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12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF MARICOPA**

14 STATE OF ARIZONA, *ex rel.* MARK
15 BRNOVICH, Attorney General,

16 Plaintiff,

17 v.

18 JOHN KAPOOR, *et al.*,

19 Defendants.
20
21

Case No.: CV2019-010695

**STIPULATED CONSENT JUDGMENT AS
TO DEFENDANTS MICHAEL BABICH
AND NATALIE LEVINE**

(Assigned to the Hon. Roger Brodman)

22 The State of Arizona, *ex rel.* Mark Brnovich, the Attorney General, filed its Complaint
23 in this action on July 19, 2019, alleging that Defendant Michael Babich (“Defendant Babich”)
24 and other parties violated the Arizona Consumer Fraud Act, Arizona Revised Statutes
25 (“A.R.S.”) §§ 44-1521, *et seq.*, and naming Defendant Natalie Levine (“Defendant Levine”) for
26 community property purposes. Defendant Babich and Defendant Levine have been fully
27 advised of their rights in this matter and have waived the same. They admit that this Court has
28

1 jurisdiction over the subject matter and the parties for purposes of entry of this Consent
2 Judgment and acknowledge that this Court retains jurisdiction for the purpose of enforcing this
3 Consent Judgment. Defendants Babich and Levine have agreed to a voluntary compromise of
4 disputed claims with the State of Arizona.

5
6 **PARTIES**

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

10 2. Venue is proper in Maricopa County.

11 3. At all times relevant to the Complaint, Defendant Babich was a resident of
12 Arizona and worked for Insys Therapeutics, Inc. (“Insys”) as Chief Executive Officer.

13 4. At all times relevant to the Complaint subsequent to their marriage on March 28,
14 2015, Defendant Babich was acting for and on behalf of his marital community with his spouse
15 Defendant Levine.

16
17 **FINDINGS OF FACT**

18 5. Defendant Babich was employed by Insys from 2007 to 2015. From 2011 to
19 2015, he served as Insys’s Chief Executive Officer.

20 6. Along with Defendants Kapoor and Gurry, Defendant Babich in part engineered
21 and engaged in a multi-pronged scheme designed to mislead insurers and patients in order to
22 increase Subsys sales in Arizona and across the nation.

23 7. Defendants Babich, Kapoor, and Gurry directed or authorized their subordinates
24 at Insys to provide insurers and pharmacy benefit managers (“PBMs”), companies hired by
25 insurers to help control the costs of prescription drugs, with false and misleading information in
26 order to induce insurers into giving prior authorization for patients’ Subsys prescriptions.

27 8. Defendants Babich and Kapoor directed or authorized their subordinates at Insys
28 to pay sham “speaker fees” to certain doctors to run supposed educational events, but the fees

1 were primarily intended to reward those doctors for prescribing Subsys and incentivize them to
2 prescribe more Subsys to patients.

3 9. In or about November 2012, Defendants Babich, Kapoor, and Gurry authorized
4 the launch of a pilot program, whereby Insys employees would assist patients and doctors in
5 attaining prior authorization for Subsys prescriptions from insurers and PBMs.

6 10. In or about January 2013, Defendants Babich, Kapoor, and Gurry directed or
7 authorized Insys to expand that program by authorizing the launch of the Insys Reimbursement
8 Center ("IRC") which consisted of a call center designed to obtain prior authorization for
9 Subsys from insurers and PBMs.

10 11. The IRC employees, as directed, authorized or permitted by Defendants Babich,
11 Kapoor, and Gurry, used a number of deceptive and unfair acts and practices to increase the
12 likelihood that insurers and PBMs would grant prior authorization for Subsys prescriptions,
13 including: (1) misrepresenting to insurers that the IRC employee was actually from the health
14 care provider's office; (2) misrepresenting to insurers that patients had certain medical
15 diagnoses, such as cancer; (3) misrepresenting to insurers that patients were suffering from
16 breakthrough cancer pain; (4) misrepresenting to insurers that patients had difficulty
17 swallowing; and (5) misrepresenting to insurers that patients had tried certain medications and
18 that those medications had been ineffective.

19 12. The IRC was located in Arizona near Insys's headquarters.

20 13. On January 9, 2019, Defendant Babich pled guilty in federal court to conspiracy
21 and mail fraud charges partly for his participation in the IRC's deceptive acts and practices.

22 14. At all relevant times, Defendants Babich, Kapoor, and Gurry were aware that
23 Insys was fraudulently using the IRC to deceive certain insurers and PBMs in order to increase
24 the prior-authorization rate of Subsys and to make more money for Insys.

25 15. In or about March 2012, Defendants Babich and Kapoor directed or authorized
26 their subordinates to use the Insys speaker program to pay doctors for prescribing Subsys.

27 16. In September 2012, Defendants Babich and Kapoor hired Alec Burlakoff as Vice
28 President of Sales and directed or authorized him to direct regional sales managers and lower-

1 level Insys-representatives to induce doctors and physician assistants to prescribe more Subsys
2 by awarding high prescribers paid speaking engagements.

3 17. Through the Insys speaker program, as directed or authorized by Defendants
4 Babich and Kapoor, the sales employees established quid pro quo relationships with doctors
5 and physician assistants whereby paid speaking engagements were awarded to the prescribers
6 to compensate them for prescribing Subsys, and in return, those doctors wrote thousands of
7 Subsys prescriptions that produced hundreds of millions of dollars in revenue for Insys.

8 18. At all relevant times, Defendants Babich and Kapoor were aware that the sales
9 employees were bribing doctors to increase prescriptions of Subsys to make more money for
10 Insys.

11 19. Defendants Babich and Levine generated at least \$45 million in the form of
12 salary, bonuses, stock incentives or other gains through the conduct of Defendant Babich
13 described above. These gains benefited the marital community of Defendants Babich and
14 Levine.

15 20. Defendant Babich knew or should have known that the deceptive and unfair acts
16 and practices listed above were of the nature prohibited by A.R.S. § 44-1522.

17 21. Defendant Babich stipulates to the foregoing findings of fact only for the
18 purposes of this action or any other proceeding to enforce this judgment which may be filed
19 against him by the State of Arizona, and for no other purpose.
20

21 **CONCLUSIONS OF LAW**

22 22. The actions described above constitute deceptive and unfair acts and practices in
23 connection with the sale and advertisement of merchandise and are, therefore, unlawful acts
24 and practices in violation of A.R.S. § 44-1522.

25 23. Defendant Babich knew or should have known that the actions described above
26 were of the nature prohibited by the ACFA, and, therefore, Defendant Babich engaged in
27 willful violations of the ACFA pursuant to A.R.S. § 44-1531.
28

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

25. Pursuant to A.R.S. § 44-1531, the Court is authorized to award civil penalties of up to ten thousand dollars (\$10,000) for each willful violation of the ACFA.

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

ORDER

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

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

2. In order to prevent future violations of the ACFA, pursuant to Rule 65(d)(2) of the Arizona Rules of Civil Procedure, Defendant Babich, his agents, servants, employees, and those persons in active concert or participation with any of the aforementioned, are prohibited from:

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

1 b. Engaging in or receiving any remuneration of any kind whatsoever from the sale,
2 advertisement, marketing, or promotion of Prescription Drugs or Medical Devices
3 in the state of Arizona; and

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

7 3. The Court enters judgment against Defendants Babich and Levine in the amount
8 of \$599,200,000 (five-hundred ninety-nine million, two-hundred thousand dollars) plus interest
9 from the date of entry of this judgment at the rate of 5.25% per annum until paid in full, as civil
10 penalties. The State acknowledges receipt from Defendants Babich and Levine of \$1,500,000
11 (one million, five-hundred thousand dollars) of this amount prior to the date of entry of this
12 judgment. All monies paid as civil penalties under this Consent Judgment shall be deposited in
13 the Consumer Protection—Consumer Fraud Revolving Fund and administered in accordance
14 with A.R.S. §44-1531.01.

15 4. The Court enters judgment against Defendants Babich and Levine in the amount
16 of \$45,000,000 (forty-five million dollars) plus interest from the date of entry of this judgment
17 at the rate of 5.25% per annum until paid in full, as disgorgement. All monies paid as
18 disgorgement under this Consent Judgment shall be deposited in the Consumer Remediation
19 Subaccount of the Consumer Restitution and Remediation Revolving Fund and administered in
20 accordance with A.R.S. § 44-1531.02.

21 5. Defendant Babich shall also pay \$500,000 (five hundred thousand dollars) to the
22 Attorney General's Office for outreach to underserved communities and law enforcement
23 training. The Attorney General shall have sole discretion as to how and when these funds are
24 used. The State acknowledges receipt from Defendants Babich and Levine of this amount prior
25 to the date of entry of this judgment.

26 6. Payment as to all amounts awarded in this judgment, shall be deemed satisfied
27 after the passage of thirty (30) months from the date of entry of this judgment if Defendant
28 Babich has not violated any of the injunctive terms of this Consent Judgment and has

1 cooperated fully with the State as described in paragraph 10 below, and provided that
2 Defendants Babich and/or Levine do not file a petition for relief under Title 11 of the United
3 States Code and any creditor of Defendants Babich and/or Levine do not file a petition for relief
4 under said laws against either or both Defendants within one-hundred and twenty (120) days
5 from the date of the State's receipt of the \$1,500,000.00 payment described in paragraph 3
6 above and the \$500,000.00 payment described in paragraph 5 above.

7 7. Irrespective of either or both of the Defendants' lack of default listed in paragraph
8 6 above, the State shall reserve the right to assert payment of the entirety of this stipulated
9 consent judgment, including all accrued interest and less any payments received, against any
10 bankruptcy estate of Defendants Babich and/or Levine, but shall not have the right to obtain
11 any non-dischargeable judgment against Defendants unless they violate the injunctive
12 provisions of paragraph 2 above or the cooperation provisions of paragraph 10 below.

13 8. All monies paid under this Consent Judgment, other than the payment listed in
14 paragraph 5, shall be used to satisfy the civil penalties awarded and interest thereon first and
15 then the disgorgement award and interest thereon, until both awards and interest thereon are
16 paid in full.

17 9. The payments required herein shall be wired or paid in the form of cashier's
18 checks or money orders made payable to "The State of Arizona," and sent to the following
19 address:

20
21 Consumer Protection and Advocacy Section
22 The Office of the Arizona Attorney General
23 2005 N. Central Ave., Suite 100
24 Phoenix, AZ 85004

25 10. It is further ordered that Defendant Babich must continue to fully cooperate with
26 the State, and its representatives, in this case and in any investigation related to or associated
27 with transactions or occurrences that are the subject of the Complaint as it is currently written
28 or as it may be amended in the future. Defendant Babich must provide truthful and complete

1 information, evidence, and testimony. Defendant Babich must also appear for interviews,
2 discovery, hearings, trials, and any other proceedings that the State may reasonably request
3 upon reasonable notice, at such places and times as the State representative may designate,
4 without the service of subpoena. To the extent Defendant Babich is a ward of correctional
5 authorities, Defendant Babich agrees to cooperate to the extent permitted by correctional
6 regulations. Any cooperation pursuant to this agreement shall be subject to approval or terms
7 established by the Boston United States Attorney's Office.

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

12 12. The parties further stipulate that if Babich violates any of the injunctive terms of
13 this Consent Judgment or fails to cooperate fully with the State as described in paragraph 10
14 above that the Findings of Fact and Conclusions of Law set forth herein establish all elements
15 necessary to sustain an action by the State pursuant to Section 523(a)(7) of the Bankruptcy
16 Code as to the civil penalties and disgorgement, 11 U.S.C. § 523(a)(7), and that this Order shall
17 have res judicata and collateral estoppel effect for such purposes and proceedings to enforce
18 payment to the State and not any other party, including, but not limited to, a non-
19 dischargeability complaint filed in a bankruptcy proceeding, and Defendants Babich and Levine
20 waive any right to contest any of the allegations in the State's Complaint in any such
21 proceedings to enforce payment.

22 13. 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 14. Nothing in this Consent Judgment shall be construed as an approval by the State
25 or this Court of the Defendants' past, present, or future conduct, and Defendants are enjoined
26 from directly or indirectly representing anything to the contrary.

27 15. Jurisdiction is retained by this Court for the purpose of entertaining an application
28 by the State for enforcement of this Judgment.

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

DATED this _____ day of _____, 2020.

The Honorable Roger Brodman
Judge of the Superior Court

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1 7. Defendants Babich and Levine acknowledge that their acceptance of this Consent
2 Judgment is solely for the purpose of settling the claims in this litigation against them, and
3 further acknowledge that this Consent Judgment does not preclude any other agency or officer
4 of this State or subdivision thereof from instituting other civil or criminal proceedings as may
5 be appropriate.

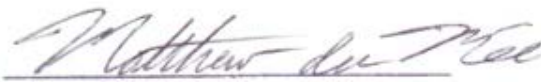
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7 DATED this 26th day of June, 2020.

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10 By: 
11 Michael Babich

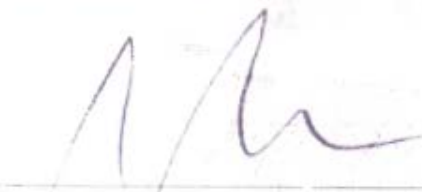
12 By: 
13 Natalie Levine

14
15 **APPROVED AS TO FORM AND CONTENT:**

16 **MARK BRNOVICH**
17 Attorney General

18
19 By: 
20 Matthew du Mée
21 Assistant Attorney General
22 Attorneys for the State of Arizona

23 Russell Piccoli, P.L.C.

24 
25 Russell Piccoli
26 Attorneys for Defendants
27
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