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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

, Individually and on)
Behalf of All Others Similarly Situated,)
)
Plaintiff,)
)
vs.)
)
INTUITIVE SURGICAL, INC., LONNIE M.)
SMITH, GARY S. GUTHART, SALVATORE)
J. BROGNA, AUGUSTO V. CASTELLO,)
JEROME J. McNAMARA, MARK J.)
MELTZER, MARSHALL L. MOHR, COLIN)
MORALES and DAVID J. ROSA,)
)
Defendants.)

No.)
CLASS ACTION)
)
COMPLAINT FOR VIOLATION OF THE)
FEDERAL SECURITIES LAWS)
)
)
)
DEMAND FOR JURY TRIAL)

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

9 **NATURE OF THE ACTION**

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

14 2. Defendant Intuitive manufactures robotic surgical systems, most notably the da Vinci
15 Surgical System. The da Vinci Surgical System allows surgery to be performed remotely using
16 robotic manipulators. The Company’s common stock is listed on the Nasdaq and forms part of the
17 Nasdaq-100 and S&P 500 indexes.

18 3. In 2000, the same year Intuitive common stock first became publicly listed, the U.S.
19 Food and Drug Administration (“FDA”) approved the use of the da Vinci Surgical System for
20 general laparoscopic surgery, which can be used to address gallbladder disease and gastroesophageal
21 disease. In 2001, the FDA approved use of the system for prostate surgery. The FDA has
22 subsequently approved the system for thoracoscopic surgery, cardiac procedures performed with
23 adjunctive incisions, and gynecologic procedures. Intuitive now dominates the robot-surgery field,
24 as it is the only company whose system is cleared in the United States for soft tissue procedures that
25 include general surgery, prostate operations and gynecological surgery.
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1 4. Throughout the Class Period, defendants issued a series of materially false and
2 misleading statements highlighting the purported safety and effectiveness of the Company's da Vinci
3 Surgical System, while concomitantly announcing quarter after quarter of record financial results.
4 Sales of Intuitive's robots, priced at \$1.5 million each, have helped make Intuitive one of the hottest
5 stocks in health care, growing 61% since the end of February 2010 to a market value of \$21.7 billion
6 by March 2013. Due in large part to what the public has recently learned were disreputable and
7 unsafe sales practices, the number of U.S. procedures done with the robots grew to approximately
8 367,000 in 2012, up from 292,000 in 2011 and 228,000 in 2010. As a result of defendants' efforts to
9 conceal significant safety and efficacy problems with the da Vinci Surgical System – which were
10 exacerbated by the Company's disreputable sales practices – and false statements concerning the
11 Company's business metrics and financial prospects, Intuitive stock traded at artificially inflated
12 prices during the Class Period, reaching a Class Period high of nearly \$595 per share in intraday
13 trading by April 18, 2012. Meanwhile, with the price of Intuitive stock soaring, nearly every senior
14 executive of Intuitive cashed in, collectively selling close to 410,000 shares of their personally held
15 Intuitive stock into the open market at fraud-inflated prices during the Class Period, *reaping more*
16 *than \$218.6 million* in proceeds.

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

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

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

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

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

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

8 (f) Intuitive failed to properly reserve for potential liability to civil litigants; and

9 (g) as a result, defendants lacked a reasonable basis to make positive statements
10 about the safety and effectiveness of the da Vinci Surgical System, the Company's business metrics
11 and its Class Period financial results and outlook.
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13 6. On February 28, 2013, the FDA sent a letter to surgeons participating in the FDA-
14 sponsored Medical Product Safety Network ("MedSun"), asking them to provide information about
15 medical complications associated with use of the da Vinci Surgical System. The FDA indicated that
16 the survey was prompted by an "increase in [the] number of reports" of "adverse events" involving
17 the da Vinci Surgical System. On this news, the price of Intuitive stock, which had opened at
18 \$573.44 per share that morning, plummeted on unusually high trading volume, closing down more
19 than 10% at \$509.89 per share, after trading below \$493 per share in intraday trading.
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21 7. Then, on March 5, 2013, *Bloomberg* ran an expose disclosing that its review of
22 pleadings in at least ten lawsuits filed against Intuitive during the prior 14 months and FDA adverse
23 incident reports had uncovered that robotic surgical systems made by Intuitive had been linked to at
24 least 70 deaths in informal incident reports sent to the FDA since 2009. On this news, the price of
25 Intuitive stock, which had closed the previous evening at \$541.32 per share, again plummeted on
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1 unusually high trading volume, closing down approximately 3% at \$525.72 per share, after trading
2 as low as \$514 per share in intraday trading.

3 8. On March 14, 2013, the president of the American Congress of Obstetricians and
4 Gynecologists (“ACOG”), Dr. James Breeden, issued a statement contending that, among other
5 things, “[r]obotic surgery is not the only or the best minimally invasive approach for hysterectomy,”
6 and “there is no good data proving that robotic hysterectomy is even as good as – let alone better –
7 than existing, and far less costly, minimally invasive alternatives.” As reported by *Bloomberg* the
8 next day, March 15, 2013, “Robotic surgery for hysterectomies doesn’t improve outcomes and
9 shouldn’t be the first choice for most women, a doctors’ group said, sending Intuitive Surgical Inc.
10 (ISRG) to its lowest value in almost 14 months,” emphasizing that the ACOG, “which represents
11 56,000 U.S. physicians, said expertise with Intuitive’s da Vinci robot system is limited and surgeons
12 learning the new technology may have higher rates of complications.” Once again, the price of
13 Intuitive stock, which had closed at \$509.33 per share on March 13, 2013, plummeted on unusually
14 high trading volume between March 14th and 15th, closing down approximately 10% at \$459.44 per
15 share on March 15, 2013.

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18 9. On March 20, 2013, Massachusetts’ Quality and Patient Safety Division of the
19 Executive Office of Health and Human Services issued an advisory, which stated, in part, that
20 “[o]ver the last two years, the Quality and Patient Safety Division . . . has received an increasing
21 number of Safety and Quality Review . . . reports of patient complications associated with robot-
22 assisted surgery.”

23
24 10. Finally, on April 18, 2013, CNBC’s Investigations, Inc. broadcast an expose on the
25 da Vinci Surgical System consisting of interviews with, among others, doctors, lawyers, and patients
26 who have filed lawsuits against Intuitive claiming they suffered injury while being operated on by
27 surgeons using the da Vinci Surgical System.

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1 **PARTIES**

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

4 16. Defendant Intuitive manufactures robotic surgical systems.

5 17. Defendant Lonnie M. Smith (“Smith”) is, and was throughout the Class Period, the
6 Chairman of Intuitive’s Board of Directors and an executive of the Company. Defendant Smith
7 previously served as Intuitive’s Chief Executive Officer (“CEO”) between June 1997 and January
8 2010. Defendant Smith sold the following 202,422 shares of Intuitive stock during the Class Period
9 at inflated prices, receiving *more than \$106.3 million* in proceeds:
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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

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25 18. Defendant Gary S. Guthart (“Guthart”) is, and was throughout the Class Period,
26 Intuitive’s President and CEO. Defendant Guthart sold the following 16,000 shares of Intuitive
27 stock during the Class Period at inflated prices, receiving *more than \$8.7 million* in proceeds:
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1	DATE	NUMBER OF SHARES SOLD	PRICE	SELLING PROCEEDS
2	20-Apr-2012	1,312	\$575.04	\$754,452
	20-Apr-2012	1,500	\$574.98	\$862,470
3	20-Apr-2012	688	\$575.04	\$395,628
	24-Jul-2012	2,000	\$473.47	\$946,940
4	26-Jul-2012	1,500	\$490.00	\$735,000
	22-Oct-2012	1,000	\$545.63	\$545,630
5	22-Oct-2012	2,000	\$544.48	\$1,088,960
	22-Oct-2012	1,500	\$542.98	\$814,470
6	25-Jan-2013	1,500	\$577.67	\$866,505
7	25-Jan-2013	1,000	\$578.07	\$578,070
	25-Jan-2013	2,000	\$577.57	\$1,155,140
8	TOTAL	16,000		\$8,743,265

9 19. Defendant Salvatore J. Brogna (“Brogna”) is, and was throughout the Class Period,
10 Intuitive’s Senior Vice President, Product Development. Defendant Brogna sold the following
11 39,042 shares of Intuitive stock during the Class Period at inflated prices, receiving *more than \$18.3*
12 *million* in proceeds:

13	DATE	NUMBER OF SHARES SOLD	PRICE	SELLING PROCEEDS
14	01-Dec-2011	3,000	\$424.67	\$1,274,010
15	01-Dec-2011	7,656	\$424.67	\$3,251,274
	01-Dec-2011	1,250	\$424.67	\$530,838
16	01-Dec-2011	9,167	\$424.67	\$3,892,950
	01-Mar-2012	1,250	\$510.12	\$637,650
17	01-Mar-2012	1,000	\$510.12	\$510,120
	01-Mar-2012	1,094	\$510.12	\$558,071
18	01-Mar-2012	1,250	\$510.12	\$637,650
	01-Jun-2012	1,250	\$511.78	\$639,725
19	01-Jun-2012	1,094	\$511.78	\$559,887
	01-Jun-2012	1,000	\$511.78	\$511,780
20	04-Sep-2012	1,250	\$490.25	\$612,813
	03-Dec-2012	2,187	\$528.75	\$1,156,376
21	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
23	01-Mar-2013	1,094	\$553.00	\$604,982
	01-Mar-2013	1,250	\$553.00	\$691,250
24	TOTAL	39,042		\$18,340,813

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

3	DATE	NUMBER OF SHARES	PRICE	SELLING PROCEEDS
4		SOLD		
4	20-Apr-2012	5,000	\$575.13	\$2,875,650
5	20-Apr-2012	5,000	\$575.34	\$2,876,700
5	20-Apr-2012	6,250	\$575.17	\$3,594,813
6	20-Apr-2012	5,000	\$575.21	\$2,876,050
6	20-Apr-2012	5,000	\$575.29	\$2,876,450
7	TOTAL	26,250		\$15,099,663

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

13	DATE	NUMBER OF SHARES	PRICE	SELLING PROCEEDS
13		SOLD		
14	21-Oct-2011	1,536	\$420.00	\$645,120
14	21-Oct-2011	231	\$418.50	\$96,674
15	20-Apr-2012	10,000	\$575.11	\$5,751,100
15	20-Apr-2012	10,000	\$575.08	\$5,750,800
16	20-Apr-2012	10,000	\$575.06	\$5,750,600
16	20-Apr-2012	9,144	\$575.03	\$5,258,074
17	22-Oct-2012	6,250	\$543.54	\$3,397,125
17	28-Jan-2013	8,464	\$574.03	\$4,858,590
18	TOTAL	55,625		\$31,508,083

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

24	DATE	NUMBER OF SHARES	PRICE	SELLING PROCEEDS
24		SOLD		
24	20-Apr-2012	1,500	\$575.30	\$862,950
25	20-Apr-2012	2,000	\$575.21	\$1,150,420
25	24-Jul-2012	2,000	\$474.05	\$948,100
26	13-Aug-2012	2,000	\$510.02	\$1,020,040
26	22-Oct-2012	2,000	\$543.59	\$1,087,180
27	22-Oct-2012	5,000	\$550.00	\$2,750,000
27	22-Oct-2012	375	\$543.88	\$203,955

