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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Richard Di Donato, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

Insys Therapeutics, Inc.; Michael L. Babich;
Darryl S. Baker; and John N. Kapoor,

Defendants.

No. 16-cv-00302-NVW

CLASS ACTION

**STIPULATION AND
AGREEMENT OF SETTLEMENT
BETWEEN LEAD PLAINTIFF
AND DEFENDANT MICHAEL L.
BABICH**

1 This Stipulation and Agreement of Settlement Between Lead Plaintiff and
2 Defendant Michael L. Babich dated July 21, 2020 (“Stipulation”) is entered into between
3 (1) Court-appointed Lead Plaintiff and Class Representative Clark Miller (“Lead
4 Plaintiff” or “Class Representative”), on behalf of himself and the Court-certified Class;
5 and (2) Michael L. Babich (“Settling Defendant” or “Defendant Babich” and, together
6 with Class Representative, the “Settling Parties”), and embodies the terms and conditions
7 of the Settling Parties’ settlement of the above-captioned action (“Action”).¹ Subject to
8 the approval of the Court, this Stipulation is intended to fully, finally, and forever
9 compromise, settle, release, resolve, and dismiss with prejudice the Action and all
10 Released Class Representative’s Claims (defined in ¶ kk below) against Defendant
11 Babich. This Stipulation does not release any claims of Class Representative and the other
12 members of the Class against the Non-Settling Defendants (defined in ¶ bb below) in the
13 Action.

14 WHEREAS:

15 A. On February 2, 2016, the initial complaint in the Action was filed in the
16 Court against Insys Therapeutics, Inc. (“Insys” or the “Company”), Defendant Babich,
17 Darryl S. Baker (“Baker”), Alec Burlakoff,² and John N. Kapoor (“Kapoor”), asserting
18 violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange
19 Act”), 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5, promulgated thereunder by the
20 U.S. Securities and Exchange Commission (“SEC”), 17 C.F.R. § 240.10b-5. Doc. 1.

21 B. On June 3, 2016, the Court appointed Clark Miller as Lead Plaintiff
22 pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”) and
23 approved Lead Plaintiff’s selection of Kessler Topaz Meltzer & Check, LLP as Lead
24 Counsel and Bonnett, Fairbourn, Friedman & Balint, P.C. as Liaison Counsel. Doc. 40.

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26 ¹ All terms with initial capitalization not otherwise defined herein shall have the
meanings ascribed to them in ¶ 1 below.

27 ² The Court dismissed Lead Plaintiff’s claims against Alec Burlakoff in its August
28 1, 2017 Order. Doc. 107.

1 On June 24, 2016, Lead Plaintiff filed the Amended Complaint for Violation of the
2 Federal Securities Laws (“Amended Complaint”). Doc. 49.

3 C. On August 19, 2016, defendants filed a motion to dismiss the Amended
4 Complaint for failure to state a claim pursuant to Rules 9(b) and 12(b)(6) of the Federal
5 Rules of Civil Procedure (“Federal Rules”) and pursuant to the pleading requirements of
6 the PSLRA. Doc. 61. Lead Plaintiff opposed defendants’ motion to dismiss on September
7 6, 2016. Doc. 67.

8 D. Thereafter, based on information that became available after the filing of
9 the Amended Complaint, and with the consent of all defendants, Lead Plaintiff, on
10 December 22, 2016, filed the operative complaint in the Action – the Second Amended
11 Class Action Complaint for Violation of the Federal Securities Laws (“Second Amended
12 Complaint”), asserting claims under Sections 10(b) and/or 20(a) of the Exchange Act, 15
13 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the SEC, 17
14 C.F.R. § 240.10b-5. Doc. 77.

15 E. On January 18, 2017, defendants moved to dismiss the Second Amended
16 Complaint for failure to state a claim pursuant to Rules 9(b) and 12(b)(6) of the Federal
17 Rules and pursuant to the pleading requirements of the PSLRA. Doc. 85. On February 2,
18 2017, Lead Plaintiff opposed defendants’ motion to dismiss. Defendants’ motion was
19 fully briefed and, following oral argument by the parties, the Court granted in part and
20 denied in part defendants’ motion to dismiss on August 1, 2017. Doc. 107.

21 F. Defendants filed their answer to the Second Amended Complaint on April
22 13, 2018, and an amended answer on May 4, 2018. Docs. 131, 135. Thereafter, discovery
23 in the Action commenced.³

24 G. On August 10, 2018, Lead Plaintiff and certain defendants, including the
25 Settling Defendant, participated in a full-day mediation in New York, New York before
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28 ³ The parties completed discovery on November 22, 2019.

1 retired federal Judge Layn R. Phillips of Phillips ADR, which did not result in an
2 agreement to resolve any portion of the Action.

3 H. On August 31, 2018, Lead Plaintiff filed a motion for class certification
4 (“Class Certification Motion”). Doc. 159. Defendants opposed Lead Plaintiff’s motion on
5 October 26, 2018. Doc. 165.

6 I. On June 10, 2019, while the parties’ discovery efforts were ongoing and the
7 Class Certification Motion was pending, Insys notified the Court and the parties to the
8 Action that the Company filed for bankruptcy protection under chapter 11 of title 11 of
9 the United States Code in the United States Bankruptcy Court for the District of Delaware.
10 Doc. 230. Accordingly, pursuant to 11 U.S.C. § 362(a) of the United States Code, the
11 Action was automatically stayed as to Insys.

12 J. On September 20, 2019, the Court granted Lead Plaintiff’s Class
13 Certification Motion (“Class Certification Order”), while making clear that the Class
14 Certification Order did not apply to Insys based upon the automatic stay provisions of 11
15 U.S.C. § 362(a) of the United States Code. Doc. 271. On October 4, 2019, defendant
16 Kapoor filed with the United States Court of Appeals for the Ninth Circuit a petition for
17 permission to appeal the Court’s Class Certification Order pursuant to Federal Rule 23(f)
18 (“Petition”). Doc. 273. On December 18, 2019, the Ninth Circuit denied the Petition.

19 K. On December 13, 2019, Class Representative filed a consent motion to
20 voluntarily dismiss Insys from the Action with prejudice (“Insys Dismissal Motion”).
21 Doc. 311. On that same day, Class Representative also filed a consent motion to approve
22 the form and manner of providing notice to the Class regarding the Court’s certification
23 of the Action as a class action pursuant to Federal Rule 23, as well as the Insys Dismissal
24 Motion (“Class Notice Motion”). Doc. 312.

25 L. The Court granted the Class Notice Motion on March 20, 2020. Doc. 331.
26 Among other things, the Court found that the proposed notice to the Class met the
27 requirements of Federal Rule 23 and due process and constituted the best notice
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1 practicable under the circumstances. Notice was mailed to potential Class Members
2 beginning on April 3, 2020 and a summary notice was published in *Investor's Business*
3 *Daily* and transmitted over *PR Newswire* on April 6, 2020. *See* Doc. 336.

4 M. Pursuant to the Court's March 20, 2020 Order, notice to the Class ("Class
5 Notice") provided Class Members the opportunity to request exclusion from the Class,
6 explained that right, and set forth the procedures for doing so.⁴ The Notice also provided
7 the opportunity for members of the Class to object to the Insys Dismissal Motion.

8 N. Pursuant to the Court's March 20, 2020 Order, and as set forth in the Class
9 Notice, the deadline for submitting requests for exclusion from the Class or objecting to
10 the Insys Dismissal Motion was April 30, 2020. In response to the Class Notice, no
11 requests for exclusion from the Class or objections to the Insys Dismissal Motion were
12 received. Docs. 336, 337. By Order dated May 15, 2020, the Court dismissed Insys from
13 the Action with prejudice. Doc. 338.

14 O. In December 2019, defendants Babich, Baker, and Kapoor filed a motion
15 for summary judgment asserting that Class Representative could not establish a triable
16 issue of fact as to certain elements of his claims, and that defendants were entitled to
17 summary judgment under Rule 56 of the Federal Rules on December 20, 2019
18 ("Summary Judgment Motion"). Doc. 317. Class Representative opposed the Summary
19 Judgment Motion on February 3, 2020, and defendants Babich, Baker, and Kapoor filed
20 a reply in support of their motion on February 18, 2020. Docs. 326, 328. On May 8, 2020,
21 the Court denied the Summary Judgment Motion in its entirety. Doc. 333.

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24 ⁴ The Class Notice informed Class Members that if they elected to remain members
25 of the Class, they would "be bound by all past, present and future orders and judgments
26 in the Action, whether favorable or unfavorable." The Class Notice also informed Class
27 Members that it would be within the Court's discretion whether to permit a second
28 opportunity to request exclusion if there was a settlement. Pursuant to the Court's Order
Preliminarily Approving Settlement with Defendant Darryl S. Baker and Providing for
Notice dated June 5, 2020 (Doc. 347), the Court exercised its discretion not to permit
Class Members a second opportunity to exclude themselves from the Class in connection
with the settlement proceedings.

1 P. On May 8, 2020, Class Representative and defendant Baker informed the
2 Court that they had reached an agreement in principle to resolve the Action as to
3 defendant Baker only (the “Baker Settlement”). Doc. 332.

4 Q. On May 22, 2020, the Court scheduled a jury trial to commence on August
5 17, 2020. Doc. 229. Thereafter, the Settling Parties engaged in substantial trial
6 preparations, including submitting their proposed Final Pretrial Order; *in limine* motions;
7 and other key pretrial disclosures. Docs. 349-52, 355-56, 358-62.

8 R. On June 25, 2020, Class Representative and defendant Kapoor informed
9 the Court that they had reached an agreement in principle to resolve the Action as to
10 defendant Kapoor only (the “Kapoor Settlement”). Doc. 364.

11 S. While the Settling Parties’ trial preparations were ongoing, Class
12 Representative and Defendant Babich restarted their earlier discussions concerning the
13 possibility of resolving the Action. Following hard-fought, arm’s-length negotiations
14 with the assistance of Michelle Yoshida of Phillips ADR, the Settling Parties agreed to
15 resolve the Action against Defendant Babich for \$250,000.00 in cash. On July 14, 2020,
16 the Settling Parties filed a Notice of Settlement informing the Court that they had reached
17 an agreement in principle to resolve the Action as to Defendant Babich. Doc. 391. If
18 approved by the Court, the settlements between Class Representative and defendants
19 Baker, Kapoor, and Babich, will provide the Class with a collective payment of no less
20 than \$2.95 million and up to \$12.25 million.

21 T. Based upon their investigation and prosecution of the Action, and the
22 Settling Parties’ settlement negotiations, Class Representative and Class Counsel have
23 concluded that the terms and conditions of this Stipulation are fair, reasonable, and
24 adequate to Class Representative and the other members of the Class, and in their best
25 interests, particularly in light of Defendant Babich’s current and expected future financial
26 condition given his forfeiture and restitution exposure, exceeding \$74 million, imposed
27 as a result of his guilty plea in the action *United States of America v. Babich, et al.*, No.
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1 1:16-cr-10343-ADB (D. Mass.) (“Criminal Action”), as well as several stipulated
2 judgments exceeding \$1.4 billion entered into with a state attorney general and a public
3 health authority (with covenants not to execute unless Defendant Babich voluntarily files
4 for bankruptcy) and the substantial likelihood that Defendant Babich would be unable to
5 satisfy a future settlement or judgment at trial in an amount greater than the Settlement
6 Amount. Based on Class Representative’s direct oversight of the prosecution of this
7 matter and with the advice of counsel, Class Representative has agreed to settle and
8 release the Released Class Representative’s Claims against the Settling Defendant
9 pursuant to the terms and provisions of this Stipulation, after considering, among other
10 things: (a) the financial benefit that members of the Class will receive under the proposed
11 Settlement; (b) the significant risks and costs of trial and the likely appeals that would
12 follow; (c) the bankruptcy of the corporate defendant; and (d) Defendant Babich’s limited
13 uncommitted financial resources and inability to access any insurance coverage, to fund
14 a settlement or judgment in the Action.⁵

15 U. This Stipulation constitutes a compromise of all matters that are in dispute
16 between the Settling Parties. Defendant Babich is entering into this Stipulation solely to
17 eliminate the burden, expense, and uncertainties of further litigation. Defendant Babich
18 denies any wrongdoing in connection with the alleged materially false or misleading
19 statements in this Action and believes he has significant defenses to all claims, and this
20 Stipulation shall in no event be construed or deemed to be evidence of or an admission or
21 concession on the part of Defendant Babich with respect to any claim or allegation of any
22 fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses
23 that Defendant Babich (or the Non-Settling Defendants) has, or could have, asserted.
24 Defendant Babich has denied, and continues to deny, any and all allegations and claims
25 asserted in the Action against him, has denied and continues to deny that he has committed

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27 ⁵ Defendant Babich’s insurance carriers have consistently and repeatedly denied
28 coverage in this matter, including, without limitation, refusing to pay defense costs, in
light of Defendant Babich’s guilty plea in the Criminal Action.

1 any act or omission giving rise to any liability and/or violation of the federal securities
2 laws, and has denied and continues to deny that Class Representative or any Class
3 Members have suffered damage or were otherwise harmed by Defendant Babich’s
4 conduct. Similarly, this Stipulation shall in no event be construed or deemed to be
5 evidence of or an admission or concession on the part of Class Representative of any
6 infirmity in any of the claims asserted in the Action, or an admission or concession that
7 any of Defendant Babich’s (or the Non-Settling Defendants’) defenses to liability had any
8 merit.

9 NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among
10 Class Representative (individually and on behalf of all other members of the Class) and
11 Defendant Babich, by and through their respective undersigned attorneys and subject to
12 the approval of the Court pursuant to Rule 23(e) of the Federal Rules, that, in
13 consideration of the benefits flowing to the Settling Parties from the Settlement, all
14 Released Class Representative’s Claims as against the Settling Defendant’s Releasees and
15 all Released Settling Defendant’s Claims as against Class Representative’s Releasees
16 shall be settled and released, upon and subject to the terms and conditions set forth below.

17 **DEFINITIONS**

18 1. As used in this Stipulation and any exhibits attached hereto and made a part
19 hereof, the following capitalized terms shall have the following meanings:

20 a. “Action” means the securities class action styled *Di Donato v. Insys*
21 *Therapeutics, Inc., et al.*, No. 16-cv-00302-NVW (D. Ariz.).

22 b. “Alternate Judgment” means a form of final judgment that may be
23 entered by the Court herein but in a form other than the form of Judgment provided for in
24 this Stipulation.

25 c. “Authorized Claimant” means a Class Member who either:
26 (i) submits a Claim to the Claims Administrator in connection with one of the Non-
27 Settling Defendants’ Settlements; or (ii) submits a Claim to the Claims Administrator in
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1 connection with this Settlement, and who is approved by the Court for payment from the
2 Net Settlement Fund.

3 d. “Baker Settlement” means the settlement reached between Lead
4 Plaintiff and defendant Darryl S. Baker, which the Court preliminarily approved by Order
5 dated June 5, 2020. Docs. 341, 347.

6 e. “Claim” means a paper claim submitted on a Proof of Claim Form
7 or an electronic claim that is submitted to the Claims Administrator.

8 f. “Claim Form” or “Proof of Claim Form” means the form,
9 substantially in the form attached hereto as Attachment 4 to Exhibit A, which a Claimant
10 must complete and submit (or completes and submits in connection with one of the Non-
11 Settling Defendants’ Settlements) should that Claimant seek to share in a distribution of
12 the Net Settlement Fund.

13 g. “Claimant” means a person or entity who or which submits a Claim
14 to the Claims Administrator (or submits a Claim to the Claims Administrator in
15 connection with one of the Non-Settling Defendants’ Settlements) seeking to be eligible
16 to share in the proceeds of the Net Settlement Fund.

17 h. “Claims Administrator” means A.B. Data, Ltd., the firm retained by
18 Class Counsel and approved by the Court in connection with Class Notice and the Non-
19 Settling Defendants’ Settlements, subject to continuing approval of the Court, to provide
20 all notices approved by the Court to potential Class Members and to administer the
21 Settlement.

22 i. “Class” means the class certified by the Court in its September 20,
23 2019 Order (Doc. 271). Specifically, the Class includes all persons and entities who
24 purchased or otherwise acquired Insys common stock during the period from March 3,
25 2015, through January 25, 2016, and were damaged thereby. Excluded from the Class are
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1 (a) Defendants;⁶ (b) present and former directors or executive officers of Insys and
2 members of their immediate families (as defined in 17 C.F.R. § 229.404, Instructions
3 (1)(a)(iii) and (1)(b)(ii)); (c) any of the foregoing individuals' or entities' legal
4 representatives, heirs, successors, or assigns; and (d) any entity in which any Defendant
5 has or had a controlling interest, or which is related to or affiliated with any Defendant.

6 j. "Class Counsel" means Kessler Topaz Meltzer & Check, LLP.

7 k. "Class Distribution Order" means an order entered by the Court
8 authorizing and directing that the Net Settlement Fund be distributed, in whole or in part,
9 to Authorized Claimants.

10 l. "Class Member" means each person and entity who or which is a
11 member of the Class.

12 m. "Class Period" means the period from March 3, 2015, through
13 January 25, 2016.

14 n. "Class Representative" or "Lead Plaintiff" means Clark Miller.

15 o. "Class Representative's Releasees" means (i) Class Representative,
16 his attorneys and all other Class Members; (ii) the current and former parents, affiliates,
17 subsidiaries, successors, predecessors, assigns, and assignees of each of the foregoing in
18 (i), if applicable; and (iii) the current and former officers, directors, immediate family
19 members (as defined in 17 C.F.R. §229.404, Instructions (1)(a)(iii) and (1)(b)(ii)), heirs,
20 trusts, trustees, executors, estates, administrators, beneficiaries, agents, affiliates,
21 insurers, reinsurers, predecessors, successors, assigns, and advisors of each of the persons
22 or entities listed in (i) and (ii), in their capacities as such.

23 p. "Court" means the United States District Court for the District of
24 Arizona.

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27 ⁶ For purposes of the Class definition, the term "Defendants" refers collectively to
28 Defendant Babich and the Non-Settling Defendants.

1 q. “Effective Date” with respect to the Settlement means the first date
2 by which all of the events and conditions specified in ¶ 33 of this Stipulation have been
3 met and have occurred or have been waived.

4 r. “Escrow Account” means an account maintained at Huntington
5 National Bank wherein the Settlement Amount shall be deposited and held in escrow
6 under the control of Class Counsel.

7 s. “Escrow Agent” means Huntington National Bank.

8 t. “Escrow Agreement” means the agreement between Class Counsel
9 and the Escrow Agent setting forth the terms under which the Escrow Agent shall
10 maintain the Escrow Account.

11 u. “Final,” with respect to the Judgment or, if applicable, the Alternate
12 Judgment, or any other court order, means: (i) if no appeal is filed, the expiration date of
13 the time provided for filing or noticing any appeal under the Federal Rules of Appellate
14 Procedure, i.e., thirty (30) days after entry of the judgment or order; or (ii) if there is an
15 appeal from the judgment or order, (a) the date of final dismissal of all such appeals, or
16 the final dismissal of any proceeding on certiorari or otherwise, or (b) the date the
17 judgment or order is finally affirmed on an appeal, the expiration of the time to file a
18 petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari
19 or other form of review, and, if certiorari or other form of review is granted, the date of
20 final affirmance following review pursuant to that grant. However, any appeal or
21 proceeding seeking subsequent judicial review pertaining solely to an order issued with
22 respect to (i) attorneys’ fees, costs or expenses, or (ii) the plan of allocation of Settlement
23 proceeds (as submitted or subsequently modified), shall not in any way delay or preclude
24 a judgment from becoming Final.

25 v. “Insys” or “Company” means Insys Therapeutics, Inc.

26 w. “Judgment” means the final judgment, substantially in the form
27 attached hereto as Exhibit B, to be entered by the Court approving the Settlement.
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1 x. “Kapoor Settlement” means the settlement reached between Lead
2 Plaintiff and defendant John N. Kapoor, which the Court preliminarily approved by Order
3 dated July 2, 2020. Docs. 371, 373.

4 y. “Liaison Counsel” means Bonnett, Fairbourn, Friedman & Balint,
5 P.C.

6 z. “Litigation Expenses” means the costs and expenses incurred in
7 connection with commencing, prosecuting, and settling the Action, for which Class
8 Counsel intend to apply to the Court for payment or reimbursement from the Settlement
9 Fund.

10 aa. “Net Settlement Fund” means the Settlement Fund less any:
11 (i) Taxes; (ii) Notice and Administration Costs; (iii) Litigation Expenses awarded by the
12 Court; and (iv) other costs or fees approved by the Court.

13 bb. “Non-Settling Defendants” means Darryl S. Baker and John N.
14 Kapoor.

15 cc. “Non-Settling Defendants’ Settlements” means the Baker
16 Settlement and the Kapoor Settlement.

17 dd. “Notice and Administration Costs” means the costs, fees, and
18 expenses that are incurred by the Claims Administrator and/or Class Counsel in
19 connection with: (i) providing notices to the Class (including, but not limited to, the Class
20 Notice and the notices informing the Class of the Settlement); and (ii) administering the
21 Settlement, including but not limited to the Claims process, as well as the costs, fees, and
22 expenses incurred in connection with the Escrow Account.

23 ee. “Plaintiffs’ Counsel” means Class Counsel, Liaison Counsel, the
24 Schall Law Firm, and Goldberg Law PC.

25 ff. “Plan of Allocation” means the proposed plan of allocation of the
26 Net Settlement Fund set forth in the Settlement Notice and the same plan of allocation
27 being proposed in connection with the Non-Settling Defendants’ Settlements.
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1 gg. “Postcard Settlement Notice” means the postcard notice,
2 substantially in the form attached hereto as Attachment 1 to Exhibit A, which is to be
3 mailed and/or emailed to Class Members.

4 hh. “Preliminary Approval Order” means the order, substantially in the
5 form attached hereto as Exhibit A, to be entered by the Court preliminarily approving the
6 Settlement with Defendant Babich and directing that notice of the Settlement be provided
7 to the Class.

8 ii. “PSLRA” means the Private Securities Litigation Reform Act of
9 1995, 15 U.S.C. §§ 77z-1, 78u-4, as amended.

10 jj. “Released Claims” means all Released Settling Defendant’s Claims
11 and all Released Class Representative’s Claims.

12 kk. “Released Class Representative’s Claims” means all claims and
13 causes of action of every nature and description, whether known claims or Unknown
14 Claims, whether arising under federal, state, local, common, statutory, administrative or
15 foreign law, or any other law, rule or regulation, at law or in equity, whether class or
16 individual in nature, whether accrued or unaccrued, whether liquidated or unliquidated,
17 whether matured or unmatured, that Class Representative or any other member of the
18 Class: (i) asserted in any of the complaints filed in the Action or (ii) could have asserted
19 in the Action or in any other court or forum that arise out of or in any way relate to the
20 allegations, transactions, facts, matters or occurrences, representations, or omissions set
21 forth in any of the complaints filed in the Action and that relate to the purchase,
22 acquisition or sale of Insys common stock during the period from August 12, 2014
23 through December 8, 2016. “Released Class Representative’s Claims” shall not include:
24 (i) any claims against the Non-Settling Defendants; (ii) any claims relating to the
25 enforcement of the Settlement with Defendant Babich; or (iii) any of the claims asserted
26 in the actions referenced in Appendix 1 hereto.

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1 ll. “Released Settling Defendant’s Claims” means all claims and causes
2 of action of every nature and description, whether known claims or Unknown Claims,
3 whether arising under federal, state, local, common, statutory, administrative or foreign
4 law, or any other law, rule or regulation, at law or in equity, whether class or individual
5 in nature, whether accrued or unaccrued, whether liquidated or unliquidated, whether
6 matured or unmatured, that arise out of or relate in any way to the institution, prosecution,
7 or settlement of the claims against Defendant Babich. “Released Settling Defendant’s
8 Claims” shall not include any claims relating to the enforcement of the Settlement.

9 mm. “Releasee(s)” means each and any of the Settling Defendant’s
10 Releasees and each and any of the Class Representative’s Releasees.

11 nn. “Releases” means the releases set forth in ¶¶ 4-5 of this Stipulation.

12 oo. “Second Amended Complaint” means the operative Second
13 Amended Class Action Complaint for Violation of the Federal Securities Laws filed in
14 the Action on December 22, 2016. Doc. 77.

15 pp. “Settlement” means the settlement between Class Representative
16 and Defendant Babich on the terms and conditions set forth in this Stipulation.

17 qq. “Settlement Amount” means \$250,000.00 in cash.

18 rr. “Settlement Fairness Hearing” means the hearing set by the Court
19 under Rule 23(e)(2) of the Federal Rules to consider final approval of the Settlement.

20 ss. “Settlement Fund” means the Settlement Amount plus interest
21 earned on the Settlement Amount while in escrow, if any.

22 tt. “Settlement Notice” means the Notice of (I) Proposed Settlement
23 with Defendant Michael L. Babich; (II) Settlement Fairness Hearing; and (III) Motion for
24 Litigation Expenses, substantially in the form attached hereto as Attachment 2 to Exhibit
25 A, which is to be posted on the Website and mailed or emailed to Class Members upon
26 request.

27 uu. “Settling Defendant” means Michael L. Babich.
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1 vv. “Settling Defendant’s Counsel” or “Defendant Babich’s Counsel”
2 means Russell Piccoli, PLC and Lang & Klain, P.C.

3 ww. “Settling Defendant’s Releasees” means Defendant Babich, all past,
4 present, or future entities owned, affiliated with or controlled by Defendant Babich,
5 including any of those entities’ parents, consultants, insurers, attorneys, advisors,
6 successors, heirs, assigns, executors, personal representatives, marital communities and
7 members of his immediate family (as defined in 17 C.F.R. §229.404, Instructions
8 (1)(a)(iii) and (1)(b)(ii)), or any trust of which Defendant Babich is the settler or which is
9 for the benefit of Defendant Babich or member(s) of his family. “Settling Defendant’s
10 Releasees” does not include any of the Non-Settling Defendants, nor any of their related
11 persons or entities.

12 xx. “Settling Parties” means Defendant Babich and Class
13 Representative, on behalf of himself and the Class.

14 yy. “Summary Settlement Notice” means the Summary Notice of
15 (I) Proposed Settlement with Defendant Michael L. Babich; (II) Settlement Fairness
16 Hearing; and (III) Motion for Litigation Expenses, substantially in the form attached
17 hereto as Attachment 3 to Exhibit A, to be published as set forth in the Preliminary
18 Approval Order.

19 zz. “Taxes” means: (i) all federal, state, and/or local taxes of any kind
20 (including any interest or penalties thereon) on any income earned by the Settlement
21 Fund; and (ii) the expenses and costs incurred by Class Counsel in connection with
22 determining the amount of, and paying, any taxes owed by the Settlement Fund
23 (including, without limitation, expenses of tax attorneys and accountants).

24 aaa. “Unknown Claims” means any Released Class Representative’s
25 Claims which Class Representative or any other Class Member do not know or suspect
26 to exist in his, her, or its favor at the time of the release of such claims, and any Released
27 Settling Defendant’s Claims which the Settling Defendant does not know or suspect to
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1 exist in his favor at the time of the release of such claims, which, if known by him, her,
2 or it, might have affected his, her, or its decision(s) with respect to this Settlement,
3 including, but not limited to, whether or not to object to the Settlement or to the release
4 of the Released Claims. With respect to any and all Released Claims, the Settling Parties
5 stipulate and agree that, upon the Effective Date of the Settlement, Class Representative
6 and the Settling Defendant shall expressly waive, and each of the Class Members shall be
7 deemed to have, and by operation of the Judgment or the Alternative Judgment, if
8 applicable, shall have, expressly waived, the provisions, rights, and benefits conferred by
9 any law of any state or territory of the United States, or principle of common law or
10 foreign law, which is similar, comparable, or equivalent to California Civil Code §1542,
11 which provides:

12 A general release does not extend to claims that the creditor or releasing party
13 does not know or suspect to exist in his or her favor at the time of executing
14 the release and that, if known by him or her, would have materially affected
15 his or her settlement with the debtor or released party.

16 Class Representative and the Settling Defendant acknowledge, and each of the other Class
17 Members shall be deemed by operation of law to have acknowledged, that the foregoing
18 waiver was separately bargained for and a key element of the Settlement.

19 bbb. “Website” means the website created specifically for the Action in
20 connection with Class Notice, www.InsysRXSecuritiesLitigation, which will be updated
21 to include information regarding the Settlement and on which the Settlement Notice and
22 Claim Form will be posted.

23 **PRELIMINARY APPROVAL OF THE SETTLEMENT**

24 2. Concurrently with the execution of this Stipulation, Class Representative
25 will move for preliminary approval of the Settlement, authorization to provide notice of
26 the Settlement with Defendant Babich to the Class, and the scheduling of a hearing for
27 consideration of final approval of the Settlement, which motion shall be unopposed by
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1 Defendant Babich. Concurrently with this motion, Class Representative shall apply to the
2 Court for, and Defendant Babich shall agree to, entry of the Preliminary Approval Order,
3 substantially in the form attached hereto as Exhibit A.

4 **RELEASE OF CLAIMS**

5 3. The obligations incurred pursuant to this Stipulation are in consideration of:
6 (a) the full and final disposition of the Action as against Defendant Babich; and
7 (b) the Releases provided for herein. On the Effective Date, the Action shall be dismissed
8 only against Defendant Babich with prejudice.

9 4. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without
10 further action by anyone, upon the Effective Date of the Settlement, Class Representative
11 and each of the other Class Members, on behalf of themselves, and their respective
12 spouses, heirs, executors, administrators, predecessors, successors, and assigns, in their
13 capacities as such, shall be deemed to have, and by operation of law and of the judgment
14 shall have, fully, finally, and forever compromised, settled, released, resolved,
15 relinquished, waived, and discharged each and every Released Class Representative's
16 Claim against the Settling Defendant and the other Settling Defendant's Releasees, and
17 shall forever be barred and enjoined from prosecuting any or all of the Released Class
18 Representative's Claims against any of the Settling Defendant's Releasees whether or not
19 such Class Member executes and delivers a Claim Form.

20 5. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without
21 further action by anyone, upon the Effective Date of the Settlement, the Settling
22 Defendant, on behalf of himself, and his spouses, heirs, executors, administrators,
23 predecessors, successors, and assigns, in their capacities as such, shall be deemed to have,
24 and by operation of law and of the judgment shall have, fully, finally, and forever
25 compromised, settled, released, resolved, relinquished, waived, and discharged each and
26 every Released Settling Defendant's Claim against Class Representative and the other
27 Class Representative's Releasees, and shall forever be barred and enjoined from
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1 prosecuting any or all of the Released Settling Defendant's Claims against any of the
2 Class Representative's Releasees.

3 6. Notwithstanding ¶¶ 4-5 above, nothing in the Judgment, or the Alternate
4 Judgment, if applicable, shall bar any action by any of the Settling Parties to enforce or
5 effectuate the terms of this Stipulation or the Judgment, or Alternate Judgment, if
6 applicable.

7 **THE SETTLEMENT AMOUNT**

8 7. In consideration of the full settlement of the claims asserted in the Action
9 against Defendant Babich and the Releases specified in ¶¶ 3-6 above, Defendant Babich
10 shall cause to be paid the Settlement Amount into the Escrow Account within twenty (20)
11 business days of: (1) the Court's entry of the Preliminary Approval Order, and (2) the
12 receipt of payment instructions and payee tax documents to be provided by Class Counsel.
13 Once deposited into the Escrow Account, Defendant Babich relinquishes his right to any
14 portion of the Settlement Amount and only retains a reversionary right to the Settlement
15 Amount in the event that the Settlement is terminated in accordance with this Stipulation,
16 and the Effective Date of the Settlement does not occur.

17 **USE OF THE SETTLEMENT FUND**

18 8. The Settlement Amount plus interest earned while in escrow, if any, is
19 referred to herein as the "Settlement Fund." The Settlement Fund shall be used to pay
20 any: (a) Taxes; (b) Notice and Administration Costs; (c) Litigation Expenses awarded by
21 the Court; and (d) other costs and fees approved by the Court, but only at those times, and
22 in such amounts, as provided below. The balance remaining in the Settlement Fund, that
23 is, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided in
24 ¶¶ 18-30 below.

25 9. Except as provided herein or pursuant to orders of the Court, the Net
26 Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds
27 held by the Escrow Agent shall be deemed to be in the custody of the Court and shall
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1 remain subject to the jurisdiction of the Court until such time as the funds shall be
2 distributed or returned pursuant to the terms of this Stipulation and/or further order of the
3 Court. At the written direction of Class Counsel, the Escrow Account shall invest any
4 funds in the Escrow Account exclusively in instruments or accounts backed by the full
5 faith and credit of the United States Government or fully insured by the United States
6 Government or an agency thereof, including a United States Treasury Fund or bank
7 account that is either (a) fully insured by the Federal Deposit Insurance Corporation
8 (“FDIC”), or (b) secured by instruments backed by the full faith and credit of the United
9 States Government. The Escrow Agent shall reinvest the proceeds of these instruments
10 or accounts as they mature in similar instruments or accounts at their then-current market
11 rates.

12 10. The Settling Parties agree that the Settlement Fund is intended to be a
13 Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and
14 that Class Counsel, as administrator of the Settlement Fund within the meaning of
15 Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to
16 be filed all informational and other tax returns as may be necessary or appropriate
17 (including, without limitation, the returns described in Treasury Regulation § 1.468B-
18 2(k)) for the Settlement Fund. Class Counsel shall also be responsible for causing
19 payment to be made from the Settlement Fund of any Taxes owed with respect to the
20 Settlement Fund. The Settling Defendant’s Releasees shall not have any liability or
21 responsibility for any such Taxes. Upon written request, Defendant Babich will provide
22 to Class Counsel the statement described in Treasury Regulation § 1.468B-3(e). Class
23 Counsel, as administrator of the Settlement Fund within the meaning of Treasury
24 Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or
25 advisable to carry out this paragraph, including, as necessary, making a “relation back
26 election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified
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1 Settlement Fund to come into existence at the earliest allowable date, and shall take or
2 cause to be taken all actions as may be necessary or appropriate in connection therewith.

3 11. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid,
4 or caused to be paid, by Class Counsel and without further order of the Court. Any tax
5 returns prepared for the Settlement Fund (as well as the election(s) set forth therein) shall
6 be consistent with the previous paragraph and in all events shall reflect that all Taxes on
7 the income earned by the Settlement Fund shall be paid out of the Settlement Fund as
8 provided herein. The Settling Defendant's Releasees shall have no responsibility or
9 liability for the acts or omissions of Class Counsel or its agents with respect to the
10 payment of Taxes, as described herein.

11 12. The Settlement is not a claims-made settlement. Upon the occurrence of the
12 Effective Date, neither Defendant Babich, any of the Settling Defendant's Releasees, nor
13 any other person or entity who or which funded any portion of the Settlement Amount
14 shall have any right to the return of the Settlement Amount or any portion thereof for any
15 reason whatsoever, including without limitation, the number of Claims submitted, the
16 collective amount of recognized losses of Authorized Claimants, the percentage of
17 recovery of losses, or the amounts to be paid to Authorized Claimants from the Net
18 Settlement Fund.

19 13. Notwithstanding the fact that the Effective Date of the Settlement has not
20 yet occurred, Class Counsel may pay from the Settlement Fund, without further approval
21 from Defendant Babich or further order of the Court, all Notice and Administration Costs
22 actually incurred and paid or payable; *provided, however*, that Class Counsel may only
23 pay up to \$35,000 in Notice and Administration Costs prior to the Effective Date. Such
24 costs and expenses shall include, without limitation, the actual costs of Class Notice, the
25 actual costs of printing and mailing the Postcard Settlement Notice, adapting and
26 maintaining the Website and posting the Settlement Notice and Claim Form, publishing
27 the Summary Settlement Notice, reimbursements to nominee owners for forwarding
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1 notices to their beneficial owners, the administrative expenses incurred and fees charged
2 by the Claims Administrator in connection with providing Class Notice and notice of the
3 Settlement, and the fees, if any, of the Escrow Agent. In the event that the Settlement is
4 terminated pursuant to the terms of this Stipulation, all Notice and Administration Costs
5 paid or incurred, including any related fees (up to the cap set forth in this paragraph), shall
6 not be returned or repaid to Defendant Babich, any of the other Settling Defendant's
7 Releasees, or any other person or entity who or which funded any portion of the
8 Settlement Amount.

