

**SUBSTANTIVE RIGHTS MAY BE AFFECTED BY THIS OBJECTION. CLAIMANTS RECEIVING THIS OBJECTION SHOULD REVIEW IT TO SEE IF THEIR NAMES APPEAR ON THE EXHIBIT ATTACHED HERETO TO DETERMINE WHETHER THE OBJECTION AFFECTS THEIR CLAIMS. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT TRUSTEE’S COUNSEL, SCOTT ZILUCK AT 212-765-9100 EXT. 130 OR BY EMAIL [SZILUCK@HALPERINLAW.NET](mailto:SZILUCK@HALPERINLAW.NET)**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

INSYS THERAPEUTICS, INC., *et al.*,

Liquidating Debtors.<sup>1</sup>

Chapter 11

Case No. 19-11292 (JTD)

(Jointly Administered)

Hearing Date: July 20, 2021 at 11:00 a.m. (ET)

Objection Deadline: July 13, 2021 at 4:00 p.m. (ET)

**THIRTEENTH OMNIBUS OBJECTION OF THE TRUSTEE OF  
THE INSYS LIQUIDATION TRUST TO CLAIMS (SUBSTANTIVE)  
(Reduced Claims, Misclassified Claims, No Liability Claims, and Equity Claims)**

William Henrich, in his capacity as liquidating trustee (the “Trustee”) of the Insys Liquidation Trust (the “Liquidation Trust”), as successor in interest to the above-captioned debtors and debtors in possession (collectively, the “Debtors”), hereby files this thirteenth omnibus objection (the “Objection”), pursuant to §§ 105(a) and 502 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 3007(d) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), seeking entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”): (1) reducing the claims identified on **Exhibit 1** attached to the Proposed

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<sup>1</sup> The Liquidating Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, 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).

Order by the amounts set forth thereon (the “Reduced Claims”); (2) reclassifying certain claims identified on **Exhibit 2** attached to the Proposed Order as solely general unsecured Class 3 or 4 claims as reflected thereon (the “Misclassified Claims”); (3) disallowing certain claims identified on **Exhibit 3** attached to the Proposed Order (the “No Liability Claims”); and (4) reclassifying and disallowing certain claims identified on **Exhibit 4** attached to the Proposed Order as Class 13 Equity Interests (the “Equity Claims”, and with the Reduced Claims, the Misclassified Claims, and the No Liability Claims, the “Claims”). In support of this Objection, the Trustee submits the *Declaration of Edward A. Phillips Pursuant to 28 U.S.C. § 1746 and Local Rule 3007-1 in Support of the Thirteenth Omnibus Objection of the Liquidating Trustee of the Insys Liquidation Trust to Claims (Substantive)* (the “Phillips Declaration”) attached hereto as **Exhibit B**. In further support of this Objection, the Trustee respectfully represents as follows:

### **BACKGROUND**

1. On June 10, 2019 (the “Petition Date”), the Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”).
2. On June 11, 2019, this Court entered an order authorizing and approving the retention of Epiq Corporate Restructuring, LLC as claims and noticing agent in these Chapter 11 Cases (the “Agent”) [Docket No. 48].
3. 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 in these Chapter 11 Cases (the “Committee”). No trustee or examiner has been appointed in these Chapter 11 Cases.

4. In the ordinary course of business pre-petition, the Debtors maintained books and records that reflected the nature and amounts of the Debtors' obligations to creditors, as well as payments made on account of such obligation (the "Books and Records").

5. On July 30, 2019, each of the Debtors filed with this Court its *Schedule of Assets and Liabilities* [Docket Nos. 363, 365, 367, 369, 371, 373, and 375] (the "Schedules").

6. On January 16, 2020, this Court entered an order [Docket No. 1115] (the "Confirmation Order") confirming the *Second Amended Joint Chapter 11 Plan of Liquidation of Insys Therapeutics, Inc. and Its Affiliated Debtors* (the "Plan") in the Chapter 11 Cases. As provided for in the Confirmation Order, all assets and liabilities of the Debtors were substantively consolidated and substantive consolidation would be implemented for distribution purposes in accordance with the Plan (the "Substantive Consolidation").

7. On February 18, 2020 (the "Effective Date"), the Plan became effective in accordance with its terms and, in accordance with the Plan, Confirmation Order and that certain *Trust Agreement for Insys Liquidation Trust* (the "Trust Agreement"), certain assets<sup>2</sup> of the Debtors existing as of such date were transferred to and became vested in the Liquidation Trust, and William Henrich was appointed the Trustee of the Liquidation Trust.

8. Also, on the Effective Date, in accordance with the Plan, Confirmation Order and that certain *Victims Restitution Trust Agreement* (the "VRT Trust Agreement"), the Victims Restitution Trust was established and Carmin Reiss was appointed as the Liquidating Trustee for

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<sup>2</sup> These assets include all assets of the Debtors other than (i) the VRT Operating Reserve, (ii) the Products Liability Insurance Rights, and (iii) any Interests held by Liquidating Debtors in other Liquidating Debtors, as defined in the Plan.

the Victims Restitution Trust (the “VRT Trustee”), for the purpose of administering the Class 9 Personal Injury Claims.<sup>3</sup>

9. In accordance with the Plan and the Trust Agreement, from and after the Effective Date, objections to various claims<sup>4</sup> may be prosecuted by the Trustee. *See e.g.*, Section 7.1 of the Plan.

