

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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In re : **Chapter 11**

:

INSYS THERAPEUTICS, INC., et al., : **Case No. 19-11292 (KG)**

:

Debtors.¹ : **Jointly Administered**

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: **Proposed Objection Deadline:**

: **December 19, 2019 at 12:00 p.m. (ET)**

:

: **Proposed Hearing Date:**

: **December 20, 2019 at 11:00 a.m. (ET)**

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**MOTION OF DEBTORS PURSUANT TO
11 U.S.C. §§ 105(a), 363, AND 554 AND FED. R. BANKR. P. 2002
FOR APPROVAL OF (I) PROCEDURES FOR THE EXPEDITED
SALE, TRANSFER OR ABANDONMENT OF DE MINIMIS ASSETS, AND
(II) ENTRY INTO AN EXCLUSIVE AUCTION AND SALES AGREEMENT**

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**”), respectfully represent as follows in support of this motion (the “**Motion**”):

Relief Requested

1. By this Motion, pursuant to sections 105(a), 363, and 554 title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 2002 of Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors request entry of an order (a) approving procedures to sell or transfer certain surplus, obsolete, non-core or burdensome assets, including any rights or interests therein (the “**De Minimis Assets**”), free and clear of any liens, claims,

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.

encumbrances, or other interests, without the need for further Court approval and with liens, if any, attaching to the proceeds of such sale or transfer with the same validity, extent, and priority as had attached to the De Minimis Assets immediately prior to such sale or transfer (as set forth below, the “**De Minimis Asset Transaction Procedures**”); (b) if the Debtors determine not to sell any De Minimis Asset or are unable to find purchasers for any De Minimis Asset, the Debtors seek authority to abandon such property; (c) pay those necessary fees and expenses incurred in connection with the sale, transfer, or abandonment of the De Minimis Assets; and (d) enter into an exclusive auction and sales agreement (the “**Auction and Sales Agreement**”) with a liquidator (the “**Liquidator**”) that the Debtors, with the consent of the Official Committee of Unsecured Creditors (the “**Committee**”), have determined in their sound business judgment offers the most favorable terms.

2. A proposed form of order granting the relief requested herein is annexed hereto as **Exhibit A** (the “**Proposed Order**”).

Jurisdiction

3. The Court has jurisdiction to consider this matter 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. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. Pursuant to Rule 9013–1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties,

cannot enter final orders or judgments consistent with Article III of the United States Constitution.

Background

5. On June 10, 2019 (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On June 20, 2019, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed the Committee. No trustee or examiner has been appointed in these Chapter 11 Cases.

6. These Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1.

7. On July 2, 2019, the Court entered the *Order (A) Approving Bidding Procedures for Sale of Debtors’ Assets, (B) Scheduling Auction for and Hearing to Approve Sale of Debtors’ Assets, (C) Approving Form and Manner of Notice of Sale Auction, and Sale Hearing, (D) Approving Assumption and Assignment Procedures, and (E) Granting Related Relief* [Docket No. 210] (the “**Bidding Procedures Order**”). In accordance with the Bidding Procedures Order, the Debtors have or are in the process of selling all or substantially all of their assets (collectively, the “**Sale Transactions**”). See [Docket Nos. 515, 525, 641, 767, and 964].

8. The Sale Transactions include the Debtors’ sale of their commercial product SYNDROS® (“**Syndros**”) in accordance with an asset purchase agreement entered into between the Debtors and Chilion Group Holdings US, Inc. on August 6, 2019 and approved by the Court on August 22, 2019 [Docket No. 514]. The Syndros Sale Transaction closed on October 31, 2019. Additionally, on September 19, 2019, the Court entered an order approving

the Debtors' sale to BTcP Pharma LLC of their fentanyl sublingual spray product, SUBSYS® (“**Subsys**”), throughout the world with the exception of certain Asian territories [Docket No. 641]. The Subsys Sale Transaction closed on September 26, 2019. On October 16, 2019, the Court entered an order approving the Debtors' sale to Pharmbio Korea, Inc. of specific intellectual property, including patents and rights to the Subsys mark in certain Asian territories, to Pharmbio Korea, Inc. [Docket No. 767]. The Debtors believe that the closing of the Pharmbio Korea, Inc. Sales Transaction is imminent. On December 5, 2019, in accordance with the Bidding Procedures Order, the Debtors filed a notice for the sale of certain equipment and related records to Renaissance Lakewood, LLC [Docket No. 964]. At the time of filing this Motion, no party has objected to the proposed sale to Renaissance Lakewood, LLC and the hearing to approve the transaction is scheduled for December 17, 2019.

9. On November 29, 2019, the Debtors filed the *Second Amended Joint Chapter 11 Plan of Liquidation of Insys Therapeutics, Inc. and Its Affiliated Debtors* [Docket No. 928] (as amended, supplemented or otherwise modified from time to time, the “**Plan**”) and related disclosure statement [Docket No. 929] (as amended, supplemented or otherwise modified from time to time, the “**Disclosure Statement**”). On December 4, 2019, the Court entered an order approving the adequacy of the Disclosure Statement [Docket No. 956] and solicitation procedures with respect to the Plan [Docket No. 955].

10. As a result of the Sale Transactions, the Debtors no longer possess an operating business and they are in the process of winding down their estates in order to distribute their remaining assets for the benefit of creditors in accordance with the proposed Plan.

11. Additional information regarding the circumstances leading to the commencement of these Chapter 11 Cases and the Debtors' business and capital structure is set

forth in the declaration of Andrew G. Long, the Debtors' former Chief Executive Officer, filed on the Petition Date [Docket No. 11].

The De Minimis Asset Transactions

12. The De Minimis Assets include certain assets and equipment the Debtors utilized to operate their pharmaceutical business, such as lab equipment and related materials, general office equipment, which includes printers, copiers, monitors, keyboards, gym equipment, water purification systems, refrigerators, walk-in chambers, reach-in chambers, fume hoods, and other miscellaneous items. These De Minimis Assets are currently located at one or more facilities in Chandler, Arizona and the Debtors' former manufacturing facility located in Round Rock, Texas. The De Minimis Assets also include certain intellectual property that the Debtors have determined that it is too costly to pay fees and other expenses related to such intellectual property, including, but not limited to patent fees.

13. The Debtors have determined that the De Minimis Assets, which were not sold pursuant to the Sale Transactions, are (i) no longer required for the operation of the Debtors' business, (ii) surplus, obsolete, non-core, excessive or burdensome as a result of the Debtors' wind down, and/or (iii) of marginal value or no value to the Debtors' estates. In addition, with respect to the Debtors' intellectual property, the Debtors have determined that maintaining such intellectual property will cause the Debtors to continue to incur fees and expenses to the detriment of the Debtors' estates and its creditors. Further, in connection with the Syndros Sale Transaction, the Debtors sold the lease for the Round Rock facility. In addition, pursuant to a stipulation (the "**Chandler Stipulation**") entered into with the landlord for the Debtors' headquarters in Chandler, Arizona, the underlying lease shall be deemed rejected as December 31, 2019 and the Debtors shall surrender the property to the Landlord. *See* Docket No. 742.

Further, pursuant to the Chandler Stipulation, any personal property of the Debtors remaining at the location shall be deemed abandoned. *Id.* As a result, the Debtors seek to sell, transfer, or abandon all or a portion of these remaining assets in an efficient manner pursuant to the procedures set forth herein. The sale or transfer of the De Minimis Assets is each referred to as a **“De Minimis Asset Transaction.”**

14. The Debtors submit that most of the De Minimis Asset Transactions are part of the ordinary course of the Debtors’ business and, therefore, permitted under section 363(c) of the Bankruptcy Code without the need for Court authority. The Debtors also believe, however, that potential purchasers may request confirmation that the De Minimis Asset Transactions are authorized by this Court and/or are made free and clear of any liens under section 363(f) of the Bankruptcy Code. Further, the Debtors anticipate that it is possible that some De Minimis Asset Transactions may constitute transactions outside the ordinary course of the Debtors’ business, thereby requiring this Court’s approval pursuant to section 363(b)(1) of the Bankruptcy Code.

15. Obtaining Court approval of each De Minimis Asset Transaction would be administratively burdensome to the Court, costly to the Debtors’ estates, and could eliminate or substantially undermine the economic benefit that would be realized from such transaction by the Debtors’ estates. In some instances, for example, the usual process for obtaining Court approval for such transactions may hinder the Debtors’ ability to take advantage of sale opportunities that are available for only a limited time.

16. The Debtors intend to conduct an auction for certain of the De Minimis Assets. The auction is currently scheduled for mid-January 2020. The Debtors believe that an auction in mid-January will maximize the value of the De Minimis Assets by providing the

liquidator with sufficient time to market the De Minimis Assets and prepare for the auction despite the upcoming holidays. The Debtors believe that, notwithstanding the timing of the auction, it is imperative to begin marketing the De Minimis Assets as soon as possible so as to receive the best value. In addition, the Debtors are in negotiation with a potential liquidator who has indicated to the Debtors that Court approval of the procedures set forth herein is required prior to their ability to begin marketing the De Minimis Assets. Further, the Debtors are engaged in discussions with certain third parties for sale of certain De Minimis Assets outside of the auction process and anticipate that such sales to close by the end of 2019 to ensure that the Debtors do not incur costs associated with storing such assets at third party facilities. As a result, any potential value of such assets to the Debtors' estates may be eliminated if the Debtors are not able to complete such De Minimis Asset Transactions prior to December 31, 2019 and the Debtors may be forced to abandon such assets.

17. As set forth above, the Debtors are required to vacate their Chandler, Arizona headquarters by December 31, 2019. The Debtors are currently in discussions with the landlords at the Arizona headquarters and the Round Rock facility, as well as the buyer of the Round Rock lease, regarding holding the auction and maintaining the De Minimis Assets at the locations through the end of January. In the event the Debtors are unable to maintain the De Minimis Assets at these locations, then the Debtors intend to move the De Minimis Assets to a third party facility and hold the auction at that location. If the Debtors are required to move the De Minimis Assets, then the Debtors need to begin preparing for the move as soon as possible to be in the position to vacate the premises prior to December 31, 2019.

18. Additionally, the Debtors may determine that it is too cost prohibitive to move some of the De Minimis Assets, and the Debtors may determine, in the exercise of their

business judgement, to abandon such assets to ensure that they can timely vacate the premises and not incur costs associated with shipping or storing such De Minimis Assets of little to no value. Further, the Debtors may be unable to find purchasers for certain De Minimis Assets, and the Debtors may determine, in the exercise of their reasonable business judgment, that abandoning such property outweighs the cost of continuing to maintain and store such De Minimis Assets with the hopes of a potential sale in the future. The Debtors also seek to abandon certain intellectual property, set forth on **Exhibit B** hereto, that they have determined is too cost prohibitive to maintain.

19. Accordingly, to alleviate the cost and delay of filing a separate motion for each proposed De Minimis Asset Transaction, the Debtors seek approval of the De Minimis Asset Transaction Procedures. The Debtors propose to utilize the De Minimis Asset Transaction Procedures to obtain more expeditious and cost-effective review by certain parties in interest of each De Minimis Asset Transaction. Additionally, to avoid filing a motion to abandon certain De Minimis Assets that the Debtors have determined not to move or unsuccessfully attempted to sell and confer no benefit to the Debtors' estates, the Debtors seek approval to abandon such assets.

Procedures to Sell, Transfer, or Abandon De Minimis Assets

20. The Debtors propose that the De Minimis Asset Transaction Procedures, which are set forth more fully below, apply to the De Minimis Asset Transactions. As set forth above, the Debtors intend to conduct an auction to sell certain of the De Minimis Assets in mid-January 2020. The Debtors may sell the balance of the De Minimis Assets and those that Debtors are unable to or determine not to sell by auction directly to buyers with consent of the Committee. In addition, if the Debtors sell or transfer the De Minimis Assets that are

encumbered by liens, such liens will attach only to the proceeds of the sale or transfer with the same validity, extent, and priority as immediately prior to the De Minimis Asset Transaction.

