

**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)
	:	
	:	Re: D.I. 5
	X	

**DEBTORS’ STATEMENT IN SUPPORT OF POSTPETITION
SEVERANCE PROGRAM AND HONORING RELATED OBLIGATIONS**

Insys Therapeutics, Inc. (“**Insys**”) and its affiliated debtors in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), as debtors and debtors in possession (collectively, the “**Debtors**”), hereby submit this statement (“**Statement**”) as a supplement to and in connection with the *Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a), 363, and 507(a) for (I) Authority to (A) Pay Certain Prepetition Wages and Reimbursable Employee Expenses, (B) Pay and Honor Employee Medical and Other Benefits, and (C) Continue Employee Benefits Programs, and (II) Related Relief* dated June 10, 2019 [D.I. 5] (the “**Wages Motion**”).²

Preliminary Statement

1. On the Petition Date, the Debtors commenced these Chapter 11 Cases and filed the Wages Motion. Pursuant to the Wages Motion, the Debtors sought, among other things, the authority, but not direction, to continue their general prepetition practice, in the ordinary course

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

of business, of paying severance benefits to certain Eligible Employees terminated in covered circumstances, including a reduction in force, job elimination, change in control, or reorganization (the “**Prepetition Severance Program**”). The Prepetition Severance Program provided Eligible Employees with severance if such employee was (a) party to an employment agreement with the Debtors, (b) the Debtors entered into a separation agreement with the Eligible Employee providing for such benefits, or (c) where the Eligible Employee is otherwise required to receive such benefits pursuant to state or local law requirements. The relief requested was and remains important for employee morale and a key incentive tool for the Debtors to address the immediate retention concerns that could significantly impact their ability to operate their businesses, administer these Chapter 11 Cases and wind-up their affairs.

2. As the Chapter 11 Cases have progressed and, importantly, the outcome of the global sale process crystalized, the Debtors reviewed the Prepetition Severance Program and related Severance Obligations to determine what modifications, if any, the circumstances dictated. After extensive discussions with the official committee of unsecured creditors appointed in these Chapter 11 Cases (the “**Creditors’ Committee**”), consideration of and the need to mitigate employee attrition, scheduled reductions in the Debtors’ work force, and the Debtors’ compliance with restrictions on marketing and sales of their pharmaceutical products imposed by the Office of Inspector General of the United States Department of Health and Human Services, the Debtors accordingly modified the Prepetition Severance Program and Severance Obligations on a postpetition basis (the “**Postpetition Severance Program**”).

3. As described more fully herein, after careful consideration, the Debtors intend to implement the Postpetition Severance Program, which involves, among other things, the following key terms:

- Severance payments may be made to non-insider Eligible Employees identified by the Debtors as key to the administration of the Chapter 11 Cases, winding-up of their affairs, and post-sale business operations (the “**Key Employees**”).
- Key Employees will receive a maximum severance award of up to eight weeks of pay in accordance with prior practice under the Prepetition Severance Program.
- The aggregate payments under the Postpetition Severance Program (as may be modified, amended, or supplemented from time to time in the ordinary course of the Debtors’ business, collectively, the “**Severance Obligations**”) shall not exceed a maximum amount of \$500,000 absent consent of the Creditors’ Committee or further order of the Court.

4. No party-in-interest objected to the Debtors continuing the Prepetition Severance Program and the response deadline with respect to the relief requested in the Wage Motion was extended only for the Creditors’ Committee. As detailed in this Statement, the Debtors (a) have materially reduced the cost of the Severance Obligations associated with the Prepetition Severance Program — reflecting an approximate \$3 million in savings, (b) will use their discretion to implement the Postpetition Severance Program to a significantly reduced pool of Eligible Employees, and (c) will condition receipt of any severance award on each recipient making a written representation that they have not engaged in any criminal conduct with respect to Insys’s commercial practices at any time during his/her employment. The modifications made to the Prepetition Severance Program are unequivocally to the benefit of the Debtors’ estates and key economic stakeholders.

5. The Debtors believe that the Postpetition Severance Program is essential to appropriately motivate an already lean workforce during these Chapter 11 Cases, particularly after the global sale process concludes and the chapter 11 plan process is underway. Indeed, absent the relief requested, the Debtors will not be well positioned to retain the Key Employees after the global sale process has concluded (likely by early October 2019) because the Debtors believe that

such employees would have satisfied the conditions necessary to keep any prior retention awards received. The Debtors' Key Employees are vital to the Debtors' ability to operate through and after the effective date of a chapter 11 plan (the "**Plan Effective Date**"). Accordingly, maintaining and promoting the Key Employees' morale and focus, and providing appropriate incentives to remain with the Debtors, is essential not only to the general welfare of the Debtors' business but also to the success of the Chapter 11 Cases. The Postpetition Severance Program is reasonable, necessary, and well within the Debtors' business judgment.