10. Under the Plan, on the Effective Date, Equity Interests were deemed surrendered, cancelled, and/or redeemed without further action by or order of the Court.<sup>5</sup> The Plan and the Confirmation Order also provide that holders of Equity Interests shall not receive or retain any property on account of such interests. *See e.g.*, Section 4.13 of the Plan and Paragraph H of the Confirmation Order.

11. Pursuant to an order dated July 15, 2019 (the “Bar Date Order”), [Docket No. 294], this Court established the following deadlines: (a) September 16, 2019 as the last day for non-governmental entities to file pre-petition claims against the Debtors and their estates (the “General Bar Date”); (b) December 9, 2019 as the last day for governmental entities and Native American tribes to file pre-petition claims against the Debtors and their estates (the “Government Bar Date”)<sup>6</sup>; and (c) October 24, 2019 as the last day to file administrative claims arising

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<sup>3</sup> “Personal Injury Claim” is defined in Section 1.1 of the Plan as “any Claim for alleged personal injury, wrongful death, or other similar Claim or Cause of Action against the Debtors, including any such Claim held by a NAS Child.”

<sup>4</sup> Other than Personal Injury Claims, which are the purview of the VRT Trustee.

<sup>5</sup> “Equity Interest” is defined in Section 1.1 of the Plan as “any Interest in Insys Therapeutics, Inc.”. “Interest” is defined in Section 1.1 of the Plan, in relevant part, as “any equity security . . . in a Debtor, or direct or indirect subsidiary of a Debtor, including all shares, common stock or units, preferred stock or units, or other instrument evidencing any fixed or contingent ownership interest in any Debtor . . . , including any option, warrant, or other right, contractual or otherwise, to acquire any such interest in a Debtor . . . whether transferable and whether fully vested or vesting in the future, that existed immediately before the Effective Date.”

<sup>6</sup> The Government Bar Date was later extended to January 31, 2019 to any State pursuant to the *Order Approving Stipulation By and Between the Debtors, the Official Committee of Unsecured Creditors, and Certain States Regarding Extending the Bar Date* [Docket No. 948].

between the Petition Date and September 9, 2019, excluding professional claims and claims asserting administrative priority and arising out of the ordinary course of business after the Petition Date (together with the General Bar Date and the Government Bar Date, the “Bar Dates”).

12. In accordance with the Bar Date Order, the Agent served a Notice of Bar Dates and the related documents and forms as evidence by the affidavits of service filed with this Court (the “Bar Date AOS”) [Docket Nos. 315, 406, 504, 587, 713, 821, and 887]. Additionally, in accordance with the Bar Date Order, the Debtors published notice of the Bar Dates once in the national editions of the New York Times and USA Today, and once in the following publications: Memphis Commercial Appeal, Indianapolis Star, Florida Times Union (Jacksonville), Las Vegas Review Journal Sun, Saginaw News, Arizona Republic, Dallas Morning News, Miami Herald, Los Angeles Times, and San Antonio Express News (the “Publication Notices”).

13. Pursuant to the Confirmation Order and the Plan, the deadline to object to claims (other than Administrative Claims) is one-hundred eighty (180) days following the later of the (a) Effective Date and (b) the date that a proof of claim is filed or amended or on such later date as fixed by this Court. *See* Section 7.1 of the Plan. Additionally, under the Plan, objections to Administrative Claims are to be filed no later than one hundred-twenty (120) days after the Effective Date, or such other date may be fixed by the Bankruptcy Court. *See* Section 2.2 of the Plan. By the most order dated May 14, 2021, the deadline to object to all claims was extended through and including January 28, 2022 [Docket No. 1661].

**JURISDICTION AND VENUE**

14. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**RELIEF REQUESTED**

15. By this Objection, and for the reasons set forth more fully below, the Trustee objects to the Claims pursuant to §§ 105(a) and 502 of the Bankruptcy Code, Bankruptcy Rules 3007 and 9014, and Local Rule 3007-1 and requests entry of the Proposed Order reducing, reclassifying and/or disallowing and expunging each of the Claims as reflected in **Exhibits 1, 2, 3, and 4** to the Proposed Order.

**OBJECTION TO CLAIMS**

16. As set forth in the Declaration, the Trustee's professionals examined proofs of claim filed against the Debtors, all supporting documentation provided by the claimants, if any, and the Books and Records and have identified certain Claims that can be identified as Reduced Claims, Misclassified Claims, No Liability Claims, or Equity Claims.

17. Pursuant to § 502 of the Bankruptcy Code, “[a] claim or interest, proof of which is filed under 501 of [the Bankruptcy Code], is deemed allowed, unless a party in interest...objects.” U.S.C. § 502(a).

18. When asserting a proof of claim against a bankruptcy estate, a claimant must allege facts that, if true, would support a finding that the debtor is legally liable to the claimant. *In re Allegheny Int’l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992); *Matter of Int’l Match Corp.*, 69 F.2d 73, 76 (2d Cir. 1934) (finding that a proof of claim should at least allege facts from which legal liability can be seen to exist). Where a claimant alleges sufficient facts to support its claim,

its claim is afforded prima facie validity. *In re Allegheny Int'l, Inc.*, 954 F.2d at 173. A party wishing to dispute such a claim must produce evidence in sufficient force to negate the claim's prima facie validity. *Id.* In practice, the objecting party must produce evidence that would refute at least one of the allegations essential to the claim's legal sufficiency. *Id.* Once the objecting party produces such evidence, the burden shifts back to the claimant to prove the validity of his or her claim by a preponderance of the evidence. *Id.* The burden of persuasion is always on the claimant. *Id.*

**A. Reduced Claims**

19. The Trustee objects to the Reduced Claims identified on **Exhibit 1** to the Proposed Order as they consist of claims which overstate the amount of liability owed by the Debtors as compared to the Books and Records. Based on the Trustee and his professionals' review of the proofs of claim and supporting documentation, if any, provided for the Reduced Claims, and the Books and Records, they have identified that there is insufficient supporting documentation to support the amounts claimed in each of the Reduced Claims. *See* the Phillips Declaration.

20. Therefore, the Trustee objects to the Reduced Claims and seeks an order modifying these claims as reflected in **Exhibit 1** to the Proposed Order under the column "Modified Claim Amount" to reflect that each claim be reduced to the amounts shown. The basis for each modification is set forth in **Exhibit 1** to the Proposed Order under the column "Reason for Modification".

21. Failure to modify the Reduced Claims will result in the holders of such claims receiving a larger recoveries than they are entitled to from the Liquidation Trust.

**B. Misclassified Claims**

22. The Trustee objects to the Misclassified Claims identified on **Exhibit 2** to the Proposed Order as they consist of claims that improperly assert entitlement to priority status under section 507(a)(4) of the Bankruptcy Code, or assert that they are administrative expense claims under section 503(b)(9) of the Bankruptcy Code. Based on the Trustee and his professionals' review of the proofs of claim filed for the Misclassified Claims, they have determined that these claims failed to provide a basis or sufficient supporting documentation to support the asserted priority or administrative expense, assert a priority or administrative expense not reflected in the Books and Records, and/or assert a priority or administrative expense that is not supported under the Bankruptcy Code and/or the Plan. Thus, by this Objection, the Trustee seeks to reclassify the Misclassified Claims pursuant to §§ 105(a) and 502 of the Bankruptcy Code, Bankruptcy Rules 3007 and 9014, and Local Rule 3007-1, solely as general unsecured claims (falling within Class 3 or 4, as delineated in the Plan).

23. The Trustee expressly reserves the right to further object to the Misclassified Claims on other bases in accordance with Local Rule 3007-1(f)(iii).

24. With respect to the Misclassified Claims asserting priority status under section 507(a)(4) of the Bankruptcy Code, none of the holders of such claims were employees of the Debtors and as such, are not entitled to a priority wage claim.

25. With respect to the Misclassified Claims asserting administrative expense claims under section 503(b)(9) of the Bankruptcy Code, none of the claims reflect value provided to the Debtors for goods received by the Debtors within twenty (20) days before the Petition Date. As such, they do not constitute valid claims under 503(b)(9).



26. Therefore, the Trustee objects to the Misclassified Claims and seeks an order modifying these claim as reflected in **Exhibit 2** to the Proposed Order under the column “Modified Claim Amount” to reflect that each claim be reclassified as a general unsecured claim. The basis for each reclassification is set forth in **Exhibit 2** to the Proposed Order under the column “Reason for Modification”.

27. Failure to reclassify the Misclassified Claims will result in the holders of such claims receiving greater recoveries from the Liquidation Trust than the recoveries received by other general unsecured creditors.

**C. No Liability Claims**

28. The Trustee objects to the No Liability Claims listed in **Exhibit 3** to the Proposed Order as they consist of claims which have no basis in fact or law which would support the liability asserted. In some cases, the No Liability Claims assert claims, in whole or in part, that are unliquidated and not capable of being liquidated. Based on the Trustee and his professionals’ review of the proofs of claim and supporting documentation, if any, provided by the claimant, as well as the Books and Records, there is no basis for liability.

29. Therefore, the Trustee objects to the No Liability Claims and seeks an order disallowing and expunging these claims in their entirety as reflected in **Exhibit 3** to the Proposed Order. The basis for each modification is set forth in **Exhibit 3** to the Proposed Order under the column “Reason for Disallowance”.

30. Failure to disallow the No Liability Claims will result in the holders of such claims receiving a recovery that they are not entitled to from the Liquidation Trust.

**D. Equity Claims**

31. The Trustee objects to the Equity Claims listed on **Exhibit 4** to the Proposed Order as they are exclusively comprised of Equity Claims filed by holders of Equity Interests. Each of the claimants identified has filed a proof of claim that does not assert any claim at all, but rather asserts ownership of Equity Interests.<sup>7</sup> The Trustee and his professionals were able to identify the claimants that have asserted these Equity Claims because those claimants noted on the proof of claim form that the claim was filed on account of a stock interest, or, in certain instances, the claimants simply submitted a brokerage statement demonstrating ownership. Because Equity Interests asserted by holders of Equity Claims have been cancelled under the Plan upon the Effective Date, the Trustee believes that all such claims should be reclassified as Class 13 Equity Interests and disallowed in their entirety.

32. Failure to disallow the Equity Claims would entitle such interest holders to recoveries on account of “claims” to which such holders are not entitled under the Plan. Accordingly, the Trustee seeks (a) to reclassify the Equity Claims listed on **Exhibit 4** to the Proposed Order, and (b) entry of the Proposed Order disallowing the Equity Claims in their entirety.

**RESPONSES TO OBJECTION**

33. **Filing and Service of Responses.** To contest this Objection, a holder of a Claim must file and serve a written response to this Objection (a “**Response**”) so that it is received no

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<sup>7</sup> Many of the claims on Exhibit 4 to the Proposed Order were also filed with little to no supporting documentation and/or filed after the applicable bar date. The Trustee anticipates filing subsequent non-substantive omnibus objections, but will not include this subset of claims at this time in order to avoid administrative confusion. The Trustee expressly reserves the right to object to those claims on Exhibit 3 to the Proposed Order on other bases in accordance with Local Rule 3007-1, if necessary.

later than 4:00 p.m. (Eastern Time) on July 13, 2021 (the “Response Deadline”). Claimants should read the Proposed Order and Exhibits attached carefully.

34. Every Response should be filed with the Office of the Clerk, United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801; and served upon the following, so that the Response is received no later than the Response Deadline at the following addresses:

HALPERIN BATTAGLIA BENZIJA, LLP  
Scott A. Ziluck  
Lige Gu  
40 Wall Street, 37<sup>th</sup> Floor  
New York, NY 10005  
sziluck@halperinlaw.net  
lgu@halperinlaw.net

-and-

MORRIS, NICOLS, ARSHT & TUNNELL LLP  
Matt Talmo  
1201 North Market Street  
PO Box 1347  
Wilmington, DE 19899  
mtalmo@morrisnichols.com

35. Content of Responses. Every Response to this Objection must contain, at a minimum, the following:

- (a) a caption setting forth the name of the Court, the name of the Debtor, the case number and the title of this Objection to which the Response is directed;
- (b) the name of the claimant and description of the basis for the amount of the disputed claim;
- (c) a concise statement setting forth the reasons why the relief in this Objection should not be granted, including, but not limited to, the specific factual and legal bases upon which the claimant relies in opposing this Objection;
- (d) all documentation or other evidence supporting the disputed claim not previously filed with the Bankruptcy Court or the Agent, upon which the claimant relies in opposing this Objection; and

- (e) the name, address, telephone number, email and fax number of the person(s) (which may be the claimant or a legal representative thereof) to whom counsel for the Trustee should serve a reply, if any, to the Response and who possesses authority to reconcile, settle or otherwise resolve the objection to the claim on behalf of the claimant.

36. Timely Response Required. If a claimant fails to file and serve a timely Response, then without further notice to the claimant or a hearing, the Trustee will present to the Court an order, substantially in the form of the order attached hereto.

### **NOTICE**

37. A copy of this Objection and all related exhibits will be served on (i) the Office of the United States Trustee for the District of Delaware; (ii) each holder of the Claims subject to this Objection; and (iii) other parties entitled to notice under the Plan and Bankruptcy Rule 2002. The Trustee respectfully submits that no further notice of this Objection is required.

38. Pursuant to Bankruptcy Rule 3007, the Trustee has provided all claimants affected by this Objection with at least thirty (30) days' notice of the hearing to consider this Objection.

### **NO PRIOR REQUEST**

39. No previous request for the relief sought herein has been made to this or any other Court.

### **STATEMENT OF COMPLIANCE WITH LOCAL RULE 3007-1**

40. To the extent that a response is filed regarding any Claim listed in this Objection and the Trustee is unable to resolve the response, each such Claim, and the objection by the Liquidation Trust to each such Claim asserted herein, shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order entered by the Court regarding an objection asserted in the Objection shall be deemed a separate order with respect to each Claim.

**RESERVATION OF RIGHTS**

41. The Trustee hereby reserves the right to object in the future to any of the claims listed in this Objection on any ground in accordance with Local Rule 3007-1, and to amend, modify, and/or supplement this Objection, including, without limitation, to object to amended or newly filed Proofs of Claim. Separate notice and hearing may be scheduled for any such objection.

WHEREFORE the Trustee respectfully requests entry of an order substantially in the form of the Proposed Order attached hereto as **Exhibit A** granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: June 18, 2021

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

*/s/ Matthew O. Talmo*

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*Counsel to the Trustee of the Insys  
Liquidation Trust*

**SUBSTANTIVE RIGHTS MAY BE AFFECTED BY THE OBJECTION. CLAIMANTS RECEIVING THE OBJECTION SHOULD REVIEW IT TO SEE IF THEIR NAMES APPEAR ON THE EXHIBIT ATTACHED THERETO TO DETERMINE WHETHER THE OBJECTION AFFECTS THEIR CLAIMS. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT TRUSTEE'S COUNSEL, SCOTT ZILUCK AT 212-765-9100 EXT. 130 OR BY EMAIL [SZILUCK@HALPERINLAW.NET](mailto:SZILUCK@HALPERINLAW.NET)**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

INSYS THERAPEUTICS, INC., *et al.*,

Liquidating Debtors.<sup>1</sup>

Chapter 11

Case No. 19-11292 (JTD)

(Jointly Administered)

Hearing Date: July 20, 2021 at 11:00 a.m. (ET)

Objection Deadline: July 13, 2021 at 4:00 p.m. (ET)

**NOTICE OF THIRTEENTH OMNIBUS OBJECTION OF THE TRUSTEE OF  
THE INSYS LIQUIDATION TRUST TO CLAIMS (SUBSTANTIVE)  
(Reduced Claims, Misclassified Claims, No Liability Claims, and Equity Claims)**

PLEASE TAKE NOTICE that today, William Henrich, in his capacity as liquidating trustee (the "Trustee") of the Insys Liquidation Trust (the "Liquidation Trust"), filed the *Thirteenth Omnibus Objection of the Trustee of The Insys Liquidation Trust to Claims (Substantive) (Reduced Claims, Misclassified Claims, No Liability Claim, and Equity Claims)* (the "Objection").

