

1 Plaintiff [REDACTED] (“Plaintiff”), individually and on behalf of all other
2 persons similarly situated, by his undersigned attorneys, for his complaint against
3 defendants, alleges the following based upon personal knowledge as to himself
4 and his own acts, and information and belief as to all other matters, based upon,
5 *inter alia*, the investigation conducted by and through his attorneys, which
6 included, among other things, a review of the defendants’ public documents,
7 conference calls and announcements made by defendants, United States
8 Securities and Exchange Commission (“SEC”) filings, wire and press releases
9 published by and regarding Insys Therapeutics, Inc. (“Insys” or the “Company”),
10 analysts’ reports and advisories about the Company, and information readily
11 obtainable on the Internet.
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16 **NATURE OF THE ACTION**

17 1. This is a federal securities class action on behalf of a class consisting
18 of all persons other than defendants who purchased or otherwise acquired Insys
19 securities between May 1, 2013 and May 8, 2014, both dates inclusive (the “Class
20 Period”), seeking to recover damages caused by defendants’ violations of the
21 federal securities laws and to pursue remedies under §§ 10(b) and 20(a) of the
22 Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5
23 promulgated thereunder against the Company and certain of its top officials.
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1 2. Insys is a commercial-stage specialty pharmaceutical company that
2 develops and commercializes innovative supportive care products, primarily
3 intended to assist cancer patients cope with the symptoms of their disease and
4 treatment or therapy.
5

6 3. The Company has two marketed products, Subsys and Dronabinol
7 SG Capsule, which utilize Insys' sublingual spray drug delivery technology and
8 dronabinol formulation and manufacturing capabilities.
9

10 4. In March 2012, Insys launched Subsys, the proprietary sublingual
11 fentanyl spray for breakthrough cancer pain, or BTCP, in opioid-tolerant patients,
12 through a purported "cost-efficient commercial organization of approximately 50
13 sales professionals."
14

15 5. In a Prospectus, filed with the SEC on May 2, 2013, the Company
16 touted to investors that "Subsys was the second most prescribed branded
17 transmucosal immediate-release fentanyl, or TIRF, product with 16.1% market
18 share on a prescription basis according to Source Healthcare Analytics."
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21 6. Throughout the Class Period, Defendants made materially false and
22 misleading statements regarding the Company's business and operations.
23 Specifically, Defendants made false and/or misleading statements concerning,
24 and/or failed to disclose, among other things that: (i) the Company engaged in
25 illegal and/or unethical off label marketing of Subsys; (ii) the Company was
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1 exposed to potential fines and other disciplinary actions as a result of its Subsys
2 marketing practices; and, (iii) as a result, the Company's financial statements
3 were materially false and misleading at all relevant times.
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5 7. On December 12, 2013, after market close, the company announced
6 that, "it has received a subpoena from the Office of Inspector General of the
7 Department of Health and Human Services ("HHS") in connection with an
8 investigation of potential violations involving HHS programs. The subpoena
9 requests documents regarding Subsys®, including Insys' sales and marketing
10 practices relating to this product."
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13 8. On this news, the company's shares fell \$7.73 per share, to close at
14 \$37.55 per share, a one day drop of over 17%, on high volume.
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16 9. On May 8, 2014, a local Michigan news source published an article
17 detailing the charges against a Michigan doctor who allegedly accounted for 20%
18 of total nationwide Subsys prescriptions. The doctor was charged by federal
19 prosecutors with defrauding Medicare and private insurers, and prescribing
20 unnecessary medications to patients.
21
22

23 10. On this news, the Company's shares fell \$6.64 per share, or over
24 16%, to close on May 9, 2014 at \$32.67 per share, on extremely high volume.
25

26 11. Then on May 11, 2014, analyst firm, Bronte Capital, published a
27 report further highlighting the claims against the Michigan doctor, and the
28

1 problems attendant to Insys' marketing of Subsys, including allegedly illegal off-
2 label marketing.

