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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIAM PAULUS, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

v.

OCERA THERAPEUTICS, INC., ECKARD WEBER, LINDA S. GRAIS, WILLARD DERE, STEVEN P. JAMES, NINA KJELLSON, ANNE M. VANLENT, and WENDELL WIERENGA,

Defendants.

Civil Action No. 5:17-cv-06876

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

VIOLATIONS OF THE SECURITIES EXCHANGE ACT OF 1934

William Paulus ("Plaintiff"), by his undersigned attorneys, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This action is brought as a class action by Plaintiff on behalf of himself and the other public holders of the common stock of Ocera Therapeutics, Inc. ("Ocera" or the "Company") against Ocera and the members of the Company's board of directors (collectively, the "Board" or "Individual Defendants," and, together with Ocera, the "Defendants") for their violations of

Sections 14(e), 14(d)(4), and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78n(e), 78n(d)(4), 78t(a), and SEC Rule 14d-9, 17 C.F.R. 240.14d-9, in connection with the tender offer ("Tender Offer") by Mallinckrodt plc through its subsidiaries ("Mallinckrodt") to acquire all of the issued and outstanding shares of Ocera (the "Proposed Transaction").

2. On November 1, 2017, Ocera entered into a definitive agreement and plan of merger (the "Merger Agreement"), whereby each shareholder of Ocera common stock will receive $1.52 per share. Additionally, each Ocera share will be converted automatically into the right to receive one Contingent Value Right ("CVR"), which represents the right to receive the Contingent Consideration if the milestones set forth below are achieved on or before December 31, 2029:

i. IV Milestone: Parent will be obligated to pay an aggregate amount equal to $10,000,000 upon the enrollment of the first patient in a Phase 3 clinical trial of an intravenous formulation of the Product (as defined in the CVR Agreement) by Parent, any of its affiliates or their respective licensee or sublicensee with respect to rights to develop or commercialize the Product (the "IV Milestone").

ii. Oral Milestone: Parent will be obligated to pay an aggregate amount equal to $15,000,000 upon the enrollment of the first patient in a Phase 3 clinical trial of an oral formulation of the Product by Parent, any of its affiliates or their respective licensee or sublicensee with respect to rights to develop or commercialize the Product (the "Oral Milestone").

iii. Product Sales Milestone: Parent will be obligated to pay an aggregate amount equal to $50,000,000 upon the first occurrence of the achievement of cumulative Product Sales (as defined in the CVR Agreement) in excess of $500,000,000, by Parent, any of its affiliates, or their respective licensee or sublicensee with respect to rights to develop or commercialize the Product (but not a distributor of the Product acting solely in the capacity as a distributor), or any combination thereto (the "Product Sales Milestone").

Based on the current capitalization information of the Company, the maximum aggregate payment per CVR is currently estimated to be $2.58. The CVR together with the $1.52 in cash represent the transaction consideration ("Consideration").

3. On November 9, 2017, in order to convince Ocera stockholders to tender their shares, the Board authorized the filing of a materially incomplete and misleading Schedule 14D-9 Solicitation/Recommendation Statement (the "Recommendation Statement") with the Securities and Exchange Commission ("SEC"). In particular, the Recommendation Statement contains materially incomplete and misleading information concerning Ocera's financial projections, the

true value of the Consideration to shareholders, and the valuation analyses performed by the Company's financial advisor, MTS Health Partners, LP ("MTS").

4. The Tender Offer is scheduled to expire on December 8, 2017 (the "Expiration Date"). It is imperative that the material information that has been omitted from the Recommendation Statement is disclosed to the Company's stockholders prior to the forthcoming Expiration Date so they can properly determine whether to tender their shares.

5. For these reasons, and as set forth in detail herein, Plaintiff seeks to enjoin Defendants from closing the Tender Offer or taking any steps to consummate the Proposed Transaction, unless and until the material information discussed below is disclosed to Ocera stockholders or, in the event the Proposed Transaction is consummated, to recover damages resulting from the Defendants' violations of the Exchange Act.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Section 14(e), 14(d)(4) and 20(a) of the Exchange Act.

7. Personal jurisdiction exists over each Defendant either because the Defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over Defendant by this Court permissible under traditional notions of fair play and substantial justice.

8. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because: (i) the conduct at issue took place and had an effect in this District; (ii) Ocera maintains its primary place of business in this District; (iii) a substantial portion of the transactions and wrongs complained of herein, including Defendants' primary participation in the wrongful acts detailed herein, occurred in this District; and (iv) Defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

PARTIES

9. Plaintiff is, and at all relevant times has been, a stockholder of Ocera.

10. Defendant Ocera is a Delaware corporation and maintains its headquarters at 555 Twin Dolphin Drive, Suite 615, Redwood City, California 94065. Ocera is a clinical stage biopharmaceutical company focused on the development and commercialization of OCR-002 (ornithine phenylacetate) in both intravenous (IV) and oral formulations. OCR-002 is an ammonia scavenger and has been granted Orphan Drug designation and Fast Track status by the U.S. Food and Drug Administration (FDA) for the treatment of hyperammonemia and resultant hepatic encephalopathy (HE) in patients with acute liver failure and acute-on-chronic liver disease. The Company's common stock trades on the Nasdaq under the ticker symbol "OCRX".

11. Individual Defendant Eckard Weber is a director of Ocera and is the Chairman of the Board.

12. Individual Defendant Linda S. Grais is a director of Ocera and is the Chief Executive Officer of the Company.

13. Individual Defendant Willard Dere is, and has been at all relevant times, a director of the Company.

14. Individual Defendant Steven P. James is, and has been at all relevant times, a director of the Company.

15. Individual Defendant Nina Kjellson is, and has been at all relevant times, a director of the Company.

16. Individual Defendant Anne M. VanLent is, and has been at all relevant times, a director of the Company.

17. Individual Defendant Wendell Wierenga is, and has been at all relevant times, a director of the Company.

18. The defendants identified in paragraphs 10-17 are collectively referred to as the "Defendants".

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and the other public stockholders of Ocera (the "Class"). Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any Defendant.

20. This action is properly maintainable as a class action because:

a. The Class is so numerous that joinder of all members is impracticable. There are millions of shares of Ocera common stock outstanding, held by hundreds to thousands of individuals and entities scattered throughout the country. The actual number of public stockholders of Ocera will be ascertained through discovery;

b. There are questions of law and fact that are common to the Class that predominate over any questions affecting only individual members, including the following:

i) whether Defendants have misrepresented or omitted material information concerning the Proposed Transaction in the Recommendation Statement, in violation of Sections 14(e) and 14(d)(4) of the Exchange Act;

ii) whether the Individual Defendants have violated Section 20(a) of the Exchange Act; and

iii) whether Plaintiff and other members of the Class will suffer irreparable harm if compelled to tender their shares based on the materially incomplete and misleading Recommendation Statement.

c. Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature, and will fairly and adequately protect the interests of the Class;

d. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class;

e. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the party opposing the Class;

f. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole; and

g. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

SUBSTANTIVE ALLEGATIONS

I. Background and the Proposed Transaction

21. Ocera, incorporated on January 12, 1998, is a clinical-stage biopharmaceutical company. The Company is focused on acute and chronic orphan liver diseases. The Company is focused on the development and commercialization of its clinical candidate, OCR-002, for the treatment of hepatic encephalopathy (HE). OCR-002 is a molecule, ornithine phenylacetate, which functions as an ammonia scavenger. The Company relies on third-party manufacturers to produce bulk drug substance and drug products required for commercial use and for its clinical trials.

22. Mallinckrodt, incorporated on January 9, 2013, develops, manufactures, markets, and distributes branded and generic specialty pharmaceutical products and therapies. The Company focuses on various therapeutic areas, such as autoimmune and rare disease specialty areas, including neurology, rheumatology, nephrology, ophthalmology, and pulmonology; immunotherapy and neonatal critical care respiratory therapies; analgesics and hemostasis products; and central nervous system drugs. The Company's segments include Specialty Brands and Specialty Generics. The Specialty Brands segment produces and markets branded pharmaceutical products and therapies. The Specialty Generics segment produces and markets specialty generic pharmaceuticals and active pharmaceutical ingredient (API) consisting of biologics, medicinal opioids, synthetic controlled substances, acetaminophen, and other active ingredients.

