

ORIGINAL

**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 (KG)
	:	
Debtors.¹	:	Jointly Administered
	:	
-----X	:	Re: Docket No. 3

**ORDER AUTHORIZING APPOINTMENT
OF EPIQ CORPORATE RESTRUCTURING, LLC AS
CLAIMS AND NOTICING AGENT EFFECTIVE AS OF PETITION DATE**

Upon the application (the “**Application**”),² dated June 10, 2019, of Insys Therapeutics, Inc. and its affiliated debtors in the above-captioned Chapter 11 Cases, as debtors and debtors in possession (collectively, the “**Debtors**”) pursuant to sections 156(c) of title 28 of the United States Code, section 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware for authority to appoint Epiq Corporate Restructuring, LLC (“**Epiq**”) as claims and noticing agent (“**Claims and Noticing Agent**”) in the Debtors’ Chapter 11 Cases, which will include Epiq assuming full responsibility for all the distribution of notices and the maintenance, processing, and docketing of any proofs of claim filed in the Debtors’ Chapter 11 Cases, all as more fully set forth in the Application; and upon the *Declaration of Brian Karpuk in Support of Debtors’ Application for Authority to*

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.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Application.

Appoint Epiq Corporate Restructuring, LLC as Claims and Noticing Agent Effective as of Petition Date (the “**Karpuk Declaration**”), filed contemporaneously with and attached to the Application as Exhibit B; and the Debtors having estimated that there are in excess of 5,000 notice parties in these Chapter 11 Cases; and it appearing that the receiving, docketing, and maintaining of proofs of claim would be unduly time consuming and burdensome for the Clerk; and this Court being authorized under 28 U.S.C. § 156(c) to utilize, at the Debtors’ expense, outside agents and facilities to provide notices to parties in title 11 cases and to receive, docket, maintain, photocopy and transmit proofs of claim; and this Court being satisfied that Epiq has the capability and experience to provide such services and that Epiq does not hold an interest adverse to the Debtors or the estates respecting the matters upon which it is to be engaged; and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Application and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Application; and the Court having held a hearing to consider the relief requested in the Application (the “**Hearing**”); and upon the Karpuk Declaration and the record of the Hearing and all proceedings had before this Court; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and it appearing that the relief requested in the Application is in the best interests of the Debtors, their estates, creditors, and all

parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT

1. Notwithstanding the terms of the Engagement Agreement attached to the Application, the Application is approved solely as set forth in this Order.

2. The Debtors are authorized to retain Epiq as Claims and Noticing Agent effective as of the Petition Date under the terms of the Engagement Agreement, and Epiq is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in these Chapter 11 Cases, and all related tasks, all as described in the Application.

3. Epiq shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these Chapter 11 Cases and is authorized and directed to maintain official claims registers for each of the Debtors, to provide public access to every proof of claim unless otherwise ordered by this Court, and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

4. Epiq is authorized and directed to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim.

5. Epiq is authorized to take such other action to comply with all duties set forth in the Application.

6. The Debtors are authorized to compensate Epiq in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by Epiq and the rates charged for each and to reimburse Epiq for all reasonable and necessary expenses it may incur, upon the presentation of appropriate

documentation, without the need for Epiq to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. Epiq shall maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the office of the United States Trustee for the District of Delaware, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, and any party-in-interest who specifically requests service of the monthly invoices.

8. The parties shall meet and confer in an attempt to resolve any dispute that may arise relating to the Engagement Agreement or monthly invoices; *provided that* the parties may seek resolution of the matter from this Court if resolution is not achieved.

9. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of Epiq under this Order shall be an administrative expenses of the Debtors' estates.

10. Epiq may apply its retainer to all prepetition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, Epiq may hold its retainer under the Engagement Agreement during the Chapter 11 Cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

11. The Debtors shall indemnify Epiq and each other Indemnified Person, as that term is defined in the Engagement Agreement (collectively, the "**Indemnified Persons**"), under the terms of the Engagement Agreement, as modified pursuant to this Order.

12. The Indemnified Persons shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Agreement for services other than the services provided under the Engagement Agreement, unless such services and the indemnification, contribution or reimbursement therefor are approved by this Court.

13. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtors shall have no obligation to indemnify the Indemnified Persons, or provide contribution or reimbursement to the Indemnified Persons, for any claim or expense that is either: (a) judicially determined (the determination having become final) to have arisen from an Indemnified Person's gross negligence, willful misconduct or fraud; (b) for a contractual dispute in which the Debtors allege the breach of an Indemnified Person's contractual obligations if this Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (c) settled prior to a judicial determination under (a) or (b), but determined by this Court, after notice and a hearing, to be a claim or expense for which an Indemnified Person should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Agreement as modified by this Order.

14. If, before the earlier of (a) the entry of an order confirming a chapter 11 plan in these Chapter 11 Cases (that order having become a final order no longer subject to appeal), or (b) the entry of an order closing these Chapter 11 Cases, an Indemnified Person believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, or reimbursement obligations under the Engagement Agreement (as modified by this Order), including the advancement of defense costs, the Indemnified Person or Epiq must file an application therefor in this Court, and the Debtors may not pay any such amounts to such Indemnified Person before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which this Court shall have jurisdiction over any request for fees and expenses by the Indemnified Persons for indemnification, contribution, or reimbursement, and not a provision

limiting the duration of the Debtors' obligation to indemnify the Indemnified Persons. All parties in interest shall retain the right to object to any demand by any Indemnified Person for indemnification, contribution, or reimbursement.

15. If Epiq is unable to provide the services set out in this Order, Epiq will immediately notify the Clerk and the Debtors' attorney and, upon approval of this Court, cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and the Debtors' attorney.

16. The Debtors may submit a separate retention application, pursuant to 11 U.S.C. § 327 or any applicable law, for work that is to be performed by Epiq but is not specifically authorized by this Order.

17. The Debtors and Epiq are authorized to take all action necessary to effectuate the relief granted in this Order.

18. Notwithstanding any term in the Engagement Agreement to the contrary, the Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order during the course of these bankruptcy cases.

19. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

20. Epiq shall not cease providing claims processing services during the Chapter 11 Cases for any reason, including nonpayment, without an order of this Court.

21. If there are any inconsistencies between the Engagement Agreement, the Application, and this Order, then this Order shall govern.

Dated: JUNE 11, 2019
Wilmington, Delaware



THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

ORIGINAL

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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Dated: JUNE 11, 2019
Wilmington, Delaware



THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE