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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Richard Di Donato, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

Insys Therapeutics, Inc.; Michael L. Babich;  
Darryl S. Baker; and John N. Kapoor,

Defendants.

No.

**CLASS ACTION**

**COMPLAINT FOR VIOLATION  
OF THE FEDERAL SECURITIES  
LAWS**

**DEMAND FOR JURY TRIAL**

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1 Plaintiff Richard Di Donato (“Plaintiff”), individually and on behalf of all others  
2 similarly situated, by and through Plaintiff’s counsel, alleges the following based upon  
3 personal knowledge as to Plaintiff’s own acts, and upon an investigation conducted by  
4 and through Plaintiff’s attorneys, which included, among other things, a review of the  
5 filings of Insys Therapeutics, Inc. (“Insys” or the “Company”) with the United States  
6 Securities and Exchange Commission (“SEC”), Company news releases and conference  
7 calls, public statements issued by Defendants, securities analyst reports, and media and  
8 industry reports. Plaintiff believes that substantial additional evidentiary support will  
9 exist for the allegations set forth herein after Plaintiff has had a reasonable opportunity to  
10 conduct discovery.

11 **I. NATURE OF THE ACTION**

12 1. This is a federal securities class action on behalf of all persons who  
13 purchased or otherwise acquired Insys common stock between March 3, 2015 and  
14 January 25, 2016, inclusive (the “Class Period”), seeking to pursue remedies under the  
15 Securities Exchange Act of 1934 (the “Exchange Act”).

16 2. Insys is a commercial-stage specialty pharmaceutical company that  
17 develops and commercializes supportive care products primarily designed to assist  
18 patients with pain management attributable to their disease, treatment, or therapy.

19 3. The Company’s principal product and source of revenue is Subsys, a  
20 sublingual fentanyl spray designed to treat breakthrough cancer pain (“BTC”) in opioid-  
21 tolerant patients.

22 4. Throughout the Class Period, Defendants (defined herein) made false and  
23 misleading statements and failed to disclose material adverse facts about the Company’s  
24 business and operations. Specifically, Defendants failed to disclose that: (i) the Company  
25 was engaged in the illegal and improper off-labeling marketing of Subsys; (ii) certain  
26 Insys employees—including Defendant Michael L. Babich, the President and Chief  
27 Executive Officer of Insys during much of the Class Period—were complicit in an illegal  
28

1 kickback scheme operated for the purpose of increasing prescriptions of Subsys; and (iii)  
2 as a result, the Company's financial statements were materially false and misleading at all  
3 relevant times.

4 5. After the close of the market on April 24, 2015, the Southern Investigating  
5 Report Foundation ("SIRF") published an article entitled "Insys Therapeutics and the  
6 New 'Killing It,'" reporting on patients who either died or suffered adverse events while  
7 being treated with Subsys. The article also detailed how Insys aggressively markets  
8 Subsys.

9 6. On this news, the price of Company shares declined \$6.00 per share, or  
10 nearly 10%, from a close of \$62.42 per share on April 24, 2015, to close at \$56.42 per  
11 share on April 27, 2015.

12 7. Then, on May 20, 2015, *Seeking Alpha* published an article entitled "Top  
13 prescribers of Insys Therapeutics' Subsys arrested on drug charges," reporting that two of  
14 Insys's highest-volume prescribers had been charged with illegal prescription drug  
15 distribution by the Drug Enforcement Agency ("DEA").

16 8. On this news, the price of Company shares declined \$2.65 per share, or  
17 more than 4%, from a close of \$59.77 per share on May 19, 2015, to close at \$57.12 per  
18 share on May 20, 2015.

19 9. On June 25, 2015, *The New York Times* reported that a nurse in Connecticut  
20 pled guilty to participating in a kickback scheme wherein she accepted approximately  
21 \$83,000 in kickbacks from Insys in exchange for writing more than \$1 million worth of  
22 Subsys prescriptions.

1           10. On this news, the price of Company shares declined \$3.00 per share, or  
2 nearly 8%, from a close of \$38.74 per share on June 24, 2015, to close at \$35.74 per  
3 share on June 25, 2015.<sup>1</sup>

4           11. On December 3, 2015, SIRF published an article entitled “Murder  
5 Incorporated: Insys Therapeutics, Part I,” alleging that Defendant Babich had been forced  
6 to resign from the Company by Defendant John N. Kapoor—the Company’s founder and  
7 the Executive Chairman of Insys’s Board of Directors—and that the Company operated a  
8 scheme to promote the illegal and improper off-label marketing and sale of Subsys.

9           12. On this news, the price of Company shares declined \$5.93 per share, or  
10 nearly 19%, from a close of \$31.99 per share on December 2, 2015, to close at \$26.06 per  
11 share on December 3, 2015.

12           13. On January 25, 2016, SIRF published an article entitled “The Brotherhood  
13 of Thieves: Insys Therapeutics,” alleging that Insys’s executives have continued to  
14 pressure Company employees to develop new schemes to promote the illegal and  
15 improper off-label marketing and sale of Subsys.

16           14. On this news, the price of Company shares declined \$1.07 per share, or  
17 nearly 5%, from a close of \$22.65 per share on January 24, 2016, to close at \$21.58 per  
18 share on January 25, 2016.

19 **II. JURISDICTION AND VENUE**

20           15. The claims asserted herein arise under Sections 10(b) and 20(a) of the  
21 Exchange Act, 15 U.S.C. §§ 78j(b), and 78t(a) and the rules and regulations promulgated  
22 thereunder, including SEC Rule 10b-5, 17 C.P.R. § 2401.10b-5.

23           16. This Court has jurisdiction over the subject matter of this action pursuant to  
24 28 U.S.C. §§ 1331 and 1337, and Section 27 of the Exchange Act, 12 U.S.C. § 78aa.

25 \_\_\_\_\_  
26 <sup>1</sup> On June 5, 2015, Insys effected a two-for-one stock split of the Company’s  
27 common stock, which began trading on a spit-adjusted basis on June 8, 2015. All  
28 share prices after June 8, 2015 reflect the June 5, 2015 two-for-one stock split.

1 Venue is proper in this District pursuant to Section 27 of the Exchange Act, 15 U.S.C. §§  
2 78aa, and 28 U.S.C. § 1391(b), as Insys’s principal place of business is located within  
3 this District.

4 17. In connection with the acts alleged in this complaint, Defendants, directly  
5 or indirectly, used the means and instrumentalities of interstate commerce, including, but  
6 not limited to, the mails, interstate telephone communications, and the facilities of the  
7 national securities markets.

8 **III. PARTIES**

9 18. Plaintiff Richard Di Donato, as set forth in the accompanying certification,  
10 incorporated by reference herein, purchased Insys common stock at artificially inflated  
11 prices during the Class Period and has suffered damages as a result of the federal law  
12 violations and false and/or misleading statements and/or material omissions alleged  
13 herein.

14 19. Defendant Insys is incorporated in Delaware and maintains its principal  
15 executive offices at 1333 South Spectrum Boulevard, Suite 100, Chandler, Arizona,  
16 85286. Insys’s common stock trades on the NASDAQ under the ticker symbol “INSY.”

17 20. Defendant Michael L. Babich (“Babich”) was the Company’s President and  
18 Chief Executive Officer throughout the Class Period until his resignation on or before  
19 November 5, 2015.

20 21. Defendant Darryl S. Baker (“Baker”) was the Company’s Chief Financial  
21 Officer throughout the Class Period.

22 22. Defendant John N. Kapoor (“Kapoor”) is the Executive Chairman of the  
23 Board of Directors of Insys and was appointed President and Chief Executive Officer on  
24 or before November 5, 2015.

25 23. Defendants Babich, Baker, and Kapoor are collectively referred to herein as  
26 the “Individual Defendants.” The Individual Defendants, because of their positions with  
27 the Company, possessed the power and authority to control the contents of Insys’s reports  
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1 to the SEC, press releases, and presentations to securities analysts, money and portfolio  
2 managers, and institutional investors—*i.e.*, the market. Each Defendant was provided  
3 with copies of the Company’s reports and press releases alleged herein to be misleading  
4 prior to, or shortly after, their issuance and had the ability and opportunity to prevent  
5 their issuance or cause them to be corrected. Because of their positions and access to  
6 material non-public information available to them, each of the Individual Defendants  
7 knew that the adverse facts specified herein had not been disclosed to, and were being  
8 concealed from, the public, and that the positive representations which were being made  
9 were then materially false and/or misleading.

10 24. Defendants Insys, Babich, Baker, and Kapoor are collectively referred to  
11 herein as the “Defendants.”

#### 12 **IV. SUBSTANTIVE ALLEGATIONS**

##### 13 **A. Background**

14 25. Insys, a Delaware company headquartered in Chandler, Arizona, is a  
15 commercial-stage specialty pharmaceutical company that develops and commercializes  
16 supportive care products designed to assist patients with the side effects attributable to  
17 their disease, treatment, or therapy.

18 26. The Company has two marketed products: (i) Subsys; and (ii) Drabinol SG  
19 Capsule. Subsys is a sublingual fentanyl spray designed to treat BTCP in opioid-tolerant  
20 patients. Subsys is classified as a transmucosal immediate-release fentanyl (“TIRF”) and  
21 competes in the TIRF market. Drabinol SG Capsule is a generic equivalent to Marinol  
22 (dronabinol), which is an approved second-line treatment for both chemotherapy-induced  
23 nausea and vomiting (“CINV”) and anorexia associated with weight loss in patients with  
24 Auto Immune Deficiency Syndrome (“AIDS”).

1           **B.     Materially False and Misleading Statements**

2           27.     On March 3, 2015, the Company released its annual report for the 2014  
3 year (“2014 Annual Report”) on Form 10-K filed with the SEC. In its 2014 Annual  
4 Report, the Company indicated that: (i) Subsys commands a substantial portion of the  
5 market share for TIRF products; (ii) the Company can increase the market penetration of  
6 Subsys; and (iii) the Company can leverage its commercial organization to effectively  
7 market Subsys.

8           28.     Regarding Subsys’s market share of the TIRF market, the Company stated:  
9           In December 2014, Subsys was the most prescribed TIRF  
10           product with 40.2% market share on a prescription basis. . . .  
11           Through our ongoing commercial initiatives, we believe we  
12           can continue to grow our market share and net revenue for  
13           Subsys. According to Source Healthcare Analytics, in 2014,  
14           TIRF products generated \$450.4 million in annual U.S.  
15           product sales. Traditionally, the physician prescriber base for  
16           TIRF products is concentrated, with approximately 1,594  
17           physicians writing 90% of all TIRF product prescriptions in  
18           2014, according to IMS. As a result, our commercial  
19           organization has been able to promote Subsys using a highly  
20           targeted approach designed to maximize impact with  
21           physicians who are TIRF REMS enrolled. In addition, our  
22           commercial organization continues to specifically target  
23           oncology health care providers and practices.

24           29.     The Company also stated that “We believe that we can continue to increase  
25 Subsys net product revenue through further market penetration and educating the medical  
26 community to ensure that patients are titrated to an effective dose of Subsys and have  
27 access to Subsys.”

28           30.     Regarding its product commercialization efforts, the Company stated that:  
“We commercialize Subsys through a cost-efficient commercial organization utilizing an  
incentive-based sales model similar to that employed by Sciele Pharma and other  
companies previously led by members of our board of directors, including our founder  
and Executive Chairman.”

1           31. Also on March 3, 2015, the Company filed its Fourth Quarter 2014  
2 financial results and Year End 2014 financial results with the SEC on Form 8-K. For the  
3 Fourth Quarter 2014, the Company announced revenues of \$66.5 million, of which \$66.1  
4 million were attributed to sales of Subsys, an increase of 69% from the Fourth Quarter  
5 2013. The Company reported Fourth Quarter 2014 net income of \$9.3 million, or \$0.25  
6 per diluted share.

7           32. For the Year End 2014 financial results the Company reported revenue of  
8 \$222.1 million, of which \$219.5 million was attributed to the sales of Subsys. The  
9 Company reported Year End 2014 net income of \$38 million, or \$1.04 per diluted share.

10           33. On May 7, 2015, the Company issued a press release announcing its First  
11 Quarter 2015 financial results. For the First Quarter 2015, the Company announced  
12 revenues of \$70.8 million, of which \$70.5 million were attributed to sales of Subsys, an  
13 increase of 74% from the First Quarter 2014. The Company reported First Quarter 2015  
14 net income of \$8 million, or \$0.21 per diluted share. Regarding the Company's First  
15 Quarter 2015 financial results, Defendant Babich stated: "Insys had another strong  
16 quarter, driven by our twelfth consecutive quarter of Subsys sales growth. We expect this  
17 will remain our largest near-term revenue driver as we advance the many projects in our  
18 pipeline through clinical trials and bring them to market." Defendant Babich stated  
19 further: "By continuing to focus our clinical, regulatory and commercial expertise on  
20 developing and successfully commercializing innovative products, we expect to deliver  
21 long-term value for our shareholders."

22           34. On May 11, 2015, the Company filed its financial results for the quarter  
23 ending March 31, 2015 on Form 10-Q, in which the Company restated their previously  
24 announced financial results for the First Quarter 2015.

