrics

1 and financial prospects, Intuitive stock traded at artificially inflated prices during the Class
2 Period, reaching a Class Period high of nearly \$595 per share in intraday trading by April 18,
3 2012. Meanwhile, with the Company's stock price soaring, nearly every senior executive of
4 Intuitive cashed in, selling 410,000 shares of their personally held Intuitive stock into the open
5 market at fraud-inflated prices during the Class Period and *reaping more than \$218.6 million* in
6 proceeds.
7

8 57. The true facts, which were known or recklessly disregarded by defendants but
9 concealed from the investing public during the Class Period, were as follows:
10

11 (a) defects in the da Vinci Surgical System had caused a substantial number
12 of patient injuries resulting in adverse incident reports prior to and during the Class Period;

13 (b) not all of these adverse incident reports were being reported to the FDA,
14 exposing the Company to significant regulatory risk and potential criminal sanctions;

15 (c) Intuitive knew, based on the receipt and review of adverse incident
16 reports and its executive's knowledge of the then-ongoing discussions with the FDA during the
17 Class Period that there was a substantial risk that the FDA might limit or restrict sales and
18 marketing of the da Vinci Surgical System;

19 (d) Intuitive was engaging in sales practices that violated community
20 standards and their own protocol agreed upon with the FDA, further exposing the Company to
21 criminal and civil sanctions;

22 (e) Intuitive was exposed to hundreds of millions of dollars in potential civil
23 liability to injured and deceased patients and their families;

24 (f) Intuitive failed to properly reserve for potential liability to civil litigants;
25 and,

26 (g) as a result, defendants lacked a reasonable basis to make positive
27 statements about the safety and effectiveness of the da Vinci Surgical System, the Company's
28 business metrics and its Class Period financial results and outlook.

58. On February 28, 2013, the FDA sent a letter to surgeons participating in the FDA
sponsored MedSun survey asking them to provide information about medical complications
associated with use of the da Vinci Surgical System. The FDA indicated that the survey was

1 prompted by an “increase in [the] number of reports” of “adverse events” involving the da
2 Vinci Surgical System. On this news, the price of Intuitive stock, which had opened at \$573.44
3 per share that morning, plummeted on unusually high trading volume, closing down more than
4 10% at \$509.89 per share, after trading below \$493 per share in intraday trading.
5

6 59. Then, on March 5, 2013, *Bloomberg* ran an expose disclosing that its review of
7 pleadings in at least ten lawsuits filed against Intuitive during the prior 14 months and FDA
8 adverse incident reports had uncovered that robotic surgical systems made by Intuitive had been
9 linked to at least 70 deaths in informal incident reports sent to the FDA since 2009. On this
10 news, the Company’s stock price, which had closed the previous evening at \$541.32 per share,
11 again plummeted on unusually high trading volume, closing down approximately 3% at \$525.72
12 per share after trading as low as \$514 per share in intraday trading.
13

14 60. On March 14, 2013, the president of the ACOG, Dr. James Breeden, issued a
15 statement contending that, among other things, “[r]obotic surgery is not the only or the best
16 minimally invasive approach for hysterectomy,” and “there is no good data proving that robotic
17 hysterectomy is even as good as – let alone better – than existing, and far less costly, minimally
18 invasive alternatives.” As reported by *Bloomberg* the next day, March 15, 2013, “Robotic
19 surgery for hysterectomies doesn’t improve outcomes and shouldn’t be the first choice for most
20 women, a doctors’ group said, sending Intuitive Surgical Inc. (ISRG) to its lowest value in
21 almost 14 months,” emphasizing that the ACOG, “which represents 56,000 U.S. physicians,
22 said expertise with Intuitive’s da Vinci robot system is limited and surgeons learning the new
23 technology may have higher rates of complications.” Once again, the price of Intuitive stock,
24 which had closed at \$509.33 per share on March 13, 2013, plummeted on unusually high
25
26
27
28

1 trading volume between March 14th and 15th, closing down approximately 10% at \$459.44 per
2 share on March 15, 2013.

3
4 61. On March 20, 2013, Massachusetts' Quality and Patient Safety Division of the
5 Executive Office of Health and Human Services issued an advisory, which stated, in part,
6 that "[o]ver the last two years, the Quality and Patient Safety Division . . . has received an
7 increasing number of Safety and Quality Review . . . reports of patient complications associated
8 with robot assisted surgery."

