

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

INSYS THERAPEUTICS, INC.,	§	
Plaintiff,	§	
	§	Civil Action No. 3:15-cv-01190-D
v.	§	
	§	Judge Sidney A. Fitzwater
LANCE CLARK,	§	
Defendant.	§	

AMENDED COMPLAINT

Plaintiff Insys Therapeutics, Inc. brings this Amended Complaint against Defendant Lance Clark, and in support thereof states, as follows:

A. PARTIES

1. Plaintiff INSYS THERAPEUTICS, INC. (“Insys” or the “Company”) is a Delaware corporation with its principal place of business in Chandler, Arizona. Insys Therapeutics, Inc. operates through its wholly-owned subsidiary Insys Pharma, Inc., a Delaware corporation with its principal place of business in Chandler, Arizona. These entities report earnings on a consolidated basis.

2. Upon information and belief, Defendant LANCE CLARK (“Clark”) is a resident of Dallas, Texas, and may be served with process by service at his residence, 1400 Hi Lane Drive, Apartment 2217, Dallas, Texas 75207.

B. JURISDICTION AND VENUE

3. This Court has jurisdiction in this Action under 28 U.S.C. § 1332(a) because Plaintiff is a citizen of Delaware and Arizona and Defendant is a citizen of Texas, and because the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

4. Venue is proper in this District because Defendant resides in the Northern District of Texas, a substantial part of the events giving rise to the claims took place in the Northern District of Texas, and Defendant is subject to personal jurisdiction in the Northern District of Texas. *See* 28 U.S.C. § 1391.

C. PRELIMINARY STATEMENT

5. Plaintiff Insys is a specialty pharmaceutical company that develops and commercializes innovative supportive care products. Insys operates within a highly regulated industry.

6. Defendant was previously employed by Insys in a highly-compensated and trusted managerial sales position.

7. During his employment with Insys, Defendant improperly (a) participated in outside toxicology businesses, in conflict with the interests of the Company, without the Company's authorization, (b) utilized his position and professional relationships at Insys to actively and successfully recruit other sales personnel to join the outside toxicology businesses for his own personal gain, (c) leveraged and exploited his health care provider ("HCP") connections, which were established through his employment at Insys, to provide such HCPs with toxicology services for his own personal gain, and (d) used the confidential and proprietary information of Insys that he obtained through his relationship of trust and confidence with the Company in order to provide such HCPs with toxicology services for his own personal gain.

8. These unauthorized activities violated several Company policies and Clark's contractual obligations, as well as Clark's fiduciary duties and common law obligations as a full-time trusted employee, representative and agent of Insys.

9. Defendant has been terminated for Cause in connection with his improper and unauthorized conduct.

D. FACTS

Insys's Background

10. Among other commercial endeavors, Insys currently develops and markets Subsys, an opioid agonist indicated for the management of breakthrough pain in cancer patients 18 years of age and older who are already receiving and who are tolerant to opioid therapy for their underlying persistent cancer pain. Patients must remain on around-the-clock opioids when taking Subsys. Subsys is a transmucosal immediate-release fentanyl (TIRF) product that delivers fentanyl, an opioid analgesic, for transmucosal absorption underneath the tongue.

11. Insys promotes Subsys using a highly targeted approach designed to maximize impact with HCPs who are TIRF Risk Evaluation and Mitigation Strategy (REMS) enrolled. Enrollment in the TIRF-REMS program is required by the FDA as of March 2012 in order to prescribe TIRF products. Among other things, HCPs who prescribe Subsys are advised by Insys to monitor their patients' use of the prescribed drugs carefully for opioid toxicity, which may cause fatal respiratory depression, and to ensure the patients are using and not illegally selling them, by ordering toxicology screenings on those patients. These toxicology services provide an important, independent "check and balance" mechanism.

