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14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
15 **IN AND FOR THE COUNTY OF MARICOPA**

16 STATE OF ARIZONA, *ex rel.* MARK
17 BRNOVICH, Attorney General,

18 Plaintiff,

19 v.

20 JOHN KAPOOR, individually; JOHN
21 KAPOOR and JANE DOE KAPOOR, as a
22 marital community; MICHAEL BABICH,
23 individually; MICHAEL BABICH and
24 NATALIE LEVINE, as a marital
community,

25 Defendants.

Case No.: CV2019-_____

**COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF**

(Complex Court Assignment Requested)

(Jury Trial Demanded)

1 Plaintiff, State of Arizona, *ex rel.* Mark Brnovich, Attorney General, alleges as follows:

2 **INTRODUCTION**

3 1. In early 2012, the U.S. Food and Drug Administration (the “FDA”) approved a
4 new drug developed by INSYS Therapeutics, Inc. (“Insys”).¹ The drug, called SUBSYS
5 (“Subsys”), carried risks of addiction and death, but the FDA approved it for the treatment of a
6 small subset of patients—those experiencing intense breakthrough cancer pain who were
7 already using opioids around-the-clock.

8 2. Over the next five years, Insys executives engineered and engaged in a
9 nationwide scheme that deceived insurers and patients. Insys executives directed employees to
10 lie to insurers, conceal key facts from patients, and pay doctors sham “speaker fees” that were
11 effectively bribes in exchange for writing prescriptions, all in order to increase the sales of
12 Subsys, without regard for the health and safety of patients.

13 3. In fact, Insys made the following admission on June 5, 2019, to settle claims
14 brought by the U.S. Department of Justice relating to Insys’s fraudulent marketing of Subsys:

15 Insys admits, accepts, and acknowledges responsibility for conduct occurring
16 from August 2012 until June 2015, involving the agreement to pay and payment
17 of remuneration to certain licensed, medical practitioners, including physicians
18 and physician assistants, *with the intent to bribe and improperly influence the*
19 *medical practitioners to improperly increase their prescriptions and dosages of*
20 *SUBSYS®* (hereafter “Subsys”), which is fentanyl-based pain medication
21 intended to treat cancer patients suffering intense breakthrough pain. In
22 exchange for the remuneration, the medical practitioners improperly prescribed
large numbers and high dosages of Subsys for patients, most of whom were not
diagnosed with cancer

23 (Emphasis added.)

24

¹ Insys is a Delaware corporation with its principal place of business at 1333 South
25 Spectrum Boulevard, Suite 100, Chandler, Arizona 85286. Insys is one of the named
26 defendants in a separate lawsuit filed by the State as CV2017-012008. However, Insys has
27 filed a Chapter 11 bankruptcy case in the U.S. District Court for the District of Delaware, and
28 as part of that case, the State has agreed to stay its state proceeding as to Insys. The stay has no
bearing on the claims or parties involved in this Complaint, which does not name Insys as a
defendant.

1 including as Executive Chairman of the Board of Directors from 2006 to 2017, as the President
2 and Chief Executive Officer from 2015 to 2017, and finally as a director until his resignation
3 from Insys's Board of Directors in October 2017. At all relevant times, Kapoor was a resident
4 of Maricopa County, Arizona.

5 12. Jane Doe Kapoor is named in the event that John Kapoor is married and that
6 community property exists against which the State can obtain monetary relief in this matter. If
7 Kapoor is married and the State learns the true identity of Jane Doe Kapoor, it will move to
8 amend its Complaint accordingly.

9 13. Defendant Michael Babich ("Babich") was employed by Insys from 2007 to
10 2015. From 2011 to 2015, Babich served as Insys's Chief Executive Officer. At all relevant
11 times, Babich was a resident of Maricopa County, Arizona.

12 14. Natalie Levine is named as the spouse of Michael Babich, in order to ensure
13 access to community property that exists and against which the State can obtain monetary relief
14 in this matter. The State alleges that all acts by Michael Babich were taken in furtherance of
15 the marital community.

16 15. Defendant Michael Gurry ("Gurry") is the former Vice President of Managed
17 Markets for Insys from approximately August 2012 through October 2016, and was, at all
18 relevant times, a resident of Maricopa County, Arizona.

19 16. Jane Doe Gurry is named in the event that Michael Gurry is married and that
20 community property exists against which the State can obtain monetary relief in this matter. If
21 Defendant Michael Gurry is married and the State learns the true identity of Jane Doe Gurry, it
22 will move to amend its Complaint accordingly.

23 17. At all relevant times, Kapoor, Babich, and Gurry did business in Arizona by
24 marketing, promoting, and selling the prescription drug Subsys.

25 **ALLEGATIONS**

26 18. Since March 2012 to the present date, Insys advertised and sold Subsys as Insys's
27 primary product offering in Arizona and nationwide.

28 19. Subsys is a Schedule II opioid, as defined by the United States Controlled

1 Substances Act, 21 U.S.C. § 801–971.

2 20. A drug is categorized under Schedule II if (1) the drug has a high potential for
3 abuse, (2) the drug has a currently accepted medical use in the United States or a currently
4 accepted medical use with severe restrictions, and (3) abuse of the drug may lead to severe
5 psychological or physical dependence.

6 21. Subsys contains fentanyl, an extremely powerful opioid that can reduce pain, but
7 is also highly addictive and potentially lethal, especially if not prescribed or used properly.

8 22. Fentanyl can come in a variety of forms, including tablets or patches.

9 23. Subsys is a Transmucosal Immediate-Release Fentanyl (“TIRF”) medication, a
10 class of opioid drugs that have a rapid onset from being absorbed through the oral mucosa.
11 Subsys is sprayed under the tongue, allowing the fentanyl to reach the bloodstream rapidly.

12 24. Like all TIRFs, Subsys is subject to a Risk Evaluation and Mitigation Strategy
13 (“REMS”) mandated by the FDA, which requires both patients using and physicians
14 prescribing Subsys to enroll in an education program to minimize “the risk of misuse, abuse,
15 addiction, overdose and serious complication” associated with TIRFs.

16 25. The FDA-approved label for Subsys highlights two dangers associated with
17 Subsys: (1) fatal respiratory depression; and (2) potential for abuse.

18 26. The FDA approved Subsys for a limited indication, namely: “the management of
19 breakthrough pain in cancer patients 18 years of age and older who are already receiving and
20 who are tolerant to around-the-clock opioid therapy for their underlying persistent cancer pain.”

21 27. Because of the dangers associated with Subsys, and in particular the dangers of
22 fatal respiratory depression, Subsys’s FDA-approved label also warns about
23 contraindications—circumstances under which the drug should not be used.

24 28. Regarding contraindications, the label states: “Due to the risk of fatal respiratory
25 depression, SUBSYS is contraindicated in opioid non-tolerant patients and in management of
26 acute or postoperative pain, including headache/migraines.”

1 29. In addition, the FDA TIRF REMS warns, “Life-threatening respiratory
2 depression could occur at any dose in opioid non-tolerant patients. Deaths have occurred in
3 opioid non-tolerant patients treated with some fentanyl products.”

4 30. Despite the dangers associated with the use of Subsys and its limited indication,
5 Defendants Kapoor, Babich, and Gurry engineered and engaged in a multi-pronged scheme
6 designed to mislead insurers and patients in order to increase Subsys’s sales in Arizona and
7 across the nation.

8 31. This scheme had two closely-related and unlawful components that worked in
9 tandem to increase dramatically the number of prescriptions written by doctors, approved by
10 insurers, and ultimately used by patients.

11 32. First, Defendants directed and authorized their subordinates at Insys to provide
12 insurers and pharmacy benefit managers (“PBMs”), companies hired by insurers to help control
13 the costs of prescription drugs, with false and misleading information in order to trick insurers
14 into giving prior authorization for patients’ Subsys prescriptions.

15 33. Second, Defendants Kapoor and Babich directed and authorized their
16 subordinates at Insys to pay sham “speaker fees” to doctors to run supposed educational events,
17 but the fees were primarily intended to reward doctors for prescribing Subsys and incentivize
18 them to prescribe more Subsys to patients.

19 **A. Defendants Misled Health Insurers and PBMs into Paying for Subsys.**

20 34. Because of Subsys’s limited indication, significant patient risks, and high cost,
21 health insurers and PBMs routinely require prior authorization before paying for Subsys.

22 35. Without prior authorization, Subsys prescriptions would have to be paid for by
23 the patient or a third party.

24 36. Given the fact that a single package of Subsys could cost thousands of dollars,
25 and the availability of other, more affordable alternatives, the denial of prior authorization
26 typically results in no one paying to fill the Subsys prescription.

27 37. Typically, prior-authorization requests are submitted by HCPs’ offices to insurers
28 and PBMs.

1 38. The requests include patient information, including past medical history and
2 current conditions, typically using standardized codes to classify diseases and injuries.

3 39. After evaluating that information, insurers and PBMs initially granted prior
4 authorization for Subsys prescriptions at a relatively low rate.

5 40. For example, in November 2012, the rate of prior authorization for Subsys was
6 between 30% and 33%.

7 41. To drive up the rate of prior authorizations, and thereby increase sales of Subsys,
8 Kapoor, Babich, and Gurry directed or authorized their subordinates to operate a scheme to
9 deceive insurers and PBMs.

10 42. In or about November 2012, Kapoor, Babich, and Gurry authorized the launch of
11 a pilot program, whereby Insys employees would assist patients and doctors in attaining prior
12 authorization for Subsys prescriptions from insurers and PBMs.

13 43. In or around January 2013, after initial success, Kapoor, Babich, and Gurry
14 expanded the Subsys pilot program by authorizing the launch of the Insys Reimbursement
15 Center (“IRC”).

16 44. The IRC consisted of a call center designed to obtain prior authorization for
17 Subsys from insurers and PBMs.

18 45. The IRC is located in Arizona near Insys’s corporate headquarters.

19 46. After creating the IRC, Kapoor, Babich, and Gurry directed Insys sales personnel
20 to encourage each HCP to utilize the IRC instead of the HCP’s staff for prior authorizations.

21 47. Participating HCPs sent the IRC “Reimbursement Assistance/Prior Authorization
22 Request” forms that included patients’ identifying information, as well as their diagnoses.

23 48. Defendant Gurry supervised and coordinated the creation and operation of the
24 pilot program and the IRC from approximately November 2012 through May 2014, and did so
25 under the supervision of Kapoor and Babich.

26 49. Defendant Gurry supervised Elizabeth Gurrieri (“Gurrieri”), who is the former
27 Manager of Reimbursement Services for Insys. Gurrieri has pled guilty to one count of wire
28 fraud conspiracy—a federal felony—for her part in the Insys scheme, which included directly

1 supervising and instructing IRC employees from approximately January 2013 through July
2 2016.

3 50. IRC employees, as directed or authorized by Kapoor, Babich, Gurry, and
4 Gurrieri, communicated directly with insurers and PBMs to attempt to secure payment by
5 insurers for Subsys prescriptions written by participating HCPs.

6 51. In those communications, as described below, IRC employees, as directed or
7 authorized by Kapoor, Babich, Gurry, and Gurrieri, used a number of deceptive and unfair acts
8 and practices.

9 52. By taking control of the prior-authorization process and manipulating the
10 information provided to insurers, Kapoor, Babich, and Gurry rapidly and dramatically
11 increased the likelihood that each Subsys prescription written would translate into additional
12 units of Subsys sold.

13 53. A mere six months after the creation of the IRC, a July 2013 presentation from
14 the Insys Board of Directors meeting indicates that the IRC was obtaining prior authorizations
15 for Subsys over 75% of the time. This is in contrast to the 30% to 33% prior-authorization rate
16 for Subsys before Insys began manipulating the information provided to the insurers and
17 PBMS.

