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**THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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KALEIDA HEALTH, on	:	
behalf of itself and all others similarly	:	
situated	:	
	:	Civil Action No. <u>3:21-cv-05266</u>
Plaintiff,	:	
	:	
v.	:	COMPLAINT AND JURY DEMAND
	:	
INTUITIVE SURGICAL, INC.	:	
	:	
Defendant.	:	
----- x	:	

Plaintiff Kaleida Health, on behalf of itself and all others similarly situated, upon knowledge with respect to its own actions and upon information and belief with respect to all other matters, alleges by way of Complaint against Defendant Intuitive Surgical, Inc. (“Intuitive”):

INTRODUCTION

1
2 1. This antitrust action, brought under Sections 1 and 2 of the Sherman Act, involves
3 abuse of monopoly power claims, including a tying and monopoly leveraging scheme
4 implemented by Intuitive in the sale of its da Vinci Surgical Robot System (“da Vinci”). Intuitive
5 has obtained patents giving it monopoly power in the U.S. surgical robot market, but unlawfully
6 leveraged that power to restrict competition in the separate (a) da Vinci surgical robot service
7 aftermarket, and (b) da Vinci surgical robot instrument service aftermarket, by, among other
8 things as alleged herein, tying the sale of the da Vinci to the service of the robot and the
9 necessary robot instruments.
10

11 2. Intuitive conditions the sale or lease of the da Vinci on the purchaser’s acceptance
12 of Intuitive’s mandatory service contract. The service contract requires the purchaser to use
13 Intuitive as the sole service provider for all da Vinci systems, and prohibits the purchaser from
14 either servicing the robot itself or hiring an independent robot repair company (“IRRC”) to
15 service the da Vinci.
16

17 3. Intuitive also ties the service, including repair and replacement, of da Vinci
18 surgical instruments, sold under the brand name “EndoWrist,” to the sale or lease of its robot
19 system. Intuitive restricts the number of times a purchaser may use the EndoWrist instruments, in
20 most cases to a mere ten uses. This forces Plaintiff and proposed Class members to purchase
21 substantially more EndoWrists than necessary, rather than allowing the EndoWrists to be
22 serviced and repaired for longer use, more in keeping with their useful lives. Intuitive’s service
23 of an EndoWrist instrument typically involves the sale and installation of a new replacement
24 EndoWrist. According to the terms of the da Vinci sales agreements and service contracts,
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1 hospitals cannot hire IRRCs to service or repair their EndoWrist instruments (i.e., clean or
2 sharpen them for longer use).

3 4. There are relevant primary markets for (a) surgical robots, (b) surgical robot
4 instruments, and (c) the repair and/or replacement of surgical robots and surgical robot
5 instruments. Additionally, there are relevant aftermarkets for service of (a) da Vinci robots; and
6 (b) EndoWrist instruments (which includes their repair and replacement), which are separate
7 from the primary markets. Intuitive has monopoly power in every relevant market and
8 aftermarket. Intuitive's abuse of monopoly power scheme illegally exploits its market power in
9 the surgical robot market to foreclose competition in the da Vinci Service and EndoWrist Service
10 Aftermarkets. The scheme is successful and has almost completely inhibited competition in the
11 service aftermarkets for either the da Vinci or EndoWrists, thus precluding customers from using
12 the IRRCs, which deliver the same quality service at lower prices. Intuitive's conduct has
13 thereby significantly increased costs to Plaintiff and the proposed Class. For example, IRRCs
14 Restore Robotics LLC ("Restore"), Surgical Instrument Service Company, Inc. ("SIS"), Revanix
15 Biomedical ("Revanix"), and Rebotix Repair LLC ("Rebotix") offer repair services for the da
16 Vinci and EndoWrists by skilled and experienced technicians.

