

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)**
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Debtors.¹ : **Jointly Administered**
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: **Re: D.I. 7**
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FINAL ORDER
PURSUANT TO 11 U.S.C. §§ 105(a) AND
366 (I) APPROVING DEBTORS’ PROPOSED
FORM OF ADEQUATE ASSURANCE OF PAYMENT TO
UTILITY PROVIDERS, (II) ESTABLISHING PROCEDURES
FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT
FOR FUTURE SERVICES AND RESOLVING THE OBJECTION OF
SALT RIVER PROJECT, AND (III) PROHIBITING UTILITY PROVIDERS
FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICE

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 (the “**Chapter 11 Cases**”), as debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to sections 105(a) and 366 of title 11 of the United States Code (the “**Bankruptcy Code**”), the Debtors request entry of an order (a) approving the Debtors’ proposed form of adequate assurance of payment to Utility Providers (as defined below), (b) establishing procedures for determining adequate assurance of payment for future utility services and resolving the objection of Salt River Project, and (c) prohibiting Utility Providers from altering, refusing, or discontinuing utility service on

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 410 S. Benson Lane, Chandler, Arizona 85224.

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

account of outstanding prepetition invoices (the “**Final Order**”), 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 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 an objection to the Motion (the “**Objection**”) having been filed by Salt River Project (D.I. 179); and the Court having reviewed the Motion; and the Court having held a hearing on June 11, 2019 to consider the relief requested in the Motion on an interim basis (the “**Interim Hearing**”); and the Court having entered an order granting the relief requested in the Motion on an interim basis (D.I. 51) (the “**Interim Order**”) and scheduling a final hearing on the Motion for July 8, 2019 (the “**Final Hearing**”); and the Final Hearing having been held, if necessary, to consider the relief requested in the Motion on a final basis; and upon the Long Declaration, filed contemporaneously with the Motion, and the record of the Interim Hearing and, if applicable, the Final 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 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 a final basis, to the extent provided herein.
2. As adequate assurance, the Debtors have deposited cash in an amount of \$31,500 (the “**Adequate Assurance Deposit**”) into a segregated bank account (the “**Adequate Assurance Account**”), which shall be separately allocated for, and payable to, each Utility Provider in the amount set forth on **Exhibit 1** hereto or as otherwise agreed; provided that the Adequate Assurance Deposit maintained in the Adequate Assurance Account may be increased or decreased by the Debtors if the Debtors terminate services with any of the Utility Providers, make other arrangements with certain Utility Providers for adequate assurance of payment, determine that an entity listed on the Utility Service List is not a utility company as defined by section 366 of the Bankruptcy Code, or supplement the Utility Service List to include additional Utility Providers.
3. The Adequate Assurance Deposits, in conjunction with cash flow from operations and cash on hand, demonstrate the Debtors’ ability to pay for future Utility Services in the ordinary course of business (together, the “**Proposed Adequate Assurance**”) and constitute sufficient adequate assurance to the Utility Providers.
4. The Proposed Adequate Assurance is hereby approved and is deemed adequate assurance of payment as the term is used in section 366 of the Bankruptcy Code.
5. The Debtors’ Utility Providers (other than Salt River Project), including those that provide Utility Services to the Debtors through a landlord (the “**Utility Providers**”), including without limitation those listed on **Exhibit 1** hereto (the “**Utility Service List**”), are prohibited from altering, refusing, or discontinuing services to the Debtors (the “**Utility**

Services”) on account of any unpaid prepetition charges and are deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.

6. The following Adequate Assurance Procedures are hereby approved:
 - i. The Debtors will mail a copy of the Motion and the Final Order to each Utility Provider within two (2) business days after entry of the Final Order.
 - ii. The Debtors have deposited the Adequate Assurance Deposit in the aggregate amount of \$31,500 in the Adequate Assurance Account; provided that, to the extent any Utility Provider receives any other value from the Debtors as adequate assurance of payment, upon agreement with the Utility Provider, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account for such Utility Provider by such amount.
 - iii. The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors upon the earlier of (i) the Debtors having satisfied in full all postpetition obligations due and owing to the applicable Utility Provider, (ii) the occurrence of the effective date of any chapter 11 plan confirmed in these Chapter 11 Cases, and (iii) the Debtors’ termination of Utility Services with the Utility Provider, if not applied earlier.³
 - iv. Any Utility Provider desiring additional assurances of payment in the form of deposits or prepayments or otherwise must serve a request for additional assurance (an “**Additional Assurance Request**”) so that it is received by the following parties at the following addresses: (i) Insys Therapeutics, Inc., 410 S. Benson Lane, Chandler, Arizona 85224 (Attn.: Andrew G. Long); (ii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn.: Candace M. Arthur and Alyssa Kutner); and (iii) counsel to any official committee appointed in the Chapter 11 Cases (collectively, the “**Adequate Assurance Notice Parties**”).
 - v. Any Additional Assurance Request must (i) be made in writing, (ii) set forth the type of Utility Services provided to the Debtors, any account numbers, and the location for which Utility Services are provided to the Debtors, (iii) include a summary of the Debtors’ payment history relevant to the affected account(s) of such Utility Provider, and (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not

³ In the event that a Utility Provider has more than one account with the Debtors, then, upon termination of an account by the Debtors, only that portion of the Adequate Assurance Deposit attributable to such terminated account will be returned.

sufficient adequate assurance of future payment.

