

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Elizabeth To (“Plaintiff”), and Defendant Intuitive Surgical, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant, collectively, as “Parties,” or individually as “Party.”

1. ADDITIONAL DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Elizabeth To v. Intuitive Surgical Inc.*, Case No. 24CV449420, initiated on October 14, 2024, and pending in the Superior Court of the State of California for the County of Santa Clara.
- 1.2 “Administrator” means ILYM Group, Inc., the neutral third-party entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator shall be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means all persons who are employed or who were previously employed by Defendant in California and classified as a non-exempt employee during the PAGA Period.
- 1.5 “Class” means all persons who are employed or who were previously employed by Defendant in California and classified as a non-exempt employee during the Class Period.
- 1.6 “Class Counsel” means Arash Sadat, Brigitte Mills and Camron Dowlatsahi of Mills Sadat Dowlat LLP.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and litigation expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means the following Class Member identifying information in Defendant’s possession: full name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9 “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10 “Class Member Address Search” means the Administrator’s investigation and search for Class Member current mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of

Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed by the Administrator to Class Members in English in the form, without material variation, attached hereto as **Exhibit A** and incorporated by reference into this Agreement.
- 1.12 “Class Period” means the period from October 14, 2020, through the date of the Court’s Preliminary Approval or ninety (90) days from the date the Agreement is fully executed, whichever is sooner.
- 1.13 “Class Representative” means Elizabeth To, the named Plaintiff in the Complaint in the Action who is seeking Court approval to serve as the Class Representative.
- 1.14 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15 “Complaint” means the Complaint filed or caused to be filed by Plaintiff on or about October 14, 2024.
- 1.16 “Court” means the Superior Court of California for the County of Santa Clara.
- 1.17 “Defendant” means Intuitive Surgical, Inc, the named Defendant in the Complaint in the Action.
- 1.18 “Defense Counsel” means Kenneth D. Sulzer and Remy Kessler of Constangy, Brooks, Smith & Prophete, LLP.
- 1.19 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Final Approval Order; and (b) the Judgment becomes final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.20 “Final Approval” or “Final Approval Order” means the Court’s Order Granting Final Approval of the Settlement.
- 1.21 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.22 “Gross Settlement Amount” means Four Million Five Hundred Thousand Dollars and Zero Cents (\$4,500,000.00), which is the total amount Defendant agrees to pay

under the Settlement. The Gross Settlement Amount shall be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administration Expenses Payment.

- 1.23 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks such Participating Class Member worked during the Class Period.
- 1.24 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of twenty-five percent (25%) of the PAGA Penalties calculated according to the number of PAGA Pay Periods such Aggrieved Employee worked during the PAGA Period.
- 1.25 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled to receive seventy-five percent (75%) of the PAGA Penalties under California Labor Code section 2699(i).
- 1.27 “LWDA PAGA Payment” means the seventy-five percent (75%) of the PAGA Penalties to be paid to the LWDA under California Labor Code section 2699(i).
- 1.28 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the Individual PAGA Payments, LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder shall be paid to Participating Class Members as Individual Class Payments.
- 1.29 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31 “PAGA Period” means the period from October 11, 2023, through the date of the Court’s Preliminary Approval.
- 1.32 “PAGA” means the California Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698, *et seq.*).
- 1.33 “PAGA Notice” means Plaintiff’s October 11, 2024 letter to Defendant and the LWDA providing notice pursuant to California Labor Code section 2699.3(a).
- 1.34 “PAGA Penalties” means Fifty Thousand Dollars and Zero Cents (\$50,000.00), the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated as follows: twenty-five percent (25%) to the Aggrieved Employees

(\$12,500.00) and seventy-five percent (75%) to the LWDA (\$37,500.00), in settlement of PAGA claims.

- 1.35 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36 “Plaintiff” means Elizabeth To, the named Plaintiff in the Action.
- 1.37 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.38 "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval of the Settlement.
- 1.39 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.40 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.41 “Released Parties” means Defendant and each of its former and present directors, partners officers, employees, shareholders, owners, members, agents, representatives, attorneys, insurers, predecessors, successors, assigns, parent companies, subsidiaries, and affiliated and related entities.
- 1.42 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Settlement that is signed by the Class Member.
- 1.43 "Response Deadline" means sixty (60) days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail objections to the Settlement. Class Members to whom Class Notices are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) days beyond the Response Deadline has expired.
- 1.44 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45 “Workweek” means any week during which a Class Member worked for Defendant for at least one day during the Class Period.

