

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: D.I. 8

**INTERIM ORDER (I) AUTHORIZING PAYMENT
OF CERTAIN PREPETITION CLAIMS OF CRITICAL
VENDORS, (II) CONFIRMING ADMINISTRATIVE EXPENSE
PRIORITY OF UNDISPUTED AND OUTSTANDING PREPETITION
ORDERS, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”),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 105(a), 363(b), and 503(b) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors request entry of an order (i) authorizing the Debtors to pay Critical Vendor Claims in an amount not to exceed the Critical Vendor Cap absent further order of the Court; (ii) confirming the administrative expense priority status of Outstanding Orders, and (iii) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion 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

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 herein but not otherwise defined shall have the meanings ascribed to such terms in the Motion.

consideration of the Motion 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 Motion 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 Motion; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and upon the Long Declaration, filed contemporaneously with the Motion, and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and 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. The Motion is granted on an interim basis, as provided herein.
2. The Debtors are authorized, but not directed, pursuant to sections 105(a), 363(b), and 503(b) of the Bankruptcy Code, to pay, or cause to be paid, Critical Vendor Claims and 503(b)(9) Claims in an amount not to exceed \$1,770,000 (the “**Critical Vendor Cap**”), of which approximately \$50,000 shall be for 503(b)(9) Claims, pending entry of a final order on the Motion; provided, that the Debtors are authorized, but not directed, to pay only amounts due and payable as of the Petition Date and amounts that are or become due and payable between the Petition Date and the date that a final order on the Motion is entered, unless otherwise ordered by the Court.

3. The Debtors shall undertake all appropriate efforts to cause Critical Vendors to enter into Trade Agreements with the Debtors.

4. The Debtors are authorized, but not directed, to condition payment of Critical Vendor Claims upon entry into Trade Agreements in the exercise of their reasonable business judgment.

5. Unless otherwise agreed by the Debtors, if any party accepts payment pursuant to the relief granted in this order (the “**Interim Order**”) and (i) is a party to an executory contract or (ii) thereafter, as applicable, does not continue to provide either goods or services on Customary Trade Terms (regardless of whether a Trade Agreement has been executed), then the Debtors reserve all of their rights to treat any payment made pursuant to the relief granted in this Interim Order as an unauthorized postpetition transfer and to exercise any and all appropriate remedies.

6. All undisputed obligations related to the Outstanding Orders are granted administrative expense priority status in accordance with section 503(b)(1)(A) of the Bankruptcy Code.

7. Nothing in the Motion or this interim order shall be deemed to authorize the Debtors to accelerate any payments not otherwise due prior to the date of the hearing to consider entry of an order granting the relief requested in the Motion on a final basis (the “**Final Hearing**”).

8. Nothing contained in the Motion or this interim order, nor any payment made pursuant to the authority granted by this interim order, is intended to be or shall be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors’ or any appropriate party in interest’s rights to dispute the amount of, basis for, or

validity of any claim against the Debtors; (c) a waiver of any claims or causes of action that may exist against any creditor or interest holder; or (d) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

9. Nothing contained in the Motion or this interim order shall be deemed to constitute an assumption or rejection of any executory contract or prepetition or postpetition agreement between the Debtors and a Critical Vendor or to require the Debtors to make any of the payments authorized herein.

10. The authorization granted hereby to pay Critical Vendor Claims shall not create any obligation on the part of the Debtors to pay the Critical Vendor Claims, and nothing contained in this order shall be deemed to increase, reclassify, elevate to an administrative expense status or otherwise affect the Critical Vendor Claims to the extent they are not paid.

11. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

12. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and Local Rule 9013-1(m).

13. Notwithstanding Bankruptcy Rule 6004(h), this interim order shall be immediately effective and enforceable upon its entry.

14. The Debtors are authorized to take all actions necessary to implement the relief granted in this interim order.

15. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this interim order.

16. The Final Hearing on the Motion shall be held on **July 8, 2019 at 9:00**
a.m. (Prevailing Eastern Time) and any objections or responses to the Motion shall be in

writing, filed with the Court, and served upon (a) the proposed attorneys for the Debtors, (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq., Ronit J. Berkovich, Esq., Candace M. Arthur, Esq., and Olga F. Peshko, Esq.), and (ii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq., Paul N. Heath, Esq., and Amanda R. Steele, Esq.); and (b) the Notice Parties; in each case, on or prior to **July 1, 2019 at 4:00 p.m. (Prevailing Eastern Time)**.

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