18 54. A November 2013 presentation from the Insys Board of Directors meeting
19 indicated that the IRC was obtaining prior authorizations for Subsys 100% of the time.

20 55. The State is currently aware of 292 prior-authorization request forms submitted
21 by Arizona HCPs to Insys for prescriptions of Subsys.

22 56. Approximately 67% of the patients represented on those 292 forms did not have
23 breakthrough cancer pain, but instead had other conditions such as back pain, migraines, and
24 chronic pain syndrome—some of which were expressly contraindicated by the FDA for the use
25 of Subsys.

26 57. If insurers and PBMs had limited prior authorization to the Arizona patients who
27 had breakthrough cancer pain, the prior-authorization rate would have been approximately
28 33%, in line with the November 2012 prior-authorization rates obtained by HCPs.

1 58. The IRC acts and practices described below are responsible for most or all of the
2 dramatic difference between the IRC prior-authorization rates and the 30% to 33% rate of prior
3 authorization obtained by HCPs in November 2012, before Kapoor, Babich, and Gurry began
4 to execute their scheme to deceive insurers and PBMs.

5 59. Kapoor purposefully sought information on the criteria used by specific insurance
6 plans to approve Subsys prescriptions, and he met with top executives, including Gurry and
7 Babich, to brainstorm how Insys employees could manipulate these criteria to obtain more prior
8 authorizations.

9 60. Gurry directed the IRC to provide false information to insurance companies to
10 obtain prior authorization for Subsys.

11 61. With the approval of Kapoor and Babich, and under the direction of Gurry, the
12 IRC engaged in deceptive and unfair acts and practices to increase the likelihood that insurers
13 and PBMs would grant prior authorization for Subsys prescriptions.

14 62. Because of the deceptive and unfair acts and practices employed by Insys, every
15 or almost every prior-authorization call the IRC placed contained lies and misrepresentations.

16 1. *The IRC Concealed That Calls Were Coming from Insys, Not HCPs.*

17 63. Kapoor, Babich, and Gurry knew that insurers and PBMs were more likely to
18 give prior authorization for Subsys if the insurers or PBMs thought that the call was coming
19 from a member of the HCP's staff, rather than from an Insys employee.

20 64. Gurry directed IRC employees to lead insurers and PBMs to believe that they
21 were calling from HCPs' offices, when in fact they were calling directly from Insys.

22 65. Gurry directed IRC employees to pose as employees of HCPs' offices, when in
23 fact they worked for Insys.

24 66. Under the direction or authorization of Kapoor, Gurry blocked the IRC phone
25 numbers, so that insurers and PBMs could not observe that the area code of the IRC differed
26 from most of the HCPs' offices.

27 67. Because Insys's employees were posing as employees of HCPs' offices, their
28 representations carried more weight than if the Insys employees had disclosed that: (1) they

1 were employed by Insys; (2) they had no connection to the HCPs or the patient; and (3) they
2 were in no position to describe the HCPs' knowledge or thought processes.

3 68. Kapoor and Babich were aware that IRC phone numbers were blocked in order to
4 deceive insurers and PBMs, and approved of these deceptive acts and practices in order to
5 increase prior-authorization rates for Subsys. In fact, Babich testified in U.S. District Court in
6 the federal criminal case against Insys executives that Kapoor specifically directed Babich to
7 block the IRC's phone numbers.

8 2. *The IRC Misrepresented That Patients Had Cancer.*

9 69. Kapoor, Babich, and Gurry knew that insurers and PBMs were more likely to
10 give prior authorization for Subsys if patients had cancer, given that the FDA only approved
11 Subsys to treat breakthrough cancer pain.

12 70. Gurry and Gurrieri directed IRC employees to leave insurers and PBMs with an
13 impression that patients had cancer, when in fact those patients did not have cancer, and had
14 never had cancer.

15 71. If a patient's medical history showed any history of cancer, IRC employees were
16 directed by Gurry and Gurrieri to provide insurers and PBMs the medical code for
17 breakthrough cancer pain regardless of whether the patient was currently being treated for
18 cancer.

19 72. Gurry and Gurrieri directed IRC employees to tell insurers and PBMs that
20 patients were being treated for cancer, when in fact those patients had recovered from cancer or
21 were in remission.

22 73. Gurry and Gurrieri informed Kapoor and Babich that IRC employees were
23 misrepresenting to insurers and PBMs that patients were being treated for cancer, and Kapoor
24 and Babich approved of these deceptive acts and practices in order to increase prior-
25 authorization rates for Subsys.

26 3. *The IRC Falsely Claimed That Patients Had Breakthrough Cancer Pain.*

27 74. Kapoor, Babich, and Gurry knew that insurers and PBMs were more likely to
28 give prior authorization for Subsys if patients had breakthrough cancer pain, which was the

1 FDA-approved use for Subsys.

2 75. Gurry and Gurrieri directed IRC employees to lead insurers and PBMs to believe
3 that patients were being treated for breakthrough cancer pain, when in fact that was not the
4 case.

5 76. Gurry and Gurrieri directed IRC employees to tell insurers and PBMs that HCPs
6 had prescribed Subsys to treat breakthrough cancer pain and to use the standardized codes for
7 breakthrough cancer pain, when in fact those HCPs had prescribed Subsys to treat a different
8 condition.

9 77. Gurry and Gurrieri directed IRC employees to read the following statement to
10 insurers and PBMs when those entities asked whether the patient at issue was being treated for
11 breakthrough cancer pain: “Yes. The physician is aware that the medication is intended for the
12 management of breakthrough pain in cancer patients. The physician is treating the patient for
13 their pain (or breakthrough pain, whichever is applicable).”

14 78. By responding “Yes” and by responding that the patient was being treated for
15 “pain” or “breakthrough pain” immediately after acknowledging the intended use for
16 breakthrough cancer pain, Gurry and Gurrieri taught employees to avoid directly stating that
17 the patient did not have breakthrough *cancer* pain, while stating or implying that the patient
18 was in fact being treated for breakthrough cancer pain.

19 79. The statement also implied that the person reading the statement had knowledge
20 of the HCP’s awareness, when in fact the person reading the statement was an IRC employee
21 who (in all likelihood) had never even spoken with the HCP.

22 80. Gurry and Gurrieri informed Kapoor and Babich that IRC employees were
23 misrepresenting to insurers and PBMs that patients were prescribed Subsys to treat
24 breakthrough cancer pain, and Kapoor and Babich approved of these deceptive acts and
25 practices in order to increase prior-authorization rates for Subsys.

26 4. *The IRC Falsely Claimed That Patients Had Difficulty Swallowing.*

27 81. Kapoor, Babich, and Gurry knew that insurers and PBMs were more likely to
28 give prior authorization for Subsys if patients had difficulty swallowing, as those patients could

1 not take pain medications in other, less expensive forms, such as pills.

2 82. Gurry and Gurrieri directed IRC employees to tell insurers and PBMs that
3 patients had dysphagia (difficulty swallowing) when in fact that was not the case.

4 83. Insys's employees made these false dysphagia claims because the claim of
5 dysphagia increased the likelihood of the insurer or PBM granting prior authorization.

6 84. Gurry and Gurrieri directed employees to put dysphagia on every authorization
7 without regard for whether the patient actually suffered from dysphagia.

8 85. Gurry and Gurrieri informed Kapoor and Babich that IRC employees were
9 misrepresenting to insurers and PBMs that patients suffered from dysphagia, and Kapoor and
10 Babich approved of these deceptive acts and practices in order to increase prior-authorization
11 rates for Subsys.

12 5. *The IRC Falsely Claimed That Patients Had Tried Other Medications and*
13 *Found Them Ineffective.*

14 86. Kapoor, Babich, and Gurry knew that insurers and PBMs were more likely to
15 give prior authorization for Subsys if patients had tried and found ineffective other "preferred"
16 medications that were less expensive, less addictive, and/or less dangerous.

17 87. Gurry and Gurrieri directed IRC employees to tell insurers and PBMs that
18 patients had tried other preferred medications and that those medications were ineffective in
19 treating their medical conditions, when in fact patients had not tried those medications or the
20 IRC had no factual basis for that claim.

21 88. Gurry and Gurrieri instructed employees to use a "cheat sheet" of preferred drugs
22 and tell insurers that the patient had found all of the drugs on the cheat sheet to be ineffective,
23 when this was unknown or false.

24 89. Gurry and Gurrieri informed Kapoor and Babich that IRC employees were
25 misrepresenting to insurers and PBMs that the patients had tried alternative medications, and
26 Kapoor and Babich approved of these deceptive acts and practices in order to increase prior-
27 authorization rates for Subsys.

1 6. *Defendants Have Pled To, or Been Convicted of, Federal Crimes Related*
2 *to the Operation of the IRC.*

3 90. On June 19, 2017, former Insys employee Gurrieri pled guilty in federal court to
4 conspiracy to commit wire fraud for her role in directing IRC employees to engage in the acts
5 and practices described above.

6 91. On January 9, 2019, Defendant Babich pled guilty in federal court to conspiracy
7 and mail fraud charges partly for his participation in the IRC's deceptive acts and practices. In
8 the parties' Agreed Statement of Facts filed in the federal case in connection with Babich's
9 guilty plea, Babich named Kapoor as having directed the IRC to provide false information to
10 insurance companies to obtain prior authorization for Subsys.

11 92. On May 2, 2019, Kapoor was found guilty in federal court of conspiring to
12 conduct or to participate in the affairs of an enterprise through racketeering, in part for his
13 participation in the operation of the IRC and the deceptive scheme to provide false and
14 misleading information to insurers and PBMs to obtain prior authorization for Subsys.

15 93. The jury unanimously found that Kapoor agreed that he or another conspirator
16 would intentionally commit more than two acts of illegal distribution of a controlled substance,
17 more than two acts of mail fraud, more than two acts of wire fraud, more than two acts of
18 honest services mail fraud, and more than two acts of honest services wire fraud.

19 94. On May 2, 2019, Defendant Gurry was found guilty in federal court of conspiring
20 to conduct or to participate in the affairs of an enterprise through racketeering, in part for his
21 participation in the operation of the IRC and the deceptive scheme to provide false and
22 misleading information to insurers and PBMs to obtain prior authorization for Subsys.

23 95. The jury unanimously found that Gurry agreed that he or another conspirator
24 would intentionally commit more than two acts of mail fraud and more than two acts of wire
25 fraud.

26 96. At all relevant times, Kapoor, Babich, and Gurry were aware that Insys was
27 fraudulently using the IRC to deceive insurers and PBMs in order to increase the prior-
28 authorization rate of Subsys and make more money for Insys.

1 **B. Defendants Kapoor and Babich Engineered and Executed a Scheme in**
2 **Which Insys Paid Top Prescribers Sham “Speaker Fees” in Exchange for**
3 **Subsys Prescriptions.**

4 97. From March 2012 through April 2017, Insys secured a total of approximately
5 \$51.87 million in gross sales of Subsys in Arizona.

6 98. *Sixty-four percent* of Insys’s sales from Subsys in Arizona during this time frame
7 came from prescriptions written by only three doctors—Steven Fanto, Nikesh Seth, and
8 Sheldon Gingerich.

9 99. Over that time frame, Fanto, Seth, and Gingerich wrote an average of *nearly*
10 *1,000 Subsys prescriptions apiece*.

11 100. In contrast, over the same timeframe, the 145 prescribers of Subsys in Arizona
12 who were not paid speaker fees by Insys wrote an average of *less than 14 prescriptions apiece*.

13 101. The dramatic difference in prescription numbers directly correlates with large
14 payments Insys made to Fanto, Seth, and Gingerich.

15 102. Between March 2012 and April 2017, Fanto was paid over \$300,000 by Insys;
16 Seth was paid over \$225,000 by Insys; and Gingerich was paid over \$100,000 by Insys.

17 103. Before Insys began paying them, Fanto, Seth, and Gingerich collectively wrote an
18 average of about nine Subsys prescriptions a month.

19 104. During the time Insys paid them, Fanto wrote an average of approximately 23
20 Subsys prescriptions a month, averaging approximately one prescription per business day; Seth
21 wrote an average of approximately 23 Subsys prescriptions a month, also averaging
22 approximately one prescription per business day; and Gingerich wrote an average of
23 approximately 16 Subsys prescriptions a month. These averages are nearly *seven times* the
24 average prescription volume of these doctors before they were being paid by Insys.

25 105. These startling statistics were no accident. Instead, they were the predictable and
26 calculated results of a scheme engineered and executed by Kapoor and Babich, both in Arizona
27 and nationwide.

1 1. *Insys's Speaker Fee Scheme Was a Primary Driver of Subsys Sales to*
2 *Patients.*

3 106. Nationwide, Insys sold over a billion dollars of Subsys, despite its limited
4 indication and the dangers associated with the drug.

5 107. Insys reported nearly \$200 million in revenue in 2014, over \$300 million in
6 revenue in 2015, and over \$215 million in revenue in 2016.

7 108. Nearly all of this revenue came from Subsys sales.

8 109. A primary driver of Subsys's remarkable sales was a scheme designed and
9 implemented by Kapoor, Babich, and other top officers at Insys, under which certain HCPs
10 received "speaker fees" conditioned on the HCPs prescribing a high volume of Subsys to their
11 patients.

12 110. Insys advertised Subsys to HCPs through the use of its sales force of "specialty
13 sales professionals" ("SSPs").

14 111. Each SSP was responsible for advertising Subsys to HCPs assigned to him or her.

15 112. As a sales tactic, Insys directed SSPs across the country to schedule regular
16 speaker programs at which one of the SSP's assigned HCPs would purportedly present an
17 Insys-prepared PowerPoint presentation regarding Subsys in exchange for a lucrative speaker
18 fee.

19 113. Insys allowed the programs to take place in the HCP's office, last as little as 30
20 minutes, and go forward even if no other HCPs were present.

21 114. Insys typically paid HCPs between \$2,400 and \$4,700 per presentation.

22 115. Kapoor and Babich directed or authorized their subordinates to use Insys speaker
23 programs to pay doctors for prescribing Subsys.

24 116. As noted above, Insys has admitted publicly that it bribed doctors through
25 speaker fees.

26 117. The true nature of these bribes was demonstrated in a number of ways, including
27 the following:
28

1 a. First, Insys directed SSPs to sell Subsys by focusing on one or two doctors
2 per marketing region whom Insys could rely on to write one Subsys prescription
3 per day (as opposed to a broad base of HCPs writing prescriptions as
4 appropriate);

5 b. Second, Insys's speaking programs did not result in HCPs other than the
6 paid speakers writing a significant number of Subsys prescriptions, yet Insys
7 continued to pay the speaker-HCPs who prescribed more Subsys but were
8 ineffective at encouraging other HCPs to prescribe Subsys; and

9 c. Third, many of the speaker programs Insys paid for had few or no
10 attendees with the license necessary to prescribe Subsys.

11 118. Insys's sales strategy was developed and implemented by Kapoor and Babich in
12 Arizona and nationwide shortly after Subsys launched in March 2012.

13 119. On or about March 2012, in a meeting of top Insys executives, Kapoor voiced his
14 belief that the speaker program was for the speakers (as opposed to the attendees) and that
15 every speaker was expected to write Subsys prescriptions.

16 120. Matthew Napoletano, the former Vice President of Marketing at Insys, initially
17 resisted this strategy because he believed it was illegal, but Babich persuaded Napoletano to
18 give Kapoor what he wanted: metrics tracking the number of prescriptions written by the
19 *speakers* in the program (not the attendees) so that Insys could assure a positive return on
20 investment ("ROI") from the speaker program.

21 121. Kapoor and Babich directed Alec Burlakoff ("Burlakoff"), former Vice President
22 of Sales at Insys, to operate the speaker program in this manner.

23 122. As Burlakoff has admitted in a multi-million dollar consent judgment with
24 Plaintiff, "From approximately September 2012 to December 2015, Defendant Burlakoff,
25 acting on instruction from Insys CEO Michael Babich and Insys founder John Kapoor, directed
26 regional sales managers and lower level pharmaceutical company representatives to use the
27 award of speaker programs to induce the doctors and physicians' assistants in the Insys Speaker
28 Bureau to prescribe more Subsys."

1 123. On September 17, 2012, Burlakoff emailed the Subsys sales force and
2 emphasized the connection between the speaker programs and prescriptions written by the paid
3 speakers.

4 124. In that email, Burlakoff stated that “if your speaker does not have at least 20
5 patients on Subsys (QTD), he or she should not be booked to speak at this juncture. You
6 should cancel or suspend your programs until you and your manager have had ample chance to
7 think this investment entirely through.”

8 125. Burlakoff told the sales force that they “must hold off on the conduction of these
9 valuable speaker programs,” until they knew “for absolute sure” that “if you use a specific
10 speaker that the program will yield positive results.”

11 126. At a national sales meeting held on September 21, 2012, Burlakoff told the
12 Subsys sales force that a “critical success factor” in selling Subsys was to schedule a “[h]igh
13 and consistent number of ISP’s with top 20 targets.”

14 127. “ISP” stands for Insys Speaker Programs, and “targets” refers to HCPs.

15 128. Burlakoff’s directive was an attempt to drive sales with a relatively small,
16 targeted group of HCPs by frequently paying them thousands of dollars in “speaker fees.”

17 129. At the same meeting, Burlakoff, analogizing doctors to race horses, told his sales
18 force to: “Make sure you chose the correct horse / horses Give your horses all the TLC
19 they need Ride your horses every chance you get.”

20 130. Burlakoff also urged the sales force, in text displayed over a picture of a horse
21 race, that “IF YOU WANT TO WIN it is time to start cracking the whip!”

22 131. On April 26, 2013, Burlakoff again directed the Subsys sales force to reward
23 HCPs for writing Subsys prescriptions, stating: “Lastly – your doctors need to know their
24 support of Subsys was noticed. These important clinicians MUST promptly be rewarded with
25 positive reinforcement immediately”

26 132. The “positive reinforcement” Burlakoff referred to was frequent ISPs and tens or
27 hundreds of thousands of dollars in speaker fees for those prescribers.

1 133. Kapoor and Babich were only willing to pay HCPs speaker fees, however, if
2 those HCPs wrote enough Subsys prescriptions.

3 134. On March 7, 2013, Burlakoff wrote an email to regional sales managers (or
4 “RSMs”) regarding the RSMs’ and SSPs’ expenditures, and how the value of those
5 expenditures was ultimately determined by ROI. Burlakoff wrote:

6 I am inclined to find myself more excited by the larger amounts of money I see
7 the managers spending, although—it all comes down to ROI. If you are going to
8 spend the most money, you should probably b[e] #1 in the region. Do not b[e]
9 shy, it takes money to make money . . . Spend some money and close some deals
10 (that’s what you were hired for) As far as the reps are concerned . . . [s]ame
11 rules apply: –If the rep spent the least money, we would probably assume that he
12 or she is not working / following our direction[.] –If the rep spent the most
13 money, he or she better be able to answer your questions around their specific
14 plan of action with each customer [HCP] they are spending money on (they are
15 most likely ranked at the top of the company, based on my experience)[.]

16 135. On September 17, 2012, Burlakoff, with Babich cc’d, emailed an SSP and
17 counseled her that: “Your local speaker should be your ‘business partner’. You do not work for
18 him, nor does he work for you. You are partners in this endeavor, if your speaker does not see it
19 this way . . . (then it is time to identify another speaker).” Of course, business partners are
20 expected to deliver business, in this case, in the form of Subsys prescriptions.

21 136. On April 1, 2013, Burlakoff acknowledged the critical importance that speaker
22 programs played in driving Subsys sales. Burlakoff wrote: “I said it a thousand times. ISP’s are
23 the most important thing you will do to increase your business. ISP’s are basically the ONLY
24 thing you should be focusing on to increase your sales.” Burlakoff went on to say that SSPs
25 should be “living, eating, and breathing ISP’s to drive sales PROGRAMS ARE THE
26 ONLY THING THAT MATTERS, WHY DO SOME OF YOU REFUSE TO
27 ACKNOWLEDGE THIS PROVEN FACT?” Further, Burlakoff directed SSPs to drive sales
28 by focusing on one or two doctors.

137. On March 19, 2013, Burlakoff wrote an email to the Subsys sales force praising
the top five selling SSPs. Burlakoff wrote:

1 The below 5 names mentioned at the top of the company rankings – literally
2 have their entire business being driven by basically 1 customer. . . . [These top
3 five sales representatives] found a customer to ‘own’, and they packed the
4 proverbial suitcase and moved in. . . . Every winning team, must have their
“MVP” player.

5 138. Burlakoff went on to say, “It is and has always been your assignment to find this
6 key player. If you have not found this doctor, throw the decile list, call list, routing, ROO list,
7 etc. out the window. You have to start prospecting and develop a key doctor.”

8 139. The “MVP players” Burlakoff referenced in his March 19, 2013 email were the
9 top five Subsys prescribers nationwide, all of whom were highly compensated speakers for
10 Insys.

11 140. These five “MVP” speakers/Subsys prescribers all have been the subject of
12 criminal lawsuits, civil lawsuits, or disciplinary actions on the basis of improper prescribing (or
13 otherwise fraudulent) practices, as follows:

14 a. Dr. Gavin Awerbuch pled guilty to charges of health care fraud and
15 distribution of controlled substances on November 7, 2016, and agreed to forfeit
16 \$4.1 million. The basis of Awerbuch’s plea included that he knowingly and
17 intentionally prescribed Subsys to patients for no legitimate medical purpose.

18 b. Dr. Xiulu Ruan was found guilty of accepting illegal kickbacks from
19 Insys, as well as other crimes, and was sentenced to 21 years in prison on May
20 26, 2017. The indictment notes that although the money paid to Ruan by Insys
21 “was ostensibly paid for ‘speaking fees,’ it was actually paid to induce, and in
22 exchange for, Ruan . . . prescribing high volumes of Subsys.”

23 c. Dr. Steven Y. Chun paid \$750,000 to settle a False Claims Act lawsuit in
24 February 2014. The lawsuit alleged that Chun’s pain clinic billed Medicare for
25 physician office visits not actually performed.

26 d. Dr. Judson Somerville was disciplined by the Texas Medical Board (the
27 “Texas Board”). On December 11, 2013, the Texas Board noted three of
28 Somerville’s patients had died in the latter half of 2012 from drug toxicity. When

1 Somerville's office was inspected, the Texas Board discovered that Somerville
2 had pre-written 93 prescriptions for Schedule II medication and directed his
3 employees to use these forms to "write" renewal prescriptions. The Texas Board
4 prohibited Somerville from prescribing Schedule II controlled substances
5 (including Subsys). In 2016, the Texas Board suspended Somerville's license
6 because he "continued to prescribe very high doses of opioids in an escalating
7 fashion."