Relevant Additional Background

6. As of the date hereof, the Debtors have 128 Full-Time Employees, 29 of which are part of the Sales Force.

7. On August 8, 2019 the Debtors filed the *Notice of Successful Bidder and Sale Hearing for Certain Assets Relating to Epinephrine and Naloxone* [D.I. 418] (the "**Hikma Transaction**") and the *Notice of Successful Bidder and Sale hearing for Certain Assets Relating to CBD Formulations, Syndros, and Buprenorphine* [D.I. 420] (the "**Chilion Transaction**" and, together with the Hikma Transaction, the "**Sale Transactions**"). The hearing to approve the Sale Transactions is scheduled for August 22, 2019.

8. The pending Chilion Transaction provides that Chilion will make offers to employ all thirty-five (35) employees at the Round Rock facility in Texas on terms and conditions not less favorable than those provided by the Debtors during the twelve month period ending on the closing date of the sale.

9. On August 9, 2019 the Debtors served conditional notices pursuant to The Worker Adjustment and Retraining Notification Act ("**WARN**" and the notices, the "**WARN Notices**") to ninety-eight of their Full-Time Employees required to receive WARN Notices under

WARN. Pursuant to the WARN Notices, Employees were informed of the Debtors' expectation that the Debtors would be permanently closing and laying off all employees on October 8, 2019, unless an employee is either selected for continued retention by the Debtors or offered employment with a buyer of the Debtors' assets.

10. In accordance with the terms of the Corporate Integrity Agreement and Conditional Exclusion Release between the Office of Inspector General of the United States Department of Health and Human Services and the Debtors (the "CIA"), the Debtors will cease all marketing and promotion of SUBSYS® ("Subsys") at the time it is sold or licensed to a bona fide independent third party in an arms' length transaction or by September 3, 2019, whichever occurs first (the "Cessation Date"). Any Key Employees retained by the Debtors following the Cessation Date who received severance will not be involved in the marketing or promotion of Subsys.

11. Certain of the Key Employees currently contemplated to receive a severance payment under the Postpetition Severance Program have received other retention and/or incentive compensation in the last twelve months. Fourteen³ of the Key Employees received a prepetition cash retention bonus under the KERP. As described further in the Wages Motion, the prepetition KERP was approved by the Compensation Committee of the Board of Directors of Insys and designed to incentivize the thirty participants to remain with Insys through, among other things, the consummation of a change of control arising from a transaction or series of related transactions with a non-affiliate of Insys of at least 50% of the assets of the Company. *See Wages Motion at ¶ 20.*

³ Upon the closing of the Chilion Transaction four of the fourteen Key Employees that received a prepetition cash retention bonus under the KERP will be rendered ineligible for the Postpetition Severance Program.

12. The Debtors continue to steadily receive resignations and currently face significant attrition concerns.

The Postpetition Severance Program

13. The Debtors seek to adopt the Postpetition Severance Program to provide established guidelines pursuant to which the Debtors, in their sole discretion, may make severance payments to Key Employees who meet the requirements described in the program when they are terminated from service. The Postpetition Severance Program provides for discretionary severance pay only and is subject to the limitations described therein.

14. The following is a summary of the salient terms of the Postpetition Severance Program. To the extent there are any inconsistencies between this summary and the operative documents, the operative documents shall govern:⁴

Eligibility	<p>An Employee shall be eligible to receive discretionary Severance Pay under the Postpetition Severance Program if and only if all of the following conditions are met (and the Employee is not otherwise disqualified from eligibility), as determined in the sole good faith discretion of the Debtors:</p> <ol style="list-style-type: none"> a. The Employee is an Employee of the Company on or after the Effective Date of the Plan; b. The employment of the Employee is terminated by the Company without Cause; c. Management and the Vice President of Human Resources (the “Severance Committee”) decides, in its sole discretion, to award Severance Pay to the Employee; d. The Employee has returned all of the Company’s property, submitted all expense reimbursements to which Employee is entitled under the Company’s standard expense reimbursement policy, and paid to the Company any amounts due by the Employee; and e. The Employee duly executes and delivers to the Company a fully executed and non-revocable general release agreement, within sixty (60) days of the Termination Date and such agreement will include a representation by the Employee that he/she did not engage in any criminal conduct with respect to the Company’s commercial
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⁴ Capitalized terms used in this summary but not defined shall have the meanings ascribed to such terms in the operative documents memorializing the Postpetition Severance Program.

