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8 Counsel for Plaintiff

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 _____, Individually and on behalf of all
12 others similarly situated,

13 Plaintiff,

14 v.

15 INTREXON CORPORATION, RANDAL J.
16 KIRK, AND RICK L. STERLING,

17 Defendants.

Case No:

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

JURY TRIAL DEMANDED

18 Plaintiff _____ (“Plaintiff”), individually and on behalf of all other persons similarly
19 situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants (defined
20 below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own
21 acts, and information and belief as to all other matters, based upon, inter alia, the investigation
22 conducted by and through Plaintiff’s attorneys, which included, among other things, a review of
23 the defendants’ public documents, conference calls and announcements made by defendants,
24 United States Securities and Exchange Commission (“SEC”) filings, wire and press releases
25 published by and regarding Intrexon Corporation (“Intrexon” or the “Company”), analysts’ reports
26 and advisories about the Company, and information readily obtainable on the Internet. Plaintiff
27 believes that substantial evidentiary support will exist for the allegations set forth herein after a
28 reasonable opportunity for discovery.

1 **NATURE OF THE ACTION**

2 1. This is a federal securities class action on behalf of a class consisting of all persons
3 and entities other than Defendants who purchased or otherwise acquired the publicly traded
4 securities of Intrexon between May 11, 2018 and August 13, 2018, both dates inclusive (the “Class
5 Period”). Plaintiff seeks to recover compensable damages caused by Defendants’ violations of the
6 federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities
7 Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder.
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9 **JURISDICTION AND VENUE**

10 2. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of the
11 Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC
12 (17 C.F.R. §240.10b-5).

13 3. This Court has jurisdiction over the subject matter of this action under 28 U.S.C.
14 §1331 and §27 of the Exchange Act.

15 4. Venue is proper in this District pursuant to §27 of the Exchange Act and 28 U.S.C.
16 §1391(b) as Defendants conducts business in this district and a significant portion of the
17 Defendants’ actions and the subsequent damages took place within this District.

18 5. In connection with the acts, conduct and other wrongs alleged in this Complaint,
19 Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce,
20 including but not limited to, the United States mail, interstate telephone communications and the
21 facilities of the national securities exchange.

22 **PARTIES**

23 6. Plaintiff, as set forth in the accompanying Certification, purchased Intrexon
24 securities at artificially inflated prices during the Class Period and was damaged upon the revelation
25 of the alleged corrective disclosure.

26 7. Defendant Intrexon operates in the synthetic biology field and creates biologically-
27 based products that improve quality of life. The Company is incorporated in Virginia and its
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1 headquarters are in Germantown, Maryland. Intrexon maintains offices in South San Francisco and
2 Davis, California. During the Class Period, Intrexon's securities traded on the New York Stock
3 Exchange ("NYSE") under the ticker symbol "XON." On September 12, 2018, the Company
4 announced its plans to begin trading on NASDAQ on September 25, 2018.

5 8. Defendant Randal J. Kirk ("Kirk") has been the Chairman and Chief Executive
6 Officer ("CEO") of Intrexon throughout the Class Period.

7 9. Defendant Rick L. Sterling ("Sterling") has been the Chief Financial Officer
8 ("CFO") of Intrexon throughout the Class Period.

9 10. Defendants Kirk and Sterling are sometimes referred to herein as the "Individual
10 Defendants."

11 11. Each of the Individual Defendants:

12 (a) directly participated in the management of the Company;

13 (b) was directly involved in the day-to-day operations of the Company at the highest
14 levels;

15 (c) was privy to confidential proprietary information concerning the Company and its
16 business and operations;

17 (d) was directly or indirectly involved in drafting, producing, reviewing and/or
18 disseminating the false and misleading statements and information alleged herein;

19 (e) was directly or indirectly involved in the oversight or implementation of the
20 Company's internal controls;

21 (f) was aware of or recklessly disregarded the fact that the false and misleading
22 statements were being issued concerning the Company; and/or

23 (g) approved or ratified these statements in violation of the federal securities laws.
24

25 12. The Company is liable for the acts of the Individual Defendants and its employees
26 under the doctrine of *respondeat superior* and common law principles of agency because all of the
27 wrongful acts complained of herein were carried out within the scope of their employment.
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1 13. The scienter of the Individual Defendants and other employees and agents of the
2 Company is similarly imputed to the Company under *respondeat superior* and agency principles.

3 14. The Company and the Individual Defendants are referred to herein, collectively, as
4 the “Defendants.”

5 **SUBSTANTIVE ALLEGATIONS**

6 **Materially False and Misleading Statements**

7 15. On May 10, 2016, after the market closed, Intrexon filed a Form 10-Q for the first
8 quarter of 2018 (“1Q18 10-Q”) with the SEC which provided the Company’s financial results and
9 position for the quarter ending March 31, 2018. The 1Q18 10-Q was signed by Defendant Sterling.
10 The 1Q18 10-Q contained signed certifications pursuant to the Sarbanes-Oxley Act of 2002
11 (“SOX”) by Defendants Kirk and Sterling attesting to the accuracy of financial reporting, the
12 disclosure of any material changes to the Company’s internal control over financial reporting, and
13 the disclosure of all fraud.

14 16. The 1Q18 10-Q contained Intrexon’s Consolidated Unaudited Financial Statements
15 which included its deferred revenue and accumulated deficit, stating relevant part:
16

17 **March 31, 2018**

	As Reported	Balances Without Adoption of ASC 606	Effect of Change Higher/(Lower)
Consolidated Balance Sheet			
Liabilities			
Deferred revenue, current	\$ 48,646	\$ 42,320	\$ 6,326
Deferred revenue, net of current portion	214,744	182,239	32,505
Total Equity			
Accumulat	(930,220)	(891,389)	(38,831)

1 ed deficit

2
3 17. The 1Q18-Q listed revenue as \$24,025,000 for the period ending March 31, 2018.

4 18. The 1Q18 10-Q also discussed Intrexon controls and procedures, stating in relevant
5 part:

6 There has been no change in our internal control over financial reporting during
7 the three months ended March 31, 2018, that has materially affected, or is
8 reasonably likely to materially affect, our internal control over financial reporting.

9 19. The statements referenced in ¶¶15-18 above was materially false and/or misleading
10 because they misrepresented and failed to disclose the following adverse facts pertaining to the
11 Company's business, operational and financial results, which were known to Defendants or
12 recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements
13 and/or failed to disclose that: (1) Intrexon's financial statements for the quarter ended March 31,
14 2018 were false and could not be relied upon; (2) Intrexon had material weaknesses in its internal
15 controls over financial reporting; and (3) as a result, Defendants' public statements were materially
16 false and misleading at all relevant times.

17 **The Truth Begins To Emerge**

18 20. On August 9, 2018, Intrexon filed a Form 8-K with the SEC announcing that
19 previously issued financial statements could no longer be relied upon, stating in relevant part:

20 **Non-reliance on Previously Issued Financial Statements** 21 **Item 4.02 or a Related Audit Report or Completed Interim Review**

22 On August 9, 2018, the Audit Committee of the Board of Directors of
23 Intrexon Corporation (the "Company") *concluded that a restatement of the*
24 *unaudited interim consolidated financial statements included in the Company's*
25 *Quarterly Report on Form 10-Q for the quarter ended March 31, 2018 (the*
26 *"Form 10-Q") was required and those financial statements should not be relied*
27 *upon because of errors in the Company's accounting related to the initial*
28 *adoption, and resultant impacts, of Accounting Standards Codification Topic*
606, Revenue from Contracts with Customers ("ASC 606"). This conclusion was
reached in consultation with the Company's management and the Company's
independent registered public accounting firm, PricewaterhouseCoopers LLP
("PwC").

