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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 DARRYL S.
BAKER**

1 This Stipulation and Agreement of Settlement Between Lead Plaintiff and
2 Defendant Darryl S. Baker dated May 22, 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) Darryl S. Baker (the “Settling Defendant” and, together with Class
6 Representative, the “Settling Parties”), and embodies the terms and conditions of the
7 Settling Parties’ settlement of the above-captioned action (“Action”).¹ Subject to the
8 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 ¶ ii below) against the Settling
11 Defendant. This Stipulation does not release any claims of Class Representative and the
12 other members of the Class against the Non-Settling Defendants (defined in ¶ z below) in
13 the Action, and those claims are still being litigated.

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”), Michael L. Babich,
17 Darryl S. Baker, Alec Burlakoff,² and John N. Kapoor, asserting violations of Sections
18 10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C.
19 §§ 78j(b) and 78t(a), and Rule 10b-5, promulgated thereunder by the U.S. Securities and
20 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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27 ¹ All terms with initial capitalization not otherwise defined herein shall have the
meanings ascribed to them in ¶ 1 below.

28 ² The Court dismissed Lead Plaintiff’s claims against Alec Burlakoff in its August
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. 61.

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,
13 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the SEC,
14 17 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
22 April 13, 2018, and an amended answer on May 4, 2018. Docs. 131, 135. Thereafter,
23 discovery 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
26 retired federal Judge Layn R. Phillips, which did not result in an agreement to resolve any
27 portion of the Action.

28 _____
³ The parties completed discovery on November 22, 2019.

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

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

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

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

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

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

7 N. Pursuant to the Court's March 20, 2020 Order, and as set forth in the Class
8 Notice, the deadline for submitting requests for exclusion from the Class or objecting to
9 the Insys Dismissal Motion was April 30, 2020. To date, there have been no requests for
10 exclusion from the Class or objections to the Insys Dismissal Motion. Docs. 336, 337.

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

18 P. While the Summary Judgment Motion was pending, Class Representative
19 and the Settling Defendant restarted their earlier discussions concerning the possibility of
20 resolving the Action. Following hard-fought, arm's-length negotiations, the Settling
21 Parties agreed to resolve the Action against the Settling Defendant for \$2,000,000 in cash.
22 This agreement was set forth in a term sheet executed on May 8, 2020. On May 8, 2020,
23 the Settling Parties filed a Notice of Settlement informing the Court that they had reached
24 an agreement in principle to resolve the Action as to the Settling Defendant only.
25 Doc. 332.

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27 ⁴ The Class Notice informed Class Members that it would be within the Court's
28 discretion whether to permit a second opportunity to request exclusion if there was a
settlement. The Class Notice also informed Class Members that if they elected to remain
members of the Class, they would "be bound by all past, present and future orders and
judgments in the Action, whether favorable or unfavorable."

1 Q. Based upon their investigation and prosecution of the Action, and the
2 Settling Parties' settlement negotiations, Class Representative and Class Counsel have
3 concluded that the terms and conditions of this Stipulation are fair, reasonable, and
4 adequate to Class Representative and the other members of the Class, and in their best
5 interests. Based on Class Representative's direct oversight of the prosecution of this
6 matter and with the advice of counsel, Class Representative has agreed to settle and
7 release the Released Class Representative's Claims against the Settling Defendant
8 pursuant to the terms and provisions of this Stipulation, after considering, among other
9 things: (a) the financial benefit that members of the Class will receive under the proposed
10 Settlement; (b) the significant risks and costs of continued litigation and trial; (c) the
11 bankruptcy of the corporate defendant; and (d) the Settling Defendant's limited financial
12 resources, including available insurance, to fund a settlement or judgment in the Action.

13 R. This Stipulation constitutes a compromise of all matters that are in dispute
14 between the Settling Parties. The Settling Defendant is entering into this Stipulation solely
15 to eliminate the burden, expense, and uncertainties of further litigation. The Settling
16 Defendant denies any wrongdoing, and this Stipulation shall in no event be construed or
17 deemed to be evidence of or an admission or concession on the part of the Settling
18 Defendant with respect to any claim or allegation of any fault or liability or wrongdoing
19 or damage whatsoever, or any infirmity in the defenses that the Settling Defendant (or
20 Non-Settling Defendants) has, or could have, asserted. The Settling Defendant has denied,
21 and continues to deny, any and all allegations and claims asserted in the Action against
22 him, has denied and continues to deny that he has committed any act or omission giving
23 rise to any liability and/or violation of law, and has denied and continues to deny that
24 Class Representative or any Class Members have suffered damage or were otherwise
25 harmed by the Settling Defendant's conduct. Similarly, this Stipulation shall in no event
26 be construed or deemed to be evidence of or an admission or concession on the part of
27 Class Representative of any infirmity in any of the claims asserted in the Action, or an
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1 admission or concession that any of the Settling Defendant’s (or Non-Settling
2 Defendants’) defenses to liability had any merit.

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

11 **DEFINITIONS**

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

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

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

19 c. “Authorized Claimant” means a Class Member who submits a Claim
20 to the Claims Administrator that is approved by the Court for payment from the Net
21 Settlement Fund.

22 d. “Claim” means a paper claim submitted on a Proof of Claim Form
23 or an electronic claim that is submitted to the Claims Administrator.

24 e. “Claim Form” or “Proof of Claim Form” means the form,
25 substantially in the form attached hereto as Attachment 4 to Exhibit A, which a Claimant
26 must complete and submit should that Claimant seek to share in a distribution of the Net
27 Settlement Fund.

1 f. “Claimant” means a person or entity who or which submits a Claim
2 to the Claims Administrator seeking to be eligible to share in the proceeds of the Net
3 Settlement Fund.

4 g. “Claims Administrator” means A.B. Data, Ltd., the firm retained by
5 Class Counsel and approved by the Court in connection with Class Notice, subject to
6 continuing approval of the Court, to provide all notices approved by the Court to potential
7 Class Members and to administer the Settlement.

8 h. “Class” means the class certified by the Court in its September 20,
9 2019 Order. Specifically, the Class includes all persons and entities who purchased or
10 otherwise acquired Insys common stock during the period from March 3, 2015, through
11 January 25, 2016, and were damaged thereby. Excluded from the Class are
12 (a) Defendants;⁵ (b) present and former directors or executive officers of Insys and
13 members of their immediate families (as defined in 17 C.F.R. § 229.404, Instructions
14 (1)(a)(iii) and (1)(b)(ii)); (c) any of the foregoing individuals’ or entities’ legal
15 representatives, heirs, successors, or assigns; and (d) any entity in which any Defendant
16 has or had a controlling interest, or which is related to or affiliated with any Defendant.
17 Also excluded from the Class are any persons and entities that submitted a request for
18 exclusion in connection with Class Notice and whose request is accepted by the Court.⁶
19 If and only if the Court permits a second opportunity for Class Members to request
20 exclusion from the Class, also excluded from the Class shall be any persons and entities
21 who exclude themselves by submitting a request for exclusion in connection with the
22 Settlement Notice and whose requests are accepted by the Court.

23 i. “Class Counsel” means Kessler Topaz Meltzer & Check, LLP.
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27 ⁵ For purposes of the Class definition, the term “Defendants” refers collectively to
the Settling Defendant and the Non-Settling Defendants.

28 ⁶ As of the date of this Stipulation, no requests for exclusion from the Class were
received in connection with Class Notice.

1 j. “Class Distribution Order” means an order entered by the Court
2 authorizing and directing that the Net Settlement Fund be distributed, in whole or in part,
3 to Authorized Claimants.

4 k. “Class Member” means each person and entity who or which is a
5 member of the Class.

6 l. “Class Period” means the period from March 3, 2015, through
7 January 25, 2016.

8 m. “Class Representative” or “Lead Plaintiff” means Clark Miller.

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

17 o. “Court” means the United States District Court for the District of
18 Arizona.

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

22 q. “Escrow Account” means an account maintained at Huntington
23 National Bank wherein the Settlement Amount shall be deposited and held in escrow
24 under the control of Class Counsel.

25 r. “Escrow Agent” means Huntington National Bank.

26 s. “Escrow Agreement” means the agreement between Class Counsel
27 and the Escrow Agent setting forth the terms under which the Escrow Agent shall
28 maintain the Escrow Account.

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

15 u. “Insys” or “Company” means Insys Therapeutics, Inc.

16 v. “Judgment” means the final judgment, substantially in the form
17 attached hereto as Exhibit B, to be entered by the Court approving the Settlement.

18 w. “Liaison Counsel” means Bonnett, Fairbourn, Friedman & Balint,
19 P.C.

20 x. “Litigation Expenses” means costs and expenses incurred in
21 connection with commencing, prosecuting, and settling the Action (which may include
22 the costs and expenses of Class Representative directly related to his representation of the
23 Class), for which Class Counsel intend to apply to the Court for payment or
24 reimbursement from the Settlement Fund.

25 y. “Net Settlement Fund” means the Settlement Fund less: (i) any
26 Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded
27 by the Court; (iv) any attorneys’ fees awarded by the Court; and (v) any other costs or
28 fees approved by the Court.

1 z. “Non-Settling Defendants” means Michael L. Babich and John N.
2 Kapoor.

3 aa. “Notice and Administration Costs” means the costs, fees, and
4 expenses that are incurred by the Claims Administrator and/or Class Counsel in
5 connection with: (i) providing notices to the Class (including, but not limited to, the Class
6 Notice and the notices informing the Class of the Settlement); and (ii) administering the
7 Settlement, including but not limited to the Claims process, as well as the costs, fees, and
8 expenses incurred in connection with the Escrow Account.

9 bb. “Parties” means the Settling Defendant and Class Representative, on
10 behalf of himself and the Class.

11 cc. “Plaintiffs’ Counsel” means Class Counsel, Liaison Counsel, the
12 Schall Law Firm, and Goldberg Law PC.

13 dd. “Plan of Allocation” means the proposed plan of allocation of the
14 Net Settlement Fund set forth in the Settlement Notice.

15 ee. “Postcard Settlement Notice” means the postcard notice,
16 substantially in the form attached hereto as Attachment 1 to Exhibit A, which is to be
17 mailed and/or emailed to Class Members.

18 ff. “Preliminary Approval Order” means the order, substantially in the
19 form attached hereto as Exhibit A, to be entered by the Court preliminarily approving the
20 Settlement with the Settling Defendant and directing that notice of the Settlement be
21 provided to the Class.

22 gg. “PSLRA” means the Private Securities Litigation Reform Act of
23 1995, 15 U.S.C. §§ 77z-1, 78u-4, as amended.

24 hh. “Released Claims” means all Released Settling Defendant’s Claims
25 and all Released Class Representative’s Claims.

26 ii. “Released Class Representative’s Claims” means all claims and
27 causes of action of every nature and description, whether known claims or Unknown
28 Claims, whether arising under federal, state, local, common, statutory, administrative or

1 foreign law, or any other law, rule or regulation, at law or in equity, whether class or
2 individual in nature, whether accrued or unaccrued, whether liquidated or unliquidated,
3 whether matured or unmatured, that Class Representative or any other member of the
4 Class: (i) asserted in any of the complaints filed in the Action or (ii) could have asserted
5 in the Action or in any other court or forum that arise out of or in any way relate to the
6 allegations, transactions, facts, matters or occurrences, representations, or omissions set
7 forth in any of the complaints filed in the Action and that relate to the purchase,
8 acquisition or sale of Insys common stock during the period from August 12, 2014
9 through December 8, 2016. “Released Class Representative’s Claims” shall not include:
10 (i) any claims against the Non-Settling Defendants; (ii) any claims relating to the
11 enforcement of the Settlement with the Settling Defendant; (iii) any of the claims asserted
12 in the following actions: *Soltau v. Kapoor, et al.*, No. 28-cv-1720-SPL (D. Ariz.), *In re*
13 *Insys Therapeutics, Inc. Deriv. Litig.*, No. 12696-VCL (Del. Ch.), *Bennett v. Kapoor*,
14 No. 2:18-cv-02170-DCG (D. Ariz.), and *In re Insys Therapeutics, Inc. Sec. Litig.*, No. 17-
15 cv-1954-PAC (S.D.N.Y.); or (iv) any claims of any person or entity that submitted a
16 request for exclusion in connection with Class Notice whose request is accepted by the
17 Court; or (v) if and only if the Court permits a second opportunity to request exclusion
18 from the Class, any claims of any person or entity that submits a request for exclusion in
19 connection with the Settlement Notice whose request is accepted by the Court.

20 jj. “Released Settling Defendant’s Claims” means all claims and causes
21 of action of every nature and description, whether known claims or Unknown Claims,
22 whether arising under federal, state, local, common, statutory, administrative or foreign
23 law, or any other law, rule or regulation, at law or in equity, whether class or individual
24 in nature, whether accrued or unaccrued, whether liquidated or unliquidated, whether
25 matured or unmatured, that arise out of or relate in any way to the institution, prosecution,
26 or settlement of the claims against the Settling Defendant. “Released Settling Defendant’s
27 Claims” shall not include any claims relating to the enforcement of the Settlement.
28

1 kk. “Releasee(s)” means each and any of the Settling Defendant’s
2 Releasees and each and any of the Class Representative’s Releasees.

3 ll. “Releases” means the releases set forth in ¶¶ 5-6 of this Stipulation.

4 mm. “Second Amended Complaint” means the operative Second
5 Amended Class Action Complaint for Violation of the Federal Securities Laws filed in
6 the Action on December 22, 2016. Doc. 77.

7 nn. “Settlement” means the settlement between Class Representative
8 and the Settling Defendant on the terms and conditions set forth in this Stipulation.

9 oo. “Settlement Amount” means \$2,000,000 in cash.

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

12 qq. “Settlement Fund” means the Settlement Amount plus any and all
13 interest earned thereon.

14 rr. “Settlement Notice” means the Notice of (I) Proposed Settlement
15 with Defendant Darryl S. Baker; (II) Settlement Fairness Hearing; and (III) Motion for
16 Litigation Expenses, substantially in the form attached hereto as Attachment 2 to Exhibit
17 A, which is to be posted on the Website and mailed or emailed to Class Members upon
18 request.

19 ss. “Settling Defendant” means Darryl S. Baker.

20 tt. “Settling Defendant’s Counsel” means Salmon, Lewis & Weldon,
21 P.L.C.

22 uu. “Settling Defendant’s Releasees” means the Settling Defendant, all
23 past, present, or future entities owned, affiliated with or controlled by the Settling
24 Defendant, including any of those entities’ parents, subsidiaries, divisions, and joint
25 ventures, and the Settling Defendant’s agents, employees, consultants, insurers, attorneys,
26 advisors, successors, heirs, assigns, executors, personal representatives, marital
27 communities and members of his immediate family (as defined in 17 C.F.R. §229.404,
28 Instructions (1)(a)(iii) and (1)(b)(ii)), or any trust of which the Settling Defendant is the

1 settler or which is for the benefit of the Settling Defendant or member(s) of his family,
2 and such other persons and entities as may be identified in the Stipulation of Settlement).
3 “Settling Defendant’s Releasees” does not include any of the Non-Settling Defendants,
4 nor any of their related persons or entities.

5 vv. “Summary Settlement Notice” means the Summary Notice of
6 (I) Proposed Settlement with Defendant Darryl S. Baker; (II) Settlement Fairness
7 Hearing; and (III) Motion for Litigation Expenses, substantially in the form attached
8 hereto as Attachment 3 to Exhibit A, to be published as set forth in the Preliminary
9 Approval Order.

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

15 xx. “Unknown Claims” means any Released Class Representative’s
16 Claims which Class Representative or any other Class Member do not know or suspect
17 to exist in his, her, or its favor at the time of the release of such claims, and any Released
18 Settling Defendant’s Claims which the Settling Defendant does not know or suspect to
19 exist in his favor at the time of the release of such claims, which, if known by him, her,
20 or it, might have affected his, her, or its decision(s) with respect to this Settlement,
21 including, but not limited to, whether or not to object to the Settlement or to the release
22 of the Released Claims. With respect to any and all Released Claims, the Settling Parties
23 stipulate and agree that, upon the Effective Date of the Settlement, Class Representative
24 and the Settling Defendant shall expressly waive, and each of the Class Members shall be
25 deemed to have, and by operation of the Judgment or the Alternative Judgment, if
26 applicable, shall have, expressly waived, the provisions, rights, and benefits conferred by
27 any law of any state or territory of the United States, or principle of common law or
28

1 foreign law, which is similar, comparable, or equivalent to California Civil Code § 1542,
2 which provides:

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

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

10 yy. “Website” means the website created specifically for the Action in
11 connection with Class Notice, www.InsysRXSecuritiesLitigation, which will be updated
12 to include information regarding the Settlement and on which the Settlement Notice and
13 Claim Form will be posted.

14 **PRELIMINARY APPROVAL OF THE SETTLEMENT**

15 2. Promptly upon execution of this Stipulation, Class Representative will
16 move for preliminary approval of the Settlement with the Settling Defendant,
17 authorization to provide notice of the Settlement to the Class, and the scheduling of a
18 hearing for consideration of final approval of the Settlement, which motion shall be
19 unopposed by the Settling Defendant. Concurrently with this motion, Class
20 Representative shall apply to the Court for, and the Settling Defendant shall agree to,
21 entry of the Preliminary Approval Order, substantially in the form attached hereto as
22 Exhibit A.

23 3. Also in connection with the motion for preliminary approval of the
24 Settlement, the Settling Parties agree to request that the Court not permit a second
25 opportunity for Class Members to request exclusion from the Class. However, the
26 Settlement is not contingent on the Court’s decision regarding whether or not a second
27 opportunity to request exclusion shall be permitted.
28

RELEASE OF CLAIMS

1
2 4. The obligations incurred pursuant to this Stipulation are in consideration of:
3 (a) the full and final disposition of the Action as against the Settling Defendant; and
4 (b) the Releases provided for herein. On the Effective Date, the Action shall be dismissed
5 only against the Settling Defendant with prejudice.

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

17 6. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without
18 further action by anyone, upon the Effective Date of the Settlement, the Settling
19 Defendant, on behalf of himself, and his spouses, heirs, executors, administrators,
20 predecessors, successors, and assigns, in their capacities as such, shall be deemed to have,
21 and by operation of law and of the judgment shall have, fully, finally, and forever
22 compromised, settled, released, resolved, relinquished, waived, and discharged each and
23 every Released Settling Defendant's Claim against Class Representative and the other
24 Class Representative's Releasees, and shall forever be barred and enjoined from
25 prosecuting any or all of the Released Settling Defendant's Claims against any of the
26 Class Representative's Releasees. This Release shall not apply to: (i) any person or entity
27 who submitted a request for exclusion from the Class in connection with the Class Notice
28 and whose request is accepted by the Court; or (ii) if and only if the Court permits a

1 second opportunity for Class Members to request exclusion, any person or entity who
2 submits a request for exclusion from the Class in connection with the Settlement Notice
3 whose request is accepted by the Court.

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

8 **THE SETTLEMENT CONSIDERATION**

9 8. In consideration of the full settlement of the claims asserted in the Action
10 against the Settling Defendant and the Releases specified in ¶¶ 4-7 above, the Settling
11 Defendant shall cause to be paid the Settlement Amount into the Escrow Account within
12 twenty (20) business days of: (1) the Court's entry of the Preliminary Approval Order and
13 (2) the receipt of payment instructions and payee tax documents to be provided by Class
14 Counsel.

15 **USE OF THE SETTLEMENT FUND**

16 9. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and
17 Administration Costs; (c) any Litigation Expenses awarded by the Court; (d) any
18 attorneys' fees awarded by the Court; and (e) any other costs and fees approved by the
19 Court. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund,
20 shall be distributed to Authorized Claimants as provided in ¶¶ 18-30 below.

21 10. Except as provided herein or pursuant to orders of the Court, the Net
22 Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds
23 held by the Escrow Agent shall be deemed to be in the custody of the Court and shall
24 remain subject to the jurisdiction of the Court until such time as the funds shall be
25 distributed or returned pursuant to the terms of this Stipulation and/or further order of the
26 Court. At the written direction of Class Counsel, the Escrow Account shall invest any
27 funds in the Escrow Account exclusively in instruments or accounts backed by the full
28 faith and credit of the United States Government or fully insured by the United States

1 Government or an agency thereof, including a United States Treasury Fund or bank
2 account that is either (a) fully insured by the Federal Deposit Insurance Corporation
3 (“FDIC”), or (b) secured by instruments backed by the full faith and credit of the United
4 States Government. The Escrow Agent shall reinvest the proceeds of these instruments
5 or accounts as they mature in similar instruments or accounts at their then-current market
6 rates.