25           35. On August 6, 2015, the Company issued a press release announcing its  
26 Second Quarter 2015 financial results. For the Second Quarter 2015, the Company  
27 announced revenues of \$77.6 million, of which \$76.7 million were attributed to sales of  
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1 Subsys, an increase of 40% from the Second Quarter 2014. The Company reported  
2 Second Quarter 2015 net income of \$7.3 million, or \$0.10 per diluted share. Regarding  
3 the Company's Second Quarter 2015 financial results, Defendant Babich stated: "Insys  
4 had another strong quarter, driven by our thirteenth consecutive quarter of Subsys sales  
5 growth. While we expect this will remain our largest near-term revenue driver, we are  
6 very pleased to have submitted the NDA for Dronabinol Oral Solution." Defendant  
7 Babich stated further: "By continuing to focus our clinical, regulatory, and commercial  
8 expertise on developing and successfully commercializing innovative products, we  
9 expect to deliver long-term value for our shareholders."

10 36. On August 6, 2015, the Company filed its financial results for the quarter  
11 ending June 31, 2015 on Form 10-Q, in which the Company restated their previously  
12 announced financial results for the Second Quarter 2015.

13 37. On November 5, 2015, the Company issued a press release announcing its  
14 Third Quarter 2015 financial results. For the Third Quarter 2015, the Company  
15 announced revenues of \$91.3 million, of which \$91.1 million were attributed to sales of  
16 Subsys, an increase of 57% from the Third Quarter 2014. The Company reported Third  
17 Quarter 2015 net income of \$26.1 million, or \$0.34 per diluted share.

18 38. The Company also announced on November 5, 2015 that Defendant Babich  
19 had stepped down as the Company's President and Chief Executive Officer and would be  
20 replaced by Defendant Kapoor. Regarding the Company's Third Quarter 2015 financial  
21 results, Defendant Kapoor stated: "Today we reported record results and our twelfth  
22 consecutive quarter of profitability at Insys. We have driven top line revenue expansion  
23 with our market-leading brand, Subsys, and see opportunity for further market share  
24 gains in the coming quarters."

25 39. On November 5, 2015, the Company filed its financial results for the  
26 quarter ending September 31, 2015 on Form 10-Q, in which the Company restated their  
27 previously announced financial results for the Third Quarter 2015.

1           40. The above statements regarding the Company’s business and operations  
2 were materially false and misleading. Specifically, Defendants failed to disclose that: (i)  
3 the Company was engaged in the illegal and improper off-labeling marketing of Subsys;  
4 (ii) certain Insys employees—including Defendant Babich—were complicit in an illegal  
5 kickback scheme operated for the purpose of increasing prescriptions of Subsys; and (iii)  
6 as a result, the Company’s financial statements were materially false and misleading at all  
7 relevant times.

8           **C. The Truth Begins to Emerge**

9           41. On April 24, 2015, after the close of market, SIRF published an article  
10 entitled “Insys Therapeutics and the New ‘Killing It’” which reported that patients on  
11 Subsys had suffered adverse events, including death, and that the Company’s Subsys  
12 commercialization program was promoting Subsys through various aggressive schemes.  
13 The article stated, in relevant part:

14  
15           The Southern Investigative Reporting Foundation asked  
16 Adverse Events, a California-based consultancy that collects  
17 and analyzes drug side effect data to analyze the FDA’s  
18 Adverse Event Reporting System’s tracking of fatalities  
19 related to Subsys. (In medical terms, an adverse event is  
20 defined as an undesirable outcome related to a drug’s use and  
21 includes categories in addition to death.)

22           The analysis shows Subsys was referenced in 63 adverse  
23 event reports resulting in deaths since its January 2012 FDA  
24 approval. Participation in the FAERS database is voluntary --  
25 a prescribing physician might not learn of an adverse event  
26 related to a drug; others elect not to report them. Because of  
27 this, many in the medical industry argue -- privately -- that  
28 FAERS’ data skews toward the lowest potential occurrence  
rate.

          Given the relatively sparse amount of FAERS data that the  
Southern Investigative Reporting Foundation obtained (just  
age, gender and date of death are provided), placing the death

1 of 63 Subsys users in a broader context is not so cut-and-  
2 dried. Certainly it's reasonable to suppose that a percentage  
3 of those prescribed Subsys have cancer and would naturally  
4 have a higher rate of mortality. Some FAERS entries list  
5 Subsys along with one or two additional drugs. But dying of  
6 cancer isn't usually considered an adverse pharmacological  
7 event; dying of respiratory failure when taking Subsys for a  
8 migraine is.

9 \*\*\*

10 So how has Insys managed to grow exponentially?

11 The answer appears to have multiple parts: a truly unique  
12 sales force paired with a corporate speakers program that  
13 provides a stream of ready cash to frequent prescription  
14 writers.

15 There's no way around it: Insys' sales force is very different  
16 from its competitors in the pharmaceutical industry. One  
17 reason is that a pharmaceutical sales background or even  
18 college courses in science are not required. Another is that if  
19 a candidate appears to be driven and aggressive, the company  
20 will look past things that a local Starbucks might not.