3
4 12. On this news, Insys shares fell a further \$5.04 per share, or 15%, to
5 close on May 12, 2014 at \$27.63 per share.

6
7 13. As a result of defendants' wrongful acts and omissions, and the
8 sharp decline in the market value of the Company's stock, Plaintiff and other
9 Class members have suffered significant losses and damages.

10
11 **JURISDICTION AND VENUE**

12 14. The claims asserted herein arise under and pursuant to §§ 10(b) and
13 20(a) of the Exchange Act (15 U.S.C. § 78j(b) and 78t(a)) and Rule 10b-5
14 promulgated thereunder (17 C.F.R. § 240.10b-5).

15
16 15. This Court has jurisdiction over the subject matter of this action
17 pursuant to § 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

18
19 16. Venue is proper in this District pursuant to §27 of the Exchange Act,
20 15 U.S.C. §78aa and 28 U.S.C. §1391(b), as Insys's principal place of business is
21 located within this District and a substantial part of the conduct complained of
22 herein occurred in this District.

23
24 17. In connection with the acts, conduct and other wrongs alleged in this
25 Complaint, defendants, directly or indirectly, used the means and
26 instrumentalities of interstate commerce, including but not limited to, the United
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1 States mail, interstate telephone communications and the facilities of the national
2 securities exchange.

3
4 **PARTIES**

5 18. Plaintiff, as set forth in the attached Certification, acquired Insys
6 securities at artificially inflated prices during the Class Period and has been
7 damaged upon the announcement of the alleged corrective disclosure.
8

9 19. Defendant Insys is a Delaware corporation with its principal
10 executive offices located at 444 South Ellis Street, Chandler, Arizona 85224.
11 Insys's common stock trades on the NASDAQ under the ticker symbol "INSY."

12 20. Defendant Michael Babich ("Babich") has been the Company's
13 President, Chief Executive Officer, and a member of the Company's board of
14 directors ("Board") at all relevant times.
15
16

17 21. Defendant Darryl S. Baker ("Baker") has been the Company's Chief
18 Financial Officer at all relevant times.
19

20 22. The defendants named in ¶¶ 16 - 17 above are sometimes referred to
21 herein as the "Officer Defendants."
22

23 **MATERIALLY FALSE AND MISLEADING STATEMENTS**

24 23. Insys is a commercial-stage specialty pharmaceutical company that
25 develops and commercializes innovative supportive care products, primarily
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1 intended to assist cancer patients in coping with the symptoms of their disease
2 and treatment or therapy.

3 24. The Company has two marketed products, Subsys and Dronabinol
4 SG Capsule, which utilize Insys' sublingual spray drug delivery technology and
5 dronabinol formulation and manufacturing capabilities.
6

7 25. On or about May 2, 2013, Insys filed with the SEC a Form S-1/A
8 Registration Statement (the "Registration Statement"), which would later be
9 utilized for the IPO, and which incorporated a prospectus to be used in connection
10 with the offer and sale of Insys shares.
11

12 26. On or about May 2, 2013, Insys filed its Prospectus for the IPO,
13 which forms part of the Registration Statement that became effective on May 3,
14 2013. The Registration Statement and Prospectus (collectively, the "Offering
15 Documents") indicated that the Company's Subsys product had obtained a
16 substantial portion of the market for supportive care products and was in the
17 position to capture even larger market share and greater revenues. The Company
18 stated in relevant part:
19
20
21

22 In February 2013, Subsys was the second most
23 prescribed branded transmucosal immediate-release
24 fentanyl, or TIRF, product with 16.1% market share on a
25 prescription basis according to Source Healthcare
26 Analytics.
27

28 ***

1 In the fourth quarter of 2012, our aggregate sales and
2 marketing expenditures were \$3.1 million, and we
3 generated \$4.8 million in Subsys net revenue. We focus
4 our development efforts on product candidates that utilize
5 innovative formulations to address the clinical
6 shortcomings of existing commercial pharmaceutical
7 products. We intend to utilize our sublingual spray drug
8 delivery technology and dronabinol formulation
9 capabilities to develop novel formulations of approved
10 medications where we believe improved efficacy, onset
11 of action or patient convenience are needed.