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

24 12. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid,
25 or caused to be paid, by Class Counsel and without further order of the Court. Any tax
26 returns prepared for the Settlement Fund (as well as the election(s) set forth therein) shall
27 be consistent with the previous paragraph and in all events shall reflect that all Taxes on
28 the income earned by the Settlement Fund shall be paid out of the Settlement Fund as

1 provided herein. The Settling Defendant's Releasees shall have no responsibility or
2 liability for the acts or omissions of Class Counsel or its agents with respect to the
3 payment of Taxes, as described herein.

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

12 14. Notwithstanding the fact that the Effective Date of the Settlement has not
13 yet occurred, Class Counsel may pay from the Settlement Fund, without further approval
14 from the Settling Defendant or further order of the Court, all Notice and Administration
15 Costs actually incurred and paid or payable. Such costs and expenses shall include,
16 without limitation, the actual costs of Class Notice, the actual costs of printing and
17 mailing the Postcard Settlement Notice, adapting and maintaining the Website and
18 posting the Settlement Notice and Claim Form, publishing the Summary Settlement
19 Notice, reimbursements to nominee owners for forwarding notices to their beneficial
20 owners, the administrative expenses incurred and fees charged by the Claims
21 Administrator in connection with providing notice, administering the Settlement
22 (including processing submitted Claims), and the fees, if any, of the Escrow Agent. In the
23 event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice
24 and Administration Costs paid or incurred, including any related fees, shall not be
25 returned or repaid to the Settling Defendant, any of the other Settling Defendant's
26 Releasees, or any other person or entity who or which funded any portion of the
27 Settlement Amount.

CLASS COUNSEL’S REQUEST FOR LITIGATION EXPENSES

1
2 15. Class Counsel, on behalf of Plaintiffs’ Counsel, will apply to the Court for
3 reimbursement or payment of Litigation Expenses, which may include a request for
4 reimbursement of Class Representative’s costs and expenses directly related to his
5 representation of the Class, to be paid solely from (and out of) the Settlement Fund. Class
6 Counsel’s application for Litigation Expenses is not the subject of any agreement between
7 the Settling Defendant and Class Representative other than what is set forth in this
8 Stipulation.

9 16. Any Litigation Expenses that are awarded by the Court shall be paid to
10 Class Counsel immediately upon award, notwithstanding the existence of any timely filed
11 objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement
12 or any part thereof, subject to Class Counsel’s obligation to make appropriate refunds or
13 repayments to the Settlement Fund, plus accrued interest at the same net rate as is earned
14 by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this
15 Stipulation or if, as a result of any appeal or further proceedings on remand, or successful
16 collateral attack, the award of Litigation Expenses is reduced or reversed and such order
17 reducing or reversing the award has become Final. Class Counsel shall make the
18 appropriate refund or repayment in full no later than thirty (30) days after: (a) receiving
19 from Settling Defendant’s Counsel notice of the termination of the Settlement; or (b) any
20 order reducing or reversing the award of Litigation Expenses has become Final. An award
21 of Litigation Expenses is not a necessary term of this Stipulation and is not a condition of
22 the Settlement embodied herein. Neither Class Representative nor Class Counsel may
23 cancel or terminate the Settlement based on this Court’s or any appellate court’s ruling
24 with respect to Litigation Expenses.

25 17. The Settling Defendant’s Releasees shall have no responsibility for or
26 liability whatsoever with respect to the allocation or award of Litigation Expenses. Any
27 Litigation Expenses that are awarded to Plaintiffs’ Counsel shall be payable solely from
28 the Escrow Account.

NOTICE AND SETTLEMENT ADMINISTRATION

1
2 18. As part of the Preliminary Approval Order, Class Representative shall seek
3 reappointment of A.B. Data, Ltd. as the Claims Administrator. A.B. Data, Ltd. was
4 previously approved by the Court as administrator in connection with the dissemination
5 of Class Notice. Doc. 331. The Claims Administrator shall administer the Settlement,
6 including but not limited to the process of receiving, reviewing, and approving or denying
7 Claims, under Class Counsel’s supervision and subject to the jurisdiction of the Court.
8 Neither the Settling Defendant, nor any of the Settling Defendant’s Releasees, shall have
9 any involvement in or any responsibility, authority, or liability whatsoever for the
10 selection of the Claims Administrator, the Plan of Allocation, the administration of the
11 Settlement, the Claims process, or disbursement of the Net Settlement Fund, and shall
12 have no liability whatsoever to any person or entity, including, but not limited to, Class
13 Representative, any other Class Members, or Class Counsel in connection with the
14 foregoing. Settling Defendant’s Counsel shall cooperate in the administration of the
15 Settlement to the extent reasonably necessary to effectuate its terms.

16 19. In accordance with the terms of the Preliminary Approval Order to be
17 entered by the Court, Class Counsel shall cause the Claims Administrator to mail, and/or
18 email, the Postcard Settlement Notice to those members of the Class as may be identified
19 through reasonable effort, including those previously identified in connection with Class
20 Notice. Class Counsel shall also cause the Claims Administrator to post the Settlement
21 Notice and Claim Form on the Website as well as cause the Claims Administrator to have
22 the Summary Settlement Notice published in accordance with the terms of the
23 Preliminary Approval Order to be entered by the Court.

24 20. No later than ten (10) calendar days following the filing of this Stipulation
25 with the Court, the Settling Defendant shall serve the notice required under the Class
26 Action Fairness Act, 28 U.S.C. § 1715 *et seq.* (“CAFA”). The Settling Defendant is solely
27 responsible for the costs of the CAFA notice and administering the CAFA notice. At least
28 seven (7) calendar days before the Settlement Fairness Hearing, the Settling Defendant

1 shall cause to be served on Class Counsel and filed with the Court proof, by affidavit or
2 declaration, regarding compliance with CAFA § 1715(b).

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

9 22. The Plan of Allocation proposed in the Settlement Notice is not a necessary
10 term of the Settlement or of this Stipulation and it is not a condition of the Settlement or
11 of this Stipulation that any particular plan of allocation be approved by the Court. Class
12 Representative and Class Counsel may not cancel or terminate the Settlement (or this
13 Stipulation) based on this Court's or any appellate court's ruling with respect to the Plan
14 of Allocation or any other plan of allocation in this Action. The Settling Defendant and
15 the Settling Defendant's Releasees shall not object in any way to the Plan of Allocation
16 or any other plan of allocation in this Action. Neither the Settling Defendant, nor any of
17 the Settling Defendant's Releasees, shall have any involvement with or liability,
18 obligation, or responsibility whatsoever for the application of the Court-approved plan of
19 allocation.

20 23. Any Class Member who does not submit a valid Claim will not be entitled
21 to receive any distribution from the Net Settlement Fund, but will otherwise be bound by
22 all of the terms of this Stipulation and the Settlement, including the terms of the Judgment
23 or, the Alternate Judgment, if applicable, to be entered in the Action against the Settling
24 Defendant and the Releases provided for herein and therein, and will be permanently
25 barred and enjoined from bringing any action, claim, or other proceeding of any kind
26 against the Settling Defendant's Releasees with respect to the Released Class
27 Representative's Claims in the event that the Effective Date occurs with respect to the
28 Settlement.

1 24. Class Counsel shall be responsible for supervising the administration of the
2 Settlement and the disbursement of the Net Settlement Fund subject to Court approval.
3 Neither the Settling Defendant, nor any Settling Defendant's Releasees, shall be permitted
4 to review, contest, or object to any Claim, or any decision of the Claims Administrator or
5 Class Counsel with respect to accepting or rejecting any Claim for payment. Class
6 Counsel shall have the right, but not the obligation, to waive what they deem to be formal
7 or technical defects in any Claims submitted in the interests of achieving substantial
8 justice.

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

12 a. Each Claimant shall be required to submit a Claim in paper form,
13 substantially in the form attached hereto as Attachment 4 to Exhibit A, or in electronic
14 form, in accordance with the instructions for the submission of such Claims, and
15 supported by such documents as are designated therein, including proof of the Claimant's
16 loss, or such other documents or proof as the Claims Administrator or Class Counsel, in
17 their discretion, may deem acceptable;

18 b. All Claims must be submitted by the date set by the Court in the
19 Preliminary Approval Order and specified in the Notice. Any Class Member who fails to
20 submit a Claim by such date shall be forever barred from receiving any distribution from
21 the Net Settlement Fund or payment pursuant to this Stipulation (unless by Order of the
22 Court such Class Member's Claim is accepted), but shall in all other respects be bound
23 by all of the terms of this Stipulation and the Settlement, including the terms of the
24 Judgment or Alternate Judgment, if applicable, and the Releases provided for herein and
25 therein, and will be permanently barred and enjoined from bringing any action, claim, or
26 other proceeding of any kind against any of the Settling Defendant's Releasees with
27 respect to any Released Class Representative's Claim. Provided that it is mailed by the
28 claim-submission deadline, a Claim Form shall be deemed to be submitted when

1 postmarked, if received with a postmark indicated on the envelope and if mailed by first-
2 class mail and addressed in accordance with the instructions thereon. In all other cases,
3 the Claim Form shall be deemed to have been submitted on the date when actually
4 received by the Claims Administrator;

5 c. Each Claim shall be submitted to and reviewed by the Claims
6 Administrator who shall determine in accordance with this Stipulation and the plan of
7 allocation the extent, if any, to which each Claim shall be allowed, subject to review by
8 the Court pursuant to subparagraph (e) below as necessary;

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

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

26 26. Each Claimant shall be deemed to have submitted to the jurisdiction of the
27 Court with respect to the Claimant's Claim, and the Claim will be subject to investigation
28 and discovery under the Federal Rules, provided, however, that such investigation and

1 discovery shall be limited to that Claimant's status as a Class Member and the validity
2 and amount of the Claimant's Claim. No discovery shall be allowed on the merits of this
3 Action or of the Settlement in connection with the processing of Claims.

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

11 28. Payment pursuant to the Class Distribution Order shall be final and
12 conclusive against all Claimants. All Class Members whose Claims are not approved by
13 the Court for payment shall be barred from participating in distributions from the Net
14 Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and
15 the Settlement, including the terms of the Judgment or Alternate Judgment, if applicable,
16 to be entered in this Action and the Releases provided for herein and therein, and will be
17 permanently barred and enjoined from bringing any action against any and all Settling
18 Defendant's Releasees with respect to any and all of the Released Class Representative's
19 Claims.

20 29. No person or entity shall have any claim against Class Representative,
21 Plaintiffs' Counsel, the Claims Administrator, or any other agent designated by Class
22 Counsel, or the Settling Defendant's Releasees and/or their respective counsel, arising
23 from distributions made substantially in accordance with the Stipulation, the plan of
24 allocation approved by the Court, or any order of the Court. Class Representative and the
25 Settling Defendant, and their respective counsel, and Class Representative's damages
26 consultant and all other Releasees shall have no liability whatsoever for the investment
27 or distribution of the Settlement Fund or the Net Settlement Fund, the plan of allocation,
28 or the determination, administration, calculation, or payment of any claim or

1 nonperformance of the Claims Administrator, the payment or withholding of taxes
2 (including interest and penalties) owed by the Settlement Fund, or any losses incurred in
3 connection therewith.

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

10 **TERMS OF THE JUDGMENT**

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

14 32. The Judgment shall contain a bar order ("Bar Order") substantially in the
15 form set forth in Exhibit B hereto that shall, upon the Effective Date, bar, pursuant to the
16 PSLRA, specifically 15 U.S.C. § 78u-4(f)(7)(A), and common law, all future claims by
17 any individual or entity against any of the Settling Defendant's Releasees, and by the
18 Settling Defendant's Releasees against any individual or entity other than a person whose
19 liability has been extinguished by the Settlement, for (a) contribution or indemnity (or
20 any other claim, however denominated on whatsoever theory) arising out of or related to
21 the claims or allegations asserted by Class Representative in the Action, or (b) any other
22 claim of any type, whether arising under state, federal, common, or foreign law, for which
23 the injury claimed is that person's or entity's actual or threatened liability to Class
24 Representative and/or members of the Class arising out of or related to the claims or
25 allegations asserted by Class Representative in the Action. The Bar Order shall also
26 provide that, pursuant to the PSLRA and common law, any final verdict or judgment that
27 may be obtained by or on behalf of the Class or a Class Member against any individual
28 or entity subject to the Bar Order, pursuant to 15 U.S.C. § 78u-4(f)(7)(B), shall be reduced

1 by the greater of: (a) an amount that corresponds to the percentage of responsibility of the
2 Settling Defendant for common damages; or (b) the amount paid by or on behalf of the
3 Settling Defendant to the Class or Class Member for common damages.

4 **CONDITIONS OF SETTLEMENT AND EFFECT OF**
5 **DISAPPROVAL, CANCELLATION OR TERMINATION**

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

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

10 b. the Settlement Amount has been deposited into the Escrow Account
11 in accordance with the provisions of ¶ 8 above;

12 c. the Settling Defendant has not exercised his option to terminate the
13 Settlement pursuant to ¶ 36 of this Stipulation;

14 d. Class Representative has not exercised his option to terminate the
15 Settlement pursuant to ¶¶ 36 and 37 of this Stipulation; and

16 e. the Court has approved the Settlement as described herein, following
17 notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules, and
18 entered the Judgment and the Judgment has become Final, or the Court has entered an
19 Alternate Judgment and none of the Settling Parties seek to terminate the Settlement and
20 the Alternate Judgment has become Final.

21 34. Upon the occurrence of all of the events referenced in ¶ 33 above, any and
22 all remaining interest or right of the Settling Defendant in or to the Settlement Fund, if
23 any, shall be absolutely and forever extinguished and the Releases herein shall be
24 effective.

25 35. If (i) the Settling Defendant exercises his right to terminate the Settlement
26 pursuant to ¶ 36 of this Stipulation; (ii) Class Representative exercises his right to
27 terminate the Settlement pursuant to ¶¶ 36 or 37 of this Stipulation; (iii) the Court
28

1 disapproves the Settlement; or (iv) the Effective Date as to the Settlement otherwise fails
2 to occur, then:

3 a. The Settlement and the relevant portions of this Stipulation shall be
4 canceled and terminated.

5 b. Class Representative and the Settling Defendant shall revert to their
6 respective positions in the Action immediately prior to the execution of the term sheet on
7 May 8, 2020.

8 c. The terms and provisions of this Stipulation, with the exception of
9 this ¶ 35 and ¶¶ 14, 16, 38, and 47, shall have no further force and effect with respect to
10 the Settling Parties and shall not be used in the Action or in any other proceeding for any
11 purpose, and any Judgment, or Alternate Judgment, if applicable, or order entered by the
12 Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc*
13 *pro tunc*.

14 d. Within fifteen (15) calendar days after joint written notification of
15 termination is sent by Settling Defendant's Counsel and Class Counsel to the Escrow
16 Agent, the Settlement Fund (including accrued interest thereon and any funds received
17 by Class Counsel consistent with ¶ 16 above), less any Notice and Administration Costs
18 actually incurred, paid, or payable and less any Taxes paid, due, or owing shall be
19 refunded by the Escrow Agent to the Settling Defendant (or such other persons or entities
20 as the Settling Defendant may direct). In the event that the funds received by Class
21 Counsel consistent with ¶ 16 above have not been refunded to the Settlement Fund within
22 the fifteen (15) calendar days specified in this paragraph, those funds shall be refunded
23 by the Escrow Agent to the Settling Defendant (or such other persons or entities as the
24 Settling Defendant may direct) immediately upon their deposit into the Escrow Account
25 consistent with ¶ 16 above.

26 36. It is further stipulated and agreed that the Settling Defendant and Class
27 Representative shall each have the right to terminate the Settlement and this Stipulation,
28 by providing written notice of their election to do so ("Termination Notice") to the other

1 Settling Party to this Stipulation within thirty (30) days of: (a) the Court's final refusal to
2 enter the Preliminary Approval Order in any material respect; (b) the Court's final refusal
3 to approve the Settlement or any material part thereof; (c) the Court's final refusal to enter
4 the Judgment in any material respect as to the Settlement; (d) the date upon which the
5 Judgment is modified or reversed in any material respect by the United States Court of
6 Appeals for the Ninth Circuit or the United States Supreme Court; or (e) the date upon
7 which an Alternate Judgment is modified or reversed in any material respect by the United
8 States Court of Appeals for the Ninth Circuit or the United States Supreme Court, and the
9 provisions of ¶ 35 above shall apply. However, any decision or proceeding, whether in
10 this Court or any appellate court, with respect to an application for attorneys' fees or
11 Litigation Expenses or with respect to any plan of allocation shall not be considered
12 material to the Settlement, shall not affect the finality of any Judgment or Alternate
13 Judgment, if applicable, and shall not be grounds for termination of the Settlement.

14 37. Class Representative shall also have the option to terminate the Settlement
15 in the event that the Settlement Amount has not been paid as provided for in ¶ 8 above,
16 by providing written notice of the election to terminate to Settling Defendant's Counsel.

17 **NO ADMISSION OF WRONGDOING**

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

24 a. shall be offered against any of the Settling Defendant's Releasees as
25 evidence of, or construed as, or deemed to be evidence of any presumption, concession,
26 or admission by any of the Settling Defendant's Releasees with respect to the truth of any
27 fact alleged by Class Representative or the validity of any claim that was or could have
28 been asserted or the deficiency of any defense that has been or could have been asserted

1 in this Action or in any other litigation, or of any liability, negligence, fault, or other
2 wrongdoing of any kind of any of the Settling Defendant's Releasees or in any way
3 referred to for any other reason as against any of the Settling Defendant's Releasees, in
4 any arbitration proceeding or other civil, criminal, or administrative action or proceeding,
5 other than such proceedings as may be necessary to effectuate the provisions of this
6 Stipulation;

7 b. shall be offered against any of the Class Representative's Releasees,
8 as evidence of, or construed as, or deemed to be evidence of any presumption, concession,
9 or admission by any of the Class Representative's Releasees that any of their claims are
10 without merit, that any of the Settling Defendant's Releasees had meritorious defenses,
11 or that damages recoverable under the Second Amended Complaint with respect to the
12 Settling Defendant would not have exceeded the Settlement Amount or with respect to
13 any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for
14 any other reason as against any of the Class Representative's Releasees, in any arbitration
15 proceeding or other civil, criminal, or administrative action or proceeding, other than such
16 proceedings as may be necessary to effectuate the provisions of this Stipulation; or

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

23 **MISCELLANEOUS PROVISIONS**

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

1 40. The Settling Defendant warrants and represents that he is not “insolvent”
2 within the meaning of 11 U.S.C. §101(32) as of the execution of this Stipulation and as
3 of the time the payment of the Settlement Amount is actually transferred or made as
4 reflected herein. In the event of a final order of a court of competent jurisdiction, not
5 subject to any further proceedings, determining the transfer of the Settlement Amount, or
6 any portion thereof, by or on behalf of the Settling Defendant to be a preference, voidable
7 transfer, fraudulent transfer or similar transaction under Title 11 of the United States Code
8 (Bankruptcy) or applicable state law, and any portion thereof is required to be refunded
9 and such amount is not promptly deposited in the Escrow Account, Class Counsel may
10 elect to terminate the settlement with the Settling Defendant. In such event, all of the
11 releases given and the judgments entered in favor of the Settling Defendant pursuant to
12 the Settlement shall be null and void, and the Settling Parties shall be restored to their
13 respective positions in the litigation as provided in ¶ 35(b) above and any cash amounts
14 in the Settlement Fund (less any Taxes paid, due, or owing with respect to the Settlement
15 Fund and less any Notice and Administration Costs actually incurred, paid, or payable)
16 shall be returned as provided in ¶ 35.

17 41. The Settling Parties intend this Stipulation and the Settlement to be a final
18 and complete resolution of all disputes asserted or which could be asserted by Class
19 Representative and any other Class Members against the Settling Defendant’s Releasees
20 with respect to the Released Class Representative’s Claims. No Settling Party shall assert
21 any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to
22 the institution, prosecution, defense, or settlement of this Action. The Settling Parties
23 agree that the amount paid and the other terms of the Settlement were negotiated at arm’s
24 length and in good faith by the Settling Parties, and reflect the Settlement that was reached
25 voluntarily after extensive negotiations and consultation with experienced legal counsel,
26 who were fully competent to assess the strengths and weaknesses of their respective
27 clients’ claims or defenses.
28

1 42. While retaining their right to deny that the claims asserted in the Action
2 were meritorious, the Settling Defendant and his counsel, in any statement made to any
3 media representative (whether or not for attribution) will not assert that the Action was
4 commenced or prosecuted in bad faith, nor will they deny that the Action was commenced
5 and prosecuted in good faith and is being settled voluntarily after consultation with
6 competent legal counsel. In all events, Class Representative and his counsel and the
7 Settling Defendant and his counsel shall not make any accusations of wrongful or
8 actionable conduct by the other side concerning the prosecution, defense, and resolution
9 of the Action, and shall not otherwise suggest that the Settlement constitutes an admission
10 of any claim or defense alleged.