8 e. Dr. Jerrold Rosenberg was indicted by a federal grand jury on February 1,
9 2017, for conspiring to receive kickbacks in the form of \$180,000 in speaker fees
10 from Insys in exchange for writing Subsys prescriptions. Among other things, the
11 indictment charges that Rosenberg refused to switch patients off of Subsys, even
12 if it was causing debilitating side effects. He ultimately pled guilty, was
13 sentenced to 51 months in prison, and was ordered to pay over \$750,000 in
14 restitution.

15 141. In addition to those listed above, other HCPs also have pled guilty, been
16 sanctioned, or been convicted on charges stemming from accepting speaker fees from Insys in
17 exchange for writing Subsys prescriptions:

18 a. Heather Alfonso, a former advanced practice registered nurse, pled guilty
19 in June 2015 to accepting kickbacks in the form of speaker fees from Insys in
20 exchange for writing Subsys prescriptions.

21 b. Dr. Michael Frey, the former co-owner of Advanced Pain Management
22 Specialists, pled guilty in February 2019 to conspiracy fraud charges for receiving
23 illegal kickbacks and defrauding Medicare, in part relating to his participation
24 with Insys's speaker program. He was sentenced to 18 months in federal prison.
25 He also paid \$2.8 million to settle the investigation into his fraudulent practices.

26 c. Dr. John Couch was found guilty of accepting illegal kickbacks from
27 Insys, as well as other crimes, and was sentenced to 20 years in prison in May
28 2017. The indictment notes that although the money paid to Couch by Insys "was

1 ostensibly paid for ‘speaking fees,’ it was actually paid to induce, and in
2 exchange for . . . Couch prescribing high volumes of Subsys.”

3 d. Dr. Alexandru Burducea pled guilty in February 2019 to conspiracy to
4 violate the federal Anti-Kickback Statute by taking approximately \$68,400 in
5 speaker fees from Insys. Insys additionally hired Burducea’s then-girlfriend to
6 work as his Insys sales representative in order to induce further his prescribing of
7 Subsys.

8 e. Dr. Todd Schlifstein pled guilty in June 2019 to conspiracy to violate the
9 federal Anti-Kickback Statute, and agreed to forfeit \$127,000. Insys paid
10 Schlifstein approximately \$127,100 in the form of speaker fees in exchange for
11 Subsys prescriptions. In the second quarter of 2015 alone, Schlifstein’s Subsys
12 prescriptions generated \$593,373 in total net sales for Insys.

13 f. Christopher Clough, a former New Hampshire physician assistant, was
14 found guilty in December 2018 of conspiring and receiving kickbacks in relation
15 to a federal healthcare program, in connection to his participation in the Insys
16 speaker program. Clough received over \$49,000 in speaker fees from Insys in
17 exchange for writing 672 Subsys prescriptions, many of which were deemed
18 medically unnecessary. Prescriptions written by Clough are estimated to have
19 generated \$8 million in revenue for Insys. In June 2019, Clough was sentenced to
20 four years in prison.

21 g. Dr. Vivienne Matalon entered into a Consent Order in 2018 with the New
22 Jersey State Board of Medical Examiners (the “New Jersey Board”), which
23 revoked her medical license and assessed a civil penalty of \$40,000. Matalon’s
24 license had been suspended since October 2016, following the death of a patient
25 to whom she had prescribed Subsys for fibromyalgia. Prior to prescribing the
26 patient Subsys, Matalon allowed an Insys SSP to sell the patient on the drug,
27 during which time both the SSP and Matalon failed to inform the patient that
28 Subsys was an opioid-based drug. Approximately 14 months later, the patient

1 died from a fatal dose of Subsys. Among other things, the New Jersey Board
2 found that Matalon engaged in gross negligence and professional misconduct
3 when she prescribed Subsys to three patients outside the standard of medical care.

4 142. A series of indictments and other actions against other HCPs involved in the
5 Insys speaker program remain pending, including:

6 a. Dr. Gordon Freedman was indicted in 2018 for conspiring to receive
7 kickbacks in the form of \$308,600 in speaker fees from Insys in exchange for
8 writing Subsys prescriptions. In the fourth quarter of 2014, Freedman was the
9 fourth-highest prescriber of Subsys nationally. In 2014 Freedman was the
10 highest-paid Insys speaker, having received \$143,000 that year. Freedman also
11 was indicted in 2019 for 16 counts of distributing oxycodone, fentanyl, and other
12 controlled substances to a particular patient, including one count for distributing
13 fentanyl that caused the patient's death

14 b. Dr. Jeffrey Goldstein was indicted in 2018 for, among other things,
15 switching patients over to Subsys from competitor products as a result of pressure
16 from Insys SSPs. Goldstein received approximately \$196,000 in speaker fees
17 from Insys in exchange for writing Subsys prescriptions. Goldstein was the fifth
18 highest prescriber of Subsys nationally in 2014.

19 c. Dr. Dialecti Voudouris was indicted in 2018 for her part in the Subsys
20 kickback scheme. She received approximately \$119,400 in speaker fees from
21 Insys in exchange for prescribing Subsys. At the time when Voudouris was first
22 approached by an Insys SSP, she was not TIRF REMS enrolled and thus was
23 ineligible to prescribe Subsys. To become eligible to prescribe Subsys, Voudouris
24 authorized Insys SSP Fernando Serrano to enroll her in the TIRF REMS Program
25 and take the TIRF REMS exam for her. Serrano used an answer key provided to
26 him by his Insys district sales manager Jonathan Roper to pass the exam. Both
27 Roper and Serrano pled guilty in 2017 to charges connected to their participation
28 in the Insys bribery and kickback scheme.

1 d. Dr. Kenneth Sun was indicted in June 2019 for soliciting and receiving
2 kickbacks totaling \$140,000 in speaker fees from Insys in exchange for writing
3 Subsys prescriptions. Sun had practices in both Pennsylvania and New Jersey
4 before having his licenses revoked for his participation in the Insys kickback
5 scheme. The indictment also charges that Sun caused the federal Medicare
6 program to pay in excess of \$847,000 for Subsys prescriptions that Insys paid
7 Sun to prescribe.

8 e. Dr. Nilesh Jobalia was indicted in June 2018 on 114 counts, including 17
9 violations of the federal Anti-Kickback Statute, for his role in the Insys speaker
10 program. The indictment alleges that, between April 2013 and July 2015, Jobalia
11 received more than \$103,000 in kickbacks from Insys in the form of sham
12 speaker fees in exchange for Subsys prescriptions, and that Jobalia caused
13 Medicare to pay \$546,652.75 for Subsys prescriptions in 2013 and 2014.

14 143. Furthermore, in addition to Defendants Kapoor, Babich, and Gurry, several
15 former Insys employees were convicted or pled guilty to crimes relating to their work for Insys,
16 including:

17 a. As part of the same trial in which Defendants Kapoor and Gurry were
18 convicted, three other Insys executives were convicted in May 2019 of RICO
19 conspiracy for their roles in the fraudulent scheme to pay kickbacks to HCPs in
20 exchange for Subsys prescriptions: (1) Richard Simon, the former National
21 Director of Sales; (2) Joseph Rowan, a former Regional Sales Director; and (3)
22 Sunrise Lee, a former Regional Sales Director.

23 b. Natalie Perhacs, the Insys SSP responsible for selling Subsys to Dr. Ruan
24 and Dr. Couch, pled guilty in February 2016 to conspiring to pay illegal
25 kickbacks for her role in providing Ruan and Couch with speaker fees in
26 exchange for writing Subsys prescriptions.

1 c. Jeffrey Pearlman, a former district sales manager at Insys, pled guilty in
2 August 2018 for his part in the fraudulent scheme to pay kickbacks to HCPs to
3 increase Subsys prescriptions.

4 d. Karen Hill, a former regional sales manager at Insys, pled guilty in July
5 2017 to conspiring to pay kickbacks to HCPs, and was sentenced to six months of
6 home confinement in May 2019 for her role in the Insys scheme to bribe HCPs.

7 e. Former Insys SSP Michelle Breitenbach pled guilty in May 2018 to
8 conspiracy to commit commercial bribery for her role in the Insys scheme to
9 bribe HCPs.

10 f. Defendant Natalie Levine,² a former Insys sales representative, pled guilty
11 in July 2017 to conspiracy to violate the federal Anti-Kickback Statute. Levine
12 was responsible for prescriptions written by HCPs that are estimated to have cost
13 Medicare Part D plans \$4.5 million. Levine's top prescribers included Heather
14 Alfonso and Christopher Clough. In June 2019, Levine was sentenced to six
15 months' home confinement and five years' probation.

16 g. Former Insys district manager Jonathan Roper pled guilty in 2017 to
17 violating the federal Anti-Kickback Statute in connection with his participation in
18 the Insys scheme to bribe HCPs. Roper admitted that he explicitly told the SSPs
19 he supervised that Insys speaker programs were intended to induce HCPs to
20 prescribe Subsys. He currently awaits sentencing.

21 h. Former Insys sales representative Fernando Serrano pled guilty in 2017 to
22 violating the federal Anti-Kickback Statute in connection with his participation in
23 the Insys scheme to bribe HCPs. Serrano admitted that he held sham speaker
24 programs to pay kickbacks and bribes to HCPs, and that he forged the names of
25 HCPs on program sign-in sheets. He currently awaits sentencing.

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27
28 ² Defendant Levine is named in this Complaint solely with respect to her access to
community property shared with her spouse, Defendant Babich.

1 144. Kapoor, Babich and other top Insys executives discussed these top prescribing
2 HCPs on a weekly or daily basis to ensure that the HCPs were prescribing large amounts of
3 Subsys in exchange for speaker fees.

4 145. On July 9, 2013, Burlakoff again emailed his sales force encouraging them to
5 develop one or two prescribers from whom they could generate prescriptions on demand:

6 The goal is 1 rx per day Are you still calling on multiple doctors a
7 day giving a ‘stand up message’ in the hall way? If so, you don’t stand a chance
8 of lasting in this market. Do you have *1 or 2 customers* whom [sic] have now
9 become your best friend, *that you can rely on at [l]east 1 rx per day* and are you
10 visiting this office every single day? If the answer is no, you are truly in a very
11 bad situation. (Emphasis added.)

12 146. As demonstrated by Burlakoff’s emails, Kapoor and Babich did not intend for
13 speaker programs to generate a broad base of prescribers.

14 147. The speaker programs provided Insys with a means of paying a small number of
15 HCPs to write large amounts of Subsys prescriptions and dramatically increase the profits of
16 the entire company.

17 148. Burlakoff consistently directed the Insys sales force to sell Subsys by scheduling
18 speaking programs with one or two doctors who would, in exchange, write Subsys
19 prescriptions.

20 149. Insys’s speaker program was a means of putting money into HCPs’ pockets,
21 which Kapoor and Babich primarily intended to be a system to reward and incentivize those
22 HCPs to write Subsys prescriptions, not a program primarily meant to educate other HCPs
23 about the characteristics of Subsys.

24 2. *In Arizona, Three HCPs Primarily Benefited from Insys’s Speaker
25 Program.*

26 150. The following examples of three Arizona doctors serve as representative
27 illustrations of the operation of Insys’s nationwide scheme:

28 a. *Dr. Steven Fanto*

 151. Insys SSP Brianna Smith (“Smith”) was responsible for interacting with Arizona

1 HCPs.

2 152. One of Smith's top targets in Arizona from whom she expected large numbers of
3 Subsys prescriptions was Dr. Steven Fanto ("Fanto"), a doctor based in Scottsdale whose
4 practice primarily dealt with pain management.

5 153. Insys directed Smith to schedule ISPs for Fanto.

6 154. Babich made the decision to target Fanto as a paid speaker and as a top prescriber
7 of Subsys as early as November 2012.

8 155. On October 22, 2012, Smith's regional sales manager, Darin Fila, emailed her,
9 stating, "You have to submit some programs today for Fanto, as there is a lot of pressure to get
10 these in."

11 156. Smith responded, "I am doing what I can. Do I need to have all eight scheduled
12 by eod?"

13 157. On October 25, 2012, Insys paid Fanto his first speaker fee, totaling \$2,400.

14 158. On November 9, 2012, Babich emailed Burlakoff and Matthew Napoletano,
15 Insys's Vice President of Marketing, stating, "[Fanto] needs to start crankin[g] or he gets taco
16 bell."

17 159. Within minutes, Burlakoff responded, giving context to Babich's statement.
18 Burlakoff replied, "Actually –when you look at WAC revenue (which includes strength and
19 units) NOT total scripts—[Fanto] is our 5th biggest producer at INSYS and we have not even
20 begun!"

21 160. Hours later, Burlakoff forwarded the above email thread to Smith, the SSP who
22 promoted Subsys to Fanto.

23 161. Within a month of Burlakoff's November 9, 2012 email, Insys gave Fanto four
24 more speaker programs, and paid him \$2,400 for each.

25 162. Over the next four years, through at least December 2016, Fanto received a high
26 number of speaker engagements, typically two or more a month.

27 163. Kapoor and Babich intended the speaker fees Insys paid to Fanto to be a reward
28 for Fanto's previous Subsys prescriptions and an incentive for Fanto to write additional Subsys

1 prescriptions.

2 164. For example, on her “ISP Representative Evaluation Form” for Fanto’s speaker
3 program on November 29, 2012, Smith wrote that an anticipated outcome of the program was
4 that “Dr. Fanto is making a shift toward switching many of his current patients to [S]ubsys.”

5 165. Fanto’s prescribing pattern changed around the time that he started receiving
6 payments from Insys.

7 166. From December 2012 to January 2013, Fanto wrote 24 Subsys prescriptions,
8 nearly five times the Subsys prescriptions he had written from October to November 2012.

9 167. In January 2013, Insys learned that Smith was having a “consensual relationship
10 with Dr. Fanto.”

11 168. Insys took no corrective action and allowed Smith to continue promoting Subsys
12 to Fanto, and told Smith in February 2013 that Insys “fully” supported her continuing to do so.

13 169. In fact, in April 2013, Insys gave Smith a \$5,000 raise because of her sales—
14 which were almost entirely driven by prescriptions written by Fanto. Fanto had single-
15 handedly accounted for 75% of Subsys sales in Arizona the previous quarter, and generated the
16 ninth-highest revenue for Insys out of all HCPs nationwide that quarter.

17 170. Babich kept apprised of Fanto’s prescriptions to make sure Insys was getting a
18 return on its investment in Fanto. In an email sent to Xun (Sean) Yu, Insys’s then-Director of
19 Sales Operations, on March 18, 2013, Babich expressed concern that Fanto was “slipping” in
20 his prescription count and asked for data indicating how much of Fanto’s (and other doctors’)
21 ROO (rapid-onset opioids) business Insys was losing to other manufacturers.

22 171. From March 2012 through April 2017, Fanto wrote a total of 1,294 Subsys
23 prescriptions—far and away the most of any HCP in Arizona.

24 172. Before receiving speaker fees, from March 2012 to October 2012, Fanto wrote 43
25 Subsys prescriptions—approximately five prescriptions per month.

26 173. During the time Insys paid Fanto speaker fees, Fanto wrote a total of 1,172
27 Subsys prescriptions—approximately 23 prescriptions per month, nearly *five times* as much as
28 he wrote prior to Insys paying him speaker fees.

1 174. In other words, before Insys paid him speaker fees, Fanto prescribed Subsys
2 about once a week on average. After Insys paid him speaker fees, Fanto prescribed Subsys
3 about once every working day on average—meeting the goal Burlakoff had given to the Insys
4 sales force of finding one doctor they could count on for “1 rx per day.”

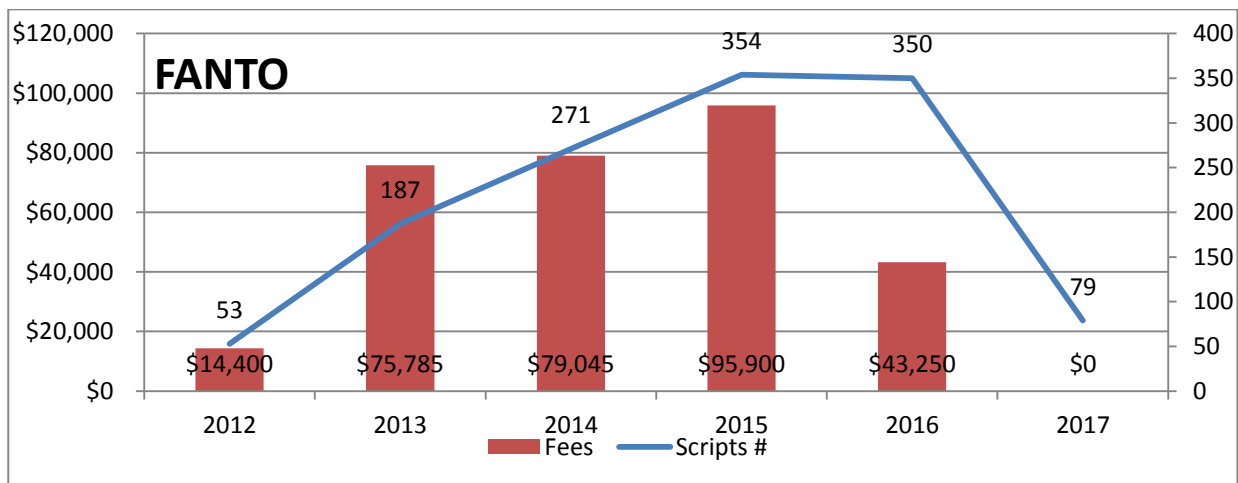
5 175. Before receiving speaker fees, from March 2012 to October 2012, Fanto
6 generated an average of \$16,296 a month in Subsys prescription revenue for Insys.

7 176. During the time Insys paid Fanto speaker fees, Fanto generated an average of
8 \$349,570 a month in Subsys prescription revenue for Insys.

9 177. Fanto’s additional prescriptions above his prior average generated a total of
10 approximately \$16,663,726 in additional revenue for Insys.

11 178. From October 25, 2012 to December 15, 2016, Insys paid Fanto \$308,380 in
12 speaker fees.

13 179. The following chart shows Fanto’s history of Subsys prescriptions and Insys
14 speaker fees, based on data collected from Insys:



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25 180. Insys, under the direction of Kapoor and Babich, paid Fanto speaker fees even
26 though he posed a danger to his patients by inappropriately prescribing opioids.

27 181. On July 12, 2017, based, in part, on Fanto’s prescribing of Subsys, Fanto signed
28 an interim consent agreement (the “Fanto Consent Agreement”) with the Arizona Medical

1 Board that prohibits him from engaging in the practice of medicine.

2 182. The Fanto Consent Agreement states that between 2011 and 2016, Fanto deviated
3 from the standard of care by initiating off-label Subsys treatment at the highest available dose
4 of 800 mcg with at least three patients, contrary to directions contained in Subsys’s FDA-
5 approved label.

6 183. Subsys’s FDA-approved label referenced in the Fanto Consent Agreement
7 instructs HCPs to titrate patients, initially starting patients off at the lowest possible dose of
8 Subsys—100 mcg—and then slowly increasing the patient’s dosage level “until the patient
9 reaches a dose that provides adequate analgesia using a single SUBSYS dose per breakthrough
10 cancer pain episode with tolerable side effects.”

11 184. Furthermore, any HCP enrolled in the TIRF REMS program is required to sign a
12 Prescriber Enrollment Form in which he or she acknowledges that “I understand that the initial
13 starting dose for TIRF medicines for all patients is the lowest dose”

14 185. The Fanto Consent Agreement states that Fanto prescribed one of the three
15 patients at issue 120 units of Subsys 800 mcg monthly for six months, even though the patient
16 reported only using approximately 30 units per month.

17 186. The Fanto Consent Agreement also states that Fanto prescribed the 800 mcg dose
18 of Subsys to one of the three patients at issue despite the patient having sleep apnea, thereby
19 deviating from the standard of care, and did so contrary to the opinion of the patient’s
20 pulmonologist.

21 187. The Fanto Consent Agreement states that Fanto’s Subsys prescriptions put at least
22 two patients “at risk of potentially fatal arrhythmias” and “at risk of the potential harms
23 associated with long term opioid use including abuse, addiction, diversion and accidental
24 overdose.”

25 188. Fanto’s initial prescriptions of Subsys at high doses put patients at risk, but they
26 also generated substantial revenue for Insys; the higher the dose of Subsys, the more money
27 Insys made.

1 189. In fact, Kapoor and Babich designed a compensation program whereby Insys paid
2 the SSPs more compensation for higher dose prescriptions than for lower dose prescriptions,
3 thus providing the SSPs with an incentive to get their HCPs to write higher doses for patients.

4 190. Indeed, Burlakoff urged Insys's SSPs at the September 21, 2012 national sales
5 meeting to "be sure your horses [HCPs] are 'unit' conscience [sic]" and "be sure your horses
6 [HCPs] are 'dosage' conscience [sic]."

7 191. Similarly, when a HCP followed the titration schedule and started his or her
8 patients at any dose 400 mcg or lower, Insys referred to that dose as a "low dose" and
9 automatically sent an email to the HCP's SSP that demanded that the SSP "report back to your
10 manager within 24 hours on WHY the low dose was used and HOW the doctor plans to titrate
11 the patient to effective dose."

12 192. Kapoor and Babich regularly reviewed reports detailing the payments to HCPs
13 and the resulting ROIs, and approved of the techniques used to funnel monies to Fanto to
14 ensure that he prescribed Subsys at a high rate to his patients.

15 *b. Dr. Nikesh Seth*

16 193. Dr. Nikesh Seth ("Seth") wrote the second-highest number of Subsys
17 prescriptions in Arizona from March 2012 through April 2017. During this time period, Seth
18 wrote a total of 884 Subsys prescriptions.

19 194. Like Fanto, Seth's practice focused on pain management.

20 195. Before 2014, Seth had only prescribed Subsys twice. During 2014, Insys's SSPs
21 made repeated phone calls to Seth, visited his office, and paid for breakfast or lunch meetings.
22 Seth responded to this attention by increasing his prescription rate of Subsys to his patients.

23 196. Insys began paying Seth speaker fees on June 10, 2014.

24 197. Kapoor and Babich intended the speaker fees Insys paid to Seth to be a reward for
25 Seth's previous Subsys prescriptions and an incentive for Seth to write additional Subsys
26 prescriptions.

27 198. Seth's prescribing pattern changed around the time that he started receiving
28 payments from Insys.

1 200. Between March 2012 and February 2014, Seth had written a total of 11 Subsys
2 prescriptions over two years.

3 201. In the three months immediately before Insys first paid Seth speaker fees,
4 between March 2014 and May 2014, Seth wrote 53 Subsys prescriptions—approximately 18
5 per month.

6 202. During the time Insys paid Seth speaker fees, Seth wrote 820 Subsys
7 prescriptions—approximately **23 per month**.

8 203. Insys did not pay Seth speaker fees until he started to prescribe far more Subsys
9 than he had previously.

10 204. While Insys paid him speaker fees, Seth prescribed Subsys about once every
11 working day on average—meeting the goal Burlakoff had given to the Insys sales force of
12 finding one doctor they could count on for “1 rx per day.”

13 205. Before receiving speaker fees, between March 2012 and May 2014, Seth
14 generated an average of \$8,301 a month in Subsys prescription revenue for Insys.

15 206. While Insys paid him speaker fees from June 2014 to September 2016, Seth
16 generated an average of \$207,050 a month in Subsys prescription revenue for Insys.

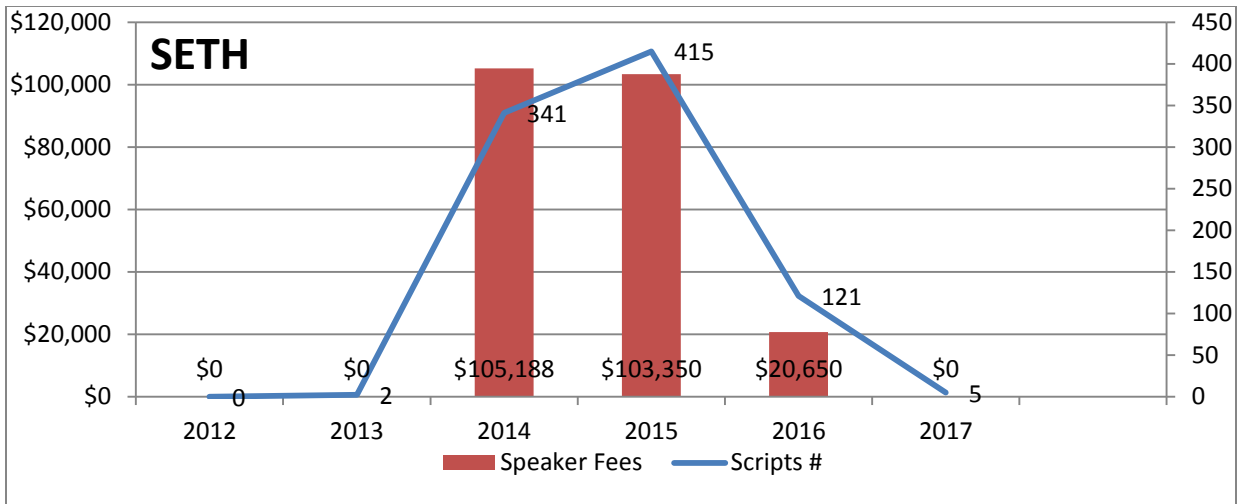
17 207. Seth’s additional prescriptions above his prior average generated a total of
18 approximately \$5,511,473 in additional revenue for Insys.

19 208. From June 10, 2014 to September 26, 2016, Insys paid Seth \$229,187.50 in
20 speaker fees.

21 209. After September 2016, Insys did not pay Seth any more speaker fees.

22 210. After Insys stopped paying Seth speaker fees, Seth’s prescribing of Subsys
23 paralleled his pre-speaker-fee averages. Seth wrote 13 Subsys prescriptions over the next seven
24 months, averaging just under two prescriptions per month.

25 211. The following chart shows Seth’s history of Subsys prescriptions and Insys
26 speaker fees, based on data collected from Insys:



211. Kapoor and Babich regularly reviewed reports detailing the payments to HCPs and the resulting ROIs, and approved of the techniques used to funnel monies to Seth to ensure that he prescribed Subsys at a high rate to his patients.

c. Dr. Sheldon Gingerich

212. Dr. Sheldon Gingerich (“Gingerich”) wrote the third-highest number of Subsys prescriptions in Arizona from March 2012 through April 2017. During this time period, Gingerich wrote a total of 741 Subsys prescriptions.

213. Like Fanto and Seth, Gingerich’s practice focused on pain management.

214. Before May 2013, the highest number of Subsys prescriptions Gingerich had ever written in a month was three prescriptions, but by July 2013, Gingerich was writing 14 Subsys prescriptions a month, much more than anyone else in Arizona except for Fanto.

215. Gingerich received his first speaker fee check from Insys on August 1, 2013.

216. Kapoor and Babich intended the speaker fees Insys paid to Gingerich to be a reward for Gingerich’s previous Subsys prescriptions, and an incentive for Gingerich to write additional Subsys prescriptions.

217. Gingerich’s prescribing pattern changed around the time that he started receiving payments from Insys.

1 218. Before receiving speaker fees, between March 2012 and April 2013, Gingerich
2 wrote seven Subsys prescriptions—averaging less than one prescription per month.

3 219. In the three months immediately before Insys first paid Gingerich speaker fees,
4 between May 2013 and July 2013, Gingerich wrote 29 Subsys prescriptions—approximately 10
5 per month.

6 220. During the time Insys paid Gingerich, Gingerich wrote 392 Subsys
7 prescriptions—approximately 16 per month.

8 221. Insys did not pay Gingerich speaker fees until he started to prescribe far more
9 Subsys than he had previously.

10 222. While Insys paid him speaker fees, Gingerich prescribed Subsys about two out of
11 every three business days on average—nearly meeting the goal Burlakoff had given to the Insys
12 sales force of finding one doctor they could count on for “1 rx per day.”

13 223. Before receiving speaker fees, between March 2012 and July 2013, Gingerich
14 generated an average of \$7,060 a month in Subsys prescription revenue for Insys.

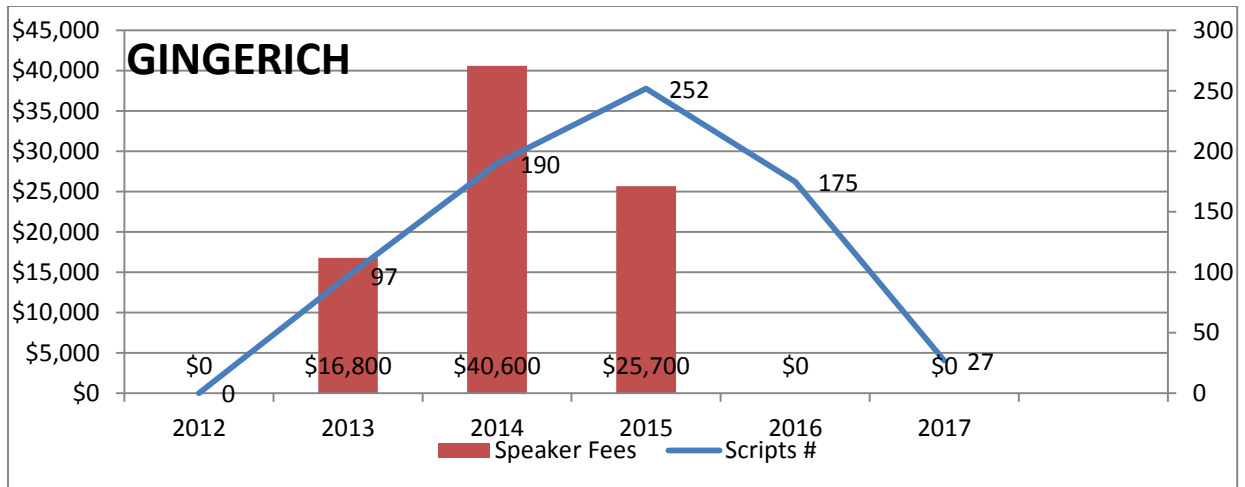
15 224. After he started receiving speaker fees, Gingerich generated an average of
16 \$138,274 a month in Subsys prescription revenue for Insys.

17 225. Gingerich’s additional prescriptions above his prior average generated a total of
18 approximately \$3,149,133 in additional revenue for Insys.

19 226. From August 1, 2013 to July 31, 2015, Insys paid Gingerich \$83,100 in speaker
20 fees, plus \$7,200 in consulting fees.

21 227. After Insys stopped paying Gingerich speaker fees, he initially continued to
22 prescribe Subsys prescriptions at a similar level, but the numbers gradually decreased, and by
23 Q1 2017, Gingerich was only writing seven or eight Subsys prescriptions a month, similar to
24 the amount he wrote in May and June 2014, before Insys began paying him.

25 228. The following chart shows Gingerich’s history of Subsys prescriptions and Insys
26 speaker fees, based on data collected from Insys:



229. Kapoor and Babich regularly reviewed reports detailing the payments to HCPs and the resulting ROIs, and approved of the techniques used to funnel monies to Gingerich in order to ensure that he prescribed Subsys at a high rate to his patients.

d. The Aggregate Return on Insys’s Bribes to Only Three Arizona Doctors Is Stunning.

230. Collectively, once Fanto, Seth, and Gingerich began receiving speaker fees, their additional prescriptions (above their historical averages) generated over \$25 million for Insys.

231. Collectively, Insys paid Fanto, Seth, and Gingerich nearly \$600,000 in speaker fees.

232. Collectively, for every \$1 Insys gave Fanto, Seth, and Gingerich in speaker fees, Insys made, on average, over \$40 in revenue.

233. Collectively, in terms of “ROI,” as Burlakoff put it, Insys obtained more than a 4,000% return on investment from its payments to Fanto, Seth, and Gingerich.

3. Defendants and Other Former Insys Employees Have Pled to, or Been Convicted of, Federal Crimes Related to Insys’s Sham “Speaker Fee” Program.

234. On March 28, 2019, Burlakoff stipulated to a consent judgment with Plaintiff, wherein Burlakoff admitted to his role, at the direction of Kapoor and Babich, in orchestrating, directing, and perpetuating the fraudulent scheme to bribe HCPs in order to increase Subsys

1 prescriptions; admitted that he knew these things were fraudulent; and admitted that he did
2 them willfully.

3 235. Furthermore, on November 28, 2018, Burlakoff pled guilty in U.S. District Court
4 to one count of racketeering conspiracy as a result of his part in the Insys scheme to bribe
5 HCPs.

6 236. As discussed in Paragraph 91, above, on January 9, 2019, Defendant Babich pled
7 guilty in U.S. District Court to federal felony conspiracy and mail fraud charges for his role in
8 Insys's fraud. In addition to admitting his part in the fraudulent acts and practices of Insys's
9 IRC, Babich further admitted in the relevant Agreed Statement of Facts that he, at the direction
10 of Kapoor, "conspired with others . . . to use the Insys Speaker Program [] as a vehicle to bribe
11 doctors and other clinicians to prescribe Subsys for their patients rather than a competitor
12 drug."

13 237. On May 2, 2019, Kapoor was found guilty in federal court of conspiring to
14 conduct the affairs of an enterprise through racketeering partly for his participation in the
15 scheme to pay doctors to prescribe Subsys.

16 238. The convictions and plea agreements listed above further demonstrate that
17 Kapoor and Babich operated a nationwide scheme through Insys to pay HCPs speaker fees in
18 exchange for writing Subsys prescriptions.

19 239. At all relevant times, at Kapoor and Babich's direction, Insys controlled, funded,
20 and acted in concert with the HCPs it paid through its speaker programs to prescribe high
21 volumes of Subsys.

22 240. At all relevant times, these HCPs acted as Insys's agents in prescribing high
23 volumes of Subsys to patients while Insys was paying the HCPs.

24 241. At all relevant times, Insys conspired with these HCPs with regard to the HCPs'
25 conduct in prescribing high volumes of Subsys to patients in exchange for payments from
26 Insys.

27 242. At all relevant times, Kapoor and Babich were aware that Insys was conspiring
28 with HCPs, including paying them sham "speaker fees," but approved of the scheme to increase

1 sales of Subsys.

2 **C. Defendants’ Unlawful Acts Were Extremely Profitable.**

3 243. Creating and running the fraudulent IRC was incredibly profitable for Insys,
4 Kapoor, Babich, and Gurry, but the IRC’s acts and practices had no benefit on market
5 competition, harmed consumers, and the harm was not reasonably avoidable by consumers.

6 244. Similarly, paying HCPs for prescriptions was incredibly profitable for Insys,
7 Kapoor, Babich, and Burlakoff, but those acts and practices also had no benefit on market
8 competition, harmed consumers, and the harm was not reasonably avoidable by consumers.

9 245. The following chart shows the rise of Insys’s public stock price during the 2013
10 to 2016 period in which Insys was employing the fraudulent IRC acts and practices to increase
11 Subsys prior authorizations, and the fraudulent “speaker fee” payments to increase Subsys
12 prescriptions. The chart also demonstrates the subsequent fall as the fraudulent acts and
13 practices began to be discovered and were eventually stopped:



23 246. Upon information and belief, Defendant Kapoor became a billionaire in 2013,
24 due in part to the skyrocketing price of Insys stock. It is estimated that Kapoor’s net worth
25 peaked in 2015 at \$3.3 billion dollars at the height of the fraudulent activities at Insys.

26 247. In addition to the Insys stock held by Kapoor, Plaintiff believes, and here alleges,
27 that, from 2013 to 2017, Kapoor received nearly \$500,000 in annual salary; over \$150,000 in
28 board “fees”; over \$125,000 in bonuses; over \$200,000 in other compensation; and stock

1 options valued as follows: \$149,904 in 2013, \$160,972 in 2014, and \$310,033 in 2015, with
2 Kapoor owning 47,094,030 shares in Insys by 2017.

3 248. All of the money that Kapoor received may have been acquired by means of
4 deceptive and unlawful acts and practices he created or condoned at Insys, including his
5 fraudulent direction of the IRC and the scheme to bribe HCPs as alleged in this Complaint. In
6 addition, Kapoor authorized Insys to provide paid dinner events to HCPs at Roka Akor, a
7 national restaurant chain in which Kapoor owns a significant financial interest, thus providing
8 additional revenues to Kapoor through Insys's fraud.

9 249. Upon information and belief, Plaintiff alleges that Defendant Babich was paid at
10 least \$325,000 per year, plus bonuses and stock options, for his work at Insys. Per his
11 testimony in U.S. District Court on February 14, 2019, Babich earned in excess of \$45 million
12 from Insys.

13 250. All of the money that Babich received may have been acquired by means of
14 deceptive and unlawful acts and practices he created or condoned at Insys, including his
15 fraudulent direction of the IRC as alleged in this Complaint.

16 251. Upon information and belief, Plaintiff alleges that Defendant Gurry was paid at
17 least \$140,000 per year, plus bonuses and stock options, for his work at Insys. During the times
18 relevant to this Complaint, Gurry earned in excess of \$1.5 million from Insys, in part as a result
19 of his fraudulent direction of the IRC and the scheme to bribe HCPs as alleged in this
20 Complaint.

21 252. All of the money that Gurry received may have been acquired by means of
22 deceptive and unlawful acts and practices he created or condoned at Insys, including his
23 fraudulent direction of the IRC as alleged in this Complaint.

24 253. As part of his consent judgment with Plaintiff, Burlakoff agreed to forfeit the \$5,200,000
25 he earned as a result of his work at Insys from September 2012 through December 2015, which
26 included his admitted role in the scheme to bribe HCPs.

1 **D. Insys’s IRC Program and Speaker Fee Scheme Contributed to the Opioid**
2 **Epidemic.**

3 1. *The Societal Costs of Defendants’ Misconduct Are Extraordinary.*

4 254. Defendants made millions from their misconduct, but society paid the costs.

5 255. By deceiving insurers through the operation of the IRC, Insys, Kapoor, Babich,
6 and Gurry tricked them into paying hundreds of millions of dollars for prescriptions that the
7 insurers otherwise would not have approved.

8 256. By bribing HCPs to prescribe Subsys, Insys, Kapoor, and Babich deprived
9 consumers of the objective medical advice for which they paid, and increased the risk that
10 HCPs would write inappropriate Subsys prescriptions in inappropriate quantities.

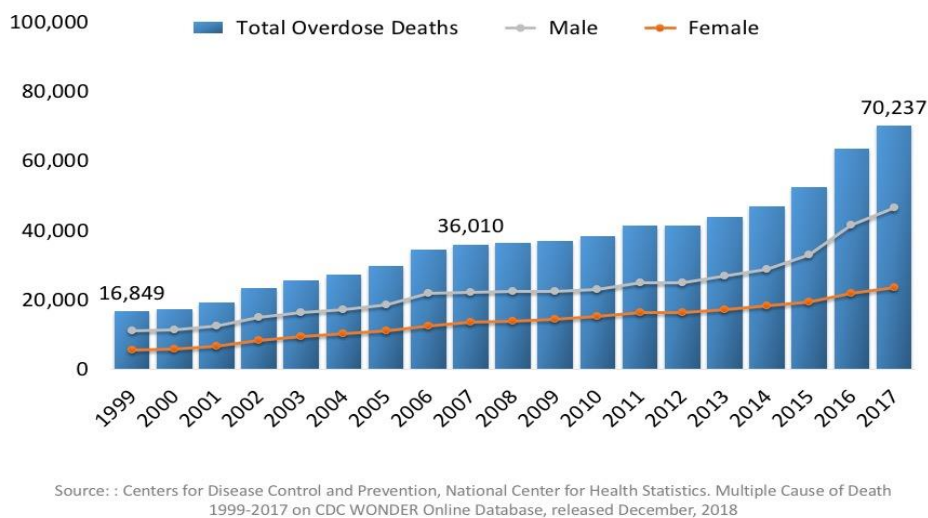
11 257. This behavior resulted in additional costs to health insurers. But in the end, the
12 costs primarily fell upon consumers. Consumers paid for biased medical advice. Consumers
13 paid for inappropriate prescriptions. Consumers paid increased insurance premiums. And most
14 importantly, many consumers who were prescribed Subsys unwittingly took on an unnecessary
15 risk of addiction and death.

16 258. Consumers were unable reasonably to avoid any of these costs.

17 259. In particular, patients who were unaware that their HCPs were bribed to prescribe
18 Subsys were unable to reasonably avoid the dangers of the unfair business practice that cost
19 them money and may have put their lives in jeopardy.

20 260. The number of Americans who died from drug overdoses in general was 16,849
21 in 1999. In 2017, this figure was 70,237:

Figure 1. National Drug Overdose Deaths
Number Among All Ages, by Gender, 1999-2017



261. Among these deaths from all forms of drugs, the sharpest increase has come from fentanyl and fentanyl analogs, according to data from the Center for Disease Control.

262. The National Institute on Drug Abuse estimates a total of 217,530 deaths in the United States from 1999 to 2017, related to prescription opioids alone.

263. From 2017 to the most recent available data on April 18, 2019, the Arizona Department of Health estimates a total of 20,541 opioid overdoses of Arizonans, of which 2,886 resulted in death. Approximately 1,344 Arizona infants were born with neonatal abstinence syndrome during this same time period.

264. Opioid overdoses have devastated both rural and urban areas of Arizona. Among the most impacted areas of Arizona, identified by the Arizona Department of Health as currently suffering the highest rates of opioid overdose deaths, are Bullhead City, Buckeye, Marana, Glendale, and Flagstaff.

265. CDC data reflects that, from 2006 to 2017, Mohave County, Arizona had more opioid prescriptions issued to its population than its actual population. Data is not available prior to 2006.

1 266. The peak years for prescription opioids in Mohave County were 2010 to 2014. In
2 2014, 142.2 prescriptions were issued for every 100 residents of the county.

3 267. During that time period, in 2013, Defendant Kapoor took Insys public with its
4 initial public offering on NASDAQ. In its Annual Report for the 2014 fiscal year, published in
5 March 2015, Insys touted the performance of Subsys as follows:

6 Within the first four weeks of product launch, Subsys realized greater market
7 share than the previous three branded products combined at their respective peak
8 market penetration levels according to Source Healthcare Analytics. In
9 December 2014, Subsys was the most prescribed TIRF product with 40.2%
10 market share on a prescription basis according to IMS. Through our ongoing
11 commercial initiatives, we believe we can continue to grow our market share and
12 net revenue for Subsys. According to Source Healthcare Analytics, in 2014,
13 TIRF products generated \$450.4 million in annual U.S. product sales.
14 Traditionally, the physician prescriber base for TIRF products is concentrated,
15 with approximately 1,594 physicians writing 90% of all TIRF product
16 prescriptions in 2014, according to IMS. As a result, our commercial
17 organization has been able to promote Subsys using a highly targeted approach
18 designed to maximize impact with physicians who are TIRF REMS enrolled.

19 268. The “highly targeted approach designed to maximize impact with physicians”
20 was successful for Insys. Its stock price peaked at \$46.17 a share in August 2015.

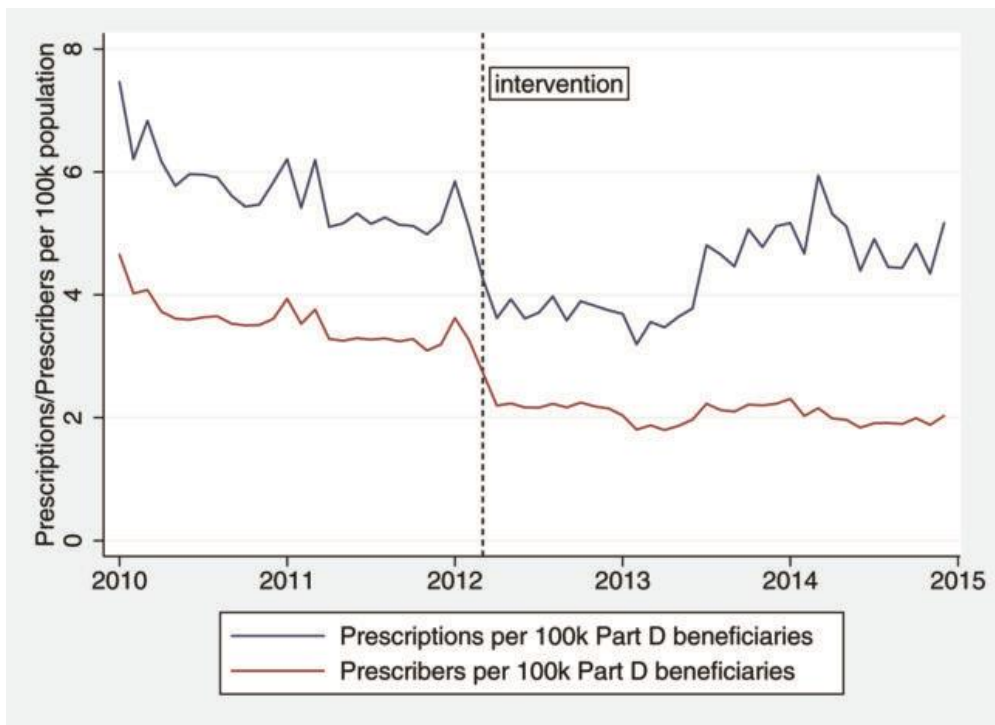
21 269. In addition to deaths from opioid overdoses, opioid addictions that were partly
22 fueled and contributed to by Defendants’ conduct have caused a wide variety of harms to the
23 State of Arizona in particular, and the country in general.

24 270. Such harms include, but are not limited to, the impact of opioid addictions on law
25 enforcement resources, resources of the medical community, and economic harms suffered by
26 the State and by Arizonans.

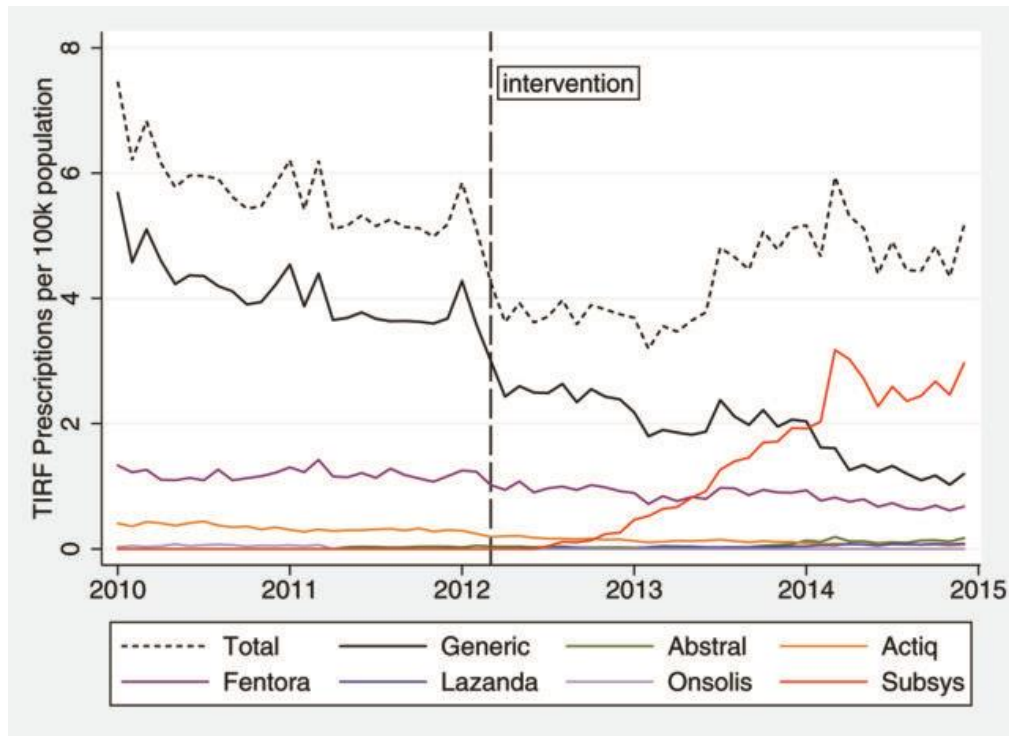
27 271. Neither Insys nor Defendants are solely to blame for the opioid epidemic.

28 272. However, it is inarguable that the conduct of Defendants only made the opioid
epidemic worse.

1 273. In particular, the actions of Defendants appear to have reversed a downward trend
2 in TIRF prescriptions nationwide. The following chart shows a steady decline in TIRF
3 prescriptions from 2010 to 2013, with a steep decline after the FDA’s implementation of the
4 TIRF-REMS program to protect consumers (marked as “Intervention” below). It also shows an
5 increase in prescriptions in 2013, without a corresponding increase in prescribers:



20 274. The following chart demonstrates that this increase in TIRF prescriptions was
21 driven *entirely* by Subsys prescriptions, as other TIRF medications continued to decrease after
22 2013:



275. By misleading insurers and PBMs about patients’ medical histories to increase prior-authorization rates for Subsys, Kapoor, Babich, and Gurry not only expanded Insys’s market for immediate-release fentanyl products, they expanded the TIRF market itself and fanned the flames of an opioid epidemic.

276. By paying HCPs to prescribe Subsys, Kapoor, and Babich not only expanded Insys’s market for immediate-release fentanyl products, they expanded the TIRF market itself and fanned the flames of an opioid epidemic.

VIOLATIONS OF LAW

277. The State realleges all preceding paragraphs as though fully set forth here.

278. Defendants Kapoor, Babich, and Gurry engaged in deception, deceptive or unfair acts or practices, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of material facts with the intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of

1 prescription drugs in violation of the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521–44-
2 1534, including, but not limited to:

3 a. Kapoor, Babich, and Gurry engaged in deceptive acts and practices by
4 creating, promoting, and executing a scheme in which Insys employees provided
5 insurers and PBMs nationwide with false and misleading information, in order to
6 obtain prior authorization for patients’ Subsys prescriptions and sell more Subsys;

7 b. Kapoor, Babich, and Gurry concealed, suppressed, or omitted material
8 facts, including facts related to the identity of the IRC employees and patient
9 health histories, and did so with intent that others rely on such concealments,
10 suppressions, or omissions, in order to obtain prior authorization for patients’
11 Subsys prescriptions and sell more Subsys;

12 c. Kapoor and Babich engaged in unfair acts and practices by creating,
13 promoting, and executing a scheme in which Insys employees provided insurers
14 and PBMs nationwide with false and misleading information after September 13,
15 2013, in order to obtain prior authorization for patients’ Subsys prescriptions and
16 sell more Subsys;³ and

17 d. Kapoor and Babich engaged in unfair acts and practices by creating,
18 promoting, and executing a scheme in which Insys provided sham “speaker fees”
19 to HCPs nationwide to induce, and in exchange for, the HCPs writing Subsys
20 prescriptions after September 13, 2013.

21 279. The unfair acts and practices alleged in the preceding paragraphs caused or were
22 likely to cause substantial injury to consumers that were not reasonably avoidable by
23 consumers and were not outweighed by countervailing benefits to consumers or to competition.

24 280. In all matters alleged in the preceding paragraphs, Defendants Kapoor, Babich,
25 and Gurry knew or should have known that their conduct was unlawful, subjecting themselves
26 to enforcement and penalties as provided in A.R.S. § 44-1531(A).

27 ³ The addition of “unfair” to A.R.S. § 44-1522(A) became effective on September 13,
28 2013, and was not retroactive.

1 281. In addition to violating the Arizona Consumer Fraud Act, the conduct of
2 Defendants Kapoor, Babich, and Gurry described above also constitutes civil racketeering
3 under the Arizona Racketeering Act, A.R.S. § 13-2301 *et seq.*, including, but not limited to:

4 a. By engaging in the fraudulent acts described in Paragraph 278(a)-(d),
5 above, Kapoor, Babich, and Gurry were operating a criminal syndicate, as
6 defined by A.R.S. § 13-2301(C)(7);

7 b. As described in Paragraph 91, above, Babich pled guilty to felony
8 conspiracy and mail fraud charges, relating to bribes paid to doctors and
9 misleading information provided to insurance providers. Those charges carry a
10 sentence that exceeds one year, and therefore constitute racketeering under A.R.S.
11 § 13-2301(D)(4);

12 c. As described in Paragraphs 92-95, above, Kapoor and Gurry were found
13 guilty of committing felony acts that included conspiring to conduct or to
14 participate in the affairs of an enterprise through racketeering for their
15 participation in the operation of the IRC and the deceptive scheme to provide
16 false and misleading information to insurers and PBMs to obtain prior
17 authorization for Subsys. Those charges carry a sentence that exceeds one year,
18 and therefore constitute racketeering under A.R.S. § 13-2301(D)(4);

19 d. Babich, Kapoor, and Gurry participated in a criminal syndicate by
20 furnishing advice or direction in the conduct, financing or management of a
21 criminal syndicate's affairs with the intent to promote or further the criminal
22 objectives of a criminal syndicate, as proscribed by A.R.S. § 13-2308(A)(3);

23 e. Babich, Kapoor, and Gurry also assisted a criminal syndicate by
24 committing the felony offenses described above, with the intent to promote or
25 further the criminal objectives of the criminal syndicate, as proscribed by A.R.S.
26 § 13-2308(C);

27 f. Babich, Kapoor, and Gurry illegally conducted an enterprise by being
28 employed by and associated with a criminal enterprise, and by conducting such

1 enterprise's affairs through racketeering, and/or by participating directly or
2 indirectly in the conduct of any enterprise that the person knows is being
3 conducted through racketeering, as proscribed by A.R.S. § 13-2312(B);

4 g. Pursuant to their scheme to defraud, Babich, Kapoor, and Gurry
5 knowingly obtained benefits by means of false or fraudulent pretenses,
6 representations, promises or material omissions, as proscribed by A.R.S. § 13-
7 2310(A); and

8 h. Babich and Kapoor, through their role in the speaker fee scheme, engaged
9 in racketeering based on the following criminal acts: (1) bribery, (2) participation
10 in a criminal syndicate, (3) asserting false claims, including false claims asserted
11 through fraud, and (4) a scheme or artifice to defraud; and all the criminal acts
12 were committed for financial gain, as proscribed by A.R.S. § 13-
13 2301(D)(4)(b)(vi), (xiii), (xv), and (xx).

14 282. As described in Paragraph 279 and its subparts listed above, Babich has pled
15 guilty to, and Kapoor and Gurry have been convicted of, criminal acts that meet the definition
16 of racketeering under A.R.S. § 13-2301(D)(4). As a result, and pursuant to A.R.S. § 13-2313,
17 Plaintiff is entitled to recover treble damages, costs, and fees to prevent, restrain, or remedy the
18 racketeering of Kapoor, Babich, and Gurry, as established by A.R.S. § 13-2314(A)(4).

19 283. Plaintiff demands a jury trial as to all triable issues of fact.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, State of Arizona, respectfully requests that this honorable
22 Court:

23 284. Permanently enjoin and restrain Defendants, their agents, employees, and all
24 other persons and entities, corporate or otherwise, in active concert or participation with any of
25 them, from engaging in deceptive or unfair acts or practices that violate the Arizona Consumer
26 Fraud Act, A.R.S. §§ 44-1521–44-1534, pursuant to A.R.S. § 44-1528(A)(1);

27 285. Permanently enjoin and restrain Defendants, their agents, employees, and all
28 other persons and entities, corporate or otherwise, in active concert or participation with any of

1 them, from engaging in acts or practices that violate the Arizona Racketeering Act, A.R.S. §
2 13-2301 *et seq.*;

3 286. Order the Defendants to pay restitution to consumers and other persons, pursuant
4 to A.R.S. § 44-1528(A)(2), in an amount no less than \$875,052,000, representing the Subsys
5 revenue that may have been acquired by Insys through unlawful acts and practices from 2013 to
6 2016;

7 287. Order the disgorgement of all profits, gain, gross receipts, or other benefit
8 obtained by the Defendants as a result of the illegal conduct alleged herein, pursuant to A.R.S.
9 § 44-1528(A)(3), as follows:

10 a. Against Defendant Kapoor, disgorgement in an amount no less than \$3.09
11 million, plus any amount received from the sale of his Insys stock, representing
12 the approximate profits earned by Kapoor through unlawful acts and practices
13 from September 13, 2013 through January 2017;

14 b. Against Defendant Babich, disgorgement in an amount no less than \$45
15 million, plus any amount received from the sale of his Insys stock, representing
16 the approximate profits earned by Babich through unlawful acts and practices
17 from September 13, 2013 to November 2015;

18 c. Against Defendant Gurry, disgorgement in an amount no less than \$1.5
19 million, plus any amount received from the sale of his Insys stock, representing
20 the approximate profits earned by Gurry through unlawful acts and practices from
21 September 13, 2013 to October 2016;

22 288. Order the Defendants to pay the State of Arizona a civil penalty of up to \$10,000
23 for each willful violation by each Defendant, pursuant to A.R.S. § 44-1531 as follows:

24 a. Against Defendant Kapoor, civil penalties in an amount no less than \$910
25 million, representing \$10,000 per violation for an estimated 9,750 prior
26 authorizations obtained through deceptive acts and practices and \$10,000 per
27 violation for over 81,250 unfair payments to HCPs from September 13, 2013 to
28 January 2017;

