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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

_____, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

vs.

MABVAX THERAPEUTICS
HOLDINGS, J. DAVID HANSEN, and
GREGORY P. HANSON,

Defendants.

Case No.: _____

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

CLASS ACTION

DEMAND FOR JURY TRIAL

1 Plaintiff _____, individually and on behalf of all others similarly
2 situated, by Plaintiff's undersigned attorneys, for Plaintiff's complaint against
3 Defendants, alleges the following based upon personal knowledge as to Plaintiff and
4 Plaintiff's own acts, and upon information and belief as to all other matters based on
5 the investigation conducted by and through Plaintiff's attorneys, which included,
6 among other things, a review of Securities and Exchange Commission ("SEC")
7 filings by MabVax Therapeutics Holdings ("MabVax" or the "Company"), as well
8 as media and analyst reports about the Company and conference all transcripts.
9 Plaintiff believes that substantial additional evidentiary support will exist for the
10 allegations set forth herein after a reasonable opportunity for discovery.

14 **NATURE OF THE ACTION**

15 1. This is a securities class action on behalf of all purchasers of common
16 stock of MabVax between March 14, 2016 and May 18, 2018, inclusive (the "Class
17 Period"), alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of
18 1934 ("Exchange Act").

21 2. MabVax through its subsidiaries develops human antibody-based
22 products and vaccines to address unmet medical needs for the treatment of diseases
23 such as pancreatic, lung, sarcoma ovarian and breast cancer.

25 3. On January 30, 2018, the Company filed an 8-K with the SEC
26 disclosing an investigation by the SEC, the Company stated in relevant part:

1 MabVax Therapeutics Holdings, Inc. (NASDAQ: MBVX)
2 (“MabVax” or the “Company”), a clinical-stage biotechnology
3 company focused on the development of antibody-based products to
4 address unmet medical needs in the treatment of cancer, today
5 announced that it received notice that the Securities and Exchange
6 Commission (“SEC”) was conducting an investigation and
7 examination pursuant to Section 8(e) of the Securities Act of 1933, as
8 amended, relating to certain of the Company’s registration statements
9 (and amendments thereto). The Company intends to cooperate fully
10 with the SEC’s examination.

11 4. On this news the Company’s shares fell \$0.47 per share, or nearly 18%,
12 to close at \$2.19 per share on January 30, 2018.

13 5. Then, on May 21, 2018, the Company filed an 8-K with the SEC
14 disclosing more details regarding the SEC investigation into the Company and its
15 officers and directors’ potential violation of federal securities laws, as well as an
16 investigation into potential violations of securities laws by various holders of the
17 Company’s securities. The Company stated in relevant part:

18 We believe the SEC is investigating (i) potential violations by the
19 Company and its officers, directors and others of Section 10(b) of the
20 Securities and Exchange Act of 1934, as amended (as amended, the
21 “Exchange Act”) and Section 17(a) of the Securities Act of 1933, as
22 amended (as amended, the “Securities Act”); and (ii) potential
23 violations by multiple holders of our preferred stock of the reporting
24 and disclosure requirements imposed by Section 13(d) of the
25 Exchange Act and pursuant to Schedules 13D and 13G. We further
26 believe the SEC Investigation pertains to our relationships with
27 multiple of those holders of our preferred stock, including (i) the
28 circumstances under which those stockholders invested in the
Company and whether they have acted as an undisclosed group in
connection with their investment; (ii) the manner with or in which
those stockholders may have sought to control or influence the
Company and its leadership since their respective investments (and
the extent to which those efforts to control or influence have been

1 successful); and (iii) our prior disclosures regarding the control of the
2 Company and beneficial ownership of our common and preferred
3 stock included in our registration statements filed in 2017 and 2018
4 and in our Exchange Act reports. In light of the SEC Investigation, we
5 have also reviewed facts and circumstances related to our recently
6 completed May 2018 offering and publicly available information
7 concerning certain of our stockholders' relationships with other
8 registrants.

9 We have cooperated with the SEC in connection with the SEC
10 Investigation, and our Board of Directors has appointed a Special
11 Committee comprised of independent members of our Board of
12 Directors to supervise the Company's review of the matters believed
13 to be under investigation. However, we cannot predict when the SEC
14 Investigation will conclude, nor whether it will conclude in a manner
15 adverse to the Company, any of its directors and officers, or its current
16 or former stockholders. We also cannot predict, how the SEC
17 Investigation or any related matters may impact how the Company is
18 perceived by the market, potential partners and potential investors in
19 our securities. We do not believe that the SEC would declare effective
20 any registration statements registering our securities effective during
21 the pendency of the SEC Investigation.

22 Historically, we have calculated and reported beneficial ownership in
23 reliance upon the accuracy of the beneficial ownership reporting of
24 our stockholders, including reports filed on Schedules 13D and 13G
25 and information provided by these stockholders directly to us. We
26 have similarly relied on the accuracy of stockholder-reported
27 beneficial ownership when effecting conversions of shares of
28 preferred stock. The SEC Investigation and our review of the matters
under investigation (including information learned recently) has raised
questions about the accuracy of those reports by those holders,
including their past disclaimers of having not acted as a group with
respect to their investment in the Company. If certain stockholders
have indeed acted as a group, their respective beneficial ownership
interests should have been aggregated and reported in the aggregate in
our prior beneficial ownership disclosures. If their holdings should
have been so aggregated, then, due to the provisions of our
organizational documents regarding the conversion limitations
applicable to certain holders of our preferred stock, shares of our
common stock may have been issued in violation of our

1 organizational documents. If shares of our common stock were issued
2 in violation of our organizational documents, then the number of
3 shares of our outstanding common stock previously reported in our
4 financial statements, registration statements and Exchange Act
5 Reports may be inaccurate. Further, figures reported and included in
6 our financial statements, registration statements and Exchange Act
7 Reports in reliance on the number of our outstanding shares of
common stock, including, but not limited to, our loss per share
figures, may also be inaccurate. We are also reviewing our internal
and disclosure controls.

8 6. On this news the Company's shares fell \$0.41 per share or over 23%, to
9 close on May 21, 2018 at \$1.36 per share.

10 7. Throughout the Class Period, Defendants made false and/or misleading
11 statements, as well as failed to disclose material adverse facts about the Company's
12 business, operations, and prospects. Specifically, Defendants failed to disclose: (1)
13 that the Company's internal controls over financial reporting were materially weak
14 and deficient; (2) that the Company had incorrectly calculated and reported
15 beneficial ownership of MabVax shares, and permitted improper influence or
16 control over MabVax, and/or the Company's officers and directors by certain
17 shareholders; and, (3) that, as a result of the foregoing, the Company's financial
18 statements and Defendants' statements about MabVax's business, operations, and
19 prospects, were materially false and misleading at all relevant times.

20 8. As a result of Defendants' wrongful acts and omissions, and the
21 precipitous decline in the market value of the Company's securities, Plaintiff and
22 other Class members have suffered significant losses and damages.

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JURISDICTION AND VENUE

9. The claims asserted herein arise under §§10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5, 17 C.F.R. §240.10b-5. Jurisdiction is confirmed by §27 of the Exchange Act, 15 U.S.C. §78aa.

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and Section 27 of the Exchange Act (15 U.S.C. §78aa).

11. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and Section 27 of the Exchange Act (15 U.S.C. §78aa(c)). The acts and transactions giving rise to the violations of law complained of occurred and certain of MabVax's executive offices are located in this District.

12. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

PARTIES

13. Plaintiff _____ purchased MabVax common stock during the Class Period as described in the Certification attached hereto and incorporated herein by reference and suffered damages.