	practices at any time during the Employee's employment with the Company.
Conditions to Payment	Except to the extent required by applicable law, an Employee shall be ineligible to receive Severance Pay under the Plan if any of the following disqualifying events are determined to have occurred, which determination shall be made in the sole good faith discretion of the Severance Committee: <ul style="list-style-type: none"> a. the Employee is offered employment by a purchaser of any portion of the assets of the Company, or an affiliate of such purchaser, regardless of the terms and conditions of such offer; b. The Employee is terminated for Cause, as determined in the sole good faith discretion of the Severance Committee; c. The Employee's employment with the Company terminates by reason of the Employee's death, retirement or voluntary resignation; or d. The Employee engaged in any criminal conduct with respect to the Company's commercial practices at any time during the Employee's employment with the Company.
Severance Pay	If the Severance Committee decides to award Severance Pay to any eligible Employee or group of eligible Employees, then such eligible Employee(s) shall receive a cash payment or cash payments in an amount or amounts determined by the Severance Committee in its sole discretion, up to a maximum an amount equal to eight (8) weeks of Pay.
Severance Pay Reduction	To the extent that an Employee receives any payment from the Company in connection with the Employee's termination of employment with the Company other than pursuant to the Plan (whether pursuant to an agreement or other severance plan or policy), the Severance Pay payable under the Plan shall be correspondingly reduced on a dollar for dollar basis. Similarly, to the extent that a federal, state or local law (including but not limited to WARN and any similar state laws) requires the Company to make a payment to an eligible Employee or require a payment in lieu of notice because of that Employee's termination of employment, any Severance Pay payable under the Plan shall be correspondingly reduced by the amount of the statutorily required payment.
Timing of Payment	Severance Pay shall be paid in a cash lump-sum within five business days following the date of which the Release Agreement becomes effective and irrevocable.

15. After careful review and deliberation, the Debtors have identified the potential Key Employees that will be eligible for the Postpetition Severance Program. The identities of each Key Employee, their title, proposed severance award amount, and the nature of the services they would render for the Debtors' estates during the post-sale and pre-Plan Effective

Date period have been provided to the Creditors' Committee. It is axiomatic, however, that the Key Employees eligible to participate in the Postpetition Severance Program are subject to change as the Chapter 11 Cases continue to evolve. For example, resignations and the ultimate disposition of the Debtors' assets will determine which employees, if any, remain available to continue employment with the Debtors during the critical post-sale and pre-Plan Effective Date period.⁵ The Debtors will determine the Key Employees eligible to participate in the Postpetition Severance Program in their discretion. Notwithstanding the necessary fluidity, the Debtors have implemented a cap on the program of \$500,000 absent consent from the Creditors' Committee or further order of the Court.

16. The Debtors intend to implement the Postpetition Severance Program after undertaking a deliberative process to design a program that will carry-forward the same philosophy and structure from their legacy Prepetition Severance Program, with modifications or revisions that address the impact of the Chapter 11 Cases. The Postpetition Severance Program is a product of input the Debtors received from several professional advisors, including their independent compensation consultants, Willis Towers Watson, and incorporating certain comments from the Creditors' Committee after engaging in extensive negotiations.

17. Administration of these Chapter 11 Cases will continue after the global sale process concludes (including the closing of the Sale Transactions). The Hikma Transaction and the Chilion Transaction are currently pending Court approval and the Debtors are engaged in negotiations with third parties in connection with the potential sale of Subsys. The Debtors believe

⁵ The Debtors have designated certain Key Employees as eligible to participate in the Postpetition Severance Program who are currently selected for employment by Chilion Group Holdings US, Inc. in connection with the Chilion Transaction. Accordingly, upon closing of the Chilion Transaction, such current Key Employees will become ineligible for the Postpetition Severance Program. This reduction to the group of Key Employees would amount to an aggregate decrease in Severance Obligations of approximately \$100,000.

that by early October 2019 a change of control, as defined in the award letters issued under KERP, will have occurred and the Key Employees that are needed after such date will be entitled to retain their respective KERP awards and resign from the Debtors' employment. It is evident that the Debtors have a gap period between the conclusion of the global sale process and the wind-up of their affairs that they need to address.

18. Without an incentivizing tool to retain the Key Employees, the Debtors face immediate and unpredictable attrition that could significantly impact the Debtors' ability to administer these Chapter 11 Cases and wind-up their affairs after the conclusion of the global sale process.⁶ Indeed, certain of the Key Employees are irreplaceable. The Debtors believe that the costs associated with implementing the Postpetition Severance Program greatly outweigh the potential negative consequences of failing to do so, including the hiring of replacement employees, to the extent there is a functional equivalent, on a short-term, temporary basis. Importantly, as noted above, implementing the Postpetition Severance Program in lieu of the Prepetition Severance Program will result in savings of approximately \$3 million for the Debtors' estates.

19. Accordingly, for the reasons set forth in the Motion and this Statement, the Debtors respectfully request authority to implement the Postpetition Severance Program, a modification of the Prepetition Severance Program, and to pay the Severance Obligations related thereto in the ordinary course. The relief sought by the Debtors is a valid exercise of the Debtors' reasonable business judgment.

⁶ As set forth in the Wages Motion, the Debtors are only seeking approval to pay severance to non-insider Employees terminated postpetition. The Debtors intend to seek relief to address the severance of insiders at the appropriate time.

Reservation of Rights

20. Nothing contained herein is intended to be or shall be construed as (a) an admission as to the validity of any claim against the Debtors, (b) an agreement or obligation to pay any claims, (c) a waiver of the Debtors' or any appropriate party in interest's rights to dispute any claim, or (d) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought by the Debtors, any payment made pursuant to this Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

Dated: August 19, 2019
Wilmington, Delaware

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