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Effective January 1, 2018, the Company adopted ASC 606 using the modified retrospective method. The Company has determined it incorrectly applied certain aspects of ASC 606, including gross versus net presentation for payments pursuant to one of the Company’s contracts and the guidance for contract modifications to a contract that had been modified prior to the adoption of ASC 606. *The Company estimates that these errors have resulted in an overstatement of deferred revenue and accumulated deficit by approximately \$67 million as of the adoption date, and an overstatement of revenues by approximately \$4 million for the three months ended March 31, 2018.* These estimates are based on the Company’s current expectations and are subject to finalization, including completion of procedures for the Form 10-Q/A. *The Company concluded these errors resulted from a material weakness as it did not maintain effective controls over the adoption of ASC 606.* As a result, the Company has reevaluated its assessment of the effectiveness of the Company’s disclosure controls and procedures for the three-months ended March 31, 2018 and has concluded that they were not effective.

The Company’s unaudited interim consolidated financial statements as of and for the quarter ended March 31, 2018 will be restated in an amended Quarterly Report on Form 10-Q/A.

The Audit Committee has discussed the matters disclosed in this Item 4.02 with PwC.
(Emphasis added).

21. On this news, shares of Intrexon fell \$0.34 per share, or over 2.2%, from its previous closing price to close at \$15.05 per share on August 10, 2018, damaging investors.

22. On August 13, 2018, Intrexon filed a Form 10-Q/A, amending and restating its previous quarterly report for the period ending March 31, 2018. The Form 10-Q/A included updated figures for deferred revenue and accumulated deficit:

March 31, 2018

	As Restated	Balances Without Adoption of ASC 606	Effect of Change
Consolidated Balance Sheet			
Liabilities			
Deferred revenue, current	\$ 38,376	\$ 42,320	\$ (3,944)
Deferred revenue, net of current portion	162,318	182,239	(19,921)
Total Equity			
Accumulated deficit	(867,374)	(891,389)	24,015
Accumulated other comprehensive loss	(9,737)	(9,586)	(151)

23. The Form 10-Q/A restated revenue as \$19,848,000 for the period ended March 31, 2018.

24. The Form 10-Q/A discussed Intrexon's internal controls over financial reporting, stating in relevant part:

Material Weakness in Internal Control Over Financial Reporting

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis.

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We did not maintain effective internal controls related to the adoption of Accounting Standards Codification ("ASC") Topic 606, *Revenue from Contracts with Customers* ("ASC 606"). Specifically, we did not design controls which were sufficiently precise to identify and account for the impacts of adopting ASC 606 on our open exclusive channel collaboration agreements, including gross versus net presentation for payments pursuant to one of the Company's contracts, the guidance for contract modifications to a contract that had been modified prior to the adoption of ASC 606, and the measurement of progress for performance obligations satisfied over time. This control deficiency resulted in the misstatement of accumulated deficit, deferred revenue, and collaboration and licensing revenues, and restatement of the Company's consolidated financial statements for the quarter ended March 31, 2018.

Additionally, this control deficiency could result in a misstatement of the aforementioned account balances or disclosures that would result in a material misstatement to the annual or interim consolidated financial statements that would not be prevented or detected. Accordingly, our management has determined that this control deficiency constitutes a material weakness.

Changes in Internal Control Over Financial Reporting

The material weakness described above constitutes a change in our internal control over financial reporting during the three months ended March 31, 2018, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

25. On this news, shares of Intrexon fell \$0.95 per share, or over 6%, from its previous closing price to close at \$14.10 per share on August 13, 2018, further damaging investors.

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

PLAINTIFF'S CLASS ACTION ALLEGATIONS

27. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired the publicly traded securities of Intrexon during the Class Period (the "Class"); and were damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are Defendants herein, the officers and directors of the Company, at all relevant times, members of their

1 immediate families and their legal representatives, heirs, successors or assigns and any entity in
2 which Defendants have or had a controlling interest.

3 28. The members of the Class are so numerous that joinder of all members is
4 impracticable. Throughout the Class Period, Intrexon securities were actively traded on the NYSE.
5 While the exact number of Class members is unknown to Plaintiff at this time and can be
6 ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or
7 thousands of members in the proposed Class. Record owners and other members of the Class may
8 be identified from records maintained by the Company or its transfer agent and may be notified of
9 the pendency of this action by mail, using the form of notice similar to that customarily used in
10 securities class actions.

