UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2020

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission File Number: 001-37897

OBALON THERAPEUTICS, INC.
(Exact Name of Registrant as Specified in Its Charter)

Delaware	**26-1828101**
(State of Incorporation)	**(I.R.S. Employer Identification No.)**
5421 Avenida Encinas, Suite F **Carlsbad, California**	**92008**
(Address of Principal Executive Offices)	**(Zip Code)**

(844) 362-2566
(Registrant's Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value $0.001 per share	OBLN	The Nasdaq Stock Market LLC (NASDAQ Global Market)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Securities Exchange Act of 1934.

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	x	Smaller reporting company	x
		Emerging growth company	x

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financing accounting standards provided pursuant to Section 13(a) of the Exchange Act. x

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No x

Total shares of common stock outstanding as of the close of business on June 11, 2020 was 7,731,633.

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PART I. FINANCIAL INFORMATION
ITEM 1. Condensed Consolidated Financial Statements

OBALON THERAPEUTICS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except shares and par value data)

	March 31, 2020	December 31, 2019
Assets	(Unaudited)	
Current assets:		
Cash and cash equivalents	$ 8,915	$ 14,055
Accounts receivable, net	461	285
Inventory	1,408	1,936
Other current assets	4,786	1,959
Total current assets	15,570	18,235
Property and equipment, net	2,159	1,081
Lease right-of-use assets	1,500	1,077
Total assets	$ 19,229	$ 20,393
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 1,070	$ 648
Accrued compensation	359	820
Deferred revenue	462	424
Other current liabilities	4,607	1,524
Current portion of lease liabilities	690	561
Total current liabilities	7,188	3,977
Lease liabilities long-term	969	567
Total liabilities	8,157	4,544
Commitments and contingencies (See Note 9)		
Stockholders' equity:		
Common stock, $0.001 par value; 100,000,000 shares authorized as of March 31, 2020 and December 31, 2019; 7,731,633 and 7,724,100 shares issued and outstanding as of March 31, 2020 and December 31, 2019, respectively	8	8
Additional paid-in capital	188,755	188,271
Accumulated deficit	(177,691)	(172,430)
Total stockholders' equity	11,072	15,849
Total liabilities and stockholders' equity	$ 19,229	$ 20,393

See accompanying notes to unaudited interim condensed consolidated financial statements.

OBALON THERAPEUTICS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(in thousands, except shares and per share data)

	Three Months Ended March 31,	
	2020	2019
	(Unaudited)	
Revenue	$ 780	$ 1,775
Cost of revenue	541	1,232
Gross profit	239	543
Operating expenses:		
Research and development	1,257	2,439
Selling, general and administrative	3,893	6,204
Total operating expenses	5,150	8,643
Loss from operations	(4,911)	(8,100)
Interest income (expense), net	35	(190)
Other expense, net	(385)	—
Net loss and comprehensive loss	$ (5,261)	$ (8,290)
Net loss per share, basic and diluted	$ (0.68)	$ (3.59)
Weighted-average common shares outstanding, basic and diluted	7,725,205	2,311,329

See accompanying notes to unaudited interim condensed consolidated financial statements.

OBALON THERAPEUTICS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(in thousands, except shares and per share data)

(unaudited)	Common stock		Additional paid-in capital	Accumulated deficit	Total stockholders' equity
	Shares	Amount			
Balance at December 31, 2019	7,724,100	$ 8	$ 188,271	$ (172,430)	$ 15,849
Stock-based compensation	—	—	470	—	470
Vesting of stock awards, net of cancellations	7,533	—	—	—	—
Vesting of early exercised stock options	—	—	14	—	14
Net loss	—	—	—	(5,261)	(5,261)
Balance at March 31, 2020	7,731,633	$ 8	$ 188,755	$ (177,691)	$ 11,072

See accompanying notes to consolidated financial statements.

OBALON THERAPEUTICS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(in thousands, except shares and per share data)

(unaudited)	Common stock Shares	Common stock Amount	Additional paid-in capital	Accumulated other comprehensive (loss) income	Accumulated deficit	Total stockholders' equity
Balance at December 31, 2018	2,351,333	$ 2	$ 161,859	$ —	$ (148,754)	$ 13,107
Stock-based compensation	—	—	1,105	—	—	1,105
Issuance of common stock for cash upon exercise of stock options	119		1	—	—	1
Vesting of early exercised stock options	—	—	14	—	—	14
Issuance of common stock, net of issuance costs	75,551	1	580	—	—	581
Issuance of restricted stock awards, net of cancellations	(2,051)	—		—	—	—
Net loss	—	—	—	—	(8,290)	(8,290)
Balance at March 31, 2019	2,424,952	$ 3	$ 163,559	$ —	$ (157,044)	$ 6,518

See accompanying notes to consolidated financial statements.

OBALON THERAPEUTICS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Three Months Ended March 31,	
	2020	2019
	(Unaudited)	
Operating activities:		
Net loss	$ (5,261)	$ (8,290)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation	103	150
Stock-based compensation	470	1,105
Amortization of right-of-use asset	122	92
Accretion of investment discount, net	—	(2)
Amortization of debt discount	—	22
Change in operating assets and liabilities:		
Accounts receivable, net	(176)	(959)
Inventory	(326)	102
Other current assets	(2,828)	923
Accounts payable	422	(137)
Accrued compensation	(446)	(2,819)
Deferred revenue	38	18
Lease liabilities, net	(14)	(42)
Other current liabilities	3,082	195
Net cash used in operating activities	(4,814)	(9,642)
Investing activities:		
Maturities of short-term investments	—	2,550
Purchases of property and equipment	(326)	(19)
Net cash (used in) provided by investing activities	(326)	2,531
Financing activities:		
Proceeds from long-term loan	—	10,000
Proceeds from issuance of common stock, net of issuance costs	—	607
Proceeds from sale of common stock upon exercise of stock options	—	1
Net cash provided by financing activities	—	10,608
Net (decrease) increase in cash and cash equivalents	(5,140)	3,497
Cash and cash equivalents at beginning of period	14,055	21,187
Cash and cash equivalents at end of period	$ 8,915	$ 24,684
Supplemental cash flow information:		
Interest paid	$ —	$ 205
Unpaid issuance costs	$ —	$ 26
Property and equipment in accounts payable	$ —	$ 4

See accompanying notes to unaudited interim condensed consolidated financial statements.

1. Organization and Basis of Presentation

Obalon Therapeutics, Inc., or the Company, was incorporated in the state of Delaware on January 2, 2008. The Company is a vertically-integrated medical device company focused on developing and commercializing innovative medical devices to treat obesity. Using its patented technology, the Company has developed the Obalon® balloon system, the first and only U.S. Food and Drug Administration, or FDA, approved swallowable, gas-filled intragastric balloon designed to provide progressive and sustained weight loss in obese patients.

The unaudited interim condensed consolidated financial statements include the accounts of Obalon Therapeutics, Inc., and its wholly owned subsidiary, Obalon Center for Weight Loss, Inc.

The accompanying unaudited interim condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles, or GAAP, and include the Company's accounts and accounts of its wholly-owned subsidiary. The Company also consolidates variable interest entities or VIE for which it is the primary beneficiary. The primary beneficiary has both (a) the power to direct the activities of the VIE that most significantly affect the entity's economic performance and (b) either the obligation to absorb losses or the right to receive benefits. Refer to Note 10, "Variable Interest Entity" for further details. All intercompany transactions and balances have been eliminated in consolidation.

The Company's principal operations are located in Carlsbad, California, and it operates in one business segment.

Reverse Stock Split

On July 24, 2019, the Company filed a certificate of amendment to its certificate of incorporation with the Secretary of State of the State of Delaware to effect a one-for-ten reverse split of its issued and outstanding common stock. The accompanying consolidated financial statements and notes thereto give retrospective effect to the reverse stock split for all periods presented. All issued and outstanding common stock, options exercisable for common stock, restricted stock units, performance restricted stock units, and per share amounts contained in the consolidated financial statements have been retrospectively adjusted to reflect this reverse stock split for all periods presented. The number of authorized shares of common stock was not changed by virtue of the reverse stock split and remained at 100.0 million shares.

Liquidity

As of March 31, 2020, the Company has devoted a substantial portion of its efforts to product development, raising capital, and building infrastructure, and, since January 2017, U.S. commercialization. The Company has incurred operating losses and has experienced negative cash flows from operations since its inception. In July 2012, the Company realized initial revenue from its planned principal operations. The Company recognized total revenue of $0.8 million and $1.8 million for the three months ended March 31, 2020 and 2019, respectively. However, the Company has not yet established an ongoing source of revenue sufficient to cover its operating costs and has funded its activities to date almost exclusively from debt and equity financings.

As reflected in the accompanying condensed consolidated financial statements, the Company has a limited operating history and the sales and income potential of the Company's business are unproven. The Company has not been profitable since inception, and as of March 31, 2020, its accumulated deficit was $177.7 million. Since inception, the Company has financed its operations primarily through private placements of its preferred stock, the sale of common stock in its IPO and in subsequent public offerings and private placements, and, to a lesser extent, debt financing arrangements. As of March 31, 2020, the Company had cash and cash equivalents of $8.9 million. The Company expects to continue to incur net losses for the foreseeable future.

The Company is subject to risks and uncertainties as a result of the COVID-19 pandemic. In late 2019, a novel strain of coronavirus, COVID-19, was reported to have surfaced in Wuhan, China. Since then, COVID-19 has spread globally. To date, COVID-19 has had, and will continue to have, an adverse impact on the Company's operations and expenses as a result of the preventive and precautionary measures that the Company, its customers, other businesses, and governments are taking, including the deferral of elective medical procedures and diversion of capital and other resources. In March 2020, the Company suspended all new patient treatments at its Obalon-branded retail centers due to the ongoing COVID-19 pandemic. The Company is taking further steps to significantly reduce expenses in an effort to extend its cash runway while it evaluates potential business options and strategic alternatives that may be available when and if the current COVID-19 crisis stabilizes and the economy rebounds. The Company has significantly reduced the organization to only essential personnel and expects that, after a transition, only two full-time employees will remain. All Obalon-branded retail centers have been shutdown with no intention to reopen, and the Company has halted plans for future expansion. The Company does not expect to restart

shipments to U.S. customers and has terminated the agreement with its international distributor, Al Danah Medical Company W.L.L. As the Company reduces its personnel to two full time employees, it will continue to seek strategic alternatives in the best interest of stockholders, while it pursues third-party payor reimbursement and coverage for the Obalon Balloon System. The decision to shift the Company's strategy to focus on pursuing reimbursement occurred after the end of the first quarter of 2020. If the Company is unsuccessful in those two endeavors over the next several months, it may be forced to liquidate the business. As a result of the above factors, there is substantial doubt about the Company's ability to continue as a going concern for the twelve months following the issuance date of the unaudited interim condensed consolidated financial statements for the three months ended March 31, 2020.

2. Summary of Significant Accounting Policies

There were no significant changes to the accounting policies during the three months ended March 31, 2020, from the significant accounting policies described in Note 2 of the “Notes to Consolidated Financial Statements” in the Company's Annual Report on Form 10-K for the year ended December 31, 2019, filed on February 27, 2020.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period.

Reported amounts and note disclosures reflect the overall economic conditions that are most likely to occur and anticipated measures management intends to take. Actual results could differ materially from those estimates. All revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

Unaudited Interim Condensed Consolidated Financial Statements

The interim condensed consolidated financial statements as of March 31, 2020 and for the three months ended March 31, 2020 and 2019 are unaudited. The unaudited interim condensed consolidated financial statements have been prepared on the same basis as the annual financial statements and reflect, in the opinion of management, all adjustments of a normal and recurring nature that are necessary for the fair presentation of the Company’s condensed consolidated financial position as of March 31, 2020 and its condensed consolidated results of operations for the three months ended March 31, 2020 and 2019, statements of stockholders' equity for the three months ended March 31, 2020 and 2019, and cash flows for the three months ended March 31, 2020 and 2019. The results of operations for the three months ended March 31, 2020 are not necessarily indicative of the results to be expected for the year ending December 31, 2020 or for any other future annual or interim period. The balance sheet as of December 31, 2019 included herein was derived from the audited financial statements as of that date. These financial statements should be read in conjunction with the Company’s audited financial statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2019, filed on February 27, 2020.

Cash and Cash Equivalents

The Company considers all highly liquid investments with original maturities of three months or less at the date of purchase to be cash equivalents. Cash and cash equivalents include cash in readily available checking and money market accounts.

Comprehensive Loss

Comprehensive loss is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources. The Company’s comprehensive loss was the same as its reported net loss for all periods presented.

Fair Value Measurements

The carrying values of the Company’s financial instruments, including cash and cash equivalents, accounts receivable, accounts payable, and accrued expenses approximate their fair values due to the short maturity of these instruments. The carrying value of the term loan approximates its fair value as the interest rate and other terms are that which are currently available to the Company.

The Company utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible. The Company determines fair value based on assumptions that market participants would use in pricing an asset or liability in the principal or most advantageous market. When considering market participant assumptions in fair value measurements, the following fair value hierarchy distinguishes between observable and unobservable inputs, which are categorized in one of the following levels in accordance with authoritative accounting guidance:

- Level 1 inputs: Observable inputs such as unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date.
- Level 2 inputs: Other than quoted prices included in Level 1 inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the asset or liability.
- Level 3 inputs: Unobservable inputs for the asset or liability used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at measurement date.

Concentrations of Credit Risk

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash equivalents and trade accounts receivable, which are generally not collateralized. The Company limits its exposure to credit loss by placing its cash equivalents with high credit quality financial institutions and investing in high quality short-term debt instruments. The Company's customers consist of physicians and institutions in the United States and one international distributor. The Company establishes customer credit policies related to its accounts receivable based on historical collection experiences within the various markets in which the Company operates, historical past-due amounts, and any specific information that the Company becomes aware of such as bankruptcy or liquidity issues of customers.

The following table summarizes certain financial data for the customers who accounted for 10.0% or more of sales and accounts receivable.

	Three Months Ended March 31,	
	2020	**2019**
Revenue:		
Customer A	30.8 %	— %
Customer B	0.1%	14.7%
Customer C	**—%**	33.1%

	March 31, 2020	**December 31, 2019**
Accounts Receivable:		
Customer A	52.1 %	— %
Customer B	—%	20.8%
Customer C	—%	—%

The Company's largest customer for the three months ended March 31, 2020 was Al Danah Medical Company W.L.L. The Company's largest customer for the three months ended March 31, 2019 was Bader Sultan & Bros. Co. W.L.L. There were no other international sales aside from sales to Al Danah for the three months ended March 31, 2020.

Inventory

Inventory is stated at the lower of cost (which approximates actual cost on a first-in, first-out basis) or net realizable value, computed on a standard cost basis. Inventory that is obsolete or is in excess of forecasted usage is written down to its estimated net realizable value based on assumptions about future demand. Inventory write-downs are charged to cost of revenue and establish a new cost basis for the inventory.

The Company evaluated whether the suspension of all new patient treatments at its Obalon-branded retail operations and the termination of shipments to U.S. customers and its international distributor as well as uncertain demand for its product were indicative of inventory impairment. The Company performed an impairment assessment on its inventory stock and determined

that no write-down was necessary as of March 31, 2020. The Company will reassess whether its inventory balance is impaired as of the second quarter of 2020, as a result of the shift in Company strategy that occurred subsequent to March 31, 2020.

Impairment of Long-Lived Assets

The Company evaluates property and equipment for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability is measured by comparison of the carrying amount of the assets to the future undiscounted net cash flows, which the assets are expected to generate. If such assets are considered to be impaired, the impairment to be recognized is measured as the difference between the carrying amount and the fair value of the impaired asset.

In light of the current economic downturn, the Company's suspension of all new patient treatments at its Obalon-branded retail operations, termination of shipments to U.S. customers and its international distributor, and the trading prices of the Company's common stock, the Company performed an impairment analysis on its long-lived assets and determined no impairment charge was necessary. The Company will reassess whether its long-lived assets are impaired as of the second quarter of 2020, as a result of the shift in Company strategy that occurred subsequent to March 31, 2020.

Net Loss per Share

Basic net loss per share is calculated by dividing the net loss by the weighted-average number of shares of common stock outstanding during the period without consideration for common stock equivalents. Diluted net loss per share is the same as basic net loss per common share, since the effects of potentially dilutive securities are anti-dilutive due to the net loss position of all periods presented.

Potentially dilutive common stock equivalents are comprised of warrants, if material, unvested restricted stock awards (RSAs), and unexercised stock options outstanding under the Company's equity plan.

Recently Issued and Adopted Accounting Pronouncements

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board, or FASB, or other standard setting bodies that are adopted by the Company as of the specified effective date. Unless otherwise discussed, the Company believes that the impact of recently issued standards that are not yet effective will not have a material impact on its financial position or results of operations upon adoption.

In August 2018, the FASB issued ASU 2018-13, Fair Value Measurement (Topic 820); Disclosure Framework - Changes to the Disclosure Requirements for Fair Value Measurement. This guidance removes certain disclosure requirements related to the fair value hierarchy, modifies existing disclosure requirements related to measurement uncertainty and adds new disclosure requirements. The new disclosure requirements include disclosing the changes in unrealized gains and losses for the period included in other comprehensive income for recurring Level 3 fair value measurements held at the end of the reporting period and the range and weighted-average of significant unobservable inputs used to develop Level 3 fair value measurements. Certain disclosures required by this guidance must be applied on a retrospective basis and others on a prospective basis. The guidance is effective for fiscal years beginning after December 15, 2019 and interim periods within those fiscal years. The adoption of the new standard did not have a material impact on the Company's interim condensed consolidated financial statements.

Recently Issued Accounting Pronouncements not yet adopted

In June 2016, the Financial Accounting Standards Board ("FASB") issued ASU 2016-13, Financial Instruments - Credit Losses, which changes the accounting for recognizing impairments of financial assets. Under the new guidance, credit losses for certain types of financial instruments will be estimated based on expected losses. The new guidance also modifies the impairment models for available-for-sale debt securities and for purchased financial assets with credit deterioration since their origination. In February 2020, the FASB issued ASU 2020-02, Financial Instruments-Credit Losses (Topic 326) and Leases (Topic 842) - Amendments to SEC Paragraphs Pursuant to SEC Staff Accounting Bulletin No. 119 and Update to SEC Section on Effective Date Related to Accounting Standards Update No. 2016-02, Leases (Topic 842), which amends the effective date of the original pronouncement for smaller reporting companies. ASU 2016-13 and its amendments will be effective for the Company for interim and annual periods in fiscal years beginning after December 15, 2022. The Company believes the adoption will modify the way the Company analyzes financial instruments, but it does not anticipate a material impact on results of operations. The Company is in the process of determining the effects the adoption will have on its consolidated financial statements.

In December 2019, the FASB issued authoritative guidance intended to simplify the accounting for income taxes: ASU 2019-12, Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes. This guidance eliminates certain exceptions to the general approach to the income tax accounting model and adds new guidance to reduce the complexity in accounting for income taxes. This guidance is effective for annual periods after December 15, 2020, including interim periods within those annual periods. The Company is currently evaluating the potential impact of this guidance on its consolidated financial statements.

3. Fair Value Measurements

Instruments Recorded at Fair Value on a Recurring Basis

The Company has segregated all financial assets and liabilities that are measured at fair value on a recurring basis (at least annually) into the most appropriate level within the fair value hierarchy based on the inputs used to determine the fair value at the measurement date in the table below.

Assets and liabilities measured at fair value on a recurring basis as of March 31, 2020 and December 31, 2019 are as follows (in thousands):

		Fair value measurements at reporting date using		
	Balance as of March 31, 2020	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Assets:				
Cash	$ 837	$ 837		
Cash equivalents:				
Money market funds	8,078	8,078	—	—
Total assets	$ 8,915	$ 8,915	$ —	$ —

		Fair value measurements at reporting date using		
	Balance as of December 31, 2019	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Assets:				
Cash	$ 1,012	$ 1,012		
Cash equivalents:				
Money market funds	13,043	13,043	—	—
Total assets	$ 14,055	$ 14,055	$ —	$ —

The Company’s investments in Level 1 assets are valued based on publicly available quoted market prices for identical securities as of March 31, 2020 and December 31, 2019.

4. Net Loss per Share

The following table sets forth the computation of basic and diluted net loss per share of common stock (in thousands, except shares and per share data):

	Three Months Ended March 31,	
	2020	2019
Net loss	$ (5,261)	$ (8,290)
Weighted-average common shares outstanding, basic and diluted	7,725,205	2,311,329
Net loss per share, basic and diluted	$ (0.68)	$ (3.59)

The following table sets forth the outstanding potentially dilutive securities determined using the treasury stock method that have been excluded in the calculation of diluted net loss per share because to do so would be anti-dilutive (in common stock equivalent shares):

	Three Months Ended March 31,	
	2020	2019
Stock options to purchase common stock	—	182,184
Total	—	182,184

5. Balance Sheet Details

Inventory consist of the following (in thousands):

	March 31, 2020	December 31, 2019
Raw materials	$ 1,215	$ 1,835
Work in process	16	12
Finished goods	177	89
Total	$ 1,408	$ 1,936

Other current assets consist of the following (in thousands):

	March 31, 2020	December 31, 2019
Prepaid expenses	$ 1,535	$ 1,890
Other assets	101	69
Insurance receivable	3,150	—
Total	$ 4,786	$ 1,959

Property and equipment, net consist of the following (in thousands):

	March 31, 2020	December 31, 2019
Computer hardware	$ 263	$ 263
Computer software	291	291
Leasehold improvements	601	497
Furniture and fixtures	247	247
Scientific equipment	1,999	1,999
Construction in progress, or CIP	1,187	110
	4,588	3,407
Less: accumulated depreciation	(2,429)	(2,326)
Total	$ 2,159	$ 1,081

Depreciation expense was $0.1 million and $0.2 million for the three months ended March 31, 2020 and 2019, respectively.

Other current liabilities consist of the following (in thousands):

	March 31, 2020	December 31, 2019
Accrued legal and professional fees	$ 373	$ 412
Accrued customer incentives	199	198
Accrued sales and other taxes	104	107
Returns reserve liability	297	315
Settlement accrual	3,150	—
Other accrued expenses	484	492
Total	$ 4,607	$ 1,524

6. Stock-Based Compensation

Equity Incentive Plan

At March 31, 2020, 578,379 shares remained available for future grant under the 2016 Equity Incentive Plan. No other plans had options or awards available for grant.

The Company recorded total non-cash compensation, including non-cash compensation to employees and nonemployees in the consolidated statements of operations and comprehensive loss as follows (in thousands):

	Three Months Ended March 31,	
	2020	2019
Cost of revenue	$ 1	$ 39
Research and development	98	219
Selling, general and administrative	371	847
Total	$ 470	$ 1,105

Unrecognized stock-based compensation expense at March 31, 2020 for all stock-based compensation pertaining to options was approximately was approximately $1.0 million, which is expected to be recognized over a weighted-average term of 2.63 years.

Incentive Stock Options

The following table summarizes stock option transactions for the 2016 Equity Incentive Plan for the three months ended March 31, 2020 (in thousands, except shares and per share data):

	Number of shares	Weighted-average exercise price per share	Weighted-average remaining contractual life (in years)	Aggregate intrinsic value (in thousands)
Outstanding at December 31, 2019	518,468	$ 38.64		
Options granted	27,000	1.87		
Options exercised	—	—		
Options canceled	(49,016)	23.70		
Outstanding at March 31, 2020	496,452	$ 38.11	6.24	$ —
Vested and expected to vest at March 31, 2020	461,421	$ 39.98	6.15	$ —
Vested and exercisable at March 31, 2020	308,207	$ 48.71	5.83	$ —

The weighted-average fair value of options granted during the three months ended March 31, 2020 was $1.12.

Restricted Stock Awards

The following table summarizes restricted stock award transactions for the 2016 Equity Incentive Plan for the three months ended March 31, 2020:

	Number of awards	Weighted-average grant date fair value
Outstanding at December 31, 2019	29,524	$ 39.64
Awards granted	—	—
Awards released	(26,524)	36.03
Awards canceled	—	—
Outstanding at March 31, 2020	3,000	$ 71.50

The Company's current restricted stock awards vest 100% at various terms from the grant date, subject to continued employment. The fair-value of each restricted stock award is determined on the grant date using the closing price of the Company's common stock on the grant date. Unamortized expense of $0.1 million is expected to be recognized over a weighted-average period of 1.3 years.

Restricted Stock Units

The following table summarizes restricted stock unit transactions for the 2016 Equity Incentive Plan for the three months ended March 31, 2020:

	Number of shares	Weighted-average grant date fair value	Aggregate intrinsic value (in thousands)
Outstanding at December 31, 2019	55,574	$ 11.70	
Awards granted	816,081	1.88	
Awards released	(8,696)	23.00	
Awards canceled	(88,225)	1.88	
Outstanding at March 31, 2020	774,734	$ 2.35	$ 558

The Company's current restricted stock units vest 100% at various terms from the grant date, subject to continued service. The fair-value of each restricted stock unit is determined on the grant date using the closing price of the Company's common stock on the grant date. Unamortized expense of $1.4 million is expected to be recognized over a weighted-average period of 2.6 years.

In June 2020, an additional 727,856 restricted stock units (originally granted in January 2020) were canceled.

7. Stockholder's Equity

Public Offering and related warrants

On August 1, 2019, the Company entered into an underwriting agreement with A.G.P./Alliance Global Partners, as underwriter, in connection with a public offering of the Company's securities, pursuant to which the Company issued and sold (i) 2,427,500 shares of common stock (including 412,500 shares of common stock pursuant to the partial exercise of the underwriters' over-allotment option to purchase 562,500 additional shares), (ii) pre-funded warrants to purchase up to 1,735,000 shares of common stock ("Pre-funded Warrants"), (iii) accompanying warrants to purchase up to 3,234,375 shares of common stock (including the exercise in full of the underwriters' over-allotment option to purchase additional warrants to purchase 421,875 shares of common stock) ("Purchase Warrants") and (iv) an additional warrant to the underwriters for the purchase 37,500

shares of common stock ("Representative Warrant"). The offering was made pursuant to a registration statement on Form S-1. The offering closed on August 6, 2019 resulting in gross proceeds of approximately $15.4 million. The Company incurred $0.7 million of legal, accounting, and other fees related to the offering. The shares of common stock and accompanying Purchase Warrants were sold at a public offering price of $4.00 per share, the Pre-funded Warrants and accompanying Purchase Warrants were sold at a public offering of $3.999. The Purchase Warrants were immediately exercisable upon issuance, will expire on August 6, 2024 and have an exercise price of $4.40 and the Representative Warrant has an exercise price of $5.00, in each case subject to adjustment in the event of stock dividends, stock splits, stock combinations, reclassifications, reorganizations or similar events.

The Representative Warrant became exercisable in February 2020 and expires on August 6, 2024. All of the Pre-funded warrants were exercised during the third quarter of 2019. None of the Purchase or Representative Warrants have been exercised as of March 31, 2020. All of the warrants are recorded within equity in accordance with authoritative accounting guidance.

Lincoln Park Purchase Agreement

On February 5, 2020, the Company entered into a new purchase agreement (the "Purchase Agreement") and registration rights agreement (the "Registration Rights Agreement") with Lincoln Park Capital Fund, LLC ("Lincoln Park"), pursuant to which Lincoln Park has committed to purchase up to $15.0 million of the Company's common stock, $0.001 par value per share (the "Common Stock"). The new Purchase Agreement replaces an existing purchase agreement, dated December 27, 2018, by and between the Company and Lincoln Park, pursuant to which Lincoln Park committed to purchase up to $20.0 million of the Company's Common Stock. In connection with entering into the new Purchase Agreement, the Company and Lincoln Park terminated the prior purchase agreement, effective February 5, 2020.

Under the terms and subject to the conditions of the Purchase Agreement, the Company has the right, but not the obligation, to sell to Lincoln Park, and Lincoln Park is obligated to purchase up to $15.0 million of the Company's Common Stock. Such sales of common stock by the Company, if any, will be subject to certain limitations, and may occur from time to time, at the Company's sole discretion, over the 36-month period commencing on February 28, 2020 date that a registration statement covering the resale of shares of Common Stock that have been and may be issued under the Purchase Agreement, which the Company agreed to file with the Securities and Exchange Commission (the "SEC") pursuant to the Registration Rights Agreement, was declared effective by the SEC and a final prospectus in connection therewith was filed and the other conditions set forth in the purchase agreement were satisfied (such date on which all of such conditions are satisfied, the "Commencement Date").

The Company incurred approximately $0.3 million of legal, accounting, and other fees related to the offering. As of March 31, 2020 the Company has not sold any shares under the Purchase Agreement to Lincoln Park. The Company determined that there is a low probability that the equity line will be utilized for the remainder of 2020 due to adverse market circumstances. As a result, the Company fully expensed the $0.3 million of fees in March 2020.

Common Stock Reserved for Future Issuance

Common stock reserved for future issuance consists of the following as of March 31, 2020:

Stock options issued and outstanding	496,452
Restricted stock units issued and outstanding	774,734
Warrants for the purchase of common stock	3,271,875
Authorized for future option and ongoing vesting of award grants	578,379
Authorized for future issuance under ESPP	190,220
Total	5,311,660

8. Income Taxes

For the three months ended March 31, 2020 and 2019, the Company did not record an income tax provision. The U.S. federal and California deferred tax assets generated from the Company's net operating losses have been fully reserved, as the Company believes it is more likely than not the benefit will not be realized.

9. Commitments and Contingencies

Operating Leases

The Company leases its facilities and retail treatment center under noncancelable operating leases which expire on various dates between 2021 and 2025. In July 2019, the Company entered into an office lease agreement to launch an Obalon-branded retail treatment center in San Diego, California, which expires on August 5, 2021. In January 2020, the Company entered into lease agreements for two additional Obalon-branded retail treatment centers in Orange County, California and Sacramento, California, respectively. Under the terms of the facilities and retail center leases, the Company is required to pay its proportionate share of property taxes, insurance and normal maintenance costs. Upon the Company's adoption of ASC 842 as of January 1, 2019, the Company recognized a ROU asset and lease liability for its building lease, assuming a 7.0% discount rate. Any short-term leases defined as 12 months or less or month-to-month leases were excluded and continue to be expensed each month. Total costs associated with short-term leases for the three months ended March 31, 2020 were immaterial.

The Company determines if an arrangement is a lease at inception. The exercise of lease renewal options is at the Company's sole discretion and were not included in the calculation of the Company's lease liability as the Company is not able to determine without uncertainty if the renewal option will be exercised. The depreciable life of assets and leasehold improvements are limited to the expected term, unless there is a transfer of title or purchase option reasonably certain of exercise. The Company's lease agreements do not contain any variable lease payments, residual value guarantees or any restrictive covenants.

The Company's ROU assets represent the right to use an underlying asset for the lease term and lease liabilities represent the obligation to make lease payments arising from the lease. Operating lease ROU assets and liabilities are recognized at commencement date of the lease or the ASC 842 adoption date, whichever is later, based on the present value of lease payments over the lease term. When readily determinable, the Company uses the implicit rate in determining the present value of lease payments, or 7.0%, as of the adoption date. When leases do not provide an implicit rate, the Company uses its incremental borrowing rate based on the information available at the lease commencement date or adoption date, including the lease term. The operating lease ROU asset also includes any lease payments made and excludes lease incentives. Lease expense for lease payments is recognized on a straight-line basis over the lease term.

The Company recorded an immaterial amount of lease liabilities, ROU assets, and interest expense associated with finance leases as of and for the three months ended March 31, 2020. The current and long-term portions of operating and finance lease liabilities are presented within the current portion of lease liabilities and lease liabilities long-term line items on the consolidated balance sheet, respectively. Operating and finance lease ROU assets are presented within the lease right-of-use assets line item on the consolidated balance sheet.

Future minimum annual lease payments under such leases were as follows as of March 31, 2020 (in thousands):

Operating leases:		
Remainder of 2020	$	495
2021		657
2022		261
2023		152
2024		156
2025		57
Total undiscounted lease payments - operating leases		1,778
Finance leases:		
Remainder of 2020		18
2021		24
Total undiscounted lease payments - finance leases		42
Total undiscounted lease payments		1,820
Less: imputed interest		(161)
Lease liability		1,659
Less: current portion of lease liability		(690)
Lease liability, less current portion	$	969

As of March 31, 2020, the Company’s remaining lease term ranges from 1.4 to 5.2 years. Rent expense totaled $0.2 million and $0.1 million for the three months ended March 31, 2020 and 2019, respectively. The Company paid $0.1 million cash payments related to its operating lease agreement for both the three months ended March 31, 2020 and 2019. The Company's weighted average discount rate for leases as of March 31, 2020 was 6.1%.

The treatment center leases in Sacramento and San Diego were terminated on April 29, 2020 and May 27, 2020, respectively as a result in the Company's shift in strategy away from the retail treatment center model in the second quarter of 2020. The Company has not paid rent under its Orange County lease or its lease for its headquarters in Carlsbad, since April 2020. The Company’s landlord in Carlsbad, Gildred Development Company, has since sent a demand letter for rent. Refer to Note 11 for further details.

Supplier Contracts

Pursuant to a supplier agreement entered into in December 2018, the Company is obligated to purchase certain minimum quantities. These costs scale up as the Company's projected manufacturing volume increases. Under the terms of the agreement, the Company can reduce the forecasted minimum quantities and is required to incur a holding fee for items manufactured by the supplier. This represents the one year minimum commitment of approximately $0.1 million as of March 31, 2020.

The Company enters into contracts in the normal course of business with clinical trial sites and clinical supply manufacturing organizations and with vendors for preclinical studies, research supplies and other services and products for operating purposes. These contracts generally provide for termination after a notice period, and, therefore, are cancelable contracts.

Shareholder Lawsuit

On February 14 and 22, 2018, plaintiff stockholders filed class action lawsuits against us and certain of our executive officers in the United States District Court for the Southern District of California (Hustig v. Obalon Therapeutics, Inc., et al., Case No. 3:18-cv-00352-AJB-WVG, and Cook v. Obalon Therapeutics, Inc. et al., Case No. 3:18-cv-00407-CAB-RBB). On July 24, 2018, the court consolidated the lawsuits and appointed Inter-Local Pension Fund GCC/IBT as lead plaintiff. On October 5, 2018, plaintiffs filed an amended complaint. The amended complaint alleges that we and certain of our executive officers made false and misleading statements and failed to disclose material adverse facts about our business, operations, and prospects in violation of Sections 10(b) (and Rule 10b-5 promulgated thereunder) and 20(a) of the Exchange Act. The amended complaint also alleges violations of Section 11 of the Exchange Act arising out of the Company’s initial public offering. The plaintiffs seek damages, interest, costs, attorneys' fees, and other unspecified equitable relief. The underwriters from our initial public offering have also been named as defendants in this case and we have certain obligations under the underwriting agreement to indemnify them for their costs and expenses incurred in connection with this litigation. On September 25, 2019, the court granted in part and denied in part the defendants’ motion to dismiss. The court dismissed the Section 11 claims entirely, without leave to amend, and accordingly dismissed the underwriters and certain directors from the case. The Court also dismissed certain statements from the Section 10 claims. On June 16, 2020, the parties reached a settlement of the securities class action, and they intend to submit a final settlement agreement for court approval. The settlement provides for a payment of $3.15 million to the plaintiffs, and provides that the defendants continue to deny the allegations and claims asserted by the plaintiffs, and are entering into the settlement solely to eliminate the burden and expense of further litigation. The Company expects that any amounts due as part of the settlement will be covered by the Company’s insurance policies.

10. Variable Interest Entity

In conjunction with the Company’s strategic focus to open weight loss treatment centers to provide medical services to patients who wish to lose weight through the Obalon balloon system, the Company entered into a consulting agreement with a lead doctor to open the first treatment center and oversee the treatment center’s activities. The treatment center was opened in September 2019 as a professional corporation (“PC”) in the State of California and, as a result of state regulatory requirements, may not be owned by a corporation. The Company fully funds all the activities of the treatment center and no financial contributions are made by the lead doctor. In addition, the Company is authorized and expected to provide daily oversight of the activities of the center, with the exception of directly providing medical services.

As the PC’s equity investment at risk is not sufficient to permit the entity to finance its activities without subordinated financial support, the PC is considered a variable interest entity. Although the Company does not own any equity interest in the PC, the Company holds the controlling financial interest as the sole funding source for the entity and through the ability to provide

daily oversight. Therefore, the Company was determined to be the primary beneficiary of the PC and consolidated the PC's balances and activity within its condensed consolidated financial statements.

For the three months ended March 31, 2020, the PC recognized $0.3 million of deferred revenue associated with prepaid services at the treatment center, which is fully presented in the condensed consolidated balance sheet of the Company at March 31, 2020.

11. Subsequent Events

Payroll Protection Program Loan

On April 22, 2020, the Company executed a promissory note (the "Note") with Silicon Valley Bank (the "Lender") evidencing an unsecured loan in the aggregate principal amount of $430,047 (the "PPP Loan"), which was made pursuant to the Paycheck Protection Program (the "PPP"). The PPP was established under the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"), which was enacted on March 27, 2020, and is administered by the U.S. Small Business Administration ("SBA"). All the funds under the PPP Loan were disbursed to the Company on April 23, 2020.

The Note provides for a fixed interest rate of one percent per year with a maturity date of April 22, 2022 (the "Maturity Date"). Monthly principal and interest payments due on the PPP Loan are deferred for a six-month period beginning from the date of disbursement of the PPP Loan. The PPP Loan may be prepaid by the Company at any time prior to the Maturity Date with no prepayment penalties or premiums. The Note contains customary event of default provisions.

Under the terms of the CARES Act, PPP loan recipients can apply for and be granted forgiveness for all or a portion of the loans granted under the PPP. Such forgiveness will be subject to approval by the SBA and the Lender and determined, subject to limitations, based on factors set forth in the CARES Act, including verification of the use of loan proceeds for payment of payroll costs and payments of mortgage interest, rent and utilities. In the event the PPP Loan, or any portion thereof, is forgiven, the amount forgiven is applied to outstanding principal. The terms of any forgiveness may also be subject to further regulations and guidelines that the SBA may adopt. The Company will carefully monitor all qualifying expenses and other requirements necessary to attain loan forgiveness; however, no assurance is provided that the Company will obtain forgiveness of the PPP Loan in whole or in part.

The Company intends to use all proceeds from the PPP Loan to retain employees, maintain payroll and make lease and utility payments.

Cancellation of Leases for Obalon-branded Retail Treatment Centers

In April 2020 and May 2020, the Company terminated its lease agreements for the San Diego and Sacramento Obalon-branded retail treatment centers, respectively. The Company has not made any rent payments for its headquarters and manufacturing facility in Carlsbad, CA or for its Company-managed retail treatment center in Orange County, CA since April 2020 and has notified both owners that the Company is taking advantage of the protections it believes are afforded by the relevant mandates related to the COVID-19 crisis. The Company has received a demand letter for payment of rent by the owner of its Carlsbad facility.

Departure of Certain Officers

On May 8, 2020, the Company announced that William Plovanic, age 51, had notified the board of directors of the Company of his resignation from his position as President and Chief Executive Officer of the Company, which will become effective as of the close of business on the date of filing of this quarterly report (the "Effective Date"). Mr. Plovanic will continue to serve as a Class I director of the Company following his resignation as President and Chief Executive Officer.

On May 8, 2020, the Company announced that Andrew Rasdal, the Company's Executive Chairman, has agreed to assume the roles of President and Chief Executive Officer following the Effective Date of Mr. Plovanic's resignation.

Mark. Brister, Chief Technology Officer, and Amy Vandenberg, Chief Clinical, Regulatory and Quality Officer, are expected to resign from the Company on a date to be mutually agreed but expected to be no later than June 30, 2020; upon such resignation, each is expected to continue to serve as a consultant to the Company to be paid on an hourly basis. In connection with their resignation, each executive's retention agreement is expected to be terminated. Additionally, in connection with their

resignation, it is anticipated that Mr. Brister and Ms. Vandenberg will be eligible to receive a performance bonus based on the achievement of performance goals, subject to the timely execution and non-revocation of a general release of claims.

Impairment of Long-Lived Assets and Inventory

During the three months ended March 31, 2020, the Company did not record any COVID-related impairment charges. However, as a result of the Company's second quarter shift in business strategy to pursue reimbursement, we expect to record an impairment charge relating to long-lived assets and inventory during the second quarter ended June 30, 2020. This shift in business strategy occurred subsequent to March 31, 2020. The Company estimates the total impairment charge to be taken in the second quarter ended June 30, 2020 to be in a range between $0.8 million and $1.4 million.

Reduction in Force

On June 16, 2020, the Company notified approximately 25 employees of their termination as part of its steps to significantly reduce expenses in an effort to extend our cash runway to refocus on obtaining coverage and reimbursement from third-party payors and pursuing strategic opportunities. The Company expects to substantially complete the organizational restructuring by June 30, 2020.

ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

This Quarterly Report on Form 10-Q contains forward-looking statements. All statements other than statements of historical fact are "forward-looking statements" for purposes of this Quarterly Report on Form 10-Q. These forward-looking statements may include, but are not limited to, statements regarding our future results of operations and financial position, business strategy, market size, potential growth opportunities, timing and results of preclinical and clinical development activities, selection of specific financial and strategic alternatives, and potential regulatory approval and commercialization of products and product candidates. In some cases, forward looking-statements may be identified by terminology such as "believe," "may," "will," "should," "predict," "goal," "strategy," "potentially," "estimate," "continue," "anticipate," "intend," "could," "would," "project," "plan," "expect," "seek" and similar expressions and variations thereof. These words are intended to identify forward-looking statements.

We have based these forward-looking statements largely on our current expectations and projections about future events and trends that we believe may affect our financial condition, results of operations, business strategy, research and development, short-term and long-term business operations and objectives and financial needs. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described in the "Risk Factors" section and elsewhere in this Quarterly Report on Form 10-Q. Moreover, we operate in a very competitive and rapidly changing environment, and new risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this Quarterly Report on Form 10-Q may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

You should not rely upon forward-looking statements as predictions of future events. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee that the future results, levels of activity, performance or events and circumstances reflected in the forward-looking statements will be achieved or occur. We undertake no obligation to update publicly any forward-looking statements for any reason after the date of this report to conform these statements to actual results or to changes in our expectations, except as required by law.

As used in this Quarterly Report on Form 10-Q, the terms "Obalon," "the Company," "we," "us," and "our" refer to Obalon Therapeutics, Inc. and, where appropriate, its consolidated subsidiary, unless the context indicates otherwise.

You should read the following discussion and analysis of our financial condition and results of operations together with our unaudited condensed consolidated financial statements and related notes included in Part I, Item 1 of this Quarterly Report on Form 10-Q and with our audited consolidated financial statements and related notes thereto for the year ended December 31, 2019, included in our Annual Report on Form 10-K for the year ended December 31, 2019, filed on February 27, 2020.

OVERVIEW

We are a vertically integrated medical device company focused on developing and commercializing innovative medical devices to treat people with obesity. Our current product offering is the Obalon Balloon System, the first and only U.S. Food and Drug Administration, or FDA, approved swallowable, gas-filled intragastric balloon designed to provide progressive and sustained weight loss in patients with obesity. We believe the Obalon Balloon System offers patients and physicians benefits over prior weight loss devices including, but not limited to, clinically meaningful weight loss, a favorable safety profile, improved patient tolerability and comfort, progressive weight loss with durable results, simple and convenient placement, and potentially attractive economics.

The Obalon Balloon System is FDA approved for temporary use to facilitate weight loss in adults with obesity having a body mass index, or BMI, of 30 to 40, or approximately 30 to 100 pounds overweight, who have failed to lose weight through diet and exercise. The system is intended to be used as an adjunct to a moderate intensity diet and behavior modification program. All balloons must be removed six months after the first balloon is placed. We believe the Obalon Balloon System provides a cost-effective, non-surgical and reversible weight loss solution in an outpatient setting.

The Obalon Balloon System consists of a swallowable capsule that contains an inflatable balloon attached to a microcatheter; the Obalon Navigation System console, which is a combination of hardware and software used to track and display the location of the balloon during placement without x-ray; the Obalon Touch Inflation Dispenser, which is a semi-automated, hand-held inflation device used to inflate the balloon once it is placed; and a disposable canister filled with our proprietary mixture of gas.

Placement of a balloon typically occurs in less than 15 minutes and can be accomplished in an outpatient setting without the need for anesthesia or sedation. Patients receive a total of three balloons over the course of eight to 12 weeks and all balloons are removed six months after the first balloon is placed.

In clinical studies, the Obalon Balloon System has demonstrated clinically meaningful weight loss with durable results. In addition, data published and presented from our commercial registry demonstrates greater weight loss in the commercial setting as compared to our pivotal clinical study used to support FDA approval. In our published pivotal SMART trial, patients in the Obalon treatment group lost, on average, approximately twice as much body weight as patients in the sham-control group, with an average of 15.1 pounds of weight loss, resulting in an average 6.9% reduction in total body weight and an average 2.4 point decrease in BMI. 66.7% of patients lost at least 5% of their total body weight (%TBWL) and the study showed statistically significant improvements in cardiometabolic risk factors, including fasting glucose, systolic blood pressure, cholesterol and triglycerides. Patients in the treatment group were followed for 48 weeks and showed, on average, 89.5% of the weight loss achieved during the initial 24 week balloon treatment period was maintained at 48 weeks, or 24 weeks after the balloons were removed.

In December 2018, data from our commercial registry was analyzed, and later published and presented, on more than 1,300 patients at 108 treatment sites. For those patients who received three balloons and at least 20 weeks of therapy, the average weight loss was 21.7 pounds, resulting in 9.9% reduction in total body weight and a 3.5 point decrease in BMI compared to baseline values. Of note, the top quartile of those patients lost an average of 39 pounds, resulting in an average of 16.8% reduction in total body weight and an average of a 6.2 point decrease in BMI compared to baseline values. Furthermore, in May 2019, analysis of data from our commercial registry was updated to include 1,411 total patients from 143 treatment sites in the United States. In this larger data set, for those patients receiving three balloons and at least 20 weeks of therapy, the average weight loss was 21.7 pounds, resulting in a 10.2% reduction in total body weight. Of note, 50.7% of patients lost 10% or more total body weight and 77.9% lost 5% or more total body weight.

We commenced U.S. commercialization of our prior generation Obalon balloon system in January 2017. In February 2019, we commercialized our current generation Obalon Balloon System with the Obalon Touch Inflation Dispenser and our Obalon Navigation System, which together are designed to make balloon placements more reliable, safer, easier and less expensive. The Obalon Navigation System is designed to eliminate the need to use x-ray technology when placing the Obalon balloon.

When we commenced our U.S. commercial launch in 2017, we relied on a small direct sales force to sell our products directly to physicians, who would then sell weight loss treatment packages to their patients that included our balloon therapy, dietary counseling and balloon removal on a non-reimbursed, self-pay basis for patients. In 2019, we began implementing a fundamental change to our commercialization efforts, pursuant to which we eliminated our direct sales force and began establishing Company-owned or managed Obalon-branded retail treatments centers. We also transitioned to a centralized customer support model through which we sold to existing physician customers or new physicians that contacted us directly to acquire the Obalon Balloon System and provided centralized marketing and clinical support to those physicians.

In March 2020, we announced that the overall uncertainty, the restriction on elective procedures and the specific directives issued by the Governor of California as a result of COVID-19 had a significant impact on our business. As a result, we halted sales to new patients in our company-branded retail treatment centers, terminated expansion plans for additional retail centers and subsequently closed the two retail treatment centers we had opened. We also halted manufacturing operations and have not filled orders to U.S. customers or our former international distributor since that time. In June 2020, we temporarily restarted manufacturing on a limited basis to convert our work in progress inventory to finished goods in order to have units available for clinical trials and unexpected physician sales but do not expect to continue manufacturing past June 30, 2020. Additionally, we terminated our contract with Al Danah, our only international distributor.

Given those impacts and the significant concern about an economic recovery that would allow consumers to feel confident enough to spend on a cash-pay procedure like the Obalon Balloon System, we do not currently plan to re-open our retail treatment centers, re-initiate our retail treatment center expansion plans, or plan to ship orders to U.S. customers or our former international distributor. As a result, we would not expect to report any meaningful revenue for the foreseeable future.

We continue to believe the Obalon Balloon System can provide significant benefits to patients and value to the healthcare system. However, treatment with the Obalon Balloon System is not currently covered by any kind of private or public health insurance. We believe this has contributed to slow commercial adoption of the product and the procedure, as physicians are not reimbursed for treating patients with the Obalon therapy and patients must pay solely out of pocket for the Obalon Balloon System and the placement procedure. With that in mind, we are initiating efforts to explore obtaining third-party payor reimbursement and coverage for the Obalon Balloon System. We believe that reimbursement and coverage for the Obalon Balloon System could significantly expand our market opportunity. There are more than 70 million adults in the United States

who are obese and over 11 million adults in the United States who have Type 2 diabetes and are obese. Moreover, the COVID-19 pandemic has further highlighted the personal health and economics costs of the obesity epidemic in the United States. Recently published data suggest that next to age, the underlying health conditions of obesity and obesity-related health conditions (hypertension and diabetes) are the greatest predictors of COVID-19 hospitalizations and death. We believe the Obalon Balloon System could help reduce third-party payors' costs and improve patient care, and we intend to explore how additional data may be collected to demonstrate the economic and clinical evidence necessary to secure reimbursement. However, obtaining reimbursement is never certain and can take many years to achieve, and if achieved, may not be determinative of our success. If our initial efforts with payors begin to bear success, we would expect to need to raise additional capital to support those efforts.

To enable us to pursue this reimbursement strategy, we are taking further steps to significantly reduce expenses in an effort to extend our cash runway. We have significantly reduced the organization to only essential personnel and expect that, after a transition, only two full-time employees will remain: Andy Rasdal, the current Executive Chairman of the Board, who effective following the date of this quarterly report will reassume the role of CEO and Nooshin Hussainy, who will remain Chief Financial Officer. During this time we also plan to continue to explore other potential business options and strategic alternatives.

We generated total revenue of $0.8 million and $1.8 million for the three months ended March 31, 2020 and 2019, respectively. For the three months ended March 31, 2020 and 2019, our net loss was $5.3 million and $8.3 million, respectively. We have not been profitable since inception, and as of March 31, 2020, our accumulated deficit was $177.7 million. On April 22, 2020, we executed a promissory note in favor of Silicon Valley Bank evidencing an unsecured loan in the aggregate principal amount of $430,047, which was made pursuant to the Paycheck Protection Program and which we refer to as the PPP Loan. The Paycheck Protection Program was established under the Coronavirus Aid, Relief and Economic Security Act , which was enacted on March 27, 2020, and is administered by the U.S. Small Business Administration. All the funds under the PPP Loan were disbursed to us on April 23, 2020.

Our consolidated financial statements as of and for the three months ended March 31, 2020 have been prepared on the basis that we will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. Based on our cash balances and recurring losses since inception, there is substantial doubt about our ability to continue as a going concern Our ability to continue as a going concern, and correspondingly to execute on our business plan and strategy, is dependent upon our ability to accomplish one or more of the following: raise additional capital in the very near term to fund our ongoing operations or engage in a strategic alternative. If we are not able to accomplish one or more of these goals in the near term, there is a high likelihood we may need to sell all or portions of our business, liquidate all or some of our assets or seek bankruptcy protection, which could result in significant decrease in value for all stakeholders.

COMPONENTS OF OUR RESULTS OF OPERATIONS

Revenue

For the three months ended March 31, 2020 and 2019, revenue reflects sales of our Obalon Balloon System directly to physicians and institutions in the United States, sales of our Obalon Balloon System to our Middle East distributors, and sales from patients treated at our Company-managed Obalon-branded retail center.

We do not currently plan to re-open our retail treatment centers, re-initiate our retail treatment center expansion plans, restart manufacturing operations, or plan to ship orders to United States customers or our former international distributor. As a result, we would not expect to report any meaningful revenue for the foreseeable future.

To date we have experienced limited penetration of the U.S. market, and there are many factors that may impact our future ability to successfully develop the intragastric balloon market (which is currently small and immature), including our ability to gain acceptance of our current Obalon Balloon System and its future iterations by doctors and patients, our ability to scale production in a cost effective manner or if at all should we restart manufacturing operations, the emergence of competing products, actions by regulatory bodies, and general economic trends. The amount of revenue and timing of revenue recognition may also be impacted by any future commercial model and customer incentive programs we decide to offer and the channels through which the revenue is derived.

Cost of revenue and gross margin

Cost of revenue consists primarily of costs related to the direct materials and direct labor that are used to manufacture our products and the overhead costs that directly support manufacturing. Currently, a significant portion of our cost of revenue consists of manufacturing overhead, which is mostly fixed in nature. These overhead costs include the costs of compensation for operations management, engineering support, material procurement and inventory control personnel, outside consultants, production related supplies, allocated quality assurance and facilities costs, and depreciation on production equipment. In the foreseeable future, we expect cost of revenue to be higher than revenue as we focus on reimbursement activities rather than commercial sales.

We calculate gross margin as gross profit divided by revenue. Our gross margin has been and will continue to be affected by a variety of factors, primarily production volumes, geographic mix, product mix, manufacturing costs, product yields, headcount and cost-reduction strategies. We expect gross margin to fluctuate from quarter to quarter due to variability of our recognized revenue, our adoption of new manufacturing processes and technologies, changes in our manufacturing capacity, and discontinuation of obsolete products. We have experienced challenges in our ability to produce finished goods, which may impact our ability to meet the demands for future commercial and clinical trials.

In March 2020, we suspended manufacturing of the Obalon Balloon System due to the ongoing COVID-19 pandemic. We restarted manufacturing on a limited basis in June 2020 to convert the small amount of work-in-progress inventory that we currently have to finished goods, in order to have units available for clinical trials and unexpected physician sales but do not expect to continue manufacturing past June 30, 2020.

Research and development expenses

Research and development, or R&D, expenses consist of the cost of engineering, clinical affairs, regulatory affairs and quality assurance associated with developing our Obalon Balloon System. R&D expenses consist primarily of:

- employee-related expenses, including salaries, benefits, travel expense and stock-based compensation expense;
- cost of outside consultants who assist with technology development, regulatory affairs, clinical affairs and quality assurance;
- cost of clinical trial activities performed by third-party medical partners; and
- cost of facilities, depreciation on R&D equipment and supplies used for internal research and development and clinical activities.

We expense R&D costs as incurred. We expect R&D expenses for the second quarter of 2020 to be lower than historical averages due to the suspension of business operations. Going forward, we expect to incur R&D expenses associated with ongoing post-approval studies and with developing the clinical data needed to support reimbursement.

Selling, general and administrative expenses

Selling, general and administrative, or SG&A, expenses consist of employee-related expenses, including salaries, commissions, benefits, travel expense and stock-based compensation expense. Other SG&A expenses include promotional and advertising activities, marketing, conferences and trade shows, professional services fees, including legal fees, accounting fees, insurance costs, general corporate expenses, and allocated facilities-related expenses. We expect SG&A expenses to significantly decrease starting in the second quarter of 2020 due to suspension of business operations and the reduction of employee personnel to only certain key employees. SG&A expenses are expected to remain significantly lower than historical averages until such time when business operations may resume.

RESULTS OF OPERATIONS

	Three Months Ended March 31,	
	2020	2019
	(in thousands)	
Condensed consolidated statements of operations data:		
Revenue	$ 780	$ 1,775
Cost of revenue	541	1,232
Gross profit	239	543
Operating expenses:		
Research and development	1,257	2,439
Selling, general and administrative	3,893	6,204
Total operating expenses	5,150	8,643
Loss from operations	(4,911)	(8,100)
Interest income (expense), net	35	(190)
Other expense, net	(385)	—
Net loss	$ (5,261)	$ (8,290)

Comparison of three months ended March 31, 2020 and 2019

Revenue. Revenue decreased $1.0 million to $0.8 million during the three months ended March 31, 2020, compared to $1.8 million during the three months ended March 31, 2019. During the second quarter of 2019, we fundamentally changed our commercialization efforts and restructured operations, eliminating the field sales force and transitioning to a centralized customer support model to support our existing physician customers. We launched the first Obalon branded retail center during September 2019 as part of our strategic shift toward a retail treatment center business model and opened our second treatment center in February 2020. As a result of the shift in business strategy from the prior year, revenue from U.S sales decreased $0.6 million stemming from selling fewer balloons in the United States. Furthermore, sales to our Middle East distributors declined to $0.2 million, a $0.4 million decrease over 2019 sales outside the United States. We have subsequently ceased all commercial operations and do not expect any material revenue for the foreseeable future.

Cost of revenue and gross profit. Cost of revenue decreased $0.7 million to $0.5 million during the three months ended March 31, 2020, compared to $1.2 million during the three months ended March 31, 2019. The decrease in cost of revenue was primarily driven by our shift towards the new retail center business model, which included reducing the volume of product sold to physicians and institutions. As a result of the change in strategy and reduced sales, our cost of revenue decreased $0.4 million. The workforce restructuring which occurred in the second quarter of 2019 resulted in a reduction in payroll and stock based compensation that caused an additional $0.3 million reduction in cost of revenue during the three months ended March 31, 2020 compared to the prior period.

Research and development expenses. R&D expenses decreased $1.2 million to $1.3 million during the three months ended March 31, 2020, compared to $2.4 million during the three months ended March 31, 2019. This decrease was due primarily to decreases of $0.5 million in R&D product development expenses, a decrease of $0.4 million payroll related expenses, a decrease of $0.2 million in clinical trial, consulting, and outside processing expenses, and a decrease of $0.1 million in stock based compensation expense.

Selling, general and administrative expenses. SG&A expenses decreased $2.3 million to $3.9 million during the three months ended March 31, 2020, compared to $6.2 million during the three months ended March 31, 2019. The change from the prior period was primarily driven by a decrease of $1.7 million in payroll and stock based compensation expenses, a decrease of $0.7 million in marketing and advertising expense, a decrease of $0.2 million in commissions expense, a decrease of $0.2 million in travel expense, and a decrease of $0.1 million in bad debt expense from fewer sales. These decreases were partially offset by an increase of $0.5 million in insurance, benefits, administrative and license and recruiting expenses and $0.2 million in consulting, tax and audit expense.

Interest income (expense), net. Interest income (expense), net increased to income of $35,000 for three months ended March 31, 2020 compared to an expense of $0.2 million during the prior period. This change was attributable to us paying off all outstanding debt in the third quarter of 2019.

Other Expense, net. Other expense, net increased $0.4 million during the three months ended March 31, 2020, compared to zero for the prior period. This increase was attributable to certain equity issuance costs which were fully expensed during the first quarter of 2020.

LIQUIDITY AND CAPITAL RESOURCES

As of March 31, 2020, we had cash and cash equivalents of $8.9 million and an accumulated deficit of $177.7 million. Our primary sources of capital have been private placements of our preferred securities, the sale of common stock in our initial public offering, or IPO, in October 2016, a subsequent private placement in August 2018, and various equity financings in 2019 including a follow-on offering in August 2019, and, to a lesser extent, debt financing arrangements. We are continuing to significantly reduce expenditures to extend our cash runway during the suspension of our business operations. We believe our current cash and cash equivalents as of March 31, 2020 are sufficient to fund our operations through the end of 2020.

In late 2019, a novel strain of coronavirus, COVID-19, was reported to have surfaced in Wuhan, China. Since then, COVID-19 has spread globally. To date, COVID-19 has had, and will continue to have, an adverse impact on our operations and expenses as a result of the preventive and precautionary measures that we, our customers, other businesses, and governments are taking, including the deferral of elective medical procedures and diversion of capital and other resources. In March 2020, we suspended all new patient treatments at our Obalon-branded retail centers due to the ongoing COVID-19 pandemic. We are taking further steps to significantly reduce expenses in an effort to extend our cash runway while we evaluate potential business options and strategic alternatives that may be available when and if the current COVID-19 crisis stabilizes and the economy rebounds. We have significantly reduced the organization to only essential personnel and expect that, after a transition, only two full-time employees will remain. All Obalon-branded retail centers have been shutdown with no intention to reopen, and we have halted plans for future expansion. We do not expect to restart shipments to U.S. customers and have terminated the agreement with our international distributor, Al Danah Medical Company W.L.L. As we reduce our personnel to two full time employees, we plan to continue to seek strategic alternatives that may be in the best interest of our stockholders, while we pursue third-party payor reimbursement and coverage for the Obalon Balloon System. If we are unsuccessful in those two endeavors over the next several months, there is a high likelihood we may need to sell all or portions of our business, liquidate all or some of our assets or seek bankruptcy protection which could result in significant decrease in value for all stakeholders.

As a result of the above factors, there is substantial doubt about our ability to continue as a going concern for the twelve months following the issuance date of the unaudited interim condensed consolidated financial statements for the three months ended March 31, 2020. The accompanying condensed consolidated financial statements have been prepared assuming we will continue to operate as a going concern, which contemplates the realization of assets and settlement of liabilities in the normal course of business, and do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result from uncertainty related to our ability to continue as a going concern.

On April 22, 2020, we executed a promissory note in favor of Silicon Valley Bank evidencing an unsecured loan in the aggregate principal amount of $430,047, which was made pursuant to the Paycheck Protection Program and which we refer to as the PPP Loan. The Paycheck Protection Program was established under the Coronavirus Aid, Relief and Economic Security Act , which was enacted on March 27, 2020, and is administered by the U.S. Small Business Administration. All the funds under the PPP Loan were disbursed to us on April 23, 2020.

Public Offering

On August 1, 2019, we entered into an underwriting agreement with A.G.P./Alliance Global Partners, as underwriter, in connection with a public offering of our securities, pursuant to which we issued and sold (i) 2,427,500 shares of our common stock (including 412,500 shares of common stock pursuant to the partial exercise of the underwriters' over-allotment option to purchase 562,500 additional shares), (ii) pre-funded warrants to purchase up to 1,735,000 shares of our common stock , (iii) accompanying warrants to purchase up to 3,234,375 shares of our common stock (including the exercise in full of the underwriters' over-allotment option to purchase additional warrants to purchase 421,875 shares of common stock) and (iv) an additional warrant to the underwriters for the purchase of 37,500 shares of our common stock resulting in net proceeds from the offering of approximately $14.7 million after deducting underwriting discounts and commissions and offering expenses payable by us. Each share of common stock and each prefunded warrant was sold together with a purchase warrant entitling the holder to purchase 0.75 of a share of common stock. The common stock and accompanying purchase warrants were sold

together at a public offering price of $4.00, and the pre-funded warrant and accompanying purchase warrants were sold at a public offering price of $3.999. The purchase warrants were immediately exercisable upon issuance, will expire on August 6, 2024 and have an exercise price of $4.40 and the underwriter warrant has an exercise price of $5.00 per share, in each case subject to adjustment in the event of stock dividends, stock splits, stock combinations, reclassifications, reorganizations or similar events. The underwriter warrant became exercisable in February 2020 and expires on August 6, 2024. All of the pre-funded warrants were exercised during the third quarter of 2019. None of the purchase or underwriter warrants have been exercised as of March 31, 2020.

Lincoln Park Purchase Agreement

On February 5, 2020, we entered into a new purchase agreement (the "Purchase Agreement") and registration rights agreement (the "Registration Rights Agreement") with Lincoln Park Capital Fund, LLC ("Lincoln Park"), pursuant to which Lincoln Park has committed to purchase up to $15.0 million of our common stock, $0.001 par value per share (the "Common Stock"). The new Purchase Agreement replaces an existing purchase agreement, dated December 27, 2018, by and between us and Lincoln Park, pursuant to which Lincoln Park committed to purchase up to $20.0 million of our Common Stock. In connection with entering into the new Purchase Agreement, the Company and Lincoln Park terminated the prior purchase agreement, effective February 5, 2020.

Under the terms and subject to the conditions of the Purchase Agreement, we have the right, but not the obligation, to sell to Lincoln Park, and Lincoln Park is obligated to purchase up to $15.0 million of our Common Stock. Such sales of common stock by us, if any, will be subject to certain limitations, and may occur from time to time, at our sole discretion, over the 36-month period commencing on February 28, 2020 date that a registration statement covering the resale of shares of Common Stock that have been and may be issued under the Purchase Agreement, which we agreed to file with the Securities and Exchange Commission (the "SEC") pursuant to the Registration Rights Agreement, was declared effective by the SEC and a final prospectus in connection therewith was filed and the other conditions set forth in the purchase agreement were satisfied (such date on which all of such conditions are satisfied, the "Commencement Date").

We incurred approximately $0.3 million of legal, accounting, and other fees related to the offering. As of March 31, 2020 we have not sold any shares under the Purchase Agreement to Lincoln Park. We determined that there is a low probability that the equity line will be utilized for the remainder of 2020 due to adverse market circumstances. As a result, we fully expensed the $0.3 million of fees in March 2020.

CASH FLOWS

The following table provides a summary of the net cash flow activity for each of the periods set forth below (in thousands):

	Three Months Ended March 31,	
	2020	**2019**
Net cash (used in) provided by:		
Operating activities	$ (4,814)	$ (9,642)
Investing activities	(326)	2,531
Financing activities	—	10,608
Net increase in cash and cash equivalents	$ (5,140)	$ 3,497

Net cash used in operating activities

During the three months ended March 31, 2020, net cash used in operating activities was $4.8 million, consisting primarily of a net loss of $5.3 million, an increase in net operating assets of $0.2 million. These items were partially offset by non-cash charges of $0.7 million, consisting primarily of stock-based compensation expense, depreciation expense, and right-of-use asset amortization expense.

During the three months ended March 31, 2019, net cash used in operating activities was $9.6 million, consisting primarily of a net loss of $8.3 million, and an increase in net operating assets of $2.7 million primarily related to a decrease in accrued

compensation offset and an increase in accounts receivable, partially offset by a decrease in other current assets. These items were partially offset by non-cash charges of $1.4 million, consisting of stock-based compensation expense and depreciation expense.

Net cash provided by (used in) investing activities

During the three months ended March 31, 2020, net cash used in investing activities was $0.3 million, consisting primarily of capital expenditures.

During the three months ended March 31, 2019, net cash provided by investing activities was $2.5 million, consisting primarily of maturities of short-term investments.

Net cash provided by financing activities

Cash provided by financing activities was immaterial for the three months ended March 31, 2020

During the three months ended March 31, 2019, net cash provided by financing activities was $10.6 million, consisting primarily of proceeds from the draw down on the second tranche under our loan and security agreement with Pacific Western Bank of $10.0 million as well as proceeds from issuance of common stock, net of issuance costs of $0.6 million.

OFF-BALANCE SHEET ARRANGEMENTS

We currently have no off-balance sheet arrangements, such as structured finance, special purpose entities or variable interest entities.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

Our management's discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles, or U.S. GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenue generated and expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. We believe that the accounting policies related to revenue recognition, accrued research and development costs, stock-based compensation expense and income taxes are critical to understanding our historical and future performance, as these policies relate to the more significant areas involving management's judgments and estimates.

There have been no significant changes in our critical accounting policies and estimates as compared to the critical accounting policies and estimates disclosed in Management's Discussion and Analysis of Financial Condition and Operations included in the Annual Report on Form 10-K for the year ended December 31, 2019, filed on February 27, 2020.

RECENT ACCOUNTING PRONOUNCEMENTS

Except as described in Note 2 to our Unaudited Interim Condensed Consolidated Financial Statements under the heading "Recently Issued and Adopted Accounting Pronouncements", there have been no new accounting pronouncements or changes to accounting pronouncements during the three months ended March 31, 2020, as compared to the recent accounting pronouncements described in the Company's Annual Report on Form 10-K for the year ended December 31, 2019, filed on February 27, 2020.

JOBS ACT ACCOUNTING ELECTION

In April 2012, the JOBS Act was enacted. Section 107 of the JOBS Act provides that an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards. Thus, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected not to avail ourselves of this extended transition period and, as a result, we will adopt new or revised accounting standards on the relevant dates on which adoption of such standards is required for other public companies.

ITEM 3. Quantitative and Qualitative Disclosures about Market Risk

Not applicable.

ITEM 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our principal executive officer and our principal financial officer, evaluated, as of the end of the period covered by this Quarterly Report on Form 10-Q, the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act). Based on that evaluation, our principal executive officer and principal financial officer have concluded that as of March 31, 2020, our disclosure controls and procedures were effective at the reasonable assurance level. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and our management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the quarter ended March 31, 2020 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II-OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

From time to time, we are involved in legal proceedings in the ordinary course of business.

On February 14 and 22, 2018, plaintiff stockholders filed class action lawsuits against us and certain of our executive officers in the United States District Court for the Southern District of California (Hustig v. Obalon Therapeutics, Inc., et al., Case No. 3:18-cv-00352-AJB-WVG, and Cook v. Obalon Therapeutics, Inc. et al., Case No. 3:18-cv-00407-CAB-RBB). On July 24, 2018, the court consolidated the lawsuits and appointed Inter-Local Pension Fund GCC/IBT as lead plaintiff. On October 5, 2018, plaintiffs filed an amended complaint. The amended complaint alleges that we and certain of our executive officers made false and misleading statements and failed to disclose material adverse facts about our business, operations, and prospects in violation of Sections 10(b) (and Rule 10b-5 promulgated thereunder) and 20(a) of the Exchange Act. The amended complaint also alleges violations of Section 11 of the Exchange Act arising out of the Company's initial public offering. The plaintiffs seek damages, interest, costs, attorneys' fees, and other unspecified equitable relief. The underwriters from our initial public offering have also been named as defendants in this case and we have certain obligations under the underwriting agreement to indemnify them for their costs and expenses incurred in connection with this litigation. On September 25, 2019, the court granted in part and denied in part the defendants' motion to dismiss. The court dismissed the Section 11 claims entirely, without leave to amend, and accordingly dismissed the underwriters and certain directors from the case. The Court also dismissed certain statements from the Section 10 claims. On June 16, 2020, the parties reached a settlement of the securities class action, and they intend to submit a final settlement agreement for court approval. The settlement provides for a payment of $3.15 million to the plaintiffs, and provides that the defendants continue to deny the allegations and claims asserted by the plaintiffs, and are entering into the settlement solely to eliminate the burden and expense of further litigation. The Company expects that any amounts due as part of the settlement will be covered by the Company's insurance policies.

ITEM 1A. Risk Factors

Investing in our common stock involves a high degree of risk. Before making your decision to invest in shares of our common stock, you should carefully consider the risks described below, together with the other information contained in this Quarterly Report on Form 10-Q, including our unaudited interim condensed consolidated financial statements and the related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations." The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that affect us. If any of the following risks actually occurs, our business, financial condition, results of operations and future growth prospects could be materially and adversely affected. The market price of our common stock would likely decline, and you could lose all or part of your investment.

RISKS RELATED TO OUR BUSINESS

We have suspended or terminated essentially all of our commercial efforts, shut down our manufacturing operations and terminated nearly all of our employees, and we cannot assure you when, if ever, these efforts will recommence.

Our commercial operations expose us to risks associated with public health crises and outbreaks of epidemic, pandemic, or contagious diseases, such as the current outbreak of a novel strain of coronavirus (COVID-19). To date, COVID-19 has had, and is expected to continue to have, an adverse impact on our operations, including our product sales, manufacturing, supply chains, and our expenses, including as a result of preventive and precautionary measures that we, other businesses, and governments are taking. Largely as a result of the COVID-19 crisis, we have permanently closed our two Obalon-branded or managed retail weight loss centers, suspended future expansion plans for new retail centers, stopped shipping product to all U.S. customers, terminated our agreement with our only international distributor, and terminated our sales and marketing organizations. We have also shut down our manufacturing operations, including terminating all manufacturing and related support personnel. Most recently, we terminated all but a few essential employees. These terminations included key long-time senior executives and other functional personnel with deep knowledge and expertise important to our business that has been acquired and developed over many years. We do not expect to restart any of these operations unless we are able to secure reimbursement from third-party payors for our products and obtain adequate funding to continue operations and establish new commercial relationships. We cannot assure you when, if ever, we will achieve any of these objectives and we do not expect to generate any revenue unless and until we can restart.

Even if we are able to obtain reimbursement and adequate funding to restart commercial operations, we would need to hire and train an entirely new workforce, including manufacturing, sales and marketing and administrative personnel. We would also need to requalify all aspects of our manufacturing operations. These efforts would take considerable time and we cannot assure you that we would be able to identify, hire and train sufficient personnel with the training and experience necessary to restart and operate the business.

There are many uncertainties regarding COVID-19, including governmental and public health responses and the unknown duration and extent of economic disruption. Due to the uncertainty surrounding COVID-19, we do not currently plan to re-open our retail treatment centers, re-initiate our retail treatment center expansion plans, restart manufacturing operations or to ship orders to U.S. customers or our former international distributor. Despite our efforts to manage and remedy these impacts on us, their ultimate impact also depends on factors beyond our knowledge or control, including the duration and severity of the COVID-19 outbreak as well as third-party actions taken to contain its spread and mitigate its public health effects. However, based on the current state of the pandemic in the United States and abroad, the disease has already disrupted our operations and had a material adverse effect on our business, results of operations, financial condition, cash flows and stock price, as well heightened many of the risks described elsewhere in the "Risk Factors" section of this Periodic Report on Form 10-Q.

We were unable to identify a strategic transaction that the board of directors believed to be in the best interest of stockholders

We engaged a financial advisor to identify and evaluate possible financial and strategic alternatives and their implications for us. We were unable to identify a strategic or financing transaction that the board of directors believed to be in the best interest of our stockholders. As a result, we may not have enough available cash to continue as an ongoing enterprise and there is a high likelihood we may need to sell all or portions of our business, liquidate all or some of our assets or seek bankruptcy protection which could result in significant decrease in value for all stakeholders.

The report of our independent registered public accounting firm contains an explanatory paragraph indicating substantial doubt about our ability to continue as a going concern.

Our operations have consumed substantial amounts of cash since inception. We have announced that we do not currently plan to re-open our Company-branded treatment centers, restart manufacturing operations, or ship orders to our U.S. customers or international distributor. As a result, we do not anticipate any material revenue for the foreseeable future. Additionally, we will continue to incur costs as a result of operating as a public company. We believe our cash and cash equivalents as of March 31, 2020 are sufficient to fund our remaining operations only through the end of 2020. The audit report of our independent registered public accounting firm covering the December 31, 2019 consolidated financial statements contains an explanatory paragraph that states that our recurring losses from operations and liquidity position raises substantial doubt about our ability to continue as a going concern. This going concern opinion could materially limit our ability to raise additional funds through the issuance of new debt or equity securities or otherwise. Future reports on our financial statements may also include an explanatory paragraph with respect to our ability to continue as a going concern. To date, our operating losses have been funded primarily from outside sources of invested capital and gross profits.

The effects of COVID-19 on our business have also negatively impacted our liquidity position and operations, and have also contributed to the doubt about our ability to continue as a going concern.We cannot fully determine the extent to which COVID-19 may continue to impact our operations and liquidity position due to facts and circumstances that are beyond our knowledge or control.The perception that we may not be able to continue as a going concern may cause third parties including suppliers, customers, and employees to terminate their respective relationships with us due to concerns about our ability to meet our contractual obligations, which could have a material adverse effect on our business.

Our ability to continue as a going concern, and correspondingly to execute on our business plan and strategy, is dependent upon our ability to accomplish one or more of the following: raise additional capital in the very near term to fund our ongoing operations or engage in a strategic alternative. If we are not able to accomplish one or more of these goals in the near term, there is a high likelihood we may need to sell all or portions of our business, liquidate all or some of our assets or seek bankruptcy protection which could result in significant decrease in value for all stakeholders

If we are unable to secure additional financing on favorable terms, or at all, we could be forced to sell all or portions of our business, liquidate all or some of our assets or seek bankruptcy protection to protect stakeholder value.

Given the recent changes to drastically reduce our organizational structure and eliminate our commercial operations, we anticipate that our cash and cash equivalents as of March 31, 2020 are sufficient to fund our operations through the end of 2020. If we are not able to raise capital to meet our needs, we will not be able to support any ongoing operations and may not be able to settle all of our liabilities. We have actively reviewed financial and strategic alternatives, including debt and equity financing, whole or partial sale of the company and a reverse merger in order to meet our capital needs and financial obligations, and increase shareholder value, and to date we have been unable to identify a viable alternative for capital raising. As a result, adequate funding may not be available to us on acceptable terms, or at all.