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23. On November 2, 2017, Ocera and Mallinckrodt issued a joint press release announcing the Proposed Transaction. The press release stated in relevant part:

> STAINES-UPON-THAMES, United Kingdom, and REDWOOD CITY, CA, Nov. 2, 2017 Mallinckrodt plc (NYSE: MNK), a leading global specialty pharmaceutical company, and Ocera Therapeutics, Inc. (NASDAQ: OCRX), today announced that they have entered into an agreement under which Mallinckrodt will acquire Ocera, a clinical stage biopharmaceutical company focused on the development and commercialization of novel therapeutics for orphan and other serious liver diseases with high unmet medical need. Ocera's developmental product OCR-002, an ammonia scavenger, is being studied for treatment of hepatic encephalopathy, a neuropsychiatric syndrome associated with hyperammonemia, a complication of acute or chronic liver disease.
>
> OCR-002 is a Phase 2 asset with both intravenous (IV) and oral formulations. Despite inability to meet statistical significance in its primary endpoint, Ocera's Phase 2 STOP-HE trial1 achieved secondary endpoints that revealed differentiated clinical impact, including demonstrated effect on lowering serum ammonia levels. Mallinckrodt believes that trial design elements, in part, drove the primary outcome and, on acquisition, will invest to establish the optimal dosing regimen prior to initiating a Phase 3 program. Mallinckrodt will have continued engagement with the U.S. Food and Drug Administration (FDA) to confirm the regulatory pathway to gain FDA approval and subsequently launch the IV formulation, expected by 2022, and the oral formulation, expected by 2024.
>
> The FDA granted OCR-002 its Orphan Drug Designation, and the resulting seven years' exclusivity would be applied upon first approval of the drug. The FDA also granted its Fast Track designation, a process designed to facilitate development and expedite the review of drugs to treat serious conditions and fill an unmet medical need2. The European Medicines Agency (EMA) also granted Orphan Drug status to OCR-002. If approved, the drug will have substantial durability through its Orphan Drug status and additionally through intellectual property that extends to at least 20303.
>
> "Hepatic encephalopathy can be a debilitating condition, affecting brain function and, in some cases, resulting in coma or death," said Steven Romano, M.D., Chief Scientific Officer and Executive Vice President of Mallinckrodt. "We look forward to bringing this much-needed treatment option to patients who suffer from this condition."
>
> "We believe OCR-002 has the potential to help thousands of patients whose hepatic encephalopathy is insufficiently treated by current therapies," said Linda S. Grais, M.D., President and Chief Executive Officer, Ocera. "We're excited by the additional development capability and commercial reach that can be gained by becoming part of Mallinckrodt. With this focus, I'm confident this important treatment can be successfully brought to market."

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Commercialization

If approved, Mallinckrodt expects OCR-002 to be commercialized by the company's existing sales organizations. At launch, patient access to this unique treatment option would also be supported and enhanced by the company's strong relationships with hospital networks, insurance companies and group purchasing organizations. Mallinckrodt's existing infrastructure of clinical and medical affairs experts will also support approval and launch of both formulations of the product. Mallinckrodt will work with the Ocera development team to ensure smooth integration of the development and regulatory plan.

Financial Considerations and Closing

A subsidiary of Mallinckrodt will commence a cash tender offer to purchase all of the outstanding shares of Ocera Therapeutics common stock for $1.52 per share (approximately $42 million), plus one Contingent Value Right to receive one or more payments in cash of up to $2.58 per share (up to approximately $75 million) based on the successful completion of certain development and sales milestones.

Mallinckrodt expects dilution from the acquisition to adjusted diluted earnings per share by $0.25 to $0.35 annually beginning in 2018, assuming the expected 2017 close. Guidance on the impact of the acquisition to the company's GAAP14 diluted earnings per share has not been provided due to the inherent difficulty of forecasting the timing or amount of items that would be included in calculating such impact. Subject to customary closing conditions, the company estimates the transaction will close in the fourth quarter of 2017.

II. The Merger Agreement's Deal Protection Provisions Deter Superior Offers

24. The Individual Defendants agreed to certain deal protection provisions in the Merger Agreement that operate conjunctively to deter other suitors from submitting a superior offer for Ocera.

25. First, the Merger Agreement contains a no solicitation provision that prohibits the Company or the Individual Defendants from taking any affirmative action to obtain a better deal for Ocera stockholders. The Merger Agreement states that the Company and the Individual Defendants shall not:

(i) solicit, initiate, knowingly facilitate or knowingly encourage any inquiries, proposals or offers that constitute, or that could reasonably be expected to lead to, an Acquisition Proposal, (ii) engage in, continue or otherwise participate in any discussions or negotiations with any third party regarding an Acquisition Proposal or any inquiry, proposal or offer that could reasonably be expected to lead to an Acquisition Proposal, or furnish to any third party information

> or provide to any third party access to the businesses, properties, assets or personnel of the Company or any of its Subsidiaries, in each case in connection with an Acquisition Proposal or any inquiry, proposal or offer that could reasonably be expected to lead to an Acquisition Proposal, or for the purpose of encouraging or facilitating an Acquisition Proposal, (iii) enter into any letter of intent, agreement, contract, commitment or agreement in principle (other than an Acceptable Confidentiality Agreement in accordance with this Section 5.2) with respect to an Acquisition Proposal or enter into any agreement, contract or commitment requiring the Company to abandon, terminate or fail to consummate the transactions contemplated by this Agreement, (iv) approve, support, adopt or recommend any Acquisition Proposal, or (v) resolve or agree to do any of the foregoing.

26. Additionally, the Merger Agreement grants Mallinckrodt recurring and unlimited matching rights, which provides Mallinckrodt with: (i) unfettered access to confidential, non-public information about competing proposals from third parties which it can use to prepare a matching bid; and (ii) four business days to negotiate with Ocera, amend the terms of the Merger Agreement, and make a counter-offer in the event a superior offer is received.

27. The non-solicitation and matching rights provisions essentially ensure that a superior bidder will not emerge, as any potential suitor will undoubtedly be deterred from expending the time, cost, and effort of making a superior proposal while knowing that Mallinckrodt can easily foreclose a competing bid. As a result, these provisions unreasonably favor Mallinckrodt, to the detriment of Ocera's public stockholders.

28. Further, the Merger Agreement provides that Ocera must pay Mallinckrodt a termination fee of $1,680,000 in the event the Company elects to terminate the Merger Agreement to pursue a superior proposal. The termination fee provision further ensures that no competing offer will emerge, as any competing bidder would have to pay a naked premium for the right to provide Ocera stockholders with a superior offer.

29. Ultimately, these preclusive deal protection provisions restrain the Company's ability to solicit or engage in negotiations with any third party regarding a proposal to acquire all or a significant interest in the Company.

30. Given that the preclusive deal protection provisions in the Merger Agreement impede a superior bidder from emerging, it is imperative that Ocera's stockholders receive all

1 material information necessary for them to cast a fully informed vote at the stockholder meeting
2 concerning the Proposed shares.

3 **III. The Recommendation Statement Is Materially Incomplete and Misleading**

4 31. On November 9, 2017, Defendants filed the Recommendation Statement with the
5 SEC. The Recommendation Statement has been disseminated to the Company's stockholders, and
6 solicits the Company's stockholders to tender their shares in the Tender Offer. The Individual
7 Defendants were obligated to carefully review the Recommendation Statement before it was filed
8 with the SEC and disseminated to the Company's stockholders to ensure that it did not contain any
9 material misrepresentations or omissions. However, the Recommendation Statement
10 misrepresents and/or omits material information that is necessary for the Company's stockholders
11 to make an informed decision concerning whether to tender their shares, in violation of Sections
12 14(e), 14(d)(4), and 20(a) of the Exchange Act.

13 32. First, the Recommendation Statement fails to disclose the non-probability of
14 success adjusted financial projections for both IV and Oral Formulations. A company's
15 management has meaningful insight into their firms' futures that the market does not. Shareholders
16 cannot hope replicate management's inside view of a company's prospects. Thus, projected
17 financial information provided by company management are among the most highly-prized
18 disclosures by shareholders. Given the decisions made by the banker in performing their valuation
19 analyses, discussed in greater detail below, these financial projections are critical for Ocera
20 shareholders to understand the value of the Company.

21 33. Second, on August 27, 2017 the Board approved management's revised financial
22 projections in light of feedback from potential partners. Yet, the Recommendation Statement only
23 discloses one set of projections to shareholders. Adjustments or revisions in management's
24 financial projections are material to shareholders. Valuation analyses are only as reliable as the
25 inputs a banker utilizes. Shareholders need to know what revisions were made to the financial
26 projections, so that they may judge if such revisions were fair, or, alternatively, made to palliate a
27 lower incoming offer price. The failure to include all sets of projections utilized during the course
28 of the sales process in materially misleading to shareholders.