12. Insys employs a Senior Vice President of Sales, who supervises two or three Regional Sales Directors for the East, West and Central regions. Regional Sales Directors oversee a number of District Sales Managers, who recruit, hire, train, develop, manage and supervise sales representatives in those districts.

13. Insys has spent a significant amount of time and money over the last several years in training its sales force and educating a network of HCPs that prescribe Insys products on the clinical benefits of its products. As the medical community has increasingly grown to understand Subsys's unique clinical attributes and potential benefits to patients, sales of Subsys have continually increased since its commercial launch in March 2012 and the Company's sales organization and infrastructure have grown significantly over the past several years. During this period, the Company has also expended a great deal of time and money on obtaining prescription and market data, and market research studies related to Subsys.

14. Like their peers in the pharmaceutical industry, Insys sales professionals can receive significant compensation if they properly and effectively perform their position.

15. Upon its launch in March 2012, Subsys was the sixth entrant into the existing TIRF market. Accordingly, the Company's sales and marketing efforts have primarily targeted the top physicians prescribing the existing TIRF products that preceded Subsys in the market. These efforts have been very successful and many of the top physician prescribers in the TIRF-REMS program prescribe Subsys for their patients. Insys's sales approach has resulted in Subsys having the highest market share percentage of any TIRF product.

Insys Policies and Agreements

16. Policy 110 (Conflict of Interest), contained in the Insys Handbook for New Employees, requires that: "Employees should always act in the best interest of INSYS . . . and not permit outside interests to interfere with their job duties. This policy prohibits all employees from using their position with INSYS or relationships with INSYS clients, customers, physicians, patients, vendors, suppliers, contractors or advisors for private gain or to obtain benefits for themselves or members of their family. Employees have an obligation to conduct

business within guidelines that prohibit actual or potential conflicts of interest. . . . For purposes of this policy, a potential or actual ‘conflict of interest’ occurs when an employee’s outside interests (for example, financial or personal interests) interfere with the interests of INSYS or the INSYS employee’s work-related duties or when an employee is in a position to influence a decision that may result in a personal gain for that employee or for a relative. . . . If you become aware of any potential conflict of interest or ethical concern regarding your employment or another employee at INSYS, you must promptly speak to, write or otherwise contact the head of INSYS Human Resources Department (or the head of the Compliance or Legal Departments), as soon as possible.”

17. Policy 111 (Outside Employment), contained in the Insys Handbook for New Employees, requires that: “Employees are required to obtain written approval from their supervisor before participating in outside work activities. Approval will be granted unless the activity conflicts with the Company’s interest. In general, outside work activities are not allowed when they: Prevent the employee from fully performing work for which he or she is employed at the Company, including overtime assignments; Involve organizations that are doing or seek to do business with the Company, including actual or potential vendors or customers; or Violate provisions of law or the Company’s policies or rules. . . . Employees are hired and continue in INSYS’s employ with the understanding that INSYS is their primary employer and that other employment or commercial involvement which is in conflict with the business interests of INSYS is strictly prohibited.”

18. All employees are provided with a copy of the Insys Handbook for New Employees, which includes Policy 110 (Conflict of Interest) and Policy 111 (Outside Employment), upon commencement of employment. A copy of the Insys Handbook for New Employees is readily available and accessible on the Company's information website.

19. Under the Insys Proprietary Information and Inventions Assignment Agreement (the "Proprietary Agreement"), Insys employees agree, as a condition of employment with the Company, among other things, that they will not, either directly or indirectly: (a) at any time, use or disclose Insys's proprietary information which includes information regarding customers, including HCPs, or skills of employees, (b) engage in any employment or business activity that would conflict with their employment at the Company without the Company's express written consent, or (c) during and for the one-year period following employment by Insys, solicit or attempt to solicit any employee, independent contractor, or consultant of Insys to terminate his, her or its relationship with Insys in order to become an employee, consultant, or independent contractor to or for any other person or entity.

20. The Insys Therapeutics Confidential Information Policy (the "Confidentiality Agreement") provides that, among other things, (a) Insys employees must not use or disclose Insys's confidential information, except within the scope of employment, (b) Insys employees must surrender all Company documents and information upon termination of employment, and (c) obligations under the Confidentiality Agreement continue after employment with the Company has ended.

21. All Insys employees are required to review, acknowledge and agree to these policies and contracts.

Defendant's Employment with Insys

22. Clark was hired by Insys on February 25, 2013 as a Specialty Sales Professional (SSP). As an SSP, Clark served as a sales representative of the Company, responsible for selling and promoting Subsys and other Insys products with a focus on targeted physicians, pharmacists and nurses and the goal of establishing Insys as a market leader. The essential functions of his position included, without limitation: (a) effectively utilizing all available resources to sell and promote Insys products, (b) anticipating and responding to customer's questions, objections and concerns, (c) identifying, developing, maintaining and leveraging relationships with physicians, pharmacists, nurses and other individuals who make or influence purchasing/prescribing decisions, (d) developing and continually building a high level of clinical knowledge to successfully educate HCPs on Insys products, (e) providing the highest level of customer service, (f) representing Insys in a professional and competent manner, and (g) displaying the highest levels of integrity and professional conduct when representing Insys. As an SSP, Clark occupied a relationship of trust and confidence with the Company and was expected to act primarily for the benefit of Insys. Because Subsys is a highly regulated pain medication, it is imperative for SSPs to understand and appreciate its use and potential risks and explain those to HCPs. The Company trusted and relied on Clark as an SSP to build trusting and committed relationships with HCPs on behalf of the Company.

23. On November 10, 2014, Clark was promoted by the Company to District Sales Manager, STL. As District Sales Manager, in addition to Clark's responsibilities for relationships with HCPs and their office staff and key accounts, Clark had management responsibility for the sales operations of the STL District. He was required to develop and lead a district sales team in the execution of sales strategies to maximize sales objectives and increase profitability. His

principal accountabilities included, among other things: (a) recruiting, hiring, training, developing and managing his district's sales force, (b) preparing and managing his district's budget, (c) executing the district business plan to achieve the fulfillment of plan objectives, (d) executing the Company's district level account targeting strategies, (e) managing his district's customer needs, (f) overseeing the development and management of the Company's district account relationships, (g) directly managing the Company's critical district account relationships, and (h) implementing sales and marketing direction throughout his district. As District Sales Manager, Clark had little direct oversight. For all purposes, Clark was a representative of Insys.

24. As District Sales Manager, Clark represented the Company in the STL District and had authority to transact business on behalf of Insys. In such role, Clark exercised a large amount of discretion and influence. He had the authority to assign and re-assign customer accounts. He was expected to serve as an example to those sales representatives he managed and to communicate and enforce Company policies and values.

25. As the Company's senior manager in the STL District, Clark occupied a relationship of trust and confidence with the Company and was expected to act primarily for the benefit of Insys. The Company trusted and relied on Clark in his dealings with its existing and potential HCP customers and its sales force.

26. On February 25, 2013, Clark entered into the Proprietary Agreement.

27. On February 25, 2013, Clark also executed the Confidentiality Agreement.

28. On July 30, 2013, Clark acknowledged and accepted responsibility for complying with all Insys policies and procedures.

29. Clark was paid a substantial base salary and bonuses throughout his employment.

30. Clark also participated in the Insys Therapeutics, Inc. 2013 Employee Stock Purchase Plan, which allowed him to purchase common stock at, effectively, a 15% discount.

31. Clark's employment with Insys was terminated for Cause effective March 26, 2015, as a result of his blatant and significant violations of Policy 110 (Conflict of Interest) and Policy 111 (Outside Employment), his obligations under the Proprietary Agreement and the Confidentiality Agreement and his common law obligations as a full-time Insys employee and agent.

Defendant's Misconduct

32. In March 2015, Insys learned that during Clark's employment at Insys, Clark was actively working for, and potentially owned, one or more toxicology and marketing companies. Each of these other companies is based in Texas.