In February 2020, we implemented a new purchase agreement with Lincoln Park Capital Fund, LLC, or Lincoln Park. Pursuant to the new purchase agreement with Lincoln Park, or the Lincoln Park Purchase Agreement, Lincoln Park has committed to purchase up to $15.0 million of our common stock from time to time over a 36-month period. The number of shares we may sell to Lincoln Park on any single business day in a Regular Purchase is 150,000, but that amount may be increased to up to 250,000 shares of our common stock, depending on the market price of our common stock at the time of sale and subject to a maximum limit of $1,000,000 per Regular Purchase. Depending on the prevailing market price of our common stock, we may not be able to sell shares to Lincoln Park for the maximum $15.0 million over the term of the Lincoln Park Purchase Agreement. In addition, under the rules of the Nasdaq Capital Market, in no event may we issue more than 19.99% of our shares outstanding under the Lincoln Park Purchase Agreement unless we obtain stockholder approval or an exception pursuant to the rules of the Nasdaq Capital Market is obtained to issue more than 19.99%. This limitation will not apply in certain limited circumstances as set out in the Lincoln Park Purchase Agreement. We have not sold any shares to Lincoln Park in the first quarter of 2020 under the current Purchase Agreement. We are not required or permitted to issue any shares of common stock under the Purchase Agreement if such issuance would breach our obligations under the rules or regulations of the Nasdaq Global Market. In addition, Lincoln Park will not be required to purchase any shares of our common stock if such sale would result in Lincoln Park's beneficial ownership exceeding 9.99% of the then outstanding shares of our common stock. Given the limitations under this arrangement, we do not believe it is adequate to provide sufficient funds for us to continue as an on-going concern.

Even if we are able to raise additional capital through the sale of equity or convertible debt securities, the ownership interest of our stockholders is likely to be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect existing stockholders' rights. Moreover, debt and equity financings, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as redeeming our shares, making investments, incurring additional debt, making capital expenditures, declaring dividends or placing limitations on our ability to acquire, sell or license intellectual property rights and other operating restrictions that could negatively impact our ability to conduct our business.

If we are unable to obtain sufficient funds on acceptable terms or in a timely manner we will be forced to take additional actions, including attempting to sell all or portions of our business, liquidating all or some of our assets or seeking bankruptcy protection.

Our shift to a commercial strategy based on coverage and reimbursement by third-party payors may not be successful and will subject us to new risks, some of which we may not yet have identified.

We are currently developing a strategy to obtain coverage and reimbursement from third-party payors, which we believe could address one of the largest barriers to patient and physician adoption of the Obalon Balloon System. Historically, we have utilized both a direct to physician model and a Company-managed Obalon-branded retail treatment center strategy. Both of these commercial strategies utilized a patient cash-pay model, with varying degrees of success. We cannot assure you that this new strategy will be successful nor which delivery model to the patient will be utilized in the future should we be able to obtain coverage and reimbursement from third-party payors.

However, payors may refuse to provide coverage and reimbursement or change their coverage and reimbursement policies for intragastric balloon products as a category and/or for other obesity treatments and procedures, and these changes could negatively impact our business. No uniform policy of coverage and reimbursement for products exists among third-party payors and coverage and reimbursement levels for products can differ significantly from payor to payor. As a result, the coverage determination process is often a time consuming and costly process that may require us to provide scientific and clinical support for the use of our products to each payor separately, with no assurance that coverage and adequate reimbursement will be applied consistently or obtained in the first instance.

Completion of clinical trials necessary to support coverage and reimbursement could take several years or more. We cannot provide any assurance that we will successfully, or in a timely manner, enroll clinical trials, that our clinical trials will meet

their primary endpoints or that such trials or their results will be accepted by third-party payors as sufficient to support coverage and reimbursement. Successful results of predecessor clinical trial results may not be replicated in subsequent clinical trials. Additionally, one or more third-party payors may disagree with our analyses and interpretation of the data from any clinical trial we undertake, or may find the clinical trial design, conduct, monitoring, or results unreliable or inadequate to support coverage and reimbursement. If we are unable to develop the clinical support needed to establish coverage and reimbursement, we may be unable to sell our products.

To contain costs of new technologies, governmental healthcare programs and third-party payors are increasingly scrutinizing new and existing treatments by requiring extensive evidence of favorable clinical outcomes. Even if we are successful in obtaining coverage from third-party payors for the Obalon Balloon System or procedures using the product, physicians may not purchase the Obalon Balloon System if they do not receive sufficient reimbursement from these payors for the cost of the product or procedures using our product. If government and other third-party payors do not provide coverage or adequate reimbursement levels for the Obalon Balloon System or procedures using the product, the demand for the Obalon Balloon System will not increase and/or create additional pricing pressure for us, either of which could adversely impact our business and financial condition.

If we are unable to reestablish commercial operations, including sales, marketing and distribution capabilities, either on our own or in collaboration with third parties, we may not be successful in commercializing our products.

We terminated all of our commercial personnel and no longer have a functioning infrastructure for the sales, marketing, or distribution of any product, and the cost of reestablishing and maintaining such an organization may exceed the cost-effectiveness of doing so. In order to market our product, we must build our sales, distribution, marketing, managerial and other nontechnical capabilities or make arrangements with third parties to perform these services.

There are significant expenses and risks involved with establishing our own sales, marketing and distribution capabilities, including our ability to hire, retain and appropriately incentivize qualified individuals, generate sufficient sales leads, provide adequate training to sales and marketing personnel, and effectively manage geographically dispersed sales and marketing teams.

Factors that may inhibit our efforts to commercialize our products on our own include:

- our inability to recruit, train and retain adequate numbers of effective sales and marketing personnel;
- our inability to regain customer confidence or recover market share that may have been ceded to competitors or other intragastric balloon technology;
- the inability of sales personnel to obtain access to physicians or attain adequate numbers of physicians to prescribe any drugs;
- the inability to negotiate with payors regarding reimbursement for our products; and
- unforeseen costs and expenses associated with creating an independent sales and marketing organization.

If we choose to enter into and maintain collaborative relationships for such sales, marketing and distribution capabilities, we would be highly dependent upon the collaborator’s strategic interest in our products, and that collaborator’s ability to successfully market and sell the product. To the extent that we depend on third parties for marketing and distribution, any revenue we receive will depend upon the efforts of such third parties, and there can be no assurance that such efforts will be successful.

If we are unable to establish adequate sales, marketing, and distribution capabilities, either on our own or in collaboration with third parties, we will not be successful in commercializing our products and may not become profitable. We may be competing with many companies that have extensive and well-funded marketing and sales operations. Without an internal team or the support of a third party to perform marketing and sales functions, we may be unable to compete successfully against these companies.

We have received funding under the Coronavirus Aid, Relief and Economic Security (CARES) Act

On April 22, 2020, we executed a promissory note in favor of Silicon Valley Bank evidencing an unsecured loan in the aggregate principal amount of $430,047, which was made pursuant to the Paycheck Protection Program, or the PPP. The PPP was established under the CARES Act, which was enacted on March 27, 2020, and is administered by the U.S. Small Business Administration, or the SBA. All the funds under the loan were disbursed to us on April 23, 2020. The Company intends to use all proceeds from the loan to retain employees, maintain payroll and make lease and utility payments.

The promissory note provides for a fixed interest rate of one percent per year with a maturity date of April 22, 2022. Monthly principal and interest payments due on the loan are deferred for a six-month period beginning from the date of disbursement. The loan may be prepaid by the Company at any time prior to April 22, 2022 with no prepayment penalties or premiums.

Under the terms of the CARES Act, loan recipients can apply for and be granted forgiveness for all or a portion of the loans granted under the PPP. Such forgiveness will be subject to approval by the SBA and the lender and determined, subject to limitations, based on factors set forth in the CARES Act, including verification of the use of loan proceeds for payment of payroll costs and payments of mortgage interest, rent and utilities. In the event the loan, or any portion thereof, is forgiven, the amount forgiven is applied to outstanding principal. The terms of any forgiveness may also be subject to further regulations and guidelines that the SBA may adopt. If the loan is not forgiven, we will be required to repay the outstanding principal, along with accrued interest. The Company will carefully monitor all qualifying expenses and other requirements necessary to attain loan forgiveness; however, no assurance is provided that the Company will ultimately apply for or obtain forgiveness of the PPP loan in whole or in part.

The PPP loan application required us to certify, among other things, that the current economic uncertainty made the PPP loan request necessary to support our ongoing operations. On April 23, 2020, the SBA, in consultation with the Department of Treasury, issued new guidance stating that it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith. We made the certification in good faith after analyzing our financial situation and access to capital and believe that we have satisfied all eligibility criteria for the PPP loan, but the SBA guidance and criteria is subject to interpretation and if we are found to be ineligible, we could be subject to significant penalties and required to repay the loan. If we become subject to penalties or are not able to attain loan forgiveness, it could result in harm to our business, results of operation and financial condition.

We have limited operating experience and a history of net losses, and we recently discontinued all of our commercial operations.

We have a limited operating history upon which you can evaluate our business and we recently discontinued all of our commercial operations while we explore our ability to secure coverage and reimbursement for our products and other strategic alternatives. Prior to discontinuing our commercial operations, we had marketed our products only since January 2017 and our commercial sales experience has been limited. We have incurred significant losses in each period since our inception in 2008, with net losses of $5.3 million and $8.3 million during the three months ended March 31, 2020 and 2019, respectively. As of March 31, 2020, we had an accumulated deficit of approximately $177.7 million and had cash and cash equivalents of $8.9 million. These losses and our accumulated deficit reflect the substantial investments we have made to develop, seek and obtain regulatory approval for our current and future generation Obalon Balloon System and sell our Obalon Balloon System in international and U.S. markets, and commercialize our Obalon Balloon System in the United States. Our consolidated financial statements as of and for the three month period ended March 31, 2020 have been prepared on the basis that we will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. Based on our cash balances and recurring losses since inception, there is substantial doubt about our ability to continue as a going concern and if we are not able to raise additional capital in a timely manner, we will not be able to support our ongoing operations.

While we explore potential alternatives for obtaining coverage and reimbursement for our products, we have dramatically reduced our costs and expenses. These costs and expenses may increase significantly if we determine to pursue additional clinical trials that may be needed to secure reimbursement. If we secure reimbursement and return to commercial operations, we would expect our costs and expenses to increase substantially as we rebuild our sales and marketing and manufacturing capabilities. As a public company, we will continue to incur significant insurance, legal, accounting, compliance and other expenses, and we expect our losses to continue for the foreseeable future. Unless and until we return to commercial operations, we do not expect to generate any revenue. We cannot assure you when, if ever, we will generate revenue and, if we do, whether we will ever achieve profitability.

Our business is entirely dependent on sales of the Obalon Balloon System, which we are currently not marketing or selling.

All of our revenue to date was attributable to sales of our Obalon Balloon System including its component parts and accessories. In 2020, largely due to the COVID-19 crisis, we discontinued all of our commercial operations while we explore our ability to secure coverage and reimbursement for our products and other strategic alternatives. Even if we are able to

secure reimbursement for the Obalon Balloon System and restart commercial operations, there are a number of factors that may contribute to our financial results, including:

- patient interest in and demand for our Obalon Balloon System;
- our ability to maintain adequate coverage and reimbursement for the Obalon Balloon System;
- positive or negative media coverage, or public, patient and/or physician perception, of our Obalon Balloon System, the procedures or products of our competitors, or our industry;
- any safety or efficacy concerns that arise through physician and patient experience with our Obalon Balloon System;
- any safety or efficacy concerns for the category of intragastric balloons, including liquid-filled balloons, as the FDA has issued four Letters to Health Care Providers warning them about the use of liquid-filled intragastric balloons citing potential risks, including death;
- our ability to service and maintain equipment such as the Obalon Navigation System;
- delays in, or failure of, product and component deliveries by our third-party suppliers and single-source suppliers;
- willingness of physicians to purchase the capital equipment required to place balloons using the Obalon Navigation System;
- difficulties in producing a sufficient quantity of our product to meet commercial demand due to shortages of component parts or due to issues in the manufacturing process;
- introduction of new procedures or products for treating patients who are obese or overweight that compete with our product;
- adverse changes in the economy that reduce patient demand for elective procedures; and
- favorable or unfavorable positions developed on intragastric balloons, or the Obalon Balloon System by professional medical associations, such as the American Society for Metabolic and Bariatric Surgery (ASMBS), the American Society for Gastrointestinal Endoscopy (ASGE), or other organizations with influence on physicians.

It is therefore difficult to predict our future financial performance and growth, and such forecasts are inherently limited and subject to a number of uncertainties. If our assumptions regarding the risks and uncertainties we face, which we use to plan our business, are incorrect or change due to circumstances in our business or our markets, or if we do not address these risks successfully, our operating and financial results could differ materially from our expectations and our business could suffer.

Because we devote substantially all of our resources to our Obalon Balloon System and rely on our Obalon Balloon System as our sole source of revenue, any factors that negatively impact our product, or result in decreasing product sales, would materially and adversely affect our business, financial condition and results of operations.

We have historically maintained a high level of inventory, which could consume a significant amount of our resources, reduce our cash flows and lead to inventory impairment charges especially if we restart commercial operations and manufacturing in the future.

We are a vertically integrated manufacturer and insufficient demand for our products subjects us to risks. As a result of the need to maintain substantial levels of inventory due to single third-party sourcing and long lead-times to develop alternate third-party sources, we historically carried a high level of inventory for strategic materials. Due to the suspension of our business operations, we have ceased shipping product to U.S. and international customers, closed our Obalon-branded retail treatment centers and halted expansion of our retail treatment center model. We performed an impairment analysis and determined that no asset impairment charges are necessary for the first quarter of 2020, although we estimate that an impairment to certain long-lived assets and inventory in the range of $0.8 million to $1.4 million will be recognized in the second quarter of 2020. If we are not successful executing clinical trials for reimbursement then further impairments may be recognized, which will have a material adverse effect on our future earnings and cash flows.

We currently have sufficient inventory to ensure the completion of treatment for all patients who are currently undergoing therapy at our Company-branded treatment centers. We have notified our U.S. and OUS customers that no inventory is available and to confirm the ability to complete existing patient treatments with inventory on hand at their locations.

We have ongoing lease obligations under two non-cancelable long-term leases and we may not be able to meet our obligations under these agreements.

We have long-term lease obligations related to our headquarters and manufacturing space in Carlsbad and for one Obalon-branded retail treatment center in Orange County, California. We have not paid rent for our Carlsbad facility or Orange County retail treatment center since April 2020 and have notified both owners that we are taking advantage of the protections we believe are afforded by the relevant mandates related to the COVID-19 crisis. We have received a demand letter for payment of rent by the owner of our Carlsbad facility. With rent payments being delayed, our landlords may at their option (a) terminate our headquarters and manufacturing leases or could take other actions that restrict our ability to operate the business, including requesting damages for the Carlsbad lease, or (b) keep the lease in place and continue to have the right to collect rent as and when it becomes due for the remainder of the term of such lease.

Physicians have been slow to adopt and use intragastric balloons, and adverse events or other negative developments involving other companies' intragastric balloons or other obesity treatments may further slow patient adoption. If any of these events were to occur, our prospects would be negatively affected.

Intragastric balloons represent a relatively new category of treatment for obese and overweight patients that is small, immature and not currently covered or reimbursed by third-party payors. We are currently aware of only one other intragastric balloon available for commercial sale in the United States, which was first commercially available in 2015. As a result, patient and physician awareness of intragastric balloons as a treatment option for obesity and weight management, and experience with intragastric balloons, is minimal. Prior to discontinuing our commercial operations, we experienced limited penetration of this market, and any future success will depend in large part on our ability to obtain coverage and reimbursement, to further develop the currently small and immature intragastric balloon market, educate physicians and patients, and to successfully demonstrate the safety, tolerability, ease of use, efficacy, cost effectiveness and other merits of our Obalon Balloon System.

Additionally, because the market for intragastric balloons is new and developing and contains a limited number of market participants, our products could be negatively impacted by unfavorable market reactions to these other devices. If the use of these or future intragastric balloons results in serious adverse device events, or SADEs, or such products are subject to malfunctions or misuse, patients may attribute such negative events to intragastric balloons generally, which may adversely affect market adoption of our Obalon Balloon System. Since February 2017, the FDA has issued four separate letters to health care providers warning of serious adverse events, including deaths, which are specific to liquid-filled intragastric balloons. We are aware of the filing of additional reports of serious adverse events, including deaths, associated with liquid-filled balloons since the issuance of the FDA safety alert letters. While the alerts were specific to liquid-filled intragastric balloons, not gas-filled intragastric balloons, these alerts could create negative perceptions of the entire category and slow down the acceptance of the Obalon Balloon System. Medical professional associations, such as ASMBS, have or may publish positions to their memberships which may be favorable or unfavorable toward the use of intragastric balloons, or the Obalon Balloon specifically. Additionally, if patients undergoing treatment with our Obalon Balloon System perceive the weight loss inadequate or adverse events too numerous or severe as compared with the treatment rates of alternative balloons or procedures, it will be difficult to demonstrate the value of our Obalon Balloon System to patients and physicians. As a result, demand for our Obalon Balloon System may decline or may not increase at the pace or to the levels we expect.

The efficacy of our Obalon Balloon System depends on patient compliance with a moderate intensity diet and behavior modification program. If patients are unwilling to make dietary and behavioral changes, patient outcomes may suffer which could negatively impact perception of our product in the marketplace.

Our Obalon Balloon System is approved as an adjunct to a moderate intensity diet and behavior modification program. As a result, in addition to undergoing the Obalon balloon procedure, patients will also need to modify their existing diet and level of physical activity in order to achieve their desired weight loss. If patients are unwilling to implement the appropriate dietary and behavioral changes, the amount of weight loss may be less than desired, leading to a negative perception of our product in the marketplace.

If patients are unable to successfully swallow the capsule or our balloon cannot otherwise be successfully deployed, patients may seek a refund or monetary damages in connection with the treatment.

Patients may be unable to successfully swallow the capsule that contains the Obalon balloon, potentially creating an economic disincentive for physicians to prescribe the Obalon Balloon System. In our SMART pivotal trial, 7.6% of the combined treatment and control group patients failed to swallow a capsule with the microcatheter attached despite success swallowing a placebo that did not have a catheter attached. We are experiencing similar rates in U.S. commercial usage. There have also been instances where balloon deployment was negatively impacted due to a leak in the microcatheter caused by the patient biting the catheter during placement and requiring endoscopic removal. There may be other reasons for unsuccessful placements of which we are not yet aware. If the balloon is not successfully placed for any reason, the patient may attempt to seek a refund or monetary damages for the treatment. Either scenario could cause a negative financial impact for us and could also create ill will with patients and physicians.

Additionally, patients may seek a refund or monetary damages from us due to Company-branded treatment center closures, inability to complete treatment, persistent side-effects resulting in early removal, and general discontent with outcomes.

Patients may experience serious injury related to the device or procedures as the result of the misuse or malfunction of, or design flaws in, our products, that could expose us to expensive litigation, divert management's attention and harm our reputation and business.

Our business is subject to significant risks associated with manufacture, distribution and use of medical devices that are placed inside the human body, including the risk that patients may be severely injured by or even die from the misuse or malfunction of our products caused by design flaws or manufacturing defects. In addition, our business may suffer adverse consequences even in circumstances where a patient injury is caused by the actions of others, such as where a patient is injured due to the improper or negligent use of our products by a physician.

For instance, if the Obalon capsule does not reach a patient's stomach and there is a hardware or software malfunction such that it is inflated in the esophagus, the patient could experience a serious injury. A patient who experiences an esophageal inflation of the balloon would most likely require surgical intervention, and could die as a result of an esophageal inflation or as a result of complications from the subsequent intervention. Physicians may use the Obalon Navigation System to track the location of the balloon prior to inflation. Failure of the sensor to function or the Obalon Navigation System to dynamically track the capsule could result in serious injury if the Obalon balloon is inflated in another portion of the body, such as the esophagus. Perforation of the esophagus at any time, including during removal, is also possible. Esophageal perforation leading to sepsis and death associated with the sepsis has been reported with use of our product. Serious injury could also occur if one or more of the balloons deflates and migrates into the lower intestine causing an obstruction. This can also lead to surgical removal of the device and associated complications including death. Failure of the Obalon Touch Inflation Dispenser to function could result in need for immediate endoscopic removal or patient injury. Balloon deflation and migration into the lower intestine requiring surgical removal has also been reported with use of our product. Perforation of the stomach is also possible and can lead to surgical removal of the device and associated complications including death. Perforation of the stomach requiring surgical repair has also been reported with use of our product. One or more balloons may get lodged in the pyloric channel which could lead to severe dehydration and be life threatening and/or require surgical procedures to remove. Failure to transit has been reported with use of our product and unscheduled endoscopy has been performed to remove the uninflated balloon. Aspiration during placement or removal is also a risk with intragastric balloons which could lead to pneumonia or other serious injury. Acute pancreatitis has been reported that may or may not be associated with the use of our product. While we have designed our products, and established instructions and protocols for physicians, to attempt to mitigate such risks, we cannot guarantee that adverse events will not occur again in the future. For example, physicians and/or patients have in the past failed, and may again in the future fail, to follow our instructions and protocols, and the safety systems we design into our products may not prevent all possible adverse events and injuries and/or our products may fail to function properly.

Our quality assurance testing programs may not be adequate to detect all defects, which may result in patient adverse events, interfere with customer satisfaction, reduce sales opportunities, harm our marketplace reputation, increase warranty repairs and/or harm our revenue and results of operations. Our inability to remedy a product defect could result in a product recall, temporary or permanent withdrawal of a product from a market, product liability suits, damage to our reputation or our brand, inventory replacement costs or product reengineering expenses, any of which could have a material impact on our business, results of operations and financial condition.

In the past we have, and in the future we may actively employ social media and call center activities as part of our marketing strategy, which could give rise to regulatory violations, liability, breaches of data security or reputational damage.

Despite our efforts to monitor evolving social media communication guidelines and comply with applicable laws and regulations, there is risk that the use of social media by us, our employees or our customers to communicate about our products or business may cause us to be found in violation of applicable requirements, including requirements of regulatory bodies such as the FDA, CMS and Federal Trade Commission. For example, adverse events, product complaints, off-label usage by physicians, unapproved marketing or other unintended messages could require an active response from us, which may not be completed in a timely manner and could result in regulatory action by a governing body. In addition, our employees may knowingly or inadvertently make use of social media in ways that may not comply with our social media policy or other legal or contractual requirements, which may give rise to liability, lead to the loss of trade secrets or other intellectual property, or result in public exposure of personal information of our employees, clinical trial patients, customers and others. Furthermore, negative posts or comments about us or our products in social media could seriously damage our reputation, brand image and goodwill.

We have limited experience manufacturing our Obalon Balloon System and Obalon Navigation System in commercial quantities and, if we restart manufacturing may experience production delays or issues in our manufacturing organization and be unable to meet current or future demand.

Prior to 2017, the majority of our product sales had been to a single international distributor in the Middle East. We first sold our products to physicians and institutions in the United States in 2017, and we anticipate the United States to be our primary market focus going forward. We have limited experience in manufacturing the current Obalon Balloon System and all its related components in commercial quantities. Moreover, we recently terminated our existing manufacturing capabilities, and if we determine to restart commercial operations, we will need to reestablish those capabilities, and likely improve them, in order to satisfy expected demand. We may find that we are unable to successfully manufacture our products in sufficient quantities, on a timely basis and with the expected quality. Any failure to meet the quality, quantity and timeliness expectations of our customers could negatively impact our results of operations.

We have had and may in the future continue to encounter production delays or shortfalls caused by many factors, including the following:

- the termination of our manufacturing organization and related support functions and/or ability to successfully rehire the necessary talent and capabilities;
- the timing and process needed to assimilate the changes necessary to enable our production processes to accommodate anticipated demand;
- shortages that we may experience in any of the key components or sub-assemblies that we obtain from third-party suppliers, especially as we have not placed any future orders from those supplies;
- production delays or stoppages caused by receiving components or supplies which do not meet our quality specifications;
- delays that we may experience in completing validation and verification testing for new controlled-environment rooms at our manufacturing facilities;
- delays that we may experience in seeking FDA review and approval of PMA supplements required for certain changes in manufacturing facilities, methods or quality control procedures;
- our limited experience in complying with the FDA's Quality System Regulation, or the QSR, which sets forth good manufacturing practice requirements for medical devices and applies to the manufacture of the components of our Obalon Balloon System;
- our ability to attract, train, and retain qualified employees, who are in short supply, in order to increase our manufacturing output;
- our ability to design and validate processes to allow us to manufacture future generations of the Obalon Balloon System that meets or exceeds our quality specifications in an efficient, cost-effective manner;
- our ability to produce commercial product that meets or exceeds our manufacturing specifications and release criteria;
- production delays or stoppages caused by malfunction of production equipment and/or malfunction of the electrical, plumbing, ventilation, or cooling systems supporting our manufacturing facility; and
- production stoppages and/or product scrap caused by positive tests for objectionable organisms on our products.

We depend on third-party suppliers, including single source suppliers, to manufacture some of our components and sub-assemblies, which could make us vulnerable to supply shortages, interruptions in production and price fluctuations that could harm our business.

Historically, we manufactured our Obalon Balloon System and some of its components and sub-assemblies at our Carlsbad facility, and we relied on third-party suppliers for other components and sub-assemblies used in production. In some cases, these suppliers were single source suppliers. For example, we relied on single suppliers for the extruded film, swallowable capsule, molded silicone valve used to manufacture our Obalon balloons and the hydrophilic coating for our catheters. We also relied on additional single source suppliers for components of our Obalon Navigation balloons and console, including sensors. These components are critical to our current and future products and there are relatively few alternative sources of supply. We do not carry a significant inventory of these components and obtaining additional components may require significant lead-time. We have experienced and may continue to experience production challenges due to shortages of key components from suppliers.

Moreover, we have not placed any future orders with our suppliers and they could refuse to fill future orders in the event we restart manufacturing, they may lose the capabilities to produce for us or they may refuse to do business with us at all in the future. Identifying and qualifying additional or replacement suppliers for any of the components or sub-assemblies used in our products could involve significant time and cost and could delay our ability to restart production and, going forward, could adversely affect our ability to fill product orders, service and maintain equipment with customers. For example, given that our Obalon Balloon System is a PMA approved product, any replacement supplier will have to be assessed by us through audits and other verification and assessment tools and found capable of producing quality components that meet our approved specifications, and we may be required to notify or obtain approval from the FDA for a change in a supplier prior to our ability to use the components it provides. If we were unable to find a replacement supplier, it could result in significant delays as we would be unable to produce additional product until such replacement supplier had been identified and qualified. If an existing or replacement supplier proposes to change any component specifications or quality requirements, the change may require FDA approval of a PMA supplement. If a supplier changes a component without notifying us, that change could result in an undetected change being incorporated into the finished product. Once detected and investigated, if the change is found to potentially affect the safety or effectiveness of the product, we would have to take corrective and preventive action, including possibly recalling the product, which could be time-consuming and expensive, and could impair our ability to meet the demand of our customers and harm our business and reputation.

In addition, our reliance on third-party suppliers for current and future products subjects us to a number of risks that could impact our ability to manufacture our products, service and maintain equipment with customers and harm our business, including:

- inability to obtain adequate supply in a timely manner or on commercially reasonable terms;
- change in payment terms, requiring upfront payment;
- concern regarding our current financial position or delay in our payments to suppliers; especially our key suppliers for the Obalon Navigation System console and balloon components, could negatively impact suppliers' perception of the Company and result in delayed or canceled delivery of components;
- difficulty identifying and qualifying alternative suppliers for components in a timely manner;
- interruption of supply resulting from modifications to, or discontinuation of, a supplier’s operations;
- damage to suppliers' facilities could interrupt supply;
- delays in product shipments resulting from uncorrected defects, reliability issues or a supplier’s failure to produce components that consistently meet our quality specifications;
- price fluctuations due to a lack of long-term supply arrangements with our suppliers for key components;
- inability of suppliers to comply with applicable provisions of the QSR or other applicable laws or regulations enforced by the FDA and state regulatory authorities;
- inability to ensure the quality of products manufactured by third parties;

- production delays related to the evaluation and testing of products from alternative suppliers and corresponding regulatory qualifications;
- delays in delivery by our suppliers due to changes in demand from us or their other customers;
- our suppliers could attempt to manufacture products for our competitors using our intellectual property; and
- decisions by suppliers to exit the medical device business or discontinue supplying us.

Although we require our third-party suppliers to supply us with components that meet our specifications and comply with applicable provisions of the QSR and other applicable legal and regulatory requirements in our agreements and contracts, and we perform incoming inspection, testing or other acceptance activities to assure the components meet our requirements, there is a risk that our suppliers will not always act consistent with our best interests, and may not always supply components that meet our requirements, or supply components in a timely manner. Any significant delay or interruption in the supply of components or sub-assemblies, or our inability to obtain substitute components, sub-assemblies or materials from alternate sources at acceptable prices in a timely manner, could impair our ability to meet the demand of our customers and harm our business and financial results.

Historically, all of our international revenue was derived from sales to a single distributor that accounted for a significant amount of our revenue.

Al Danah Medical Company W.L.L, or Al Danah, was the sole distributor of our Obalon Balloon System in the Middle East and our sole international customer. International sales to Al Danah represented 30.8% and 0.0% of our total revenue for the three months ended March 31, 2020 and 2019, respectively. Bader Sultan & Bros. Co. W.L.L., or Bader, was previously the sole distributor of our prior generation Obalon balloon system in the Middle East and our sole international customer. The agreement with Bader was terminated in December 2019. In May 2020 we terminated the agreement with Al Danah and will not ship them product in the future. The significant reduction in international revenue in 2020 has had a significant impact on our financial performance. Currently, we do not have regulatory approval for our Obalon Navigation System and Obalon Touch Inflation Dispenser in the Middle East. However, there are certain countries in the Middle East that allow importation of medical device products with United States FDA approval or clearance to meet local regulatory standards, including Qatar.

If we were to restart commercial operations, we would not intend to devote significant additional resources in the near-term to market our Obalon Balloon System internationally, which will limit our potential revenue from our product.

Marketing our Obalon Balloon System outside of the United States would require substantial additional sales and marketing, regulatory and personnel expenses. As part of our longer-term product development and regulatory strategy, we may expand into other select international markets, but we do not currently intend to devote significant additional resources to market our Obalon Balloon System internationally. Our decision to market our product primarily in the United States in the near-term will limit our ability to reach all of our potential markets and will limit our potential sources of revenue. In addition, our competitors will have an opportunity to further penetrate and achieve market share outside of the United States until such time, if ever, that we devote significant additional resources to market our product internationally. We have not submitted to the Competent Authority for CE-marking of the Obalon Navigation System or Obalon Touch Inflation Dispenser. Furthermore, given recent changes to the CE-mark process, which requires additional filings, the CE Mark for the prior version of the Obalon balloon system will not be renewed in May 2020.

The medical device industry, and the market for weight loss and obesity in particular, is highly competitive. If our competitors are able to develop and market products that are safer, more effective, easier to use or more readily adopted by patients and physicians, our commercial opportunities will be reduced or eliminated.

The medical device industry generally, and the market for weight loss and obesity specifically, are highly competitive, subject to rapid change and significantly affected by new product introductions, results of clinical research, corporate combinations, actions by regulatory bodies, changes by public and private payers and other factors. Because of the market opportunity and the high growth potential of the non-surgical device market for weight loss and obesity, competitors and potential competitors have historically dedicated, and will continue to dedicate, significant resources to aggressively develop and commercialize their products.

In the United States, our product competes with a variety of pharmaceuticals, surgical procedures and devices for the treatment of obese and overweight people. There are several competitors in the pharmaceutical segment including Vivus, Inc., Eisai Co.,

Ltd, Inc., AstraZeneca plc, and Allergan plc. Large competitors in the surgical segment for weight loss and obesity include Ethicon Inc. (subsidiary of Johnson & Johnson), Medtronic plc (formerly Covidien Ltd.), Apollo EndoSurgery, Inc., and ReShape LifeSciences (which acquired the Lap-Band from Apollo Endosurgery, Inc. and currently sells that device worldwide). We are aware of only one FDA approved, commercially marketed liquid-filled balloon device for treating overweight people, the ORBERA Balloon by Apollo EndoSurgery. Outside of the United States, Allurion Technologies, Inc. has developed a swallowable, passable liquid-filled intragastric balloon that has been approved for sale in Europe and the Middle East and completed enrollment in a U.S. clinical trial and is pending FDA approval. Spatz Medical has also developed a liquid-filled intragastric balloon that has been approved for sale in Latin America and Europe and is is currently under review by the FDA for PMA approval. We also compete against non-balloon treatments including Aspire Bariatrics' ApireAssist device and a technology developed by Gelesis known as the Plenity device, that is intended to expand in the stomach by absorbing water to create the feeling of satiety. Gelesis's Plenity device was cleared by FDA in 2019. Also in 2019, BAROnova gained FDA PMA approval in the U.S. for its transpyloric shuttle, a non-surgical, non-pharmacologic device to induce weight loss by slowing gastric emptying. Additionally, we are aware of numerous companies around the world working to develop less invasive and less costly alternatives for the treatment of obesity, any of which, if approved, could compete with us in the future.

At any time, these or other competitors may introduce new or alternative products that compete directly or indirectly with our products and services. They may also develop and patent products and processes earlier than we can or obtain regulatory clearance or approvals faster than us, which could impair our ability to develop and commercialize similar products or services. If clinical outcomes of procedures performed with our competitors' products are, or are perceived to be, superior to treatments performed with our products, sales of our products could be negatively affected and our business, results of operations and financial condition could suffer.

Many of our competitors have significantly greater financial and other resources than we do, as well as:

- well-established reputations and name recognition with key opinion leaders and physician networks;
- an established base of long-time customers with strong brand loyalty;
- products supported by long-term data;
- longer operating histories;
- significantly larger installed bases of equipment;
- greater existing market share in the obesity and weight management market;
- broader product offerings and established distribution channels;
- greater ability to cross-sell products;
- additional lines of products, and the ability to offer rebates or bundle products to offer higher discounts or incentives; and
- more experience in conducting research and development, manufacturing, performing clinical trials and obtaining regulatory approvals or clearances.

Competition with these companies could result in significant price-cutting, reduced profit margins and loss of market share, any of which would harm our business, financial condition and results of operations. In addition, competitors with greater financial resources than ours could acquire other companies to gain enhanced name recognition and market share, as well as new technologies or products that could effectively compete with our existing and future products, which may cause our revenues to decline and harm our business.

If in the future we restart manufacturing operations and our manufacturing facility becomes damaged or inoperable, or we are required to vacate the facility, our ability to manufacture and sell our Obalon Balloon System and to pursue our research and development efforts may be jeopardized.

We manufacture and assemble our Obalon Balloon System in our single manufacturing facility in Carlsbad, California. Our products consist of components sourced from a variety of contract manufacturers and suppliers, with final assembly completed at our facility. In early 2019 we began commercial manufacturing of our current generation Obalon Balloon System and all of its related components. We have limited experience manufacturing these products, which could result in supply shortages or interruptions. The Obalon Navigation System console is entirely manufactured by a single source supplier and shipped to our single manufacturing facility in Carlsbad, California. Our facility and equipment, or those of our suppliers, could be harmed or rendered inoperable by natural or man-made disasters, including fire, earthquake, hurricane, terrorism, flooding and power outages. Any of these may render it difficult or impossible for us to manufacture products for an extended period of time. If our facility is inoperable for even a short period of time, the inability to manufacture our current products, and the interruption in

research and development of any future products, may result in harm to our reputation, increased costs, lower revenues and the loss of customers. Furthermore, it could be costly and time-consuming to repair or replace our facilities and the equipment we use to perform our research and development work and manufacture our products, particularly as the use of a new facility or new manufacturing, quality control, or environmental control equipment or systems would require FDA review and approval of a PMA supplement.

We have not paid rent for our Carlsbad facility since April 2020 and have notified the owner that we are taking advantage of the protections we believe are afforded by the relevant mandates related to the COVID-19 crisis. We have received a demand letter for payment of rent by the owner of our Carlsbad facility. We could be required to move manufacturing to another location in the future. With rent payments being delayed, our landlords may, at their option, (a) terminate our headquarters and manufacturing leases or could take other actions that restrict our ability to operate the business or (b) keep the lease in place and continue to have the right to collect rent as and when it becomes due for the remainder of the term of such lease.

Certification of a new manufacturing facility can be time consuming and expensive and requires personnel resources that we may not have or access to. We may be unsuccessful in our efforts to move manufacturing, which could negatively impact our ability to manufacture product in the future.

We have dramatically reduced our senior management team and cannot assure you that we have sufficient resources to accomplish our business plan.

Our success largely depends upon the services of our executive management team, which currently is expected to be reduced to two shortly after the filing of this quarterly report: Andy Rasdal, our Executive Chairman and former CEO who will be assuming the position of CEO and Nooshin Hussainy, our Chief Financial Officer. Our current President and CEO, William Plovanic has announced his resignation in order to accept another position with his resignation effective as of the close of business on the date of filing of this quarterly report. Mr. Plovanic will continue to serve as a member of the Board of Directors. Mark Brister, our Chief Technology Officer, and Amy VandenBerg, our Chief Clinical, Regulatory and Quality Officer, are expected to resign on or before June 30, 2020 but will continue to provide limited services on a consulting basis. Bob MacDonald, our Chief Retail Officer, resigned on March 13, 2020. We cannot assure you that the remaining executives will be sufficient to implement our current business plan. Additionally, we do not currently maintain key personnel life insurance policies on any of our employees. Moreover, if we determine to pursue securing reimbursement for our products, and if we are successful, we will need to attract and retain additional executive officers and numerous highly qualified personnel. Competition for executive officers and skilled personnel is intense. We have, from time to time, experienced, and we expect to continue to experience, difficulty in hiring and retaining employees with appropriate qualifications. If we are unable to attract and retain additional executive officers or other key employees it could impede the achievement of our research, development and commercialization objectives and seriously harm our ability to successfully implement our business strategy.

Many of the companies with which we compete for experienced personnel have greater resources than we have. If we hire employees from competitors or other companies, their former employers may attempt to assert that these employees or we have breached legal obligations, resulting in a diversion of our time and resources and, potentially, damages. In addition, job candidates and existing employees, particularly in the San Diego area, are particularly focused on the value of the stock awards they receive in connection with their employment. As a result, the current market price of our common stock, in particular as it relates to exercise prices of our outstanding options, limits our ability to retain existing employees and makes it difficult to attract additional highly skilled employees. In addition, we invest significant time and expense in training our employees, which increases their value to competitors who may seek to recruit them. If we fail to attract new personnel or fail to retain and motivate our current personnel, our business and future growth prospects would be harmed.

