

fraudulently obtain approval for the drug.

(p) negligence/recklessness/wantonness as a matter of law.

95. On behalf of the beneficiaries of Decedent, Deborah Fuller and David Fuller, as the Administrators Ad Prosequendum for the Estate of Sarah A. Fuller, Deceased, and Deborah Fuller and David Fuller, individually, claim damages for the full damages allowed under the Wrongful Death Act and all decisional law interpreting said statute for the pain, suffering, and inconvenience endured by Decedent prior to death, including, but not limited to, physical pain and suffering, mental pain and suffering and the fright and mental suffering attributed to the peril leading to Decedent's death.

WHEREFORE, Plaintiffs, Deborah Fuller and David Fuller, as Administrator Ad Prosequendum for the Estate of Sarah A. Fuller, Deceased, and Deborah Fuller and David Fuller, individually, demand damages and judgment against Defendant, Insys Therapeutics, Inc., John Kapoor, Michael Babich and Alec Burlakoff, individually, jointly, severally or in the alternative, exclusive of pre-judgment interest, post-judgment interest, costs, counsel fees and all other damages allowable by law.

THIRD COUNT - NEGLIGENCE - WRONGFUL DEATH

Plaintiffs, Deborah Fuller and David Fuller, as Administrator Ad Prosequendum for the Estate of Sarah A. Fuller, Deceased, and Deborah Fuller and David Fuller, Individually v. Defendant, Rochester Drug Co-Operative, Inc.

96. Plaintiffs incorporate the previous paragraphs at length in this count as fully set forth herein at length.

97. At the time of Decedent, Sarah A. Fuller's death, she left surviving her mother and father,

Deborah Fuller and David Fuller, and her sister, Barbara Fuller.

98. At the time of Decedent, Sarah A. Fuller's death and by reason of that wrongful death, Plaintiffs and all surviving family members and beneficiaries have suffered pecuniary losses and loss of household services and all are pursuing this applicable cause of action under and by virtue of the New Jersey Wrongful Death Statute known and designated as N.J.S.A. 2A:31-1 through 6.
99. The actions of the Defendants, Rochester Drug Co-Operative, as aforesaid constitute fraud, deception, misrepresentation, wantonness, negligence and gross negligence that endangered the life, safety, health and welfare of the general public and Sarah A. Fuller.
100. The grievous injuries, pain, suffering and ultimate death of Sarah A. Fuller, were caused solely and exclusively by the negligence and other wrongful conduct of Defendant, jointly, severally and/or individually, and/or by their agents, servants, and employees.
101. The liability of the Defendant is predicated upon individual acts and/or on principles of respondeat superior and the Defendant is liable individually, jointly, severally and/or in the alternative.
102. The injuries/death sustained by Decedent, Sarah Fuller, as aforesaid, were directly and proximately caused by the negligent, careless, wanton, willful and reckless conduct of Defendant and consisted of, but is not limited to, the following:
 - (a) manipulation and subversion of the TIRF-REMS access program by knowing Subsys was only indicated for breakthrough pain as a result of malignant cancer and that was the only medical condition for which it should dispense Subsys and therefore knowingly causing a serious risk or

harm and death;

- (b) assisting Insys and Linden Care with its scheme of marketing, promoting and encouraging the medical community to prescribe Subsys for unapproved indications by ensuring Insys that it would fill and dispense and ultimately did fill and dispense hundreds of thousands of off-label prescriptions for Subsys throughout the country, including those for Sarah Fuller;
- (c) violating New Jersey regulations regarding the dispensing of a schedule II narcotic by dispensing to Linden Care knowing that prescriptions for Subsys were being filled via facsimile and dispensing upon the receipt of that faxed prescription;
- (d) violating FDA prescribing/describing requirements for Subsys as well as the TIRF-REMS access program by assisting Linden Care in dispensing an initial prescription of Subsys at 200 mcg for Sarah Fuller;
- (e) violating FDA prescribing/describing requirements for Subsys as well as the TIRF-REMS access program by assisting Linden Care in filling and dispensing the second prescription of Subsys for Sarah Fuller for 600 mcg, triple the initial prescription that it dispenses less than one month earlier;
- (f) directly knew or should have known that Linden Care was regularly filling and dispensing prescriptions for Subsys for unapproved indications, including Sarah Fuller which it knew caused a serious risk of harm and death;

