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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Derick Larson,

Plaintiff,

v.
Insys Therapeutics Incorporated, et al.,

Defendants.

Hongwei Li,

Lead Plaintiff,

v.
Insys Therapeutics Incorporated, et al.,

Defendants.

Lead Case No. CV-14-01043-PHX-GMS
Consolidated with:
No. CV-14-1077-PHX-GMS

**ORDER PRELIMARILY
APPROVING THE SETTLEMENT
AND ESTABLISHING NOTICE
PROCEDURES**

Pending before the Court is the Unopposed Motion and Memorandum of Points and Authorities in Support of Preliminary Approval of Settlement, Preliminary Certification of Settlement Class, and Establishing Notice Procedures (Doc. 65).

WHEREAS, a consolidated class action is pending before this Court, captioned *Larson v. Insys Therapeutics Incorporated et al.*, Case No. 2:14-cv-01043-PHX-GMS (the “Action”);

WHEREAS, the Parties have jointly moved, pursuant to Federal Rule of Civil Procedure 23, for an order approving the settlement of the Action in accordance with the Stipulation of Settlement between Hongwei Li (“Lead Plaintiff”) and Insys Therapeutics,

1 Inc. (“Insys”), Michael L. Babich, Darryl S. Baker, Dr. John N. Kapoor, and Dr. Larry M.
2 Dillaha (collectively, “Defendants”) dated as of May 28, 2015 (the “Stipulation”) which,
3 together with the exhibits annexed thereto, set forth the terms and conditions for a
4 proposed settlement of the Action (the “Settlement”) and for dismissal of the Action with
5 prejudice;

6 WHEREAS, for purposes of this Order, all capitalized terms contained herein
7 shall have the same meanings as set forth in the Stipulation (in addition to those
8 capitalized terms defined herein);

9 Whereas, the Stipulation provides for the conditional certification of the
10 Settlement Class solely for the purpose of the Settlement; and

11 WHEREAS, the Court has read and considered the Stipulation, the exhibits
12 annexed thereto, and all other papers filed and proceedings held herein, and found good
13 cause appearing.

14 **NOW THEREFORE, IT IS HEREBY ORDERED:**

15 1. The Court preliminarily finds the Stipulation and the proposed Settlement
16 embodied therein, to be fair, reasonable, and adequate to the Settlement Class such that it
17 may be presented to Settlement Class Members for consideration in anticipation of a final
18 approval hearing.

19 2. Solely for purposes of the Stipulation and the Settlement, the Court now
20 finds and concludes that:

21 (a) With respect to all Released Claims, in light of the Settlement:
22 (1) the Settlement Class Members are so numerous that joinder of all class members in
23 the Action is impracticable; (2) there are questions of law and fact common to the
24 Settlement Class; (3) the claims of Lead Plaintiff are typical of the claims of the
25 Settlement Class; and (4) in negotiating and entering into the Stipulation, Lead Plaintiff
26 and Lead Counsel have fairly and adequately represented and protected the interests of all
27 Settlement Class Members; and
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1 (b) With respect to all Released Claims: (1) the questions of law and
2 fact that are common to the Settlement Class predominate over any individual questions;
3 and (2) a class action is superior to other available methods for the fair and efficient
4 adjudication of this controversy, considering (i) the interests of the Settlement Class
5 Members in individually controlling the prosecution of separate actions, (ii) the extent
6 and nature of any litigation concerning the controversy already commenced by
7 Settlement Class Members, (iii) the desirability or undesirability of concentrating the
8 litigation of these claims in this particular forum, and (iv) the difficulties likely to be
9 encountered in the management of the Action.

10 3. Solely for purposes of the Stipulation and the Settlement, the Settlement
11 Class is hereby certified pursuant to Rule 23 of the Federal Rules of Civil Procedure in
12 accordance with the following definition as set forth in the Stipulation: “Settlement
13 Class” or “Settlement Class Members” means all Persons who, during the Settlement
14 Class Period (November 12, 2013 through May 14, 2014), purchased or otherwise
15 acquired publicly traded shares of Insys common stock. Specifically excluded from the
16 definition of “Settlement Class” and “Settlement Class Members” are: (a) Defendants;
17 any parent or subsidiary, present or former director, officer, or subsidiary of Insys; any
18 entity in which any excluded person has a controlling interest; their legal representatives,
19 heirs, successors and assigns; any immediate family member of a Settling Individual
20 Defendant; and (b) any putative members of the Settlement Class who timely and validly
21 exclude themselves from the Settlement Class in accordance with the requirements set
22 forth in the Mailed Notice and Rule 23 of the Federal Rules of Civil Procedure.

24 4. Solely for purposes of the Stipulation and the Settlement, Lead Plaintiff is
25 hereby certified as the class representative on behalf of the Settlement Class pursuant to
26 Rule 23(b)(3) of the Federal Rules of Civil Procedure.

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1 5. The Court appoints Glancy Prongay & Murray LLP, the firm previously
2 selected as Lead Counsel and appointed by the Court, as Lead Counsel for the Settlement
3 Class.

4 6. Lead Counsel has the authority to enter into the Stipulation on behalf of the
5 Settlement Class and is authorized to act on behalf of the members of the Settlement
6 Class with respect to all acts or consents required by or that may be given pursuant to the
7 Stipulation or such other acts that are reasonably necessary to consummate the
8 Settlement.

9 7. The Court hereby appoints the firm Angeion Group as Settlement
10 Administrator to supervise and administer the notice and claim procedures.

11 8. The Court approves as to form and content, and for distribution to all
12 potential Settlement Class Members: (i) the Mailed Notice, substantially in the form of
13 Exhibit A-1 to the Stipulation; (ii) the Summary Notice, substantially in the form of
14 Exhibit A-2 to the Stipulation; and (iii) the Proof of Claim and Release, substantially in
15 the form of Exhibit A-3 to the Stipulation.

16 9. The date and time of the Settlement Hearing shall be added to the Mailed
17 Notice and the Summary Notice before they are mailed and published, respectively, in
18 accordance with ¶ 10, below.

19 10. The Court finds that the mailing, publication, and distribution of the Mailed
20 Notice and Summary Notice, substantially in the manner and form set forth in the
21 Stipulation, constitutes the best notice practicable under the circumstances, including
22 individual notice to all potential Settlement Class Members who can be identified through
23 reasonable effort, and constitutes valid, due and sufficient notice to all Persons entitled
24 thereto, in full compliance with the requirements of Rule 23 of the Federal Rules of Civil
25 Procedure and due process.

26 11. The Settlement Administrator is empowered to supervise and administer
27 the notice procedure, as set forth below:
28

1 (a) Not later than twenty (20) business days from the date of this Order
2 (“Notice Date”), the Settlement Administrator shall mail or cause to be mailed, by first
3 class mail, postage prepaid, copies of the Mailed Notice and Proof of Claim to all
4 potential Settlement Class Members (who can be identified by Lead Counsel with
5 reasonable effort) to each such Settlement Class Member’s last known address; and

6 (b) Not later than twenty (20) business days after the date of this Order,
7 the Settlement Administrator shall cause the Stipulation of Settlement and its Exhibits
8 and a copy of the Mailed Notice to be posted on the following website:
9 www.InsysSecuritiesLitigation.com; and

10 (c) Not later than thirty (30) business days from the date of this Order,
11 the Settlement Administrator shall cause the Summary Notice to be published once in
12 Investor’s Business Daily, and on a different day shall cause the Summary Notice to be
13 published once in PR Newswire;

14 (d) Not later than seventy (70) calendar days after the date of this Order,
15 Lead Counsel shall cause to be served on Defendants’ counsel and filed with the Court
16 proof, by affidavit or declaration, of such mailing, publishing, and posting.

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18 12. Banks, brokerage firms, institutions, and other Persons who are nominees
19 that purchased Insys common stock for the beneficial interest of other Persons during the
20 Settlement Class Period shall, within twenty (20) business days of receiving the Mailed
21 Notice and Proof of Claim, (a) send the Mailed Notice and Proof of Claim to all such
22 beneficial owners, or (b) send a list of the names and addresses of such beneficial owners
23 to the Settlement Administrator, in which event the Settlement Administrator shall
24 promptly mail the Mailed Notice to such beneficial owners. If requested, Lead Counsel
25 and/or the Settlement Administrator are authorized to reimburse banks, brokerage houses,
26 or other nominees solely for their reasonable out-of-pocket expenses incurred in
27 providing the Mailed Notice to beneficial owners who are Settlement Class Members out
28 of the Gross Settlement Fund, which expenses would not have been incurred except for

1 the sending of such Mailed Notice, subject to further order of this Court with respect to
2 any dispute concerning such compensation.

3 13. Any Person falling within the definition of the Settlement Class may, upon
4 request, be excluded from the Settlement Class. Any such Person must submit to the
5 Settlement Administrator a request for exclusion (“Request for Exclusion”), postmarked
6 no later than twenty-one (21) calendar days prior to the Settlement Hearing to the address
7 listed in the Mailed Notice. A Request for Exclusion must state: (a) the name, address,
8 and telephone number of the Person requesting exclusion; (b) each of the Person’s
9 purchases and sales of Insys common stock made during the Settlement Class Period,
10 including the dates of purchase or sale, the number of shares purchased and/or sold, and
11 the price paid or received per share for each such purchase or sale; and (c) that the Person
12 wishes to be excluded from the Settlement Class. All Persons who submit valid and
13 timely Requests for Exclusion in the manner set forth in this paragraph and the Mailed
14 Notice shall have no rights under the Settlement, shall not share in the distribution of the
15 Net Settlement Fund, and shall not be bound by the Settlement or the Judgment entered in
16 this Action.

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18 14. Unless otherwise ordered by the Court, all Persons who fall within the
19 definition of the Settlement Class and who do not timely and validly request to be
20 excluded from the Settlement Class in accordance with the instructions set forth above
21 and in the Mailed Notice shall be subject to and bound by the provisions of the
22 Stipulation, the releases contained therein, and the Final Judgment with respect to all
23 Released Claims, regardless of whether such Persons seek or obtain by any means,
24 including, without limitation, by submitting a Proof of Claim and Release or any similar
25 document, any distribution from the Gross Settlement Fund or the Net Settlement Fund.

26 15. Potential Settlement Class Members (other than those Persons or entities
27 who shall timely and validly request exclusion from the Settlement Class) who wish to
28 participate in the Settlement shall complete and submit a Proof of Claim and Release

1 form in accordance with the instructions contained therein. Unless the Court orders
2 otherwise, all Proof of Claim and Release forms must be postmarked no later than one
3 hundred and twenty (120) calendar days from the Notice Date. Any Settlement Class
4 Member who does not timely submit a Proof of Claim within the time provided for shall
5 be barred from sharing in the distribution of the proceeds of the Net Settlement Fund,
6 unless otherwise ordered by the Court, but will in all other respects be subject to and
7 bound by the provisions of the Stipulation and the Judgment, if entered.

8 16. A hearing (the "Settlement Hearing") shall be held on **December 4, 2015 at**
9 **9:00 a.m.**, before the Honorable G. Murray Snow, United States District Judge, at the
10 United States District Court for the District of Arizona, 401 West Washington Street,
11 Phoenix, AZ 85003, to (a) determine whether the proposed Settlement as set forth in the
12 Stipulation is fair, reasonable and adequate and should be approved by the Court;
13 (b) determine whether an Order of Final Judgment and Dismissal, substantially in the
14 form attached to the Stipulation as Exhibit B, should be entered herein; (c) rule upon an
15 application by Lead Counsel for an award of attorneys' fees and reimbursement of
16 expenses, and reimbursement of expenses for the Settlement Class Representative;
17 (d) approve the Plan of Allocation; and (e) consider any other matters that may properly
18 be brought before the Court in connection with the Settlement.
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20 17. All papers in support of the Settlement, Plan of Allocation and Lead
21 Counsel's application for attorneys' fees shall be filed at least thirty (30) calendar days
22 prior to the Settlement Hearing. Any papers in further support of the Settlement, the Plan
23 of Allocation, Lead Plaintiff's application for reimbursement of expenses, and the
24 application for attorneys' fees or expenses, shall be filed and served no later than seven
25 (7) days prior to the Settlement Hearing.

26 18. Any Settlement Class Member may appear and show cause (if he, she or it
27 has any) why the Court should or should not (a) approve the proposed Settlement as set
28 forth in the Stipulation as fair, reasonable and adequate; (b) enter the Order of Final