21. The Debtors propose that the following De Minimis Asset Transaction Procedures apply to the De Minimis Asset Transactions:

- (a) For sales or transfers of De Minimis Assets in any individual transaction or series of related transactions to a single buyer or group of related buyers with a sale price, as measured by the amount of cash and other consideration to be received by the Debtors on account of the assets to be sold (“**Sale Price**”), less than or equal to \$25,000:
 - (i) the Debtors are authorized to consummate such transactions if the Debtors determine in the reasonable exercise of their business judgment that such sales are in the best interest of the estates, without further order of the Court or notice to any party;
 - (ii) any such transactions shall be free and clear of all liens, claims and encumbrances with such liens, claims and encumbrances attaching only to the sale proceeds with the same validity, extent and priority as immediately prior to the transaction; and
 - (iii) each purchaser of a De Minimis Asset will be afforded the protections of section 363(m) of the Bankruptcy Code as a good faith purchaser.

- (b) For sales or transfers of De Minimis Assets in any individual transaction or series of related transactions to a single buyer or group of related buyers with a Sale Price greater than or equal to \$25,000 and less than or equal to \$100,000:
 - (i) the Debtors are authorized to consummate such transactions if the Debtors with consent of the Committee determine in the reasonable exercise of their business judgment that such sales are in the best interest of the estates, without further order of the Court or notice to any party;
 - (ii) any such transactions shall be free and clear of all liens, claims and encumbrances with such liens, claims and encumbrances attaching only to the sale proceeds with the same validity, extent and priority as immediately prior to the transaction; and
 - (iii) each purchaser of a De Minimis Asset will be afforded the protections of section 363(m) of the Bankruptcy Code as a good faith purchaser.

- (c) For sales or transfers of De Minimis Assets in any individual transaction or series of related transactions to a single buyer or group of related buyers with a Sale Price greater than \$100,000 and less than or equal to \$250,000:
- (i) the Debtors are authorized to consummate such transactions with the consent of the Committee if the Debtors determine in the reasonable exercise of their business judgment that such sales are in the best interest of the estates, without further order of the Court, subject to the procedures set forth herein;
 - (ii) any such transactions shall be free and clear of all liens, claims and encumbrances with such liens, claims and encumbrances attaching only to the sale proceeds with the same validity, extent and priority as immediately prior to the transaction;
 - (iii) each purchaser of a De Minimis Asset will be afforded the protections of section 363(m) of the Bankruptcy Code as a good faith purchaser;
 - (iv) the Debtors shall, at least five (5) calendar days prior to closing such sale or effectuating such transfer, serve a written notice of such sale or transfer by e-mail, facsimile, or overnight delivery service (each notice, a **“De Minimis Asset Sale Notice”**) to (a) the U.S. Trustee; (b) counsel to the Committee; and (c) any person or entity with a particularized interest in the De Minimis Asset, including any known creditor asserting a lien, claim, interest or encumbrance on such De Minimis Asset (each a **“Notice Party”** and collectively, the **“Notice Parties”**);
 - (v) the content of the De Minimis Asset Sale Notice shall consist of:
 - identification of the De Minimis Assets being sold or transferred and its location;
 - identification of the purchaser of the assets and any relationship such party has with the Debtors;
 - identification of any parties known to the Debtors as holding liens or encumbrances on the assets subject to the De Minimis Assets being sold and a statement indicating whether all such liens or encumbrances are capable of monetary satisfaction;
 - the purchase price;
 - any other significant terms of the sale or transfer; and
 - date and time within which objections may be filed and served on the Debtors;
 - (vi) Objections, if any, must be in writing and served on the other Notice Parties and counsel to the Debtors so as to be received by all such parties prior to **4:00 p.m. (Eastern Time)** on the fifth calendar day after service of the De Minimis Asset Sale Notice and must state with specificity the grounds for the objection;

- (vii) if no written objections are filed by any of the Notice Parties within five (5) calendar days of service of such De Minimis Asset Sale Notice, the Debtors are authorized to immediately consummate such transaction; and
 - (viii) if a written objection is received from a Notice Party within such five-day (5-day) period that cannot be resolved, the objection will be deemed a request for a hearing on the objection at the next scheduled omnibus hearing, subject to adjournment by the Debtors, and the relevant De Minimis Asset(s) shall only be sold upon withdrawal of such written objection or further order of the Court specifically approving the sale or transfer of the De Minimis Asset(s).
- (d) The Debtors shall consult with and obtain the Committee's consent prior to (i) designating any De Minimis Asset to be sold outside of the auction process and (ii) the sale of such De Minimis Asset outside of the auction process.

22. The Debtors believe that the aggregate value of *all* De Minimis Assets is approximately \$100,000 to \$300,000. The Debtors intend to sell the De Minimis Assets where possible, however, if the Debtors are unable to move any De Minimis Asset or are unable to find purchasers for any De Minimis Asset, the Debtors seek authority to abandon such assets where, in the exercise of their reasonable business judgment, the Debtors determine that the cost of continuing to maintain, relocate, and store such De Minimis Assets outweighs any potential recovery from a future sale. Further, the Debtors seek authority to abandon certain intellectual property set forth on **Exhibit B** hereto upon entry of the Proposed Order. As described further below, the Debtors will file with the Court a report listing those assets that were abandoned following the sales.

Effects of De Minimis Asset Transactions

23. All buyers will take each De Minimis Asset sold by the Debtors pursuant to the De Minimis Asset Transaction Procedures subject to the terms of the documentation executed in connection with such transaction, which documentation may (but is not required to) include provisions that the buyers are taking the De Minimis Assets "as is" and "where is,"

without any representations or warranties from the Debtors as to the quality or fitness of such De Minimis Assets. Buyers will, however, take title to the De Minimis Assets free and clear of liens pursuant to section 363(f) of the Bankruptcy Code. All such liens shall attach to the proceeds of the De Minimis Asset Transaction with the same validity, extent, and priority as had attached to the De Minimis Assets immediately prior to such sale or transfer.