2. RECITALS.

- 2.1 On October 14, 2024, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for: (1) failure to pay minimum wage for all hours worked, (2) failure to pay overtime compensation, (3) failure to provide meal periods, (4) failure to provide rest periods, (5) failure to indemnify necessary business expenses, (6) waiting time penalties (7) failure to provide

accurate wage statements, (8) violation of the Business and Professions Code Unfair Competition Law, and (9) violation of the PAGA. Defendant denies the allegations in the Complaint, denies any failure to comply with the laws identified in the Complaint and denies any and all liability for the causes of action alleged.

- 2.2 Pursuant to California Labor Code section 2699.3(a), Plaintiff gave timely written notice to Defendant and the LWDA of her PAGA claims by sending the PAGA Notice.
- 2.3 On December 23, 2024, the Parties participated in an all-day mediation presided over by Nikki Tolt, Esq., which led to this Agreement to settle the Action.
- 2.4 Prior to mediation, Plaintiff obtained, through informal discovery: (1) Plaintiff's personnel file, (2) Plaintiff's time and payroll records, (3) Defendant's policies and operating procedures regarding the (a) payment of wages, (b) timekeeping policies (including recording hours), (c) issuance of wage statements, (d) reimbursement of business expenses, and (e) termination wages, and (4) the payroll and time records for all Class Members and Aggrieved Employees. Plaintiff's investigation was sufficient to satisfy the criteria for Court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.5 The Court has not granted or denied class certification in the Action.
- 2.6 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that shall be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1 **Gross Settlement Amount.** Defendant promises to pay the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant shall have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.2 of this Agreement. The Administrator shall disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount shall revert to Defendant.
- 3.2 **Payments from the Gross Settlement Amount.** The Administrator shall make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval Order:
 - 3.2.1 **To Plaintiff:** Class Representative Service Payment to the Class Representative of not more than Five Thousand Dollars and Zero Cents (\$5,000.00) (in addition to any Individual Class Payment the Class Representative is entitled to receive as a Participating Class Member and

any Individual PAGA Payment). Defendant shall not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the Motion for Final Approval, Plaintiff shall seek Court approval for the Class Representative Service Payment. If the Court approves a Class Representative Service Payment that is less than the amount requested, the Administrator shall allocate the remainder to the Net Settlement Amount. The Administrator shall pay the Class Representative Service Payment using an IRS Form 1099. Plaintiff shall assume full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

- 3.2.2 **To Class Counsel:** A Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which is currently estimated to be One Million Five Hundred Thousand Dollars and Zero Cents (\$1,500,000.00), and a Class Counsel Litigation Expenses Payment of not more than Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Defendant shall not oppose requests for these payments provided that they do not exceed these amounts. As part of the Motion for Final Approval, Plaintiff shall seek approval of the Class Counsel Fees Payment and Class Counsel Litigation Expenses. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment that is less than the amounts requested, the Administrator shall allocate the remainder to the Net Settlement Amount. The Released Parties shall have no liability to Class Counsel or any other counsel for Plaintiff arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator shall pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel shall assume full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and Plaintiff and her counsel shall hold Defendant harmless, and shall indemnify Defendant, from any dispute or controversy regarding any division or sharing of any of these payments.
- 3.2.3 **To the Administrator:** An Administrator Expenses Payment not to exceed Sixteen Thousand Nine Hundred Fifty Dollars and Zero Cents \$16,950.00, except for a showing of good cause and as approved by the Court.
- 3.2.4 **To Each Participating Class Member:** An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1 **Tax Allocation of Individual Class Payments.** Twenty percent (20%) of each Participating Class Member's Individual Class Payment shall be allocated to settlement of wage claims (the "Wage Portions"). The Wage Portions shall be subject to tax withholding and shall be reported by the Administrator on IRS W-2 Forms. Eighty percent (80%) of each Participating Class Member's Individual Class Payment shall be allocated to settlement of claims for interest, non-wage damages and penalties (the "Non-Wage Portions"). The Non-Wage Portions shall not be subject to tax withholdings and shall be reported by the Administrator on IRS 1099 Forms. Participating Class Members shall assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2 **Effect of Non-Participating Class Members on Calculation of Individual Class Payments.** Non-Participating Class Members shall not receive any Individual Class Payments. The Administrator shall retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members

3.2.5 **To the LWDA and Aggrieved Employees:** PAGA Penalties shall be paid from the Gross Settlement Amount. PAGA Penalties shall be allocated to Individual PAGA Payments and to the LWDA PAGA Payment.

3.2.5.1 The Administrator shall calculate each Individual PAGA Payment by: (a) dividing the amount of the Aggrieved Employees' twenty-five (25%) share of PAGA Penalties by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. The Individual PAGA Payments shall not be subject to tax withholdings. Aggrieved Employees shall assume full responsibility and liability for any taxes owed on their Individual PAGA Payments.

3.2.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator shall allocate the remainder to the Net Settlement Amount for distribution to Aggrieved Employees. The Administrator shall report the Individual PAGA Payments on IRS 1099 Forms.

4. **SETTLEMENT FUNDING AND PAYMENTS.**

4.1 **Class Data.** Not later than thirty (30) days after the Court grants Preliminary Approval of the Settlement, Defendant shall deliver the Class Data to the

Administrator in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator shall maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant shall have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel shall expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

- 4.2 **Funding of Gross Settlement Amount.** Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes, by transmitting the funds to the Administrator no later than fourteen (14) days after the Effective Date.
- 4.3 **Payments from the Gross Settlement Amount.** Within fourteen (14) days after Defendant funds the Gross Settlement Amount, the Administrator shall mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1 The Administrator shall issue checks for the Individual Class Payments and Individual PAGA Payments and send them to the Participating Class Members and Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check shall be voided. The Administrator shall cancel all checks not cashed by the void date. The Administrator shall send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator shall send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). To the extent proper and feasible, the Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator shall

update the recipients' mailing addresses using the National Change of Address Database.

- 4.4.2 The Administrator shall conduct a Class Member Address Search for all Participating Class Members and Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check, the Administrator shall re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member address search. The Administrator need not take further steps to deliver checks to Participating Class Members and Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Participating Class Member and/or Aggrieved Employee whose original check was lost or misplaced, as requested by the Participating Class Member and/or Aggrieved Employee prior to the void date.
- 4.4.3 For any Participating Class Member and/or Aggrieved Employee whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member/Aggrieved Employee, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384(b).
- 4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Participating Class Members or Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASE OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Participating Class Members, and Aggrieved Employees shall release claims against Defendant and all other Released Parties as follows:

- 5.1 **Plaintiff's General Release.** Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally release and discharge Defendant and all other Released Parties from all claims, transactions, or occurrences that occurred through the date of the Judgment, including, but not limited to: (a) all claims relating or pertaining to Plaintiff's employment with Defendant, including, but not limited to, her separation from employment; (b) all claims that were, or reasonably could have been, alleged based on the facts contained in the Complaint and (c) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Complaint

and Plaintiff's PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested retirement benefits, unemployment benefits, disability benefits, social security benefits, and workers' compensation benefits. Plaintiff acknowledges that she may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542.

For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of Section 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Defendant and all other Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts alleged in the Complaint, including claims for: (1) unpaid regular, overtime and minimum wages, (2) meal period violations, (3) rest period violations, (4) failure to timely pay all wages due during employment and/or at the time of separation of employment; (5) business expense reimbursements, (6) wage statement violations, (7) failure to maintain accurate and complete payroll and/or personnel records; (7) waiting time penalties, and (8) violation of the Business and Professions Code Unfair Competition Law during the Class Period. Participating Class Members (other than Plaintiff) only release claims for the duration of the Class Period. Except as set forth in Section 5.3 of this Agreement, Participating Class Members also do not release any other claims, including claims for vested retirement benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits, or claims based on facts occurring outside the Class Period.

5.3 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, Defendant and all other Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts alleged in the Complaint and the PAGA Notice, including for: (1) unpaid regular, overtime

and minimum wages, (2) meal period violations, (3) rest period violations, (4) failure to timely pay all wages due during employment and/or at the time of separation of employment; (5) business expense reimbursements, (6) wage statement violations, (7) failure to maintain accurate and complete payroll and/or personnel records; (7) waiting time penalties, and (8) violation of the Business and Professions Code Unfair Competition Law. Aggrieved Employees (other than Plaintiff) only release PAGA claims for the duration of the PAGA Period. Aggrieved Employees who submit Requests for Exclusion shall remain bound by the Released PAGA Claims.