9 14. Any Notice and Administration Costs which are determined to be costs
10 pertaining to both this Settlement and the Non-Settling Defendants' Settlements (e.g.,
11 processing Claims) will be paid from the Settlement Fund based on the proportion such
12 costs represent to the respective settlement amounts.

13 **REQUEST FOR REIMBURSEMENT OF LITIGATION EXPENSES**

14 15. Class Counsel, on behalf of Plaintiffs' Counsel, may apply to the Court for
15 reimbursement of any remaining unreimbursed Litigation Expenses which have not been
16 sought for reimbursement in connection with the Non-Settling Defendants' Settlements,
17 to be paid solely from (and out of) the Settlement Fund, only after final approval of the
18 Settlement. Class Counsel's application for Litigation Expenses is not the subject of any
19 agreement between Defendant Babich and Class Representative other than what is set
20 forth in this Stipulation.

21 16. Any Litigation Expenses that are awarded by the Court shall be paid to
22 Class Counsel immediately upon award (and after final approval of the Settlement),
23 notwithstanding the existence of any timely filed objections thereto, or potential for
24 appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to
25 Class Counsel's obligation to make appropriate refunds or repayments to the Settlement
26 Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the
27 Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any
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1 appeal or further proceedings on remand, or successful collateral attack, the award of
2 Litigation Expenses is reduced or reversed and such order reducing or reversing the award
3 has become Final. Class Counsel shall make the appropriate refund or repayment in full
4 no later than thirty (30) days after: (a) making or receiving from Settling Defendant's
5 Counsel notice of the termination of the Settlement pursuant to ¶ 36; or (b) any order
6 reducing or reversing the award of Litigation Expenses has become Final. An award of
7 Litigation Expenses is not a necessary term of this Stipulation and is not a condition of
8 the Settlement embodied herein. Any order of the Court awarding Litigation Expenses
9 will not operate to terminate the Settlement or affect the finality or binding nature of the
10 Settlement. Further, neither Class Representative nor Class Counsel may cancel or
11 terminate the Settlement based on this Court's or any appellate court's ruling with respect
12 to an award of Litigation Expenses.

13 17. Neither Defendant Babich nor any of the other Settling Defendant's
14 Releasees shall have any responsibility for or liability whatsoever with respect to
15 Plaintiffs' Counsel's Litigation Expenses, including the allocation thereof among
16 Plaintiffs' Counsel and/or any other person or entity who may assert some claim to any
17 Litigation Expenses awarded by the Court. Any Litigation Expenses that are awarded to
18 Plaintiffs' Counsel shall be payable solely from the Escrow Account.

19 **NOTICE AND SETTLEMENT ADMINISTRATION**

20 18. As part of the Preliminary Approval Order, Class Representative shall
21 request the Court's authorization to retain A.B. Data, Ltd. as the Claims Administrator.
22 A.B. Data, Ltd. was previously approved by the Court as the administrator in connection
23 with the dissemination of Class Notice and was authorized by the Court to serve as the
24 Claims Administrator for the Baker Settlement and the Kapoor Settlement. Docs. 331,
25 347, 373. The Claims Administrator shall administer the Settlement, including but not
26 limited to the process of receiving, reviewing, and approving or denying Claims, under
27 Class Counsel's supervision and subject to the jurisdiction of the Court. Neither
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1 Defendant Babich, nor any of the other Settling Defendant's Releasees, shall have any
2 involvement in or any responsibility, authority, or liability whatsoever for the selection
3 of the Claims Administrator, the Plan of Allocation, the administration of the Settlement,
4 the Claims process, or disbursement of the Net Settlement Fund, and shall have no
5 liability whatsoever to any person or entity, including, but not limited to, Class
6 Representative, any other Class Members, or Class Counsel in connection with the
7 foregoing. Settling Defendant's Counsel shall cooperate in the administration of the
8 Settlement to the extent reasonably necessary to effectuate its terms.

9 19. In accordance with the terms of the Preliminary Approval Order to be
10 entered by the Court, Class Counsel shall cause the Claims Administrator to mail, and/or
11 email, the Postcard Settlement Notice to those members of the Class identified in
12 connection with Class Notice and the Non-Settling Defendants' Settlements, and any
13 additional Class Members that may be identified. Class Counsel shall also cause the
14 Claims Administrator to post the Settlement Notice and Claim Form on the Website as
15 well as cause the Claims Administrator to have the Summary Settlement Notice published
16 in accordance with the terms of the Preliminary Approval Order to be entered by the
17 Court.

18 20. No later than ten (10) calendar days following the filing of this Stipulation
19 with the Court, Defendant Babich shall serve the notice required under the Class Action
20 Fairness Act, 28 U.S.C. § 1715 *et seq.* ("CAFA"). Defendant Babich is solely responsible
21 for the costs of the CAFA notice and administering the CAFA notice. At least seven (7)
22 calendar days before the Settlement Fairness Hearing, Defendant Babich shall cause to
23 be served on Class Counsel and filed with the Court proof, by affidavit or declaration,
24 regarding compliance with CAFA § 1715(b).

25 21. The Claims Administrator shall receive Claims and determine first, whether
26 the Claim is a valid Claim, in whole or part, and second, each Authorized Claimant's pro
27 rata share of the Net Settlement Fund based upon each Authorized Claimant's Recognized
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1 Claim compared to the total Recognized Claims of all Authorized Claimants (as set forth
2 in the Plan of Allocation set forth in the Settlement Notice attached hereto as Attachment
3 2 to Exhibit A, or in such other plan of allocation as the Court approves).

4 22. The Plan of Allocation will be proposed solely by Class Representative,
5 subject to Court Approval. The proposed Plan of Allocation (as set forth in the Settlement
6 Notice) is the same plan of allocation proposed in connection with the Non-Settling
7 Defendants' Settlements. The Plan of Allocation is not a necessary term of the Settlement
8 or of this Stipulation, and it is not a condition of the Settlement or of this Stipulation that
9 any particular plan of allocation be approved by the Court. Class Representative and Class
10 Counsel may not cancel or terminate the Settlement (or this Stipulation) based on this
11 Court's or any appellate court's ruling with respect to the Plan of Allocation or any other
12 plan of allocation in this Action. Defendant Babich and the Settling Defendant's
13 Releasees shall not object in any way to the Plan of Allocation or any other plan of
14 allocation in this Action. Neither Defendant Babich, nor any of the Settling Defendant's
15 Releasees, shall have any involvement with or liability, obligation, or responsibility
16 whatsoever for the application of the Court-approved plan of allocation. Any order of the
17 Court modifying or rejecting the proposed Plan of Allocation will not operate to terminate
18 the Settlement or affect the finality or binding nature of the Settlement.

19 23. Claim Forms submitted by or on behalf of Class Members in connection
20 with the Non-Settling Defendants' Settlements will be considered as resubmitted in
21 connection with the Settlement with Defendant Babich; Class Members need not resubmit
22 Claim Forms in connection with this Settlement. However, an additional opportunity for
23 submitting Claim Forms in connection with this Settlement will be allowed as set forth in
24 the Preliminary Approval Order. Any Class Member who does not submit (or did not
25 submit in connection with one of the Non-Settling Defendants' Settlements) a valid Claim
26 will not be entitled to receive any distribution from the Net Settlement Fund, but will
27 otherwise be bound by all of the terms of this Stipulation and the Settlement, including
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1 the terms of the Judgment or, the Alternate Judgment, if applicable, to be entered in the
2 Action against Defendant Babich and the Releases provided for herein and therein, and
3 will be permanently barred and enjoined from bringing any action, claim, or other
4 proceeding of any kind against the Settling Defendant's Releasees with respect to the
5 Released Class Representative's Claims in the event that the Effective Date occurs with
6 respect to the Settlement.

7 24. Class Counsel shall be responsible for supervising the administration of the
8 Settlement and the disbursement of the Net Settlement Fund subject to Court approval.
9 Neither Defendant Babich, nor any Settling Defendant's Releasees, shall be permitted to
10 review, contest, or object to any Claim, or any decision of the Claims Administrator or
11 Class Counsel with respect to accepting or rejecting any Claim for payment. Class
12 Counsel shall have the right, but not the obligation, to waive what it deems to be formal
13 or technical defects in any Claims submitted in the interests of achieving substantial
14 justice.

