

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
MICHAEL L. BABICH; (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 (“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 Michael L. Babich (“Settling Defendant” or “Defendant Babich”) for \$250,000 in cash that, if approved, will resolve all claims in the Action against Defendant Babich (“Settlement”). The terms and provisions of the Settlement are contained in the Stipulation and Agreement of Settlement between Lead Plaintiff and Defendant Michael L. Babich dated July 21, 2020 (“Stipulation”).¹ **Please Note: This Settlement does not resolve any of the claims asserted in the Action against defendants Darryl S. Baker or John N. Kapoor (together, “Non-Settling Defendants”).**² There are separate settlements currently being evaluated by the Court with respect to the Non-Settling Defendants (i.e., the “Baker Settlement” and the “Kapoor Settlement”). If all three settlements are approved by the Court, the settlements will provide the Class with a collective payment of no less than \$2.95 million and up to \$12.25 million.

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 Defendant Babich. 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, Defendant Babich, or Defendant Babich’s Counsel. All questions should be directed to the Claims Administrator or Class Counsel (see ¶ 76 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

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.

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.

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 ¶¶ 11-31 below. The Settlement, if approved by the Court, will settle the claims of the Class, as defined in ¶ 32 below, **against Defendant Babich 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 Defendant Babich in exchange for \$250,000 in cash (the "Settlement Amount"), to be deposited into an escrow account.³ The Settlement Amount plus any and all interest earned thereon is referred to herein as the "Settlement Fund." The Settlement Fund less any: (i) Taxes; (ii) Notice and Administration Costs; (iii) Litigation Expenses awarded by the Court; and (iv) any other costs or fees approved by the Court ("Net Settlement Fund") 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.

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 Defendant Babich, the estimated average recovery (before the deduction of any Court-approved expenses and costs as described herein) per eligible share of Insys common stock will be approximately \$0.01. **Class Members should note, however, that the foregoing average recovery per eligible share is only an estimate and only the average recovery for the Babich Settlement.** When taking into account the consideration recovered from all three settlements reached in the Action, the estimated average recovery per eligible share of Insys common stock will be between approximately \$0.08 and \$0.35. Some Class Members may recover more or less than the estimated amount in connection with the Babich Settlement 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 (including the Claims submitted for the Baker and Kapoor Settlements); (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.

PLEASE NOTE: If you already submitted a Claim Form in connection with the Baker and/or Kapoor Settlements or plan to do so, you do not need to resubmit your Claim Form in connection with this Settlement. The Claim Form you submitted (or plan to submit) for the Baker and/or Kapoor Settlements will also be processed for this Settlement. YOU ONLY NEED TO SUBMIT ONE CLAIM FORM. If you did not submit a Claim Form for the Baker and/or Kapoor Settlements, you must submit a Claim Form now in order to be potentially eligible to participate in this Settlement.

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 Defendant Babich. Among other things, Defendant Babich 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 Fund, 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 in the Action which were not sought for reimbursement from the Baker and/or Kapoor Settlements in an amount not to exceed \$75,000. Any Litigation 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 maximum request for Litigation Expenses set forth herein, will amount to \$0.002 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

³ The Settlement with Defendant Babich is in addition to the Baker Settlement and the Kapoor Settlement. See ¶¶ 39-40 below.