PLEASE TAKE FURTHER NOTICE that to contest this Objection, a holder of a Claim must file and serve a written response to this Objection (a "Response") so that it is received no later than **4:00 p.m. (Eastern Time) on July 13, 2021** (the "Response Deadline"). Claimants should read the Proposed Order and Exhibits attached carefully.

PLEASE TAKE FURTHER NOTICE THAT only responses made in writing and timely filed and received, in accordance with the procedures above, will be considered by the Bankruptcy Court at such hearing.

PLEASE TAKE FURTHER NOTICE THAT every Response should be filed with the Office of the Clerk, United States Bankruptcy Court for the District of Delaware, 824 Market

<sup>1</sup> The Liquidating Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, 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).

Street, 3rd Floor, Wilmington, Delaware 19801; and served upon the following, so that the Response is received no later than the Response Deadline at the following addresses:

HALPERIN BATTAGLIA BENZIJA, LLP  
Scott A. Ziluck  
40 Wall Street, 37<sup>th</sup> Floor  
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-and-

MORRIS, NICOLS, ARSHT & TUNNELL LLP  
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Wilmington, DE 19899  
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Content of Responses. Every Response to this Objection must contain, at a minimum, the following:

- (a) a caption setting forth the name of the Court, the name of the Debtor, the case number and the title of this Objection to which the Response is directed;
- (b) the name of the claimant and description of the basis for the amount of the disputed claim;
- (c) a concise statement setting forth the reasons why the relief in this Objection should not be granted, including, but not limited to, the specific factual and legal bases upon which the claimant relies in opposing this Objection;
- (d) all documentation or other evidence supporting the disputed Claim not previously filed with the Bankruptcy Court or the Agent, upon which the claimant relies in opposing this Objection; and
- (e) the name, address, telephone number, email and fax number of the person(s) (which may be the claimant or a legal representative thereof) to whom counsel for the Trustee should serve a reply, if any, to the Response and who possesses authority to reconcile, settle or otherwise resolve the objection to the Claim on behalf of the claimant.

Timely Response Required. If a claimant fails to file and serve a timely Response, then without further notice to the claimant or a hearing, the Trustee will present to the Court an order, substantially in the form of the order attached hereto. **IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE OBJECTION WITHOUT FURTHER NOTICE OR HEARING.**

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE OBJECTION WILL BE HELD ON **JULY 20, 2021 at 11:00 a.m. (ET)** VIA

VIDEOCONFERENCE BEFORE THE HONORABLE JOHN T. DORSEY OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE.

Dated: June 18, 2021

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

/s/ Matthew O. Talmo

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*Counsel to the Trustee of the Insys  
Liquidation Trust*



**Exhibit A**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

INSYS THERAPEUTICS, INC., *et al.*,

Liquidating Debtors.<sup>1</sup>

Chapter 11

Case No. 19-11292 (JTD)

(Jointly Administered)

**ORDER GRANTING THIRTEENTH OMNIBUS OBJECTION OF THE TRUSTEE OF  
THE INSYS LIQUIDATION TRUST TO CLAIMS (SUBSTANTIVE)  
(Reduced Claims, Misclassified Claims, No Liability Claims, and Equity Claims)**

Upon the *Thirteenth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims* (the “Objection”) for entry of an order reducing the claims set forth on Exhibit 1, reclassifying the claims set forth on Exhibit 2, disallowing and expunging the claims set forth on Exhibit 3 hereto; and reclassifying and disallowing and expunging the claims set forth on Exhibit 4 (each a “Claim” and collectively, the “Claims”), all as more fully set forth in the Objection; and upon the *Declaration of Edward A. Phillips Pursuant to 28 U.S.C. § 1746 and Local Rule 3007-1 in Support of the Thirteenth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims* filed contemporaneously with the Objection and in support thereof; and this Court having jurisdiction to consider the Objection and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Objection and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Objection having been provided, and no other or further notice being required; and the Court having

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<sup>1</sup> The Liquidating Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, 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).

considered all responses to the Objection, if any, and all such responses having been either overruled or withdrawn; and upon all proceedings had before the Court; and the Court having determined that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and

This Court having **FOUND AND DETERMINED THAT:**

A. The holders of the Claims listed on **Exhibits 1, 2, 3, and 4** attached hereto were properly and timely served with a copy of the Objection and all of its accompanying exhibits and notice of a hearing on the Objection and response deadline,

B. Any entity known to have an interest in the Claims subject to the Objection has been afforded reasonable opportunity to respond to, or be heard regarding, the relief requested in the Objection, and

C. The relief requested in the Objection is in the best interests of the Liquidation Trust, its beneficiaries, the Debtors, their estates, their creditors, and other parties in interest; And after due deliberation and sufficient cause appearing therefor,

**IT IS THEREFORE ORDERED THAT:**

1. The Objection is **GRANTED**.
2. The Claims listed on **Exhibit 1** attached hereto are hereby reduced as reflected on the exhibit.
3. The Claims listed on **Exhibit 2** attached hereto are hereby reclassified as general unsecured claims as reflected on the exhibit.
4. The Claims listed on **Exhibit 3** attached hereto are hereby disallowed and expunged in their entirety.
5. The Claims listed on **Exhibit 4** attached hereto are hereby reclassified as Class 13

Equity Interests and are hereby disallowed and expunged in their entirety.

6. Epiq Corporate Restructuring, LLC is authorized and directed to reduce the Claims listed on Exhibit 1 as reflected therein; reclassify the Claims listed on Exhibit 2 to general unsecured claims; and disallow and expunge the Claims listed on Exhibit 3 and Exhibit 4 on the official claims registry pursuant to this Order and to make other changes to the official claims registry as necessary to reflect the terms of this Order.