33. Clark engaged in such outside toxicology businesses while doing Insys business and on Insys time, starting no later than August 2014, while continuing to be paid in excess of \$220,000 in salary and quarterly bonuses from Insys.

34. In August 2014, Clark set up one or more HCPs, that were prescribing Subsys, with standing orders for toxicology services.

35. Insys also determined that Clark was utilizing his position and professional relationships at Insys to actively and successfully recruit other Insys sales representatives (i.e., SSPs) to join these outside business activities for his own personal gain. The number of Insys sales representatives who Clark solicited to engage in such activities is known only to Clark.

36. Clark was well aware of those sales representatives' job responsibilities, duties and contractual obligations to the Company, as they had the same responsibilities, duties and contractual obligations to the Company as Clark had as an SSP.

37. Nevertheless, Clark approached and pressured such Insys sales representatives to sell the outside toxicology services to the HCPs to whom they sold Insys products, and promised the sales representatives they would make a lot of money doing so.

38. In August 2014, Clark aggressively attempted to recruit an Insys sales representative to his outside toxicology businesses. Clark misrepresented to that sales representative that it was not against Company policy to engage in outside business activities. When that sales representative said she wanted to make sure that engaging in such businesses would not be a conflict of interest with her employment at Insys, Clark did not answer the question, but advised her to get a separate e-mail and cellphone for the toxicology businesses. Clark told her that she would miss out on a huge opportunity if she did not join and that it would be a mistake for her to leave so much money on the table. He even told her that the toxicology businesses could serve as her primary source of income. On August 14, 2014, Clark emailed to her contracts with and other relevant information pertaining to the toxicology businesses.

39. On August 21, 2014, Clark sent a contract to another Insys sales representative, who had agreed to participate in Clark's outside businesses. In exchange for work performed by the sales representative for Clark's outside toxicology businesses, the sales representative received a check, written by Clark, in the outside company's name.

40. Clark recruited one Insys sales representative to train new hires for the toxicology businesses, including Insys employees, while she was employed by the Company. One such training was held in Dallas, Texas in or about October 2014. Other Insys sales representatives and employees attended the training as well.

41. Clark exploited his and other Insys sales representatives' HCP connections which were established using the Insys platform solely during his and the other sales representatives' employment at Insys for his own personal gain. Clark specifically targeted the network of TIRF-REMS participating HCPs that Insys had developed, at Insys's significant time and expense, who Clark knew would need toxicology services based upon his interactions with these HCPs during the scope of his duties at Insys. Clark improperly, and in conflict with the Company's interests and written policies, encouraged those HCPs to use his toxicology services in exchange for referral or consulting fees.

42. As part of its marketing efforts, Insys retains qualified HCPs to serve as speakers at promotional speaker programs designed to educate other HCPs about Subsys. Clark threatened to take a speaker program away from an HCP if he did not agree to use Clark's outside companies for toxicology services.

43. Sales personnel at the Company were given preferential treatment by Clark for their involvement with his outside toxicology companies, such as more desired territories and HCPs for their sales.

44. Sales personnel who refused to be involved with Clark's outside toxicology businesses received negative treatment from Clark.

45. An Insys employee reported that Clark "wage[d] war" against another Insys sales representative due to her reluctance to encourage Insys HCPs to engage Clark's outside businesses for toxicology services. Upon information and belief, that sales representative said, "You can't go against Lance because he'll go after you."

46. In addition, Clark took away several of another sales representative's top HCPs, who had been selling toxicology services for Clark's outside businesses, as retaliation for not continuing to do so.

47. Several employees have allegedly resigned from Insys in response to monetary disputes with Clark regarding their involvement in his toxicology businesses.

48. Clark's activity violated several company policies, including Policy 110 (Conflict of Interest) and Policy 111 (Outside Employment), Clark's contractual obligations under the Proprietary Agreement and the Confidentiality Agreement, as well as his common law obligations as a full time employee and fiduciary of Insys.

