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12 UNITED STATES DISTRICT COURT  
 13 SOUTHERN DISTRICT OF CALIFORNIA

14 LIAM HARDY, Individually and on  
 15 Behalf of All Others Similarly Situated,

16 Plaintiff,

17 vs.

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

21 Defendants.

Case No.: '18CV1160 BAS NLS

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

CLASS ACTION

**DEMAND FOR JURY TRIAL**

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

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14 **NATURE OF THE ACTION**

15 1. This is a securities class action on behalf of all purchasers of common  
16 stock of MabVax between March 14, 2016 and May 18, 2018, inclusive (the "Class  
17 Period"), alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of  
18 1934 ("Exchange Act").  
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20 2. MabVax through its subsidiaries develops human antibody-based  
21 products and vaccines to address unmet medical needs for the treatment of diseases  
22 such as pancreatic, lung, sarcoma ovarian and breast cancer.  
23

24 3. On January 30, 2018, the Company filed an 8-K with the SEC  
25 disclosing an investigation by the SEC, the Company stated in relevant part:  
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1 MabVax Therapeutics Holdings, Inc. (NASDAQ: MBVX)  
2 (“MabVax” or the “Company”), a clinical-stage biotechnology  
3 company focused on the development of antibody-based products to  
4 address unmet medical needs in the treatment of cancer, today  
5 announced that it received notice that the Securities and Exchange  
6 Commission (“SEC”) was conducting an investigation and  
7 examination pursuant to Section 8(e) of the Securities Act of 1933, as  
8 amended, relating to certain of the Company’s registration statements  
9 (and amendments thereto). The Company intends to cooperate fully  
10 with the SEC’s examination.

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

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

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

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

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

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

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

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

10 7. Throughout the Class Period, Defendants made false and/or misleading  
11 statements, as well as failed to disclose material adverse facts about the Company's  
12 business, operations, and prospects. Specifically, Defendants failed to disclose: (1)  
13 that the Company's internal controls over financial reporting were materially weak  
14 and deficient; (2) that the Company had incorrectly calculated and reported  
15 beneficial ownership of MabVax shares, and permitted improper influence or  
16 control over MabVax, and/or the Company's officers and directors by certain  
17 shareholders; and, (3) that, as a result of the foregoing, the Company's financial  
18 statements and Defendants' statements about MabVax's business, operations, and  
19 prospects, were materially false and misleading at all relevant times.  
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24 8. As a result of Defendants' wrongful acts and omissions, and the  
25 precipitous decline in the market value of the Company's securities, Plaintiff and  
26 other Class members have suffered significant losses and damages.  
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**JURISDICTION AND VENUE**

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

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

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

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

**PARTIES**

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

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

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

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

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

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

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

25 **Financing Activities**

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

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

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

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

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

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

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

19 \*\*\*

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

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

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

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

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

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

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

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

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

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

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

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

3 \*\*\*

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

### 11 **The Truth Partially Disclosed**

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

### 22 **The Truth Partially Revealed**

23 21. On January 30, 2018, the Company filed an 8-K with the SEC  
24 disclosing an investigation by the SEC, the Company stated in relevant part:  
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26 MabVax Therapeutics Holdings, Inc. (NASDAQ: MBVX)  
27 (“MabVax” or the “Company”), a clinical-stage biotechnology  
28

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

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

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

15 **Conversion of Preferred Stock into Common Stock**

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

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

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

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

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

### 24 **Series D Preferred Stock**

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

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

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

### 22 **Series E Preferred Stock**

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

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

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

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

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

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

### 23 **Series F Preferred Stock**

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

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

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

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

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

#### 4 **Series G Preferred Stock**

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

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

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

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

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

### 13 **Series H Preferred Stock**

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

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

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

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

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

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

### 27 **Series I Preferred Stock**

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

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

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

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

### 15 **Series J Preferred Stock**

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

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

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

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

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

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

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

#### 11 **Series K Preferred Stock**

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

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

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

### 13 **Series L Preferred Stock**

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

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

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

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

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

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

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

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

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

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

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

8 \*\*\*

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

18 \*\*\*

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

\*\*\*

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



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

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

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

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

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

### 19 **NO SAFE HARBOR**

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

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

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

### 12 **ADDITIONAL SCIENTER ALLEGATIONS**

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

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

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

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

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

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

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

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

21  
22 (e) MabVax was followed by many securities analysts who wrote  
23 reports that were distributed during the Class Period. Each of these reports was  
24 publicly available and entered the public marketplace; and  
25  
26

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

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

### 10 **LOSS CAUSATION**

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

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

### 24 **CLASS ACTION ALLEGATIONS**

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

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

6 35. Common questions of law and fact predominate and include whether  
7 Defendants Hansen and Hanson: (a) violated the Exchange Act; (b) omitted and/or  
8 misrepresented material facts; (c) knew or recklessly disregarded that their  
9 statements were false; (d) artificially inflated the price of MabVax common stock;  
10 and (e) the extent of and appropriate measure of damages.  
11  
12

