

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re

INSYS THERAPEUTICS, INC., *et al.*

Debtors.¹

INSYS THERAPEUTICS, INC., *et al.*

Plaintiffs,

– against –

STATE OF ARIZONA, *ex. rel.* Mark Brnovich, Attorney General; STATE OF FLORIDA, Office of the Attorney General, Department of Legal Affairs; COMMONWEALTH OF KENTUCKY, *ex. rel.* Andy Beshear, Attorney General; STATE OF MARYLAND; STATE OF MINNESOTA, by its Attorney General Lori Swanson, and Minnesota Board of Pharmacy; Gurbir Singh Grewal, Attorney General of New Jersey, on behalf of the STATE OF NEW JERSEY; and Sharon M. Joyce, acting director of the New Jersey State of Consumer Affairs State of New Jersey; STATE OF NEW MEXICO, *ex. rel.*, Hector Balderas, Attorney General; STATE OF NEW YORK; STATE OF NORTH CAROLINA; STATE OF RHODE ISLAND; CITY OF PRESCOTT; STATE OF ARKANSAS, *ex. rel.* Scott Ellington *et al.*; CITY OF SANTA ANA, and the People of the State of California, by and through Santa Ana Attorney Sonia R. Carvalho; CITY OF NEW HAVEN; CITIES OF ANSONIA, DANBURY, DERBY, NORWALK; TOWNS OF STRATFORD, BERLIN, MIDDLEBURY, PROSPECT, SEYMOUR, WOLCOTT, BETHLEHEM, NEW MILFORD, ROXBURY, COVENTRY; CITY OF NEW BRITAIN; TOWN OF WALLINGFORD;

Chapter 11

Case No. 19-11292 (KG)

Joint Administration Requested

Adv. Pro. No. 19-50261 (KG)

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 1333 South Spectrum Blvd #100, Chandler, Arizona 85286.

CITY OF MIDDLETOWN; TOWN OF WETHERSFIELD; LA SALLE COUNTY; CITY OF MANDERVILLE; CITY OF WORCESTER; CITY OF BOSTON, BOSTON PUBLIC HEALTH COMMISSION, BOSTON HOUSING AUTHORITY; TOWN OF WAKEFIELD; CITY OF FRAMINGHAM; CITY OF SALEM; CITY OF HAVERHILL; CITY OF GLOUCESTER; TOWN OF LYNNFIELD; TOWN OF CANTON; CITY OF SPRINGFIELD; CITY OF CHICOPEE; TOWN OF NATICK; TOWN OF WELLFLEET; CITY OF BALTIMORE; ANNE ARUNDEL COUNTY; CITY OF STERLING HEIGHTS; CHARTER TOWNSHIP OF HARRISON; CITY OF WARREN; COUNTY OF BURLINGTON; CLARK COUNTY; CITY OF RENO; COUNTY OF NASSAU; SUFFOLK COUNTY; CITY OF YONKERS; BOARD OF COUNTY COMMISSIONERS OF CLEVELAND COUNTY; COUNTY OF NORTHUMBERLAND; COUNTY OF ANDERSON; COUNTY OF BAMBERG; COUNTY OF BARNWELL; COUNTY OF COLLETON; COUNTY OF CHEROKEE; COUNTY OF OCONEE; COUNTY OF LEXINGTON; COUNTY OF ALLENDALE; COUNTY OF HAMPTON; COUNTY OF JASPER; COUNTY OF KERSHAW; FAIRFIELD COUNTY; GREENWOOD COUNTY; COUNTY OF LAURENS; COUNTY OF UNION; COUNTY OF YORK; COUNTY OF GREENVILLE; COUNTY OF DORCHESTER; COUNTY OF PICKENS; COUNTY OF SPARTANBURG; COUNTY OF ORANGEBURG; COUNTY OF LEE; COUNTY OF CHESTERFIELD; COUNTY OF BEAUFORT; COUNTY OF WILLIAMSBURG; COUNTY OF EDGEFIELD; COUNTY OF MCCORMICK; COUNTY OF SUMTER; COUNTY OF FLORENCE; COUNTY OF AIKEN; DILLON COUNTY; LANCASTER COUNTY; COUNTY OF MARION; COUNTY OF CALHOUN; COUNTY OF HORRY; ABBEVILLE COUNTY; COUNTY OF SALUDA; COUNTY OF CLARENDON; SHELBY COUNTY; COUNTY OF BEXAR; COUNTY OF BURLESON; COUNTY OF CAMERON; COUNTY OF EL PASO; COUNTY OF

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Government Defendants.

