

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

**FORM S-8
REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933**

OBALON THERAPEUTICS, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation or Organization)

26-1828101
(I.R.S. Employer Identification No.)

**5421 Avenida Encinas, Suite F
Carlsbad, California 92008**
(Address of Principal Executive Offices) (Zip Code)

Obalon Therapeutics, Inc. 2016 Equity Incentive Plan
(Full Title of the Plan)

**William Plovanic
President and Chief Executive Officer
Obalon Therapeutics, Inc.
5421 Avenida Encinas, Suite F
Carlsbad, California 92008
(844) 362-2566**

(Name, address, and telephone number, including area code, of agent for service)

Copy to:
**B. Shayne Kennedy
LATHAM & WATKINS LLP
650 Town Center Drive, 20th Floor
Costa Mesa, California 92626
Telephone: (714) 540-1235
Facsimile: (714) 755-8290**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☒

Smaller reporting company ☒

Emerging growth company ☒

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 financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act . ☒

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee
Common Stock, \$0.001 par value per share	816,081 (3)	\$1.90	\$1,550,553.90	\$201.26

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of the Registrant’s common stock that become issuable under the Obalon Therapeutics, Inc. 2016 Equity Incentive Plan (as amended, the “2016 Plan”) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected that increases the number of the Registrant’s outstanding shares of common stock.
- (2) Estimated in accordance with Rule 457(c) and (h) solely for the purpose of calculating the registration fee. The maximum price per share and the maximum aggregate offering price are based upon the average of the high and low prices of the Registrant's common stock as reported on the Nasdaq Global Market on January 17, 2020, which date is within five business days prior to filing this Registration Statement.
- (3) Represents shares of the Registrant’s common stock that may become issuable under the 2016 Plan.
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EXPLANATORY NOTE

By Registration Statement on Form S-8 (File Nos. 333-213988, 333-218482, 333-224864, 333-232759 and 333-235876) filed with the Securities and Exchange Commission (the "Commission"), Obalon Therapeutics, Inc. (the "Registrant") previously registered an aggregate of 5,543,162 shares of its common stock for issuance from time to time in connection with the Obalon Therapeutics, Inc. 2016 Equity Incentive Plan (as amended, the "2016 Plan"). Under this Registration Statement on Form S-8, the Registrant is registering an additional 816,081 shares of common stock of the Registrant that may become issuable under the 2016 Plan.

Pursuant to General Instruction E of Form S-8, the contents of the above-referenced prior registration statements are incorporated into this Registration Statement by reference to the extent not modified or superseded hereby or by any subsequently filed document, which is incorporated by reference herein or therein.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents filed by the Registrant with the Commission are incorporated by reference into this Registration Statement:

- a) the Registrant's Annual Report on Form 10-K for the year ended December 31, 2018, filed with the Commission on February 22, 2019, as amended on April 30, 2019;
- b) the Registrant's Definitive Proxy Statement on Schedule 14A, filed with the Commission on June 13, 2019;
- c) the Registrant's Quarterly Reports on Form 10-Q for the three months ended March 31, 2019, June 30, 2019 and September 30, 2019 and filed with the Commission on May 10, 2019, July 24, 2019 and November 8, 2019, respectively;
- d) the Registrant's Current Reports on Form 8-K, filed with the Commission on January 3, 2019 (Items 8.01 and 9.01 only), January 25, 2019, February 19, 2019, April 3, 2019 (Items 2.05 and 8.01 only), May 17, 2019, May 22, 2019, May 28, 2019 (Items 1.01 and the related exhibits included under 9.01 only), May 30, 2019, May 31, 2019, June 10, 2019, June 24, 2019, June 28, 2019 July 12, 2019, July 24, 2019 (Items 3.03, 5.03, 7.07, 8.01 and 9.01 only), August 6, 2019, October 3, 2019, and October 25, 2019;
- e) the Registrant's Current Report on Form 8-K/A, filed with the Commission on May 30, 2019; and
- f) the description of the Registrant's common stock in our registration statement on Form 8-A filed with the Commission on September 27, 2016 and any amendment or report filed with the Commission for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, on the date hereof or after the date of this Registration Statement, and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which de-registers all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents, except as to any portion of any future annual, quarterly or current report of the Registrant or document that is not deemed filed under such provisions. Unless expressly incorporated into this Registration Statement, a report (or portion thereof) "furnished" on Form 8-K shall not be incorporated by reference into this Registration Statement. Any statement contained in a document incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be

incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 8. Exhibits

Exhibit Number	Description	Form	Incorporated by Reference			Filed Herewith
			Exhibit	Date Filed	File Number	
4.1	Restated Certificate of Incorporation of Obalon Therapeutics, Inc.	S-1/A	3.2	9/26/16	333-213551	
4.2	Certificate of Amendment to the Restated Certificate of Incorporation of Obalon Therapeutics, Inc.	8-K	3.3	6/14/18	001-37897	
4.3	Certificate of Second Amendment to the Restated Certificate of Incorporation of Obalon Therapeutics, Inc.	8-K	3.1	7/24/19	001-37897	
4.4	Amended and Restated Bylaws of Obalon Therapeutics, Inc.	S-1/A	3.4	9/26/16	333-213551	
4.5	Form of Common Stock Certificate.	S-1	4.1	9/9/16	333-213551	
5.1	Opinion of Latham & Watkins LLP.					X
23.1	Consent of Latham & Watkins LLP (included in Exhibit 5.1).					X
23.2	Consent of KPMG LLP, Independent Registered Public Accounting Firm.					X
24.1	Power of Attorney (included in the signature page to this Registration Statement).					X
99.1	Obalon Therapeutics, Inc. 2016 Equity Incentive Plan and form of award agreements thereunder.	S-1/A	10.3	9/26/16	333-213551	
99.2	First Amendment to Obalon Therapeutics, Inc. 2016 Equity Incentive Plan.	10-K	10.4	2/22/19	001-37897	
99.3	Obalon Therapeutics, Inc. 2016 Employee Stock Purchase Plan and form of enrollment agreement.	S-1/A	10.4	9/26/16	333-213551	

99.4	<u>Amendment to Obalon Therapeutics, Inc. 2016 Employee Stock Purchase Plan.</u>	8-K	10.1	5/4/18	001-37897	
99.5	<u>Form of Non-Employee Director Option Agreement.</u>	10-K	10.8	2/23/17	001-37897	
99.6	<u>Form of Restricted Stock Unit Award pursuant to the 2016 Equity Incentive Plan.</u>	10-K	10.28	2/22/19	001-37897	
99.7	<u>Form of Restricted Stock Unit Award Agreement (Share and Cash Settlement) pursuant to the 2016 Equity Incentive Plan</u>					X

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Carlsbad, State of California, on January 24, 2020.

OBALON THERAPEUTICS, INC.

By: /s/ William Plovanic

Name: William Plovanic

Title: President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints William Plovanic, and each of them, as his or her true and lawful attorney-in-fact and agent with full power of substitution, for him or her in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ William Plovanic William Plovanic	President, Chief Executive Officer and Director (Principal Executive Officer)	January 24, 2020
/s/ Nooshin Hussainy Nooshin Hussainy	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	January 24, 2020
/s/ Andrew Rasdal Andrew Rasdal	Executive Chairman of the Board	January 24, 2020
/s/ Kim Kamdar, Ph.D. Kim Kamdar, Ph.D.	Director	January 24, 2020
/s/ Ray Dittamore Ray Dittamore	Director	January 24, 2020
/s/ Douglas Fisher, M.D. Douglas Fisher, M.D.	Director	January 24, 2020
/s/ Les Howe Les Howe	Director	January 24, 2020
/s/ David Moatazedi David Moatazedi	Director	January 24, 2020
/s/ Sharon Stevenson, DVM Ph.D. Sharon Stevenson, DVM Ph.D.	Director	January 24, 2020

650 Town Center Drive, 20th Floor
 Costa Mesa, California 92626-1925
 Tel: +1.714.540.1235 Fax: +1.714.755.8290
 www.lw.com