12 ***

13 We believe there is a large and underserved market for
14 supportive care products. The National Cancer Institute
15 estimates that, as of January 1, 2009, there were
16 approximately 12.5 million people in the United States
17 who had been diagnosed or were living with cancer.
18 Cancer and the radiation or chemotherapy treatment
19 regimens intended to eradicate or inhibit the progression
20 of the disease often cause debilitating side effects and
21 symptoms such as pain, nausea and vomiting in cancer
22 patients

23 27. On or about June 3, 2013, the Company issued a press release
24 reporting first quarter 2013 results. For the quarter the Company announced total
25 revenues of \$11.1 million, \$9.7 million in net revenue from sales of Subsys, and
26 net income of \$0.1 million or \$0.01 per diluted share. The Company further stated
27 that, "total net revenue increased by 446% to \$11.1 million for the first quarter of
28 2013."

29 28. On or about June 5, 2013, the Company filed with the SEC on Form
30 10-Q its quarterly report for the period ending March 31, 2013, in which the

1 Company reiterated its previously announced financial performance for the
2 quarter.

3
4 29. On or about August 13, 2013, the Company issued a press release
5 reporting second quarter 2013 results. For the quarter, the Company announced
6 total revenues of \$18.8 million, \$18.5 million in net revenue from sales of Subsys,
7
8 up 90.8% since the first quarter 2013, and net income of \$4.5 million or \$0.26 per
9 diluted share. Defendant Babich further stated that, “[o]ur strong second quarter
10 results were driven by continued uptake of Subsys. We are excited to have
11 achieved our second quarter of profitability and look forward to building value
12 for shareholders as we continue to execute on our marketing plan. The continued
13 growth we have achieved allows us to accelerate reinvestment in both our
14 research and development and sales and marketing efforts.”
15
16

17
18 30. On or about August 13, 2013, the Company filed with the SEC on
19 Form 10-Q its quarterly report for the period ending June 30, 2013, in which the
20 Company reiterated its previously announced financial statements for the quarter.
21

22 31. On or about November 11, 2013, the Company issued a press release
23 reporting third quarter 2013 results. For the quarter, the Company announced total
24 revenues of \$29.2 million versus \$4.8 million for the third quarter of 2012, \$28.4
25 million in net revenue from sales of Subsys, up “1,002% over third quarter 2012,”
26 and net income of \$11.6 million or \$0.51 per diluted share. Defendant Babich
27
28

1 further stated that, “[o]ur strong results this quarter were driven by continued
2 prescription growth of the Subsys franchise to alleviate breakthrough pain for
3 cancer patients. The product, with its simple, one-step administration system, has
4 captured over 30% share of the transmucosal immediate-release fentanyl (TIRF)
5 market, and we aim to drive further growth through execution of our marketing
6 strategy.”
7
8

9 32. On or about November 12, 2013, the Company filed with the SEC
10 on Form 10-Q its quarterly report for the period ending September 30, 2013, in
11 which the Company reiterated its previously announced financial statements for
12 the quarter.
13

14 33. On March 4, 2014, the Company issued a press release reporting
15 fourth quarter and annual 2013 results. For the fourth quarter, the Company
16 announced total revenues of \$40.2 million versus \$5.2 million for the fourth
17 quarter 2012. The press release also announced that:
18
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20 Revenues from Subsys® (fentanyl sublingual spray)
21 were \$39.2 million, up 719% over fourth quarter of 2012
22 levels and up 38% as compared with \$28.4 million in the
23 third quarter of 2013;

24 Net income of \$24.1 million, or \$1.01 per diluted share,
25 compared to a net loss of \$7.1 million, or (\$0.76) per
26 basic and diluted share, for the fourth quarter of 2012.

27 Non-GAAP adjusted net income, which excludes the
28 \$9.7 million income tax benefit, was \$17.1 million, or
\$0.71 per diluted share; and,

1
2 "Our solid results for the quarter and year were driven by
3 strong growth in Subsys prescriptions to alleviate
4 breakthrough pain for cancer patients," said Michael L.
5 Babich, President and Chief Executive Officer. "In December 2013, Subsys was the most prescribed branded trans-
6 mucosal immediate-release fentanyl (TIRF)
7 product. We believe that its simple, one-step
8 administration system and rapid onset will enable further
9 growth of our market share for and net revenue from this
10 unique product."

11 34. On or about March 5, 2014, the Company filed with the SEC on
12 Form 10-K its annual report for the period ending December 31, 2013, in which
13 the Company reiterated its previously announced financial statements for the
14 quarter. The Company also touted the success of Subsys, including the strong
15 network of marketing employees endorsing the product to doctors, stating in
16 relevant part:
17

18 We launched Subsys as a commercial product in March
19 2012. Subsys is the fourth new branded product in the
20 TIRF market over the last four years. Within the first four
21 weeks of product launch, Subsys realized greater market
22 share than the previous three branded products combined
23 at their respective peak market penetration levels to date
24 according to Source Healthcare Analytics. In December
25 2013, Subsys was the most prescribed branded TIRF
26 product with 28.3% market share on a prescription basis
27 according to Source Healthcare Analytics. Through our
28 ongoing commercial initiatives, we believe we can
continue to grow our market share and net revenue for
Subsys. According to Source Healthcare Analytics, in
2013, TIRF products generated \$421.2 million in annual
U.S. product sales. **The physician prescriber base for**

1 *Continue to leverage our cost-efficient commercial*
2 *organization to market Subsys and, if approved,*
3 *Dronabinol Oral Solution and other complementary*
4 *products* . We commercialize Subsys through a cost-
5 efficient commercial organization utilizing an incentive-
6 based sales model similar to that employed by Sciele
7 Pharma and other companies previously led by members
8 of our board of directors, including our founder and
9 Executive Chairman. We intend to market Dronabinol
10 Oral Solution and other proprietary supportive care
11 products, if approved, using the same approach and our
12 commercial organization. We target our product detailing
13 efforts primarily towards oncologists, pain specialists and
14 centers that focus on supportive care. We may also
15 pursue opportunities to acquire commercial products or
16 product candidates that could further leverage our
17 supportive care commercial organization.

18 We believe Subsys' proprietary formulation and
19 sublingual delivery mechanism offer several advantages
20 over other FDA-approved TIRF products, and these
21 advantages may lead to improved patient compliance and
22 expanded medical use of fentanyl for BTCP. Such
23 advantages include:

24 • *Statistically significant pain relief in five*
25 *minutes:* Subsys is the only product to show statistically
26 significant pain relief when measuring the sum of pain
27 intensity difference, SPID, at five minutes in a Phase 3
28 BTCP clinical trial using fentanyl. We believe that
 Subsys is able to achieve this rapid delivery of fentanyl
 through sublingual delivery because there is a high
 density of blood vessels beneath the tongue and the thin
 layer in the mucosa enables higher absorption. The
 product sprays in a manner that is designed to maximize
 the area covered by the product.

 • *One-step administration:* Subsys is administered in
 one step using a small handheld delivery system that
 sprays fentanyl beneath the patient's tongue. This

1 delivery mechanism allows for administration in less than
2 one minute, rather than the 14 to 30 minutes required for
3 Actiq and Fentora. Further, Subsys can be administered
4 without moistening the tongue or cheek, allowing for
5 administration in cancer patients suffering from dry
6 mouth and oral mucositis.