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22 A qui tam claim filed last year by former Insys salesman Ray  
23 Furchak alleged that the speakers program's sole purpose  
24 was, in the words of his then supervisor Alec Burlakoff, "to  
25 get money in the doctor's pocket." The catch, Furchak  
26 alleged, was that the doctors who increased the level of  
27 Subsys prescriptions, and at higher dosages (such 400 or 800  
28 micrograms instead of 200 micrograms), would receive the  
invitations to the program -- and the checks.

The claim described texts from Burlakoff to Furchak and other sales colleagues regularly demanding that "doctors be held accountable" and that "doctors who are not increasing their clinical experience [prescription writing], please cancel, suspend, and cease doing speaker programs."

42. On this news, the price of Company shares declined \$6.00 per share, or nearly 10%, from a close of \$62.42 per share on April 24, 2015, to close at \$56.42 per share on April 27, 2015.

1           43. On May 20, 2015, *Seeking Alpha* published an article entitled “Top  
2 prescribers of Insys Therapeutics’ Subsys arrested on drug charges,” reporting that two of  
3 Insys’s highest-volume prescribers had been charged with illegal prescription drug  
4 distribution by the DEA. The article stated, in relevant part:

5                   Two Mobile, AL-based pain specialists, Dr. Xiulu Ruan and  
6 Dr. John Patrick Couch were arrested today on charges of  
7 illegal prescription drug distribution and conspiracy to  
8 commit healthcare fraud to increase insurance  
9 reimbursements. Both doctors, owners of Physicians’ Pain  
10 Specialists of Alabama Pain Center, are the top prescribers of  
11 Insys Therapeutics’ (NASDAQ:INSY) Subsys (fentanyl  
sublingual spray), a powerful opioid for the management of  
pain in adult cancer patients. Neither doctor is a board-  
certified oncologist.

12           44. On this news, the price of Company shares declined \$2.65 per share, or  
13 more than 4%, from a close of \$59.77 per share on May 19, 2015, to close at \$57.12 per  
14 share on May 20, 2015.

15           45. On June 25, 2015, *The New York Times* published an article entitled “Nurse  
16 Pleads Guilty to Taking Kickbacks From Drug Maker” which reported that a nurse in  
17 Connecticut pled guilty to federal charges for participating in a kickback scheme wherein  
18 she accepted approximately \$83,000 in kickbacks from Insys in exchange for writing  
19 more than \$1 million worth of Subsys prescriptions.

20           46. On this news, the price of Company shares declined \$3.00 per share, or  
21 nearly 8%, from a close of \$38.74 per share on June 24, 2015, to close at \$35.74 per  
22 share on June 25, 2015.

23           47. On December 3, 2015, SIRF published an article entitled “Murder  
24 Incorporated: Insys Therapeutics, Part I,” alleging that Defendant Babich had been forced  
25 to resign from the Company by Defendant Kapoor and that the Company operated a  
26 scheme to promote the illegal and improper off-label marketing and sale of Subsys. The  
27 article stated, in relevant part:

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On Nov. 2, on the eve of an earnings announcement, CEO Babich suddenly resigned -- a move that typically raises a major red flag for investors. Kapoor, who assumed the CEO mantle, told those listening on the conference call, "Mike decided that now is the best time to turn the page and focus on his family as well as pursue new opportunities."

Babich was forced out by Kapoor, according to a senior Insys executive who was in regular contact with Kapoor in the days prior to the announcement. While both men are the subjects of intense regulatory scrutiny, the founder and chairman bluntly told his lieutenant of 14 years that Babich was closest to the issues that federal prosecutors were looking at and that a change had to be made should settlement talks become serious, according to the executive source.

While Babich may be spending time with his young family, his personal life is more complex.

Earlier this year, Babich began a relationship with Natalie Levine, then a Boston area Insys sales executive who subsequently became pregnant; they married in the summer. (This is Babich's second romance with a sales colleague; Kapoor has also dated two sales executives.) Aside from the fact that it's unusual for a public company CEO to date someone who reports to him, the Babich-Levine relationship had another dynamic to it.

The newlyweds will probably be monitoring the developments in a rapidly expanding criminal suit filed in the U.S. District Court in Hartford where Heather Alfonso, an advanced practice registered nurse who was a high-volume Subsys prescriber over the past two years, pleaded guilty to accepting \$83,000 in kickbacks. Federal prosecutors, according to the transcript of the July plea hearing, allege that the kickbacks prompted her to write Subsys prescriptions worth \$1.6 million.