14. Defendant MabVax is a Delaware corporation with certain executive offices located in San Diego, California. MabVax's stock trades on the NASDAQ under the ticker MBVX. The Company's Annual Report filed with the SEC on

1 April 2, 2018 states that 8,961,840 shares of MabVax common stock were issued
2 and outstanding as of April 2, 2018.

3 15. Defendant J. David Hansen (“Hansen”) is, and was at all relevant
4 times, the Chief Executive Officer (“CEO”), President and Chairman of MabVax.
5

6 16. Defendant Gregory P. Hanson (“Hanson”) is, and was at all relevant
7 times, the Chief Financial Officer (“CFO”) of MabVax.
8

9 17. During the Class Period, Defendants Hansen and Hanson oversaw the
10 Company’s operations and finances. Defendants Hansen and Hanson were
11 intimately knowledgeable about all aspects of MabVax’s financial and business
12 operations and were also intimately involved in deciding which disclosures would
13 be made by MabVax. Defendants Hansen and Hanson made various public
14 statements for MabVax during the Class Period, and participated in Class Period
15 investor conferences.
16
17

18 **DEFENDANTS’ FALSE AND MISLEADING CLASS PERIOD**
19 **STATEMENTS**

20 18. The Class Period starts on March 14, 2016, the date that MabVax filed
21 its annual report for the period ended December 31, 2015, therein the Company
22 discussed its “Financing Activities” and the effectiveness of MabVax’s internal
23 controls, stating in relevant part:
24

25 **Financing Activities**

26 Oxford Loan –On January 15, 2016, we entered into a Loan and
27 Security Agreement with Oxford Finance LLC providing for senior
28 secured term loans to us in the aggregate principal amount of up to

1 \$10,000,000. On January 15, 2016, we received an initial loan of
2 \$5,000,000 under the Loan and Security Agreement.

3 Underwritten Offering –On September 30, 2015, we entered into an
4 underwriting agreement with Laidlaw & Company (UK) Ltd. relating
5 to the issuance and sale in a public offering of 2,500,000 shares of our
6 common stock and 1,250,000 three-year warrants to purchase
7 1,250,000 shares of our common stock at an initial exercise price of
8 \$1.32 per share. The shares of common stock were sold at a public
9 offering price of \$1.10 per share and the warrants were sold at a price
10 of \$0.01 per warrant. The offering closed on October 5, 2015 with
11 total gross proceeds to us of \$2,750,000.

12 April Private Placement –On March 31, 2015 and April 10, 2015, we
13 entered into separate subscription agreements with accredited
14 investors relating to the issuance and sale of \$11,714,498 of units at a
15 purchase price of \$0.75 per unit, with each unit consisting of one
16 share of common stock (or, at the election of any investor who, as a
17 result of receiving common stock would hold in excess of 4.99% of
18 our issued and outstanding common stock, shares of our newly
19 designated Series E Preferred Shares) and a thirty month warrant to
20 purchase one half of one share of common stock at an initial exercise
21 price of \$1.50 per share (such sale and issuance, the “April Private
22 Placement,” or the “Private Placement”). We conducted an initial
23 closing of the April Private Placement on March 31, 2015 in which
24 we sold an aggregate of \$4,995,750 of units. Following the initial
25 closing we entered into separate reconfirmation agreements with the
26 investors in order to extend the initial closing date, increase the
27 offering amount, and adopt a lockup agreement which was entered
28 into by all investors who elected to continue their investment. A
second closing was held on April 10, 2015 in which we entered into
separate subscription agreements for the sale of an additional
\$6,718,751 of units.

On April 14, 2015, as a condition to participation by OPKO Health,
Inc. (“OPKO”) and Frost Gamma Investments Trust (“FGIT”) in the
April Private Placement, we entered into an Escrow Deposit
Agreement with Signature Bank N.A. and OPKO, as amended on
June 22, 2015, pursuant to which \$3.5 million from the April Private
Placement was deposited into and held at Signature Bank. The
escrowed funds were released us on June 30, 2015 as part of a letter
agreement giving OPKO the right, but not the obligation, until June

1 30, 2016, to nominate and have appointed up to two additional
2 members of the our Board of Directors, or to approve the person(s)
3 nominated by the Company. The nominees will be subject to
4 satisfaction of standard corporate governance practices and any
5 applicable national securities exchange requirements.

6 Preferred and Warrant Holders Common Stock Exchange Agreements
7 –On March 25, 2015, we entered into separate exchange agreements
8 (collectively, the “Exchange Agreements”) with certain holders of our
9 Series A-1 Preferred Stock and A-1 Warrants and holders of our
10 Series B Preferred Stock and Series B Warrants, all previously issued
11 by us. Pursuant to the Exchange Agreements, the holders exchanged
12 their respective preferred shares and warrants and relinquished any
13 and all other rights they may have pursuant to such securities, their
14 respective governing agreements and certificates of designation,
15 including any related registration rights, in exchange for an aggregate
16 of 2,537,502 shares of our common stock and an aggregate of 238,156
17 shares of our newly designated Series D Convertible Preferred Stock
18 (collectively the “Exchange Securities”).

19 ***

20 We conducted an evaluation of the effectiveness of internal control
21 over financial reporting based on the framework in Internal Control —
22 Integrated Framework (2013) issued by the Committee of Sponsoring
23 Organizations of the Treadway Commission. Based on this evaluation,
24 our principal executive officer and principal financial officer conclude
25 that, at December 31, 2015, our internal control over financial
26 reporting was effective.

27 19. On March 1, 2017, the Company MabVax filed its annual report for the
28 period ended December 31, 2016, therein the Company discussed its “Financing
Activities” and the effectiveness of MabVax’s internal controls, stating in relevant
part:

August Public Offering –On August 22, 2016, we closed a public
offering of 1,297,038 shares of common stock and 665,281 shares of

1 Series F Convertible Preferred Stock (“Series F Preferred Stock”), and
2 warrants to purchase 1,962,319 shares of common stock at \$5.55 per
3 share and warrants to purchase 1,962,319 shares of common stock at
4 \$6.29 per share, at an offering price of \$4.81 per share. For every one
5 share of common stock or Series F Preferred Stock sold, we issued
6 one warrant to purchase one share of common stock at \$5.55 per share
7 and one warrant to purchase one share of common stock, warrant to
8 purchase one share of common stock at \$5.55 per share and one
9 warrant to purchase one share of common stock at \$6.29 per share.
10 We received \$9,438,753 in gross proceeds, before underwriting
11 discounts and commissions and offering expenses totaling \$871,305.
12

13 Oxford Loan –On January 15, 2016, we entered into a loan and
14 security agreement with Oxford Finance LLC (the “Load and Security
15 Agreement”) providing for senior secured term loans to us in the
16 aggregate principal amount of up to \$10,000,000. On January 15,
17 2016, we received an initial loan of \$5,000,000 under the Loan and
18 Security Agreement. The option to draw the second \$5,000,000
19 expired on September 30, 2016.
20

21 Underwritten Offering –On September 30, 2015, we entered into an
22 underwriting agreement with Laidlaw & Company (UK) Ltd. relating
23 to the issuance and sale in a public offering of 337,838 shares of our
24 common stock and 168,919 three-year warrants to purchase 168,919
25 shares of our common stock at an initial exercise price of \$9.77 per
26 share (all numbers adjusted for the Listing Reverse Split). The shares
27 of common stock were sold at a public offering price of \$8.14 per
28 share and the warrants were sold at a price of \$0.01 per warrant
(adjusted for the Listing Reverse Split). The offering closed on
October 5, 2015 with total gross proceeds to us of \$2,750,000.

April Private Placement –On March 31, 2015 and April 10, 2015, we
entered into separate subscription agreements with accredited
investors relating to the issuance and sale of \$11,714,498 of units at a
purchase price of \$5.55 per unit (adjusted for the Listing Reverse
Split), with each unit consisting of one share of common stock (or, at
the election of any investor who, as a result of receiving common
stock would hold in excess of 4.99% of our issued and outstanding
common stock, shares of our newly designated Series E Convertible
Preferred Stock (“Series E Preferred Stock”)) and a thirty-month
warrant to purchase one half of one share of common stock at an

1 initial exercise price of \$11.10 per share (adjusted for the Listing
2 Reverse Split), such sale and issuance, the “April Private
3 Placement,” or the “Private Placement”). We conducted an initial
4 closing of the April Private Placement on March 31, 2015, in which
5 we sold an aggregate of \$4,995,750 of units.