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

14 30. Plaintiff will fairly and adequately protect the interests of the members of the Class
15 and has retained counsel competent and experienced in class and securities litigation. Plaintiff has
16 no interests antagonistic to or in conflict with those of the Class.

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

- 20 • whether the federal securities laws were violated by Defendants' acts as alleged
21 herein;
- 22 • whether statements made by Defendants to the investing public during the Class
23 Period misrepresented material facts about the financial condition, business,
24 operations, and management of the Company;
- 25 • whether Defendants' public statements to the investing public during the Class
26 Period omitted material facts necessary to make the statements made, in light of the
27 circumstances under which they were made, not misleading;

- 1 • whether the Individual Defendants caused the Company to issue false and misleading
- 2 SEC filings and public statements during the Class Period;
- 3 • whether Defendants acted knowingly or recklessly in issuing false and misleading
- 4 SEC filings and public statements during the Class Period;
- 5 • whether the prices of Intrexon securities during the Class Period were artificially
- 6 inflated because of the Defendants' conduct complained of herein; and
- 7 • whether the members of the Class have sustained damages and, if so, what is the
- 8 proper measure of damages.

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

14 33. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-
15 on-the-market doctrine in that:

- 16 • Defendants made public misrepresentations or failed to disclose material facts during
- 17 the Class Period;
- 18 • the omissions and misrepresentations were material;
- 19 • Intrexon securities are traded in efficient markets;
- 20 • the Company's securities were liquid and traded with moderate to heavy volume
- 21 during the Class Period;
- 22 • the Company traded on the NYSE, and was covered by multiple analysts;
- 23 • the misrepresentations and omissions alleged would tend to induce a reasonable
- 24 investor to misjudge the value of the Company's securities; and
- 25 • Plaintiff and members of the Class purchased and/or sold Intrexon securities between
- 26 the time the Defendants failed to disclose or misrepresented material facts and the
- 27 time the true facts were disclosed, without knowledge of the omitted or
- 28 misrepresented facts.

1 34. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a
2 presumption of reliance upon the integrity of the market.

3 35. Alternatively, Plaintiff and the members of the Class are entitled to the presumption
4 of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United*
5 *States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their
6 Class Period statements in violation of a duty to disclose such information, as detailed above.

7 **COUNT I**

8 **Violation of Section 10(b) of The Exchange Act and Rule 10b-5**
9 **Against All Defendants**

10 36. Plaintiff repeats and realleges each and every allegation contained above as if fully
11 set forth herein.

12 37. This Count is asserted against the Company and the Individual Defendants and is
13 based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated
14 thereunder by the SEC.

15 38. During the Class Period, the Company and the Individual Defendants, individually
16 and in concert, directly or indirectly, disseminated or approved the false statements specified above,
17 which they knew or deliberately disregarded were misleading in that they contained
18 misrepresentations and failed to disclose material facts necessary in order to make the statements
19 made, in light of the circumstances under which they were made, not misleading.

20 39. The Company and the Individual Defendants violated §10(b) of the 1934 Act and
21 Rule 10b-5 in that they:

- 22 • employed devices, schemes and artifices to defraud;
- 23 • made untrue statements of material facts or omitted to state material facts necessary
24 in order to make the statements made, in light of the circumstances under which they
25 were made, not misleading; or
- 26 • engaged in acts, practices and a course of business that operated as a fraud or deceit
27 upon plaintiff and others similarly situated in connection with their purchases of
28 Intrexon securities during the Class Period.

1 40. The Company and the Individual Defendants acted with scienter in that they knew
2 that the public documents and statements issued or disseminated in the name of the Company were
3 materially false and misleading; knew that such statements or documents would be issued or
4 disseminated to the investing public; and knowingly and substantially participated, or acquiesced in
5 the issuance or dissemination of such statements or documents as primary violations of the
6 securities laws. These defendants by virtue of their receipt of information reflecting the true facts of
7 the Company, their control over, and/or receipt and/or modification of the Company's allegedly
8 materially misleading statements, and/or their associations with the Company which made them
9 privy to confidential proprietary information concerning the Company, participated in the
10 fraudulent scheme alleged herein.

