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8 Lead Counsel for Lead Plaintiff

9 UNITED STATES DISTRICT COURT  
 10 SOUTHERN DISTRICT OF CALIFORNIA

11	In re OBALON THERAPEUTICS,	}	Master File No. 3:18-cv-00352-AJB-AHG
12	INC. SECURITIES LITIGATION		<u>CLASS ACTION</u>
13	_____	}	STIPULATION AND AGREEMENT OF CLASS ACTION SETTLEMENT
14	This Document Relates To:		
15	ALL ACTIONS.		
16	_____		

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1 This Stipulation and Agreement of Class Action Settlement, dated August 17,  
2 2020 (the “Stipulation” or the “Settlement Agreement”), submitted pursuant to  
3 Rule 23 of the Federal Rules of Civil Procedure (“Rules”) and Rule 408 of the  
4 Federal Rules of Evidence, embodies a settlement (the “Settlement”) made and  
5 entered into by and among the following Settling Parties: (i) Lead Plaintiff Inter-  
6 Local Pension Fund GCC/IBT (“Lead Plaintiff”), on behalf of itself and each of the  
7 members of the Class, as defined in ¶¶1.3-1.4, *infra*, on the one hand, and (ii) Obalon  
8 Therapeutics, Inc. (“Obalon” or the “Company”), Andrew P. Rasdal, and William J.  
9 Plovanic (collectively, “Defendants”) (together, Lead Plaintiff and Defendants are  
10 referred to as the “Settling Parties”), on the other hand, by and through their counsel  
11 of record in the above-captioned litigation pending in the United States District  
12 Court for the Southern District of California (the “Litigation”).

13 This Stipulation is intended by the Settling Parties to fully, finally, and forever  
14 resolve, discharge, and settle the Released Claims, as defined in ¶1.23, *infra*, upon  
15 and subject to the terms and conditions hereof and subject to the approval of the  
16 Court. Throughout this Stipulation, all capitalized terms used, but not immediately  
17 defined, have the meanings given to them in Section IV, *infra*.

## 18 I. THE LITIGATION

19 This case is currently pending before the Honorable Anthony J. Battaglia in  
20 the United States District Court for the Southern District of California (the “Court”)  
21 and was brought on behalf of a Class of all persons who purchased or acquired  
22 Obalon common stock during the period from October 6, 2016, through and  
23 including May 11, 2018.

24 The initial complaint was filed on February 14, 2018, alleging violations of  
25 §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and  
26 SEC Rule 10b-5 promulgated thereunder. ECF No. 1.

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1 On July 24, 2018, the Court appointed Lead Plaintiff and the firm of Robbins  
2 Geller Rudman & Dowd LLP as Lead Counsel. ECF No. 10.

3 On October 5, 2018, Lead Plaintiff filed the Consolidated Complaint for  
4 Violation of the Federal Securities Laws (“Complaint”). In addition to the Exchange  
5 Act claims, the Complaint also alleged violations of §§11 and 15 of the Securities  
6 Act of 1933 on behalf of plaintiff Teamster Affiliates Pension Plan (“TAPP”)  
7 (together with Lead Plaintiff, “Plaintiffs”), against UBS Securities LLC, Canaccord  
8 Genuity Inc., Stifel Nicolaus & Company Incorporated, and BTIG, LLC (the  
9 “Underwriter Defendants”) as additional defendants.

10 The Complaint alleged that Defendants made materially false and misleading  
11 statements between October 6, 2016 and May 11, 2018 and in their offering  
12 materials regarding the Obalon Balloon System’s (the “Obalon Balloon”) ease of  
13 use, safety profile, and efficacy. ECF No. 17. The Complaint also alleged that  
14 Defendants made materially false and misleading statements regarding the financial  
15 health of the Company. *Id.* The Complaint further alleged that Defendants  
16 materially misled investors when it reported revenue that had not been properly  
17 recognized in violation of Generally Accepted Accounting Principles. *Id.* Finally,  
18 the Complaint alleged that Defendants made materially false and misleading  
19 statements that artificially inflated the price of Obalon common stock and that, when  
20 the truth was eventually disclosed, the Class suffered substantial damages. *Id.*

21 On December 4, 2018, Defendants and the Underwriter Defendants filed  
22 motions to dismiss the Complaint, as well as requests for incorporation by reference  
23 and judicial notice. *See* ECF Nos. 41-42. Plaintiffs filed their oppositions on  
24 January 18, 2019. *See* ECF Nos. 48-50. Defendants and the Underwriter  
25 Defendants filed their replies on February 19, 2019. *See* ECF Nos. 58-59.

26 On September 25, 2019, the Court issued an order ruling on both the  
27 Defendants’ and Underwriter Defendants’ motions to dismiss and requests for

1 incorporation by reference and judicial notice. *See* ECF No. 68. The Court granted  
2 in part and denied in part Defendants' motion to dismiss, upholding Lead Plaintiff's  
3 claims concerning Obalon's financial condition and revenue recognition scheme.  
4 ECF No. 68. The Court granted the Underwriters Defendants' motion to dismiss,  
5 holding that TAPP's §11 claim was time-barred. *Id.*

6 Defendants filed an answer to the Exchange Act claims on October 25, 2019,  
7 denying all material allegations. ECF No. 71.

8 Discovery commenced shortly thereafter. On November 14, 2019, counsel  
9 for the Settling Parties met in person to conduct a Rule 26(f) conference. Lead  
10 Plaintiff served its initial disclosures on January 6, 2020. On January 10, 2020,  
11 Defendants served their initial disclosures.

12 On February 25, 2020, Lead Plaintiff served its first set of 46 Requests for  
13 Production of Documents on Defendants. On February 26, 2020, Defendants served  
14 their first set of 31 Requests for Production of Documents on Lead Plaintiff. The  
15 Settling Parties met and conferred extensively over the scope and relevance of the  
16 total 77 requests. These efforts included numerous telephonic meet and confer  
17 sessions and multiple written correspondence wherein the Settling Parties outlined  
18 their respective positions. In total, the Settling Parties exchanged over 8,600 pages  
19 in discovery.

20 On November 11, 2019, Lead Plaintiff served Rule 45 document subpoenas  
21 on Northland Securities, Inc. and the Underwriter Defendants. Northland Securities  
22 produced documents responsive to Lead Plaintiff's Rule 45 Subpoenas on  
23 December 6, 2019 and on February 27, 2020.

24 On April 7, 2020, following extensive negotiations, the Settling Parties jointly  
25 moved the Court for entry of a stipulated protective order. ECF No. 87. On April 10,  
26 2020, the Court granted the Settling Parties' motion. ECF No. 88.

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1 On May 5, 2020, following extensive negotiations, the Settling Parties filed  
2 their Joint Case Management Statement. ECF No. 93. The Settling Parties reached  
3 a resolution of this Litigation before the Court could issue a ruling on the Settling  
4 Parties' Joint Case Management Statement.

5 As a result of their Rule 26(f) discussions, the Settling Parties agreed to  
6 engage the services of the Hon. Irma Gonzalez (ret.), an experienced mediator. The  
7 Settling Parties participated in a full-day mediation session with Judge Gonzalez on  
8 January 30, 2020, but were unable to reach a resolution that day or in the days that  
9 followed.

10 Thereafter, and with the benefit of additional discovery, the Settling Parties  
11 virtually participated in a court-ordered Early Neutral Evaluation ("ENE")  
12 conference all day on May 15, 2020, and again on May 19, 2020, before Magistrate  
13 Judge Allison H. Goddard. With Judge Goddard's able assistance, the Settling  
14 Parties agreed to a mediator's proposal to settle the Litigation for \$3,150,000.00 in  
15 cash (the "Settlement Amount"), subject to the negotiation of the terms of a  
16 Stipulation and Agreement of Settlement and approval by this Court.

17 **II. CLAIMS OF LEAD PLAINTIFF AND BENEFITS OF THIS**  
18 **SETTLEMENT TO THE CLASS**

19 Lead Plaintiff believes that the claims asserted in the Litigation have merit.  
20 However, Lead Plaintiff and Lead Counsel recognize and acknowledge the expense  
21 and length of continued proceedings necessary to prosecute the Litigation against  
22 the Defendants through trial. Lead Plaintiff and Lead Counsel also have taken into  
23 account the uncertain outcome and risks in connection with Defendants' anticipated  
24 opposition to any motion for class certification, Defendants' anticipated motion for  
25 summary judgment, and persuading a unanimous jury at trial, especially in complex  
26 matters such as this Litigation, as well as the risks posed by post-trial motions, and  
27 potential appeals from the determination of those motions, or a jury verdict. Lead

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1 Plaintiff and Lead Counsel also are aware of the risks presented by the defenses to  
2 the securities law violations asserted in the Litigation. Lead Plaintiff and Lead  
3 Counsel believe that the Settlement set forth in this Stipulation confers substantial  
4 benefits upon the Class in light of the circumstances present here. Based on their  
5 evaluation, Lead Plaintiff and Lead Counsel have determined that the Settlement set  
6 forth in this Stipulation is in the best interests of Lead Plaintiff and the Class, and is  
7 fair, reasonable, and adequate.

8 **III. DEFENDANTS' DENIALS OF WRONGDOING AND**  
9 **LIABILITY**

10 Defendants have denied, and continue to deny, any and all allegations and  
11 claims asserted by Plaintiffs in the Litigation. As set forth in ¶9.5 below, this  
12 Stipulation does not constitute, and shall not be offered or received against  
13 Defendants as evidence of, or construed as, or deemed to be evidence of any  
14 concession or admission by Defendants with respect to the truth of any fact alleged  
15 or the validity of any claim in this Litigation. Defendants state that they are entering  
16 into the Settlement solely to eliminate the burden, expense, and uncertainties of  
17 further litigation.

18 **IV. TERMS OF STIPULATION AND AGREEMENT OF**  
19 **SETTLEMENT**

20 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by  
21 and among Lead Plaintiff (for itself and the members of the Class), on the one hand,  
22 and Defendants, on the other hand, by and through their respective counsel of record,  
23 that, subject to the approval of the Court, pursuant to Rule 23(e), in consideration of  
24 the benefits flowing to the parties from the Settlement set forth herein, the Released  
25 Claims shall be finally and fully compromised, settled, and released, and the  
26 Litigation shall be dismissed with prejudice, as to all Settling Parties, upon and  
27 subject to the terms and conditions of the Stipulation, as follows.

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1           1.12 “Final” means when the last of the following with respect to the  
2 Judgment approving the Settlement, in the form of Exhibit B attached hereto, shall  
3 occur: (i) the expiration of the time to file a motion to alter or amend the Judgment  
4 under Rule 59(e) has passed without any such motion having been filed; (ii) the  
5 expiration of the time in which to appeal the Judgment has passed without any appeal  
6 having been taken, which date shall be deemed to be thirty (30) days following the  
7 entry of the Judgment, unless the date to take such an appeal shall have been  
8 extended by Court order or otherwise, or unless the 30th day falls on a weekend or  
9 a Court holiday, in which case the date for purposes of this Stipulation shall be  
10 deemed to be the next business day after such 30th day; and (iii) if a motion to alter  
11 or amend is filed under Rule 59(e) or if an appeal is taken, immediately after the  
12 determination of that motion or appeal so that it is no longer subject to any further  
13 judicial review or appeal whatsoever, whether by reason of affirmance by a court of  
14 last resort, lapse of time, voluntary dismissal of the appeal or otherwise, and in such  
15 a manner as to permit the consummation of the Settlement substantially in  
16 accordance with the terms and conditions of this Stipulation. For purposes of this  
17 paragraph, an “appeal” shall include any petition for a writ of certiorari or other writ  
18 that may be filed in connection with approval or disapproval of this Settlement, but  
19 shall not include any appeal that concerns only the issue of attorneys’ fees and  
20 expenses or any Plan of Allocation of the Settlement Fund.

21           1.13 “Individual Defendants” means Andrew P. Rasdal and William J.  
22 Plovanic.

23           1.14 “Judgment” means the judgment and order of dismissal with prejudice  
24 to be rendered by the Court upon approval of the Settlement, substantially in the  
25 form attached hereto as Exhibit B, or such other substantially similar form agreed to  
26 by the Settling Parties.

27           1.15 “Lead Counsel” means Robbins Geller Rudman & Dowd LLP.

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1 1.16 “Lead Plaintiff” means Inter-Local Pension Fund GCC/IBT.

2 1.17 “Net Settlement Fund” means the Settlement Fund less: (i) the amount  
3 of the Fee and Expense Award and any award to Lead Plaintiff as allowed under the  
4 PSLRA, if and to the extent allowed by the Court; (ii) Notice and Administration  
5 Expenses; (iii) Taxes and Tax Expenses; and (iv) any other fees or expenses  
6 approved by the Court.

7 1.18 “Notice” means the Notice of Pendency and Proposed Settlement of  
8 Class Action to be sent to Class Members, which, subject to approval of the Court,  
9 shall be substantially in the form attached hereto as Exhibit A-1.

10 1.19 “Notice and Administration Expenses” means the fees and expenses  
11 reasonably and actually incurred in connection with providing notice, locating Class  
12 Members, assisting with the filing of claims, administering and distributing the Net  
13 Settlement Fund to Authorized Claimants, processing claim forms, and paying  
14 escrow fees and costs, if any.

15 1.20 “Notice Order” is defined in ¶4.1 below.

16 1.21 “Person” means a natural person, individual, corporation, partnership,  
17 limited partnership, association, joint stock company, estate, legal representative,  
18 trust, unincorporated association, government or any political subdivision or agency  
19 thereof, and any business or legal entity and his, her or its spouses, heirs,  
20 predecessors, successors, representatives, or assignees.

21 1.22 “Plan of Allocation” means a plan or formula of allocation of the Net  
22 Settlement Fund whereby the Net Settlement Fund shall be distributed to Authorized  
23 Claimants. Any Plan of Allocation is not part of the Stipulation and the Released  
24 Defendant Parties shall have no responsibility or liability with respect to the Plan of  
25 Allocation.

26 1.23 “Released Claims” means any and all claims and causes of action of  
27 every nature and description whatsoever, including Unknown Claims as defined in

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1 ¶1.33 hereof, whether arising under federal, state, local, common, statutory,  
2 administrative, or foreign law, or any other law, rule, or regulation, at law or in  
3 equity, whether fixed or contingent, whether foreseen or unforeseen, whether  
4 accrued or unaccrued, whether liquidated or unliquidated, whether matured or  
5 unmatured, whether direct, representative, class, or individual in nature, that either  
6 were or could have been asserted in this Litigation, which arise out of, are based  
7 upon, or are related in any way to both: (i) the purchase or acquisition, or sale of  
8 Obalon securities; and (ii) the allegations, transactions, facts, matters, or  
9 occurrences, representations or omissions involved, set forth, or referred to, or which  
10 could have been alleged, in the Complaint.

11 1.24 “Released Defendant Claims” means upon the Effective Date,  
12 Defendants and any defendant previously named as a defendant in this Litigation,  
13 including the Underwriter Defendants, will release as against Released Plaintiff  
14 Parties (as defined below), all claims and causes of action of every nature and  
15 description, whether known or Unknown Claims, whether arising under federal,  
16 state, local, common, statutory, administrative, or foreign law, or any other law, rule,  
17 or regulation, at law or in equity, whether fixed or contingent, whether foreseen or  
18 unforeseen, whether accrued or unaccrued, whether liquidated or unliquidated,  
19 whether matured or unmatured, whether direct, representative, class, or individual  
20 in nature that arise out of or relate in any way to the institution, prosecution, or  
21 settlement of the claims against Defendants and any defendant previously named as  
22 a defendant in this Litigation, including the Underwriter Defendants. Released  
23 Defendant Claims shall not include any claims relating to the enforcement of the  
24 Settlement.

25 1.25 “Released Defendant Parties” means: (i) Defendants and any defendant  
26 previously named as a defendant in this Litigation, including the Underwriter  
27 Defendants; and (ii) each of their respective family members, and their respective

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1 general partners, limited partners, principals, shareholders, joint venturers,  
2 members, officers, directors, managers, managing directors, supervisors, employees,  
3 contractors, consultants, auditors, accountants, financial advisors, professional  
4 advisors, investment bankers, underwriters, representatives, insurers, trustees,  
5 trustors, agents, attorneys, professionals, predecessors, successors, assigns, heirs,  
6 executors, administrators, and any controlling person thereof in their capacities as  
7 such.

8       1.26 “Released Plaintiff Parties” means: (i) Lead Plaintiff and other Class  
9 Members; and (ii) each of their respective family members, and their respective  
10 general partners, limited partners, principals, shareholders, joint venturers,  
11 members, officers, directors, managers, managing directors, supervisors, employees,  
12 contractors, consultants, auditors, accountants, financial advisors, professional  
13 advisors, investment bankers, representatives, insurers, trustees, trustors, agents,  
14 attorneys, including Lead Counsel, professionals, predecessors, successors, assigns,  
15 heirs, executors, administrators, and any controlling person thereof, in their  
16 capacities as such.

17       1.27 “Settlement Amount” means Three Million One Hundred Fifty  
18 Thousand U.S. Dollars (\$3,150,000.00) in cash.

19       1.28 “Settlement Fund” means the Settlement Amount, together with all  
20 interest and income earned thereon after being transferred to the Escrow Account.

21       1.29 “Settlement Hearing” is defined in ¶4.3 below.

22       1.30 “Settling Parties” means, collectively, Lead Plaintiff on behalf of itself  
23 and the Class Members, and Defendants.

24       1.31 “Summary Notice” means the Summary Notice, which, subject to  
25 approval of the Court, shall be substantially in the form attached hereto as  
26 Exhibit A-3.

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1           1.32 “Underwriter Defendants” means UBS Securities LLC, Canaccord  
2 Genuity Inc., Stifel Nicolaus & Company Incorporated, and BTIG, LLC.

3           1.33 “Unknown Claims” means any Released Claims or Released Defendant  
4 Claims that Defendants, Lead Plaintiff or any other Class Member does not know or  
5 suspect to exist in such party’s favor at the time of the release, which, if known by  
6 such party, might have affected such party’s decision to settle or release claims.  
7 Upon the Effective Date of the Settlement, Defendants, Lead Plaintiff and the Class  
8 shall expressly waive, and be deemed to have waived, to the fullest extent permitted  
9 by law, the provisions, rights, and benefits of California Civil Code §1542. Upon  
10 the Effective Date of the Settlement, Defendants, Lead Plaintiff and the Class shall  
11 expressly waive, and be deemed to have waived, to the fullest extent permitted by  
12 law, any and all provisions, rights, and benefits conferred by law of any state or  
13 territory of the United States, or principle of common law that are similar,  
14 comparable, or equivalent to California Civil Code §1542. Defendants, Lead  
15 Plaintiff and the Class shall be deemed to have, and by operation and order of final  
16 judgement shall have fully, finally, and forever settled and released all Released  
17 Claims, as the case may be known or unknown, suspected or unsuspected, contingent  
18 or non-contingent, whether or not concealed or hidden, upon any theory of law or  
19 equity now existing or coming into existence in the future, without regard to the  
20 subsequent discovery or existence of different or additional facts.

21           **2. CAFA Notice**

22           2.1 Pursuant to the Class Action Fairness Act (“CAFA”), no later than ten  
23 (10) calendar days after the Settlement Agreement is filed with the Court,  
24 Defendants, at their own cost, shall serve proper notice of the proposed Settlement  
25 upon those who are entitled to such notice pursuant to CAFA.

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1           **3.     The Settlement**

2                   **a.     The Settlement Fund**

3           3.1     Defendants shall pay or shall cause their insurance carriers to pay  
4     \$3,150,000.00 (the Settlement Amount) cash into the Escrow Account controlled by  
5     the Escrow Agent (subject to Court oversight), within thirty (30) calendar days from  
6     the later of: (a) entry of the Court’s order preliminarily approving the Settlement; or  
7     (b) the date on which the Escrow Agent provides to Defendants: (i) specific bank  
8     identification and wiring information (including the physical address of the bank)  
9     necessary to wire the Settlement Amount to the Escrow Account, (ii) instructions for  
10    the payee and address to which a physical check can be mailed, and (iii) a completed  
11    and signed Form W-9 reflecting the tax identification number of the payee.

12           3.2     Lead Plaintiff shall have the right, but not the obligation, to terminate  
13    the Settlement twenty (20) calendar days after any failure of Defendants to timely  
14    pay the Settlement Amount in accordance with ¶3.1 above.

15           3.3     The payment described in ¶3.1 above is the only payment to be made  
16    by or on behalf of Defendants in connection with this Settlement.

17                   **b.     The Escrow Agent**

18           3.4     The Escrow Agent shall invest the Settlement Amount deposited  
19    pursuant to ¶3.1 hereof in instruments backed by the full faith and credit of the  
20    United States Government or fully insured by the United States Government or an  
21    agency thereof and shall reinvest the proceeds of these instruments as they mature  
22    in similar instruments at their then-current market rates. All costs and risks related  
23    to the investment of the Settlement Fund in accordance with the guidelines set forth  
24    in this paragraph shall be borne by the Settlement Fund.

25           3.5     The Escrow Agent shall not disburse the Settlement Fund except: (a) as  
26    provided in the Stipulation; (b) by an order of the Court; or (c) with the written  
27    agreement of counsel for the Settling Parties.

1           3.6 Subject to further order(s) and/or directions as may be made by the  
2 Court, or as provided in the Stipulation, the Escrow Agent is authorized to execute  
3 such transactions as are consistent with the terms of the Stipulation. The Released  
4 Defendant Parties shall have no responsibility for, interest in, or liability whatsoever  
5 with respect to, the actions of the Escrow Agent, or any transaction executed by the  
6 Escrow Agent.

7           3.7 All funds held by the Escrow Agent shall be deemed and considered to  
8 be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the  
9 Court, until such time as such funds shall be distributed pursuant to the Stipulation  
10 and/or further order(s) of the Court.

11           3.8 Prior to the Effective Date, Lead Counsel, without further approval of  
12 Defendants or the Court, may pay from the Settlement Fund up to \$300,000.00 in  
13 Notice and Administration Expenses. Prior to the Effective Date, payment of any  
14 Notice and Administration Expenses exceeding \$300,000.00 shall require notice to,  
15 and agreement from, the Defendants, through Defendants' counsel, which agreement  
16 shall not be unreasonably refused. Subsequent to the Effective Date, without further  
17 approval by Defendants or the Court, the Settlement Fund may be used by Lead  
18 Counsel to pay all reasonable and necessary Notice and Administration Expenses.

19                           **c. Taxes**

20           3.9 (a) The Settling Parties agree to treat the Settlement Fund as being  
21 at all times a "Qualified Settlement Fund" within the meaning of Treasury  
22 Regulation §1.468B-1. In addition, the Escrow Agent shall timely make such  
23 elections as necessary or advisable to carry out the provisions of this ¶3.9, including  
24 the "relation-back election" (as defined in Treasury Regulation §1.468B-1) back to  
25 the earliest permitted date. Such elections shall be made in compliance with the  
26 procedures and requirements contained in such regulations. It shall be the  
27 responsibility of the Escrow Agent to timely and properly prepare and deliver, or

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1 cause to be prepared and delivered, the necessary documentation for signature by all  
2 necessary parties, and thereafter to cause the appropriate filing to occur.

3 (b) For the purpose of §468B of the Internal Revenue Code of 1986,  
4 as amended, and the regulations promulgated thereunder, the “administrator” shall  
5 be the Escrow Agent. The Escrow Agent shall timely and properly file, or cause to  
6 be filed, all informational and other tax returns necessary or advisable with respect  
7 to the Settlement Fund (including, without limitation, the returns described in  
8 Treasury Regulation §1.468B-2(k)). Such returns (as well as the election described  
9 in ¶3.9(a) hereof) shall be consistent with this ¶3.9 and in all events shall reflect that  
10 all Taxes (including any estimated Taxes, interest, or penalties) on the income earned  
11 on the Settlement Amount shall be paid out of the Settlement Fund as provided in  
12 ¶3.9(c) hereof.

13 (c) All (a) Taxes (including any estimated Taxes, interest, or  
14 penalties) arising with respect to the income earned on the Settlement Amount,  
15 including any Taxes or tax detriments that may be imposed upon the Released  
16 Defendant Parties or their counsel with respect to any income earned on the  
17 Settlement Amount for any period during which the Settlement Amount does not  
18 qualify as a “Qualified Settlement Fund” for federal or state income tax purposes  
19 (“Taxes”), and (b) expenses and costs incurred in connection with the operation and  
20 implementation of this ¶3.9 (including, without limitation, expenses of tax attorneys  
21 and/or accountants and mailing and distribution costs and expenses relating to filing  
22 (or failing to file) the returns described in this ¶3.9) (“Tax Expenses”), shall be paid  
23 out of the Settlement Fund; in all events the Released Defendant Parties and their  
24 counsel shall have no liability or responsibility for the Taxes or the Tax Expenses.  
25 Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of  
26 administration of the Settlement Fund and shall be timely paid by the Escrow Agent  
27 out of the Escrow Account without prior order from the Court or approval of

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1 Defendants, and the Escrow Agent shall be obligated (notwithstanding anything  
2 herein to the contrary) to withhold from distribution to Authorized Claimants any  
3 funds necessary to pay such amounts, including the establishment of adequate  
4 reserves for any Taxes and Tax Expenses (as well as any amounts that may be  
5 required to be withheld under Treasury Regulation §1.468B-2(1)(2)); neither the  
6 Released Defendant Parties nor their counsel are responsible nor shall they have any  
7 liability therefor. The Settling Parties hereto agree to cooperate with the Escrow  
8 Agent, each other, and their tax attorneys and accountants to the extent reasonably  
9 necessary to carry out the provisions of this ¶3.9.

10 (d) Except as required by ¶3.1 concerning payment of the Settlement  
11 Amount, the Released Defendant Parties are not responsible for Taxes, Tax  
12 Expenses, Notice and Administration Expenses, nor shall they be liable for any  
13 claims with respect thereto.

14 **d. Termination of Settlement**

15 3.10 In the event the Settlement: (i) is not approved; (ii) is terminated,  
16 canceled, or fails to become effective for any reason, including, without limitation,  
17 in the event the Judgment is reversed or vacated following any appeal taken  
18 therefrom; or (iii) is successfully collaterally attacked, the Settlement Fund  
19 (including accrued interest) less expenses actually incurred or due and owing for  
20 Notice and Administration Expenses, Taxes or Tax Expenses, pursuant to ¶¶3.8 or  
21 3.9, respectively, shall be refunded to such Persons that paid the Settlement Amount  
22 pursuant to written instructions from Defendants' counsel.

23 **4. Notice Order and Settlement Hearing**

24 4.1 Promptly after execution of this Stipulation, Lead Counsel shall submit  
25 the Stipulation together with its exhibits (the "Exhibits") to the Court and shall apply  
26 for entry of an order (the "Notice Order"), in the form of Exhibit A attached hereto,  
27 requesting, *inter alia*, the preliminary approval of the Settlement set forth in the

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1 Stipulation and approval of the mailing of the Notice and publication of the  
2 Summary Notice, in the forms of Exhibits A-1 and A-3 attached hereto. The Notice  
3 shall include the general terms of the Settlement set forth in the Stipulation, the  
4 proposed Plan of Allocation, the general terms of the application for the Fee and  
5 Expense Award, and the date of the Settlement Hearing (defined in ¶4.3 below).

6 4.2 It shall be the Claims Administrator’s responsibility, under supervision  
7 of Lead Counsel, to disseminate the Notice and Summary Notice to the Class in  
8 accordance with this Stipulation and as ordered by the Court. Class Members shall  
9 have no recourse as to the Released Defendant Parties with respect to any claims  
10 they may have that arise from any failure of the notice process.

11 4.3 Lead Counsel shall request that after notice is given to the Class, the  
12 Court hold a hearing (the “Settlement Hearing”) and approve the Settlement of the  
13 Litigation as set forth herein. At or after the Settlement Hearing, Lead Counsel also  
14 shall request that the Court approve the proposed Plan of Allocation and the Fee and  
15 Expense Award.

16 **5. Releases**

17 5.1 Upon the Effective Date, Lead Plaintiff and each of the Class Members  
18 shall be deemed to have, and by operation of the Judgment shall have, fully, finally,  
19 and forever released, relinquished, and discharged against the Released Defendant  
20 Parties (whether or not such Class Member executes and delivers a Proof of Claim  
21 and Release form) any and all Released Claims (including, without limitation,  
22 Unknown Claims). Claims to enforce the terms of this Stipulation are not released.  
23 The Settling Parties acknowledge, and the Class Members shall be deemed by  
24 operation of law to acknowledge, that the waiver of Unknown Claims, and of the  
25 provisions, rights and benefits of §1542 of the California Civil Code, was bargained  
26 for and is a key element of the Settlement of which the release in this paragraph is a  
27 part.

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1           6.2    Within fourteen (14) calendar days after execution of this Stipulation,  
2 Obalon shall provide or cause to be provided to the Claims Administrator with a list  
3 of names and addresses of record holders of Obalon common stock during the Class  
4 Period on the transfer agent's books. This information shall be provided in an  
5 electronic format acceptable to the Claims Administrator. Obalon shall be  
6 responsible for any costs or expenses related to providing this information.

7           6.3    In accordance with the schedule set forth in the Notice Order, Lead  
8 Counsel will cause the Claims Administrator to mail to all shareholders of record,  
9 identified on the list provided by Obalon to the Claims Administrator, the Notice,  
10 substantially in the form of Exhibit A-1 attached hereto, and a Proof of Claim and  
11 Release, substantially in the form of Exhibit A-2 attached hereto. The Notice shall  
12 set forth the terms of the Stipulation, including the proposed Plan of Allocation and  
13 Lead Counsel's request for attorneys' fees and expenses; the date and time of the  
14 Settlement Hearing; the right to object to the Settlement, proposed Plan of  
15 Allocation, or request for fees and expenses; the right to appear at the Settlement  
16 Hearing; and the right to request exclusion from the Class. The Notice and Proof of  
17 Claim and Release form shall also be posted on the Claims Administrator's website.  
18 In accordance with the schedule set forth in the Notice Order, the Summary Notice,  
19 substantially in the form of Exhibit A-3 attached hereto, will also be published once  
20 in the national edition of *The Wall Street Journal* and once over a national newswire  
21 service. The cost of providing such notice shall be paid out of the Settlement Fund.

22           6.4    The Settlement Fund shall be applied as follows:  
23                   (a)    to pay all Notice and Administration Expenses;  
24                   (b)    to pay the Taxes and Tax Expenses described in ¶3.9 hereof;  
25                   (c)    to pay the Fee and Expense Award;  
26                   (d)    to pay any award to Lead Plaintiff as allowed under the PSLRA,  
27 subject to the approval of the Court; and

28

1 (e) after the Effective Date, to distribute the Net Settlement Fund to  
2 Authorized Claimants as allowed by the Stipulation, the Plan of Allocation, or the  
3 Court.

4 6.5 Upon the Effective Date and thereafter, and in accordance with the  
5 terms of the Stipulation, the Plan of Allocation, or such further approval and further  
6 order(s) of the Court as may be necessary or as circumstances may require, the Net  
7 Settlement Fund shall be distributed to Authorized Claimants, subject to and in  
8 accordance with the following.

9 6.6 Each Person claiming to be an Authorized Claimant shall be required  
10 to submit to the Claims Administrator a completed Proof of Claim and Release,  
11 substantially in the form of Exhibit A-2 attached hereto, postmarked or submitted  
12 electronically by no later than 90 calendar days after the Notice Date (as defined in  
13 Exhibit A attached hereto), or such other time as the Court may set, signed under  
14 penalty of perjury and supported by such documents as are specified in the Proof of  
15 Claim and Release.

16 6.7 Except as otherwise ordered by the Court, all Class Members who fail  
17 to submit a Proof of Claim and Release by such date, or who submit a Proof of Claim  
18 and Release that is rejected, shall be forever barred from receiving any payments  
19 pursuant to the Stipulation and the Settlement set forth herein, but will in all other  
20 respects be subject to and bound by the provisions of the Stipulation, the releases  
21 contained herein, and the Judgment. Notwithstanding the foregoing, Lead Counsel  
22 shall have the discretion (but not the obligation) to accept late-submitted claims for  
23 processing by the Claims Administrator, so long as the distribution of the Net  
24 Settlement Fund to Authorized Claimants is not materially delayed thereby. No  
25 person shall have any claim against Lead Plaintiff, Lead Counsel or the Claims  
26 Administrator by reason of the decision to exercise or not exercise such discretion.

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1           6.8    The Claims Administrator shall calculate the claims of Authorized  
2 Claimants substantially in accordance with the Plan of Allocation set forth in the  
3 Notice and approved by the Court. Following the Effective Date, the Claims  
4 Administrator shall send to each Authorized Claimant his, her, or its *pro rata* share  
5 of the Net Settlement Fund.

6           6.9    Other than in the event of the termination of the Settlement pursuant to  
7 ¶3.10, Defendants shall not have a reversionary interest in the Net Settlement Fund.  
8 If there is any balance remaining in the Net Settlement Fund after a reasonable period  
9 of time after the initial date of distribution of the Net Settlement Fund, Lead Counsel  
10 shall, if feasible, allocate such balance among Authorized Claimants in an equitable  
11 and economic fashion. These redistributions shall be repeated until the balance  
12 remaining in the Net Settlement Fund is *de minimis* and such remaining balance shall  
13 then be donated to the Legal Aid Society of San Diego.

14           6.10 The Released Defendant Parties shall have no responsibility for,  
15 interest in, or liability whatsoever with respect to the distribution of the Net  
16 Settlement Fund, the Plan of Allocation, the determination, administration, or  
17 calculation of claims, the payment or withholding of Taxes, or any losses incurred  
18 in connection therewith.

19           6.11 Defendants shall take no position with respect to the Plan of Allocation  
20 or any other such plan as may be approved by the Court. Defendants will have no  
21 involvement in reviewing or challenging claims.

22           6.12 It is understood and agreed by the Settling Parties that any proposed  
23 Plan of Allocation of the Net Settlement Fund, including, but not limited to, any  
24 adjustments to an Authorized Claimant's claim set forth therein, is not a part of the  
25 Stipulation and is to be considered by the Court separately from the Court's  
26 consideration of the fairness, reasonableness, and adequacy of the Settlement set  
27 forth in the Stipulation, and any order or proceeding relating to the Plan of Allocation

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1 Counsel shall, in an amount consistent with such reversal, modification, cancellation  
2 or termination, refund such fees or expenses to the Settlement Fund, plus interest  
3 earned thereon at the same rate as earned on the Settlement Fund, within thirty (30)  
4 calendar days from receiving notice from Defendants' counsel or from a court of  
5 competent jurisdiction.

6 7.3 If so ordered by the Court upon preliminary approval, Lead Counsel  
7 shall be entitled to provisional reimbursement of 75% of their litigation expenses  
8 and charges, subject to Lead Counsel's obligation to make appropriate refunds or  
9 repayments to the Settlement Fund plus interest earned thereon if, and when, as a  
10 result of any order, the final fee or expense award is lower than that amount.

11 7.4 The procedure for and the allowance or disallowance by the Court of  
12 the Fee and Expense Award, or the award to the Lead Plaintiff, to be paid out of the  
13 Settlement Fund, are not part of the Settlement, and any order or proceeding relating  
14 to the Fee and Expense Application, or an award to Lead Plaintiff, or any appeal  
15 from any order relating thereto or reversal or modification thereof, shall not operate  
16 to terminate or cancel the Settlement, or affect or delay the finality of the Judgment  
17 approving the Stipulation and the Settlement of the Litigation (including the releases  
18 contained herein).

19 7.5 Neither the Released Defendant Parties nor Defendants' insurers shall  
20 have any responsibility for or liability with respect to the payment of any Fee and  
21 Expense Award to Lead Counsel and/or any other Person who may assert some  
22 claim thereto, of any Fee and Expense Award that the Court may make in the  
23 Litigation.

24 **8. Conditions of Settlement, Effect of Disapproval,**  
25 **Cancellation, or Termination**

26 8.1 The Effective Date of the Stipulation shall be conditioned on the  
27 occurrence of all of the following events:

28

1 (a) execution of this Stipulation and such other documents as may  
2 be required to obtain final Court approval of the Stipulation in a form satisfactory to  
3 the Settling Parties;

4 (b) the Settlement Amount has been deposited into the Escrow  
5 Account as provided by ¶3.1 hereof;

6 (c) Defendants have not exercised their option to terminate the  
7 Stipulation pursuant to ¶8.3 hereof;

8 (d) the Court has entered the Notice Order, as required by ¶4.1  
9 hereof;

10 (e) the Court has entered the Judgment that, *inter alia*, dismisses  
11 with prejudice the Litigation, as to the Settling Parties, as set forth above; and

12 (f) the Judgment has become Final, as defined in ¶1.12 hereof.

13 8.2 This is not a claims-made settlement. As of the Effective Date,  
14 Defendants, their insurance carriers, and/or any other such persons or entities  
15 funding the Settlement on the Defendants' behalf, shall not have any right to the  
16 return of the Settlement Fund or any portion thereof for any reason. Upon the  
17 occurrence of all of the events referenced in ¶8.1 hereof, any and all remaining  
18 interest or right of Defendants, if any, in or to the Settlement Fund shall be absolutely  
19 and forever extinguished. If all of the conditions specified in ¶8.1 hereof are not  
20 met, then the Stipulation shall be canceled and terminated subject to ¶8.4 hereof  
21 unless Lead Counsel and counsel for Defendants mutually agree in writing to  
22 proceed with the Settlement.

23 8.3 If, prior to the Settlement Hearing, Persons who otherwise would be  
24 members of the Class have timely requested exclusion from the Class in accordance  
25 with the provisions of the Notice Order and the Notice given pursuant thereto, and  
26 such Persons in the aggregate purchased a number of shares of Obalon common  
27 stock during the Class Period in an amount greater than the sum specified (the "Opt-

1 Out Threshold”) in a separate Supplemental Agreement Regarding Requests for  
2 Exclusion (“Supplemental Agreement”) executed between Lead Plaintiff and  
3 Defendants, Defendants shall have the option (which option must be exercised  
4 unanimously) to terminate this Stipulation and Settlement in accordance with the  
5 procedures set forth in the Supplemental Agreement. The Supplemental Agreement  
6 is incorporated by reference into this Stipulation. The Supplemental Agreement will  
7 not be filed with the Court unless and until a dispute between Lead Plaintiff and  
8 Defendants concerning its interpretation or application arises. The Opt-Out  
9 Threshold may be disclosed to the Court for purposes of approval of the Settlement,  
10 as may be required by the Court, but such disclosure shall be carried out to the fullest  
11 extent possible in accordance with the practices of the Court so as to maintain the  
12 Opt-Out Threshold as confidential. Copies of all requests for exclusion received,  
13 together with copies of all written revocations of requests for exclusion, shall be  
14 promptly delivered to Defendants’ counsel by Lead Counsel.

15 8.4 Unless otherwise ordered by the Court, in the event the Stipulation shall  
16 terminate, or be canceled, or shall not become effective for any reason, within five  
17 (5) business days after written notification of such event is sent by counsel for  
18 Defendants or Lead Counsel to the Escrow Agent, the Settlement Fund, less Notice  
19 and Administration Expenses, Taxes, and Tax Expenses reasonably and actually  
20 incurred pursuant to ¶¶3.8 or 3.9 hereof, shall be refunded pursuant to written  
21 instructions from Defendants’ counsel. At the request of counsel for Defendants,  
22 the Escrow Agent or its designee shall apply for any tax refund owed on the  
23 Settlement Fund and pay the proceeds, after deduction of any expenses incurred in  
24 connection with such application(s) for refund, at the written direction of  
25 Defendants’ counsel.

26 8.5 In the event that the Stipulation is not approved by the Court or the  
27 Settlement set forth in the Stipulation is terminated or fails to become effective in

1 accordance with its terms, the Settling Parties shall not forfeit or waive any factual  
2 or legal defense or contention in the Litigation and shall be restored to their  
3 respective positions in the Litigation as of June 16, 2020. In such event, the terms  
4 and provisions of the Stipulation, with the exception of ¶¶1.1-1.33, 3.8-3.10, 7.2,  
5 8.4-8.5, 9.2, 9.4, and 9.5 hereof, shall have no further force and effect with respect  
6 to the Settling Parties and shall not be used in this Litigation or in any other  
7 proceeding for any purpose, and any judgment or order entered by the Court in  
8 accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro*  
9 *tunc*, and the Settling Parties shall be deemed to return to their status as of June 16,  
10 2020, and shall be required to present an amended pre-trial schedule to the Court.  
11 No order of the Court or modification or reversal on appeal of any such order of the  
12 Court concerning the Plan of Allocation or the amount of any attorneys' fees and  
13 expenses, and interest awarded by the Court to Lead Counsel, shall constitute  
14 grounds for cancellation or termination of the Stipulation.

15       8.6 In the event of a final order of a court of competent jurisdiction, not  
16 subject to any further proceedings, determining the transfer of the Settlement Fund,  
17 or any portion thereof, by or on behalf of any Defendant to be a preference, voidable  
18 transfer, fraudulent transfer or similar transaction under Title 11 of the United States  
19 Code (Bankruptcy) or applicable state law and any portion thereof is required to be  
20 refunded and such amount is not promptly deposited in the Settlement Fund by or  
21 on behalf of any other Defendant, then, at the election of Lead Counsel, as to the  
22 Defendant as to whom such order applies, the Settlement may be terminated and the  
23 releases given and the judgment entered in favor of such Defendant pursuant to the  
24 Settlement shall be null and void. In such instance, the releases given and the  
25 judgement entered in favor of other Defendants shall remain in full force and effect.  
26 Alternatively, Lead Counsel may elect to terminate the entire Settlement as to all  
27 Defendants and all the releases given and the judgments entered in favor of the

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1 Defendants pursuant to the Settlement shall be null and void, and Lead Plaintiff may  
2 proceed as if the Settlement was never entered into.

3 **9. Miscellaneous Provisions**

4 9.1 The Settling Parties: (a) acknowledge that it is their intent to  
5 consummate this Settlement; and (b) agree to cooperate to the extent reasonably  
6 necessary to effectuate and implement all terms and conditions of the Stipulation  
7 and to exercise their best efforts to accomplish the foregoing terms and conditions  
8 of the Stipulation expeditiously.

9 9.2 The Settlement will not be conditioned upon the obtaining of or any  
10 judicial approval of any releases between or among Defendants or third parties.

11 9.3 The Settling Parties intend this Settlement to be a final and complete  
12 resolution of all disputes between them with respect to the Litigation. The  
13 Settlement and all negotiations, discussions, and proceedings leading up to and in  
14 connection herewith shall not be deemed to constitute a presumption, concession, or  
15 an admission by any Settling Party or any of the Released Defendant Parties of any  
16 fault, liability, or wrongdoing by it, or as to the merits of any claim or defense.

17 9.4 The Settling Parties and their counsel mutually agree that, throughout  
18 the course of this Litigation, all parties and their counsel complied with the  
19 provisions of Rule 11 relating to the prosecution, defense or settlement of the  
20 Litigation, and the Judgment shall contain a finding that all Settling Parties and their  
21 counsel complied with the requirements of Rule 11 with respect to the institution,  
22 prosecution, defense, and resolution of the Litigation. The Settling Parties agree that  
23 the Settlement Amount and the other terms of the Settlement were negotiated in good  
24 faith at arm's length by the Settling Parties and reflect a settlement that was reached  
25 voluntarily after consultation with competent legal counsel.

26 9.5 Neither the Stipulation nor the Settlement contained herein, nor any  
27 negotiations, discussions, proceedings or act performed or document executed

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1 pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be  
2 deemed to be or may be used as an admission of, or evidence of, the validity of any  
3 Released Claim, or of any wrongdoing or liability of Defendants; or (b) is or may be  
4 deemed to be or may be used as an admission of, or evidence of, any fault or  
5 omission of any of Defendants in any civil, criminal or administrative proceeding in  
6 any court, administrative agency or other tribunal. The Released Defendant Parties,  
7 Lead Plaintiff, Class Members, and Lead Counsel may file the Stipulation and/or the  
8 Judgment in any action that may be brought against them in order to support a  
9 defense or counterclaim based on principles of *res judicata*, collateral estoppel,  
10 release, good faith settlement, judgment bar or reduction or any other theory of claim  
11 preclusion or issue preclusion or similar defense or counterclaim, or in connection  
12 with any proceeding to enforce the terms of this Stipulation.

13         9.6 All agreements made and orders entered during the course of the  
14 Litigation relating to the confidentiality of documents and information shall survive  
15 this Stipulation, pursuant to its terms.

16         9.7 The Settling Parties shall, in good faith, endeavor to communicate the  
17 terms of the Settlement, if at all, in a manner that is respectful of the fact that no final  
18 adjudication of fault was determined by a court or a jury. The Settling Parties agree  
19 that, unless required by law, no press release or other written public statements  
20 purporting to characterize the Settlement may be made without the approval of  
21 counsel for all parties, which approval shall not unreasonably be withheld. A party  
22 intending to issue a press release or other written public statement purporting to  
23 characterize the Settlement shall provide a draft of the statement to counsel for the  
24 other parties at least 24 hours in advance of such statement. For the avoidance of  
25 doubt, nothing in this paragraph shall be construed as prohibiting, or placing  
26 restrictions on, the public disclosure of the fact of, terms of, or Court-approved  
27 notice of the Settlement, including on Plaintiffs' counsel's firm websites.

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1           9.8 All of the Exhibits to the Stipulation are material and integral parts  
2 hereof and are fully incorporated herein by this reference.

3           9.9 This Stipulation shall not be construed more strictly against one party  
4 than another merely by virtue of the fact that it, or any part of it, may have been  
5 prepared by counsel for one of the parties, it being recognized that it is the result of  
6 arm's-length negotiations between the parties and that all parties have contributed  
7 substantially and materially to the preparation of this Stipulation.

8           9.10 The Stipulation may be amended or modified only by a written  
9 instrument signed by or on behalf of all Settling Parties or their respective  
10 successors-in-interest.

11           9.11 No waiver of any term or provision of this Settlement Agreement, or of  
12 any breach or default hereof or hereunder, shall be valid or effective unless in writing  
13 and signed by or on behalf of all Settling Parties or their respective successors-in-  
14 interest. No waiver of any term or provision of this Settlement Agreement, or of any  
15 breach or default hereof or hereunder, shall be construed as a waiver of the same or  
16 any other term or provision or of any previous or subsequent breach thereof.

17           9.12 The Stipulation and the Exhibits attached hereto (together with the  
18 Supplemental Agreement referred to in ¶8.3) constitute the entire agreement among  
19 the Settling Parties and no representations, warranties, or inducements have been  
20 made to any Settling Party concerning the Stipulation or its Exhibits other than the  
21 representations, warranties, and covenants contained and memorialized in such  
22 documents. Except as otherwise provided herein, each Settling Party shall bear its  
23 own costs.

24           9.13 This Settlement Agreement shall be construed and interpreted to  
25 effectuate the intent of the Settling Parties, which is to resolve completely those  
26 claims and disputes, including in the Litigation, and as more fully described herein.  
27 If any provision of this Settlement Agreement shall be determined to be invalid,

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1 void, or illegal, such provision shall be construed and amended in a manner that  
2 would permit its enforcement, but in no event shall such provision affect, impair, or  
3 invalidate any other provision hereof.

4 9.14 Neither the Class Members nor Defendants shall be bound by the  
5 Stipulation if the Court modifies material terms thereof, provided, however, that it  
6 shall not be a basis for Class Members to terminate the Settlement if the Court  
7 modifies any proposed Plan of Allocation or criteria for allocation of the Net  
8 Settlement Fund amongst Class Members, or the Plan of Allocation is modified on  
9 appeal. Nor shall it be a basis to terminate the Stipulation if the Court disapproves  
10 of or modifies the terms of this Stipulation with respect to attorneys' fees or expenses  
11 or the distribution of the Net Settlement Fund. Notwithstanding any such  
12 modification of the terms or Plan of Allocation or the Stipulation with respect to  
13 attorneys' fees or expenses, Defendants and Defendants' insurers shall be entitled to  
14 all benefits of the Settlement and shall not, under any circumstances, be called upon  
15 to contribute additional funds to the Settlement Amount.

16 9.15 Lead Counsel, on behalf of the Class, is expressly authorized by Lead  
17 Plaintiff to take all appropriate action required or permitted to be taken by the Class  
18 pursuant to the Stipulation to effectuate its terms and also is expressly authorized to  
19 enter into any modifications or amendments to the Stipulation on behalf of the Class  
20 which it deems appropriate.

21 9.16 Each counsel or other Person executing the Stipulation or any of its  
22 Exhibits on behalf of any Settling Party hereby warrants that such Person has the full  
23 authority to do so.

24 9.17 All notices, requests, demands, claims, and other communications  
25 hereunder shall be in writing and shall be deemed duly given: (i) when delivered  
26 personally to the recipient; (ii) one (1) business day after being sent to the recipient  
27 by reputable overnight courier service (charges prepaid); or (iii) five (5) business

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1 days after being mailed to the recipient by certified or registered mail, return receipt  
2 requested and postage prepaid, and addressed to the intended recipient as set forth  
3 below:

4 ***If to Lead Plaintiff or to Lead Counsel:***

5 Rachel L. Jensen  
6 ROBBINS GELLER RUDMAN & DOWD LLP  
7 655 West Broadway, Suite 1900  
8 San Diego, CA 92101

9 ***If to Defendants or to Defendants' counsel:***

10 Colleen Smith  
11 LATHAM & WATKINS LLP  
12 12670 High Bluff Drive  
13 San Diego, CA 92130

14 9.18 The Stipulation may be executed in one or more counterparts. All  
15 executed counterparts and each of them shall be deemed to be one and the same  
16 instrument. A complete set of executed counterparts shall be filed with the Court.  
17 Signatures sent by facsimile or by PDF via e-mail shall be deemed originals.

18 9.19 The Stipulation shall be binding upon, and inure to the benefit of, the  
19 heirs, successors, and assigns of the Settling Parties hereto.

20 9.20 The Court shall retain jurisdiction with respect to implementation and  
21 enforcement of the terms of the Stipulation, and all Settling Parties hereto submit to  
22 the jurisdiction of the Court for purposes of implementing and enforcing the  
23 Settlement embodied in the Stipulation.

24 9.21 Pending approval of the Court of the Stipulation and its Exhibits, all  
25 proceedings in this Litigation shall be stayed and all members of the Class shall be  
26 barred and enjoined from commencing any action to prosecute or prosecuting any  
27 of the Released Claims against any of the Released Defendant Parties.

28 9.22 This Stipulation and the Exhibits hereto shall be considered to have  
been negotiated, executed, and delivered, and to be wholly performed, in the State

1 of California, and the rights and obligations of the parties to the Stipulation shall be  
2 construed and enforced in accordance with, and governed by, the internal,  
3 substantive laws of the State of California, without giving effect to that State's  
4 choice-of-law principles.

5 IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to  
6 be executed, by their duly authorized attorneys, dated August 17, 2020.

