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GURBIR S. GREWAL, Attorney General of the
State of New Jersey, and PAUL R.
RODRÍGUEZ, Acting Director of the New
Jersey Division of Consumer Affairs,

Plaintiffs,

v.

INSYS THERAPEUTICS, INC., a Delaware
corporation, and JOHN N. KAPOOR,

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY

Docket No. MID-C-1-18

Civil Action

FINAL CONSENT JUDGMENT

The parties to this Action and Final Consent Judgment (“Consent Judgment”) are Plaintiffs Gurbir S. Grewal, the Attorney General of the State of New Jersey, and Paul R. Rodríguez, Acting Director of the New Jersey Division of Consumer Affairs (together, “Plaintiffs”) and Defendant John N. Kapoor (“Defendant” or “Kapoor”) through their authorized representatives. As evidenced by their signatures below, Plaintiffs and Defendant (collectively, the “Parties”) consent to the entry of this Consent Judgment and its provisions without trial or adjudication of any issue of fact or law, and without an admission of any liability or wrongdoing of any kind. The Parties consent to entry of this Consent Judgment to avoid the expenses and uncertainty associated with further litigation.

RECITALS

1. On October 5, 2017, following an extensive investigation, Plaintiffs filed a four-count complaint against Defendant Insys Therapeutics, Inc. (“Insys”) in the Superior Court of New Jersey, General Equity Part, Chancery Division, in Middlesex County, Docket Number MID-C-162-17, alleging that Insys violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -226, (“CFA”) and the New Jersey False Claims Act, N.J.S.A. 2A:32C-1 to -18, (“FCA”) by engaging in a sophisticated, multifaceted and purposeful scheme to expand the off-label prescriptions of the opioid medication Subsys without regard to the law or New Jersey consumer safety.

2. Defendant Kapoor founded Insys, was formerly the principal shareholder of Insys, and until January 2017, held executive management positions at Insys, including Chief Executive Officer and Executive Chairman of the Board of Directors.

3. On November 16, 2017, Plaintiffs filed an amended complaint (the “Amended Complaint”), adding Kapoor as a defendant, alleging that he acted in violation of the CFA and FCA, and seeking injunctive and monetary relief, including (i) civil penalties under the CFA, (ii) damages and penalties under the FCA, and (iii) reimbursement of Plaintiffs’ attorneys’ fees and investigative costs under the CFA and FCA. The action against Insys and Kapoor was re-assigned to Docket Number MID-C-1-18 (the “Action”), and Kapoor’s conduct alleged in the Amended Complaint is hereinafter referred to as the “Covered Conduct.”

4. Following motion practice, including a stay motion and motions to dismiss, the Parties commenced discovery.

5. Shortly thereafter, on June 10, 2019, Insys commenced chapter 11 cases in the United States Bankruptcy Court in the District of Delaware, Case No. 19-11292-KG (the “Chapter 11 Bankruptcy”), staying the present action against Insys. Insys subsequently filed a Second Amended Joint Chapter 11 Plan of Liquidation, which was confirmed by the Bankruptcy Court on January 16, 2020, and is currently in effect.

6. While the bankruptcy case stayed Plaintiffs' litigation against Insys, Plaintiffs continued to engage in discovery with Defendant Kapoor.

7. On November 23, 2020, Plaintiffs filed a motion for partial summary judgment against Defendant Kapoor for his alleged unconscionable commercial practices in violation of the CFA, as alleged in Count I of the Amended Complaint.

8. Under the operative Case Management Order in this Action, entered on December 11, 2020, continued litigation includes, among other things, adjudication of Plaintiffs' summary judgment motion, expert discovery, dispositive motions, pre-trial motions, and a bench trial that has yet to be scheduled.

9. Defendant Kapoor's financial condition has severely worsened since Plaintiffs filed this Action, in particular, due to the monetary obligation that was imposed on Kapoor as part of his sentencing in the matter entitled United States v. Babich et al., Docket No. 16-CR-10343-ADB (D. Mass.) (the "Criminal Action"), ordering him to pay (i) \$59,755,362.45 (which Defendant Kapoor and co-defendants Michael Babich and Alec Burlakoff owe jointly and severally, and \$5 million of which is owed jointly and severally between co-defendants Michael Gurry, Richard Simon, Joseph Rowan and Sunrise Lee); (ii) \$1,914,771.20 in forfeiture; and (iii) a fine of \$250,000, for a total liability amount of \$61,920,133.65 (the "Criminal Obligation").

10. To avoid the delay, uncertainty, and protracted costs of continued litigation, and in recognition of Defendant Kapoor's deteriorating financial condition, the Parties have reached this Consent Judgment.

11. This Consent Judgment is neither an admission of liability by Defendant Kapoor nor a concession by Plaintiffs that their claims are not well-founded.

IT IS HEREBY ORDERED, ADJUDGED AND AGREED AS FOLLOWS:

TERMS AND CONDITIONS

12. **Settlement Consideration.** In consideration of the full and final settlement of the claims asserted in the Action against Defendant Kapoor and the Releases specified in ¶¶ 25-27 below, Defendant Kapoor shall pay or cause to be paid to Plaintiffs consideration consisting of a “Down Payment” of One Million Dollars in cash (\$1,000,000) and a “Savings Payment” of as much as Four Million Dollars in cash (\$4,000,000), payable in accordance with the terms and schedule set forth below. The Down Payment and Savings Payment, which may total as much as Five Million Dollars in cash (\$5,000,000), are collectively referred to as the “Settlement Consideration.” The terms of payment of the Settlement Consideration are as follows:

(a) **Down Payment.** Defendant Kapoor shall make one lump-sum, cash Down Payment to Plaintiffs in the amount of \$1,000,000.00 within ten (10) calendar days of the Effective Date (defined below) of this Consent Judgment by electronic funds transfer pursuant to written instructions to be provided by the Office of the Attorney General for the State of New Jersey.

(b) **Savings Payment.** Separate and distinct from the Down Payment, within sixty (60) calendar days after the satisfaction in full of the Criminal Obligation (regardless of how the Criminal Obligation is satisfied or who pays the Criminal Obligation), Defendant Kapoor shall be obligated to pay to Plaintiffs in one lump sum, subject to the cap set forth below, thirty percent (30%) of any amount of the Criminal Obligation that has not been paid by Defendant Kapoor (the “Savings Payment”). The Savings Payment shall be made by electronic funds transfer pursuant to written instructions to be provided by the Office of the Attorney General for the State of New Jersey. For purposes of clarity, this Savings Payment obligation can arise from a scenario in which Defendant Kapoor does not pay the full amount of the Criminal Obligation (a) because the Criminal Obligation is satisfied in part or in full by persons other than Defendant Kapoor (e.g., if any portion of the Criminal Obligation is paid by or on behalf of any of his co-defendants in the Criminal Action, the bankruptcy estate of Insys, through insurance proceeds covering any insured, including Defendant

Kapoor, or by or on behalf of any person or corporate entity other than Defendant Kapoor); or (b) if the Criminal Obligation is reduced in any amount or eliminated for any reason and not subject to reinstatement or reassessment in further proceedings. In no event shall the Savings Payment exceed Four Million Dollars (\$4,000,000).

13. **Criminal Obligation Contributions.** Based on information on the public docket and court hearings in the Criminal Action, the parties believe that the U.S. government has, as of the Effective Date, collected the following sums from individuals and/or entities other than Defendant Kapoor, totaling no less than \$8,632,663, that may be applied to the Criminal Obligation: (i) \$5 million from Insys, and (ii) \$3,632,663 from Michael Babich. If, for example, these payments are not reversed and are applied to the Criminal Obligation, no additional payments are made towards the Criminal Obligation by individuals and/or entities other than Kapoor, and the Criminal Obligation is not reduced for any other reason, the Savings Payment due and owing to Plaintiffs shall be \$2,589,798.90, which is thirty percent (30%) of \$8,632,663. Plaintiffs anticipate that there will be further contributions to satisfy the Criminal Obligation.

14. **Savings Payment Notification.** Within seven (7) calendar days of the satisfaction of the Criminal Obligation, Defendant Kapoor shall notify Plaintiffs in writing (i) that the Criminal Obligation has been satisfied, and (ii) the total amount that Kapoor paid toward the Criminal Obligation.

15. **Payments are Not Dischargeable.** Defendant Kapoor agrees that both the Down Payment and the Savings Payment shall constitute obligations that cannot be discharged in bankruptcy or otherwise be reduced in amount or delayed in promptness of payment in bankruptcy.

16. **Non-Classification of Payments.** Nothing in this paragraph or any other paragraph of this Consent Judgment constitutes an agreement by Plaintiffs concerning the characterization of the Settlement Consideration for purposes of New Jersey's revenue codes.

17. **Payment of Settlement Consideration.** Upon paying the Down Payment and Savings Payment, Defendant Kapoor shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Plaintiffs pursuant to the terms herein.

18. **Default.** In the event of the failure by Defendant Kapoor to pay the Settlement Consideration when due, Plaintiffs shall provide written notice of the non-payment to Defendant Kapoor by (a) delivery in person, (b) a nationally recognized next-day courier service, or (c) first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (a) receipt, or (b) on the fifth day following mailing, whichever occurs first. Defendant Kapoor shall have the opportunity to pay the amount due within five (5) calendar days from the date of notice. If Defendant Kapoor fails to pay the amount due under this Consent Judgment within five (5) calendar days from the date of notice of non-payment, then Defendant Kapoor shall be in default (“Default”). In the event of Default, the Settlement Consideration shall immediately increase as it shall accrue interest at the rate of fifteen percent (15%) per annum, computed monthly until paid. If Defendant Kapoor has not cured the default within ninety (90) days of the date the payment came due, Plaintiffs may then file an action against Defendant Kapoor for the amount owed, including interest accrued, via summary proceedings under R. 4:67-1 et seq.

19. **No Corporate Ownership or Governance in New Jersey.** Kapoor shall permanently refrain from managing or owning any business organization within New Jersey and from serving as an officer, director, trustee, member of an executive board or similar governing body, principal, manager, or stockholder owning ten percent (10%) or more of the aggregate outstanding capital stock of all classes of any corporation doing business in New Jersey.

20. **General Injunction.** Defendant Kapoor, along with his agents, employees, and all persons acting on his behalf and/or under his authority, shall be permanently enjoined from engaging in any acts or practices in violation of the CFA and FCA.

21. **Maximum Consideration.** By entering into this Consent Judgment, Kapoor affirmatively represents that, based on his financial condition, including his liability to pay the Criminal Obligation, the Down Payment and Savings Payment constitute the upper limit of what Kapoor is reasonably able to pay to settle this Action, and that the Department of Justice (“DOJ”) has been apprised of the Settlement Consideration and has represented that it will not cause the DOJ to accelerate efforts, including seizing Kapoor’s assets, to collect the Criminal Obligation.

22. **Allocation of Settlement Proceeds.**

(a) The first \$1,666,666 of the Settlement Consideration shall be applied to reimburse the Attorney General’s fees and investigative costs, as authorized by the CFA.

(b) 70% of the Settlement Consideration in excess of \$1,666,666 shall constitute monetary relief under the CFA, and shall be dedicated to such of the following uses as the Attorney General in his sole discretion may designate:

- i. Law enforcement assisted addiction and recovery referral programs, as authorized by N.J.S.A. 30:6C-12;
- ii. Such professional diagnostic assessment of drug dependence, as may be required by N.J.S.A. 2C:35-14.1;
- iii. The unreimbursed costs of the regional medical oriented clinics that provide aftercare treatment for individuals released or discharged from mental hospitals in accordance with N.J.S.A. 30:6C-8;
- iv. The cost to develop and maintain the database required under N.J.S.A. 26:2G-25.1;

- v. Medication-Assisted Treatment for opioid use disorder, including the costs of medications approved by the federal Food and Drug Administration for the treatment of opioid abuse disorder, as provided in N.J.S.A. 30:4D-6m;
- vi. Community-based drug treatment programs, as provided in N.J.S.A. 26:2H-18.58a;
- vii. Narcotic treatment programs and centers, as provided by N.J.S.A. 40:9B-1;
- viii. The costs of opioid antidotes, as that term is defined by N.J.S.A. 24:6J-3, provided for use by New Jersey fire departments, police departments, emergency medical services and other governmental entities;
- ix. Programs and community services provided by those clinics, regional centers and outreach offices established pursuant to N.J.S.A. 26:2G-34;
- x. The costs associated with the establishment and/or maintenance of sterile syringe access programs, as provided in N.J.S.A. 26:5C-27, or such other harm reduction programs as may be subsequently authorized by the Legislature;
- xi. Regional substance abuse treatment facilities, as authorized under N.J.S.A. 26:5C-30;
- xii. The costs associated with the provision of adequate and appropriate substance use disorder services in State owned, operated or contracted correctional facilities, to inmates incarcerated and/or upon release, pursuant to N.J.S.A. 30:4-8.2;
- xiii. Medication-assisted-treatment to persons sentenced to probation, who have been ordered by the court as a condition of probation to undergo treatment for a substance use disorder, including the use of medication assisted treatment, as authorized by N.J.S.A. 2C:45-5;

xiv. Costs associated with the establishment and/or maintenance of comprehensive substance abuse intervention, prevention and treatment referral programs in public elementary and secondary schools, as authorized pursuant to N.J.S.A. 18A:40A-10.

(c) 30% of the Settlement Consideration in excess of \$1,666,666 shall constitute monetary relief under the FCA, and shall be allocated as follows:

- i. One tenth of the 30% shall be deposited in the “False Claims Prosecution Fund” established in N.J.S.A. 2A:32C-13, and shall only be used to support the Attorney General’s ongoing investigation and prosecution of false claims pursuant to the FCA;
- ii. Seventeen fortieths of the 30% shall be paid to the New Jersey State Health Benefits Program pursuant to N.J.S.A. 2A:32C-7e, as reimbursement of the costs it paid for Subsys prescriptions;
- iii. Seventeen fortieths of the 30% shall be paid to the New Jersey School Employees’ Health Benefits Program pursuant to N.J.S.A. 2A:32C-7e, as reimbursement of the costs it paid for Subsys prescriptions;
- iv. One twentieth of the 30% shall be paid to the New Jersey Workers’ Compensation Program pursuant to N.J.S.A. 2A:32C-7e, as reimbursement of the costs it paid for Subsys prescriptions.

23. **More Favorable Monetary Terms.** If Defendant Kapoor enters into an agreement with any state or local governmental entity, including a state Attorney General, to resolve a lawsuit or an investigation related to the promotion or distribution of Subsys, or the facts underlying this Action, Kapoor shall, within seven (7) calendar days of the date any such agreement is entered into, provide Plaintiffs with a copy of the agreement. If the Parties agree in writing that the settling state or local

governmental entity has received more favorable monetary terms than Plaintiffs have received here under this Consent Judgment, this Consent Judgment shall be deemed amended to include the more favorable monetary terms. If there is a dispute among the Parties as to whether such more favorable monetary terms exist, either Party may seek court intervention, as necessary.

24. **Dismissal of Lawsuit.** Within seven (7) calendar days of receipt of the Down Payment, Plaintiffs shall seek dismissal of this Action by filing with the Court a Stipulation of Settlement and Notice of Dismissal under the Rules Governing the Courts for the State of New Jersey in the form attached as Exhibit A. Such dismissal, however, shall expressly preserve the Court's jurisdiction to enforce this Consent Judgment, including jurisdiction over Defendant Kapoor's obligations to pay the Savings Payment.

25. **Releases Generally.** The obligations incurred pursuant to this Consent Judgment are in consideration of: (a) the full and final disposition of the Action as against Defendant Kapoor; and (b) the Releases provided for herein.

26. **Release by Plaintiffs.** Subject to the exceptions set forth in this paragraph, in consideration of the obligations of Defendant Kapoor in this Consent Judgment, and conditioned upon Defendant Kapoor's full payment of the Settlement Consideration, Plaintiffs fully and finally release, waive and forever discharge Defendant Kapoor, his predecessors, successors and assigns, and his current and former directors, trustees, members, agents, officers, employees, representatives, attorneys, consultants and administrators, individually and collectively, from any claims, allegations, actions, rights, causes of action, suits, debts, obligations, liabilities, demands, losses, damages (including treble damages and any civil penalties), punitive damages, costs and expenses of any kind, character or nature whatsoever, known or unknown, fixed or contingent, in law or in equity, in contract or in tort, or under any state or federal statute or regulation or arising in any way out of or connected in any way with the facts, claims, and circumstances alleged in, arising under, or arising from the

Covered Conduct (“Released Claim”). For purposes of clarity, this release is solely as to Defendant Kapoor, and does not release Insys from any payments owed to Plaintiffs from the Chapter 11 Bankruptcy or elsewhere. Plaintiffs specifically reserve and do not release the following claims:

- (a) Any criminal, civil, or administrative liability arising under New Jersey’s tax revenue codes;
- (b) Any criminal liability;
- (c) Any administrative liability;
- (d) Any liability to the State of New Jersey (or its departments and agencies) for any conduct other than the Covered Conduct;
- (e) Any liability based upon obligations created by this Consent Judgment;
- (f) Any liability for personal injury or property damage or other consequential damages arising from the Covered Conduct; or
- (g) Any claims against and liability of individuals except those released by the operation of this Consent Judgment.

27. **Release by Defendant Kapoor.** Upon Plaintiffs’ compliance with the return/destroy provision of the August 13, 2019 Protective Order, Defendant Kapoor fully and finally releases, waives and forever discharges Plaintiffs, their predecessors, and their current and former subsidiaries, affiliates, successors and assigns, and their current and former directors, trustees, members, agents, officers, employees, representatives, attorneys, consultants, administrators and assigns, individually and collectively from any liability, causes of action, claims, allegations, actions, rights, causes of action, suits, debts, obligations, liabilities, demands, losses, damages (including treble damages and any civil penalties), punitive damages, costs and expenses of any kind, character or nature whatsoever, known or unknown, fixed or contingent, in law or in equity, in contract or in tort, or under any state

or federal statute or regulation or arising in any way out of or connected in any way with the facts, claims, and circumstances alleged in, arising under, or arising from the Covered Conduct.

28. **Stipulated Protective Order.** The Parties acknowledge and agree that the Stipulated Protective Order entered in this Action on August 13, 2019 remains in effect.

29. **Other Terms.**

(a) This Consent Judgment is intended to be for the benefit of the Parties only.

(b) Except as otherwise provided in this Consent Judgment, the Parties shall bear their own legal and other costs incurred in connection with this Action, including the preparation and performance of this Consent Judgment.

(c) The Parties and signatories to this Consent Judgment represent that they freely and voluntarily enter into this Consent Judgment without any degree of duress or compulsion.

(d) This Consent Judgment is governed by the laws of the State of New Jersey. The exclusive jurisdiction and venue for any dispute arising out of this Consent Judgment is the New Jersey Superior Court, Middlesex County.

(e) Any Party hereto may apply, at any time, to the New Jersey Superior Court for enforcement of any provision of this Consent Judgment.

(f) This Consent Judgment shall be deemed to have been drafted by all Parties and shall not, therefore, be construed against any Party for that reason in any dispute arising out of this Consent Judgment.

(g) This Consent Judgment constitutes the entire agreement between the Parties and may not be amended or supplemented except by written consent of the Parties or upon order of the Court.

(h) The undersigned attorneys represent and warrant that they are fully authorized to execute this Consent Judgment on behalf of the Parties.

(i) Except as otherwise explicitly provided for in this Consent Judgment, nothing herein shall be construed to limit the authority of Plaintiffs to protect the interests of the State or the people of the State.

(j) This Consent Judgment may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Consent Judgment. Electronic signatures shall constitute acceptable, binding signatures for purposes of this Consent Judgment.

(k) If any portion of this Consent Judgment is held invalid or unenforceable by operation of law, the remaining terms of the Consent Judgment shall not be affected.

(l) This Consent Judgment is binding on the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Judgment avoid compliance with this Consent Judgment.

(m) This Consent Judgment is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in the Consent Judgment nor any action taken hereunder shall constitute or be construed as: (a) an approval, sanction or authorization by Plaintiffs or any other governmental unit of the State of any act or practice of Defendant Kapoor, or (b) an admission by Defendant Kapoor that any of his acts or practices described in the Amended Complaint or prohibited by this Consent Judgment violate the consumer protection laws of the State or the FCA. This Consent Judgment is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind, or otherwise implement or affirm any or all of the terms of this Consent Judgment, or (b) any action or proceeding involving a Released Claim to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

(n) Nothing contained in this Consent Judgment shall be construed to limit or otherwise affect the rights of any Persons who are not Parties to this Consent Judgment with respect to any of the matters contained herein.

(o) All Parties consent to the public disclosure of this Consent Judgment, including by Plaintiffs or Defendant.

(p) This Consent Judgment is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

(q) This Consent Judgment is effective on the date of the last signatory to the Consent Judgment (the “Effective Date”).

(r) All notices and communications to be provided under this Consent Judgment shall be in writing by electronic mail. If the recipient does not acknowledge such notice of communication within three (3) business days, the notice or communication shall be made by certified or registered mail, return receipt requested, which shall be deemed effectuated three (3) calendar days after the date of mailing, excluding Sundays. All notices or other communications under this Consent Judgment shall be sent to the Parties at the following addresses:

If to Plaintiffs:

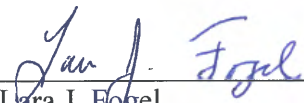
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Dated: 1/21/21

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For Defendant John N. Kapoor:



Dated: January 20, 2021

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