6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to cooperate in filing with the Court a motion seeking Preliminary Approval of the Settlement (“Motion for Preliminary Approval”).

- 6.1 **Class Counsel Responsibilities.** Class Counsel shall timely prepare and deliver to Defense Counsel for its review all documents necessary for obtaining Preliminary Approval, and conditionally certifying the Class for settlement purposes only, including, but not limited to: (i) drafts of the notice of Motion for Preliminary Approval, memorandum of points and authorities in support of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar*, and supporting declarations; and (ii) a draft Preliminary Approval Order.
- 6.2 **Further Responsibilities of Class Counsel.** Class Counsel also shall be responsible for: (i) expeditiously finalizing and filing the Motion for Preliminary Approval no later than thirty (30) days after the full execution of this Agreement, (ii) obtaining a prompt hearing date for the Motion for Preliminary Approval, and for appearing in Court to advocate in favor of the Motion for Preliminary Approval, (iii) delivering the Court’s Preliminary Approval Order to the Administrator, and (iv) providing the LWDA with all documents and notices required under the PAGA in connection with the Settlement.
- 6.3 **Duty to Cooperate.** If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel shall expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel shall expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court’s concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 **Selection of Administrator.** The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement, and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of the Administration Expenses Payment. The Parties and their counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences, if any, administering settlements.
- 7.2 **Employer Identification Number.** The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 7.3 **Qualified Settlement Fund.** The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 7.4 **Notice to Class Members.**
- 7.4.1 No later than seven (7) days after receipt of the Class Data, the Administrator shall notify Class Counsel and Defense Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator shall send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and any Individual PAGA Payment payable to the Class Member/Aggrieved Employee, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 7.4.3 Not later than five (5) days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator shall have no obligation to make further attempts to locate or send Class Notices to Class Members whose Class Notice is returned by the USPS a second time.

- 7.4.4 The deadline for Class Members' written objections to the Settlement, challenges to Workweeks and/or PAGA Pay Periods, and Requests for Exclusion shall be extended an additional fourteen (14) days beyond the sixty (60) days otherwise provided in the Class Notice for all Class Members whose Class Notice is re-mailed. The Administrator shall inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, Defense Counsel or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties shall expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons shall be deemed Class Members entitled to the same rights as other Class Members, and the Administrator shall send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of the Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves from (opt-out of) the Class Settlement shall send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than sixty (60) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion may be in the form of a letter or other statement in writing from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's full name, home address, email address and telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.5.2 The Administrator shall not reject a Request for Exclusion because it fails to contain all of the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

- 7.5.3 Each Class Member who does not submit a timely and valid Request for Exclusion shall be deemed to be a Participating Class Member under this Agreement and shall be entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Member's releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 7.5.4 Each Class Member who submits a valid and timely Request for Exclusion shall be deemed a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the Class components of the Settlement. Because PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees shall still be deemed to have released the claims identified in Paragraph 5.3 of this Agreement and shall be entitled to receive an Individual PAGA Payment.
- 7.6 **Challenges to Calculation of Workweeks and PAGA Pay Periods.** Each Class Member shall have sixty (60) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Workweeks and/or PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator shall encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator shall be entitled to presume that the Workweeks and PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.
- 7.7 **Objections to Settlement.**
- 7.7.1 Only Participating Class Members may object to this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.
- 7.7.2 Participating Class Members may send written objections to the Administrator by fax, email, or mail. In the alternative or in the addition, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.

A Participating Class Member who elects to send a written objection to the Administrator must do so not later than sixty (60) days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed).

7.7.3 Non-Participating Class Members have no right to object to the Agreement.

7.8 **Administrator Duties.** The Administrator has a duty to perform and observe all tasks to be performed and observed by the Administrator contained in this Agreement or otherwise.

7.8.1 **Website, Email Address and Toll-Free Number.** The Administrator shall establish and maintain and use an internet website to post information of interest to Class Members, including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval Order, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval Order and the Judgment. The Administrator shall also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7.8.2 **Requests for Exclusion (Opt-outs) and Exclusion List.** The Administrator shall promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than seven (7) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing: (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion (whether valid or invalid).