- (g) knowing that the amount of Subsys that it was dispensing throughout the country from 2012-2016 increased drastically and that the increase was due to prescriptions being written off-label for non-cancer related pain, including those for Sarah Fuller;
- (h) failing to train, oversee and manage its employees for the proper, safe and lawful dispensing of Subsys for its patients throughout the country, including Sarah Fuller;
- (i) failing to report suspicious orders of Subsys to the DEA as required by law;
- (j) negligence/recklessness/wantonness as a matter of law.

103. On behalf of the beneficiaries of Decedent, Deborah Fuller and David Fuller, as the Administrators Ad Prosequendum for the Estate of Sarah A. Fuller, Deceased, and Deborah Fuller and David Fuller, individually, claim damages for the full damages allowed under the Wrongful Death Act and all decisional law interpreting said statute for the pain, suffering, and inconvenience endured by Decedent prior to death, including, but not limited to, physical pain and suffering, mental pain and suffering and the fright and mental suffering attributed to the peril leading to Decedent's death.

WHEREFORE, Plaintiffs, Deborah Fuller and David Fuller, as Administrator Ad Prosequendum for the Estate of Sarah A. Fuller, Deceased, and Deborah Fuller and David Fuller, individually, demand damages and judgment against Defendant, Rochester Drug Co-Operative, Inc. under the Wrongful Death Act, exclusive of pre-judgment interest, post-judgment interest, costs, counsel fees and all other damages allowable by law.

FOURTH COUNT - NEGLIGENCE-SURVIVAL ACTION

Plaintiffs, Deborah Fuller and David Fuller, as Administrator Ad Prosequendum for the Estate of Sarah A. Fuller, Deceased, and Deborah Fuller and David Fuller, Individually v. Defendant, Rochester Drug Co-Operative, Inc.

104. Plaintiffs incorporate the previous paragraphs at length in this count as fully set forth herein at length.
105. Plaintiffs, Deborah Fuller and David Fuller, as Administrators Ad Prosequendum for the Estate of Sarah A. Fuller, Deceased, and Deborah Fuller and David Fuller, Individually bring this Survival Action on behalf of the Estate of Sarah A. Fuller, Deceased under and by virtue of N.J.S.A. 2A:31-4.
106. As a result of the acts and omissions of Defendants, the negligence, recklessness and wantonness of Defendants, Plaintiff's Decedent was caused significant pain and suffering and anguish for a lengthy period before her death resulting in the entitlement to damages by said beneficiaries under the Survival Act.
107. The injuries/death sustained by Decedent, as aforesaid, were directly and proximately caused by the negligent, careless, wanton, willful and reckless conduct of Defendant and consisted of, but is not limited to, the following:
- (a) manipulation and subversion of the TIRF-REMS access program by knowing Subsys was only indicated for breakthrough pain as a result of malignant cancer and that was the only medical condition for which it should dispense Subsys and therefore knowingly causing a serious risk or harm and death;
 - (b) assisting Insys and Linden Care with its scheme of marketing, promoting

and encouraging the medical community to prescribe Subsys for unapproved indications by ensuring Insys that it would fill and dispense and ultimately did fill and dispense hundreds of thousands of off-label prescriptions for Subsys throughout the country, including those for Sarah Fuller;

- (c) violating New Jersey regulations regarding the dispensing of a schedule II narcotic by dispensing to Linden Care knowing that prescriptions for Subsys were being filled via facsimile and dispensing upon the receipt of that faxed prescription;
- (d) violating FDA prescribing/describing requirements for Subsys as well as the TIRF-REMS access program by assisting Linden Care in dispensing an initial prescription of Subsys at 200 mcg for Sarah Fuller;
- (e) violating FDA prescribing/describing requirements for Subsys as well as the TIRF-REMS access program by assisting Linden Care in filling and dispensing the second prescription of Subsys for Sarah Fuller for 600 mcg, triple the initial prescription that it dispenses less than one month earlier;
- (f) directly knew or should have known that Linden Care was regularly filling and dispensing prescriptions for Subsys for unapproved indications, including Sarah Fuller which it knew caused a serious risk of harm and death;
- (g) knowing that the amount of Subsys that it was dispensing throughout the country from 2012-2016 increased drastically and that the increase was

due to prescriptions being written off-label for non-cancer related pain,
including those for Sarah Fuller;

