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

\_\_\_\_\_, Individually  
and on Behalf of All Others Similarly  
Situated,  
  
Plaintiff,  
  
v.  
  
OBALON THERAPEUTICS, INC.,  
ANDREW RASDAL, and WILLIAM  
PLOVANIC,  
  
Defendants.

Case No.:

**CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF THE  
FEDERAL SECURITIES LAWS**

**JURY TRIAL DEMANDED**

1 Plaintiff \_\_\_\_\_ (“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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20 2. Obalon is purportedly a medical device company that develops and  
21 commercializes medical devices to treat obese and overweight people by facilitating  
22 weight loss. The Company claims that its initial product offering is the Obalon  
23 balloon system, a U.S. Food and Drug Administration (“FDA”) approved  
24 swallowable, gas-filled intragastric balloon designed to provide progressive and  
25 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.  
13

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.  
5

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."  
10

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.  
15

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.  
19

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.  
23

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  
27  
28

1 Form S-1 and all amendments thereto form part of the “Registration Statement” for  
2 the IPO.

3  
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  
8 required to disclose known trends, events or uncertainties that were having, and  
9 were reasonably likely to have, an impact on the Company’s continuing operations.

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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17 **Materially False and Misleading**  
18 **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:  
22

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.

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

34 (a) All significant deficiencies and material weaknesses in the  
35 design or operation of internal control over financial reporting  
36 which are reasonably likely to adversely affect the registrant's  
37 ability to record, process, summarize and report financial  
38 information; and

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

1  
2 26. On February 23, 2017, Obalon issued a press release entitled, “Obalon  
3 Therapeutics, Inc. Announces Fourth Quarter and Full Year 2016 Financial  
4 Results.” Therein, the Company, in relevant part, stated:

5  
6 **Fourth Quarter 2016 Results**

7 The Company reported total revenues of \$0.8 million for the fourth  
8 quarter, compared to \$1.0 million for the fourth quarter of 2015. Net  
9 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.

10 Cost of goods sold was \$0.9 million during the three months ended  
11 December 31, 2016, up from \$0.7 million for the prior year period.  
12 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.

13 Research and Development expense for the fourth quarter totaled \$2.6  
14 million, down from \$3.8 million in the fourth quarter of 2015, and  
15 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.

16 Operating loss for the fourth quarter was \$7.5 million, compared to an  
17 operating loss of \$4.7 million for the fourth quarter of 2015.  
18 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.

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

21 On October 12, 2016, Obalon closed an initial public offering of 5.0  
22 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.

23 **Full Year 2016 Results**

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

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

28 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:  
17  
18

19  
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  
4 in ¶25, *supra*.

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  
8 recognized revenue in violation of GAAP; (2) that the Company lacked adequate  
9 internal controls over accounting and financial reporting; and (3) that, as a result of  
10 the foregoing, the Company’s financial statements and Defendants’ statements about  
11 Obalon’s business, operations, and prospects, were materially false and misleading  
12 at all relevant times.  
13

14 **Disclosures at the End of the Class Period**

15  
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:  
22  
23

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).  
7  
8

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);  
15

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);  
25  
26  
27  
28

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.  
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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 **UNDISCLOSED ADVERSE FACTS**

12  
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 Class. As described herein, during the Class Period, Defendants made or caused to  
8 be made a series of materially false and/or misleading statements about Obalon's  
9 financial well-being and prospects. These material misstatements and/or omissions  
10 had the cause and effect of creating in the market an unrealistically positive  
11 assessment of the Company and its financial well-being and prospects, thus causing  
12 the Company's securities to be overvalued and artificially inflated at all relevant  
13 times. Defendants' materially false and/or misleading statements during the Class  
14 Period resulted in Plaintiff and other members of the Class purchasing the  
15 Company's securities at artificially inflated prices, thus causing the damages  
16 complained of herein.

17  
18  
19  
20  
21 **LOSS CAUSATION**

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

24  
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 Company's securities significantly declined when the misrepresentations made to  
28

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  
12 **NO SAFE HARBOR**

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  
25  
26  
27  
28

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

19 61. the Company and the Individual Defendants (i) employed devices,  
20 schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or  
21 omitted to state material facts necessary to make the statements not misleading; and  
22 (iii) engaged in acts, practices, and a course of business which operated as a fraud  
23 and deceit upon the purchasers of the Company's securities in an effort to maintain  
24 artificially high market prices for Obalon's securities in violation of Section 10(b) of  
25  
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28

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 person liability, arises from the following facts: (i) the Individual Defendants were  
28

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.

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,

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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21

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  
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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  
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