19 5. Defendant's anticompetitive scheme has had the effect of driving the majority of
20 Intuitive's annual revenues: in 2019, Intuitive reported product revenue of \$2.621 billion in the
21 U.S. out of a total \$3.1 billion in U.S. revenue. Product revenues comprise revenues from the
22 sales of da Vincis, accompanying accessories, EndoWrists and replacement EndoWrists. Most of
23 Intuitive's U.S. revenue (57%) was attributable to instrument and accessory sales and
24 replacement, and 16% was attributable to service contracts. While the coronavirus pandemic
25 reduced the overall da Vinci-related revenues in 2020, Intuitive's revenues from its related
26

1 service and repair offerings still exceeded \$2 billion in 2020 and represented approximately 77%
2 of its total revenue in the U.S.

3 6. But for Intuitive's unlawful abuse of monopoly power, IRRCs could service the
4 da Vinci and EndoWrists, which would allow for competitive pricing in the da Vinci and
5 EndoWrist Service Aftermarkets. For example, SIS states it charges its customers approximately
6 30-45% less to clean or repair an EndoWrist than Intuitive charges to replace the same
7 EndoWrist. Restore also estimates that Intuitive charges approximately 30% higher prices on
8 average for EndoWrist replacement as compared to EndoWrist repairs performed by IRRCs.
9 Denying IRRCs the ability to service da Vincis forces Plaintiff and proposed Class members
10 such as hospitals and clinics to pay supracompetitive prices for these services. Likewise, denying
11 IRRCs the ability to service EndoWrists forces Plaintiff and proposed class members to spend
12 thousands of dollars replacing instruments that could be repaired and safely reused throughout
13 those instruments' useful lives.
14

15
16 7. For these reasons and to remedy the injuries that have been caused by Intuitive's
17 anticompetitive conduct, Plaintiff and the proposed Class seek treble damages.

18 **PARTIES**

19 8. Plaintiff Kaleida Health is a New York not-for-profit corporation with its
20 principal place of business in Buffalo, New York. During the proposed Class Period (defined in
21 paragraph 104, *infra*), Plaintiff Kaleida leased da Vinci Xi models directly from Defendant
22 Intuitive, pursuant to written lease agreements, and it paid Defendant Intuitive for service to its
23 da Vincis and EndoWrists. As a result of Intuitive's antitrust violations, Plaintiff and members of
24 the proposed Class (defined in paragraph 104, *infra*) have been injured in their business or
25 property.
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9. Defendant Intuitive Surgical, Inc. is a Delaware corporation with its principal place of business at 1020 Kifer Road, Sunnyvale, CA. Intuitive is the creator and manufacturer of the da Vinci, along with its accessories and instruments, including the EndoWrist line of surgical instruments. Intuitive directly sells da Vincis and EndoWrists, along with associated parts and services, to hospitals, clinics and surgical centers throughout the United States, including in the Northern District of California.

VENUE AND JURISDICTION

10. This complaint is filed under Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2. This Court has jurisdiction over the federal antitrust law claims alleged herein under 28 U.S.C. §§ 1331, 1337, 2201 and 2202, and 15 U.S.C. §§ 15 and 26.

11. Defendant transacts business and is found in this district. Substantial interstate trade and commerce involved and affected by the alleged violations of antitrust law occurs within this district. The acts complained of have had substantial anticompetitive effects in this district. Venue is proper in this district under 28 U.S.C. § 1391 and 15 U.S.C. §§ 15, 22 and 26.

12. Intradistrict Assignment. Although antitrust class actions are excluded from Local Rule 3-2(c), Intuitive is headquartered in Sunnyvale, California.

GENERAL ALLEGATIONS

A. Relevant Markets

1. The Robotic Surgical Systems Market and Intuitive's Monopoly Power in That Market

a. The Robotic Surgical Systems Product Market

13. Robotic surgical systems are used for minimally invasive soft tissue surgeries performed between the pelvis and the head. Robotic surgery, like laparoscopic surgery done by hand, makes several incisions in soft tissue for the insertion of small surgical instruments to

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