DECLARATION OF ANDREW G. LONG IN SUPPORT OF DEBTORS' MOTION FOR A PRELIMINARY INJUNCTION PURSUANT TO 11 U.S.C. § 105(a) AND MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 502(c) ESTABLISHING PROCEDURES AND SCHEDULE FOR ESTIMATION PROCEEDINGS

I, Andrew G. Long, pursuant to section 1746 of title 28 of the United States Code, hereby declare that the following is true to the best of my knowledge, information, and belief:

1. I am the Chief Executive Officer of Insys Therapeutics, Inc. (“**Insys**,” and collectively with its above-captioned debtor affiliates, the “**Debtors**”) and have served in this capacity since being appointed to it on April 15, 2019. Prior to this position, I was the Chief Financial Officer of Insys since August 2017. Prior to joining Insys, I served as Senior Vice President of Global Finance at Patheon for one and a half years, and Vice President of Finance for multiple divisions at Thermo Fisher Scientific for over nine years. I have over three decades of experience in the life sciences, bio-pharma, and industrial sectors.

2. I submit this declaration (the “**Declaration**”) in support of the Debtors’ Motion for a Preliminary Injunction Pursuant to 11 U.S.C. § 105(a) (“**Preliminary Injunction**”).

Motion”) and Motion for Entry of an Order Pursuant to 11 U.S.C. § 105(a) and 502(c) Establishing Procedures and Schedule for Estimation Proceedings (“**Estimation Motion**”).²

3. I am generally familiar with the Debtors’ day-to-day operations, books and records, and business and financial affairs. Except as otherwise indicated herein, the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, my discussion with other members of the Debtors’ senior management, information provided to me by employees working under my supervision, or my opinion based upon experience, knowledge, and information concerning the operations of the Debtors and the pharmaceutical industry. If called upon to testify, I would testify competently to the facts set forth in this Declaration. I am authorized to submit this Declaration on behalf of the Debtors.

I. OVERVIEW OF THE DEBTORS’ SUBSYS BUSINESS

4. The Debtors are a specialty pharmaceutical company that develops (including preclinical and clinical trials and studies) and commercializes certain drugs and novel drug delivery systems for targeted therapies to improve patients’ quality of life. The Debtors’ business focuses on the research and development, manufacture, marketing, and sales in support of these drugs and drug delivery systems.

5. The Debtors currently have two commercially marketed products: SUBSYS® (“**Subsys**”) and SYNDROS®.

² The complete title of the Estimation Motion is The Motion of Debtors for (I) Entry of Orders Pursuant to 11 U.S.C. § 105(a) and 502(c) (A) Establishing Procedures and Schedule for Estimation Proceedings and (B) Estimating Debtors’ Aggregate Liability for Certain Categories of Unliquidated Claims, (II) Entry of Protective Order, and (III) Subordination of Certain Penalty Claims.

6. Subsys is an opioid pain medication indicated for the management of breakthrough pain in cancer patients 18 years of age and older who are already receiving and who are tolerant to around-the-clock opioid therapy for their underlying persistent cancer pain.

7. Subsys is the first and only breakthrough cancer pain medication approved by the U.S. Food and Drug Administration (“**FDA**”) offered as a sublingual spray that delivers fentanyl to patients. Subsys is an opioid agonist absorbed beneath the tongue that can provide pain relief in as little as five minutes. Subsys was launched as a commercial product in March 2012.

8. According to data available to Debtors through the Transmucosal Immediate Release Fentanyl (“**TIRF**”) Risk Evaluation and Mitigation System (“**REMS**”)³ Access Program, from March 2012 to May 7, 2019, approximately 206,741 prescriptions of Subsys were dispensed.

9. Beginning in 2017, Insys and numerous other opioid manufacturers, distributors, and retailers have faced an onslaught of litigation in connection with their marketing and sale of opioid products (“**Opioid Litigation**”).