49. Upon information and belief, Clark earned a significant amount of money in connection with his and other Insys employees' services to the outside toxicology businesses. Clark proudly admitted to a senior company executive that he earned \$1.5M in connection with these outside business endeavors. Clark's employment with Insys was terminated shortly thereafter.

50. Clark's misconduct has caused and will continue to cause significant disruption to the productivity of Insys's sales force and Insys's relationships with HCPs. Had the Company known of Clark's misconduct, it would have terminated his employment for Cause sooner.

E. COUNTS

COUNT 1 - Breaches of Contract Against Defendant

51. Insys incorporates by reference all preceding and succeeding paragraphs of this Complaint.

52. Insys and Clark entered into a valid and enforceable written Proprietary Agreement effective February 25, 2013.

53. Insys and Clark entered into a valid and enforceable written Confidentiality Agreement effective February 25, 2013.

54. On July 30, 2013, Clark acknowledged and accepted responsibility for complying with all Insys policies and procedures.

55. Insys has fully performed its contractual obligations under the Proprietary Agreement, Confidentiality Agreement, Company Policy 110 (Conflict of Interest) and Company Policy 111 (Outside Employment).

56. Clark materially breached the Proprietary Agreement by unlawfully using Company proprietary information relating to customers and skills and compensation of Company's employees and soliciting Company employees.

57. Clark materially breached the Confidentiality Agreement by using confidential information for personal gain, outside the scope of his employment.

58. Clark materially breached Company Policy 110 (Conflict of Interest) by using his Insys position and professional relationships for private gain, which created a conflict of interest that was never disclosed to the Company.

59. Clark materially breached Company Policy 111 (Outside Employment) by failing to obtain written approval before participating in unauthorized outside work activities that

prevented him from fully performing work for which he was employed and violated Company policies.

60. Clark's breaches, including those set forth above, proximately caused irreparable injury to Insys.

COUNT 2 – Tortious Interference with Contracts Against Defendant

61. Insys incorporates by reference all preceding and succeeding paragraphs of this Complaint.

62. Insys entered into valid and enforceable written contracts with Insys sales representatives, including the Proprietary Agreement, the Confidentiality Agreement, and Company Policies 110 and 111.

63. Insys has fully performed its contractual obligations under these agreements and policies.

64. Clark was aware of the terms of the Company's contracts with Insys employees.

65. Clark interfered with the contracts by willfully and intentionally causing Insys employees to breach the terms of the agreements and policies.

66. This interference proximately caused irreparable injury to Insys, causing actual damage and loss.

COUNT 3 - Breaches of Fiduciary Duties Against Defendant

67. Insys incorporates by reference all preceding and succeeding paragraphs of this Complaint.

68. Defendant owed fiduciary duties to the Company as both its SSP and District Sales Manager.

69. Defendant served as an agent for Insys both through his interactions and sales transactions on behalf of the Company with the Company's HCP customers and his development and management of a sales force.

70. Defendant also agreed to perform the duties of an agent by agreeing to comply with Company Policy 110, which prohibits employees from using their position with Insys or relationship with Insys clients, customers, physicians, patients, vendors, suppliers, contractors or advisors for private gain or to obtain benefits for themselves or members of their family.

71. In addition, throughout his employment with the Company, Defendant occupied a special relationship of trust and confidence with Insys and was expected to act solely for the benefit of Insys in all matters connected with such relationship.

72. Clark owed fiduciary duties to Insys including, but not limited to, the duty to act primarily for the benefit of the Company, the duty not to compete with the Company on his own account, the duty of integrity of the strictest kind, the duty of fair and honest dealing, and the duty to deal openly and not to conceal matters which might influence his actions to Insys's detriment. By virtue of these fiduciary duties, Clark was prohibited from using his relationship with Insys and its customers and employees to further his personal interests at the expense of Insys, except with the full knowledge and consent of Insys. Clark was obligated to make reasonable use of the confidence Insys placed in him as its sales representative, agent and manager. Clark also had a duty to account for all profits arising out his employment.

