IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	
	:	Chapter 11
	:	
INSYS THERAPEUTICS, INC., *et al.*,	:	
	:	Case No. 19-11292 (KG)
	:	
Debtors.	:	Obj. Deadline Extended for DOJ:
	:	November 4, 2019 by 4 p.m.

UNITED STATES' OBJECTION TO DISCLOSURE STATEMENT FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION PROPOSED BY INSYS THERAPEUTICS, INC. AND ITS AFFILIATED DEBTORS

The United States of America hereby objects to the above-referenced debtors' (the "Debtors") Disclosure Statement For Joint Chapter 11 Plan Of Liquidation Proposed By Insys Therapeutics, Inc. And Its Affiliated Debtors filed on September 17, 2019 [Docket No. 613] ("Disclosure Statement") because the Debtors' proposed plan of liquidation (the "Plan") accompanying the Disclosure Statement fails to comply with 11 U.S.C. § 1129 and is patently unconfirmable. In support of its objection, the United States respectfully states the following:

BACKGROUND

1. The Debtors filed for chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of Delaware on June 10, 2019 (the "Petition Date").

2. As described in the Debtors' first day pleadings, prior to the Petition Date, the United States spent years investigating, negotiating, and eventually resolving certain criminal, civil, and administrative claims and actions against debtors Insys Therapeutics, Inc. ("Insys") and Insys Pharma, Inc. ("Insys Pharma"). These various settlements are

documented in the following agreements executed by Insys or Insys Pharma and the United States:

a. an agreement settling five civil actions filed against Insys pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730 (the "FCA Settlement Agreement");

b. a regulatory corporate integrity agreement and conditional exclusion release;

c. a criminal plea agreement with Insys Pharma (the "Plea Agreement"); and

d. a criminal deferred prosecution agreement with Insys (the "DPA").

Although these agreements were executed within a week of each other and based, in part, on much of the same conduct and acts committed by Insys, the agreements and the legal actions they resolved are separate and independent of each other.

3. The amounts due or claims arising from these agreements are also separate and distinct. Specifically, under the FCA Settlement Agreement, Insys agreed, among other things, to make an initial payment of $5 million dollars as well as other fixed payments over a period of five years. Debtor Insys Pharma also agreed, under its Plea Agreement, to a $28 million money judgment in lieu of forfeiture, and to pay $2 million in fines. Under its DPA, Insys agreed to be joint and severally liable for the amounts due under Insys Pharma's Plea Agreement.

4. On the Petition Date, the Debtors filed a motion seeking authorization and approval to enter into a stipulation with the United States to resolve and liquidate the United States' claims arising under the FCA Settlement Agreement [Docket No. 28] (the "FCA Stipulation"). The Court entered a consensual order modifying and approving the FCA Stipulation on October 7, 2019, which provides, in relevant part, that: (i) the United

States will have an allowed, general unsecured and non-subordinated claim of $243 million (the "Allowed FCA Claim"); (ii) the $5 million paid by Insys under the FCA Settlement Agreement will be converted into an initial distribution on the Allowed FCA Claim; and (iii) the United States will receive no further distributions on its Allowed FCA Claim until all holders of other non-subordinated general, unsecured claims receive four percent (4%) on their allowed claims. *See* Docket No. 707. Once all the other general unsecured creditors receive distributions equaling four percent (4%) of their claims, the United States shall resume receiving distributions on its Allowed FCA Claim. *Id.*

5. In July, an order of forfeiture and a judgment were entered in the Debtors' criminal case pending before Judge Zobel in the United States District Court for Massachusetts, *United States v. Insys Therapeutics, Inc. et al.*, Case No. 19-10191 (D. Mass. 2019), establishing that the Debtors owed $30 million in forfeiture and fines (the "DOJ Forfeiture Judgment"), and that criminal restitution claims would be determined at a later date.

6. On July 15, 2019, the Court entered an order establishing December 9, 2019, as the "Governmental and Native American Tribes Bar Date" by which governmental units and Native American Tribes must file prepetition claims against any of the Debtors. *See* Docket No. 383.

7. After selling substantially all of their assets, the Debtors filed the Disclosure Statement and Plan and requested a confirmation hearing for December 6, 2019, three days before the United States is required to file its proofs of claims. *See* Docket No. 715.

8. The Plan provides for a complex scheme of distributions to six classes of unsecured creditors that will be paid from two distinct trusts, the Insys Liquidation Trust and the Victims Restitution Trust.[1] *See* Plan at ¶¶ 5.4-5.9. Holders of Class 8 claims, i.e., allowed, unsecured personal injury claims, will recover only from the Victims Restitution Trust and receive 95% of the proceeds from the Debtors' Products Liability Insurance. *Id.* at ¶5.9.

9. Other unsecured creditors will receive distributions from the Insys Liquidation Trust, which will be comprised of the Debtors' non-Products Liability Insurance Proceeds, and will include Preference and Indemnification Proceeds. *Id.* at ¶5.4. The Plan provides that these general unsecured creditors, i.e., the creditors in Classes 3-7, will receive differing and unequal distributions, and that such distributions are being made according to unexplained proportions rather than on a *pro rata* basis among. The following is a simplified summary of the Plan's proposed distributions:

Class Description	**CLASS 3** **Trade & Other Unsecured Claim**	**CLASS 4** **Insurance Related Claims**	**CLASS 5** **Hospital and NAS Monitoring Claims**	**CLASS 6** **DOJ Claims**	**CLASS 7** **SMT Group Claims**
Estimated Claims	$50 million	$258 million	$117 million	$273 million, plus criminal restitution	$597 million
Plan Settlement Distribution	First $3 million, plus .5% of $3-$38 million, plus 7% of Preference and Indemnification Proceeds *Distributions subject to Class 3 Recovery Cap*	68.5% of 55% of $3-$38 million; 68.5% of 20% of $38 million+	31% of 55% of $3-$38 million; 31% of 20% of $38 million+	31.4% of 45% of $3-$38 million; 31.4% of 38 million+ *Allowed FCA Claim is subject to GUC Recovery Reallocation Threshold and DOJ Distribution Reallocation*	68.6% of 45% of $3-$38 million; 68.6% of 20% of $38 million+, plus 5% of Products Liability Insurance Proceeds, plus 100% of any Excess Products Liability Proceeds

[1] Capitalized terms not otherwise defined herein shall have the same meanings ascribed to the in the Disclosure Statement and Plan.

10. This disparate and inequitable distribution scheme is the result of a Plan Settlement entered into by the Debtors, the Creditors' Committee and certain creditors after the parties participated in a court-ordered mediation. *See* Disclosure Statement at ¶5.7. The Debtors are using the Plan as a 9019 motion to approve their agreement with a limited group of creditors as a way to bind all the creditors even though a majority of the creditors who hold substantial claims against the estates are not Settling Parties to the Plan Settlement. *See id.*

11. In the Disclosure Statement, the Debtors indicate that the Government did not participate in the court-ordered mediation because "the DOJ . . . previously entered into a settlement agreement with the Debtors," i.e., the FCA Stipulation, or what the Debtors refer to as the "DOJ Stipulation," as approved by the "DOJ Settlement Order." Disclosure Statement at; ¶¶ 1.1,1.4, 4.1(a). Although the DOJ did not participate in the court-order mediation, it did meet with counsel for the Debtors and the Creditors Committee regarding the FCA Stipulation, and conferred regularly with Debtors counsel over contract and regulatory issues related to the sales of the Debtors' assets. At no time during these communications did counsel for the Debtors or Creditors Committee share, discuss, or reveal the proposed Plan Settlement distribution scheme with the United States.

12. Further, although the Disclosure Statement references the $30 million owed to the United States under the DPA and Plea Agreement, i.e., the DOJ Forfeiture Claim, it does not disclose that the victims of the Debtors criminal activities may also be entitled to restitution pursuant to 18 U.S.C. §§ 3663A and 3771, which Judge Zobel will determine and the United States will be responsible for collecting. The victims' criminal

restitution claims are separate and apart from the DOJ Forfeiture Claim, and will likely exceed $243 million.

13. Despite having significant allowed and liquidated unsecured claims against the estate (i.e., the Allowed FCA Claim and the Criminal Forfeiture Claim), as well as substantial victim restitution claims, the proposed Plan gerrymanders the United States' claims into their own class, and any potential distributions that the United States may receive are unlawfully and unreasonably limited by the Debtors' arbitrary percentage caps. Such treatment of the United States' claims is neither fair nor equitable, and does not meet the requirements of confirmation under section 1129 of the Bankruptcy Code.

14. Therefore, because the Disclosure Statement fails to describe a confirmable plan, the Court should not approve this Disclosure Statement or allow the Debtors to waste additional estate funds to solicit votes on the proposed Plan.

LEGAL STANDARDS

15. A disclosure statement must contain "adequate information" about the debtor and be provided to "each holder of a claim or interest of a particular class." 11 U.S.C. § 1125(c). Section 1125 broadly defines adequate information to mean:

> information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan . . . .

11 U.S.C. § 1125(a)(1); *see also In re Cajun Elec. Power Co-op, Inc.,* 150 F.3d 503, 518 (5th Cir. 1998) (citing to the legislative history, which, in essence, is a case-by-case determination as to what constitutes adequate information for the particular debtor involved).

16. In evaluating whether a disclosure statement contains adequate information, a court "shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information . . . ." 11 U.S.C. § 1125(a)(1). Further, a disclosure statement should be a source "of factual information upon which one can make an informed judgment about a [] plan . . . . [and] must contain factual support for any opinions contained therein since opinions alone do not provide the parties voting on the plan with sufficient information upon which to formulate decisions." *In re Budd Co., Inc*., 550 B.R. 407, 412 (Bankr. N.D. Ill. 2016) (internal citations and quotation marks omitted). A disclosure statement "certainly should not be written in complex technical terms that ordinary creditors will not understand." *Id*. at 413.

17. However, even when a disclosure statement contains adequate information, it should not be approved if the plan it describes fails to comply with section 1129 of the Bankruptcy Code. *In re Am. Capital Equip., LLC*, 688 F.3d 145, 154 (3d Cir. 2012)(listing cases). To approve such a disclosure statement would needlessly subject an estate and its creditors to an expensive and time-consuming solicitation and confirmation process. *Id.* A court must, therefore, "decline approval of the disclosure statement and prevent diminution of the estate." *In re Pecht*, 57 B.R. 137, 139 (Bankr. E.D. Va. 1986); *In re Eastern Maine Electric Co–Op, Inc.*, 125 B.R.

329, 333 (Bankr. D. Me. 1991) ("Such an exercise of discretion is appropriate because undertaking the burden and expense of plan distribution and vote solicitation is unwise and inappropriate if the proposed plan could never legally be confirmed."). The debtor bears the burden of proving that its disclosure statement is adequate, which includes demonstrating that its proposed plan can be confirmed. *In re Am. Capital Equip., LLC*, 688 F.3d at 155.

ARGUMENT

18. The Debtors have sold their assets. They have successfully resolved their legal and bankruptcy claims with the United States. There is nothing left to do but liquidate remaining claims and recover transfers and insurance proceeds to distribute to creditors. The Plan should be a simple, straightforward plan of liquidation that allocates the estates' available assets on a *pro rata* basis equally amongst all the unsecured secured creditors.

19. The Debtors and the Creditors' Committee, however, apparently spent the last three months negotiating a byzantine and complex distribution scheme to the detriment of the largest creditors in this case —the governmental unit creditors, including the United States, who do not support the Plan Settlement. *See* Disclosure Statement at Exhibit B; Docket No. 661 (motion by the court-appointed leadership team in the MDL cases to convert these cases to chapter 7 for Debtors' failure, among other things, to propose a confirmable plan); Doc. No. 834 (joinder of 911 municipalities to MDL' motion to convert); Doc Nos. 835-36, 839 (objections by various states to the Disclosure Statement because Plan Settlement is patently unconfirmable). Therefore, if the Debtors are permitted to solicit acceptances of their currently proposed Plan, the

parties and the Court will spend the next six weeks engaged in a contentious confirmation process that will surely drain the estates of significant cash. The Court should not allow the Debtors to initiate this fight without further negotiations and disclosure of sufficient information to allow creditors to make an informed decision about the Plan Settlement. Otherwise, the Plan is fatally flawed and cannot be confirmed under section 1129 of the Bankruptcy Code.

A. The Plan Fails to Comply with 11 U.S.C. § 1129

20. Setting aside Class 8 and the Victims Restitution Trust (and any concerns the United States' may have with such classification), the Plan, on its face, arbitrarily classifies all of the other general, unsecured claims into Classes 3-7 and then unfairly assigns distribution recovery percentages to such classes. Not surprisingly, the private party claim holders in Classes 4-5, many of whom are Settling Parties, are slated to receive significantly more under the Plan than the governmental unit claimants in Classes 6-7.

21. Further, even amongst the government claimants, the United States, which is the only creditor with a significant allowed claim in these cases (i.e., the Allowed FCA Claim) and a known liquidated claim (i.e., the Criminal Forfeiture Claim), is slated to receive less than its state, tribal and local counterparts. This unequal distribution is in addition to the delay in distributions the United States already agreed to in the order modifying the FCA Stipulation to account for the payment it received under the FCA Settlement Agreement.

22. By allocating a greater proportion of the first dollars into the Insys Liquidation Trust to the private creditors, the Plan unfairly favors the private creditors at

the expense of the public creditors. The Debtors, however, offer no legal support, facts or rational as to why the public creditors should bear a higher risk with respect to expected recoveries. Further, the percentage allocations set forth in the Plan essentially subordinate the public creditors' claims to the private creditors' claims and the United States' claims to all other claims without the Debtors proving that subordination of such claims under 11 U.S.C. § 510 is warranted. Because the Plan was not proposed in good faith, and is patently unfair and inequitable, it cannot be confirmed.

i. The Debtors Improperly Classified Substantially Similar Claims to Ensure That at Least One Impaired Class Would Accept the Plan.

23. "A court shall confirm a plan only if, *inter alia*, it 'has been proposed in good faith and not by any means forbidden by law[,]' and if it is feasible. 11 U.S.C. § 1129(a)(3)." *In re Am. Capital Equip., LLC*, 688 F.3d at 155 (citing to *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 243 n.59 (3d Cir. 2004)). Further, a plan can be confirmed under section 1129(a) only if each class of claims or interests "has accepted the plan" or "is not impaired under the plan." 11 U.S.C. § 1129(a)(8); *see also* 11 U.S.C. § 1126(c) ("A class of claims has accepted a plan if such plan has been accepted by creditors . . . that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors . . . that have accepted or rejected such plan."). Absent the acceptance of an impaired class, the Plan must meet the "cram down" requirements of section 1129(b). 11 U.S.C. § 1129(b)(1)-(2); *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 132 S. Ct. 2065, 2069 (2012).

24. Given its disparate treatment of the unsecured creditors' claims and inequitable distribution scheme, the Plan could only be confirmed is if it is crammed

down over the United States' (and the other governmental units') objections. Accordingly, the Debtors will have to prove that its Plan was not only proposed in good faith, but that the Plan also "does not discriminate unfairly, and is fair and equitable, with respect to" the United States' claims. 11 U.S.C. § 1129(b)(1).

25. However, the Plan unfairly discriminates against many of the creditors in this case. Most significantly, the Debtors separated all of the substantially similar general unsecured claims and divided them into separate classes. Plan at Art. IV. These classes are then generally divided into two subgroup of claim holders—the private creditors (Classes 4 and 5) and the public creditors (Classes 6 and 7).[2] *See* Disclosure Statement at ¶1.4.

26. While grouping similar claims into different classes is not prohibited, classifications must be reasonable and focus "[should be on] the legal character of the claim as it relates to the assets of the debtor." *In re W.R. Grace & Co*., 475 B.R. 34, 109-10 (D. Del. 2012), *aff'd*, 729 F.3d 332 (3d Cir. 2013) (internal citations and quotation marks omitted). "The primary analysis centers upon the legal attributes of the claims and not upon the status or circumstances of the claimant. Emphasis is not upon the holder so much as it is upon that which is held." *In re Coram Healthcare Corp.*, 315 B.R. 321, 349 (Bankr. D. Del. 2004) (internal citation and quotation marks omitted).

[2] Class 3 includes general unsecured trade claims and other unsecured claims. The holders of such claims will presumably, based on the Debtors' estimations, recover the highest *pro rata* distribution of all the unsecured creditors. *See* Disclosure Statement at ¶5.7(c). The Debtors estimate that these claims will equal $50 million but does not provide a breakdown of how much of that $50 million represents trade claims and how much represents "other" unsecured claims. *Id.*

27. However, a debtor does not have unfettered discretion to separate claims into different classes, particularly in a cram down scenario where it needs at least one impaired class to accept the plan. *John Hancock Mutual Life Insurance Co. v. Route 37 Business Park Associates*, 987 F.2d 154, 158 (3d Cir. 1993). Otherwise, the debtor could be tempted into separating and favoring one group of impaired creditors to ensure that it receives that necessary vote needed for cram down:

> [T]here must be some limit on a debtor's power to classify creditors in such a manner [to assure that at least one class of impaired creditors will vote for the plan and make it eligible for cram down consideration by the court]. The potential for abuse would be significant otherwise. Unless there is some requirement of keeping similar claims together, nothing would stand in the way of a debtor seeking out a few impaired creditors (or even one such creditor) who will vote for the plan and placing them in their own class.

In re Jersey City Medical Center, 817 F.2d 1055, 1061 (3d Cir. 1987) (quoting *In re U.S. Truck Co., Inc.*, 800 F.2d 581, 586 (6th Cir. 1986)); *Route 37 Business Park Assocs.*, 987 F.2d at 158 (3d Cir. 1993).

28. Here, although the private creditors' estimated claims are less than half of the public creditors' allowed and estimated claims,[3] the Plan provides that the private creditors will receive fifty-five percent (55%) of what will likely be the only Estate Distributable Value (i.e., the first $38 million distributed from the Insys Liquidation Trust, minus the first $3 million that inexplicitly is being set aside for the unsecured

[3] Class 4's estimated claim amount is $258 million and the claim estimate for Class 5 is $117 million, for an aggregate total of $375 million. Class 6 includes the DOJ's Allowed FCA Claim ($243 million), the Criminal Forfeiture Judgment ($30 million) and an unknown amount for criminal restitution claims. Class 7's claims are estimated to be $597 million, which means the public creditors' claims will exceed $760 million.

Class 3 claimants).[4] *See* Disclosure Statement at ¶5.7(c). By receiving a higher percentage of the Estate Distributable Value (i.e., 55% of the first $3-$38 million), the private creditors automatically recover more overall from the Debtors' estates than the public creditors. Further, because their estimated claims are, in the aggregate, substantially less than the public creditors' claims, the private creditors will recover a significantly higher percentage of their claims than they would if their claims were paid on a *pro rata* basis equally with the other unsecured creditors.

29. This is inequitable windfall to the private creditors -- who will obviously accept the Plan -- is the result of improper gerrymandering by the Debtors to secure at least one impaired class' acceptance of their Plan Settlement to the detriment of the public creditors. There is no reasonable basis for separating the private creditors' claims from the public creditors' claims. First, this is a plan of liquidation, not reorganization. The classification scheme does nothing to promote and ensure that the Debtors will be able to continue on-going relationships with the private entities (or any of their other creditors, including the trade creditors in Class 3).