10. Some of the litigation the Debtors are facing is common to all opioid manufacturers, while other claims are based on particular activities of the Debtors’ former executives, a number of whom either pled guilty to, or were convicted after trial of, federal crimes relating to such activities. The expenses and settlement costs resulting from such litigation have been substantial, consuming large portions of the Debtors’ revenue and liquidity.

11. Through its “speaker program,” Insys paid healthcare professionals to make presentations to doctors promoting Subsys and providing information on its appropriate uses and

³ The TIRF REMS program is an FDA-required program designed to ensure informed risk-benefit decisions before initiating treatment, and while patients are being treated, to ensure appropriate use of TIRF medications.

dosage levels. In some circumstances, there were no appropriate attendees and/or no presentation was actually given. Insys terminated the Subsys speaker program in early 2018 and does not currently have, and has no plan to reinstate, any program that involves compensating outside “speakers” in relation to Subsys.

12. The Insys Reimbursement Center (later called the Patient Services Center or Patient Services Hub) was a prior authorization unit created by Insys that, at times, allegedly employed a number of misleading tactics to secure authorization for Subsys prescriptions from insurers. Insys stopped conducting in-house prior authorizations in early 2017 and does not currently have, and has no plan to reinstate, any practice by which its personnel make direct contact with insurance companies to secure authorizations for Subsys prescriptions.

13. In light of these now-terminated practices, and the recent criminal convictions of a number of former officers and employees, Insys has taken significant steps to address allegations of past wrongdoing, including establishing and maintaining an effective compliance program and an overhaul of key personnel (as described below), and has focused extensively since then on instilling the highest respect for fundamentally sound values among all of its employees.

14. As previously indicated, I joined Insys in August 2017. Insys’s General Counsel, and the heads of Commercial, Human Resources, and Clinical Development are also all new to the company since July 2017, along with nearly all of the independent directors on the Board. In addition, most of the management team and the commercial organization, which includes Insys’s sales force, is new to the company since 2015.

15. Insys currently trains all of its sales representatives to promote Subsys only for use consistent with its FDA-approved label, including with respect to titration and side effects

for each patient. Sales representatives are specifically trained to not promote Insys for any off-label use. Further, Insys's sales force is prohibited from promoting Subsys to a prescriber unless that prescriber (a) has all state and federal licenses required to prescribe Subsys, and (b) is enrolled in the TIRF REMS program or is an oncologist.

16. If a sales representative seeks to promote Subsys to a non-oncologist member of the TIRF REMS programs, the sales representative must first inquire into whether the prescriber treats, and then form, at the minimum, a reasonable belief that the prescriber is likely to treat patients for cancer pain. Unless the prescriber treats patients for cancer pain, or the sales representative forms a reasonable belief that the prescriber is likely to treat patients for cancer pain, the sales representative is strictly prohibited from promoting Subsys to that prescriber.

17. On June 5, 2019, Insys entered into a Corporate Integrity Agreement and Conditional Exclusion Release ("CIA") with the Office of Inspector General of the United States Department of Health and Human Services under which Insys has agreed to establish and maintain, for a period of five years, an extensive program intended to promote compliance with the statutes, regulations, and written directives of Medicare, Medicaid, and all other Federal health care programs and with the statutes, regulations, and written directives of the FDA. For example, the compliance program mandated under the CIA includes the appointment of a compliance officer and compliance committee, board compliance obligations, the establishment of written standards, and training and education requirements, among other elements. Among other conduct, Insys has agreed under the CIA to cease all payments to prescribers and non-Insys employee physicians for participating in any speaker programs and related activities in connection with any Insys product. Insys intends to fully implement and execute the compliance program in accordance with the terms of the CIA.

18. In addition, under the CIA, Insys has agreed to stop all marketing and promotion of Subsys upon the earlier of a sale or 90 days from the effective date of the CIA. Therefore, the Debtors expect that all activity related to the sale and marketing of Subsys will necessarily cease by mid-September, 2019.

II. DEBTORS' STRATEGY TO MAXIMIZE RECOVERY FOR STAKEHOLDERS

19. The Debtors commenced these chapter 11 cases to maximize recoveries for their stakeholders. To advance that goal, the Debtors are seeking to execute a three-step strategy by: (i) maximizing the value of their enterprise through exploring sales of their assets and pursuing affirmative causes of action; (ii) preserving funds by seeking a stay of burdensome and asset-consuming litigation; and (iii) further preserving funds by limiting their time in chapter 11 through estimation of categories of claims to facilitate confirmation of a plan.

