

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.<sup>1</sup> : (Jointly Administered)  
: :  
: Obj. Deadline: Jan. 17, 2020 at 4:00 p.m. (ET)  
: Hearing Date: Jan. 29, 2020 at 10:30 a.m. (ET)  
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**SECOND MOTION OF THE DEBTORS FOR AN ORDER  
EXTENDING PERIOD WITHIN WHICH THE DEBTORS  
MAY REMOVE ACTIONS PURSUANT TO 28 U.S.C. § 1452 AND  
FED. R. BANKR. P. 9006(b) AND 9027, AND GRANTING RELATED RELIEF**

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 28 U.S.C. § 1452 and Rules 9006(b) and 9027 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors respectfully request the entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”): (a) extending the time by which the Debtors may file notices of removal under Bankruptcy Rule 9027 by an additional 120 days, through and including May 5, 2020 (the “**Extended Removal Deadline**”), without prejudice to the Debtors’ right to seek further extensions

<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 3100 West Ray Road Ste. 201, Chandler, Arizona 85226.

and (b) granting related relief.<sup>2</sup> The Debtors request that the proposed Extended Removal Deadline apply to all matters specified in Bankruptcy Rules 9027(a)(2) and 9027(a)(3).

### **Jurisdiction**

2. 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 as of 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.

3. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to the Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

### **Background**

4. On June 10, 2019 (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (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 an official committee of unsecured creditors in these Chapter 11 Cases (the “**Committee**”). No trustee or examiner has been appointed in these Chapter 11 Cases.

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

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<sup>2</sup> The current time period within which the Debtors may file any removal notices under Bankruptcy Rule 9027(a)(2) expires on January 6, 2020 (the “**Current Deadline**”). Pursuant to Rule 9006-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the filing of this motion prior to the Current Deadline serves to automatically extend the Current Deadline until such time as the Court rules on the motion. *See* Del. Bankr. L.R. 9006-2.

6. 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, filed on the Petition Date [D.I. 11] (the "**Long Declaration**").

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 sold substantially all of their assets (collectively, the "**Sale Transactions**"). See [Docket Nos. 515, 525, 641, 767, and 964].

8. 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].

9. 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.

10. On September 9, 2019, the Debtors filed the *Motion of the Debtors for an Order Extending Period Within Which the Debtors May Remove Actions Pursuant to 28 U.S.C. § 1452 and Fed. R. Bankr. P. 9006(b) and 9027, and Granting Related Relief* [D.I. 571] (the "**Prior**

**Extension Motion**”). On September 25, 2019, the Court granted the Prior Extension Motion, extending the time by which the Debtors may file notices of removal under Bankruptcy Rule 9027 through and including January 6, 2020 [D.I. 660].

**Basis for Relief Requested**

11. 28 U.S.C. § 1452 provides for the removal of pending civil claims with respect to which federal district courts have jurisdiction under 28 U.S.C. § 1334. Section 1452(a) provides in pertinent part as follows:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452(a).

12. Bankruptcy Rule 9027 establishes the deadline for filing notices of removal of claims or causes of action. Bankruptcy Rule 9027(a)(2) provides in pertinent part as follows:

If the claim or cause of action in a civil action is pending when a case under the [Bankruptcy] Code is commenced, a notice of removal may be filed [in the bankruptcy court] only within the longest of (A) 90 days after the order for relief in the case under the [Bankruptcy] Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the [Bankruptcy] Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

Fed. R. Bankr. P. 9027(a)(2).

13. With respect to postpetition actions, Bankruptcy Rule 9027(a)(3) provides that a notice of removal may be filed:

only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt

of the summons if the initial pleading has been filed with the court but not served with the summons.

Fed. R. Bankr. P. 9027(a)(3).

14. Finally, Bankruptcy Rule 9006(b)(1) provides that the Court can extend unexpired time periods, including the removal periods in Bankruptcy Rule 9027, without notice, upon a showing of cause. Fed. R. Bankr. P. 9006(b)(1).

15. It is well settled that this Court is authorized to extend the removal periods provided under Bankruptcy Rule 9027. *See, e.g., Pacor, Inc. v. Higgins*, 743 F.2d 984, 996 n.17 (3d Cir. 1984) (stating that under Bankruptcy Rule 9006(b), “it is clear that the court may grant such an extension [of time to remove]”), *overruled in part on other grounds, Things Remembered, Inc. v. Petrarca*, 516 U.S. 124 (1995); *Caperton v. A.T. Massey Coal Co.*, 251 B.R. 322, 325 (S.D. W. Va. 2000) (explaining that Bankruptcy Rule 9006(b) allows a court to enlarge the time period for removing actions under Bankruptcy Rule 9027); *Saint Joseph’s Hosp. v. Dep’t of Pub. Welfare of Pa. (In re Saint Joseph’s Hosp.)*, 103 B.R. 643, 648 (Bankr. E.D. Pa. 1989) (extending the 90-day time period in which to seek removal of pending state court litigation).

16. Certain of the Debtors are party to various civil lawsuits and proceedings (the “**Civil Actions**”) and the Debtors may seek to remove certain of the Civil Actions. Since the commencement of the Chapter 11 Cases, many of those actions have been stayed as to the Debtors, and the Debtors have focused their limited resources on the numerous pressing matters associated with (a) administering their estates, (b) stabilizing their operations, (c) negotiating, obtaining Court approval of, and closing the various sales of the Debtors’ assets (and the associated procedures governing such sale processes), and (d) negotiating with the Committee and principal parties in interest regarding resolution of the significant issues for confirmation of a chapter 11 plan. Importantly, the hearing regarding confirmation of the Debtors’ Plan is scheduled to occur mid-

January 2020. As a result, the Debtors' efforts have been focused on pursuing plan confirmation and negotiating with their key stakeholders. Consequently, the Debtors request an additional reasonable extension of the Current Deadline to complete their evaluation of whether removal of any actions is appropriate. The extension sought will afford the Debtors, and following the effective date of the Plan, the Liquidating Trustee a reasonable additional amount of time to determine whether to remove any pending Civil Action.

17. Accordingly, the Debtors seek an extension of the Current Deadline under Bankruptcy Rule 9027(a) to protect their rights to remove any Civil Actions for which they may determine that removal is appropriate. The extension sought will afford the Debtors additional time to ensure that the Debtors do not forfeit valuable rights under 28 U.S.C. § 1452. Critically, the rights of other parties to the relevant litigation will not be prejudiced by the extension because (i) many of the actions are already stayed and (ii) any party to an action that may be removed may seek to have the litigation remanded to the state court pursuant to 28 U.S.C. § 1452(b).<sup>3</sup>

18. The Debtors further request that the Proposed Order be without prejudice to (a) any position the Debtors or their successors in interest may take regarding whether section 362 of the Bankruptcy Code applies to stay any pending Civil Action in which any Debtor is a party and (b) the rights of the Debtors or their successors in interest to seek further extensions of the period during which such parties may remove Civil Actions pursuant to Bankruptcy Rule 9027.

19. For the reasons stated above, the Debtors respectfully submit that cause exists to grant the relief requested herein and is in the best interest of their estates. Moreover, requests by debtors for extensions of the removal period have been routinely granted by courts in this district.

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<sup>3</sup> 28 U.S.C. § 1452(b) provides that "[t]he court to which [a] claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise...." 28 U.S.C. § 1452(b).

*See, e.g., In re Cloud Peak Energy Inc.*, Case No. 19-11047 (KG) (Bankr. D. Del. Aug. 22, 2019) (granting 120-day extension); *In re Consolidated Infrastructure Grp., Inc.*, Case No. 19-10165 (BLS) (Bankr. D. Del. May 20, 2019) (same).

**Notice**

20. Notice of this Motion has been provided to (a) the Office of the United States Trustee for the District of Delaware (Attn: Jane M. Leamy); (b) the 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; and (g) all parties who have requested service of notices in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that this notice is sufficient under the circumstances.

**No Previous Request**

21. 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, substantially in the format attached as **Exhibit A**, granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: January 3, 2020  
Wilmington, Delaware

/s/ Christopher M. De Lillo  
RICHARDS, LAYTON & FINGER, P.A.  
John H. Knight (No. 3848)  
Paul N. Heath (No. 3704)  
Amanda R. Steele (No. 5530)  
Zachary I. Shapiro (No. 5103)  
Christopher M. De Lillo (No. 6355)  
One Rodney Square  
920 N. King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

-and-

WEIL, GOTSHAL & MANGES LLP  
Gary T. Holtzer (admitted *pro hac vice*)  
Ronit J. Berkovich (admitted *pro hac vice*)  
Candace M. Arthur (admitted *pro hac vice*)  
Olga F. Peshko (admitted *pro hac vice*)  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

*Attorneys for the Debtors  
and Debtors in Possession*



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
	:	
INSYS THERAPEUTICS, INC., <i>et al.</i> ,	:	Case No. 19-11292 (KG)
	:	
Debtors. <sup>1</sup>	:	(Jointly Administered)
	:	
	:	<b>Obj. Deadline: Jan. 17, 2020 at 4:00 p.m. (ET)</b>
	:	<b>Hearing Date: Jan. 29, 2020 at 10:30 a.m. (ET)</b>
	:	
	X	

**NOTICE OF MOTION AND HEARING**

**PLEASE TAKE NOTICE** that, on January 3, 2020, 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 *Second Motion of the Debtors for an Order Extending Period Within Which the Debtors May Remove Actions Pursuant to 28 U.S.C. § 1452 and Fed. . R. Bankr. P. 9006(b) and 9027, and Granting Related Relief* (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

**PLEASE TAKE FURTHER NOTICE** that any 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 **January 17, 2020 at 4:00 p.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that if any objections to the Motion are received, the Motion and such objections shall be considered at a hearing before The Honorable Kevin Gross, United States Bankruptcy Judge for the District of Delaware, at the Bankruptcy

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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 3100 West Ray Road Ste. 201, Chandler, Arizona 85226.

Court, 824 N. Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801 on **January 29, 2020 at 10:30 a.m. (prevailing Eastern Time).**

**PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: January 3, 2020  
Wilmington, Delaware

/s/ Christopher M. De Lillo  
RICHARDS, LAYTON & FINGER, P.A.  
John H. Knight (No. 3848)  
Paul N. Heath (No. 3704)  
Zachary I. Shapiro (No. 5103)  
Christopher M. De Lillo (No. 6355)  
Megan E. Kenney (No. 6426)  
One Rodney Square  
920 N. King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

-and-

WEIL, GOTSHAL & MANGES LLP  
Gary T. Holtzer (admitted *pro hac vice*)  
Ronit J. Berkovich (admitted *pro hac vice*)  
Candace M. Arthur (admitted *pro hac vice*)  
Olga F. Peshko (admitted *pro hac vice*)  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

*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., <i>et al.</i> ,	:	Case No. 19-11292 (KG)
	:	
Debtors. <sup>1</sup>	:	(Jointly Administered)
	:	
	X	Re: D.I. _____

**ORDER EXTENDING PERIOD WITHIN WHICH DEBTORS  
MAY REMOVE ACTIONS PURSUANT TO 28 U.S.C. § 1452 AND  
FED. R. BANKR. P. 9006(b) AND 9027, AND GRANTING RELATED RELIEF**

Upon the motion (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 28 U.S.C. § 1452 and Bankruptcy Rules 9006(b) and 9027, seeking an extension of the time by which the Debtors may file notices of removal under Bankruptcy Rule 9027 by an additional 120 days, without prejudice to the Debtors’ right to seek further extensions and granting related relief; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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 as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that notice of the Motion and any Hearing was

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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 3100 West Ray Road Ste. 201, Chandler, Arizona 85226.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

sufficient under the circumstances; and upon the record herein and upon all of the proceedings had before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as provided herein.
2. The time periods provided under Bankruptcy Rules 9027(a)(2) and 9027(a)(3) within which the Debtors may file notices of removal of any and all Civil Actions are extended through and including May 5, 2020, to the extent that the time period for filing any such notices of removal expires on or before such date.
3. This Order is without prejudice to (a) any position the Debtors or their successors in interest may take regarding whether section 362 of the Bankruptcy Code applies to stay any pending Civil Action in which any Debtor is a party and (b) the rights of the Debtors or their successors in interest to seek from this Court further extensions of the period within which the Debtors may file notices of removal under Bankruptcy Rule 9027(a).
4. The Debtors are authorized to take all actions necessary to implement the relief granted this Order.
5. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.