

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 PENDENCY OF CLASS ACTION AND PENDING CONSENT MOTION TO  
VOLUNTARILY DISMISS INSYS THERAPEUTICS, INC. FROM THE ACTION  
WITH PREJUDICE BASED UPON ITS BANKRUPTCY**

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

*A federal court has authorized this notice. This is not a solicitation from a lawyer.*

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.  
YOU MAY BE A MEMBER OF THE CLASS DESCRIBED HEREIN. AS SUCH, YOUR RIGHTS MAY BE  
AFFECTED BY A PENDING CLASS ACTION LAWSUIT. THIS NOTICE ADVISES YOU OF YOUR  
OPTIONS REGARDING THE CLASS ACTION.**

**PLEASE DO NOT CALL OR WRITE THE COURT.  
IF YOU HAVE ANY QUESTIONS AFTER READING THIS NOTICE,  
YOU SHOULD CONTACT CLASS COUNSEL OR THE ADMINISTRATOR,  
AS DISCUSSED FURTHER BELOW.**

This Notice is being 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") to inform you: (a) of a class action lawsuit that is now pending in the Court under the above caption ("Action") against Michael L. Babich, Darryl S. Baker, and John N. Kapoor (collectively, "Defendants"); (b) that the Action has been certified by the Court to proceed as a class action against Defendants on behalf of the Class, as defined in ¶ 1 below; and (c) Class Representative has moved to voluntarily dismiss Insys Therapeutics, Inc. ("Insys" or the "Company") from the Action with prejudice given the Company's bankruptcy and the Class's inability to pursue claims against Insys in the Action.<sup>1</sup> The proposed dismissal of Insys from the Action will preserve the Class Representative's rights to seek on behalf of the Class relief from Insys, if any is available, in the Company's bankruptcy proceeding: *In re Insys Therapeutics, Inc.*, No. 19-11292-KG (Bankr. D. Del.). **This Notice is not a settlement notice and you are not being asked to submit a claim.**

<sup>1</sup> If you wish to object to the pending motion to dismiss Insys from the Action with prejudice, you must do so by no later than April 30, 2020 in accordance with the instructions set forth in ¶ 25 below.

**Questions? Call toll free 1-866-905-8102 or visit [www.InsysRXSecuritiesLitigation.com](http://www.InsysRXSecuritiesLitigation.com).**

1. By the Court's September 20, 2019 Order granting Lead Plaintiff's motion for class certification (Doc. 271), the Court certified the following Class to proceed against Defendants, but not against Insys, as claims against Insys are subject to a mandatory and automatic stay of litigation pursuant to 11 U.S.C. § 362 of the United States Code:

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

Excluded from the Class are: (a) Defendants; (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.

2. This Notice is directed to members of the Class. If you are a member of the Class, your rights will be affected by this Action. If you do not meet the Class definition, this Notice does not apply to you. If you are uncertain whether you are a member of the Class, please contact Class Counsel listed in ¶ 26 below, or your own attorney.

3. This Notice is not an admission by Defendants or an expression of any opinion by the Court as to the merits of the Action, or a finding by the Court that the claims asserted by Class Representative in this Action are valid. This Notice is intended solely to inform you of the pendency of the Action and of your rights in connection with it, including the right to request exclusion from the Class and the right to object to Class Representative's pending motion to voluntarily dismiss Insys from the Action with prejudice. **There is no judgment, settlement, or monetary recovery at this time.** Defendants have denied Class Representative's claims and contend that they are not liable for the harm alleged by Class Representative on behalf of the Class.

4. The Class definition may be subject to change by the Court pursuant to Rule 23 of the Federal Rules.

#### **DESCRIPTION AND STATUS OF THE LAWSUIT**

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

6. On February 2, 2016, the initial complaint was filed in the Court against Defendants, asserting 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.

7. On June 3, 2016, the Court appointed Clark Miller as Lead Plaintiff pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA") and approved Kessler Topaz Meltzer & Check, LLP as Lead Counsel and Bonnett, Fairbourn, Friedman & Balint, P.C. as Liaison Counsel. On June 24, 2016, Lead Plaintiff filed the Amended Complaint for Violation of the Federal Securities Laws ("Amended Complaint").

8. On August 19, 2016, Defendants filed a motion to dismiss the Amended Complaint for failure to state a claim pursuant to Rules 9 and 12(b)(6) of the Federal Rules and pursuant to the pleading requirements of the PSLRA. Lead Plaintiff opposed Defendants' motion to dismiss on September 6, 2016.