24. The Debtors also seek authority to take any action that is reasonable and necessary to close a De Minimis Asset Transaction and obtain the proceeds thereof, including, without limitation, paying reasonable and necessary fees and expenses to agents, brokers, and auctioneers.

I. The De Minimis Asset Transaction and Abandonment Report

25. Commencing on February 1, 2020 and every month thereafter, the Debtors shall file a report with the Court listing all assets sold or abandoned pursuant to the procedures set forth herein, including the names of the purchasing parties, the sale price or the names of the parties to whom the assets were abandoned, if applicable. The Debtors' obligations to file such reports shall terminate thirty (30) days after confirmation of a plan.

26. The Debtors submit that the establishment of the De Minimis Asset Transaction Procedures is desirable and in the best interests of the Debtors' estates, their creditors, and other parties in interest. The sale or transfer of the De Minimis Assets will generate additional value, or help preserve existing value, for the benefit of the Debtors' estates and all parties in interest. These procedures will conserve the Debtors' resources, promote the efficient administration of these Chapter 11 Cases, and make the De Minimis Asset Transactions cost-effective in a manner that will provide the most benefit to the Debtors' estates.

II. The Auction and Sales Agreement

27. The Debtors have determined that retaining a liquidator it is in the best interest of their estates. The Debtors believe that they need to immediately apply the De Minimis Asset Transaction Procedures to avoid incurring significant and unnecessary expenses and losses. In addition, the number of De Minimis Assets that need to be simultaneously sold warrants the use of a liquidator. As a result, the Debtors believe that retaining a liquidator will achieve the maximum value for the De Minimis Assets and minimize administrative expenses.

28. Following the sales of its major assets, the Debtors initiated a process to weigh the costs and benefits of hiring a Liquidator to assist with the De Minimis Asset Transactions, and to develop a course to hire an experienced and cost-effective Liquidator. The Debtors coordinated with their financial advisor, FTI Consulting (“**FTI**”), to locate and negotiate terms with potential Liquidators. The Debtors along with FTI are actively engaged in negotiations with potential Liquidators to ensure that the best terms are arrived at. The Debtors anticipate selecting a Liquidator, with the consent of the Committee, on the specific and conditions terms set forth in an Auction and Sales Agreement that the Debtors intend to file prior to the hearing on this Motion.²

29. The Debtors intend that the Auction and Sales Agreement will grant the Liquidator the sole, exclusive and irrevocable right to sell at public auction or otherwise the De Minimis Assets. In connection with these services, the Liquidator will market and advertise the sale to ensure the De Minimis Assets are sold for the best possible price.

² Although the Debtors are not retaining the Liquidator pursuant to section 327 of the Bankruptcy Code, upon selection, the Liquidator will file a declaration setting forth its connections, if any, with certain parties-in-interest as evidence of its disinterestedness.

30. In consideration of the services to be rendered, the Debtors propose to provide any Liquidator with a buyer's premium related to the De Minimis Asset Transactions that is equal or less than 18% (the "**Asset Sale Fee**"). In addition, the Debtors propose to reimburse any Liquidator for certain reasonable out-of-pocket expenses incurred in connection with the sale or other disposition of the De Minimis Assets as will be fully described in the Auction and Sales Agreement. The Debtors submit that the terms proposed under any Auction and Sales Agreement will be reasonable and the Debtors' selection process will ensure that the Asset Sale Fee, and any other fees agreed to by the Debtors, are reasonable and market based.

Basis for Relief Requested

31. For the reasons set forth herein, this Court should grant the relief requested and approve the De Minimis Asset Transaction Procedures. Moreover, as more fully discussed below, the foregoing procedures are similar to procedures that have been approved in other chapter 11 cases.

I. Approval of the Proposed De Minimis Asset Transaction Procedures is Warranted

A. The Proposed De Minimis Asset Transaction Procedures are an Exercise of the Debtors' Sound Business Judgment

32. Section Bankruptcy Code section 363(b)(1) provides, in relevant part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Bankruptcy courts regularly authorize sales of a debtor's assets if there is a "sound business purpose" that justifies such use of estate property. *See, e.g., In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (adopting the "sound business purpose" test to evaluate motions brought pursuant to Bankruptcy Code section 363(b)); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (same).

33. Section 105 of the Bankruptcy Code provides, in relevant part, that “The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

34. The Debtors have largely completed the sales of their major business lines and assets. All that remains to be sold is certain lab equipment and materials, general office equipment, which includes printers, copiers, monitors, keyboards, gym equipment, water purification systems, refrigerators, walk-in chambers, reach-in chambers, fume hoods, and other miscellaneous items, each of which will likely be sold for a de minimis monetary sum. The De Minimis Asset Transaction Procedures will enable the Debtors to minimize or avoid any operational, carrying, storage, or other expenses associated with the De Minimis Assets, protect the Debtors against the possible declining value of certain De Minimis Assets, and minimize the costs associated with delays in the sale or transfer of assets. Moreover, the De Minimis Asset Transaction Procedures will enable the Debtors to take advantage of sale opportunities that are available only for a limited time, and will monetize otherwise unusable assets.

35. Accordingly, the De Minimis Asset Transaction Procedures are in the best interests of the Debtors’ estates, their creditors, and other parties in interest and should be approved. In light of the demonstrable benefits of streamlined procedures to the De Minimis Assets, courts in this district have approved similar procedures to permit the sale of such de minimis assets in other chapter 11 cases for much higher monetary thresholds than the Debtors are requesting in the Motion. *See, e.g., In re Fred’s, Inc.*, Case No. 19-11984 (CSS) (Bankr. D. Del. Sept. 26, 2019) [D.I. 192] (authorizing *de minimis* asset sales up to \$1.5 million); *In re Emerge Energy Services LP*, Case No. 19-11563 (KBO) [D.I. 347] (Bankr. D. Del. Sept. 10, 2019) (authorizing *de minimis* asset sales up to \$400,000); *In re Southcross Energy Partners*,

L.P., Case No. 19-10702 (MFW) (Bankr. D. Del. May 6, 2019) [D.I. 190] (authorizing *de minimis* asset sales up to \$2 million).