6 Following the initial closing we entered into separate reconfirmation
7 agreements with the investors in order to extend the initial closing
8 date, increase the offering amount, and adopt a lockup agreement
9 which was entered into by all investors who elected to continue their
10 investment. A second closing was held on April 10, 2015 in which we
11 entered into separate subscription agreements for the sale of an
12 additional \$6,718,751 of units.

13 On April 14, 2015, as a condition to participation by OPKO Health,
14 Inc. (“OPKO”) and Frost Gamma Investments Trust (“FGIT”) in the
15 April Private Placement, we entered into an Escrow Deposit
16 Agreement with Signature Bank N.A. and OPKO, as amended on
17 June 22, 2015, pursuant to which \$3.5 million from the April Private
18 Placement was deposited into and held at Signature Bank. The
19 escrowed funds were released to us on June 30, 2015, as part of a
20 letter agreement giving OPKO the right, but not the obligation until
21 June 30, 2016, to nominate and have appointed up to two additional
22 members of our Board of Directors, or to approve the person(s)
23 nominated by the Company. The nominees selected were required to
24 meet certain standard corporate governance practices and applicable
25 national securities exchange requirements.

26 Preferred and Warrant Holders Common Stock Exchange Agreements
27 –On March 25, 2015, we entered into separate exchange agreements
28 (collectively, the “Exchange Agreements”) with certain holders of our
Series A-1 Convertible Preferred Stock (“Series A-1 Preferred Stock”)
and A-1 Warrants and holders of our Series B Convertible Preferred
Stock (“Series B Preferred Stock”) and Series B Warrants, all
previously issued by us. Pursuant to the Exchange Agreements, the
holders exchanged their respective preferred shares and warrants and
relinquished any and all other rights they may have pursuant to such
securities, their respective governing agreements and certificates of
designation, including any related registration rights, in exchange for
an aggregate of 342,906 shares of our common stock (adjusted for the
Listing Reverse Split) and an aggregate of 238,156 shares of our

1 newly designated Series D Convertible Preferred Stock (“Series D
2 referred Stock” and, collectively, the “Exchange Securities”).

3 ***

4 We conducted an evaluation of the effectiveness of internal control
5 over financial reporting based on the framework in Internal Control —
6 Integrated Framework (2013) issued by the Committee of Sponsoring
7 Organizations of the Treadway Commission. Based on this
8 evaluation, our principal executive officer and principal financial
9 officer conclude that, at December 31, 2016, our internal controls over
10 financial reporting were effective.

11 **The Truth Partially Disclosed**

12 20. The statements referenced above in ¶¶ 18 & 19 were materially false
13 and/or misleading when made because Defendants failed to disclose: (1) that the
14 Company’s internal controls over financial reporting were materially weak and
15 deficient; (2) that the Company had incorrectly calculated and reported beneficial
16 ownership of MabVax shares and permitted improper influence or control over
17 MabVax, and/or the Company’s officers and directors by certain shareholders; and,
18 (3) that, as a result of the foregoing, the Company’s financial statements and
19 Defendants’ statements about MabVax’s business, operations, and prospects, were
20 materially false and misleading at all relevant times.
21

22 **The Truth Partially Revealed**

23 21. On January 30, 2018, the Company filed an 8-K with the SEC
24 disclosing an investigation by the SEC, the Company stated in relevant part:
25

26 MabVax Therapeutics Holdings, Inc. (NASDAQ: MBVX)
27 (“MabVax” or the “Company”), a clinical-stage biotechnology
28

1 company focused on the development of antibody-based products to
2 address unmet medical needs in the treatment of cancer, today
3 announced that it received notice that the Securities and Exchange
4 Commission (“SEC”) was conducting an investigation and
5 examination pursuant to Section 8(e) of the Securities Act of 1933, as
6 amended, relating to certain of the Company’s registration statements
7 (and amendments thereto). The Company intends to cooperate fully
8 with the SEC’s examination.

9
10 22. On this news the Company’s shares fell \$0.47 per share, or nearly 18%,
11 to close at \$2.19 per share on January 30, 2018.

12 23. On April 2, 2018, the Company MabVax filed its annual report for the
13 period ended December 31, 2017, therein the Company discussed its “Financing
14 Activities” and the effectiveness of MabVax’s internal controls, stating in relevant
15 part:

16 **Conversion of Preferred Stock into Common Stock**

17 During 2017 holders of Series D Preferred Stock converted 88,384
18 shares into 398,131 shares of common stock, holders of Series I
19 Preferred Stock converted 1,170,204 shares into 390,068 shares of
20 common stock, holders of Series J Preferred Stock converted 1,614
21 shares into 537,874 shares of common stock and holders of Series K
22 Preferred Stock converted 1,850 shares into 61,667 shares of common
23 stock.

24 **Exchange of Series F Preferred Stock, Series G Preferred Stock
25 and Series H Preferred Stock into Series L Preferred Stock**

26 On October 18, 2017, we entered into exchange agreements (each, an
27 “Exchange Agreement” and collectively, the “Exchange Agreements”)
28 with the holders of all of the Company’s outstanding shares of Series
F Preferred Stock, Series G Preferred Stock and Series H Preferred
Stock, pursuant to which 665,281 shares of Series F Preferred Stock,
1,000,000 shares of Series G Preferred Stock and 850 shares of Series
H Preferred Stock were exchanged for 58,000 newly authorized shares
of Series L Preferred Stock convertible into 3,222,223 shares of

1 common stock (the “Conversion Shares”). In connection with the
2 Exchange Agreement the Company became obligated to schedule and
3 hold a special meeting of the stockholders of the Company within 60
4 days of the date of signing the Exchange Agreement, at which time
5 the Company shall present to its stockholders a proposal for approval
6 of the potential issuance of up to an aggregate of 3,222,223 shares of
7 common stock, in excess of 19.99% of the number of shares of
8 common stock that were issued and outstanding on October 17, 2017,
9 upon the conversion of 58,000 shares of the Series L Preferred Stock
10 issued to the holders pursuant to the Exchange Agreements. On
11 December 1, 2017, the stockholders approved the number of shares
12 underlying the Series L Preferred Stock upon conversion.

13 On December 21, 2017, following the completion of the exchange of
14 Series L Preferred Stock for all outstanding Series F Preferred Stock,
15 Series G Preferred Stock and Series H Preferred Stock and related
16 documentation, The Company filed with the Secretary of State of the
17 State of Delaware a Certificates of Elimination eliminating from its
18 Amended and Restated Certificate of Incorporation the designation of
19 shares of its preferred stock as Series F Preferred Stock, Series G
20 Preferred Stock and Series H Preferred Stock. As a result, all shares of
21 preferred stock previously designated as Series F, Series G and Series
22 H Preferred Stock were eliminated and returned to the status of
23 authorized but unissued shares of preferred stock, without designation.

24 **Series D Preferred Stock**

25 As of December 31, 2017 and 2016, there were 44,104 and 132,489
26 shares of Series D Preferred Stock issued and outstanding,
27 respectively. Shares outstanding as of December 31, 2017 and 2016
28 were convertible into 198,667 and 596,798 shares of common stock,
respectively.

As contemplated by the exchange agreements and as approved by the
Company’s Board of Directors, the Company filed with the Secretary
of State of the State of Delaware a Certificate of Designation of
Preferences, Rights and Limitations of Series D Convertible Preferred
Stock (the “Series D Certificate of Designations”), on March 25,
2015. Pursuant to the Series D Certificate of Designations, the
Company designated 1,000,000 shares of its blank check preferred
stock as Series D Preferred Stock. Each share of Series D Preferred
Stock has a stated value of \$0.01 per share. In the event of a

1 liquidation, dissolution or winding up of the Company, each share of
2 Series D Preferred Stock will be entitled to a per share preferential
3 payment equal to the par value. Each share of Series D Preferred
4 Stock is convertible into 4.5045 shares of common stock. The
5 conversion ratio is subject to adjustment in the event of stock splits,
6 stock dividends, combination of shares and similar recapitalization
7 transactions. The Company is prohibited from effecting the
8 conversion of the Series D Preferred Stock to the extent that, as a
9 result of such conversion, the holder beneficially would own more
10 than 4.99% (provided that certain investors elected to block their
11 beneficial ownership initially at 2.49% in the exchange agreements),
12 in the aggregate, of the issued and outstanding shares of the
13 Company's common stock calculated immediately after giving effect
14 to the issuance of shares of common stock upon the conversion of the
15 Series D Preferred Stock. Each share of Series D Preferred Stock
16 entitles the holder to vote on all matters voted on by holders of
17 common stock. With respect to any such vote, each share of Series D
18 Preferred Stock entitles the holder to cast such number of votes equal
19 to the number of shares of common stock such shares of Series D
20 Preferred Stock are convertible into at such time, but not in excess of
21 the beneficial ownership limitations.

22 **Series E Preferred Stock**

23 As of December 31, 2017, and 2016, there were 33,333 shares of
24 Series E Preferred Stock issued and outstanding, convertible into
25 173,251 shares of common stock.

26 On March 30, 2015, the Company filed with the Secretary of State of
27 the State of Delaware a Certificate of Designation of Preferences,
28 Rights and Limitations of Series E Convertible Preferred Stock (the
"Series E Certificate of Designations") to designate 100,000 shares of
its blank check preferred stock as Series E Preferred Stock.

The shares of Series E Preferred Stock are convertible into shares of
common stock based on a conversion calculation equal to the stated
value of such preferred share, plus all accrued and unpaid dividends,
if any, on such share of Series E Preferred Stock, as of such date of
determination, divided by the conversion price. The stated value of
each share of Series E Preferred Stock is \$75 and the initial
conversion price is \$16.65 per share, each subject to adjustment for
stock splits, stock dividends, recapitalizations, combinations,

1 subdivisions or other similar events. In addition, during the period
2 proscribed for in the Series E Certificate of Designations, in the event
3 the Company issues or sells, or is deemed to issue or sell, shares of
4 common stock at a per share price that is less than the conversion
5 price then in effect, the conversion price shall be reduced to such
6 lower price, subject to certain exceptions. The Company is prohibited
7 from effecting a conversion of the share of Series E Preferred Stock to
8 the extent that, as a result of such conversion, such holder would
9 beneficially own more than 4.99% of the number of shares of
10 common stock outstanding immediately after giving effect to the
11 issuance of shares of common stock upon conversion of the Series E
12 Preferred Stock, which beneficial ownership limitation may be
13 increased by the holder up to, but not exceeding, 9.99%. Each holder
is entitled to vote on all matters submitted to stockholders of the
Company and shall have the number of votes equal to the number of
shares of common stock issuable upon conversion of such holder's
share of Series E Preferred Stock, but not in excess of beneficial
ownership limitations. The shares of Series E Preferred Stock bear no
interest.

14 On August 22, 2016, when the Company closed on the August 2016
15 Public Offering, the current Series E Preferred Stock conversion price
16 of \$16.65 per share was reduced to \$14.43 per share under the terms
17 of the Series E Certificate of Designations, resulting in an increase in
18 the number of shares of common stock to 173,251 that the Series E
Preferred Stock may be converted into.

19 In the event of a liquidation, dissolution or winding up of the
20 Company, each share of Series E preferred stock will be entitled to a
21 per share preferential payment equal to the stated value. There is no
22 further adjustment required by the Series E Certificate of Designations
in the event of an offering of shares below \$14.43 per share by the
Company.

23 **Series F Preferred Stock**

24 As of December 31, 2017, and 2016, there were no shares and
25 665,281 shares, respectively, of Series F Preferred Stock issued and
26 outstanding. Shares outstanding as of December 31, 2016 were
27 convertible into 221,761 shares of common stock. These shares were
28 exchanged for Series L Preferred Stock in connection with the
Exchange Agreement.

1 On August 16, 2016, we filed a Certificate of Designations,
2 Preferences and Rights of the 0% Series F Convertible Preferred
3 Stock with the Delaware Secretary of State, designating 1,559,252
4 shares of preferred stock as 0% Series F Preferred Stock. The shares
5 of Series F Preferred Stock were convertible into shares of common
6 stock based on a conversion calculation equal to the stated value of
7 such Series F Preferred Stock, plus all accrued and unpaid dividends,
8 if any, on such Series F Preferred Stock, as of such date of
9 determination, divided by the conversion price. The stated value of
10 each share of Series F Preferred Stock is \$4.81 and the initial
11 conversion price is \$14.43 per share, each subject to adjustment for
12 stock splits, stock dividends, recapitalizations, combinations,
13 subdivisions or other similar events. In the event of a liquidation,
14 dissolution or winding up of the Company, each share of Series F
15 Preferred Stock was entitled to a per share preferential payment equal
16 to the par value. All shares of the Company's capital stock were junior
17 in rank to Series F Preferred Stock with respect to the preferences as
18 to dividends, distributions and payments upon the liquidation,
19 dissolution and winding-up of the Company, except for the
20 Company's Series D Preferred Stock and Series E Preferred Stock.

21 The holders of Series F Preferred Stock were entitled to receive
22 dividends if and when declared by our Board of Directors. The Series
23 F Preferred Stock had the ability to participate on an "as converted"
24 basis, with all dividends declared on the Company's common stock.
25 In addition, if we had granted, issued or sold any rights to purchase
26 our securities pro rata to all our record holders of our common stock,
27 each holder was entitled to acquire such securities applicable to the
28 granted purchase rights as if the holder had held the number of shares
of common stock acquirable upon complete conversion of all Series F
Preferred Stock then held.

We were prohibited from effecting a conversion of the Series F
Preferred Stock to the extent that, as a result of such conversion, the
holder would beneficially own more than 4.99% of the number of
shares of common stock outstanding immediately after giving effect
to the issuance of shares of common stock upon conversion of the
Series F Preferred Stock, which beneficial ownership limitation may
be increased by the holder up to, but not exceeding, 9.99%. Each
holder was entitled to vote on all matters submitted to stockholders of

1 the Company and would have had the number of votes equal to the
2 number of shares of common stock issuable upon conversion of such
3 holder's Series F Preferred Stock, but not in excess of the beneficial
ownership limitations.

4 **Series G Preferred Stock**

5 As of December 31, 2017, and 2016, there were no shares of our
6 Series G Preferred Stock issued and outstanding. On May 19, 2017,
7 we closed a public offering of 1,000,000 shares of newly designated
8 0% Series G Convertible Preferred stock; however, on October 17,
2017, these shares were exchanged for our Series L Preferred Stock in
connection with the Exchange Agreement.

9 Pursuant to a Series G Preferred Stock Certificate of Designations, on
10 May 15, 2017, we designated 5,000,000 shares of our blank check
11 preferred stock as Series G Preferred Stock, par value of \$0.01 per
12 share. The shares of Series G Preferred Stock were convertible into
13 shares of common stock based on a conversion calculation equal to
14 the stated value of the of such Series G Preferred Stock, plus all
15 accrued and unpaid dividends, if any, on such Series G Preferred
16 Stock, as of such date of determination, divided by the conversion
17 price. The stated value of each share of Series G Preferred Stock is
18 \$1.75 and the initial conversion price is \$5.25 per share, each subject
to adjustment for stock splits, stock dividends, recapitalizations,
combinations, subdivisions or other similar events. The holder of a
majority of the Series G Preferred Stock had the right to nominate a
candidate for the Board, such right to expire on December 31, 2017.