From time to time, we engage outside parties to perform services related to certain of our clinical studies and trials, and any failure of those parties to fulfill their obligations could increase costs and cause delays.

From time to time, we engage consultants to help design, monitor and analyze the results of certain of our clinical studies and trials. The consultants we engage interact with clinical investigators to enroll patients in our clinical trials. We depend on these consultants and clinical investigators to help facilitate the clinical studies and trials and monitor and analyze data from these studies and trials under the investigational plan and protocol for the study or trial and to comply with applicable regulations and standards, commonly referred to as good clinical practices, or GCP, requirements for conducting, monitoring, recording and reporting the results of clinical trials, in order to ensure that the data and results are scientifically credible and accurate and that

the trial subjects are adequately informed of the potential risks of participating in clinical trials. We rely on medical institutions, clinical investigators, contract laboratories and other third parties, such as CROs, to conduct GLP-compliant preclinical studies and GCP-compliant clinical trials on our product properly and on time. While we will have agreements governing their activities, we control only certain aspects of their activities and have limited influence over their actual performance. We may face delays in our regulatory approval process if these parties do not perform their obligations in a timely, compliant or competent manner. If these third parties do not successfully carry out their duties or meet expected deadlines, or if the quality, completeness or accuracy of the data they obtain is compromised due to the failure to adhere to our clinical trial protocols or for other reasons, our clinical studies or trials may be extended, delayed or terminated or may otherwise prove to be unsuccessful to support product approval of a commercially viable product, or at all, and we may have to conduct additional studies, which would significantly increase our costs, in order to obtain the regulatory clearances or approvals that we need to commercialize our products and delay commercialization.

In the future, our Obalon Balloon System may be subject to product recalls that could harm our reputation and business.

The FDA and similar governmental authorities in other countries have the authority to require the recall of commercialized products in the event of material regulatory deficiencies or defects in design or manufacture. A government-mandated or voluntary recall by us could occur as a result of component failures, manufacturing errors, design or labeling defects with the Obalon Balloon System and the Obalon Navigation System or deficiencies of other products in the intragastric balloon category. Recalls of our Obalon Balloon System would divert managerial attention, be expensive, harm our reputation with customers and harm our financial condition and results of operations.

Depending on the corrective action we take to redress a device product's deficiencies or defects, the FDA may require us, or we may decide to, obtain new approvals, clearances, or other marketing authorizations for the device before we may market or distribute the corrected device. Seeking such authorizations may delay our ability to replace the recalled devices in a timely manner. Moreover, if we do not adequately address problems associated with our devices, we may face additional regulatory enforcement action, including FDA warning letters, Form 483s, product seizure, injunctions, administrative penalties, or civil or criminal fines.

Companies are required to maintain certain records of recalls and corrections, even if they are not reportable to the FDA. We may initiate voluntary recalls or corrections for our products in the future that we determine do not require notification of the FDA. If the FDA disagrees with our determinations, they could require us to report those actions as recalls and we may be subject to enforcement action. A future recall announcement could harm our reputation with customers, potentially lead to product liability claims against us and negatively affect our stock price.

We may face product liability claims that could result in costly litigation and significant liabilities.

Our business exposes us to the risk of product liability claims that are inherent in the manufacturing, marketing and selling of medical devices, including those which may arise from the misuse or malfunction of, or design flaws in, our products. Claims may be made by patients, healthcare providers or others selling our products. We may be subject to product liability claims if our products cause, or merely appear to have caused, an injury. In addition, we may be subject to claims against us even if the apparent injury is due to the actions of others or the pre-existing health of the patient.

We also may be subject to claims against us due to actions of others. We rely on physicians in connection with the placement and subsequent removal at the end of the six-month treatment period of our Obalon balloon. If these physicians are not properly trained, are negligent, or willfully decide not to follow the instructions for use, the capabilities of our products may be diminished or the patient may suffer critical injury. We may face negative consequences from misconduct of physicians despite our best efforts to remediate situations arising from negligence of the physicians and may also face negative consequences from nonconformity of patient therapy. We may also be subject to claims that are caused by the activities of our suppliers, such as those who provide us with components and raw materials. This risk exists even if a device or product is cleared or approved for commercial sale by the FDA or other foreign regulators and manufactured in facilities registered with and regulated by the FDA or an applicable foreign regulatory authority.

Although we have, and intend to maintain, product liability and clinical trial liability insurance that we believe is appropriate, this insurance is subject to deductibles and coverage limitations. Our current product liability insurance may not continue to be available to us on acceptable terms, or at all, and, if available, the coverages may not be adequate to protect us against any future product liability claims. In addition, we may seek additional insurance coverage; however, if we are unable to obtain insurance at an acceptable cost or on acceptable terms with adequate coverage or otherwise protect against potential product liability claims, we will be exposed to significant liabilities, which may harm our business. A product liability claim, recall or other claim with respect to uninsured liabilities or for amounts in excess of insured liabilities could result in significant costs and significant harm to our business.

For instance, patients could be harmed by the Obalon balloon if it is improperly inflated, inflated in the body other than in the stomach, not removed at the end of the six-month treatment period resulting in deflation, or if it deflates prematurely while in the body. Additionally, we do not sell our product sterilized, and it may be contaminated with forms of microorganisms prior to use. Any failure to follow the physician's directions for use or the patient information guide, or any other defects, misuse or abuse associated with our product, could result in patient injury or death. The medical device industry has historically been subject to extensive litigation over product liability claims, and we cannot assure you that we will not face product liability suits.

In addition, regardless of merit or eventual outcome, product liability claims may result in:

- impairment of our brand and business reputation;
- costly litigation;
- distraction of management's attention from our primary business;
- loss of revenue;
- the inability to commercialize our product;
- decreased demand for our product;
- product recall or withdrawal from the market;
- withdrawal of clinical trial participants; and
- substantial monetary awards to patients or other claimants.

While we may attempt to manage our product liability exposure by proactively recalling or withdrawing from the market any defective products, or by refusing to sell to any physician not following the physicians' directions for use, any recall or market withdrawal of, or refusal to sell, our products may delay the supply of those products to our customers and may impact our reputation. We cannot assure you that we will be successful in initiating appropriate recall or market withdrawal efforts that may be required in the future or that these efforts will have the intended effect of preventing product malfunctions and the accompanying product liability that may result. Any such recalls and market withdrawals may also be used by our competitors to harm our reputation for safety or be perceived by patients as a safety risk when considering the use of our products, either of which could have a material adverse effect on our business, results of operations and financial condition.

Since we began selling in the United States in January 2017, we have reported adverse events relating to patient injuries associated with use of the Obalon balloon in the FDA's MAUDE database. To-date, none of these adverse events have resulted in product liability claims against us.

Our Company-owned or managed Obalon-branded retail treatment centers may subject us to professional liability claims if one or more of our affiliated physicians causes harm to patients, and we may be unable to obtain or maintain adequate insurance against these claims.

We have established two Company-managed Obalon-branded retail treatment centers, where medical services were provided to the public, which has exposed us to the risk of professional liability and other claims. We have since closed both centers. In recent years, physicians have become subject to an increasing number of lawsuits alleging malpractice and related legal claims. Some of these lawsuits may involve large claims and significant defense costs. It is possible that these claims could be asserted against us and/or our affiliated physicians. Any litigation, if successful, could result in substantial damage awards to the claimants that may exceed the limits of any applicable insurance coverage. Although we did not be make patient care or treatment decisions at the Company-owned or managed Obalon-branded retail treatment centers, it could be asserted that we should be held liable for the malpractice of a physician using our products at a Company-owned or managed Obalon-branded retail treatment center. In addition, we could incur reputational harm or negative publicity in relation to a material malpractice or care-related injury. Malpractice lawsuits and claims can also lead to increased scrutiny by regulatory authorities and other third parties. Some plaintiffs have asserted allegations of corporate practice of medicine or prohibited fee splitting in connection with malpractice claims. There can be no assurance that a future claim or claims will not be successful or, if successful, will not exceed the limits of available insurance coverage. Professional liability insurance, moreover, can be expensive and varies from state to state and there can be no assurance that professional liability insurance will be available to us or our affiliated physicians at costs acceptable to us or at all.

If patients using our products experience adverse events or other undesirable side effects, regulatory authorities could withdraw or modify our commercial approvals, which would adversely affect our reputation and commercial prospects and/or result in other significant negative consequences.

Undesirable side effects caused by our Obalon Balloon System could cause us, the FDA or other regulatory authorities to interrupt, delay or halt clinical trials, and could result in more restrictive labeling than originally required, cause the FDA or other regulatory authorities to subsequently withdraw or modify our PMA or other commercial approvals, or result in the delay or denial of regulatory approval by other notified bodies. For example, in the 1980s and early 1990s, the FDA required additional post-market safety and efficacy data collection and analysis on an earlier version of an intragastric balloon after patients suffered severe side effects and complications with the device, which ultimately resulted in the withdrawal of the PMA approval.

Since February 2017, the FDA has issued four separate letters (known as Safety Alerts) to health care providers warning of serious adverse events, including deaths, which are specific to liquid-filled intragastric balloons. While the Safety Alerts were specific to liquid-filled intragastric balloons and not gas-filled intragastric balloons, these adverse events could result in the FDA taking action against the entire intragastric balloon category which may cause negative consequences for us including requiring additional warnings, precautions and/or contraindications in the labeling than originally required, delaying or denying approval of our future products, or possible review or withdrawal of our current approval.

If we are unable to demonstrate that any adverse events are not related to our product, the FDA or other regulatory authorities could order us to cease further development of, require more restrictive indications for use and/or additional warnings, precautions and/or contraindications in the labeling than originally required, or delay or deny approval of any of our future products. Even if we are able to do so, such event could affect patient recruitment or the ability of enrolled patients to complete a clinical trial. Moreover, if we elect, or are required, to not initiate, delay, suspend or terminate any future clinical trial of any of our products, the commercial prospects of such product may be harmed and our ability to generate product revenues from our product may be delayed or eliminated. Any of these occurrences may harm our ability to develop other products, and may harm our business, financial condition and prospects significantly.

In addition, we or others may later identify undesirable side effects caused by the product (or any other similar product), resulting in potentially significant consequences, including:

- the FDA or European notified bodies may withdraw or limit their approval of the product;
- the FDA or European notified bodies may require the addition of labeling statements, such as a contraindication;
- we may be required to change the way the product is distributed or administered, conduct additional clinical trials or change the labeling of the product;
- we may be required to correct or remove the products from the marketplace or decide to conduct a voluntary recall;
- we may decide to alert physicians through customer notifications;
- the FDA may use publicity such as a press release to alert our customers and the public of the issue;
- physicians and patients may be dissatisfied, seek refunds and refuse to use our products;
- we could be sued and held liable for injury caused to individuals using our product; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of our Obalon Balloon System and could substantially increase the costs of commercializing our product and significantly impact our ability to successfully commercialize our product and generate product sales.

If there are significant disruptions in our information technology systems including a cybersecurity breach, our business, financial condition and operating results could be adversely affected.

The efficient operation of our business depends on our information technology systems. We rely on our information technology systems to effectively manage sales and marketing data, accounting and financial functions, inventory, product development tasks, quality assurance, clinical data, and customer service and technical support functions. Our information technology systems are vulnerable to damage or interruption from earthquakes, fires, floods and other natural disasters, terrorist attacks, computer viruses, ransomware or other malware, attacks by computer hackers, failures during the process of upgrading or replacing software, databases or components thereof, power outages, hardware failures, telecommunication failures, user errors or other catastrophic events. Attacks upon information technology systems are increasing in their frequency, levels of persistence, sophistication and intensity, and are being conducted by sophisticated and organized groups and individuals with a wide range of motives and expertise. As a result of the COVID-19 pandemic, we may face increased cybersecurity risks due to our reliance on internet technology and the number of our employees who are working remotely, which may create additional opportunities for cybercriminals to exploit vulnerabilities. In addition, a variety of our software systems are cloud-based data management applications hosted by third-party service providers whose security and information technology systems are

subject to similar risks. Numerous and evolving cybersecurity threats pose potential risks to the security of our information technology systems, networks and products, as well as the confidentiality and integrity of our data. A security breach could impact the use of such products and the security of information stored therein.

The failure of our or our service providers' information technology could disrupt our entire operation or result in decreased sales, increased overhead costs and product shortages. For example, the loss of clinical trial data from completed or ongoing clinical trials could result in delays in our regulatory efforts and significantly increase our costs to recover or reproduce the data. A number of proposed and enacted federal, state and international laws and regulations obligate companies to notify
individuals of security breaches involving personally identifiable information, which could result from breaches experienced by us or by third parties, including collaborators, vendors or contractors. In addition, a cybersecurity attack could result in other negative consequences, including disruption of our internal operations, increased cybersecurity protection costs, lost revenue, regulatory actions or litigations. To the extent that any disruption or security breach were to result in a loss of or damage to our data or applications, or inappropriate disclosure of confidential or proprietary information, we could also incur liability. Any of these events could have a material adverse effect on our reputation, business, financial condition and results of operations.

Our costs could substantially increase if we experience a significant number of warranty claims.

We provide limited product warranties against manufacturing defects of our products. Our product warranty requires us to repair defects arising from product design and production processes, and, if necessary, replace defective components. The future costs associated with our warranty claims are uncertain due to our limited commercialization experience with our current generation Obalon Balloon System and lack of commercial experience with our Obalon Navigation System and Obalon Touch Inflation Dispenser. Thus far, we have not accrued a significant liability contingency for potential warranty claims.

We have instituted a swallow guarantee which may provide replacement of product for physicians and institutions when patients are unable to swallow a capsule. To qualify for a replacement of product, the physician must adhere by our policies and procedures. The swallow guarantee is limited to a certain number of swallow attempts per balloon placement, as well as other procedural and technical requirements. As a result of this program, our financial results or gross profit may be impacted.

If we experience warranty claims, including manufacturing defects as well as our swallow guarantee, in excess of our expectations, or if our repair and replacement costs associated with warranty claims increase significantly, we will incur liabilities for potential warranty claims that may be greater than we expect. An increase in the frequency of warranty claims or amount of warranty costs may harm our reputation and could have a material adverse effect on our business, results of operations and financial condition.

Our results of operations could be negatively impacted if we are unable to collect our accounts receivable or if we experience a large number of product returns.

We reserve for sales returns as a reduction to revenue based on our historical experience with return rates and the specific circumstances which lead us to believe a customer may return product. If we experience a large number of product returns or an unexpected increase to product return rates, it would have a negative impact on our revenue and results of operations.

In our Company-managed Obalon-branded retail treatment centers payment is collected from the patient in advance of initiation of treatment and payments will be handled the same way for any future Company-owned or managed Obalon-branded treatment centers. Third party financing is offered at the Obalon Center for Weight Loss™ by companies that specialize in that service. If patients are not satisfied with the outcome of the treatment, or experience complications or early removals, they may request refunds. We reserve for sales returns as a reduction of revenue. If we experience a higher than expected request for refunds, it could have a negative impact on our revenue or results of operations.

If we are unable to implement and maintain effective internal control over financial reporting in the future, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our common stock may decrease.

As a public company, we are required to maintain internal control over financial reporting and to report any material weaknesses in such internal controls. Section 404 of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, requires that we evaluate and determine the effectiveness of our internal control over financial reporting and provide a management report on our internal control over financial reporting, however, while we remain an emerging growth company we will not be required to include the attestation report issued by our independent registered public accounting firm.

The process of designing and implementing our internal control over financial reporting, has been time consuming, costly and complicated. If we identify material weaknesses in our internal control over financial reporting, are unable to comply with the requirements of Section 404 in a timely manner, are unable to assert that our internal control over financial reporting is

effective or, once required, if our independent registered public accounting firm is unable to attest that our internal control over financial reporting is effective, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our common stock could decrease. We could also become subject to stockholder or other third-party litigation as well as investigations by the stock exchange on which our securities are listed, the SEC or other regulatory authorities, which could require additional financial and management resources and could result in fines, trading suspensions or other remedies.

Fluctuations in insurance cost and availability could adversely affect our profitability or our risk management profile.

We hold a number of insurance policies, including directors' and officers' liability insurance, product liability insurance, business interruption insurance, medical malpractice, property insurance and workers' compensation insurance. The cost of maintaining directors' and officers' liability insurance and product liability insurance on implantable medical devices has increased substantially over the past few years and could continue to increase, due to general market trends, as part of an evaluation of our specific loss history and other factors. If the costs of maintaining adequate insurance coverage should increase significantly in the future, our operating results could be materially adversely affected. Likewise, if any of our current insurance coverage should become economically impractical or become unavailable to us due to exhaustion of the coverage or any other reason, we would be required to operate our business without indemnity from commercial insurance providers.

Our ability to utilize our net operating loss carryovers may be limited.

At December 31, 2019, we had federal and state net operating loss carryforwards, or NOLs, of approximately $147.9 million and $114.6 million, respectively. The federal and state tax loss carryforwards will begin expiring in 2028, unless previously utilized. The federal net operating loss carryover includes $59.7 million of net operating losses generated after 2017. Federal net operating losses generated in 2018 and beyond carryover indefinitely and may be generally be used to offset up to 80% of future taxable income. We also had federal and California research and development tax credit carryforwards totaling $3.4 million and $2.7 million respectively. The federal research and development tax credit carryforward will begin to expire in 2028 unless previously utilized. The California research tax credits do not expire.

In general, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, or IRC, a corporation that undergoes an "ownership change" is subject to limitations on its ability to utilize its pre-change NOLs and certain other tax assets to offset future taxable income, and an ownership change is generally defined as a cumulative change of 50% or more in the ownership positions of certain stockholders during a rolling three-year period. We have not completed a formal study to determine if any ownership changes within the meaning of IRC Section 382 have occurred.

If ownership changes within the meaning of IRC Section 382 have occurred, it could restrict our ability to use NOL carryforwards and research and development tax credits generated since inception. Limitations on our ability to use NOL carryforwards and research and development tax credits to offset future taxable income could require us to pay U.S. federal income taxes earlier than would be required if such limitations were not in effect. Similar rules and limitations may apply for state income tax purposes.

RISKS RELATED TO REGULATORY MATTERS

Even though we have received FDA approval of our PMA application to commercially market the Obalon balloon system in the United States, we will continue to be subject to extensive FDA regulatory oversight.

Our Obalon Balloon System, Obalon Navigation System, and Obalon Touch Inflation Dispenser are medical devices that are subject to extensive regulation by the FDA in the United States and by regulatory agencies in other countries where we do business. We will be required to timely file various reports with the FDA, including reports required by the medical device reporting regulations, or MDRs, that require that we report to the regulatory authorities if our devices may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur. If these reports are not filed timely, regulators may impose sanctions and sales of our products may suffer, and we may be subject to product liability or regulatory enforcement actions, all of which could harm our business.

We rely on our U.S. physician customers and international distributors for timely reporting of any adverse events or product malfunctions that occur, which may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur. Notification by our U.S. physician customers and our international distributor on a timely basis or at all of such events could result in product liability or regulatory enforcement actions, both of which could harm our business.

In addition, as a condition of approving a PMA application, the FDA may also require some form of post-approval study or post-market surveillance, whereby the applicant conducts a follow-up study or follows certain patient groups for a number of years and makes periodic reports to the FDA on the clinical status of those patients when necessary to protect the public health or to provide additional safety and effectiveness data for the device. For example, as part of our PMA approval, we are required to conduct a post-approval study at up to 16 sites in the United States to evaluate the safety and efficacy of our Obalon Balloon System in approximately 200 subjects over a twelve-month period, consisting of six months of treatment with the Obalon Balloon System followed by six months of observation after balloon removal. We began patient enrollment in the post approval study in the second quarter of 2018 and in April 2019 we notified the FDA that we had temporarily paused active new patient enrollment to conserve cash resources and ensure we could meet future financial obligations to physicians and patients. We have subsequently notified the FDA in July 2019 that we restarted enrollment and as of March 31, 2020 we enrolled approximately 200 patients, which we believe represents full enrollment. As part of our PMA-S approval of the Obalon Navigation System, we are required to conduct a post-approval study at up to 40 sites in the United States to evaluate the safety and efficacy of our Obalon Navigation System for approximately 4,000 balloon placements, as it relates to the safety and efficacy of acute balloon placement including deployment, but not long-term results such as weight loss. We began enrollment of the Obalon Navigation System post-approval study in December 2019. In the first quarter of 2020, we enrolled 32 patients in the Obalon Navigation System post-approval study. We intend to notify the FDA that we have temporarily paused active new patient enrollment as a result of ceasing to ship new product to commercial customers and the closure of the Obalon-branded retail treatment centers. We intend to keep this study paused until we secure a pathway to a product reimbursement trial where we may collect the data required to support this study in conjunction with the data required of a third-party payor. The product labeling for any product subject to a post-approval study must be updated and submitted in a PMA supplement as results, including any adverse event data, from the post-approval study data become available. Failure to conduct post-approval studies in compliance with applicable regulations or to timely complete required post-approval studies or comply with other post-approval requirements could result in withdrawal of approval of the PMA, which would materially harm our business. Moreover, if post-approval studies of our products reveal unanticipated adverse effects, increases in the incidence of anticipated adverse effects, or device failures, and we are required to modify the approved labeling for our products to include such adverse findings, such labeling modifications could have a materially adverse effect on our ability to market and sell the affected products.

If we initiate a correction or removal for one of our devices, issue a safety alert, or undertake a field action or recall to reduce a risk to health posed by the device, we would be required to submit a publicly available Correction and Removal report to the FDA and in many cases, similar reports to other regulatory agencies. This report could be classified by the FDA as a device recall, which could lead to increased scrutiny by the FDA, other international regulatory agencies and our customers regarding the quality and safety of our devices and to negative publicity, including FDA alerts, press releases, or administrative or judicial enforcement actions. Furthermore, the submission of these reports has been and could be used by competitors against us in competitive situations and cause customers to delay purchase decisions or cancel orders and would harm our reputation.

Since February 2017, the FDA has issued four separate letters to health care providers warning of serious adverse events, including deaths, which are specific to liquid-filled intragastric balloons. The letters were specific to liquid-filled intragastric balloons and not gas-filled intragastric balloons. However, these adverse events associated with liquid-filled intragastric balloons could result in the FDA taking action against the entire gastric balloon category, which may cause negative consequences for us including requiring additional warnings, precautions and/or contraindications in the labeling than originally required, delaying or denying approval of our future products, or possible review or withdrawal of our current approval.

The FDA and the Federal Trade Commission, or FTC, also regulate the advertising and promotion of our products to ensure that the claims we make are consistent with our regulatory clearances and approvals, that there are adequate and reasonable data to substantiate the claims and that our promotional labeling and advertising is neither false nor misleading in any respect. If the FDA or FTC determines that any of our advertising or promotional claims are false, misleading, not substantiated or not permissible, we may be subject to enforcement actions, including Warning Letters, and we may be required to revise our promotional claims and make other corrections or restitutions.

Additionally, the medical device industry’s relationship with physicians is under increasing scrutiny by the Health and Human Services Office of Inspector General, or OIG, the Department of Justice, or DOJ, state attorneys general, and other foreign and domestic government agencies. Our failure to comply with laws, rules and regulations governing our relationships with physicians, or an investigation into our compliance by the OIG, DOJ, state attorneys general and other government agencies, could significantly harm our business.

The FDA and state authorities have broad enforcement powers. Our failure to comply with applicable regulatory requirements could result in enforcement action by the FDA or state agencies, which may include any of the following sanctions:

- adverse publicity, warning letters, untitled letters, Form 483s, fines, injunctions, consent decrees and civil penalties;

- repair, replacement, refunds, recalls, termination of distribution, administrative detention or seizures of our products;
- operating restrictions, partial suspension or total shutdown of production;
- customer notifications or repair, replacement or refunds;
- refusing our requests for 510(k) clearance or PMA approvals or foreign regulatory approvals of new products, new intended uses or modifications to existing products;
- withdrawals of current 510(k) clearances or PMAs or foreign regulatory approvals, resulting in prohibitions on sales of our products;
- FDA refusal to issue certificates to foreign governments needed to export products for sale in other countries; and
- criminal prosecution.

Any of these sanctions could also result in higher than anticipated costs or lower than anticipated sales and have a material adverse effect on our reputation, business, results of operations and financial condition.

In addition, the FDA's and other regulatory authorities' policies may change and additional government regulations may be enacted that could prevent, limit or delay regulatory approval of our product candidates. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any marketing approval that we may have obtained and we may not achieve or sustain profitability, which would adversely affect our business, prospects, financial condition and results of operations.

We also cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative or executive action, either in the United States or abroad. For example, certain policies of the current administration may impact our business and industry. The current administration has taken several executive actions, including the issuance of a number of Executive Orders, that could impose significant burdens on, or otherwise materially delay, FDA's ability to engage in routine regulatory and oversight activities such as implementing statutes through rulemaking, issuance of guidance, and review and approval of marketing applications. It is difficult to predict how these executive actions, including the Executive Orders, will be implemented, and the extent to which they will affect the FDA's ability to exercise its regulatory authority. If these executive actions impose constraints on FDA's ability to engage in oversight and implementation activities in the normal course, our business may be negatively impacted.

Material modifications to our Obalon Balloon System and Obalon Navigation System may require new premarket approvals and may require us to recall or cease marketing our Obalon Balloon System until approvals are obtained.

Once a medical device is approved, a manufacturer must notify the FDA of any modifications to the device. Any modification to a device that has received FDA approval that affects its safety or effectiveness requires approval from the FDA pursuant to a PMA supplement. An applicant may make a change in a device approved through a PMA without submitting a PMA supplement if the change does not affect the safety and effectiveness of the device and the change is reported to FDA in a post-approval periodic report required as a condition of approval. We may not be able to obtain additional premarket approvals for new products or obtain approval of PMA supplements for modifications to, or additional indications for, our Obalon Balloon System in a timely fashion, or at all. Delays in obtaining required future approvals would harm our ability to introduce new or enhanced products in a timely manner, which in turn would harm our future growth. If we make additional modifications in the future that we believe do not or will not require additional approvals and the FDA disagrees and requires new approvals for the modifications, we may be required to recall and to stop selling or marketing our Obalon Balloon System as modified, which could harm our operating results and require us to redesign our Obalon Balloon System and Obalon Navigation System. In these circumstances, we may be subject to significant enforcement actions.

If we or our suppliers fail to comply with the FDA and international quality system requirements, our manufacturing operations could be delayed or shut down and sales of our Obalon Balloon System could suffer.

Our manufacturing processes and those of our third-party suppliers are required to comply with the FDA's QSR, which covers the procedures and documentation of the design, testing, production, control, quality assurance, inspection, complaint handling, record keeping, management review, labeling, packaging, sterilization, storage and shipping of our Obalon Balloon System. We are also subject to similar state requirements and licenses. In addition, we must engage in extensive record keeping and reporting and must make available our manufacturing facilities and records for periodic unannounced inspections by governmental agencies, including the FDA, state authorities and comparable agencies in other countries. If we are found to not be in compliance at the conclusion of an FDA QSR inspection, our operations could be disrupted and our manufacturing interrupted. Failure to take adequate corrective action in response to an adverse QSR inspection could result in, among other things, issuance of a Warning Letter, a shut-down of our manufacturing operations, significant fines, suspension of marketing

clearances and approvals, seizures or recalls of our device, operating restrictions and criminal prosecutions, any of which would cause our business to suffer. Furthermore, our key component suppliers may not currently be or may not continue to be in compliance with applicable regulatory requirements, which may result in manufacturing delays for our product and cause our revenues to decline.

We have registered with the FDA as a medical device manufacturer and have obtained a manufacturing license from the California Department of Public Health, or CDPH. The FDA has broad post-market and regulatory enforcement powers. We are subject to unannounced inspections by the FDA and the Food and Drug Branch of CDPH to determine our compliance with the QSR and other regulations, and these inspections may include the manufacturing facilities of our suppliers. Our current facility has been inspected by the FDA numerous times, the most recent of which occurred in November 2017, which resulted in no observations. Although we believe our manufacturing facilities and those of our critical component suppliers are in compliance with the QSR requirements, we can provide no assurance that we will continue to remain in compliance with the QSR. If our manufacturing facilities or those of any of our component suppliers are found to be in violation of applicable laws and regulations, or we or our suppliers have significant noncompliance issues or fail to timely and adequately respond to any adverse inspectional observations or product safety issues, or if any corrective action plan that we or our suppliers propose in response to observed deficiencies is not sufficient, the FDA could take enforcement action, including any of the following sanctions:

- untitled letters, warning letters, and Form 483s;
- fines, injunctions, consent decrees and civil penalties;
- customer notifications or repair, replacement, refunds, recall, detention or seizure of our products;
- operating restrictions or partial suspension or total shutdown of production;
- refusing or delaying our requests for clearance or approval of new products or modified products;
- withdrawing clearances or approvals that have already been granted;
- refusal to grant export approval for our products; or
- criminal prosecution.

Taking corrective action may be expensive, time consuming and a distraction for management and if we experience a shutdown or delay at our manufacturing facility, we may be unable to produce our Obalon Balloon System, which would materially harm our business.

Outside the United States, our products and operations are also often required to comply with standards set by industrial standards bodies, such as the International Organization for Standardization. Foreign regulatory bodies may evaluate our products or the testing that our products undergo against these standards. The specific standards, types of evaluation and scope of review differ among foreign regulatory bodies. If we fail to adequately comply with any of these standards, a foreign regulatory body may take adverse actions similar to those within the power of the FDA. Any such action may harm our reputation and could have an adverse effect on our business, results of operations and financial condition.

We also have an ISO 13485:2003 Quality System Certificate through British Standards Institution, or BSI, that is required to support our CE mark. We have been audited at least annually and are subject to unannounced audits by BSI which could result in major nonconformances. Major nonconformances could result in the suspension or revocation of our ISO Certificate, which would disrupt distribution in the European Union and other countries that require certificated Quality Systems.

Our success depends on our ability to obtain FDA approval or other regulatory approvals for our future products and product improvements.

The successful commercialization of the Obalon Balloon System is dependent on the successful development and commercialization of future devices intended to improve the safety, efficacy, ease-of-use or cost of the Obalon Balloon System. A product we have under development includes a longer-term duration balloon, intended to remain in the stomach for up to twelve months.

We cannot assure you that this or other devices or improvements we develop will receive regulatory approval in the United States or in other regulatory jurisdictions outside the United States, including the Middle East or CE-Mark. A number of companies in the medical device field have suffered significant setbacks during evaluation due to lack of efficacy or unacceptable safety issues, notwithstanding promising preliminary results. Our failure to receive regulatory approval in jurisdictions outside the United States, in a timely manner or at all, could harm our financial results and ability to become profitable. Even if we obtain regulatory approval for one or more of these new products, the terms of such regulatory approval may limit our ability to successfully market the approved product.

The FDA and other regulatory agencies actively enforce the laws and regulations governing the development, approval and commercialization of medical devices. If we are found to have failed to comply with these laws and regulations, we may become subject to significant liability.

The Obalon Balloon System is classified by the FDA as a Class III medical device. As a result, we are subject to extensive government regulation in the United States by the FDA and state regulatory authorities. We are also subject to foreign regulatory authorities in the countries in which we currently and intend to conduct business. These regulations relate to, among other things, research and development, design, pre-clinical testing, clinical trials, manufacturing, packaging, storage, premarket approval, environmental controls, safety and efficacy, labeling, advertising, promotion, pricing, recordkeeping, reporting, import and export, post-approval studies and the sale and distribution of the Obalon Balloon System.

Further, the FDA and European regulatory authorities strictly regulate the indications for use and associated promotional safety and effectiveness claims, including comparative and superiority claims vis a vis competitors' products, that may be made about products, such as the Obalon Balloon System. In particular, a medical device may not be promoted for uses or indications that are not approved by the FDA or other regulatory agencies as reflected in the product's approved labeling. For example, we will not be able to promote or make claims for the Obalon Balloon System for the treatment of patients outside of the BMI ranges specifically approved by the FDA or other regulatory authorities. In the United States, we received FDA approval of the Obalon Balloon System for temporary use to facilitate weight loss in adults with obesity (BMI of 30 to 40) who have failed to lose weight through diet and exercise. The Obalon Balloon System is intended to be used as an adjunct to a moderate intensity diet and behavior modification program. All balloons must be removed six months after the first balloon is placed. Our pivotal trial inclusion and exclusion criteria included patients with a BMI of 30 to 40; thus, our approved labeling is limited to the same BMI range. We also will not be able to make comparative or superiority claims for the Obalon Balloon System versus other products without scientific data supporting or establishing those claims, including possibly data from head-to-head clinical trials if appropriate. Our CE mark label includes patients with a BMI of 27 or greater. As a part of our PMA approval, we are required to conduct a post-approval study at up to 16 sites in the United States to evaluate the safety and efficacy of our Obalon Balloon System over a twelve-month period, consisting of six months of treatment with the Obalon Balloon System followed by six months of observation after balloon removal. We began patient enrollment in the post-approval study in the second quarter of 2018 and in April 2019 we notified the FDA that we had temporarily paused active new patient enrollment to conserve cash resources and ensure we could meet future financial obligations to physicians and patients. We have subsequently notified the FDA in July 2019 that we restarted enrollment and as of December 31, 2019 we enrolled 187 patients. Failure to conduct post-approval studies in compliance with applicable regulations or to timely complete required post-approval studies or comply with other post-approval requirements could result in withdrawal of approval of the PMA, which would materially harm our business. As part of our PMA-S approval of the Obalon Navigation System, we are required to conduct a post-approval study of up to 40 sites in the United States to evaluate the safety and efficacy of our Obalon Navigation System as it relates to acute balloon placement including deployment. We began enrollment of the Obalon Navigation System post approval study in December 2019. Failure to conduct the post-approval study in compliance with applicable regulations or to timely complete required post-approval studies, obtaining results different than our pivotal trial results or failure to comply with other post-approval requirements could result in withdrawal of approval of the PMA, which would harm our business.

Physicians may choose to prescribe such products to their patients in a manner that is inconsistent with the approved label, as the FDA does not restrict or regulate a physician's choice of treatment within the practice of medicine. However, if the FDA determines that our promotional materials or physician training, including our paid consultants' educational materials, constitutes promotion of an off-label use, it could request that we modify our training or promotional materials or subject us to enforcement action, including warning letters, untitled letters, fines, penalties, or seizures. If we are found to have promoted such off-label uses, we may become subject to significant liability. The federal government has levied large civil and criminal fines and/or other penalties against companies for alleged improper promotion and has investigated, prosecuted, and/or enjoined several companies from engaging in off-label promotion. The FDA has also requested that companies enter into consent decrees of permanent injunctions under which specified promotional conduct is changed, curtailed or prohibited. If we cannot successfully manage the promotion of and training for our Obalon Balloon System, we could become subject to significant liability, which would materially adversely affect our business and financial condition.

Disruptions at the FDA and other government agencies caused by funding shortages or global health concerns could hinder their ability to hire, retain or deploy key leadership and other personnel, or otherwise prevent new or modified products from being developed, cleared or approved or commercialized in a timely manner or at all, which could negatively impact our business.

The ability of the FDA to review and clear or approve new products can be affected by a variety of factors, including government budget and funding levels, statutory, regulatory, and policy changes, the FDA's ability to hire and retain key personnel and accept the payment of user fees, and other events that may otherwise affect the FDA's ability to perform routine

functions. Average review times at the agency have fluctuated in recent years as a result. In addition, government funding of other government agencies that fund research and development activities is subject to the political process, which is inherently fluid and unpredictable. Disruptions at the FDA and other agencies may also slow the time necessary for new medical devices or modifications to cleared or approved medical devices to be reviewed and/or approved by necessary government agencies, which would adversely affect our business. For example, over the last several years, including for 35 days beginning on December 22, 2018, the U.S. government has shut down several times and certain regulatory agencies, such as the FDA, have had to furlough critical FDA employees and stop critical activities.

Separately, in response to the global COVID-19 pandemic, on March 10, 2020 the FDA announced its intention to postpone most foreign inspections of manufacturing facilities, and regulatory authorities outside the United States may adopt similar restrictions or other policy measures in response to the COVID-19 pandemic. If a prolonged government shutdown occurs, or if global health concerns continue to prevent the FDA or other regulatory authorities from conducting their regular inspections, reviews, or other regulatory activities, it could significantly impact the ability of the FDA or other regulatory authorities to timely review and process our regulatory submissions, which could have a material adverse effect on our business.

If we fail to obtain and maintain regulatory approval in foreign jurisdictions, our market opportunities will be limited.

In order to market our products in the European Union, the Middle East or other foreign jurisdictions, we must obtain and maintain separate regulatory approvals and comply with numerous and varying regulatory requirements. The approval procedure varies from country to country and can involve additional testing. The time required to obtain approval abroad may be longer than the time required to obtain FDA clearance or approval. Foreign regulatory approval processes include many of the risks associated with obtaining FDA clearance or approval and we may not obtain foreign regulatory approvals on a timely basis, if at all. FDA clearance or approval does not ensure approval by regulatory authorities in other countries, and approval by one foreign regulatory authority does not ensure approval by regulatory authorities in other foreign countries. However, the failure to obtain clearance or approval in one jurisdiction may have a negative impact on our ability to obtain clearance or approval elsewhere. If we do not obtain or maintain necessary approvals to commercialize our products in markets outside the United States, it would negatively affect our overall market penetration. We currently do not have any approvals for the Obalon Navigation System and Obalon Touch Inflation Dispenser outside the U.S., including the Middle East and CE-Mark. Furthermore, given recent changes to the CE-mark process which requires additional filings, the CE Mark for the prior version of the Obalon Ballloon System will not be renewed in May 2020. However, there are certain countries in the Middle East that allow importation of medical device products with United States FDA approval or clearance to meet local regulatory standards, including Qatar.

If we fail to comply with healthcare regulations and fraud and abuse laws, we could face substantial penalties and our business, operations and financial condition could be adversely affected.

Although intragastric balloon products similar to our Obalon Balloon System are not currently reimbursed by U.S. federal healthcare programs (such as Medicare or Medicaid) or other third-party payors, any future reimbursement by third-party payors could expose our business to broadly applicable fraud and abuse and other healthcare laws and regulations that would regulate the business, including laws that would regulate financial arrangements and relationships through which we market, sell and distribute the Obalon Balloon System. Additionally, as a device manufacturer, we are still subject to certain healthcare fraud and abuse regulation, including those laws that apply to self-pay products, and enforcement by the federal government and the states in which we conduct our business.

Applicable and potentially applicable U.S. federal and state healthcare laws and regulations and their foreign equivalents, include, but are not limited to, the following:

- ***Anti-Kickback Laws.*** The federal healthcare program Anti-Kickback Statute, which prohibits, among other things, any person from knowingly and willfully offering, soliciting, receiving or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual for, or the purchase, order or recommendation of, any good or service for which payment may be made under federal healthcare programs, such as Medicare and Medicaid, unless the arrangement fits within one of several statutory exceptions or regulatory "safe harbors." Courts have interpreted the term "remuneration" broadly under the Anti-Kickback Statute to include anything of value, such as, for example, gifts, discounts, payments of cash and waivers of payments. Violations can result in significant penalties, imprisonment and exclusion from Medicare, Medicaid and other federal healthcare programs. Exclusion of a manufacturer would preclude any federal healthcare program from paying for the manufacturer's products. A person does not need to have actual knowledge of the federal Anti-Kickback Statute or specific intent to violate it in order to have committed a violation. In addition, kickback arrangements can provide the basis for an action under the False Claims Act, which is discussed in more detail below.

Government officials have recently increased enforcement efforts with respect to sales and marketing activities of pharmaceutical, medical device, and other healthcare companies, and they have brought cases against individuals and entities that allegedly offered unlawful inducements to potential or existing customers in an attempt to procure business. Settlements of these government cases have involved significant fines and penalties and, in some instances, criminal pleas.

In addition to the federal Anti-Kickback Statute, many states have their own anti-kickback laws. Often, these laws closely follow the language of the federal law, although they do not always have the same exceptions or safe harbors. In some states, the restrictions imposed by anti-kickback laws are not limited to items and services paid for by government programs but, instead, apply with respect to all payors for healthcare items and services, including commercial health insurance companies.

- ***False Claims Laws.*** The federal False Claims Act prohibits any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government or knowingly making, or causing to be made, a false statement to get a false claim paid. A manufacturer can be held liable under false claims laws, even if it does not submit claims to the government, if it is found to have caused submission of false claims. For example, these laws may apply to a manufacturer that provides information regarding coverage, coding or reimbursement of its products to persons who bill third-party payers. In addition, a violation of the federal Anti-Kickback Statute is deemed to be a violation of the federal False Claims Act.

  The federal False Claims Act also includes whistleblower provisions that allow private citizens to bring suit against an entity or individual on behalf of the United States and to recover a portion of any monetary recovery. Many of the recent, highly publicized settlements in the healthcare industry relating to sales and marketing practices have related to cases brought under the federal False Claims Act.

  The majority of states also have adopted statutes or regulations similar to the federal laws, which apply to items and services reimbursed under Medicaid and other state programs. Sanctions under these federal and state laws may include civil monetary penalties, exclusion of a manufacturer's products from reimbursement under government programs, criminal fines and imprisonment.

- ***Other Healthcare Fraud Laws.*** HIPAA includes criminal health care fraud provisions and related rules that prohibit knowingly and willfully executing a scheme or artifice to defraud any healthcare benefit program or falsifying, concealing or covering up a material fact or making any material false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items, or services. Similar to the Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation.

- ***Transparency Laws.*** There has been a recent trend of increased federal and state regulation of payments and transfers of value provided to healthcare professionals and entities. For example, the Physician Payment Sunshine Act, imposes annual reporting requirements on certain manufacturers of drugs, medical devices, biologics and medical supplies with respect to payments and other transfers of value provided by them, directly or indirectly, to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors), certain other health care professionals beginning in 2022, and teaching hospitals, as well as with respect to certain ownership and investment interests held by physicians and their family members. A manufacturer's failure to submit timely, accurately and completely the required information regarding all payments, transfers of value or ownership or investment interests may result in civil monetary penalties. Certain states also mandate implementation of commercial compliance programs, impose restrictions on medical device manufacturers' marketing practices, require reporting of marketing and pricing information, and require the tracking and reporting of gifts, compensation and other remuneration to healthcare professionals and entities under certain circumstances.

Efforts to ensure that our business arrangements will comply with applicable healthcare laws may involve substantial costs. In addition, the dynamic healthcare regulatory compliance environment and the need to build and maintain robust systems to comply with different reporting and other legal requirements in multiple jurisdictions, increase the possibility that a healthcare company may fail to comply fully with one or more of these laws or regulations. It is possible that governmental and enforcement authorities will conclude that our business practices do not comply with current or future statutes, regulations, agency guidance or case law interpreting applicable fraud and abuse or other healthcare laws and regulations. If any such actions are instituted against us, defending against any such actions can be costly, time-consuming and may require significant financial and personnel resources. If our operations are found to be in violation of any of the healthcare regulatory laws to which the business is subject, or any other laws that apply to the business, we may be subject to penalties, including potentially significant criminal and civil and administrative penalties, damages, fines, disgorgement, imprisonment, exclusion from participation in government healthcare programs, additional compliance and reporting requirements, contractual damages, reputational harm, administrative burdens, diminished profits and future earnings, and the curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and our results of operations.

In addition, the clearance or approval and commercialization of any of our products outside the United States will also likely subject us to foreign equivalents of the healthcare laws mentioned above, among other foreign laws.

If our retail arrangements with physicians or customers are found to violate state laws prohibiting the corporate practice of medicine or fee splitting, our business, financial condition and our ability to operate in those states could be adversely impacted.

The practice of medicine is highly regulated, and our operation of retail treatment centers, arrangements with physicians and interactions with retail customers in the near future will be subject to federal, state or local laws, rules and regulations, any of which may change from time to time. Regulatory oversight includes, but is not limited to, the corporate practice of medicine, fee-splitting, regulation and registration of medical practices, clinics and facilities and management companies by state and local licensing boards or other agencies, licensure and scope of practice limitation for physicians and other healthcare professionals, advertising and consumer protection laws. Certain states have laws, rules and regulations which require that medical practices be owned by licensed physicians and that business entities which are not owned by licensed physicians refrain from providing, or holding themselves out as providers of, medical care. These laws generally prohibit the practice of medicine by lay entities or persons and are intended to prevent unlicensed persons or entities from interfering with or inappropriately influencing the physician's professional judgment. The specific restrictions with respect to enforcement of the corporate practice of medicine and fee-splitting laws varies from state to state. Such laws may make it difficult for us to establish or expand our operations into a state, as interpretive legal precedent and regulatory guidance varies by jurisdiction and is often sparse and not fully developed. A determination that we are in violation of applicable restrictions on the practice of medicine or fee-splitting in any jurisdiction in which we operate, could have a material adverse effect on us, particularly if we are unable to restructure our operations and arrangements to comply with the requirements of that jurisdiction, if we are required to restructure our operations and arrangements at a significant cost, or if we are subject to penalties or other adverse action.

If we or our affiliated physicians fail to comply with licensing and accreditation requirements applicable to our business, various governmental agencies may impose fines or preclude us from operating in certain states.

Federal, state, and local laws and policies impose various registration, accreditation, permit and/or licensing requirements on healthcare facilities and subject healthcare facilities to regulations ranging from the adequacy of medical care, to compliance with building codes and environmental protection laws. Additionally, physicians at our retail treatment centers, once operational, will also be subject to various state and federal regulations, including utilization of diagnostic tests and regarding prescribing medication and controlled substances. Delays or failures to obtain or maintain any required registrations, accreditations, permits and other licenses could adversely impact our ability to establish and operate our retail treatment centers.

Moreover, each state defines the scope of practice of physicians and other healthcare professionals through legislation and through their respective boards of medicine and we will need to comply with laws related to the physician supervision of services and scope of practice requirements. Activities that qualify as professional misconduct under state law may subject our personnel to sanctions, or may even result in loss of their license and could, possibly, subject us to sanctions as well. Some state boards of medicine impose reciprocal discipline, that is, if a physician is disciplined for having committed professional misconduct in one state where he or she is licensed, another state where he or she is also licensed may impose the same discipline even though the conduct occurred in another state. Our ability to operate profitably will depend, in part, upon our ability and the ability of our affiliated physicians and retail treatment centers to obtain and maintain all necessary licenses and other approvals and operate in compliance with applicable healthcare and other laws and regulations that evolve rapidly.

We are subject to data privacy and security laws and regulations governing our collection, use, disclosure, or storage of personally identifiable information, including personal health information, which may impose restrictions on us and our operations and subject us to penalties if we are unable to fully comply with such laws.

In order to provide our services and solutions, we routinely receive, process, transmit and store personally identifiable information, or PII, including personal health information, of individuals, as well as other financial, confidential and proprietary information belonging to our patients and third parties from which we obtain information. The receipt, maintenance, protection, use, transmission, disclosure and disposal of this information is regulated at the federal and state levels and we also have obligations with respect to this information pursuant to our contractual requirements with customers. These laws, rules and requirements are subject to frequent change. Compliance with new privacy and security laws, regulations and requirements may result in increased operating costs and may constrain or require us to alter our business model or operations.

HIPAA requires certain entities, referred to as “covered entities” (including most healthcare providers and health plans), to comply with established standards, including standards regarding the privacy and security of PHI. HIPAA further requires that covered entities enter into agreements meeting certain regulatory requirements with their “business associates,” as such term is defined by HIPAA, which, among other things, obligate business associates to safeguard the covered entity’s PHI against improper use and disclosure. In addition, a business associate may face significant statutory and contractual liability if the business associate breaches the agreement or causes the covered entity to fail to comply with HIPAA. We believe that our Company-owned or managed treatment centers are required to be HIPAA compliant; we do not believe our corporate offices are required to be HIPAA compliant, but are nevertheless committed to maintaining the security and privacy of patients’ health information. Violation of HIPAA could result in the imposition of civil or criminal penalties.

Numerous other federal, state and foreign laws may apply that restrict the use and protect the privacy and security of PII, including health information. These include state medical privacy laws, state social security number protection laws, state breach notification laws, and federal and state consumer protection laws. These various laws in many cases are not preempted by HIPAA and may be subject to varying interpretations by the courts and government agencies. For instance, In Europe, the GDPR, went into effect in May 2018 and imposes stringent data protection requirements for controllers and processors of personal data of persons within the EU. The GDPR applies to any company established in the EU as well as to those outside the EU if they collect and use personal data in connection with the offering of goods or services to individuals in the EU or the monitoring of their behavior. Companies that must comply with the GDPR face increased compliance obligations and risk, including more robust regulatory enforcement of data protection requirements and potential fines for noncompliance of up to €20 million or 4% of the annual global revenues of the noncompliant company, whichever is greater. In addition, the United Kingdom leaving the EU could also lead to further legislative and regulatory changes. It remains unclear how the United Kingdom data protection laws or regulations will develop in the medium to longer term and how data transfer to the United Kingdom from the EU will be regulated, especially following the United Kingdom's departure from the EU on January 31, 2020 without a deal. However, the United Kingdom has transposed the GDPR into domestic law with the Data Protection Act 2018, which remains in force following the United Kingdom's departure from the EU.

Noncompliance or findings of noncompliance with applicable laws, regulations or requirements, or the occurrence of any privacy or security breach involving the misappropriation, loss or other unauthorized disclosure of sensitive personal information, whether by us or by one of our third party service providers, could have a material adverse effect on our reputation and business, including, among other consequences, mandatory disclosure to the media, loss of existing or new patients, significant increases in the cost of managing and remediating privacy or security incidents and material fines, penalties and litigation awards, any of which could have a material adverse effect on our business, results of operations, and financial condition.

Further, as regulatory focus on privacy issues continues to increase and laws and regulations concerning the protection of personal information expand and become more complex, these potential risks to our business could intensify. We expect that there will continue to be new proposed laws, regulations and industry standards concerning privacy, data protection and information security in the United States, including the California Consumer Privacy Act, which went into effect January 1, 2020. The CCPA creates individual privacy rights for California consumers and increases the privacy and security obligations of entities handling certain personal data. The CCPA provides for civil penalties for violations, as well as a private right of action for data breaches that is expected to increase data breach litigation. The CCPA may increase our compliance costs and potential liability, and many similar laws have been proposed at the federal level and in other states. We cannot yet determine the impact such future laws, regulations and standards may have on our business. Changes in laws or regulations associated with the enhanced protection of certain types of sensitive data, including health data, along with increased patient demands for enhanced data security infrastructure, could greatly increase our cost of providing our services, decrease demand for our services, reduce our revenue and/or subject us to additional liabilities.

Compliance with environmental laws and regulations could be expensive. Failure to comply with environmental laws and regulations could subject us to significant liability.

Our research and development and manufacturing operations involve the use of hazardous substances and a greenhouse gas, and are subject to a variety of federal, state, local and foreign environmental laws and regulations relating to the storage, use, discharge, disposal, remediation of, and human exposure to, hazardous substances and the sale, labeling, collection, recycling, treatment and disposal of products containing hazardous substances as well as the control and reduction of greenhouse gas emissions. In addition, our research and development and manufacturing operations produce biological waste materials, such as human and animal tissue, and waste solvents, such as isopropyl alcohol. These operations are permitted by regulatory authorities, and the resultant waste materials are disposed of in material compliance with environmental laws and regulations.

Liability under environmental laws and regulations can be joint and several and without regard to fault or negligence. Compliance with environmental laws and regulations may be expensive and non-compliance could result in substantial liabilities, fines and penalties, personal injury and third part property damage claims and substantial investigation and

remediation costs. Environmental laws and regulations could become more stringent over time, imposing greater compliance costs and increasing risks and penalties associated with violations. We cannot assure you that violations of these laws and regulations will not occur in the future or have not occurred in the past as a result of human error, accidents, equipment failure or other causes. The expense associated with environmental regulation and remediation could harm our financial condition and results of operations.

RISKS RELATED TO OUR INTELLECTUAL PROPERTY

If we are unable to adequately protect our proprietary technology or maintain issued patents that are sufficient to protect our Obalon Balloon System or our other products, others could compete against us more directly, which would have a material adverse impact on our business, results of operations, financial condition and prospects.

Our commercial success will depend in part on our ability to protect our proprietary rights to the technologies and inventions used in, or embodied by, our products. We rely on a combination of patents, trademarks, trade secret laws and confidentiality and invention assignment agreements to protect our intellectual property rights. If we do not adequately protect our intellectual property rights and proprietary technology, competitors may be able to use our technologies and erode or negate any competitive advantage that we may have, which could harm our business and ability to achieve profitability.

As of March 31, 2020, we held 25 issued U.S. patents and had 17 pending U.S. patent applications, as well as 32 international patents issued in regions including Europe, Mexico, Australia, Canada, Asia, China and Israel and 63 pending international patent applications in regions including Australia, Canada, Europe, Asia, the Middle East and South America. Our issued patents expire between the years 2023 and 2038, and are directed to various features and combinations of features of the Obalon Balloon System technology, including the apparatus for connecting the balloon to an inflation catheter, the structure and composition of the balloon wall, and the composition of the initial fill gas.

As of March 31, 2020, we held two registered U.S. trademarks and 41 registered marks in Europe, the Middle East, Asia and Mexico. We have five pending U.S. trademark applications and no pending marks outside the United States, including in Europe, the Middle East, Asia and Mexico.

Although an issued patent is presumed valid and enforceable, its issuance is not conclusive as to its validity or its enforceability, and it may not provide us with adequate proprietary protection or competitive advantages against competitors with similar products. Competitors may also be able to design around our patents. Other parties may develop and obtain patent protection for more effective technologies, designs or methods.

The degree of future protection for our proprietary rights is uncertain, and we cannot ensure that:

- any of our patents, or any of our pending patent applications, if issued, will include claims having a scope sufficient to protect the Obalon Balloon System or any other products;
- any of our pending patent applications will issue as patents;
- we will be able to successfully commercialize our Obalon Balloon System before our relevant patents expire;
- we were the first to make the inventions shown in each of our patents and pending patent applications;
- we were the first to file patent applications for these inventions;
- others will not develop similar or alternative technologies that do not infringe our patents;
- any of our patents will be found to ultimately be valid and enforceable;
- any patents issued to us will provide a basis for an exclusive market for our commercially viable products, will provide us with any competitive advantages or will not be challenged by third parties;
- we will develop additional proprietary technologies or products that are separately patentable;
- our commercial activities or products will not infringe the patents of others; or
- we will be in the financial position to defend our trademarks and patents.

If we are unable to protect the confidentiality of our proprietary information and know-how, the value of our technology and products could be adversely affected.

In addition to patent protection, we also rely on other proprietary rights, including protection of unpatented trade secrets, unpatented know-how and confidential and proprietary information, which we seek to protect, in part, by confidentiality

agreements with our employees and our collaborators and consultants. We also have agreements with our employees and selected consultants that obligate them to assign their inventions to us and have non-compete agreements with some, but not all, of our consultants. It is possible that technology relevant to our business will become known or be independently developed by a person that is not a party to such an agreement, including our competitors. We may not be able to prevent the unauthorized disclosure or use of our technical knowledge or trade secrets by consultants, vendors, former employees and current employees. If the employees and consultants who are parties to these agreements breach or violate the terms of these agreements, we may not have adequate remedies for any such breach or violation, and we could lose our trade secrets through such breaches or violations.

We may be subject to claims challenging the inventorship or ownership of our patents and other intellectual property.

We may also be subject to claims that former employees, collaborators or other third parties have an ownership interest in our patents or other intellectual property. For example, each of our patents and patent applications names one or more inventors having past or present affiliations with other institutions, and any of these institutions may assert an ownership claim. Litigation may be necessary to defend against these and other claims challenging inventorship or ownership. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights, such as ownership of, or right to use, valuable intellectual property. Such an outcome could have a material adverse effect on our business. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees.

We may infringe or be alleged to infringe the intellectual property rights of others, which may result in costly and time-consuming litigation, delay our product development efforts or prevent us from commercializing the Obalon Balloon System.

Our success will depend in part on our ability to operate without infringing the intellectual property and proprietary rights of third parties. The medical device industry is characterized by rapid technological change and extensive litigation regarding patent and other intellectual property rights. Our competitors and other industry participants, many of which have substantially greater resources and have made substantial investments in patent portfolios and competing technologies, may have applied for or obtained, or may in the future apply for and obtain, patents that will prevent, limit or otherwise interfere with our ability to make, use and sell our products. In addition, numerous third-party patents exist in the fields relating to our products. We cannot assure you that our business, products and methods do not or will not infringe the patents or other intellectual property rights of third parties.

From time to time, third parties, including our competitors as well as other industry participants and/or non-practicing entities, may allege that the Obalon Balloon System or the use of our technologies infringes patent claims or other intellectual property rights held by them or that we are employing their proprietary technology without authorization. For example, during 2017, we settled intellectual property infringement claims made by two separate third parties. We believed the claims in both instances were meritless but settled the matters for a nominal cash payment and aggregate stock issuances of 17,500 shares, in exchange for which we received a general release of all claims. Additionally, we have received and may from time to time in the ordinary course of business continue to receive, letters from third parties advising us of third-party patents that may relate to our business. The letters typically do not explicitly seek any particular action or relief from us. Although these letters do not threaten legal action, these letters may be deemed to put us on notice that continued operation of our business might infringe the patent rights of such third parties. If we decide not to seek a license or do not otherwise obtain a license to such third-party patents, there can be no assurance that we will not become subject to infringement claims or will not be forced to initiate legal proceedings in order to dispose of such actual or potential infringement claims or to seek to invalidate the claims of such third-party patents.

Patent and other types of intellectual property litigation can involve complex factual and legal questions, and can have an uncertain outcome. Any claim relating to intellectual property infringement that is successfully asserted against us may require us to pay substantial damages, including treble damages and attorney fees if we are found to be willfully infringing another party’s patents, for past use of the asserted intellectual property and royalties and other consideration going forward if we determine it necessary or are required to take a license. In addition, if any such claim were successfully asserted against us and we could not obtain such a license, an injunction may force us to stop or delay developing, manufacturing, selling or otherwise commercializing the Obalon Balloon System or our other products.

Intellectual property claims or litigation, regardless of merit, may be expensive and time-consuming to resolve, result in negative publicity, and divert our management’s attention from our core business. In addition, if we are subject to intellectual property claims or litigation, we may:

- be subject to a protected period of uncertainty while the claims or litigation remain unresolved, which could adversely affect our ability to raise additional capital and otherwise adversely affect our business;

- lose the opportunity to license our technology to others or to collect royalty payments based upon successful protection and assertion of our intellectual property rights against others; and
- be required to redesign those products that contain the allegedly infringing intellectual property, which could be costly, disruptive and/or infeasible.

Furthermore, we also rely on our trademarks as one means to distinguish our products from the products of our competitors, and have registered or applied to register many of these trademarks. However, our trademark applications may not be approved. Third parties may oppose our trademark applications, or otherwise challenge our use of the trademarks. In the event that our trademarks are successfully challenged, we could be forced to rebrand our products, which could result in loss of brand recognition and could require us to devote resources to advertising and marketing new brands. Our competitors may infringe our trademarks and we may not have adequate resources to enforce our trademarks.

If any of the risks described above come to fruition, our business, results of operations, financial condition and prospects could be harmed.

Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

The U.S. Patent and Trademark Office, or US PTO, and various international, foreign governmental and foreign regional patent agencies require compliance with a number of procedural, documentary, fee payment and other provisions during the patent application process. In addition, periodic maintenance fees on issued patents often must be paid to the US PTO and foreign patent agencies over the lifetime of the patent. There are situations in which noncompliance with these requirements can result in abandonment or lapse of a patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, competitors might be able to enter the market earlier than would otherwise have been the case.

We may be involved in legal proceedings to protect or enforce our intellectual property, which could be expensive, time-consuming, and unsuccessful.

Competitors may infringe our patents, trademarks or other intellectual property rights. Our ability to enforce our intellectual property rights depends on our ability to identify infringement. It may be difficult to identify infringers who do not advertise the components of their products. Moreover, it may be difficult or impossible to obtain evidence of infringement in a competitor’s or potential competitor’s product.

To counter infringement of our intellectual property rights, we have in the past been, and may in the future be, required to file infringement claims, which can be expensive and time-consuming. Even if successful, litigation to enforce our intellectual property rights could be costly and time-consuming and would divert the attention of our management and key personnel from our business operations. Moreover, we may not have sufficient resources to bring these actions to a successful conclusion. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded if we were to prevail may not be commercially meaningful. In addition, in an infringement proceeding, a court may decide that a patent of ours is not infringed and may refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question.

Interference proceedings instituted by third parties or brought by us may be necessary to determine the priority of inventions with respect to our patents or patent applications. An unfavorable outcome could require us to cease using the related technology or to attempt to obtain a license under such rights from the prevailing party. Our business could be harmed if the prevailing party does not offer us a license on commercially reasonable terms or offer us a license at all. Our defense of interference proceedings may fail and, even if successful, may result in substantial costs and distract our management and other employees.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. There could also be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a material adverse effect on the price of our common stock.

Issued patents covering our products could be found invalid or unenforceable if challenged in court or before administrative bodies.

If we initiated legal proceedings against a third party to enforce one of our patents, the defendant could counterclaim that the patent is invalid and/or unenforceable. Even if legal proceedings were not initiated, if we threatened a third party with a patent

infringement lawsuit, the third party preemptively may sue us in a declaratory judgment action and seek to have our patent declared invalid or not infringed. In patent litigation in the United States, defendant counterclaims alleging invalidity and/or unenforceability are commonplace. Grounds for a validity challenge include alleged failures to meet any of several statutory requirements, including lack of novelty, obviousness or non-enablement. Grounds for unenforceability assertions include allegations that someone connected with prosecution of the patent withheld relevant information from the U.S. PTO, or made a misleading statement during prosecution. Third parties may also raise similar claims before administrative bodies in the United States or abroad, even outside the context of litigation. Such mechanisms include reexamination, post-grant review and equivalent proceedings in foreign jurisdictions, e.g., opposition proceedings. Such proceedings could result in revocation or amendment of our patents in such a way that they no longer cover our products or competitive products. The outcome following legal assertions of invalidity and unenforceability is unpredictable. With respect to validity, for example, we cannot be certain that there is no invalidating prior art of which we and the patent examiner were unaware during prosecution. If a third party were to prevail on a legal assertion of invalidity and/or unenforceability, we would lose at least part, and perhaps all, of the patent protection on our products. Such a loss of patent protection would have a material adverse impact on our business. An adverse result in any legal proceeding could put one or more of our patents at risk of being invalidated, found unenforceable or interpreted narrowly and could put our patent applications at risk of not issuing.

We do not seek to protect our intellectual property rights in all jurisdictions throughout the world and we may not be able to adequately enforce our intellectual property rights even in the jurisdictions where we seek protection.

Filing, prosecuting and defending intellectual property rights related to our products in all countries and jurisdictions throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States could be less extensive than those in the United States. Consequently, we may not be able to prevent third parties from practicing our inventions in all countries outside the United States, or from selling or importing products made using our inventions in and into the United States or other jurisdictions. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and further, may export otherwise infringing products to territories where we have patent protection, but enforcement is not as strong as that in the United States. These products may compete with our products, and our patents or other intellectual property rights may not be effective or sufficient to prevent them from competing.

In addition, the laws of some foreign countries do not protect our proprietary rights to the same extent as the laws of the United States, and we may encounter significant problems in protecting our proprietary rights in these countries. If these problems were to occur, they could have a material adverse effect on our sales. Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents and other intellectual property protection, particularly those relating to medical devices, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our proprietary rights generally. Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents at risk of being invalidated or interpreted narrowly, could put our patent applications at risk of not issuing and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded, if any, may not be commercially meaningful. Accordingly, our efforts to enforce our intellectual property rights around the world may not adequately protect our rights or permit us to gain or keep any competitive advantage.

Changes in U.S. patent law could diminish the value of patents in general, thereby impairing our ability to protect our products.

The United States has enacted and is implementing the America Invents Act of 2011, a wide-ranging patent reform legislation. Further, the U.S. Supreme Court has ruled on several patent cases in recent years, either narrowing the scope of patent protection available in certain circumstances or weakening the rights of patent owners in certain situations. In addition to increasing uncertainty with regard to our ability to obtain future patents, this combination of events has created uncertainty with respect to the value of patents, once obtained. Depending on decisions by the U.S. Congress, the federal courts and the US PTO, the laws and regulations governing patents could change in unpredictable ways that would weaken our ability to obtain new patents or to enforce our existing patents or future patents.

We may be subject to damages resulting from claims that we, our employees, consultants or third parties we engage to manufacture our products have wrongfully used, or disclosed, alleged trade secrets of our competitors or are in breach of non-competition or non-solicitation agreements with our competitors.

Many of our current and former employees were previously employed at pharmaceutical companies and other medical device companies, including our potential competitors, in some cases until recently. We may be subject to claims that we, our current

and former employees, consultants or third parties have inadvertently or otherwise used or disclosed alleged trade secrets or proprietary information of these former employers or competitors. In addition, we may be subject to claims that we caused a current or former employee to breach the terms of his or her non-competition or non-solicitation agreement. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and could be a distraction for our management. If our defense to those claims fails, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Any litigation or the threat thereof may adversely affect our ability to hire employees or contract with third parties. A loss of key personnel or their work product could have an adverse effect on our business, results of operations and financial condition.

RISKS RELATED TO OWNERSHIP OF OUR COMMON STOCK

The sale or issuance of our common stock to Lincoln Park may cause dilution and the sale of the shares of common stock acquired by Lincoln Park, or the perception that such sales may occur, could cause the price of our common stock to fall.

On February 5, 2020, we entered into the Purchase Agreement with Lincoln Park, pursuant to which Lincoln Park has committed to purchase up to $15,000,000 of our common stock. The shares of our common stock that may be issued under the Purchase Agreement may be sold by us to Lincoln Park at our discretion from time to time over a 36-month period commencing after the satisfaction of certain conditions set forth in the Purchase Agreement, including that the SEC has declared effective the registration statement filed with the SEC on February 7, 2020. The purchase price for the shares that we may sell to Lincoln Park under the Purchase Agreement will fluctuate based on the price of our common stock. Depending on market liquidity at the time, sales of such shares may cause the trading price of our common stock to fall.

We generally have the right to control the timing and amount of any sales of our shares to Lincoln Park under the Purchase Agreement. Sales of our common stock, if any, to Lincoln Park under the Purchase Agreement will depend upon market conditions and other factors to be determined by us. We may ultimately decide to sell to Lincoln Park all, some or none of the shares of our common stock that may be available for us to sell pursuant to the Purchase Agreement. If and when we do sell shares to Lincoln Park, after Lincoln Park has acquired the shares, Lincoln Park may resell all, some or none of those shares at any time or from time to time in its discretion. Therefore, sales to Lincoln Park by us could result in substantial dilution to the interests of other holders of our common stock. Additionally, the sale of a substantial number of shares of our common stock to Lincoln Park, or the anticipation of such sales, could make it more difficult for us to sell equity or equity-related securities in the future at a time and at a price that we might otherwise wish to effect sales.

As of March 31, 2020 we have not sold any shares of our stock under the Purchase Agreement with Lincoln Park.

Our stock price may be volatile, and you may not be able to resell shares of our common stock at or above the price you paid.

The public trading price for our common stock can be affected by a number of factors, including:

- a slowdown in the medical device industry, the aesthetics industry or the general economy;
- whether we obtain coverage and reimbursement from third-party payors;
- quarterly variations in our or our competitors' results of operations;
- the results of our clinical trials;
- unanticipated or serious safety concerns related to the use of any of our products or competitive liquid-filled intragastric balloon products;
- adverse regulatory decisions, including failure to receive regulatory approval for any of our products;
- regulatory or legal developments in the United States and other countries;
- changes in analysts’ estimates, investors’ perceptions, recommendations by securities analysts or our failure to achieve analysts’ estimates;
- the financial projections we may provide to the public, any changes in these projections or our failure to meet these projections;

- changes in operating performance and stock market valuations of other technology companies generally, or those in the medical device industry in particular;
- performance of third parties on whom we rely, including for the manufacture of the components for our product, including their ability to comply with regulatory requirements;
- inability to obtain adequate supply of the components for any of our products, or inability to do so at acceptable prices;
- the loss of key personnel, including changes in our board of directors and management;
- legislation or regulation of our business;
- changes in the structure of healthcare payment systems;
- our commencement of, or involvement in, litigation;
- the announcement of new products or product enhancements by us or our competitors;
- competition from existing technologies and products or new technologies and products that may emerge;
- negative publicity, such as whistleblower complaints, about us or our products;
- developments, announcements or disputes related to patents or other proprietary rights issued to us or our competitors and to litigation;
- ability to meet Nasdaq minimum listing requirements; and
- developments in our industry.

In recent years, the stock markets generally and the stock prices of many companies in the medical device industry have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may significantly affect the market price of our common stock, regardless of our actual operating performance. As a result of this volatility, you may not be able to sell your common stock at or above the price at which you purchased it and you may lose some or all of your investment.

If we fail to meet all applicable Nasdaq Global Market requirements, Nasdaq could delist our common stock, which could adversely affect the market liquidity of our common stock and the market price of our common stock could decrease.
Nasdaq monitors our ongoing compliance with its minimum listing requirements and if we fail to meet those requirements and cannot cure such failure in the prescribed period of time, our common stock could be subject to delisting from the Nasdaq market. Should we not raise capital on or before June 30, 2020, we expect our shareholder equity will decrease below the $10,000,000 minimum, which would trigger written notification from Nasdaq for non-compliance.

Since the COVID-19 pandemic began, the closing bid for our common stock has consistently been below $1.00. We have not received any notification from Nasdaq related to the minimum bid price requirement or stockholder equity requirements. On April 23, 2020, Nasdaq's proposed rule change to toll the compliance periods for the minimum bid price requirement and market value requirement through June 30, 2020 became effective. During this tolled period, Nasdaq would still send notices of non-compliance and companies would still have to disclose such notice in accordance with SEC rules. Our common stock closed below $1.00 every day from April 17, 2020 to May 26, 2020, but has since closed above $1.00 per share. We cannot assure you that the closing price of our common stock will remain at or above $1.00 per share for a sufficient period to enable us to avoid notification of non-compliance with this listing requirement.

In the event that our common stock is delisted from the Nasdaq Global Market and is not eligible for quotation or listing on another market or exchange, trading of our common stock could be conducted only in the over-the-counter market or on an electronic bulletin board established for unlisted securities such as the Pink Sheets or the OTC Bulletin Board. In such event, it could become more difficult to dispose of, or obtain accurate price quotations for, our common stock, and there would likely also be a reduction in our coverage by securities analysts and the news media, which could cause the price of our common stock to decline further. Also, it may be difficult for us to raise additional capital if we are not listed on a major exchange.

If securities or industry analysts do not publish research or reports about our business, publish negative reports about our business, or publish financial projections that we are unable to achieve, our share price and trading volume could decline.

The trading market for our common stock depends in part on the research and reports that securities or industry analysts publish about us or our business, our market and our competitors, and their projections of our financial results. We do not have any control over these analysts. If one or more of the analysts who cover us downgrade our shares, change their opinion of our shares, change their financial projections, publish negative information about us or if we are unable to achieve their financial projections for us, our share price would likely decline. Several analysts that previously provided coverage of us have ceased to do so or have failed to regularly publish reports on us. If one or more of the remaining analysts cease coverage of our company or fails to regularly publish reports on us, our visibility in the financial markets could decline even further, which could cause our share price or trading volume to decline. In addition, analysts may publish negative opinions concerning our company, business strategy or accounting policies, which could negatively impact our share price.

Future sales and issuances of our common stock or other securities may result in significant dilution and could cause the price of our common stock to decline.

To raise capital, we may sell common stock, convertible securities or other equity securities in one or more transactions at prices and in a manner we determine from time to time, including pursuant to the Purchase Agreement with Lincoln Park. These sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our common stock. These sales may also result in material dilution to our existing stockholders, and new investors could gain rights superior to our existing stockholders.

We cannot predict what effect, if any, sales of our shares in the public market or the availability of shares for sale will have on the market price of our common stock. However, future sales of substantial amounts of our common stock in the public market, including shares issued upon exercise of outstanding options, or the perception that such sales may occur, could adversely affect the market price of our common stock.

Our management will have broad discretion over the use of the net proceeds from our sale of shares of common stock to Lincoln Park, you may not agree with how we use the proceeds and the proceeds may not be invested successfully.

Our management will have broad discretion as to the use of the net proceeds from our sale of shares of common stock to Lincoln Park, and we could use them for purposes other than those contemplated at the time of commencement of the offering. Accordingly, you will be relying on the judgment of our management with regard to the use of those net proceeds, and you will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately. It is possible that, pending their use, we may invest those net proceeds in a way that does not yield a favorable, or any, return for us. The failure of our management to use such funds effectively could have a material adverse effect on our business, financial condition, operating results and cash flows.

We are an emerging growth company, and intend to take advantage of reduced disclosure requirements applicable to emerging growth companies, which could make our common stock less attractive to investors.

We are an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. We will remain an emerging growth company until the earliest of (i) the last day of the fiscal year in which we have total annual gross revenue of $1.07 billion or more; (ii) the last day of the fiscal year following the fifth anniversary of the date of the completion of our IPO; (iii) the date on which we have issued more than $1 billion in nonconvertible debt during the previous three years; or (iv) the date on which we are deemed to be a large accelerated filer under the rules of the SEC, which means the market value of our common stock that is held by non-affiliates exceeds $700 million as of the last business day of our most recently completed second fiscal quarter. For so long as we remain an emerging growth company, we are permitted and intend to rely on exemptions from certain disclosure requirements that are applicable to other public companies that are not emerging growth companies. These exemptions include:

- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002;
- not being required to comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor’s report providing additional information about the audit and the financial statements;
- reduced disclosure obligations regarding executive compensation; and
- exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and shareholder approval of any golden parachute payments not previously approved.

We may choose to take advantage of some, but not all, of the available exemptions described above. We cannot predict whether investors will find our common stock less attractive if we rely on these exemptions. If some investors find our common stock

less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

In addition, the JOBS Act provides that an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards. This allows an emerging growth company to delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards and, therefore, we are subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

We will continue to incur increased costs as a result of operating as a public company and our management will be required to devote substantial time to compliance initiatives.

As a public company, and particularly after we are no longer an emerging growth company, we will continue to incur significant legal, accounting and other expenses that we did not incur as a private company. In addition, the Sarbanes-Oxley Act of 2002 and rules subsequently implemented by the SEC and Nasdaq, have imposed various requirements on public companies, including establishment and maintenance of effective disclosure and financial controls and corporate governance practices. Our management and other personnel will continue to devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly.

Pursuant to Section 404, we will be required to furnish a report by our management on our internal control over financial reporting, including an attestation report on internal control over financial reporting issued by our independent registered public accounting firm. However, while we remain an emerging growth company, we will not be required to include an attestation report on internal control over financial reporting issued by our independent registered public accounting firm. To achieve compliance with Section 404 within the prescribed period, we will be engaged in a process to document and evaluate our internal control over financial reporting, which is both costly and challenging. In this regard, we will need to continue to dedicate internal resources, potentially engage outside consultants and adopt a detailed work plan to assess and document the adequacy of internal control over financial reporting, continue steps to improve control processes as appropriate, validate through testing that controls are functioning as documented and implement a continuous reporting and improvement process for internal control over financial reporting. Despite our efforts, there is a risk that neither we nor our independent registered public accounting firm will be able to conclude within the prescribed timeframe that our internal control over financial reporting is effective as required by Section 404. This could result in an adverse reaction in the financial markets due to a loss of confidence in the reliability of our consolidated financial statements.

In addition, changing laws, regulations and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs and making some activities more time consuming. These laws, regulations and standards are subject to varying interpretations, in many cases due to their lack of specificity and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to invest resources to comply with evolving laws, regulations and standards, and this investment may result in increased general and administrative expenses and a diversion of management’s time and attention from revenue-generating activities to compliance activities. If our efforts to comply with new laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to their application and practice, regulatory authorities may initiate legal proceedings against us and our business may be harmed.

We also expect that being a public company and compliance with applicable rules and regulations will make it more expensive for us to obtain director and officer liability insurance, and we may be required to incur substantially higher costs to obtain and maintain the same or similar coverage. These factors could also make it more difficult for us to attract and retain qualified executive officers and members of our board of directors.

Our executive officers, directors, principal stockholders and their affiliates have significant influence over our company, which will limit your ability to influence corporate matters and could delay or prevent a change in corporate control.