9. 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 in the Action – the Second Amended Class Action Complaint for Violation of the Federal Securities Laws ("Second Amended Complaint"), asserting

**Questions? Call toll free 1-866-905-8102 or visit [www.InsysRXSecuritiesLitigation.com](http://www.InsysRXSecuritiesLitigation.com).**

claims under Sections 10(b) and/or 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R. § 240.10b-5.

10. On January 18, 2017, Defendants moved to dismiss the Second Amended Complaint for failure to state a claim pursuant to Rules 9 and 12(b)(6) of the Federal Rules and pursuant to the pleading requirements of the PSLRA. On February 2, 2017, Lead Plaintiff opposed Defendants' motion to dismiss. Defendants' 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.

11. Defendants filed their answer to the Second Amended Complaint on April 13, 2018, and an amended answer on May 4, 2018. Thereafter, the parties pursued discovery.

12. On August 31, 2018, Lead Plaintiff filed a motion for class certification. Defendants opposed Lead Plaintiff's motion on October 26, 2018.

13. While the parties' discovery efforts were ongoing and Lead Plaintiff's motion for class certification was pending, Insys, on June 10, 2019, notified the Court and the parties to the Action that the Company 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, and has remained stayed against Insys since that time.

14. On September 20, 2019, the Court granted Lead Plaintiff's motion to certify the Class ("Class Certification Order") against Defendants, while making clear that the Class Certification Order does not apply to Insys based upon the automatic stay provisions of 11 U.S.C. § 362(a) of the United States Code. On October 4, 2019, Defendant 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 ("Petition"). On December 18, 2019, the Ninth Circuit denied Defendant Kapoor's Petition.

15. The Action is ongoing. The parties completed discovery on November 22, 2019. Defendants filed a motion for summary judgment on December 20, 2019, asserting that Class Representative cannot 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. Class Representative opposed Defendants' motion on February 3, 2020, and Defendants filed a reply in support of their motion on February 18, 2020.

16. No court has made a ruling on the merits of Class Representative's claims or on Defendants' denials and defenses. Please note that this Notice does not describe all claims and defenses asserted by the parties. The section entitled "Where You Can Find Additional Information" describes the process by which you can obtain additional information about the Action and the claims and defenses asserted.

### **YOUR RIGHTS AS A CLASS MEMBER**

17. A class action is a type of lawsuit in which one or several individuals or entities prosecute claims on behalf of all members of a group of similarly situated individuals and entities to obtain monetary or other relief for the benefit of the entire group. Class actions avoid the necessity of each member of a class having to file his, her, or its own separate lawsuit to obtain relief. Class actions are used to decide legal and factual issues that are common to all members of a class.

18. If you purchased or otherwise acquired Insys common stock during the period from March 3, 2015, through January 25, 2016, and were damaged thereby, and you are not excluded by definition from the Class, you are a member of the Class. If you are a member of the Class, you have the right to decide whether to remain a member of the Class. If you are a member of the Class and wish to be excluded from the Class, you must request exclusion in accordance with the procedures set forth in ¶ 20 below. ***If you want to remain a member of the Class, you do not need to do anything at this time other than retain documentation reflecting your transactions in Insys common stock during the Class Period as discussed below in ¶ 19.*** Your decision is important for the following reasons:

**Questions? Call toll free 1-866-905-8102 or visit [www.InsysRXSecuritiesLitigation.com](http://www.InsysRXSecuritiesLitigation.com).**

- a. **If you choose to remain a member of the Class**, you will be bound by all past, present, and future orders and judgments in the Action, whether favorable or unfavorable. If any money is awarded to the Class, either through a settlement with Defendants or a judgment of the Court after a trial, you may be eligible to receive a share of that award. However, if you remain a member of the Class, you may not pursue a lawsuit on your own behalf with regard to any of the issues in this Action. Pursuant to Rule 23(e)(4) of the Federal Rules, it is within the Court’s discretion whether to allow a second opportunity to request exclusion from the Class if there is a settlement or a judgment in the Action after a trial; accordingly, this may be the only opportunity to request exclusion from the Class. Please note that if you remain a member of the Class, you will not be personally responsible for Class Counsel’s attorneys’ fees or costs. Class Counsel has agreed to represent the Class on a contingent fee basis, which means that it will be awarded fees and costs to be approved by the Court only if it succeeds in obtaining a recovery from one or more Defendants. Any attorneys’ fees for Class Counsel will be awarded by the Court from the settlement or judgment, if any, obtained on behalf of the Class. As a member of the Class you will be represented by Class Counsel. Alternatively, you may remain a member of the Class and elect to be represented by counsel of your own choosing. If you do retain separate counsel, you will be responsible for that attorney’s fees and expenses and that attorney must enter an appearance on your behalf by filing a Notice of Appearance with the Court and mailing it to Class Counsel at one of the addresses set forth in ¶ 26 below **on or before April 30, 2020**.
- b. **If you choose to be excluded from the Class**, you will not be bound by any orders or judgments in the Action, nor will you be eligible to share in any recovery that might be obtained in the Action. If you exclude yourself from the Class, you will retain any right you have to individually pursue any legal rights that you may have against any Defendants with respect to the claims asserted in the Action. ***Please note however, that you may be time-barred from asserting the claims covered by the Action by a statute of repose. Class Counsel offers no advice and no opinion on whether you will be able to maintain such claims.*** Please refer to ¶¶ 20-23 below if you would like to request exclusion from the Class.

