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12 **UNITED STATES DISTRICT COURT**
 13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 MICHAEL HUSTIG, Individually
 15 and on Behalf of All Others Similarly
 16 Situated,

17 Plaintiff,

18 v.

19 OBALON THERAPEUTICS, INC.,
 20 ANDREW RASDAL, and WILLIAM
 21 PLOVANIC,

22 Defendants.

23 Case No.: '18CV0352 AJB WVG

24 **CLASS ACTION COMPLAINT**
 25 **FOR VIOLATIONS OF THE**
 26 **FEDERAL SECURITIES LAWS**

27 **JURY TRIAL DEMANDED**

1 Plaintiff Michael Hustig (“Plaintiff”), by and through his attorneys, alleges
2 the following upon information and belief, except as to those allegations concerning
3 Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and
4 belief is based upon, among other things, his counsel’s investigation, which includes
5 without limitation: (a) review and analysis of regulatory filings made by Obalon
6 Therapeutics, Inc. (“Obalon” or the “Company”), with the United States Securities
7 and Exchange Commission (“SEC”); (b) review and analysis of press releases and
8 media reports issued by and disseminated by Obalon; and (c) review of other
9 publicly available information concerning Obalon.
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13 **NATURE OF THE ACTION AND OVERVIEW**

14 1. This is a class action on behalf of all persons and entities that purchased
15 or otherwise acquired Obalon common stock between October 5, 2016 and January
16 23, 2018, inclusive (the “Class Period”). Plaintiff pursues claims under the
17 Securities Exchange Act of 1934 (the “Exchange Act”).
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19 2. Obalon is purportedly a medical device company that develops and
20 commercializes medical devices to treat obese and overweight people by facilitating
21 weight loss. The Company claims that its initial product offering is the Obalon
22 balloon system, a U.S. Food and Drug Administration (“FDA”) approved
23 swallowable, gas-filled intragastric balloon designed to provide progressive and
24 sustained weight loss in obese patients.
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1 3. On January 23, 2018, Obalon issued a press release disclosing that “a
2 purported whistleblower contacted KPMG LLP, the Company’s independent
3 auditors, to make certain allegations relating to allegedly improper revenue
4 recognition during the Company’s fourth fiscal quarter of 2017.” The Company
5 further stated that “Obalon’s Audit Committee will oversee an internal investigation
6 of these allegations.”
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9 4. On this news, Obalon’s stock price fell \$1.73 per share, or 33.3%, to
10 close at \$3.46 per share on January 23, 2018, on unusually heavy volume. The
11 \$3.46 closing price represented a total decline of \$11.54, or nearly 77%, from the
12 IPO price of \$15.00 per share.
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14 5. Throughout the Class Period, Defendants made false and/or misleading
15 statements, as well as failed to disclose material adverse facts about the Company’s
16 business, operations, and prospects. Specifically, Defendants failed to disclose: (1)
17 that the Company recognized revenue in violation of Generally Accepted
18 Accounting principles (“GAAP”); (2) that the Company lacked adequate internal
19 controls over accounting and financial reporting; and (3) that, as a result of the
20 foregoing, the Company’s financial statements and Defendants’ statements about
21 Obalon’s business, operations, and prospects, were materially false and misleading
22 at all relevant times.
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1 pursuant and/or traceable to the Registration Statement issued in connection with the
2 Company's IPO, and suffered damages as a result of the federal securities law
3 violations and false and/or misleading statements and/or material omissions alleged
4 herein.
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6 12. Defendant Obalon Therapeutics, Inc. is incorporated in Delaware and
7 its principal executive offices are located in Carlsbad, California. Obalon's
8 common stock trades on the NASDAQ Stock Market (the "NASDAQ") under the
9 symbol "OBLN."
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11 13. Defendant Andrew Rasdal ("Rasdal") was the President and Chief
12 Executive Officer ("CEO") and a Director of Obalon at all relevant times. Rasdal
13 signed or authorized the signing of the Company's Registration Statement filed with
14 the SEC.
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16 14. Defendant William Plovanic ("Plovanic") was the Chief Financial
17 Officer ("CFO") of Obalon at all relevant times. Plovanic signed or authorized the
18 signing of the Company's Registration Statement filed with the SEC.
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20 15. Defendant Nooshin Hussainy ("Hussainy") was the Vice President of
21 Finance of Obalon at all relevant time. Hussainy signed or authorized the signing
22 of the Company's Registration Statement filed with the SEC.
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24 16. Defendants Rasdal, Plovanic, and Hussainy are collectively referred to
25 hereinafter as the "Individual Defendants." The Individual Defendants, because of
26 their positions with the Company, possessed the power and authority to control the
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1 contents of Obalon’s reports to the SEC, press releases and presentations to
2 securities analysts, money and portfolio managers and institutional investors, *i.e.*,
3 the market. Each defendant was provided with copies of the Company’s reports and
4 press releases alleged herein to be misleading prior to, or shortly after, their issuance
5 and had the ability and opportunity to prevent their issuance or cause them to be
6 corrected. Because of their positions and access to material non-public information
7 available to them, each of these defendants knew that the adverse facts specified
8 herein had not been disclosed to, and were being concealed from, the public, and
9 that the positive representations which were being made were then materially false
10 and/or misleading. The Individual Defendants are liable for the false statements
11 pleaded herein, as those statements were each “group-published” information, the
12 result of the collective actions of the Individual Defendants.
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17 **SUBSTANTIVE ALLEGATIONS**
18 **Background**

19 17. Obalon is purportedly a medical device company that develops and
20 commercializes medical devices to treat obese and overweight people by facilitating
21 weight loss. The Company claims that its initial product offering is the Obalon
22 balloon system, an FDA approved swallowable, gas-filled intragastric balloon
23 designed to provide progressive and sustained weight loss in obese patients.
24

25 18. On October 5, 2016, the SEC declared effective the Form S-1 that
26 Obalon filed on September 9, 2016, and amended on September 26, 2016. The
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1 Form S-1 and all amendments thereto form part of the “Registration Statement” for
2 the IPO.

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4 19. On October 6, 2016, the Company filed with the SEC its IPO
5 prospectus (the “Prospectus”), which also forms part of the Registration Statement.
6 Under applicable SEC rules and regulations, the Registration Statement was
7 required to disclose known trends, events or uncertainties that were having, and
8 were reasonably likely to have, an impact on the Company’s continuing operations.