30. Second, the private creditors' claims share the same legal characteristics as the public creditors' claims: they share the same unsecured and general non-priority status, and are litigation claims based on the same underlying facts and similar legal theories. Thus, their general unsecured claims are "no different from the legal attributes" of the public creditors' general unsecured claims. *Coram Healthcare*, 315

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[4] Again, although trade claims may be classified separately from other unsecured claims, *see In re Nuverra Envtl. Sols., Inc.*, 590 B.R. 75, 97 (D. Del. 2018), the Disclosure Statement fails to identify or value the trade claims in Class 3 from the "other" unsecured claims in Class 3. Without knowing this breakdown, it is impossible to determine whether Class 3 has been properly classified. Further, as discussed *infra*, there is a real likelihood that distributions in this case will never exceed $38 million.

B.R. at 350. The only difference in this case is that the private creditors' claims are receiving preferential treatment as Settling Creditors, which does not justify a separate classification. *Id.* (finding that separately classifying insider general unsecured claims, which had the same legal attributes of the unsecured trade creditors' claims but received better treatment, was inappropriate).

31. Indeed, if all of the Debtors' unsecured claims were properly included in a general unsecured class for the purposes liquidation, the public creditors' estimated claims would be at least two-thirds in amount and more than one-half in number of the private creditors' claims. In other words, the public creditors would rightfully control whether the proposed Plan should be accepted. By separating all the litigation claims, the Debtors improperly gerrymandered the private creditors' claims to support their anticipated cram down of the Plan over the public creditors' objections.

ii. The Plan Unfairly Discriminates Against the United States and is Inequitable.

32. The United States is the only major creditor in this case with an allowed, unsecured and nonsubordinated claim. This claim, the Allowed FCA Claim, represents almost twenty percent (20%) of all the estimated, non-personal injury claims included in the Plan Settlement.[5] The United States also has an undisputed, non-contingent and liquidated claim for $30 million, i.e., the Criminal Forfeiture Judgment. These are not the only claims that the United States has against the estates. As mentioned above, the United States is also charged with seeking restitution on behalf of the victims who were injured by the Debtors' criminal activities. These claims, which will be determined by

[5] The Settlement Plan estimates that the claims in Classes 3-7 will equal approximately $1.29 billion.

Judge Zobel in the pending criminal case, may be significant and, by agreement, will be treated as a general unsecured claim in the bankruptcy case.

33. Despite being one of the largest unsecured creditors in the case, the United States' claims have been classified in Class 6, which is slated to receive approximately one-third (1/3) of the 45% of the Estate Distributable Value available to the public creditors. The states, tribal governments and municipalities (i.e., the STM Group) will receive the other two-thirds of the 45%, *plus* five percent (5%) of the Products Liability Proceeds, *plus* one hundred percent (100%) of any Excess Products Liability Proceeds. *See* Plan at 5.7(c).

34. Not only is it unfair and inequitable to divide the Estate Distributable Value in favor of the private creditors (whose estimated claims, again, are substantially less than the private creditors' estimated claims) but it is completely discriminatory to then further dilute the United States' distributions in favor of the STM Group. Even if the Debtors could show that the disparate treatment between the private creditor' claims and the public creditors' claims were somehow equitable (which it is not), there is no reasonable rationale why the United States' potential distributions amongst public creditors should be diluted and capped. The United States' claims, once the criminal restitution claims are determined and included along with the Allowed FCA Claim and the Criminal Forfeiture Judgment, could well exceed those of the STM Group. Further, it is unclear under the Plan Settlement whether the United States is guaranteed to recover at least 4% of its other claims, including the Criminal Forfeiture Judgment, once the GUC Recovery Reallocation Threshold is met.

35. In sum, the United States—even though it already agreed to compromise its civil and criminal claims against the Debtors, and further agreed to modify its Allowed FCA Claim by deferring future distributions until all other unsecured creditors receive four percent (4%)— receives the worst treatment of any creditor group under the Plan. This discriminatory, unfair, and inequitable treatment of the United States' claims makes the Plan, on its face, patently unconfirmable.

iii. The Plan Was Not Proposed In Good Faith.