1	22-Oct-2012	2,625	\$543.88	\$1,427,685
	25-Jan-2013	1,875	\$577.60	\$1,083,000
2	25-Jan-2013	5,000	\$577.93	\$2,889,650
	25-Jan-2013	125	\$577.60	\$72,200
3	25-Jan-2013	3,000	\$577.61	\$1,732,830
4	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
10	30-Apr-2012	200	\$586.50	\$117,300
11	30-Apr-2012	500	\$585.50	\$292,750
	30-Apr-2012	400	\$583.50	\$233,400
12	30-Apr-2012	300	\$584.50	\$175,350
	30-Apr-2012	1,200	\$583.50	\$700,200
13	30-Apr-2012	200	\$584.50	\$116,900
	30-Apr-2012	400	\$585.50	\$234,200
14	30-Apr-2012	400	\$584.50	\$233,800
	30-Apr-2012	700	\$581.50	\$407,050
15	30-Apr-2012	700	\$581.50	\$407,050
	30-Apr-2012	200	\$582.50	\$116,500
16	30-Apr-2012	600	\$583.50	\$350,100
	30-Apr-2012	300	\$582.50	\$174,750
17	30-Apr-2012	1,000	\$581.50	\$581,500
	30-Apr-2012	400	\$585.50	\$234,200
18	30-Apr-2012	300	\$580.50	\$174,150
	30-Apr-2012	500	\$586.50	\$293,250
19	30-Apr-2012	400	\$586.50	\$234,600
20	30-Apr-2012	100	\$580.50	\$58,050
	25-Jul-2012	3,300	\$478.58	\$1,579,314
21	22-Oct-2012	3,300	\$543.22	\$1,792,626
	22-Oct-2012	4,000	\$543.02	\$2,172,080
22	28-Jan-2013	1,200	\$574.57	\$689,484
	28-Jan-2013	3,600	\$574.57	\$2,068,452
23	28-Jan-2013	3,200	\$574.12	\$1,837,184
24	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 Health. Prior to joining Intuitive, defendant Guthart was part of the core team developing foundation technology for computer-enhanced surgery at SRI.

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

1 sales of 133 da Vinci Surgical Systems compared to 105 system sales during the
2 same period last year. Third quarter of 2011 services revenue increased 25% to \$72
3 million from \$57 million during the third quarter of 2010, reflecting growth in the
4 installed base of da Vinci Surgical Systems.

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

9 ***Third quarter of 2011 net income increased 41% to \$122 million, or \$3.05***
10 ***per diluted share, from \$87 million, or \$2.14 per diluted share for the third quarter of***
11 ***2010.***

12 * * *

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

16 32. Later in the day on October 18, 2011, Intuitive held an earnings conference call
17 providing additional positive statements about the safety, efficacy and sales of the Company’s da
18 Vinci Surgical System, its third quarter 2011 financial results and raising its guidance for fiscal
19 2011, stating the Company then saw revenue growth of as much as 23% compared with an earlier
20 target of 21%.

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

23 34. On October 19, 2011, Intuitive filed its third quarter 2011 quarterly financial report
24 on Form 10-Q with the SEC that confirmed the same quarterly financial results. The Form 10-Q was
25 signed by defendant Mohr and certified as to accuracy by defendants Guthart and Mohr. As to
26 “Contingencies,” the Form 10-Q stated in pertinent part that though Intuitive was “a party to
27 various . . . legal actions that arose in the ordinary course of its business,” “[t]he Company [did] not
28 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 2011 financial results
nor the Form 10-Q disclosed or properly reserved for Intuitive’s potential liability to patients,

1 regulators and investors for civil judgments, criminal/regulatory fines and penalties or related
2 investor losses.

3 35. On January 19, 2012, Intuitive issued a press release announcing its fourth quarter
4 and fiscal 2011 financial results for the quarter and fiscal year ended December 31, 2011. The press
5 release stated in pertinent part as follows:
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7 Intuitive Surgical . . . , the industry leader in surgical robotics, today reported fourth
8 quarter of 2011 **revenue of \$497 million, up 28%** compared with \$389 million for
9 the fourth quarter of 2010. **Fourth quarter of 2011 revenue growth was driven by**
10 **continued robotic procedure adoption and higher da Vinci Surgical System sales.**

11 Fourth quarter of 2011 instruments and accessories revenue increased 30% to
12 \$196 million from \$151 million in the fourth quarter of 2010. The growth in
13 instruments and accessories revenue was primarily driven by growth in *da Vinci*
14 surgical procedures of approximately 27%. Fourth quarter of 2011 systems revenue
15 was \$225 million, an increase of 27%, compared with \$178 million during the fourth
16 quarter of 2010. The growth in fourth quarter 2011 systems revenue was driven by
17 sales of 152 *da Vinci* Surgical Systems compared with 124 system sales during the
18 same period last year. Fourth quarter of 2011 service revenue increased 24% to \$75
19 million from \$61 million during the fourth quarter of 2010, reflecting growth in the
20 installed base of *da Vinci* Surgical Systems.

21 **Fourth quarter of 2011 operating income increased to \$200 million** from
22 \$154 million in the fourth quarter of 2010. Operating results for the fourth quarter of
23 2011 included \$35 million of non-cash stock-based compensation expense compared
24 with \$30 million for the fourth quarter of 2010.

25 * * *

26 **Fourth quarter of 2011 net income was \$151 million, or \$3.75 per diluted**
27 **share**, compared with \$121 million, or \$3.02 per diluted share for the fourth quarter
28 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.”