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

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

17 45. The administration and consummation of the Settlement as embodied in this
18 Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction
19 for the purpose of entering orders providing for awards of attorneys' fees and Litigation
20 Expenses to Plaintiffs' Counsel and enforcing the terms of this Stipulation, including the
21 Plan of Allocation (or such other plan of allocation as may be approved by the Court) and
22 the distribution of the Net Settlement Fund to Class Members.

23 46. The waiver by one Settling Party of any breach of this Stipulation by any
24 other Settling Party shall not be deemed a waiver of any other prior or subsequent breach
25 of this Stipulation.

26 47. This Stipulation and its exhibits constitute the entire agreement among
27 Class Representative and the Settling Defendant concerning the Settlement. The Settling
28 Parties acknowledge that no other agreements, representations, warranties, or

1 inducements have been made by any Settling Party hereto concerning this Stipulation or
2 its exhibits other than those contained and memorialized in such documents.

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

7 49. This Stipulation shall be binding upon and inure to the benefit of the
8 successors and assigns of the Settling Parties, including any and all Releasees and any
9 corporation, partnership, or other entity into or with which any of them may merge,
10 consolidate, or reorganize.

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

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

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

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

26 54. Class Counsel and Settling Defendant's Counsel agree to cooperate fully
27 with one another in seeking Court approval of the Preliminary Approval Order and the
28 Settlement, as embodied in this Stipulation, and to use best efforts to promptly agree upon

1 and execute all such other documentation as may be reasonably required to obtain final
2 approval by the Court of the Settlement.

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

7 If to Class Representative or Kessler Topaz Meltzer & Check, LLP
8 Class Counsel: Attn: Johnston de F. Whitman, Jr., Esq.
280 King of Prussia Road
9 Radnor, PA 19087
10 Tel: (610) 667-7706
Fax: (610) 667-7056
11 Email: jwhitman@ktmc.com

12 If to the Settling Defendant: Salmon, Lewis & Weldon, P.L.C.
13 Attn: George J. Coleman, Esq.
Michael K. Foy, Esq.
14 2850 E. Camelback Road, Suite 200
Phoenix, Arizona 85016
15 (602) 977-7305
16 gjc@slwplc.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

1 of this Stipulation. Each Class Member's tax obligations, and the determination thereof,
2 are the sole responsibility of the Class Member, and it is understood that the tax
3 consequences may vary depending on the particular circumstances of each individual
4 Class Member.

5 IN WITNESS WHEREOF, the Settling Parties hereto have caused this Stipulation
6 to be executed, by their duly authorized attorneys, on May 22, 2020.

7

8 Dated: May 22, 2020

**KESSLER TOPAZ
MELTZER & CHECK, LLP**

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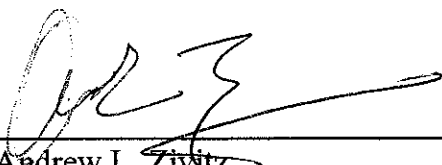
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jjoost@ktmc.com
One Sansome Street, Suite 1850
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Telephone: (415) 400-3000
Facsimile: (415) 400-3001

Class Counsel and Counsel for Class Representative

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**BONNETT, FAIRBOURN,
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Telephone: (602) 274-1100
Facsimile: (602) 274-1199

*Liaison Counsel for the Class and Class
Representative*

Dated: May 22, 2020

SALMON, LEWIS & WELDON, P.L.C.



George J. Coleman, No. 009435
Michael K. Foy, No. 032736
2850 E. Camelback Road, Suite 200
Phoenix, Arizona 85016
Telephone: (602) 977-7305

Attorneys for Defendant Darryl S. Baker

EXHIBIT A

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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

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
SETTLEMENT WITH
DEFENDANT DARRYL S.
BAKER AND PROVIDING FOR
NOTICE**

1 WHEREAS, an action is pending in this Court entitled *Di Donato v. Insys*
2 *Therapeutics, Inc., et al.*, No. 16-00302-PHX-NVW (the “Action”);

3 WHEREAS, by Order dated September 20, 2019 (Doc. 271), this Court certified
4 the Action to proceed as a class action on behalf of all persons and entities who purchased
5 or otherwise acquired Insys Therapeutics, Inc. (“Insys”) common stock during the period
6 from March 3, 2015, through January 25, 2016 (the “Class Period”), and were damaged
7 thereby (the “Class”);¹

8 WHEREAS, pursuant to the Court’s Order dated March 20, 2020 (Doc. 331),
9 notice was disseminated to potential members of the Class to notify them of, among other
10 things: (i) the pendency of the Action against defendants Michael L. Babich, Darryl S.
11 Baker, and John N. Kapoor (collectively, “Defendants”); (ii) the Court’s certification of
12 the Action to proceed against Defendants as a class action on behalf of the Class;
13 (iii) the right of Class Members to request to be excluded from the Class, the effect of
14 remaining in the Class or requesting exclusion, and the requirements for requesting
15 exclusion; (iv) the then-pending motion to voluntarily dismiss Insys from the Action with
16 prejudice (“Insys Dismissal Motion”) given the Company’s bankruptcy and the Class’s
17 inability to pursue claims against Insys in the Action; and (v) the right of Class Members
18 to object to the Insys Dismissal Motion (“Class Notice”);²

19 WHEREAS, Court-appointed Lead Plaintiff and Class Representative Clark
20 Miller (“Class Representative”), on behalf of himself and the other members of the Court-
21 certified Class, and Darryl S. Baker (the “Settling Defendant” and, together with Class
22 Representative, the “Settling Parties”) have determined to settle all claims asserted

23 _____
24 ¹ Excluded from the Class are: (i) Defendants; (ii) present and former directors or
25 executive officers of Insys and members of their immediate families (as defined in
26 17 C.F.R. § 229.404, Instructions (1)(a)(iii) and (1)(b)(ii)); (iii) any of the foregoing
27 individuals’ or entities’ legal representatives, heirs, successors, or assigns; and (iv) any
entity in which any Defendant has or had a controlling interest, or which is related to or
affiliated with, any Defendant. The Court did not certify the Action against Insys, as
claims against Insys are subject to a mandatory and automatic stay of litigation pursuant
to 11 U.S.C. § 362 of the United States Code due to its bankruptcy filing.

28 ² By Order dated May 15, 2020 (Doc. 338), Insys was dismissed from the Action
with prejudice.

1 against the Settling Defendant in the Action with prejudice on the terms and conditions
2 set forth in the Stipulation and Agreement of Settlement Between Lead Plaintiff and
3 Defendant Darryl S. Baker dated May 22, 2020 (the “Stipulation”), subject to the approval
4 of this Court (the “Settlement”);

5 WHEREAS, the claims asserted in the Action against Michael L. Babich and John
6 N. Kapoor (together, “Non-Settling Defendants”) have not been resolved and are still
7 being litigated;

8 WHEREAS, Class Representative has made a motion, pursuant to Rule 23(e)(1)
9 of the Federal Rules of Civil Procedure, for an order preliminarily approving the
10 Settlement of the Action with the Settling Defendant in accordance with the Stipulation
11 and authorizing notice of the Settlement to Class Members as more fully described herein;

12 WHEREAS, the Court has read and considered: (i) Class Representative’s motion
13 for preliminary approval of the Settlement with the Settling Defendant and authorization
14 to disseminate notice of the Settlement to the Class, and the papers filed and arguments
15 made in connection therewith; and (ii) the Stipulation and the exhibits attached thereto;
16 and

17 WHEREAS, unless otherwise defined in this Order, the capitalized terms herein
18 shall have the same meanings as they have in the Stipulation;

19 NOW THEREFORE, IT IS HEREBY ORDERED:

20 1. **Preliminary Approval of the Settlement** – The Court hereby preliminarily
21 approves the Settlement of the Action with the Settling Defendant, as embodied in the
22 Stipulation, and finds, pursuant to Rule 23(e)(1)(B)(i) of the Federal Rules of Civil
23 Procedure, that it will likely be able to finally approve the Settlement under Rule 23(e)(2)
24 as being fair, reasonable, and adequate to the Class, subject to further consideration at the
25 Settlement Fairness Hearing to be conducted as described below.

26 2. **Settlement Fairness Hearing** – The Court will hold a settlement hearing
27 (the “Settlement Fairness Hearing”) on _____, 2020 at __:__ .m. at the
28 Sandra Day O’Connor United States Courthouse, 401 W. Washington St., Phoenix, AZ

1 85003, Courtroom 401, for the following purposes: (a) to determine whether the proposed
2 Settlement of the Action with the Settling Defendant on the terms and conditions provided
3 for in the Stipulation is fair, reasonable, and adequate to the Class, and should be finally
4 approved by the Court; (b) to determine whether a Judgment substantially in the form
5 attached as Exhibit B to the Stipulation should be entered dismissing the Action with
6 prejudice against the Settling Defendant; (c) to determine whether the proposed Plan of
7 Allocation for the proceeds of the Settlement is fair and reasonable and should be
8 approved; (d) to determine whether the motion by Class Counsel for Litigation Expenses
9 should be approved; and (e) to consider any other matters that may properly be brought
10 before the Court in connection with the Settlement. Notice of the Settlement and the
11 Settlement Fairness Hearing shall be given to Class Members as set forth in paragraph 4
12 of this Order.

13 3. The Court may adjourn the Settlement Fairness Hearing or decide to hold
14 the Settlement Fairness Hearing telephonically without further notice to the Class, and
15 may approve the proposed Settlement with such modifications as the Settling Parties may
16 agree to, if appropriate, without further notice to the Class.

17 4. **Retention of Claims Administrator and Manner of Giving Notice** –
18 Class Counsel is hereby authorized to retain A.B. Data, Ltd. (“Claims Administrator” or
19 “A.B. Data”), the administrator previously approved by the Court to administer the
20 dissemination of Class Notice, to supervise and administer the notice procedure in
21 connection with the proposed Settlement as well as the processing of Claims as more fully
22 set forth below. Notice of the Settlement and the Settlement Fairness Hearing shall be
23 given by Class Counsel as follows:

24 (a) not later than ten (10) ten calendar days after the date of entry
25 of this Order (“Notice Date”), the Claims Administrator shall cause a copy of the Postcard
26 Settlement Notice, substantially in the form attached hereto as Attachment 1, to be mailed
27 by first-class mail, or emailed, to potential Class Members who were previously mailed,
28 or emailed, notice in connection with Class Notice and any other potential Class Member

1 who otherwise may be identified through further reasonable effort, and shall cause a copy
2 of the Settlement Notice and Claim Form, substantially in the forms attached hereto as
3 Attachments 2 and 4, respectively, to be mailed to the brokers and other nominees (the
4 “Nominees”) contained in the Claims Administrator’s Nominee database;

5 (b) contemporaneously with the mailing of the Postcard
6 Settlement Notice, the Claims Administrator shall cause copies of the Settlement Notice
7 and the Claim Form to be posted on the website previously developed for the Action,
8 www.InsysRXSecuritiesLitigation.com, from which copies of the Settlement Notice and
9 Claim Form can be downloaded;

10 (c) not later than ten (10) calendar days after the Notice Date, the
11 Claims Administrator shall cause the Summary Settlement Notice, substantially in the
12 form attached hereto as Attachment 3, to be published once in *Investor’s Business Daily*
13 and to be transmitted once over *PR Newswire*; and

14 (d) not later than seven (7) calendar days prior to the Settlement
15 Fairness Hearing, Class Counsel shall serve on Settling Defendant’s Counsel and file with
16 the Court proof, by affidavit or declaration, of such mailing, posting, and publication.

17 5. **Approval of Form and Content of Notice** – The Court (a) approves, as to
18 form and content, the Postcard Settlement Notice, the Settlement Notice, the Summary
19 Settlement Notice, and the Claim Form, attached hereto as Attachments 1, 2, 3, and 4
20 respectively, and (b) finds that the mailing and distribution of the Postcard Settlement
21 Notice, the posting of the Settlement Notice and Claim Form on the Website, and the
22 publication of the Summary Settlement Notice in the manner and forms set forth in ¶ 4 of
23 this Order (i) is the best notice practicable under the circumstances; (ii) constitutes notice
24 that is reasonably calculated, under the circumstances, to apprise Class Members of the
25 effect of the proposed Settlement (including the Releases to be provided thereunder), of
26 Class Counsel’s motion for Litigation Expenses, of their right to object to the Settlement,
27 the Plan of Allocation, and/or Class Counsel’s motion for Litigation Expenses, and of
28 their right to appear at the Settlement Fairness Hearing; (iii) constitutes due, adequate,

1 and sufficient notice to all persons and entities entitled to receive notice of the proposed
2 Settlement; and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil
3 Procedure, the United States Constitution (including the Due Process Clause), the Private
4 Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1, 78u-4, as amended, and
5 all other applicable law and rules. The date and time of the Settlement Fairness Hearing
6 shall be included in the Postcard Settlement Notice, the Settlement Notice, and the
7 Summary Settlement Notice before they are mailed (and/or emailed), posted, and
8 published, respectively.

9 6. **Nominee Procedures** – In the previously disseminated Class Notice,
10 Nominees were advised that, if they purchased or otherwise acquired Insys common stock
11 during the period from March 3, 2015, through January 25, 2016, for the beneficial
12 interest of any person or entity other than themselves, they must either: (i) within seven
13 (7) calendar days of receipt of the Notice of Pendency of Class Action, request from A.B.
14 Data sufficient copies of the postcard Class Notice to forward to all such beneficial
15 owners and within seven (7) calendar days of receipt of those postcard Class Notices
16 forward them to all such beneficial owners; or (ii) within seven (7) calendar days of
17 receipt of the Notice of Pendency of Class Notice, provide a list of the names and
18 addresses of all such beneficial owners to A.B. Data.

19 (a) For Nominees who chose the first option (i.e., elected to mail
20 the postcard Class Notice directly to beneficial owners), A.B. Data shall forward the same
21 number of Postcard Settlement Notices to such Nominees, and the Nominees shall, within
22 seven (7) calendar days of receipt of the Postcard Settlement Notices, mail the Postcard
23 Settlement Notices to their beneficial owners;

24 (b) For Nominees who chose the second option (i.e., provided a
25 list of names and addresses of beneficial owners to A.B. Data), A.B. Data shall promptly
26 mail a Postcard Settlement Notice to each of the beneficial owners whose names and
27 addresses the Nominee previously supplied. Unless the Nominee purchased or otherwise
28 acquired Insys common stock during the Class Period for beneficial owners whose names

1 and addresses were not previously provided to A.B. Data, or the Nominee is aware of
2 name and address changes for these beneficial owners, these Nominees need not take any
3 further action;

4 (c) For Nominees who purchased or otherwise acquired Insys
5 common stock during the Class Period for beneficial owners whose names and addresses
6 were not previously provided to A.B. Data or if a Nominee is aware of name and address
7 changes for beneficial owners whose names and addresses were previously provided to
8 A.B. Data, such Nominees shall within seven (7) calendar days of receipt of the
9 Settlement Notice, provide a list of the names and addresses of all such beneficial owners
10 to A.B. Data, or shall request from A.B. Data sufficient copies of the Postcard Settlement
11 Notice to forward to all such beneficial owners which the Nominee shall, within seven
12 (7) calendar days of receipt of the Postcard Settlement Notices from A.B. Data, mail to
13 the beneficial owners; and

14 (d) Upon full and timely compliance with this Order, Nominees
15 may seek reimbursement of their reasonable expenses actually incurred in complying with
16 this Order by providing the Claims Administrator with proper documentation supporting
17 the expenses for which reimbursement is sought. Such properly documented expenses
18 incurred by Nominees in compliance with the terms of this Order shall be paid from the
19 Settlement Fund, with any disputes as to the reasonableness or documentation of expenses
20 incurred subject to review by the Court.

21 7. **CAFA Notice** – As provided in the Stipulation, the Settling Defendant shall
22 serve the notice required under the Class Action Fairness Act, 28 U.S.C. § 1715 et seq.
23 (“CAFA”) no later than ten (10) calendar days following the filing of the Stipulation with
24 the Court. The Settling Defendant is solely responsible for the costs of the CAFA notice
25 and administering the CAFA notice. No later than seven (7) calendar days before the
26 Settlement Fairness Hearing, the Settling Defendant shall cause to be served on Class
27 Counsel and filed with the Court proof, by affidavit or declaration, regarding compliance
28 with 28 U.S.C. § 1715(b).

1 8. **Participation in the Settlement** – Class Members who wish to participate
2 in the Settlement and to be eligible to receive a distribution from the Net Settlement Fund
3 must complete and submit a Claim Form in accordance with the instructions contained
4 therein. Unless the Court orders otherwise, all Claim Forms must be postmarked no later
5 than ninety (90) calendar days after the Notice Date. Notwithstanding the foregoing, Class
6 Counsel may, at its discretion, accept for processing late Claims provided such acceptance
7 does not delay the distribution of the Net Settlement Fund to the Class. By submitting a
8 Claim, a person or entity shall be deemed to have submitted to the jurisdiction of the
9 Court with respect to his, her, or its Claim and the subject matter of the Settlement.

10 9. Each Claim Form submitted must satisfy the following conditions: (a) it
11 must be properly completed, signed, and submitted in a timely manner in accordance with
12 the provisions of the preceding paragraph; (b) it must be accompanied by adequate
13 supporting documentation for the transactions and holdings reported therein, in the form
14 of broker confirmation slips, broker account statements, an authorized statement from the
15 broker containing the transactional and holding information found in a broker
16 confirmation slip or account statement, or such other documentation as is deemed
17 adequate by Class Counsel or the Claims Administrator; (c) if the person executing the
18 Claim Form is acting in a representative capacity, a certification of his, her, or its current
19 authority to act on behalf of the Class Member must be included in the Claim Form to the
20 satisfaction of Class Counsel or the Claims Administrator; and (d) the Claim Form must
21 be complete and contain no material deletions or modifications of any of the printed
22 matter contained therein and must be signed under penalty of perjury.

23 10. Any Class Member that does not timely and validly submit a Claim Form
24 or whose Claim is not otherwise approved by the Court: (a) shall be deemed to have
25 waived his, her, or its right to share in the Net Settlement Fund; (b) shall be forever barred
26 from participating in any distributions therefrom; (c) shall be bound by the provisions of
27 the Stipulation and the Settlement and all proceedings, determinations, orders, and
28 judgments in the Action relating thereto, including, without limitation, the Judgment or

1 Alternate Judgment, if applicable, and the Releases provided for therein, whether
2 favorable or unfavorable to the Class; and (d) will be barred from commencing,
3 maintaining, or prosecuting any of the Released Class Representative's Claims against
4 each and all of the Settling Defendant's Releasees, as more fully described in the
5 Stipulation and Settlement Notice. Notwithstanding the foregoing, late Claim Forms may
6 be accepted for processing as set forth in paragraph 8 above.

7 11. **No Second Opportunity to Request Exclusion From the Class** – In light
8 of the extensive notice program undertaken in connection with class certification and the
9 ample opportunity provided to Class Members to request exclusion from the Class at that
10 time, as well as the notification they received that there may not be a second opportunity
11 to opt out, the Court is exercising its discretion not to allow a second opportunity for Class
12 Members to exclude themselves from the Class in connection with the Settlement
13 proceedings. *See, e.g., Low v. Trump Univ., LLC*, 881 F.3d 1111, 1121 (9th Cir. 2018);
14 *Denney v. Deutsch Bank AG*, 443 F.3d 253, 271 (2d Cir. 2006).

15 12. **Appearance and Objections at Settlement Fairness Hearing** – Any
16 Class Member may enter an appearance in the Action, at his, her, or its own expense,
17 individually or through counsel of his, her, or its own choice, by filing with the Clerk of
18 Court and delivering a notice of appearance to both Class Counsel and Settling
19 Defendant's Counsel, at the addresses set forth in paragraph 13 below, such that it is
20 received no later than twenty-one (21) calendar days prior to the Settlement Fairness
21 Hearing, or as the Court may otherwise direct. Any Class Member who does not enter an
22 appearance will be represented by Class Counsel.