with Defendant Babich, 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 Defendant Babich 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, which was schedule to commence on August 17, 2020. 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 Defendant Babich 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 Defendant Babich’s limited uncommitted financial resources, including his inability to access any insurance coverage, to fund a settlement or judgment in the Action. For this reason, there was a strong possibility that the Class would receive a smaller recovery even if it prevailed at trial, and that the payment of any such recovery would be delayed. Defendant Babich, who denies all allegations of wrongdoing or liability in connection with the alleged materially false or misleading statements in this Action 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 NOVEMBER 7, 2020. | <p>You must submit a Claim Form in order 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 Defendant Babich as approved by the Court and you will give up any Released Class Representative’s Claims (defined in ¶ 44 below) that you have against Defendant Babich and the other Settling Defendant’s Releases (defined in ¶ 45 below), so it is in your interest to submit a Claim Form.</p> <p><u>Please Note:</u> If you previously submitted or plan to submit a Claim Form in connection with the Baker and/or Kapoor Settlements, you need not submit another Claim Form in connection with this Settlement. Please only submit <u>one</u> Claim Form. See ¶ 50 below.</p> |
| OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN OCTOBER 28, 2020. | <p>If you do not like the proposed Settlement with Defendant Babich, 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.</p> |
| GO TO A HEARING ON NOVEMBER 18, 2020 AT 1:30 P.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN OCTOBER 28, 2020. | <p>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 October 28, 2020, which allows you to speak in Court, at the discretion of the Court, about the fairness of the Settlement with Defendant Babich, the Plan of Allocation, and/or the requested Litigation Expenses. If you submit a written objection, you may (but you do not have to) attend the hearing.</p> |
| DO NOTHING. | <p>If you are a member of the Class and you do not submit a valid Claim Form in connection with this Settlement, or the Baker and/or Kapoor Settlements, 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 with Defendant Babich 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 November 18, 2020 at 1:30 p.m. – is subject to change without further notice to the Class. If you plan to attend the hearing, you should check the website

Questions? Visit www.InsysRXSecuritiesLitigation.com or call 1-866-905-8102

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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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 Defendant Babich 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 Defendant Babich, 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 an award of Litigation Expenses ("Settlement Fairness Hearing"). See ¶ 64 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 Defendant Babich. 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, Defendant Babich, Darryl S. Baker, Alec Burlakoff,⁴ 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 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 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.⁵

19. On August 10, 2018, Lead Plaintiff and certain defendants, including Defendant Babich, participated in a full-day mediation in New York, New York before retired federal Judge Layn R. Phillips of Phillips ADR, 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. On June 10, 2019, while the parties’ discovery efforts were ongoing and Lead Plaintiff’s motion for class certification was pending, 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. 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

⁴ The Court dismissed Lead Plaintiff’s claims against Alec Burlakoff in its Order dated August 1, 2017.

⁵ The parties completed discovery on November 22, 2019.

of 11 U.S.C. § 362(a) of the United States Code. On October 4, 2019, defendant 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 defendant 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 no objections to the Insys Dismissal Motion.⁶ 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 Babich, Baker, and Kapoor, 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 the motion for summary judgment in its entirety.

26. On May 8, 2020, Class Representative and defendant Baker informed the Court that they had reached an agreement in principle to resolve the Action as to defendant Baker only (i.e., the Baker Settlement).

27. On May 22, 2020, the Court scheduled a jury trial to commence on August 17, 2020. Thereafter, the Settling Parties engaged in substantial trial preparations, including submission of their proposed Final Pretrial Order; *in limine* motions; and other key pretrial disclosures.

28. On June 25, 2020, Class Representative and defendant Kapoor informed the Court that they had reached an agreement in principle to resolve the Action as to defendant Kapoor only (i.e., the Kapoor Settlement).

29. While the Settling Parties' trial preparations were ongoing, Class Representative and Defendant Babich restarted their earlier discussions concerning the possibility of resolving the Action with the assistance of Michelle Yoshida of Phillips ADR. Following hard-fought, arm's-length direct negotiations, the Settling Parties agreed to resolve the Action against Defendant Babich for the Settlement Amount. On July 14, 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 Defendant Babich.

30. On July 21, 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.InsysRXSecuritiesLitigation.com.

31. On July 31, 2020, following an additional settlement submission from the Settling Parties, the Court preliminarily approved the Settlement with Defendant Babich, authorized notice of the Settlement to the Class, and scheduled the Settlement Fairness Hearing to consider whether to grant final approval to the Settlement. On the same day, the Court vacated the August 17, 2020 jury trial and all other deadlines and hearings leading up to it.

⁶ Pursuant to the Court's Order Preliminarily Approving Settlement with Defendant Darryl S. Baker and Providing for Notice dated June 5, 2020, because Class Members had the opportunity to exclude themselves in connection with Class Notice, the Court exercised its discretion not to permit Class Members a second opportunity to exclude themselves from the Class in connection with the settlement proceedings. This ruling became the law of the case for all subsequent settlements in the Action including this Settlement.

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

32. 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:

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;⁷ (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 SETTLEMENT 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 WITH DEFENDANT BABICH, YOU ARE REQUIRED TO SUBMIT A CLAIM FORM AND THE REQUIRED SUPPORTING DOCUMENTATION POSTMARKED (IF MAILED), OR ONLINE, NO LATER THAN NOVEMBER 7, 2020, UNLESS YOU ALREADY SUBMITTED OR PLAN TO SUBMIT A CLAIM FORM IN CONNECTION WITH THE BAKER AND/OR KAPOOR SETTLEMENTS. IF YOU ALREADY SUBMITTED OR PLAN TO SUBMIT A CLAIM FORM FOR THE BAKER AND/OR KAPOOR SETTLEMENTS, YOU DO NOT NEED TO SUBMIT A CLAIM FORM FOR THIS SETTLEMENT. THE CLAIM FORM YOU SUBMITTED FOR THE BAKER AND/OR KAPOOR SETTLEMENTS WILL ALSO BE PROCESSED IN CONNECTION WITH THIS SETTLEMENT. YOU ONLY NEED TO SUBMIT ONE CLAIM FORM. IF YOU NEED A CLAIM FORM, YOU CAN GET ONE BY VISITING THE WEBSITE WWW.INSYSRXSECURITIESLITIGATION.COM OR BY CALLING 1-866-905-8102.

WHAT ARE CLASS REPRESENTATIVE'S REASONS FOR THE SETTLEMENT?

33. 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 preparations for a trial - scheduled to commence in August 2020 - were well underway. Class Representative believes that the claims asserted against Defendant Babich have merit; however, he recognized the risks faced in collecting any amount of money following a favorable verdict against Defendant Babich at trial and through the likely time-consuming appeals that would follow.

34. If the Action continued against Defendant Babich, Class Representative faced some challenges to proving that Defendant Babich made materially false or misleading statements. Throughout the Action, Defendant Babich maintained that the statements for which he is being sued in the Action were true when made. Additionally, Defendant Babich asserted that the statements at issue were not actionable, as a matter of law, because they are vaguely optimistic, forward-looking statements that do not amount to a securities violation and are, in any event, within the statutory safe harbor. Class Representative also would have faced challenges to establishing loss causation and damages, as Defendant Babich would have continued to argue at trial 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, and most importantly, there were severe limitations on the ability of Defendant Babich to pay a substantial judgment, particularly in light of Defendant Babich's current and expected future financial condition, given his forfeiture and restitution exposure, exceeding \$74 million, imposed as a result of his guilty plea in the action *United States of America v. Babich, et al.*, No. 1:16-cr-10343-ADB (D. Mass.), as well as several stipulated judgments exceeding \$1.4 billion entered into with a state attorney general and a public health authority. As such, Class Representative faced a significant risk that he would not be able to collect any payment at all from Defendant Babich - 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.

⁷ For purposes of the Class definition, the term "Defendants" refers collectively to Defendant Babich and the Non-Settling Defendants.

35. In light of these risks and the amount of the recovery to the Class, Class Representative and Class Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Class. Class Representative and Class Counsel believe that the Settlement provides a favorable result for the Class, namely consideration of \$250,000 in cash (less the various deductions described in this Settlement Notice), as compared to the risk that the claims against Defendant Babich would produce a smaller, or no, recovery after trial and appeals, possibly years in the future.

36. Defendant Babich has denied the claims asserted against him in the Action and denies having engaged in any wrongdoing or violation of the federal securities laws of any kind whatsoever. Defendant Babich has agreed to the Settlement to eliminate the burden and expense of continued litigation against him, and the Settlement with Defendant Babich 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?

37. If there were no Settlement with Defendant Babich and Class Representative failed to establish any essential legal or factual element of his claims against Defendant Babich at trial, neither Class Representative nor the other members of the Class would recover anything from Defendant Babich. Also, if Defendant Babich 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 THE OTHER DEFENDANTS INCLUDED IN THE PARTIAL SETTLEMENT?

38. No. This Settlement only includes Defendant Babich. This Settlement does not resolve claims against Defendants Darryl S. Baker and John N. Kapoor.

WHAT ARE THE OTHER SETTLEMENTS REACHED IN THE ACTION?