73. The totality of conduct and actions alleged and ascribed to Clark during his employment by Insys demonstrates that Clark has breached the fiduciary duties Clark owed Insys during such period by, among other things, (a) using Insys's proprietary and confidential information for personal gain, (b) soliciting Insys employees for his personal gain while they

were employed by Insys, (c) using the professional relationships he had developed with HCPs while employed by Insys for personal gain, (d) abusing his position of power to give preferential treatment to Insys employees whom were complicit in his unlawful activities and retaliating against those whom were not, and (e) pursuing personal business interests during work time. Clark did so intentionally, willfully, knowingly, wantonly, recklessly, maliciously, deceptively, fraudulently, in bad faith, and/or in a grossly negligent manner.

74. By such acts, Clark did not make reasonable use of the confidence that the Company placed in him.

75. By such acts, Clark failed to act in the utmost good faith or exercise the most scrupulous honesty toward the Company.

76. By such acts, Clark placed his own interests before the Company's, used the advantage of his position to gain a benefit for himself at the expense of the Company, and placed himself in a position where his self-interest conflicted with his obligations as a fiduciary.

77. Clark failed to fully and fairly disclose his outside business activities and such other acts to Insys and never received consent to engage in such activities.

78. As a consequence of Clark's intentional breaches of his fiduciary duties, Insys has and will continue to be injured and Clark has benefitted.

79. As a consequence of Clark's intentional breaches of his fiduciary duties, Insys is entitled to the disgorgement of all compensation, including salary and incentive bonuses it paid to Clark during the periods in which he breached his fiduciary duties, plus interest.

80. As a consequence of Clark's intentional breaches of his fiduciary duties, Insys is also entitled to the profits earned by Clark in connection with unauthorized services provided by Clark while employed by Insys.

COUNT 4 - Aiding and Abetting Breaches of Fiduciary Duties Against Defendant

81. Insys incorporates by reference all preceding and succeeding paragraphs of this Complaint.

82. The Insys sales representatives (i.e., SSPs) who Clark recruited to engage in the outside toxicology business owed fiduciary duties to Insys.

83. Like Clark, such sales representatives served as agents for Insys through their interactions and sales transactions on behalf of the Company with the Company's HCP customers.

84. Like Clark, such sales representatives also agreed to perform the duties of an agent by agreeing to comply with Company Policy 110, which prohibits employees from using their position with Insys or relationship with Insys clients, customers, physicians, patients, vendors, suppliers, contractors or advisors for private gain or to obtain benefits for themselves or members of their family.

85. Like Clark, such sales representatives occupied a special relationship of trust with and confidence with Insys and were expected to act solely for the benefit of Insys in all matters connected with such relationship.

86. Clark was aware of the fiduciary duties owed by sales representatives to Insys,

87. Clark knowingly and successfully induced a number of the Company's sales representatives to breach the fiduciary duties they owed to Insys by soliciting such sales representatives to sell outside toxicology services to the HCPs to whom they sold Insys products.

88. Clark knowingly participated and substantially assisted in the breaches of fiduciary duties owed by such sales representatives to Insys by promising them they would make a lot of money by engaging in the outside toxicology business. In addition, when he was District

Sales Manager, Clark provided favorable treatment to sales representatives who participated in the outside toxicology business and unfavorable treatment to those who would not do so.

89. This knowing inducement of and participation and assistance in breaches of fiduciary duties proximately caused irreparable injury to Insys, causing actual damage and loss, while Clark has benefitted.