20. The first prong of the strategy is aimed at increasing the cash value of the saleable assets of the Debtors. Specifically, the Debtors are filing with their petitions a global bidding procedures and sale motion to sell Subsys and the Debtors' other products, to permit a flexible and expeditious postpetition sale process. Upon the sale of Subsys, which is expected to close by the end of August, 2019, or, under the terms of the CIA, by mid-September 2019 at the latest, the Debtors will cease all activity related to the sale and marketing of Subsys.

21. By contrast, the second and third prongs will preserve as much of the enterprise value as possible to pay claimants, rather than using estate assets to fund unnecessary chapter 11 and other legal costs. Contemporaneously with the Preliminary Injunction Motion and the Estimation Motion, the Debtors are also filing a motion to establish a deadline and procedures for filing proofs of claim ("**Bar Date Motion**") to secure this overall goal.

22. In combination, the Bar Date Motion and Estimation Motion target the third component of the Debtors' overall strategy: implementing an efficient process that enables the

Debtors (and their creditors) to fix aggregate amounts of particular categories of claims on an expedited basis. The proposed process is intended to enable the Debtors to propose a confirmable chapter 11 plan and make distributions to creditors sooner than any other option available to the Debtors. Although the Debtors resolved certain claims relating to Subsys prepetition, including all civil and criminal claims of the U.S. government,⁴ the relief sought in the Estimation Motion is critical because the sheer numbers and types of claims made prepetition settlement of all the claims impossible.

III. IMPACT OF ACTIVE LITIGATION ON DEBTORS' RESOURCES

23. The Debtors are currently defendants in approximately 1,000 lawsuits related to the marketing and sale of Subsys. Specifically, certain states' attorneys general, certain municipalities, personal injury plaintiffs, and insurance providers have asserted claims against Insys arising out of the marketing and sale of Subsys ("**Subsys Claims**"). Through the Preliminary Injunction Motion, the Debtors seek to stay a subset of Subsys Claims brought by government entities that are currently active, to the extent those claims are not subject to the automatic stay.

24. The cost of litigating the Government Actions has taxed and, absent a stay, will continue to tax the Debtors' limited financial resources. The Debtors anticipate that, should the cases proceed, legal spend will increase substantially because of significant activity expected to occur in the near term in certain of the pending actions. For instance, as discussed below in more detail, trials in three of the Government Actions are currently scheduled to begin in the next six months. The legal expense associated with defending the Debtors in a single trial proceeding

⁴ Indeed, the Debtors were also successful prepetition in resolving claims of Humana, Illinois, Massachusetts, New Hampshire, Oregon, and three personal injury plaintiffs.

can exceed \$10 million, with the trial itself accounting for approximately one-third to one-half of that figure.

25. Based upon historical spend, knowledge of upcoming activity expected to take place in the Government Actions, and legal expense budgeting forecasts, the Debtors anticipate that, absent a stay, they would spend approximately \$8,500,000 to \$9,000,000 in defending these and other government actions from June through December, 2019. With the stay, the Debtors anticipate a significant savings of \$1,000,000 to \$1,500,000 per month.

26. As of the Petition Date, the Debtors have under \$40,000,000 in cash on hand. The Debtors are, and will continue, losing money. The Debtors are hopeful that the upfront portion of the bids they receive by the end of July, 2019 will provide sufficient liquidity to get through these chapter 11 cases and make a distribution to creditors. However, until the results of the sale process, which is expected to conclude by the end of August, 2019, are known, preserving liquidity is particularly important.

27. In light of these facts, absent a stay, the Debtors expect that the costs they would incur in continuing to litigate the Government Actions would have a material impact on the Debtors' liquidity.

A. MDL

28. The first trial in the MDL, of the Track One bellwether cases brought by Summit County and Cuyahoga County, Ohio, is scheduled to begin on October 21, 2019 and is expected to last seven weeks. The Debtors' MDL counsel, Holland & Knight LLP ("Holland & Knight"), is actively engaged in fact and expert discovery, and will soon be required to begin preparation for trial, including drafting direct and cross examinations, fact and expert witness preparation, and various other tasks essential to meeting pre-trial deadlines.