- (h) failing to train, oversee and manage its employees for the proper, safe and lawful dispensing of Subsys for its patients throughout the country, including Sarah Fuller;
- (i) failing to report suspicious orders of Subsys to the DEA as required by law;
- (j) negligence/recklessness/wantonness as a matter of law.

108. On behalf of the beneficiaries of Decedent, Deborah Fuller and David Fuller as the Administrators Ad Prosequendum for the Estate of Sarah A. Fuller, Deceased, and Deborah A. Fuller and David Fuller, individually, claim damages for the full damages allowed under the Survival Act and all decisional law interpreting said statute for the pain, suffering, and inconvenience endured by Decedent prior to death, including, but not limited to, physical pain and suffering, mental pain and suffering and the fright and mental suffering attributed to the peril leading to Decedent's death.

WHEREFORE, Plaintiffs, Deborah Fuller and David Fuller, as Administrator Ad Prosequendum for the Estate of Sarah A. Fuller, Deceased, and Deborah Fuller and David Fuller, individually, demand damages and judgment against Defendant, Rochester Drug Co-Operative, Inc., under the Wrongful Death Act, exclusive of pre-judgment interest, post-judgment interest, costs, counsel fees and all other damages allowable by law.

FIFTH COUNT - COMMON LAW FRAUD

Deborah Fuller and David Fuller, as Administrators of the Estate of Sarah A. Fuller, Deceased, and Deborah Fuller and David Fuller individually v. Insys Therapeutics, Inc., John Kapoor, Michael Babich, Alec Burlakoff and Rochester Drug Co-Operative, Inc.

109. Plaintiffs incorporate the previous paragraphs at length in this count as fully set forth herein.
110. The Defendants Insys, John Kapoor, Michael Babich, Alec Burlakoff, and Rochester Drug Co-Operative, Inc., independently and collectively, falsely and fraudulently represented to the public and specifically to Sarah Fuller and her family that the drug, Subsys, was indicated and found to be safe and effective for the treatment of non-cancer pain when they knew it was only approved by the FDA for the very limited purpose of treating patients with breakthrough cancer pain. The Defendants conspired and colluded in having Subsys prescribed and dispensed regularly and systematically throughout the country for people that did not have cancer and for which Subsys was extremely deadly and dangerous, including Sarah Fuller and intentionally hid the suspicious illegal activity from the DEA.
111. As a direct result of the Defendants instruction and training of their employees to mislead and deceive insurers regarding their employment, patient diagnoses and tried and failed medications, a call was made to Sarah Fullers' insurer on January 7, 2015, and it was misrepresented that the call was being made from the office of the Decedent's doctor and false information was provided regarding the Decedent's diagnosis and tolerance to opioids in order to fraudulently obtain approval for Subsys.

112. The representations made by Defendants were, in fact, false and when the Defendants made their representations they knew they were false and they willfully, wantonly, and recklessly disregarded the extreme danger of causing serious illness, addiction and death to non-cancer patients who used Subsys. Moreover, these false representations were carried out through Defendants' manipulation, subversion and violation of the TIRF-REMS access program.
113. The false representations made by Defendants were carried out with the intent to defraud and deceive the Plaintiffs, the Decedent, the Decedent's insurer and the public for the sole purpose of increasing prescriptions, sales and consumption of Subsys to increase Defendant's profits, all of which evidenced a callous, willful, reckless and depraved indifference to the health, safety and welfare of the Decedent, Sarah A. Fuller and the public.
114. At the time the misrepresentations were made by the Defendants, the Plaintiffs herein, the Decedent, Sarah A. Fuller, and the Decedent's insurer were unaware of the falsity of those representations and reasonably relied upon the false representations of defendants.
115. In reliance upon the Defendant's false representations the Decedent, Sarah A. Fuller, was induced into using Subsys for the treatment of a condition for which it was not approved and clearly was not safe, believing it to be safe, appropriate and effective.
116. Had the Decedent, Sarah A. Fuller, known the true facts that Subsys was only approved for treatment of patients with breakthrough cancer pain and that Subsys was never tested, proven to be effective, safe nor approved by the FDA for her condition, she would never have used the drug.