LATHAM & WATKINS LLP

FIRM / AFFILIATE OFFICES

Beijing	Moscow
Boston	Munich
Brussels	New York
Century City	Orange County
Chicago	Paris
Dubai	Riyadh
Düsseldorf	San Diego
Frankfurt	San Francisco
Hamburg	Seoul
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

File No. 059688-0001

January 24, 2020

Obalon Therapeutics, Inc.
 5421 Avenida Encinas, Suite F
 Carlsbad, CA 92008

Re: Registration Statement on Form S-8: 816,081 shares of Common Stock, par value \$0.001 per share, of Obalon Therapeutics, Inc.

Ladies and Gentlemen:

We have acted as special counsel to Obalon Therapeutics, Inc., a Delaware corporation (the “Company”), in connection with the preparation and filing by the Company with the Securities and Exchange Commission (the “Commission”) of a registration statement on Form S-8 (the “Registration Statement”) under the Securities Act of 1933, as amended (the “Securities Act”), relating to the issuance of up to 816,081 shares of the Company’s common stock, par value \$0.001 per share (the “Shares”), which may be issued pursuant to the Company’s 2016 Equity Incentive Plan (the “Plan”). This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or the prospectus forming a part thereof, other than as expressly stated herein with respect to the issuance of the Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters

without having independently verified such factual matters. We are opining herein as to the General Corporation Law of the State of Delaware (the “DGCL”), and we express no opinion with respect to any other laws.

Subject to the foregoing and the other matters set forth herein, it is our opinion that, as of the date hereof, when the Shares shall have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the purchasers, and have been issued by the Company for legal consideration in excess of par value in the circumstances contemplated by the Plan, assuming the Shares have been duly authorized under the Plan and, in each case, that the individual issuances, grants or awards under the Plan are duly authorized by all necessary corporate action of the Company and duly issued, granted or awarded and exercised in accordance with the requirements of law and the Plan (and the agreements and awards duly adopted thereunder and in accordance therewith), the issue and sale of the Shares will have been duly authorized by all necessary corporate action of the Company and the Shares will be validly issued, fully paid and nonassessable. In rendering the foregoing opinion, we have assumed that the Company will comply with all applicable notice requirements regarding uncertificated shares provided in the DGCL.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Securities Act. We consent to your filing this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Latham & Watkins LLP

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Obalon Therapeutics, Inc.:

We consent to the use of our report incorporated by reference herein. Our report dated February 22, 2019 contains an explanatory paragraph that states that the Company has suffered recurring losses from operations and has an accumulated deficit, which raise substantial doubt about its ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might result from the outcome of that uncertainty. Our report also refers to the adoption of the Accounting Standards Update No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*, as amended.

/s/ KPMG LLP

San Diego, California
January 24, 2020

**NOTICE OF RESTRICTED STOCK UNIT AWARD
(WITH SHARE AND CASH SETTLEMENT)
OBALON THERAPEUTICS, INC. 2016 EQUITY INCENTIVE PLAN**

Unless otherwise defined herein, the terms defined in the Obalon Therapeutics, Inc. (the “**Company**”) 2016 Equity Incentive Plan (the “**Plan**”) shall have the same meanings in this Notice of Restricted Stock Unit Award (the “**Notice**”) and the attached Award Agreement (Restricted Stock Unit Agreement, including any special terms and conditions for your country set forth in the appendix attached thereto (collectively, the “**RSU Agreement**”). You (“**you**”) have been granted an award of Restricted Stock Units (“**RSUs**”) under the Plan subject to the terms and conditions of the Plan, this Notice and the attached RSU Agreement.

Name:

Address:

Number of RSUs:

Date of Grant:

You acknowledge that the vesting of the RSUs pursuant to this Notice is earned only by continued Service through the Vesting Date (as defined in Exhibit A). For the avoidance of doubt, any termination of Service (whether voluntary or involuntary) shall mean your RSUs under this RSU Agreement shall be automatically cancelled and forfeited by you for no consideration therefor. By accepting this award, you and the Company agree that this award is granted under and governed by the terms and conditions of the Plan, this Notice and the RSU Agreement. By accepting this award of RSUs, you consent to the electronic delivery and acceptance as further set forth in the RSU Agreement.

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PARTICIPANT

OBALON THERAPEUTICS INC.

Signature:
Print Name:

By:
Its:

RESTRICTED STOCK UNIT AGREEMENT

OBALON THERAPEUTICS, INC.

2016 EQUITY INCENTIVE PLAN

You have been granted Restricted Stock Units (“**RSUs**”) by Obalon Therapeutics, Inc. (the “**Company**”) subject to the terms, restrictions and conditions of the Plan, the Notice of Restricted Stock Unit Award (the “**Notice**”) and this Restricted Stock Unit Agreement, including any special terms and conditions for your country set forth in the appendix attached hereto (the “**Appendix**”) (collectively, this “**RSU Agreement**”).

1. Nature of Grant. In accepting this award of RSUs, you acknowledge, understand and agree that:

- (a) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;
- (b) the grant of the RSUs is voluntary and occasional and does not create any contractual or other right to receive future awards of RSUs, or benefits in lieu of RSUs, even if RSUs have been granted in the past;
- (c) all decisions with respect to future RSUs or other grants, if any, will be at the sole discretion of the Company;
- (d) you are voluntarily participating in the Plan;
- (e) the RSUs and the Shares subject to the RSUs, and the income and value of the same, are not intended to replace any pension rights or compensation;
- (f) the RSUs and the Shares subject to the RSUs, and the income and value of the same, are not part of normal or expected compensation for purposes of calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, long-service awards, pension or retirement or welfare benefits or similar payments;
- (g) unless otherwise agreed with the Company, the RSUs and any Shares acquired under the Plan, and the income and value of the same, are not granted as consideration for, or in connection with, any service you may provide as a director of the Company, or a Parent or Subsidiary of the Company;
- (h) the future value of the underlying Shares is unknown, indeterminable and cannot be predicted with certainty;
- (i) no claim or entitlement to compensation or damages shall arise from forfeiture of the RSUs resulting from the termination of your Service (for any reason whatsoever whether or not later found to be invalid or in breach of labor laws in the jurisdiction where you are providing Service or the terms of your employment or service agreement, if any), and in consideration of the grant of the RSUs to which you are otherwise not entitled, you irrevocably agree never to institute any claim against the Company, the Employer (as defined below), or any other Parent or Subsidiary of the Company, waive your ability, if any, to bring any such claim, and release the Company, the Employer and its Parent or Subsidiaries from any such

claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by participating in the Plan, you shall be deemed irrevocably to have agreed not to pursue such claim and agree to execute any and all documents necessary to request dismissal or withdrawal of such claim; and

(j) the following provisions apply only if you are providing Service outside the United States: (i) the RSUs and the Shares subject to the RSUs, and the income and value of same, are not part of normal or expected compensation or salary for any purpose; and (ii) neither the Company, the Employer nor any Parent or Subsidiary of the Company shall be liable for any foreign exchange rate fluctuation between your local currency and the United States Dollar that may affect the value of the RSUs or the subsequent sale of any Shares acquired upon settlement.

2. **Settlement.** Settlement of RSUs shall be made no later than March 15 of the year following the year in which the Vesting Date occurs. Settlement of RSUs shall be in Shares or cash; provided, however, that if, as of the applicable settlement date, insufficient Shares remain available under the Plan to cover settlement of any or all of the RSUs for which payment is required, as determined by the Committee, such RSUs shall be paid in cash in an amount equal to the Fair Market Value as of the settlement date of the Shares otherwise distributable on such settlement date. Settlement means the delivery to you of the Shares vested under the RSUs and/or a cash payment with respect to such vested RSUs. Fractional Shares will not be issued.

3. **No Stockholder Rights.** Prior to the issuance of Shares in settlement of vested RSUs, if any, you shall have no ownership of any Shares underlying the RSUs and shall have no right to dividends or to vote such Shares.

4. **Dividend Equivalents.** Dividends, if any (whether in cash or Shares), shall not be credited to you.

5. **No Transfer.** RSUs may not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of in any manner other than by will or by the laws of descent or distribution or court order or unless otherwise permitted by the Committee on a case-by-case basis.

6. **Termination.** If your Service terminates for any reason, all unvested RSUs shall be forfeited to the Company forthwith, and all rights you have to such RSUs shall immediately terminate, without payment of any consideration to you. For purposes of this award of RSUs, your Service will be considered terminated as of the date you are no longer providing Service (regardless of the reason for such termination and whether or not later found to be invalid or in breach of labor laws in the jurisdiction where you are employed or the terms of your employment or service agreement, if any) and will not be extended by any notice period mandated under local employment laws (e.g., Service would not include a period of “garden leave” or similar period). In case of any dispute as to whether your termination of Service has occurred, the Committee shall have sole discretion to determine whether such termination has occurred (including whether you may still be considered to be providing Services while on a leave of absence) and the effective date of such termination.

7. **Tax Consequences.** You acknowledge that there will be certain consequences with regard to income tax, national or social insurance contributions, payroll tax, fringe benefits tax, payment on account or other tax-related items (“***Tax-Related Items***”) upon settlement of the RSUs or disposition of the Shares, if any, received in connection therewith, and you should consult a tax adviser regarding your tax obligations prior to such settlement or disposition in the jurisdiction where you are subject to tax.

8. **Responsibility for Taxes.** Regardless of any action the Company or, if different, your actual employer (the “***Employer***”) takes with respect to any or all Tax-Related Items withholding or required deductions, you acknowledge that the ultimate liability for all Tax-Related Items legally due by you is and

remains your responsibility and that the Company and/or the Employer (1) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the award, including the grant, vesting or settlement of the RSUs, the subsequent sale of Shares acquired pursuant to such settlement and the receipt of any dividends; and (2) do not commit to structure the terms of the award or any aspect of the RSUs to reduce or eliminate your liability for Tax-Related Items or achieve any particular tax result. You acknowledge that if you are subject to Tax-Related Items in more than one jurisdiction, the Company and/or the Employer may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

Prior to the settlement of your RSUs, you shall pay or make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all Tax-Related Items withholding and payment on account obligations of the Company and/or the Employer. In this regard, you authorize the Company and/or the Employer, and their respective agents, at their discretion, to withhold all applicable Tax-Related Items legally payable by you from your wages or other cash compensation paid to you by the Company and/or the Employer. These arrangements may also include, if permissible under local law, (a) withholding Shares that otherwise would be issued to you when your RSUs are settled, provided that the Company only withholds the amount of Shares necessary to satisfy the minimum statutory withholding amount, (b) having the Company withhold taxes from the proceeds of the sale of the Shares, either through a voluntary sale or through a mandatory sale arranged by the Company (on your behalf pursuant to this authorization), (c) payment by you of an amount equal to the Tax-Related Items directly by cash, cheque, wire transfer, bank draft or money order payable to the Company, or (d) any other arrangement approved by the Company; in each case in compliance with such rules as may be established by the Committee and in compliance with the Company's Insider Trading Policy and 10b5-1 Trading Plan Policy, if applicable; provided, however, that if you are a Section 16 officer of the Company under the Exchange Act, then alternative (c) shall be the method of withholding. The Fair Market Value of these Shares, determined as of the effective date when taxes otherwise would have been withheld in cash, will be applied as a credit against the Tax-Related Items.

Depending on the withholding method, the Company may withhold or account for Tax-Related Items by considering applicable minimum statutory withholding rates or other applicable withholding rates, including maximum applicable rates, in which case you will receive a refund of any over-withheld amount in cash and will have no entitlement to the Shares equivalent and/or cash settlement of such RSUs. If the obligation for Tax-Related Items is satisfied by withholding in Shares, for tax purposes, you are deemed to have been issued the full number of Shares subject to the vested RSUs, notwithstanding that a number of the Shares are held back solely for the purpose of paying the Tax-Related Items.

Finally, you agree to pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold as a result of your participation in the Plan or the vesting and settlement of the RSUs that cannot be satisfied by the means previously described. You acknowledge that the Company has no obligation to deliver any payment with respect to the RSUs to you until you have satisfied the obligations in connection with the Tax-Related Items as described in this Section.

9. Data Privacy. *You hereby explicitly and unambiguously consent to the collection, use and transfer, in electronic or other form, of your personal data as described in this RSU Agreement and any other RSU grant materials by and among, as applicable, the Company, the Employer and any other Parent or Subsidiaries, for the exclusive purpose of implementing, administering and managing your participation in the Plan.*

You understand that the Company and the Employer may hold certain personal information about you, including, but not limited to, your name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title, any shares of stock or directorships held

in the Company, details of all RSUs or any other entitlement to shares of stock awarded, canceled, exercised, vested, unvested or outstanding in your favor ("**Data**"), for the exclusive purpose of implementing, administering and managing the Plan.

You understand that Data will be transferred to the stock plan service provider as may be designated by the Company from time to time, which is assisting the Company with the implementation, administration and management of the Plan. You understand that the recipients of Data may be located in the United States or elsewhere, and that the recipients' country (e.g., the United States) may have different data privacy laws and protections than your country. You understand that if you reside outside the United States, you may request a list with the names and addresses of any potential recipients of Data by contacting your local human resources representative. You authorize the Company, the designated broker and any other possible recipients which may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer Data, in electronic or other form, for the sole purpose of implementing, administering and managing your participation in the Plan. You understand that Data will be held only as long as is necessary to implement, administer and manage your participation in the Plan. You understand that if you reside outside the United States, you may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing your local human resources representative. Further, you understand that you are providing the consents herein on a purely voluntary basis. If you do not consent, or if you later seek to revoke your consent, your employment status or service and career with the Employer will not be adversely affected. The only adverse consequence of refusing or withdrawing your consent is that the Company would not be able to grant you RSUs or other equity awards or administer or maintain such awards. Therefore, you understand that refusing or withdrawing your consent may affect your ability to participate in the Plan. For more information on the consequences of your refusal to consent or withdrawal of consent, you understand that you may contact your local human resources representative.

10. Acknowledgement. The Company and you agree that the RSUs are granted under and governed by the Notice, this RSU Agreement and the provisions of the Plan. You: (i) acknowledge receipt of a copy of the Plan prospectus, (ii) represent that you have carefully read and are familiar with the provisions in the grant documents, and (iii) hereby accept the RSUs subject to all of the terms and conditions set forth in this RSU Agreement and those set forth in the Notice. You hereby agree to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions relating to the Plan, the Notice and this RSU Agreement.

11. Entire Agreement; Enforcement of Rights. This RSU Agreement, the Plan and the Notice constitute the entire agreement and understanding of the parties relating to the subject matter herein and supersede all prior discussions between them. Any prior agreements, commitments or negotiations concerning the purchase of the Shares hereunder are superseded. No modification of or amendment to this RSU Agreement, nor any waiver of any rights under this RSU Agreement, shall be effective unless in writing and signed by the parties to this RSU Agreement. The failure by either party to enforce any rights under this RSU Agreement shall not be construed as a waiver of any rights of such party.

12. Compliance with Laws and Regulations. The issuance of Shares in settlement of your RSUs, if any, will be subject to and conditioned upon compliance by the Company and you with all applicable state, federal and foreign laws and regulations and with all applicable requirements of any stock exchange or automated quotation system on which the Company's Common Stock may be listed or quoted at the time of such issuance or transfer, which compliance the Company shall, in its absolute discretion, deem necessary or advisable. You understand that the Company is under no obligation to register or qualify the Common Stock with any state, federal or foreign securities commission or to seek approval or clearance from any

governmental authority for the issuance or sale of the Shares. Further, you agree that the Company shall have unilateral authority to amend the Plan and this RSU Agreement without your consent to the extent necessary to comply with securities or other laws applicable to issuance of Shares. Finally, the Shares issued pursuant to this RSU Agreement shall be endorsed with appropriate legends, if any, determined by the Company.

13. No Advice Regarding Grant. The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding your participation in the Plan, or your acquisition or sale of any underlying Shares. You are hereby advised to consult with your own personal tax, legal and financial advisors regarding your participation in the Plan before taking any action related to the Plan.

14. Governing Law; Venue. This RSU Agreement, all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law. For purposes of litigating any dispute that may arise directly or indirectly from the Plan, the Notice and this RSU Agreement, the parties hereby submit and consent to litigation in the exclusive jurisdiction of the State of California and agree that any such litigation shall be conducted only in the courts of California in San Diego County, California or the federal courts of the United States for the Southern District of California and no other courts.

15. Severability. If one or more provisions of this RSU Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this RSU Agreement, (ii) the balance of this RSU Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of this RSU Agreement shall be enforceable in accordance with its terms.

16. No Rights as Employee, Director or Consultant. Nothing in this RSU Agreement shall affect in any manner whatsoever the right or power of the Company, or a Parent or Subsidiary of the Company, to terminate your Service, for any reason, with or without Cause.

17. Consent to Electronic Delivery and Acceptance of All Plan Documents and Disclosures. By your acceptance of this award of RSUs, you consent to the electronic delivery of the Notice, this RSU Agreement, the Plan, account statements, Plan prospectuses required by the SEC, U.S. financial reports of the Company, and all other documents that the Company is required to deliver to its stockholders (including, without limitation, annual reports and proxy statements) or other communications or information related to the RSUs. Electronic delivery may include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other delivery determined at the Company's discretion. You acknowledge that you may receive from the Company a paper copy of any documents delivered electronically at no cost if you contact the Company by telephone, through a postal service or electronic mail at [email]. You further acknowledge that you will be provided with a paper copy of any documents delivered electronically if electronic delivery fails; similarly, you understand that you must provide on request to the Company or any designated third party a paper copy of any documents delivered electronically if electronic delivery fails. You agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company. Also, you understand that your consent may be revoked or changed, including any change in the electronic mail address to which documents are delivered (if you have provided an electronic mail address), at any time by notifying the Company of such revised or revoked consent by telephone, postal service or electronic mail at [email]. Finally, you understand that you are not required to consent to electronic delivery.

18. Insider Trading Restrictions/Market Abuse Laws. You acknowledge that, depending on your country, you may be subject to insider trading restrictions and/or market abuse laws, which may affect

your ability to acquire or sell the Shares or rights to Shares under the Plan during such times as you are considered to have “inside information” regarding the Company (as defined by the laws in your country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. You acknowledge that it is your responsibility to comply with any applicable restrictions, and you are advised to speak to your personal advisor on this matter.

19. Language. If you have received this RSU Agreement or any other document related to the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.

20. Appendix. Notwithstanding any provisions in this Restricted Stock Unit Agreement, this award of RSUs shall be subject to any special terms and conditions set forth in any Appendix hereto for your country. Moreover, if you relocate to one of the countries included in the Appendix, the special terms and conditions for such country will apply to you, to the extent the Company determines that the application of such terms and conditions is necessary or advisable for legal or administrative reasons. The Appendix constitutes part of this RSU Agreement.

21. Imposition of Other Requirements. The Company reserves the right to impose other requirements on your participation in the Plan, on the RSUs and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable for legal or administrative reasons, and to require you to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

22. Waiver. You acknowledge that a waiver by the Company of breach of any provision of this RSU Agreement shall not operate or be construed as a waiver of any other provision of this RSU Agreement, or of any subsequent breach by you or any other Participant.

23. Code Section 409A. For purposes of this RSU Agreement, a termination of employment will be determined consistent with the rules relating to a “separation from service” as defined in Section 409A of the Code and the regulations thereunder (“**Section 409A**”). Notwithstanding anything else provided herein, to the extent any payments provided under this RSU Agreement in connection with your termination of employment constitute deferred compensation subject to Section 409A, and you are deemed at the time of such termination of employment to be a “specified employee” under Section 409A, then such payment shall not be made or commence until the earlier of (i) the expiration of the six-month period measured from your separation from service from the Company or (ii) the date of your death following such a separation from service; provided, however, that such deferral shall only be effected to the extent required to avoid adverse tax treatment to you including, without limitation, the additional tax for which you would otherwise be liable under Section 409A(a)(1)(B) in the absence of such a deferral. To the extent any payment under this RSU 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 section are intended to constitute separate payments for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

24. Award Subject to Company Clawback or Recoupment. The RSUs shall be subject to clawback or recoupment pursuant to any compensation clawback or recoupment policy adopted by the Board or required by law during the term of your employment or other Service that is applicable to executive officers, Employees, Directors or other service providers of the Company, and in addition to any other remedies available under such policy and applicable law may require the cancellation of your RSUs (whether vested or unvested) and the recoupment of any gains realized with respect to your RSUs.

BY ACCEPTING THIS AWARD OF RSUS, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED ABOVE AND IN THE PLAN.

EXHIBIT A

Vesting:

Subject to your continuous Service, your RSUs shall vest on the Vesting Date based on the Final Share Price (as defined below) as of such date:

Final Share Price per Share	Percentage of RSUs that Vest
< \$11.00	0%
≥ \$11.00 but < \$16.00	50% or 40%
≥ \$16.00 but < \$21.00	70% or 60%
≥ \$21.00	100%

Notwithstanding the foregoing, unless otherwise determined by the Committee, in the event that the Net Aggregate Evergreen Increase (as defined below) is less than the aggregate number of RSUs that vest pursuant to this Program (as defined below), then the aggregate number of RSUs that are eligible to vest pursuant to this Program (including this Award) shall be reduced pro rata such that the sum of all RSUs that vest under this Program (including this Award) shall equal the Net Aggregate Evergreen Increase and the remaining RSUs shall be automatically cancelled and forfeited on the Vesting Date, and the Participant’s rights in any such RSUs shall lapse and expire.

Any RSUs that do not vest for failure to achieve the applicable Final Share Price goal (in whole or in part) shall be automatically cancelled and forfeited on the Vesting Date, and the Participant’s rights in any such RSUs shall lapse and expire.

Settlement:

The Shares shall be settled in Shares and/or in cash, as determined by the Committee in its sole discretion.

Adjustments:

You acknowledge that the Final Share Price goal, the RSUs, and the Shares subject to the RSUs are subject to adjustment in certain events as provided in the Plan.

Definitions:

“*Corporate Transaction*” shall have the meaning set forth in the Plan, but shall not include subclause (e) (regarding a Board turnover).

“*Final Share Price*” shall mean the Common Stock’s 40 trading-day trailing average over the period ending on (and including) December 31, 2022; *provided, however*, that if a Corporate Transaction occurs prior to or on December 31, 2022, the Final Share Price shall mean the price per Share paid by the acquiror in the Change in Control transaction or, to the extent that the consideration in the Corporate Transaction is paid in stock of the acquiror or its affiliate, then, unless otherwise determined by the Committee (including in

connection with valuing any shares that are not publicly traded), the Final Share Price shall mean the value of the consideration paid per Share based on the average of the closing trading prices of a share of such acquiror stock on the principal exchange on which such shares are then traded for each trading day during the five consecutive trading days ending on and including the date on which a Corporate Transaction occurs.

“**Net Aggregate Evergreen Increase**” shall mean the difference between (i) the aggregate number of Shares that become available for issuance pursuant to Section 2.4 of the Plan on January 1 of each of 2020, 2021, 2022 and 2023 minus (ii) the aggregate number of Shares underlying equity awards granted under the Plan, other than pursuant to this Program, which have an effective grant date that occurs during the Performance Period (but excluding for this purpose Shares subject to such awards that again become available for grant under the Plan pursuant to Section 2.2(b) or (c) of the Plan)).

“**Performance Period**” means the period beginning on January 1, 2020 and ending on the Vesting Date.

“**Program**” shall mean this Award, together with all other Awards granted pursuant to this Agreement under the Plan.

“**Vesting Date**” shall mean the earlier of: (i) December 31, 2022 or (ii) the consummation of a Corporate Transaction.