7.8.3 **Weekly Reports.** The Administrator shall, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports shall include or provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

- 7.8.4 **Workweek and/or PAGA Pay Period Challenges.** The Administrator shall have the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member/Aggrieved Employee challenges over the calculation of Workweeks and/or PAGA Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5 **Administrator's Declaration.** Not later than fourteen (14) days after the Response Deadline, the Administrator shall provide to Class Counsel and Defense Counsel a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of the Class Notice, the total number of Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion received (both valid or invalid), and the number of written objections to the Settlement. The Administrator also shall attach the Exclusion List. The Administrator shall supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel shall be responsible for filing the Administrator's declaration(s) and the Requests for Exclusion with the Court.
- 7.8.6 **Final Report by Settlement Administrator.** Within ten (10) days after the Administrator disburses all funds from the Gross Settlement Amount, the Administrator shall provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) days before any deadline set by the Court, the Administrator shall prepare and submit to Class Counsel and Defense Counsel a signed declaration suitable for filing with the Court attesting to its disbursement of all payments required under this Agreement. Class Counsel shall be responsible for filing the Administrator's declaration with the Court.

8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.

- 8.1 **Number of Workweeks:** Based on its records, Defendant estimates that Class Members worked a total of approximately Two Hundred Sixty Thousand (260,000) Workweeks from the start of the Class Period through October 14, 2024, and the number of Workweeks is expected to increase pro rata.
- 8.2 **Escalator:** The Gross Settlement Amount was agreed upon based on Defendant's representation in Paragraph 8.1 above. If the actual number of Workweeks worked by all Class Member through October 14, 2024 increases by ten percent (10%) or more, the end date of the Released Class Claims shall be adjusted to equal Two

Hundred Sixty Thousand (260,000) Workweeks, plus pro rate growth, plus 10 percent (10%).

9. **DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified on the Exclusion List exceeds 10 percent (10%) of the total of all Class Members by number or value, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and that neither Party shall have any further obligation to perform under this Agreement; provided, however, Defendant shall remain responsible for paying all Settlement Administration Expenses incurred to that point. Defense Counsel shall notify Class Counsel and the Court of Defendant's election to withdraw not later than fourteen (14) days after the end of the opt out period by providing notice to Plaintiff's Counsel.
10. **MOTION FOR FINAL APPROVAL.** Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff shall file with the Court a motion for final approval of the Settlement that includes a request for approval of the Class settlement and PAGA settlement under Labor Code section 2699(l), a Proposed Final Approval Order and a proposed Judgment (collectively, "Motion for Final Approval"). Plaintiff shall provide drafts of the Motion for Final Approval to Defense Counsel as soon as practicable prior to its filing. Class Counsel and Defense Counsel shall expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
 - 10.1 **Response to Objections.** Each Party shall retain the right to respond to any objection to the Settlement raised by a Participating Class Member, including the right to file responsive documents with the Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
 - 10.2 **Duty to Cooperate.** If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of the releases to be provided by Participating Class Members or Aggrieved Employees), the Parties shall expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
 - 10.3 **Continuing Jurisdiction of the Court.** The Parties agree that, after entry of Judgment, the Court shall retain jurisdiction over the Parties, the Action, and the Settlement solely for purposes of: (i) enforcing this Agreement and/or the

Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement shall be suspended until such time as the appeal is finally resolved and the Judgment becomes final.

10.5 **Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment.** If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be provided by Participating Class Members or Aggrieved Employees), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a fifty-fifty (50-50) basis, any additional Administration Expenses Payment reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. **AMENDED JUDGMENT.** If any amended judgment is required under California Code of Civil Procedure section 384, the Parties shall work together in good faith to jointly submit and a proposed amended judgment.

12. **ADDITIONAL PROVISIONS.**

12.1 **No Admission of Liability, Class Certification, or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Complaint or PAGA Notice have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only.