7 • *Superior pharmacokinetic profile.* As compared to
8 Actiq's PK profile, Subsys' PK profile is characterized
9 by higher peak blood concentrations, which are achieved
10 at a more rapid rate. This profile is, in part, due to greater
11 than 85% absorption occurring transmucosally, resulting
12 in higher bioavailability. Because a small volume of
13 liquid is sprayed on to the sublingual mucosa, we believe
14 this method of administration reduces the amount of
15 liquid swallowed and subsequently absorbed via the
16 digestive system. As a result, we believe that less
17 fentanyl is exposed to first-pass metabolism in the liver.

18 • *Broad spectrum of dosage strengths allows for proper
19 titration and better pain relief.* Subsys is available in
20 the most complete range of dosage strengths in the TIRF
21 market, at 100, 200, 400, 600, 800, 1,200 and 1,600 mcg.
22 We believe it is important to offer a product in all dose
23 ranges for the treatment of BTCP, as all branded products
24 without generic equivalents, and, to our knowledge, all
25 product candidates currently in development, are not, or
26 will not be, available in the 1,200 and 1,600 mcg dosage
27 strengths.

28 *Subsys Market Experience to Date*

Prescription Trends: Monthly prescription data through
February 2014 shows that approximately 39,000
prescriptions of Subsys have been dispensed since launch
in March 2012. Subsys' total prescription share of the
TIRF market has increased each quarter since launch. In
December 2013, Subsys was the most prescribed branded
TIRF product with 28.3% market share.

1 *Physician Prescriber Base:* Approximately 1,850
2 physicians were responsible for 90% of all TIRF
3 prescriptions dispensed in 2013, according to Source
4 Healthcare Analytics. We have targeted our initial
5 commercialization efforts towards the majority of these
6 high prescribers. As of December 2013, there were
7 approximately 1,140 unique physician prescribers of
8 Subsys, according to the TIRF risk evaluation mitigation
9 strategy, or REMS, database. As of December 2013,
10 approximately 81% of the top 118 TIRF prescribers had
11 prescribed Subsys. These physicians accounted for 30%
12 of TIRF prescriptions, according to Source Healthcare
13 Analytics.

14 *Patient Use:* Patient data generated by the TIRF REMS
15 database demonstrates that the number of Subsys-
16 experienced patients has increased steadily since launch
17 with over 7,100 unique patients as of December 2013.
18 Importantly, the proportion of Subsys prescriptions
19 written for repeat Subsys patients has continued to
20 increase since July 2012 from 50% of prescriptions to
21 over 80% of prescriptions as of December 2013.
22 Generally, repeat Subsys patients receive higher doses of
23 Subsys on average than first-time patients, as patients are
24 titrated from a starter dose of Subsys to their effective
25 dose in accordance with the REMS protocol.

26 [Emphasis added.]

27 35. The above statements were materially false and misleading regarding
28 the Company's business and operations. Specifically, Defendants made false
 and/or misleading statements concerning, and/or failed to disclose, among other
 things that: (i) the Company engaged in illegal and/or unethical marketing of
 Subsys, including off-label marketing; (ii) the Company was exposed to potential
 fines and other disciplinary actions as a result of its Subsys marketing practices;

1 and, (iii) as a result, the Company's financial statements were materially false and
2 misleading at all relevant times.

3
4 **THE TRUTH EMERGES**

5 36. On December 12, 2013, after the market close, the Company
6 announced that, "it has received a subpoena from the Office of Inspector General
7 of the Department of Health and Human Services ("HHS") in connection with an
8 investigation of potential violations involving HHS programs. The subpoena
9 requests documents regarding Subsys®, including Insys' sales and marketing
10 practices relating to this product."
11
12

13 37. On this news, the Company's shares fell \$7.73 per share, to close at
14 \$37.55 per share, a one day drop of over 17%, on unusually high trading volume.
15

16 38. On May 8, 2014, a local Michigan news source published an article
17 detailing the charges against a Michigan doctor who allegedly accounted for 20%
18 of total nationwide Subsys prescriptions. The doctor was charged by federal
19 prosecutors with defrauding Medicare and private insurers, and prescribing
20 unnecessary medications to patients.
21
22