- vi. Any Additional Assurance Request must be made and actually received by all of the Adequate Assurance Notice Parties. If a Utility Provider fails to serve an Additional Assurance Request on the Adequate Assurance Notice Parties, such Utility Provider shall be: (i) deemed to have received adequate assurance of payment satisfactory to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (ii) forbidden to discontinue, alter, or refuse service to, or discriminate against, the Debtors on account of the commencement of the Chapter 11 Cases and/or any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance.
- vii. Upon the Adequate Assurance Notice Parties' receipt of any Additional Assurance Request at the addresses set forth above, the Debtors shall promptly negotiate with such Utility Provider to resolve such Utility Provider's Additional Assurance Request.
- viii. The Debtors may, in their sole discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in their sole discretion, provide a Utility Provider with additional adequate assurance of future payment, including but not limited to cash deposits, prepayments, or other forms of security, without further order of this Court if the Debtors believe such additional assurance is reasonable.
- ix. If the Debtors determine that the Additional Assurance Request is not reasonable and they are not able to reach a resolution with the Utility Provider, the Debtors will request a hearing before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the "**Determination Hearing**") pursuant to section 366(c)(3) of the Bankruptcy Code, and such Determination Hearing shall be scheduled for the next omnibus hearing date for which shortened notice is not required or such later hearing date as may be agreed to between the Debtors and such Utility Provider.
- x. Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider that made such Additional Assurance Request shall be prohibited from discontinuing, altering, or refusing service to the Debtors on account of the commencement of the Chapter 11 Cases, any unpaid charges for prepetition services, and/or any objections to the Proposed Adequate Assurance.
- xi. Absent compliance with the procedures set forth in the Motion and the Final Order, the Debtors' Utility Providers are prohibited from discontinuing, altering, or refusing service on account of the

commencement of the Chapter 11 Cases and/or any unpaid prepetition charges and are deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.

7. The Debtors are authorized, in their sole discretion, to amend the Utility Service List to add or delete any Utility Provider, and the Final Order shall apply to any Utility Provider that is subsequently added to the Utility Service List. Any such amended Utility Service List shall be filed with the Court.

8. For those Utility Providers that are subsequently added to the Utility Service List, the Debtors will serve a copy of this Final Order on the subsequently added Utility Provider and deposit two weeks' worth of estimated utility costs in the Adequate Assurance Account for the benefit of such Utility Provider (less any amounts already on deposit with any such Utility Provider), and any such subsequently added entities shall make any Additional Assurance Requests in accordance with the Adequate Assurance Procedures.

9. Any Utility Provider that fails to request additional assurance in accordance with the Adequate Assurance Procedures shall be deemed to consent to the Adequate Assurance Procedures and shall be bound by this Final Order.

10. The hearing on the Objection shall be adjourned to **July 24, 2019 at 9:30 a.m. (Eastern Time)**. Pending the hearing thereon, Salt River Project is prohibited from altering, refusing, or discontinuing service to the Debtors on account of any unpaid prepetition charges pursuant to section 366 of the Bankruptcy Code.

11. The Debtors may, in their sole discretion, resolve the Objection by mutual agreement with Salt River Project and without further order of the Court, and may, in connection with any such agreement, in their sole discretion, provide Salt River Project with additional adequate assurance of future payment, including but not limited to cash deposits, prepayments or

other forms of security, without further order of this Court if the Debtors believe such additional assurance is reasonable.

12. Nothing contained in the Motion, the Interim Order, or this Final Order, nor any payment made pursuant to the authority granted by this Final 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.

13. Under the circumstances of these Chapter 11 Cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

14. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

15. The Debtors are authorized to take all actions necessary to implement the relief granted in this Final Order.

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



KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

Dated: July 3rd, 2019
Wilmington, Delaware

Exhibit 1

Utility Service List

Utility	Address	Description of Utility Service	Account Number(s)	Average Monthly Expense	Adequate Assurance Deposit
SRP	P.O. Box 80062 Prescott AZ, 86304-8062	Electric	581-144-001 343-606-002 391-217-005 782-917-006	\$8,514	Adjourned until 7/24/2019
Atmos	P.O. Box 790311 St. Louis, MO 63179-0311	Gas	4006950765	\$6,751	\$3,375
Just Energy	P.O. Box 650518 Dallas, TX 75265-0518	Electric	6330018 6775184	\$19,760	\$9,880
Verizon	P.O. Box 408, Newark, NJ 07101-0408	Internet/Telephones	972328505-00001	\$10,773	\$5,387
Cox Communications	P.O. Box 53249 Phoenix, AZ 85072-3249	Internet/Telephones	001-8501-222-367701 001-8501-229-403401 001-8501-239-306601 001-8501-206-602301 001-8501-240-989401	\$14,134	\$7,067
Time Warner-Spectrum Business	P.O. Box 60074 City of Industry, CA 91716-0074	Internet/Telephones	8260-16-030-1105326 8260-16-030-0939014	\$822	\$411
City of Round Rock	Utility Billing Department 221 E. Main Street Round Rock, TX 78664-5299	Water/Waste	41565-464029 41565-464039	\$1,936	\$968
Level 3 Communications	P.O. Box 910182 Denver, CO 80291-0182	Internet/Telephones	303248	\$1,435	\$718
Vast Conference	1960 East Grand Ave. #290, CA 90245	Internet/Telephones	1134892	\$760	\$380
Ring Central	20 Davis Dr, Belmont, CA 94002	Internet/Telephones	8667218195	\$198	\$99
TTC Conference	P.O. Box 409573 Atlanta, GA 30384-1866	Internet/Telephones	N/A	\$301	\$150
CenturyLink	P.O. Box 910182 Denver, CO 80291-0182	Internet/Telephones	303248	\$1,146	\$573
Cerilliant Corporation	811 Paloma Dr. Ste. A Round Rock, TX 78665	Security/Electric	N/A	\$5,063	\$2,532