

1 **HALEY GUILIANO LLP**
 JOSHUA V. VAN HOVEN (CSB No. 262815)
 2 E-Mail: joshua.vanhoven@hglaw.com
 GREGORY J. LUNDELL (CSB No. 234941)
 3 E-Mail: greg.lundell@hglaw.com
 111 N Market Street, Suite 900
 4 San Jose, California 95113
 Telephone: 669.213.1050
 5 Facsimile: 669.500.7375

6 RICHARD T. MCCAULLEY (applying *pro hac vice*)
 E-Mail: richard.mccaalley@hglaw.com
 7 116 W. Hubbard, Unit 20
 Chicago, Illinois 60654
 8 Telephone: 312.330.8105

9 Attorneys for Plaintiff
 SURGICAL INSTRUMENT SERVICE COMPANY, INC.

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 11
 12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA

14 SURGICAL INSTRUMENT SERVICE
 15 COMPANY, INC.,

16 Plaintiff,

17 vs.

18 INTUITIVE SURGICAL, INC.,

19 Defendant.

Case No. _____

- 20 **1. SHERMAN ACT § 1 - TYING**
- 21 **2. SHERMAN ACT § 1 – EXCLUSIVE DEALING**
- 22 **3. SHERMAN ACT § 2 - MONOPOLY**
- 23 **4. SHERMAN ACT § 2 – ATTEMPTED MONOPOLY**
- 24 **5. VIOLATION OF LANHAM ACT**

JURY TRIAL DEMANDED

25 **COMPLAINT**

26 Plaintiff Surgical Instrument Service Company, Inc (“SIS”) brings this Complaint against
 27 Defendant Intuitive Surgical, Inc. (“Intuitive”) for antitrust violations of tying, exclusive
 dealing, monopolization, and attempted monopolization under the Sherman Act, and unfair
 competition under the Lanham Act.

INTRODUCTION

1
2 1. SIS has 50 years of experience servicing surgical instruments and equipment
3 ranging from simple devices such as forceps and scalpels to complex electromechanical devices
4 such as flexible video endoscopes, powered orthopedic devices, and surgical video systems. SIS
5 employs exhaustive inspection and repair procedures to ensure that previously used surgical
6 instruments are only returned to the operating room in accordance with specifications. SIS's
7 services save health care providers and patients millions of dollars a year, reducing the per-surgery
8 cost of procedures without compromising instrument operation or patient safety. SIS is a trusted
9 nationwide partner for hospitals, health care systems, and group purchasing organizations
10 ("GPOs"), including in this District.

11 2. Since the late 1990's, defendant Intuitive has been the leading provider of robotic
12 surgery systems for minimally invasive soft tissue surgeries. In contrast to operating directly on a
13 patient, the surgeon using Intuitive's system remotely operates a multi-arm "da Vinci" surgical
14 robot from a console that receives video of the surgical site and includes means for precisely
15 controlling the movement and operation of surgical tools known as EndoWrists. EndoWrists
16 include traditional surgical tools such as forceps and scalpels and are attached to the robotic arms
17 based on the type of surgery to be performed. The robotic arms include motors that control cables
18 within the EndoWrist in response to the surgeon's inputs, allowing precise multi-axis movement
19 of the "wrist" of the surgical tool that is not possible in traditional surgeries.

20 3. Intuitive has monopoly power in the relevant markets of surgical robots for
21 minimally invasive surgeries, the instruments used in such surgeries, and the servicing of those
22 surgical robots, with a 99%+ market share. In the early 2000's, Intuitive's Form 10-K filings noted
23 a use counter to limit the number of operations performed with EndoWrist instruments, and
24 acknowledged its strategy to "sell the instrument for a fixed number of uses or hours and
25 effectively price our EndoWrist instruments on a per-procedure or per-hour basis." As Intuitive
26 has since gained and exercised monopoly power in the relevant markets, this strategy has become
27 extremely profitable. Although revenue from the da Vinci robots initially exceeded revenue from

1 instrument and accessory sales, by fiscal year 2013 Intuitive's revenues from instruments and
2 accessories surpassed da Vinci robot revenue. By fiscal year 2019 instrument and accessories
3 revenue exceeded \$2.4 billion, or more than a \$1 billion more than sales of da Vinci systems.
4 Although Intuitive does not break out its gross profit for instruments alone, its gross profit on
5 instruments and da Vinci systems is over 70%.

6 4. In connection with the purchase or lease of da Vinci Surgical products, Intuitive
7 requires customers to enter into a Terms and Conditions Agreement ("Sales Agreement") and a
8 Use, License and Service Agreement ("ULSA"). In connection with the agreements required to
9 purchase or lease an Intuitive robotic surgical system, Intuitive demands that customers further
10 agree to a limited license for the use of EndoWrist instruments. The limited license expires once
11 an EndoWrist instrument is used up to its maximum number of uses as specified in the
12 documentation accompanying the particular instrument. Intuitive's ULSA prohibits customers
13 from engaging any unauthorized third party to repair, refurbish, or recondition EndoWrist
14 instruments, whether before or after the limited use license has expired. Further, if a customer has
15 or attempts to have an EndoWrist instrument repaired, refurbished or reconditioned, Intuitive has
16 threatened to terminate the entire Use, License and Service Agreement with the customer
17 immediately upon written notice, and any warranties applicable to the da Vinci robotic surgical
18 system will become void. Intuitive has advised its customers that should Intuitive or its personnel
19 determine, after having accepted a service call or a purchase order for a service call, such as after
20 an Intuitive Field Service Engineer arrives at a customer's site for a service call, that the da Vinci
21 robotic surgical system has been used with EndoWrist instruments refurbished or modified by any
22 unauthorized third party, Intuitive will no longer provide any service for the customer's entire
23 robotic system.