11 41. Individual Defendants, who are the senior officers and/or directors of the Company,
12 had actual knowledge of the material omissions and/or the falsity of the material statements set forth
13 above, and intended to deceive Plaintiff and the other members of the Class, or, in the alternative,
14 acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in
15 the statements made by them or other personnel of the Company to members of the investing
16 public, including Plaintiff and the Class.

17 42. As a result of the foregoing, the market price of Intrexon securities was artificially
18 inflated during the Class Period. In ignorance of the falsity of the Company's and the Individual
19 Defendants' statements, Plaintiff and the other members of the Class relied on the statements
20 described above and/or the integrity of the market price of Intrexon securities during the Class
21 Period in purchasing Intrexon securities at prices that were artificially inflated as a result of the
22 Company's and the Individual Defendants' false and misleading statements.

23 43. Had Plaintiff and the other members of the Class been aware that the market price of
24 Intrexon securities had been artificially and falsely inflated by the Company's and the Individual
25 Defendants' misleading statements and by the material adverse information which the Company's
26 and the Individual Defendants did not disclose, they would not have purchased Intrexon securities at
27 the artificially inflated prices that they did, or at all.

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1 44. As a result of the wrongful conduct alleged herein, Plaintiff and other members of
2 the Class have suffered damages in an amount to be established at trial.

3 45. By reason of the foregoing, the Company and the Individual Defendants have
4 violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the
5 Plaintiff and the other members of the Class for substantial damages which they suffered in
6 connection with their purchases of Intrexon securities during the Class Period.

7 **COUNT II**

8 **Violation of Section 20(a) of The Exchange Act** 9 **Against The Individual Defendants**

10 46. Plaintiff repeats and realleges each and every allegation contained in the foregoing
11 paragraphs as if fully set forth herein.

12 47. During the Class Period, the Individual Defendants participated in the operation and
13 management of the Company, and conducted and participated, directly and indirectly, in the
14 conduct of the Company's business affairs. Because of their senior positions, they knew the adverse
15 non-public information regarding the Company's business practices.

16 48. As officers and/or directors of a publicly owned company, the Individual Defendants
17 had a duty to disseminate accurate and truthful information with respect to the Company's financial
18 condition and results of operations, and to correct promptly any public statements issued by the
19 Company which had become materially false or misleading.

20 49. Because of their positions of control and authority as senior officers, the Individual
21 Defendants were able to, and did, control the contents of the various reports, press releases and
22 public filings which the Company disseminated in the marketplace during the Class Period.
23 Throughout the Class Period, the Individual Defendants exercised their power and authority to
24 cause the Company to engage in the wrongful acts complained of herein. The Individual Defendants
25 therefore, were "controlling persons" of the Company within the meaning of Section 20(a) of the
26 Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially
27 inflated the market price of Intrexon securities.

28 50. Each of the Individual Defendants, therefore, acted as a controlling person of the
Company. By reason of their senior management positions and/or being directors of the Company,

1 each of the Individual Defendants had the power to direct the actions of, and exercised the same to
2 cause, the Company to engage in the unlawful acts and conduct complained of herein. Each of the
3 Individual Defendants exercised control over the general operations of the Company and possessed
4 the power to control the specific activities which comprise the primary violations about which
5 Plaintiff and the other members of the Class complain.

6 51. By reason of the above conduct, the Individual Defendants are liable pursuant to
7 Section 20(a) of the Exchange Act for the violations committed by the Company.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

10 A. Determining that the instant action may be maintained as a class action under Rule
11 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;

12 B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason
13 of the acts and transactions alleged herein;

14 C. Awarding Plaintiff and the other members of the Class prejudgment and post-
15 judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and

16 D. Awarding such other and further relief as this Court may deem just and proper.

17 **DEMAND FOR TRIAL BY JURY**

18 Plaintiff hereby demands a trial by jury.

19 Dated:

Respectfully submitted,

20 **THE ROSEN LAW FIRM, P.A.**

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