9
10 62. On March 25, 2013, *The New York Times* ran an expose entitled "Salesmen in
11 the Surgical Suite," which described one of the wrongful death lawsuits presently pending
12 against Intuitive as follows:

13 When Fred E. Taylor arrived at Harrison Medical Center in Silverdale,
14 Wash., for a routine prostatectomy, he expected the best medical care new
15 technology had to offer: robotic surgery, billed as safer, less painful and easier on
the body than traditional surgery.

16 The operation, on Sept. 9, 2008, was supposed to take five hours. But it
17 was marred by a remarkable cascade of complications and dragged on for more
18 than 13 hours, leaving Mr. Taylor, who had been an active 67-year-old retiree,
19 incontinent and with a colostomy bag, and leading to kidney and lung damage,
sepsis and a stroke.

20 Mr. Taylor survived his injuries but died last year. *Now, his wife, Josette,*
21 *issuing Intuitive Surgical Inc., the company that makes the equipment and trained*
22 *the surgeon to use it. As it turned out, the surgeon, Dr. Scott Bildsten, had never*
before used the robotic equipment without supervision.

23 "We are the old school, where you trust the doctor," said Mrs. Taylor, who
24 noted that her husband's life was so limited after the operation that he used to cry
about being "trapped in this body."

25 *It is not the first time patients have claimed they were harmed by*
26 *Intuitive's robotic surgical equipment, called the da Vinci Surgical System. But*
27 *the Taylor case, set for trial in April, is unusual. Internal company e-mails,*
28 *provided to The New York Times by lawyers for the Taylor estate, offer a glimpse*
into the aggressive tactics used to market high-tech medical devices and raise

1 *questions about the quality of training provided to doctors before they use new*
2 *equipment on patients.*

3 Intuitive, based in Sunnyvale, Calif., declined to comment on the lawsuit
4 but said studies showed that its robotic equipment results in better outcomes than
5 conventional open surgery. "The most objective and therefore best measure of
6 efficacy for all of those involved in training – from Intuitive Surgical, the
7 hospitals, the proctors and the surgeons themselves – is represented in the
8 comparative clinical outcomes of da Vinci surgery," said Angela Wonson, the
9 company's vice president for communications.

10 According to Intuitive, 1,371 hospitals in the United States have purchased
11 a da Vinci system, and many have purchased two. Nearly half a million
12 procedures worldwide were performed robotically last year, including
13 prostatectomies and hysterectomies, among other operations.

14 A surgeon using the da Vinci system sits at a console with a camera that
15 provides a high-definition, three-dimensional image of the surgical site. He or she
16 manipulates miniaturized instruments; computer and robotic technology translates
17 and scales the surgeon's hand movements.

18 Hospitals are responsible for setting the credentialing standards, or
19 training requirements, for physicians who will use the equipment on patients. But
20 internal company e-mails suggest that Intuitive's sales representatives were
21 intimately involved in the process, presenting themselves as experts and pressing
22 for lower standards in order to ease the training path for busy surgeons, to
23 increase use of the equipment and to drive sales.

24 In an e-mail dated May 31, 2011, a Western regional sales manager for
25 Intuitive noted that area surgeons had used robotic equipment only five times,
26 although the company's goal was to see 36 robotic operations performed by the
27 end of June. He urged sales staff to persuade surgeons to switch upcoming cases
28 to robotic ones

"Don't let proctoring or credentialing" – shorthand for supervised surgery
and hospital certification – "get in our way," the e-mail said.

In December 2009, a sales representative urged a hospital in Billings,
Mont., to ease up on its credentialing requirement, saying in an e-mail that
requiring surgeons to do five supervised operations using the robot before going
solo was "on the high side" and could have "unintended consequences." Hospital
officials replied, saying, "We will review and most likely will decrease the 5
down to 3."

Ms. Wonson, the Intuitive spokeswoman, said the company does not get
involved in determining who is qualified to operate its robotic equipment, which

1 is the responsibility of the hospitals. "We do not make recommendations," she
2 said in an e-mail.

3 Dr. Bildsten was one of six doctors given free training by Intuitive,
4 including one day of hands-on training at the company's facility in California. He
5 also had done two practice runs on the equipment with a more experienced
6 surgeon before operating on Mr. Taylor, he said in a legal deposition. Still, he
said, no one warned him that a patient like Mr. Taylor, who weighed nearly 300
pounds, was not a good candidate for robotic surgery.

7 He did not respond to telephone messages requesting comment. Company
8 e-mails submitted in the Taylor case also suggest that members of the sales staff
9 at Intuitive worked diligently to persuade surgeons to choose the da Vinci
procedure for patients even when they were planning to use a different method.

10 In one e-mail on June 28, 2010, a clinical sales director urged the sales
11 team – whose compensation was linked to filling a quarterly quota of operations –
12 to "scrub" doctors' schedules and get procedures moved up by a few days in order
13 to make the quarterly goal. "Let's bring it home!" she wrote. "Be sure you scrub
all schedules, identify cases on Thursday and Friday that can be moved up."

14 On Aug. 9, 2010, a clinical sales director wrote to his team: "Be proactive
15 in finding cases to convert. Be prepared to challenge each trained surgeon every
16 time you see a lap or open case. Be unsatisfied with the thought of ending a day
without a converted case." ("Lap" refers to laparoscopic procedures, an alternate
form of minimally invasive surgery.)

17 The sales representatives were often in the operating rooms, where they
18 offered advice to newly trained surgeons who were having technical difficulties
19 with the robot, according to legal depositions in the Taylor case. The
20 representatives also appear to have had access to the operating room schedules
and were urged to "partner" with surgical teams "to review and select appropriate
cases," according to court documents.

21 On March 3, 2011, a sales representative wrote in an e-mail to his team
22 that he had met with a gynecologic surgeon in Utah who was trained a year earlier
23 but had stopped doing robotic cases. The surgeon subsequently "agreed to convert
24 the next two to da Vinci."

25 In depositions, some Intuitive sales representatives defended their
26 involvement, saying that it was important for surgeons to use the robotic system
frequently in order to maintain and improve their skills.

27 The Food and Drug Administration allowed the sale of the da Vinci
28 system in 2000 under a controversial process called "premarket notification,"
often used to bring medical devices to market without the rigorous trials of safety

1 and efficacy typically required of new drugs. Manufacturers are able to exempt
2 devices from the rigorous trials by claiming they are similar to existing devices
3 already on the market.

4 When devices are brought to market this way, the F.D.A. "cannot require
5 training programs as a condition of clearance," said Synim Rivers, an agency
6 spokeswoman.

7 Before allowing this type of market clearance, the agency twice asked
8 Intuitive for more information about how doctors would be trained to use
9 company equipment. Intuitive provided details of a 70-item exam for surgeons
10 and a three day hands-on training protocol.

11 By 2002, however, the company had revamped its training program,
12 replacing the 70-item exam with a 10-question online quiz and reducing the time
13 spent in hands-on training at Intuitive's facility to one day.

14 The largest study to date of robotic hysterectomies has questioned the use
15 of robot-assisted surgery over more conventional forms of minimally invasive
16 surgery. A study published in February in The Journal of the American Medical
17 Association evaluated outcomes in 264,758 women who had laparoscopic or
18 robotically assisted hysterectomy and found no overall difference in complication
19 rates between the two groups.

20 But the researchers did find that robotically assisted surgery for
21 hysterectomy costs on average about one-third more than laparoscopic surgery.

22 Last week, Dr. James T. Breeden, the president of the American Congress
23 of Obstetricians and Gynecologists, publicly urged patients "to separate the
24 marketing hype from the reality" when considering a surgical method for
25 hysterectomy. "Just because it's newer and higher technology," he said, "doesn't
26 mean it's better."

27 [Emphasis added.]

28 63. Finally, on April 18, 2013, CNBC's Investigations, Inc. broadcast an expose on
the da Vinci Surgical System consisting of interviews with, among others, doctors, lawyers, and
patients who have filed lawsuits against Intuitive claiming they suffered injury while being
operated on by surgeons using the da Vinci Surgical System.