As of March 31, 2020, our executive officers, directors, holders of 5% or more of our capital stock and their respective affiliates beneficially owned approximately 21% of our outstanding capital stock. These stockholders may be able to influence the outcome of matters requiring stockholder approval. For example, these stockholders may be able to influence elections of directors, amendments of our organizational documents or approval of any merger, sale of assets or other major corporate transaction. This may prevent or discourage unsolicited acquisition proposals or offers for our common stock that you may feel are in your best interest as one of our stockholders. The interests of this group of stockholders may not always coincide with your interests or the interests of other stockholders and they may act in a manner that advances their best interests and not

necessarily those of other stockholders, including seeking a premium value for their common stock, and might affect the prevailing market price for our common stock.

We are subject to securities class action litigation.

On February 14 and 22, 2018, plaintiff stockholders filed class action lawsuits against us and certain of our executive officers in the United States District Court for the Southern District of California (Hustig v. Obalon Therapeutics, Inc., et al., Case No. 3:18-cv-00352-AJB-WVG, and Cook v. Obalon Therapeutics, Inc. et al., Case No. 3:18-cv-00407-CAB-RBB). On July 24, 2018, the court consolidated the lawsuits and appointed Inter-Local Pension Fund GCC/IBT as lead plaintiff. On October 5, 2018, plaintiffs filed an amended complaint. The amended complaint alleges that we and certain of our executive officers made false and misleading statements and failed to disclose material adverse facts about our business, operations, and prospects in violation of Sections 10(b) (and Rule 10b-5 promulgated thereunder) and 20(a) of the Securities Exchange Act of 1934, as amended, or the Exchange Act. The amended complaint also alleges violations of Section 11 of the Exchange Act arising out of the Company's initial public offering. The plaintiffs seek damages, interest, costs, attorneys' fees, and other unspecified equitable relief. The underwriters from our initial public offering have also been named as defendants in this case and we have certain obligations under the underwriting agreement to indemnify them for their costs and expenses incurred in connection with this litigation.

On September 25, 2019, the court granted in part and denied in part the defendants' motion to dismiss. The court dismissed the Section 11 claims entirely, without leave to amend, and accordingly dismissed the underwriters and certain directors from the case. The Court also dismissed certain statements from the Section 10 claims.

On June 16, 2020, the parties reached a settlement of the securities class action, and they intend to submit a final settlement agreement for court approval. The settlement provides for a payment of $3.15 million to the plaintiffs, and provides that the defendants continue to deny the allegations and claims asserted by the plaintiffs, and are entering into the settlement solely to eliminate the burden and expense of further litigation. The Company expects that any amounts due as part of the settlement will be covered by the Company's insurance policies.

On December 12, 2019, a purported stockholder submitted a formal demand letter to the Board asserting similar alleged wrongdoing as alleged in the securities class action and demanding that the Board investigate the alleged wrongdoing and take action to remedy the alleged injury to the Company. The Board's review of the demand is on-going.

Such litigation could subject us to substantial costs, divert resources and the attention of management from our business and harm our business, results of operations, financial condition, reputation and cash flows. These factors may materially and adversely affect the market price of our common stock.

Provisions in our corporate charter documents and under Delaware law could make an acquisition of us, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove our current board directors or management.

Provisions in our restated certificate of incorporation and our restated bylaws discourage, delay or prevent a merger, acquisition or other change in control of our company that stockholders may consider favorable, including transactions in which you might otherwise receive a premium for your shares. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock, thereby depressing the market price of our common stock. In addition, because our board of directors is responsible for appointing the members of our management team, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors. Among other things, these provisions:

- establish a classified board of directors so that not all members of our board are elected at one time;
- permit only the board of directors to establish the number of directors and fill vacancies on the board;
- provide that directors may only be removed "for cause" and only with the approval of two-thirds of our stockholders;
- require super-majority voting to amend some provisions in our restated certificate of incorporation and restated bylaws;
- authorize the issuance of "blank check" preferred stock that our board could use to implement a stockholder rights plan, also known as a "poison pill";
- eliminate the ability of our stockholders to call special meetings of stockholders;

- prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders;
- prohibit cumulative voting; and
- establish advance notice requirements for nominations for election to our board or for proposing matters that can be acted upon by stockholders at annual stockholder meetings.

Moreover, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, or the DGCL, which prohibits a person who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner. Any of these provisions of our charter documents or Delaware law could, under certain circumstances, depress the market price of our common stock.

Our restated certificate of incorporation designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or agents.

Our restated certificate of incorporation provides that, unless we consent in writing to an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for any derivative action or proceeding brought on our behalf, any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers, employees or agents to us or our stockholders, any action asserting a claim arising pursuant to any provision of the DGCL, our restated certificate of incorporation or our restated bylaws or any action asserting a claim that is governed by the internal affairs doctrine. Notwithstanding the foregoing, this provision will not apply to any claims arising under the Securities Act or the Exchange Act, or any claim in which exclusive jurisdiction is vested in a court or forum other than the Court of Chancery or for which the Court of Chancery does not have subject matter jurisdiction. Any person purchasing or otherwise acquiring any interest in any shares of our capital stock shall be deemed to have notice of and to have consented to this provision of our restated certificate of incorporation. This choice of forum provision may limit our stockholders' ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, employees or agents, which may discourage such lawsuits against us and our directors, officers, employees and agents even though an action, if successful, might benefit our stockholders. Stockholders who do bring a claim in the Court of Chancery could face additional litigation costs in pursuing any such claim, particularly if they do not reside in or near Delaware. The Court of Chancery may also reach different judgments or results than would other courts, including courts where a stockholder considering an action may be located or would otherwise choose to bring the action, and such judgments or results may be more favorable to us than to our stockholders. Alternatively, if a court were to find this provision of our restated certificate of incorporation inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could have a material adverse effect on our business, financial condition or results of operations.

Because we do not anticipate paying any cash dividends on our common stock in the foreseeable future, capital appreciation, if any, will be your sole source of gain.

We have never declared or paid any cash dividends on our common stock and do not currently intend to do so for the foreseeable future. We currently anticipate that we will retain future earnings for the development, operation and expansion of our business. Any return to stockholders will be limited to the appreciation of stock. Therefore, the success of an investment in shares of our common stock will depend upon any future appreciation in the value of the stock. We cannot guarantee you that shares of our common stock will appreciate in value or even maintain the price at which our stockholders have purchased their shares.

ITEM 2. Unregistered Sales of Equity Securities and Use of Proceeds

Recent Sales of Unregistered Securities

None.

Use of Proceeds

None.

ITEM 3. Defaults Upon Senior Securities

Not applicable.

ITEM 4. Mine Safety Disclosures

Not applicable.

ITEM 5. Other Information

On June 16, 2020, the Company notified approximately 25 employees of their termination as part of its steps to significantly reduce expenses in an effort to extend our cash runway to refocus on obtaining coverage and reimbursement from third-party payors and pursuing strategic opportunities. The Company estimates it will incur pre-tax cash charges of approximately $0.2 million for bonus payouts and related cash expenditures. The Company expects to recognize the majority of these charges in the second quarter of 2020. The Company expects to substantially complete the organizational restructuring by June 30, 2020.

The charges that the Company expects to incur in connection with the organizational restructuring are subject to a number of assumptions, and actual results may differ materially. The Company may also incur additional costs not currently contemplated due to events that may occur as a result of, or that are associated with, the organizational restructuring.

ITEM 6. Exhibits

Exhibit Number	Description of Document	Form	File No.	Exhibit Filing Date	Filed/Furnished Herewith
3.2	Restated Certificate of Incorporation	S-1	333-213551	9/26/2016	
3.4	Restated Bylaws	S-1	333-213551	9/26/2016	
10.1	Promissory Note, dated as of April 22, 2020, by and between Obalon Therapeutics, Inc. and Silicon Valley Bank	8-K	001-37897	4/27/2020	10.1
10.2	Amended and Restated Retention Agreement, dated as of June 9, 2020, by and between Obalon Therapeutics, Inc. and Andrew Rasdal				X
10.3	Amended and Restated Retention Agreement, dated as of June 9, 2020, by and between Obalon Therapeutics, Inc. and Nooshin Hussainy				X
10.4	Transition and Consulting Agreement, dated as of June 11, 2020, by and between Obalon Therapeutics, Inc. and Amy Vandenberg				X
10.5	Transition and Consulting Agreement, dated as of June 11, 2020, by and between Obalon Therapeutics, Inc. and Mark Brister				X
31.1	Certification of Principal Executive Officer, pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				X
31.2	Certification of Principal Financial Officer, pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				X
32.1†	Certifications Pursuant to U.S.C. Section 1350, As Adopted Pursuant to Section 906 of the Public Company Accounting Reform and Investor Protection Act of 2002.				X
101.INS	XBRL Instance Document.				X
101.SCH	XBRL Taxonomy Extension Schema Document.				X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.				X
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.				X
101.LAB	XBRL Taxonomy Extension Labels Linkbase Document.				X
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.				X

† This certification is deemed not filed for purpose of section 18 of the Exchange Act or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

OBALON THERAPEUTICS, INC.

Date: June 19, 2020 by: /s/ William Plovanic

William Plovanic

President & Chief Executive Officer

Date: June 19, 2020 by: /s/ Nooshin Hussainy

Nooshin Hussainy

Chief Financial Officer

Exhibit 10.2

AMENDED AND RESTATED RETENTION AGREEMENT

This Amended and Restated Retention Agreement (the "**Agreement**") is entered into by and between Andrew Rasdal (the "**Executive**") and Obalon Therapeutics, Inc., a Delaware corporation (the "**Company**"), effective as of June 9, 2020 (the "**Effective Date**"). This Agreement amends and restates in its entirety that certain Retention Agreement, dated as of October 10, 2016, by and between the Executive and the Company (the "**Original Agreement**"). The Executive agrees that, as of the Effective Date, the Original Agreement shall be terminated and of no further force or effect and shall be superseded by this Agreement.

1. **Term of Agreement.** This Agreement shall terminate on the date the Company has met all of its obligations under this Agreement following the consummation of the Change in Control (the "**Closing**").

2. **Change in Control.** If Executive remains in continuous employment with the Company until immediately prior to the Closing then, upon the Closing, subject to Sections 3, 7, and 8 below, Executive will be entitled to the following benefits:

   (a) **Bonus Payment**. The Company shall pay the Executive $250,000. Such payment shall be paid in a cash lump sum payment in accordance with the Company's standard payroll procedures, which payment will be made within thirty (30) days following the Closing , *provided that* the Release Conditions have been satisfied.

   (b) **Equity**. Each of Executive's then-outstanding Equity Awards that vest based solely on the passage of time shall accelerate and become vested and exercisable as to 100% of the then unvested shares subject to the Equity Award. "**Equity Awards**" means all options to purchase shares of Company common stock, as well as any and all other stock-based awards granted to the Executive, including but not limited to stock bonus awards, restricted stock, restricted stock units or stock appreciation rights. Subject to Section 3, the accelerated vesting described above shall be effective as of immediately prior to the Closing. For clarity, any Equity Awards that vest only upon satisfaction of performance criteria ("**Performance Equity Awards**") shall continue to be governed by the vesting and acceleration provisions contained in the grant agreements for such Performance Equity Awards.

3. **General Release**. Any other provision of this Agreement notwithstanding, the benefits under Section 2 shall not apply unless the Executive (i) has executed a general release (in substantially the form attached hereto as Exhibit A) of all known and unknown claims that he or she may then have against the Company or persons affiliated with the Company and such release has become effective and (ii) has agreed not to prosecute any legal action or other proceeding based upon any of such claims. The release must be in the form prescribed by the Company, without alterations (this document effecting the foregoing, the "**Release**"). The Company will deliver the form of Release to the Executive within twenty-one (21) days after the Closing. The Executive must execute and return, and if applicable, not revoke, the Release within the time period specified in the form.

4. **Covenants.**

   (a) **Non-Competition**. The Executive agrees that, during his or her employment with the Company, he or she shall not engage in any other employment, consulting or other business activity (whether full-time or part-time) that would create a conflict of interest with the Company.

(b) **Cooperation and Non-Disparagement**. The Executive agrees that, during the six (6)-month period following his or her cessation of employment, he or she shall cooperate with the Company in every reasonable respect and shall use his or her best efforts to assist the Company with the transition of Executive's duties to his or her successor. The Executive further agrees that, during this six (6)-month period, he or she shall not in any way or by any means disparage the Company, the members of the Company's Board of Directors or the Company's officers and employees. The Company agrees that, during this six-month period, none of the members of its Board of Directors or its executive officers will disparage Executive.

5. **Definitions.**

(a) "**Change in Control**" means a "Corporate Transaction," as such term is defined in the Company's 2016 Equity Incentive Plan, as may be amended from time to time, *provided that* the transaction (including any series of transactions) also qualifies as a change in control event under U.S. Treasury Regulation 1.409A-3(i)(5).

(b) "**Code**" means the Internal Revenue Code of 1986, as amended.

(c) "**Release Conditions**" mean the following conditions: (i) Company has received the Executive's executed Release in substantially the form attached hereto as Exhibit A, and (ii) any rescission period applicable to the Executive's executed Release has expired.

6. **Successors**.

(a) **Company's Successors**. The Company shall require any successor (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets, by an agreement in substance and form satisfactory to the Executive, to assume this Agreement and to agree expressly to perform this Agreement in the same manner and to the same extent as the Company would be required to perform it in the absence of a succession. For all purposes under this Agreement, the term "Company" shall include any successor to the Company's business and/or assets or which becomes bound by this Agreement by operation of law.

(b) **Executive's Successors**. This Agreement and all rights of the Executive hereunder shall inure to the benefit of, and be enforceable by, the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

7. **Golden Parachute Taxes**.

(a) **Best After-Tax Result**. In the event that any payment or benefit received or to be received by Executive pursuant to this Agreement or otherwise ("**Payments**") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code and (ii) but for this subsection (a), be subject to the excise tax imposed by Section 4999 of the Code, any successor provisions, or any comparable federal, state, local or foreign excise tax ("**Excise Tax**"), then, subject to the provisions of Section 8, such Payments shall be either (A) provided in full pursuant to the terms of this Agreement or any other applicable agreement, or (B) provided as to such lesser extent which would result in no portion of such Payments being subject to the Excise Tax ("**Reduced Amount**"), whichever of the foregoing amounts, taking into account the applicable federal, state, local and foreign income, employment and other taxes

and the Excise Tax (including, without limitation, any interest or penalties on such taxes), results in the receipt by Executive, on an after-tax basis, of the greatest amount of payments and benefits provided for hereunder or otherwise, notwithstanding that all or some portion of such Payments may be subject to the Excise Tax. Unless the Company and Executive otherwise agree in writing, any determination required under this Section shall be made by independent tax counsel designated by the Company and reasonably acceptable to Executive ("**Independent Tax Counsel**"), whose determination shall be conclusive and binding upon Executive and the Company for all purposes. For purposes of making the calculations required under this Section, Independent Tax Counsel may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code; *provided that* Independent Tax Counsel shall assume that Executive pays all taxes at the highest marginal rate. The Company and Executive shall furnish to Independent Tax Counsel such information and documents as Independent Tax Counsel may reasonably request in order to make a determination under this Section. The Company shall bear all costs that Independent Tax Counsel may reasonably incur in connection with any calculations contemplated by this Section. In the event that Section 7(a)(ii)(B) above applies, then based on the information provided to Executive and the Company by Independent Tax Counsel, Executive may, in Executive's sole discretion and within thirty (30) days of the date on which Executive is provided with the information prepared by Independent Tax Counsel, determine which and how much of the Payments (including the accelerated vesting of equity compensation awards) to be otherwise received by Executive shall be eliminated or reduced (as long as after such determination the value (as calculated by Independent Tax Counsel in accordance with the provisions of Sections 280G and 4999 of the Code) of the amounts payable or distributable to Executive equals the Reduced Amount). If the Internal Revenue Service (the "**IRS**") determines that any Payment is subject to the Excise Tax, then Section 7(b) hereof shall apply, and the enforcement of Section 7(b) shall be the exclusive remedy to the Company.

(b) **Adjustments**. If, notwithstanding any reduction described in Section 7(a) hereof (or in the absence of any such reduction), the IRS determines that Executive is liable for the Excise Tax as a result of the receipt of one or more Payments, then Executive shall be obligated to surrender or pay back to the Company, within one-hundred twenty (120) days after a final IRS determination, an amount of such payments or benefits equal to the "**Repayment Amount**." The Repayment Amount with respect to such Payments shall be the smallest such amount, if any, as shall be required to be surrendered or paid to the Company so that Executive's net proceeds with respect to such Payments (after taking into account the payment of the Excise Tax imposed on such Payments) shall be maximized. Notwithstanding the foregoing, the Repayment Amount with respect to such Payments shall be zero (0) if a Repayment Amount of more than zero (0) would not eliminate the Excise Tax imposed on such Payments or if a Repayment Amount of more than zero would not maximize the net amount received by Executive from the Payments. If the Excise Tax is not eliminated pursuant to this Section 7(b), Executive shall pay the Excise Tax.

8. **Miscellaneous Provisions**.

(a) **Section 409A**. To the extent (i) any payments to which Executive becomes entitled under this Agreement, or any agreement or plan referenced herein, in connection with Executive's termination of employment with Company constitute deferred compensation subject to Section 409A of the Code and (ii) Executive is deemed at the time of such termination of

employment to be a "specified" employee under Section 409A of the Code, then such payment or payments shall not be made or commence until the earlier of (A) the expiration of the six (6)-month period measured from the Executive's "separation from service" (within the meaning of Section 409A of the Code); or (B) the date of Executive's death following such "separation from service"; *provided, however,* that such deferral shall only be effected to the extent required to avoid adverse tax treatment to Executive, including (without limitation) the additional twenty percent (20%) tax for which Executive would otherwise be liable under Section 409A(a)(1)(B) of the Code in the absence of such deferral. Upon the expiration of the applicable deferral period, any payments which would have otherwise been made during that period in the absence of this paragraph shall be paid to Executive or Executive's beneficiary in one lump sum (without interest). To the extent that any provision of this Agreement is ambiguous as to its exemption or compliance with Section 409A, the provision will be read in such a manner so that all payments hereunder are exempt from Section 409A to the maximum permissible extent, and for any payments where such construction is not tenable, that those payments comply with Section 409A to the maximum permissible extent. To the extent any payment under this Agreement may be classified as a "short-term deferral" within the meaning of Section 409A, such payment shall be deemed a short-term deferral, even if it may also qualify for an exemption from Section 409A under another provision of Section 409A. Payments pursuant to this Agreement (or referenced in this Agreement) are intended to constitute separate payments for purposes of Section 1.409A-2(b)(2) of the regulations under Section 409A.

(b) **Other Arrangements**. This Agreement supersedes any and all cash severance arrangements and vesting acceleration arrangements on change in control under any agreement governing Equity Awards, severance and salary continuation arrangements, programs and plans which were previously offered, or may be offered on the Effective Date or thereafter, by the Company to the Executive, including change in control severance arrangements and vesting acceleration arrangements pursuant to an agreement governing Equity Awards, employment agreement or offer letter, including the Original Agreement, and Executive hereby waives Executive's rights to such other benefits. In no event shall any individual receive cash severance benefits under both this Agreement and any other vesting acceleration arrangement, severance pay or salary continuation program, plan or other arrangement with the Company.

(c) **Dispute Resolution**. To ensure rapid and economical resolution of any and all disputes that might arise in connection with this Agreement, Executive and the Company agree that any and all disputes, claims, and causes of action, in law or equity, arising from or relating to this Agreement or its enforcement, performance, breach, or interpretation, will be resolved solely and exclusively by final, binding, and confidential arbitration, by a single arbitrator, in San Diego County, and conducted by Judicial Arbitration & Mediation Services, Inc. ("**JAMS**") under its then-existing employment rules and procedures, which are available at http://www.jamsadr.com/rules-employment-arbitration/, and the Company will provide a copy upon Executive's request, as the exclusive remedy for resolving any and all such disputes. Nothing in this section, however, is intended to prevent either party from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Each party to an arbitration or litigation hereunder shall be responsible for the payment of its own attorneys' fees. EXECUTIVE AND THE COMPANY UNDERSTAND THAT BY AGREEING TO ARBITRATE ANY ARBITRATION CLAIM, THEY WILL NOT HAVE THE RIGHT TO HAVE ANY ARBITRATION CLAIM DECIDED BY A JURY OR A COURT, BUT SHALL INSTEAD HAVE ANY ARBITRATION CLAIM DECIDED

THROUGH ARBITRATION. EXECUTIVE AND THE COMPANY WAIVE ANY CONSTITUTIONAL OR OTHER RIGHT TO BRING CLAIMS COVERED BY THIS AGREEMENT OTHER THAN IN THEIR INDIVIDUAL CAPACITIES. EXCEPT AS MAY BE PROHIBITED BY LAW, THIS WAIVER INCLUDES THE ABILITY TO ASSERT CLAIMS AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

(d) **Notice**. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid or deposited with Federal Express Corporation, with shipping charges prepaid. In the case of the Executive, mailed notices shall be addressed to him or her at the home address which he or she most recently communicated to the Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary.

(e) **Waiver**. No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by the Executive and by an authorized officer of the Company (other than the Executive). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(f) **Withholding Taxes**. All payments made under this Agreement shall be subject to reduction to reflect taxes or other charges required to be withheld by law.

(g) **Severability**. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.

(h) **No Retention Rights**. Nothing in this Agreement shall confer upon the Executive any right to continue in service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company or any subsidiary of the Company or of the Executive, which rights are hereby expressly reserved by each, to terminate his or her service at any time and for any reason, or no reason, with or without cause.

(i) **Choice of Law**. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California (other than its choice-of-law provisions).

(j) **Survival**. Section 4 (Covenants), Section 6 (Successors), Section 7 (Golden Parachute Taxes), Section 8(c) (Dispute Resolution) and Section 8(k) (Exceptions) hereof shall survive any termination of this Agreement and shall continue in effect.

(k) **Exceptions**. Notwithstanding anything in this Agreement or the Release to the contrary, nothing contained in this Agreement or the Release shall prohibit Executive from (i) filing a charge with, reporting possible violations of federal law or regulation to, participating in any investigation by, or cooperating with any governmental agency or entity or making other disclosures that are protected under the whistleblower provisions of applicable law or

regulation and/or (ii) communicating directly with, cooperating with, or providing information (including trade secrets) in confidence to, any federal, state or local government regulator (including, but not limited to, the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, or the U.S. Department of Justice) for the purpose of reporting or investigating a suspected violation of law, or from providing such information to Executive's attorney or in a sealed complaint or other document filed in a lawsuit or other governmental proceeding. Pursuant to 18 USC Section 1833(b), Executive will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made: (x) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (y) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by its duly authorized officer, as of the day and year first above written.

EXECUTIVE	OBALON THERAPEUTICS, INC.
_____	_____
	By: Raymond Dittamore Title: Director
Andrew Rasdal	

Exhibit A

GENERAL RELEASE OF ALL CLAIMS AND COVENANT NOT TO SUE

This General Release of All Claims and Covenant Not to Sue (the "Release") is entered into between Andrew Rasdal ("Executive") and Obalon Therapeutics, Inc. (the "Company") (collectively, "the parties").

WHEREAS, on June 9, 2020, Executive and the Company entered into an Amended and Restated Retention Agreement (the "Retention Agreement," to which this Release is attached as Exhibit A); and

WHEREAS, this agreement serves as the Release, pursuant to the Retention Agreement.

NOW THEREFORE, in consideration for the mutual promises and undertakings of the parties as set forth below, Executive and the Company hereby enter into this Release.

1. Consideration: In exchange for Executive's agreement to this Release and his or her other promises in the Retention Agreement and herein, and pursuant to the Retention Agreement, the Company agrees to provide Executive with the consideration set forth in Section 2 of the Retention Agreement. By signing below, Executive acknowledges that he or she is receiving the consideration in exchange for waiving his or her rights to claims referred to in this Release.

2. General Release and Waiver of Claims:

a. To the fullest extent permitted by law, Executive hereby releases and waives any other claims he or she may have against the Company and its owners, agents, officers, shareholders, employees, directors, attorneys, subscribers, subsidiaries, affiliates, successors and assigns (collectively "Releasees"), whether known or not known, fixed or contingent (hereinafter called "Claims"), which Executive now has or may hereafter have against the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof. The Claims released herein include, without limiting the generality of the foregoing, any Claims in any way arising out of, based upon, or related to the employment or termination of employment of the Executive by the Releasees, or any of them; fraud; breach of contract; breach of implied covenant of good faith and fair dealing; inducement of breach; interference with contract; wrongful or unlawful discharge or demotion; violation of public policy; sexual or any other type of assault and battery; invasion of privacy; intentional or negligent infliction of emotional distress; intentional or negligent misrepresentation; conspiracy; failure to pay wages, benefits, vacation pay, severance pay, commissions, equity, attorneys' fees, or other compensation of any sort; failure to accommodate disability, including pregnancy; discrimination or harassment on the basis of pregnancy, race, color, sex, gender, national origin, ancestry, religion, disability, handicap, medical condition, marital status, sexual orientation or any other protected category; any Claim under the Age Discrimination in Employment Act, as amended, 29 U.S.C. § 621 et seq.; the Older Workers Protection Benefit Act of 1990; Title VII of the Civil Rights Act of 1964, as amended, by the Civil Rights Act of 1991, 42 U.S.C. § 2000 et seq.; Equal Pay Act, as amended, 29 U.S.C. § 206(d); the Civil Rights Act of 1866, 42 U.S.C. § 1981; the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.; the False Claims Act, 31 U.S.C. § 3729 et seq.; the Employee Retirement Income Security Act, as amended, 29 U.S.C. § 1001 et seq.; the Worker Adjustment and Retraining Notification Act ("WARN"), as amended, 29 U.S.C. § 2101 et seq.; the Fair Labor Standards Act, 29 U.S.C. § 215 et seq.; the California Fair Employment and Housing Act, as amended, Cal. Lab. Code § 12940 et seq.; the California Equal Pay Law, as amended, Cal. Lab. Code §§ 1197.5(a),1199.5; the Moore-Brown-Roberti Family Rights Act of 1991, as amended, Cal.

Gov't Code §§12945.2, 19702.3; the California WARN Act, Cal. Lab. Code § 1400 et seq.; the California False Claims Act, Cal. Gov't Code § 12650 et seq.; the California Corporate Criminal Liability Act, Cal. Penal Code § 387; the California Labor Code; and any federal, state or local laws of similar effect.

b. EXECUTIVE ACKNOWLEDGES THAT HE OR SHE HAS BEEN ADVISED BY LEGAL COUNSEL AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

EXECUTIVE, BEING AWARE OF SAID CODE SECTION, HEREBY EXPRESSLY WAIVES ANY RIGHTS HE OR SHE MAY HAVE THEREUNDER, AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

c. Executive and the Company do not intend to release Claims that Executive may not release as a matter of law, including but not limited to (i) the Company's obligations to provide payments or benefits under Section 2 of the Retention Agreement, (ii) vested benefits Executive may have, if any, as of the date hereof under any applicable plan, policy, practice, program, contract or agreement with the Company, (iii) indemnification pursuant to an agreement with the Company or the Articles or Bylaws of the Company, as applicable, or applicable law, (iv) Claims for workers' compensation or unemployment benefits, (v) Claims of discrimination, harassment or retaliation brought to the attention of the Equal Employment Opportunity or California Department of Fair Employment and Housing; provided, however, that Executive does release Executive's right to secure damages for any alleged discriminatory, harassing or retaliatory treatment, (vi) any right to communicate directly with, cooperate with, or provide information to, any federal, state or local government regulator or (vii) any other rights that may not be waived by an employee under applicable law. To the fullest extent permitted by law, any dispute regarding the scope of this Release shall be determined by an arbitrator under the procedures set forth in the Dispute Resolution section set forth in the Retention Agreement.

d. Executive represents and warrants that there has been no assignment or other transfer of any interest in any Claim which he or she may have against Releasees, or any of them, and Executive agrees to indemnify and hold Releasees, and each of them, harmless from any liability, claims, demands, damages, costs, expenses and attorneys' fees incurred by Releasees, or any of them, as the result of any such assignment or transfer or any rights or claims under any such assignment or transfer. It is the intention of the parties that this indemnity does not require payment as a condition precedent to recovery by the Releasees against Executive under this indemnity.

e. Executive further understands and agrees that neither the payment of any sum of money nor the execution of this Release shall constitute or be construed as an admission of any liability whatsoever by Executive or the Releasees, or any of them, who have consistently taken the position that they have no liability whatsoever to the Company or the Releasees, or any of them, or to Executive, as applicable.

3. Covenant Not to Sue:

a. Executive agrees that if he or she hereafter commences any suit arising out of, based upon, or relating to any of the Claims released hereunder or in any manner asserts against Releasees, or any of them, any of the Claims released hereunder, then Executive agrees to pay to Releasees, and each of them, in addition to any other damages caused to Releasees thereby, all attorneys' fees incurred by Releasees in defending or otherwise responding to said suit or Claim.

b. Nothing in this paragraph shall prohibit Executive from filing a charge or complaint with a government agency where, as a matter of law, the parties may not restrict his or her right to file such administrative complaints. However, Executive understands and agrees that, by entering into this Release, he or she is releasing any and all individual Claims for relief, and that any and all subsequent disputes between Executive and the Company shall be resolved through arbitration as provided in the Retention Agreement.

c. Nothing in this Release shall prohibit or impair Executive or the Company from complying with all applicable laws, nor shall this Release be construed to obligate either party to commit (or aid or abet in the commission of) any unlawful act.

4. Review of Release: Executive, in consideration of the payments provided to Executive as described in the Retention Agreement, agrees and acknowledges that this Release constitutes a knowing and voluntary waiver and release of all Claims Executive has or may have against the Company and/or any of the Releasees as set forth herein, including, but not limited to, all Claims arising under the Older Workers Benefit Protection Act and the Age Discrimination in Employment Act. In accordance with the Older Workers Benefit Protection Act, Executive is hereby advised as follows:

a. Executive has read the terms of this Release, and understands its terms and effects, including the fact that Executive agreed to release and forever discharge the Company and each of the Releasees, from any Claims released in this Release;

b. Executive understands that, by entering into this Release, Executive does not waive any Claims that may arise after the date of Executive's execution of this Release, including without limitation any rights or Claims that Executive may have to secure enforcement of the terms and conditions of this Release or the Retention Agreement;

c. Executive has signed this Release voluntarily and knowingly in exchange for the consideration described in this Release, which Executive acknowledges is adequate and satisfactory to Executive and which Executive acknowledges is in addition to any other benefits to which Executive is otherwise entitled;

d. The Company advises Executive to consult with an attorney prior to executing this Release;

e. Executive has been given 21 days in which to review and consider this Release. To the extent that Executive chooses to sign this Release prior to the expiration of such period, Executive acknowledges that Executive has done so voluntarily, had sufficient time to consider the Release, to consult with counsel and that Executive does not desire additional time and hereby waives the remainder of the 21-day period; and

f. Executive may revoke this Release within seven days from the date Executive signs this Release and this Release will become effective upon the expiration of that revocation period, and that the consideration to be provided to him or her pursuant to Section 2 of the Retention Agreement will be

provided only at the end of that seven-day revocation period. If Executive revokes this Release during such seven-day period, this Release will be null and void and of no force or effect on either the Company or Executive and Executive will not be entitled to any of the payments or benefits which are expressly conditioned upon the execution and non-revocation of this Release. Any revocation must be in writing and sent to [*name, title*], via electronic mail at [*email address*] on or before 5:00 p.m. Pacific time on the seventh day after this Release is executed by Executive.

5. Other Terms of Retention Agreement Incorporated Herein: All other terms of the Retention Agreement to the extent not inconsistent with the terms of this Release are hereby incorporated in this Release as though fully stated herein and apply with equal force to this Release.

Name:
Title:
Dated: For the company

Dated: Name: Andrew Rasdal

Exhibit 10.3

AMENDED AND RESTATED RETENTION AGREEMENT

This Amended and Restated Retention Agreement (the "**Agreement**") is entered into by and between Nooshin Hussainy (the "**Executive**") and Obalon Therapeutics, Inc., a Delaware corporation (the "**Company**"), effective as of June 9, 2020 (the "**Effective Date**"). This Agreement amends and restates in its entirety that certain Retention Agreement, dated as of October 10, 2016, by and between the Executive and the Company (the "**Original Agreement**"). The Executive agrees that, as of the Effective Date, the Original Agreement shall be terminated and of no further force or effect and shall be superseded by this Agreement.

1. **Term of Agreement**. This Agreement shall terminate on the date the Company has met all of its obligations under this Agreement following the consummation of the Change in Control (the "**Closing**").

2. **Change in Control**. If Executive remains in continuous employment with the Company until immediately prior to the Closing then, upon the Closing, subject to (i) Executive's satisfaction of the Release Conditions, (ii) Executive's continued compliance with the terms and conditions of Section 4 of this Agreement, and (iii) Sections 7 and 8 below, Executive will be entitled to the following benefits:

   (a) **Bonus Payment**. The Company shall pay the Executive $250,000. Such payment shall be paid in a cash lump sum payment in accordance with the Company's standard payroll procedures, which payment will be made within thirty (30) days following the Closing.

   (b) **Equity**. Each of Executive's then-outstanding Equity Awards that vest based solely on the passage of time shall accelerate and become vested and exercisable as to 100% of the then unvested shares subject to the Equity Award. "**Equity Awards**" means all options to purchase shares of Company common stock, as well as any and all other stock-based awards granted to the Executive, including but not limited to stock bonus awards, restricted stock, restricted stock units or stock appreciation rights. Subject to Section 3, the accelerated vesting described above shall be effective as of immediately prior to the Closing. For clarity, any Equity Awards that vest only upon satisfaction of performance criteria ("**Performance Equity Awards**") shall continue to be governed by the vesting and acceleration provisions contained in the grant agreements for such Performance Equity Awards.

3. **General Release**. Any other provision of this Agreement notwithstanding, the benefits under Section 2 shall not apply unless the Executive (i) has executed a general release (in substantially the form attached hereto as Exhibit A) of all known and unknown claims that he or she may then have against the Company or persons affiliated with the Company and such release has become effective and (ii) has agreed not to prosecute any legal action or other proceeding based upon any of such claims. The release must be in the form prescribed by the Company, without alterations (this document effecting the foregoing, the "**Release**"). The Company will deliver the form of Release to the Executive within twenty-one (21) days after the Closing. The Executive must execute and return, and if applicable, not revoke, the Release within the time period specified in the form.

4. **Covenants.**

   (a) **Non-Competition**. The Executive agrees that, during his or her employment with the Company, he or she shall not engage in any other employment, consulting or other business

activity (whether full-time or part-time) that would create a conflict of interest with the Company.

(b) **Cooperation and Non-Disparagement**. The Executive agrees that, during the six (6)-month period following his or her cessation of employment, he or she shall cooperate with the Company in every reasonable respect and shall use his or her best efforts to assist the Company with the transition of Executive's duties to his or her successor. The Executive further agrees that, during this six (6)-month period, he or she shall not in any way or by any means disparage the Company, the members of the Company's Board of Directors or the Company's officers and employees.

5. **Definitions**.

(a) "**Change in Control**" means a "Corporate Transaction," as such term is defined in the Company's 2016 Equity Incentive Plan, as may be amended from time to time, *provided that* the transaction (including any series of transactions) also qualifies as a change in control event under U.S. Treasury Regulation 1.409A-3(i)(5).

(b) "**Code**" means the Internal Revenue Code of 1986, as amended.

(c) "**Release Conditions**" mean the following conditions: (i) Company has received the Executive's executed Release in substantially the form attached hereto as Exhibit A, and (ii) any rescission period applicable to the Executive's executed Release has expired.

6. **Successors**.

(a) **Company's Successors**. The Company shall require any successor (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets, by an agreement in substance and form satisfactory to the Executive, to assume this Agreement and to agree expressly to perform this Agreement in the same manner and to the same extent as the Company would be required to perform it in the absence of a succession. For all purposes under this Agreement, the term "Company" shall include any successor to the Company's business and/or assets or which becomes bound by this Agreement by operation of law.

(b) **Executive's Successors**. This Agreement and all rights of the Executive hereunder shall inure to the benefit of, and be enforceable by, the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

7. **Golden Parachute Taxes**.

(a) **Best After-Tax Result**. In the event that any payment or benefit received or to be received by Executive pursuant to this Agreement or otherwise ("**Payments**") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code and (ii) but for this subsection (a), be subject to the excise tax imposed by Section 4999 of the Code, any successor provisions, or any comparable federal, state, local or foreign excise tax ("**Excise Tax**"), then, subject to the provisions of Section 8, such Payments shall be either (A) provided in full pursuant to the terms of this Agreement or any other applicable agreement, or (B) provided as to such lesser extent which would result in no portion of such Payments being subject to

the Excise Tax ("**Reduced Amount**"), whichever of the foregoing amounts, taking into account the applicable federal, state, local and foreign income, employment and other taxes and the Excise Tax (including, without limitation, any interest or penalties on such taxes), results in the receipt by Executive, on an after-tax basis, of the greatest amount of payments and benefits provided for hereunder or otherwise, notwithstanding that all or some portion of such Payments may be subject to the Excise Tax. Unless the Company and Executive otherwise agree in writing, any determination required under this Section shall be made by independent tax counsel designated by the Company and reasonably acceptable to Executive ("**Independent Tax Counsel**"), whose determination shall be conclusive and binding upon Executive and the Company for all purposes. For purposes of making the calculations required under this Section, Independent Tax Counsel may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code; *provided that* Independent Tax Counsel shall assume that Executive pays all taxes at the highest marginal rate. The Company and Executive shall furnish to Independent Tax Counsel such information and documents as Independent Tax Counsel may reasonably request in order to make a determination under this Section. The Company shall bear all costs that Independent Tax Counsel may reasonably incur in connection with any calculations contemplated by this Section. In the event that Section 7(a)(ii)(B) above applies, then based on the information provided to Executive and the Company by Independent Tax Counsel, Executive may, in Executive's sole discretion and within thirty (30) days of the date on which Executive is provided with the information prepared by Independent Tax Counsel, determine which and how much of the Payments (including the accelerated vesting of equity compensation awards) to be otherwise received by Executive shall be eliminated or reduced (as long as after such determination the value (as calculated by Independent Tax Counsel in accordance with the provisions of Sections 280G and 4999 of the Code) of the amounts payable or distributable to Executive equals the Reduced Amount). If the Internal Revenue Service (the "**IRS**") determines that any Payment is subject to the Excise Tax, then Section 7(b) hereof shall apply, and the enforcement of Section 7(b) shall be the exclusive remedy to the Company.