If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons and to assert all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement, and the Parties' willingness to settle the Action shall have no bearing on, and shall not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 12.2 **Confidentiality Prior to Preliminary Approval.** Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them shall not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom shall be instructed to keep this Agreement confidential; (2) to the extent necessary to report income to appropriate taxing authorities; (3) in response to a court order or subpoena; or (4) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement, except to respond only that "the matter has been resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.3 **No Solicitation.** The Parties separately agree that they and their respective counsel and employees shall not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.4 **Integrated Agreement.** Upon execution of this Agreement by all Parties and their counsel, this Agreement, together with its attached exhibit, shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 **Attorney Authorization.** Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant

to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement, including any amendments to this Agreement.

- 12.6 **Cooperation.** The Parties and their counsel shall cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Agreement, submitting supplemental evidence and points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties shall seek the assistance of a mediator and/or the Court for resolution.
- 12.7 **No Prior Assignments.** The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8 **No Tax Advice.** Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel is providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9 **Modification of Agreement.** This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their authorized representatives, and approved by the Court.
- 12.10 **Agreement Binding on Successors.** This Agreement shall be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 **Applicable Law.** All terms and conditions of this Agreement and its exhibit shall be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12 **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement shall not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 **Confidentiality.** To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement, relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 **Use and Return of Class Data.** Information provided to Class Counsel pursuant to California Evidence Code Section 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defense Counsel in connection with the mediation of the Action, other settlement negotiations, or in connection with the

Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the date when the Court discharges the Administrator's obligation to provide a declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.

- 12.15 **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 **Calendar Days.** Unless otherwise noted, all references to "days" in this Agreement shall be considered calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or court holiday, such date or deadline shall be extended to the first court day thereafter.
- 12.17 **Notice.** All notices, demands or other communications between the Parties in connection with this Agreement shall be in writing and deemed to have been duly given as of the third court day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Arash Sadat
arash@msdlawyers.com
Brigitte Mills
brie@msdlawyers.com
Camron Dowlatsahi
camron@msdlawyers.com
333 South Hope St., 40th Floor
Los Angeles, CA 90071

To Defendant:

Kenneth D. Sulzer
ksulzer@constangy.com
Remy Kessler
rkessler@constangy.com
**CONSTANGY, BROOKS, SMITH
& PROPHETE, LLP**
2029 Century Park East, Suite 1100
Los Angeles, CA 90067

12.18 **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically (*i.e.*, DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them shall be deemed to be one and the same instrument if counsel for the Parties exchange between themselves signed counterparts. Any executed counterpart shall be admissible in evidence to prove the existence and contents of this Agreement.

12.19 **Stay of Litigation.** The Parties agree that upon the full execution of this Agreement, the Action should be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon execution of this Agreement, and pursuant to Code of Civil Procedure section 583.330, the date to bring this Action to trial under Code of Civil Procedure section 583.310 shall be extended for the entire period of this settlement process.

Dated: March 14, 2025


[Elizabeth To \(Mar 14, 2025 13:43 PDT\)](#)
Plaintiff ELIZABETH TO

Dated: March __, 2025

for:
Defendant INTUITIVE SURGICAL, INC.

Dated: March 10, 2025

MILLS SADAT DOWLAT LLP


Arash Sadat
Brigitte Mills
Camron Dowlatsahi
Attorneys for Plaintiff, the Class and Aggrieved
Employees

Dated: March __, 2025

**CONSTANGY, BROOKS, SMITH &
PROPHETE, LLP**

Kenneth D. Sulzer
Remy Kessler
Attorneys for Defendant

EXHIBIT A

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING
DATE FOR FINAL COURT APPROVAL**

Elizabeth To v. Intuitive Surgical, Inc.,

Santa Clara County Superior Court, Case No. 24CV449420

The Superior Court for the State of California authorized this Notice. Read it carefully!

This is not junk mail, spam, advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Defendant Intuitive Surgical, Inc. (“Defendant”) for alleged wage and hour violations. The Action was filed by a former non-exempt employee of Defendant (“Plaintiff”) and seeks payment of back wages and other relief for a class of all non-exempt employees who worked for Defendant in California (“Class Members”) during the Class Period (October 14, 2020, through [REDACTED]); and penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) (Labor Code §§ 2698, et seq.) for all non-exempt employees who worked for Defendant in California (“Aggrieved Employees”) during the PAGA Period (October 11, 2023, through [REDACTED]).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendant’s records, and the Parties’ current assumptions, your Individual Class Payment is estimated to be \$ [REDACTED] (less tax withholding) and your Individual PAGA Payment is estimated to be \$ [REDACTED]. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records, you are not eligible for an Individual PAGA Payment under the Settlement because you did not work during the PAGA Period.)