39. Class Representative previously reached a settlement with defendant Darryl S. Baker for \$2,000,000 in cash. On June 5, 2020, the Court entered an order preliminarily approving the settlement with defendant Baker. Class Representative also previously reached a settlement with defendant John N. Kapoor for consideration of at least \$700,000 in cash with the potential to increase to up to \$10,000,000 in cash, payable in accordance with the terms and schedule set forth in the Stipulation and Agreement of Settlement Between Lead Plaintiff and Defendant John N. Kapoor dated July 1, 2020. On July 2, 2020, the Court entered an order preliminarily approving the settlement with defendant Kapoor. **If all three settlements are approved by the Court, the settlements between Class Representative and defendants Baker, Babich, and Kapoor will provide the Class with a collective payment of no less than \$2.95 million and up to \$12.25 million.**

40. Please visit www.InsysRXSecuritiesLitigation.com for more information regarding the Baker and Kapoor Settlements. **If you previously submitted or plan to submit a Claim Form for the Baker and/or Kapoor Settlements, your Claim Form will also be processed in connection with this Settlement. You only need to submit one Claim Form to participate in all three settlements.**

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

41. 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 12 below.

42. If you are a Class Member and you wish to object to the Settlement of the Action with Defendant Babich, the Plan of Allocation, and/or Class Counsel’s application for an award of 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 12 below.

43. If you are a Class Member, you will be bound by any orders issued by the Court. If the Settlement with Defendant Babich is approved, the Court will enter a judgment (“Judgment”). The Judgment will dismiss with prejudice the claims against Defendant Babich 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 ¶ 44 below) against the Settling Defendant and the other Settling Defendant’s Releasees (as defined in ¶ 45 below), 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.⁸

44. “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 Defendant Babich; or (iii) any of the claims asserted in the actions referenced in Appendix 1 to the Stipulation.

45. “Settling Defendant’s Releasees” means Defendant Babich, all past, present, or future entities owned, affiliated with or controlled by Defendant Babich, including any of those entities’ parents, 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 Defendant Babich is the settler or which is for the benefit of Defendant Babich or member(s) of his family. “Settling Defendant’s Releasees” does not include any of the Non-Settling Defendants, nor any of their related persons or entities.

46. “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 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.

47. 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

⁸ 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 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 Defendant Babich and/or certain other related parties.

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.

48. "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 Defendant Babich. "Released Settling Defendant's Claims" shall not include any claims relating to the enforcement of the Settlement.

49. "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?

50. **IF YOU PREVIOUSLY SUBMITTED OR PLAN TO SUBMIT A CLAIM FORM IN CONNECTION WITH THE BAKER AND/OR KAPOOR SETTLEMENTS, YOU NEED NOT SUBMIT ANOTHER CLAIM FORM IN ORDER TO PARTICIPATE IN THIS SETTLEMENT AS YOUR CLAIM FORM FOR THE BAKER AND/OR KAPOOR SETTLEMENTS WILL ALSO BE PROCESSED IN CONNECTION WITH THIS SETTLEMENT.** If you are unsure as to whether you submitted a Claim Form for the Baker and/or Kapoor Settlements, please contact the Claims Administrator at 1-866-905-8102 or at info@InsysRXSecuritiesLitigation.com.

51. If you are a member of the Class and you did not submit or do not plan to submit a Claim Form in connection with the Baker and/or Kapoor Settlements, to be eligible for a payment from the proceeds of the Settlement of the Action with Defendant Babich, 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 November 7, 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?

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

53. Pursuant to the Settlement, Defendant Babich shall cause to be paid \$250,000 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 Defendant Babich 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.

54. 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.

55. Neither Defendant Babich 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. Defendant Babich 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.

56. Unless the Court otherwise orders, any Class Member who fails to submit a Claim Form postmarked (if mailed), or online, on or before November 7, 2020 shall be fully and forever barred from receiving payments pursuant to the Settlement with Defendant Babich, 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 ¶ 44 above) against the Settling Defendant's Releasees (as defined in ¶ 45 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.

57. 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.

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

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

60. 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.