36. The Debtors submit that the De Minimis Asset Transaction Procedures are both an exercise of sound business judgment and in the best interests of the Debtors' estates. As discussed above, the De Minimis Asset Transaction Procedures provide for an efficient and cost-effective means of maximizing the value to be realized with respect to the De Minimis Assets. Obtaining Court approval for each De Minimis Asset Transaction would be administratively burdensome to the Court, result in unnecessary legal costs, and could significantly reduce the ultimate net benefit of the De Minimis Assets to the Debtors' estates.

37. Notably, although the Debtors request authority to sell, transfer, or abandon De Minimis Assets for a price of up to \$250,000, the Debtors believe that many individual transactions will, in fact, be for substantially less money. In light of the size of the Debtors' estates, the proposed sale price limitations are relatively modest and appropriate.

B. The De Minimis Asset Transaction Procedures Satisfy the Notice and Hearing Requirements Under Section 363(b)(1)

38. The notice and hearing requirements contained in section 363(b)(1) of the Bankruptcy Code are satisfied if appropriate notice and an opportunity for a hearing are given in light of the particular circumstances of a proposed transaction. *See* 11 U.S.C. § 102(1)(A) (defining "after notice and a hearing" to mean such notice and opportunity for a hearing "as [are] appropriate in the particular circumstances"). 363(b)(1) of the Bankruptcy Code provides, in relevant part, that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." The notice and hearing requirements contained in Section 363(b)(1) are satisfied if appropriate notice and an opportunity for hearing are given in light of the particular circumstances. 11 U.S.C. § 102(1)(A) (defining "after notice

and a hearing” to mean such notice and an opportunity for hearing “as [are] appropriate in the particular circumstances”). Generally, Rules 2002(a)(2) and 2002(i) of the Bankruptcy Rules require that a minimum of 21 days’ notice of proposed sales of property outside the ordinary course of business be provided by mail to “the debtor, the trustee, all creditors and indenture trustees” and any committee appointed under Section 1102 of the Bankruptcy Code.

39. Courts are authorized to shorten the 21-day notice period generally applicable to asset sales, or direct another method of giving notice, upon a showing of “cause.” *See* Fed. R. Bankr. P. 2002(a)(2). The usual process of obtaining court approval of each sale of De Minimis Assets: (a) would create costs to the Debtors’ estates that may undermine or eliminate the economic benefits of the underlying transactions and (b) in some instances may hinder the Debtors’ ability to take advantage of sale opportunities that are available only for a limited time. The Debtors therefore propose to streamline the process and shorten the applicable notice periods as described herein to maximize the net value realized from sales of De Minimis Assets for the benefit of all parties-in-interest.

40. The De Minimis Asset Transaction Procedures comply with the hearing requirements of the Bankruptcy Code, as well as due process, by providing the Notice Parties with an opportunity to present objections as to De Minimis Asset Transaction above \$100,000 and to have a hearing. A De Minimis Asset Transaction are approved without a hearing if no objection is filed with respect thereto.

41. Based on the foregoing, the Debtors submit that sufficient cause exists to implement the De Minimis Asset Transaction Procedures and such procedures will improve the efficiency of the sale process for De Minimis Assets and maximize the value of such assets to the Debtors’ estates.

C. The Proposed De Minimis Asset Transaction Procedures Satisfy the Requirements of Section 363(f) and Allow the Debtors to Sell, Transfer, or Abandon Property Free and Clear

42. Bankruptcy Code section 363(f) permits a debtor to sell property free and clear of another party's interest in such property if: (a) applicable nonbankruptcy law permits such a free and clear sale; (b) the holder of the interest consents; (c) the interest is a lien and the sales price of the property exceeds the value of all liens on the property; (d) the interest is in bona fide dispute; or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. 11 U.S.C. § 363(f). Because Bankruptcy Code section 363(f) is stated in the disjunctive, when selling property of the estate, it is only necessary to meet one of the five conditions listed in that section. *See Folger Adam Sec., Inc. v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 257 (3d Cir. 2000) (noting that a debtor is authorized to sell property free and clear of "any interest" if any one of the five prescribed conditions under section 363(f) is met); *In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) ("Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.") (citations omitted).

43. The Debtors propose to sell, transfer, or abandon the De Minimis Assets in a commercially reasonable manner, and expect that the value of the proceeds from such sales or transfer will fairly reflect the value of the property sold. Pursuant to the De Minimis Asset Transaction Procedures, any known party that may have an interest in the relevant De Minimis Asset, will have the opportunity to object to the sale of De Minimis Assets worth more than \$100,000 and their interests in such property will be affected only upon their consent or by court order. Accordingly, the requirements of section 363(f) of the Bankruptcy Code will be satisfied

for the sale of the De Minimis Assets free and clear of all liens, claims, interests, and encumbrances.

II. Purchasers of De Minimis Assets Should Be Entitled to the Protections of Section 363(m)

44. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

45. 11 U.S.C. § 363(m). The Third Circuit has held that: “The requirement that a purchaser act in good faith . . . speaks to the integrity of [purchaser’s] conduct in the course of the sale proceedings. *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986) (internal citations omitted).

46. The Debtors submit that any agreement that results in the sale of De Minimis Assets will be an arm’s-length transaction entitled to the protections of Bankruptcy Code section 363(m), and the Debtors request that section 363(m) be deemed to apply to each sale of such assets in accordance with the Sale Procedures.

III. The Abandonment of the De Minimis Assets Should Be Approved

47. The Debtors also request authority to abandon any property, including certain surplus, burdensome, or non-core assets that the Debtors are unable to sell or transfer pursuant to the De Minimis Asset Transactions.

48. Under section 554(a) of the Bankruptcy Code, a debtor, after notice and a hearing, is authorized to “abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a); *see also* Hanover

Ins. Co. v. Tyco Indus., Inc., 500 F.2d 654, 657 (3d Cir. 1974) (“[A trustee] may abandon his claim to any asset, including a cause of action, he deems less than valuable than the cost of asserting that claim.”); *In re Contract Research Solutions, Inc.*, 2013 WL 1910286, at *4 (Bankr. D. Del. May 1, 2013) (“[A debtor] need only demonstrate that [it] has exercised sound business judgment in making the determination to abandon.”) (citations omitted). The right to abandon property is, except for certain exceptions inapplicable in the present case, unfettered. *See Midlantic Nat’l Bank v. N.J. Dep’t of Env’tl. Prot.*, 474 U.S. 494, 506–07 (1986) (noting one such exception and holding that section 554(a) does not preempt state laws aimed at protecting the public’s health and safety).

49. Although the Debtors will have, in their business judgment, removed personal property at the Debtors’ leased premises if feasible and of value to the Debtors’ estates, a minimal amount of the Debtors’ personal property is expected to remain at certain properties. The De Minimis Assets will primarily consist of miscellaneous equipment and intellectual property that is of inconsequential value or benefit to the Debtors’ estate or would be cost prohibitive to remove or continue to maintain. Any landlord or other designee will be free to dispose of the De Minimis Assets after the effective date of rejection of the applicable underlying lease or after completion of the applicable De Minimis Asset Transactions without notice or liability to any party. To the best of the Debtors’ knowledge, the abandonment of the property would not be in violation of any state or local statutes or regulations reasonably designed to protect the public health or safety. In addition, the Debtors will not abandon any personally identifiable information. Accordingly, abandonment of the De Minimis Assets as of the effective date of rejection of the applicable underlying leases or after completion of the applicable De Minimis Asset Transactions should be approved.

IV. Entry into the Auction and Sales Agreement is in the Best Interests of the Debtors and Their Estates

50. The Debtors' decision to utilize and pay for the services provided by a Liquidator is a reasonable exercise of their business judgment. Given the nature of the assets that will need to be liquidated or transferred, recognized liquidators with significant combined experience managing large-scale liquidations are best equipped to ensure a smooth liquidation process that will maximize the value of the De Minimis Asset Transaction Procedures. Any Liquidator the Debtors intend to engage will have extensive expertise in conducting liquidation sales and can oversee, and assist in the management and implementation of, the De Minimis Assets Sales in an efficient and cost-effective manner. Moreover, an Auction and Sales Agreement will enable the Debtors to utilize the experience, skills, and resources of the Liquidator to effectively and efficiently conduct the De Minimis Asset Transactions and, thus, significantly improve the value to be received through the De Minimis Asset Transactions for the benefit of all stakeholders.

51. The Debtors expect that the Liquidator's fees will be based on the successful sale of the De Minimis Assets. The Debtors believe that the proposal and negotiation process will ensure that any agreed fee structure will be reasonable, market based, and consistent with the fees this Court and other courts have approve in connection with entry into liquidating consulting agreements. *See, e.g., In re Things Remembered, Inc.*, Case No. 19-10234 (KG) (Bankr. D. Del. Feb. 28, 2019) [D.I. 217] (authorizing a fee equal to 2.0% of gross proceeds of sales of merchandise, and 3.5% of gross proceeds of merchandise sales on a wholesale or bulk basis, and 15% of proceeds from sales of furniture, fixtures, and equipment); *In re J&M Sales, Inc.*, Case No. 18-11801 (JTD) (Bankr. D. Del. Sept. 20, 2018) (authorizing a fee ranging from 1.0% to 1.5% of gross sales if such sales exceed the cost value of the merchandise, depending on

the percentage amount that the sales exceed merchandise cost value, and 15% of proceeds from sales of furniture, fixtures, and equipment); *In re Southeastern Grocers, LLC*, Case No. 18-10700 (MFW) (Bankr. D. Del. April 23, 2018) [D.I. 340] (authorizing a fee ranging from 1.25% to 1.6% of gross merchandise sales, depending on whether sales exceed 99% of merchandise cost value, and 15% of proceeds from sales of furniture, fixtures, and equipment); and *In re Central Grocers Inc.*, No. 17-10993 (LSS) (Bankr. D. Del. June 2, 2017) [D.I. 336] (authorizing a fee equal to 1.5% of gross sales if such sales exceed the cost value of the merchandise and 15% of proceeds from sales of furniture, fixtures, and equipment).

52. As noted above, the Debtors believe that the expertise of a Liquidator will greatly assist the Debtors in the disposition of the De Minimis Assets and maximize the value to be realized in that process. This will inure to the benefit of the Debtors' estates, which will more than offset any expenses incurred through a Liquidator's retention. Thus, the decision to employ a Liquidator is a sound exercise of the Debtors' business judgment.

Waiver of Bankruptcy Rules 6004(a) and (h)

53. To implement the requested relief immediately, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

54. The Debtors request that any order approving De Minimis Asset Transaction Procedures and the De Minimis Asset Abandonment Procedures be effective immediately upon entry of such order by providing that the fourteen-day stay shall not apply. As discussed above, any delay in the Debtors' ability to sell, transfer, or abandon the De Minimis Assets could result in lost sale opportunities and the incurrence of additional costs and fees. Accordingly, the Debtors submit that the fourteen-day stay required by Bankruptcy Rule 6004(h) should be waived.

Notice

55. Notice of this Motion will be provided to (a) the U.S. Trustee (Attn: Jane M. Leamy); (b) counsel to the Committee; (c) the Securities and Exchange Commission; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the District of Delaware; (f) the Department of Justice; (g) the landlords at the Chandler, Arizona headquarters and Round Rock, Texas facility; (h) any holders of liens with respect to the De Minimis Assets; and (i) any other party entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in view of the facts and circumstances, such notice is sufficient and no further notice is required.

56. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: December 13, 2019
Wilmington, Delaware

/s/ Amanda R. Steele

RICHARDS, LAYTON & FINGER, P.A.

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*Attorneys for the Debtors
and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X	
In re:	:	Chapter 11
	:	
INSYS THERAPEUTICS, INC., <i>et al.</i> ,	:	Case No. 19-11292 (KG)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
	:	Proposed Objection Deadline:
	:	December 19, 2019 at 12:00 p.m. (ET)
	:	
	:	Proposed Hearing Date:
	:	December 20, 2019 at 11:00 a.m. (ET)
	X	

NOTICE OF MOTIONS AND HEARING

PLEASE TAKE NOTICE that, on December 13, 2019, Insys Therapeutics, Inc. and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), filed the *Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a), 363, and 554 and Fed. R. Bank. P. 2002 for Approval of (I) Procedures for the Expedited Sale, Transfer or Abandonment of De Minimis Assets, and (II) Entry into an Exclusive Auction and Sales Agreement* (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

PLEASE TAKE FURTHER NOTICE that, contemporaneously with the filing of the Motion, the Debtors also filed a motion to shorten the notice and objection periods with respect to the Motion (the “**Motion to Shorten**”).

PLEASE TAKE FURTHER NOTICE that if the Court grants the relief requested in the Motion to Shorten: (i) a hearing to consider the Motion will be held on **December 20, 2019 at 11:00 a.m. (prevailing Eastern Time)** before the Honorable Kevin Gross, United States

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 South Benson Lane, Chandler, Arizona 85224.

Bankruptcy Judge for the District of Delaware at the Court, 824 N. Market Street, 6th Floor, Courtroom 3, Wilmington, Delaware 19801, and (ii) responses or objections to the relief requested in the Motion, if any, must be in writing and filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **December 19, 2019 at 12:00 p.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that if the Court denies, in whole or in part, the relief requested in the Motion to Shorten, parties-in-interest will receive a separate notice of the Court-approved objection deadline and hearing date for the Motion.

Dated: December 13, 2019
Wilmington, Delaware

/s/ Amanda R. Steele

RICHARDS, LAYTON & FINGER, P.A.

John H. Knight (No. 3848)

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Attorneys for the Debtors and Debtors in Possession

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X		
	:		
In re	:		Chapter 11
	:		
INSYS THERAPEUTICS, INC., et al.,	:		Case No. 19-11292 (KG)
	:		
Debtors.¹	:		Jointly Administered
	:		
	:		Re: Docket No. ____
	X		

ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363 AND FED. R. BANKR. P. 2002 FOR APPROVAL OF (I) PROCEDURES FOR THE EXPEDITED SALE, TRANSFER OR ABANDONMENT OF DE MINIMIS ASSETS, AND (II) ENTRY INTO AN EXCLUSIVE AUCTION AND SALES AGREEMENT

Upon the Motion, dated December 13, 2019 (the “**Motion**”)² 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), 363, and 554 of the Bankruptcy Code and Bankruptcy Rule 2002, for an order authorizing and establishing the De Minimis Asset Transaction Procedures and the abandonment of certain assets and authorizing the Debtors to enter into an Auction and Sales Agreement, 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

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.

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 Core 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 (the “**Hearing**”), if necessary; and upon the Long Declaration, filed on the Petition Date, 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 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

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. Pursuant to sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rule 2002, the De Minimis Asset Transaction Procedures as set forth herein.
3. The Debtors are authorized, but not directed, to sell or transfer De Minimis Assets under the following procedures (the “**De Minimis Asset Transaction Procedures**”):
 - (a) For sales or transfers of De Minimis Assets in any individual transaction or series of related transactions to a single buyer or group of related buyers with a sale price, as measured by the amount of cash and other consideration to be received by the Debtors on account of the assets to be sold (“**Sale Price**”), less than or equal to \$25,000:
 - (i) the Debtors are authorized to consummate such transactions if the Debtors determine in the reasonable exercise of their business judgment that such sales are in the best interest of the estates, without further order of the Court or notice to any party;

- (ii) any such transactions shall be free and clear of all liens, claims and encumbrances with such liens, claims and encumbrances attaching only to the sale proceeds with the same validity, extent and priority as immediately prior to the transaction; and
 - (iii) each purchaser of a De Minimis Asset will be afforded the protections of section 363(m) of the Bankruptcy Code as a good faith purchaser.
- (b) For sales or transfers of De Minimis Assets in any individual transaction or series of related transactions to a single buyer or group of related buyers with a Sale Price greater than or equal to \$25,000 and less than or equal to \$100,000:
 - (i) the Debtors are authorized to consummate such transactions if the Debtors with consent of the Committee determine in the reasonable exercise of their business judgment that such sales are in the best interest of the estates, without further order of the Court or notice to any party;
 - (ii) any such transactions shall be free and clear of all liens, claims and encumbrances with such liens, claims and encumbrances attaching only to the sale proceeds with the same validity, extent and priority as immediately prior to the transaction; and
 - (iii) each purchaser of a De Minimis Asset will be afforded the protections of section 363(m) of the Bankruptcy Code as a good faith purchaser.
- (c) For sales or transfers of De Minimis Assets in any individual transaction or series of related transactions to a single buyer or group of related buyers with a Sale Price greater than \$100,000 and less than or equal to \$250,000:
 - (i) the Debtors are authorized to consummate such transactions with the consent of the Committee if the Debtors determine in the reasonable exercise of their business judgment that such sales are in the best interest of the estates, without further order of the Court, subject to the procedures set forth herein;
 - (ii) any such transactions shall be free and clear of all liens, claims and encumbrances with such liens, claims and encumbrances attaching only to the sale proceeds with the same validity, extent and priority as immediately prior to the transaction;
 - (iii) each purchaser of a De Minimis Asset will be afforded the protections of section 363(m) of the Bankruptcy Code as a good faith purchaser;