The above estimates are based on Defendant’s records showing that you worked [REDACTED] workweeks during the Class Period and you worked [REDACTED] pay periods during the PAGA Period. If you believe that you worked more workweeks and/or pay periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval of the Settlement. Your legal rights are affected whether you do or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have two options under the Settlement:

1. **Do Nothing.** You do not have to do anything to participate in the proposed Settlement and still be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to directly assert Class Period wage claims and PAGA Period penalty claims against Defendant.
2. **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the Administrator (named on page 5 below) in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to directly pursue Class Period wage claims against Defendant, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Do Not Have to Do Anything to Participate in the Settlement. If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to directly assert the wage claims against Defendant that are covered by this Settlement (“Released Claims”).

You Can Opt-Out of the Class Settlement, but not the PAGA Settlement. The Opt-Out Deadline is **DATE**. If you don’t want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.

You Cannot Opt-out of the PAGA Portion of the Proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims (defined below).

Participating Class Members Can Object to the Class Settlement, but not the PAGA Settlement. Written objections must be submitted by **DATE**. All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff. Other than the PAGA portion of this Settlement, you can object to any aspect of this Settlement. See Section 7 of this Notice.

You Can Participate at the Final Approval Hearing. The Court's Final Approval Hearing is scheduled to take place on **DATE**. You do not have to attend, but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can also verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

You Can Challenge the Calculation of Your Workweeks/Pay Periods. Written challenges must be submitted by **DATE**. The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Workweeks and number of Pay Periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it, if at all, by **DATE**. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former non-exempt employee of Defendant. The Action accuses Defendant of violating California labor laws for (1) failure to pay minimum wage for all hours worked, (2) failure to pay overtime compensation, (3) failure to provide meal periods, (4) failure to provide rest periods, (5) failure to indemnify necessary business expenses, (6) wage statement violations, (7) waiting time penalties, (8) failure to provide accurate wage statements, and (9) violation of the Business and Profession Code Unfair Competition Law. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the PAGA. Plaintiff is represented by attorneys ("Class Counsel") in the Action.

Defendant strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendant violated any laws. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator to help resolve the Action by negotiating an end to the Action by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a Judgment ending the Action and enforcing the Agreement, Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations of law or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable, and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable, and adequate, authorized this Notice, and scheduled a hearing to determine whether to finally approve the Settlement.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

Defendant Will Pay \$4,500,000.00 as the Gross Settlement Amount (“Gross Settlement Amount”). Defendant has agreed to deposit the Gross Settlement Amount into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the LWDA. Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

Court Approved Deductions from Gross Settlement Amount. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement Amount. The Court will decide these amounts at the Final Approval Hearing:

- Up to \$1,500,000.00 (one-third of the Gross Settlement Amount) to Class Counsel for attorneys’ fees and up to \$25,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- Up to \$5,000.00 as a Class Representative Service Payment to Plaintiff for filing the Action, working with Class Counsel and representing the Class. A Class Representative Service Payment will be the only monies Plaintiff will receive other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
- Up to \$ [REDACTED] to the Administrator for services administering the Settlement.
- Up to \$50,000.00 for PAGA Penalties, 75% of which would be allocated to the LWDA as an LWDA PAGA Payment and 25% of which would be allocated to the Aggrieved Employees as Individual PAGA Payments based on the number of pay periods they worked for Defendant in California for at least one day during the PAGA Period (the “PAGA Pay Periods”).

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement Amount”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to penalties and interest (“Non-Wage Portion”). The Wage Portions are subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portions. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your payments are taxable or how much you might owe in taxes. You are solely responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the “Void Date”). If you do not cash it by the Void Date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund (the “Fund”) in your name. If the payment represented by your check is sent to the Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Settlement, unless you notify the Administrator in writing, not later than **DATE**, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a you or your representative setting forth your name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (“Non-Participating Class Members”) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the facts alleged in the Action during the PAGA Period.

The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void and, in turn, Defendant will not pay any money and Class Members/Aggrieved Employees will not release any claims against Defendant.