23 39. On this news, the Company's shares fell \$6.64 per share, or over
24 16%, to close on May 9, 2014 at \$32.67 per share, on extremely high volume.
25

26 40. Then, on May 11, 2014, analyst firm, Bronte Capital published a
27 report further highlighting the claims against the Michigan doctor, and the
28

1 problems attendant to Insys' marketing of Subsys, including allegedly illegal off-
2 label marketing. The report stated in relevant part:

3
4 Insys Therapeutics ([INSY: NASDAQ](#)) is a seller of
5 marijuana based anti-nausea drugs and super-strong
6 opiates (Fentanyl) and nothing much else. Nothing has
7 anything that resembles strong patent protection and their
8 version of sublingual Fentanyl is a relatively new comer
9 to the opiate scene - having only been on the market
10 since early 2013.

11 ***

12 Subsys - by far their important product - is a me-too
13 product. It is - as the form 10K stated - the fourth
14 Transmucosal Immediate Release Fentanyl (TIRF)
15 product released in recent years. However very rapidly
16 gained sales - indeed far more rapidly than any Fentanyl
17 ever. Again to quote the 10K.

18 ***

19 Now given that there is not a huge difference between
20 TIRF products it is remarkable that Subsys immediately
21 became the dominant TIRF product with a greater share
22 than the three previous leaders combined. It is not
23 entirely obvious how they did that.

24 But the key was quoted above - and I underlined it just to
25 make sure you noticed. Insys markets Subsys through "an
26 incentive-based sales model".

27 Its a little hard to work out what that actually means - but
28 it is the key risk in this business. The 10-K only says this:
We market Subsys through our U.S.-based, field sales
force focused on supportive care physicians. We utilize
an incentive-based sales model that employs a pay
structure where a significant component of the
compensation paid to sales representatives is in the form
of potential bonuses based on sales performance.

1 This is not well-described in the form 10-K. They state
2 several times that the sales approach is similar to one
3 used at Sciele Pharma - a company that management
4 were previously associated with. Again to quote:

5 We commercialize Subsys through a cost-efficient
6 commercial organization utilizing an incentive-
7 based sales model similar to that employed by
8 Sciele Pharma and other companies previously led
9 by members of our board of directors, including
10 our founder and Executive Chairman. We intend to
11 market Dronabinol Oral Solution and other
12 proprietary supportive care products, if approved,
13 using the same approach and our commercial
14 organization.

15 Beyond that - and a description of the size of the
16 marketing force - the marketing scheme is not well
17 described. Here is the description of the size and extent
18 of the marketing force.

19 41. On this news, Insys shares fell a further \$5.04 per share, or 15%, to
20 close on May 12, 2014 at \$27.63 per share.

21 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

22 42. Plaintiff brings this action as a class action pursuant to Federal Rule
23 of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those
24 who purchased or otherwise acquired Insys securities during the Class Period (the
25 "Class"); and were damaged upon the revelation of the alleged corrective
26 disclosures. Excluded from the Class are defendants herein, the officers and
27 directors of the Company, at all relevant times, members of their immediate
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1 families and their legal representatives, heirs, successors or assigns and any entity
2 in which defendants have or had a controlling interest.

3
4 43. The members of the Class are so numerous that joinder of all
5 members is impracticable. Throughout the Class Period, Insys securities were
6 actively traded on the NASDAQ. While the exact number of Class members is
7 unknown to Plaintiff at this time and can be ascertained only through appropriate
8 discovery, Plaintiff believes that there are hundreds or thousands of members in
9 the proposed Class. Record owners and other members of the Class may be
10 identified from records maintained by Insys or its transfer agent and may be
11 notified of the pendency of this action by mail, using the form of notice similar to
12 that customarily used in securities class actions.
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16 44. Plaintiff's claims are typical of the claims of the members of the Class
17 as all members of the Class are similarly affected by defendants' wrongful
18 conduct in violation of federal law that is complained of herein.
19