15 25. For purposes of determining the extent, if any, to which a Class Member
16 shall be entitled to be treated as an Authorized Claimant, the following conditions shall
17 apply:

18 a. Unless a valid Claim Form was submitted in connection with one of
19 the Non-Settling Defendants' Settlements, each Claimant shall be required to submit a
20 Claim in paper form, substantially in the form attached hereto as Attachment 4 to Exhibit
21 A, or in electronic form, in accordance with the instructions for the submission of such
22 Claims, and supported by such documents as are designated therein, including proof of
23 the Claimant's loss, or such other documents or proof as the Claims Administrator or
24 Class Counsel, in their discretion, may deem acceptable;

25 b. All Claims must be submitted by the date set by the Court in the
26 Preliminary Approval Order and specified in the notices. Any Class Member who fails to
27 submit a Claim by such date shall be forever barred from receiving any distribution from
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1 the Net Settlement Fund or payment pursuant to this Stipulation (unless by Order of the
2 Court such Class Member's Claim is accepted), but shall in all other respects be bound
3 by all of the terms of this Stipulation and the Settlement, including the terms of the
4 Judgment or Alternate Judgment, if applicable, and the Releases provided for herein and
5 therein, and will be permanently barred and enjoined from bringing any action, claim, or
6 other proceeding of any kind against any of the Settling Defendant's Releasees with
7 respect to any Released Class Representative's Claim. Provided that it is mailed by the
8 claim-submission deadline, a Claim Form shall be deemed to be submitted when
9 postmarked, if received with a postmark indicated on the envelope and if mailed by first-
10 class mail and addressed in accordance with the instructions thereon. In all other cases,
11 the Claim Form shall be deemed to have been submitted on the date when actually
12 received by the Claims Administrator;

13 c. Each Claim shall be submitted to and reviewed by the Claims
14 Administrator who shall determine in accordance with this Stipulation and the Plan of
15 Allocation the extent, if any, to which each Claim shall be allowed, subject to review by
16 the Court pursuant to subparagraph (e) below as necessary;

17 d. Claims that do not meet the submission requirements may be
18 rejected. Prior to rejecting a Claim in whole or in part, the Claims Administrator shall
19 communicate with the Claimant in writing, to give the Claimant the chance to remedy
20 any curable deficiencies in the Claim submitted. The Claims Administrator shall notify,
21 in a timely fashion and in writing, all Claimants whose Claim the Claims Administrator
22 proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate
23 in such notice that the Claimant whose Claim is to be rejected has the right to a review
24 by the Court if the Claimant so desires and complies with the requirements of
25 subparagraph (e) below; and

26 e. If any Claimant whose Claim has been rejected in whole or in part
27 desires to contest such rejection, the Claimant must, within twenty (20) days after the date
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1 of mailing of the notice required in subparagraph (d) above or a lesser time period if the
2 Claim was untimely, serve upon the Claims Administrator a notice and statement of
3 reasons indicating the Claimant's grounds for contesting the rejection along with any
4 supporting documentation, and requesting a review thereof by the Court. If a dispute
5 concerning a Claim cannot be otherwise resolved, Class Counsel shall thereafter present
6 the request for review to the Court.

7 26. Each Claimant shall be deemed to have submitted to the jurisdiction of the
8 Court with respect to the Claimant's Claim, and the Claim will be subject to investigation
9 and discovery under the Federal Rules, provided, however, that such investigation and
10 discovery shall be limited to that Claimant's status as a Class Member and the validity
11 and amount of the Claimant's Claim. No discovery shall be allowed on the merits of this
12 Action or of the Settlement in connection with the processing of Claims.

13 27. Class Counsel will apply to the Court, on notice to Settling Defendant's
14 Counsel, for a Class Distribution Order: (a) approving the Claims Administrator's
15 administrative determinations concerning the acceptance and rejection of the Claims
16 submitted; (b) approving payment of any unpaid administration fees and expenses
17 associated with the administration of the Settlement from the Escrow Account; and (c) if
18 the Effective Date has occurred, directing payment of the Net Settlement Fund to
19 Authorized Claimants from the Escrow Account.

20 28. Payment pursuant to the Class Distribution Order shall be final and
21 conclusive against all Claimants. All Class Members whose Claims are not approved by
22 the Court for payment shall be barred from participating in distributions from the Net
23 Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and
24 the Settlement, including the terms of the Judgment or Alternate Judgment, if applicable,
25 to be entered in this Action and the Releases provided for herein and therein, and will be
26 permanently barred and enjoined from bringing any action against any and all Settling
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1 Defendant's Releasees with respect to any and all of the Released Class Representative's
2 Claims.

3 29. No person or entity shall have any claim against Class Representative,
4 Plaintiffs' Counsel, the Claims Administrator, or any other agent designated by Class
5 Counsel, or the Settling Defendant's Releasees and/or their respective counsel, arising
6 from distributions made substantially in accordance with the Stipulation, the plan of
7 allocation approved by the Court, or any order of the Court. Class Representative and
8 Defendant Babich, and their respective counsel, and Class Representative's damages
9 consultant and all other Releasees shall have no liability whatsoever for the investment
10 or distribution of the Settlement Fund or the Net Settlement Fund, the plan of allocation,
11 or the determination, administration, calculation, or payment of any claim or
12 nonperformance of the Claims Administrator, the payment or withholding of taxes
13 (including interest and penalties) owed by the Settlement Fund, or any losses incurred in
14 connection therewith.

15 30. All proceedings with respect to the administration, processing, and
16 determination of Claims and the determination of all controversies relating thereto,
17 including disputed questions of law and fact with respect to the validity of Claims, shall
18 be subject to the jurisdiction of the Court. All Class Members, other Claimants, and
19 parties to this Settlement expressly waive trial by jury (to the extent any such right may
20 exist) and any right of appeal or review with respect to such determinations.

21 **TERMS OF THE JUDGMENT**

22 31. If the Settlement contemplated by this Stipulation is approved by the Court,
23 Class Counsel and Settling Defendant's Counsel shall request that the Court enter a
24 Judgment, substantially in the form attached hereto as Exhibit B.

25 32. The Judgment shall contain a bar order ("Bar Order") substantially in the
26 form set forth in Exhibit B hereto that shall, upon the Effective Date, bar, pursuant to the
27 PSLRA, specifically 15 U.S.C. § 78u-4(f)(7)(A), and common law, all future claims by
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1 any individual or entity against any of the Settling Defendant's Releasees, and by the
2 Settling Defendant's Releasees against any individual or entity other than a person whose
3 liability has been extinguished by the Settlement, for (a) contribution or indemnity (or
4 any other claim, however denominated on whatsoever theory) arising out of or related to
5 the claims or allegations asserted by Class Representative in the Action, or (b) any other
6 claim of any type, whether arising under state, federal, common, or foreign law, for which
7 the injury claimed is that person's or entity's actual or threatened liability to Class
8 Representative and/or members of the Class arising out of or related to the claims or
9 allegations asserted by Class Representative in the Action. The Bar Order shall also
10 provide that, pursuant to the PSLRA and common law, any final verdict or judgment that
11 may be obtained by or on behalf of the Class or a Class Member against any individual
12 or entity subject to the Bar Order, pursuant to 15 U.S.C. § 78u-4(f)(7)(B), shall be reduced
13 by the greater of: (a) an amount that corresponds to the percentage of responsibility of the
14 Settling Defendant for common damages; or (b) the amount paid by or on behalf of the
15 Settling Defendant to the Class or Class Member for common damages.

16 **CONDITIONS OF SETTLEMENT AND EFFECT OF**
17 **DISAPPROVAL, CANCELLATION OR TERMINATION**

18 33. The Effective Date of the Settlement shall be deemed to occur on the
19 occurrence or waiver of all of the following events:

20 a. the Court has entered the Preliminary Approval Order, substantially
21 in the form set forth in Exhibit A attached hereto, as required by ¶ 2 above;

22 b. the Settlement Amount has been deposited into the Escrow Account
23 in accordance with the provisions of ¶ 7 above;

24 c. Defendant Babich has not exercised his option to terminate the
25 Settlement pursuant to ¶ 36 of this Stipulation;

26 d. Class Representative has not exercised his option to terminate the
27 Settlement pursuant to ¶¶ 36 and 37 of this Stipulation; and
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1 e. the Court has approved the Settlement as described herein, following
2 notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules, and
3 entered the Judgment and the Judgment has become Final, or the Court has entered an
4 Alternate Judgment and none of the Settling Parties seek to terminate the Settlement and
5 the Alternate Judgment has become Final.

6 34. Upon the occurrence of all of the events referenced in ¶ 33 above, any and
7 all remaining interest or right of Defendant Babich in or to the Settlement Fund, if any,
8 shall be absolutely and forever extinguished and the Releases herein shall be effective.

9 35. If (i) Defendant Babich exercises his right to terminate the Settlement
10 pursuant to ¶ 36 of this Stipulation; (ii) Class Representative exercises his right to
11 terminate the Settlement pursuant to ¶¶ 36 or 37 of this Stipulation; (iii) the Court
12 disapproves the Settlement; or (iv) the Effective Date as to the Settlement otherwise fails
13 to occur, then:

14 a. The Settlement and the relevant portions of this Stipulation shall be
15 canceled and terminated.

16 b. Class Representative and Defendant Babich shall revert to their
17 respective positions in the Action immediately prior to the execution of this Stipulation
18 on July 21, 2020.

