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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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

Plaintiff,

v.

Insys Therapeutics, Inc.; et al.,

Defendants.

No. CV-16-00302-PHX-NVW

**ORDER RE LITIGATION
EXPENSES**

This matter came on for hearings on Class Counsel’s motions for reimbursement of Litigation Expenses (Docs. 406, 425) filed in connection with the settlements achieved in the above-captioned action (“Action”) with defendants Darryl S. Baker and Michael L. Babich (the “Baker Settlement” and “Babich Settlement,” respectively) and Class Counsel’s motion for an award of attorneys’ fees (Doc. 410) filed in connection with the settlement achieved in the Action with defendant John N. Kapoor (the “Kapoor Settlement” and, together with the Baker and Babich Settlements, the “Settlements”).¹

The Court having considered all matters submitted to it at the Settlement Fairness Hearings and otherwise; and it appearing that notice of each of the Settlements and

¹ The Court held a final hearing for each of the Settlements (collectively, the “Settlement Fairness Hearings”). The final hearing for the Baker Settlement was held on September 23, 2020, the final hearing for the Kapoor Settlement was held on October 15, 2020, and the final hearing for the Babich Settlement was held on November 18, 2020.

1 Settlement Fairness Hearings substantially in the forms approved by the Court were
2 mailed to all Class Members who or which could be identified with reasonable effort, and
3 that a summary notice of each of the Settlements and Settlement Fairness Hearings
4 substantially in the forms approved by the Court was published in *Investor's Business*
5 *Daily* and transmitted over the *PR Newswire* pursuant to the specifications of the Court
6 set forth in each of its Orders preliminarily approving the Settlements (Docs. 347, 373,
7 402); and the Court having considered and determined the fairness and reasonableness of
8 Class Counsel's motions for reimbursement of Litigation Expenses and award of
9 attorneys' fees,

10 NOW, THEREFORE, IT IS HEREBY ORDERED granting Class Counsel's
11 motions (Doc. 406, 425 and 410).

12 IT IS FURTHER ORDERED THAT:

13 1. This Order incorporates by reference the definitions in: (i) the Stipulation
14 and Agreement of Settlement Between Lead Plaintiff and Defendant Darryl S. Baker
15 dated May 22, 2020 (Doc. 341-1); (ii) the Stipulation and Agreement of Settlement
16 Between Lead Plaintiff and Defendant John N. Kapoor dated July 1, 2020 (Doc. 371-1);
17 and (iii) the Stipulation and Agreement of Settlement Between Lead Plaintiff and
18 Defendant Michael L. Babich dated July 21, 2020 (Doc. 399-1) (collectively, the
19 "Stipulations"), and all terms not otherwise defined herein shall have the same meanings
20 as set forth in the Stipulations.

21 2. The Court has jurisdiction to enter this Order and over the subject matter of
22 the Action and all parties to the Action, including all Class Members.

23 3. Notice of Class Counsel's motions for reimbursement of Litigation
24 Expenses in connection with the Baker and Babich Settlements and Class's Counsel's
25 motion for an award of attorneys' fees in connection with the Kapoor Settlement was
26 given to all Class Members who or which could be identified with reasonable effort. The
27 forms and methods of notifying the Class of the motions for reimbursement of Litigation
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1 Expenses and the motion for an award of attorneys' fees satisfied the requirements of
2 Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including
3 the Due Process Clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C.
4 §§ 77z-1, 78u-4), as amended, and all other applicable law and rules, constituted the best
5 notice practicable under the circumstances, and constituted due and sufficient notice to all
6 persons and entities entitled thereto.

7 4. **Reimbursement of Litigation Expenses from Baker Settlement** - Class
8 Counsel is hereby awarded \$635,000.00 in reimbursement of Plaintiffs' Counsel's
9 Litigation Expenses (which expenses shall be paid from the Settlement Fund created in
10 the Baker Settlement), which sum the Court finds to be fair and reasonable.

11 5. Class Representative Clark Miller is hereby awarded \$15,000.00 from the
12 Settlement Fund created in the Baker Settlement as reimbursement for his reasonable
13 costs directly related to his representation of the Class.

14 6. **Reimbursement of Litigation Expenses from Babich Settlement** - Class
15 Counsel is hereby awarded \$75,000.00 in reimbursement of Plaintiffs' Counsel's
16 Litigation Expenses (which expenses shall be paid from the Settlement Fund created in
17 the Babich Settlement), which sum the Court finds to be fair and reasonable.