23 13. Any Class Member may file a written objection to the proposed Settlement,
24 the proposed Plan of Allocation, and/or Class Counsel's motion for Litigation Expenses
25 and appear and show cause, if he, she, or it has any cause, why the proposed Settlement,
26 the proposed Plan of Allocation, and/or Class Counsel's motion for Litigation Expenses
27 should not be approved; provided, however, that no Class Member shall be heard or
28 entitled to contest the approval of the terms and conditions of the proposed Settlement,

1 the proposed Plan of Allocation, and/or the motion for Litigation Expenses unless that
2 person or entity has filed a written objection with the Court and served copies of such
3 objection on Class Counsel and Settling Defendant's Counsel at the addresses set forth
4 below such that they are received no later than twenty-one (21) calendar days prior to the
5 Settlement Fairness Hearing.

6 Class Counsel

7 Kessler Topaz Meltzer & Check, LLP
8 Johnston de F. Whitman, Jr., Esq.
9 280 King of Prussia Road
10 Radnor, PA 19087

Settling Defendant's Counsel

Salmon, Lewis & Weldon, P.L.C.
George J. Coleman, Esq.
Michael K. Foy, Esq.
2850 E. Camelback Road, Suite 200
Phoenix, AZ 85016

11 14. Any objections, filings, and other submissions by the objecting Class
12 Member must: (a) state the name, address, and telephone number of the person or entity
13 objecting and must be signed by the objector; (b) state with specificity the grounds for
14 the Class Member's objection, including any legal and evidentiary support the Class
15 Member wishes to bring to the Court's attention and whether the objection applies only
16 to the objector, to a specific subset of the Class, or to the entire Class; and (c) include
17 documents sufficient to prove membership in the Class, including the number of shares
18 of Insys common stock that the objecting Class Member: (A) owned as of the opening of
19 trading on March 3, 2015, and (B) purchased/acquired and/or sold during the Class
20 Period, as well as the dates, number of shares, and prices of each such
21 purchase/acquisition and sale. The objecting Class Member shall provide documentation
22 establishing membership in the Class through copies of brokerage confirmation slips or
23 monthly brokerage account statements, or an authorized statement from the objector's
24 broker containing the transactional and holding information found in a broker
25 confirmation slip or account statement. Objectors who enter an appearance and desire to
26 present evidence at the Settlement Fairness Hearing in support of their objection must
27 include in their written objection or notice of appearance the identity of any witnesses
28

1 they may call to testify and any exhibits they intend to introduce into evidence at the
2 hearing.

3 15. Any Class Member who or which does not make his, her, or its objection
4 in the manner provided herein shall be deemed to have waived his, her, or its right to
5 object to any aspect of the proposed Settlement, the proposed Plan of Allocation, and
6 Class Counsel's motion for Litigation Expenses and shall be forever barred and
7 foreclosed from objecting to the fairness, reasonableness, or adequacy of the Settlement,
8 the Plan of Allocation, or the requested Litigation Expenses, or from otherwise being
9 heard concerning the Settlement, the Plan of Allocation, or the requested Litigation
10 Expenses in this or any other proceeding.

11 16. **Stay and Temporary Injunction** – Until otherwise ordered by the Court,
12 the Court stays all proceedings against or by the Settling Defendant in the Action other
13 than the proceedings necessary to carry out or enforce the terms and conditions of the
14 Stipulation. Pending final determination of whether the Settlement should be approved,
15 the Court bars and enjoins Class Representative and all other members of the Class from
16 commencing or prosecuting any and all of the Released Class Representative's Claims
17 against each and all of the Settling Defendant's Releasees. For the avoidance of doubt,
18 this paragraph does not stay, or affect in any way, any of the proceedings against or by
19 the Non-Settling Defendants.

20 17. **Notice and Administration Costs** – All reasonable Notice and
21 Administration Costs shall be paid from the Settlement Fund as set forth in the Stipulation
22 without further order of the Court.

23 18. **Settlement Fund** – The contents of the Settlement Fund held by the Escrow
24 Agent, Huntington National Bank, shall be deemed and considered to be in *custodia legis*
25 of the Court, and shall remain subject to the jurisdiction of the Court, until such time as
26 the contents shall be distributed pursuant to the Stipulation and/or further order(s) of the
27 Court.

28

1 19. **Taxes** – Class Counsel is authorized and directed to prepare any tax returns
2 and any other tax reporting form for or in respect to the Settlement Fund, to pay from the
3 Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise
4 perform all obligations with respect to Taxes and any reporting or filings in respect
5 thereof without further order of the Court in a manner consistent with the provisions of
6 the Stipulation.

7 20. **Termination of Settlement** – If the Settlement of the Action with the
8 Settling Defendant is terminated as provided in the Stipulation, the Settlement is not
9 approved, or the Effective Date of the Settlement otherwise fails to occur, this Order shall
10 be vacated, rendered null and void, and be of no further force and effect, except as
11 otherwise provided by the Stipulation, and this Order shall be without prejudice to the
12 rights of Class Representative, the other Class Members, and the Settling Defendant, and
13 the Settling Parties shall revert to their respective positions in the Action as of May 8,
14 2020, as provided in the Stipulation.

15 21. **Use of this Order** – Neither this Order, the Stipulation (whether or not
16 consummated), including the exhibits thereto and the Plan of Allocation contained therein
17 (or any other plan of allocation that may be approved by the Court), the negotiations
18 leading to the execution of the Stipulation, nor any proceedings taken pursuant to or in
19 connection with the Stipulation, and/or approval of the Settlement (including any
20 arguments proffered in connection therewith):

21 (a) shall be offered against any of the Settling Defendant’s
22 Releasees as evidence of, or construed as, or deemed to be evidence of any presumption,
23 concession, or admission by any of the Settling Defendant’s Releasees with respect to the
24 truth of any fact alleged by Class Representative or the validity of any claim that was or
25 could have been asserted or the deficiency of any defense that has been or could have
26 been asserted in this Action or in any other litigation, or of any liability, negligence, fault,
27 or other wrongdoing of any kind of any of the Settling Defendant’s Releasees or in any
28 way referred to for any other reason as against any of the Settling Defendant’s Releasees,

1 in any arbitration proceeding or other civil, criminal, or administrative action or
2 proceeding, other than such proceedings as may be necessary to effectuate the provisions
3 of the Stipulation;

4 (b) shall be offered against any of the Class Representative's
5 Releasees, as evidence of, or construed as, or deemed to be evidence of any presumption,
6 concession, or admission by any of the Class Representative's Releasees that any of their
7 claims are without merit, that any of the Settling Defendant's Releasees had meritorious
8 defenses, or that damages recoverable under the Second Amended Complaint against the
9 Settling Defendant would not have exceeded the Settlement Amount or with respect to
10 any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for
11 any other reason as against any of the Class Representative's Releasees, in any arbitration
12 proceeding or other civil, criminal, or administrative action or proceeding, other than such
13 proceedings as may be necessary to effectuate the provisions of the Stipulation; or

14 (c) shall be construed against any of the Releasees as an
15 admission, concession, or presumption that the consideration to be given hereunder
16 represents the amount which could be or would have been recovered from the Settling
17 Defendant after trial;

18 *provided, however*, that if the Stipulation is approved by the Court, the Settling Parties
19 and the Releasees and their respective counsel may refer to it to effectuate the protections
20 from liability granted hereunder or otherwise to enforce the terms of the Settlement.

21 22. **Supporting Papers** – Class Counsel shall file and serve the opening papers
22 in support of final approval of the proposed Settlement, the proposed Plan of Allocation,
23 and Class Counsel's motion for Litigation Expenses no later than thirty-five (35) calendar
24 days prior to the Settlement Fairness Hearing; and reply papers, if any, shall be filed and
25 served no later than seven (7) calendar days prior to the Settlement Fairness Hearing.

26 SO ORDERED.
27
28

THIS POSTER PROVIDES ONLY LIMITED INFORMATION ABOUT THE SETTLEMENT.
PLEASE VISIT WWW.INSYSRXSECURITIESLITIGATION.COM FOR MORE INFORMATION.

Class Representative Clark Miller and defendant Darryl S. Baker (“Settling Defendant”) have reached a proposed Settlement of the claims asserted in *Di Donato v. Insys Therapeutics, Inc., et al.*, No. CV-16-00302-PHX-NVW (“Action”) **against the Settling Defendant only**. The proposed Settlement does not resolve any of the claims asserted against the other defendants in the Action and those claims are still being litigated.

The Action alleges that all defendants made materially false or misleading statements regarding the marketing and sales of Subsys, a sublingual fentanyl spray designed to treat breakthrough cancer pain in opioid tolerant patients. The proposed Settlement, if approved, will resolve these allegations against the Settling Defendant. The Settling Defendant denies any liability or wrongdoing. You received this notice because you, or an investment account for which you serve as a custodian, may be a member of the following Court-certified Class and affected by the Settlement: all persons and entities who purchased or otherwise acquired Insys Therapeutics, Inc. common stock during the period from March 3, 2015, through January 25, 2016, and were damaged.

Pursuant to the Settlement, the Settling Defendant has agreed to cause to be paid \$2,000,000 in cash, which, after deduction of Court-awarded expenses, notice and administration costs, and taxes, will be allocated among Class Members who submit valid claims, in exchange for the Settlement of the Action against the Settling Defendant and the release of all claims asserted in the Action against the Settling Defendant and related claims. **For additional information regarding the proposed Settlement of the Action with the Settling Defendant, please review the detailed Settlement Notice at www.InsysRXSecuritiesLitigation.com.** If you are a Class Member, your *pro rata* share of the Settlement will depend on the number of valid claims submitted, and the number, size, and timing of your transactions in Insys common stock during the relevant time period. If all Class Members elect to participate in the Settlement, the estimated average recovery per eligible share of Insys common stock will be approximately \$0.06 *before* deduction of Court-approved expenses. Your actual share of the Settlement will be determined by the Plan of Allocation set forth in the Settlement Notice, or other plan ordered by the Court.

To qualify for a payment from the Settlement with the Settling Defendant, you must submit a valid Claim Form. The Claim Form can be found and submitted on the Website, or you can request that one be mailed to you. **Claim Forms must be postmarked (if mailed), or submitted online, by _____, 2020.** If you want to object to any aspect of the Settlement, you must file and serve an objection by _____, 2020. The detailed Settlement Notice provides instructions on how to submit a Claim Form and how to object. Because Class Members were previously provided the opportunity to request exclusion from the Class in connection with class certification, the Court is not permitting a second opportunity to request exclusion in connection with the settlement proceedings.

The Court will hold a hearing on _____, 2020 at _____.m., to consider, among other things, whether to approve the Settlement and Class Counsel’s request for litigation expenses of no more than \$650,000 (which equals a cost of approximately \$0.02 per share of Insys common stock). You may attend the hearing and ask to be heard by the Court, but you do not have to. **For more information, call 1-866-905-8102, email info@InsysRXSecuritiesLitigation.com, or visit www.InsysRXSecuritiesLitigation.com.**

Insys Therapeutics, Inc.

Securities Litigation

c/o A.B. Data, Ltd.

P.O. Box 170999

Milwaukee, WI 53217

COURT-ORDERED LEGAL NOTICE

Di Donato v. Insys Therapeutics, Inc., et al.

No. CV-16-00302-PHX-NVW (D. Ariz.)

Your legal rights may be affected by this securities class action. You may be eligible for a cash payment from the settlement. Please read this notice carefully.

For more information, please visit

www.InsysRXSecuritiesLitigation.com

or call 1-866-905-8102.

ATTACHMENT 2

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

**NOTICE OF (I) PROPOSED SETTLEMENT WITH DEFENDANT
DARRYL S. BAKER; (II) SETTLEMENT FAIRNESS HEARING; AND
(III) MOTION FOR LITIGATION EXPENSES**

**TO: ALL PERSONS AND ENTITIES WHO PURCHASED OR OTHERWISE
ACQUIRED INSYS THERAPEUTICS, INC. (“INSYS”) COMMON STOCK
DURING THE PERIOD FROM MARCH 3, 2015, THROUGH JANUARY 25,
2016, AND WERE DAMAGED THEREBY.**

A Federal Court authorized this notice. This is not a solicitation from a lawyer.

NOTICE OF SETTLEMENT: This notice (the “Settlement Notice”) has been issued pursuant to Rule 23 of the Federal Rules of Civil Procedure (“Federal Rules”) and an Order of the United States District Court for the District of Arizona (“Court”). Please be advised that the Court-appointed Lead Plaintiff and Class Representative for the Court-certified Class, Clark Miller, on behalf of himself and the Class, has reached a proposed settlement of the above-captioned action (“Action”) with defendant Darryl S. Baker (the “Settling Defendant”) for \$2,000,000 in cash that, if approved, will resolve all claims in the Action against the Settling Defendant (the “Settlement”). The terms and provisions of the Settlement are contained in the Stipulation and Agreement of Settlement between Lead Plaintiff and Defendant Darryl S. Baker dated May 22, 2020 (“Stipulation”).¹ **Please Note:** **This Settlement does not resolve any of the claims against any other defendants in the**

¹ The Stipulation can be viewed at www.InsysRXSecuritiesLitigation.com. Any capitalized terms used in this Settlement Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation.

Action, and the claims against Michael L. Babich and John N. Kapoor (together, the “Non-Settling Defendants”) continue to be litigated.²

PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY. This Settlement Notice explains important rights you may have, including the possible receipt of cash from the Settlement of the Action with the Settling Defendant. If you are a member of the Class, your legal rights will be affected whether or not you act.

If you have questions about this Settlement Notice, the proposed Settlement, or your eligibility to participate in the Settlement, please **DO NOT** contact the Court, the Clerk’s Office, the Settling Defendant, or Settling Defendant’s Counsel. All questions should be directed to the Claims Administrator or Class Counsel (*see* ¶ 70 below).

Additional information about the Settlement is available on the website, www.InsysRXSecuritiesLitigation.com.

1. **Description of the Action and the Class:** This Settlement Notice relates to a proposed partial settlement of claims in a pending securities class action brought by Insys investors alleging, among other things, that defendants violated the federal securities laws by making materially false or misleading statements during the class period regarding their marketing and sales of Subsys, a sublingual fentanyl spray designed to treat breakthrough cancer pain in opioid tolerant adult cancer patients. A more detailed description of the Action is set forth in ¶¶ 11-28 below. The Settlement, if approved by the Court, will settle the claims of the Class, as defined in ¶ 29 below, *against the Settling Defendant only*.

2. **Statement of the Class’s Recovery:** Subject to Court approval, Class Representative, on behalf of himself and the Class, has agreed to settle the Action against the Settling Defendant in exchange for a settlement payment of \$2,000,000 in cash (“Settlement Amount”) to be deposited into an escrow account. The Net Settlement Fund (*i.e.*, the Settlement Amount plus any and all interest earned thereon (“Settlement Fund”) less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys’ fees awarded by the Court; and (v) any other costs or fees approved by the Court) will be distributed in accordance with a plan of allocation approved by the Court, which will determine how the Net Settlement Fund shall be allocated among members of the Class. The proposed plan of allocation (“Plan of Allocation”) is attached hereto as Appendix A.

² On June 10, 2019, Insys notified the Court and the parties to the Action that it had filed for bankruptcy protection under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. Accordingly, pursuant to 11 U.S.C. § 362(a) of the United States Code, the Action was automatically stayed as to Insys. By Order dated May 15, 2020, Insys was dismissed from the Action with prejudice.

3. **Estimate of Average Amount of Recovery Per Share:** Based on Class Representative's damages expert's estimate of the number of shares of Insys common stock purchased or otherwise acquired during the Class Period that may have been affected by the conduct at issue in the Action, and assuming that all Class Members elect to participate in the Settlement of the Action with the Settling Defendant, the estimated average recovery (before the deduction of any Court-approved fees, expenses, and costs as described herein) per eligible share of Insys common stock is approximately \$0.06. **Class Members should note, however, that the foregoing average recovery per eligible share is only an estimate.** Some Class Members may recover more or less than this estimated amount depending on, among other factors: (i) when and the price at which they purchased/acquired shares of Insys common stock; (ii) whether they sold their shares of Insys common stock and, if so, when; (iii) the total number and value of valid Claims submitted to participate in the Settlement; (iv) the amount of Notice and Administration Costs; and (v) the amount of Litigation Expenses awarded by the Court. Distributions to Class Members will be made based on the Plan of Allocation attached hereto as Appendix A or such other plan of allocation as may be ordered by the Court.

4. **Average Amount of Damages Per Share:** The Settling Parties do not agree on the average amount of damages per share of Insys common stock that would be recoverable if Class Representative was to prevail in the Action against the Settling Defendant. Among other things, the Settling Defendant does not agree with the assertion that he violated the federal securities laws or that any damages were suffered by any members of the Class as a result of his conduct.

5. **Litigation Expenses Sought:** Class Counsel has not received any payment for its representation of the Class in the Action, which has been pending since 2016, and has advanced the funds to pay expenses incurred to prosecute this Action with the expectation that if it was successful in recovering money for the Class, it would be reimbursed for its expenses from the settlement proceeds, as is customary in this type of litigation. Class Counsel, Kessler Topaz Meltzer & Check, LLP, on behalf of Plaintiffs' Counsel, will apply for reimbursement of Litigation Expenses incurred by Plaintiffs' Counsel in connection with the institution, prosecution, and resolution of the claims against the Settling Defendant, in an amount not to exceed \$650,000, plus interest, which amount may include a request for reimbursement of the reasonable costs and expenses incurred by Class Representative directly related to his representation of the Class in accordance with 15 U.S.C. §78u-4(a)(4), in an amount not to exceed \$15,000. Any expenses awarded by the Court will be paid from the Settlement Fund. Class Members are not personally liable for any such expenses. The estimated average cost per eligible share of Insys common stock, if the Court approves Class Counsel's expense application, is approximately \$0.02 per share. **Please note that this amount is only an estimate.**

6. **Identification of Attorneys' Representatives:** Class Representative and the Class are represented by Johnston de F. Whitman, Jr., Esq. of Kessler Topaz Meltzer

& Check, LLP, 280 King of Prussia Road, Radnor, PA 19087, 1-610-667-7706, info@ktmc.com, www.ktmc.com. Further information regarding the Action, the Settlement of the Action with the Settling Defendant, and this Settlement Notice may be obtained by contacting the Claims Administrator at: *Insys Therapeutics, Inc. Securities Litigation*, c/o A.B. Data, Ltd., P.O. Box 170999, Milwaukee, WI 53217; 1-866-905-8102; info@InsysRXSecuritiesLitigation.com; or by visiting the website for the Action, www.InsysRXSecuritiesLitigation.com.

7. **Reasons for the Settlement:** Class Representative’s principal reason for entering into the Settlement with the Settling Defendant is the immediate cash benefit for the Class. Here, had the Settlement not been reached, the Settling Parties would have proceeded to a jury trial. The benefit of the Settlement must be considered against the risk that a smaller recovery – or no recovery at all – might be obtained with respect to the Settling Defendant after trial, or after the likely and lengthy appeals that would have followed a trial. In reaching the Settlement of the Action, Class Representative also considered the bankruptcy of the corporate defendant and the Settling Defendant’s limited financial resources, including available insurance, to fund a settlement or judgment in the Action. The Settling Defendant, who denies all allegations of wrongdoing or liability whatsoever, is entering into the Settlement solely to eliminate the uncertainty, burden, and expense of further litigation.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:	
SUBMIT A CLAIM FORM POSTMARKED (IF MAILED), OR ONLINE, NO LATER THAN _____, 2020.	This is the only way to be eligible to receive a payment from the Settlement Fund. If you are a Class Member, you will be bound by the Settlement of the Action with the Settling Defendant as approved by the Court and you will give up any Released Class Representative’s Claims (defined in ¶ 39 below) that you have against the Settling Defendant and the other Settling Defendant’s Releasees (defined in ¶ 40 below), so it is in your interest to submit a Claim Form.
OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN _____, 2020.	If you do not like the proposed Settlement, the proposed Plan of Allocation, and/or the requested Litigation Expenses, you may object by writing to the Court and explaining why you do not like them. In order to object, you must be a member of the Class.
GO TO A HEARING ON _____, 2020 AT ____:____.M., AND FILE A	If you have filed a written objection and wish to appear at the hearing, you must also file a notice of intention to appear by _____, 2020, which allows you to speak

<p>NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN _____, 2020.</p>	<p>in Court, at the discretion of the Court, about the fairness of the Settlement, the Plan of Allocation, and/or the request for Litigation Expenses. If you submit a written objection, you may (but you do not have to) attend the hearing.</p>
<p>DO NOTHING.</p>	<p>If you are a member of the Class and you do not submit a valid Claim Form, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Class, which means that you give up your right to sue about the claims that are being resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.</p>

These rights and options – and the deadlines to exercise them – are further explained in this Settlement Notice. Please Note: The date and time of the Settlement Fairness Hearing – currently scheduled for _____, 2020 at __:__ .m. – is subject to change without further notice to the Class. If you plan to attend the hearing, you should check the website www.InsysRXSecuritiesLitigation.com or with Class Counsel as set forth above to confirm that no change to the date and/or time of the hearing has been made.