24 5. Plaintiff SIS has detailed procedures for servicing used EndoWrists to original
25 specifications and returning them to service. These procedures include disassembly of the
26 EndoWrist, inspection of all components, adjustment of components as necessary, confirming all
27 movements, and setting a counter to Intuitive's original counter value. While these procedures are

1 extensive and return the EndoWrist to original performance specifications, the cost to the hospital
2 is a fraction of what Intuitive charges to buy a new EndoWrist. In 2019 and 2020, SIS entered
3 into contracts and was in discussion for other contracts to provide EndoWrist repair services to
4 numerous hospitals, health care systems, and GPOs. The cost savings were so substantial that one
5 of the nation's largest health care systems awarded SIS's EndoWrist repair program a prestigious
6 annual award for cost savings. Revenues for SIS, and savings to hospitals and patients, were
7 anticipated to be in the tens if not hundreds of millions of dollars.

8 6. When Intuitive discovered that its customers were using SIS's services, it
9 immediately leveraged its anti-competitive agreements and monopoly power to crush this threat
10 to its supra-competitive EndoWrist profitability. Intuitive's agreements with hospitals include
11 numerous restrictive terms that allow Intuitive to render the da Vinci robots effectively inoperable,
12 and it threatened to exercise those terms against hospitals that used SIS's services. Intuitive also
13 made misleading statements that use of refurbished EndoWrists would violate FDA requirements
14 and intellectual property rights.

15 7. Despite the massive savings to hospitals and patients from SIS's EndoWrist
16 program, SIS's customers and potential customers had no choice but to capitulate to Intuitive's
17 threats. Because of Intuitive's monopoly power in minimally invasive surgical robots, the
18 instruments for those robots, and the servicing of those robots, there are no realistic alternative
19 suppliers in those relevant markets. Health care providers have made massive capital investments
20 in da Vinci robots, surgeons are specifically trained to perform surgery with those robots, and a
21 large number of patients choose da Vinci robotic surgeries despite a significantly higher out-of-
22 pocket cost. To lose access to existing da Vinci robots would not only waste an expensive capital
23 investment, but would effectively foreclose hospitals and surgeons from performing certain types
24 of surgeries.

25 8. Intuitive's anti-competitive conduct cannot be justified by any purported safety or
26 regulatory requirements. All components of the EndoWrists are medical-grade materials that are
27 capable of many times more uses than permitted by Intuitive's unilaterally programmed counter.

1 SIS's services ensure that the inspected or repaired EndoWrists meet all original specifications,
2 and SIS sets the instrument counter to the original value provided by Intuitive. In sum, the only
3 purpose of Intuitive's anti-competitive conduct is to maintain supra-competitive "per-procedure"
4 EndoWrist pricing. By leveraging its monopoly power and anti-competitive agreements in this
5 manner, Intuitive has violated the Sherman Act's prohibitions on monopoly, attempted monopoly,
6 exclusive dealing and tying, and the Lanham Act's prohibition on unfair competition.

7 9. Intuitive is the dominant supplier of robotic surgical systems for minimally invasive
8 soft tissue surgeries. Intuitive essentially has no competition in this market. Additionally, Intuitive
9 is the dominant supplier of instruments used with minimally invasive soft tissue robots and the
10 dominant supplier of servicing for the robots -- essentially having no competition in either of these
11 markets as well.

12 10. Intuitive has used its monopoly power in the EndoWrist instrument replacement
13 aftermarket, as well as in the servicing of surgical robots, to engage in a variety of anticompetitive
14 practices. These exclusionary practices essentially prevent hospitals, health care systems, and
15 GPO's from having access to competitors that offer to repair and refurbish EndoWrist instruments
16 which have been previously used.

17 11. Intuitive wields its monopoly power in the market for robotic soft tissue surgery
18 systems to coerce hospitals, health care systems, and GPO's to act in ways that have
19 anticompetitive effects thus harming competition. Such coercion is backed up by Intuitive's
20 threats to withhold technical support and servicing for the robotic surgery systems purchased by
21 hospitals, health care systems, and GPO's and to deny those customers access to additional and/or
22 replacement EndoWrist instruments.

23 **PARTIES**

24 12. Plaintiff Surgical Instrument Service Company, Inc. is an Illinois corporation with
25 a principal place of business at 151 N. Brandon Drive, Glendale Heights, Illinois.

26 13. Defendant Intuitive Surgical, Inc. is a Delaware corporation with a principal place
27 of business at 1020 Kifer Road, Sunnyvale, California.

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