36. Whether a plan has been proposed in good faith, "the important point of inquiry is the plan itself and whether such a plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code." *In re Combustion Eng'g*, 391 F.3d at 247. A central policy of the Code is "[e]quality of distribution among creditors." *Begier v. IRS*, 496 U.S. 53, 58 (1990). As demonstrated above, there is no equality of distribution nor is the Plan Settlement consistent with any purpose or objective under the Bankruptcy Code.

37. As noted earlier, the United States did not participate in the court-order mediation because it had already reached certain settlements and compromises with the Debtors prior to and just after the Petition Date. The United States was aware that the Debtors and Creditors' Committee were working to resolve the unliquidated claims in this case but was not privy to or included in any negotiations regarding the proposed limitations on distributions through percentage caps. Although the United States understands the need to resolve unliquidated claims efficiently to keep professional fees at a minimum, the proposed Plan Settlement is a substantial departure from the distribution scheme contemplated by and expected under the Bankruptcy Code. To

propose the Plan that essentially subordinates a large majority of similarly situated claims under the guise of a global settlement without securing the participation from the majority of claim holders in this case demonstrates that the Plan and the Plan Settlement have not been proposed in good faith.

B. The Plan Fails To Include Adequate Information About the Plan Settlement and Distribution Scheme.

38. Notwithstanding that the Plan is fatally flawed, the Disclosure Statement inherently lacks adequate information because it fails to: (i) include any factual rationale or demonstrative evidence supporting the estimated claim amounts included in the Plan Settlement; (ii) provide a comprehensible analysis of the distribution scheme under the Plan Settlement; (ii) show that creditors will receive an amount under the Plan Settlement that is not less than what they would receive if the cases were converted to chapter 7; and (iii) provide an estimate of the Estate Valuable Distribution, including potential and expected recoveries of the Preference and Indemnification Proceeds.[6]

39. Indeed, the Debtors will likely assert that their Plan is fair and equitable because the public entity creditors are slated to start recovering eighty percent (80%) of the Estate Valuable Distribution once the bulk of the first $38 million is distributed to Classes 3-5. However, without adequate information to assess whether it is likely, or even possible, that the Insys Liquidation Trust will distribute over $38 million, there is simply no way for creditors to determine the real value of their expected recoveries under the Plan Settlement. The one mantra repeated over and over again in this case is that there will be little to distribute to creditors. If that is the case, then the Disclosure

[6] Prior to filing this Objection, the United States shared its concerns about the Disclosure Statement and Plan Settlement with Debtors, who provided some but not all of the information requested above.

Statement must provide adequate information about expected recoveries that will allow creditors to make a truly informed judgment whether Plan Settlement should be accepted or rejected.

CONCLUSION

40. Accordingly, based on the foregoing, the United States objects to the Disclosure Statement because the Plan discriminates against the United States' claims, is inherently inequitable, and cannot be confirmed. Further, given limited available funds in this case, the Court should not allow the Debtors or the Creditors' Committee to expend any further resources on pursing and promoting the Plan Settlement until they provide adequate financial information and analyses to all the creditors regarding the Estate Valuable Distribution.

41. By filing this Objection, the United States does not waive any other rights, claims, actions, arguments, defenses, setoffs, or recoupments to which it entitled, and all rights, claims, actions, arguments, defenses, setoffs, and recoupments are expressly preserved.

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Dated: November 4, 2019

Respectfully submitted,

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
INSYS THERAPEUTICS, INC., *et al.*,	:	Case No. 19-11292 (KG)
Debtors.	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I caused a copy of the United States' Objection to the Disclosure Statement For Joint Chapter 11 Plan Of Liquidation Proposed By Insys Therapeutics, Inc. And Its Affiliated Debtors [Docket No. 613] to be served by 4:00 p.m. on November 4, 2019, upon those parties who have signed up for the Court's electronic noticing system (CM/ECF) and by electronic mail on the parties included on the attached service list.

Dated: November 4, 2019

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