7 ROBBINS GELLER RUDMAN  
8 & DOWD LLP  
9 RACHEL L. JENSEN  
10 ROBERT R. HENSSLER JR.  
11 JEFFREY J. STEIN  
12 FRANCISCO J. MEJIA

13   
14 \_\_\_\_\_  
15 RACHEL L. JENSEN

16 655 West Broadway, Suite 1900  
17 San Diego, CA 92101  
18 Telephone: 619/231-1058  
19 619/231-7423 (fax)

20 Lead Counsel for Lead Plaintiff

21 LATHAM & WATKINS LLP  
22 MICHELE D. JOHNSON  
23 KRISTIN N. MURPHY

24   
25 \_\_\_\_\_  
26 KRISTIN N. MURPHY

27 650 Town Center Drive, 20th Floor  
28 Costa Mesa, CA 92626  
Telephone: 714/540-1235  
714/755-8290 (fax)

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LATHAM & WATKINS LLP  
COLLEEN SMITH  
12670 High Bluff Drive  
San Diego, CA 92130-3086  
Telephone: 858/523-5400  
858/523-5450 (fax)

Counsel for Defendants Obalon  
Therapeutics, Inc., William J. Plovanic,  
and Andrew P. Rasdal

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# **EXHIBIT A**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re OBALON THERAPEUTICS, INC. SECURITIES LITIGATION	) Master File No. 3:18-cv-00352-AJB-AHG
	) <u>CLASS ACTION</u>
This Document Relates To:	) ORDER PRELIMINARILY
ALL ACTIONS.	) APPROVING SETTLEMENT AND
	) PROVIDING FOR NOTICE
	) [EXHIBIT A TO STIPULATION AND
	) AGREEMENT OF CLASS ACTION
	) SETTLEMENT]

1 WHEREAS, the parties have participated in settlement negotiations before  
2 Magistrate Judge Allison H. Goddard and entered into a Stipulation and Agreement of  
3 Class Action Settlement dated August 17, 2020 (the “Stipulation”), which, together  
4 with the Exhibits annexed thereto, sets forth the terms and conditions for a proposed  
5 Settlement of the Litigation and for dismissal of the Litigation with prejudice upon the  
6 terms and conditions set forth therein; and

7 WHEREAS, the parties having made a joint application pursuant to Federal  
8 Rule of Civil Procedure (“Rule”) 23(e) for an order preliminarily approving the  
9 Settlement set forth in the Stipulation; and the Court having read and considered the  
10 Stipulation and the Exhibits annexed thereto; and

11 WHEREAS, unless otherwise defined, all terms used herein have the same  
12 meanings as set forth in the Stipulation.

13 NOW, THEREFORE, IT IS HEREBY ORDERED:

14 1. The Court has reviewed the Stipulation and does hereby preliminarily  
15 approve the Settlement set forth therein, subject to further consideration at the  
16 Settlement Hearing described below.

17 2. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil  
18 Procedure, and for purposes of this Settlement only, the Litigation is hereby  
19 preliminarily certified as a class action on behalf of all Persons who purchased Obalon  
20 common stock between October 6, 2016 and May 11, 2018, inclusive, excluding  
21 Defendants, directors and officers of Obalon, and their families and affiliates and any  
22 defendant previously named as a defendant in this Litigation. Also excluded are those  
23 Persons who timely and validly request exclusion from the Class pursuant to the  
24 Notice.

25 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for  
26 purposes of settlement only, Lead Plaintiff is preliminarily certified as Class  
27 Representative for the Class and Robbins Geller Rudman & Dowd LLP is  
28 preliminarily appointed as Class Counsel for the Class.

1           4.     A hearing (the “Settlement Hearing”) shall be held before this Court on  
2 \_\_\_\_\_, 2020, at \_\_\_\_\_ [a.m./p.m.] [a date that is at least 100 calendar days from  
3 the date of this Order], at the United States District Court for the Southern District of  
4 California, 221 West Broadway, Courtroom 4A, San Diego, California 92101, to  
5 determine whether the proposed Settlement of the Litigation on the terms and  
6 conditions provided for in the Stipulation is fair, reasonable, and adequate to the Class  
7 and should be approved by the Court; whether a Judgment as provided in ¶1.14 of the  
8 Stipulation should be entered; whether the proposed Plan of Allocation is fair,  
9 reasonable, and adequate and should be approved; to determine the amount of fees and  
10 expenses that should be awarded to Lead Counsel; and to determine the amount to be  
11 awarded to Lead Plaintiff pursuant to 15 U.S.C. §78u-4(a)(4) in connection with its  
12 representation of the Class. The Court may adjourn the Settlement Hearing or hold it  
13 via videoconference or teleconference without further notice to the Class Members.

14           5.     The Court approves, as to form and content, the Notice of Pendency and  
15 Proposed Settlement of Class Action (the “Notice”), the Proof of Claim and Release  
16 form (the “Proof of Claim”), and Summary Notice annexed hereto as Exhibits A-1,  
17 A-2, and A-3, respectively, and finds that the mailing and distribution of the Notice  
18 and publishing of the Summary Notice substantially in the manner and form set forth  
19 in ¶¶8-9 of this Order meet the requirements of Rule 23, the Private Securities  
20 Litigation Reform Act of 1995, and due process, and is the best notice practicable  
21 under the circumstances and shall constitute due and sufficient notice to all Persons  
22 entitled thereto.

23           6.     The firm of A.B. Data, Ltd. (“Claims Administrator”) is hereby  
24 appointed to supervise and administer the notice procedure as well as the processing  
25 of claims as more fully set forth below.

26           7.     Within fourteen (14) calendar days after execution of the Stipulation,  
27 Obalon shall provide or cause to be provided to the Claims Administrator with a list of  
28 names and addresses of record holders of Obalon common stock during the Class

1 Period on the transfer agent's books. This information shall be provided in an  
2 electronic format acceptable to the Claims Administrator. Obalon shall be responsible  
3 for any costs or expenses related to providing this information.

4 8. Not later than \_\_\_\_\_, 2020 (the "Notice Date") [ten (10) business  
5 days after the Court signs and enters this Order], the Claims Administrator shall  
6 commence mailing the Notice and Proof of Claim, substantially in the forms annexed  
7 hereto, by First-Class Mail to all Class Members who can be identified with reasonable  
8 effort, and to be posted on its website at [www.obalonsecuritieslitigation.com](http://www.obalonsecuritieslitigation.com).

9 9. Not later than ten (10) calendar days after the Notice Date, the Claims  
10 Administrator shall cause the Summary Notice to be published once in the national  
11 edition of *The Wall Street Journal* and once over a national newswire service.

12 10. At least seven (7) calendar days prior to the Settlement Hearing, Lead  
13 Counsel shall serve on Defendants' counsel and file with the Court proof, by affidavit  
14 or declaration, of such mailing and publishing.

15 11. Nominees who purchased Obalon common stock for the beneficial  
16 ownership of Class Members during the Class Period shall send the Notice and the  
17 Proof of Claim to all such beneficial owners of Obalon common stock within ten (10)  
18 business days after receipt thereof, or send a list of the names and addresses of such  
19 beneficial owners to the Claims Administrator within ten (10) business days of receipt  
20 thereof, in which event the Claims Administrator shall promptly mail the Notice and  
21 Proof of Claim to such beneficial owners. Lead Counsel shall, if requested, reimburse  
22 banks, brokerage houses, or other nominees out of the Settlement Fund solely for their  
23 reasonable out-of-pocket expenses incurred in providing notice to beneficial owners  
24 who are Class Members, which expenses would not have been incurred except for the  
25 sending of such notice, subject to further order of this Court with respect to any  
26 dispute concerning such compensation.

27

28

1           12. All Class Members shall be bound by all determinations and judgments  
2 in the Litigation concerning the Settlement, whether favorable or unfavorable to the  
3 Class.

4           13. Class Members who wish to participate in the Settlement shall complete  
5 and submit Proofs of Claim in accordance with the instructions contained therein.  
6 Unless the Court orders otherwise, all Proofs of Claim must be postmarked or  
7 submitted electronically no later than ninety (90) calendar days from the Notice Date.  
8 Any Class Member who does not timely submit a Proof of Claim within the time  
9 provided for, shall be barred from sharing in the distribution of the proceeds of the  
10 Settlement Fund, unless otherwise ordered by the Court. Notwithstanding the  
11 foregoing, Lead Counsel may, in its discretion, accept late-submitted claims for  
12 processing by the Claims Administrator so long as distribution of the Net Settlement  
13 Fund to Authorized Claimants is not materially delayed thereby.

14           14. Any Class Member may enter an appearance in the Litigation, at their  
15 own expense, individually or through counsel of their own choice. If they do not enter  
16 an appearance, they will be represented by Lead Counsel.

17           15. Any Person falling within the definition of the Class may, upon request,  
18 be excluded or “opt out” from the Class. Any such Person must submit to the Claims  
19 Administrator a request for exclusion (“Request for Exclusion”), postmarked no later  
20 than \_\_\_\_\_, 2020 [twenty-one (21) calendar days prior to the Settlement  
21 Hearing] to the address designated in the Notice. A Request for Exclusion must be  
22 signed and state: (a) the name, address, and telephone number of the Person  
23 requesting exclusion; (b) the Person’s purchases and sales of Obalon common stock  
24 from October 6, 2016 through and including May 11, 2018, including the dates, the  
25 number of shares of Obalon common stock purchased or sold, and price paid or  
26 received for each such purchase or sale; and (c) that the Person wishes to be excluded  
27 from the Class. All Persons who submit valid and timely Requests for Exclusion in  
28 the manner set forth in this paragraph shall have no rights under the Stipulation, shall

1 not share in the distribution of the Net Settlement Fund, and shall not be bound by the  
2 Stipulation or any final judgment.

3 16. Lead Counsel shall cause to be provided to Defendants' counsel copies of  
4 all Requests for Exclusion, and any written revocation of Requests for Exclusion, as  
5 expeditiously as possible and in any event not less than fourteen (14) calendar days  
6 prior to the Settlement Hearing.

7 17. Any Class Member may appear at the Settlement Hearing and show  
8 cause why the proposed Settlement of the Litigation should or should not be approved  
9 as fair, reasonable, and adequate, why a judgment should or should not be entered  
10 thereon, why the Plan of Allocation should or should not be approved, why attorneys'  
11 fees and expenses should or should not be awarded to Lead Counsel, or why Lead  
12 Plaintiff should not be awarded an amount in connection with its representation of the  
13 Class; provided, however, that no Class Member or any other Person shall be heard or  
14 entitled to contest such matters, unless that Person has delivered by hand or sent by  
15 First-Class Mail written objections and copies of any papers and briefs such that they  
16 are received, not simply postmarked, on or before \_\_\_\_\_, 2020 [twenty-one (21)  
17 calendar days prior to the Settlement Hearing], by Robbins Geller Rudman & Dowd  
18 LLP, Rachel L. Jensen, 655 West Broadway, Suite 1900, San Diego, California  
19 92101; and Latham & Watkins LLP, Colleen Smith, 12670 High Bluff Drive, San  
20 Diego, California 92130, and filed said objections, papers, and briefs with the Clerk of  
21 the United States District Court for the Southern District of California, 333 West  
22 Broadway, Suite 420, San Diego, California 92101, on or before \_\_\_\_\_, 2020  
23 [twenty-one (21) calendar days prior to the Settlement Hearing]. The notice of  
24 objection must demonstrate the objecting Person's membership in the Class, including  
25 the number of shares of Obalon common stock purchased and sold during the Class  
26 Period and contain a statement of the reasons for objection. The objection must state  
27 whether it applies only to the objector, to a specific subset of the Class, or to the entire  
28 Class. The objection must identify any other actions in which the objector or the

1 objector's counsel has filed, or participated in the filing of, an objection of any nature.  
2 The objection must also state with specificity the grounds for the objection. Any  
3 Class Member who does not make his, her, or its objection in the manner provided  
4 shall be deemed to have waived such objection and shall forever be foreclosed from  
5 making any objection to the fairness or adequacy of the proposed Settlement as set  
6 forth in the Stipulation, to the Plan of Allocation, or to the award of attorneys' fees  
7 and expenses to Lead Counsel or award to Lead Plaintiff, unless otherwise ordered by  
8 the Court.

9       18. All funds held by the Escrow Agent shall be deemed and considered to be  
10 *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court,  
11 until such time as such funds shall be distributed pursuant to the Stipulation and/or  
12 further order(s) of the Court.

13       19. All opening briefs and supporting documents in support of the  
14 Settlement, the Plan of Allocation, and any application by Lead Counsel for an award  
15 of attorneys' fees and expenses or award to Lead Plaintiff shall be filed and served by  
16 \_\_\_\_\_, 2020 [thirty-five (35) calendar days prior to the Settlement Hearing].  
17 Replies to any objections shall be filed and served by \_\_\_\_\_, 2020 [seven (7)  
18 calendar days prior to the Settlement Hearing].

19       20. The Released Defendant Parties shall not have any responsibility for the  
20 Plan of Allocation or any application for attorneys' fees or expenses submitted by  
21 Lead Counsel or Lead Plaintiff, and such matters will be considered separately from  
22 the fairness, reasonableness, and adequacy of the Settlement.

23       21. At or after the Settlement Hearing, the Court shall determine whether the  
24 Plan of Allocation proposed by Lead Counsel, and any application for an award of  
25 attorneys' fees and expenses shall be approved.

26       22. Lead Counsel shall be provisionally paid an amount representing  
27 approximately 75% of their litigation expenses and charges, subject to Lead Counsel's  
28 obligation to make appropriate refunds or repayments to the Settlement Fund plus

1 interest earned thereon if, and when, as a result of any order, the final fee or expense  
2 award is lower than that amount.

3 23. All reasonable expenses incurred in identifying and notifying Class  
4 Members, as well as administering the Settlement Fund, shall be paid as set forth in  
5 the Stipulation. In the event the Settlement is not approved by the Court, or otherwise  
6 fails to become effective, neither Lead Plaintiff nor Lead Counsel shall have any  
7 obligation to repay any amounts incurred or properly disbursed pursuant to ¶¶3.8 or  
8 3.9 of the Stipulation.

9 24. Neither the Stipulation, nor any of its terms or provisions, nor any of the  
10 negotiations or proceedings connected with it, shall be construed as an admission or  
11 concession by the Defendants of the truth of any of the allegations in the Litigation, or  
12 of any liability, fault, or wrongdoing of any kind, nor construed as, or deemed to be  
13 evidence of, or an admission or concession that Lead Plaintiff or any Class Members  
14 have suffered any damages, harm, or loss.

15 25. The Court reserves the right to adjourn the date of the Settlement Hearing  
16 without further notice to the Class Members, and retains jurisdiction to consider all  
17 further applications arising out of or connected with the proposed Settlement. The  
18 Court also reserves the right to conduct the Settlement Hearing telephonically or by  
19 videoconference without further notice to the Class Members. The Court may  
20 approve the Settlement, with such modifications as may be agreed to by the Settling  
21 Parties, if appropriate, without further notice to the Class.

22 26. If the Stipulation and the Settlement set forth therein is not approved or  
23 consummated or the Effective Date as provided in the Stipulation fails to occur for  
24 any reason whatsoever, then this Order shall be rendered null and void to the extent  
25 provided by and in accordance with the Stipulation, and in such event, all orders  
26 entered and releases delivered in connection herewith shall be null and void to the  
27 extent provided by and in accordance with the Stipulation and all proceedings had in  
28

1 connection therewith shall be without prejudice to the rights of the Settling Parties  
2 *status quo ante*.

3 27. Pending final determination of whether the proposed Settlement should  
4 be approved, neither the Lead Plaintiff nor any Class Member, directly or indirectly,  
5 representatively, or in any other capacity, shall commence or prosecute against any of  
6 the Defendants, any action or proceeding in any court or tribunal asserting any of the  
7 Released Claims.

8 28. Pending further order of the Court, all litigation activity, except that  
9 contemplated herein, in the Stipulation, in the Notice, in the Summary Notice, or in  
10 the Judgment, is hereby stayed and all hearings, deadlines and other proceedings in  
11 the Litigation, except the Settlement Hearing and any deadlines set forth in this Order,  
12 are hereby taken off calendar.

13 IT IS SO ORDERED.

14 DATED: \_\_\_\_\_

\_\_\_\_\_  
HONORABLE ANTHONY J. BATTAGLIA  
UNITED STATES DISTRICT JUDGE

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# **EXHIBIT A-1**



1 **TO: ALL PERSONS AND ENTITIES WHO PURCHASED OBALON**  
2 **THERAPEUTICS, INC. (“OBALON”) COMMON STOCK BETWEEN**  
3 **THE DATES OF OCTOBER 6, 2016 AND MAY 11, 2018, INCLUSIVE**

4 PLEASE READ THIS ENTIRE NOTICE CAREFULLY. IT CONTAINS  
5 IMPORTANT INFORMATION THAT MAY AFFECT YOUR RIGHTS  
6 CONCERNING A PROPOSED CLASS ACTION SETTLEMENT.

7 IF YOU ARE A CLASS MEMBER, YOU MUST SUBMIT A CLAIM FORM TO  
8 OBTAIN YOUR SHARE OF THE SETTLEMENT. IF YOU DO NOT SUBMIT  
9 A CLAIM BY THE DEADLINE, YOU WILL NOT HAVE ANY RIGHT TO  
10 CLAIM PART OF THE SETTLEMENT FUND OR SUE LATER, UNLESS YOU  
11 HAVE ELECTED TO TIMELY OPT OUT OF THE CLASS.

12 This Notice concerns a lawsuit brought on behalf of a “Class” of investors  
13 (individuals and entities) who purchased Obalon common stock during the period  
14 from October 6, 2016 through and including May 11, 2018 (the “Class Period”).<sup>1</sup>  
15 The lawsuit is referred to as *In re Obalon Therapeutics, Inc. Securities Litigation*,  
16 No. 3:18-cv-00352-AJB-AHG (S.D. Cal.) (the “Litigation”) and is pending before  
17 the Honorable Anthony J. Battaglia in the United States District Court for the  
18 Southern District of California (the “Court”).

