

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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In re : **Chapter 11**
:
INSYS THERAPEUTICS, INC., et al., : **Case No. 19-11292 (JTD)**
:
Debtors. : **Jointly Administered**
:
: **Re: D.I. 1201**
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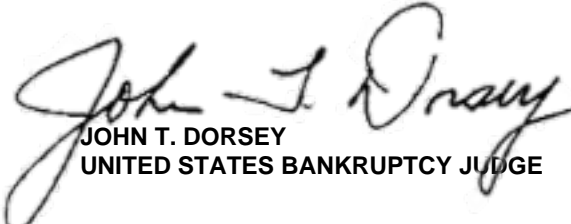
**ORDER APPROVING STIPULATION AND AGREEMENT
BETWEEN DEBTORS AND PHARMACEUTICAL RESEARCH
ASSOCIATES, INC. REGARDING TREATMENT OF CERTAIN CLAIMS**

Upon consideration of the *Stipulation and Agreement between Debtors and Pharmaceutical Research Associates, Inc. Regarding Treatment of Certain Claims* (the “**Stipulation**”), a copy of which is attached hereto as **Exhibit 1**; and the Court having jurisdiction to consider the Stipulation pursuant to 28 U.S.C. § 1334; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Stipulation is hereby approved.
2. Immediately upon the entry of this Order, the Stipulation shall become effective.
3. The Debtors, Pharmaceutical Research Associates, Inc., and the Debtors’ claims and noticing agent are authorized to take any and all actions reasonably necessary to implement and effectuate the terms of the Stipulation.
4. This Court retains jurisdiction over all matters arising from or related to the implementation or interpretation of this Order.

Dated: February 19th, 2020
Wilmington, Delaware



JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Stipulation

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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In re : **Chapter 11**
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INSYS THERAPEUTICS, INC., et al., : **Case No. 19-11292 (JTD)**
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Debtors.¹ : **Jointly Administered**
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**STIPULATION AND AGREEMENT
BETWEEN DEBTORS AND PHARMACEUTICAL RESEARCH
ASSOCIATES, INC. REGARDING TREATMENT OF CERTAIN CLAIMS**

Insys Therapeutics, Inc. (“**Insys**”) and its affiliated debtors in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), as debtors and debtors in possession (collectively, the “**Debtors**”), on the one hand, and Pharmaceutical Research Associates, Inc. (“**PRA**,” and, together with the Debtors, the “**Parties**”) on the other hand, hereby enter into this stipulation (the “**Stipulation**”) and agree as follows:

RECITALS

A. On November 30, 2015, the Parties executed the “Master Agreement for Clinical Trials Management Services” (the “**Master Agreement**”). Pursuant to the Master Agreement, PRA agreed to perform certain Services in accordance with “**Task Orders**” entered into from time to time by the Parties. The relevant Task Orders set out PRA’s services requested by the Debtors’ regarding the Debtors’ clinical trials and studies on the effects of certain pharmaceutical products in pediatric patients with treatment-resistant childhood absence seizures (the “**Services**”).

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Insys Therapeutics, Inc. (7886); IC Operations, LLC (9659); Insys Development Company, Inc. (3020); Insys Manufacturing, LLC (0789); Insys Pharma, Inc. (9410); IPSC, LLC (6577); and IPT 355, LLC (0155). The Debtors’ mailing address is 3100 West Ray Road Ste. 201, Chandler, Arizona 85226.

B. The terms of the Master Agreement and the Task Orders (together with all supplements, amendments, or modifications thereto, the “**PRA Agreements**”), required the Debtors to: (1) pay for the Services performed by PRA at the time and frequency set forth in the payment schedules detailed in each Task Order; (2) advance payments owed to third parties responsible for conducting the requested clinical trials at the designated investigative sites (the “**Investigator Grants**”); and (3) advance payments, exclusive of Investigator Grants, for estimated pass-through expenses of goods and services including, but not limited to, third-party vendor costs, and travel expenses (the “**Pass-Through Advances**”). PRA retains the Investigator Grants and the Pass-Through Advances until completion of the Services contemplated by the applicable PRA Agreements, and thereafter, any Investigator Grants or Pass-Through Advances remaining after a final reconciliation in accordance with the PRA Agreements are refunded to the Debtors within thirty (30) days from the date of such final reconciliation.

C. On June 10, 2019 (the “**Petition Date**”), the Debtors each commenced with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) a voluntary case under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”).

D. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered for procedural purposes pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1.

E. On June 20, 2019, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors (the

“**Creditors’ Committee**”) in the Chapter 11 Cases. No chapter 11 trustee or examiner has been appointed in the Chapter 11 Cases.

F. After the Petition Date and at the Debtors’ direction, PRA began the process of winding-down its Services under the PRA Agreements and paying all associated wind-down costs. The Debtors have not made any post-petition payments to PRA.

G. The Debtors assert a claim against PRA, as of the Petition Date, for prepetition Investigator Grants in the aggregate amount of \$339,972.99 (the “**Prepetition Investigator Grants**” and the claim, the “**Debtors’ Claim**”) that have not been refunded to the Debtors.