1 Judgment and Dismissal substantially in the form attached to the Stipulation as Exhibit B;
2 (c) rule upon an application by Lead Counsel for an award of attorneys' fees and
3 reimbursement of expenses; or (d) consider any other matters that may properly be
4 brought before the Court in connection with the Settlement. However, no Person shall be
5 heard with respect to, or shall be entitled to contest, the foregoing matters unless, on or
6 before twenty-one (21) calendar days prior to the Settlement Hearing, that Person has
7 filed his, her, or its objections, papers, briefs and request to be heard with the Court and
8 served the same by hand or by first class mail, setting forth briefly each objection and the
9 basis therefore, as well as proof of membership in the Settlement Class, upon
10 (i) Lionel Z. Glancy, Glancy Prongay & Murray LLP, 1925 Century Park East, Suite
11 2100, Los Angeles CA 90067 (on behalf of Lead Plaintiff) and (ii) Koji F. Fukumura,
12 Cooley LLP, 4401 Eastgate Mall, San Diego, CA 92121 (on behalf of all Defendants).
13 Persons who intend to object in writing to the Settlement, Plan of Allocation, or request
14 for an award of attorneys' fees and expenses and/or the request for the payment of Lead
15 Plaintiff's time and expenses in representing the Class and desire to present evidence at
16 the Settlement Hearing must include in their written objections copies of any exhibits
17 they intend to introduce into evidence at the Settlement Hearing. If an objector hires an
18 attorney to represent that Person for purposes of making an objection, the attorney must
19 both effect service of a notice of appearance on counsel listed above and file it with the
20 Court no later than **November 25, 2015**. A Settlement Class Member who files a written
21 objection does not have to appear at the Settlement Hearing for the Court to consider the
22 objection. Unless otherwise ordered by the Court, any Settlement Class Member who
23 does not make his, her, or its objection in the manner provided for herein shall be deemed
24 to have waived such objection and shall forever be foreclosed from making any objection
25 to the foregoing matters.
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27 19. The Court may adjourn the Settlement Hearing from time to time and
28 without further notice to the Settlement Class. The Court reserves the right to approve

1 the Settlement at or after the Settlement Hearing with such modifications as may be
2 consented to by the Parties and without further notice to the Settlement Class. The Court
3 further reserves the right to enter the Order of Final Judgment and Dismissal, *inter alia*,
4 dismissing the Action with prejudice as to the Defendants at or after the Settlement
5 Hearing and without further notice to the Settlement Class.

6 20. Except as otherwise provided in the Stipulation, no Person who is not a
7 Settlement Class Member or counsel for the Lead Plaintiff shall have any rights to any
8 portion of the Gross Settlement Fund.

9 21. All reasonable costs and expenses incurred in identifying and providing
10 notice to potential Settlement Class Members and in administering the Gross Settlement
11 Fund shall be paid as set forth in the Stipulation.

12 22. The Court retains jurisdiction over all proceedings arising out of or related
13 to the Stipulation and/or the Settlement.

14 23. The Released Defendants' Parties shall have no responsibility or liability
15 whatsoever with respect to the Plan of Allocation or Lead Counsel's application for an
16 award of attorneys' fees and expenses, or with respect to Lead Plaintiff's application for
17 reimbursement of expenses (including lost wages). The Plan of Allocation, Lead
18 Counsel's application for an award of attorneys' fees and expenses, and Lead Plaintiff's
19 application for reimbursement of expenses will be considered separately from the
20 fairness, reasonableness, and adequacy of the Settlement. At or after the Settlement
21 Hearing, the Court will determine whether the proposed Plan of Allocation should be
22 approved, the amount of attorneys' fees and litigation expenses to be awarded to
23 Plaintiff's Counsel, and Lead Plaintiff's application for reimbursement of reasonable
24 costs and expenses. Any appeal from any orders relating to the Plan of Allocation,
25 Plaintiff's Counsel's application for an award of attorneys' fees and litigation expenses,
26 or Lead Plaintiff's application for reimbursement of reasonable costs and expenses, or
27 reversal or modification of any order(s) thereon, shall not operate to terminate or cancel
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1 the Settlement, or affect or delay the finality of Judgment approving the Stipulation and
2 the Settlement of the Action set forth therein.

3 24. If for any reason the Settlement does not become effective in accordance
4 with the terms of the Stipulation, this Preliminary Approval Order shall be rendered null
5 and void and shall be vacated *nunc pro tunc*, and the provisions of paragraph 7.5 of the
6 Stipulation shall apply.

7 25. Pending final determination as to whether the Settlement as set forth in the
8 Stipulation should be approved, all proceedings in the Action, other than such
9 proceedings as may be necessary to carry out the terms and conditions of the Settlement,
10 are hereby stayed and suspended until further order of this Court. Pending final
11 determination whether the Settlement should be approved.

12 Pending final determination as to whether the Settlement as set forth in the
13 Stipulation should be approved, no Settlement Class Member shall commence, prosecute,
14 pursue or litigate any Released Claim against any of the Released Parties, whether
15 directly, representatively or in any other capacity, and regardless of whether or not any
16 such Settlement Class Member has appeared in the Action.

17 Dated this 2nd day of June, 2015.

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20 Honorable G. Murray Snow
21 United States District Judge
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