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

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**FORM 10-Q**

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(Mark One)

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

FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2017

OR

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

FOR THE TRANSITION PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_

Commission File Number 001-36500

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**CymaBay Therapeutics, Inc.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**94-3103561**  
(I.R.S. Employer  
Identification No.)

**7999 Gateway Blvd, Suite 130**  
**Newark, CA**  
(Address of principal executive offices)

**94560**  
(Zip Code)

**(510) 293-8800**  
(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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.

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

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 13(a) of the Exchange Act.

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

As of August 3, 2017, there were 43,756,968 shares of the registrant's Common Stock outstanding.

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**CYMABAY THERAPEUTICS, INC.  
QUARTERLY REPORT ON FORM 10-Q  
FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2017**

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**PART I. FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**CymaBay Therapeutics, Inc.**  
**Condensed Balance Sheets**  
(In thousands, except share and per share amounts)

	<u>June 30,</u> <u>2017</u>	<u>December 31,</u> <u>2016</u>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 9,509	\$ 10,495
Marketable securities	7,217	6,499
Prepaid expenses	1,126	1,369
Other current assets	<u>17</u>	<u>165</u>
Total current assets	17,869	18,528
Property and equipment, net	59	77
Other assets	<u>804</u>	<u>754</u>
Total assets	<u>\$ 18,732</u>	<u>\$ 19,359</u>
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Accounts payable	\$ 1,101	\$ 899
Accrued liabilities	3,592	4,501
Warrant liability	4,343	1,145
Facility loan	2,897	2,700
Accrued interest payable	<u>55</u>	<u>66</u>
Total current liabilities	11,988	9,311
Facility loan, less current portion	4,599	6,098
Other liabilities	<u>6</u>	<u>13</u>
Total liabilities	16,593	15,422
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.0001 par value: 10,000,000 shares authorized; no shares issued and outstanding	—	—
Common stock, \$0.0001 par value: 100,000,000 shares authorized; 28,752,451 and 23,447,003 shares issued and outstanding as of June 30, 2017 and December 31, 2016, respectively	3	2
Additional paid-in capital	439,376	426,895
Accumulated other comprehensive loss	(1)	(1)
Accumulated deficit	<u>(437,239)</u>	<u>(422,959)</u>
Total stockholders' equity	2,139	3,937
Total liabilities and stockholders' equity	<u>\$ 18,732</u>	<u>\$ 19,359</u>

*See accompanying notes to the unaudited condensed financial statements.*

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**CymaBay Therapeutics, Inc.**  
**Condensed Statements of Operations and Comprehensive Loss**  
*(In thousands, except share and per share information)*  
*(unaudited)*

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Collaboration revenue	\$ —	\$ —	\$ 4,793	\$ —
Operating expenses:				
Research and development	4,044	4,131	8,085	8,559
General and administrative	3,582	2,215	7,283	4,676
Total operating expenses	7,626	6,346	15,368	13,235
Loss from operations	(7,626)	(6,346)	(10,575)	(13,235)
Other income (expense):				
Interest income	44	48	81	101
Interest expense	(283)	(336)	(588)	(668)
Other income (expense), net	(1,064)	(358)	(3,198)	(38)
Net loss	\$ (8,929)	\$ (6,992)	\$ (14,280)	\$ (13,840)
Net loss	\$ (8,929)	\$ (6,992)	\$ (14,280)	\$ (13,840)
Other comprehensive income (loss):				
Unrealized gain (loss) on marketable securities, net of tax	1	(4)	—	16
Other comprehensive income (loss):	1	(4)	—	16
Comprehensive loss	\$ (8,928)	\$ (6,996)	\$ (14,280)	\$ (13,824)
Basic net loss per common share	\$ (0.31)	\$ (0.30)	\$ (0.52)	\$ (0.59)
Diluted net loss per common share	\$ (0.31)	\$ (0.30)	\$ (0.52)	\$ (0.59)
Weighted average common shares outstanding used to calculate basic net loss per common share	28,752,451	23,447,003	27,687,110	23,447,003
Weighted average common shares outstanding used to calculate diluted net loss per common share	28,752,451	23,447,003	27,687,110	23,447,003

*See accompanying notes to the unaudited condensed financial statements.*

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**CymaBay Therapeutics, Inc.**  
**Condensed Statements of Cash Flows**  
*(In thousands)*  
*(unaudited)*

	Six Months Ended June 30,	
	2017	2016
<b>Operating activities</b>		
Net loss	\$(14,280)	(13,840)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	18	11
Stock-based compensation expense	3,118	1,130
Accretion and amortization of marketable securities	4	133
Non-cash interest associated with debt discount accretion	232	229
Change in fair value of warrant liability	3,198	39
Changes in assets and liabilities:		
Other current assets	4	167
Prepaid expenses	243	(421)
Other assets	(50)	520
Accounts payable	202	264
Accrued liabilities	(772)	(442)
Accrued interest payable	(11)	—
Net cash used in operating activities	(8,094)	(12,210)
<b>Investing activities</b>		
Purchases of property and equipment	—	(37)
Purchases of marketable securities	(9,822)	(17,704)
Proceeds from maturities of marketable securities	9,100	34,656
Net cash (used in) provided by investing activities	(722)	16,915
<b>Financing activities</b>		
Proceeds from issuance of common stock, net of issuance costs	9,364	—
Repayment of facility loan principal	(1,534)	—
Net cash provided by financing activities	7,830	—
Net (decrease) increase in cash and cash equivalents	(986)	4,705
Cash and cash equivalents at beginning of period	10,495	7,706
Cash and cash equivalents at end of period	<u>\$ 9,509</u>	<u>\$ 12,411</u>

*See accompanying notes to the unaudited condensed financial statements.*

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**CymaBay Therapeutics, Inc.**  
**Notes to Condensed Financial Statements**  
**(unaudited)**

**1. Organization and Description of Business**

CymaBay Therapeutics, Inc. (the “Company” or “CymaBay”) is a clinical-stage biopharmaceutical company focused on developing and providing access to innovative therapies for patients with liver and other chronic diseases with high unmet medical need. The Company’s two key clinical development candidates are seladelpar and arhalofenate. Seladelpar is currently being developed primarily for the treatment of primary biliary cholangitis (PBC). Arhalofenate is being developed for the treatment of gout and rights to develop and commercialize arhalofenate in the U.S. (including all its possessions and territories) have been licensed to Kowa Pharmaceuticals America, Inc. (“Kowa”). The Company was incorporated in Delaware in October 1988 as Transtech Corporation. The Company’s headquarters and operations are located in Newark, California and it operates in one segment.

**Liquidity**

The Company has incurred net operating losses and negative cash flows from operations since its inception. During the six months ended June 30, 2017, the Company incurred a net loss of \$14.3 million and used \$8.1 million of cash in operations. At June 30, 2017, the Company had an accumulated deficit of \$437.2 million. CymaBay expects to incur substantial research and development expenses as it continues to study its product candidates in clinical trials. To date, none of the Company’s product candidates have been approved for marketing and sale, and the Company has not recorded any revenue from product sales. As a result, management expects operating losses to continue in future years. The Company’s ability to achieve profitability is dependent primarily on its ability to successfully develop, acquire or in-license additional product candidates, continue clinical trials for product candidates currently in clinical development, obtain regulatory approvals, and support commercialization activities for partnered product candidates. Products developed by the Company will require approval of the U.S. Food and Drug Administration (“FDA”) or a foreign regulatory authority prior to commercial sale. The regulatory approval process is expensive, time-consuming, and uncertain, and any denial or delay of approval could have a material adverse effect on the Company. Even if approved, the Company’s products may not achieve market acceptance and will face competition from both generic and branded pharmaceutical products.

As of June 30, 2017, the Company’s cash, cash equivalents and marketable securities totaled \$16.7 million. Management believes these funds, together with net proceeds of approximately \$91.1 million received in the Company’s July 2017 public offering, are sufficient to fund the Company’s liquidity requirements for at least the next 12 months. The Company expects to incur substantial expenditures in the future for the development and potential commercialization of its product candidates. Because of this, the Company expects its future liquidity and capital resource needs will be impacted by numerous factors, including but not limited to, the repayment of the Company’s facility loan, the timing and conduct of clinical trials, including its ongoing phase 2 clinical trials and planned phase 3 clinical trial to study the therapeutic benefits of seladelpar on patients with PBC. The Company has and expects to obtain additional funding to develop its products and fund future operating losses, as appropriate, through equity offerings; debt financing; its existing license and collaboration arrangement with Kowa; one or more possible licenses, collaborations or other similar arrangements with respect to development and/or commercialization rights of its product candidates; or a combination of the above. It is unclear if or when any such transactions will occur, on satisfactory terms or at all. The Company’s failure to raise capital as and when needed could have a negative impact on its financial condition and its ability to pursue its business strategies. If adequate funds are not available to the Company, it could have a material adverse effect on the Company’s business, results of operations, and financial condition.