H. As of September 13, 2019, PRA asserts a general unsecured claim for amounts due under the PRA Agreements totaling \$833,928.11 (*see* Proof of Claim No. 10327, the “**PRA General Unsecured Claim**”). PRA also asserts an administrative expense claim in an amount of no less than \$381,633.81 on account of post-petition Services and post-petition wind-down costs (the “**PRA Administrative Expense Claim**,” and, together with the PRA General Unsecured Claim, the “**PRA Claims**”). Prior to entering into this Stipulation, PRA submitted documentation to the Debtors supporting the PRA Administrative Expense Claim. PRA asserts it has a right to set off the PRA Claims against the Debtors’ Claim under applicable law.

I. On January 16, 2020, the Court entered an order confirming the *Second Amended Joint Chapter 11 Plan of Liquidation of Insys Therapeutics, Inc. and Its Affiliated Debtors* [D.I. 1095] (as amended or modified, the “**Plan**”). The Debtors anticipate the Plan going effective in the near term and, pursuant to section 8.1 of the Plan, on the Effective Date (as defined by the Plan) of the Plan each executory contract not previously rejected, assumed, or assumed and assigned, except as otherwise provided in the Plan, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code.

J. The Parties have negotiated in good faith and at arms-length, and desire to resolve the treatment of the PRA Claims and the Debtors' Claim in accordance with the terms of this Stipulation. The Debtors have consulted with counsel to the Creditors' Committee and the U.S. Trustee on the terms of this Stipulation, and neither party objects to the terms of this Stipulation.

NOW, THEREFORE, UPON THE FOREGOING RECITALS, WHICH ARE INCORPORATED AS THOUGH FULLY SET FORTH HEREIN, IT IS HEREBY STIPULATED AND AGREED, BY AND BETWEEN THE PARTIES, THAT

1. The Stipulation shall have no force or effect unless and until the date it is approved by the Bankruptcy Court (the "**Stipulation Effective Date**") pursuant to an order of the Bankruptcy Court (the "**Stipulation Order**").

2. Upon the Effective Date (as defined in the Plan), all PRA Agreements shall be rejected by the Debtors pursuant to sections 365 and 1123 of the Bankruptcy Code, with such rejection deemed as of the Effective Date.

3. Accordingly, on the Stipulation Effective Date, the PRA General Unsecured Claim will be reduced from \$833,928.11 and allowed in the aggregate amount of \$595,189.59 (the "**Allowed PRA General Unsecured Claim**"). PRA authorizes the Debtors to provide a copy of the Stipulation Order to the Claims Agent with instructions to update the claims registry accordingly.

4. On the Stipulation Effective Date, in full and final resolution of the Debtors' Claim and the PRA Administrative Claim, PRA shall retain the entirety of the Prepetition Investigator Grants and, within fourteen days of the Stipulation Effective Date, the Debtors shall remit to PRA \$71,660.82 in full and final satisfaction of the PRA Administrative Expense Claim. The Debtors shall owe no further and other post-petition administrative amounts to PRA on account of or arising under the PRA Agreements.

5. In consideration of the mutual agreements and covenants contained herein, and except to the extent of the duties and obligations set forth in the Stipulation and required of the Parties, upon the Stipulation Effective Date, the Parties each expressly knowledgeable waive and mutually release and forever discharge one another, their respective affiliates, predecessors in interest, successors, trustees, shareholders, members, directors, officers, affiliates, employees, agents, attorneys, advisors, consultants, professionals, designees (including any professionals retained by such persons), and assigns in their capacities as such, of any and all liabilities, obligations, claims (with the limited exception of any claims that are not related to the PRA Agreements or the PRA Claims that the Debtors may have arising under chapter 5 of the Bankruptcy Code that the Debtors and/or the Liquidating Trustee, on behalf of the Debtors, may seek to bring), defenses, rights, causes of action, choses in action, setoffs, recoupments and demands of any kind whatsoever, at law or in equity, direct or indirect, known or unknown, discovered or undiscovered, asserted or unasserted, fixed or contingent, liquidated or unliquidated, relating in any way whatsoever to the Debtors' Claim, the Debtors' rejection of the PRA Agreements pursuant to the Plan, the PRA Administrative Expense Claim, the PRA Agreements (except as they relate to the Allowed PRA General Unsecured Claim), and any transactions or courses of dealing between the Parties during the Chapter 11 Cases. For the avoidance of doubt, the releases set forth in this paragraph 5 do not apply to PRA's right to receive a distribution in accordance with the Plan for the Allowed PRA General Unsecured Claim.

6. This Stipulation does not constitute any admission of fact, liability, and wrongdoing of any kind by either of the Parties against the other, or any other party, person, or entity for any purpose.

7. This Stipulation constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof and, except as otherwise expressly provided herein, are not intended to confer upon any other person any rights or remedies hereunder. This Stipulation is intended to and shall be construed without regard to any presumption or other rule of construction against the drafter.

8. The undersigned persons represent and warrant that they have full authority to execute this Stipulation and that the respective Parties have full knowledge of and have consented to this Stipulation.

9. This Stipulation may be executed in counterparts, any of which may be transmitted by facsimile or electronic mail, and each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

10. This Stipulation shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to principles of conflicts of laws.

11. The Bankruptcy Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Stipulation.

Dated: February 18, 2020
Wilmington, Delaware

INSYS THERAPEUTICS, INC. AND ITS
AFFILIATED DEBTORS AND DEBTORS IN
POSSESSION

PHARMACEUTICAL RESEARCH
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