19. Members of the Class will be eligible to participate in any recovery that might be obtained in the Action. While this Notice is not intended to suggest any likelihood that the Class Representative or members of the Class will obtain any recovery, should there be a recovery, members of the Class will be required to support their requests to participate in the distribution of the recovery by demonstrating their membership in the Class and documenting their purchases, acquisitions, and sales of Insys common stock, and their resulting damages. ***For this reason, please be sure to keep all records of your transactions in Insys common stock. DO NOT mail them to Class Counsel or the Administrator at this time.***

#### **HOW TO BE EXCLUDED FROM THE CLASS**

20. To exclude yourself from the Class, you must send a letter by first-class mail stating that you “request exclusion from the Class in *Di Donato v. Insys Therapeutics, Inc., et al*, No. 16-cv-00302-NVW (D. Ariz.)” Your request must state your full name, address, and telephone number and be signed by you. If you are signing on behalf of a Class member (such as an estate, corporation, or partnership), please indicate your full name and the basis of your authority to act on behalf of the Class member. Your request for exclusion must also state the amount of Insys common stock purchased, acquired, and/or sold during the Class Period, as well as the dates and prices of each such purchase, acquisition, and/or sale.

You must mail your exclusion request, ***postmarked no later than April 30, 2020***, to:

***Insys Therapeutics, Inc. Securities Litigation  
EXCLUSIONS  
c/o A.B. Data, Ltd.  
P.O. Box 173001  
Milwaukee, WI 53217***

**Questions? Call toll free 1-866-905-8102 or visit [www.InsysRXSecuritiesLitigation.com](http://www.InsysRXSecuritiesLitigation.com).**

21. You cannot exclude yourself from the Class by telephone, facsimile, or email. Requests for exclusion that do not comply with the above requirements will be invalid, unless otherwise accepted by the Court, subject to any objections of the parties to be resolved by the Court.

22. Do not request exclusion if you wish to participate in this Action as a member of the Class.

23. If you properly request exclusion from the Class, you will not be bound by any orders or judgments in the Action, but you also will not be eligible to share in any recovery that might be obtained in the Action. If you properly request exclusion from the Class, you may be entitled to pursue an individual lawsuit, claim, or remedy, if available, which you may have, at your own expense. Please note, if you decide to exclude yourself from the Class, you may be time-barred from asserting the claims covered by the Action by a statute of repose. *Class Counsel offers no advice and no opinion on whether you will be able to maintain such claims.*

### **HOW TO OBJECT TO THE MOTION TO VOLUNTARILY DISMISS INSYS**

24. As noted above, Class Representative has requested voluntary dismissal with prejudice of the claims asserted against Insys in this Action. Insys filed a chapter 11 bankruptcy petition in the United States Bankruptcy Court for the District of Delaware, Case No. 19-11292-KG (Bankr. D. Del.). Accordingly, Class Representative's claims against Insys were and have been automatically stayed pursuant to 11 U.S.C. § 362(a)(1) of the United States Code. The voluntary dismissal of Insys will not dismiss any claims against any of the other Defendants in the Action.

25. Should any member of the Class wish to object to the pending motion to voluntarily dismiss Insys from the Action with prejudice, such objection, including the basis for the objection, must be mailed by **no later than April 30, 2020** to Class Counsel, Kessler Topaz Meltzer & Check, LLP, Attn. Johnston de F. Whitman, Jr., Esq., 280 King of Prussia Road, Radnor, PA 19087. Class Counsel will file any objections received with the Court.