Administrator. The Court has appointed a neutral company, **[REDACTED]** (the “Administrator”), to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member challenges over Workweeks/Pay Periods, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

Participating Class Members’ Release. After the Judgment is final and Defendant has fully funded the Gross Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class

Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages and penalties during the Class Period and PAGA Period based on the facts alleged in the Action and resolved by this Settlement.

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Defendant and all other Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts alleged in the Complaint, including claims for: (1) unpaid regular, overtime and minimum wages, (2) meal period violations, (3) rest period violations, (4) failure to timely pay all wages during employment and/or at the time of separation of employment, (5) business expense reimbursements, (6) wage statement violations, (7) failure to maintain accurate and complete payroll and/or personnel records, (8) waiting time penalties, and (9) violation of the Unfair Competition Law during the Class Period. Except as set forth in Section 5.2 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendant has paid the Gross Settlement, all Aggrieved Employees will be barred from asserting PAGA claims against Defendant, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or its related entities based on the facts alleged in the Action and resolved by this Settlement for the PAGA Period.

All Aggrieved Employees release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, Defendant and all other Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts alleged in the Complaint and the PAGA Notice, including for (1) unpaid regular, overtime and minimum wages, (2) meal period violations, (3) rest period violations, (4) failure to timely pay all wages during employment and/or at the time of separation of employment, (5) business expense reimbursements, (6) wage statement violations, (7) failure to maintain accurate and complete payroll and/or personnel records, (8) waiting time penalties, and (9) violation of the Unfair Competition Law during the PAGA Period.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENTS?

Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.

Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$12,500.00 by the total number of PAGA Pay Periods worked by all Aggrieved

Employees and (b) multiplying the result by the number of Pay Periods worked by each individual Aggrieved Employee.

Workweek/Pay Period Challenges. The number of Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendant's records, are stated on the first page of this Notice. You have until **DATE** to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks and/or Pay Periods based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members and Aggrieved Employees) and Defense Counsel. The Administrator's decision is final. You cannot appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

Participating Class Members. The Administrator will send, by U.S. mail, a single check, to the extent possible, to every Participating Class Member (*i.e.*, every Class Member who does not opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment. Otherwise, two checks will be sent.

Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Settlement (*i.e.*, every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing you submit communicating your request to be excluded. Be sure to personally sign your request, identify the Action as *Elizabeth To v. Intuitive Surgical, Inc.*, Santa Clara County Superior Court Case No. 24CV449420, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. The Administrator must be sent your request to be excluded by **DATE**, or it will be invalid. Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least 16 court days before the Final Approval Hearing, Class Counsel will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website ([url](#)) or the Court's website (<https://santaclara.courts.ca.gov>).

A Participating Class Member who disagrees with any aspect of the Settlement or the Motion for Final Approval may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. The deadline for sending written objections to the Administrator is **DATE**. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Elizabeth To v. Intuitive Surgical, Inc.*, Santa Clara County Superior Court Case No. 24CV449420, and include your name, current address, telephone number, and approximate dates of employment with Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but do not have to, attend the Final Approval Hearing on **DATE** at **TIME** in Department 19 of the Santa Clara County Superior Court, located at 191 N. First Street, San Jose, CA 95113. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement Amount will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court's website for the most current information.

It is possible the Court will reschedule the Final Approval Hearing. You should check the Court's website beforehand to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Settlement Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Settlement Agreement, the Judgment or any other Settlement documents is to go to [\[redacted\]](#) website at ([url](#)). You can also telephone or send the Administrator an email using the contact information listed below, or consult the Santa Clara County Superior Court website by going to <https://santaclara.courts.ca.gov> (Online Services

and then Case Information Online) and entering the Case Number for the Action, 24CV449420. You can also make personally review documents pertaining to the Action in the Clerk's Office of the Court.

**DO NOT CONTACT THE COURT TO OBTAIN INFORMATION OR TO ASK
QUESTIONS ABOUT THIS NOTICE OR THE SETTLEMENT.**

Class Counsel:

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MILLS SADAT DOWLAT LLP
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Los Angeles, CA 90071

Settlement Administrator:

[REDACTED]

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK(S)?

If you lose or misplace your settlement check(s) before cashing it/them, the Administrator will replace it/them as long as you request a replacement before the Void Date on the face of the original check(s). If your check is already void you should consult the Fund for instructions on how to retrieve the money.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check(s), you should immediately notify the Administrator if you move or otherwise change your mailing address.