117. Had the Decedent's insurer known the true facts that Sarah Fuller did not have cancer and was not suffering from breakthrough cancer pain, the prescription would never have been approved and the Decedent would never have used the drug.
118. Had the Defendant Rochester Drug Co-Operative, Inc. lawfully reported the illegal suspicious activity to the DEA rather than conspire to mislead the public the prescription would not have been approved and decedent would never have used the drug.
119. The Defendants' wrongful conduct constitutes fraud, deceit and was committed and perpetrated willfully, wantonly, and purposely upon Decedent, Sarah A. Fuller.
120. As a direct result of Defendants fraudulent conduct, Decedent, Sarah A. Fuller, was caused grievous sickness, suffering, addiction and untimely death.

WHEREFORE, Plaintiffs, Deborah Fuller and David Fuller, as Administrator Ad Prosequendum for the Estate of Sarah A. Fuller, Deceased, and Deborah Fuller and David Fuller, individually, demand compensatory damages, treble damages and punitive damages in judgment against Defendants, Insys Therapeutics, Inc., John Kapoor, Michael Babich, Alec Burlakoff and Rochester Drug Co-Operative, Inc. individually, jointly, severally and/or in the alternative exclusive of pre-judgment interest, post-judgment interest, costs, counsel fees and all other damages allowable by law.

SIXTH COUNT - NEGLIGENT MISREPRESENTATION

Plaintiffs, Deborah Fuller and David Fuller, as Administrator Ad Prosequendum for the Estate of Sarah A. Fuller, Deceased, and Deborah Fuller and David Fuller, Individually v. Insys Therapeutics, Inc., John Kapoor, Michael Babich, Alec Burlakoff and Rochester Drug Co-Operative

121. Plaintiffs incorporate the previous paragraphs at length in this count as fully set forth herein at length.
122. The Defendants herein had a duty to accurately and truthfully represent to the public and the Decedent herein that Subsys was only approved to be safe and effective for the treatment of patients with cancer pain from malignancies and that it was not approved by the FDA as safe and effective for the treatment of non-cancer pain and it would not be marketed and dispensed otherwise.
123. The Defendants, through the TIRF-REMS access program and certifications, agreed and certified that Subsys would only be prescribed and dispensed solely for patients suffering breakthrough pain due to malignant cancer; yet the Defendants manipulated and violated said provisions and requirements.
124. The representations made by the Defendants through their multiple unlawful and fraudulent acts were, in fact, false. Defendant's failure to report the illegal activity of the co-defendants and others was an intentional and material misrepresentation of fact. Decedent, Sarah Fuller, as well as others, reasonably relied upon Defendants' negligent misrepresentations and omissions which led her to unknowingly consuming Subsys for which it was not indicated for her and instead posed extreme risk or harm and death.

125. The Defendants failed to exercise reasonable and ordinary care in making their representations to the public and the Decedent concerning Subsys while they were marketing, promoting, selling and distributing, and dispensing Subsys to the public and the Decedent and the Defendants' intent and purpose was for the medical community to prescribe Subsys and consumers to ingest Subsys for medical conditions that were unapproved and for which the drug was unsafe and ineffective all for their financial benefit.
126. The Defendants failed to report the illegal suspicious activities to the DEA as required by law and knowingly and intentionally hid said information from law enforcement authorities.
127. As a foreseeable, direct and proximate result of the negligent misrepresentations of the Defendants to the medical community, the general public, and the Decedent, the Decedent relied upon said misrepresentations and believed it was to take Subsys for her non-cancer pain.
128. The grievous suffering, injuries and death of Sarah A. Fuller were proximately caused by and/or contributed to by the negligence, fraud, wantonness, recklessness and intentional wrongful behavior of the defendants, their agents, servants and/or employees, and were due in no manner whatsoever to any act or failure to act on the part of Sarah A. Fuller.