20 45. Plaintiff will fairly and adequately protect the interests of the
21 members of the Class and has retained counsel competent and experienced in
22 class and securities litigation. Plaintiff has no interests antagonistic to or in
23 conflict with those of the Class.
24
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1 46. Common questions of law and fact exist as to all members of the
2 Class and predominate over any questions solely affecting individual members of
3 the Class. Among the questions of law and fact common to the Class are:
4

- 5 • whether the federal securities laws were violated by
6 defendants' acts as alleged herein;
- 7 • whether statements made by the Individual Defendants to
8 the investing public during the Class Period misrepresented
9 and/or omitted material facts about the business, prospects,
10 and operations of Insys
- 11 • whether defendants acted knowingly or recklessly (i.e., with
12 scienter) in issuing false and misleading financial
13 statements;
- 14 • whether the prices of Insys securities during the Class Period
15 were artificially inflated because of the defendants' conduct
16 complained of herein; and
- 17 • whether the members of the Class have sustained damages
18 and, if so, what is the proper measure of damages.

19 47. A class action is superior to all other available methods for the fair
20 and efficient adjudication of this controversy since joinder of all members is
21 impracticable. Furthermore, as the damages suffered by individual Class
22 members may be relatively small, the expense and burden of individual litigation
23 make it impossible for members of the Class to individually redress the wrongs
24 done to them. There will be no difficulty in the management of this action as a
25 class action.
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1 48. Alternatively, Plaintiffs and the members of the Class are entitled to
2 the presumption of reliance established by the Supreme Court in *Affiliated Ute*
3 *Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430
4 (1972), as Defendants omitted material information in their Class Period
5 statements in violation of a duty to disclose such information, as detailed above.
6

7
8 **APPLICABILITY OF PRESUMPTION OF RELIANCE:**
9 **FRAUD-ON-THE-MARKET DOCTRINE**

10 49. Plaintiff will rely, in part, upon the presumption of reliance
11 established by the fraud-on-the-market doctrine in that:

- 12 • defendants made public misrepresentations or failed to
13 disclose material facts during the Class Period;
- 14 • the omissions and misrepresentations were material;
- 15 • the Company's stock met the requirements for listing,
16 and was listed and actively traded on the NASDAQ, a highly
17 efficient and automated markets;
- 18 • the Company's shares were liquid and traded with
19 moderate to heavy volume during the Class Period (ranging
20 from hundreds of thousands to millions of shares per week);
- 21 • as a regulated issuer, the Company filed with the SEC
22 periodic reports during the Class Period;
- 23 • the Company regularly communicated with public
24 investors via established market communication mechanisms,
25 including regular disseminations of press releases on the
26 national circuits of major newswire services and other wide-
27 ranging public disclosures, such as communications with the
28 financial press and other similar reporting services;

1 • the Company was followed by multiple securities
2 analysts employed by major brokerage firms who wrote reports
3 that were distributed to the sales force and certain customers of
4 their respective brokerage firms during the Class Period; these
5 reports was publicly available and entered the public
6 marketplace;

7 • numerous FINRA member firms were active market-
8 makers in the Company's stock at all times during the Class
9 Period; and

10 • unexpected material news about the Company was
11 rapidly reflected in and incorporated into the Company's stock
12 price during the Class Period.

13 50. Based upon the foregoing, Plaintiff and the members of the Class are
14 entitled to a presumption of reliance upon the integrity of the market.

15 COUNT I

16 Violation of § 10(b) of the Exchange Act, and Rule 10b-5 17 Promulgated Thereunder, Against Insys, and the Individual Defendants

18 51. Plaintiff repeats and realleges the allegations contained above as if
19 fully set forth herein.