61. **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?**

62. Class Counsel, on behalf of Plaintiffs' Counsel, will apply to the Court for reimbursement of any remaining Litigation Expenses incurred by Plaintiffs' Counsel in connection with the institution, prosecution, and resolution of the claims against Defendant Babich which were not sought to be reimbursed in connection with the Baker and/or Kapoor Settlements, in an amount not to exceed \$75,000. Class Counsel's motion for an award of Litigation Expenses will be filed by October 14, 2020, and the Court will consider Class Counsel's motion at the Settlement Fairness Hearing. A copy of Class Counsel's motion for an award of Litigation Expenses will be available for review at www.InsysRXSecuritiesLitigation.com once it is filed. Any award of Litigation Expenses 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?**

63. **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.InsysRXSecuritiesLitigation.com, or contact Class Counsel to confirm that the date and/or time of the hearing has not changed.

64. The Settlement Fairness Hearing will be held on **November 18, 2020 at 1:30 p.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 Defendant Babich, the Plan of Allocation, Class Counsel's motion for an award of 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. The Court may also combine the Settlement Fairness Hearing with the final hearing for any other settlement(s) entered into under this same caption.

65. Any Class Member may object to the Settlement with Defendant Babich, the Plan of Allocation, and/or Class Counsel's motion for an award of 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 Defendant Babich's Counsel at the addresses set forth below **on or before October 28, 2020**.

| <u>Clerk's Office</u> | <u>Class Counsel</u> | <u>Defendant Babich's 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 | Russell Piccoli Russell Piccoli, PLC 701 North 44 th Street Phoenix, AZ 85008 |

66. 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.

67. **You may not object to the Settlement with Defendant Babich, the Plan of Allocation, and/or Class Counsel's motion for an award of Litigation Expenses if you are not a member of the Class.**

68. 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.

69. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement with Defendant Babich, the Plan of Allocation, and/or Class Counsel's motion for an award of 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 Defendant Babich's Counsel at the addresses set forth in ¶ 65 above so that it is **received on or before October 28, 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.

70. 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 Defendant Babich's Counsel at the addresses set forth in ¶ 65 above so that the notice is **received on or before October 28, 2020**.

71. 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 Defendant Babich, the proposed Plan of Allocation, and/or Class Counsel's motion for an award of 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?**

72. **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 or the Baker and/or Kapoor Settlements, 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 or the Baker and/or Kapoor Settlements. 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 (unless that number was updated in connection with the Baker and/or Kapoor Settlements and in that case, the Claims Administrator shall forward the updated 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 or the Baker and/or Kapoor Settlements, 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.

73. 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 or the Baker and/or Kapoor Settlements, 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 OR THE BAKER AND/OR KAPOOR SETTLEMENTS, UNLESS THAT INFORMATION HAS CHANGED (E.G., BENEFICIAL OWNER HAS CHANGED ADDRESS), IT IS UNNECESSARY TO PROVIDE SUCH INFORMATION AGAIN.**

74. 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.

75. 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?

76. This Settlement Notice contains only a summary of the terms of the Settlement of the Action with Defendant Babich. For the full 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, Questions? Visit www.InsysRXSecuritiesLitigation.com or call 1-866-905-8102

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@InsysRXSecuritiesLitigation.com
www.InsysRXSecuritiesLitigation.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, DEFENDANT BABICH, OR
DEFENDANT BABICH'S COUNSEL REGARDING THIS SETTLEMENT NOTICE.**

Dated: August 10, 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 Plan of Allocation below is the same plan that is being proposed for approval by Class Representative in connection with the Baker and Kapoor Settlements. 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. Defendant Babich 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 Defendant Babich.** 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 Defendant Babich.

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.⁹ To the extent that the calculation of a

⁹ 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.

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, 2016,¹⁰ 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 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).

¹⁰ 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.

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 stock¹¹ 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, any of the other Class

¹¹ 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.

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.

| 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) ¹² | \$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* |

* For shares of Insys common stock *sold* 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 *purchased/acquired* on January 25, 2016, the estimated alleged artificial inflation per share is \$1.13.

| 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 |

¹² 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.

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 |
|------------------|-------------------------------|--|------------------|-------------------------------|
| 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 |
| 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 | | | |