9
10 20. On October 5, 2016, Obalon priced its IPO of 5 million shares of
11 common stock at a price of \$15.00 per share, exclusive of the underwriters’ option
12 to purchase 750,000 additional shares. According to the Company, the Offering
13 raised approximately \$67.2 million for the Company, net of underwriting discounts,
14 commissions, and estimated offering expenses.
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18 **Materially False and Misleading
Statements Issued During the Class Period**

19 21. The Class Period begins on October 5, 2016. Prior to the start of the
20 Class Period, on September 26, 2016, the Company filed an amendment to its Form
21 S-1. In the amendment, the Company, in relevant part, stated:
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23 **CRITICAL ACCOUNTING POLICIES AND ESTIMATES**

24 Management’s discussion and analysis of our financial condition and
25 results of operations is based on our financial statements, which have
26 been prepared in accordance with U.S. generally accepted accounting
27 principles, or GAAP. The preparation of these financial statements
28 requires us to make estimates and assumptions for the reported amounts
of assets, liabilities, revenue, expenses and related disclosures. Our
estimates are based on our historical experience and on various other
factors that we believe are reasonable under the circumstances, the
results of which form the basis for making judgments about the

1 carrying value of assets and liabilities that are not readily apparent from
 2 other sources. Actual results may differ from these estimates under
 3 different assumptions or conditions and any such differences may be
 4 material.

5 While our significant accounting policies are more fully described in
 6 the notes to our financial statements appearing elsewhere in this
 7 prospectus, we believe the following discussion addresses our most
 8 critical accounting policies, which are those that are most important to
 9 our financial condition and results of operations and require our most
 10 difficult, subjective and complex judgments.

11 **Revenue recognition**

12 Revenue relates to sales of components of the Obalon balloon system,
 13 which includes the balloon and accessory kit, EzFill inflation system,
 14 pre-filled can of gas and placebo capsule. As of June 30, 2016, the
 15 product is sold to one customer, Bader, a related party and healthcare
 16 product distributor based in Sufat, Kuwait. We recognize revenue when
 17 the following revenue recognition criteria are met:

- 18 ➤ *Persuasive evidence of an arrangement exists.* We consider this
 19 criterion satisfied when we have an agreement or contract in place
 20 with the customer.
- 21 ➤ *Delivery has occurred.* Our standard terms specify that title and risk
 22 of loss transfers upon shipment to customer. We use third-party
 23 shipping documents to verify that title has transferred.
- 24 ➤ *The selling price is fixed or determinable.* We assess whether the
 25 sales price is fixed or determinable at the time of the transaction.
 26 Sales prices are documented in the executed sales contract or
 27 purchase order received prior to shipment. Our standard terms do
 28 not allow for trial or evaluation periods, rights of return or refund,
 payments contingent upon the customer obtaining financing or other
 terms that could impact the customer's obligation.
- *Collectability is reasonably assured.* We assess whether collection
 is reasonably assured based on a number of factors, including the
 customer's past transaction history and credit worthiness.

* * *

22 **UNAUDITED CONDENSED CONSOLIDATED STATEMENTS** 23 **OF OPERATIONS AND COMPREHENSIVE LOSS** 24 (in thousands, except shares and per share data)

and diluted

9,091,211

25 22. On October 6, 2016, the Company filed its Prospectus. The prospectus
 26 reaffirmed the statements regarding GAAP compliance and revenue identified in

27 ¶21.

1 23. On November 3, 2017, Obalon issued a press release entitled “Obalon
2 Announces Third Quarter 2017 Financial Results.” Therein, the Company, in
3 relevant part, stated:
4

5 **Third Quarter 2017 highlights:**

- 6 • Revenue grew 42% sequentially over Q2-17 to \$2.8 million
- 7 • Gross margin improved to 53%
- 8 • First sales to multi-store aesthetic national account
- 9 • Submitted PMA-Supplement for Obalon Navigation System
- 10 • Submitted PMA-Supplement for Obalon Touch Inflation Dispenser

11 The Company reported total revenues of \$2.8 million for the third
12 quarter of 2017, compared to \$0.8 million for the third quarter of 2016.
13 Net loss was reported at \$9.2 million compared to a net loss of \$5.3
14 million in the third quarter of 2016 and net loss per share for the quarter
15 was \$0.55 as compared to net loss per share of \$5.46 in the third
16 quarter of 2016.

17 24. On November 10, 2016, Obalon filed its quarterly report with the SEC
18 on Form 10-Q for the quarterly period ended September 30, 2016. The Company’s
19 10-Q was signed by Defendants Rasdal and Plovanic and reaffirmed the Company’s
20 financial results previously announced on November 3, 2016. The Form 10-Q also
21 stated that the Company’s financial statements were “prepared in accordance with
22 United States generally accepted accounting principles, or U.S. GAAP.”

23 25. The Company’s Form 10-Q contained certifications pursuant to the
24 Sarbanes-Oxley Act of 2002 (“SOX”), signed by defendants Rasdal and Plovanic,
25 who certified:
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1 1. I have reviewed this Quarterly Report on Form 10-Q of Obalon
2 Therapeutics, Inc.;

3 2. Based on my knowledge, this report does not contain any untrue
4 statement of a material fact or omit to state a material fact necessary to
5 make the statements made, in light of the circumstances under which
6 such statements were made, not misleading with respect to the period
7 covered by this report;

8 3. Based on my knowledge, the financial statements, and other financial
9 information included in this report, fairly present in all material
10 respects the financial condition, results of operations and cash flows of
11 the registrant as of, and for, the periods presented in this report;

12 4. The registrant's other certifying officer and I are responsible for
13 establishing and maintaining disclosure controls and procedures (as
14 defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal
15 control over financial reporting (as defined in Exchange Act Rules 13a-
16 15(f) and 15d-15(f)) for the registrant and have:

17 (a) Designed such disclosure controls and procedures, or caused
18 such disclosure controls and procedures to be designed under our
19 supervision, to ensure that material information relating to the
20 registrant, including its consolidated subsidiaries, is made known
21 to us by others within those entities, particularly during the
22 period in which this report is being prepared;

23 (b) Evaluated the effectiveness of the registrant's disclosure
24 controls and procedures and presented in the report our
25 conclusions about the effectiveness of the disclosure controls and
26 procedures, as of the end of the period covered by this report
27 based on such evaluation; and

28 (c) Disclosed in this report any change in the registrant's internal
control over financial reporting that occurred during the
registrant's most recent fiscal quarter (the registrant's fourth
fiscal quarter in the case of an annual report) that has materially
affected, or is reasonably likely to materially affect, the
registrant's internal control over financial reporting.

1 5. The registrant's other certifying officer and I have disclosed, based
2 on our most recent evaluation of internal control over financial
3 reporting, to the registrant's auditors and the audit committee of the
4 registrant's board of directors (or person performing the equivalent
5 functions):

6 (a) All significant deficiencies and material weaknesses in the
7 design or operation of internal control over financial reporting
8 which are reasonably likely to adversely affect the registrant's
9 ability to record, process, summarize and report financial
10 information; and

11 (b) Any fraud, whether or not material, that involves
12 management or other employees who have a significant role in
13 the registrant's internal control over financial reporting.

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26. On February 23, 2017, Obalon issued a press release entitled, “Obalon Therapeutics, Inc. Announces Fourth Quarter and Full Year 2016 Financial Results.” Therein, the Company, in relevant part, stated:

Fourth Quarter 2016 Results

The Company reported total revenues of \$0.8 million for the fourth quarter, compared to \$1.0 million for the fourth quarter of 2015. Net loss was reported at \$7.5 million compared to a net loss of \$4.8 million in the fourth quarter of 2015 and net loss per share for the quarter was \$0.51 as compared to net loss per share of \$8.42 in the fourth quarter of 2015.

Cost of goods sold was \$0.9 million during the three months ended December 31, 2016, up from \$0.7 million for the prior year period. Gross profit for the fourth quarter was a negative \$0.1 million, resulting in a negative gross margin of 13%, compared to a positive gross profit of \$0.3 million and 33% for the fourth quarter of 2015.

Research and Development expense for the fourth quarter totaled \$2.6 million, down from \$3.8 million in the fourth quarter of 2015, and Selling, General and Administrative, or SG&A, expense increased to \$4.8 million for the fourth quarter, compared to \$1.2 million in the fourth quarter 2015.

Operating loss for the fourth quarter was \$7.5 million, compared to an operating loss of \$4.7 million for the fourth quarter of 2015. Net loss for the quarter was \$7.5 million, or \$0.51 per share as compared to a net loss of \$4.8 million or \$8.42 per share for fourth quarter of 2015.

At December 31, 2016, cash, cash equivalents and short term marketable securities were \$75.5 million and long-term debt was \$9.9 million.

On October 12, 2016, Obalon closed an initial public offering of 5.0 million shares were at a price of \$15.00 per share for gross proceeds of \$75.0 million and net proceeds of \$67.2 million.

Full Year 2016 Results

Obalon reported full year 2016 total revenues of \$3.4 million, a decrease from \$4.0 million for the full year 2015.

Gross profit for the full year 2016 was \$0.6 million, which equates to a gross margin of 17%. This compared to gross profit of \$1.5 million in the prior year and a gross margin of 38%.

Operating loss was \$19.5 million as compared to an operating loss of \$14.9 million in the prior year.

1 Net loss for the full year 2016 increased to \$20.5 million, or \$4.85 per
2 share, compared to a net loss of \$15.6 million, or \$27.14 per share, in
3 the prior year.

4 27. On February 23, 2017, Obalon filed its annual report with the SEC on
5 Form 10-K for the year ended December 31, 2016. The Company's Form 10-K was
6 signed by Defendants Rasdal and Plovanic, and affirmed the Company's financial
7 results announced in the press release issued the same day. The Form 10-K further
8 stated that the Company's financial statements were "prepared in accordance with
9 U.S. generally accepted accounting principles, or GAAP." The Form 10-K also
10 contained certifications pursuant to SOX, signed by defendants Rasdal and Plovanic,
11 substantially similar to the certifications described in ¶25, *supra*.

14 28. On May 10, 2017, Obalon issued a press release entitled, "Obalon
15 Announces First Quarter 2017 Financial Results." Therein, the Company, in
16 relevant part, stated:

18 The Company reported total revenues of \$1.5 million for the first
19 quarter of 2017, compared to \$1.1 million for the first quarter of 2016.
20 All revenues in the first quarter 2017 were realized from sale of the
21 Obalon balloon system in the United States, compared to all revenues
22 in the first quarter of 2016 which were from sales to our distributor in
23 the Middle East. Net loss was reported at \$7.7 million compared to a
24 net loss of \$3.6 million in the first quarter of 2016 and net loss per
25 share for the quarter was \$0.47 as compared to net loss per share of
26 \$6.22 in the first quarter of 2016.

27 Cost of goods sold was \$0.8 million during the three months ended
28 March 31, 2017, up from \$0.6 million for the prior year period. Gross
profit for the first quarter of 2017 was \$0.6 million, resulting in a gross
margin of 44%, compared to a gross profit of \$0.4 million and gross
margin of 42% for the first quarter of 2016.

Research and Development expense for the first quarter of 2017 totaled
\$2.4 million, down from \$2.5 million in the first quarter of 2016, and
Selling, General and Administrative expense increased to \$5.9 million
for the first quarter, compared to \$1.4 million in the first quarter 2016.

1 Operating loss for the first quarter of 2017 was \$7.7 million, compared
2 to an operating loss of \$3.4 million for the first quarter of 2016.

3 At March 31, 2017, cash, cash equivalents and short-term investments
4 were \$66.7 million and long-term debt was \$10.0 million.

5 29. On the same day, May 10, 2017, Obalon filed its quarterly report with
6 the SEC on Form 10-Q for the fiscal quarter ended March 31, 2017. The
7 Company's Form 10-Q was signed by Defendants Rasdal and Plovanic, and
8 affirmed the Company's financial results announced in the press release issued the
9 same day. The Form 10-Q further stated that the Company's financial statements
10 were "prepared in accordance with U.S. generally accepted accounting principles, or
11 GAAP." The Form 10-Q also contained certifications pursuant to SOX, signed by
12 Defendants Rasdal and Plovanic, substantially similar to the certifications described
13 in ¶25, *supra*.

14 30. On August 2, 2017, Obalon issued a press release entitled, "Obalon
15 Announces Second Quarter 2017 Financial Results." Therein, the Company, in
16 relevant part, stated:
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20 **Second Quarter 2017 highlights:**

- 21 • Revenue grew 33% sequentially over Q1-17 to \$2.0 million
- 22 • Gross margin improved to 50%
- 23 • First commercial shipments of 6-month product to Middle East
24 in July 2017
- 25 • First US shipments of HPMC, vegetable based capsule, in July
26 2017

27 The Company reported total revenues of \$2.0 million for the second
28 quarter of 2017, compared to \$0.8 million for the second quarter of
2016. Net loss was reported at \$7.7 million compared to a net loss of
\$4.1 million in the second quarter of 2016 and net loss per share for the

1 quarter was \$0.46 as compared to net loss per share of \$7.15 in the
2 second quarter of 2016.

3 Cost of goods sold was \$1.0 million during the three months ended
4 June 30, 2017, up from \$0.7 million for the prior year period. Gross
5 profit for the second quarter of 2017 was \$1.0 million, resulting in a
6 gross margin of 50%, compared to a gross profit of \$0.1 million and
7 gross margin of 14% for the second quarter of 2016.

8 Research and Development expense for the second quarter of 2017
9 totaled \$2.8 million, up from \$2.6 million in the second quarter of
10 2016, and Selling, General and Administrative expense increased to
11 \$5.9 million for the second quarter of 2017, compared to \$1.6 million
12 in the second quarter 2016.

13 Operating loss for the second quarter of 2017 was \$7.6 million,
14 compared to an operating loss of \$4.1 million for the second quarter of
15 2016.

16 At June 30, 2017, cash, cash equivalents and short-term investments
17 were \$60.7 million and long-term debt was \$10.0 million.

18 31. On the same day, August 2, 2017, Obalon filed its quarterly report with
19 the SEC on Form 10-Q for the fiscal quarter ended June 30, 2017. The Company's
20 Form 10-Q was signed by Defendants Rasdal and Plovanic, and affirmed the
21 Company's financial results announced in the press release issued the same day. The
22 Form 10-Q further stated that the Company's financial statements were "prepared in
23 accordance with U.S. generally accepted accounting principles, or GAAP." The
24 Form 10-Q also contained certifications pursuant to SOX, signed by Defendants
25 Rasdal and Plovanic, substantially similar to the certifications described in ¶25,
26 *supra*.

27 32. On November 3, 2017, Obalon issued a press release entitled, "Obalon
28 Announces Third Quarter 2017 Financial Results." Therein, the Company, in
relevant part, stated:

1 **Third Quarter 2017 highlights:**

- 2 • Revenue grew 42% sequentially over Q2-17 to \$2.8 million
- 3 • Gross margin improved to 53%
- 4 • First sales to multi-store aesthetic national account
- 5 • Submitted PMA-Supplement for Obalon Navigation System
- 6 • Submitted PMA-Supplement for Obalon Touch Inflation
7 Dispenser

8 The Company reported total revenues of \$2.8 million for the third
9 quarter of 2017, compared to \$0.8 million for the third quarter of 2016.
10 Net loss was reported at \$9.2 million compared to a net loss of \$5.3
11 million in the third quarter of 2016 and net loss per share for the quarter
12 was \$0.55 as compared to net loss per share of \$5.46 in the third
13 quarter of 2016.

14 Cost of goods sold was \$1.3 million during the three months ended
15 September 30, 2017, up from \$0.6 million for the prior year period.
16 Gross profit for the third quarter of 2017 was \$1.5 million, resulting in
17 a gross margin of 53%, compared to a gross profit of \$0.1 million and
18 gross margin of 17% for the third quarter of 2016.

19 Research and Development expense for the third quarter of 2017
20 totaled \$2.8 million, up from \$2.2 million in the third quarter of 2016,
21 and Selling, General and Administrative expense increased to \$7.8
22 million for the third quarter of 2017, compared to \$2.4 million in the
23 third quarter 2016. Selling, General and Administrative expenses in the
24 third quarter 2017 included a one-time, non-cash charge of \$1.4 million
25 for litigation settlement.

26 Operating loss for the third quarter of 2017 was \$9.1 million, compared
27 to an operating loss of \$4.5 million for the third quarter of 2016.

28 As of September 30, 2017, cash, cash equivalents and short-term
investments were \$53.4 million and debt was \$10.0 million.

33. On the same day, November 3, 2017, Obalon filed its quarterly report
with the SEC on Form 10-Q for the fiscal quarter ended September 30, 2017. The
Company's Form 10-Q was signed by Defendants Rasdal and Plovanic, and
affirmed the Company's financial results announced in the press release issued the
same day. The Form 10-Q further stated that the Company's financial statements
were "prepared in accordance with U.S. generally accepted accounting principles, or

1 GAAP.” The Form 10-Q also contained certifications pursuant to SOX, signed by
2 Defendants Rasdal and Plovanic, substantially similar to the certifications described
3 in ¶25, *supra*.
4

5 34. The above statements identified in ¶¶21-33 were materially false and/or
6 misleading when made because Defendants failed to disclose: (1) that the Company
7 recognized revenue in violation of GAAP; (2) that the Company lacked adequate
8 internal controls over accounting and financial reporting; and (3) that, as a result of
9 the foregoing, the Company’s financial statements and Defendants’ statements about
10 Obalon’s business, operations, and prospects, were materially false and misleading
11 at all relevant times.
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14 **Disclosures at the End of the Class Period**

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16 35. On January 23, 2018, Obalon issued a press release disclosing that “a
17 purported whistleblower contacted KPMG LLP, the Company’s independent
18 auditors, to make certain allegations relating to allegedly improper revenue
19 recognition during the Company’s fourth fiscal quarter of 2017.” The Company
20 further stated that “Obalon’s Audit Committee will oversee an internal investigation
21 of these allegations.” In greater part, the Company stated:
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24 Obalon Therapeutics, Inc. (the “Company” or “Obalon”) (NASDAQ:OBLN) today announced the termination of the
25 underwriting agreement and cancellation of its previously announced
26 public offering (the “Offering”) of 5,454,545 shares of its common
stock at a public offering price of \$5.50 per share.

27 UBS Investment Bank, Canaccord Genuity and Stifel were acting as
28 joint book-running managers for the offering. BTIG was acting as a co-
manager. The offering was being made pursuant to a shelf registration

1 statement (File No. 333-221264) previously filed with and declared
2 effective by the U.S. Securities and Exchange Commission.

3 The Offering was scheduled to close on January 23, 2018. However, a
4 purported whistleblower contacted KPMG LLP, the Company's
5 independent auditors, to make certain allegations relating to allegedly
6 improper revenue recognition during the Company's fourth fiscal
7 quarter of 2017 ("Q4 2017"). These allegations were reported to
8 Obalon late in the day on January 22, 2018, making it infeasible for the
9 Company to complete an investigation of the allegations prior to the
10 intended closing of the public offering.

11 Obalon's Audit Committee will oversee an internal investigation of
12 these allegations (the "Investigation"). The Company is currently
13 unable to predict the timing or outcome of the Investigation. Based on
14 information known at this time, management does not currently believe
15 material adjustments to the preliminary, unaudited revenue for Q4
16 2017 and full year 2017 previously reported by the Company will be
17 required as a result of these allegations. The Company intends to make
18 a further announcement regarding the outcome of the Investigation as
19 soon as practicable.

20 36. On this news, Obalon's stock price fell \$1.73 per share, or 33.3%, to
21 close at \$3.46 per share on January 23, 2018, on unusually heavy volume. The
22 \$3.46 closing price represented a total decline of \$11.54, or nearly 77%, from the
23 IPO price of \$15.00 per share.

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**OBALON'S VIOLATION OF GAAP RULES
IN ITS FINANCIAL STATEMENTS
FILED WITH THE SEC**

37. The above-identified financial statements and statements about the
Company's financial results were false and misleading, as such financial
information was not prepared in conformity with GAAP, nor was the financial
information a fair presentation of the Company's operations due to the Company's
improper recording of revenue, in violation of GAAP rules.

38. GAAP are those principles recognized by the accounting profession as
the conventions, rules and procedures necessary to define accepted accounting

1 practice at a particular time. Regulation S-X (17 C.F.R. § 210.4-01(a)(1)) states that
2 financial statements filed with the SEC which are not prepared in compliance with
3 GAAP are presumed to be misleading and inaccurate. Regulation S-X requires that
4 interim financial statements must also comply with GAAP, with the exception that
5 interim financial statements need not include disclosure which would be duplicative
6 of disclosures accompanying annual financial statements. 17 C.F.R. § 210.10-01(a).
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9 39. Given the accounting irregularities, the Company announced financial
10 results that were in violation of GAAP and the following principles:
11

12 (a) The principle that “the results for each interim period should be
13 based on the accounting principles and practices used by an enterprise in the
14 preparation of its latest annual financial statements” was violated (APB 28, 10);
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16 (b) The principle that financial reporting should “provide financial
17 information about the reporting entity that is useful to existing and potential
18 investors, lenders, and other creditors in making decisions about providing resources
19 to the entity” was violated (FASB Statement of Concepts No. 8, OB2);
20

21 (c) The principle that financial reporting should “provide
22 information about the financial position of a reporting entity, which is information
23 about the entity’s economic resources and the claims against the reporting entity”
24 was violated (FASB Statement of Concepts No. 8, OB12);
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1 (d) The principle that financial information “must be relevant and
2 faithfully represent what it purports to represent” was violated (FASB Statement of
3 Concepts No. 8, QC4);
4

5 40. The adverse information concealed by Defendants during the Class
6 Period and detailed above was also in violation of Item 303 of Regulation S-K under
7 the federal securities laws (17 C.F.R. § 229.303).
8

9 **CLASS ACTION ALLEGATIONS**

10 41. Plaintiff brings this action as a class action pursuant to Federal Rule of
11 Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and
12 entities that purchased or otherwise acquired Obalon securities between October 5,
13 2016 and January 23, 2018, inclusive, seeking to pursue remedies under the
14 Exchange Act; and who were damaged thereby (collectively, the “Class”).
15 Excluded from the Class are Defendants, the officers and directors of the Company,
16 at all relevant times, members of their immediate families and their legal
17 representatives, heirs, successors or assigns and any entity in which Defendants
18 have or had a controlling interest.
19
20
21

22 42. The members of the Class are so numerous that joinder of all members
23 is impracticable. Throughout the Class Period, Obalon’s securities were actively
24 traded on the NASDAQ. While the exact number of Class members is unknown to
25 Plaintiff at this time and can only be ascertained through appropriate discovery,
26 Plaintiff believes that there are hundreds or thousands of members in the proposed
27
28

1 Class. Millions of Obalon shares were traded publicly during the Class Period on
2 the NASDAQ. As of November 1, 2017, there were 17,441,817 shares of the
3
4 Company's common stock outstanding. Record owners and other members of the
5 Class may be identified from records maintained by Obalon or its transfer agent and
6 may be notified of the pendency of this action by mail, using the form of notice
7
8 similar to that customarily used in securities class actions.

9 43. Plaintiff's claims are typical of the claims of the members of the Class
10 as all members of the Class are similarly affected by Defendants' wrongful conduct
11
12 in violation of federal law that is complained of herein.

13 44. Plaintiff will fairly and adequately protect the interests of the members
14 of the Class and has retained counsel competent and experienced in class and
15
16 securities litigation.

17 45. Common questions of law and fact exist as to all members of the Class
18 and predominate over any questions solely affecting individual members of the
19
20 Class. Among the questions of law and fact common to the Class are:

21 (a) whether the federal securities laws were violated by Defendants'
22 acts as alleged herein;

23
24 (b) whether statements made by Defendants to the investing public
25 during the Class Period omitted and/or misrepresented material facts about the
26
27 business, operations, and prospects of Obalon ; and
28

1 (c) whether the members of the Class have sustained damages and,
2 if so, what is the proper measure of damages.
3

4 46. A class action is superior to all other available methods for the fair and
5 efficient adjudication of this controversy since joinder of all members is
6 impracticable. Furthermore, as the damages suffered by individual Class members
7 may be relatively small, the expense and burden of individual litigation makes it
8 impossible for members of the Class to individually redress the wrongs done to
9 them. There will be no difficulty in the management of this action as a class action.
10
11

12 **UNDISCLOSED ADVERSE FACTS**

13 47. The market for Obalon's securities was open, well-developed and
14 efficient at all relevant times. As a result of these materially false and/or misleading
15 statements, and/or failures to disclose, Obalon's securities traded at artificially
16 inflated prices during the Class Period. Plaintiff and other members of the Class
17 purchased or otherwise acquired Obalon's securities relying upon the integrity of the
18 market price of the Company's securities and market information relating to Obalon,
19 and have been damaged thereby.
20
21

22 48. During the Class Period, Defendants materially misled the investing
23 public, thereby inflating the price of Obalon's securities, by publicly issuing false
24 and/or misleading statements and/or omitting to disclose material facts necessary to
25 make Defendants' statements, as set forth herein, not false and/or misleading. Said
26 statements and omissions were materially false and/or misleading in that they failed
27
28

1 to disclose material adverse information and/or misrepresented the truth about
2 Obalon’s business, operations, and prospects as alleged herein.

3
4 49. At all relevant times, the material misrepresentations and omissions
5 particularized in this Complaint directly or proximately caused or were a substantial
6 contributing cause of the damages sustained by Plaintiff and other members of the
7
8 Class. As described herein, during the Class Period, Defendants made or caused to
9 be made a series of materially false and/or misleading statements about Obalon’s
10 financial well-being and prospects. These material misstatements and/or omissions
11 had the cause and effect of creating in the market an unrealistically positive
12 assessment of the Company and its financial well-being and prospects, thus causing
13 the Company’s securities to be overvalued and artificially inflated at all relevant
14 times. Defendants’ materially false and/or misleading statements during the Class
15
16 Period resulted in Plaintiff and other members of the Class purchasing the
17 Company’s securities at artificially inflated prices, thus causing the damages
18
19 complained of herein.
20

21 **LOSS CAUSATION**

22 50. Defendants’ wrongful conduct, as alleged herein, directly and
23
24 proximately caused the economic loss suffered by Plaintiff and the Class.

25 51. During the Class Period, Plaintiff and the Class purchased Obalon’s
26 securities at artificially inflated prices and were damaged thereby. The price of the
27
28 Company’s securities significantly declined when the misrepresentations made to

1 the market, and/or the information alleged herein to have been concealed from the
2 market, and/or the effects thereof, were revealed, causing investors' losses.

3
4 **SCIENTER ALLEGATIONS**

5 52. As alleged herein, Defendants acted with scienter in that Defendants
6 knew that the public documents and statements issued or disseminated in the name
7 of the Company were materially false and/or misleading; knew that such statements
8 or documents would be issued or disseminated to the investing public; and
9 knowingly and substantially participated or acquiesced in the issuance or
10 dissemination of such statements or documents as primary violations of the federal
11 securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of
12 their receipt of information reflecting the true facts regarding Obalon, his/her control
13 over, and/or receipt and/or modification of Obalon's allegedly materially misleading
14 misstatements and/or their associations with the Company which made them privy
15 to confidential proprietary information concerning Obalon, participated in the
16 fraudulent scheme alleged herein.

17
18 **APPLICABILITY OF PRESUMPTION OF RELIANCE**
19 **(FRAUD-ON-THE-MARKET DOCTRINE)**

20
21
22
23 53. The market for Obalon's securities was open, well-developed and
24 efficient at all relevant times. As a result of the materially false and/or misleading
25 statements and/or failures to disclose, Obalon's securities traded at artificially
26 inflated prices during the Class Period. On October 6, 7, and 10, 2016, the
27
28

1 Company's stock closed at a Class Period high of \$15 per share. Plaintiff and other
2 members of the Class purchased or otherwise acquired the Company's securities
3
4 relying upon the integrity of the market price of Obalon's securities and market
5 information relating to Obalon, and have been damaged thereby.

6 54. During the Class Period, the artificial inflation of Obalon's stock was
7
8 caused by the material misrepresentations and/or omissions particularized in this
9 Complaint causing the damages sustained by Plaintiff and other members of the
10 Class. As described herein, during the Class Period, Defendants made or caused to
11 be made a series of materially false and/or misleading statements about Obalon's
12 business, prospects, and operations. These material misstatements and/or omissions
13 created an unrealistically positive assessment of Obalon and its business, operations,
14 and prospects, thus causing the price of the Company's securities to be artificially
15 inflated at all relevant times, and when disclosed, negatively affected the value of
16 the Company stock. Defendants' materially false and/or misleading statements
17 during the Class Period resulted in Plaintiff and other members of the Class
18 purchasing the Company's securities at such artificially inflated prices, and each of
19 them has been damaged as a result.

20 55. At all relevant times, the market for Obalon's securities was an
21 efficient market for the following reasons, among others:

22 (a) Obalon stock met the requirements for listing, and was listed and
23 actively traded on the NASDAQ, a highly efficient and automated market;

1 (b) As a regulated issuer, Obalon filed periodic public reports with
2 the SEC and/or the NASDAQ;

3 (c) Obalon regularly communicated with public investors *via*
4 established market communication mechanisms, including through regular
5 dissemination of press releases on the national circuits of major newswire services
6 and through other wide-ranging public disclosures, such as communications with the
7 financial press and other similar reporting services; and/or
8

9 (d) Obalon was followed by securities analysts employed by
10 brokerage firms who wrote reports about the Company, and these reports were
11 distributed to the sales force and certain customers of their respective brokerage
12 firms. Each of these reports was publicly available and entered the public
13 marketplace.
14
15
16

17 56. As a result of the foregoing, the market for Obalon's securities
18 promptly digested current information regarding Obalon from all publicly available
19 sources and reflected such information in Obalon's stock price. Under these
20 circumstances, all purchasers of Obalon's securities during the Class Period suffered
21 similar injury through their purchase of Obalon's securities at artificially inflated
22 prices and a presumption of reliance applies.
23
24

25 57. A Class-wide presumption of reliance is also appropriate in this action
26 under the Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United*
27 *States*, 406 U.S. 128 (1972), because the Class's claims are, in large part, grounded
28

1 on Defendants’ material misstatements and/or omissions. Because this action
2 involves Defendants’ failure to disclose material adverse information regarding the
3 Company’s business operations and financial prospects—information that
4 Defendants were obligated to disclose—positive proof of reliance is not a
5 prerequisite to recovery. All that is necessary is that the facts withheld be material
6 in the sense that a reasonable investor might have considered them important in
7 making investment decisions. Given the importance of the Class Period material
8 misstatements and omissions set forth above, that requirement is satisfied here.
9
10

11 **NO SAFE HARBOR**

12
13 58. The statutory safe harbor provided for forward-looking statements
14 under certain circumstances does not apply to any of the allegedly false statements
15 pleaded in this Complaint. The statements alleged to be false and misleading herein
16 all relate to then-existing facts and conditions. In addition, to the extent certain of
17 the statements alleged to be false may be characterized as forward looking, they
18 were not identified as “forward-looking statements” when made and there were no
19 meaningful cautionary statements identifying important factors that could cause
20 actual results to differ materially from those in the purportedly forward-looking
21 statements. In the alternative, to the extent that the statutory safe harbor is
22 determined to apply to any forward-looking statements pleaded herein, Defendants
23 are liable for those false forward-looking statements because at the time each of
24 those forward-looking statements was made, the speaker had actual knowledge that
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1 the forward-looking statement was materially false or misleading, and/or the
2 forward-looking statement was authorized or approved by an executive officer of
3
4 Obalon who knew that the statement was false when made.

5 **FIRST CLAIM**
6 **Violation of Section 10(b) of The Exchange Act**
7 **and Rule 10b-5 Promulgated Thereunder**
8 **(Against the Company and the Individual Defendants)**

9 59. Plaintiff repeats and re-alleges each and every allegation contained
10 above as if fully set forth herein.

11 60. During the Class Period, the Company and the Individual Defendants
12 carried out a plan, scheme and course of conduct which was intended to and,
13 throughout the Class Period, did: (i) deceive the investing public, including Plaintiff
14 and other Class members, as alleged herein; and (ii) cause Plaintiff and other
15 members of the Class to purchase Obalon's securities at artificially inflated prices.
16 In furtherance of this unlawful scheme, plan and course of conduct, the Company
17 and the Individual Defendants, and each of them, took the actions set forth herein.

18 61. the Company and the Individual Defendants (i) employed devices,
19 schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or
20 omitted to state material facts necessary to make the statements not misleading; and
21 (iii) engaged in acts, practices, and a course of business which operated as a fraud
22 and deceit upon the purchasers of the Company's securities in an effort to maintain
23 artificially high market prices for Obalon's securities in violation of Section 10(b) of
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1 the Exchange Act and Rule 10b-5. The Company and the Individual Defendants are
2 sued either as primary participants in the wrongful and illegal conduct charged
3
4 herein or as controlling persons as alleged below.

5 62. The Company and the Individual Defendants, individually and in
6 concert, directly and indirectly, by the use, means or instrumentalities of interstate
7
8 commerce and/or of the mails, engaged and participated in a continuous course of
9 conduct to conceal adverse material information about Obalon's financial well-
10 being and prospects, as specified herein.

11 63. These defendants employed devices, schemes and artifices to defraud,
12 while in possession of material adverse non-public information and engaged in acts,
13 practices, and a course of conduct as alleged herein in an effort to assure investors of
14
15 Obalon's value and performance and continued substantial growth, which included
16 the making of, or the participation in the making of, untrue statements of material
17 facts and/or omitting to state material facts necessary in order to make the
18
19 statements made about Obalon and its business operations and future prospects in
20 light of the circumstances under which they were made, not misleading, as set forth
21
22 more particularly herein, and engaged in transactions, practices and a course of
23
24 business which operated as a fraud and deceit upon the purchasers of the Company's
25 securities during the Class Period.

26 64. Each of the Individual Defendants' primary liability, and controlling
27
28 person liability, arises from the following facts: (i) the Individual Defendants were

1 high-level executives and/or directors at the Company during the Class Period and
2 members of the Company's management team or had control thereof; (ii) each of
3 these defendants, by virtue of their responsibilities and activities as a senior officer
4 and/or director of the Company, was privy to and participated in the creation,
5 development and reporting of the Company's internal budgets, plans, projections
6 and/or reports; (iii) each of these defendants enjoyed significant personal contact
7 and familiarity with the other defendants and was advised of, and had access to,
8 other members of the Company's management team, internal reports and other data
9 and information about the Company's finances, operations, and sales at all relevant
10 times; and (iv) each of these defendants was aware of the Company's dissemination
11 of information to the investing public which they knew and/or recklessly
12 disregarded was materially false and misleading.

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14
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16
17 65. The Company and the Individual Defendants had actual knowledge of
18 the misrepresentations and/or omissions of material facts set forth herein, or acted
19 with reckless disregard for the truth in that they failed to ascertain and to disclose
20 such facts, even though such facts were available to them. Such defendants' material
21 misrepresentations and/or omissions were done knowingly or recklessly and for the
22 purpose and effect of concealing Obalon's financial well-being and prospects from
23 the investing public and supporting the artificially inflated price of its securities. As
24 demonstrated by the Company and the Individual Defendants' overstatements
25 and/or misstatements of the Company's business, operations, financial well-being,
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1 and prospects throughout the Class Period, these defendants, if they did not have
2 actual knowledge of the misrepresentations and/or omissions alleged, were reckless
3 in failing to obtain such knowledge by deliberately refraining from taking those
4 steps necessary to discover whether those statements were false or misleading.
5

6 66. As a result of the dissemination of the materially false and/or
7 misleading information and/or failure to disclose material facts, as set forth above,
8 the market price of Obalon's securities was artificially inflated during the Class
9 Period. In ignorance of the fact that market prices of the Company's securities were
10 artificially inflated, and relying directly or indirectly on the false and misleading
11 statements made by the Company and the Individual Defendants, or upon the
12 integrity of the market in which the securities trades, and/or in the absence of
13 material adverse information that was known to or recklessly disregarded by the
14 Company and the Individual Defendants, but not disclosed in public statements by
15 these defendants during the Class Period, Plaintiff and the other members of the
16 Class acquired Obalon's securities during the Class Period at artificially high prices
17 and were damaged thereby.
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22 67. At the time of said misrepresentations and/or omissions, Plaintiff and
23 other members of the Class were ignorant of their falsity, and believed them to be
24 true. Had Plaintiff and the other members of the Class and the marketplace known
25 the truth regarding the problems that Obalon was experiencing, which were not
26 disclosed by the Company and the Individual Defendants, Plaintiff and other
27
28

1 members of the Class would not have purchased or otherwise acquired their Obalon
2 securities, or, if they had acquired such securities during the Class Period, they
3 would not have done so at the artificially inflated prices which they paid.
4