18 7. **Award of Attorneys' Fees from Kapoor Settlement** - Class Counsel is
19 hereby awarded attorneys' fees in the amount of 30% of the Settlement Fund created in
20 the Kapoor Settlement, which sum the Court finds to be fair and reasonable. In
21 accordance with the Stipulation for the Kapoor Settlement, any attorneys' fees awarded
22 by the Court shall be paid to Class Counsel from the Down Payment immediately upon
23 award, and immediately from any other proceeds obtained through the Kapoor Settlement
24 as those proceeds are received into the Escrow Account (without the need for additional
25 Court Orders). Class Counsel shall allocate the attorneys' fees awarded amongst
26 Plaintiffs' Counsel in a manner which it, in good faith, believes reflects the contributions
27 of such counsel to the institution, prosecution, and settlement of the Action.
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1 8. In making the foregoing awards for reimbursement of Litigation Expenses
2 and attorneys' fees, the Court has considered and found that:

3 (a) The Settlements will provide the Class with a collective recovery of
4 no less than \$2.95 million with the potential to increase to \$12.25 million, and will
5 resolve this Action in its entirety. Numerous Class Members who submit acceptable
6 Claim Forms will benefit from the Settlements that occurred because of the efforts of
7 Plaintiffs' Counsel;

8 (b) The requested expense amounts in connection with the Baker and
9 Babich Settlements have been approved as reasonable by Class Representative; and the
10 fee sought in connection with the Kapoor Settlement is based on a retainer agreement
11 entered into between Class Representative and Class Counsel at the outset of Class
12 Representative's involvement in the Action, and is supported by Class Representative;

13 (c) In the aggregate, more than 93,600 Postcard Settlement Notices and
14 12,600 long-form Settlement Notice for the Settlements were mailed to potential Class
15 Members and nominees, and the long-form Settlement Notices for the Settlements which
16 included the Plan of Allocation were posted on the Website. Docs. 407-2, 411-2, 426-2.
17 An additional 886 long-form Settlement Notices (including the Plan of Allocation) were
18 downloaded from the Website. Docs. 423-1, 426-2. The notices for the Baker Settlement
19 stated that Class Counsel would apply for reimbursement of Litigation Expenses in an
20 amount not to exceed \$650,000, which amount may include a request for reimbursement
21 to Class Representative in an aggregate amount not to exceed \$15,000; the notices for the
22 Kapoor Settlement stated that Class Counsel would apply for an award of attorneys' fees,
23 inclusive of any remaining Litigation Expenses incurred by Plaintiffs' Counsel in
24 connection with the institution, prosecution, and resolution of the claims against
25 Defendant Kapoor which were not sought to be reimbursed in connection with the Baker
26 Settlement, in an amount not to exceed 30% of the Settlement Fund in the aggregate; and
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1 the notices for the Babich Settlement stated that Class Counsel would apply for
2 reimbursement of Litigation Expenses in an amount not to exceed \$75,000;

3 (d) Plaintiffs' Counsel conducted the litigation and achieved the
4 Settlements with skill, perseverance, and diligent advocacy;

5 (e) The Action raised a number of complex issues;

6 (f) Had Plaintiffs' Counsel not achieved the Settlements, there would
7 remain a significant risk that Class Representative and the other members of the Class
8 may have recovered less or nothing from Defendants after trial;

9 (g) In the aggregate, Plaintiffs' Counsel have expended \$1,202,389.60
10 in expenses and devoted more than 22,306 hours, with a collective lodestar value of
11 \$11,539,774.75, to achieve the Settlements;

12 (h) The amounts of Litigation Expenses awarded from the Settlement
13 Funds in the Baker and Babich Settlements are fair and reasonable and supported by the
14 facts of the Action and the law, and the attorneys' fees awarded from the Settlement Fund
15 in the Kapoor Settlement are fair and reasonable and consistent with awards in similar
16 cases; and

17 (i) Not a single Class Member has objected to the requests for
18 reimbursement of Litigation Expenses in connection with the Baker and Babich
19 Settlements or the request for an award of attorneys' fees in connection with the Kapoor
20 Settlement.

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22 9. Any appeal or any challenge affecting this Court's approval regarding any
23 application for attorneys' fees or reimbursement of Litigation Expenses shall in no way
24 disturb or affect the finality of the Judgment.

25 10. Exclusive jurisdiction is hereby retained over the parties and the Class
26 Members for all matters relating to this Action, including the administration,
27 interpretation, effectuation, or enforcement of the Stipulations and this Order.
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1 11. In the event that the Settlements are terminated or the Effective Dates of the
2 Settlements otherwise fail to occur, this Order shall be rendered null and void to the
3 extent provided by the Stipulations.

4 Dated this 18th day of November, 2020.

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8 Neil V. Wake
9 Senior United States District Judge
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