7. Each Claim addressed in the Objection constitutes a separate contested matter as contemplated by Bankruptcy Rule 9014. This Order shall be deemed a separate Order with respect to each Claim. Any stay of this Order pending appeal by any of the claimants whose Claims are subject to this Order shall apply only to the contested matter which involves such claimant and shall not act to stay the applicability and/or finality of this Order with respect to other contested matters covered hereby.

8. Nothing contained in the Objection or this Order is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors or its estates, (ii) waiver of rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of rights under Bankruptcy Code or any applicable non-bankruptcy law, (iv) an agreement or obligation to pay any claims, or (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder.

9. Nothing in the Objection or this Order shall be construed as an allowance of any Claim.

10. The Trustee's rights to amend, modify, or supplement the Objection, to file additional objections to the Claims, any other claims (filed or not) which have or may be asserted against the Debtors or their estates, and to seek further reduction of any Claim, are preserved.

Additionally, should the grounds of objection stated in the Objection be dismissed, the Trustee's right to object on other stated grounds or any other grounds that the Trustee discovers during the pendency of these cases are further preserved.

11. This Court shall retain jurisdiction to hear and determine all matters arising from the interpretation and/or implementation of this Order.

## Thirteenth Omnibus Claims Objection

## Exhibit 1 - Reduced Claims

Name of Claimant	Claim No.	Debtor	Current Claim Amount		Modified Claim Amount		Reason for Modification
			Claim Amount	Claim Classification	Claim Amount	Claim Classification	
BIOCLINICA INC.	10018	Insys Therapeutics, Inc.	\$ 25,996.59	General Unsecured	\$ 19,033.77	General Unsecured	Claimant overstated the balance owed. According to the Debtors' books and records, the amount owed is \$19,033.77
BRETT PROPERTIES LLC D/B/A/ VANGUARD CLEANING SYSTEMS OF AUSTIN	10003	Insys Therapeutics, Inc.	\$ 9,428.16	General Unsecured	\$ 7,321.62	General Unsecured	Claimant overstated the amount owed. According to the Debtors' books and records, the amount owed is \$7,321.62. The Debtors prorated, and paid, \$2,106.54 of this claim as a post-petition administrative expense.
CAZ 1 DE, LLC	10568	Insys Therapeutics, Inc.	\$1,795,402.68	General Unsecured	\$ 699,488.40	General Unsecured	Claimant overstated the amount owed. Claimant improperly calculated permissible rejection damages. Debtors' books and records and the relevant lease reflect maximum rejection damages of \$699,488.40.
CHILDREN'S HOSPITAL OF PHILADELPHIA	10554	Insys Therapeutics, Inc.	\$6,920.00	General Unsecured	\$ 2,304.00	General Unsecured	Claimant overstated the amount owed. According to Debtors' books and records, the amount owed is \$2,304.00
KOETTER FIRE PROTECTION OF AUSTIN LLC	40	Insys Therapeutics, Inc.	\$ 2,740.41	General Unsecured	\$ 1,131.21	General Unsecured	Claimant overstated the amount owed. Claimant provided prepetition invoices totaling \$1,131.21. The remainder of the invoices were dated after the Petition Date and were paid in the ordinary course of business.
J.M. SMITH CORP D/B/A SMITH DRUG CO	10571	Insys Therapeutics, Inc.	\$ 297,107.30	General Unsecured	\$ 182,191.75	General Unsecured	Claimant overstated the amount owed. According to the Debtors' books and records, the amount owed is \$182,101.75.
ROCHESTER DRUG COOPERATIVE INC	10400	Insys Therapeutics, Inc.	\$ 323,974.58	General Unsecured	\$ 213,726.16	General Unsecured	Claimant overstated the amount owed. According to the Debtors' books and records, the amount owed is \$213,726.16. Claimant attached supporting documentation that claimed a credit for \$20,823.02 not reflected on the Debtors' books and records and failed to take into account \$89,425.40 of outstanding invoices owed to the Debtors.

Name of Claimant	Claim No.	Debtor	Asserted Claim Amount	Asserted Claim Status	Modified Claim Status and Amount	Reason for Modification
DESIGN DREAMS, LLC	10008	Insys Therapeutics, Inc.	\$7,050.00	Priority under 11 U.S.C. Section 507(a)(4)	\$7,050.00 General unsecured claim	Claimant was not Debtors' employee as is required under 11 U.S.C. Section 507(a)(4)
ELLMAN LAW GROUP, LLC	10204	Insys Therapeutics, Inc.	\$3,492.00	Priority under 11 U.S.C. Section 507(a)(4)	\$3,492.00 General unsecured claim	Claimant was not Debtors' employee as is required under 11 U.S.C. Section 507(a)(4)
EUTECHIC SERVICES LLC	10009	Insys Therapeutics, Inc.	\$14,852.80	Administrative under 11 U.S.C. Section 503(b)(9)	\$14,852.80 General unsecured claim	Claim does not reflect goods provided to Debtors within 20 days of the commencement of case as is required under 11 U.S.C. Section 503(b)(9).
RED COATS INC. D/B/A ADM SECURITY	10012	Insys Therapeutics, Inc.	\$12,984.68	Administrative under 11 U.S.C. Section 503(b)(9)	\$12,984.68 General unsecured claim	Claim does not reflect goods provided to Debtors within 20 days of the commencement of case as is required under 11 U.S.C. Section 503(b)(9).