(b) **Adjustments**. If, notwithstanding any reduction described in Section 7(a) hereof (or in the absence of any such reduction), the IRS determines that Executive is liable for the Excise Tax as a result of the receipt of one or more Payments, then Executive shall be obligated to surrender or pay back to the Company, within one-hundred twenty (120) days after a final IRS determination, an amount of such payments or benefits equal to the "**Repayment Amount**." The Repayment Amount with respect to such Payments shall be the smallest such amount, if any, as shall be required to be surrendered or paid to the Company so that Executive's net proceeds with respect to such Payments (after taking into account the payment of the Excise Tax imposed on such Payments) shall be maximized. Notwithstanding the foregoing, the Repayment Amount with respect to such Payments shall be zero (0) if a Repayment Amount of more than zero (0) would not eliminate the Excise Tax imposed on such Payments or if a Repayment Amount of more than zero would not maximize the net amount received by Executive from the Payments. If the Excise Tax is not eliminated pursuant to this Section 7(b), Executive shall pay the Excise Tax.

8. **Miscellaneous Provisions**.

(a) **Section 409A**. To the extent (i) any payments to which Executive becomes entitled under this Agreement, or any agreement or plan referenced herein, in connection with Executive's

termination of employment with Company constitute deferred compensation subject to Section 409A of the Code and (ii) Executive is deemed at the time of such termination of employment to be a "specified" employee under Section 409A of the Code, then such payment or payments shall not be made or commence until the earlier of (A) the expiration of the six (6)-month period measured from the Executive's "separation from service" (within the meaning of Section 409A of the Code); or (B) the date of Executive's death following such "separation from service"; *provided, however*, that such deferral shall only be effected to the extent required to avoid adverse tax treatment to Executive, including (without limitation) the additional twenty percent (20%) tax for which Executive would otherwise be liable under Section 409A(a)(1)(B) of the Code in the absence of such deferral. Upon the expiration of the applicable deferral period, any payments which would have otherwise been made during that period in the absence of this paragraph shall be paid to Executive or Executive's beneficiary in one lump sum (without interest). To the extent that any provision of this Agreement is ambiguous as to its exemption or compliance with Section 409A, the provision will be read in such a manner so that all payments hereunder are exempt from Section 409A to the maximum permissible extent, and for any payments where such construction is not tenable, that those payments comply with Section 409A to the maximum permissible extent. To the extent any payment under this Agreement may be classified as a "short-term deferral" within the meaning of Section 409A, such payment shall be deemed a short-term deferral, even if it may also qualify for an exemption from Section 409A under another provision of Section 409A. Payments pursuant to this Agreement (or referenced in this Agreement) are intended to constitute separate payments for purposes of Section 1.409A-2(b)(2) of the regulations under Section 409A.

(b) **Other Arrangements**. This Agreement supersedes any and all cash severance arrangements and vesting acceleration arrangements on change in control under any agreement governing Equity Awards, severance and salary continuation arrangements, programs and plans which were previously offered, or may be offered on the Effective Date or thereafter, by the Company to the Executive, including change in control severance arrangements and vesting acceleration arrangements pursuant to an agreement governing Equity Awards, employment agreement or offer letter, including the Original Agreement, and Executive hereby waives Executive's rights to such other benefits. In no event shall any individual receive cash severance benefits under both this Agreement and any other vesting acceleration arrangement, severance pay or salary continuation program, plan or other arrangement with the Company.

(c) **Dispute Resolution**. To ensure rapid and economical resolution of any and all disputes that might arise in connection with this Agreement, Executive and the Company agree that any and all disputes, claims, and causes of action, in law or equity, arising from or relating to this Agreement or its enforcement, performance, breach, or interpretation, will be resolved solely and exclusively by final, binding, and confidential arbitration, by a single arbitrator, in San Diego County, and conducted by Judicial Arbitration & Mediation Services, Inc. ("**JAMS**") under its then-existing employment rules and procedures, which are available at http://www.jamsadr.com/rules-employment-arbitration/, and the Company will provide a copy upon Executive's request, as the exclusive remedy for resolving any and all such disputes. Nothing in this section, however, is intended to prevent either party from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Each party to an arbitration or litigation hereunder shall be responsible for the payment of its own attorneys' fees. EXECUTIVE AND THE COMPANY UNDERSTAND THAT BY AGREEING TO ARBITRATE ANY ARBITRATION CLAIM, THEY WILL NOT HAVE

THE RIGHT TO HAVE ANY ARBITRATION CLAIM DECIDED BY A JURY OR A COURT, BUT SHALL INSTEAD HAVE ANY ARBITRATION CLAIM DECIDED THROUGH ARBITRATION. EXECUTIVE AND THE COMPANY WAIVE ANY CONSTITUTIONAL OR OTHER RIGHT TO BRING CLAIMS COVERED BY THIS AGREEMENT OTHER THAN IN THEIR INDIVIDUAL CAPACITIES. EXCEPT AS MAY BE PROHIBITED BY LAW, THIS WAIVER INCLUDES THE ABILITY TO ASSERT CLAIMS AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

(d) **Notice**. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid or deposited with Federal Express Corporation, with shipping charges prepaid. In the case of the Executive, mailed notices shall be addressed to him or her at the home address which he or she most recently communicated to the Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary.

(e) **Waiver**. No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by the Executive and by an authorized officer of the Company (other than the Executive). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(f) **Withholding Taxes**. All payments made under this Agreement shall be subject to reduction to reflect taxes or other charges required to be withheld by law.

(g) **Severability**. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.

(h) **No Retention Rights**. Nothing in this Agreement shall confer upon the Executive any right to continue in service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company or any subsidiary of the Company or of the Executive, which rights are hereby expressly reserved by each, to terminate his or her service at any time and for any reason, or no reason, with or without cause.

(i) **Choice of Law**. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California (other than its choice-of-law provisions).

(j) **Survival**. Section 4 (Covenants), Section 6 (Successors), Section 7 (Golden Parachute Taxes), Section 8(c) (Dispute Resolution) and Section 8(k) (Exceptions) hereof shall survive any termination of this Agreement and shall continue in effect.

(k) **Exceptions**. Notwithstanding anything in this Agreement or the Release to the contrary, nothing contained in this Agreement or the Release shall prohibit Executive from (i) filing a charge with, reporting possible violations of federal law or regulation to, participating in any

investigation by, or cooperating with any governmental agency or entity or making other disclosures that are protected under the whistleblower provisions of applicable law or regulation and/or (ii) communicating directly with, cooperating with, or providing information (including trade secrets) in confidence to, any federal, state or local government regulator (including, but not limited to, the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, or the U.S. Department of Justice) for the purpose of reporting or investigating a suspected violation of law, or from providing such information to Executive's attorney or in a sealed complaint or other document filed in a lawsuit or other governmental proceeding. Pursuant to 18 USC Section 1833(b), Executive will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made: (x) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (y) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by its duly authorized officer, as of the day and year first above written.

EXECUTIVE	OBALON THERAPEUTICS, INC.
_____	_____
	By: Raymond Dittamore Title: Director
Nooshin Hussainy	

Exhibit A

GENERAL RELEASE OF ALL CLAIMS AND COVENANT NOT TO SUE

This General Release of All Claims and Covenant Not to Sue (the "Release") is entered into between Nooshin Hussainy ("Executive") and Obalon Therapeutics, Inc. (the "Company") (collectively, "the parties").

WHEREAS, on June 9, 2020, Executive and the Company entered into an Amended and Restated Retention Agreement (the "Retention Agreement," to which this Release is attached as Exhibit A); and

WHEREAS, this agreement serves as the Release, pursuant to the Retention Agreement.

NOW THEREFORE, in consideration for the mutual promises and undertakings of the parties as set forth below, Executive and the Company hereby enter into this Release.

1. Consideration: In exchange for Executive's agreement to this Release and his or her other promises in the Retention Agreement and herein, and pursuant to the Retention Agreement, the Company agrees to provide Executive with the consideration set forth in Section 2 of the Retention Agreement. By signing below, Executive acknowledges that he or she is receiving the consideration in exchange for waiving his or her rights to claims referred to in this Release.

2. General Release and Waiver of Claims:

a. To the fullest extent permitted by law, Executive hereby releases and waives any other claims he or she may have against the Company and its owners, agents, officers, shareholders, employees, directors, attorneys, subscribers, subsidiaries, affiliates, successors and assigns (collectively "Releasees"), whether known or not known, fixed or contingent (hereinafter called "Claims"), which Executive now has or may hereafter have against the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof. The Claims released herein include, without limiting the generality of the foregoing, any Claims in any way arising out of, based upon, or related to the employment or termination of employment of the Executive by the Releasees, or any of them; fraud; breach of contract; breach of implied covenant of good faith and fair dealing; inducement of breach; interference with contract; wrongful or unlawful discharge or demotion; violation of public policy; sexual or any other type of assault and battery; invasion of privacy; intentional or negligent infliction of emotional distress; intentional or negligent misrepresentation; conspiracy; failure to pay wages, benefits, vacation pay, severance pay, commissions, equity, attorneys' fees, or other compensation of any sort; failure to accommodate disability, including pregnancy; discrimination or harassment on the basis of pregnancy, race, color, sex, gender, national origin, ancestry, religion, disability, handicap, medical condition, marital status, sexual orientation or any other protected category; any Claim under the Age Discrimination in Employment Act, as amended, 29 U.S.C. § 621 et seq.; the Older Workers Protection Benefit Act of 1990; Title VII of the Civil Rights Act of 1964, as amended, by the Civil Rights Act of 1991, 42 U.S.C. § 2000 et seq.; Equal Pay Act, as amended, 29 U.S.C. § 206(d); the Civil Rights Act of 1866, 42 U.S.C. § 1981; the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.; the False Claims Act, 31 U.S.C. § 3729 et seq.; the Employee Retirement Income Security Act, as amended, 29 U.S.C. § 1001 et seq.; the Worker Adjustment and Retraining Notification Act ("WARN"), as amended, 29 U.S.C. § 2101 et seq.; the Fair Labor Standards Act, 29 U.S.C. § 215 et seq.; the California Fair Employment and Housing Act, as amended, Cal. Lab. Code § 12940 et seq.; the California Equal Pay Law, as amended, Cal. Lab. Code §§ 1197.5(a),1199.5; the Moore-Brown-Roberti Family Rights Act of 1991, as amended, Cal. Gov't Code §§12945.2, 19702.3; the California WARN Act, Cal. Lab. Code § 1400 et seq.; the California

False Claims Act, Cal. Gov't Code § 12650 et seq.; the California Corporate Criminal Liability Act, Cal. Penal Code § 387; the California Labor Code; and any federal, state or local laws of similar effect.

b. EXECUTIVE ACKNOWLEDGES THAT HE OR SHE HAS BEEN ADVISED BY LEGAL COUNSEL AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

EXECUTIVE, BEING AWARE OF SAID CODE SECTION, HEREBY EXPRESSLY WAIVES ANY RIGHTS HE OR SHE MAY HAVE THEREUNDER, AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

c. Executive and the Company do not intend to release Claims that Executive may not release as a matter of law, including but not limited to (i) the Company's obligations to provide payments or benefits under Section 2 of the Retention Agreement, (ii) vested benefits Executive may have, if any, as of the date hereof under any applicable plan, policy, practice, program, contract or agreement with the Company, (iii) indemnification pursuant to an agreement with the Company or the Articles or Bylaws of the Company, as applicable, or applicable law, (iv) Claims for workers' compensation or unemployment benefits, (v) Claims of discrimination, harassment or retaliation brought to the attention of the Equal Employment Opportunity or California Department of Fair Employment and Housing; provided, however, that Executive does release Executive's right to secure damages for any alleged discriminatory, harassing or retaliatory treatment, (vi) any right to communicate directly with, cooperate with, or provide information to, any federal, state or local government regulator or (vii) any other rights that may not be waived by an employee under applicable law. To the fullest extent permitted by law, any dispute regarding the scope of this Release shall be determined by an arbitrator under the procedures set forth in the Dispute Resolution section set forth in the Retention Agreement.

d. Executive represents and warrants that there has been no assignment or other transfer of any interest in any Claim which he or she may have against Releasees, or any of them, and Executive agrees to indemnify and hold Releasees, and each of them, harmless from any liability, claims, demands, damages, costs, expenses and attorneys' fees incurred by Releasees, or any of them, as the result of any such assignment or transfer or any rights or claims under any such assignment or transfer. It is the intention of the parties that this indemnity does not require payment as a condition precedent to recovery by the Releasees against Executive under this indemnity.

e. Executive further understands and agrees that neither the payment of any sum of money nor the execution of this Release shall constitute or be construed as an admission of any liability whatsoever by Executive or the Releasees, or any of them, who have consistently taken the position that they have no liability whatsoever to the Company or the Releasees, or any of them, or to Executive, as applicable.

3. Covenant Not to Sue:

a. Executive agrees that if he or she hereafter commences any suit arising out of, based upon, or relating to any of the Claims released hereunder or in any manner asserts against Releasees, or any

of them, any of the Claims released hereunder, then Executive agrees to pay to Releasees, and each of them, in addition to any other damages caused to Releasees thereby, all attorneys' fees incurred by Releasees in defending or otherwise responding to said suit or Claim.

b. Nothing in this paragraph shall prohibit Executive from filing a charge or complaint with a government agency where, as a matter of law, the parties may not restrict his or her right to file such administrative complaints. However, Executive understands and agrees that, by entering into this Release, he or she is releasing any and all individual Claims for relief, and that any and all subsequent disputes between Executive and the Company shall be resolved through arbitration as provided in the Retention Agreement.

c. Nothing in this Release shall prohibit or impair Executive or the Company from complying with all applicable laws, nor shall this Release be construed to obligate either party to commit (or aid or abet in the commission of) any unlawful act.

4. Review of Release: Executive, in consideration of the payments provided to Executive as described in the Retention Agreement, agrees and acknowledges that this Release constitutes a knowing and voluntary waiver and release of all Claims Executive has or may have against the Company and/or any of the Releasees as set forth herein, including, but not limited to, all Claims arising under the Older Workers Benefit Protection Act and the Age Discrimination in Employment Act. In accordance with the Older Workers Benefit Protection Act, Executive is hereby advised as follows:

a. Executive has read the terms of this Release, and understands its terms and effects, including the fact that Executive agreed to release and forever discharge the Company and each of the Releasees, from any Claims released in this Release;

b. Executive understands that, by entering into this Release, Executive does not waive any Claims that may arise after the date of Executive's execution of this Release, including without limitation any rights or Claims that Executive may have to secure enforcement of the terms and conditions of this Release or the Retention Agreement;

c. Executive has signed this Release voluntarily and knowingly in exchange for the consideration described in this Release, which Executive acknowledges is adequate and satisfactory to Executive and which Executive acknowledges is in addition to any other benefits to which Executive is otherwise entitled;

d. The Company advises Executive to consult with an attorney prior to executing this Release;

e. Executive has been given 21 days in which to review and consider this Release. To the extent that Executive chooses to sign this Release prior to the expiration of such period, Executive acknowledges that Executive has done so voluntarily, had sufficient time to consider the Release, to consult with counsel and that Executive does not desire additional time and hereby waives the remainder of the 21-day period; and

f. Executive may revoke this Release within seven days from the date Executive signs this Release and this Release will become effective upon the expiration of that revocation period, and that the consideration to be provided to him or her pursuant to Section 2 of the Retention Agreement will be provided only at the end of that seven-day revocation period. If Executive revokes this Release during such seven-day period, this Release will be null and void and of no force or effect on either the Company or

Executive and Executive will not be entitled to any of the payments or benefits which are expressly conditioned upon the execution and non-revocation of this Release. Any revocation must be in writing and sent to [*name, title*], via electronic mail at [*email address*] on or before 5:00 p.m. Pacific time on the seventh day after this Release is executed by Executive.

5. Other Terms of Retention Agreement Incorporated Herein: All other terms of the Retention Agreement to the extent not inconsistent with the terms of this Release are hereby incorporated in this Release as though fully stated herein and apply with equal force to this Release.

Name:
Title:
Dated: For the company

Dated: Name: Nooshin Hussainy

Exhibit 10.4

TRANSITION AND CONSULTING AGREEMENT

THIS TRANSITION AND CONSULTING AGREEMENT (the "***Agreement***") is made and entered into as of June 11, 2020 (the "***Effective Date***") by and between Obalon Therapeutics, Inc. (the "***Company***") and Amy Vandenberg ("***Consultant***").

RECITALS

A. Consultant currently serves as Chief Officer, Quality Assurance, Clinical Affairs & Regulatory Affairs of the Company.

B. Consultant intends to resign from such role, and the Company and Consultant mutually desire to transition Consultant's role with the Company from that of Chief Officer, Quality Assurance, Clinical Affairs & Regulatory Affairs of the Company to that of a non-employee consultant to the Company, effective as of a date mutually agreed upon by the Company and Consultant, but expected to be no later than June 30, 2020 (such mutually agreed date, the "***Transition Date***").

C. Consultant and the Company (i) agree that each of the retention agreement by and between the Company and Consultant, dated October 10, 2016 (the "***Retention Agreement***") and the offer letter by and between the Company and Consultant, dated November 24, 2008 (the "***Offer Letter***"), shall terminate, and neither the Company nor Consultant shall have any further obligations thereunder (except, in each case, as provided under Section 15 below) and (ii) mutually desire that, effective as of the Transition Date, Consultant will cease to be an employee of the Company and will thereupon become an independent contractor of the Company performing consulting services.

D. Consultant desires to perform such services on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Consultant hereby agree as follows:

1. Transition of Employment. Consultant shall remain employed by the Company as an employee at will through the Transition Date, on the same terms and conditions in effect as of the Effective Date; provided, that, during the period commencing on May 1, 2020 and ending on the Transition Date, Consultant shall receive a base salary of $100,000 per annum. Consultant agrees that, prior to the Transition Date, Consultant will continue to perform his or her duties, responsibilities and functions to the Company as are usual and customary for Consultant's position, and shall not engage in any other employment, occupation, consulting or other business activity.

2. Separation of Employment.

(a) Termination of Employment. Consultant's last day of employment with the Company shall be the Transition Date. Effective as of the Transition Date, Consultant's employment with the Company and all of its affiliates shall terminate and Consultant shall cease to be an employee of all of the foregoing.

(b) Accrued Obligations. Upon the Transition Date, the Company will pay to Consultant (i) all accrued salary and all accrued, unused paid time off through the Transition Date, and (ii) any unreimbursed business expenses incurred by Consultant, in accordance with Company policy, prior to the Transition Date (collectively, the "***Accrued Obligations***").

(c) Performance Cash Bonus. Consultant shall be eligible to earn a discretionary cash

performance bonus (the "***Performance Bonus***") in an amount equal to $61,250. The Performance Bonus shall be earned, if at all, based on the attainment of Company and/or individual performance goals, as determined by the Compensation Committee of the Company's Board of Directors, in its sole discretion. Payment of the Performance Bonus, to the extent the Performance Bonus becomes payable, will be contingent upon Consultant's continued employment through the Transition Date and will be subject to Consultant's execution and delivery of an effective release of claims in substantially the form attached hereto as Exhibit A (the "***Release***") within 21 days following the Transition Date, and non-revocation of the Release within the prescribed time period. The Performance Bonus (if any) shall be paid in a single lump-sum payment within 60 days after the Transition Date.

(d) Performance-based RSUs. The Company restricted stock unit award granted to Consultant on January 24, 2020 (the "***PRSUs***") has been terminated and forfeited and Consultant shall have no further right to or interest in such award or any shares of the Company's common stock underlying such award.

(e) Withholdings and Other Deductions. All compensation payable to Consultant hereunder shall be subject to such withholdings and deductions as the Company is from time to time required to make pursuant to law, governmental regulation or order.

(f) Warranty. Consultant acknowledges that the payments under Sections 2(c) and 3 of this Agreement constitute additional compensation to which Consultant would not be entitled except for Consultant's decision to sign this Agreement and to abide by the terms of this Agreement. Consultant acknowledges that, upon receipt of the Accrued Obligations, Consultant has received all monies and other benefits due to Consultant as a result of Consultant's employment with and termination of employment from the Company. Consultant further represents that to the best of Consultant's knowledge Consultant has not sustained a work-related injury or illness which Consultant has not previously reported to the Company.

3. Consulting Services.

(a) Consulting Period. During the period commencing on the Transition Date and ending on the date on which this Agreement and the consulting relationship established hereby are terminated in accordance with Section 3(f) below (the "***Consulting Period***"), Consultant shall provide consulting services with regard to the business and operations of the Company, its subsidiaries and its affiliates as reasonably requested by the Company's Chief Executive Officer (collectively, the "***Services***"). Notwithstanding the foregoing, either party hereto may terminate the Consulting Period and Consultant's services hereunder at any time, for any reason or no reason.

(b) Compensation for Services. Subject to and conditioned upon Consultant's execution and delivery to the Company of the Release within 21 days following the Transition Date, and non-revocation of the Release with the prescribed time period, Consultant shall be entitled to receive the following:

(c) Consulting Fee. During the Consulting Period, the Company shall pay Consultant a fee (the "***Consulting Fee***") of $150 per hour. The Consulting Fee shall be paid to Consultant in arrears in the calendar month following the calendar month in which such Consulting Fee was earned. Consultant shall submit invoices to the Company as and when requested by the Company describing in detail the Services provided and the time expended by Consultant on such Services each month and any expenses incurred during such period that are reimbursable pursuant to Section 3(e) below.

(d) Equity Awards. Each outstanding Company equity award held by Consultant as of the Transition Date other than the PRSUs (each a "***Pre-Consulting Equity Award***") shall remain outstanding and eligible to vest and, as applicable, become exercisable during the Consulting Period (based on Consultant's continued provision of Services thereafter rather than continued employment), but, with respect to any Pre-Consulting Equity Award that is a stock option, in no event beyond the outside expiration date of such Pre-Consulting Equity Award. Consultant acknowledges and agrees that the foregoing amendments to any Company stock options may cause an incentive stock option to be reclassified as a non-qualified stock option, and that Consultant, and not the Company, shall be solely responsible for any tax consequences relating to such reclassification.

(e) Expenses. During the Consulting Period, the Company shall reimburse Consultant for reasonable expenses in accordance with the Company's substantiation and reimbursement policies applicable to independent contractors, as in effect from time to time.

(f) Termination of Consultancy. Either the Company or Consultant may terminate the Consulting Period and Consultant's Services hereunder at any time, for any reason, upon written notice to the other party, provided that Consultant must provide at least 30 days' prior written notice to the Company prior to any such termination for convenience. Upon a termination of the Consulting Period and the Consultant's Services, (i) the Company shall pay to Consultant any portion of the Consulting Fee that has been earned but unpaid through the termination date and (ii) any portion of Pre-Consulting Equity Awards that remain unvested as of the termination date shall automatically terminate and be forfeited as of such date. In addition, if the Consulting Period and the Consultant's Services hereunder are terminated, Consultant immediately shall forfeit all Consulting Fees payable with respect to periods of service following the termination date.

(g) Return of Property. Upon the termination of the Consulting Period and Consultant's Services hereunder for any reason, Consultant agrees to return to the Company all documents of the Company and its affiliates (and all copies thereof) and all other Company or Company affiliate property that Consultant has in his or her possession, custody or control. Such property includes, without limitation: (i) any materials of any kind that Consultant knows contain or embody any proprietary or confidential information of the Company or an affiliate of the Company (and all reproductions thereof), (ii) computers (including, but not limited to, laptop computers, desktop computers and similar devices) and other portable electronic devices (including, but not limited to, tablet computers), cellular phones/smartphones, credit cards, phone cards, entry cards, identification badges and keys (and any related or relevant passwords), and (iii) any correspondence, drawings, manuals, letters, notes, notebooks, reports, programs, plans, proposals, financial documents, or any other documents concerning the customers, business plans, marketing strategies, products and/or processes of the Company or any of its affiliates and any information received from the Company or any of its affiliates regarding third parties.

(h) Exclusivity of Benefits. Except as expressly provided in this Agreement, the Company shall have no further obligations to Consultant upon termination of the Consulting Period and Consultant's Services hereunder.

4. Cooperation. In addition to the Services (and without further compensation), Consultant agrees that, following the Transition Date, Consultant will use commercially reasonable efforts to cooperate with the Company, to the extent reasonably requested by the Company, to consult, advise and provide relevant input with respect to any internal investigation or administrative, regulatory or judicial proceeding involving matters that were within the scope of Consultant's duties and responsibilities to the Company and its affiliates during employment with the Company. Any time spent by Consultant pursuant to this Section 4 will be compensated by the Company at an hourly rate of $150. Any such compensation shall be paid monthly in arrears, no later than the 15th day of the calendar month following the calendar month in which such compensation was earned. Consultant shall submit invoices to the Company as and when requested by the Company describing in detail the services provided pursuant to this Section 4 and the time expended by Consultant on such services each month.

5. Covenants.

(a) Notwithstanding anything in this Agreement to the contrary, the parties acknowledge and agree that Consultant previously made certain representations with respect to confidential information and dispute resolution (as set forth in Section[s] 11 and 13 of the Offer Letter), with respect to cooperation and non-disparagement (as set forth in Section 6(b) of the Retention Agreement), and with respect to proprietary information, inventions, non-solicitation and confidential information (as set forth in Sections 2, 3 4, 7 and 8 of the Employee Proprietary Information , Inventions and Confidentiality Agreement by and between the Company and Consultant, dated December 10, 2008 (the "***Confidentiality Agreement***")), and Consultant hereby acknowledges and agrees that such provisions shall remain in full force and effect in accordance with their terms and that Consultant shall be bound by their terms. In addition,

the Company acknowledges and agrees that that certain Indemnity Agreement by and between the Company and Consultant shall remain in full force and effect in accordance with its terms and that the Company shall be bound by its terms.

(b) During the Consulting Period, Consultant may consult or become an employee of other businesses, but shall not be engaged in any other business activity which would be directly competitive with the business of the Company (a "***Restricted Business***"). The foregoing restrictions shall not be construed as preventing Consultant from making passive investments in other businesses or enterprises; provided, however, that such other investments will not require services on the part of Consultant which would in any manner impair the performance of his duties under this Agreement, and provided further that such other businesses or enterprises are not engaged in any business competitive to the business of the Company; provided that nothing herein shall prevent Consultant from owning up to 3 percent of the capital stock of a publicly held entity carrying on a Restricted Business so long as the Consultant does not actively participate in the control of such Restricted Business.

6. Non-Disparagement. During the Consulting Period, Consultant agrees not to disparage the Company, any affiliate of the Company and/or any officers, directors, employees, shareholders and/or agents of the Company or any affiliate of the Company in any manner intended or reasonably likely to be harmful to them or their business, business reputation or personal reputation. During the Consulting Period, the Company agrees to instruct its directors and executive officers not to disparage Consultant in any manner intended or reasonably likely to be harmful to him or his business, business reputation or personal reputation.

7. Exceptions. Notwithstanding anything in this Agreement to the contrary, nothing contained in this Agreement shall prohibit Consultant (or Consultant's attorney) from (a) filing a charge with, reporting possible violations of federal law or regulation to, participating in any investigation by, or cooperating with the U.S. Securities and Exchange Commission, the Financial Industry Regulatory Authority, the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, the U.S. Commodity Futures Trading Commission, the U.S. Department of Justice or any other securities regulatory agency, self-regulatory authority or federal, state or local regulatory authority (collectively, "***Government Agencies***"), or making other disclosures that are protected under the whistleblower provisions of applicable law or regulation, (b) communicating directly with, cooperating with, or providing information (including trade secrets) in confidence to any Government Agencies for the purpose of reporting or investigating a suspected violation of law, or from providing such information to Consultant's attorney or in a sealed complaint or other document filed in a lawsuit or other governmental proceeding, and/or (c) receiving an award for information provided to any Government Agency. Pursuant to 18 USC Section 1833(b), Consultant will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made: (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (ii) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Further, nothing in this Agreement is intended to or shall preclude Consultant from providing truthful testimony in response to a valid subpoena, court order, regulatory request or other judicial, administrative or legal process or otherwise as required by law. If Consultant is required to provide testimony, then unless otherwise directed or requested by a Governmental Agency or law enforcement, Consultant shall notify the Company in writing as promptly as practicable after receiving any such request of the anticipated testimony and at least ten days prior to providing such testimony (or, if such notice is not possible under the circumstances, with as much prior notice as is possible) to afford the Company a reasonable opportunity to challenge the subpoena, court order or similar legal process.

8. Representations.

(a) Consultant represents and warrants that Consultant has no outstanding agreement, relationship or obligation that is in conflict with any of the provisions of this Agreement, or that would preclude Consultant from performing hereunder or complying with the provisions hereof, and further agrees that Consultant will not enter into any such conflicting agreement or relationship during the Consulting Period. Consultant agrees to comply with any insider trading policy, ethics policy and business conduct policy of the Company during the term of this Agreement. Consultant agrees to not use information received by Consultant during the term of this Agreement

for personal gain or take advantage of any business opportunities that arise as a result of this Agreement that might be of interest to the Company. Consultant agrees that if Consultant makes any "reportable transactions" under Section 16 of the Exchange Act of 1934, as amended, Consultant shall immediately notify the Company of such transactions.

(b) Consultant hereby acknowledges (i) that Consultant has consulted with or has had the opportunity to consult with independent counsel of Consultant's own choice concerning this Agreement, and has been advised to do so by the Company, and (ii) that Consultant has read and understands this Agreement, is fully aware of its legal effect, and has entered into it freely based on Consultant's own judgment.

(c) Consultant acknowledges and agrees that (i) none of the foregoing, including the change to Consultant's annual base salary, Consultant's termination of employment and/or transition to a consultant of the Company shall constitute an event(s) giving rise to Good Reason for purposes of the Retention Agreement, and (ii) each of the Retention Agreement and the Offer Letter automatically shall terminate as of the Transition Date (subject to the survival of Section 6(b) of the Retention Agreement and Sections 11 and 13 of the Offer Letter).

9. Independent Contractor. Consultant expressly acknowledges and agrees that, as of the Transition Date, Consultant is solely an independent contractor and shall not be construed to be an employee of the Company in any matter under any circumstances or for any purposes whatsoever. Except as expressly contemplated by this Agreement, the Company shall not be obligated to (a) pay on the account of Consultant any unemployment tax or other taxes required under the law to be paid with respect to employees, (b) withhold any monies from the fees of Consultant for income tax purposes or (c) provide Consultant with any benefits, including without limitation health, welfare, pension, retirement, or any kind of insurance benefits, including workers' compensation insurance. Notwithstanding the foregoing, any amounts payable to Consultant in respect of his service as an employee of the Company prior to the Transition Date shall be subject to withholding in accordance with applicable law. Consultant acknowledges and agrees that Consultant is obligated to report as income all compensation received by Consultant pursuant to this Agreement with respect to the Services, and to pay any applicable income, self-employment and other taxes thereon. Consultant and the Company hereby acknowledge and agree that this Agreement does not impose any obligation on the Company to offer employment to Consultant at any time.

10. Assignment. This Agreement and the rights and duties hereunder are personal to Consultant and shall not be assigned, delegated, transferred, pledged or sold by Consultant without the prior written consent of the Company. Consultant hereby acknowledges and agrees that the Company may assign, delegate, transfer, pledge or sell this Agreement and the rights and duties hereunder (a) to an affiliate of the Company or (b) to any third party or successor (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) that acquires all or substantially all of the assets of the Company or that is the surviving or acquiring corporation in connection with a merger, consolidation or other acquisition involving the Company. This Agreement shall inure to the benefit of and be enforceable by the parties hereto, and their respective heirs, personal representatives, successors and assigns.

11. Notices. All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Consultant: at Consultant's most recent address on the records of the Company.

If to the Company: at the Company's corporate headquarters and directed to the attention of its Secretary.

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

12. Section 409A. To the extent applicable, this Agreement shall be interpreted in accordance with Section 409A of the Internal Revenue Code and Department of Treasury regulations and other

interpretive guidance issued thereunder ("***Section 409A***"). Notwithstanding any provision of this Agreement to the contrary, if the Company determines that any compensation or benefits payable under this Agreement may be subject to Section 409A, the Company shall work in good faith with Consultant to adopt such amendments to this Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Company determines are necessary or appropriate to avoid the imposition of taxes under Section 409A, including without limitation, actions intended to (a) exempt the compensation and benefits payable under this Agreement from Section 409A, and/or (b) comply with the requirements of Section 409A; provided, however, that this Section 12 shall not create an obligation on the part of the Company to adopt any such amendment, policy or procedure or take any such other action, nor shall the Company have any liability for failing to do so. Any right to a series of installment payments pursuant to this Agreement is to be treated as a right to a series of separate payments. To the extent required under Section 409A, any payment or benefit required to be paid upon the termination of Consultant's Services (or any other similar term or phrase) shall be made only upon Consultant's "separation from service" with the Company within the meaning of Section 409A ("***Separation from Service***"). Notwithstanding anything to the contrary in this Agreement, no compensation or benefits shall be paid to Consultant during the six-month period following Consultant's Separation from Service if the Company determines that paying such amounts at the time or times indicated in this Agreement would be a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code. If the payment of any such amounts is delayed as a result of the previous sentence, then on the first business day following the end of such six-month period (or such earlier date upon which such amount can be paid under Section 409A without resulting in a prohibited distribution, including as a result of Consultant's death), the Company shall pay Consultant a lump-sum amount equal to the cumulative amount that would have otherwise been payable to Consultant during such period (without interest). To the extent permitted under Section 409A, any separate payment or benefit under this Agreement or otherwise shall not be deemed "nonqualified deferred compensation" subject to Section 409A to the extent provided in the exceptions in Treasury Regulation Section 1.409A-1(b)(4), Section 1.409A-1(b)(9) or any other applicable exception or provision of Section 409A.

13. Survival. Section 3(f) (Termination of Consultancy), Section 4 (Cooperation), Section 5 (Covenants), Section 6 (Non-Disparagement), Section 7 (Exceptions), and Section 9 (Independent Contractor) hereof shall survive any termination of this Agreement and shall continue in effect.

14. Governing Law. Any dispute, controversy, or claim of whatever nature arising out of or relating to this Agreement or breach thereof shall be governed by and interpreted under the laws of the State of California, without regard to conflict of law principles.

15. Entire Agreement; Counterparts. Effective as of the Transition Date, this Agreement, together with the Release and Confidentiality Agreement, Section 6(b) of the Retention Agreement and Sections 11 and 13 of the Offer Letter, constitute the complete and final agreement of the parties and supersede any prior agreements between them, whether written or oral, with respect to the subject matter hereof. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by duly authorized representatives of the parties hereto. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same Agreement.

16. Severability. The invalidity or unenforceability of any provision of this Agreement, or any terms thereof, shall not affect the validity of this Agreement as a whole, which shall at all times remain in full force and effect.

17. Dispute Resolution. To ensure rapid and economical resolution of any and all disputes that might arise in connection with this Agreement, Consultant and the Company agree that any and all disputes, claims, and causes of action, in law or equity, arising from or relating to this Agreement or its enforcement, performance, breach, or interpretation, will be resolved solely and exclusively by final, binding, and confidential arbitration, by a single arbitrator, in San Diego County, and conducted by Judicial Arbitration & Mediation Services, Inc. ("***JAMS***") under its then-existing employment rules and procedures, which are available at http://www.jamsadr.com/rules-

employment-arbitration/, and the Company will provide a copy upon Consultant's request, as the exclusive remedy for resolving any and all such disputes. Nothing in this section, however, is intended to prevent either party from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Each party to an arbitration or litigation hereunder shall be responsible for the payment of its own attorneys' fees. CONSULTANT AND THE COMPANY UNDERSTAND THAT BY AGREEING TO ARBITRATE ANY ARBITRATION CLAIM, THEY WILL NOT HAVE THE RIGHT TO HAVE ANY ARBITRATION CLAIM DECIDED BY A JURY OR A COURT, BUT SHALL INSTEAD HAVE ANY ARBITRATION CLAIM DECIDED THROUGH ARBITRATION. CONSULTANT AND THE COMPANY WAIVE ANY CONSTITUTIONAL OR OTHER RIGHT TO BRING CLAIMS COVERED BY THIS AGREEMENT OTHER THAN IN THEIR INDIVIDUAL CAPACITIES. EXCEPT AS MAY BE PROHIBITED BY LAW, THIS WAIVER INCLUDES THE ABILITY TO ASSERT CLAIMS AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Consultant has hereunto set Consultant's hand, and the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

Obalon Therapeutics, Inc.,
a Delaware corporation

By:
Name: Andrew Rasdal
Title: Executive Chairman

"Consultant"

_____
Amy Vandenberg

EXHIBIT A

GENERAL RELEASE OF ALL CLAIMS AND COVENANT NOT TO SUE

This General Release of All Claims and Covenant Not to Sue (the "***Release***") is entered into between Mark Brister ("***Consultant***") and Obalon Therapeutics, Inc. (the "***Company***") (collectively, "***the parties***").

WHEREAS, on June 11, 2020, Consultant and the Company entered into a Transition and Consulting Agreement (the "***Consulting Agreement***," to which this Release is attached as Exhibit A); and

WHEREAS, this agreement serves as the Release, pursuant to the Consulting Agreement.

NOW THEREFORE, in consideration for the mutual promises and undertakings of the parties as set forth below, Consultant and the Company hereby enter into this Release.

1. Consideration: In exchange for Consultant's agreement to this Release and his or her other promises in the Consulting Agreement and herein, and pursuant to the Consulting Agreement, the Company agrees to provide Consultant with the consideration set forth in Sections 2(c) and 3 of the Consulting Agreement. By signing below, Consultant acknowledges that he or she is receiving the consideration in exchange for waiving his or her rights to claims referred to in this Release.