19 In the event of a liquidation, dissolution or winding up of the
20 Company, each share of Series G Preferred Stock was entitled to a per
21 share preferential payment equal to the par value. All shares of our
22 capital stock were junior in rank to Series G Preferred Stock with
23 respect to the preferences as to dividends, distributions and payments
upon the liquidation, dissolution and winding-up of the Company,
24 except for the Company's Series D Preferred Stock, Series E
25 Preferred Stock and Series F Preferred Stock. The holders of Series G
26 Preferred Stock were entitled to receive dividends if and when
27 declared by our Board of Directors. The Series G Preferred Stock
28 were entitled to participate on an "as converted" basis, with all
dividends declared on our common stock. In addition, if we had
granted, issued or sold any rights to purchase our securities pro rata to

1 all our record holders of our common stock, each holder was entitled
2 to acquire such securities applicable to the granted purchase rights as
3 if the holder had held the number of shares of common stock
4 acquirable upon complete conversion of all Series G Preferred Stock
5 then held.

6 We were prohibited from effecting a conversion of the Series G
7 Preferred Stock to the extent that, as a result of such conversion, the
8 holder would beneficially own more than 4.99% of the number of
9 shares of common stock outstanding immediately after giving effect
10 to the issuance of shares of common stock upon conversion of the
11 Series G Preferred Stock, which beneficial ownership limitation may
12 be increased by the holder up to, but not exceeding, 9.99%. Each
13 holder was entitled to vote on all matters submitted to stockholders of
14 the Company and would have had the number of votes equal to the
15 number of shares of common stock issuable upon conversion of such
16 holder's Series G Preferred Stock, but not in excess of the beneficial
17 ownership limitations.

18 **Series H Preferred Stock**

19 As of December 31, 2017 and 2016, there were no shares of our
20 Series H Preferred Stock issued and outstanding. On May 3, 2017 we
21 closed a private placement of 850 shares; however, these shares were
22 exchanged for our Series L Preferred Stock in connection with the
23 Exchange Agreement.

24 Pursuant to a Series H Preferred Stock Certificate of Designations, on
25 May 3, 2017, we designated 2,000 shares of our blank check preferred
26 stock as Series H Preferred Stock, par value of \$0.01 per share. The
27 shares of Series H Preferred Stock were convertible into shares of
28 common stock based on a conversion calculation equal to the stated
value of the Series H Preferred Stock, plus the base amount, if any, on
such Series H Preferred Stock, as of such date of determination,
divided by the conversion price.

The stated value of each share of Series H Preferred Stock was \$1,000
and the initial conversion price was \$5.25 per share, each subject to
adjustment for stock splits, stock dividends, recapitalizations,
combinations, subdivisions or other similar events.

In the event of a liquidation, dissolution or winding up of the
Company, each share of Series H Preferred Stock was entitled to a per

1 share preferential payment equal to the base amount. All shares of our
2 capital stock were junior in rank to Series H Preferred Stock with
3 respect to the preferences as to dividends, distributions and payments
4 upon the liquidation, dissolution and winding-up of the Company
5 other than Series A through G Preferred Stock. The holders of Series
6 H Preferred Stock were entitled to receive dividends if and when
7 declared by our Board of Directors. The Series H Preferred Stock
8 holders were entitled to participate on an “as converted” basis, with all
9 dividends declared on our common stock. In addition, if we granted,
10 issued or sold any rights to purchase our securities pro rata to all our
11 record holders of our common stock, each holder was entitled to
12 acquire such securities applicable to the granted purchase rights as if
13 the holder had held the number of shares of common stock acquirable
14 upon complete conversion of all Series H Preferred Stock then held.

15 We were prohibited from effecting a conversion of the Series H
16 Preferred Stock to the extent that, as a result of such conversion, the
17 holder would beneficially own more than 4.99% of the number of
18 shares of common stock outstanding immediately after giving effect
19 to the issuance of shares of common stock upon conversion of the
20 Series H Preferred Stock, which beneficial ownership limitation may
21 be increased by the holder up to, but not exceeding, 9.99%. Each
22 holder was entitled to vote on all matters submitted to stockholders of
23 the Company, and would have had the number of votes equal to the
24 number of shares of common stock issuable upon conversion of such
25 holder’s Series H Preferred Stock, but not in excess of the beneficial
26 ownership limitations.

27 **Series I Preferred Stock**

28 As of December 31, 2017 and 2016, there were 798,460 and no shares
of our Series I convertible preferred stock (the “Series I Preferred
Stock”) issued and outstanding and convertible into 266,154 and no
shares of our common stock, respectively.

Pursuant to a Series I Preferred Stock Certificate of Designations, on
May 26, 2017, we designated 1,968,664 shares of our blank check
preferred stock as Series I Preferred Stock, par value of \$0.01 per
share.

Each share of Series I Preferred Stock has a stated value of \$0.01 per
share. In the event of a liquidation, dissolution or winding up of the

1 Company, each share of Series I Preferred Stock will be entitled to a
2 per share preferential payment equal to the stated value. Each share of
3 Series I Preferred Stock is convertible into one-third share of common
4 stock. The conversion ratio is subject to adjustment in the event of
5 stock splits, stock dividends, combination of shares and similar
6 recapitalization transactions. The Company is prohibited from
7 effecting the conversion of the Series I Preferred Stock to the extent
8 that, as a result of such conversion, the holder beneficially owns more
9 than 4.99%, in the aggregate, of the issued and outstanding shares of
10 the Company's Common Stock calculated immediately after giving
11 effect to the issuance of shares of Common Stock upon the conversion
12 of the Series I Preferred Stock (the "Beneficial Ownership
13 Limitation"), which beneficial ownership limitation may be increased
14 by the holder up to, but not exceeding, 9.99%. Each share of Series I
15 Preferred Stock entitles the holder to vote on all matters voted on by
16 holders of Common Stock. With respect to any such vote, each share
17 of Series I Preferred Stock entitles the holder to cast such number of
18 votes equal to the number of shares of Common Stock such shares of
19 Series I Preferred Stock are convertible into at such time, but not in
20 excess of the Beneficial Ownership Limitation.

15 **Series J Preferred Stock**

16 As of December 31, 2017, and December 31, 2016, there were 773
17 and no shares of our Series J Preferred Stock issued and On August
18 14, 2017, the Company filed a Certificate of Designations,
19 Preferences and Rights of the 0% Series J Convertible Preferred Stock
20 with the Delaware Secretary of State, designating 3,400 shares of
21 preferred stock as Series J Preferred Stock. The shares of Series J
22 Preferred Stock are convertible into shares of common stock based on
23 a conversion calculation equal to the stated value of the Series J
24 Preferred Stock, plus all accrued and unpaid dividends, if any, on such
25 Series J Preferred Stock, as of such date of determination, divided by
26 the conversion price. The stated value of each share of Series J
27 Preferred Stock is \$550 and the initial conversion price is \$1.65 per
28 share, each subject to adjustment for stock splits, stock dividends,
recapitalizations, combinations, subdivisions or other similar events.
For so long as the holder has Series J Preferred Stock, if the Company
sells, or is deemed to have sold, common stock, or common
equivalent shares, for consideration per share less than the conversion
price in effect immediately prior to the issuance (the "Lower Issuance
Price"), then the conversion price in effect immediately prior to such

1 issuance will be adjusted to the Lower Issuance Price, provided
2 however the Lower Issuance Price shall not be less than \$0.03.

3 The holders of Series J Preferred Stock will be entitled to receive
4 dividends if and when declared by our Board of Directors. The Series
5 J Preferred Stock shall participate on an “as converted” basis, with all
6 dividends declared on our common stock. In addition, if we grant,
7 issue or sell any rights to purchase our securities pro rata to all our
8 record holders of our common stock, each holder will be entitled to
9 acquire such securities applicable to the granted purchase rights as if
10 the holder had held the number of shares of common stock acquirable
11 upon complete conversion of all Series J Preferred Stock then held.