COUNT 5 - Breach of Duty of Loyalty Against Defendant

90. Insys incorporates by reference all preceding and succeeding paragraphs of this Complaint.

91. As an employee of Insys, Clark owed the Company a common law duty of loyalty.

92. Such common law duty of loyalty precluded Clark from soliciting the Company's customers for his own personal gain while he was employed by the Company,

93. Such common law duty of loyalty precluded Clark from using the Company's employees for his own personal gain while he was employed by the Company.

94. Such common law duty of loyalty precluded Clark from disclosing or using the Company's confidential and proprietary information for his own benefit.

95. The totality of conduct and actions alleged and ascribed to Clark during his employment by Insys demonstrates that Clark has breached the common law duty of loyalty he owed Insys during such period by, among other things, (a) using Insys's proprietary and confidential information for personal gain, (b) soliciting Insys employees while they were employed by Insys, (c) using the professional relationships he had developed with HCPs while employed by Insys for personal gain, (d) abusing his position of power to give preferential treatment to Insys employees whom were complicit in his unlawful activities and retaliating against those whom were not, and (e) pursuing personal business interests during work time.

Clark did so intentionally, willfully, knowingly, wantonly, recklessly, maliciously, deceptively, fraudulently, in bad faith, and/or in a grossly negligent manner.

96. Clark failed to fully and fairly disclose his outside business activities and such other acts to Insys and never received consent to engage in such activities.

97. As a consequence of Clark's intentional breach of his duty of loyalty, Insys has and will continue to be injured and Clark has benefitted.

98. As a consequence of Clark's intentional breach of his duty of loyalty, Insys is entitled to the disgorgement of all compensation, including salary and incentive bonuses it paid to Clark during the periods in which he breached his duty of loyalty, plus interest.

99. As a consequence of Clark's intentional breach of his duty of loyalty, Insys is also entitled to the profits earned by Clark in connection with unauthorized services provided by Clark while employed by Insys.

COUNT 6 - Aiding and Abetting Breaches of Duty of Loyalty Against Defendant

100. Insys incorporates by reference all preceding and succeeding paragraphs of this Complaint.

101. The Insys sales representatives (i.e., SSPs) who Clark recruited to engage in the outside toxicology business owed the Company a common law duty of loyalty.

102. As with Clark, such common law duty of loyalty precluded such sales representatives from soliciting the Company's customers for their own personal gain while they were employed by the Company,

103. As with Clark, such common law duty of loyalty precluded such sales representatives from disclosing or using the Company's confidential and proprietary information for their own benefit.

104. Clark was aware of the duty of loyalty owed by sales representatives to Insys,

105. Clark knowingly and successfully induced a number of the Company's sales representatives to breach the duty of loyalty they owed to Insys by soliciting such sales representatives to sell outside toxicology services to the HCPs to whom they sold Insys products.

106. Clark knowingly participated and substantially assisted in the breaches of the duty of loyalty by such sales representatives to Insys by promising them they would make a lot of money by engaging in the outside toxicology business. In addition, when he was District Sales Manager, Clark provided favorable treatment to sales representatives who participated in the outside toxicology business and unfavorable treatment to those who would not do so.

107. This knowing inducement of and participation and assistance in breaches of the duty of loyalty caused irreparable injury to Insys, causing actual damage and loss, while Clark has benefitted.

F. PRAYER

For the foregoing reasons, Insys asks that it be awarded a judgment against Defendant for the following:

- a. Actual Damages in an amount expected to significantly exceed \$75,000;
- b. Compensation Disgorgement;
- c. Profit Disgorgement;
- d. Equitable Relief;
- e. Exemplary Damages;
- f. Prejudgment and Postjudgment Interest;
- g. Court costs;
- h. Attorney Fees; and
- i. All other relief to which Plaintiff is entitled.

Date: July 2, 2015

Respectfully submitted,

/s/ Noelle M. Reed

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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2015, the attached document was electronically transmitted to the Clerk of the Court using the ECF System for filing and transmittal of Notice of Electronic Filing to the attorneys of record in this matter.

/s/ Noelle M. Reed

Noelle M. Reed