34. Third, the Recommendation Statement omits the components of the unlevered free cash flow projections. Investors are concerned, perhaps above all else, with the unlevered free cash flows of the companies in which they invest. Under sound corporate finance theory, the value of stock should be premised on the expected unlevered free cash flows of the corporation. Accordingly, the question that the Company's shareholders need to assess in determining whether to tender their shares in favor of a transaction is clear – is the Consideration fair compensation given the expected unlevered free cash flows? Unlevered free cash flows are a non-GAAP financial metric, so their calculation can vary from company to company. Given the importance unlevered free cash flows to shareholders and the potential for variation in their calculation, the failure to disclose all the components of the unlevered free cash flows renders the financial projections misleading.

35. The omission of the above-referenced projections also renders the financial projections included on pages 38-40 of the Recommendation Statement materially incomplete and misleading. If a recommendation statement discloses financial projections and valuation information, such projections must be complete and accurate. The question here is not the duty to speak, but liability for not having spoken enough. With regard to future events, uncertain figures, and other so-called soft information, a company may choose silence or speech elaborated by the factual basis as then known—but it may not choose half-truths.

36. Further, the Recommendation Statement inconsistently states the number of Ocera shares outstanding. At various points, the Recommendation Statement states that there are 26,514,134, 27.698 million, and 81.752 million shares outstanding. The number of shares outstanding has a direct impact on the value of the CVRs. Since each milestone results in a lump-sum payment, the number of shares that payment is divided into directly and significantly impacts the amount each shareholder might receive. The portion of the Recommendation Statement describing the *Contingent Value Rights Agreement* makes no mention of the number of shares used to calculate the $2.58 per share consideration. Ocera stockholders are required to decide whether they should forever relinquish their equity in the Company and forego the opportunity to

1 participate in the Company's future earnings and growth in exchange for the Consideration. Thus,
2 the most crucial piece of information to them is the accurate value of the Consideration.
3 37. On page 40, the Recommendation Statement states:
4 In particular, for purposes of preparing the financial projections, the
5 Company assumed that it would successfully implement an immediate equity financing plan to raise net proceeds of
6 approximately $30.0 million through the issuance of approximately 54.0 million shares of Company common stock, representing total
7 dilution of 67% to shares outstanding as of November 1, 2017.
8 Outside of a footnote in the *Discounted Cash Flow Analysis* section, there is no other mention of
9 this stock issuance in the Recommendation Statement. A secondary equity offering of this
10 magnitude has a tremendous impact on the Company. If this information is indeed accurate, then
11 the Company will issue an amount of stock approximately double the current float at a severe
12 *discount* to the current trading price. The execution of this potential equity financing will
13 substantially affect the value of the Consideration, the value of Ocera stock, the cash balance
14 closing requirements of the Merger Agreement, and valuation analyses performed by MTS. The
15 failure to provide full and accurate account of the equity offering and its potential effects on the
16 Consideration renders the Recommendation Statement materially incomplete and misleading
17 38. Additionally, the Recommendation Statement fails to adequately inform
18 shareholders of the true value of the Consideration. The Recommendation statement devotes ten
19 pages to explaining how MTS derived its fairness opinion, but only one sentence on a more
20 accurate value of the unadjusted per share Consideration. In that sentence, KBW states that the
21 probability and present value adjusted Consideration is worth $1.99. However, the
22 Recommendation omits what the probability of success for each milestone is, when it is likely to
23 occur, or what rate was applied to the payment to discount it back to present value. These pieces
24 of information are crucial, so that shareholders can understand the value they are receiving for
25 their shares. The omission of complete and accurate details about the Consideration renders the
26 Recommendation Statement materially incomplete and misleading.
27 39. With respect to MTS' *Discounted Cash Flow Analysis*, the Recommendation
28 Statement fails to disclose the following key components used in the analysis: (i) the inputs and

assumptions underlying the calculation of the discount rate range of 18% to 22%, including all WACC components; and (ii) the expiration date of the patent that justifies no calculation or inclusion of a terminal value.

