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11
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 INSYS THERAPEUTICS, INC., *et al.*,

19 Defendants.
20

Case No: CV2017-012008

**CONSENT JUDGMENT WITH
DEFENDANT STEVE FANTO**

(Tier 3 case)

(Assigned to the Hon. Randall Warner)

21
22 STATE OF ARIZONA, *ex rel.* MARK
23 BRNOVICH, Attorney General,

24 Plaintiff,

25 v.

26 JOHN KAPOOR, *et al.*,

27 Defendants.
28

Consolidated with Case No: CV2019-010695

1 The State of Arizona, *ex rel.* Mark Brnovich, the Attorney General (the “State”), having
2 filed a complaint (“First Amended Complaint”) alleging violations of the Arizona Consumer
3 Fraud Act, Arizona Revised Statutes (“A.R.S.”) § 44-1521, *et seq.*, and defendant Steve Fanto
4 (“Defendant Fanto”) having been served with a copy of the First Amended Complaint and having
5 been fully advised of the right to a trial in this matter and having waived the same, the State and
6 Defendant Fanto (collectively, the “Parties”) agree to the entry of this Consent Judgment by this
7 Court without trial or adjudication of any issue of fact or law and without any admission or finding
8 of any violations of any laws, guilt, liability, sanction, penalty, or wrongdoing. Solely for
9 purposes of this Consent Judgment, Defendant Fanto admits the jurisdiction of this Court over the
10 subject matter and parties, and he acknowledges that this Court will retain jurisdiction for the
11 purpose of enforcing this Consent Judgment. The Parties acknowledge and agree that Defendant
12 Fanto has consented and stipulated to entry of this Consent Judgment solely as a compromise of
13 disputed claims, and Defendant Fanto does not admit any liability, guilt, wrongdoing, violation,
14 or sanction.

15
16 NOW, THEREFORE, upon the consent of the Parties hereto, IT IS HEREBY ORDERED,
17 ADJUDGED AND DECREED AS FOLLOWS:

18 **FINDINGS OF FACT**

19 1. Plaintiff is the State of Arizona, *ex rel.* Mark Brnovich, Attorney General, who is
20 authorized to bring this action under the Arizona Consumer Fraud Act, A.R.S. § 44-1521, *et seq.*
21 (the “ACFA”).

22 2. Defendant Fanto was, at all times relevant, a resident of Arizona.

23 3. The State alleges that:

24 (a) From at least August 13, 2013 to at least December 15, 2016, Defendant
25 Fanto acted as a paid speaker for Insys Therapeutics, Inc. (“Insys”), and performed
26 educational presentations related to Subsys, a fentanyl-based pharmaceutical
27 product;

28

1 (b) From at least September 13, 2013 to at least December 15, 2016, Insys paid
2 Defendant Fanto a combined total of at least \$250,980 to influence him to prescribe
3 Subsys to his patients; and

4 (c) From at least September 13, 2013 to at least December 15, 2016, Defendant
5 Fanto accepted at least seventy-eight (78) payments with a combined total of at least
6 \$250,980 from Insys in exchange for increasing the number and dosage of Subsys
7 prescriptions he wrote for his patients.

8 4. The State alleges that the conduct described in Paragraph 3 above constitutes unfair
9 business practices under the ACFA, and further alleges that Defendant Fanto knew or should have
10 known that his conduct was of the nature prohibited by the ACFA.

11 5. Defendant Fanto expressly denies any and all allegations in Paragraphs 3 and 4
12 above, and denies any and all allegations, liability, guilt, penalties, wrongdoing, claims, and/or
13 causes of action that were or could have been asserted against them in the above-captioned action,
14 including but not limited to the State's ACFA claim. Defendant Fanto agrees to the entry of this
15 Consent Judgment solely in order to compromise disputed claims, and to avoid the expense and
16 uncertainty of further litigation.

17 6. The Parties represent, warrant and agree that this Consent Judgment, its language,
18 and any agreement to enter this Consent Judgment shall not be construed to be a finding of liability
19 on any claim or an admission by Defendant Fanto of any guilt, liability, violation, sanction or
20 wrongdoing in connection with any matter whatsoever. The Parties further represent, warrant and
21 agree that this Consent Judgment, its language, and any agreement to enter into this Consent
22 Judgment shall not be used or construed as an admission or evidence of any alleged wrongdoing
23 or liability by Defendant Fanto in any other civil, criminal, administrative proceeding, or board
24 proceeding before any court, administrative body, or tribunal anywhere in the United States of
25 America.

26 **CONCLUSIONS OF LAW**

27 7. The State alleges that Defendant Fanto violated the ACFA by engaging in the
28 actions described in Paragraph 3 of this Consent Judgment.

- 1 b. Receive financial compensation or payment of any kind from any
2 pharmaceutical drug manufacturer or medical device manufacturer while
3 residing in Arizona or in exchange for any conduct occurring in Arizona while
4 holding a license to practice medicine in Arizona; and
- 5 c. Practice medicine in Arizona after receiving any compensation from a drug
6 manufacturer or medical device manufacturer after the entry of this Consent
7 Judgment.

8 14. The injunction against receiving financial compensation or payment-in-kind in
9 Paragraph 13 above shall not apply to de minimus food and beverage items given to Defendant
10 Fanto or his staff by any pharmaceutical drug manufacturer or medical device manufacturer,
11 provided the aggregate value of all such food and beverage items does not exceed \$300 per year.

12 15. Pursuant to A.R.S. § 44-1528(A)(3), the Court is authorized to order disgorgement.
13 Defendant Fanto is ordered and agrees to pay the Arizona Attorney General's Office \$250,980
14 in disgorgement, which is due at or before the time of entry of this Consent Judgment and shall
15 be deposited into the Consumer Remediation Subaccount of the Consumer Restitution and
16 Remediation Revolving Fund and administered in accordance with A.R.S. § 44-1531.02.

17 16. Pursuant to A.R.S. § 44-1531, the Court is authorized to order civil penalties of up
18 to \$10,000 for each willful violation of the ACFA. Defendant Fanto is ordered and agrees to pay
19 the Arizona Attorney General's Office \$152,000 in civil penalties as follows:

- 20 a. Defendant Fanto shall pay civil penalties of \$30,000 due at the time of entry of
21 this Consent Judgment;
- 22 b. Defendant Fanto shall pay civil penalties of \$100,000 in monthly increments of
23 at least \$1,667 each month for 60 months beginning November 1, 2021, with
24 interest accruing thereon at the statutory rate for the full amount owing as of the
25 due date; and
- 26 c. Defendant Fanto will pay civil penalties of \$22,000, which shall be paid by
27 transferring his claim on funds currently held by the federal government to the
28 State, and shall be deposited into the Consumer Protection-Consumer Fraud

1 Revolving Fund and shall be administered in accordance with A.R.S. § 44-
2 1531.01. Defendant Fanto authorizes the federal government to release all
3 funds seized from him at the time of the entry of this Consent Judgment to the
4 State of Arizona. Defendant Fanto forgoes any interest in those funds up to the
5 amount of \$22,000, and shall provide reasonable assistance to the State in its
6 efforts to collect these funds from the federal government. The State agrees that
7 \$22,000 of the \$152,000 in civil penalties owed by Defendant Fanto shall be
8 collected only from the federal government. In the event the State is unable to
9 collect the \$22,000 from the federal government, the State shall not be
10 permitted to collect these funds directly from Defendant Fanto unless the funds
11 seized by the federal government were remitted to Defendant Fanto or his
12 agents and Defendant Fanto fails to transfer those funds to the State with fifteen
13 (15) days of receipt.

14 17. All amounts and interest thereon collected by the State pursuant to Paragraph 16 of
15 this Consent Judgment shall be deposited in the Consumer Remediation Subaccount of the
16 Consumer Restitution and Remediation Revolving Fund and administered in accordance with
17 A.R.S. § 44-1531.02.

18 18. A failure to pay the amounts required under Paragraphs 15 and 16(a) of this
19 Consent Judgment by the entry of this Consent Judgment shall be considered a material breach
20 of this Consent Judgment, and the State will have the right, at its sole discretion, to reopen
21 proceedings, and proceed with this case as though this Consent Judgment had not been entered,
22 provided that Defendant Fanto will be entitled to an offset for any amount already paid to the
23 State under this Consent Judgment.

24 19. Defendant Fanto must pay the \$100,000 portion of the civil penalty award under
25 Paragraph 16(b) of this Consent Judgment in monthly increments of at least \$1,667 until the total
26 monetary award of \$100,000 is paid in full. The first monthly payment will be due by November
27 1, 2021 and each remaining monthly payment will be due by the first day of each month
28 thereafter. Defendant Fanto shall not be penalized for making monthly payments in excess of

1 \$1,667 or paying the entire \$100,000 civil penalty award under Paragraph 16(b) of this Consent
2 Judgment in less than 60 months. Failure to make a monthly payment within 14 days of the date
3 due is a default on Defendant Fanto's payment obligations under this Consent Judgment.

4 20. Should Defendant Fanto default on the payment obligation imposed by Paragraphs
5 16(b) of this Consent Judgment, and further fail to cure the deficiency within 10 calendar days
6 after having received written notice from the State of any amount past due in addition to any
7 other penalties and remedies provided by law, all payments set forth in Paragraphs 16(b) will be
8 accelerated and become due and owing in their entirety as of the date of the default, with interest
9 accruing thereon at the statutory rate for the full amount owing as of that date.

10 21. In the event of a default described in Paragraph 19 of this Consent Judgment,
11 Defendant Fanto stipulates that the State may secure the remaining debt owed by placing a
12 judgment lien on any real property owned by Defendant Fanto or held in trust for the benefit of
13 Defendant Fanto.

14 22. If Defendant Fanto pays the total combined monetary award in this Consent
15 Judgment without committing any breach of this Consent Judgment or defaulting on any payment
16 terms, the State agrees to forgo the collection of all interest accrued under this Consent Judgment.

17 23. The payments required herein must be paid in the form of a cashier's check or
18 money order made payable to "The State of Arizona." Payment must be delivered, or mailed and
19 postmarked, to:

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

24 24. Nothing in this Consent Judgment will be construed as an approval by the Attorney
25 General, the Court, the State of Arizona, or any agency thereof of Defendant Fanto's alleged past,
26 present, or future conduct. Defendant Fanto shall not represent or imply that the Attorney
27 General, the Court, the State of Arizona, or any agency thereof has approved or approves of his
28 alleged actions or any of his alleged past, present or future business practices.

25. This Consent Judgment, its language, and any agreement to enter this Consent

1 Judgment shall not be construed to be a finding of liability on any claim against Defendant Fanto
2 or a finding, determination, or an admission by him of any guilt, liability, violation, sanction or
3 wrongdoing whatsoever. This Consent Judgment, its language, and any agreement to enter into
4 this Consent Judgment shall not be used or construed as an admission or evidence of any alleged
5 wrongdoing or liability by Defendant Fanto in any other civil, criminal, administrative
6 proceeding, or board proceeding before any court, administrative body, or tribunal anywhere in
7 the United States of America.

8 26. Defendant Fanto warrants and represents that there is not any pending case,
9 proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation,
10 dissolution, discharge, or recomposition of Defendant Fanto or his debts under any law relating
11 to bankruptcy, insolvency, reorganization, or the relief of debtors, or seeking the appointment of
12 a receiver, trustee, custodian, or other similar official for Defendant Fanto. Defendant Fanto
13 further warrants and represents that he will not file, or cause to be filed, any such case,
14 proceeding, or other action prior to ninety-one (91) days after complete payment of all amounts
15 due under this Consent Judgment. If Defendant Fanto does file or causes to be filed such a case,
16 proceeding, or other action prior to the expiration of that time, then the State will have the right,
17 at its sole discretion, to treat that as a material breach of this Consent Judgment, reopen
18 proceedings, and proceed with this case as though this Consent Judgment had not been entered,
19 provided that Defendant Fanto will be entitled to an offset for any amount already paid to the
20 State under this Consent Judgment.

21 27. Defendant Fanto must provide the State with written notice within fifteen (15) days
22 of filing or causing to be filed any case, proceeding, or other action seeking reorganization,
23 arrangement, adjustment, liquidation, dissolution, discharge, or recomposition of Defendant
24 Fanto or his debts under any law relating to bankruptcy, insolvency, reorganization, or the relief
25 of debtors, or seeking the appointment of a receiver, trustee, custodian, or other similar official
26 prior to complete payment of all amounts due under this Consent Judgment. If Defendant Fanto
27 fails to provide the notice as required, the State will have the right, at its sole discretion, to treat
28 that as a material breach of this Consent Judgment, reopen proceedings, and proceed with this

1 case as though this Consent Judgment had not been entered, provided that Defendant Fanto will
2 be entitled to an offset for any amount already paid to the State under this Consent Judgment.

3 28. In the event of a material breach of this Consent Judgment, in addition to all other
4 remedies available under Arizona law and the penalties specifically provided under A.R.S. § 44-
5 1532, the State may, in its sole discretion, reopen proceedings and continue with this case as
6 though this Consent Judgment had not been entered, provided that Defendant Fanto will be
7 entitled to an offset for any amount actually paid by him to the State.

8 29. The parties acknowledge by the execution hereof that this Consent Judgment
9 constitutes a complete settlement of all allegations contained in the First Amended Complaint
10 and this Consent Judgment as to Defendant Fanto, and the State agrees not to institute any civil
11 action against Defendant Fanto or his employees or agents relating to the conduct described
12 herein or in the First Amended Complaint. Notwithstanding the foregoing, the State may institute
13 an action or proceeding to enforce the terms and provisions of this Consent Judgment, take action
14 based on future conduct by Defendant Fanto, take action based on past conduct not specified in
15 this Consent Judgment, and/or institute an action or proceeding to prevent the discharge of any
16 debt acquired through this Consent judgment. Defendant Fanto reserves all rights, remedies, and
17 defenses in connection with any action or proceeding brought by the State.

18 30. This Consent Judgment represents the entire agreement between the parties, and
19 there are no representations, agreements, arrangements, or understandings, oral or written,
20 between the parties relating to the subject matter of this Consent Judgment which are not fully
21 expressed herein or attached hereto.

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

24 32. Jurisdiction is retained by this Court solely for the purpose of entertaining an
25 application by the State related to the enforcement of this Consent Judgment.

26 33. This Consent Judgment is the result of a compromise and settlement agreement
27 between the Parties. Only the State may seek enforcement of this Consent Judgment. Nothing
28 herein is intended to create a private right of action by other parties.

1 **CONSENT TO JUDGMENT**

2 1. Defendant Fanto acknowledges that he was served with a copy of the Summons
3 and First Amended Complaint has read the Findings of Fact, Conclusions of Law and Order, and
4 is aware of the right to a trial in this matter and has waived the same.

5 2. Defendant Fanto admits the jurisdiction of this Court, and consents to the entry of
6 the foregoing Findings of Fact and Conclusions of Law.

7 3. Defendant Fanto states that no promise of any kind or nature whatsoever was made
8 to induce Defendant Fanto to enter into this Consent Judgment and declares that he has entered
9 into this Consent Judgment voluntarily.

10 4. This Consent Judgment is entered as a result of a compromise of disputed claims.
11 Only the State may seek enforcement of this Consent Judgment. Nothing herein is intended to
12 create a private right of action by other parties; however, this Consent Judgment does not limit
13 the rights of any private party to pursue any remedies allowed by law.

14 5. Defendant Fanto acknowledges that his acceptance of this Consent Judgment is for
15 the purpose of settling the ongoing consumer fraud lawsuit filed by the State, and further
16 acknowledges that this Consent Judgment does not preclude any agency or officer of the State of
17 Arizona or subdivision thereof from instituting other civil or criminal proceedings as may be
18 appropriate.

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eSignature Page 1 of 1

Filing ID: 13543382 Case Number: CV2017-012008
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Granted as Submitted



/S/ Randall Warner Date: 10/27/2021
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2017-012008

SIGNATURE DATE: 10/27/2021

E-FILING ID #: 13543382

FILED DATE: 10/28/2021 8:00:00 AM

ADAM C ANDERSON

ALAN S BASKIN

ALEXANDRA MIJARES NASH

JENNIFER LYNN BONHAM

JONATHAN GRANT BRINSON

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