### **CLASS COUNSEL**

26. The Court appointed the law firm of Kessler Topaz Meltzer & Check, LLP as Class Counsel. If you have any questions concerning the matters raised in this Notice, you may contact Class Counsel, as follows:

#### **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](mailto:info@ktmc.com)  
[www.ktmc.com](http://www.ktmc.com)

27. As noted above, unless you elect to retain your own personal lawyer, if you remain in the Class, you will not have any direct obligations to pay the costs of the litigation. If there is a recovery by the Class in this Action, all costs

**Questions? Call toll free 1-866-905-8102 or visit [www.InsysRXSecuritiesLitigation.com](http://www.InsysRXSecuritiesLitigation.com).**

and expenses of the Action, including Class Counsel's attorneys' fees, will be paid from that recovery in an amount approved by the Court.

28. If you want to be represented by your own lawyer, you may hire one at your own expense. If you do retain your own lawyer, such counsel must enter an appearance on your behalf by filing a Notice of Appearance with the Clerk of the Court at the United States District Court for the District of Arizona, Sandra Day O'Connor U.S. Courthouse, 401 W. Washington Street, Phoenix, AZ 85003, **on or before April 30, 2020**. Your Notice of Appearance must also be mailed to Class Counsel at one of the addresses set forth in ¶ 26 above, **on or before April 30, 2020**.

**PLEASE KEEP YOUR ADDRESS CURRENT**

29. To assist the Court and the parties in maintaining an accurate list of Class members, you are requested to mail notice of any changes in your address to:

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

30. If you received a Postcard Notice relating to this Action in the mail and that Postcard Notice was forwarded to you by the postal service, or if it was otherwise sent to you at an address that is not current, you should immediately contact the Administrator, A.B. Data, Ltd., at the address above, by email at [info@InsysRXSecuritiesLitigation.com](mailto:info@InsysRXSecuritiesLitigation.com), or by toll-free phone at (866) 905-8102 and provide them with your correct address. If the Administrator does not have your correct address, you may not receive notice of important developments in the Action.

**WHERE YOU CAN FIND ADDITIONAL INFORMATION**

31. This Notice provides only a summary of the lawsuit and the claims asserted by the Class Representative. For more detailed information regarding the Action, you may contact Class Counsel or visit [www.InsysRXSecuritiesLitigation.com](http://www.InsysRXSecuritiesLitigation.com). You may also contact the Administrator by email at [info@InsysRXSecuritiesLitigation.com](mailto:info@InsysRXSecuritiesLitigation.com), or by toll-free phone at (866) 905-8102.

32. Complete copies of the pleadings, orders, and other documents filed in this Action are available at <http://www.pacer.gov> or at the office of the Clerk of the Court, United States District Court for the District of Arizona, located at the Sandra Day O'Connor U.S. Courthouse, 401 W. Washington Street, Phoenix, AZ 85003, under Case No. 16-cv-00302-NVW.

**PLEASE DO NOT CALL OR WRITE THE COURT OR CLERK OF THE COURT  
REGARDING THIS NOTICE.**

**NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

33. If, for the beneficial interest of any person or entity other than yourself, you purchased or otherwise acquired Insys common stock during the period from March 3, 2015, through January 25, 2016, you MUST EITHER: (i) WITHIN SEVEN (7) CALENDAR DAYS of receipt of this Notice, request from the Administrator sufficient copies of the Postcard Notice to forward to all such beneficial owners and WITHIN SEVEN (7) CALENDAR DAYS of receipt of those Postcard Notices forward them to all such beneficial owners; or (ii) WITHIN SEVEN (7) CALENDAR DAYS of receipt of this Notice, provide a list of the names and addresses (and email addresses, if available) of all such beneficial owners to the Administrator at *Insys Therapeutics, Inc. Securities Litigation*, c/o A.B. Data, Ltd., P.O. Box 170999, Milwaukee, WI 53217. If you choose the first option, YOU MUST send a statement to the Administrator confirming that the mailing was made and YOU MUST retain your mailing records for use in connection with any further notices that may be provided in the Action. If you choose the second option, the Administrator will send a copy of the Postcard Notice to the beneficial owners. Upon FULL AND TIMELY compliance with these directions, such nominees may seek reimbursement of their

**Questions? Call toll free 1-866-905-8102 or visit [www.InsysRXSecuritiesLitigation.com](http://www.InsysRXSecuritiesLitigation.com).**

reasonable expenses actually incurred by providing the Administrator with proper documentation supporting the expenses for which reimbursement is sought.

DATED: April 3, 2020

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

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

**COURT-APPROVED NOTICE REGARDING**  
*Insys Therapeutics, Inc. Securities Litigation*

Questions? Call toll free 1-866-905-8102 or visit [www.InsysRXSecuritiesLitigation.com](http://www.InsysRXSecuritiesLitigation.com).