**2. Summary of Significant Accounting Policies**

**Basis of Presentation**

The accompanying interim condensed financial statements are unaudited. These unaudited interim financial statements have been prepared in accordance with U.S. GAAP (“GAAP”) and following the requirements of the United States Securities and Exchange Commission (“SEC”) for interim reporting. As permitted under those rules, certain footnotes or other financial information that are normally required by GAAP can be condensed or omitted. In management’s opinion, the unaudited interim condensed financial statements have been prepared on the same basis as the audited financial statements and include normal recurring adjustments necessary for the fair presentation of the Company’s financial position and its results of operations and comprehensive loss and its cash flows for the periods presented. These statements do not include all disclosures required by GAAP and should be read in conjunction with the Company’s financial statements and accompanying notes for the fiscal year ended December 31, 2016, which is contained in the Company’s Annual Report on Form 10-K as filed with the SEC on March 23, 2017. The results for the six months ended June 30, 2017 are not necessarily indicative of results to be expected for the year or for any other period.

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### **Use of Estimates**

The condensed financial statements have been prepared in accordance with GAAP, which requires management to make estimates and assumptions that affect the amounts and disclosures reported in the condensed financial statements and accompanying notes. Management bases its estimates on historical experience and on assumptions believed to be reasonable under the circumstances. The estimation process often may yield a range of potentially reasonable estimates of actual future outcomes, and management must select an amount that falls within that range of reasonable estimates. Actual results could differ materially from those estimates. The Company believes significant judgment is involved in estimating revenue, stock-based compensation, accrued clinical expenses, and equity instrument valuations.

### **Fair Value of Financial Instruments**

The Company's financial instruments during the periods reported consist of cash and cash equivalents, marketable securities, prepaid expenses, other current assets, other assets, accounts payable, accrued interest payable, accrued liabilities, the facility loan, and warrant liabilities. Fair value estimates of these instruments are made at a specific point in time, based on relevant market information. These estimates may be subjective in nature and involve uncertainties and matters of significant judgment. The carrying amounts of financial instruments such as cash and cash equivalents, prepaid expenses, other current assets, other assets, accounts payable, accrued liabilities, and accrued interest payable approximate the related fair values due to the short maturities of these instruments. Based on prevailing borrowing rates available to the Company for loans with similar terms, the Company believes the fair value of the facility loan, considering level 2 inputs, approximates its carrying value.

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. Assets and liabilities that are measured at fair value are reported using a three-level fair value hierarchy that prioritizes the inputs used to measure fair value. This hierarchy maximizes the use of observable and unobservable inputs and is as follows:

Level 1—Quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.

Level 2—Inputs other than quoted prices in active markets that are observable for the asset or liability, either directly or indirectly.

Level 3—Inputs that are significant to the fair value measurement and are unobservable (i.e. supported by little market activity), which requires the reporting entity to develop its own valuation techniques and assumptions.



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The following tables present the fair value of the Company's financial assets and liabilities measured at fair value on a recurring basis using the above input categories (in thousands):

<u>Description</u>	<u>As of June 30, 2017</u>			<u>Fair Value</u>
	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	
<b>Cash equivalents:</b>				
Money market funds	\$7,118	\$ —	\$ —	\$ 7,118
Commercial paper	—	1,300	—	1,300
Total cash equivalents	7,118	1,300	—	8,418
<b>Marketable securities:</b>				
Commercial paper	—	3,647	—	3,647
Corporate debt securities	—	2,200	—	2,200
Asset-backed securities	—	1,370	—	1,370
Total short-term investments	—	7,217	—	7,217
Total assets measured at fair value	<u>\$7,118</u>	<u>\$8,517</u>	<u>\$ —</u>	<u>\$ 15,635</u>
Warrant liability	<u>\$ —</u>	<u>\$ —</u>	<u>\$4,343</u>	<u>\$ 4,343</u>
Total liabilities measured at fair value	<u>\$ —</u>	<u>\$ —</u>	<u>\$4,343</u>	<u>\$ 4,343</u>

<u>Description</u>	<u>As of December 31, 2016</u>			<u>Fair Value</u>
	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	
<b>Cash equivalents:</b>				
Money market funds	\$9,456	\$ —	\$ —	\$ 9,456
Commercial paper	—	599	—	599
Corporate debt securities	—	500	—	500
Total cash equivalents	9,456	1,099	—	10,555
<b>Marketable securities:</b>				
Commercial paper	—	4,295	—	4,295
Corporate debt securities	—	2,204	—	2,204
Total short-term investments	—	6,499	—	6,499
Total assets measured at fair value	<u>\$9,456</u>	<u>\$7,598</u>	<u>\$ —</u>	<u>\$ 17,054</u>
Warrant liability	<u>\$ —</u>	<u>\$ —</u>	<u>\$1,145</u>	<u>\$ 1,145</u>
Total liabilities measured at fair value	<u>\$ —</u>	<u>\$ —</u>	<u>\$1,145</u>	<u>\$ 1,145</u>

The Company estimates the fair value of its corporate debt and asset backed securities by taking into consideration valuations obtained from third-party pricing services. The pricing services utilize industry standard valuation models, including both income and market-based approaches, for which all significant inputs are observable, either directly or indirectly, to estimate fair value. These inputs include reported trades of and broker/dealer quotes on the same or similar securities, issuer credit spreads, benchmark securities, prepayment/default projections based on historical data, and other observable inputs.

There were no transfers between Level 1 and Level 2 during the periods presented.

The Company holds a Level 3 liability associated with common stock warrants that were issued in connection with the Company's financings completed in September and October 2013, January 2014, and August 2015. The warrants are considered liabilities and are valued using a binomial lattice option-pricing model, the inputs for which include the exercise price of the warrants,

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market price of the underlying common shares, expected term, volatility, the risk-free rate, key strategic initiatives, the probability of success related to those initiatives, and the expected changes in stock price that follow announcements of the Company's strategic initiatives. Changes to any of these inputs to the option-pricing model used by the Company can have a significant impact to the estimated fair value of the warrants. For example, the increase in fair value of the level 3 common stock warrant as of the six months ended June 30, 2017 was primarily due to an increase in the market price of the Company's common stock from \$1.73 at December 31, 2016 to \$5.76 at June 30, 2017, and to a lesser extent, changes in the probability of trial success and the expected future change in the Company's stock price.

The following table sets forth an activity summary which includes the changes in the fair value of the Company's Level 3 financial instruments (in thousands):

	For the Six Months Ended June 30,	
	2017	2016
Balance, beginning of period	\$ 1,145	\$ 1,220
Issuance of financial instrument	—	—
Change in fair value	3,198	39
Settlement of financial instrument	—	—
Balance, end of period	<u>\$ 4,343</u>	<u>\$ 1,259</u>

### **Cash, Cash Equivalents, and Marketable Securities**

The Company considers all highly liquid investments with a remaining maturity of 90 days or less at the time of purchase to be cash equivalents. Cash and cash equivalents consist of deposits with commercial banks in checking, interest-bearing, demand money market accounts, and corporate debt securities.

The Company invests excess cash in marketable securities with high credit ratings, which are classified in Level 2 of the fair value hierarchy. These securities consist primarily of corporate debt, commercial paper, and asset-backed securities and are classified as "available-for-sale." Management may liquidate any of these investments in order to meet the Company's liquidity needs in the next year. Accordingly, any investments with contractual maturities greater than one year from the balance sheet date are classified as short-term in the accompanying condensed balance sheets.

Realized gains and losses from the sale of marketable securities, if any, are calculated using the specific identification method. Realized gains and losses and declines in value judged to be other-than-temporary are included in interest income or expense in the statements of operations and comprehensive loss. Unrealized holding gains and losses are reported in accumulated other comprehensive loss, in the balance sheets. To date, the Company has not recorded any impairment charges on its marketable securities related to other-than-temporary declines in market value. In determining whether a decline in market value is other-than-temporary, various factors are considered, including the cause, duration of time and severity of the impairment, any adverse changes in the investees' financial condition, and the Company's intent and ability to hold the security for a period of time sufficient to allow for an anticipated recovery in market value.

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The following tables present the Company's marketable securities (in thousands):

	<u>Amortized Cost</u>	<u>Gross Unrealized Gains</u>	<u>Gross Unrealized Losses</u>	<u>Estimated Fair Value</u>
As of June 30, 2017:				
Marketable securities:				
Commercial paper	3,647	—	—	3,647
Corporate debt securities	2,201	—	(1)	2,200
Asset-backed securities	1,370	—	—	1,370
	<u>\$ 7,218</u>	<u>\$ —</u>	<u>\$ (1)</u>	<u>\$ 7,217</u>

	<u>Amortized Cost</u>	<u>Gross Unrealized Gains</u>	<u>Gross Unrealized Losses</u>	<u>Estimated Fair Value</u>
As of December 31, 2016:				
Marketable securities:				
Commercial paper	4,295	—	—	4,295
Corporate debt securities	2,205	—	(1)	2,204
	<u>\$ 6,500</u>	<u>\$ —</u>	<u>\$ (1)</u>	<u>\$ 6,499</u>