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Can I See The Court File? Whom Should I Contact If I Have Questions?	Page ___
Proposed Plan of Allocation of Net Settlement Fund Among Authorized Claimants	Appendix A

WHAT IS THE PURPOSE OF THIS NOTICE?

8. The Court has directed the issuance of this Settlement Notice to inform potential Class Members about the proposed Settlement of the Action with the Settling Defendant and their options in connection therewith before the Court rules on the proposed Settlement. Additionally, Class Members have the right to understand how this class action lawsuit may generally affect their legal rights. If the Court approves the Settlement and the Plan of Allocation (or some other plan of allocation), the Claims Administrator selected by Class Representative and approved by the Court will make payments pursuant to the Settlement after any objections and appeals are resolved.

9. The purpose of this Settlement Notice is to inform potential Class Members of the terms of the proposed Settlement of the Action with the Settling Defendant, and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation, and the motion by Class Counsel for Litigation Expenses (“Settlement Fairness Hearing”). *See* ¶ 58 below for details about the Settlement Fairness Hearing, including the date and location of the hearing.

10. The issuance of this Notice is not an expression of any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement with the Settling Defendant. If the Court approves the Settlement and a plan of allocation, then payments to Authorized Claimants will be made after any appeals are resolved and after the completion of all claims processing. Please be patient, as this process can take some time.

WHAT IS THIS CASE ABOUT?

11. This is a securities class action against defendants for alleged violations of the federal securities laws during the Class Period. Class Representative alleges that all of the defendants made materially false or misleading statements during the Class Period regarding the marketing and sales of Subsys, a sublingual fentanyl spray designed to treat breakthrough cancer pain in opioid tolerant adult cancer patients. Class Representative alleges that when the relevant truth was revealed, the price of Insys common stock declined, causing damage to Insys shareholders.

12. This Action commenced on February 2, 2016, with the filing of the initial complaint in the Court against Insys, Michael L. Babich, Darryl S. Baker, Alec Burlakoff,³ and John N. Kapoor. The complaint asserted violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5, promulgated thereunder by the U.S. Securities and Exchange Commission (“SEC”), 17 C.F.R. § 240.10b-5.

13. Pursuant to the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended (“PSLRA”), notice to the public was issued setting forth the deadline by which putative class members could move the Court to be appointed to act as lead plaintiffs. On June 3, 2016, the Court appointed Clark Miller as Lead Plaintiff and approved Lead Plaintiff’s selection of Kessler Topaz Meltzer & Check, LLP as Lead Counsel and Bonnett, Fairbourn, Friedman & Balint, P.C. as Liaison Counsel.

14. On June 24, 2016, Lead Plaintiff filed the Amended Complaint for Violation of the Federal Securities Laws (“Amended Complaint”). On August 19, 2016, defendants filed a motion to dismiss the Amended Complaint for failure to state a claim pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules and pursuant to the pleading requirements of the PSLRA. Lead Plaintiff opposed this motion on September 6, 2016.

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

16. On January 18, 2017, defendants moved to dismiss the Second Amended Complaint for failure to state a claim pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules and pursuant to the pleading requirements of the PSLRA. This motion was fully briefed and, following oral argument by the parties, the Court granted in part and denied in part defendants’ motion to dismiss on August 1, 2017.

17. Defendants filed their answer to the Second Amended Complaint on April 13, 2018, and an amended answer on May 4, 2018.

18. Thereafter, discovery in the Action commenced. From June 2018 through November 2019, the parties engaged in extensive fact and expert discovery, including: (i) the production of over 14 million pages of documents by defendants and third parties and 70 pages of documents by Class Representative; (ii) 15 fact and expert

³ The Court dismissed Lead Plaintiff’s claims against Alec Burlakoff in its Order dated August 1, 2017.

depositions; and (iii) the exchange of opening and rebuttal reports for a total of 4 merits experts. The parties also served and responded to interrogatories and requests for admission, exchanged numerous letters, and held numerous conferences concerning discovery issues.⁴

19. On August 10, 2018, Lead Plaintiff and certain defendants, including the Settling Defendant, participated in a full-day mediation which did not result in an agreement to resolve any portion of the Action.

20. On August 31, 2018, Lead Plaintiff filed a motion for class certification. Defendants opposed this motion on October 26, 2018.

21. While the parties' discovery efforts were ongoing and Lead Plaintiff's motion for class certification was pending, Insys, on June 10, 2019, notified the Court and the parties to the Action that it had filed for bankruptcy protection under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. Pursuant to 11 U.S.C. § 362(a) of the United States Code, the Action was automatically stayed as to Insys.

22. On September 20, 2019, the Court granted Lead Plaintiff's motion for class certification ("Class Certification Order"), while making clear that the Class Certification Order did not apply to Insys based upon the automatic stay provisions of 11 U.S.C. § 362(a) of the United States Code. On October 4, 2019, defendant John N. Kapoor filed with the United States Court of Appeals for the Ninth Circuit a petition for permission to appeal the Court's Class Certification Order pursuant to Federal Rule 23(f). The Ninth Circuit denied Mr. Kapoor's petition on December 18, 2019.

23. On December 13, 2019, Class Representative filed a consent motion to voluntarily dismiss Insys from the Action with prejudice ("Insys Dismissal Motion"). On the same day, Class Representative also filed a consent motion to approve the form and manner of providing notice to the Class regarding the Court's certification of the Action as a class action pursuant to Federal Rule 23, as well as the Insys Dismissal Motion ("Class Notice Motion").

24. The Court granted the Class Notice Motion on March 20, 2020. Thereafter, notice was provided to the Class (collectively, "Class Notice"). The Class Notice informed potential Class Members that the deadline for requesting exclusion from the Class and objecting to the Insys Dismissal Motion was April 30, 2020. Out of the thousands of notices disseminated, not one request for exclusion from the Class was received, and there were

⁴ The parties completed discovery on November 22, 2019.

no objections to the Insys Dismissal Motion.⁵ The Court subsequently granted the Insys Dismissal Motion by Order dated May 15, 2020, dismissing Insys from the Action with prejudice.

25. During the same time, defendants, on December 20, 2019, filed a motion for summary judgment asserting that Class Representative would be unable to establish a triable issue of fact as to certain elements of his claims, and that defendants are entitled to summary judgment under Rule 56 of the Federal Rules. Following full briefing by the parties, the Court, on May 8, 2020, denied defendants' motion for summary judgment in its entirety.

26. While defendants' summary judgment motion was pending, Class Representative and the Settling Defendant restarted their earlier discussions concerning the possibility of resolving the Action. Following hard-fought, arm's-length negotiations, the Settling Parties agreed to resolve the Action against the Settling Defendant for \$2,000,000 in cash. This agreement was set forth in a term sheet executed on May 8, 2020. Also, on May 8, 2020, the Settling Parties filed a Notice of Settlement informing the Court that they had reached an agreement in principle to resolve the Action as to the Settling Defendant only.

27. On May 22, 2020, the Settling Parties entered into the Stipulation, which sets forth the specific terms and conditions of the Settlement. The Stipulation can be viewed at www.InsyRXSecuritiesLitigation.com.

28. On _____, 2020, the Court preliminarily approved the Settlement, authorized notice of the Settlement of the Action with the Settling Defendant to the Class, and scheduled the Settlement Fairness Hearing to consider whether to grant final approval to the Settlement.

**HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?
WHO IS INCLUDED IN THE CLASS?**

29. If you are a member of the Class, you are subject to the Settlement. The Class certified by the Court on September 20, 2019 consists of:

⁵ Pursuant to the Court's Order Preliminarily Approving Settlement with Defendant Darryl S. Baker and Providing for Notice ("Preliminary Approval Order") dated _____, 2020, because Class Members had the opportunity to exclude themselves in connection with Class Notice, the Court is exercising its discretion not to permit Class Members a second opportunity to exclude themselves from the Class in connection with the Settlement.

All persons and entities who purchased or otherwise acquired Insys common stock during the period from March 3, 2015, through January 25, 2016, and were damaged thereby.

Excluded from the Class are: (a) Defendants;⁶ (b) present and former directors or executive officers of Insys and members of their immediate families (as defined in 17 C.F.R. § 229.404, Instructions (1)(a)(iii) and (1)(b)(ii)); (c) any of the foregoing individuals' or entities' legal representatives, heirs, successors, or assigns; and (d) any entity in which any Defendant has or had a controlling interest, or which is related to or affiliated with any Defendant

PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT.

IF YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, YOU ARE REQUIRED TO SUBMIT A CLAIM FORM AND THE REQUIRED SUPPORTING DOCUMENTATION POSTMARKED (IF MAILED), OR ONLINE, NO LATER THAN _____, 2020. YOU CAN OBTAIN A CLAIM FORM AT WWW.INSYSRXSECURITIESLITIGATION.COM OR BY CALLING 1-866-905-8102.

WHAT ARE CLASS REPRESENTATIVE'S REASONS FOR THE SETTLEMENT?

30. The Settlement is the result of more than four years of hard-fought litigation and extensive, arm's-length negotiations by the Settling Parties and was reached while defendants' summary judgment motion was pending and just months before trial. Class Representative believes that the claims asserted against the Settling Defendant have merit; however, he recognized the risks faced in successfully obtaining a favorable verdict against the Settling Defendant at trial and through the likely appeals that would follow.

31. If the Action continued against the Settling Defendant, Lead Plaintiff faced challenges to proving that the Settling Defendant made a materially false or misleading statement. Throughout the Action, the Settling Defendant maintained that the only allegedly false or misleading statement attributable to him was (i) forward looking, (ii) puffery, and, in any event, (iii) literally true. Moreover, the Settling Defendant's assertion that he legitimately believed any increased sales growth was at least partially due to Insys's

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

efforts with respect to oncologists - could have resonated with a jury. In addition, the Settling Defendant would have likely argued that any of the fraudulent acts alleged in the Action were undertaken by the Non-Settling Defendants, Messrs. Babich and Kapoor, or other Insys sales and marketing employees, and that he had no knowledge of the allegations asserted. Notably, there was a significant risk to establishing Defendant Baker's liability as he was the only individual defendant in this matter not criminally prosecuted in connection with Insys' off-label promotion of Subsys. Lead Plaintiff also would have faced formidable challenges to establishing loss causation and damages, as the Settling Defendant would have argued that the declines in the price of Insys common stock on the dates at issue could not be linked to any alleged misstatement regarding oncology. Finally, there were limitations on the ability of the Settling Defendant to pay a substantial judgment and Class Representative faced a significant risk that he would not be able to collect any payment at all from the Settling Defendant - even if a judgment was obtained against him at trial. In addition, the bankruptcy of the corporate defendant, Insys, seriously limited the sources of recovery in this proceeding, and it created a number of other challenges to a successful prosecution of claims against the remaining defendants.

32. In light of these risks, the amount of the Settlement with the Settling Defendant, and the immediacy of recovery to the Class, Class Representative and Class Counsel believe that the proposed Settlement with the Settling Defendant is fair, reasonable, and adequate, and in the best interests of the Class. Class Representative and Class Counsel believe that the Settlement with the Settling Defendant provides a favorable result for the Class, namely \$2,000,000 in cash (less the various deductions described in this Settlement Notice), as compared to the risk that the claims against the Settling Defendant would produce a smaller, or no, recovery after trial, and appeals, possibly years in the future.

33. The Settling Defendant has denied the claims asserted against him in the Action and denies having engaged in any wrongdoing or violation of law of any kind whatsoever. The Settling Defendant has agreed to the Settlement to eliminate the burden and expense of continued litigation against him, and the Settlement with the Settling Defendant may not be construed as an admission of any wrongdoing by him in this or any other action or proceeding.

WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?

34. If there were no Settlement with the Settling Defendant and Class Representative failed to establish any essential legal or factual element of his claims against the Settling Defendant at trial, neither Class Representative nor the other members of the Class would recover anything from the Settling Defendant. Also, if the Settling Defendant was successful in proving any of his defenses at trial, or on appeal, the Class could recover substantially less than the amount provided in the Settlement, or nothing at all.

**ARE THERE OTHER DEFENDANTS INCLUDED IN THE
PARTIAL SETTLEMENT?**

35. No. This Settlement only includes the Settling Defendant, Darryl S. Baker. The Action is continuing against Non-Settling Defendants Michael L. Babich and John N. Kapoor.

**HOW ARE CLASS MEMBERS AFFECTED
BY THE ACTION AND THE SETTLEMENT?**

36. As a Class Member, you are represented by Class Representative and Class Counsel, unless you enter an appearance through counsel of your own choice and at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section entitled, “When And Where Will The Court Decide Whether To Approve The Settlement?,” on page __ below.

37. If you are a Class Member and you wish to object to the Settlement of the Action with the Settling Defendant, the Plan of Allocation, and/or Class Counsel’s application for Litigation Expenses, you may present your objections by following the instructions in the section entitled, “When And Where Will The Court Decide Whether To Approve The Settlement?,” on page __ below.

38. If you are a Class Member, you will be bound by any orders issued by the Court. If the Settlement with the Settling Defendant is approved, the Court will enter a judgment (“Judgment”). The Judgment will dismiss with prejudice the claims against the Settling Defendant and will provide that, upon the Effective Date of the Settlement, Class Representative and each of the other Class Members, on behalf of themselves, and their respective spouses, heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Class Representative’s Claim (as defined in ¶ 39 below) against the Settling Defendant and the other Settling Defendant’s Releasees (as defined in ¶ 40), and shall forever be barred and enjoined from prosecuting any or all of the Released Class Representative’s Claims against any of the Settling Defendant’s Releasees whether or not such Class Member executes and delivers a Claim Form.⁷

⁷ The Settling Parties will also seek, among other things, a judgment reduction order in connection with the Judgment in the Action. A judgment reduction order generally

39. “Released Class Representative’s Claims” means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, local, common, statutory, administrative or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, that Class Representative or any other member of the Class: (i) asserted in any of the complaints filed in the Action or (ii) could have asserted in the Action or in any other court or forum that arise out of or in any way relate to the allegations, transactions, facts, matters or occurrences, representations, or omissions set forth in any of the complaints filed in the Action and that relate to the purchase, acquisition or sale of Insys common stock during the period from August 12, 2014 through December 8, 2016. “Released Class Representative’s Claims” shall not include: (i) any claims against the Non-Settling Defendants; (ii) any claims relating to the enforcement of the settlement with the Settling Defendant; (iii) any of the claims asserted in the following actions: *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.), and *In re Insys Therapeutics, Inc. Sec. Litig.*, No. 17-1954-PAC (S.D.N.Y.); or (iv) any claims of any person or entity that submitted a request for exclusion in connection with Class Notice whose request is accepted by the Court.

40. “Settling Defendant’s Releasees” means the Settling Defendant, all past, present, or future entities owned, affiliated with or controlled by the Settling Defendant, including any of those entities’ parents, subsidiaries, divisions, and joint ventures, and the Settling Defendant’s agents, employees, consultants, insurers, attorneys, advisors, successors, heirs, assigns, executors, personal representatives, marital communities and members of his immediate family (as defined in 17 C.F.R. §229.404, Instructions (1)(a)(iii) and (1)(b)(ii)), or any trust of which the Settling Defendant is the settler or which is for the benefit of the Settling Defendant or member(s) of his family, and such other persons and entities as may be identified in the Stipulation of Settlement). “Settling Defendant’s Releasees” does not include any of the Non-Settling Defendants, nor any of their related persons or entities.

41. “Unknown Claims” means any Released Class Representative’s Claims which Class Representative or any other Class Member do not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Settling

reduces the liability of non-settling defendants and/or certain other parties for common damages by the greater of the settlement amount paid by or on behalf of the settling defendant for common damages or the percentage share of responsibility of the settling defendant for common damages. The Settling Parties will also seek to include in the Judgment a “bar order” that will, among other things, bar certain claims for contribution and indemnification against or by the Settling Defendant and/or certain other related parties.

Defendant's Claims which the Settling Defendant does not know or suspect to exist in his favor at the time of the release of such claims, which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to this Settlement, including, but not limited to, whether or not to object to the Settlement or to the release of the Released Claims. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date of the Settlement, Class Representative and the Settling Defendant shall expressly waive, and each of the Class Members shall be deemed to have, and by operation of the Judgment or the Alternative Judgment, if applicable, shall have, expressly waived, the provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

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

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

42. The Judgment will also provide that, upon the Effective Date of the Settlement, the Settling Defendant, on behalf of himself, and his spouses, heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Settling Defendant's Claim against Class Representative and the other Class Representative's Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Settling Defendant's Claims against any of the Class Representative's Releasees. This Release shall not apply to any claims of any person or entity that submitted a request for exclusion in connection with Class Notice whose request is accepted by the Court.

43. "Released Settling Defendant's Claims" means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, local, common, statutory, administrative or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against the Settling Defendant. "Released Settling Defendant's Claims" shall not include any claims relating to the enforcement of the Settlement.

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

**HOW DO I PARTICIPATE IN THE SETTLEMENT?
WHAT DO I NEED TO DO?**

45. To be eligible for a payment from the proceeds of the Settlement of the Action with the Settling Defendant, you must be a member of the Class and you must timely complete and return the Claim Form with adequate supporting documentation *postmarked (if mailed), or submitted online at www.InsysRXSecuritiesLitigation.com, no later than _____, 2020*. You can obtain a copy of the Claim Form on the website for the Action, www.InsysRxSecuritiesLitigation.com, or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll free at 1-866-905-8102, or by emailing the Claims Administrator at info@InsysRXSecuritiesLitigation.com. **Please retain all records of your ownership of and transactions in Insys common stock, as they may be needed to document your Claim.** If you do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

HOW MUCH WILL MY PAYMENT BE?

46. At this time, it is not possible to make any determination as to how much any individual Class Member may receive from the Settlement.

47. Pursuant to the Settlement, the Settling Defendant shall pay or cause to be paid \$2,000,000 in cash. The Settlement Amount will be deposited into an escrow account. The Settlement Amount, plus any interest earned thereon, is referred to as the “Settlement Fund.” If the Settlement with the Settling Defendant is approved by the Court and the Effective Date occurs, the Net Settlement Fund will be distributed to Class Members who submit valid Claim Forms, in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve.

48. The Net Settlement Fund will not be distributed unless and until the Court has approved the Settlement and a plan of allocation and that decision is affirmed on appeal (if any) and/or the time for any petition for rehearing, appeal, or review, whether by certiorari or otherwise, has expired.

49. Neither the Settling Defendant nor any other person or entity that paid any portion of the Settlement Amount on his behalf are entitled to get back any portion of the Settlement Fund once the Court's order or judgment approving the Settlement becomes Final. The Settling Defendant and the other Settling Defendant's Releasees shall not have any liability, obligation, or responsibility for the administration of the Settlement, the disbursement of the Net Settlement Fund, or the Plan of Allocation.

50. Unless the Court otherwise orders, any Class Member who fails to submit a Claim Form postmarked (if mailed), or online, on or before _____, 2020 shall be fully and forever barred from receiving payments pursuant to the Settlement with the Settling Defendant, but will in all other respects remain a Class Member and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the Releases given. This means that each Class Member releases the Released Class Representative's Claims (as defined in ¶ 39 above) against the Settling Defendant's Releasees (as defined in ¶ 40 above) and will be enjoined and prohibited from prosecuting any of the Released Class Representative's Claims against any of the Settling Defendant's Releasees whether or not such Class Member submits a Claim Form.

51. Participants in and beneficiaries of any employee retirement and/or benefit plan ("Employee Plan") should NOT include any information relating to shares of Insys common stock purchased/acquired through an Employee Plan in any Claim Form they submit in this Action. They should include ONLY those eligible shares of Insys common stock purchased/acquired during the Class Period outside of an Employee Plan. Claims based on any Employee Plan(s)' purchases/acquisitions of eligible Insys common stock during the Class Period may be made by the Employee Plan(s)' trustees.

52. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the Claim of any Class Member.

53. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her, or its Claim Form.

54. Only Class Members or persons authorized to submit a Claim on their behalf will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are excluded from the Class will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms.

55. Appendix A to this Notice sets forth the Plan of Allocation for allocating the Net Settlement Fund among Authorized Claimants, as proposed by Class Representative. At the Settlement Fairness Hearing, Class Counsel will request the Court approve the Plan of Allocation. The Court may modify the Plan of Allocation, or approve a different plan of allocation, without further notice to the Class.

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE CLASS SEEKING?
HOW WILL THE LAWYERS BE PAID?**

56. Class Counsel, on behalf of Plaintiffs' Counsel, will apply for payment or reimbursement of Litigation Expenses incurred in connection with the prosecution of the Action in an amount not to exceed \$650,000, plus interest. Class Counsel's motion for Litigation Expenses, which may include a request for reimbursement of the reasonable costs and expenses incurred by Class Representative directly related to his representation of the Class in accordance with 15 U.S.C. § 78u-4(a)(4), in an amount not to exceed \$15,000, will be filed by _____, 2020, and the Court will consider Class Counsel's motion at the Settlement Fairness Hearing. A copy of Class Counsel's motion for Litigation Expenses will be available for review at www.InsysRXSecuritiesLitigation.com once it is filed. Any award of Litigation Expenses, including any reimbursement of costs and expenses to Class Representative, will be paid from the Settlement Fund prior to allocation and payment to Authorized Claimants. *Class Members are not personally liable for any such expenses.*

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE
THE SETTLEMENT? DO I HAVE TO COME TO THE HEARING? MAY I
SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?**

57. **Class Members do not need to attend the Settlement Fairness Hearing. The Court will consider any submission made in accordance with the provisions below even if a Class Member does not attend the hearing.** Please Note: The date and time of the Settlement Fairness Hearing may change without further written notice to the Class. If you plan on attending the hearing, please check the website, www.InsyRXSecuritiesLitigation.com, or contact Class Counsel to confirm that the date and/or time of the hearing has not changed.

58. The Settlement Fairness Hearing will be held on _____, **2020 at __: __ .m.**, before the Honorable Neil V. Wake at the Sandra Day O'Connor United States Courthouse, 401 W. Washington St., Phoenix, AZ 85003, Courtroom 401. The Court reserves the right to approve the Settlement of the Action with the Settling Defendant, the Plan of Allocation, Class Counsel's motion for Litigation Expenses, and/or any other matter related to the Settlement at or after the Settlement Fairness Hearing without further notice to the members of the Class.

59. Any Class Member may object to the Settlement, the Plan of Allocation, and/or Class Counsel's motion for Litigation Expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the

District of Arizona at the address set forth below, as well as serve copies on Class Counsel and Settling Defendant's Counsel at the addresses set forth below *on or before* _____, **2020**.

<u>Clerk's Office</u>	<u>Class Counsel</u>	<u>Settling Defendants' Counsel</u>
United States District Court District of Arizona Sandra Day O'Connor U.S. Courthouse Suite 130 401 West Washington Street, SPC 1 Phoenix, AZ 85003-2118	Johnston de F. Whitman, Jr. Kessler Topaz Meltzer & Check, LLP 280 King of Prussia Road Radnor, PA 19087	George J. Coleman Michael K. Foy Salmon, Lewis & Weldon, P.L.C. 2850 E. Camelback Road, Suite 200 Phoenix, AZ 85016

60. Any objection, filing, or other submission by an objecting Class Member: (a) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (b) must state with specificity the grounds for the Class Member's objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention and whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class; and (c) must include documents sufficient to prove membership in the Class, *including* the number of shares of Insys common stock that the objecting Class Member: (A) owned as of the opening of trading on March 3, 2015, and (B) purchased/acquired and/or sold during the Class Period, as well as the dates, number of shares, and prices of each such purchase/acquisition and sale. The objecting Class Member shall provide documentation establishing membership in the Class through copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from the objector's broker containing the transactional and holding information found in a broker confirmation slip or account statement.

61. You may not object to the Settlement, Plan of Allocation, and/or Class Counsel's motion for Litigation Expenses if you are not a member of the Class.

62. You may submit an objection without having to appear at the Settlement Fairness Hearing. You may not, however, appear at the Settlement Fairness Hearing to present your objection unless (1) you first submit a written objection in accordance with the procedures described above, (2) you first submit your notice of appearance in accordance with the procedures described below, or (3) the Court orders otherwise.

63. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, and/or Class Counsel's motion for Litigation Expenses, and if you timely submit a written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Class Counsel and

Settling Defendant's Counsel at the addresses set forth in ¶ 59 above so that it is *received on or before* _____, 2020. Persons who intend to object and desire to present evidence at the Settlement Fairness Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

64. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Fairness Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Class Counsel and Settling Defendant's Counsel at the addresses set forth in ¶ 59 above so that the notice is *received on or before* _____, 2020.

65. **Unless the Court orders otherwise, any Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement with the Settling Defendant, the proposed Plan of Allocation, and/or Class Counsel's motion for Litigation Expenses. Class Members do not need to appear at the Settlement Fairness Hearing or take any other action to indicate their approval.**

**WHAT IF I BOUGHT SHARES OF INSYS COMMON STOCK
ON SOMEONE ELSE'S BEHALF?**

66. **Please Note: If you previously provided the names and addresses of persons and entities on whose behalf you purchased or otherwise acquired Insys common stock during the period from March 3, 2015, through January 25, 2016, in connection with Class Notice, and (i) those names and addresses remain current and (ii) you have no additional names and addresses for potential Class Members to provide to the Claims Administrator, you need do nothing further at this time. The Claims Administrator will mail a Postcard Settlement Notice to the beneficial owners whose names and addresses were previously provided in connection with Class Notice.** If you elected to mail the Class Notice directly to beneficial owners, you were advised that you must retain the mailing records for use in connection with any further notices that may be provided in the Action. If you elected this option, the Claims Administrator will forward the same number of Postcard Settlement Notices to you to send to the beneficial owners. If you require more copies of the Postcard Settlement Notice than you previously requested in connection with the Class Notice mailing, please contact the Claims Administrator, A.B. Data, Ltd., toll free at 1-866-905-8102, and let them know how many additional Postcard Settlement Notices you require. You must mail the Postcard Settlement Notice to the beneficial owners within seven (7) calendar days of your receipt of the Postcard Settlement Notices.

67. If you have not already provided the names and addresses for persons and entities on whose behalf you purchased or otherwise acquired Insys common stock during the period from March 3, 2015, through January 25, 2016, in connection with Class Notice, then the Court has ordered that you must, WITHIN SEVEN (7) CALENDAR DAYS OF YOUR RECEIPT OF THIS SETTLEMENT NOTICE, either: (i) send the Postcard Settlement Notice to all beneficial owners of such Insys common stock, or (ii) send a list of the names and addresses of such beneficial owners to the Claims Administrator at *Insys Therapeutics, Inc. Securities Litigation*, c/o A.B. Data, Ltd., P.O. Box 170999, Milwaukee, WI 53217, in which event the Claims Administrator shall promptly mail the Postcard Settlement Notice to such beneficial owners. **AS STATED ABOVE, IF YOU HAVE ALREADY PROVIDED THIS INFORMATION IN CONNECTION WITH CLASS NOTICE, UNLESS THAT INFORMATION HAS CHANGED (E.G., BENEFICIAL OWNER HAS CHANGED ADDRESS), IT IS UNNECESSARY TO PROVIDE SUCH INFORMATION AGAIN.**

68. Upon full and timely compliance with these directions, nominees who mail the Postcard Settlement Notice to beneficial owners may seek reimbursement of their reasonable expenses actually incurred by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Such properly documented expenses incurred by nominees in compliance with these directions shall be paid from the Settlement Fund, with any disputes as to the reasonableness or documentation of expenses incurred subject to review by the Court.

69. Copies of this Settlement Notice and the Claim Form may be obtained from the website for the Action, www.InsysRXSecuritiesLitigation.com, by calling the Claims Administrator toll free at 1-866-905-8102, or by emailing the Claims Administrator at info@InsysRXSecuritiesLitigation.com.

CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

70. This Notice contains only a summary of the terms of the Settlement of the Action with the Settling Defendant. For the terms and conditions of the Settlement, please see the Stipulation available at www.InsysRXSecuritiesLitigation.com. More detailed information about the matters involved in this Action can be obtained by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.azd.uscourts.gov>, or by visiting, during regular office hours, the Office of the Clerk, United States District Court for the District of Arizona, Sandra Day O'Connor U.S. Courthouse, Suite 130, 401 West Washington Street, SPC 1, Phoenix, AZ 85003-2118. Additionally, copies of any related orders entered by the Court and certain other filings in this Action will be posted on the website www.InsysRXSecuritiesLitigation.com.

All inquiries about this Settlement Notice and the Claim Form should be directed to:

Insys Therapeutics, Inc. Securities Litigation
c/o A.B. Data, Ltd.
P.O. Box 170999
Milwaukee, WI 53217

1-866-905-8102
info@InsyRXSecuritiesLitigation.com
www.InsyRXSecuritiesLitigation.com

and/or

**KESSLER TOPAZ MELTZER
& CHECK, LLP**

Johnston de F. Whitman, Jr., Esq.
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056

-and-

Jennifer L. Joost, Esq.
One Sansome Street, Suite 1850
San Francisco, CA 94104
Telephone: (415) 400-3000
Facsimile: (415) 400-3001

info@ktmc.com
www.ktmc.com

**PLEASE DO NOT CALL OR WRITE THE COURT, THE CLERK'S OFFICE,
THE SETTLING DEFENDANT, OR SETTLING DEFENDANT'S COUNSEL
REGARDING THIS SETTLEMENT NOTICE.**

Dated: _____, 2020

By Order of the Court
United States District Court
District of Arizona

APPENDIX A

Proposed Plan of Allocation of Net Settlement Fund **Among Authorized Claimants**

The Plan of Allocation set forth herein is the plan that is being proposed to the Court for approval by Class Representative after consultation with his damages expert. The Court may approve the Plan of Allocation with or without modification, or approve another plan of allocation, without further notice to the Class. Any Orders regarding a modification of the Plan of Allocation will be posted on www.InsysRXSecuritiesLitigation.com. The Settling Defendant has had, and will have, no involvement or responsibility for the terms or application of the Plan of Allocation.

The objective of the proposed Plan of Allocation is to equitably distribute the Net Settlement Fund among those Class Members who purportedly suffered economic losses as a result of the alleged violations of the federal securities laws set forth in the Second Amended Complaint. **The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Class Members might have been able to recover after a trial with the Settling Defendant.** Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund. These calculations have not in any way been agreed to or conceded by the Settling Defendant.

In developing the Plan of Allocation, Class Representative's damages expert calculated the estimated amount of alleged artificial inflation in the per-share price of Insys common stock that allegedly was proximately caused by defendants' alleged materially false and misleading statements and omissions during the Class Period. In calculating the estimated alleged artificial inflation allegedly caused by those alleged misleading statements and omissions, Class Representative's damages expert considered price changes in Insys common stock in reaction to certain public announcements allegedly revealing the truth concerning defendants' alleged misrepresentations and omissions, adjusting for price changes on those days that were attributable to market or industry forces. The estimated artificial inflation in the per-share price of Insys common stock for each day of the Class Period is provided in **Table 1** below.

In order to have recoverable damages under the Exchange Act, the disclosure of the allegedly misrepresented information must be the cause of the decline in the price of the security. Accordingly, to have a "Recognized Loss Amount" pursuant to the Plan of Allocation, Insys common stock must have been purchased or otherwise acquired during the Class Period certified by the Court (i.e., the period from March 3, 2015, through January

25, 2016) and *held through at least one of the alleged corrective disclosures* that removed alleged artificial inflation related to that information. For purposes of the Plan of Allocation, Class Representative’s damages expert has identified the following dates on which alleged corrective disclosures removed alleged artificial inflation from the per-share price of Insys common stock: November 4, 2015, December 3, 2015, and January 25, 2016.

CALCULATION OF RECOGNIZED LOSS AMOUNTS

1. For purposes of determining whether a Claimant has a “Recognized Claim,” purchases, acquisitions, and sales of Insys common stock will first be matched on a First In, First Out (“FIFO”) basis as set forth in ¶ 6 below.

2. A “Recognized Loss Amount” will be calculated as set forth below for each share of Insys common stock purchased or otherwise acquired during the Class Period (i.e., the period from March 3, 2015, through January 25, 2016), that is listed in the Claim Form and for which adequate documentation is provided.⁸ To the extent that the calculation of a Claimant’s Recognized Loss Amount results in a negative number, that number shall be set to zero. The sum of a Claimant’s Recognized Loss Amounts will be the Claimant’s “Recognized Claim.”

3. For each share of Insys common stock purchased or otherwise acquired during the period from March 3, 2015, through January 25, 2016, and sold on or before April 22, 2016,⁹ an “Out of Pocket Loss” will be calculated. Out of Pocket Loss is defined as the per-share purchase/acquisition price (excluding all fees, taxes, and commissions) *minus* the per-share sale price (excluding all fees, taxes, and commissions). To the extent

⁸ All shares, prices per share, and artificial inflation per share reflect the 2-for-1 stock split that occurred during the Class Period on June 8, 2015. If necessary, the Claims Administrator will adjust Claimants’ submissions to reflect post-split levels.

⁹ April 22, 2016 represents the last day of the 90-day period subsequent to the end of the Class Period (the “90-Day Look-Back Period”). The PSLRA imposes a statutory limitation on recoverable damages using the 90-Day Look-Back Period. This limitation is incorporated into the calculation of a Class Member’s Recognized Loss Amount. Specifically, a Class Member’s Recognized Loss Amount cannot exceed the difference between the purchase price paid for the Insys common stock and the average price of Insys common stock during the 90-Day Look-Back Period if the share was held through April 22, 2016, the end of this period. Losses on Insys common stock purchased/acquired during the period from March 3, 2015, through January 25, 2016 and sold during the 90-Day Look-Back Period cannot exceed the difference between the purchase price paid for the Insys common stock and the average price of Insys common stock during the portion of the 90-Day Look-Back Period elapsed as of the date of sale (the “90-Day Look-Back Value”), as set forth in **Table 2** below.

that the calculation of an Out of Pocket Loss results in a negative number, that number shall be set to zero.

4. A Claimant's Recognized Loss Amount per share of Insys common stock purchased or otherwise acquired during the Class Period will be calculated as follows:

- A. For each share of Insys common stock purchased or otherwise acquired during the Class Period and subsequently sold prior to the opening of trading on November 4, 2015, the Recognized Loss Amount is \$0.
- B. For each share of Insys common stock purchased or otherwise acquired during the Class Period and subsequently sold after the opening of trading on November 4, 2015 and prior to the close of trading on January 22, 2016, the Recognized Loss Amount shall be *the lesser of*:
 - (i) the dollar amount of alleged artificial inflation applicable to each such share on the date of purchase/acquisition as set forth in **Table 1** below *minus* the dollar amount of alleged artificial inflation applicable to each such share on the date of sale as set forth in **Table 1** below; or
 - (ii) the Out of Pocket Loss.
- C. For each share of Insys common stock purchased or otherwise acquired during the Class Period and subsequently sold after the close of trading on January 22, 2016 and prior to the close of trading on April 22, 2016 (i.e., the last day of the 90-Day Look-Back Period), the Recognized Loss Amount shall be *the least of*:
 - (i) the dollar amount of alleged artificial inflation applicable to each such share on the date of purchase/acquisition as set forth in **Table 1** below;
 - (ii) the purchase/acquisition price of each such share (excluding all fees, taxes, and commissions) *minus* the 90-Day Look-Back Value on the date of sale as set forth in **Table 2** below; or
 - (iii) the Out of Pocket Loss.
- D. For each share of Insys common stock purchased or otherwise acquired during the Class Period and still held as of the close of trading on April 22, 2016 (i.e., the last day of the 90-Day Look-Back Period), the Recognized Loss Amount shall be *the lesser of*:

- (i) the dollar amount of alleged artificial inflation applicable to each such share on the date of purchase/acquisition as set forth in **Table 1** below; or
- (ii) the purchase/acquisition price of each such share (excluding all fees, taxes, and commissions) *minus* \$16.93 (i.e., the average closing price of Insys common stock during the 90-Day Look-Back Period from January 25, 2016 through April 22, 2016, as shown on the last line in **Table 2** below).

ADDITIONAL PROVISIONS

5. The Net Settlement Fund will be allocated among all Authorized Claimants whose Distribution Amount (defined in ¶10 below) is \$10.00 or greater.

6. If a Class Member has more than one purchase/acquisition or sale of Insys common stock during the Class Period, all purchases/acquisitions and sales shall be matched on a FIFO basis. Class Period sales will be matched first against any holdings of Insys common stock at the beginning of the Class Period, and then against purchases/acquisitions of Insys common stock, in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

7. Purchases/acquisitions and sales of Insys common stock shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt or grant by gift, inheritance, or operation of law of Insys common stock during the Class Period, shall not be deemed a purchase, acquisition, or sale of the Insys common stock for the calculation of an Authorized Claimant’s Recognized Claim, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of such Insys common stock unless (i) the donor or decedent purchased or otherwise acquired such Insys common stock during the Class Period; (ii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such Insys common stock; and (iii) it is specifically so provided in the instrument of gift or assignment.

8. The date of covering a “short sale” is deemed to be the date of purchase or acquisition of the Insys common stock. The date of a “short sale” is deemed to be the date of sale of the Insys common stock. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on “short sales” is zero. In the event that a Claimant has an opening short position in Insys common stock, the earliest purchases or acquisitions during the Class Period shall be matched against such opening short position and shall not be entitled to a recovery until that short position is fully covered.

9. Insys common stock is the only security eligible for recovery under the Plan of Allocation. Option contracts to purchase or sell Insys common stock are not securities eligible to participate in the Settlement. With respect to Insys common stock purchased or sold through the exercise of an option, the purchase/sale date of the Insys common stock is the exercise date of the option and the purchase/sale price is the exercise price of the option. Any Recognized Loss Amount arising from purchases of Insys common stock acquired during the Class Period through the exercise of an option on Insys common stock¹⁰ shall be computed as provided for other purchases of Insys common stock in the Plan of Allocation.

10. The Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Specifically, a “Distribution Amount” will be calculated for each Authorized Claimant, which will be the Authorized Claimant’s Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. If any Authorized Claimant’s Distribution Amount calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

11. After the initial distribution of the Net Settlement Fund, the Claims Administrator will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the Net Settlement Fund by reason of uncashed checks, or otherwise, nine (9) months after the initial distribution, if Class Counsel, in consultation with the Claims Administrator, determines that it is cost-effective to do so, the Claims Administrator will conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution. Additional re-distributions may occur thereafter if Class Counsel, in consultation with the Claims Administrator, determines that additional re-distributions, after deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance shall be contributed to non-sectarian, not-for-profit organization(s), to be recommended by Class Counsel and approved by the Court.

12. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Authorized Claimants. No person shall have any claim against Class Representative, Plaintiffs’ Counsel, Class Representative’s damages expert, the Settling Defendant, Settling Defendant’s Counsel,

¹⁰ This includes (1) purchases of Insys common stock as the result of the exercise of a call option, and (2) purchases of Insys common stock by the seller of a put option as a result of the buyer of such put option exercising that put option.

any of the other Class Representative's Releasees or Settling Defendant's Releasees, or the Claims Administrator or other agent designated by Class Counsel arising from distributions made substantially in accordance with the Stipulation, the Plan of Allocation approved by the Court, or further orders of the Court. Class Representative, the Settling Defendant and their respective counsel, and all other Settling Defendant's Releasees, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund; the Plan of Allocation; the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator; the payment or withholding of Taxes; or any losses incurred in connection therewith.

TABLE 1		
Estimated Alleged Artificial Inflation in the Per-Share Price of Insys Common Stock		
From	To	Estimated Alleged Artificial Inflation Per Share
March 3, 2015	November 3, 2015	\$7.76
November 4, 2015	December 3, 2015 (prior to 12:16 PM EST) ¹¹	\$5.31
December 3, 2015 (at or after 12:16 PM EST)	January 24, 2016	\$1.13
January 25, 2016	January 25, 2016	\$0.00*
<p>* For shares of Insys common stock <i>sold</i> on January 25, 2016, the estimated alleged artificial inflation per share, as set forth in the chart, is \$0.00. For shares of Insys common stock <i>purchased/acquired</i> on January 25, 2016, the estimated alleged artificial inflation per share is \$1.13.</p>		

¹¹ For purposes of this Plan of Allocation, the Claims Administrator will assume that any shares of Insys common stock purchased/acquired or sold on December 3, 2015 at a price less than \$30.74 per share occurred *after* the corrective information was released to the market at 12:16 p.m. EST on December 3, 2015, and any shares of Insys common stock purchased/acquired or sold on December 3, 2015 at a price equal to or greater than \$30.74 per share occurred *prior* to the release of the corrective information at 12:16 p.m. EST on December 3, 2015.

Sale Date	90-Day Look-back Value	Sale Date	90-Day Look-Back Value
1/25/2016	\$21.58	3/10/2016	\$17.29
1/26/2016	\$21.23	3/11/2016	\$17.28
1/27/2016	\$20.85	3/14/2016	\$17.33
1/28/2016	\$20.20	3/15/2016	\$17.34
1/29/2016	\$19.63	3/16/2016	\$17.33
2/1/2016	\$19.14	3/17/2016	\$17.32
2/2/2016	\$18.64	3/18/2016	\$17.34
2/3/2016	\$18.26	3/21/2016	\$17.38
2/4/2016	\$18.08	3/22/2016	\$17.45
2/5/2016	\$17.91	3/23/2016	\$17.45
2/8/2016	\$17.63	3/24/2016	\$17.44
2/9/2016	\$17.47	3/28/2016	\$17.42
2/10/2016	\$17.41	3/29/2016	\$17.39
2/11/2016	\$17.36	3/30/2016	\$17.36
2/12/2016	\$17.33	3/31/2016	\$17.33
2/16/2016	\$17.36	4/1/2016	\$17.32
2/17/2016	\$17.38	4/4/2016	\$17.32
2/18/2016	\$17.39	4/5/2016	\$17.31
2/19/2016	\$17.37	4/6/2016	\$17.33
2/22/2016	\$17.34	4/7/2016	\$17.34
2/23/2016	\$17.29	4/8/2016	\$17.34
2/24/2016	\$17.28	4/11/2016	\$17.28
2/25/2016	\$17.26	4/12/2016	\$17.22
2/26/2016	\$17.29	4/13/2016	\$17.16
2/29/2016	\$17.30	4/14/2016	\$17.11
3/1/2016	\$17.30	4/15/2016	\$17.06
3/2/2016	\$17.33	4/18/2016	\$17.03

TABLE 2**Insys Common Stock 90-Day Look-Back Value by Sale/Disposition Date**

Sale Date	90-Day Look-back Value		Sale Date	90-Day Look-Back Value
3/3/2016	\$17.36		4/19/2016	\$17.00
3/4/2016	\$17.38		4/20/2016	\$16.97
3/7/2016	\$17.40		4/21/2016	\$16.95
3/8/2016	\$17.38		4/22/2016	\$16.93
3/9/2016	\$17.33			

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

**SUMMARY NOTICE OF (I) PROPOSED SETTLEMENT WITH DEFENDANT
DARRYL S. BAKER; (II) SETTLEMENT FAIRNESS HEARING; AND
(III) MOTION FOR LITIGATION EXPENSES**

TO: All persons and entities who purchased or otherwise acquired Insys Therapeutics, Inc. (“Insys”) common stock during the period from March 3, 2015, through January 25, 2016, and were damaged thereby (“Class”). Certain persons and entities are excluded from the Class as set forth in detail in the Stipulation and Agreement of Settlement between Lead Plaintiff and Defendant Darryl S. Baker dated May 22, 2020 (“Stipulation”) and the Settlement Notice described below.

**PLEASE READ THIS NOTICE CAREFULLY;
YOUR RIGHTS WILL BE AFFECTED BY A
CLASS ACTION LAWSUIT PENDING IN THIS COURT.**

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of Arizona (“Court”), that the Court-appointed Lead Plaintiff and Class Representative Clark Miller (“Class Representative”), on behalf of himself and the Court-certified Class in the above-captioned securities class action (“Action”), have reached a proposed settlement of the Action with defendant Darryl S. Baker (the “Settling Defendant”), for \$2,000,000 in cash that, if approved, will resolve all claims in the Action against the Settling Defendant only. **Please Note: This settlement does not resolve any of the claims asserted against the other defendants in the Action and those claims are still being litigated.**

A hearing will be held on _____, 2020 at __:__.m., before the Honorable Neil V. Wake at the Sandra Day O'Connor United States Courthouse, 401 W. Washington St., Phoenix, AZ 85003, Courtroom 401, to determine whether: (i) the proposed Settlement of the Action with the Settling Defendant should be approved as fair, reasonable, and adequate; (ii) the Action should be dismissed with prejudice against the Settling Defendant, and the releases specified and described in the Stipulation (and in the Settlement Notice described below) should be entered; (iii) the proposed Plan of Allocation should be approved as fair and reasonable; and (iv) Class Counsel's motion for litigation expenses should be approved.

If you are a member of the Class, your rights will be affected by the pending Action and the Settlement of the Action with the Settling Defendant, and you may be entitled to share in the Settlement Fund. This notice provides only a summary of the information contained in the detailed Notice of (I) Proposed Settlement with Defendant Darryl S. Baker; (II) Settlement Fairness Hearing; and (III) Motion for Litigation Expenses ("Settlement Notice"). You may obtain a copy of the Settlement Notice, along with the Claim Form, on the website for the Action, www.InsysRXSecuritiesLitigation.com. You may also obtain a copy of the Settlement Notice and the Claim Form by writing to the Claims Administrator at *Insys Therapeutics, Inc. Securities Litigation*, c/o A.B. Data, Ltd., P.O. Box 170999, Milwaukee, WI 53217; by calling toll free 1-866-905-8102; or by sending an email to info@InsysRXSecuritiesLitigation.com.

If you are a member of the Class, in order to be eligible to receive a payment under the proposed Settlement with the Settling Defendant, you must submit a Claim Form ***postmarked (if mailed), or online, no later than _____, 2020***, in accordance with the instructions set forth in the Claim Form. If you are a Class Member and do not submit a proper Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlement of the Action with the Settling Defendant, but you will nevertheless be bound by any releases, judgments, or orders entered by the Court in the Action.

Any objections to the proposed Settlement of the Action with the Settling Defendant, the proposed Plan of Allocation, and/or Class Counsel's motion for litigation expenses, must be filed with the Court and delivered to Class Counsel and Settling Defendant's Counsel such that they are ***received no later than _____, 2020***, in accordance with the instructions set forth in the Settlement Notice. As this Class was previously certified and, in connection therewith, Class Members had the opportunity to exclude themselves from the Class, the Court has exercised its discretion not to allow a second opportunity for exclusion in connection with the settlement proceedings.

PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, THE SETTLING DEFENDANT, OR SETTLING DEFENDANT'S COUNSEL REGARDING THIS NOTICE. All questions about this notice, the Settlement of the

Action with the Settling Defendant, or your eligibility to participate in the Settlement with the Settling Defendant should be directed to the Claims Administrator or Class Counsel.

Requests for the Settlement Notice and Claim Form should be made to the Claims Administrator:

Insys Therapeutics, Inc. Securities Litigation
c/o A.B. Data, Ltd.
P.O. Box 170999
Milwaukee, WI 53217

1-866-905-8102
info@InsyRXSecuritiesLitigation.com
www.InsyRXSecuritiesLitigation.com

All other inquiries should be made to Class Counsel:

**KESSLER TOPAZ MELTZER
& CHECK, LLP**

Johnston de F. Whitman, Jr., Esq.
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056

-and-

Jennifer L. Joost, Esq.
One Sansome Street, Suite 1850
San Francisco, CA 94104
Telephone: (415) 400-3000
Facsimile: (415) 400-3001

info@ktmc.com
www.ktmc.com

DATED: _____, 2020

BY ORDER OF THE COURT
United States District Court
District of Arizona

ATTACHMENT 4

Insys Therapeutics, Inc. Securities Litigation
c/o A.B. Data, Ltd.
P.O. Box 170999
Milwaukee, WI 53217

Toll-Free Number: 1-866-905-8102
Email: info@InsyRXSecuritiesLitigation.com
Website: www.InsyRXSecuritiesLitigation.com

PROOF OF CLAIM AND RELEASE FORM

To be eligible to receive a share of the Net Settlement Fund in connection with the proposed Settlement of the Action with defendant Darryl S. Baker (the “Settling Defendant”), you must complete and sign this Proof of Claim and Release Form (“Claim Form”) and mail it by first-class mail to the above address, or submit it online at www.InsyRXSecuritiesLitigation.com, **postmarked (or received) no later than _____, 2020.**

Failure to submit your Claim Form by the date specified will subject your claim to rejection and may preclude you from being eligible to recover any money in connection with the proposed Settlement.

Do not mail or deliver your Claim Form to the Court, the Settling Parties, or their counsel. Submit your Claim Form only to the Claims Administrator at the address set forth above, or online at www.InsyRXSecuritiesLitigation.com.

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PART I – GENERAL INSTRUCTIONS

1. It is important that you completely read and understand the Notice of (I) Proposed Settlement with Defendant Darryl S. Baker; (II) Settlement Fairness Hearing; and (III) Motion for Litigation Expenses (“Settlement Notice”), including the proposed Plan of Allocation set forth therein. The Settlement Notice is available for download on the website www.InsyRXSecuritiesLitigation.com. The Settlement Notice describes the proposed Settlement of the Action with the Settling Defendant, how Class Members are affected by the Settlement, and the manner in which the Net Settlement Fund will be distributed if the Settlement and Plan of Allocation are approved by the Court. The Settlement Notice also contains the definitions of many of the defined terms (which are indicated by initial capital letters) used in this Claim Form. By signing and submitting this Claim Form, you will be certifying that you have read and that you understand the Settlement Notice, including the terms of the Releases described therein and provided for herein.

2. This Claim Form is directed to **all persons and entities who purchased or otherwise acquired Insys Therapeutics, Inc. (“Insys”) common stock during the period from March 3, 2015, through January 25, 2016, and were damaged thereby (“Class”)**. Certain persons and entities are excluded from the Class by definition as set forth in ¶ 29 of the Settlement Notice.

3. By submitting this Claim Form, you are making a request to share in the proceeds of the Settlement described in the Settlement Notice. **IF YOU ARE NOT A CLASS MEMBER (see definition of Class contained in ¶ 29 of the Settlement Notice), DO NOT SUBMIT A CLAIM FORM AS YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENT. THUS, IF YOU ARE EXCLUDED FROM THE CLASS, ANY CLAIM FORM THAT YOU SUBMIT, OR THAT MAY BE SUBMITTED ON YOUR BEHALF, WILL NOT BE ACCEPTED.**

4. **Submission of this Claim Form does not guarantee that you will share in the proceeds of the Settlement. The distribution of the Net Settlement Fund will be governed by the Plan of Allocation set forth in the Notice, if it is approved by the Court, or by such other plan of allocation as the Court approves.**

5. Use the Schedule of Transactions in Part III of this Claim Form to supply all required details of your transaction(s) (including free transfers and deliveries) in and holdings of Insys common stock. On this schedule, please provide all of the requested information with respect to your holdings, purchases, acquisitions, and sales of Insys common stock, whether such transactions resulted in a profit or a loss. **Failure to report all transaction and holding information during the requested time period may result in the rejection of your claim.**

6. **Please note:** Only Insys common stock purchased or otherwise acquired during the Class Period (*i.e.*, March 3, 2015 through January 25, 2016), is eligible under the Settlement. However, pursuant to the “90-Day Look-Back Period” (described in the Plan of Allocation set forth in the Settlement Notice), your sales of Insys common stock during the period from January 25, 2016 through and including the close of trading on April 22, 2016 will be used for purposes of calculating loss amounts

under the Plan of Allocation. Therefore, in order for the Claims Administrator to be able to balance your claim, the requested purchase information during the 90-Day Look-Back Period must also be provided. **Failure to report all transaction and holding information during the requested time periods may result in the rejection of your claim.**

7. You are required to submit genuine and sufficient documentation for all of your transactions in and holdings of Insys common stock set forth in the Schedule of Transactions in Part III of this Claim Form. Documentation may consist of copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from your broker containing the transactional and holding information found in a broker confirmation slip or account statement. The Settling Parties and the Claims Administrator do not independently have information about your investments in Insys common stock. **IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OF THE DOCUMENTS OR EQUIVALENT DOCUMENTS FROM YOUR BROKER. FAILURE TO SUPPLY THIS DOCUMENTATION MAY RESULT IN THE REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL DOCUMENTS. Please keep a copy of all documents that you send to the Claims Administrator. Also, do not highlight any portion of the Claim Form or any supporting documents.**

8. All joint beneficial owners each must sign this Claim Form and their names must appear as “Claimants” in Part II of this Claim Form. The complete name(s) of the beneficial owner(s) must be entered. If you purchased or otherwise acquired Insys common stock during the Class Period and held the shares in your name, you are the beneficial owner as well as the record owner. If you purchased or otherwise acquired Insys common stock during the Class Period and the shares were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial owner of these shares, but the third party is the record owner. The beneficial owner, not the record owner, must sign this Claim Form.

9. **One Claim should be submitted for each separate legal entity.** Separate Claim Forms should be submitted for each separate legal entity (*e.g.*, a claim from joint owners should not include separate transactions of just one of the joint owners, and an individual should not combine his or her IRA transactions with transactions made solely in the individual’s name). Conversely, a single Claim Form should be submitted on behalf of one legal entity including all transactions made by that entity on one Claim Form, no matter how many separate accounts that entity has (*e.g.*, a corporation with multiple brokerage accounts should include all transactions made in all accounts on one Claim Form).

10. Agents, executors, administrators, guardians, and trustees must complete and sign the Claim Form on behalf of persons represented by them, and they must:

- (a) expressly state the capacity in which they are acting;
- (b) identify the name, account number, last four digits of the Social Security Number (or Taxpayer Identification Number), address, and telephone number of the beneficial owner of the Insys common stock (or other person or entity on whose behalf they are acting with respect to); and

- (c) furnish herewith evidence of their authority to bind to the Claim Form the person or entity on whose behalf they are acting. (Authority to complete and sign a Claim Form cannot be established by stockbrokers demonstrating only that they have discretionary authority to trade securities in another person's accounts.)

11. By submitting a signed Claim Form, you will be swearing to the truth of the statements contained therein and the genuineness of the documents attached thereto, subject to penalties of perjury under the laws of the United States of America. The making of false statements, or the submission of forged or fraudulent documentation, will result in the rejection of your claim and may subject you to civil liability or criminal prosecution.

12. If the Court approves the Settlement, payments to eligible Authorized Claimants pursuant to the Plan of Allocation (or such other plan of allocation as the Court approves) will be made after any appeals with respect to the Settlement are resolved, and after the completion of all claims processing. The claims process will take substantial time to complete fully and fairly. Please be patient.

13. **PLEASE NOTE:** As set forth in the Plan of Allocation, each Authorized Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund. If the prorated payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

14. If you have questions concerning the Claim Form, or need additional copies of the Claim Form or a copy of the Settlement Notice, you may contact the Claims Administrator, A.B. Data, Ltd. by writing to the above address, by sending an email to info@InsysRXSecuritiesLitigation.com, or by calling toll-free 1-866-905-8102, or you can visit the website for the Action, www.InsysRXSecuritiesLitigation.com, where copies of the Claim Form and Settlement Notice are available for downloading.

15. **NOTICE REGARDING ELECTRONIC FILES:** Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the **mandatory** electronic filing requirements and file layout, you may visit the website for the Action, www.InsysRXSecuritiesLitigation.com, or you may email the Claims Administrator's electronic filing department at info@InsysRXSecuritiesLitigation.com. **Any file that is not in accordance with the required electronic filing format will be subject to rejection.** No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email to you to that effect. **Do not assume that your file has been received until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the Claims Administrator's electronic filing department at info@InsysRXSecuritiesLitigation.com to inquire about your file and confirm it was received.**

IMPORTANT PLEASE NOTE:

YOUR CLAIM IS NOT DEEMED FILED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD. THE CLAIMS ADMINISTRATOR WILL ACKNOWLEDGE RECEIPT OF YOUR CLAIM FORM BY MAIL WITHIN 60 DAYS. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT 1-866-905-8102.

PART II – CLAIMANT IDENTIFICATION

Please complete this PART II in its entirety. The Claims Administrator will use this information for all communications regarding this Claim Form. If this information changes, you MUST notify the Claims Administrator in writing at the address above.

Beneficial Owner's First Name

Beneficial Owner's Last Name

Co-Beneficial Owner's First Name

Co-Beneficial Owner's Last Name

Entity Name (if Beneficial Owner is not an individual)

Representative or Custodian Name (if different from Beneficial Owner(s) listed above)

Address 1 (street name and number)

Address 2 (apartment, unit or box number)

City

State

Zip Code

Country

Last four digits of Social Security Number or Taxpayer Identification Number

Telephone Number (home)

Telephone Number (work)

Email address (E-mail address is not required, but if you provide it you authorize the Claims Administrator to use it in providing you with information relevant to this claim.)

PART III – SCHEDULE OF TRANSACTIONS IN INSYS THERAPUETICS, INC.
COMMON STOCK

Complete this Part III if and only if you purchased or otherwise acquired Insys common stock from March 3, 2015 through January 25, 2016. Please be sure to include proper documentation with your Claim Form as described in detail in Part I – General Instructions, ¶ 7, above. Do not include information regarding securities other than Insys common stock.

1. HOLDINGS AS OF MARCH 3, 2015 – State the total number of shares of Insys common stock held as of the opening of trading on March 3, 2015. (Must be documented.) If none, write “zero” or “0.” _____				Confirm Proof of Holding Position Enclosed <input type="radio"/>
2. PURCHASES/ACQUISITIONS FROM MARCH 3, 2015 THROUGH JANUARY 25, 2016 – Separately list each and every purchase/acquisition (including free receipts) of Insys common stock from after the opening of trading on March 3, 2015 through and including the close of trading on January 25, 2016. (Must be documented.)				
Date of Purchase/ Acquisition (List Chronologically) (Month/Day/Year)	Number of Shares Purchased/ Acquired	Purchase/ Acquisition Price Per Share	Total Purchase/ Acquisition Price (excluding taxes, commissions, and fees)	Confirm Proof of Purchases/ Acquisitions Enclosed
/ /		\$	\$	<input type="radio"/>
/ /		\$	\$	<input type="radio"/>
/ /		\$	\$	<input type="radio"/>
/ /		\$	\$	<input type="radio"/>
/ /		\$	\$	<input type="radio"/>
3. PURCHASES/ACQUISITIONS FROM JANUARY 26, 2016 THROUGH APRIL 22, 2016 – State the total number of shares of Insys common stock purchased/acquired (including free receipts) from after the opening of trading on January 26, 2016 through and including the close of trading on April 22, 2016. (Must be documented.) If none, write “zero” or “0.” ² _____				

² **Please note:** Information requested with respect to your purchases/acquisitions of Insys common stock from after the opening of trading on January 26, 2016 through and including the close of trading on April 22, 2016 is needed in order to perform the necessary calculations for your claim;

4. SALES FROM MARCH 3, 2015 THROUGH APRIL 22, 2016 – Separately list each and every sale/disposition (including free deliveries) of Insys common stock from after the opening of trading on March 3, 2015 through and including the close of trading on April 22, 2016. (Must be documented.)				IF NONE, CHECK HERE <input type="radio"/>
Date of Sale (List Chronologically) (Month/Day/Year)	Number of Shares Sold	Sale Price Per Share	Total Sale Price (excluding taxes, commissions, and fees)	Confirm Proof of Sales Enclosed
/ /		\$	\$	<input type="radio"/>
/ /		\$	\$	<input type="radio"/>
/ /		\$	\$	<input type="radio"/>
/ /		\$	\$	<input type="radio"/>
/ /		\$	\$	<input type="radio"/>
5. HOLDINGS AS OF APRIL 22, 2016 – State the total number of shares of Insys common stock held as of the close of trading on April 22, 2016. (Must be documented.) If none, write “zero” or “0.” _____				Confirm Proof of Holding Position Enclosed <input type="radio"/>

IF YOU REQUIRE ADDITIONAL SPACE FOR THE SCHEDULE ABOVE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER’S FULL NAME AND LAST FOUR DIGITS OF SOCIAL SECURITY/TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO ATTACH EXTRA SCHEDULES, CHECK THIS BOX

_____ purchases/acquisitions during this period, however, are not eligible transactions and will not be used for purposes of calculating Recognized Loss Amounts pursuant to the Plan of Allocation.

PART IV - RELEASE OF CLAIMS AND SIGNATURE

YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW AND SIGN ON PAGE __ OF THIS CLAIM FORM.

I (we) hereby acknowledge that, pursuant to the terms set forth in the Stipulation, without further action by anyone, upon the Effective Date of the Settlement, I (we), on behalf of myself (ourselves) and my (our) spouses, heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Class Representative's Claim against the Settling Defendant and the other Settling Defendant's Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Class Representative's Claims against any of the Settling Defendant's Releasees.

CERTIFICATION

By signing and submitting this Claim Form, the claimant(s) or the person(s) who represent(s) the claimant(s) agree(s) to the release above and certifies (certify) as follows:

1. that I (we) have read and understand the contents of the Settlement Notice and this Claim Form, including the Releases provided for in the Settlement of the Action with the Settling Defendant and the terms of the Plan of Allocation;
2. that the claimant(s) is a (are) member(s) of the Class, as defined in the Settlement Notice, and is (are) not excluded by definition from the Class as set forth in the Settlement Notice;
3. that I (we) own(ed) the Insys common stock identified in the Claim Form and have not assigned the claim against the Settling Defendant or any of the other Settling Defendant's Releasees to another, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
4. that the claimant(s) has (have) not submitted any other claim covering the same purchases/acquisitions of Insys common stock and knows (know) of no other person having done so on the claimant's (claimants') behalf;
5. that the claimant(s) submit(s) to the jurisdiction of the Court with respect to claimant's (claimants') claim and for purposes of enforcing the Releases set forth herein;
6. that I (we) agree to furnish such additional information with respect to this Claim Form as Class Counsel, the Claims Administrator, or the Court may require;
7. that the claimant(s) waive(s) the right to trial by jury, to the extent it exists, agree(s) to the determination by the Court of the validity or amount of this Claim and waives any right of appeal or review with respect to such determination;
8. that I (we) acknowledge that the claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and

9. that the claimant(s) is (are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (a) the claimant(s) is (are) exempt from backup withholding or (b) the claimant(s) has (have) not been notified by the IRS that he/she/it/they is (are) subject to backup withholding as a result of a failure to report all interest or dividends or (c) the IRS has notified the claimant(s) that he/she/it/they is (are) no longer subject to backup withholding. **If the IRS has notified the claimant(s) that he/she/it/they is (are) subject to backup withholding, please strike out the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above.**

UNDER THE PENALTIES OF PERJURY, I (WE) CERTIFY THAT ALL OF THE INFORMATION PROVIDED BY ME (US) ON THIS CLAIM FORM IS TRUE, CORRECT, AND COMPLETE, AND THAT THE DOCUMENTS SUBMITTED HEREWITH ARE TRUE AND CORRECT COPIES OF WHAT THEY PURPORT TO BE.

Signature of claimant Date

Print claimant name here

Signature of joint claimant, if any Date

Print joint claimant name here

If the claimant is other than an individual, or is not the person completing this form, the following also must be provided:

Signature of person signing on behalf of claimant Date

Print name of person signing on behalf of claimant here

Capacity of person signing on behalf of claimant, if other than an individual, *e.g.*, executor, president, trustee, custodian, etc. (Must provide evidence of authority to act on behalf of claimant – *see* ¶ 10 on page __ of this Claim Form.)

REMINDER CHECKLIST

1. Sign the above release and certification. If this Claim Form is being made on behalf of joint claimants, then both must sign.
2. Attach only **copies** of acceptable supporting documentation as these documents will not be returned to you.
3. Do not highlight any portion of the Claim Form or any supporting documents.
4. Keep copies of the completed Claim Form and any supporting documentation for your own records.
5. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. **If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator toll free at 1-866-905-8102.**
6. If your address changes in the future, you must send the Claims Administrator written notification of your new address. If you change your name, inform the Claims Administrator.
7. If you have any questions or concerns regarding your claim, please contact the Claims Administrator at the address below, by email at info@InsysRXSecuritiesLitigation.com, or by toll-free phone at 1-866-905-8102, or you may visit the website for the Action, www.InsysRXSecuritiesLitigation.com. **DO NOT** call the Court, the Settling Defendant, or Settling Defendant's Counsel with questions regarding your claim.

THIS CLAIM FORM MUST BE MAILED TO THE CLAIMS ADMINISTRATOR BY FIRST-CLASS MAIL, OR SUBMITTED ONLINE AT WWW.INSYSRXSECURITIESLITIGATION.COM, **POSTMARKED (OR RECEIVED) NO LATER THAN _____, 2020**. IF MAILED, THE CLAIM FORM SHOULD BE ADDRESSED AS FOLLOWS:

Insys Therapeutics, Inc. Securities Litigation
c/o A.B. Data, Ltd.
P.O. Box 170999
Milwaukee, WI 53217

If mailed, a Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before _____, 2020, is indicated on the envelope and it is mailed First Class, and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

You should be aware that it will take a significant amount of time to fully process all of the Claim Forms. Please be patient and notify the Claims Administrator of any change of address.

EXHIBIT B

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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

**[PROPOSED] JUDGMENT
APPROVING CLASS ACTION
SETTLEMENT WITH
DEFENDANT DARRYL S.
BAKER**

1 WHEREAS, an action is pending in this Court entitled *Di Donato v. Insys*
2 *Therapeutics, Inc., et al.*, No. 16-00302-PHX-NVW (the “Action”);

3 WHEREAS, by Order dated September 20, 2019 (Doc. 271), this Court certified
4 the Action to proceed as a class action on behalf of all persons and entities who purchased
5 or otherwise acquired Insys Therapeutics, Inc. (“Insys”) common stock during the period
6 from March 3, 2015, through January 25, 2016 (the “Class Period”), and were damaged
7 thereby (the “Class”);¹

8 WHEREAS, pursuant to the Court’s Order dated March 20, 2020 (Doc. 331),
9 notice was disseminated to potential members of the Class to notify them of, among other
10 things: (i) the pendency of the Action against defendants Michael L. Babich, Darryl S.
11 Baker, and John N. Kapoor (collectively, “Defendants”); (ii) the Court’s certification of
12 the Action to proceed against Defendants as a class action on behalf of the Class;
13 (iii) the right of Class Members to request to be excluded from the Class, the effect of
14 remaining in the Class or requesting exclusion, and the requirements for requesting
15 exclusion; (iv) the then-pending motion to voluntarily dismiss Insys from the Action with
16 prejudice given the Company’s bankruptcy and the Class’s inability to pursue claims
17 against Insys in the Action; and (v) the right of Class Members to object to the motion to
18 voluntarily dismiss Insys from the Action with prejudice (“Class Notice”);²

19 WHEREAS, Court-appointed Lead Plaintiff and Class Representative Clark
20 Miller (“Class Representative”), on behalf of himself and the other members of the Court-
21 certified Class, and Darryl S. Baker (the “Settling Defendant” and, together with Class
22 Representative, the “Settling Parties”) have entered into the Stipulation and Agreement

23 _____
24 ¹ Excluded from the Class are: (i) Defendants; (ii) present and former directors or
25 executive officers of Insys and members of their immediate families (as defined in
26 17 C.F.R. § 229.404, Instructions (1)(a)(iii) and (1)(b)(ii)); (iii) any of the foregoing
27 individuals’ or entities’ legal representatives, heirs, successors, or assigns; and (iv) any
entity in which any Defendant has or had a controlling interest, or which is related to or
affiliated with, any Defendant. The Court did not certify the Action against Insys, as
claims against Insys are subject to a mandatory and automatic stay of litigation pursuant
to 11 U.S.C. § 362 of the United States Code due to its bankruptcy filing.

28 ² By Order dated May 15, 2020 (Doc. 338), Insys was dismissed from the Action
with prejudice.

1 of Settlement Between Lead Plaintiff and Defendant Darryl S. Baker dated May 22, 2020
2 (the “Stipulation”), that provides for a complete dismissal with prejudice of the claims
3 asserted against the Settling Defendant in the Action on the terms and conditions set forth
4 in the Stipulation, subject to the approval of this Court (the “Settlement”);

5 WHEREAS, the claims asserted in the Action against Michael L. Babich and John
6 N. Kapoor (together, “Non-Settling Defendants”) have not been resolved and are still
7 being litigated;

8 WHEREAS, unless otherwise defined in this Order, the capitalized terms herein
9 shall have the same meanings as they have in the Stipulation;

10 WHEREAS, by Order dated _____, 2020 (the “Preliminary Approval
11 Order”), this Court: (a) found, pursuant to Rule 23(e)(1)(B), that it would likely be able
12 to approve the Settlement of the Action with the Settling Defendant as fair, reasonable,
13 and adequate under Rule 23(e)(2); (b) ordered that notice of the proposed Settlement with
14 the Settling Defendant be provided to potential Class Members; (c) provided Class
15 Members with the opportunity to object to the proposed Settlement; and (d) scheduled a
16 hearing regarding final approval of the Settlement;

17 WHEREAS, due and adequate notice has been given to the Class;

18 WHEREAS, the Court conducted a hearing on _____, 2020 (the
19 “Settlement Fairness Hearing”) to consider, among other things: (a) whether the terms
20 and conditions of the Settlement of the Action with the Settling Defendant are fair,
21 reasonable, and adequate to the Class, and should therefore be approved; and (b) whether
22 a judgment should be entered dismissing the Action with prejudice as against the Settling
23 Defendant; and

24 WHEREAS, the Court having reviewed and considered the Stipulation, all papers
25 filed and proceedings held herein in connection with the Settlement, all oral and written
26 comments received regarding the Settlement, and the record in the Action, and good cause
27 appearing therefor;

28 NOW THEREFORE, IT IS HEREBY ORDERED:

1 1. **Jurisdiction** – The Court has jurisdiction over the subject matter of the
2 Action, and all matters relating to the Settlement, as well as personal jurisdiction over the
3 Settling Parties and each of the Class Members.

4 2. **Incorporation of Settlement Documents** – This Judgment incorporates
5 and makes a part hereof: (a) the Stipulation filed with the Court on May 22, 2020; and
6 (b) the Postcard Settlement Notice, the Settlement Notice, and the Summary Settlement
7 Notice, all of which were filed with the Court on _____, 2020.

8 3. **Notice** – The Court finds that the mailing of the Postcard Settlement Notice,
9 the posting of the Settlement Notice on the Website, and the publication of the Summary
10 Settlement Notice: (a) were implemented in accordance with the Preliminary Approval
11 Order; (b) constituted the best notice practicable under the circumstances; (c) constituted
12 notice that was reasonably calculated, under the circumstances, to apprise Class Members
13 of (i) the effect of the proposed Settlement of the Action with the Settling Defendant
14 (including the Releases to be provided thereunder); (ii) Class Counsel’s motion for
15 Litigation Expenses; (iii) Class Members’ right to object to any aspect of the Settlement,
16 the Plan of Allocation and/or Class Counsel’s motion for Litigation Expenses; and
17 (iv) Class Members’ right to appear at the Settlement Fairness Hearing; (d) constituted
18 due, adequate, and sufficient notice to all persons and entities entitled to receive notice of
19 the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal
20 Rules of Civil Procedure, the United States Constitution (including the Due Process
21 Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1, 78u-
22 4, as amended, and all other applicable law and rules.

23 4. **CAFA Notice** – The Court finds that the notice requirements set forth in
24 the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, to the extent applicable to the
25 Action, have been satisfied.

26 5. **Final Settlement Approval and Dismissal of Claims** – Pursuant to, and
27 in accordance with, Rule 23(e)(2) of the Federal Rules of Civil Procedure, this Court
28 hereby fully and finally approves the Settlement of the Action with the Settling Defendant

1 set forth in the Stipulation in all respects (including, without limitation, the amount of the
2 Settlement, the Releases provided for therein, and the dismissal with prejudice of the
3 claims asserted against the Settling Defendant in the Action), and finds that the Settlement
4 is, in all respects, fair, reasonable, and adequate to the Class. Specifically, the Court finds
5 that (a) Class Representative and Class Counsel have adequately represented the Class;
6 (b) the Settlement was negotiated by the Settling Parties at arm's length; (c) the relief
7 provided for the Class under the Settlement is adequate taking into account the costs,
8 risks, and delay of trial and appeal, the proposed means of distributing the Settlement
9 Fund to the Class, and the proposed attorneys' fee award; and (d) the Settlement treats
10 members of the Class equitably relative to each other. The Settling Parties are directed to
11 implement, perform, and consummate the Settlement in accordance with the terms and
12 provisions contained in the Stipulation.

13 6. The Action and all of the claims asserted against the Settling Defendant in
14 the Action by Class Representative and the other Class Members are hereby dismissed
15 with prejudice as to the Settling Defendant only. The Settling Parties shall bear their own
16 costs and expenses, except as otherwise expressly provided in the Stipulation.

17 7. **Binding Effect** – The terms of the Stipulation and of this Judgment shall
18 be forever binding on the Settling Defendant, Class Representative, and all other Class
19 Members (regardless of whether or not any individual Class Member submits a Claim
20 Form or seeks or obtains a distribution from the Net Settlement Fund), as well as their
21 respective successors and assigns.

22 8. **Releases** – The Releases set forth in paragraphs 5 and 6 of the Stipulation,
23 together with the definitions contained in paragraph 1 of the Stipulation relating thereto,
24 are expressly incorporated herein in all respects. The Releases are effective as of the
25 Effective Date. Accordingly, this Court orders that:

26 (a) Without further action by anyone, and subject to paragraph 9 below,
27 upon the Effective Date of the Settlement, Class Representative and each of the other
28 Class Members, on behalf of themselves, and their respective spouses, heirs, executors,

1 administrators, predecessors, successors, and assigns, in their capacities as such, shall be
2 deemed to have, and by operation of law and of the judgment shall have, fully, finally,
3 and forever compromised, settled, released, resolved, relinquished, waived, and
4 discharged each and every Released Class Representative's Claim against the Settling
5 Defendant and the other Settling Defendant's Releasees, and shall forever be barred and
6 enjoined from prosecuting any or all of the Released Class Representative's Claims
7 against any of the Settling Defendant's Releasees whether or not such Class Member
8 executes and delivers a Claim Form; and.

9 (b) Without further action by anyone, and subject to paragraph 9 below,
10 upon the Effective Date of the Settlement, the Settling Defendant, on behalf of himself,
11 and his spouses, heirs, executors, administrators, predecessors, successors, and assigns,
12 in their capacities as such, shall be deemed to have, and by operation of law and of the
13 judgment shall have, fully, finally, and forever compromised, settled, released, resolved,
14 relinquished, waived, and discharged each and every Released Settling Defendant's
15 Claim against Class Representative and the other Class Representative's Releasees, and
16 shall forever be barred and enjoined from prosecuting any or all of the Released Settling
17 Defendant's Claims against any of the Class Representative's Releasees.

18 9. Notwithstanding paragraphs 8(a) – (b) above, nothing in this Judgment shall
19 bar any action by any of the Settling Parties to enforce or effectuate the terms of the
20 Stipulation or this Judgment.

21 10. **Bar Order** – Pursuant to the PSLRA, specifically 15 U.S.C. § 78u-
22 4(f)(7)(A), and common law, the Court hereby bars all future claims by any individual or
23 entity against any of the Settling Defendant's Releasees, and by the Settling Defendant's
24 Releasees against any individual or entity other than a person whose liability has been
25 extinguished by the Settlement, for (a) contribution or indemnity (or any other claim,
26 however denominated on whatsoever theory) arising out of or related to the claims or
27 allegations asserted by Class Representative in the Action, or (b) any other claim of any
28 type, whether arising under state, federal, common, or foreign law, for which the injury

1 claimed is that person's or entity's actual or threatened liability to Class Representative
2 and/or members of the Class arising out of or related to the claims or allegations asserted
3 by Class Representative in the Action.

4 11. Pursuant to the PSLRA and common law, any final verdict or judgment that
5 may be obtained by or on behalf of the Class or a Class Member against any person or
6 entity subject to the bar order set forth in ¶ 10 above shall, pursuant to 15 U.S.C. §78u-
7 4(f)(7)(B), be reduced by the greater of: (a) an amount that corresponds to the percentage
8 of responsibility of the Settling Defendant for common damages; or (b) the amount paid
9 by or on behalf of the Settling Defendant to the Class or Class Member for common
10 damages.

11 12. **Rule 11 Findings** – Pursuant to 15 U.S.C. § 78u-4(c)(1) and based on its
12 review of the record, the Court finds that the Settling Parties and their respective counsel
13 complied with the requirements of Rule 11(b) of the Federal Rules of Civil Procedure in
14 connection with the Second Amended Complaint (Doc. 77), Answer and amended
15 Answer (Docs. 131, 135), and dispositive motions (Docs. 61, 85, 311, 317) filed in the
16 Action.

17 13. **No Admissions** – Neither this Judgment, the Stipulation (whether or not
18 consummated), including the exhibits thereto and the Plan of Allocation contained therein
19 (or any other plan of allocation that may be approved by the Court), the negotiations
20 leading to the execution of the Stipulation, nor any proceedings taken pursuant to or in
21 connection with the Stipulation and/or approval of the Settlement (including any
22 arguments proffered in connection therewith):

23 (a) shall be offered against any of the Settling Defendant's Releasees as
24 evidence of, or construed as, or deemed to be evidence of any presumption, concession,
25 or admission by any of the Settling Defendant's Releasees with respect to the truth of any
26 fact alleged by Class Representative or the validity of any claim that was or could have
27 been asserted or the deficiency of any defense that has been or could have been asserted
28 in this Action or in any other litigation, or of any liability, negligence, fault, or other

1 wrongdoing of any kind of any of the Settling Defendant's Releasees or in any way
2 referred to for any other reason as against any of the Settling Defendant's Releasees, in
3 any arbitration proceeding or other civil, criminal, or administrative action or proceeding,
4 other than such proceedings as may be necessary to effectuate the provisions of the
5 Stipulation;

6 (b) shall be offered against any of the Class Representative's Releasees, as
7 evidence of, or construed as, or deemed to be evidence of any presumption, concession,
8 or admission by any of the Class Representative's Releasees that any of their claims are
9 without merit, that any of the Settling Defendant's Releasees had meritorious defenses,
10 or that damages recoverable under the Second Amended Complaint against the Settling
11 Defendant would not have exceeded the Settlement Amount or with respect to any
12 liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any
13 other reason as against any of the Class Representative's Releasees, in any arbitration
14 proceeding or other civil, criminal, or administrative action or proceeding, other than such
15 proceedings as may be necessary to effectuate the provisions of the Stipulation; or

16 (c) shall be construed against any of the Releasees as an admission,
17 concession, or presumption that the consideration to be given hereunder represents the
18 amount which could be or would have been recovered from the Settling Defendant after
19 trial; *provided, however*, that the Settling Parties and the Releasees and their respective
20 counsel may refer to it to effectuate the protections from liability granted hereunder or
21 otherwise to enforce the terms of the Settlement, and may file the Stipulation and/or this
22 Judgment in any action in order to support a defense, claim, or counterclaim based on
23 principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar
24 or reduction, or any other theory of claim preclusion or issue preclusion or similar defense
25 or counterclaim.

26 14. **Retention of Jurisdiction** – Without affecting the finality of this Judgment
27 in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Settling
28 Parties for purposes of the administration, interpretation, implementation, and

1 enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) any motion
2 for an award of attorneys' fees and/or Litigation Expenses by Class Counsel in the Action
3 that will be paid from the Settlement Fund; (d) any motion to approve the Plan of
4 Allocation; (e) any motion to approve the Class Distribution Order; and (f) the Class
5 Members for all matters relating to the Action.

6 15. Separate orders shall be entered regarding approval of a plan of allocation
7 and the motion of Class Counsel for Litigation Expenses. Such orders shall in no way
8 affect or delay the finality of this Judgment and shall not affect or delay the Effective
9 Date of the Settlement.

10 16. **Modification of the Stipulation** – Without further approval from the
11 Court, Class Representative and the Settling Defendant are hereby authorized to agree to
12 and adopt such amendments or modifications of the Stipulation or any exhibits attached
13 thereto to effectuate the Settlement that: (a) are not materially inconsistent with this
14 Judgment; and (b) do not materially limit the rights of Class Members in connection with
15 the Settlement. Without further order of the Court, Class Representative and the Settling
16 Defendant may agree to reasonable extensions of time to carry out any provisions of the
17 Stipulation.

18 17. **Termination of Settlement** – If the Settlement is terminated as provided
19 in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, this
20 Judgment shall be vacated, rendered null and void, and be of no further force and effect,
21 except as otherwise provided by the Stipulation, and this Judgment shall be without
22 prejudice to the rights of Class Representative, the other Class Members, and the Settling
23 Defendant, and the Settling Parties shall revert to their respective positions in the Action
24 as of May 8, 2020, as provided in the Stipulation.

25 18. **Entry of Final Judgment** – There is no just reason to delay the entry of
26 this Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is
27 expressly directed to immediately enter this final judgment in this Action.

28 SO ORDERED.