5 68. By virtue of the foregoing, the Company and the Individual Defendants
6 have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated
7 thereunder.
8

9 69. As a direct and proximate result of Defendants' wrongful conduct,
10 Plaintiff and the other members of the Class suffered damages in connection with
11 their respective purchases and sales of the Company's securities during the Class
12 Period.
13

14 **SECOND CLAIM**
15 **Violation of Section 20(a) of the Exchange Act**
16 **(Against the Individual Defendants)**

17 70. Plaintiff repeats and re-alleges each and every allegation contained
18 above as if fully set forth herein.
19

20 71. The Individual Defendants acted as controlling persons of Obalon
21 within the meaning of Section 20(a) of the Exchange Act as alleged herein. By
22 virtue of their high-level positions, and their ownership and contractual rights,
23 participation in and/or awareness of the Company's operations and/or intimate
24 knowledge of the false financial statements filed by the Company with the SEC and
25 disseminated to the investing public, the Individual Defendants had the power to
26 influence and control and did influence and control, directly or indirectly, the
27
28

1 decision-making of the Company, including the content and dissemination of the
2 various statements which Plaintiff contends are false and misleading. The
3 Individual Defendants were provided with or had unlimited access to copies of the
4 Company's reports, press releases, public filings and other statements alleged by
5 Plaintiff to be misleading prior to and/or shortly after these statements were issued
6 and had the ability to prevent the issuance of the statements or cause the statements
7 to be corrected.
8

9
10 72. In particular, each of these Defendants had direct and supervisory
11 involvement in the day-to-day operations of the Company and, therefore, is
12 presumed to have had the power to control or influence the particular transactions
13 giving rise to the securities violations as alleged herein, and exercised the same.
14

15
16 73. As set forth above, Obalon and the Individual Defendants each violated
17 Section 10(b) and Rule 10b-5 by their acts and/or omissions as alleged in this
18 Complaint. By virtue of their positions as controlling persons, the Individual
19 Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct
20 and proximate result of Defendants' wrongful conduct, Plaintiff and other members
21 of the Class suffered damages in connection with their purchases of the Company's
22 securities during the Class Period.
23

24
25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for relief and judgment, as follows:
27

28 (a) Determining that this action is a proper class action under Federal

1 Rules of Civil Procedure 23;

2 (b) Awarding compensatory damages in favor of Plaintiff and the other
3 Class members against all defendants, jointly and severally, for all damages
4 sustained as a result of Defendants’ wrongdoing, in an amount to be proven at trial,
5 including interest thereon;
6

7 (c) Awarding Plaintiff and the Class their reasonable costs and expenses
8 incurred in this action, including counsel fees and expert fees; and
9

10 (d) Such other and further relief as the Court may deem just and proper.
11

12 **JURY TRIAL DEMANDED**

13 Plaintiff hereby demands a trial by jury.

14 Dated: February 14, 2018

GLANCY PRONGAY & MURRAY LLP

17 By: s/Robert V. Prongay
18 Lionel Z. Glancy
19 Robert V. Prongay
20 Lesley F. Portnoy
21 Charles H. Linehan
22 1925 Century Park East, Suite 2100
23 Los Angeles, CA 90067
24 Telephone: (310) 201-9150
25 Facsimile: (310) 201-9160
26 Email: rprongay@glancylaw.com

Counsel for Plaintiff

SWORN CERTIFICATION OF PLAINTIFF

OBALON THERAPEUTICS, INC. SECURITIES LITIGATION

I, Mike Husting individually, and/or in my capacity as trustee and/or principal for accounts listed on Schedule A, certify that:

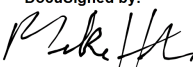
1. I have reviewed the Complaint and authorize its filing and/or the filing of a Lead Plaintiff motion on my behalf.
2. I did not purchase Obalon Therapeutics, Inc. securities that are the subject of this action at the direction of plaintiff's counsel or in order to participate in any private action arising under this title.
3. I am willing to serve as a representative party on behalf of a class and will testify at deposition and trial, if necessary.
4. My transactions in Obalon Therapeutics, Inc. securities during the Class Period set forth in the Complaint are as follows:

(See attached transactions)
5. I have not sought to serve, nor served, as a representative party on behalf of a class under this title during the last three years, except for the following:
6. I will not accept any payment for serving as a representative party, except to receive my pro rata share of any recovery or as ordered or approved by the court, including the award to a representative plaintiff of reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

I declare under penalty of perjury that the foregoing are true and correct statements.

1/26/2018

Date

DocuSigned by:

 178560D6DA0A4A5...

Mike Husting

**Mike Husting's Transactions in
Obalon Therapeutics, Inc. (OBLN)**

Date	Transaction Type	Quantity	Unit Price
1/18/2018	Bought	130	\$6.3000
1/18/2018	Bought	100	\$6.3000
1/18/2018	Bought	200	\$6.3000
1/18/2018	Bought	570	\$6.3000
1/19/2018	Bought	500	\$5.3158
1/23/2018	Sold	-123	\$4.0000
1/23/2018	Sold	-77	\$4.0000
1/23/2018	Sold	-500	\$4.0000
1/23/2018	Sold	-650	\$4.0001
1/23/2018	Sold	-150	\$4.0001

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

MICHAEL HUSTIG, Individually and on Behalf of All Others Similarly Situated,

(b) County of Residence of First Listed Plaintiff Phoenix, AZ (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Robert V. Prongay (#270796), GLANCY PRONGAY & MURRAY LLP 1925 Century Park East, Suite 2100, Los Angeles, California 90067 Telephone: (310) 201-9150

DEFENDANTS

OBALON THERAPEUTICS, INC., ANDREW RASDAL, and WILLIAM PLOVANIC,

County of Residence of First Listed Defendant Carlsbad, CA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'18CV0352 AJB WVG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Private Securities Litigation Reform Act, 15 U.S.C. §§78j(b) and 78t(a); and 17 C.F.R. §240.10b-5. Brief description of cause: Securities Fraud - Violations of Sections 10(B) and 20(A) of the Exchange Act and SEC Rule 10B-5

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 02/14/2018 SIGNATURE OF ATTORNEY OF RECORD s/ Robert V. Prongay

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

- V. **Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Medical Device Maker Obalon Therapeutics Facing Securities Case Following Balloon System IPO](#)