64. During the broadcast, CNBC referenced the FDA's MAUDE database, which
contains voluntary reports by manufacturers concerning adverse events involving medical

1 devices, including reports of injuries and deaths associated with use of the da Vinci Surgical
2 System.

3 65. A former Intuitive employee, interviewed by CNBC during the show on
4 condition of anonymity, stated that she recalled instances of da Vinci-related complications that
5 were not reported in MAUDE, and contended that the MAUDE database is “significantly
6 understated in terms of [da Vinci-related] complications.” Concurring was Dr. Martin Makary, a
7 prominent surgeon with the Johns Hopkins School of Medicine and an international expert on
8 patient safety, who shared with CNBC details of a study he co-authored entitled
9 “Underreporting of Robotic Surgery Complications.” The study contends there is “massive
10 underreporting” of robotic surgery complications. In particular, the report states that “[i]n the
11 case of Intuitive . . . some incidents [involving the da Vinci system] that have resulted in serious
12 injury and death were never reported or were reported late.”
13

14 66. On this news, the price of Intuitive stock closed down \$8.62 per share on April
15 19, 2013. Indeed, since February 27, 2013, the day before the FDA announced its MedSun
16 survey, Intuitive stock has *fallen nearly 19% – or \$110.25 per share* – from its Class Period
17 high on account of the above news, falling from \$595 per share to a close of \$484.75 per share
18 on April 19, 2013, *resulting in market capitalization losses of over \$4.4 billion.*
19
20
21

22 DEFENDANTS' SCIENTER

23 67. Defendants are Intuitive and its top officers and/or directors. Each ran Intuitive
24 as a manager, dealing with important issues facing Intuitive's business, and controlled the false
25 statements concerning Intuitive's Class Period operational and financial status in order to
26 facilitate their sales of hundreds of millions of dollars of their personally held Intuitive stock at
27 artificially inflated prices.
28

1 68. Each of the Individual Defendants, by virtue of their high-level positions with
2 Intuitive, directly participated in the management of Intuitive, was directly involved in the day-
3 today operations of Intuitive at the highest levels and was privy to confidential proprietary
4 information concerning Intuitive and its business, operations, adverse incident reports related to
5 the use of the da Vinci Surgical System, and the Company's financial statements and financial
6 condition and was aware of, or deliberately disregarded, that false and misleading statements
7 were being made by and regarding the Company. Because of their managerial positions with
8 Intuitive, each of the Individual Defendants had access to the adverse information about the da
9 Vinci Surgical System's efficacy and safety and Intuitive's business, financial condition and
10 prospects and knew (or deliberately disregarded) that the adverse facts alleged herein rendered
11 the positive representations made during the Class Period materially false and misleading.
12

13
14 69. Each Individual Defendant was personally familiar with the da Vinci Surgical
15 System's significant safety and efficacy problems because they had access to adverse incident
16 reports and repeatedly confirmed during the Class Period that they not only reviewed all
17 incoming data concerning the Company's products, but it has now been disclosed they were in
18 talks with FDA about those adverse incident reports for at least a portion of the Class Period. As
19 a result of their monitoring, each Individual Defendant was aware of the significant health and
20 safety concerns with the da Vinci Surgical System and the Company's substantial exposure to
21 civil and regulatory judgments, fines and penalties.
22

23
24 70. Each of the Individual Defendants knew about but failed to report the da Vinci
25 Surgical System's safety and efficacy problems during the Class Period, the substantial civil,
26 criminal and regulatory exposure the Company faced, and the Company's failure to adequately
27 reserve for such potential liability during the Class Period in order to maintain the artificial
28

1 inflation in Intuitive's stock price to facilitate the sale of more than \$218 million worth of their
2 personally held Intuitive stock at inflated prices.