13 36. Plaintiff’s claims are typical of those of the Class. Prosecution of  
14 individual actions would create a risk of inconsistent adjudications. Plaintiff will  
15 adequately protect the interests of the Class. A class action is superior to other  
16 available methods for the fair and efficient adjudication of this controversy.  
17

18 **COUNT I**

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

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

24 38. Throughout the Class Period, Defendants MabVax, Hansen and  
25 Hanson, in pursuit of their scheme and continuous course of conduct to inflate the  
26 market price of MabVax common stock, had the ultimate authority for making, and  
27  
28

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

5         39. During the Class Period, Defendants MabVax, Hansen and Hanson,  
6 and each of them, carried out a plan, scheme, and course of conduct using the  
7 instrumentalities of interstate commerce and the mails, which was intended to and,  
8 throughout the Class Period did: (a) artificially inflate and maintain the market price  
9 of MabVax common stock; (b) deceive the investing public, including Plaintiff and  
10 other Class members, as alleged herein; (c) cause Plaintiff and other members of the  
11 Class to purchase MabVax common stock at inflated prices; and (d) cause them  
12 losses when the truth was revealed. In furtherance of this unlawful scheme, plan  
13 and course of conduct, Defendants MabVax, Hansen and Hanson took the actions  
14 set forth herein, in violation of §10(b) of the Exchange Act and Rule 10b-5, 17  
15 C.F.R. §240.10b-5.  
16  
17  
18

19         40. In addition to the duties of full disclosure imposed on Defendants  
20 MabVax, Hansen and Hanson as a result of their affirmative false and misleading  
21 statements to the investing public, these Defendants had a duty to promptly  
22 disseminate truthful information with respect to MabVax's operations and  
23 performance that would be material to investors in compliance with the integrated  
24 disclosure provisions of the SEC, including with respect to the Company's revenue  
25 and earnings trends, so that the market price of the Company's securities would be  
26  
27  
28

1 based on truthful, complete and accurate information. SEC Regulations S-X (17  
2 C.F.R. §210.01, *et seq.*) and S-K (17 C.F.R. §229.10, *et seq.*)

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

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

21 43. Had Plaintiff and the other members of the Class and the marketplace  
22 known of the true facts, which were knowingly or recklessly concealed by  
23 Defendants MabVax, Hansen and Hanson, Plaintiff and the other members of the  
24 Class would not have purchased or otherwise acquired their MabVax shares during  
25 the Class Period, or if they had acquired such shares during the Class Period, they  
26 would not have done so at the artificially inflated prices which they paid.  
27  
28





1 D. Awarding such other and further relief as the Court may deem just and  
2 proper.

3 **JURY DEMAND**

4  
5 Plaintiff demands a trial by jury.

6  
7 DATED: June 4, 2018

**GLANCY PRONGAY & MURRAY LLP**

8  
9  
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27 *Attorneys for Plaintiff*

**CERTIFICATION OF NAMED PLAINTIFF  
PURSUANT TO FEDERAL SECURITIES LAWS**

The undersigned declares, as to the claims asserted under the federal securities laws, that:

Plaintiff has reviewed the initial complaint filed in this action.

Plaintiff did not purchase and/or acquire the security that is the subject of this action at the direction of Plaintiff's counsel or in order to participate in any private action under the federal securities laws.

Plaintiff is willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary. I understand that this is not a claim form, and that my ability to share in any recovery as a member of the class is not dependent upon execution of this Plaintiff Certification.

Plaintiff's transactions in the security that is the subject of this action during the Class Period are as follows:

Purchases:

<u>Name of Company</u>	<u>Date(s) Purchased</u>	<u># Shares Purchased</u>	<u>Cost/Share</u>
MBVX	11/04/2016	100	\$3.8929
	11/04/2016	442	\$3.8970
	11/04/2016	100	\$3.8828
	11/04/2016	700	\$3.8596
	11/04/2016	100	\$3.8626
	11/14/2016	1,130	\$4.4591

Sales:

<u>Name of Company</u>	<u>Date(s) Sold</u>	<u># Shares Sold</u>	<u>Proceeds/Share</u>
MBVX			

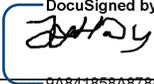
During the three (3) years prior to the date of this certification, Plaintiff has not sought to serve or served as a class representative in an action filed under the federal securities laws except for the following (if any):

None

Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1 day of June, 2018 in Walsall, West Midlands, England.  
City State

(Signature) X  DocuSigned by:  
9A841858A8784DD...  
(Print Name) Liam Hardy