29. For instance, pursuant to the MDL Court's Civil Jury Trial order filed May 1, 2019 [Doc #1598], the deadline for filing dispositive and *Daubert* motions is June 28, 2019, the deadline to exchange witness lists and proposed trial exhibits is September 11, 2019, and the deadline for filing motions *in limine* and trial briefs is September 25, 2019. In addition to the work necessary to prepare its defense on behalf of Insys, Holland & Knight is actively engaged in work as part of the joint defense group on behalf of the manufacturer defendants in the MDL, which aims to consolidate tasks, such as research and briefing, among various defendants for purposes of efficiency.

30. The active cases in the MDL are creating significant demands on the Debtors' resources and, absent a stay, will result in increased legal fees and expenses in the coming weeks and months.

B. Maryland Attorney General Action

31. In the action brought against Insys by the Consumer Protection Division of the Office of the Attorney General of Maryland, a hearing before an administrative law judge is scheduled to take place over approximately 35 days spread across August, 2019 – January, 2020, with closing arguments and post-hearing briefs in February and March, 2020. Moreover, there are a number of impending pre-hearing deadlines, including filing expert disclosures and pre-trial motions by July 15, 2019.

32. The Maryland action is creating a significant demand on the Debtors' resources and, absent a stay, will result in increased legal fees and expenses in the coming weeks and months.

C. Minnesota Board of Pharmacy Action

33. In the proceeding brought against Insys by the Minnesota Board of Pharmacy, a hearing is scheduled to take place before an administrative law judge from September 2–13, 2019.

34. As with the actions discussed above, counsel representing the Debtors in the Minnesota action is engaged in preparation for the hearing and in work required to meet several impending pre-hearing deadlines. Pursuant to the governing scheduling order, the discovery period is set to close July 8, 2019. Expert witness statements must be served by July 17, dispositive motions must be filed by July 26, a prehearing conference is set for August 9, and motions *in limine* must be filed by August 26. The parties must also submit trial briefs and Proposed Findings of Fact and Conclusions of Law prior to the hearing.

35. Absent a stay, the Minnesota action will result in increased legal fees and expenses in the coming weeks and months.

D. Continuing to Litigate Will Result in Distraction and Delay

36. In addition to the significant costs associated with defending the Government Actions, the ongoing litigation also requires me and other senior management to divert time and attention away from our primary focus, maximizing the value of the Debtors' estates for purposes of these chapter 11 proceedings. Given the activity expected to take place in these cases over the next six months, if allowed to proceed, the Government Actions will almost certainly result in increased demands on the time and focus of the Debtors' senior management in the near term.

37. Notwithstanding the subset of active Government Actions rapidly progressing towards trial, resulting in significant legal expenses, many of the approximately 1,000

Subsys Claims are still in their nascent stages. Waiting for these claims to be resolved through litigation will impede the Debtors' ability to formulate, confirm, and implement a plan—materially reducing the value of these estates and the recoveries of creditors and other stakeholders. The Debtors therefore seek to stay the Government Actions and use estimation as a tool to avoid wasteful delay in the administration of the Debtors' estates and to maximize recoveries for all claimants.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of June, 2019

/s/ Andrew G. Long
Andrew G. Long
Chief Executive Officer

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4. The Debtors are a specialty pharmaceutical company that develops (including preclinical and clinical trials and studies) and commercializes certain drugs and novel drug delivery systems for targeted therapies to improve patients’ quality of life. The Debtors’ business focuses on the research and development, manufacture, marketing, and sales in support of these drugs and drug delivery systems.

5. The Debtors currently have two commercially marketed products: SUBSYS® (“**Subsys**”) and SYNDROS®.

² The complete title of the Estimation Motion is The Motion of Debtors for (I) Entry of Orders Pursuant to 11 U.S.C. § 105(a) and 502(c) (A) Establishing Procedures and Schedule for Estimation Proceedings and (B) Estimating Debtors’ Aggregate Liability for Certain Categories of Unliquidated Claims, (II) Entry of Protective Order, and (III) Subordination of Certain Penalty Claims.

6. Subsys is an opioid pain medication indicated for the management of breakthrough pain in cancer patients 18 years of age and older who are already receiving and who are tolerant to around-the-clock opioid therapy for their underlying persistent cancer pain.

