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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
AWARDING ATTORNEYS' FEES
AND LITIGATION EXPENSES**

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

8 The Court having considered all matters submitted to it at the Settlement Fairness
9 Hearings and otherwise; and it appearing that notice of each of the Settlements and
10 Settlement Fairness Hearings substantially in the forms approved by the Court were
11 mailed to all Class Members who or which could be identified with reasonable effort, and
12 that a summary notice of each of the Settlements and Settlement Fairness Hearings
13 substantially in the forms approved by the Court was published in *Investor’s Business*
14 *Daily* and transmitted over the *PR Newswire* pursuant to the specifications of the Court
15 set forth in each of its Orders preliminarily approving the Settlements (Docs. 347, 373,
16 402); and the Court having considered and determined the fairness and reasonableness of
17 Class Counsel’s motions for reimbursement of Litigation Expenses and award of
18 attorneys’ fees,

19 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

20 1. This Order incorporates by reference the definitions in: (i) the Stipulation
21 and Agreement of Settlement Between Lead Plaintiff and Defendant Darryl S. Baker
22 dated May 22, 2020 (Doc. 341-1); (ii) the Stipulation and Agreement of Settlement
23 Between Lead Plaintiff and Defendant John N. Kapoor dated July 1, 2020 (Doc. 371-1);
24 and (iii) the Stipulation and Agreement of Settlement Between Lead Plaintiff and
25 Defendant Michael L. Babich dated July 21, 2020 (Doc. 399-1) (collectively, the

26 _____
27 ¹ The Court held a final hearing for each of the Settlements (collectively, the
28 “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 “Stipulations”), and all terms not otherwise defined herein shall have the same meanings
2 as set forth in the Stipulations.

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

5 3. Notice of Class Counsel’s motions for reimbursement of Litigation
6 Expenses in connection with the Baker and Babich Settlements and Class’s Counsel’s
7 motion for an award of attorneys’ fees in connection with the Kapoor Settlement was
8 given to all Class Members who or which could be identified with reasonable effort. The
9 forms and methods of notifying the Class of the motions for reimbursement of Litigation
10 Expenses and the motion for an award of attorneys’ fees satisfied the requirements of
11 Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including
12 the Due Process Clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C.
13 §§ 77z-1, 78u-4), as amended, and all other applicable law and rules, constituted the best
14 notice practicable under the circumstances, and constituted due and sufficient notice to
15 all persons and entities entitled thereto.

16 4. **Reimbursement of Litigation Expenses from Baker Settlement** - Class
17 Counsel is hereby awarded \$_____ in reimbursement of Plaintiffs’ Counsel’s
18 Litigation Expenses (which expenses shall be paid from the Settlement Fund created in
19 the Baker Settlement), which sum the Court finds to be fair and reasonable.

20 5. Class Representative Clark Miller is hereby awarded \$_____ from the
21 Settlement Fund created in the Baker Settlement as reimbursement for his reasonable
22 costs directly related to his representation of the Class.

23 6. **Reimbursement of Litigation Expenses from Babich Settlement** - Class
24 Counsel is hereby awarded \$_____ in reimbursement of Plaintiffs’ Counsel’s
25 Litigation Expenses (which expenses shall be paid from the Settlement Fund created in
26 the Babich Settlement), which sum the Court finds to be fair and reasonable.

27 7. **Award of Attorneys’ Fees from Kapoor Settlement** - Class Counsel is
28 hereby awarded attorneys’ fees in the amount of ___% of the Settlement Fund created in

1 the Kapoor Settlement, which sum the Court finds to be fair and reasonable. In accordance
2 with the Stipulation for the Kapoor Settlement, any attorneys' fees awarded by the Court
3 shall be paid to Class Counsel from the Down Payment immediately upon award, and
4 immediately from any other proceeds obtained through the Kapoor Settlement as those
5 proceeds are received into the Escrow Account (without the need for additional Court
6 Orders). Class Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs'
7 Counsel in a manner which it, in good faith, believes reflects the contributions of such
8 counsel to the institution, prosecution, and settlement of the Action.

9 8. In making the foregoing awards for reimbursement of Litigation Expenses
10 and attorneys' fees, the Court has considered and found that:

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

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

21 (c) In the aggregate, more than 93,600 Postcard Settlement Notices and
22 12,600 long-form Settlement Notice for the Settlements were mailed to potential Class
23 Members and nominees, and the long-form Settlement Notices for the Settlements which
24 included the Plan of Allocation were posted on the Website. Docs. 407-2, 411-2, 426-2.
25 An additional 886 long-form Settlement Notices (including the Plan of Allocation) were
26 downloaded from the Website. Docs. 423-1, 426-2. The notices for the Baker Settlement
27 stated that Class Counsel would apply for reimbursement of Litigation Expenses in an
28 amount not to exceed \$650,000, which amount may include a request for reimbursement

1 to Class Representative in an aggregate amount not to exceed \$15,000; the notices for the
2 Kapoor Settlement stated that Class Counsel would apply for an award of attorneys' fees,
3 inclusive of any remaining Litigation Expenses incurred by Plaintiffs' Counsel in
4 connection with the institution, prosecution, and resolution of the claims against
5 Defendant Kapoor which were not sought to be reimbursed in connection with the Baker
6 Settlement, in an amount not to exceed 30% of the Settlement Fund in the aggregate; and
7 the notices for the Babich Settlement stated that Class Counsel would apply for
8 reimbursement of Litigation Expenses in an amount not to exceed \$75,000;

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

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

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

15 (g) In the aggregate, Plaintiffs' Counsel have expended \$1,202,389.60
16 in expenses and devoted more than 22,306 hours, with a collective lodestar value of
17 \$11,539,774.75, to achieve the Settlements;

18 (h) The amounts of Litigation Expenses awarded from the Settlement
19 Funds in the Baker and Babich Settlements are fair and reasonable and supported by the
20 facts of the Action and the law, and the attorneys' fees awarded from the Settlement Fund
21 in the Kapoor Settlement are fair and reasonable and consistent with awards in similar
22 cases; and

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

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1 9. Any appeal or any challenge affecting this Court’s approval regarding any
2 application for attorneys’ fees or reimbursement of Litigation Expenses shall in no way
3 disturb or affect the finality of the Judgment.

4 10. Exclusive jurisdiction is hereby retained over the parties and the Class
5 Members for all matters relating to this Action, including the administration,
6 interpretation, effectuation, or enforcement of the Stipulations and this Order.

7 11. In the event that the Settlements are terminated or the Effective Dates of the
8 Settlements otherwise fail to occur, this Order shall be rendered null and void to the extent
9 provided by the Stipulations.

10 12. There is no just reason for delay in the entry of this Order, and immediate
11 entry by the Clerk of the Court is expressly directed.

12 SO ORDERED.

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