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

4 37. On February 6, 2012, Intuitive filed its 2011 annual financial report on Form 10-K
5 with the SEC that confirmed the same quarterly and fiscal year financial results reported above. The
6 Form 10-K was signed by defendants Guthart, Mohr, Smith and each of the Company's directors,
7 and was certified as to accuracy by defendants Guthart and Mohr. As to "Contingencies," the Form
8 10-K stated in pertinent part that though Intuitive was "a party to various . . . legal actions that arose
9 in the ordinary course of its business," "[t]he Company [did] not believe that any of these other legal
10 actions [would] have a material adverse impact on its business, financial position or results of
11 operations." Neither the reported fourth quarter/fiscal year 2011 financial results nor the Form 10-K
12 disclosed or properly reserved for Intuitive's potential liability to patients, regulators and investors
13 for civil judgments, criminal/regulatory fines and penalties or related investor losses.

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

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

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

27 Intuitive Surgical . . . , the industry leader in surgical robotics, today reported first
28 quarter of 2012 revenue of ***\$495 million, up 28%*** compared with \$388 million for the

1 first quarter of 2011. ***First quarter of 2012 revenue growth was driven by continued***
2 ***robotic procedure adoption and higher da Vinci Surgical System sales.***

3 First quarter of 2012 instruments and accessories revenue increased 32% to
4 \$208 million from \$157 million in the first quarter of 2011. The growth in
5 instruments and accessories revenue is the result of growth in da Vinci surgical
6 procedures and the introduction of new products. Procedure growth of approximately
7 29% primarily reflects higher US gynecologic procedures, US general surgery
8 procedures and international urologic procedures.

9 First quarter of 2012 systems revenue was \$207 million, an increase of 24%,
10 compared with \$167 million during the first quarter of 2011. The growth in first
11 quarter 2012 systems revenue was driven by sales of 140 da Vinci Surgical Systems
12 compared with 120 system sales during the same period last year. First quarter of
13 2012 service revenue increased 27% to \$81 million from \$64 million during the first
14 quarter of 2011, reflecting growth in the installed base of da Vinci Surgical Systems.

15 ***First quarter of 2012 operating income increased to \$193 million*** from \$148
16 million in the first quarter of 2011. Operating results for the first quarter of 2012
17 included \$34 million of non-cash stock-based compensation expense compared with
18 \$32 million for the first quarter of 2011.

19 ***First quarter of 2012 net income was \$144 million, or \$3.50 per diluted***
20 ***share***, compared with \$104 million, or \$2.59 per diluted share for the first quarter of
21 2011.

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

25 ***Commenting on the announcement, Dr. Gary Guthart, President and CEO***
26 ***of Intuitive Surgical, said, “In the first quarter, we are pleased with the growing***
27 ***use of da Vinci, the acceptance of our new products and the financial performance***
28 ***that follows.”***

40. Later in the day on April 17, 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 first quarter 2012 financial results.

41. On April 19, 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

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

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

8 Intuitive Surgical . . . , the industry leader in surgical robotics, today reported second
9 quarter of 2012 revenue of ***\$537 million, up approximately 26%*** compared with
10 ***\$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 da
Vinci Surgical System sales.***

11 Second quarter of 2012 instruments and accessories revenue increased 30% to
12 \$224 million from \$172 million in the second quarter of 2011. The growth in
13 instruments and accessories revenue is the result of growth in *da Vinci* surgical
14 procedures and the introduction of new products. Procedure growth of 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.

15 Second quarter of 2012 systems revenue was \$229 million, an increase of
16 23%, compared with \$187 million during the second quarter of 2011. The growth in
17 second quarter 2012 systems revenue was driven by sales of 150 *da Vinci* Surgical
18 Systems compared with 129 system sales during the same period last 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.

19 ***Second quarter of 2012 operating income increased to \$225 million*** from
20 ***\$168 million*** in the second quarter of 2011. Operating results for the second quarter
of 2012 included \$33 million of non-cash stock-based compensation expense
compared with \$35 million for the second quarter of 2011.

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

23 * * *

24 ***Commenting on the announcement, Dr. Gary Guthart, President and CEO***
25 ***of Intuitive Surgical, said, “Our solid second quarter revenue and earnings***
26 ***performance is the result of robust US gynecologic and general surgery procedure***
growth offset by pressure in Europe and US prostatectomy.”

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

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

13 45. On September 18, 2012, Intuitive filed a Current Report on Form 8-K with the SEC
14 announcing that on September 14, 2012, an article was published in the *Modesto Bee* entitled "More
15 Surgeries at Modesto Hospitals Being Done via Remote Control." Intuitive's Form 8-K stated that
16 the "article contained information about the estimated number of single incision surgeries that have
17 been performed since January, 2012 and cited Intuitive Surgical Inc. ('the Company') as the source
18 of information" and that "[t]his was an unauthorized disclosure by a field employee in violation of
19 Company policy." The Company in no way negated the content of the article, and in so doing
20 adopted the article, which stated in pertinent part as follows:
21
22

23 ***Fewer complications***

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

28 ***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***

1 ***launched in January. The newer version of da Vinci makes it possible to remove a***
2 ***gallbladder through the navel because of the flexibility of the rods that hold the***
3 ***forceps and scissors.***

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

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

10 * * *

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

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

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

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

23 ***Greater range of motion***

24 ***Advocates say robotic systems give surgeons a sharper view of the patient’s***
25 ***anatomy and provide instruments with a greater range of motion to grab, cut and***
26 ***suture tissue.***

27 * * *

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

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

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

Doctors said robotics eliminate some of the physical demands of more
conventional surgery. Eve said the long-shafted instruments used in laparoscopic

1 surgery are not flexible, so the surgical team sometimes goes into contortions getting
2 the camera in place or making difficult cuts.

3 “It’s like a big game of Twister all over the patient’s bedside,” she said.

4 *Gonzalez said it is advantageous to use the robot for “retraction” – or*
5 *holding tissue aside while he operates deep in the pelvis. Holding retractors during*
6 *a three-hour operation is physically exhausting, he said.*

7 *Getting a clearer view*

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

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

14 * *

15 *The FDA gave approval for the da Vinci system in 2000, and there now are*
16 *2,132 surgical robots in hospitals worldwide for performing cardiac, thoracic,*
17 *gynecologic, pediatric and general surgeries. Despite their growing use, robotic-*
18 *assisted procedures represent a small percentage of surgeries at Doctors in Modesto,*
19 *which is looking to purchase the newer version of da Vinci, a spokeswoman said.*

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

22 46. On October 16, 2012, Intuitive issued a press release announcing its third quarter
23 2012 financial results for the quarter ended September 30, 2012. The press release stated in
24 pertinent part as follows:

25 Intuitive Surgical . . . , the industry leader in surgical robotics, today reported third
26 quarter of 2012 revenue of **\$538 million, up approximately 20%** compared with
27 \$447 million for the third quarter of 2011. **Third quarter of 2012 revenue growth**
28 **was driven by continued adoption of da Vinci surgery procedures and higher da**
Vinci Surgical System sales.

Third quarter of 2012 instruments and accessories revenue increased 24% to
\$218 million from \$176 million in the third 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. Third quarter procedure growth of
approximately 22% reflected US gynecologic and general surgery growth, partially
offset by a decline in US prostatectomy procedures and slower growth in European
procedures.

Third quarter of 2012 systems revenue was \$232 million, an increase of 17%,
compared with \$199 million during the third quarter of 2011. The growth in third
quarter 2012 systems revenue was driven by sales of 155 *da Vinci* Surgical Systems
compared with 133 system sales during the same period last year. Third quarter of

1 2012 service revenue increased 22% to \$88 million from \$72 million during the third
2 quarter of 2011, reflecting growth in the installed base of *da Vinci* Surgical Systems.

3 ***Third quarter of 2012 operating income increased to \$211 million*** from
4 \$179 million in the third quarter of 2011. Operating results for the third quarter of
5 2012 included \$47 million of non-cash stock-based compensation expense compared
6 with \$35 million for the third quarter of 2011.

7 ***Third quarter of 2012 net income was \$183 million, or \$4.46 per diluted***
8 share, compared with \$122 million, or \$3.05 per diluted share, for the third quarter of
9 2011. Included in net income are one-time tax benefits of approximately \$38 million,
10 including reserve reversals associated with the lapse of statutes of limitations.

11 * * *

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

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

21 48. On October 18, 2012, Intuitive filed its quarterly financial report on Form 10-Q with
22 the SEC that confirmed the same quarterly financial results. The 10-Q was signed by defendant
23 Mohr and certified as to accuracy by defendants Guthart and Mohr. As to “Contingencies,” the
24 Form 10-Q stated in pertinent part that though Intuitive was “a party to various . . . legal actions that
25 arose in the ordinary course of its business,” “[t]he Company [did] not believe that any of these other
26 legal actions [would] have a material adverse impact on its business, financial position or results of
27 operations.” Neither the reported third quarter 2012 financial results nor the Form 10-Q disclosed or
28 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:

1 Intuitive Surgical . . . , the industry leader in surgical robotics, today reported fourth
2 quarter of 2012 revenue of **\$609 million, up approximately 23%** compared with
3 \$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.***

4 Fourth quarter of 2012 instruments and accessories revenue increased 29% to
5 \$254 million from \$196 million in the fourth quarter of 2011. The growth in
6 instruments and accessories revenue is the result of growth in *da Vinci* surgical
7 procedures and the introduction of new products. *da Vinci* surgical procedures grew
8 approximately 25% in the fourth quarter of 2012 compared to the fourth quarter of
9 2011, driven primarily by U.S. gynecology and general surgery growth, and partially
10 offset by a decline in U.S. prostatectomy procedures.

11 Fourth quarter of 2012 systems revenue was \$265 million, an increase of
12 18%, compared with \$225 million during the fourth quarter of 2011. The growth in
13 fourth quarter of 2012 systems revenue was driven by sales of 175 *da Vinci* Surgical
14 Systems compared with sales of 152 systems during the same period last year. Fourth
15 quarter of 2012 service revenue increased 20% to \$91 million from \$75 million
16 during the fourth quarter of 2011, reflecting growth in the installed base of *da Vinci*
17 Surgical Systems.

18 ***Fourth quarter of 2012 operating income increased to \$248 million*** from
19 \$200 million in the fourth quarter of 2011. Operating results for the fourth quarter of
20 2012 included \$38 million of non-cash stock-based compensation expense compared
21 with \$35 million for the fourth quarter of 2011.

22 * * *

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

26 Revenue for the year ended December 31, 2012 totaled **\$2,179 million,**
27 ***increasing 24%*** from \$1,757 million for the year ended December 31, 2011. ***Net***
28 ***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.