What appears to have brought the federal prosecutors' intense scrutiny of the divorced mother of four was the baldness of the scheme. According to her plea, Alfonso was paid \$1,000 each time she attended an Insys speakers event, where she

1 was supposed to discuss with other medical professionals her  
2 clinical experience of Subsys. In reality, however, no other  
3 prescribers were present, and prosecutors said the events  
4 amounted to nothing more than Insys-sponsored dinners and  
5 drinks for Alfonso and her co-workers.

6 Natalie Levine was one of the sales staffers who called on  
7 Alfonso, and Levine arranged and attended many of the 70  
8 speakers program events. As CEO, Babich approved two  
9 years' worth of budgeted payments to Alfonso.

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11 Alfonso is cooperating with the government, as might be  
12 expected for someone facing a possible sentence of 46 to 57  
13 months in jail; her sentencing date has been pushed back  
14 twice, most recently for six months. In the plea hearing  
15 transcript, prosecutors offered a pretty big clue about where  
16 Alfonso's cooperation might be taking the investigation. For  
17 example, several Medicare Part D beneficiaries were  
18 described by prosecutors as ready to testify that she diagnosed  
19 them with having issues other than breakthrough cancer pain  
20 (the primary condition Subsys is indicated to treat) yet  
21 insurers still authorized the prescriptions.

22 As described in the transcript, Insys' prior-authorization unit  
23 changed Alfonso's diagnoses to cancer. Absent the alleged  
24 changes, the prosecutor asserted, the insurers would have  
25 never paid for the prescriptions.

26 And as the Southern Investigative Reporting Foundation  
27 wrote in July, Medicare and commercial insurers appear to  
28 have approved reimbursement of prescriptions for Subsys at  
vastly higher rates than those of its rivals in the Fentanyl  
marketplace.

The prior-authorization unit was set up to assist patients with  
complex insurance paperwork. Its value proposition was  
simple: The patient signs a few forms and Insys handles the  
messy paperwork. Patients would get the medicine,  
prescribers wouldn't have to scramble for an alternate  
medication and Insys would book thousands of dollars in  
revenue per prescription.

1 In reality what the prior-authorization unit did was take  
2 advantage of pharmacy-benefit manager inertia to work a  
3 type of bureaucratic alchemy, whereby a torrent of off-label  
4 Subsys prescriptions would be transformed into ones  
5 associated with medically urgent cancer diagnoses.

6 Unmistakably, the prior-authorization unit was the key piece  
7 in helping Insys double the size of the Fentanyl marketplace  
8 to more than \$500 million in less than two years.

9 48. On this news, the price of Company shares declined \$5.93 per share, or  
10 nearly 19%, from a close of \$31.99 per share on December 2, 2015, to close at \$26.06 per  
11 share on December 3, 2015.

12 49. On January 25, 2016, SIRF published an article entitled “The Brotherhood  
13 of Thieves: Insys Therapeutics,” alleging that Insys’s executives have continued to  
14 pressure Company employees to develop new schemes to promote the illegal and  
15 improper off-label marketing and sale of Subsys. The article stated, in relevant part:

16 Executives at Insys Therapeutics have continued to pressure  
17 its employees to develop new ways to mislead insurance  
18 companies into granting coverage to patients prescribed its  
19 drug Subsys, even as the Food and Drug Administration’s  
20 Office of Criminal Investigations issues a stream of  
21 subpoenas to former employees.

22 \*\*\*

23 Internal Insys documents and an audio recording of a PA unit  
24 meeting show that as recently as the late autumn executives  
25 were frantically brainstorming new ways to get around  
26 increasingly stringent pharmacy benefit manager rule  
27 enforcement.

28 \*\*\*

So Jeff Kobos, the prior authorization unit’s new supervisor,  
wrote a new version of the spiel that was alternately called  
“Statement 13” or, in a homage to its confidential nature,  
“Agent 14.” It tried to thread a needle, designed to navigate  
both elevated PBM scrutiny and the rising level of  
compliance oversight required, while still allowing the unit’s  
employees to try and guide PBMs to an approval.

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1 The initial speaker (and the clearest voice) is PA executive  
2 Jeff Kobos who makes a pair of important admissions: at the  
3 2:20 mark he acknowledged the unit's pattern of dishonesty  
4 by saying "when we were using [insurance codes for cancer-  
5 related pain diagnoses] for non-cancer [pain]." At 4:30, he  
6 made jokes referring to "sandwiches" and "the sky is blue" as  
7 the kind of conversational gambits they should try and deflect  
8 PBM worker questions with.

9 At 5:00, David Richardson a trainer with the PA unit,  
10 suggests dropping the "Agent 14" spiel since it wasn't  
11 working. A minute later, he and his wife, Tamara  
12 Kalmykova, an analyst with the PA unit, begin to discuss an  
13 idea he had in response to so-called smart-scripting, whereby  
14 PBMs use software analysis to determine if a patient--per the  
15 FDAs protocol--had tried another Fentanyl drug.

16 (Montgomery said smart-scripting was another development  
17 that Insys' PA staff couldn't readily steer around.)

18 Richardson suggested patients use a coupon for a free-trial  
19 prescription of Cephalon's Actiq. The patient wouldn't pick  
20 the drug up but it would register in databases and allow PA  
21 staffers to plausibly claim that the patient was in full  
22 compliance with regulations.

23 50. On this news, the price of Company shares declined \$1.07 per share, or  
24 nearly 5%, from a close of \$22.65 per share on January 24, 2016, to close at \$21.58 per  
25 share on January 25, 2016.

## 26 **V. PLAINTIFF'S CLASS ACTION ALLEGATIONS**

27 51. Plaintiff brings this action as a class action pursuant to Rule 23 of the  
28 Federal Rules of Civil Procedure on behalf of all persons who purchased Insys common  
stock during the Class Period (the "Class"). Excluded from the Class are Defendants,  
directors and officers of Insys, and their families and affiliates.

52. The members of the Class are so numerous that joinder of all members is  
impracticable. The disposition of their claims in a class action will provide substantial

1 benefits to the parties and the Court. According to the Company's Form 10-K filed with  
2 the SEC on March 3, 2015, Insys had more than 35 million shares of stock outstanding,  
3 likely owned by thousands of persons—subsequently increasing to more than 71 million  
4 shares outstanding after the Company's two-for-one stock split on June 5, 2015.

5 53. There is a well-defined community of interest in the questions of law and  
6 fact involved in this case. Questions of law and fact common to the members of the  
7 Class which predominate over questions which may affect individual Class members  
8 include:

- 9 (a) Whether Defendants violated the Securities Exchange Act;
- 10 (b) Whether Defendants omitted and/or misrepresented material facts;
- 11 (c) Whether Defendants' statements omitted material facts necessary in order  
12 to make the statements made, in light of the circumstances under which  
13 they were made, not misleading;
- 14 (d) Whether Defendants knew or recklessly disregarded that their statements  
15 were false and misleading;
- 16 (e) Whether the price of Insys's common stock was artificially inflated; and
- 17 (f) The extent of damage sustained by Class members and the appropriate  
18 measure of damages.

19 54. Plaintiff's claims are typical of those of the Class because Plaintiff and the  
20 Class sustained damages from Defendants' wrongful conduct.

21 55. Plaintiff will adequately protect the interests of the Class and has retained  
22 counsel who are experienced in class action securities litigation. Plaintiff has no interests  
23 which conflict with those of the Class.

24 56. A class action is superior to other available methods for the fair and  
25 efficient adjudication of this controversy.

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1 **VI. LOSS CAUSATION/ECONOMIC LOSS**

2 57. Defendants' wrongful conduct, as alleged herein, directly and proximately  
3 caused the economic loss suffered by Plaintiff and the Class. The price of Insys's  
4 common stock was artificially inflated throughout the Class Period by Defendants' false  
5 and misleading statements, and significantly declined when the misrepresentations made  
6 to the market, and/or the information alleged herein to have been concealed from the  
7 market, and/or the effects thereof, were revealed, causing investors' losses. As a result of  
8 their purchases of Insys securities during the Class Period, Plaintiff and other members of  
9 the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

10 **VII. SCIENTER ALLEGATIONS**

11 58. During the Class Period, Defendants had both the motive and opportunity  
12 to commit fraud. They also had actual knowledge of the misleading nature of the  
13 statements they made, or acted in reckless disregard of the true information known to  
14 them at the time. In so doing, Defendants participated in a scheme to defraud and  
15 committed acts that operated as a fraud or deceit on purchasers of the Company's  
16 common stock during the Class Period.

