

1 Intuitive Surgical, Inc. (“Intuitive”) and Illinois Union Insurance Company (“Illinois Union”)
2 jointly stipulate, pursuant to Civil Local Rules 6-1(b), 6-2, and 7-12, that, (1) in the event Intuitive
3 prevails on its bad faith claim, the Court will determine the amount of attorney fees to which
4 Intuitive is entitled under Brandt v. Superior Court (“Brandt”), 37 Cal. 3d 813 (1985),
5 (2) documents related to Brandt fees shall be produced after trial, and (3) the parties will jointly
6 propose deadlines relating to any allocation and award of Brandt fees after trial in this action
7 concludes.

8 WHEREAS, in Brandt the California Supreme Court held that “when an insurance company
9 withholds policy benefits in bad faith, attorney fees reasonably incurred to compel payment of the
10 benefits are recoverable as an element of the plaintiff’s damages.” Nickerson v. Stonebridge Life
11 Ins. Co., 63 Cal. 4th 363, 373 (2016) (citing Brandt, 37 Cal. 3d at 819);

12 WHEREAS, in Brandt, the California Supreme Court went on to hold:

13 Since the attorney’s fees are recoverable as damages, the
14 determination of the recoverable fees must be made by the trier of fact
15 unless the parties stipulate otherwise. A stipulation for a postjudgment
16 allocation and award by the trial court would normally be preferable
17 since the determination then would be made after completion of the
18 legal services, and proof that otherwise would have been presented to
19 the jury could be simplified because of the court’s expertise in
20 evaluating legal services.

21 Id. at 819-20 (internal citations omitted); see also Nickerson, 63 Cal. 4th at 373 (“Consistent with
22 that suggestion the trial court in this case accepted the parties’ pretrial stipulation that if [plaintiff]
23 were to succeed on his bad faith claim against [defendant], the court would determine the amount of
24 attorney fees to which [plaintiff] was entitled under Brandt.”);

25 WHEREAS, Intuitive is seeking Brandt fees in connection with its implied covenant of good
26 faith and fair dealing claim against Illinois Union;

27 WHEREAS, the deadline for all fact discovery was initially set for November 10, 2016 (Dkt.
28 186); and

WHEREAS, the parties then stipulated, and the Court subsequently ordered, that to the extent
Intuitive produces any evidence supporting Brandt fees, including legal bills, invoices, or receipts,
such evidence need not be produced until May 19, 2017 (30 days before trial) (Dkts. 197, 198).

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~~PROPOSED~~ ORDER

PURSUANT TO THE FOREGOING STIPULATION OF THE PARTIES, IT IS ORDERED THAT:

(1) In the event that Intuitive succeeds on its bad faith claim at trial, the Court will determine a postjudgment allocation and award of recoverable fees to which Intuitive is entitled under Brandt v. Superior Court (“Brandt”), 37 Cal. 3d 813 (1985);

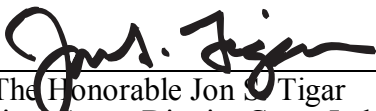
(2) The parties will meet and confer within 20 days after a verdict in the jury trial in this action and jointly propose to the Court expert disclosure deadlines and a briefing schedule relating to the Brandt fee issue; and

(3) The May 19, 2017 deadline for the production of evidence supporting Brandt fees is extended until 30 days after a verdict in the jury trial in this action.

The prior deadlines in Case No. 3:13-cv-04863-JST are amended as follows:

Event	Current Schedule	New Schedule
Parties to Jointly Propose to the Court Expert Disclosure Deadlines and a Briefing Schedule Relating to Brandt Fees	N/A	20 days after a verdict in the jury trial
Deadline to Produce Evidence Supporting Brandt Fees	5/19/2017	30 days after a verdict in the jury trial

DATED: May 21, 2017

By: 
The Honorable Jon S. Tigar
United States District Court Judge