WHEREFORE, Plaintiffs, Deborah Fuller and David Fuller, as Administrator Ad Prosequendum for the Estate of Sarah A. Fuller, Deceased, and Deborah Fuller and David Fuller, individually, demand damages, compensatory and punitive damages, and judgment against Defendants, Insys Therapeutics, Inc., John Kapoor, Michael Babich, Alec Burlakoff and

Rochester Drug Co-Operative, Inc, individually, jointly severally and/or in the alternative, exclusive of pre-judgment interest, post-judgment interest, costs, counsel fees and all other damages allowable by law.

SEVENTH COUNT

Plaintiffs, Deborah Fuller and David Fuller, as Administrator Ad Prosequendum for the Estate of Sarah A. Fuller, Deceased, and Deborah Fuller and David Fuller, Individually v. Defendants John Doe 1-10 (fictitious) and ABC Corporation 1-10 (fictitious)

129. Plaintiffs incorporate the previous paragraphs in this count as fully set forth herein at length and are asserting all causes of action that were previously stated against all of the specifically named Defendant under each and every count.
130. Defendant John Doe 1-10 (fictitious) are the fictitious names of physicians, doctors or other health care providers, duly licensed to practice in the state of New Jersey, who, at all times relevant hereto, were engaged in the practice of their profession and provided medical services to Sarah A. Fuller for profit including but not limited to issuing prescriptions for narcotics and other dangerous drugs.
131. Defendant, ABC Corporation 1-10 (fictitious), is a New Jersey corporate/business entity, professional association, partnership and/or medical practice that at all times relevant hereto was providing health care services and/or pharmaceutical services for profit in the State of New Jersey. ABC Corporation 1-10 provided health care services to further its business interests.

WHEREFORE, Plaintiffs, Deborah Fuller and David Fuller, as Administrator Ad Prosequendum for the Estate of Sarah A. Fuller, Deceased, and Deborah Fuller and David Fuller, individually, demand damages and judgment against Defendants, John Doe 1-10 (fictitious) and ABC Corporation 1-10 (fictitious) individually, jointly severally and/or in the alternative, under the Wrongful Death Act, exclusive of pre-judgment interest, post-judgment interest, costs,

counsel fees and all other damages allowable by law.

EIGHTH COUNT - PUNITIVE DAMAGES


Plaintiffs, Deborah Fuller and David Fuller, as Administrator Ad Prosequendum for the Estate of Sarah A. Fuller, Deceased, and Deborah Fuller and David Fuller, Individually v. Insys Therapeutics, Inc., John Kapoor, Michael Babich, Alec Burlakoff, Rochester Drug Co-Operative, Inc., John Doe # 1-10 (fictitious) and ABC Corporation #1-10 (fictitious)

132. Plaintiffs incorporate the previous paragraphs at length in this count as though fully set forth herein at length.
133. Defendants knew or should have known that their actions with the marketing, prescribing and dispensing of Subsys posed a significant risk of serious health problems and/or death and their actions, individually and collectively were wanton and reckless and in wilful disregard to the rights and safety of Decedent, Sarah A. Fuller.
134. As a result of the reckless and wanton acts and omissions of Defendants, individually and collectively, Decedent, Sarah Fuller, was caused significant pain and suffering and anguish for a lengthy period of time which then ultimately led to her death.
135. The injuries/death sustained by Decedent, Sarah Fuller, as aforesaid, were directly and proximately caused by the wanton, wilful and reckless conduct of Defendants as fully set forth in detail throughout Plaintiff's Complaint.

WHEREFORE, Plaintiffs, Deborah Fuller and David Fuller, as Administrator Ad Prosequendum for the Estate of Sarah A. Fuller, Deceased, and Deborah Fuller and David Fuller, individually, demand damages and judgment against Defendants, Insys Therapeutics, Inc., John Kapoor, Michael Babich, Alec Burlakoff, Rochester Drug Co-Operative, Inc., John Doe 1-10, (fictitious) and ABC Corporation 1-10, (fictitious), for treble damages and/or punitive damages,

together with interest, attorney fees and costs of suit as well as any other damages the court
deems just and are allowable by law.


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