19 This Notice is to inform you that the Lead Plaintiff in the Litigation, Inter-Local  
20 Pension Fund GCC/IBT (“Lead Plaintiff” or “Inter-Local”), on behalf of itself and  
21 the Class of investors who purchased Obalon common stock during the Class Period,  
22 has reached an agreement with Defendants Obalon, Andrew P. Rasdal, and William  
23 J. Plovanic (collectively, “Defendants”) to settle the Litigation (the “Settlement”).  
24 If the Court approves the Settlement, all claims in the Litigation against the Released  
25 Defendant Parties (defined in Question 25 below) will be resolved.

26 **Overview of the Action and Settlement:** This Litigation alleges claims on behalf  
27 of the Class under the Securities Exchange Act of 1934 (the “Exchange Act”) against  
28 Defendants. Lead Plaintiff, on behalf of the Class, alleges that Defendants made  
materially false and misleading statements and/or failed to disclose material facts  
regarding Obalon’s financial condition. Lead Plaintiff further alleges that  
Defendants materially misled investors by prematurely reporting revenue generated  
in connection with a promotional sale of the Obalon Balloon System in violation of  
Generally Accepted Accounting Principles (“GAAP”). Lead Plaintiff alleges that  
Defendants’ material misstatements and omissions caused the price of Obalon stock  
to be artificially inflated. Defendants deny any wrongdoing, fault, or liability. As a  
result of settlement negotiations with the assistance of the magistrate judge, the  
parties have agreed to the Settlement described below, subject to Court approval.  
More detailed descriptions of the Litigation and the Settlement are set forth below.

**Statement of the Recovery:** Lead Plaintiff has agreed to settle all claims asserted  
in the Litigation and grant Released Defendant Parties a full and complete release in  
exchange for a cash payment of \$3,150,000 (the “Settlement Amount”). The  
Settlement Amount and any interest earned thereon is referred to as the “Settlement  
Fund.” The “Net Settlement Fund” (the Settlement Fund less any Taxes, attorneys’  
fees, expert fees, Notice and Administration Expenses, litigation expenses, or other

<sup>1</sup> All capitalized terms used in this Notice that are not otherwise defined herein  
shall have the meanings provided in the Stipulation and Agreement of Class Action  
Settlement dated August 17, 2020 (the “Stipulation”), which is available on the  
settlement website, [www.obalonsecuritieslitigation.com](http://www.obalonsecuritieslitigation.com).

1 costs and expenses approved by the Court) will be distributed in accordance with the  
2 plan of allocation that is approved by the Court (the "Plan of Allocation"), which  
3 will determine how the Net Settlement Fund will be allocated among members of  
4 the Class who become eligible to participate in the distribution of the Net Settlement  
5 Fund by submitting a timely and valid Proof of Claim and Release form ("Proof of  
6 Claim" or "Claim Form"). The proposed Plan of Allocation is included in this  
7 Notice at pages \_\_ below.

8 Based on the analysis performed by Lead Plaintiff's damages expert, the estimated  
9 average recovery per share for a Class Member from the Settlement Fund (before  
10 the deduction of any Court-approved fees, expenses and costs as described herein)  
11 would be approximately \$0.31 per share. This amount assumes all eligible Class  
12 Members submit valid and timely Proofs of Claim. If fewer than all members of  
13 Class submit timely and valid Proofs of Claim, which is likely, the distributions per  
14 share will be higher. A Class Member's actual recovery will be a proportion of the  
15 Net Settlement Fund determined by the number of that Class Member's eligible  
16 shares as compared to the total eligible shares of all Class Members who submit  
17 timely and valid Proofs of Claim. See the Plan of Allocation beginning on page \_\_  
18 for details and more information.

19 Lead Counsel intends to seek attorneys' fees not to exceed one-third of the  
20 Settlement Amount. In addition, Lead Counsel intends to seek payment of its  
21 expenses in connection with the prosecution of the Litigation in an amount not to  
22 exceed \$150,000. Such requested attorneys' fees and expenses would amount to an  
23 average of approximately \$0.12 per share of Obalon common stock. In addition, the  
24 distribution will be reduced by Notice and Administration Expenses and any award  
25 to Lead Plaintiff approved by the Court not to exceed \$8,000. These amounts are  
26 only estimates and are subject to approval by the Court.

27 Lead Plaintiff and Defendants do not agree on the average amount of damages per  
28 share, if any, that would have been recoverable if Lead Plaintiff were to have  
29 prevailed on each claim alleged. Defendants deny that they are liable in any respect  
30 or that Lead Plaintiff or that the Class suffered any injury and deny that they have  
31 violated the federal securities laws or any laws. The issues on which the parties  
32 disagree are many, but include: (1) whether Defendants engaged in conduct that  
33 would give rise to any liability to the Class under the federal securities laws, or any  
34 other laws; (2) whether Defendants have valid defenses to any such claims of  
35 liability; (3) the appropriate economic model for determining the amount by which  
36 the price of Obalon common stock was allegedly artificially inflated (if at all) during  
37 the Class Period; (4) the amount by which the price of Obalon common stock was  
38 allegedly artificially inflated (if at all) during the Class Period; (5) the effect of  
39 various market forces on the price of Obalon common stock at various times during  
40 the Class Period; (6) the extent to which external factors influenced the price of  
41 Obalon common stock at various times during the Class Period; (7) the extent to  
42 which the various matters that Lead Plaintiff alleged were materially false or  
43 misleading influenced (if at all) the price of Obalon common stock at various times  
44 during the Class Period; and (8) the extent to which the various allegedly adverse  
45 material facts that Lead Plaintiff alleged were omitted influenced (if at all) the price  
46 of Obalon common stock at various times during the Class Period.

47 Lead Plaintiff believes that the proposed Settlement is a good recovery and is in the  
48 best interests of the Class. Because of the risks associated with continuing to litigate  
49 and proceeding to trial, there was a danger that the Class would not have prevailed  
50 on any of its claims, in which case the Class would receive nothing. Also, the  
51 amount of damages recoverable by the Class was and is challenged by Defendants.

1 Recoverable damages in this case are limited to losses caused by conduct actionable  
 2 under applicable law and, had the Litigation gone to trial, Defendants would likely  
 3 have asserted that any losses of Class Members were caused by non-actionable  
 4 market, industry, or general economic factors. Defendants also would likely have  
 5 asserted that throughout the Class Period the uncertainties and risks associated with  
 6 the purchase of Obalon common stock were fully and adequately disclosed. The  
 7 proposed Settlement provides a certain benefit to Class Members and will avoid the  
 8 years of delay that would likely occur in the event of a contested trial and appeals.

9 **Identification of Attorneys’ Representatives:** Lead Plaintiff and the Class are  
 10 represented by Lead Counsel identified in Question 16 below.

11 **PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S**  
 12 **OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM**  
 13 **PROCESS.**

14 **YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

<p>15 <b>SUBMIT A PROOF OF CLAIM POSTMARKED OR SUBMITTED ONLINE BY _____, 2020</b></p>	<p>This is the only way to be eligible to get a payment from the Settlement. If you wish to participate in the Settlement, you will need to complete and submit the enclosed Proof of Claim. Class Members who do not complete and submit the Proof of Claim in accordance with the instructions on the Proof of Claim and do not submit it within the time required will be bound by the Settlement but will not participate in any distribution of the Net Settlement Fund.</p>
<p>16 <b>EXCLUDE YOURSELF FROM THE CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS POSTMARKED NO LATER THAN _____, 2020</b></p>	<p>You will not be bound by the results of this lawsuit, and you will not receive any payment. This is the <b>only</b> option that allows you to ever be part of any other lawsuit against the Released Defendant Parties about the legal claims related to the issues raised in this Litigation.</p>
<p>17 <b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN _____, 2020</b></p>	<p>If you believe the Settlement is objectionable in any respect, you may write to the Court about why you oppose the Settlement, the Plan of Allocation, and/or the request for attorneys’ fees and expenses. You will still be a member of the Class.</p>
<p>18 <b>ATTEND THE SETTLEMENT HEARING ON _____, 2020, AT _____M., AND PROVIDE A NOTICE OF INTENTION TO APPEAR TO LEAD COUNSEL SO THAT IT IS RECEIVED NO LATER THAN _____, 2020</b></p>	<p>The hearing on whether to approve the Settlement is scheduled for _____, 2020, at ____m. (the “Settlement Hearing”) and is open to the public. You do not need to attend the hearing unless you wish to speak either in support of the Settlement or in support of any objection you may have submitted, and have submitted to Lead Counsel a Notice of Intention to Appear so that it is received no later than</p>

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	_____, 2020. The Court may postpone the Settlement Hearing without prior notice or decide to hold the Settlement Hearing by telephone or videoconference.
<b>DO NOTHING</b>	If you are a Class Member and do not submit a Proof of Claim postmarked or submitted online by _____, 2020, you will not be eligible to receive any payment from the Settlement Fund. You will, however, be bound by the Settlement, unless you have requested exclusion from the Class.

These rights and options are explained in further detail later in this Notice.

**Further Information**

For further information regarding this Settlement, you may contact Lead Counsel: Rachel L. Jensen, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, Telephone: 800/449-4900.

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1 **23. May I speak at the hearing?** \_\_\_\_\_

2 **24. What happens if I do nothing at all?** \_\_\_\_\_

3 **25. What happens if the proposed Settlement is approved?** \_\_\_\_\_

4 **26. How do I get more information about the proposed Settlement?** \_\_\_\_\_

5  
6 **SPECIAL NOTICE TO NOMINEES** \_\_\_\_\_

7 **PLAN OF ALLOCATION OF NET SETTLEMENT FUND** \_\_\_\_\_

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**BASIC INFORMATION**

**1. Why did I get this Notice?**

You have received this Notice because the parties are seeking approval of a proposed Settlement on behalf of the Class in this Litigation, and you have been identified as a potential Class Member either from the transfer agent’s record of ownership of Obalon common stock or by your broker or custodian if you purchased or acquired Obalon stock in “street name.”

The Court directed that this Notice be sent to Class Members because they have a right to know about the proposed Settlement of this class action lawsuit, and about their options, before the Court decides whether to approve the Settlement.

This Notice explains the class action lawsuit, the Settlement, Class Members’ legal rights, what benefits are available, who is eligible for them, and how to get them.

**2. What is this lawsuit about?**

This case is currently pending before the Honorable Anthony J. Battaglia in the United States District Court for the Southern District of California. The initial complaint in this case, entitled *Hustig v. Obalon Therapeutics, et al.*, No. 3:18-CV-0352-AJB-WVG, was filed in the Court on February 14, 2018. On July 24, 2018, the Court appointed Inter-Local as Lead Plaintiff.

On October 10, 2018, Lead Plaintiff and another plaintiff filed the Consolidated Complaint for Violation of the Federal Securities Laws, alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 and §§11 and 15 of the Securities Act of 1933 (“Complaint”). The Complaint alleged that Defendants made materially false and misleading statements during the Class Period and in their offering materials regarding the Obalon Balloon System’s (the “Obalon Balloon”) ease of use, safety profile, and efficacy. It also alleged that, during the Class Period, Defendants made materially false and misleading statements and/or failed to disclose material facts regarding Obalon’s financial health. The Complaint further alleged that Defendants materially misled investors when they prematurely reported revenue results from a promotional sale of the Obalon Balloon in violation of GAAP. And it alleged that Defendants made materially false and misleading statements that artificially inflated the price of Obalon common stock and that when the truth was eventually disclosed the Class suffered substantial damages.

On December 4, 2018, Defendants moved to dismiss the Complaint. On September 25, 2019, the Court issued an order granting in part and denying in part Defendants’ motion to dismiss. The Court denied Defendants’ motion to dismiss with respect to Defendants’ statements concerning Obalon’s financial condition and statements concerning Obalon’s recognition of revenue. The Court dismissed the §§11 and 15 claims. Thereafter, Defendants filed an answer denying all material allegations in the Complaint and asserting defenses thereto.

Discovery commenced shortly thereafter. On November 14, 2019, counsel for the parties met in person to conduct a Fed. R. Civ. P. (“Rule”) 26(f) conference. Lead Plaintiff served its initial disclosures on January 6, 2020. On January 10, 2020, Defendants served their initial disclosures. In total, the parties exchanged over 8,600 pages in discovery prior to engaging in settlement discussions.

1 On January 30, 2020, the parties participated in a full-day mediation session  
2 with the Honorable Irma Gonzalez (ret.) but were unable to reach a resolution. With  
3 the benefit of additional discovery, the parties thereafter virtually attended a court-  
4 ordered Early Neutral Evaluation conference on May 15 and 19, 2020, before the  
5 Honorable Allison H. Goddard, magistrate judge. These efforts culminated with the  
6 Settling Parties agreeing to settle the Litigation for \$3,150,000.00, subject to  
7 agreement on non-monetary terms and approval by the Court.

8 On \_\_\_\_\_, 2020, the Court entered an order preliminarily approving  
9 the proposed Settlement, authorizing the mailing of this Notice to potential Class  
10 Members, and scheduling the Settlement Hearing to consider whether to grant final  
11 approval of the Settlement.

12 **This Notice is NOT an expression of the Court’s opinion on the merits or**  
13 **the lack of merits of any of Lead Plaintiff’s claims in the Litigation or whether**  
14 **Defendants engaged in any wrongdoing.**

15 To learn more about what has happened in this Litigation to date, please see  
16 the Stipulation and other court filings, which are available at  
17 [www.obalonsecuritieslitigation.com](http://www.obalonsecuritieslitigation.com). Instructions on how to get more information  
18 are also included in Question 26 below.

19 **3. Why is this a class action?**

20 In a class action, one or more persons or entities (in this case, the Lead  
21 Plaintiff) sue on behalf of other people and entities who have similar claims.  
22 Together, these people and entities are referred to as a Class, and each is a Class  
23 Member. One court resolves the issues for all Class Members at the same time,  
24 except for those Class Members who exclude themselves or “opt out” from the Class.

25 **4. Why is there a settlement?**

26 Lead Plaintiff made claims against Defendants on behalf of the Class.  
27 Defendants deny that they have done anything wrong or violated any statute and  
28 admit no liability. The Court has not decided in favor of Defendants or the Class.  
Instead, both sides agreed to the Settlement to avoid the costs and risks of further  
litigation, including trial and post-trial appeals, and Lead Plaintiff agreed to the  
Settlement to ensure that Class Members will receive compensation. Lead Plaintiff  
and Lead Counsel believe the Settlement is in the best interest of all Class Members  
in light of the possibility that continued litigation could result in no recovery at all.

**WHO IS IN THE SETTLEMENT?**

To see if you will get money from this Settlement, you first have to decide if  
you are a Class Member.

**5. How do I know if I am part of the Settlement?**

The Court directed that everyone who fits this description is a Class Member:  
*all Persons who purchased Obalon common stock between October 6, 2016 and  
May 11, 2018, inclusive*, except those Persons that are excluded, as described below.

**PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN  
THAT YOU ARE A CLASS MEMBER OR THAT YOU WILL BE  
ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF**

1 **YOU ARE A CLASS MEMBER AND WISH TO BE ELIGIBLE TO**  
2 **PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE**  
3 **SETTLEMENT, YOU ARE REQUIRED TO SUBMIT THE CLAIM FORM**  
4 **THAT IS INCLUDED WITH THIS NOTICE POSTMARKED OR**  
5 **SUBMITTED ONLINE NO LATER THAN \_\_\_\_\_, 2020.**

6 **6. Are there exceptions to being included?**

7 Excluded from the Class are Defendants, directors and officers of Obalon, and  
8 their families and affiliates and any defendant previously named as a defendant in  
9 this Litigation. Also excluded from the Class are those Persons who timely and  
10 validly request exclusion from the Class pursuant to this Notice.

11 **7. What if I am still not sure if I am included?**

12 If you are still not sure whether you are included in the Settlement, you can  
13 ask for free help. You can contact the Claims Administrator toll-free at 877-883-  
14 7664, or you can fill out and return the Proof of Claim enclosed with this Notice, to  
15 see if you qualify.

16 **SETTLEMENT BENEFITS – WHAT YOU MAY GET**

17 **8. What does the Settlement provide?**

18 A settlement has been reached in the Litigation between Lead Plaintiff and  
19 Defendants, the terms and conditions of which are set forth in the Stipulation and  
20 the Exhibits thereto. The following description of the proposed Settlement is only a  
21 summary, and reference is made to the text of the Stipulation, on file with the Court  
22 or accessible at [www.obalonsecuritieslitigation.com](http://www.obalonsecuritieslitigation.com), for a full statement of its  
23 provisions.

24 The Settlement Fund consists of Three Million One Hundred Fifty Thousand  
25 Dollars (\$3,150,000.00) in cash, plus any interest earned thereon.

26 A portion of the settlement proceeds will be used to pay attorneys’ fees and  
27 expenses to Lead Counsel, to pay for this Notice and the processing of claims  
28 submitted by Class Members, any award to Lead Plaintiff, and to pay Taxes and Tax  
Expenses. The balance of the Settlement Fund (the “Net Settlement Fund”) will be  
distributed, in accordance with the Plan of Allocation described below, to Class  
Members who submit valid and timely Proofs of Claim.