17 **VIII. APPLICABILITY OF THE PRESUMPTION OF RELIANCE**

18 59. Plaintiff will rely upon the presumption of reliance established by the  
19 fraud-on-the-market doctrine in that, among other things:

- 20 (a) Defendants made public misrepresentations or failed to disclose  
21 material facts during the Class Period;
- 22 (b) The omissions and misrepresentations were material;
- 23 (c) The Company's common stock traded in an efficient market;
- 24 (d) The misrepresentations alleged would tend to induce a reasonable  
25 investor to misjudge the value of the Company's common stock; and
- 26 (e) Plaintiff and other members of the Class purchased Insys common stock  
27 between the time Defendants misrepresented or failed to disclose  
28

1 material facts and the time the true facts were disclosed, without  
2 knowledge of the misrepresented or omitted facts

3 60. At all relevant times, the market for Insys common stock was efficient for  
4 the following reasons, among others: (i) as a regulated issuer, Insys filed periodic public  
5 reports with the SEC; and (ii) Insys regularly communicated with public investors  
6 through established market communication mechanisms, including through regular  
7 disseminations of press releases on major news wire services and through other wide-  
8 ranging public disclosures, such as communications with the financial press, securities  
9 analysts, and other similar reporting services.

10 **IX. NO SAFE HARBOR**

11 61. Defendants' "Safe Harbor" warnings accompanying their forward-looking  
12 statements issued during the Class Period were ineffective to shield those statements from  
13 liability.

14 62. Defendants are also liable for any false or misleading forward-looking  
15 statements pled because, at the time each forward-looking statement was made, the  
16 speaker knew the forward-looking statement was false or misleading and the forward-  
17 looking statement was authorized and/or approved by an executive officer of Insys who  
18 knew that the statement was false. None of the historic or present tense statements made  
19 by Defendants were assumptions underlying or relating to any plan, projection, or  
20 statement of future economic performance, as they were not stated to be such  
21 assumptions underlying or relating to any projection or statement of future economic  
22 performance when made, nor were any of the projections or forecasts made by  
23 Defendants expressly related to or stated to be dependent on those historic or present  
24 tense statements when made.

**FIRST CLAIM**  
**Violation of Section 10(b) of the Exchange Act and Rule 10b-5**  
**Promulgated Thereunder Against All Defendants**

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3           63. Plaintiff repeats and realleges each and every allegation contained above as  
4 if fully set forth herein.

5           64. During the Class Period, Insys and the Individual Defendants carried out a  
6 plan, scheme and course of conduct which was intended to and, throughout the Class  
7 Period, did: (i) deceive the investing public, including Plaintiff and other Class members,  
8 as alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase  
9 Insys common stock at artificially inflated prices. In furtherance of this unlawful  
10 scheme, plan and course of conduct, these Defendants, and each of them, took the actions  
11 set forth herein.

12           65. Insys and the Individual Defendants: (i) employed devices, schemes, and  
13 artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state  
14 material facts necessary to make the statements not misleading; and (iii) engaged in acts,  
15 practices, and a course of business which operated as a fraud and deceit upon the  
16 purchasers of the Company's common stock in an effort to maintain artificially high  
17 market prices for Insys common stock in violation of Section 10(b) of the Exchange Act  
18 and Rule 10b-5. These Defendants are sued either as primary participants in the  
19 wrongful and illegal conduct charged herein or as controlling persons.

20           66. Defendants had actual knowledge that their Class Period statements were  
21 materially false and misleading.

22           67. As a direct and proximate result of these Defendants' wrongful conduct,  
23 Plaintiff and other members of the Class suffered damages in connection with their  
24 purchases of the Company's common stock during the Class Period.  
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**SECOND CLAIM**  
**Violation of Section 20(a) of**  
**The Exchange Act Against the Individual Defendants**

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3       68. Plaintiff repeats and realleges each and every allegation contained above as  
4 if fully set forth herein.

5       69. The Individual Defendants acted as controlling persons of Insys within the  
6 meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-  
7 level positions, and their ownership and contractual rights, participation in and/or  
8 awareness of the Company's operations and/or intimate knowledge of the false financial  
9 statements filed by the Company with the SEC and disseminated to the investing public,  
10 the Individual Defendants had the power to influence and control and did influence and  
11 control, directly or indirectly, the decision-making of the Company, including the content  
12 and dissemination of the various statements which Plaintiff contends are false and  
13 misleading. The Individual Defendants were provided with or had unlimited access to  
14 copies of the Company's reports, press releases, public filings, and other statements  
15 alleged by Plaintiff to be misleading prior to and/or shortly after these statements were  
16 issued and had the ability to prevent the issuance of the statements or cause the  
17 statements to be corrected.

18       70. In particular, each of the Individual Defendants had direct and supervisory  
19 involvement in the day-to-day operations of the Company and therefore are presumed to  
20 have had the power to control or influence the particular transactions giving rise to the  
21 securities violations as alleged herein, and exercised the same.

22       71. As set forth above, Insys and the Individual Defendants each violated  
23 Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint.  
24 By virtue of their positions as controlling persons, the Individual Defendants are liable  
25 pursuant to Section 20(a) of the Exchange Act.



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