

1 **MARK BRNOVICH**
2 **ATTORNEY GENERAL**
(Firm State Bar No. 14000)
3 MATTHEW DU MÉE (Bar No. 28468)
4 MITCHELL W. ALLEE (Bar No. 31815)
5 **ASSISTANT ATTORNEYS GENERAL**
OFFICE OF THE ATTORNEY GENERAL
2005 North Central Avenue
6 Phoenix, AZ 85004
7 Telephone: (602) 542-3725
8 Facsimile: (602) 542-4377
consumer@azag.gov
Attorneys for Plaintiff State of Arizona

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

11 **IN AND FOR THE COUNTY OF MARICOPA**

12 STATE OF ARIZONA, *ex rel.* MARK
13 BRNOVICH, Attorney General,

14 Plaintiff,

15 vs.

16
17 INSYS THERAPEUTICS, INC., *et al.*

18 Defendants.

Case No.: CV2017-012008

CONSENT JUDGMENT

(Assigned to The Honorable Rosa Mroz)

19 The State of Arizona, *ex rel* Mark Brnovich, the Attorney General, filed its Amended
20 Complaint in this action on March 2, 2018, alleging that Defendant Alec Burlakoff (“Defendant
21 Burlakoff”) and other parties violated the Arizona Consumer Fraud Act, Arizona Revised
22 Statutes (“A.R.S.”) 44-1521, *et seq.* Defendant Burlakoff has been fully advised of his rights in
23 this matter and has waived the same. He admits that this Court has jurisdiction over the subject
24 matter and the parties for purposes of entry of this Consent Judgment and acknowledges that
25 this Court retains jurisdiction for the purpose of enforcing this Consent

1 Judgment. Defendant Burlakoff has agreed to a voluntary compromise of disputed claims with
2 the State of Arizona.

3 **PARTIES**

4 1. The Plaintiff is the State of Arizona, *ex rel.* Mark Brnovich, Attorney General
5 (the “State”), who is authorized to bring this action under the Arizona Consumer Fraud Act,
6 A.R.S. §§ 44-1521 to 44-1534 (the “ACFA”).

7 2. Venue is proper in Maricopa County

8 3. Defendant Burlakoff was, at all times relevant to the Amended Complaint, a
9 resident of Maricopa County and worked for Defendant Insys Therapeutics, Inc. in a
10 managerial position.

11 4. At all times relevant to the Amended Complaint, Defendant Burlakoff was acting
12 for and on behalf of his marital community.

13 **FINDINGS OF FACT**

14 5. From approximately September 2012 through December 2015, Defendant
15 Burlakoff was the Vice President of Sales for Insys Therapeutics, Inc. and oversaw the
16 expansion and day-to-day operation of the Insys Speaker Program.

17 6. The Insys Speaker Program paid doctors and physicians’ assistants who were part
18 of the Insys Speaker Bureau up to \$125,000 a year to give presentations on the drug Subsys.

19 7. From approximately September 2012 to December 2015, Defendant Burlakoff,
20 acting on instruction from Insys CEO Michael Babich and Insys founder John Kapoor, directed
21 regional sales managers and lower level pharmaceutical company representatives to use the
22 award of speaker programs to induce the doctors and physicians’ assistants in the Insys Speaker
23 Bureau to prescribe more Subsys.

24 8. From approximately September 2012 to December 2015, Insys regional
25 sales managers, acting on the direction of Defendant Burlakoff, their supervisor, established

1 quid pro quo relationships with doctors and physicians' assistants whereby speaking
2 engagements were awarded to the prescribers to compensate them for prescribing Subsys.

3 9. In connection with his role as the Vice President of Sales for Insys, Defendant
4 Burlakoff actively sought out and targeted doctors who expressed a willingness to write Subsys
5 prescriptions and prescribe higher doses of Subsys in exchange for speaking engagements.

6 10. The practice of paying doctors to prescribe Subsys caused or was likely to cause
7 substantial injury to consumers that was not reasonably avoidable by consumers themselves and
8 was not outweighed by countervailing benefits to consumers or to competition.

9 11. Defendant Burlakoff knew or should have known that paying prescribers to
10 influence their prescribing behavior caused or was likely to cause substantial injury to
11 consumers that was not reasonably avoidable by consumers themselves and was not
12 outweighed by countervailing benefits to consumers or to competition, and was, therefore, an
13 unfair practice of the nature prohibited by A.R.S. § 44-1522.

14 12. Defendant Burlakoff acquired approximately \$5,200,000 in money and other
15 personal property as a direct result of his operation of the Insys Speaker Program and the
16 payments made to Subsys prescribers in the Insys Speaker Bureau.

17 **CONCLUSIONS OF LAW**

18 13. The actions described in paragraphs 5 through 12 above constitute unfair
19 practices in connection with the sale and advertisement of merchandise and are, therefore,
20 unlawful practices in violation of A.R.S. § 44-1522.

21 14. Defendant Burlakoff should have known that the actions described in paragraphs
22 5 through 12 above were of the nature prohibited by the ACFA, and, therefore, Defendant
23 Burlakoff engaged in willful violations of the ACFA pursuant to A.R.S. § 44-1531.

24 15. Pursuant to A.R.S. § 44-1528(A)(3), the Court is authorized to award
25 disgorgement of all gains, profits, and gross receipts acquired through any practice in violation

1 of the ACFA.

2 16. Pursuant to A.R.S. § 44-1531, the Court is authorized to award civil penalties of
3 up to \$10,000 for each willful violation of the ACFA.

4 17. Pursuant to A.R.S. § 44-1528(A), the Court is authorized to make such orders as
5 may be necessary to enjoin violations of the ACFA and prohibit those found to have violated
6 the ACFA from engaging in a specified trade or occupation.

7 **ORDER**

8 Now, therefore, it is ordered, judged and decreed that:

9 For the purpose of this Consent Judgment, the term “Prescription Drug” means any chemical
10 compound which may be used on or administered to humans to help diagnose, treat, cure,
11 mitigate, or prevent disease or other abnormal conditions, and which legally requires a medical
12 prescription to dispense. For purpose of this Consent Judgment, the term “Medical Device”
13 means any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or
14 other similar or related article intended for use in the diagnosis of disease or other conditions, or
15 in the cure, mitigation, treatment, or prevention of disease in humans, or is intended to affect the
16 structure or any function of the human body, and which does not achieve its primary intended
17 purposes through chemical action within or on the body.

18 1. In order to prevent future violations of the ACFA, Defendant Alec Burlakoff and,
19 pursuant to Rule 65(d)(2) of the Arizona Rules of Civil Procedure, his officers, agents, servants,
20 employees, and attorneys and those persons in active concert or participation with the same, are
21 prohibited from:

22 a. Engaging in any conduct in violation of A.R.S. § 44-1521, *et seq.* as it is
23 currently written or as it may be amended in the future;

24 b. Engaging in or receiving any remuneration of any kind whatsoever from
25 the sale, advertisement, marketing, or promotion of Prescription Drugs or Medical

1 Devices in the state of Arizona; and

2 c. Serving as an officer, director, trustee, or employee of any business entity
3 engaged in whole or in part in the sale, advertisement, marketing, or promotion of
4 Prescription Drugs or Medical Devices in the state of Arizona.

5 2. Plaintiff is awarded civil penalties from Defendant Burlakoff in the amount of
6 Four Million Three-Hundred Thousand Dollars (\$4,300,000). All monies paid as civil penalties
7 under this Consent Judgment shall be deposited in the Consumer Protection–Consumer Fraud
8 Revolving Fund and administered in accordance with A.R.S. § 44-1531.01.

9 3. Plaintiff is awarded disgorgement from Defendant Burlakoff in the amount of
10 Five Million Two-Hundred Thousand Dollars (\$5,200,000). All monies paid as disgorgement
11 under this Consent Judgment shall be deposited in the Consumer Remediation Subaccount of
12 the Consumer Restitution and Remediation Revolving Fund and administered in accordance
13 with A.R.S. § 44-1531.02.

14 4. All monies paid under this Consent Judgment shall be used to satisfy the
15 disgorgement award first and then the civil penalties award until both awards are paid in full.

16 5. Regardless of what award the monies are used to satisfy, the Plaintiff shall not
17 collect and Defendant Burlakoff shall not be required to pay more than Three Million Dollars
18 (\$3,000,000) in any calendar year to satisfy the amounts awarded under this Consent Judgment.

19 6. The payments required herein shall be paid in the form of cashier’s checks or
20 money orders made payable to “The State of Arizona.” Payment shall be delivered, or mailed
21 and postmarked, to:

22 Consumer Protection and Advocacy Section
23 The Office of the Arizona Attorney General
24 Attn: Stephanie Paine
25 2005 N. Central Ave, Suite 100
Phoenix, AZ 85004

1 7. It is further ordered that Defendant Burlakoff must fully cooperate with the State,
2 and its representatives, in this case and in any investigation related to or associated with
3 transactions or occurrences that are the subject of the Amended Complaint as it is currently
4 written or as it may be amended in the future. Defendant Burlakoff must provide truthful and
5 complete information, evidence, and testimony. Defendant Burlakoff must also appear for
6 interviews, discovery, hearings, trials, and any other proceedings that the State may reasonably
7 request upon reasonable notice, at such places and times as the State representative may
8 designate, without the service of a subpoena.

9 8. The parties stipulate by entering this Consent Judgment that the facts set forth in
10 the Findings of Fact shall be taken as true without further proof in any bankruptcy case or
11 subsequent civil litigation pursued by the State to enforce its rights to any payment or money
12 judgment owed pursuant to this Order, including but not limited to a non-dischargeability
13 complaint in any bankruptcy case.

14 9. The parties further stipulate by entering this Consent Judgment that the Findings
15 of Fact and Conclusions of Law set forth herein establish all elements necessary to sustain an
16 action by the State pursuant to Section 523(a)(2)(A) and (a)(7) of the Bankruptcy Code, 11
17 U.S.C. § 523(a)(2)(A) and (a)(7), and that this Order shall have res judicata and collateral
18 estoppel effect for such purposes and proceedings to enforce payment, including, but not
19 limited to, a non-dischargeability complaint filed in a bankruptcy proceeding, and Defendant
20 Burlakoff waives any right to contest any of the allegations in the State's Amended Complaint
21 in any such proceedings to enforce payment.

22 10. If any portion of this Consent Judgment is held invalid by operation of law, the
23 remaining terms thereof shall not be affected and shall remain in full force and effect.

24 11. Nothing in this Consent Judgment shall be construed as an approval by the State
25 or this Court of the Defendant's past, present, or future conduct, and Defendant Burlakoff is

1 enjoined from directly or indirectly representing anything to the contrary.

2 12. Jurisdiction is retained by this Court for the purpose of entertaining an application
3 by the State for enforcement of this Judgment.

4 13. Pursuant to Rule 54(b) of the Rules of Civil Procedure, the Court has determined
5 there is no just reason for delay and it is therefore directed that Judgment as provided herein
6 shall be entered forthwith.

7 DATED this _____ day of _____, 2019.

8
9
10 _____
11 The Honorable Rosa Mroz
12 Judge of the Superior Court

13 **CONSENT TO JUDGMENT**

14 1. Defendant Alec Burlakoff acknowledges that he was served with a copy of the
15 Summons and Amended Complaint, has read and fully understands the foregoing Consent
16 Judgment and understands the legal consequences involved in signing it, is aware of his rights
17 in this matter and has waived the same.

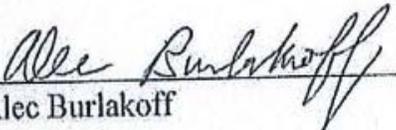
18 2. Defendant Alec Burlakoff admits the jurisdiction of the Court and consents to the
19 entry of the foregoing judgment.

20 3. Defendant Alec Burlakoff states that other than what is contained herein, no
21 promise of any kind or nature whatsoever was made to induce him to enter into this Consent
22 Judgment and declares that he has entered into this Consent Judgment voluntarily.

23 4. Defendant Alec Burlakoff acknowledges that his acceptance of this Consent
24 Judgment is solely for the purpose of settling the claims this litigation against him, and further
25 acknowledges that this Consent Judgment does not preclude any other agency or officer of this

1 State or subdivision thereof from instituting other civil or criminal proceedings as may be
2 appropriate.

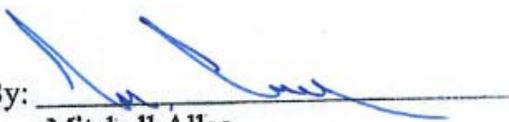
3
4
5
6 DATED this 28 day of March,

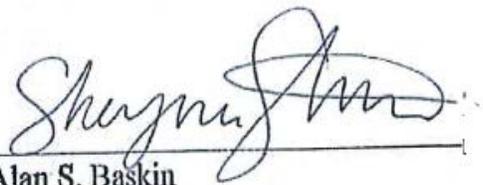
7
8
9 By: 
10 Alec Burlakoff

11
12 **APPROVED AS TO FORM AND CONTENT:**

13 **MARK BRNOVICH**
14 Attorney General

BASKIN RICHARDS PLC

15
16 By: 
17 Mitchell Allee
18 Matthew du Mée
19 Assistant Attorneys General
20 Attorneys for Plaintiff

21
22 By: 
23 Alan S. Baskin
24 Shayna G. Stuart
25 Attorneys for Defendant
Alec Burlakoff