12 We are prohibited from effecting a conversion of the Series J
13 Preferred Stock to the extent that, as a result of such conversion, the
14 holder would beneficially own more than 4.99% of the number of
15 shares of common stock outstanding immediately after giving effect
16 to the issuance of shares of common stock upon conversion of the
17 Series J Preferred Stock, which beneficial ownership limitation may
18 be increased by the holder up to, but not exceeding, 9.99%. Each
19 holder is entitled to vote on all matters submitted to stockholders of
20 the Company, and shall have the number of votes equal to the number
21 of shares of common stock issuable upon conversion of such holder’s
22 Series J Preferred Stock, substituting the consolidated closing bid
23 price of the common stock on August 10, 2017 for the then-applicable
24 conversion price, and not in excess of the beneficial ownership
25 limitations.

26 The Company shall not be obligated to issue any shares of common
27 stock upon conversion of the Series J Preferred Stock, and the holder
28 of any shares of Series J Preferred Stock shall not have the right to
receive upon conversion of any shares of the Series J Preferred Stock
if the issuance of such shares of common stock would exceed the
aggregate number of shares of common stock which the Company
may issue upon conversion of the Series J Preferred Stock without
breaching the Company's obligations under the rules or regulations of
The NASDAQ Capital Market, which aggregate number equals
19.99% of the number of shares outstanding on the closing date,
except that such limitation shall not apply in the event that the
Company obtains the approval of its stockholders as required by the
applicable rules of The NASDAQ Capital Market for issuances of

1 common stock in excess of such amount. Such approval was obtained
2 in October 2017.

3 Holders of Series J Preferred Stock will be entitled to a preferential
4 payment of cash per share equal to the greater of 125% of the base
5 amount on the date of payment or the amount per share had the
6 holders converted such preferred shares immediately prior to the date
7 of payment upon the liquidation, dissolution or winding up of the
8 affairs of the Company, or a consolidation or merger of the Company
9 with or into any other corporation or corporations, or a sale of all or
10 substantially all of the assets of the Company, or the effectuation by
11 the Company of a transaction or series of transactions in which more
12 than 50% of the voting shares of the Company is disposed of or
13 conveyed.

14 **Series K Preferred Stock**

15 As of December 31, 2017 and 2016, there were 63,150 and no shares,
16 respectively, of our Series K convertible preferred stock (“Series K
17 Preferred Stock”) issued and outstanding and convertible into
18 2,105,000 and no shares of our common stock, respectively. On
19 August 14, 2017, the Company filed a Certificate of Designations,
20 Preferences and Rights of the Series K Convertible Preferred Stock
21 with the Delaware Secretary of State, designating 65,000 shares of
22 preferred stock as Series K Preferred Stock. The shares of Series K
23 Preferred Stock are convertible into shares of common stock based on
24 a conversion calculation equal to the stated value of the Series K
25 Preferred Stock divided by the conversion price. The stated value of
26 each share of Series K Preferred Stock is \$0.01 and the initial
27 conversion price is \$0.0003 per share, each subject to adjustment for
28 stock splits, stock dividends, recapitalizations, combinations,
subdivisions or other similar events.

29 The holders of Series K Preferred Stock will be entitled to receive
30 dividends if and when declared by our Board of Directors. The Series
31 K Preferred Stock shall participate on an “as converted” basis, with all
32 dividends declared on our common stock. In addition, if we grant,
33 issue or sell any rights to purchase our securities pro rata to all our
34 record holders of our common stock, each holder will be entitled to
35 acquire such securities applicable to the granted purchase rights as if
36 the holder had held the number of shares of common stock acquirable
37 upon complete conversion of all Series K Preferred Stock then held.

1 We are prohibited from effecting any conversion of the Series K
2 Preferred Stock if the Company has not obtained shareholder approval
3 for the full conversion of the Series J Preferred Stock and Series K
4 Preferred Stock in accordance with the rules of The NASDAQ Capital
5 Market or to the extent that, as a result of such conversion, the holder
6 would beneficially own more than 4.99% of the number of shares of
7 common stock outstanding immediately after giving effect to the
8 issuance of shares of common stock upon conversion of the Series K
9 Preferred Stock, which beneficial ownership limitation may be
10 increased by the holder up to, but not exceeding, 9.99%. Each holder
11 is entitled to vote on all matters submitted to stockholders of the
12 Company, and shall have the number of votes equal to the number of
13 shares of common stock issuable upon conversion of such holder's
14 Series K Preferred Stock, substituting the consolidated closing bid
15 price of the common stock on August 10, 2017 for the then-applicable
16 conversion price, and not in excess of the beneficial ownership
17 limitations. Such approval was obtained in October 2017.

13 **Series L Preferred Stock**

14 As of December 31, 2017 and 2016, there were 58,000 and no shares
15 of our Series L Preferred Stock issued and outstanding and convertible
16 into 3,222,223 and no shares of our common stock, respectively. On
17 October 16, 2017, we filed a Certificate of Designations, Preferences
18 and Rights of the 0% Series L Convertible Preferred Stock (the "Series
19 L Certificate of Designation") with the Delaware Secretary of State,
20 designating 58,000 shares of preferred stock as Series L Preferred
21 Stock. On October 18, 2017, we filed a Certificate of Correction to the
22 Series L Certificate of Designation to include a sentence that was
23 inadvertently omitted. The shares of Series L Preferred Stock are
24 convertible into shares of common stock based on a conversion
25 calculation equal to the stated value of the Series L Preferred Stock,
26 plus all accrued and unpaid dividends, if any, on such Series L
27 Preferred Stock, as of such date of determination, divided by the
28 conversion price. The stated value of each share of Series L Preferred
Stock is \$100 and the initial conversion price is \$1.80 per share, each
subject to adjustment for stock splits, stock dividends,
recapitalizations, combinations, subdivisions or other similar events.
The holders of Series L Preferred Stock will be entitled to receive
dividends if and when declared by our Board of Directors. The Series
L Preferred Stock shall participate on an "as converted" basis, with all
dividends declared on our common stock. In addition, if the Company

1 grants, issues or sells any rights to purchase its securities pro rata to
2 all record holders of common stock, each holder will be entitled to
3 acquire such securities applicable to the granted purchase rights as if
4 the holder had held the number of shares of common stock acquirable
upon complete conversion of all Series L Preferred Stock then held.

5 We are prohibited from effecting a conversion of the Series L
6 Preferred Stock if the Company has not obtained stockholder approval
7 for the full conversion of the Series L Preferred Stock in accordance
8 with the rules of The NASDAQ Capital Market or to the extent that,
9 as a result of such conversion, the holder would beneficially own
10 more than 4.99% of the number of shares of common stock
11 outstanding immediately after giving effect to the issuance of shares
12 of common stock upon conversion of the Series L Preferred Stock,
13 which beneficial ownership limitation may be increased by the holder
14 up to, but not exceeding, 9.99%. Each holder is entitled to vote on all
15 matters submitted to stockholders of the Company, and shall have the
16 number of votes equal to the number of shares of common stock
issuable upon conversion of such holder's Series L Preferred Stock,
substituting the consolidated closing bid price of the common stock on
October 13, 2017, for the then-applicable conversion price, and not in
excess of the beneficial ownership limitations or limitations required
by the rules and regulations of The NASDAQ Capital Market.

17 Holders of Series L Preferred Stock will be entitled to a preferential
18 payment of cash per share equal to the greater of 100% of the base
19 amount representing the sum of the stated value and any unpaid
20 dividends, or the Base Amount, on the date of payment or the amount
21 per share had the holders converted such preferred shares immediately
22 prior to the date of payment upon the liquidation, dissolution or
23 winding up of the affairs of the Company, or a consolidation or
24 merger of the Company with or into any other corporation or
corporations, or a sale of all or substantially all of the assets of the
Company, or the effectuation by the Company of a transaction or
series of transactions in which more than 50% of the voting shares of
the Company is disposed of or conveyed.