* * *

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

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

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

11
12 52. On March 6, 2013, Intuitive filed its annual proxy statement to shareholder for use in
13 voting at the 2013 annual shareholder meeting. As to “Board Responsibilities,” the 2013 proxy
14 statement stated in pertinent part:

15
16 ***The Board’s primary responsibility is to seek to maximize long-term***
17 ***stockholder value. . . . In fulfilling the Board’s responsibilities, directors have full***
18 ***access to the Company’s management, external auditors and outside advisors.***
19 ***With respect to the Board’s role in risk oversight of the Company, the Board of***
20 ***Directors discusses the Company’s risk exposures and risk management of various***
21 ***parts of the business, including appropriate guidelines and policies to minimize***
22 ***business risks and major financial risks and the steps management has undertaken***
23 ***to control them.***

24 53. On March 13, 2013, Intuitive issued a press release entitled “Intuitive Surgical
25 Comments on Medical Device Reporting Practices.” The press release stated in pertinent part as
26 follows:

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

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

1 ***“We self-identified the reporting issue, notified the FDA and revised our***
2 ***practices,” said Dave Rosa, Senior Vice President, Emerging Procedures and***
3 ***Technologies, Intuitive Surgical.***

3 MDRs can be found in the FDA’s MAUDE database, which is updated by
4 FDA regularly. The most common type of report filed under the company’s revised
5 MDR practices involves instrument cable breaks. These cable breaks render the
6 instrument non-functional and require an instrument change, which can be
7 accomplished quickly.

6 ***The company also made an administrative change in how MDRs previously***
7 ***reported as adverse events were subcategorized. This change has not increased the***
8 ***total number of adverse event reports.*** This will result in an increase in events in the
9 “serious injury” subcategory and a corresponding decrease in the “other”
10 subcategory. ***Total adverse event rates have remained low and in line with***
11 ***historical trends.***

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

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

16 Intuitive Surgical . . . the industry leader in surgical robotics, today reported first
17 quarter of 2013 revenue of ***\$611 million, up approximately 23%*** compared with
18 \$495 million for the first quarter of 2012. ***First quarter of 2013 revenue growth was***
19 ***driven by continued growth of da Vinci surgery procedures and higher da Vinci***
20 ***Surgical System sales.***

20 ***First quarter of 2013 net income was \$189 million, or \$4.56 per diluted***
21 ***share,*** compared with \$144 million, or \$3.50 per diluted share, for the first quarter of
22 2012.

22 ***“We are pleased with our first quarter revenue and earnings growth.***
23 ***Despite a concerted effort by vocal critics of robotic surgery, support remains***
24 ***strong among patients, surgeons and hospitals,” said Dr. Gary Guthart, President***
25 ***and CEO of Intuitive Surgical. “da Vinci Surgery has clinically proven benefits in***
26 ***offering a minimally invasive option to a broader group of patients than traditional***
27 ***technologies.”***

25 First quarter of 2013 instruments and accessories revenue increased 26% to
26 \$261 million from \$208 million in the first quarter of 2012. The growth in
27 instruments and accessories revenue is the result of growth in *da Vinci* surgical
28 procedures and increased utilization of new products. *da Vinci* surgical procedures
grew approximately 18% in the first quarter of 2013 compared to the first quarter of
2012, driven primarily by growth in general surgery, U.S. gynecology and
international urology procedures, partially offset by a decline in U.S. prostatectomy

1 procedures. The first quarter of 2013 contained one fewer surgical operating day due
2 to a Leap Year day in 2012. Excluding the impact of Leap Year, procedure growth
was approximately 20%.

3 First quarter of 2013 systems revenue was \$256 million, an increase of 24%,
4 compared with \$207 million during the first quarter of 2012. The growth in first
quarter of 2013 systems revenue was driven by sales of 164 *da Vinci* Surgical
5 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
6 during the first quarter of 2012, reflecting growth in the installed base of *da Vinci*
Surgical Systems.

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

10 56. As a result of defendants' efforts to conceal significant safety problems with the
11 *da Vinci* Surgical System and their false statements concerning the Company's business metrics and
12 financial prospects, Intuitive stock traded at artificially inflated prices during the Class Period,
13 reaching a Class Period high of nearly \$595 per share in intraday trading by April 18, 2012.
14 Meanwhile, with the Company's stock price soaring, nearly every senior executive of Intuitive
15 cashed in, selling 410,000 shares of their personally held Intuitive stock into the open market at
16 fraud-inflated prices during the Class Period and ***reaping more than \$218.6 million*** in proceeds.

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

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

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

23 (c) Intuitive knew, based on the receipt and review of adverse incident reports and
24 its executive's knowledge of the then-ongoing discussions with the FDA during the Class Period that
25 there was a substantial risk that the FDA might limit or restrict sales and marketing of the *da Vinci*
26 Surgical System;
27
28

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

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

6 (f) Intuitive failed to properly reserve for potential liability to civil litigants; and

7 (g) as a result, defendants lacked a reasonable basis to make positive statements
8 about the safety and effectiveness of the da Vinci Surgical System, the Company's business metrics
9 and its Class Period financial results and outlook.
10

11 58. On February 28, 2013, the FDA sent a letter to surgeons participating in the FDA-
12 sponsored MedSun survey asking them to provide information about medical complications
13 associated with use of the da Vinci Surgical System. The FDA indicated that the survey was
14 prompted by an "increase in [the] number of reports" of "adverse events" involving the da Vinci
15 Surgical System. On this news, the price of Intuitive stock, which had opened at \$573.44 per share
16 that morning, plummeted on unusually high trading volume, closing down more than 10% at
17 \$509.89 per share, after trading below \$493 per share in intraday trading.
18

19 59. Then, on March 5, 2013, *Bloomberg* ran an expose disclosing that its review of
20 pleadings in at least ten lawsuits filed against Intuitive during the prior 14 months and FDA adverse
21 incident reports had uncovered that robotic surgical systems made by Intuitive had been linked to at
22 least 70 deaths in informal incident reports sent to the FDA since 2009. On this news, the
23 Company's stock price, which had closed the previous evening at \$541.32 per share, again
24 plummeted on unusually high trading volume, closing down approximately 3% at \$525.72 per share
25 after trading as low as \$514 per share in intraday trading.
26
27
28

1 60. On March 14, 2013, the president of the ACOG, Dr. James Breeden, issued a
2 statement contending that, among other things, “[r]obotic surgery is not the only or the best
3 minimally invasive approach for hysterectomy,” and “there is no good data proving that robotic
4 hysterectomy is even as good as – let alone better – than existing, and far less costly, minimally
5 invasive alternatives.” As reported by *Bloomberg* the next day, March 15, 2013, “Robotic surgery
6 for hysterectomies doesn’t improve outcomes and shouldn’t be the first choice for most women, a
7 doctors’ group said, sending Intuitive Surgical Inc. (ISRG) to its lowest value in almost 14 months,”
8 emphasizing that the ACOG, “which represents 56,000 U.S. physicians, said expertise with
9 Intuitive’s da Vinci robot system is limited and surgeons learning the new technology may have
10 higher rates of complications.” Once again, the price of Intuitive stock, which had closed at \$509.33
11 per share on March 13, 2013, plummeted on unusually high trading volume between March 14th and
12 15th, closing down approximately 10% at \$459.44 per share on March 15, 2013.
13
14

15 61. On March 20, 2013, Massachusetts’ Quality and Patient Safety Division of the
16 Executive Office of Health and Human Services issued an advisory, which stated, in part, that
17 “[o]ver the last two years, the Quality and Patient Safety Division . . . has received an increasing
18 number of Safety and Quality Review . . . reports of patient complications associated with robot-
19 assisted surgery.”
20

21 62. On March 25, 2013, *The New York Times* ran an expose entitled “Salesmen in the
22 Surgical Suite,” which described one of the wrongful death lawsuits presently pending against
23 Intuitive as follows:

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

28 The operation, on Sept. 9, 2008, was supposed to take five hours. But it was
29 marred by a remarkable cascade of complications and dragged on for more than 13
30 hours, leaving Mr. Taylor, who had been an active 67-year-old retiree, incontinent

1 and with a colostomy bag, and leading to kidney and lung damage, sepsis and a
2 stroke.

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

7 “We are the old school, where you trust the doctor,” said Mrs. Taylor, who
8 noted that her husband’s life was so limited after the operation that he used to cry
9 about being “trapped in this body.”

10 *It is not the first time patients have claimed they were harmed by Intuitive’s*
11 *robotic surgical equipment, called the da Vinci Surgical System. But the Taylor*
12 *case, set for trial in April, is unusual. Internal company e-mails, provided to The*
13 *New York Times by lawyers for the Taylor estate, offer a glimpse into the*
14 *aggressive tactics used to market high-tech medical devices and raise questions*
15 *about the quality of training provided to doctors before they use new equipment on*
16 *patients.*

17 Intuitive, based in Sunnyvale, Calif., declined to comment on the lawsuit but
18 said studies showed that its robotic equipment results in better outcomes than
19 conventional open surgery. “The most objective and therefore best measure of
20 efficacy for all of those involved in training – from Intuitive Surgical, the hospitals,
21 the proctors and the surgeons themselves – is represented in the comparative clinical
22 outcomes of da Vinci surgery,” said Angela Wonson, the company’s vice president
23 for communications.

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

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

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

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

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

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

7 Ms. Wonson, the Intuitive spokeswoman, said the company does not get
8 involved in determining who is qualified to operate its robotic equipment, which is
9 the responsibility of the hospitals. “We do not make recommendations,” she said in
10 an e-mail.

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

17 He did not respond to telephone messages requesting comment.

18 ***Company e-mails submitted in the Taylor case also suggest that members of***
19 ***the sales staff at Intuitive worked diligently to persuade surgeons to choose the da***
20 ***Vinci procedure for patients even when they were planning to use a different***
21 ***method.***

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

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

32 ***The sales representatives were often in the operating rooms, where they***
33 ***offered advice to newly trained surgeons who were having technical difficulties***
34 ***with the robot, according to legal depositions in the Taylor case. The***
35 ***representatives also appear to have had access to the operating room schedules and***
36 ***were urged to “partner” with surgical teams “to review and select appropriate***
37 ***cases,” according to court documents.***

38 ***On March 3, 2011, a sales representative wrote in an e-mail to his team that***
39 ***he had met with a gynecologic surgeon in Utah who was trained a year earlier but***
40 ***had stopped doing robotic cases. The surgeon subsequently “agreed to convert the***
41 ***next two to da Vinci.”***

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

1 ***The Food and Drug Administration allowed the sale of the da Vinci system***
2 ***in 2000 under a controversial process called “premarket notification,” often used***
3 ***to bring medical devices to market without the rigorous trials of safety and efficacy***
4 ***typically required of new drugs. Manufacturers are able to exempt devices from the***
5 ***rigorous trials by claiming they are similar to existing devices already on the***
6 ***market.***

7 ***When devices are brought to market this way, the F.D.A. “cannot require***
8 ***training programs as a condition of clearance,” said Synim Rivers, an agency***
9 ***spokeswoman.***

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

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

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

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

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

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

65. A former Intuitive employee, interviewed by CNBC during the show on condition of
anonymity, stated that she recalled instances of da Vinci-related complications that were not reported

1 in MAUDE, and contended that the MAUDE database is “significantly understated in terms of [da
2 Vinci-related] complications.” Concurring was Dr. Martin Makary, a prominent surgeon with the
3 Johns Hopkins School of Medicine and an international expert on patient safety, who shared with
4 CNBC details of a study he co-authored entitled “Underreporting of Robotic Surgery
5 Complications.” The study contends there is “massive underreporting” of robotic surgery
6 complications. In particular, the report states that “[i]n the case of Intuitive . . . some incidents
7 [involving the da Vinci system] that have resulted in serious injury and death were never reported or
8 were reported late.”

9
10 66. On this news, the price of Intuitive stock closed down \$8.62 per share on April 19,
11 2013. Indeed, since February 27, 2013, the day before the FDA announced its MedSun survey,
12 Intuitive stock has *fallen nearly 19% – or \$110.25 per share* – from its Class Period high on account
13 of the above news, falling from \$595 per share to a close of \$484.75 per share on April 19, 2013,
14 *resulting in market capitalization losses of over \$4.4 billion.*

15 **DEFENDANTS’ SCIENTER**

16
17 67. Defendants are Intuitive and its top officers and/or directors. Each ran Intuitive as a
18 manager, dealing with important issues facing Intuitive’s business, and controlled the false
19 statements concerning Intuitive’s Class Period operational and financial status in order to facilitate
20 their sales of hundreds of millions of dollars of their personally held Intuitive stock at artificially
21 inflated prices.

22
23 68. Each of the Individual Defendants, by virtue of their high-level positions with
24 Intuitive, directly participated in the management of Intuitive, was directly involved in the day-to-
25 day operations of Intuitive at the highest levels and was privy to confidential proprietary information
26 concerning Intuitive and its business, operations, adverse incident reports related to the use of the
27 da Vinci Surgical System, and the Company’s financial statements and financial condition and was
28

1 safety and efficacy of the da Vinci Surgical System and thus the Company's business success and
2 future business prospects. Defendants achieved this façade of success, growth and strong future
3 business prospects by blatantly misrepresenting the drug's safety and efficacy and understating the
4 Company's potential liability to civil judgments, fines and penalties. Later, however, when
5 defendants' prior misrepresentations and fraudulent conduct were disclosed and became apparent to
6 the market, Intuitive stock fell precipitously as the prior artificial inflation came out of Intuitive's
7 stock price. As a result of their purchases of Intuitive stock during the Class Period, plaintiff and
8 other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

10 72. The significant declines in the price of Intuitive stock at the end of the Class Period
11 were a direct result of the nature and extent of defendants' fraud finally being revealed to investors
12 and the market. The timing and magnitude of Intuitive stock price declines negate any inference that
13 the loss suffered by plaintiff and other Class members was caused by changed market conditions,
14 macroeconomic or industry factors or Company-specific facts unrelated to the defendants' fraudulent
15 conduct.

17 73. The economic loss, *i.e.*, damages, suffered by plaintiff and other members of the
18 Class was a direct result of defendants' fraudulent scheme to artificially inflate Intuitive's stock price
19 and the subsequent significant decline in the value of Intuitive stock when defendants' prior
20 misrepresentations and other fraudulent conduct was revealed.

22 **APPLICATION OF PRESUMPTION OF RELIANCE;
23 FRAUD ON THE MARKET**

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

26 (a) Defendants made public misrepresentations or failed to disclose material facts
27 during the Class Period;

28 (b) The omissions and misrepresentations were material;

- 1 (c) The Company's common stock traded in an efficient market;
- 2 (d) The misrepresentations alleged would tend to induce a reasonable investor to
- 3 misjudge the value of the Company's common stock; and
- 4 (e) Plaintiff and other members of the Class purchased Intuitive common stock
- 5 between the time defendants misrepresented or failed to disclose material facts and the time the true
- 6 facts were disclosed, without knowledge of the misrepresented or omitted facts.
- 7

8 75. At all relevant times, the market for Intuitive common stock was efficient for the

9 following reasons, among others:

- 10 (a) As a regulated issuer, Intuitive filed periodic public reports with the SEC; and
- 11 (b) Intuitive regularly communicated with public investors via established market
- 12 communication mechanisms, including through regular disseminations of press releases on the major
- 13 news wire services and through other wide-ranging public disclosures, such as communications with
- 14 the financial press, securities analysts, and other similar reporting services.
- 15

16 **CLASS ACTION ALLEGATIONS**

17 76. This is a class action on behalf of purchasers of Intuitive common stock during the

18 Class Period (the "Class"). Excluded from the Class are the defendants and their families and the

19 officers and directors of the Company and their families. Class members are so numerous that

20 joinder of them is impracticable.

21

22 77. Common questions of law and fact predominate and include: (i) whether defendants

23 violated the 1934 Act; (ii) whether defendants omitted and/or misrepresented material facts;

24 (iii) whether defendants knew or recklessly disregarded that their statements were false; and

25 (iv) whether the price of Intuitive common stock was inflated during the Class Period and the extent

26 of and appropriate measure of damages.

27

28

1 directly or indirectly, the decision-making of the Company, including the content and dissemination
2 of the various statements that plaintiff contend are false and misleading. Intuitive controlled the
3 Individual Defendants and all of its employees.

4 84. By reason of such wrongful conduct, the defendants are liable pursuant to §20(a) of
5 the 1934 Act. As a direct and proximate result of the wrongful conduct, plaintiff and other members
6 of the Class suffered damages in connection with their purchases of the Company's common stock
7 during the Class Period.
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, plaintiff, individually and on behalf of the Class, prays for judgment as
11 follows:

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

15 B. Awarding plaintiff and other members of the Class damages together with interest
16 thereon;

17 C. Awarding plaintiff and other members of the Class costs and expenses of this
18 litigation, including reasonable attorneys' fees, accountants' fees and experts' fees and other costs
19 and disbursements; and
20

21 D. Awarding plaintiff and other members of the Class such equitable/injunctive or other
22 and further relief as may be just and proper under the circumstances.
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JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

DATED:
