2 3 4 5	ALLEN RUBY (SBN 47109) RAOUL D. KENNEDY (SBN 40892) SKADDEN, ARPS, SLATE, MEAGHER & FLOM LI 525 University Avenue, Suite 1400 Palo Alto, CA 94301 Telephone: (650) 470-4500 Facsimile: (650) 470-4570 allen.ruby@skadden.com raoul.kennedy@skadden.com Attorneys for Plaintiff/Defendant INTUITIVE SURGICAL, INC. UNITED STATES DIST				
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10	SAN FRANCISCO	DIVISION			
11	ILLINOIS UNION INSURANCE COMPANY, an Illinois corporation,	) CASE NO.: 3:13-CV-04863-JST			
12	Plaintiff,	JOINT STIPULATION RE: BRANDT			
13	V.	<pre>/ FEES ALLOCATION AND AWARD; ) and</pre>			
14	INTUITIVE SURGICAL, INC., a Delaware	) [PROPOSED] ORDER.			
15		) Complaint Filed: October 21, 2013 Judge: Honorable Jon S. Tigar			
16	Defendant.	) Trial Date: June 19, 2017			
17	INTUITIVE SURGICAL, INC.,	) CASE NO. 3:15-cv-04834-JST			
18	Plaintiff,	) Complaint Filed: October 20, 2015			
19 20	V.	)			
20 21	ILLINOIS UNION INSURANCE COMPANY, an Illinois Corporation; NAVIGATORS SPECIALTY				
21 22	INSURANCE CO., a New York Corporation,				
22	Defendants.	)			
24					
25					
26					
27					
28					
	JOINT STIPULATION RE: BRANDT FEES ALLOCATION AND AWARD CASE NO. 3:13-CV-04863-JST Dockets.Justia.cor				

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 unless the parties stipulate otherwise. A stipulation for a postjudgment
15	allocation and award by the trial court would normally be preferable since the determination then would be made after completion of the
16	legal services, and proof that otherwise would have been presented to the jury could be simplified because of the court's expertise in
17	evaluating legal services.
18	Id. at 819-20 (internal citations omitted); see also Nickerson, 63 Cal. 4th at 373 ("Consistent with
19	that suggestion the trial court in this case accepted the parties' pretrial stipulation that if [plaintiff]
20	were to succeed on his bad faith claim against [defendant], the court would determine the amount of
21	attorney fees to which [plaintiff] was entitled under Brandt.");
22	WHEREAS, Intuitive is seeking Brandt fees in connection with its implied covenant of good
23	faith and fair dealing claim against Illinois Union;
24	WHEREAS, the deadline for all fact discovery was initially set for November 10, 2016 (Dkt.
25	186); and
26	WHEREAS, the parties then stipulated, and the Court subsequently ordered, that to the extent
27	Intuitive produces any evidence supporting Brandt fees, including legal bills, invoices, or receipts,
28	such evidence need not be produced until May 19, 2017 (30 days before trial) (Dkts. 197, 198).
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	JOINT STIPULATION RE: BRANDT FEES ALLOCATION AND AWARD CASE NO. 3:13-CV-04863-JST

L	NOW THEREFORE, the pa	rties, through	the undersigned	counsel, hereby stipulate that:		
2	• in the event that Intuitive succeeds on its bad faith claim at trial, the Court will					
3	determine a postjudgment allocation and award of recoverable fees to which Intuitive					
۱	<ul> <li>is entitled under Brandt;</li> <li>within 20 days after a verdict in the jury trial in this action, the parties will (1) meet</li> </ul>					
5						
5	and confer, and (2) jointly propose to the Court expert disclosure deadlines and a					
7	<ul> <li>briefing schedule relating to the Brandt fee issue; and</li> <li>the May 19, 2017 deadline for the production of evidence supporting Brandt fees is</li> </ul>					
3						
	extended until 30 days after a verdict in the jury trial in this action.					
	The parties' proposed time n	nodifications	would impact the	deadlines in Case No. 3:13-cv-		
L 0	4863-JST as follows:					
2	Event		Current Schedule	New Schedule		
3 L	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		
5	Deadline to Produce Evidence S			30 days after a verdict in the		
5	Brandt Fees		5/19/2017	jury trial		
7				jury trial		
7 3	Brandt Fees	SKAD	DEN, ARPS, SLA	jury trial ATE, MEAGHER & FLOM LLP en Ruby		
7 3	Brandt Fees	SKAD	DEN, ARPS, SLA /s/ All Attorr INTUITIV	jury trial ATE, MEAGHER & FLOM LLP en Ruby neys for Plaintiff E SURGICAL, INC.		
7 3	Brandt Fees	SKAD	DEN, ARPS, SLA /s/ All Attorr INTUITIV	jury trial ATE, MEAGHER & FLOM LLP en Ruby neys for Plaintiff		
7 3 ) L	Brandt Fees	SKADI By:	DEN, ARPS, SLA /s/ All Attorr INTUITIV COZH /s/ Ch	jury trial ATE, MEAGHER & FLOM LLP en Ruby heys for Plaintiff E SURGICAL, INC. EN O'CONNER arlie Wheeler		
7 3 1 1 2 2 3 3	Brandt Fees	SKADI By:	DEN, ARPS, SLA /s/ All Attorr INTUITIV COZH /s/ Ch Attorne	jury trial ATE, MEAGHER & FLOM LLP en Ruby heys for Plaintiff E SURGICAL, INC. EN O'CONNER		
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7 3 3 1 5 5	Brandt Fees DATED: May 5, 2017 DATED: May 5, 2017 Pursuant to Civil Local Rule	SKADI By: By: II 5-1(i), the fil	DEN, ARPS, SLA /s/ All Attorr INTUITIV COZE /s/ Ch Attorne LLINOIS UNION er attests that cor	jury trial ATE, MEAGHER & FLOM LLP en Ruby heys for Plaintiff E SURGICAL, INC. EN O'CONNER arlie Wheeler bys for Defendant I INSURANCE COMPANY		
7 3 3 1 1 5 5 7 7 d	Brandt Fees DATED: May 5, 2017 DATED: May 5, 2017	SKADI By: By: II 5-1(i), the fil	DEN, ARPS, SL/ /s/ All Attorr INTUITIV COZH /s/ Ch Attorne LLINOIS UNION er attests that cor above.	jury trial ATE, MEAGHER & FLOM LLP en Ruby heys for Plaintiff E SURGICAL, INC. EN O'CONNER arlie Wheeler eys for Defendant I INSURANCE COMPANY neurrence in the filing of this		
7 3 3 1 5 5	Brandt Fees DATED: May 5, 2017 DATED: May 5, 2017 Pursuant to Civil Local Rule	SKADI By: By: II 5-1(i), the fil	DEN, ARPS, SLA /s/ All Attorr INTUITIV COZE /s/ Ch Attorne LLINOIS UNION er attests that cor	jury trial ATE, MEAGHER & FLOM LLP en Ruby heys for Plaintiff E SURGICAL, INC. EN O'CONNER arlie Wheeler eys for Defendant I INSURANCE COMPANY neurrence in the filing of this		
7 3 3 1 5 5 7 4 3 3 4 1 5 5 7 4	Brandt Fees DATED: May 5, 2017 DATED: May 5, 2017 Pursuant to Civil Local Rule	SKADI By: By: II 5-1(i), the fil he signatories	DEN, ARPS, SLA /s/ All Attorr INTUITIV COZE /s/ Ch Attorne LLINOIS UNION er attests that cor above. /s/ Allen Ruby 2	jury trial ATE, MEAGHER & FLOM LLP en Ruby heys for Plaintiff E SURGICAL, INC. EN O'CONNER arlie Wheeler eys for Defendant INSURANCE COMPANY neurrence in the filing of this		

	[PROPOSED] ORDER				
2	PURSUANT TO THE FOREGOING	STIPULATION	OF THE PARTIES, IT IS		
<b>6</b>	ORDERED THAT:				
ŀ	(1) In the event that Intuitive succeeds on its bad faith claim at trial, the Court will				
5 d	determine a postjudgment allocation and award of recoverable fees to which Intuitive is entitled				
u	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				
8 a	action and jointly propose to the Court expert disclosure deadlines and a briefing schedule relating to				
<b>)</b>    t]	he Brandt fee issue; and				
	(3) The May 19, 2017 deadline for th	ne production of e	vidence supporting Brandt fees is		
.    e	extended until 30 days after a verdict in the jury	trial in this action			
2	The prior deadlines in Case No. 3:13-cv-	04863-JST are an	nended 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:		orable Jon Tigar es District Court Judge		
		1 ON AND AWARD			
[·]	PROPOSED] ORDER RE: BRANDT FEES ALLOCATI	UN AND AWARD	CASE NO. 3:13-CV-04863-J		