1 **Warrants Issued in Connection with April 2015 Private**
2 **Placement**

3 As of December 31, 2017, there were no warrants outstanding in
4 connection with the April 2015 Private Placement as all of the
5 warrants expired on October 10, 2017. As of December 31, 2016,
6 there were warrants outstanding to purchase 268,454 shares of
7 common stock at \$33.30 per share. The warrants priced at \$33.30 and
8 \$6.00 per share were remaining from our private offering in March
9 and April 2015 (the “April 2015 Private Placement”) in which we sold
10 \$8,546,348 worth of units (the “Units”), net of \$668,150 in issuance
11 costs, of which \$2,500,000 of the Units consisted of Series E
12 Preferred Stock and the balance consisted of 553,424 shares of
13 common stock, together with warrants to all investors to purchase
14 351,787 shares of common stock at \$33.30 per share. Each Unit was
15 sold at a purchase price of \$16.65 per Unit. OPKO Health, Inc., the
16 lead investor in the April 2015 Private Placement, purchased
17 \$2,500,000 worth of Units consisting all the shares of the Series E
18 Preferred Stock.

19 In connection with the May 2017 Public Offering, the Company had
20 agreed to amend the terms of a portion of the outstanding warrants, or
21 warrants to purchase 108,108 shares of common stock that had an
22 exercise price of \$33.30 per share, such that the amended warrants
23 shall have an exercise price of \$6.00 per share and no cashless
24 exercise feature, for those investors who made a certain minimum
25 required investment to qualify for repricing. After the repricing, the
26 stock price never reached above \$6.00 in order for the warrants to be
27 exercised prior to the expiration date of October 10, 2017.

28 **Warrants Issued in Connection with October 2015 Public**
 Offering

 As of December 31, 2017 and 2016, there were warrants outstanding
to purchase 56,307 shares of common stock at \$29.31 per share in
connection with a public offering on October 5, 2015. The warrants at
\$29.31 per share were issued in connection with our public offering
on October 5, 2015, which consisted of 112,613 shares of common
stock and warrants to purchase 56,307 shares of common stock, at an
offering price of \$2.71 per share. For every two shares of common
stock sold, the Company issued one warrant to purchase one share of
common stock. We received \$2,750,000 in gross proceeds, before

1 underwriting discounts and commissions and offering expenses
2 totaling approximately \$586,608.

3 The shares and warrants were separately issued and sold in equal
4 proportions. The warrants are immediately exercisable, expire
5 September 30, 2018, and have an exercise price of \$29.31 per share.
6 The warrants are not listed on any securities exchange or other trading
7 market.

8 ***

9 The Company is obligated to issue an aggregate of 350,000 options to
10 certain employees and members of the Board, at a price not less than
11 \$6.00 per share, and 16,667 options to each other Board member at
12 the current market price in connection with this offering. The options
13 shall be issued pursuant to the Company's option plan and are subject
14 to the requisite approvals and subject to availability under the plan. To
15 the extent we need to increase the number of shares available under
16 such plan, we will need the approval of our Board and Stockholders.
17 All Board fees will be waived for 2017.

18 ***

19 Additionally we granted the Lead Investor in the May 2017 Public
20 Offering certain rights to approve future (i) issuances of our securities,
21 (ii) equity or debt financings and (iii) sales of any development
22 product assets currently held by us, subject to certain exceptions, if
23 such securities are sold at price below \$7.50 per share and for as long
24 as the Lead Investor in the offering holds 50% or more of the shares
25 of Series G Preferred Stock purchased by the Lead Investor in this
26 offering (the "May 2017 Consent Right"). All other prior consent
27 rights of the Lead Investor have been superseded by the May 2017
28 Consent Right.

We conducted an evaluation of the effectiveness of internal control
over financial reporting based on the framework in *Internal Control*
— *Integrated Framework* (2013) issued by the Committee of
Sponsoring Organizations of the Treadway Commission. Based on
this evaluation, our principal executive officer and principal financial
officer conclude that, at December 31, 2017, our internal controls over
financial reporting were effective.

1 circumstances under which those stockholders invested in the
2 Company and whether they have acted as an undisclosed group in
3 connection with their investment; (ii) the manner with or in which
4 those stockholders may have sought to control or influence the
5 Company and its leadership since their respective investments (and
6 the extent to which those efforts to control or influence have been
7 successful); and (iii) our prior disclosures regarding the control of the
8 Company and beneficial ownership of our common and preferred
9 stock included in our registration statements filed in 2017 and 2018
10 and in our Exchange Act reports. In light of the SEC Investigation, we
11 have also reviewed facts and circumstances related to our recently
12 completed May 2018 offering and publicly available information
13 concerning certain of our stockholders' relationships with other
14 registrants.

15 We have cooperated with the SEC in connection with the SEC
16 Investigation, and our Board of Directors has appointed a Special
17 Committee comprised of independent members of our Board of
18 Directors to supervise the Company's review of the matters believed
19 to be under investigation. However, we cannot predict when the SEC
20 Investigation will conclude, nor whether it will conclude in a manner
21 adverse to the Company, any of its directors and officers, or its current
22 or former stockholders. We also cannot predict, how the SEC
23 Investigation or any related matters may impact how the Company is
24 perceived by the market, potential partners and potential investors in
25 our securities. We do not believe that the SEC would declare effective
26 any registration statements registering our securities effective during
27 the pendency of the SEC Investigation.

28 Historically, we have calculated and reported beneficial ownership in
reliance upon the accuracy of the beneficial ownership reporting of
our stockholders, including reports filed on Schedules 13D and 13G
and information provided by these stockholders directly to us. We
have similarly relied on the accuracy of stockholder-reported
beneficial ownership when effecting conversions of shares of
preferred stock. The SEC Investigation and our review of the matters
under investigation (including information learned recently) has raised
questions about the accuracy of those reports by those holders,
including their past disclaimers of having not acted as a group with
respect to their investment in the Company. If certain stockholders
have indeed acted as a group, their respective beneficial ownership

1 interests should have been aggregated and reported in the aggregate in
2 our prior beneficial ownership disclosures. If their holdings should
3 have been so aggregated, then, due to the provisions of our
4 organizational documents regarding the conversion limitations
5 applicable to certain holders of our preferred stock, shares of our
6 common stock may have been issued in violation of our
7 organizational documents. If shares of our common stock were issued
8 in violation of our organizational documents, then the number of
9 shares of our outstanding common stock previously reported in our
10 financial statements, registration statements and Exchange Act
11 Reports may be inaccurate. Further, figures reported and included in
12 our financial statements, registration statements and Exchange Act
13 Reports in reliance on the number of our outstanding shares of
14 common stock, including, but not limited to, our loss per share
15 figures, may also be inaccurate. We are also reviewing our internal
16 and disclosure controls.

17 26. On this news the Company's shares fell \$0.41 per share or over 23%, to
18 close on May 21, 2018 at \$1.36 per share.

19 **NO SAFE HARBOR**

20 27. Most of the false and misleading statements related to existing facts or
21 conditions, and the Safe Harbor provisions have no applicability to such statements.
22 To the extent that known trends should have been included in the Company's
23 financial reports prepared in accordance with GAAP, they too are excluded from the
24 protection of the statutory Safe Harbor. 15 U.S.C. §78u-5(b)(2)(A).

25 28. MabVax's "Safe Harbor" warnings accompanying its reportedly
26 forward-looking statements issued during the Class Period were also ineffective to
27 shield those statements from liability. Defendants Hansen and Hanson are liable for
28 any false or misleading forward-looking statements because, at the time each

1 forward-looking statements was made, the speaker knew the forward-looking
2 statements was false or misleading and the forward-looking statements was
3 authorized and/or approved by an executive officer and/or director of MabVax who
4 knew that the forward-looking statements was false. In addition, the forward-
5 looking statements were contradicted by existing, undisclosed material facts that
6 were required to be disclosed so that the forward-looking statements would not be
7 misleading. Finally, most of the purported “Safe Harbor” warnings were themselves
8 misleading because they warned of “risks” that had already materialized or failed to
9 provide meaningful disclosures of the relevant risks.
10
11

12 **ADDITIONAL SCIENTER ALLEGATIONS**

13
14 29. As alleged herein, Defendants Hansen and Hanson acted with scienter
15 in that each knew that the public documents and statements issued or disseminated
16 in the name of the Company were materially false and misleading; knew that such
17 statements or documents would be issued or disseminated to the investing public;
18 and knowingly and substantially participated or acquiesced in the issuance or
19 dissemination of such statements or documents as primary violations of the federal
20 securities laws. As set forth elsewhere herein in detail, Defendants Hansen and
21 Hanson, by virtue of their receipt of information reflecting the true facts regarding
22 MabVax, their control over, and/or receipt of modification of MabVax’s allegedly
23 materially misleading misstatements and/or his associations with the Company
24
25
26
27
28

1 which made them privy to confidential proprietary information concerning MabVax,
2 participated in the fraudulent scheme alleged herein.

3
4 **APPLICABILITY OF PRESUMPTION OF RELIANCE:**
5 **FRAUD-ON-THE-MARKET DOCTRINE**

6 30. At all relevant times, the market for MabVax's common stock was an
7 efficient market for the following reasons, among others:

8 (a) MabVax's stock met the requirements for listing, and was listed
9 and actively traded on the NASDAQ, a highly efficient and automated market;

10 (b) The Company had approximately 8,961,840 shares of common
11 stock issued and outstanding as of April 2, 2018;

12 (c) as a regulated issuer, MabVax filed periodic public reports with
13 the SEC;

14 (d) MabVax regularly communicated with public investors via
15 established market communication mechanisms, including regular disseminations of
16 press releases on the national circuits of major newswire services, the Internet and
17 other wide-ranging public disclosures, such as communications with the financial
18 press and other similar reporting services;

19 (e) MabVax was followed by many securities analysts who wrote
20 reports that were distributed during the Class Period. Each of these reports was
21 publicly available and entered the public marketplace; and
22

1 (f) unexpected material news about MabVax was rapidly reflected
2 in and incorporated into the Company's stock price during the Class Period.

3 31. As a result of the foregoing, the market for MabVax common stock
4 promptly digested current information regarding MabVax from publicly available
5 sources and reflected such information in MabVax's stock price. Under these
6 circumstances, all purchasers of MabVax common stock during the Class Period
7 suffered similar injury through their purchase of MabVax common stock at
8 artificially inflated prices, and a presumption of reliance applies.
9

10 **LOSS CAUSATION**

11
12 32. During the Class Period, as detailed herein, Defendants Hansen and
13 Hanson made false and misleading statements, and omitted material information,
14 concerning MabVax's business fundamentals and financial prospects and engaged
15 in a scheme to deceive the market.
16

17
18 33. By artificially inflating and manipulating MabVax's stock price,
19 Defendants Hansen and Hanson deceived Plaintiff and the Class and caused them
20 losses when the truth was revealed. As a result of their purchases of MabVax
21 securities during the Class Period, Plaintiff and other members of the Class suffered
22 economic loss, *i.e.*, damages, under the federal securities laws.
23

24 **CLASS ACTION ALLEGATIONS**

25
26 34. This is a class action on behalf of those who purchased or otherwise
27 acquired MabVax common stock between March 14, 2016 and May 18, 2018,
28

1 inclusive, excluding Defendants Hansen and Hanson (the “Class”). Also excluded
2 from the Class are officers and directors of the Company as well as their families
3 and the family of Defendants Hansen and Hanson. Class members are so numerous
4 that joinder of them is impracticable.
5

6 35. Common questions of law and fact predominate and include whether
7 Defendants Hansen and Hanson: (a) violated the Exchange Act; (b) omitted and/or
8 misrepresented material facts; (c) knew or recklessly disregarded that their
9 statements were false; (d) artificially inflated the price of MabVax common stock;
10 and (e) the extent of and appropriate measure of damages.
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13 36. Plaintiff’s claims are typical of those of the Class. Prosecution of
14 individual actions would create a risk of inconsistent adjudications. Plaintiff will
15 adequately protect the interests of the Class. A class action is superior to other
16 available methods for the fair and efficient adjudication of this controversy.
17

18 **COUNT I**

19 **For Violation of Section 10(b) of the Exchange Act** 20 **and Rule 10b-5 Against All Defendants**

21 37. Plaintiff repeats and realleges the above paragraphs as though fully set
22 forth herein.
23

24 38. Throughout the Class Period, Defendants MabVax, Hansen and
25 Hanson, in pursuit of their scheme and continuous course of conduct to inflate the
26 market price of MabVax common stock, had the ultimate authority for making, and
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28

1 knowingly or recklessly made, materially false or misleading statements or failed to
2 disclose material facts necessary to make the statements made, in light of the
3 circumstances under which they were made, not misleading.
4

5 39. During the Class Period, Defendants MabVax, Hansen and Hanson,
6 and each of them, carried out a plan, scheme, and course of conduct using the
7 instrumentalities of interstate commerce and the mails, which was intended to and,
8 throughout the Class Period did: (a) artificially inflate and maintain the market price
9 of MabVax common stock; (b) deceive the investing public, including Plaintiff and
10 other Class members, as alleged herein; (c) cause Plaintiff and other members of the
11 Class to purchase MabVax common stock at inflated prices; and (d) cause them
12 losses when the truth was revealed. In furtherance of this unlawful scheme, plan
13 and course of conduct, Defendants MabVax, Hansen and Hanson took the actions
14 set forth herein, in violation of §10(b) of the Exchange Act and Rule 10b-5, 17
15 C.F.R. §240.10b-5.
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19 40. In addition to the duties of full disclosure imposed on Defendants
20 MabVax, Hansen and Hanson as a result of their affirmative false and misleading
21 statements to the investing public, these Defendants had a duty to promptly
22 disseminate truthful information with respect to MabVax's operations and
23 performance that would be material to investors in compliance with the integrated
24 disclosure provisions of the SEC, including with respect to the Company's revenue
25 and earnings trends, so that the market price of the Company's securities would be
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1 based on truthful, complete and accurate information. SEC Regulations S-X (17
2 C.F.R. §210.01, *et seq.*) and S-K (17 C.F.R. §229.10, *et seq.*)

3
4 41. Defendants MabVax, Hansen and Hanson had actual knowledge of the
5 misrepresentations and omissions of material facts set forth herein or acted with
6 reckless disregard for the truth in that they failed to ascertain and disclose such
7 facts, even though such facts were either known or readily available to them.
8

9 42. As a result of the dissemination of the materially false and misleading
10 information and failure to disclose material facts as set forth above, the market price
11 of MabVax common stock was artificially inflated during the Class Period. In
12 ignorance of the fact that the market price of MabVax common stock was artificially
13 inflated, and relying directly or indirectly on the false and misleading statements
14 made knowingly or with deliberate recklessness by Defendants MabVax, Hansen
15 and Hanson, or upon the integrity of the market in which the shares traded, Plaintiff
16 and other members of the Class purchased MabVax stock during the Class Period at
17 artificially high prices and, when the truth was revealed, were damaged thereby.
18
19
20

21 43. Had Plaintiff and the other members of the Class and the marketplace
22 known of the true facts, which were knowingly or recklessly concealed by
23 Defendants MabVax, Hansen and Hanson, Plaintiff and the other members of the
24 Class would not have purchased or otherwise acquired their MabVax shares during
25 the Class Period, or if they had acquired such shares during the Class Period, they
26 would not have done so at the artificially inflated prices which they paid.
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1 D. Awarding such other and further relief as the Court may deem just and
2 proper.

3 **JURY DEMAND**

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5 Plaintiff demands a trial by jury.

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7 DATED: June 4, 2018
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