40. These key inputs are material to Ocera stockholders, and their omission renders the summary of MTS' Discounted Cash Flow Analysis incomplete and misleading. As a highly-respected professor explained in one of the most thorough law review articles regarding the fundamental flaws with the valuation analyses bankers perform in support of fairness opinions, in a discounted cash flow analysis a banker takes management's forecasts, and then makes several key choices "each of which can significantly affect the final valuation." Steven M. Davidoff, *Fairness Opinions*, 55 Am. U.L. Rev. 1557, 1576 (2006). Such choices include "the appropriate discount rate, and the terminal value…" *Id.* As Professor Davidoff explains:

> There is substantial leeway to determine each of these, and any change can markedly affect the discounted cash flow value. For example, a change in the discount rate by one percent on a stream of cash flows in the billions of dollars can change the discounted cash flow value by tens if not hundreds of millions of dollars….This issue arises not only with a discounted cash flow analysis, but with each of the other valuation techniques. This dazzling variability makes it difficult to rely, compare, or analyze the valuations underlying a fairness opinion *unless full disclosure is made of the various inputs in the valuation process, the weight assigned for each, and the rationale underlying these choices*. The substantial discretion and lack of guidelines and standards also makes the process vulnerable to manipulation to arrive at the "right" answer for fairness. This raises a further dilemma in light of the conflicted nature of the investment banks who often provide these opinions.

Id. at 1577-78.

41. With respect to MTS' *Publicly Traded Comparable Companies* and *Selected Acquisitions* Analyses, the Recommendation statement fails to disclose following material information: (i) the reasoning for "*Net Cash Adjustment*" given that each company selected in these two analyses had their own capital structure that was represented in their transaction and/or enterprise values; and (ii) the reasoning behind using 81.752 million shares for the *Discounted Cash Flow Analysis* and 27.698 million shares for these two analyses. This information has an immense impact on the illustrative per share value ranges derived in these two analyses, and, thus, is material to shareholders.

1 42. In sum, the omission and/or misstatement of the above-referenced information
2 renders statements in the Recommendation Statement materially incomplete and misleading in
3 contravention of the Exchange Act. Absent disclosure of the foregoing material information prior
4 to the expiration of the Tender Offer, Plaintiff and the other members of the Class will be unable
5 to make a fully-informed decision regarding whether to tender their shares, and they are thus
6 threatened with irreparable harm, warranting the injunctive relief sought herein.

7 **COUNT I**

8 **(Against All Defendants for Violation of Section 14(e) of the Exchange Act)**

9 43. Plaintiff incorporates each and every allegation set forth above as if fully set forth
10 herein.

11 44. Section 14(e) of the Exchange Act provides that it is unlawful "for any person to
12 make any untrue statement of a material fact or omit to state any material fact necessary in order
13 to make the statements made, in the light of the circumstances under which they are made, not
14 misleading…" 15 U.S.C. §78n(e).

15 45. Defendants have issued the Recommendation Statement with the intention of
16 soliciting Ocera stockholders to tender their shares. Each of the Defendants reviewed and
17 authorized the dissemination of the Recommendation Statement, which fails to provide material
18 information regarding Ocera's financial projections and the valuation analyses performed by MTS.

19 46. In so doing, Defendants made untrue statements of fact and/or omitted material
20 facts necessary to make the statements made not misleading. Each of the Individual Defendants,
21 by virtue of their roles as officers and/or directors, were aware of the omitted information but failed
22 to disclose such information, in violation of Section 14(e). The Individual Defendants were
23 therefore reckless, as they had reasonable grounds to believe material facts existed that were
24 misstated or omitted from the Recommendation Statement, but nonetheless failed to obtain and
25 disclose such information to stockholders although they could have done so without extraordinary
26 effort.

27 47. The Individual Defendants were privy to and had knowledge of the projections for
28 the Company and the details concerning MTS's valuation analyses. The Individual Defendants

1 were reckless in choosing to omit material information from the Recommendation Statement,
2 despite the fact that such information could have been disclosed without unreasonable efforts.
3 48. The misrepresentations and omissions in the Recommendation Statement are
4 material to Plaintiff and the Class, who will be deprived of their right to make an informed decision
5 regarding whether to tender their shares if such misrepresentations and omissions are not corrected
6 prior to the Expiration Date. Plaintiff and the Class have no adequate remedy at law. Only through
7 the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from
8 the immediate and irreparable injury that Defendants' actions threaten to inflict.

9 **COUNT II**

10 **(Against all Defendants for Violations of Section 14(d)(4) of the Exchange Act and SEC Rule 14d-9,17 C.F.R. § 240.14d-9)**

11 49. Plaintiff incorporates each and every allegation set forth above as if fully set forth
12 herein.
13 50. Section 14(d)(4) of the Exchange Act and SEC Rule 14d-9 promulgated thereunder
14 require full and complete disclosure in connection with tender offers. Specifically, Section
15 14(d)(4) provides that:

16 Any solicitation or recommendation to the holders of such a security
17 to accept or reject a tender offer or request or invitation for tenders
shall be made in accordance with such rules and regulations as the
18 Commission may prescribe as necessary or appropriate in the public
interest or for the protection of investors.

19 51. SEC Rule 14d-9(d), which was adopted to implement Section 14(d)(4) of the
20 Exchange Act, provides that:

21 Information required in solicitation or recommendation. Any
22 solicitation or recommendation to holders of a class of securities
referred to in section 14(d)(1) of the Act with respect to a tender
23 offer for such securities shall include the name of the person making
such solicitation or recommendation and the information required
24 by Items 1 through 8 of Schedule 14D-9 (§ 240.14d-101) or a fair
and adequate summary thereof.

25 52. In accordance with Rule 14d-9, Item 8 of a Schedule 14D-9 requires a Company's
26 directors to:
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> Furnish such additional information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

53. The Recommendation Statement violates Section 14(d)(4) and Rule 14d-9 because it omits material facts, including those set forth above, which omissions render the Recommendation Statement false and/or misleading.

54. Defendants knowingly or with deliberate recklessness omitted the material information identified above from the Recommendation Statement, causing certain statements therein to be materially incomplete and therefore misleading. Indeed, Defendants undoubtedly reviewed the omitted material information in connection with approving the Proposed Transaction.

55. The misrepresentations and omissions in the Recommendation Statement are material to Plaintiff and the Class, who will be deprived of their right to make an informed decision regarding whether to tender their shares if such misrepresentations and omissions are not corrected prior to the Expiration Date. Plaintiff and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

COUNT III

(Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act)

56. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

57. The Individual Defendants acted as controlling persons of Ocera within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or directors of Ocera, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the incomplete and misleading statements contained in the Recommendation Statement, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that Plaintiff contends are materially incomplete and misleading.

1 58. Each of the Individual Defendants was provided with or had unlimited access to
2 copies of the Recommendation Statement by Plaintiff to be misleading prior to the date the
3 Recommendation Statement was issued, and had the ability to prevent the issuance of the false and
4 misleading statements or cause the statements to be corrected.
5 59. In particular, each of the Individual Defendants had direct and supervisory
6 involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had
7 the power to control or influence the particular transactions giving rise to the Exchange Act
8 violations alleged herein, and exercised the same. The Recommendation Statement at issue
9 contains the unanimous recommendation of each of the Individual Defendants that stockholders
10 tender their shares in the Tender Offer. They were thus directly involved in preparing this
11 document.
12 60. In addition, as the Recommendation Statement sets forth, and as described herein,
13 the Individual Defendants were involved in negotiating, reviewing, and approving the merger
14 agreement. The Recommendation Statement purports to describe the various issues and
15 information that the Individual Defendants reviewed and considered. The Individual Defendants
16 participated in drafting and/or gave their input on the content of those descriptions.
17 61. By virtue of the foregoing, the Individual Defendants have violated Section 20(a)
18 of the Exchange Act.
19 62. As set forth above, the Individual Defendants had the ability to exercise control
20 over and did control a person or persons who have each violated Section 14(e), 14(d)(4) and Rule
21 14d-9 by their acts and omissions as alleged herein. By virtue of their positions as controlling
22 persons, these Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct
23 and proximate result of Individual Defendants' conduct, Plaintiff and the Class will be irreparably
24 harmed.
25 63. Plaintiff and the Class have no adequate remedy at law. Only through the exercise
26 of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate
27 and irreparable injury that Defendants' actions threaten to inflict.
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RELIEF REQUESTED

WHEREFORE, Plaintiff demands injunctive relief in his favor and in favor of the Class and against the Defendants jointly and severally, as follows:

A. Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class Representative and his counsel as Class Counsel;