- (iv) the Debtors shall, at least five (5) calendar days prior to closing such sale or effectuating such transfer, serve a written notice of such sale or transfer by e-mail, facsimile, or overnight delivery service (each notice, a “**De Minimis Asset Sale Notice**”) to (a) the U.S. Trustee; (b) counsel to the Committee and (c) any person or entity with a particularized interest in the De Minimis Asset, including any known creditor asserting a lien, claim, interest or encumbrance on such De Minimis Asset (each a “**Notice Party**” and collectively, the “**Notice Parties**”);
 - (v) the content of the De Minimis Asset Sale Notice shall consist of:
 - identification of the De Minimis Assets being sold or transferred and its location;
 - identification of the purchaser of the assets and any relationship such party has with the Debtors;
 - identification of any parties known to the Debtors as holding liens or encumbrances on the assets subject to the De Minimis Assets being sold and a statement indicating whether all such liens or encumbrances are capable of monetary satisfaction;
 - the purchase price;
 - any other significant terms of the sale or transfer; and
 - date and time within which objections may be filed and served on the Debtors;
 - (vi) Objections, if any, must be in writing and served on the other Notice Parties and counsel to the Debtors so as to be received by all such parties prior to **4:00 p.m. (Eastern Time)** on the fifth calendar day after service of the De Minimis Asset Sale Notice and must state with specificity the grounds for the objection;
 - (vii) if no written objections are filed by any of the Notice Parties within five (5) calendar days of service of such De Minimis Asset Sale Notice, the Debtors are authorized to immediately consummate such transaction; and
 - (viii) if a written objection is received from a Notice Party within such five-day (5-day) period that cannot be resolved, the objection will be deemed a request for a hearing on the objection at the next scheduled omnibus hearing, subject to adjournment by the Debtors, and the relevant De Minimis Asset(s) shall only be sold upon withdrawal of such written objection or further order of the Court specifically approving the sale or transfer of the De Minimis Asset(s).
- (d) The Debtors shall consult with and obtain the Committee’s consent prior to (i) designating any De Minimis Asset to be sold outside of the auction process and (ii) the sale of such De Minimis Asset outside of the auction process.

4. The De Minimis Asset Sale Procedures shall not apply to any sales or transfers of assets that involve an “insider” of the Debtors as such term is defined in section 101(31) of the Bankruptcy Code.

5. The sales of De Minimis Assets that are consummated pursuant to the De Minimis Asset Sale Procedures shall be deemed arm’s-length transactions entitled to the protections of section 363(m) of the Bankruptcy Code.

6. The De Minimis Asset Sale Procedures shall not apply to any transaction that involves the assumption and the assignment of unexpired leases of nonresidential real property or the requirements of section 365 of the Bankruptcy Code.

7. The absence of an objection to the relief requested in the Motion combined with the absence of a timely objection to the sale or transfer of the De Minimis Assets in accordance with the terms of this Order shall be determined to be “consent” to such sale or transfer free and clear of Liens and Claims within the meaning of section 363(f)(2).

8. Except as specifically provided in the applicable sale or transfer document, sales and transfers of De Minimis Assets shall be free and clear of all Liens and Claims, with such Liens and Claims, if any, to attach to the proceeds of such assets with the same validity and enforceability, to the same extent, subject to the same defenses, and with the same amount and priority as they attached to such assets immediately prior to the closing of the applicable sale.

9. The Debtors are authorized, but not directed, to abandon any De Minimis Assets, including the Debtors’ intellectual property listed on Exhibit B of the Motion.

10. The Debtors are authorized to pay those reasonable and necessary fees and expenses incurred in the sale, transfer, or abandonment of De Minimis Assets, including the fees to the Liquidator as set forth in the Auction and Sales Agreement..

11. Sales or transfers of De Minimis Assets shall be deemed arm's-length transactions entitled to the protections of section 363(m) of the Bankruptcy Code.

12. With respect to all De Minimis Asset Transactions consummated pursuant to this Order, this Order shall be sole and sufficient evidence of the transfer of title to any particular purchaser, and each De Minimis Asset Transaction consummated pursuant to this Order shall be binding upon and shall govern the acts of all persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the property sold pursuant to this Order, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, administrative agencies, governmental departments, secretaries of state, and federal, state, and local officials, and each of such persons and entities is hereby directed to accept this Order as sole and sufficient evidence of such transfer of title and shall rely upon this Order in consummating the transactions contemplated hereby; *provided*, nothing herein shall affect the obligation to pay any filing fees required under nonbankruptcy law.

13. Service of the De Minimis Asset Sale Notice and/or the Motion is sufficient notice of the sale, transfer, and/or abandonment of such De Minimis Assets.

14. Sales to "insiders," as that term is defined in section 101(31) of the Bankruptcy Code, are excluded from this Order.

15. Commencing on February 1, 2020 and every month thereafter, the Debtors shall file a report with the Court listing all assets sold or abandoned pursuant to the procedures approved herein, including the names of the purchasing parties, the sale price or the names of the

parties to whom the assets were abandoned, if applicable. The Debtors' obligations to file such reports shall terminate thirty (30) days after confirmation of a plan.

Auction and Sales Agreement

16. The Debtors are authorized to enter into the Auction and Sales Agreement with [_____], the Liquidator, in connection with the De Minimis Asset Transaction Procedures.

17. Nothing contained in the Motion or this Order or any payment made pursuant to the authority granted by this Order, other than as expressly provided for herein, 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 any claim, or (c) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code

18. Notwithstanding entry of this Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

19. The requirements of Bankruptcy Rule 6004(a) are hereby waived.

20. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

21. The Debtors are authorized to take all action necessary to carry out this Order.

22. Transactions in the ordinary course of business permitted pursuant to 11 U.S.C. § 363(c)(1) shall not be subject to this Order or the De Minimis Asset Transaction Procedures.

23. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

EXHIBIT B

Application No.	Filing Date	Title	Owner
16/579,821	Sept 23, 2019	Dronabinol inhalable formulations and uses thereof	Insys Development Company, Inc.