The effectiveness of the Settlement is subject to a number of conditions and  
reference to the Stipulation is made for further particulars regarding these conditions.

**9. How much will my payment be?**

Your share of the fund will depend on several things, including how many  
Class Members submit a timely and valid Proof of Claim, the total dollar amount of  
the claims represented by the valid Proofs of Claim that Class Members send in, the  
number of shares of Obalon common stock you purchased during the Class Period,  
how much you paid for the shares, when you purchased them, and if you sold your  
shares and for how much.

By following the instructions in the Plan of Allocation, you can calculate your  
claim. It is unlikely that you will get a payment for the full amount of your claim.

1 After all Class Members have sent in their Proofs of Claim, the payment you get will  
2 be a part of the Net Settlement Fund equal to your claim divided by the total of all  
3 valid claimants' claims. See the Plan of Allocation on pages \_\_\_\_ for more  
4 information on your claim.

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8 **10. How can I receive a payment?**

9 You may submit a Proof of Claim as described below. If you choose this  
10 option, you will share in the proceeds of the proposed Settlement if your claim is  
11 timely, valid, and entitled to a distribution under the Plan of Allocation described  
12 below and if the proposed Settlement is finally approved by the Court; and you will  
13 be bound by the Judgment and release to be entered by the Court as described below.

14 **TO PARTICIPATE IN THE DISTRIBUTION OF THE NET  
15 SETTLEMENT FUND, YOU MUST TIMELY SUBMIT A PROOF OF  
16 CLAIM.** A Proof of Claim is enclosed with this Notice or it may be downloaded at  
17 [www.obalonsecuritieslitigation.com](http://www.obalonsecuritieslitigation.com). Read the instructions carefully, fill out the  
18 Proof of Claim, include all the documents the form asks for, sign it, and mail or  
19 submit it to the Claims Administrator so that it is *postmarked or electronically  
20 submitted no later than* \_\_\_\_\_, 2020. The Claim Form may be submitted online  
21 at [www.obalonsecuritieslitigation.com](http://www.obalonsecuritieslitigation.com). Unless the Court orders otherwise, if you  
22 do not timely submit a valid Proof of Claim, you will be barred from receiving any  
23 payments from the Net Settlement Fund, but will in all other respects be bound by  
24 the provisions of the Stipulation and the Judgment.

25 **11. When would I receive my payment?**

26 The Court will hold a Settlement Hearing on \_\_\_\_\_, 2020, at \_\_\_\_  
27 *.m.*, to decide whether to approve the Settlement. The Court may postpone or  
28 hold the hearing by telephone or videoconference without further notice to the Class.

If the Court approves the Settlement after that hearing, there might be appeals.  
It is always uncertain whether these appeals can be resolved, and resolving them can  
take time, perhaps more than a year. It also takes time for all the Proofs of Claim to  
be processed. Please be patient.

**12. What am I giving up to receive a payment or to stay in the Class?**

If you do not make a valid and timely request in writing to be excluded from  
the Class, you will be bound by any and all determinations or judgments in the  
Litigation in connection with the Settlement entered into or approved by the Court,  
whether favorable or unfavorable to the Class, and you shall be deemed to have, and  
by operation of the Judgment shall have, fully released all of the Released Claims  
against the Released Defendant Parties, whether or not you submit a valid Proof of  
Claim.

**EXCLUDING YOURSELF FROM THE CLASS**

**13. How do I get out of the proposed Settlement?**

If you do not wish to be included in the Class and you do not wish to  
participate in the proposed Settlement described in this Notice, you may request to  
be excluded. *If you are requesting exclusion because you want to bring your own  
lawsuit based on the matters alleged in this Litigation, you may want to consult an*

1 *attorney and discuss whether any individual claim that you may wish to pursue*  
2 *would be time-barred by the applicable statutes of limitations or repose.*

3 If you wish to be excluded, you must mail a written request stating that you  
4 wish to be excluded from the Class to:

5 *Obalon Litigation*  
6 Claims Administrator  
7 EXCLUSIONS  
8 c/o A.B. Data, Ltd.  
9 P.O Box 173001  
10 Milwaukee, WI 53217

11 The request for exclusion must: (1) include your name, address, and telephone  
12 number; (2) state that you wish to be “excluded from the Class and do not wish to  
13 participate in the settlement in *In re Obalon Therapeutics, Inc. Securities Litigation*,  
14 No. 3:18-cv-00352-AJB-AHG (S.D. Cal.)”; (3) state the date(s), price(s), and  
15 number of shares of all purchases and/or sales of Obalon common stock during the  
16 period between October 6, 2016 and May 11, 2018, inclusive; and (4) be signed by  
17 you or your representative. **YOUR EXCLUSION REQUEST MUST BE**  
18 **POSTMARKED NO LATER THAN \_\_\_\_\_, 2020.** No request for  
19 exclusion will be considered valid unless all of the information described above is  
20 included in any such request. No further opportunity to request exclusion will be  
21 given in this Litigation. If you choose to be excluded from the Class, (a) you are not  
22 entitled to share in the proceeds of the Settlement described herein; (b) you are not  
23 bound by any judgment entered in the Litigation; and (c) you are not precluded by  
24 the Settlement from otherwise prosecuting an individual claim against Defendants,  
25 if timely, based on the matters complained of in the Litigation.

16 **14. If I do not exclude myself, can I sue the Defendants and the other  
17 Released Defendant Parties for the same thing later?**

18 No. Unless you exclude yourself, you give up any rights to sue the Defendants  
19 and the other Released Defendant Parties for any and all Released Claims. Please  
20 note, however, that if you decide to exclude yourself from the Class, you may be  
21 time-barred from asserting the claims covered by the Litigation by applicable  
22 statutes of limitations or statutes of repose. If you have a pending lawsuit against  
23 any Defendant or Released Defendant Party, speak to your lawyer in that case  
24 immediately. You must exclude yourself from this Litigation to continue your own  
25 lawsuit. Remember, the exclusion deadline is \_\_\_\_\_, 2020.

22 **15. If I exclude myself, can I get money from the proposed Settlement?**

23 No. If you exclude yourself, you may not send in a Proof of Claim to ask for  
24 any money. But, you may be able to sue or be part of a different lawsuit against the  
25 Defendants and the other Released Defendant Parties about the claims raised in this  
26 Litigation.

25 **THE LAWYERS REPRESENTING YOU**

26 **16. Do I have a lawyer in this case?**

27 The Court ordered that the law firm of Robbins Geller Rudman & Dowd LLP  
28 represents the Class, including you. These lawyers are called Lead Counsel. You

1 will not be charged for these lawyers. They will be paid from the Settlement Fund  
 2 to the extent the Court approves their application for fees and expenses. If you want  
 to be represented by your own lawyer, you may hire one at your own expense.

3 **17. How will the lawyers be paid?**

4 At the Settlement Hearing, Lead Counsel will request the Court to award  
 5 attorneys’ fees of not more than one-third of the Settlement Amount, plus expenses  
 6 not to exceed \$150,000, plus interest thereon. Such sums as may be approved by the  
 Court will be paid from the Settlement Fund. Class Members are not personally  
 liable for any such fees or expenses.

7 To date, Lead Counsel have not received any payment for their services in  
 8 conducting this Litigation on behalf of the Lead Plaintiff and the Class, nor have  
 9 counsel been paid their expenses. The fee requested by Lead Counsel will  
 10 compensate counsel for its efforts in achieving the Settlement for the benefit of the  
 11 Class, and for its risk in undertaking this representation on a wholly contingent basis.  
 Lead Counsel believes that the fee requested is well within the range of fees awarded  
 to plaintiff’s counsel under similar circumstances in other litigation of this type. The  
 fee to be requested has been approved by the Lead Plaintiff.

12 **18. Can I hire my own lawyer?**

13 If you are a Class Member, you may, but are not required to, enter an  
 14 appearance through counsel of your own choosing and at your own expense,  
 15 provided that such counsel must file an appearance on your behalf on or before  
 16 \_\_\_\_\_, 2020, and must serve copies of such appearance on the attorneys listed  
 below. If you do not enter an appearance through counsel of your own choosing,  
 you will be represented by Lead Counsel: Robbins Geller Rudman & Dowd LLP,  
 Rachel L. Jensen, 655 West Broadway, Suite 1900, San Diego, CA 92101.

<b>LEAD COUNSEL</b>	<b>COUNSEL FOR DEFENDANTS</b>
Robbins Geller Rudman & Dowd LLP Rachel L. Jensen 655 West Broadway Suite 1900 San Diego, CA 92101	Latham & Watkins LLP Colleen Smith 12670 High Bluff Drive San Diego, CA 92130

**OBJECTING TO THE SETTLEMENT**

23 **19. How do I tell the Court that I object to the proposed Settlement?**

24 Any Class Member who objects to any aspect of the Settlement, the Plan of  
 25 Allocation, or the application for attorneys’ fees and expenses, may appear and be  
 heard at the Settlement Hearing.

26 The Court can only approve or deny the Settlement, not change its terms. You  
 can ask the Court to deny approval by filing an objection.

27 You may object to the proposed Settlement in writing. You may also appear  
 28 at the Settlement Hearing, either in person or through your own attorney. If you  
 appear through your own attorney, you are responsible for paying that attorney. All

1 written objections and supporting papers must (a) clearly identify the case name and  
 2 number (*In re Obalon Therapeutics, Inc. Securities Litigation*, No. 3:18-cv-00352-  
 3 AJB-AHG (S.D. Cal.)), and (b) be filed with the Clerk of the Court, 333 West  
 4 Broadway, Suite 420, San Diego, California 92101, and received by the following  
 5 counsel: Robbins Geller Rudman & Dowd LLP, Rachel L. Jensen, 655 West  
 6 Broadway, Suite 1900, San Diego, California 92101; and Latham & Watkins LLP,  
 7 Colleen Smith, 12670 High Bluff Drive, San Diego, California 92130. Such  
 8 objections, papers, and briefs must be **received or filed, not simply postmarked,**  
 9 **on or before \_\_\_\_\_, 2020.**

10 The notice of objection must demonstrate the objecting Person's membership  
 11 in the Class, including the number of shares of Obalon common stock purchased and  
 12 sold during the Class Period and contain a statement of the reasons for objection.  
 13 The objection must state whether it applies only to the objector, to a specific subset  
 14 of the Class, or to the entire Class. The objection must identify any other actions in  
 15 which the objector or the objector's counsel has filed, or participated in the filing of,  
 16 an objection of any nature. The objection must also state with specificity the grounds  
 17 for the objection. Only members of the Class who have submitted written notices of  
 18 objection in this manner will be entitled to be heard at the Settlement Hearing, unless  
 19 the Court orders otherwise. Any member of the Class who does not make his, her  
 20 or its objection in the manner and time provided shall be deemed to have waived  
 21 such objection and shall forever be foreclosed from making any objection to the  
 22 fairness or adequacy of the proposed Settlement as set forth in the Stipulation, to the  
 23 Plan of Allocation, or to the award of attorneys' fees and expenses, unless otherwise  
 24 ordered by the Court.

25 **20. What is the difference between objecting and excluding myself?**

26 Objecting is simply telling the Court that you do not like something about the  
 27 proposed Settlement, the Plan of Allocation, or the fee and expense application. You  
 28 can object only if you stay in the Class. Excluding yourself is telling the Court that  
 you do not want to be part of the Class.

**THE COURT'S SETTLEMENT HEARING**

29 **21. When and where will the Court decide whether to approve the proposed  
 30 Settlement?**

31 The Settlement Hearing will be held on \_\_\_\_\_, 2020, at \_\_\_\_\_, before the  
 32 Honorable Anthony J. Battaglia, United States District Judge, at the United States  
 33 District Court for the Southern District of California, 221 West Broadway, San  
 34 Diego, CA 92101. The purpose of the Settlement Hearing will be to determine:  
 35 (1) whether the proposed Settlement, as set forth in the Stipulation, consisting of  
 36 Three Million One Hundred Fifty Thousand Dollars (\$3,150,000.00) in cash, should  
 37 be approved as fair, reasonable, and adequate to the members of the Class;  
 38 (2) whether the proposed plan to distribute the Settlement proceeds (the "Plan of  
 Allocation") is fair, reasonable, and adequate; (3) whether the application by Lead  
 Counsel for an award of attorneys' fees and expenses should be approved; and  
 (4) whether the Judgment, in the form attached to the Stipulation, should be entered.  
**The Court may adjourn the Settlement Hearing from time to time and without  
 further notice to the Class. The Court may also decide to hold the Settlement  
 Hearing by telephone or videoconference. Class Members should check the  
 Settlement website or the Court's PACER site (see Question 26 below) to  
 confirm that the date or method of the Settlement Hearing is unchanged.**

**22. Do I have to come to the hearing?**

No. Lead Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection or statement in support of the Settlement, you are not required to come to Court to discuss it. As long as you mailed your objection on time, the Court will consider it. You may also pay your own lawyer to attend, but you are not required to do so. Class Members do not need to appear at the hearing or take any other action to indicate their approval.

**23. May I speak at the hearing?**

If you object to the Settlement, the Plan of Allocation, and/or the fee and expense application, you may ask the Court for permission to speak at the Settlement Hearing. To do so, you must include in your objection (*see* Question 19 above) a statement saying that it is your “Notice of Intention to Appear in *In re Obalon Therapeutics, Inc. Securities Litigation*, No. 3:18-cv-00352-AJB-AHG (S.D. Cal.)” Persons who intend to object to the Settlement, the Plan of Allocation and/or the fee and expense application, and desire to present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing. You cannot speak at the hearing if you exclude yourself.

**24. What happens if I do nothing at all?**

You may do nothing at all. If you choose this option, you will not share in the proceeds of the Settlement, but you will be bound by any judgment entered by the Court, and you shall be deemed to have, and by operation of the Judgment shall have, fully released all of the Released Claims against the Released Defendant Parties.

**DISMISSALS AND RELEASES**

**25. What happens if the proposed Settlement is approved?**

As a Class Member, in consideration for the benefits of the Settlement, you will be bound by the terms of the Settlement and you will release the Released Defendant Parties from the Released Claims as defined below.

“Released Claims” means any and all claims and causes of action of every nature and description whatsoever, including Unknown Claims as defined in ¶1.33 of the Stipulation, whether arising under federal, state, local, common, statutory, administrative, or foreign law, or any other law, rule, or regulation, at law or in equity, whether fixed or contingent, whether foreseen or unforeseen, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, whether direct, representative, class, or individual in nature, that either were or could have been asserted in this Litigation, which arise out of, are based upon, or are related in any way to both: (i) the purchase or acquisition, or sale of Obalon securities; and (ii) the allegations, transactions, facts, matters, or occurrences, representations or omissions involved, set forth, or referred to, or which could have been alleged, in the Complaint.

“Released Defendant Parties” means: (i) Defendants and any defendant previously named as a defendant in this Litigation, including the Underwriter Defendants; and (ii) each of their respective family members, and their respective

1 general partners, limited partners, principals, shareholders, joint venturers,  
2 members, officers, directors, managers, managing directors, supervisors, employees,  
3 contractors, consultants, auditors, accountants, financial advisors, professional  
4 advisors, investment bankers, underwriters, representatives, insurers, trustees,  
5 trustors, agents, attorneys, professionals, predecessors, successors, assigns, heirs,  
6 executors, administrators, and any controlling person thereof in their capacities as  
7 such.

8 If the proposed Settlement is approved, the Court will enter a Judgment (the  
9 “Judgment”). In addition, upon the Effective Date, Lead Plaintiff and each of the  
10 Class Members, for themselves and for any other Person claiming (now or in the  
11 future) through or on behalf of them, and regardless of whether any such plaintiff or  
12 Class Member ever seeks or obtains by any means, including, without limitation, by  
13 submitting a Proof of Claim, any distribution from the Settlement Fund, shall be  
14 deemed to have, and by operation of the Judgment shall have, fully, finally, and  
15 forever released, relinquished, and discharged all Released Claims against the  
16 Released Defendant Parties, and shall be permanently barred and enjoined from  
17 instituting, commencing, or prosecuting any such Released Claim against the  
18 Released Defendant Parties except to enforce the releases and other terms and  
19 conditions contained in the Stipulation or the Judgment entered pursuant thereto.

20 **GETTING MORE INFORMATION**

21 **26. How do I get more information about the proposed Settlement?**

22 This Notice contains only a summary of the terms of the proposed Settlement  
23 and does not describe all of the details of the Stipulation. For the precise terms and  
24 conditions of the Settlement, please see the Stipulation available at  
25 [www.obalonsecuritieslitigation.com](http://www.obalonsecuritieslitigation.com), by contacting Lead Counsel at (800) 449-  
26 4900, by accessing the Court docket in this case through the Court’s Public Access  
27 to Court Electronic Records (PACER) system at <https://www.casd.uscourts.gov/cmecf>, or by visiting the office of the Clerk at 333 West Broadway, Suite 420, San  
28 Diego, CA 92101, between 8:30 a.m. and 4:30 p.m., Monday through Friday,  
excluding Court holidays. **DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE.**

29 If you have any questions about the Settlement of the Litigation, you may  
30 contact Lead Counsel by writing to:

31 **ROBBINS GELLER RUDMAN**  
32 **& DOWD LLP**  
33 Rachel L. Jensen  
34 655 West Broadway, Suite 1900  
35 San Diego, CA 92101  
36 RachelJ@rgrdlaw.com

37 **SPECIAL NOTICE TO NOMINEES**

38 Nominees who purchased Obalon common stock for the beneficial interest of  
39 other Persons during the Class Period shall, within ten (10) business days after  
40 receipt of this Notice: (1) provide the Claims Administrator with the names and  
41 addresses of such beneficial owners, or (2) forward a copy of this Notice and the  
42 Proof of Claim by First-Class Mail to each such beneficial owner, and provide Lead  
43 Counsel with written confirmation that the Notice and Proof of Claim have been so  
44 forwarded. Upon submission of appropriate documentation, Lead Counsel will

1 reimburse your reasonable costs and expenses of complying with this provision.  
2 Additional copies of this Notice may be obtained from the Claims Administrator by  
writing to:

3 *Obalon Litigation*  
4 Claims Administrator  
5 c/o A.B. Data, Ltd.  
P.O. Box 173031  
6 Milwaukee, WI 53217

6 **PLAN OF ALLOCATION OF NET SETTLEMENT FUND**

7 The Net Settlement Fund will be distributed to Class Members who, in  
8 accordance with the terms of the Stipulation, are entitled to a distribution from the  
9 Net Settlement Fund pursuant to any Plan of Allocation or any order of the Court  
10 and who submit a valid and timely Proof of Claim under the Plan of Allocation  
described below. The Plan of Allocation provides that you will be eligible to  
participate in the distribution of the Net Settlement Fund only if you have an overall  
net loss on all of your transactions in Obalon common stock during the Class Period.

11 For purposes of determining the amount an Authorized Claimant may recover  
12 under the Plan of Allocation, Lead Counsel has conferred with its damages expert  
and developed a Plan of Allocation that divides the Settlement proceeds equitably  
13 among Class Members.

14 In the unlikely event there are sufficient funds in the Net Settlement Fund,  
15 each Authorized Claimant will receive an amount equal to the Authorized  
16 Claimant's claim, as defined below. If, however, and as is more likely, the amount  
17 in the Net Settlement Fund is not sufficient to permit payment of the total claim of  
each Authorized Claimant, then each Authorized Claimant shall be paid the  
percentage of the Net Settlement Fund that each Authorized Claimant's claim bears  
to the total of the claims of all Authorized Claimants. Payment in this manner shall  
be deemed conclusive against all Authorized Claimants.

18 A claim will be calculated as follows:

19 For shares of Obalon common stock purchased from October 6, 2016 through  
20 May 11, 2018, inclusive, including shares purchased in the Company's IPO, the  
claim per share shall be as follows:

- 21 A. If sold from October 6, 2016 through May 10, 2018, inclusive, the claim  
22 per share shall be the lesser of:
  - 23 a. the inflation per share in Table A at the time of purchase less the  
inflation per share in Table A at the time of sale; and
  - 24 b. the difference between the purchase price per share and the sales  
25 price per share.
- 26 B. If sold from May 11, 2018 through August 8, 2018, inclusive, the claim  
per share shall be the least of:
  - 27 a. the inflation per share in Table A at the time of purchase;

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- b. the difference between the purchase price per share and the sales price per share; and
  - c. the difference between the purchase price per share and the average closing price per share up to the date of sale as set forth in Table B below.
- C. If retained at the close of trading on August 8, 2018, the claim per share shall be the lesser of:
- a. the inflation per share in Table A at the time of purchase; and
  - b. the difference between the purchase price per share and \$2.24 per share.

**Table A**

Time Period	Inflation
October 6, 2016 through February 22, 2017	\$0.62
February 23, 2017 through January 16, 2018	\$6.17
January 17, 2018	\$5.04
January 18, 2018	\$4.32
January 19, 2018 through January 22, 2018	\$3.38
January 23, 2018 through May 10, 2018	\$1.59
May 11, 2018	\$0.00

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**Table B**

Date	Closing Price	Average Closing Price from May 11, 2018 through Sales Date	Date	Closing Price	Average Closing Price from May 11, 2018 through Sales Date
5/11/2018	\$2.85	\$2.85	6/26/2018	\$2.32	\$2.50
5/14/2018	\$2.82	\$2.84	6/27/2018	\$2.18	\$2.49
5/15/2018	\$2.83	\$2.83	6/28/2018	\$2.14	\$2.48
5/16/2018	\$2.60	\$2.78	6/29/2018	\$2.15	\$2.47
5/17/2018	\$2.62	\$2.74	7/2/2018	\$2.11	\$2.46
5/18/2018	\$2.63	\$2.73	7/3/2018	\$2.10	\$2.45
5/21/2018	\$2.64	\$2.71	7/5/2018	\$2.15	\$2.45
5/22/2018	\$2.71	\$2.71	7/6/2018	\$2.13	\$2.44
5/23/2018	\$2.66	\$2.71	7/9/2018	\$2.20	\$2.43
5/24/2018	\$2.50	\$2.69	7/10/2018	\$2.19	\$2.43
5/25/2018	\$2.54	\$2.67	7/11/2018	\$2.23	\$2.42
5/29/2018	\$2.58	\$2.67	7/12/2018	\$2.20	\$2.42
5/30/2018	\$2.52	\$2.65	7/13/2018	\$2.20	\$2.41
5/31/2018	\$2.52	\$2.64	7/16/2018	\$2.01	\$2.40
6/1/2018	\$2.53	\$2.64	7/17/2018	\$2.01	\$2.39
6/4/2018	\$2.20	\$2.61	7/18/2018	\$1.97	\$2.38
6/5/2018	\$2.24	\$2.59	7/19/2018	\$1.86	\$2.37
6/6/2018	\$2.23	\$2.57	7/20/2018	\$1.91	\$2.36
6/7/2018	\$2.22	\$2.55	7/23/2018	\$1.90	\$2.35
6/8/2018	\$2.21	\$2.53	7/24/2018	\$1.93	\$2.35
6/11/2018	\$2.16	\$2.51	7/25/2018	\$1.98	\$2.34
6/12/2018	\$2.36	\$2.51	7/26/2018	\$1.97	\$2.33
6/13/2018	\$2.36	\$2.50	7/27/2018	\$1.86	\$2.32
6/14/2018	\$2.36	\$2.50	7/30/2018	\$1.66	\$2.31
6/15/2018	\$2.46	\$2.49	7/31/2018	\$1.66	\$2.30
6/18/2018	\$2.53	\$2.50	8/1/2018	\$1.67	\$2.29
6/19/2018	\$2.57	\$2.50	8/2/2018	\$1.66	\$2.28
6/20/2018	\$2.58	\$2.50	8/3/2018	\$1.63	\$2.27
6/21/2018	\$2.95	\$2.52	8/6/2018	\$1.63	\$2.26
6/22/2018	\$2.43	\$2.51	8/7/2018	\$1.66	\$2.25
6/25/2018	\$2.35	\$2.51	8/8/2018	\$1.68	\$2.24

A Class Member will be eligible to receive a distribution from the Net Settlement Fund only if a Class Member had a net overall loss, after all profits from transactions in all Obalon common stock described above during the Class Period are subtracted from all losses. However, the proceeds from sales of shares that have been matched against the shares held at the beginning of the Class Period will not be used in the calculation of such net loss. No distributions will be made to Authorized Claimants who would otherwise receive a distribution of less than \$10.00.

The Court has reserved jurisdiction to allow, disallow, or adjust the claim of any Class Member on equitable grounds.

Released Defendant Parties and their respective counsel will have no responsibility or liability whatsoever for the investment of the Settlement Fund, the distribution of the Net Settlement Fund, the Plan of Allocation, or the payment of any claim. No Person shall have any claim against the Lead Plaintiff, Lead Counsel, any claims administrator, or other Person designated by Lead Counsel, or any Defendant or Defendant’s counsel, based on distributions made under the Stipulation and the Settlement contained therein, the Plan of Allocation, or further orders of the

1 Court. All Class Members who fail to complete and file a valid and timely Proof of  
2 Claim shall be barred from participating in distributions from the Net Settlement  
3 Fund (unless otherwise ordered by the Court), but otherwise shall be bound by all of  
the terms of the Stipulation, including the terms of any judgment entered and the  
releases given.

4 DATED: \_\_\_\_\_

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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# **EXHIBIT A-2**

1 ROBBINS GELLER RUDMAN  
 & DOWD LLP  
 2 RACHEL L. JENSEN (211456)  
 ROBERT R. HENSSLER JR. (216165)  
 3 JEFFREY J. STEIN (265268)  
 FRANCISCO J. MEJIA (306477)  
 4 655 West Broadway, Suite 1900  
 San Diego, CA 92101  
 5 Telephone: 619/231-1058  
 619/231-7423 (fax)  
 6 rachelj@rgrdlaw.com  
 bhenssler@rgrdlaw.com  
 7 jstein@rgrdlaw.com  
 fmejia@rgrdlaw.com

8 Lead Counsel for Lead Plaintiff

9

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UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF CALIFORNIA

12

In re OBALON THERAPEUTICS, ) Master File No. 3:18-cv-00352-AJB-AHG  
 13 INC. SECURITIES LITIGATION )  
 14 ) CLASS ACTION

15 This Document Relates To: ) PROOF OF CLAIM AND RELEASE  
 16 ) [EXHIBIT A-2 TO STIPULATION AND  
 ALL ACTIONS. ) AGREEMENT OF CLASS ACTION  
 17 ) SETTLEMENT]

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1 **I. GENERAL INSTRUCTIONS**

2 1. To recover as a Class Member based on your claims in the action entitled  
3 *In re Obalon Therapeutics, Inc. Securities Litigation*, No. 3:18-cv-00352-AJB-AHG  
4 (the “Litigation”), you must complete and, on page \_\_\_ hereof, sign this Proof of  
5 Claim and Release form. If you fail to submit a timely and properly addressed (as set  
6 forth in paragraph 3 below) Proof of Claim and Release form, your claim may be  
7 rejected and you may not receive any recovery from the Net Settlement Fund created  
8 in connection with the proposed Settlement.

9 2. Submission of this Proof of Claim and Release form, however, does not  
10 assure that you will share in the proceeds of the settlement of the Litigation. To share  
11 in the proceeds, the Claims Administrator must determine, based on the information in  
12 your Proof of Claim and Release, that you have a recognized loss as a result of your  
13 purchases of Obalon common stock during the period from October 6, 2016 through  
14 and including May 11, 2018.

15 3. YOU MUST MAIL (POSTMARKED ON OR BEFORE \_\_\_\_\_,  
16 2020) OR SUBMIT ONLINE (ON OR BEFORE \_\_\_\_\_, 2020) YOUR  
17 COMPLETED AND SIGNED PROOF OF CLAIM AND RELEASE FORM,  
18 ACCOMPANIED BY COPIES OF THE DOCUMENTS REQUESTED HEREIN,  
19 ADDRESSED AS FOLLOWS:

20 *Obalon Litigation*  
21 Claims Administrator  
22 c/o A.B. Data, Ltd.  
23 P.O. Box 173031  
24 Milwaukee, WI 53217  
Online Submissions: [www.obalonsecuritieslitigation.com](http://www.obalonsecuritieslitigation.com)

25 If you are NOT a Class Member, as defined in the Notice of Pendency and Proposed  
26 Settlement of Class Action (“Notice”), DO NOT submit a Proof of Claim and Release  
27 form.

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1           4.     If you are a Class Member and you did not timely request exclusion in  
2 response to the Notice, you are bound by the terms of any judgment entered in the  
3 Litigation, including the releases provided therein, WHETHER OR NOT YOU  
4 SUBMIT A PROOF OF CLAIM AND RELEASE FORM.

5 **II. CLAIMANT IDENTIFICATION**

6           If you purchased Obalon common stock and held the certificate(s) in your  
7 name, you are the beneficial purchaser as well as the record purchaser. If, however,  
8 you purchased Obalon common stock and the certificate(s) were registered in the  
9 name of a third party, such as a nominee or brokerage firm, you are the beneficial  
10 purchaser and the third party is the record purchaser.

11           Use Part I of this form entitled “Claimant Identification” to identify each  
12 purchaser of record (“nominee”), if different from the beneficial purchaser of the  
13 Obalon common stock that forms the basis of this claim. THIS CLAIM MUST BE  
14 FILED BY THE ACTUAL BENEFICIAL PURCHASER(S) OR THE LEGAL  
15 REPRESENTATIVE OF SUCH PURCHASER(S) OF THE OBALON COMMON  
16 STOCK UPON WHICH THIS CLAIM IS BASED.

17           All joint purchasers must sign this claim. Executors, administrators, guardians,  
18 conservators, and trustees must complete and sign this claim on behalf of persons  
19 represented by them and their authority must accompany this claim and their titles or  
20 capacities must be stated. The Social Security (or taxpayer identification) number and  
21 telephone number of the beneficial owner may be used in verifying the claim. Failure  
22 to provide the foregoing information could delay verification of your claim or result in  
23 rejection of the claim.

24 **III. CLAIM FORM**

25           Use Part II of this form entitled “Schedule of Transactions in Obalon Common  
26 Stock” to supply all required details of your transaction(s) in Obalon common stock.  
27 If you need more space or additional schedules, attach separate sheets giving all of the  
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1 required information in substantially the same form. Sign and print or type your name  
2 on each additional sheet.

3 On the schedules, provide all of the requested information with respect to **all** of  
4 your purchases and **all** of your sales of Obalon common stock which took place during  
5 the period from October 6, 2016 through and including August 8, 2018, whether such  
6 transactions resulted in a profit or a loss. You must also provide all of the requested  
7 information with respect to **all** of the Obalon common stock you held at the close of  
8 trading on October 5, 2016, May 11, 2018, and August 8, 2018. Failure to report all  
9 such transactions may result in the rejection of your claim.

10 List each transaction separately and in chronological order, by trade date,  
11 beginning with the earliest. You must accurately provide the month, day, and year of  
12 each transaction you list.

13 The date of covering a “short sale” is deemed to be the date of purchase of  
14 Obalon common stock. The date of a “short sale” is deemed to be the date of sale of  
15 Obalon common stock.

16 Copies of broker confirmations or other documentation of your transactions in  
17 Obalon common stock should be attached to your claim. Failure to provide this  
18 documentation could delay verification of your claim or result in rejection of your  
19 claim.

20 NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large  
21 numbers of transactions may request to, or may be requested to, submit information  
22 regarding their transactions in electronic files. All claimants **MUST** submit a  
23 manually signed paper Proof of Claim and Release form whether or not they also  
24 submit electronic copies. If you have a large number of transactions and wish to file  
25 your claim electronically, you must contact the Claims Administrator at 877-883-7664  
26 to obtain the required file layout. No electronic files will be considered to have been  
27 properly submitted unless the Claims Administrator issues to the claimant a written  
28 acknowledgment of receipt and acceptance of electronically submitted data.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

*In re Obalon Therapeutics, Inc. Securities Litigation*

No. 3:18-cv-00352-AJB-AHG

PROOF OF CLAIM AND RELEASE

**Must Be Postmarked (if Mailed) or Received (if Filed Electronically) No Later  
than:**

\_\_\_\_\_, 2020

Please Type or Print

PART I: CLAIMANT IDENTIFICATION

Beneficial Owner's Name (First, Middle, Last)

Street Address

City State or Province

Zip Code or Postal Code Country

Social Security Number or Taxpayer Identification Number Individual Corporation/Other

Area Code Telephone Number (work)

Area Code Telephone Number (home)

Record Owner's Name (if different from beneficial owner listed above)

1 PART II: SCHEDULE OF TRANSACTIONS IN OBALON COMMON STOCK

2 A. Number of shares of Obalon common stock held at the close of trading  
 3 on October 5, 2016: \_\_\_\_\_

4 B. Purchases of Obalon common stock (October 6, 2016 – August 8, 2018,  
 5 inclusive):

Trade Date Month Day Year	Number of Shares Purchased	Total Purchase Price
1. _____	1. _____	1. _____
2. _____	2. _____	2. _____
3. _____	3. _____	3. _____

10 **IMPORTANT:** If any purchase listed covered a “short sale,” please mark Yes:

11  Yes

12 C. Sales of Obalon common stock (October 6, 2016 – August 8, 2018,  
 13 inclusive):

Trade Date Month Day Year	Number of Shares Sold	Total Sales Price
1. _____	1. _____	1. _____
2. _____	2. _____	2. _____
3. _____	3. _____	3. _____

19 D. Number of shares of Obalon common stock held at the close of trading  
 20 on May 11, 2018: \_\_\_\_\_

21 E. Number of shares of Obalon common stock held at the close of trading  
 22 on August 8, 2018: \_\_\_\_\_

23 If you require additional space, attach extra schedules in the same format as  
 24 above. Sign and print your name on each additional page.

25 **YOU MUST READ AND SIGN THE RELEASE ON PAGE \_\_. FAILURE**  
 26 **TO SIGN THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR**  
 27 **THE REJECTION OF YOUR CLAIM.**

1 **IV. SUBMISSION TO JURISDICTION OF COURT AND**  
2 **ACKNOWLEDGMENTS**

3 I (We) submit this Proof of Claim and Release under the terms of the  
4 Stipulation and Agreement of Class Action Settlement described in the Notice. I (We)  
5 also submit to the jurisdiction of the United States District Court for the Southern  
6 District of California, with respect to my (our) claim as a Class Member and for  
7 purposes of enforcing the release set forth herein. I (We) further acknowledge that I  
8 am (we are) bound by and subject to the terms of any judgment that may be entered in  
9 the Litigation. I (We) agree to furnish additional information to the Claims  
10 Administrator to support this claim (including transactions in other Obalon securities)  
11 if requested to do so. I (We) have not submitted any other claim covering the same  
12 purchases or sales of Obalon common stock during the Class Period and know of no  
13 other person having done so on my (our) behalf.

14 **V. RELEASE**

15 1. I (We) hereby acknowledge full and complete satisfaction of, and do  
16 hereby fully, finally, and forever settle, release, and discharge from the Released  
17 Claims each and all of the “Released Defendant Parties” defined as: (i) Defendants  
18 and any defendant previously named as a defendant in this Litigation, including the  
19 Underwriter Defendants; and (ii) each of their respective family members, and their  
20 respective general partners, limited partners, principals, shareholders, joint venturers,  
21 members, officers, directors, managers, managing directors, supervisors, employees,  
22 contractors, consultants, auditors, accountants, financial advisors, professional  
23 advisors, investment bankers, underwriters, representatives, insurers, trustees, trustors,  
24 agents, attorneys, professionals, predecessors, successors, assigns, heirs, executors,  
25 administrators, and any controlling person thereof in their capacities as such.

26 2. “Released Claims” means any and all claims and causes of action of  
27 every nature and description whatsoever, including Unknown Claims as defined  
28 below, whether arising under federal, state, local, common, statutory, administrative,

1 or foreign law, or any other law, rule, or regulation, at law or in equity, whether fixed  
2 or contingent, whether foreseen or unforeseen, whether accrued or unaccrued, whether  
3 liquidated or unliquidated, whether matured or unmatured, whether direct,  
4 representative, class, or individual in nature, that either were or could have been  
5 asserted in this Litigation, which arise out of, are based upon, or are related in any  
6 way to both: (i) the purchase or acquisition, or sale of Obalon securities; and (ii) the  
7 allegations, transactions, facts, matters, or occurrences, representations or omissions  
8 involved, set forth, or referred to, or which could have been alleged, in the Complaint.

9 3. “Unknown Claims” means any Released Claims or Released Defendant  
10 Claims that Defendants, Lead Plaintiff or any other Class Member does not know or  
11 suspect to exist in such party’s favor at the time of the release, which, if known by  
12 such party, might have affected such party’s decision to settle or release claims. Upon  
13 the Effective Date of the Settlement, Defendants, Lead Plaintiff and the Class shall  
14 expressly waive, and be deemed to have waived, to the fullest extent permitted by law,  
15 the provisions, rights, and benefits of California Civil Code §1542. Upon the  
16 Effective Date of the Settlement, Defendants, Lead Plaintiff and the Class shall  
17 expressly waive, and be deemed to have waived, to the fullest extent permitted by law,  
18 any and all provisions, rights, and benefits conferred by law of any state or territory of  
19 the United States, or principle of common law that are similar, comparable, or  
20 equivalent to California Civil Code §1542. Defendants, Lead Plaintiff and the Class  
21 shall be deemed to have, and by operation and order of final judgement shall have  
22 fully, finally, and forever settled and released all Released Claims, as the case may be  
23 known or unknown, suspected or unsuspected, contingent or non-contingent, whether  
24 or not concealed or hidden, upon any theory of law or equity now existing or coming  
25 into existence in the future, without regard to the subsequent discovery or existence of  
26 different or additional facts.

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1 **ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT**  
2 **OF TIME.**  
3 **THANK YOU FOR YOUR PATIENCE.**

4 Reminder Checklist:

- 5 1. Please sign the above release and acknowledgment.
- 6 2. If this claim is being made on behalf of Joint Claimants, then both must sign.
- 7 3. Remember to attach copies of supporting documentation, if available.
- 8 4. **Do not send** originals of certificates.
- 9 5. Keep a copy of your claim form and all supporting documentation for your records.
- 10 6. If you desire an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt Requested.
- 11 7. If you move, please send your new address to the address below.
- 12 8. **Do not use red pen or highlighter** on the Proof of Claim and Release form or supporting documentation.

13 **THIS PROOF OF CLAIM AND RELEASE MUST BE SUBMITTED**  
14 **ONLINE OR, IF MAILED, POSTMARKED NO LATER THAN**  
15 \_\_\_\_\_, 2020, ADDRESSED AS FOLLOWS:

16 *Obalon Litigation*  
17 Claims Administrator  
18 c/o A.B. Data, Ltd.  
19 P.O. Box 173031  
20 Milwaukee, WI 53217  
21 [www.obalonsecuritieslitigation.com](http://www.obalonsecuritieslitigation.com)

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# **EXHIBIT A-3**

1 ROBBINS GELLER RUDMAN  
 & DOWD LLP  
 2 RACHEL L. JENSEN (211456)  
 ROBERT R. HENSSLER JR. (216165)  
 3 JEFFREY J. STEIN (265268)  
 FRANCISCO J. MEJIA (306477)  
 4 655 West Broadway, Suite 1900  
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 5 Telephone: 619/231-1058  
 619/231-7423 (fax)  
 6 rachelj@rgrdlaw.com  
 bhenssler@rgrdlaw.com  
 7 jstein@rgrdlaw.com  
 fmejia@rgrdlaw.com

8 Lead Counsel for Lead Plaintiff

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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

In re OBALON THERAPEUTICS, INC. SECURITIES LITIGATION	) Master File No. 3:18-cv-00352-AJB-AHG ) <u>CLASS ACTION</u>
This Document Relates To:	) SUMMARY NOTICE
ALL ACTIONS.	) [EXHIBIT A-3 TO STIPULATION AND ) AGREEMENT OF CLASS ACTION ) SETTLEMENT]

1 TO: ALL PERSONS AND ENTITIES WHO PURCHASED THE COMMON  
2 STOCK OF OBALON THERAPEUTICS, INC. (“OBALON”) BETWEEN  
OCTOBER 6, 2016 AND MAY 11, 2018, INCLUSIVE

3 YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States  
4 District Court for the Southern District of California, that a hearing will be held on  
5 \_\_\_\_\_, 2020, at \_\_\_\_\_m., before the Honorable Anthony J. Battaglia, United  
6 States District Judge, at the United States District Court for the Southern District of  
7 California, 221 West Broadway, Courtroom 4A, San Diego, California 92101, for the  
8 purpose of determining: (1) whether the proposed settlement of the claims in the  
9 Litigation for the principal amount of \$3,150,000.00, plus interest, should be approved  
10 by the Court as fair, just, reasonable, and adequate; (2) whether a Final Judgment and  
11 Order of Dismissal with Prejudice should be entered by the Court dismissing the  
12 Litigation with prejudice; (3) whether the Plan of Allocation is fair, reasonable, and  
13 adequate and should be approved; and (4) whether the application of Lead Counsel for  
14 the payment of attorneys’ fees and expenses and award to Lead Plaintiff pursuant to  
15 15 U.S.C. §78u-4(a)(4) in connection with its representation of the Class in this  
16 Litigation should be approved. The Court may adjourn the Settlement Hearing or hold  
17 it via videoconference or teleconference without further notice to the Class Members.

18 IF YOU PURCHASED THE COMMON STOCK OF OBALON BETWEEN  
19 OCTOBER 6, 2016 AND MAY 11, 2018, INCLUSIVE, YOUR RIGHTS MAY BE  
20 AFFECTED BY THE SETTLEMENT OF THIS LITIGATION. If you have not  
21 received a detailed Notice of Pendency and Proposed Settlement of Class Action  
22 (“Notice”) and a copy of the Proof of Claim and Release form, you may obtain copies by  
23 writing to *Obalon Litigation*, Claims Administrator, c/o A.B. Data, Ltd., P.O.  
24 Box 173031, Milwaukee, WI 53217, or on the internet at  
25 www.obalonsecuritieslitigation.com. If you are a Class Member, in order to share in the  
26 distribution of the Net Settlement Fund, you must submit a Proof of Claim and Release  
27 by mail (*postmarked no later than* \_\_\_\_\_, 2020) or if submitted electronically *no later*  
28 *than* \_\_\_\_\_, 2020, establishing that you are entitled to recovery.

1 If you are a Class Member and you desire to be excluded from the Class, you  
2 must submit a request for exclusion such that it is *postmarked no later than*  
3 \_\_\_\_\_, **2020**, in the manner and form explained in the detailed Notice,  
4 referred to above. All Class Members who do not timely and validly request  
5 exclusion from the Class in response to the Notice will be bound by any judgment  
6 entered in the Litigation pursuant to the Stipulation and Agreement of Class Action  
7 Settlement.

8 Any objection to the Settlement, the Plan of Allocation, and/or the fee and  
9 expense application must be mailed to each of the following recipients, such that it is  
10 *received no later than* \_\_\_\_\_, **2020**:

11 CLERK OF THE COURT  
12 UNITED STATES DISTRICT COURT  
13 SOUTHERN DISTRICT OF CALIFORNIA  
14 333 West Broadway, Suite 420  
15 San Diego, CA 92101

16 *Lead Counsel:*

17 ROBBINS GELLER RUDMAN  
18 & DOWD LLP  
19 RACHEL L. JENSEN  
20 655 West Broadway, Suite 1900  
21 San Diego, CA 92101

22 *Counsel for Defendants:*

23 LATHAM & WATKINS LLP  
24 COLLEEN SMITH  
25 12670 High Bluff Drive  
26 San Diego, CA 92130

27 **PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S**  
28 **OFFICE REGARDING THIS NOTICE.** If you have any questions about the  
Settlement, you may contact Lead Counsel at the address listed above.

DATED: \_\_\_\_\_, 2020

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

# **EXHIBIT B**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re OBALON THERAPEUTICS, INC. SECURITIES LITIGATION	} Master File No. 3:18-cv-00352-AJB-AHG
	} <u>CLASS ACTION</u>
This Document Relates To:  ALL ACTIONS.	} FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE
	} [EXHIBIT B TO STIPULATION AND AGREEMENT OF CLASS ACTION SETTLEMENT]

1 This matter came before the Court pursuant to the Order Preliminarily  
2 Approving Settlement and Providing for Notice (“Order”) dated \_\_\_\_\_, 2020,  
3 on the application of the parties for approval of the Settlement set forth in the  
4 Stipulation and Agreement of Class Action Settlement dated August 17, 2020 (the  
5 “Stipulation”). Due and adequate notice having been given to the Class as required in  
6 said Order, and the Court having considered all papers filed and proceedings had  
7 herein and otherwise being fully informed in the premises and good cause appearing  
8 therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

9 1. This Judgment incorporates by reference the definitions in the  
10 Stipulation, and all terms used herein shall have the same meanings as set forth in the  
11 Stipulation, unless otherwise set forth herein.

12 2. This Court has jurisdiction over the subject matter of the Litigation and  
13 over all parties to the Litigation, including all members of the Class.

14 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court  
15 hereby affirms its determinations in the Order and finally certifies for purposes of  
16 settlement only a Class defined as all Persons who purchased Obalon common stock  
17 between October 6, 2016 and May 11, 2018, inclusive, excluding Defendants,  
18 directors and officers of Obalon, and their families and affiliates and any defendant  
19 previously named as a defendant in this Litigation. Also excluded are those Persons  
20 who timely and validly requested exclusion from the Class pursuant to the Notice.

21 4. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby  
22 approves the Settlement set forth in the Stipulation and finds that:

23 (a) said Stipulation and the Settlement contained therein, are, in all  
24 respects, fair, reasonable, and adequate and in the best interest of the Class;

25 (b) there was no collusion in connection with the Stipulation;

26 (c) the Stipulation was the product of informed, arm’s-length  
27 negotiations among competent, able counsel; and  
28

1 (d) the record is sufficiently developed to have enabled the Lead  
2 Plaintiff and the Defendants to have adequately evaluated and considered their  
3 positions.

4 5. Accordingly, the Court authorizes and directs implementation and  
5 performance of all the terms and provisions of the Stipulation, as well as the terms and  
6 provisions hereof. Except as to any individual claim of those Persons (identified in  
7 Exhibit 1 attached hereto) who have validly and timely requested exclusion from the  
8 Class, the Court hereby dismisses the Litigation and all Released Claims of the Class  
9 with prejudice. The Settling Parties are to bear their own costs, except as and to the  
10 extent provided in the Stipulation and herein.

11 6. Upon the Effective Date, and as provided in the Stipulation, Lead  
12 Plaintiff shall, and each of the Class Members shall be deemed to have, and by  
13 operation of this Judgment shall have, fully, finally, and forever released,  
14 relinquished, and discharged against the Released Defendant Parties (whether or not  
15 such Class Member executes and delivers the Proof of Claim and Release form) any  
16 and all Released Claims (including, without limitation, Unknown Claims). Claims to  
17 enforce the terms of the Stipulation are not released. The Settling Parties  
18 acknowledge and the Class Members shall be deemed by operation of law to  
19 acknowledge that the waiver of Unknown Claims, and of the provisions, rights and  
20 benefits of Section 1542 of the California Civil Code, was bargained for and is a key  
21 element of the Settlement of which the release in this paragraph is a part.

22 7. Upon the Effective Date, and as provided in the Stipulation, Lead  
23 Plaintiff and each of the Class Members and anyone claiming through or on behalf of  
24 them, shall be permanently barred and enjoined from the commencement, assertion,  
25 institution, maintenance, prosecution, or enforcement against any Released Defendant  
26 Parties of any action or other proceeding in any court of law or equity, arbitration  
27 tribunal, administrative forum, or forum of any kind, asserting any of the Released  
28 Claims.

1           8.     Upon the Effective Date, and as provided in the Stipulation, Defendants  
2 and any defendant previously named as a defendant in this Litigation, including the  
3 Underwriter Defendants, shall be deemed to have, and by operation of this Judgment  
4 shall have, fully, finally, and forever released, relinquished, and discharged Lead  
5 Plaintiff, each and all of the Class Members, and Lead Counsel from all Released  
6 Defendant Claims (including, without limitation, Unknown Claims). Claims to  
7 enforce the terms of the Stipulation are not released.

8           9.     The Notice of Pendency and Proposed Settlement of Class Action given  
9 to the Class was the best notice practicable under the circumstances, including the  
10 individual notice to all members of the Class who could be identified through  
11 reasonable effort. Said notice provided the best notice practicable under the  
12 circumstances of those proceedings and of the matters set forth therein, including the  
13 proposed Settlement set forth in the Stipulation, to all Persons entitled to such notice,  
14 and said notice fully satisfied the requirements of Federal Rule of Civil Procedure 23,  
15 the requirements of due process, and any other applicable law, including the Private  
16 Securities Litigation Reform Act of 1995.

17          10.    Any Plan of Allocation submitted by Lead Counsel or any order entered  
18 regarding any attorneys' fee and expense application shall in no way disturb or affect  
19 this Final Judgment and shall be considered separate from this Final Judgment.

20          11.    Neither the Stipulation nor the Settlement contained therein, nor any  
21 negotiations, discussions, proceedings or act performed or document executed  
22 pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be  
23 deemed to be or may be used as an admission of, or evidence of, the validity of any  
24 Released Claims, or of any wrongdoing or liability of Defendants; or (b) is or may be  
25 deemed to be or may be used as an admission of, or evidence of, any fault or omission  
26 of any of the Defendants in any civil, criminal or administrative proceeding in any  
27 court, administrative agency or other tribunal. The Released Defendant Parties, Lead  
28 Plaintiff, Class Members, and Lead Counsel may file the Stipulation and/or this

1 Judgment in any action that may be brought against them in order to support a defense  
2 or counterclaim based on principles of *res judicata*, collateral estoppel, release, good  
3 faith settlement, judgment bar or reduction or any other theory of claim preclusion or  
4 issue preclusion or similar defense or counterclaim, or in connection with any  
5 proceeding to enforce the terms of the Stipulation.

6 12. Without affecting the finality of this Judgment in any way, this Court  
7 hereby retains continuing jurisdiction over: (a) implementation of this Settlement and  
8 any award or distribution of the Settlement Fund, including interest earned thereon;  
9 (b) disposition of the Settlement Fund; (c) hearing and determining applications for  
10 attorneys' fees, expenses, and interest in the Litigation; and (d) all parties herein for  
11 the purpose of construing, enforcing, and administering the Stipulation.

12 13. The Court finds that during the course of the Litigation, the Settling  
13 Parties and their respective counsel at all times complied with the requirements of  
14 Federal Rule of Civil Procedure 11.

15 14. In the event that the Settlement does not become effective in accordance  
16 with the terms of the Stipulation, or the Effective Date does not occur, or in the event  
17 that the Settlement Fund, or any portion thereof, is returned to the Defendants'  
18 insurers, then this Judgment shall be rendered null and void to the extent provided by  
19 and in accordance with the Stipulation and shall be vacated and, in such event, all  
20 orders entered and releases delivered in connection herewith shall be null and void to  
21 the extent provided by and in accordance with the Stipulation.

22 15. Without further order of the Court, the Settling Parties may agree to  
23 reasonable extensions of time to carry out any of the provisions of the Stipulation.

24 16. The Court directs immediate entry of this Judgment by the Clerk of the  
25 Court.

26 IT IS SO ORDERED.

27 DATED: \_\_\_\_\_

28 HONORABLE ANTHONY J. BATTAGLIA  
UNITED STATES DISTRICT JUDGE