7. Subsys is the first and only breakthrough cancer pain medication approved by the U.S. Food and Drug Administration (“**FDA**”) offered as a sublingual spray that delivers fentanyl to patients. Subsys is an opioid agonist absorbed beneath the tongue that can provide pain relief in as little as five minutes. Subsys was launched as a commercial product in March 2012.

8. According to data available to Debtors through the Transmucosal Immediate Release Fentanyl (“**TIRF**”) Risk Evaluation and Mitigation System (“**REMS**”)³ Access Program, from March 2012 to May 7, 2019, approximately 206,741 prescriptions of Subsys were dispensed.

9. Beginning in 2017, Insys and numerous other opioid manufacturers, distributors, and retailers have faced an onslaught of litigation in connection with their marketing and sale of opioid products (“**Opioid Litigation**”).

10. Some of the litigation the Debtors are facing is common to all opioid manufacturers, while other claims are based on particular activities of the Debtors’ former executives, a number of whom either pled guilty to, or were convicted after trial of, federal crimes relating to such activities. The expenses and settlement costs resulting from such litigation have been substantial, consuming large portions of the Debtors’ revenue and liquidity.

11. Through its “speaker program,” Insys paid healthcare professionals to make presentations to doctors promoting Subsys and providing information on its appropriate uses and

³ The TIRF REMS program is an FDA-required program designed to ensure informed risk-benefit decisions before initiating treatment, and while patients are being treated, to ensure appropriate use of TIRF medications.

dosage levels. In some circumstances, there were no appropriate attendees and/or no presentation was actually given. Insys terminated the Subsys speaker program in early 2018 and does not currently have, and has no plan to reinstate, any program that involves compensating outside “speakers” in relation to Subsys.

12. The Insys Reimbursement Center (later called the Patient Services Center or Patient Services Hub) was a prior authorization unit created by Insys that, at times, allegedly employed a number of misleading tactics to secure authorization for Subsys prescriptions from insurers. Insys stopped conducting in-house prior authorizations in early 2017 and does not currently have, and has no plan to reinstate, any practice by which its personnel make direct contact with insurance companies to secure authorizations for Subsys prescriptions.

13. In light of these now-terminated practices, and the recent criminal convictions of a number of former officers and employees, Insys has taken significant steps to address allegations of past wrongdoing, including establishing and maintaining an effective compliance program and an overhaul of key personnel (as described below), and has focused extensively since then on instilling the highest respect for fundamentally sound values among all of its employees.

14. As previously indicated, I joined Insys in August 2017. Insys’s General Counsel, and the heads of Commercial, Human Resources, and Clinical Development are also all new to the company since July 2017, along with nearly all of the independent directors on the Board. In addition, most of the management team and the commercial organization, which includes Insys’s sales force, is new to the company since 2015.

15. Insys currently trains all of its sales representatives to promote Subsys only for use consistent with its FDA-approved label, including with respect to titration and side effects

for each patient. Sales representatives are specifically trained to not promote Insys for any off-label use. Further, Insys's sales force is prohibited from promoting Subsys to a prescriber unless that prescriber (a) has all state and federal licenses required to prescribe Subsys, and (b) is enrolled in the TIRF REMS program or is an oncologist.

16. If a sales representative seeks to promote Subsys to a non-oncologist member of the TIRF REMS programs, the sales representative must first inquire into whether the prescriber treats, and then form, at the minimum, a reasonable belief that the prescriber is likely to treat patients for cancer pain. Unless the prescriber treats patients for cancer pain, or the sales representative forms a reasonable belief that the prescriber is likely to treat patients for cancer pain, the sales representative is strictly prohibited from promoting Subsys to that prescriber.

17. On June 5, 2019, Insys entered into a Corporate Integrity Agreement and Conditional Exclusion Release ("CIA") with the Office of Inspector General of the United States Department of Health and Human Services under which Insys has agreed to establish and maintain, for a period of five years, an extensive program intended to promote compliance with the statutes, regulations, and written directives of Medicare, Medicaid, and all other Federal health care programs and with the statutes, regulations, and written directives of the FDA. For example, the compliance program mandated under the CIA includes the appointment of a compliance officer and compliance committee, board compliance obligations, the establishment of written standards, and training and education requirements, among other elements. Among other conduct, Insys has agreed under the CIA to cease all payments to prescribers and non-Insys employee physicians for participating in any speaker programs and related activities in connection with any Insys product. Insys intends to fully implement and execute the compliance program in accordance with the terms of the CIA.