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**Thirteenth Omnibus Claims Objection**  
**Exhibit 3 - No Liability Claims**

Name of Claimant	Claim No.	Debtor	Claim Amount	Reason for Disallowance
HERRERA, MIGUEL	10360	Insys Therapeutics, Inc.	\$ 3,577.75	Claimant asserts a priority claim under 11 U.S.C. Section 507(a)(5). Debtors' books and records do not reflect that claimant was an employee. No evidence in books and records for any of the amount claimed.
ILLINOIS DEPT OF EMPLOYMENT SECURITY	2621	IC Operations, LLC	\$ 1,544.31	Claimant asserts a priority claim under 11 U.S.C. Section 507(a)(8) for unemployment insurance taxes for quarters 1 and 2 of 2020. Debtors had not employees during 2020 and thus owed no unemployment insurance.
LOGATTI, LILIAN	230	Insys Therapeutics, Inc.	\$ 500,000.00	Claimant asserts an unliquidated claim that is unsupported in Debtors' books and records. Claimant was granted right to sue by the EEOC, but never filed an action.
LOUISIANA DEPARTMENT OF REVENUE	2276	Insys Pharma, Inc.	\$ 1,289.19	Claimant asserts that a portion of its claim is entitled to priority under 11 U.S.C. Section 507(a)(8) for withholding taxes for the quarter ending 6/30/2019. This Debtor had no employees during this period, so owed no withholding taxes.
LOUISIANA DEPARTMENT OF REVENUE	2277	Insys Pharma, Inc.	\$ 4,467.78	Claimant asserts a priority claim under 11 U.S.C. Section 507(a)(2) for withholding taxes allegedly incurred post-petition for the quarters ending 9/30/2019 and 12/31/2019. This Debtor had no employees during this period, so owed no withholding taxes.
MISSISSIPPI DEPARTMENT OF REVENUE	50	Insys Pharma, Inc.	Unliquidated	Claimant asserts a priority claim under 11 U.S.C. Section 507(a)(8) for undetermined corporate and franchise taxes for the years 2014, 2015, 2016, 2017, 2018 and 2019. These amounts have not been liquidated by claimant and there is no bases for the claim. No such returns were due as this Debtor had no nexus with the State of Mississippi.
NUNN, KYLE	98	Insys Therapeutics, Inc.	\$ 200,000.00	Claimant asserts that a portion of his claim (\$13,175.00) is entitled priority under 11 U.S.C. Section 507(a)(4) for wages owed, with the balance of the claim for wrongful termination and defamation of character. Claimant was terminated in 2016. Thus, there is no basis for the 507(a)(4) claim. There is no basis Debtors' books and records for the remainder of the claim and Claimant provides no supporting documentation to establish the claim.
NY STATE DEPT OF TAXATION AND FINANCE	50009	IPSC, LLC	\$ 2,018.66	Claimant asserts a priority claim under 11 U.S.C. Section 507(a)(8) for withholding taxes allegedly incurred post-petition for the quarters ending 6/30/2020 and 9/30/2020. This Debtor had no employees during this timeframe and thus there is no basis for withholding taxes. Additionally, this Debtor was only a holding company.



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**Thirteenth Omnibus Claims Objection**  
**Exhibit 3 - No Liability Claims**

Name of Claimant	Claim No.	Debtor	Claim Amount	Reason for Disallowance
NY STATE DEPT OF TAXATION AND FINANCE	50010	IC Operations, LLC	\$ 2,018.66	Claimant asserts a priority claim under 11 U.S.C. Section 507(a)(8) for withholding taxes allegedly incurred post-petition for the quarters ending 6/30/2020 and 9/30/2020. This Debtor had no employees during this timeframe and thus, there is no basis for withholding taxes.
NY STATE DEPT OF TAXATION AND FINANCE	50011	IC Operations, LLC	\$ 3,058.87	Claimant asserts a priority claim under 11 U.S.C. Section 507(a)(8) for withholding taxes allegedly incurred post-petition for the quarters ending 6/30/2020, 9/30/2020 and 12/31/2020. This Debtor had no employees during this timeframe and thus, there is no basis for withholding taxes.
NY STATE DEPT OF TAXATION AND FINANCE	50012	IPSC, LLC	\$ 3,058.87	Claimant asserts a priority claim under 11 U.S.C. Section 507(a)(8) for withholding taxes allegedly incurred post-petition for the quarters ending 6/30/2020, 9/30/2020 and 12/31/2020. This Debtor had no employees during this timefrom and thus, there is no basis for withholding taxes. Additionally, this Debtor was only a holding company.
SOUTH CAROLINA DEPARTMENT OF REVENUE	1386	Insys Pharma, Inc.	\$ 500.00	Claimant asserts a priority claim under 11 U.S.C. Section 507(a)(8) for withholding taxes for the quarter ending 6/30/2019. This Debtor had no employees during this timeframe and thus, there is no basis for withholding taxes.