19 c. The terms and provisions of this Stipulation, with the exception of
20 this ¶ 35 and ¶¶ 13, 16, 38, and 47, shall have no further force and effect with respect to
21 the Settling Parties and shall not be used in the Action or in any other proceeding for any
22 purpose, and any Judgment, or Alternate Judgment, if applicable, or order entered by the
23 Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc*
24 *pro tunc*.

25 d. Within fifteen (15) calendar days after joint written notification of
26 termination is sent by Settling Defendant's Counsel and Class Counsel to the Escrow
27 Agent, the Settlement Fund (including accrued interest thereon and any funds received
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1 by Class Counsel consistent with ¶ 16 above), less any Notice and Administration Costs
2 actually incurred, paid, or payable (subject to the cap set forth in ¶ 13 above) and less any
3 Taxes paid, due, or owing shall be refunded by the Escrow Agent to Defendant Babich
4 (or such other persons or entities as Defendant Babich may direct). In the event that the
5 funds received by Class Counsel consistent with ¶ 16 above have not been refunded to
6 the Settlement Fund within the fifteen (15) calendar days specified in this paragraph,
7 those funds shall be refunded by the Escrow Agent to Defendant Babich (or such other
8 persons or entities as Defendant Babich may direct) immediately upon their deposit by
9 Class Counsel into the Escrow Account consistent with ¶ 16 above.

10 36. It is further stipulated and agreed that Defendant Babich and Class
11 Representative shall each have the right to terminate the Settlement and this Stipulation,
12 by providing written notice of their election to do so (“Termination Notice”) to the other
13 Settling Party to this Stipulation within thirty (30) days of: (a) the Court’s final refusal to
14 enter the Preliminary Approval Order in any material respect; (b) the Court’s final refusal
15 to approve the Settlement or any material part thereof; (c) the Court’s final refusal to enter
16 the Judgment in any material respect as to the Settlement; (d) the date upon which the
17 Judgment is modified or reversed in any material respect by the United States Court of
18 Appeals for the Ninth Circuit or the United States Supreme Court; or (e) the date upon
19 which an Alternate Judgment is modified or reversed in any material respect by the United
20 States Court of Appeals for the Ninth Circuit or the United States Supreme Court, and the
21 provisions of ¶ 35 above shall apply. However, any decision or proceeding, whether in
22 this Court or any appellate court, with respect to an application for Litigation Expenses
23 or with respect to any plan of allocation shall not be considered material to the Settlement,
24 shall not affect the finality of any Judgment or Alternate Judgment, if applicable, and
25 shall not be grounds for termination of the Settlement.

1 37. Class Representative shall also have the option to terminate the Settlement
2 in the event that the Settlement Amount has not been paid as provided for in ¶ 7 above,
3 by providing written notice of the election to terminate to Settling Defendant's Counsel.

4 **NO ADMISSION OF WRONGDOING**

5 38. Neither this Stipulation (whether or not consummated), including the
6 exhibits hereto and the Plan of Allocation contained therein (or any other plan of
7 allocation that may be approved by the Court), the negotiations leading to the execution
8 of this Stipulation, nor any proceedings taken pursuant to or in connection with this
9 Stipulation, and/or approval of the Settlement (including any arguments proffered in
10 connection therewith):

11 a. shall be offered against any of the Settling Defendant's Releasees as
12 evidence of, or construed as, or deemed to be evidence of any presumption, concession,
13 or admission by any of the Settling Defendant's Releasees with respect to the truth of any
14 fact alleged by Class Representative or the validity of any claim that was or could have
15 been asserted or the deficiency of any defense that has been or could have been asserted
16 in this Action or in any other litigation, or of any liability, negligence, fault, or other
17 wrongdoing of any kind of any of the Settling Defendant's Releasees or in any way
18 referred to for any other reason as against any of the Settling Defendant's Releasees, in
19 any arbitration proceeding or other civil, criminal, or administrative action or proceeding,
20 other than such proceedings as may be necessary to effectuate the provisions of this
21 Stipulation;

22 b. shall be offered against any of the Class Representative's Releasees,
23 as evidence of, or construed as, or deemed to be evidence of any presumption, concession,
24 or admission by any of the Class Representative's Releasees that any of their claims are
25 without merit, that any of the Settling Defendant's Releasees had meritorious defenses,
26 or that damages recoverable under the Second Amended Complaint with respect to
27 Defendant Babich would not have exceeded the Settlement Amount or with respect to
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1 any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for
2 any other reason as against any of the Class Representative's Releasees, in any arbitration
3 proceeding or other civil, criminal, or administrative action or proceeding, other than such
4 proceedings as may be necessary to effectuate the provisions of this Stipulation; or

5 c. shall be construed against any of the Releasees as an admission,
6 concession, or presumption that the consideration to be given hereunder represents the
7 amount which could be or would have been recovered from Defendant Babich after trial;
8 *provided, however*, that if this Stipulation is approved by the Court, the Settling Parties
9 and the Releasees and their respective counsel may refer to it to effectuate the protections
10 from liability granted hereunder or otherwise to enforce the terms of the Settlement.

11 **MISCELLANEOUS PROVISIONS**

12 39. All of the exhibits attached hereto are hereby incorporated by reference as
13 though fully set forth herein. Notwithstanding the foregoing, in the event that there exists
14 a conflict or inconsistency between the terms of this Stipulation and the terms of any
15 exhibit attached hereto, the terms of the Stipulation shall prevail.

16 40. Defendant Babich cannot warrant nor represent that he is not "insolvent"
17 on a balance sheet basis (excluding contingent litigation claims which he disputes) as of
18 the execution of this Stipulation or that he does not anticipate that he will be insolvent
19 under such test as of the anticipated time the Settlement Amount is to be actually
20 transferred or made as reflected herein. In the event of a final order of a court of competent
21 jurisdiction, not subject to any further proceedings, determining the transfer of the
22 Settlement Amount, or any portion thereof, by or on behalf of Defendant Babich to be a
23 preference, voidable transfer, fraudulent transfer or similar transaction under Title 11 of
24 the United States Code (Bankruptcy) or applicable state law, and any portion thereof is
25 required to be refunded and such amount is not promptly deposited in the Escrow
26 Account, Class Counsel may elect to terminate the Settlement with Defendant Babich. In
27 such event, all of the releases given and the judgments entered in favor of Defendant
28

1 Babich pursuant to the Settlement shall be null and void, and all Settling Parties shall be
2 restored to their respective positions in the litigation as provided in ¶ 35(b) above and any
3 cash amounts in the Settlement Fund (less any Taxes paid, due, or owing with respect to
4 the Settlement Fund and less any Notice and Administration Costs actually incurred, paid,
5 or payable (subject to the cap in ¶ 13 above) shall be returned as provided in ¶ 35.

6 41. The Settling Parties intend this Stipulation and the Settlement to be a final
7 and complete resolution of all disputes asserted or which could be asserted by Class
8 Representative and any other Class Members against the Settling Defendant's Releasees
9 with respect to the Released Class Representative's Claims. The Settling Parties agree
10 that each has complied fully with the strictures of Rule 11 of the Federal Rules and no
11 Settling Party shall assert any claims of any violation of Rule 11 relating to the institution,
12 prosecution, defense, or settlement of this Action. The Settling Parties agree that the
13 amount paid and the other terms of the Settlement were negotiated at arm's length and in
14 good faith by the Settling Parties, and reflect the Settlement that was reached voluntarily
15 after extensive negotiations and consultation with experienced legal counsel, who were
16 fully competent to assess the strengths and weaknesses of their respective clients' claims
17 or defenses.

18 42. While retaining their right to deny that the claims asserted in the Action
19 were meritorious, Defendant Babich and his counsel, in any statement made to any media
20 representative (whether or not for attribution) will not assert that the Action was
21 commenced or prosecuted in bad faith, nor will they deny that the Action was commenced
22 and prosecuted in good faith and is being settled voluntarily after consultation with
23 competent legal counsel. In all events, Class Representative and his counsel and
24 Defendant Babich and his counsel shall not make any accusations of wrongful or
25 actionable conduct by the other side concerning the prosecution, defense, and resolution
26 of the Action, and shall not otherwise suggest that the Settlement constitutes an admission
27 of any claim or defense alleged.
28

1 43. The terms of the Settlement, as reflected in this Stipulation, may not be
2 modified or amended, nor may any of its provisions be waived except by a writing signed
3 on behalf of both Class Representative and Defendant Babich (or their successors-in-
4 interest).

5 44. The headings herein are used for the purpose of convenience only and are
6 not meant to have legal effect.

7 45. The administration and consummation of the Settlement as embodied in this
8 Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction
9 for the purpose of entering orders providing for awards of Litigation Expenses to
10 Plaintiffs' Counsel and enforcing the terms of this Stipulation, including the Plan of
11 Allocation (or such other plan of allocation as may be approved by the Court) and the
12 distribution of the Net Settlement Fund to Class Members.

13 46. The waiver by one Settling Party of any breach of this Stipulation by any
14 other Settling Party shall not be deemed a waiver of any other prior or subsequent breach
15 of this Stipulation.

16 47. This Stipulation and its exhibits constitute the entire agreement among
17 Class Representative and Defendant Babich concerning the Settlement. The Settling
18 Parties acknowledge that no other agreements, representations, warranties, or
19 inducements have been made by any Settling Party hereto concerning this Stipulation or
20 its exhibits other than those contained and memorialized in such documents.