18. In addition, under the CIA, Insys has agreed to stop all marketing and promotion of Subsys upon the earlier of a sale or 90 days from the effective date of the CIA. Therefore, the Debtors expect that all activity related to the sale and marketing of Subsys will necessarily cease by mid-September, 2019.

II. DEBTORS' STRATEGY TO MAXIMIZE RECOVERY FOR STAKEHOLDERS

19. The Debtors commenced these chapter 11 cases to maximize recoveries for their stakeholders. To advance that goal, the Debtors are seeking to execute a three-step strategy by: (i) maximizing the value of their enterprise through exploring sales of their assets and pursuing affirmative causes of action; (ii) preserving funds by seeking a stay of burdensome and asset-consuming litigation; and (iii) further preserving funds by limiting their time in chapter 11 through estimation of categories of claims to facilitate confirmation of a plan.

20. The first prong of the strategy is aimed at increasing the cash value of the saleable assets of the Debtors. Specifically, the Debtors are filing with their petitions a global bidding procedures and sale motion to sell Subsys and the Debtors' other products, to permit a flexible and expeditious postpetition sale process. Upon the sale of Subsys, which is expected to close by the end of August, 2019, or, under the terms of the CIA, by mid-September 2019 at the latest, the Debtors will cease all activity related to the sale and marketing of Subsys.

21. By contrast, the second and third prongs will preserve as much of the enterprise value as possible to pay claimants, rather than using estate assets to fund unnecessary chapter 11 and other legal costs. Contemporaneously with the Preliminary Injunction Motion and the Estimation Motion, the Debtors are also filing a motion to establish a deadline and procedures for filing proofs of claim ("**Bar Date Motion**") to secure this overall goal.

22. In combination, the Bar Date Motion and Estimation Motion target the third component of the Debtors' overall strategy: implementing an efficient process that enables the

Debtors (and their creditors) to fix aggregate amounts of particular categories of claims on an expedited basis. The proposed process is intended to enable the Debtors to propose a confirmable chapter 11 plan and make distributions to creditors sooner than any other option available to the Debtors. Although the Debtors resolved certain claims relating to Subsys prepetition, including all civil and criminal claims of the U.S. government,⁴ the relief sought in the Estimation Motion is critical because the sheer numbers and types of claims made prepetition settlement of all the claims impossible.

III. IMPACT OF ACTIVE LITIGATION ON DEBTORS' RESOURCES

23. The Debtors are currently defendants in approximately 1,000 lawsuits related to the marketing and sale of Subsys. Specifically, certain states' attorneys general, certain municipalities, personal injury plaintiffs, and insurance providers have asserted claims against Insys arising out of the marketing and sale of Subsys ("**Subsys Claims**"). Through the Preliminary Injunction Motion, the Debtors seek to stay a subset of Subsys Claims brought by government entities that are currently active, to the extent those claims are not subject to the automatic stay.

24. The cost of litigating the Government Actions has taxed and, absent a stay, will continue to tax the Debtors' limited financial resources. The Debtors anticipate that, should the cases proceed, legal spend will increase substantially because of significant activity expected to occur in the near term in certain of the pending actions. For instance, as discussed below in more detail, trials in three of the Government Actions are currently scheduled to begin in the next six months. The legal expense associated with defending the Debtors in a single trial proceeding

⁴ Indeed, the Debtors were also successful prepetition in resolving claims of Humana, Illinois, Massachusetts, New Hampshire, Oregon, and three personal injury plaintiffs.

can exceed \$10 million, with the trial itself accounting for approximately one-third to one-half of that figure.

25. Based upon historical spend, knowledge of upcoming activity expected to take place in the Government Actions, and legal expense budgeting forecasts, the Debtors anticipate that, absent a stay, they would spend approximately \$8,500,000 to \$9,000,000 in defending these and other government actions from June through December, 2019. With the stay, the Debtors anticipate a significant savings of \$1,000,000 to \$1,500,000 per month.