B. Preliminarily and permanently enjoining Defendants and their counsel, agents, employees and all persons acting under, in concert with, or for them, from proceeding with, consummating, or closing the Proposed Transaction, unless and until Defendants disclose the material information identified above which has been omitted from the Recommendation Statement;

C. Rescinding, to the extent already implemented, the Merger Agreement or any of the terms thereof, or granting Plaintiff and the Class rescissory damages;

D. Directing the Defendants to account to Plaintiff and the Class for all damages suffered as a result of their wrongdoing;

E. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and expert fees and expenses; and

F. Granting such other and further equitable relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: November 30, 2017

Respectfully submitted,

/s/ David E. Bower
David E. Bower

David E. Bower SBN 119546
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Counsel for Plaintiff

OF COUNSEL

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Fax: 212-202-7880
Email: jmonteverde@monteverdelaw.com

Counsel for Plaintiff

CERTIFICATION OF PROPOSED LEAD PLAINTIFF

I, William C Paulus ("Plaintiff"), declare, as to the claims asserted under the federal securities laws, that:

1. Plaintiff has reviewed a draft of the complaint and has authorized the filing of a complaint substantially similar to the one reviewed.

2. Plaintiff selects Monteverde & Associates PC and any firm with which it affiliates for the purpose of prosecuting this action as my counsel for purposes of prosecuting my claim against defendants.

3. Plaintiff did not purchase the security that is the subject of the complaint at the direction of Plaintiff's counsel or in order to participate in any private action arising under the federal securities laws.

4. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.

5. Plaintiff sets forth in the attached chart all the transactions in the security that is the subject of the complaint during the class period specified in the complaint.

6. In the past three years, Plaintiff has not sought to serve nor has served as a representative party on behalf of a class in an action filed under the federal securities laws, unless otherwise specified below.

7. Plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

I declare under penalty of perjury under the laws of the United States that the foregoing information is correct to the best of my knowledge.

Signed this 30 day of November, 2017.

Signature

Company Name/Ticker	Transaction (Purchase or Sale)	Trade Date	Quantity
OCRX	Purchase	03/09/2017	125
OCRX	"	03/10/2017	975
OCRX	"	03/13/2017	385

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
William Paulus Individually and on Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff: Cape May NJ
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

DEFENDANTS
OCERA THERAPEUTICS, INC., ECKARD WEBER, LINDA S. GRAIS, WILLARD DERE, STEVEN P. JAMES, NINA KJELLSON, ANNE M. VANLENT, and WENDELL WIERENGA,

County of Residence of First Listed Defendant: San Mateo
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys *(If Known)*

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

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 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)* *(For Diversity Cases Only)*

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment Of Veteran's Benefits
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury -Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury – Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities–Employment
- ☐ 446 Amer. w/Disabilities–Other
- ☐ 448 Education

PRISONER PETITIONS

HABEAS CORPUS
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

OTHER
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee– Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC § 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC § 158
- ☐ 423 Withdrawal 28 USC § 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent─Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS–Third Party 26 USC § 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC § 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced & Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☒ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State 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*)**:
15 USC §§ 78n(a)(1) Rule 14n-9

Brief description of cause:
Defendants violated §§ 14(a) and 20(a) of the Exchange Act

VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, Fed. R. Civ. P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S), IF ANY *(See instructions)*:

JUDGE Hon. Edward Chen DOCKET NUMBER 3:17-cv-06636-EMC

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) ☐ **SAN FRANCISCO/OAKLAND** ☒ **SAN JOSE** ☐ **EUREKA-MCKINLEYVILLE**

DATE 11/30/2017 **SIGNATURE OF ATTORNEY OF RECORD**

Print Save As... Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate 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 Federal Rule of Civil Procedure 8(a), 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.

(1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.

(2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

(3) Federal question. This refers to suits under 28 USC § 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.

(4) Diversity of citizenship. This refers to suits under 28 USC § 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-CAND 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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the six boxes.

(1) Original Proceedings. Cases originating in the United States district courts.

(2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.

(3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

(4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

(5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

(6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.

(8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.

Please note that there is no 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 Federal Rule of Civil Procedure 23.

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-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

IX. Divisional Assignment. If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."

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: Stockholder Claims Ocera Therapeutics Withholding Material Info Concerning Merger