3 **LOSS CAUSATION/ECONOMIC LOSS**

4
5 71. During the Class Period, as detailed herein, defendants engaged in a scheme to
6 deceive the market and a course of conduct that artificially inflated Intuitive's stock price and
7 operated as a fraud or deceit on Class Period purchasers of Intuitive stock by misrepresenting
8 the safety and efficacy of the da Vinci Surgical System and thus the Company's business
9 success and future business prospects. Defendants achieved this façade of success, growth and
10 strong future business prospects by blatantly misrepresenting the drug's safety and efficacy and
11 understating the Company's potential liability to civil judgments, fines and penalties. Later,
12 however, when defendants' prior misrepresentations and fraudulent conduct were disclosed and
13 became apparent to the market, Intuitive stock fell precipitously as the prior artificial inflation
14 came out of Intuitive's stock price. As a result of their purchases of Intuitive stock during the
15 Class Period, Plaintiff and other members of the Class suffered economic loss, *i.e.*, damages,
16 under the federal securities laws.
17

18
19 72. The significant declines in the price of Intuitive stock at the end of the Class
20 Period were a direct result of the nature and extent of defendants' fraud finally being revealed to
21 investors and the market. The timing and magnitude of Intuitive stock price declines negate any
22 inference that the loss suffered by Plaintiff and other Class members was caused by changed
23 market conditions, macroeconomic or industry factors or Company-specific facts unrelated to
24 the defendants' fraudulent conduct.
25

26 73. The economic loss, *i.e.*, damages, suffered by Plaintiff and other members of the
27 Class was a direct result of defendants' fraudulent scheme to artificially inflate Intuitive's stock
28

1 price and the subsequent significant decline in the value of Intuitive stock when defendants'
2 prior misrepresentations and other fraudulent conduct was revealed.

3
4 **APPLICATION OF PRESUMPTION OF RELIANCE;
FRAUD ON THE MARKET**

5 74. Plaintiff will rely upon the presumption of reliance established by the fraud-on-
6 the-market doctrine in that, among other things:

7
8 (a) Defendants made public misrepresentations or failed to disclose material
9 facts during the Class Period;

10 (b) The omissions and misrepresentations were material;

11 (c) The Company's common stock traded in an efficient market;

12 (d) The misrepresentations alleged would tend to induce a reasonable investor
13 to misjudge the value of the Company's common stock; and
14

15 (e) Plaintiff and other members of the Class purchased Intuitive common
16 stock between the time defendants misrepresented or failed to disclose material facts and the
17 time the true facts were disclosed, without knowledge of the misrepresented or omitted facts.

18 75. At all relevant times, the market for Intuitive common stock was efficient for the
19 following reasons, among others:

20
21 (a) As a regulated issuer, Intuitive filed periodic public reports with the SEC;
22 and

23 (b) Intuitive regularly communicated with public investors via established
24 market communication mechanisms, including through regular disseminations of press releases
25 on the major news wire services and through other wide-ranging public disclosures, such as
26 communications with the financial press, securities analysts, and other similar reporting services.
27
28

CLASS ACTION ALLEGATIONS

76. This is a class action on behalf of purchasers of Intuitive common stock during the Class Period (the "Class"). Excluded from the Class are the defendants and their families and the officers and directors of the Company and their families. Class members are so numerous that joinder of them is impracticable.

77. Common questions of law and fact predominate and include: (i) whether defendants violated the 1934 Act; (ii) whether defendants omitted and/or misrepresented material facts; (iii) whether defendants knew or recklessly disregarded that their statements were false; and (iv) whether the price of Intuitive common stock was inflated during the Class Period and the extent of and appropriate measure of damages.

78. Plaintiff's claims are typical of those of the Class. Prosecution of individual actions would create a risk of inconsistent adjudications. Plaintiff will adequately protect the interests of the Class. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

COUNT I
For Violations of §10(b) of the 1934 Act and Rule 10b-5
Against All Defendants

79. Plaintiff incorporates by reference ¶¶1-78 herein.

80. Defendants violated §10(b) and Rule 10b-5 by:

- (a) Employing devices, schemes and artifices to defraud;
- (b) Making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- (c) Engaging in acts, practices and a course of business that operated as a fraud or deceit upon the Class in connection with their purchases of Intuitive common stock.

81. Class members were damaged as they paid artificially inflated prices for Intuitive common stock in reliance on the integrity of the market.

COUNT II
For Violations of §20(a) of the 1934 Act
Against All Defendants

82. Plaintiff incorporates by reference ¶¶1-81.

83. The Individual Defendants acted as controlling persons of the Company within the meaning of §20(a) of the 1934 Act, 15 U.S.C. §78t(a), as alleged herein. By virtue of their stock ownership, high-level positions, and participation in and/or awareness of the Company's operations, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements that Plaintiff contend are false and misleading. Intuitive controlled the Individual Defendants and all of its employees.