26. As of the Petition Date, the Debtors have under \$40,000,000 in cash on hand. The Debtors are, and will continue, losing money. The Debtors are hopeful that the upfront portion of the bids they receive by the end of July, 2019 will provide sufficient liquidity to get through these chapter 11 cases and make a distribution to creditors. However, until the results of the sale process, which is expected to conclude by the end of August, 2019, are known, preserving liquidity is particularly important.

27. In light of these facts, absent a stay, the Debtors expect that the costs they would incur in continuing to litigate the Government Actions would have a material impact on the Debtors' liquidity.

A. MDL

28. The first trial in the MDL, of the Track One bellwether cases brought by Summit County and Cuyahoga County, Ohio, is scheduled to begin on October 21, 2019 and is expected to last seven weeks. The Debtors' MDL counsel, Holland & Knight LLP ("Holland & Knight"), is actively engaged in fact and expert discovery, and will soon be required to begin preparation for trial, including drafting direct and cross examinations, fact and expert witness preparation, and various other tasks essential to meeting pre-trial deadlines.

29. For instance, pursuant to the MDL Court's Civil Jury Trial order filed May 1, 2019 [Doc #1598], the deadline for filing dispositive and *Daubert* motions is June 28, 2019, the deadline to exchange witness lists and proposed trial exhibits is September 11, 2019, and the deadline for filing motions *in limine* and trial briefs is September 25, 2019. In addition to the work necessary to prepare its defense on behalf of Insys, Holland & Knight is actively engaged in work as part of the joint defense group on behalf of the manufacturer defendants in the MDL, which aims to consolidate tasks, such as research and briefing, among various defendants for purposes of efficiency.

30. The active cases in the MDL are creating significant demands on the Debtors' resources and, absent a stay, will result in increased legal fees and expenses in the coming weeks and months.

B. Maryland Attorney General Action

31. In the action brought against Insys by the Consumer Protection Division of the Office of the Attorney General of Maryland, a hearing before an administrative law judge is scheduled to take place over approximately 35 days spread across August, 2019 – January, 2020, with closing arguments and post-hearing briefs in February and March, 2020. Moreover, there are a number of impending pre-hearing deadlines, including filing expert disclosures and pre-trial motions by July 15, 2019.

32. The Maryland action is creating a significant demand on the Debtors' resources and, absent a stay, will result in increased legal fees and expenses in the coming weeks and months.

C. Minnesota Board of Pharmacy Action

33. In the proceeding brought against Insys by the Minnesota Board of Pharmacy, a hearing is scheduled to take place before an administrative law judge from September 2–13, 2019.

34. As with the actions discussed above, counsel representing the Debtors in the Minnesota action is engaged in preparation for the hearing and in work required to meet several impending pre-hearing deadlines. Pursuant to the governing scheduling order, the discovery period is set to close July 8, 2019. Expert witness statements must be served by July 17, dispositive motions must be filed by July 26, a prehearing conference is set for August 9, and motions *in limine* must be filed by August 26. The parties must also submit trial briefs and Proposed Findings of Fact and Conclusions of Law prior to the hearing.

35. Absent a stay, the Minnesota action will result in increased legal fees and expenses in the coming weeks and months.

D. Continuing to Litigate Will Result in Distraction and Delay

36. In addition to the significant costs associated with defending the Government Actions, the ongoing litigation also requires me and other senior management to divert time and attention away from our primary focus, maximizing the value of the Debtors' estates for purposes of these chapter 11 proceedings. Given the activity expected to take place in these cases over the next six months, if allowed to proceed, the Government Actions will almost certainly result in increased demands on the time and focus of the Debtors' senior management in the near term.

37. Notwithstanding the subset of active Government Actions rapidly progressing towards trial, resulting in significant legal expenses, many of the approximately 1,000

Subsys Claims are still in their nascent stages. Waiting for these claims to be resolved through litigation will impede the Debtors' ability to formulate, confirm, and implement a plan—materially reducing the value of these estates and the recoveries of creditors and other stakeholders. The Debtors therefore seek to stay the Government Actions and use estimation as a tool to avoid wasteful delay in the administration of the Debtors' estates and to maximize recoveries for all claimants.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of June, 2019

/s/ Andrew G. Long
Andrew G. Long
Chief Executive Officer