

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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<b>In re</b>	:		<b>Chapter 11</b>
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<b>INSYS THERAPEUTICS, INC., et al.,</b>	:		<b>Case No. 19-11292 (KG)</b>
	:		
<b>Debtors.<sup>1</sup></b>	:		<b>Jointly Administered</b>
	:		
	:		<b>Re: Docket No. 985</b>
	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**”)<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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, file with the Court and 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. Notwithstanding anything to the contrary herein, the Debtors may not sell or transfer any De Minimis Asset located at 811 Paloma Drive, Suite A, Round Rock, Texas 78665 (the “**Round Rock Facility**”) or elsewhere in which Benuvia Therapeutics Inc. (“**Benuvia**”) asserts a claim (the “**Benuvia Claimed De Minimis Asset**”) absent written approval from Benuvia or further order from the Court, and the rights and interests, if any, of Benuvia, with

respect to the Benuvia Claimed De Minimis Assets are preserved. The Liquidator shall have immediate access to the Round Rock Facility to prepare for an auction of the De Minimis Assets. To the extent the Debtors and Benuvia reach an agreement with respect to the sale of the Benuvia Claimed De Minimis Assets to Benuvia, the Debtors are authorized to sell such assets, with consent of the Committee, pursuant to the procedures set forth in this Order. To the extent the Debtors and Benuvia do not reach an agreement with respect to the treatment of the Benuvia Claimed De Minimis Assets by December 31, 2019, Benuvia shall have at least five (5) business days' notice before a hearing is scheduled before this Court to determine the rights and interests, if any, Benuvia may have to such assets and Benuvia shall preserve the Benuvia Claimed De Minimis Assets until the earlier of (i) a ruling of this Court and (ii) an agreement between the Debtors and Benuvia regarding the sale of the Benuvia Claimed De Minimis Assets.

10. 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.

11. 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..

12. 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.

13. 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.

14. 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.

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

16. 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**

17. The Debtors are authorized to enter into the Auction and Sales Agreement with Heritage Global Partners, Inc., Federal Machinery & Equipment Company, Capital Recovery Group, LLC and PPL Group LLC, the Liquidator, in connection with the De Minimis Asset Transaction Procedures.

18. 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

19. 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.

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

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

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

23. 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.

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



KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE