

MARK BRNOVICH
ATTORNEY GENERAL
 (Firm State Bar No. 14000)
 Matthew du Mee (Bar No. 028468)
 Samuel P.A. Fox (Bar No. 035428)
 Mitchell Allee (Bar No. 031815)
 Jennifer Bonham (Bar No. 032332)
 Laura Dilweg (Bar No. 036066)
 Assistant Attorneys General
 Office of the Attorney General
 2005 North Central Avenue
 Phoenix, AZ 85004-1592
 Telephone: (602) 542-3725
 Facsimile: (602) 542-4377
 Email: Matthew.duMee@azag.gov
consumer@azag.gov
Attorneys for the State of Arizona

SUPERIOR COURT OF ARIZONA
IN MARICOPA COUNTY

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

 Plaintiff,

 v.

 INSYS THERAPEUTICS, INC., et al.,

 Defendants.

Case No.: CV2017-012008

CONSENT JUDGMENT

(Assigned to the Hon. Randall Warner)

The State of Arizona, *ex rel.* Mark Brnovich, the Attorney General, filed its First Amended Complaint in this action on March 2, 2018, alleging that Defendant Nikesh Seth, M.D. (“Dr. Seth”) and other parties violated the Arizona Consumer Fraud Act, Arizona Revised Statutes (“A.R.S.”) §§ 44-1521 to 44-1534 (“ACFA”). Dr. Seth has been fully advised of his rights in this matter and has waived the same. This Court has jurisdiction over the subject matter and the parties for purposes of entering this Consent Judgment and retains jurisdiction for the purpose of enforcing this Consent Judgment. Dr. Seth has agreed to a voluntary

1 compromise of disputed claims with the State of Arizona for the sole purpose of ending
2 litigation concerning the matters at issue in the First Amended Complaint. Dr. Seth explicitly
3 denies any unlawful or wrongful conduct, any violations of applicable standards of care, the
4 allegations in the First Amended Complaint, and the Conclusions of Law below. This Consent
5 Judgment shall not be construed as an admission by Dr. Seth of any unlawful or wrongful
6 conduct, violation of applicable standards of care, the allegations in the First Amended
7 Complaint, or the Conclusions of Law below.

8 **PARTIES AND VENUE**

9 1. The Plaintiff is the State of Arizona, *ex rel.* Mark Brnovich, Attorney General,
10 who is authorized to bring this action under the ACFA.

11 2. Dr. Seth is a medical doctor and a resident of Maricopa County, Arizona, and was
12 at all times relevant to the First Amended Complaint.

13 3. Defendant Ami Seth (together with Dr. Seth, the “Seth Defendants”) was, at all
14 times relevant, the spouse of Defendant Seth, and was named in the underlying action solely for
15 her interest in the marital community. The State does not allege that Defendant Ami Seth
16 violated the ACFA.

17 4. At all times relevant to the First Amended Complaint, Dr. Seth was acting for and
18 on behalf of his marital community.

19 5. Venue is proper in Maricopa County, Arizona.

20 **FINDINGS OF FACT**

21 6. Dr. Seth has practiced medicine in Maricopa County since 2011.

22 7. Dr. Seth’s medical practice focuses on pain management and did at all times
23 relevant to the First Amended Complaint.

24 8. From approximately June 2014 through September 2016, Dr. Seth was paid by
25 Insys Therapeutics, Inc. (“Insys”) to speak to medical providers and others about his experience
26 prescribing the drug Subsys.

27 9. Insys paid Dr. Seth a contractually fixed amount for each speaking engagement,
28 totaling approximately \$229,187.50 for the entire time period.

10. During the same timeframe, Dr. Seth prescribed Subsys to some of his patients. The State alleges that Dr. Seth did so as a result of receiving payments from Insys. Dr. Seth contends that he prescribed Subsys to a small subset of his patients where it was his medical judgment that such a prescription was in the patient's best interest.

11. Dr. Seth's patient population fluctuated in size and varied in diagnosis makeup during the years 2011 through 2017, and his prescription of Subsys and other similar products also varied over that time period.

12. After Dr. Seth began speaking for Insys in 2014, the number of Subsys prescriptions he wrote increased.

13. After Dr. Seth stopped speaking for Insys in 2016, the number of Subsys prescriptions he wrote decreased.

CONCLUSIONS OF LAW

14. The State alleges that Dr. Seth's actions described above constitute unfair acts in connection with the sale or advertisement of merchandise in violation of A.R.S. § 44-1522.

15. The State alleges that Dr. Seth should have known that the actions described above were prohibited by the ACFA and, therefore, that Dr. Seth willfully violated the ACFA pursuant to A.R.S. § 44-1531.

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

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

18. 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.

ORDER

It is ordered, adjudged, and decreed that:

19. Pursuant to the parties' agreement, the Seth Defendants shall disgorge to the State the amount of \$229,187.50. All monies paid as disgorgement under this Consent Judgment

1 shall be deposited in the Consumer Remediation Subaccount of the Consumer Restitution and
2 Remediation Revolving Fund and administered in accordance with A.R.S. § 44-1531.02.

3 20. Pursuant to the parties' agreement, the Seth Defendants shall pay civil penalties
4 to the State in the amount of \$145,000.00. All monies paid as civil penalties under this Consent
5 Judgment shall be deposited in the Consumer Protection-Consumer Fraud Revolving Fund and
6 administered in accordance with A.R.S. § 44-1531.01.

7 21. The Seth Defendants shall pay \$40,000.00 within 30 days of the entry of this
8 Consent Judgment. Thereafter, the Seth Defendants shall pay \$25,000.00 per calendar quarter
9 until both the disgorgement award and civil penalties award are paid in full.

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

12 23. The payments required herein shall be paid in the form of cashier's checks or
13 money orders made payable to "The State of Arizona." Payment shall be delivered, or mailed
14 and postmarked, to:

15 Consumer Protection and Advocacy Section
16 The Office of the Arizona Attorney General
17 Attn: Stephanie Paine
18 2005 N. Central Ave, Suite 100
Phoenix, AZ 85004

19 24. Pursuant to the parties' agreement, and in order to prevent future violations of the
20 ACFA:

21 a. Dr. Seth is prohibited from engaging in any conduct that violates the
22 ACFA as it is currently written or as it may be amended in the future.

23 b. Dr. Seth is prohibited from engaging in or receiving any remuneration of
24 any kind whatsoever from Prescription Drug makers, sellers, or promoters from the sale,
25 advertisement, marketing, or promotion of Prescription Drugs for ten calendar years
26 beginning on the date of the Court enters this Consent Judgment. For purposes of this
27 provision, "Prescription Drug" means any chemical compound which may be used on or
28 administered to humans to help diagnose, treat, cure, mitigate, or prevent disease or

1 other abnormal conditions, and which legally requires a medical prescription to
2 dispense. This provision prohibits Dr. Seth from taking consulting fees, advisory fees, or
3 any similar fees from makers, sellers, or promoters of Prescription Drugs. This
4 provision does not prohibit or limit Dr. Seth from providing to patients and posting in
5 his office patient-education information concerning Prescription Drugs, provided that
6 any such activities do not involve remuneration of any kind whatsoever. This provision
7 also does not prohibit Dr. Seth from receiving funds as a passive investor in any
8 pharmacy, provided that Dr. Seth does not send any prescriptions to a pharmacy in
9 which he which he has a greater than 1% ownership interest and prescriptions written by
10 Dr. Seth are not filled at a pharmacy in which he has a greater than 1% ownership
11 interest. This provision also does not prohibit Dr. Seth from receiving remuneration
12 from the prescription of non-controlled substances by his business. This provision also
13 does not prohibit or limit Dr. Seth from accepting for himself and his office staff de
14 minimis items of value from Prescription Drug representatives, including in-office
15 lunches, pens, and other office supplies, provided that the de minimis items do not total
16 more than \$500 a year from any Prescription Drug maker, seller, or promoter.

17 25. Nothing in this Consent Judgment will be construed as an approval by the
18 Attorney General, the Court, the State of Arizona, or any agency thereof of the Seth
19 Defendants' past, present, or future conduct. The Seth Defendants shall not represent or imply
20 that the Attorney General, the Court, the State of Arizona, or any agency thereof has approved
21 or approves of the Seth Defendants' actions or any of the Seth Defendants' past, present or
22 future business practices.

23 26. The Seth Defendants warrant and represent that there is not any pending case,
24 proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation,
25 dissolution, discharge, or recomposition of the Seth Defendants or their debts under any law
26 relating to bankruptcy, insolvency, reorganization, or the relief of debtors, or seeking the
27 appointment of a receiver, trustee, custodian, or other similar official for the Seth Defendants.
28 The Seth Defendants further warrant and represent that they will not file, or cause to be filed,

1 any such case, proceeding, or other action prior to ninety-one (91) days after complete payment
2 of all amounts due under this Consent Judgment. If the Seth Defendants do file or cause to be
3 filed such a case, proceeding, or other action prior to the expiration of that time, then the State
4 will have the right, at its sole discretion, to treat that as a material breach of this Consent
5 Judgment, reopen proceedings, and proceed with this case as though this Consent Judgment had
6 not been entered, provided that the Seth Defendants will be entitled to an offset for any amount
7 the Seth Defendants already paid to the State under this Consent Judgment.

8 27. The Seth Defendants must provide the State with written notice within fifteen
9 (15) days of the Seth Defendants filing or causing to be filed any case, proceeding, or other
10 action seeking reorganization, arrangement, adjustment, liquidation, dissolution, discharge, or
11 recomposition of the Seth Defendants or their debts under any law relating to bankruptcy,
12 insolvency, reorganization, or the relief of debtors, or seeking the appointment of a receiver,
13 trustee, custodian, or other similar official prior to complete payment of all amounts due under
14 this Consent Judgment. If the Seth Defendants fail to provide the notice as required, the State
15 will have the right, at its sole discretion, to treat that as a material breach of this Consent
16 Judgment, reopen proceedings, and proceed with this case as though this Consent Judgment had
17 not been entered, provided that the Seth Defendants will be entitled to an offset for any amount
18 the Seth Defendants already paid to the State under this Consent Judgment.

19 28. In the event of a material breach of this Consent Judgment, in addition to all other
20 remedies available under Arizona law and the penalties specifically provided under A.R.S. §
21 44-1532, the State may, in its sole discretion, reopen proceedings and continue with this case as
22 though this Consent Judgment had not been entered, provided that the Seth Defendants will be
23 entitled to an offset for any amount actually paid to the State.

24 29. The effective date of this Consent Judgment is the date that it is entered by the
25 Court.

26 30. Jurisdiction is retained by this Court for the purpose of entertaining an application
27 by the State for enforcement of this Consent Judgment.

28 . . .

31. Pursuant to Rule 54(b) of the Rules of Civil Procedure, the Court has determined that there is no just reason for delay, and it is therefore directed that judgment as provided in this Consent Judgement shall be entered.

DATED _____, 2021.

The Honorable Randall Warner
Judge of the Superior Court

CONSENT TO JUDGMENT

32. The Seth Defendants acknowledge that they were served with a copy of the Summons and First Amended Complaint, have read and fully understands the foregoing Consent Judgment, understand the legal consequences involved in signing it, and are aware of their rights in this matter and have waived the same.

33. The Seth Defendants acknowledge that they are subject to the jurisdiction of the Court and consent to the entry of the foregoing judgment.

34. The Seth Defendants state that, other than what is contained herein, no promise of any kind or nature whatsoever was made to induce them to enter into this Consent Judgment and declare that they have entered into this Consent Judgment voluntarily.


35. This Consent Judgment is entered as a result of a compromise and a settlement agreement between the parties. Only the State may seek enforcement of this Consent Judgment. Nothing herein is intended to create a private right of action by other parties; however, this Consent Judgment does not limit the rights of any private party to pursue any remedies allowed by law.


36. The Seth Defendants acknowledge that their acceptance of this Consent Judgment is for the purpose of settling the ongoing consumer fraud lawsuit filed by the State, and further

1 acknowledge that this Consent Judgment does not preclude any agency or officer of this State
2 or subdivision thereof from instituting other civil proceedings as may be appropriate.

3 37. This Consent to Judgment may be executed in counterparts and be delivered by
4 facsimile or electronic transmission, or a copy thereof, such constituting an original counterpart
5 hereof, all of which together will constitute one and the same document.

6
7 DATED this 21st day of July, 2021.

8
9
10 By: 
11 _____
12 Nikesh Seth, M.D.


By: 


Ami Seth

13 **APPROVED AS TO FORM AND CONTENT:**

14 MARK BRNOVICH
15 Attorney General

Mitchell Stein Carey Chapman, PC

16
17 By: 
18 _____
19 Matthew du Mee
20 Assistant Attorney General
21 Attorneys for State of Arizona

By: 

Barry D. Mitchell
Kathleen E. Brody
Attorneys for the Seth Defendants

eSignature Page 1 of 1

Filing ID: 13177131 Case Number: CV2017-012008
Original Filing ID: 13164507

Granted as Submitted



/S/ Randall Warner Date: 7/27/2021
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2017-012008

SIGNATURE DATE: 7/27/2021

E-FILING ID #: 13177131

FILED DATE: 7/29/2021 8:00:00 AM

ADAM C ANDERSON

ALAN S BASKIN

ALEXANDRA MIJARES NASH

JENNIFER LYNN BONHAM

JONATHAN GRANT BRINSON

LAUREN ELLIOTT STINE