21 48. This Stipulation may be executed in one or more counterparts, including by
22 signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via
23 email. All executed counterparts and each of them shall be deemed to be one and the same
24 instrument.

25 49. This Stipulation shall be binding upon and inure to the benefit of the
26 successors and assigns of the Settling Parties, including any and all Releasees and any
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28

1 corporation, partnership, or other entity into or with which any of them may merge,
2 consolidate, or reorganize.

3 50. The construction, interpretation, operation, effect and validity of this
4 Stipulation and all documents necessary to effectuate it shall be governed by the internal
5 laws of the State of Arizona without regard to conflicts of laws, except to the extent that
6 federal law requires that federal law govern.

7 51. Any action arising under or to enforce this Stipulation or any portion
8 thereof, shall be commenced and maintained only in the Court.

9 52. This Stipulation shall not be construed more strictly against one Settling
10 Party than another merely by virtue of the fact that it, or any part of it, may have been
11 prepared by counsel for one of the Settling Parties, it being recognized that it is the result
12 of arm's-length negotiations between both Settling Parties and both Settling Parties have
13 contributed substantially and materially to the preparation of this Stipulation.

14 53. All counsel and any other person executing this Stipulation and any of the
15 exhibits hereto, or any related Settlement documents, warrant and represent that they have
16 the full authority to do so and that they have the authority to take appropriate action
17 required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

18 54. Class Counsel and Settling Defendant's Counsel agree to cooperate fully
19 with one another in seeking Court approval of the Preliminary Approval Order and the
20 Settlement, as embodied in this Stipulation, and to use best efforts to promptly agree upon
21 and execute all such other documentation as may be reasonably required to obtain final
22 approval by the Court of the Settlement.

23 55. If any Settling Party is required to give notice to another Settling Party
24 under this Stipulation, such notice shall be in writing and shall be deemed to have been
25 duly given upon receipt of hand delivery or facsimile or email transmission, with
26 confirmation of receipt. Notice shall be provided as follows:
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28

1 If to Class Representative or
2 Class Counsel:

Kessler Topaz Meltzer & Check, LLP
Attn: Johnston de F. Whitman, Jr., Esq.
280 King of Prussia Road
Radnor, PA 19087
Tel: (610) 667-7706
Fax: (610) 667-7056
Email: jwhitman@ktmc.com

5 If to Defendant Babich:

Russell Piccoli, PLC
Attn: Russell Piccoli, Esq.
701 North 44th Street
Phoenix, AZ 85008
Tel: (480) 429-3000
Email: rp@winazlaw.com

9 Lang & Klain, P.C.
10 Attn: William G. Klain, Esq.
11 6730 N. Scottsdale Rd.
12 Suite 101
13 Scottsdale, AZ 85253
14 Tel: (480) 534-4900
15 Fax: (480) 970-5034
16 Email: wklain@lang-klain.com

17 56. Except as otherwise provided herein, each Settling Party shall bear its own
18 costs.

19 57. Whether or not the Stipulation is approved by the Court and whether or not
20 the Stipulation is consummated, or the Effective Date occurs, the Settling Parties and their
21 counsel shall use their best efforts to keep all negotiations, discussions, acts performed,
22 agreements, drafts, documents signed, and proceedings in connection with the Stipulation
23 confidential.

24 58. All agreements made and orders entered during the course of this Action
25 relating to the confidentiality of information shall survive this Settlement.

26 59. No opinion or advice concerning the tax consequences of the proposed
27 Settlement to individual Class Members is being given or will be given by the Settling
28 Parties or their counsel; nor is any representation or warranty in this regard made by virtue
of this Stipulation. Each Class Member's tax obligations, and the determination thereof,
are the sole responsibility of the Class Member, and it is understood that the tax

1 consequences may vary depending on the particular circumstances of each individual
2 Class Member.

3 IN WITNESS WHEREOF, the Settling Parties hereto have caused this Stipulation
4 to be executed, by their duly authorized attorneys, on July 21, 2020.

5
6 Dated: July 21, 2020

**KESSLER TOPAZ
MELTZER & CHECK, LLP**

7
8 *s/ Andrew L. Zivitz* _____

9 Andrew L. Zivitz (admitted *Pro Hac Vice*)
10 azivitz@ktmc.com

11 Johnston de F. Whitman, Jr. (admitted *Pro Hac Vice*)
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12 Jonathan F. Neumann (admitted *Pro Hac Vice*)
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13 280 King of Prussia Road
Radnor, PA 19087

14 Telephone: (610) 667-7706
15 Facsimile: (610) 667-7056

16 -and-

17 Jennifer L. Joost (admitted *Pro Hac Vice*)
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18 One Sansome Street, Suite 1850
San Francisco, CA 94104

19 Telephone: (415) 400-3000
20 Facsimile: (415) 400-3001

21 *Class Counsel and Counsel for Class Representative*

22 **BONNETT, FAIRBOURN,
23 FRIEDMAN & BALINT, P.C.**

24 Francis J. Balint, Jr.
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25 Andrew S. Friedman
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27 Telephone: (602) 274-1100
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Facsimile: (602) 274-1199

Liaison Counsel for the Class and Class Representative

Dated: July 21, 2020

RUSSELL PICCOLI, PLC

s/ Russell Piccoli with permission

Russell Piccoli, No. 004492
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701 North 44th Street
Phoenix, AZ 85008
Telephone: (480) 429-3000

LANG & KLAIN, P.C.

s/ Zachary W. Rosenberg with permission

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Attorneys for Defendant Michael L. Babich

Appendix 1

- *Soltau v. Kapoor, et al.*, No. 28-1720-SPL (D. Ariz.)
- *In re Insys Therapeutics, Inc. Deriv. Litig.*, No. 12696-VCL (Del. Ch.)
- *Bennett v. Kapoor*, No. 2:18-cv-02170-DCG (D. Ariz.)
- *In re Insys Therapeutics, Inc. Sec. Litig.*, No. 17-1954-PAC (S.D.N.Y.)
- *United States v. Babich*, No. 1:16-cr-10343 (D. Mass)
- *Ravansari v. Kapoor*, No. 1:18-cv-07026 (S.D.N.Y.)
- *Aetna, Inc. v. Insys Therapeutics, Inc.*, No. 2:17-cv-04812 (E.D. Pa.)
- *In re Insys Therapeutics Inc. Derivative Litig.*, No. 13696-VCMR (Del. Ch.)
- *Tisher v. Insys Therapeutics, Inc.*, No. K18C-05-011 (Del. Sup. Ct.)
- *Fuller v. Insys Therapeutics, Inc.*, No. 2:17-cv-07877 (D.N.J.)
- *Whitham v. Insys Therapeutics, Inc.*, No. 17-cv-05005 (Johnson Cnty. Circuit Ct., Kan.)
- *Ballou v. Insys Therapeutics, Inc.*, No. 17-cv-05004 (Johnson Cnty. Circuit Ct., Kan.)
- *Hanson v. Insys Therapeutics, Inc.*, No. 18-cv-03806 (Johnson Cnty. Circuit Ct., Kan.)
- *Farquhar v. Insys Therapeutics, Inc.*, No. 18-cv-06181 (Johnson Cnty. Circuit Ct., Kan.)
- *Jordan v. Insys Therapeutics, et al.*, No. 2018cv6 (Leavensworth Cnty. Dist. Ct., Kan.)
- *City of Prescott v. Allergan PLC*, No. CV2019-00393 (Maricopa Cnty. Sup. Ct., Az.)
- *Cnty. of Apache v. Allergan PLC*, No. CV2019-00101 (Apache Cnty. Sup. Ct., Az.)
- *Cnty. of La Paz v. Allergan PLC*, No. CV2019-00053 (La Paz Cnty. Sup. Ct., Az.)
- *Bullhead City v. Allergan PLC*, No. CV2019-00591 (Mohave Cnty. Sup. Ct., Az.)
- *City of Surprise v. Allergan PLC*, No. CV2019-003439 (Maricopa Cnty. Sup. Ct., Az.)
- *Cnty. of Pinal v. Allergan, PLC*, No. CV2019-01448 (Pinal Cnty. Sup. Ct., Az.)
- *Buchalter v. Tham*, No. CV-16-002718 (Anne Arundel Cnty. Cir. Ct., Md.)
- *Carroll Cnty., Maryland v. Allergan, PLC*, No. 1:17-md-02804 (N.D. Ohio)
- *Clinton Cnty., Missouri v. Allergan, PLC*, No. 1922-CC11604 (St. Louis City Cir. Ct., Mo.)
- *Pike County, Missouri v. Allergan, PLC*, No. 1922 CC11661 (St. Louis City Cir. Ct., Mo.); removed to District Court - 4:19-cv-03170 (E.D. Mo.)
- *Mobile County Board of Health v. Sackler*, No. 02-CV-2019-902806 (Mobile Cnty. Cir. Ct., Ala.); removed to District Court - 1:19-cv-01007 (S.D. Ala.)
- *Nardolillo et ux v. Kapoor*, No. PC-2019-8580 (Sup. Ct. R.I.)