20 52. During the Class Period, Insys and the Officer Defendants
21 disseminated or approved the materially false and misleading statements specified
22 above, which they knew or deliberately disregarded were misleading in that they
23 contained misrepresentations and failed to disclose material facts necessary in
24 order to make the statements made, in light of the circumstances under which
25 they were made, not misleading.
26
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1 53. The Officer Defendants: (a) employed devices, schemes, and
2 artifices to defraud; (b) made untrue statements of material fact and/or omitted to
3 state material facts necessary to make the statements made not misleading; and
4 (c) engaged in acts, practices, and a course of business which operated as a fraud
5 and deceit upon the purchasers of the Companies' units and shares during the
6 Class Period.
7
8

9 54. Plaintiff and the Class have suffered damages in that, in reliance on
10 the integrity of the market, they paid artificially inflated prices for Insys shares.
11 Plaintiff and the Class would not have purchased Insys shares at the prices they
12 paid, or at all, if they had been aware that the market prices had been artificially
13 and falsely inflated by the Officer Defendants' misleading statements.
14
15

16 55. As a direct and proximate result of the Officer Defendants' wrongful
17 conduct, Plaintiff and the other members of the Class suffered damages in
18 connection with their purchases of Insys shares during the Class Period.
19

20 **COUNT II**

21 **Violation of § 20(a) of the Exchange Act**
22 **Against the Individual Defendants**
23

24 56. Plaintiff repeats and realleges the allegations contained above as if
25 fully set forth herein.
26

27 57. During the Class Period, the Individual Defendants, as senior
28 executive officers and/or directors of Insys, were privy to confidential and

1 proprietary information concerning Insys, its operations, finances, financial
2 condition and present and future business prospects. The Individual Defendants
3 also had access to material adverse non-public information concerning Insys, as
4 detailed in this Complaint. Because of their positions within Insys, the Individual
5 Defendants had access to non-public information about the business, finances,
6 products, markets and present and future business prospects of Insys via internal
7 corporate documents, conversations and connections with other corporate officers
8 and employees, attendance at management and/or board of directors meetings and
9 committees thereof and via reports and other information provided to them in
10 connection therewith. Because of their possession of such information, the
11 Individual Defendants knew or recklessly disregarded that the adverse facts
12 specified herein had not been disclosed to, and were being concealed from, the
13 investing public.
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19 58. The Individual Defendants are liable as direct participants in the
20 wrongs complained of herein. In addition, the Individual Defendants, by reason
21 of their status as senior executive officers and/or directors, were “controlling
22 persons” within the meaning of §20(a) of the Exchange Act and had the power
23 and influence to cause Insys to engage in the unlawful conduct complained of
24 herein. Because of their positions of control, the Individual Defendants were able
25 to and did, directly or indirectly, control the conduct of the business of Insys.
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1 59. The Individual Defendants, because of their positions with Insys,
2 controlled and/or possessed the authority to control the contents of Insys's
3 reports, press releases and presentations to securities analysts and through them,
4 to the investing public. The Individual Defendants were provided with copies of
5 Insys's reports and press releases alleged herein to be misleading, prior to or
6 shortly after their issuance and had the ability and opportunity to prevent their
7 issuance or cause them to be corrected. Thus, the Individual Defendants had the
8 opportunity to commit the fraudulent acts alleged herein.
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12 60. The Individual Defendants, as senior executive officers and/or
13 directors and as controlling persons of a publicly traded company whose shares
14 were, and is, governed by the federal securities laws and is registered with the
15 NASDAQ Global Select Market, had a duty to promptly disseminate accurate and
16 truthful information with respect to Insys's financial condition, cash flow,
17 performance, growth, operations, financial statements, business, products,
18 markets, management, earnings and present and future business prospects, and to
19 correct any previously issued statements that had become materially misleading
20 or untrue, so that the market price of Insys shares would be based upon truthful
21 and accurate information. The Individual Defendants' misrepresentations and
22 omissions during the Class Period violated these specific requirements and
23 obligations.
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1 D. Awarding such other and further relief as this Court may deem just
2 and proper.

3 **DEMAND FOR TRIAL BY JURY**
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5 Plaintiff hereby demands a trial by jury.

6 Dated this 15th day of May, 2014.
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