**Exhibit 4 - Equity Claims**

Name of Claimant	Claim Number	Debtor	Asserted Claim Amount	Asserted Claim Classification	Reason for Reclassification to Class 13 Equity Interest and Disallowance.
FRANCOIS, MAX	11745	Insys Therapeutics, Inc.	Undetermined	Administrative expense under 11 U.S.C. Section 503(b)(9)	The claimant asserts an equity interest in one or more of the Debtors. Equity Interests were cancelled as of the Effective Date and as such, the claimant is not entitled to receive any distributions in the cases under the Plan.
GRAVES, TERRI	10606	Insys Therapeutics, Inc.	Undetermined	Secured; Setoff; and Priority under 11 U.S.C. Section 507(a) Administrative Expenses under 11 U.S.C. Section 503(b)(9)	The claimant asserts an equity interest in one or more of the Debtors. Equity Interests were cancelled as of the Effective Date and as such, the claimant is not entitled to receive any distributions in the cases under the Plan.
NASH, DALE	550	Insys Therapeutics, Inc.	\$ 1,120.00	Administrative expense under 11 U.S.C. Section 503(b)(9); General Unsecured	The claimant asserts an equity interest in one or more of the Debtors. Equity Interests were cancelled as of the Effective Date and as such, the claimant is not entitled to receive any distributions in the cases under the Plan.

**Exhibit B**

**Phillips Declaration**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

INSYS THERAPEUTICS, INC., *et al.*,

Liquidating Debtors.<sup>1</sup>

Chapter 11

Case No. 19-11292 (JTD)

(Jointly Administered)

**DECLARATION OF EDWARD A. PHILLIPS PURSUANT TO 28 U.S.C. § 1746 AND  
LOCAL RULE 3007-1 IN SUPPORT OF THIRTEENTH OMNIBUS OBJECTION OF  
THE TRUSTEE OF THE INSYS LIQUIDATION TRUST TO CLAIMS (SUBSTANTIVE)  
(Reduced Claims, Misclassified Claims, No Liability Claims and Equity Claims)**

Edward A. Phillips, under penalty of perjury hereby declares as follows:

1. I am Managing Director of Getzler Henrich & Associates LLC (“Getzler Henrich”).

My professional credentials include: Certified Turnaround Professional; Certified Insolvency & Restructuring Advisor; Certified Fraud Examiner; Certified in Financial Forensics; and Certified Public Account. I have more than 25 years of experience in finding solutions to problems in restructuring, insolvency, liquidation, and forensic accounting matters. I have advised a variety of parties and functioned in numerous roles in bankruptcy proceedings, out-of-court restructurings, forensic accounting engagements and post-confirmation engagements.

2. I submit this declaration in support of the *Thirteenth Omnibus Objection of the Trustee of the Insys Liquidation Trust to Claims (Substantive)* (the “Objection”).

3. Getzler Henrich serves as the financial advisor to the Insys Liquidation Trust (the “Trust”) and Mr. William Henrich, the Trustee of the Trust and has been working in these cases

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<sup>1</sup> The Liquidating Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, 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).

since the Effective Date.<sup>2</sup> I am the primary Getzler Henrich professional responsible for overseeing the claims analysis process. Additionally, I also consult with the Debtors' former Chief Financial Officer and Director of Accounting who currently act as consultants to the Trust and have firsthand knowledge of the Debtors' books and records (the "Books and Records"). As such, I have gained significant familiarity of the Books and Records and their Schedules.

4. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my review (or the review of Trust's counsel, Epiq, and/or Trust's consultants under my supervision) of business records kept by the Debtors in the ordinary course of business, the relevant proofs of claim, and/or the claims register maintained by Epiq, the claims and noticing agent in these cases. The objections set forth in the Objection are based on the review conducted. I have personally reviewed the Objection and to the best of my knowledge and belief, the information contained on Exhibits 1, 2, 3 and 4 to the Objection is true and correct.

5. I and/or the Trust's counsel reviewed the claims identified in Exhibit 1 to the Objection and the supporting documentation, if any, filed with the claims, and have determined that they assert claims that overstate the amount of liability owed by the Debtors as compared to the Books and Records, and/or because such claims fail to include sufficient documentation to support the full amount asserted. Therefore, the claims in Exhibit 1 should be reduced as reflected therein.

6. I and/or the Trust's counsel reviewed the claims identified in Exhibit 2 to the Objection and the supporting documentation, if any, filed with the claims, and have determined that they were misclassified since they improperly assert that they are claims entitled to priority under § 507 of the Bankruptcy Code, or administrative expense claims under § 503(b)(9) of the

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Objection.

Bankruptcy Code even though they are general unsecured claims. Based on our review of the proofs of claim filed for these claims, we have determined that these claims failed to provide sufficient supporting documentation to support the asserted priority or administrative expense, assert a priority or administrative expense not reflected in the Books and Records, assert a priority or administrative expense that is not supported under the Bankruptcy Code and/or the Plan, and assert claims that are solely general unsecured claims. Therefore, the claims in **Exhibit 2** should be modified as reflected therein.

7. I and/or the Trust's counsel reviewed the claims identified in **Exhibit 3** to the Objection and the supporting documentation, if any, filed with the claims, and have determined that the claims have no basis in fact or law which would support the asserted claims and/or the amounts asserted are unliquidated. These unliquidated amounts are not reflected in the Books and Records. Therefore, the claims in **Exhibit 3** should be disallowed and expunged.

8. Finally, I and/or the Trust's counsel the reviewed all of the claims identified in **Exhibit 4** to the Objection and the supporting documentation, if any, filed with the claims, and have determined that these claims were filed by holders of equity interests. Therefore, the claims should be reclassified as a Class 13 Equity Interests and under the Plan, Equity Interests were deemed cancelled and as of the Effective Date. As such, the claims on **Exhibit 4** should be reclassified, disallowed in their entirety, and expunged.

9. Based on the foregoing, and to the best of my knowledge, information and belief, the information contained in the Objection and exhibits thereto is true and correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed on: June 18, 2021

/s/ Edward A. Phillips  
Edward A. Phillips