2. General Release and Waiver of Claims:

a. To the fullest extent permitted by law, Consultant hereby releases and waives any other claims he or she may have against the Company and its owners, agents, officers, shareholders, employees, directors, attorneys, subscribers, subsidiaries, affiliates, successors and assigns (collectively "***Releasees***"), whether known or not known, fixed or contingent (hereinafter called "***Claims***"), which Consultant now has or may hereafter have against the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof. The Claims released herein include, without limiting the generality of the foregoing, any Claims in any way arising out of, based upon, or related to the employment or termination of employment of the Consultant by the Releasees, or any of them; fraud; breach of contract; breach of implied covenant of good faith and fair dealing; inducement of breach; interference with contract; wrongful or unlawful discharge or demotion; violation of public policy; sexual or any other type of assault and battery; invasion of privacy; intentional or negligent infliction of emotional distress; intentional or negligent misrepresentation; conspiracy; failure to pay wages, benefits, vacation pay, severance pay, commissions, equity, attorneys' fees, or other compensation of any sort; failure to accommodate disability, including pregnancy; discrimination or harassment on the basis of pregnancy, race, color, sex, gender, national origin, ancestry, religion, disability, handicap, medical condition, marital status, sexual orientation or any other protected category; any Claim under the Age Discrimination in Employment Act, as amended, 29 U.S.C. § 621 et seq.; the Older Workers Protection Benefit Act of 1990; Title VII of the Civil Rights Act of 1964, as amended, by the Civil Rights Act of 1991, 42 U.S.C. § 2000 et seq.; Equal Pay Act, as amended, 29 U.S.C. § 206(d); the Civil Rights Act of 1866, 42 U.S.C. § 1981; the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.; the False Claims Act, 31 U.S.C. § 3729 et seq.; the Employee Retirement Income Security Act, as amended, 29 U.S.C. § 1001 et seq.; the Worker Adjustment and Retraining Notification Act ("***WARN***"), as amended, 29 U.S.C. § 2101 et seq.; the Fair Labor Standards Act, 29 U.S.C. § 215 et seq.; the California Fair Employment and Housing Act, as amended, Cal. Lab. Code § 12940 et seq.; the California Equal Pay Law, as amended, Cal. Lab. Code §§ 1197.5(a),1199.5; the Moore-Brown-Roberti Family Rights Act of 1991, as amended, Cal. Gov't Code §§12945.2, 19702.3; the California WARN Act, Cal. Lab. Code § 1400 et seq.; the California False Claims Act, Cal. Gov't Code § 12650 et seq.; the California Corporate Criminal Liability Act, Cal. Penal Code § 387; the California Labor Code; and any federal, state or local laws of similar effect.

b. CONSULTANT ACKNOWLEDGES THAT HE OR SHE HAS BEEN ADVISED BY LEGAL COUNSEL AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

CONSULTANT, BEING AWARE OF SAID CODE SECTION, HEREBY EXPRESSLY WAIVES ANY RIGHTS HE OR SHE MAY HAVE THEREUNDER, AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

c. Consultant and the Company do not intend to release Claims that Consultant may not release as a matter of law, including but not limited to (i) the Company's obligations to provide payments or benefits under Sections 2(c) and 3 of the Consulting Agreement, (ii) accrued or vested benefits Consultant may have, if any, as of the date hereof under any applicable plan, policy, practice, program, contract or agreement with the Company, (iii) indemnification pursuant to an agreement with the Company or the Articles or Bylaws of the Company, as applicable, or applicable law, (iv) Claims for workers' compensation or unemployment benefits, (v) Claims of discrimination, harassment or retaliation brought to the attention of the Equal Employment Opportunity or California Department of Fair Employment and Housing; provided, however, that Consultant does release Consultant's right to secure damages for any alleged discriminatory, harassing or retaliatory treatment, (vi) any right to communicate directly with, cooperate with, or provide information to, any federal, state or local government regulator or (vii) any other rights that may not be waived by an employee under applicable law. To the fullest extent permitted by law, any dispute regarding the scope of this Release shall be determined by an arbitrator under the procedures set forth in the Dispute Resolution section set forth in the Consulting Agreement.

d. Consultant represents and warrants that there has been no assignment or other transfer of any interest in any Claim which he or she may have against Releasees, or any of them, and Consultant agrees to indemnify and hold Releasees, and each of them, harmless from any liability, claims, demands, damages, costs, expenses and attorneys' fees incurred by Releasees, or any of them, as the result of any such assignment or transfer or any rights or claims under any such assignment or transfer. It is the intention of the parties that this indemnity does not require payment as a condition precedent to recovery by the Releasees against Consultant under this indemnity.

e. Consultant further understands and agrees that neither the payment of any sum of money nor the execution of this Release shall constitute or be construed as an admission of any liability whatsoever by Consultant or the Releasees, or any of them, who have consistently taken the position that they have no liability whatsoever to the Company or the Releasees, or any of them, or to Consultant, as applicable.

3. Covenant Not to Sue:

a. Consultant agrees that if he or she hereafter commences any suit arising out of, based upon, or relating to any of the Claims released hereunder or in any manner asserts against Releasees, or any of them, any of the Claims released hereunder, then Consultant agrees to pay to Releasees, and each of them, in addition to any other damages caused to Releasees thereby, all attorneys' fees incurred by Releasees in defending or otherwise responding to said suit or Claim.

b. Nothing in this paragraph shall prohibit Consultant from filing a charge or complaint with a government agency where, as a matter of law, the parties may not restrict his or her right to file such administrative complaints. However, Consultant understands and agrees that, by entering into this Release, he or she is releasing any and all individual Claims for relief, and that any and all subsequent disputes between Consultant and the Company shall be resolved through arbitration as provided in the Consulting Agreement.

c. Nothing in this Release shall prohibit or impair Consultant or the Company from complying with all applicable laws, nor shall this Release be construed to obligate either party to commit (or aid or abet in the commission of) any unlawful act.

4. Review of Release: Consultant, in consideration of the payments provided to Consultant as described in the Consulting Agreement, agrees and acknowledges that this Release constitutes a knowing and voluntary waiver and release of all Claims Consultant has or may have against the Company and/or any of the Releasees as set forth herein, including, but not limited to, all Claims arising under the Older Workers Benefit Protection Act and the Age Discrimination in Employment Act. In accordance with the Older Workers Benefit Protection Act, Consultant is hereby advised as follows:

a. Consultant has read the terms of this Release, and understands its terms and effects, including the fact that Consultant agreed to release and forever discharge the Company and each of the Releasees, from any Claims released in this Release;

b. Consultant understands that, by entering into this Release, Consultant does not waive any Claims that may arise after the date of Consultant's execution of this Release, including without limitation any rights or Claims that Consultant may have to secure enforcement of the terms and conditions of this Release or the Consulting Agreement;

c. Consultant has signed this Release voluntarily and knowingly in exchange for the consideration described in this Release, which Consultant acknowledges is adequate and satisfactory to Consultant and which Consultant acknowledges is in addition to any other benefits to which Consultant is otherwise entitled;

d. The Company advises Consultant to consult with an attorney prior to executing this Release;

e. Consultant has been given 21 days in which to review and consider this Release. To the extent that Consultant chooses to sign this Release prior to the expiration of such period, Consultant acknowledges that Consultant has done so voluntarily, had sufficient time to consider the Release, to consult with counsel and that Consultant does not desire additional time and hereby waives the remainder of the 21-day period; and

f. Consultant may revoke this Release within seven days from the date Consultant signs this Release and this Release will become effective upon the expiration of that revocation period, and that the consideration to be provided to him or her pursuant to Sections 2(c) and 3 of the Consulting Agreement will be provided only at the end of that seven-day revocation period. If Consultant revokes this Release during such seven-day period, this Release will be null and void and of no force or effect on either the Company or Consultant and Consultant will not be entitled to any of the payments or benefits which are expressly conditioned upon the execution and non-revocation of this Release. Any revocation must be in writing and sent to [*name, title*], via electronic mail at [*email address*] on or before 5:00 p.m. Pacific time on the seventh day after this Release is executed by Consultant.

Name: Andrew Rasdal
Title: Executive Chairman
Dated: For the company

Dated: Name: Amy Vandenberg

Exhibit 10.5

TRANSITION AND CONSULTING AGREEMENT

THIS TRANSITION AND CONSULTING AGREEMENT (the "***Agreement***") is made and entered into as of June 11, 2020 (the "***Effective Date***") by and between Obalon Therapeutics, Inc. (the "***Company***") and Mark Brister ("***Consultant***").

RECITALS

A. Consultant currently serves as Chief Technology Officer of the Company.

B. Consultant intends to resign from such role, and the Company and Consultant mutually desire to transition Consultant's role with the Company from that of Chief Technology Officer of the Company to that of a non-employee consultant to the Company, effective as of a date mutually agreed upon by the Company and Consultant, but expected to be no later than June 30, 2020 (such mutually agreed date, the "***Transition Date***").

C. Consultant and the Company (i) agree that each of the retention agreement by and between the Company and Consultant, dated October 10, 2016 (the "***Retention Agreement***") and the offer letter by and between the Company and Consultant, dated June 16, 2008 (the "***Offer Letter***"), shall terminate, and neither the Company nor Consultant shall have any further obligations thereunder (except, in each case, as provided under Section 15 below) and (ii) mutually desire that, effective as of the Transition Date, Consultant will cease to be an employee of the Company and will thereupon become an independent contractor of the Company performing consulting services.

D. Consultant desires to perform such services on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Consultant hereby agree as follows:

1. Transition of Employment. Consultant shall remain employed by the Company as an employee at will through the Transition Date, on the same terms and conditions in effect as of the Effective Date; provided, that, during the period commencing on May 1, 2020 and ending on the Transition Date, Consultant shall receive a base salary of $100,000 per annum. Consultant agrees that, prior to the Transition Date, Consultant will continue to perform his or her duties, responsibilities and functions to the Company as are usual and customary for Consultant's position, and shall not engage in any other employment, occupation, consulting or other business activity.

2. Separation of Employment.

(a) Termination of Employment. Consultant's last day of employment with the Company shall be the Transition Date. Effective as of the Transition Date, Consultant's employment with the Company and all of its affiliates shall terminate and Consultant shall cease to be an employee of all of the foregoing.

(b) Accrued Obligations. Upon the Transition Date, the Company will pay to Consultant (i) all accrued salary and all accrued, unused paid time off through the Transition Date, and (ii) any unreimbursed business expenses incurred by Consultant, in accordance with Company policy, prior to the Transition Date (collectively, the "***Accrued Obligations***").

(c) Performance Cash Bonus. Consultant shall be eligible to earn a discretionary cash performance bonus (the "***Performance Bonus***") in an amount equal to $61,250. The Performance Bonus shall be earned, if at all, based on the attainment of Company and/or individual performance goals, as determined by the

Compensation Committee of the Company's Board of Directors, in its sole discretion. Payment of the Performance Bonus, to the extent the Performance Bonus becomes payable, will be contingent upon Consultant's continued employment through the Transition Date and will be subject to Consultant's execution and delivery of an effective release of claims in substantially the form attached hereto as Exhibit A (the "***Release***") within 21 days following the Transition Date, and non-revocation of the Release within the prescribed time period. The Performance Bonus (if any) shall be paid in a single lump-sum payment within 60 days after the Transition Date.

(d) Performance-based RSUs. The Company restricted stock unit award granted to Consultant on January 24, 2020 (the "***PRSUs***") has been terminated and forfeited and Consultant shall have no further right to or interest in such award or any shares of the Company's common stock underlying such award.

(e) Withholdings and Other Deductions. All compensation payable to Consultant hereunder shall be subject to such withholdings and deductions as the Company is from time to time required to make pursuant to law, governmental regulation or order.

(f) Warranty. Consultant acknowledges that the payments under Sections 2(c) and 3 of this Agreement constitute additional compensation to which Consultant would not be entitled except for Consultant's decision to sign this Agreement and to abide by the terms of this Agreement. Consultant acknowledges that, upon receipt of the Accrued Obligations, Consultant has received all monies and other benefits due to Consultant as a result of Consultant's employment with and termination of employment from the Company. Consultant further represents that to the best of Consultant's knowledge Consultant has not sustained a work-related injury or illness which Consultant has not previously reported to the Company.

3. Consulting Services.

(a) Consulting Period. During the period commencing on the Transition Date and ending on the date on which this Agreement and the consulting relationship established hereby are terminated in accordance with Section 3(f) below (the "***Consulting Period***"), Consultant shall provide consulting services with regard to the business and operations of the Company, its subsidiaries and its affiliates as reasonably requested by the Company's Chief Executive Officer (collectively, the "***Services***"). Notwithstanding the foregoing, either party hereto may terminate the Consulting Period and Consultant's services hereunder at any time, for any reason or no reason.

(b) Compensation for Services. Subject to and conditioned upon Consultant's execution and delivery to the Company of the Release within 21 days following the Transition Date, and non-revocation of the Release with the prescribed time period, Consultant shall be entitled to receive the following:

(c) Consulting Fee. During the Consulting Period, the Company shall pay Consultant a fee (the "***Consulting Fee***") of $150 per hour. The Consulting Fee shall be paid to Consultant in arrears in the calendar month following the calendar month in which such Consulting Fee was earned. Consultant shall submit invoices to the Company as and when requested by the Company describing in detail the Services provided and the time expended by Consultant on such Services each month and any expenses incurred during such period that are reimbursable pursuant to Section 3(e) below.

(d) Equity Awards. Each outstanding Company equity award held by Consultant as of the Transition Date other than the PRSUs (each a "***Pre-Consulting Equity Award***") shall remain outstanding and eligible to vest and, as applicable, become exercisable during the Consulting Period (based on Consultant's continued provision of Services thereafter rather than continued employment), but, with respect to any Pre-Consulting Equity Award that is a stock option, in no event beyond the outside expiration date of such Pre-Consulting Equity Award. Consultant acknowledges and agrees that the foregoing amendments to any Company stock options may cause an incentive stock option to be reclassified as a non-qualified stock option, and that Consultant, and not the Company, shall be solely responsible for any tax consequences relating to such reclassification.

(e) Expenses. During the Consulting Period, the Company shall reimburse Consultant

for reasonable expenses in accordance with the Company's substantiation and reimbursement policies applicable to independent contractors, as in effect from time to time.

(f) Termination of Consultancy. Either the Company or Consultant may terminate the Consulting Period and Consultant's Services hereunder at any time, for any reason, upon written notice to the other party, provided that Consultant must provide at least 30 days' prior written notice to the Company prior to any such termination for convenience. Upon a termination of the Consulting Period and the Consultant's Services, (i) the Company shall pay to Consultant any portion of the Consulting Fee that has been earned but unpaid through the termination date and (ii) any portion of Pre-Consulting Equity Awards that remain unvested as of the termination date shall automatically terminate and be forfeited as of such date. In addition, if the Consulting Period and the Consultant's Services hereunder are terminated, Consultant immediately shall forfeit all Consulting Fees payable with respect to periods of service following the termination date.

(g) Return of Property. Upon the termination of the Consulting Period and Consultant's Services hereunder for any reason, Consultant agrees to return to the Company all documents of the Company and its affiliates (and all copies thereof) and all other Company or Company affiliate property that Consultant has in his or her possession, custody or control. Such property includes, without limitation: (i) any materials of any kind that Consultant knows contain or embody any proprietary or confidential information of the Company or an affiliate of the Company (and all reproductions thereof), (ii) computers (including, but not limited to, laptop computers, desktop computers and similar devices) and other portable electronic devices (including, but not limited to, tablet computers), cellular phones/smartphones, credit cards, phone cards, entry cards, identification badges and keys (and any related or relevant passwords), and (iii) any correspondence, drawings, manuals, letters, notes, notebooks, reports, programs, plans, proposals, financial documents, or any other documents concerning the customers, business plans, marketing strategies, products and/or processes of the Company or any of its affiliates and any information received from the Company or any of its affiliates regarding third parties.

(h) Exclusivity of Benefits. Except as expressly provided in this Agreement, the Company shall have no further obligations to Consultant upon termination of the Consulting Period and Consultant's Services hereunder.

4. Cooperation. In addition to the Services (and without further compensation), Consultant agrees that, following the Transition Date, Consultant will use commercially reasonable efforts to cooperate with the Company, to the extent reasonably requested by the Company, to consult, advise and provide relevant input with respect to any internal investigation or administrative, regulatory or judicial proceeding involving matters that were within the scope of Consultant's duties and responsibilities to the Company and its affiliates during employment with the Company. Any time spent by Consultant pursuant to this Section 4 will be compensated by the Company at an hourly rate of $150. Any such compensation shall be paid monthly in arrears, no later than the 15th day of the calendar month following the calendar month in which such compensation was earned. Consultant shall submit invoices to the Company as and when requested by the Company describing in detail the services provided pursuant to this Section 4 and the time expended by Consultant on such services each month.

5. Covenants.

(a) Notwithstanding anything in this Agreement to the contrary, the parties acknowledge and agree that Consultant previously made certain representations with respect to confidential information and dispute resolution (as set forth in Section[s] 12 and 14 of the Offer Letter), with respect to cooperation and non-disparagement (as set forth in Section 6(b) of the Retention Agreement), and with respect to proprietary information, inventions, non-solicitation and confidential information (as set forth in Sections 2, 4, 7 and 8 of the Employee Proprietary Information , Inventions and Confidentiality Agreement by and between the Company and Consultant, dated July 11, 2008 (the "***Confidentiality Agreement***")), and Consultant hereby acknowledges and agrees that such provisions shall remain in full force and effect in accordance with their terms and that Consultant shall be bound by their terms. In addition, the Company acknowledges and agrees that that certain Indemnity Agreement by and between the Company and Consultant shall remain in full force and effect in accordance with its terms and that the Company shall be bound by its terms.

(b) During the Consulting Period, Consultant may consult or become an employee of other businesses, but shall not be engaged in any other business activity which would be directly competitive with the business of the Company (a "***Restricted Business***"). The foregoing restrictions shall not be construed as preventing Consultant from making passive investments in other businesses or enterprises; provided, however, that such other investments will not require services on the part of Consultant which would in any manner impair the performance of his duties under this Agreement, and provided further that such other businesses or enterprises are not engaged in any business competitive to the business of the Company; provided that nothing herein shall prevent Consultant from owning up to 3 percent of the capital stock of a publicly held entity carrying on a Restricted Business so long as the Consultant does not actively participate in the control of such Restricted Business.

6. Non-Disparagement. During the Consulting Period, Consultant agrees not to disparage the Company, any affiliate of the Company and/or any officers, directors, employees, shareholders and/or agents of the Company or any affiliate of the Company in any manner intended or reasonably likely to be harmful to them or their business, business reputation or personal reputation. During the Consulting Period, the Company agrees to instruct its directors and executive officers not to disparage Consultant in any manner intended or reasonably likely to be harmful to him or his business, business reputation or personal reputation.

7. Exceptions. Notwithstanding anything in this Agreement to the contrary, nothing contained in this Agreement shall prohibit Consultant (or Consultant's attorney) from (a) filing a charge with, reporting possible violations of federal law or regulation to, participating in any investigation by, or cooperating with the U.S. Securities and Exchange Commission, the Financial Industry Regulatory Authority, the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, the U.S. Commodity Futures Trading Commission, the U.S. Department of Justice or any other securities regulatory agency, self-regulatory authority or federal, state or local regulatory authority (collectively, "***Government Agencies***"), or making other disclosures that are protected under the whistleblower provisions of applicable law or regulation, (b) communicating directly with, cooperating with, or providing information (including trade secrets) in confidence to any Government Agencies for the purpose of reporting or investigating a suspected violation of law, or from providing such information to Consultant's attorney or in a sealed complaint or other document filed in a lawsuit or other governmental proceeding, and/or (c) receiving an award for information provided to any Government Agency. Pursuant to 18 USC Section 1833(b), Consultant will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made: (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (ii) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Further, nothing in this Agreement is intended to or shall preclude Consultant from providing truthful testimony in response to a valid subpoena, court order, regulatory request or other judicial, administrative or legal process or otherwise as required by law. If Consultant is required to provide testimony, then unless otherwise directed or requested by a Governmental Agency or law enforcement, Consultant shall notify the Company in writing as promptly as practicable after receiving any such request of the anticipated testimony and at least ten days prior to providing such testimony (or, if such notice is not possible under the circumstances, with as much prior notice as is possible) to afford the Company a reasonable opportunity to challenge the subpoena, court order or similar legal process.

8. Representations.

(a) Consultant represents and warrants that Consultant has no outstanding agreement, relationship or obligation that is in conflict with any of the provisions of this Agreement, or that would preclude Consultant from performing hereunder or complying with the provisions hereof, and further agrees that Consultant will not enter into any such conflicting agreement or relationship during the Consulting Period. Consultant agrees to comply with any insider trading policy, ethics policy and business conduct policy of the Company during the term of this Agreement. Consultant agrees to not use information received by Consultant during the term of this Agreement for personal gain or take advantage of any business opportunities that arise as a result of this Agreement that might be of interest to the Company. Consultant agrees that if Consultant makes any "reportable transactions" under Section 16 of the Exchange Act of 1934, as amended, Consultant shall immediately notify the Company of such transactions.

(b) Consultant hereby acknowledges (i) that Consultant has consulted with or has had the opportunity to consult with independent counsel of Consultant's own choice concerning this Agreement, and has been advised to do so by the Company, and (ii) that Consultant has read and understands this Agreement, is fully aware of its legal effect, and has entered into it freely based on Consultant's own judgment.

(c) Consultant acknowledges and agrees that (i) none of the foregoing, including the change to Consultant's annual base salary, Consultant's termination of employment and/or transition to a consultant of the Company shall constitute an event(s) giving rise to Good Reason for purposes of the Retention Agreement, and (ii) each of the Retention Agreement and the Offer Letter automatically shall terminate as of the Transition Date (subject to the survival of Section 6(b) of the Retention Agreement and Sections 12 and 14 of the Offer Letter).

9. Independent Contractor. Consultant expressly acknowledges and agrees that, as of the Transition Date, Consultant is solely an independent contractor and shall not be construed to be an employee of the Company in any matter under any circumstances or for any purposes whatsoever. Except as expressly contemplated by this Agreement, the Company shall not be obligated to (a) pay on the account of Consultant any unemployment tax or other taxes required under the law to be paid with respect to employees, (b) withhold any monies from the fees of Consultant for income tax purposes or (c) provide Consultant with any benefits, including without limitation health, welfare, pension, retirement, or any kind of insurance benefits, including workers' compensation insurance. Notwithstanding the foregoing, any amounts payable to Consultant in respect of his service as an employee of the Company prior to the Transition Date shall be subject to withholding in accordance with applicable law. Consultant acknowledges and agrees that Consultant is obligated to report as income all compensation received by Consultant pursuant to this Agreement with respect to the Services, and to pay any applicable income, self-employment and other taxes thereon. Consultant and the Company hereby acknowledge and agree that this Agreement does not impose any obligation on the Company to offer employment to Consultant at any time.

10. Assignment. This Agreement and the rights and duties hereunder are personal to Consultant and shall not be assigned, delegated, transferred, pledged or sold by Consultant without the prior written consent of the Company. Consultant hereby acknowledges and agrees that the Company may assign, delegate, transfer, pledge or sell this Agreement and the rights and duties hereunder (a) to an affiliate of the Company or (b) to any third party or successor (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) that acquires all or substantially all of the assets of the Company or that is the surviving or acquiring corporation in connection with a merger, consolidation or other acquisition involving the Company. This Agreement shall inure to the benefit of and be enforceable by the parties hereto, and their respective heirs, personal representatives, successors and assigns.

11. Notices. All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Consultant: at Consultant's most recent address on the records of the Company.

If to the Company: at the Company's corporate headquarters and directed to the attention of its Secretary.

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

12. Section 409A. To the extent applicable, this Agreement shall be interpreted in accordance with Section 409A of the Internal Revenue Code and Department of Treasury regulations and other interpretive guidance issued thereunder ("***Section 409A***"). Notwithstanding any provision of this Agreement to the contrary, if the Company determines that any compensation or benefits payable under this Agreement may be subject to Section 409A, the Company shall work in good faith with Consultant to adopt such amendments to this Agreement or adopt other policies and procedures (including amendments, policies and

procedures with retroactive effect), or take any other actions, that the Company determines are necessary or appropriate to avoid the imposition of taxes under Section 409A, including without limitation, actions intended to (a) exempt the compensation and benefits payable under this Agreement from Section 409A, and/or (b) comply with the requirements of Section 409A; provided, however, that this Section 12 shall not create an obligation on the part of the Company to adopt any such amendment, policy or procedure or take any such other action, nor shall the Company have any liability for failing to do so. Any right to a series of installment payments pursuant to this Agreement is to be treated as a right to a series of separate payments. To the extent required under Section 409A, any payment or benefit required to be paid upon the termination of Consultant's Services (or any other similar term or phrase) shall be made only upon Consultant's "separation from service" with the Company within the meaning of Section 409A ("***Separation from Service***"). Notwithstanding anything to the contrary in this Agreement, no compensation or benefits shall be paid to Consultant during the six-month period following Consultant's Separation from Service if the Company determines that paying such amounts at the time or times indicated in this Agreement would be a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code. If the payment of any such amounts is delayed as a result of the previous sentence, then on the first business day following the end of such six-month period (or such earlier date upon which such amount can be paid under Section 409A without resulting in a prohibited distribution, including as a result of Consultant's death), the Company shall pay Consultant a lump-sum amount equal to the cumulative amount that would have otherwise been payable to Consultant during such period (without interest). To the extent permitted under Section 409A, any separate payment or benefit under this Agreement or otherwise shall not be deemed "nonqualified deferred compensation" subject to Section 409A to the extent provided in the exceptions in Treasury Regulation Section 1.409A-1(b)(4), Section 1.409A-1(b)(9) or any other applicable exception or provision of Section 409A.

13. Survival. Section 3(f) (Termination of Consultancy), Section 4 (Cooperation), Section 5 (Covenants), Section 6 (Non-Disparagement), Section 7 (Exceptions), and Section 9 (Independent Contractor) hereof shall survive any termination of this Agreement and shall continue in effect.

14. Governing Law. Any dispute, controversy, or claim of whatever nature arising out of or relating to this Agreement or breach thereof shall be governed by and interpreted under the laws of the State of California, without regard to conflict of law principles.

15. Entire Agreement; Counterparts. Effective as of the Transition Date, this Agreement, together with the Release and Confidentiality Agreement, Section 6(b) of the Retention Agreement and Sections 12 and 14 of the Offer Letter, constitute the complete and final agreement of the parties and supersede any prior agreements between them, whether written or oral, with respect to the subject matter hereof. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by duly authorized representatives of the parties hereto. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same Agreement.

16. Severability. The invalidity or unenforceability of any provision of this Agreement, or any terms thereof, shall not affect the validity of this Agreement as a whole, which shall at all times remain in full force and effect.

17. Dispute Resolution. To ensure rapid and economical resolution of any and all disputes that might arise in connection with this Agreement, Consultant and the Company agree that any and all disputes, claims, and causes of action, in law or equity, arising from or relating to this Agreement or its enforcement, performance, breach, or interpretation, will be resolved solely and exclusively by final, binding, and confidential arbitration, by a single arbitrator, in San Diego County, and conducted by Judicial Arbitration & Mediation Services, Inc. ("***JAMS***") under its then-existing employment rules and procedures, which are available at http://www.jamsadr.com/rules-employment-arbitration/, and the Company will provide a copy upon Consultant's request, as the exclusive remedy for resolving any and all such disputes. Nothing in this section, however, is intended to prevent either party from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Each party to an arbitration or litigation hereunder shall be responsible for the payment of its own attorneys' fees.

CONSULTANT AND THE COMPANY UNDERSTAND THAT BY AGREEING TO ARBITRATE ANY ARBITRATION CLAIM, THEY WILL NOT HAVE THE RIGHT TO HAVE ANY ARBITRATION CLAIM DECIDED BY A JURY OR A COURT, BUT SHALL INSTEAD HAVE ANY ARBITRATION CLAIM DECIDED THROUGH ARBITRATION. CONSULTANT AND THE COMPANY WAIVE ANY CONSTITUTIONAL OR OTHER RIGHT TO BRING CLAIMS COVERED BY THIS AGREEMENT OTHER THAN IN THEIR INDIVIDUAL CAPACITIES. EXCEPT AS MAY BE PROHIBITED BY LAW, THIS WAIVER INCLUDES THE ABILITY TO ASSERT CLAIMS AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Consultant has hereunto set Consultant's hand, and the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

Obalon Therapeutics, Inc.,
a Delaware corporation

By:
Name: Andrew Rasdal
Title: Executive Chairman

"Consultant"

_____
Mark Brister

EXHIBIT A

GENERAL RELEASE OF ALL CLAIMS AND COVENANT NOT TO SUE

This General Release of All Claims and Covenant Not to Sue (the "***Release***") is entered into between Mark Brister ("***Consultant***") and Obalon Therapeutics, Inc. (the "***Company***") (collectively, "***the parties***").

WHEREAS, on June 11, 2020, Consultant and the Company entered into a Transition and Consulting Agreement (the "***Consulting Agreement***," to which this Release is attached as Exhibit A); and

WHEREAS, this agreement serves as the Release, pursuant to the Consulting Agreement.

NOW THEREFORE, in consideration for the mutual promises and undertakings of the parties as set forth below, Consultant and the Company hereby enter into this Release.

1. Consideration: In exchange for Consultant's agreement to this Release and his or her other promises in the Consulting Agreement and herein, and pursuant to the Consulting Agreement, the Company agrees to provide Consultant with the consideration set forth in Sections 2(c) and 3 of the Consulting Agreement. By signing below, Consultant acknowledges that he or she is receiving the consideration in exchange for waiving his or her rights to claims referred to in this Release.

2. General Release and Waiver of Claims:

a. To the fullest extent permitted by law, Consultant hereby releases and waives any other claims he or she may have against the Company and its owners, agents, officers, shareholders, employees, directors, attorneys, subscribers, subsidiaries, affiliates, successors and assigns (collectively "***Releasees***"), whether known or not known, fixed or contingent (hereinafter called "***Claims***"), which Consultant now has or may hereafter have against the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof. The Claims released herein include, without limiting the generality of the foregoing, any Claims in any way arising out of, based upon, or related to the employment or termination of employment of the Consultant by the Releasees, or any of them; fraud; breach of contract; breach of implied covenant of good faith and fair dealing; inducement of breach; interference with contract; wrongful or unlawful discharge or demotion; violation of public policy; sexual or any other type of assault and battery; invasion of privacy; intentional or negligent infliction of emotional distress; intentional or negligent misrepresentation; conspiracy; failure to pay wages, benefits, vacation pay, severance pay, commissions, equity, attorneys' fees, or other compensation of any sort; failure to accommodate disability, including pregnancy; discrimination or harassment on the basis of pregnancy, race, color, sex, gender, national origin, ancestry, religion, disability, handicap, medical condition, marital status, sexual orientation or any other protected category; any Claim under the Age Discrimination in Employment Act, as amended, 29 U.S.C. § 621 et seq.; the Older Workers Protection Benefit Act of 1990; Title VII of the Civil Rights Act of 1964, as amended, by the Civil Rights Act of 1991, 42 U.S.C. § 2000 et seq.; Equal Pay Act, as amended, 29 U.S.C. § 206(d); the Civil Rights Act of 1866, 42 U.S.C. § 1981; the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.; the False Claims Act, 31 U.S.C. § 3729 et seq.; the Employee Retirement Income Security Act, as amended, 29 U.S.C. § 1001 et seq.; the Worker Adjustment and Retraining Notification Act ("***WARN***"), as amended, 29 U.S.C. § 2101 et seq.; the Fair Labor Standards Act, 29 U.S.C. § 215 et seq.; the California Fair Employment and Housing Act, as amended, Cal. Lab. Code § 12940 et seq.; the California Equal Pay Law, as amended, Cal. Lab. Code §§ 1197.5(a),1199.5; the Moore-Brown-Roberti Family Rights Act of 1991, as amended, Cal. Gov't Code §§12945.2, 19702.3; the California WARN Act, Cal. Lab. Code § 1400 et seq.; the California False Claims Act, Cal. Gov't Code § 12650 et seq.; the California Corporate Criminal Liability Act, Cal. Penal Code § 387; the California Labor Code; and any federal, state or local laws of similar effect.

b. CONSULTANT ACKNOWLEDGES THAT HE OR SHE HAS BEEN ADVISED BY LEGAL COUNSEL AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER

FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

CONSULTANT, BEING AWARE OF SAID CODE SECTION, HEREBY EXPRESSLY WAIVES ANY RIGHTS HE OR SHE MAY HAVE THEREUNDER, AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

c. Consultant and the Company do not intend to release Claims that Consultant may not release as a matter of law, including but not limited to (i) the Company's obligations to provide payments or benefits under Sections 2(c) and 3 of the Consulting Agreement, (ii) accrued or vested benefits Consultant may have, if any, as of the date hereof under any applicable plan, policy, practice, program, contract or agreement with the Company, (iii) indemnification pursuant to an agreement with the Company or the Articles or Bylaws of the Company, as applicable, or applicable law, (iv) Claims for workers' compensation or unemployment benefits, (v) Claims of discrimination, harassment or retaliation brought to the attention of the Equal Employment Opportunity or California Department of Fair Employment and Housing; provided, however, that Consultant does release Consultant's right to secure damages for any alleged discriminatory, harassing or retaliatory treatment, (vi) any right to communicate directly with, cooperate with, or provide information to, any federal, state or local government regulator or (vii) any other rights that may not be waived by an employee under applicable law. To the fullest extent permitted by law, any dispute regarding the scope of this Release shall be determined by an arbitrator under the procedures set forth in the Dispute Resolution section set forth in the Consulting Agreement.

d. Consultant represents and warrants that there has been no assignment or other transfer of any interest in any Claim which he or she may have against Releasees, or any of them, and Consultant agrees to indemnify and hold Releasees, and each of them, harmless from any liability, claims, demands, damages, costs, expenses and attorneys' fees incurred by Releasees, or any of them, as the result of any such assignment or transfer or any rights or claims under any such assignment or transfer. It is the intention of the parties that this indemnity does not require payment as a condition precedent to recovery by the Releasees against Consultant under this indemnity.

e. Consultant further understands and agrees that neither the payment of any sum of money nor the execution of this Release shall constitute or be construed as an admission of any liability whatsoever by Consultant or the Releasees, or any of them, who have consistently taken the position that they have no liability whatsoever to the Company or the Releasees, or any of them, or to Consultant, as applicable.

3. Covenant Not to Sue:

a. Consultant agrees that if he or she hereafter commences any suit arising out of, based upon, or relating to any of the Claims released hereunder or in any manner asserts against Releasees, or any of them, any of the Claims released hereunder, then Consultant agrees to pay to Releasees, and each of them, in addition to any other damages caused to Releasees thereby, all attorneys' fees incurred by Releasees in defending or otherwise responding to said suit or Claim.

b. Nothing in this paragraph shall prohibit Consultant from filing a charge or complaint with a government agency where, as a matter of law, the parties may not restrict his or her right to file such administrative complaints. However, Consultant understands and agrees that, by entering into this Release, he or she is releasing any and all individual Claims for relief, and that any and all subsequent disputes between Consultant and the Company shall be resolved through arbitration as provided in the Consulting Agreement.

c. Nothing in this Release shall prohibit or impair Consultant or the Company from complying with all applicable laws, nor shall this Release be construed to obligate either party to commit (or aid or abet in the commission of) any unlawful act.

4. Review of Release: Consultant, in consideration of the payments provided to Consultant as described in the Consulting Agreement, agrees and acknowledges that this Release constitutes a knowing and voluntary waiver and release of all Claims Consultant has or may have against the Company and/or any of the Releasees as set forth herein, including, but not limited to, all Claims arising under the Older Workers Benefit Protection Act and the Age Discrimination in Employment Act. In accordance with the Older Workers Benefit Protection Act, Consultant is hereby advised as follows:

a. Consultant has read the terms of this Release, and understands its terms and effects, including the fact that Consultant agreed to release and forever discharge the Company and each of the Releasees, from any Claims released in this Release;

b. Consultant understands that, by entering into this Release, Consultant does not waive any Claims that may arise after the date of Consultant's execution of this Release, including without limitation any rights or Claims that Consultant may have to secure enforcement of the terms and conditions of this Release or the Consulting Agreement;

c. Consultant has signed this Release voluntarily and knowingly in exchange for the consideration described in this Release, which Consultant acknowledges is adequate and satisfactory to Consultant and which Consultant acknowledges is in addition to any other benefits to which Consultant is otherwise entitled;

d. The Company advises Consultant to consult with an attorney prior to executing this Release;

e. Consultant has been given 21 days in which to review and consider this Release. To the extent that Consultant chooses to sign this Release prior to the expiration of such period, Consultant acknowledges that Consultant has done so voluntarily, had sufficient time to consider the Release, to consult with counsel and that Consultant does not desire additional time and hereby waives the remainder of the 21-day period; and

f. Consultant may revoke this Release within seven days from the date Consultant signs this Release and this Release will become effective upon the expiration of that revocation period, and that the consideration to be provided to him or her pursuant to Sections 2(c) and 3 of the Consulting Agreement will be provided only at the end of that seven-day revocation period. If Consultant revokes this Release during such seven-day period, this Release will be null and void and of no force or effect on either the Company or Consultant and Consultant will not be entitled to any of the payments or benefits which are expressly conditioned upon the execution and non-revocation of this Release. Any revocation must be in writing and sent to [*name, title*], via electronic mail at [*email address*] on or before 5:00 p.m. Pacific time on the seventh day after this Release is executed by Consultant.

Name: Andrew Rasdal
Title: Executive Chairman
Dated: For the company

Dated: Name: Mark Brister

Exhibit 31.1

OBALON THERAPEUTICS, INC.
CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, William Plovanic, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Obalon Therapeutics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

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

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

Date: June 19, 2020

/s/ William Plovanic

William Plovanic

President and Chief Executive Officer

(Principal Executive Officer)

Exhibit 31.2

OBALON THERAPEUTICS, INC.
CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Nooshin Hussainy, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Obalon Therapeutics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

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

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

Date: June 19, 2020

/s/ Nooshin Hussainy

Nooshin Hussainy
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO

18 U.S.C. SECTION 1350

AS ADOPTED PURSUANT TO SECTION 906

OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Obalon Therapeutics, Inc. (the "Company") for the quarter ended March 31, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), William Plovanic, the President and Chief Executive Officer, and Nooshin Hussainy, the Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his and her knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: June 19, 2020

/s/ William Plovanic	/s/ Nooshin Hussainy
William Plovanic	Nooshin Hussainy
President and Chief Executive Officer (Principal Executive Officer)	Chief Financial Officer (Principal Financial Officer)

A signed original of this written statement required by Section 906 has been provided to Obalon Therapeutics, Inc. and will be retained by Obalon Therapeutics, Inc. and furnished to the Securities and Exchange Commission or its staff upon request. These certifications will not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section, nor will these certifications be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except to the extent that the registrant specifically incorporates them by reference.