84. By reason of such wrongful conduct, the defendants are liable pursuant to §20(a) of the 1934 Act. As a direct and proximate result of the wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's common stock during the Class Period.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for judgment as follows:

A. Determining that this action is a proper class action, designating Plaintiff as Lead Plaintiff and certifying Plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel.

B. Awarding Plaintiff and other members of the Class damages together with interest thereon;

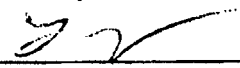
1 C. Awarding Plaintiff and other members of the Class costs and expenses of this
2 litigation, including reasonable attorneys' fees, accountants' fees and experts' fees and other
3 costs and disbursements; and
4

5 D. Awarding Plaintiff and other members of the Class such equitable/injunctive or
6 other and further relief as may be just and proper under the circumstances.

7 **JURY TRIAL DEMANDED**

8 Plaintiff hereby demands a trial by jury.

9 Dated: May 24, 2013

10 Respectfully submitted,
11 
12 _____

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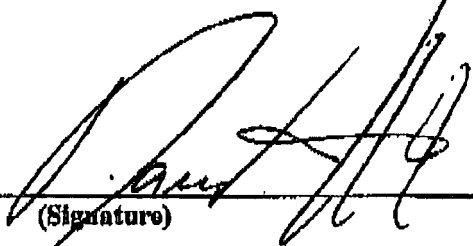
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**CERTIFICATION PURSUANT
TO FEDERAL SECURITIES LAWS**

1. I, Darian Adel, make this declaration pursuant to Section 27(a)(2) of the Securities Act of 1933 ("Securities Act") and/or Section 21D(a)(2) of the Securities Exchange Act of 1934 ("Exchange Act") as amended by the Private Securities Litigation Reform Act of 1995.
2. I have reviewed a Complaint against Intuitive Surgical, Inc. ("Intuitive Surgical" or the "Company"), and authorize the filing of a comparable complaint on my behalf.
3. I did not purchase or acquire Intuitive Surgical securities at the direction of plaintiff's counsel or in order to participate in any private action arising under the Securities Act or Exchange Act.
4. I am willing to serve as a representative party on behalf of a Class of investors who purchased or acquired Intuitive Surgical securities during the class period, including providing testimony at deposition and trial, if necessary. I understand that the Court has the authority to select the most adequate lead plaintiff in this action.
5. To the best of my current knowledge, the attached sheet lists all of my transactions in Intuitive Surgical securities during the Class Period as specified in the Complaint.
6. During the three-year period preceding the date on which this Certification is signed, I have not sought to serve as a representative party on behalf of a class under the federal securities laws.
7. I agree not to accept any payment for serving as a representative party on behalf of the class as set forth in the Complaint, beyond my pro rata share of any recovery, except such reasonable costs and expenses directly relating to the representation of the class as ordered or approved by the Court.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed 5/23/13
(Date)


(Signature)

Darian Adel
(Type or Print Name)

JS 44 (Rev. 12/12) and rev (1/15/13)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DARIAN ADEL, individually and On Behalf of All Others Similarly Situated,

(b) County of Residence of First Listed Plaintiff Pine Brook, NJ
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Lionel Z. Glancy (SBN 134180), Glancy Binkow & Goldberg LLP
1925 Century Park East, Suite 2100, Los Angeles, CA 90067
Telephone: (310) 201-9150

DEFENDANTS

INTUITIVE SURGICAL, INC., LONNIE M. SMITH, GARY S. GUTHART, SALVATORE J. BROGNA, AUGUSTO V. CASTELLO, JEROME J. McNAMARA, MARK J. MELTZER, et al.

County of Residence of First Listed Defendant Santa Clara County, CA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Private Securities Litigation Reform Act, 15 U.S.C. §§78j(b) and 78t(a); and 17 C.F.R. §240.10b-5
Brief description of cause:
Securities fraud - Violations of Sections 10(B) and 20(A) of the Exchange Act and SEC Rule 10B-5

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

05/24/2013

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-3)

(Place an "X" in One Box Only)

☐ SAN FRANCISCO/OAKLAND ☒ SAN JOSE ☐ EUREKA

FILED BY FAX