### **Concentration of Credit Risk**

Cash, cash equivalents, and marketable securities consist of financial instruments that potentially subject the Company to a concentration of credit risk to the extent of the fair value recorded in the balance sheets. The Company invests cash that is not required for immediate operating needs primarily in highly liquid instruments that bear minimal risk. The Company has established guidelines relating to the quality, diversification, and maturities of securities to enable the Company to manage its credit risk. The Company is exposed to credit risk in the event of a default by the financial institutions holding its cash, cash equivalents and investments and issuers of investments to the extent recorded on the balance sheets.

Certain materials and key components that the Company utilizes in its operations are obtained through single suppliers. Since the suppliers of key components and materials must be named in a new drug application (NDA) filed with the U.S. Food and Drug Administration (FDA) for a product, significant delays can occur if the qualification of a new supplier is required. If delivery of material from the Company's suppliers were interrupted for any reason, the Company may be unable to supply any of its product candidates for clinical trials.

### **Revenue Recognition**

The Company recognizes revenue when (i) persuasive evidence of an arrangement exists, (ii) delivery has occurred or services have been rendered, (iii) the price is fixed or determinable, and (iv) collectability is reasonably assured. Payments received in advance of work performed are recorded as deferred revenue and recognized when earned.

Collaboration and license agreements may include non-refundable upfront license fees, contingent consideration payments based on the achievement of defined collaboration objectives and royalties on sales of commercialized products. The Company's performance obligations under collaboration and license agreements may include the license or transfer of intellectual property rights, obligations to provide research and development services and related materials and obligations to participate on certain development and/or commercialization committees with the collaborators.

If the Company determines that multiple deliverables in an arrangement exist, the consideration is allocated to one or more units of accounting based upon the relative-selling-price of each element in an arrangement. The relative-selling-price used for each deliverable is based on vendor-specific objective evidence, if available, third-party evidence if vendor-specific objective evidence is

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not available, or estimated selling price if neither vendor-specific or third-party evidence is available. The Company identifies deliverables at the inception of the arrangement. Each deliverable is accounted for as a separate unit of accounting if both of the following criteria are met: (1) the delivered item or items have value to the customer on a standalone basis and (2) for an arrangement that includes a general right of return relative to the delivered items, delivery or performance of the undelivered items is considered probable and substantially in the Company's control. Non-refundable upfront payments received and allocated to separate units of accounting are recognized as revenue when the four basic revenue recognition criteria are met for each unit of accounting.

The Company recognizes payments that are contingent upon achievement of a substantive milestone in their entirety in the period in which the milestone is achieved. Milestones are defined as events that can only be achieved based on the Company's performance and there is substantive uncertainty about whether the event will be achieved at the inception of the arrangement. Events that are contingent only on the passage of time or only on counterparty performance are not considered milestones subject to this guidance. Further, the amounts received must relate solely to prior performance, be reasonable relative to all of the deliverables and payment terms within the agreement and commensurate with the Company's performance to achieve the milestone after commencement of the agreement. Any contingent payment that becomes payable upon achievement of events that are not considered substantive milestones are allocated to the units of accounting previously identified at the inception of an arrangement when the contingent payment is received and revenue is recognized based on the revenue recognition criteria for each unit of accounting.

### **Common Stock Warrant Liability**

The Company's outstanding common stock warrants issued in connection with certain equity and debt financings that occurred in 2013 through 2015 are classified as liabilities in the accompanying condensed balance sheets because of certain contractual terms that preclude equity classification. The warrants are recorded at fair value using a binomial lattice option-pricing model. The warrants are re-measured at each financial reporting period until the warrants are exercised or expire, with any changes in fair value being recognized as a component of other income (expense), net in the accompanying condensed statements of operations and comprehensive loss.

### **Stock-Based Compensation**

Employee and director stock-based compensation is measured at fair value on the grant date of the award. Compensation cost is recognized as expense on a straight-line basis over the vesting period for options and on an accelerated basis for stock options with performance conditions. For stock options with performance conditions, the Company evaluates the probability of achieving performance conditions at each reporting date. The Company begins to recognize the expense when it is deemed probable that the performance conditions will be met. The Company uses the Black-Scholes option pricing model to determine the fair value of stock option awards. The determination of fair value for stock-based awards using an option-pricing model requires management to make certain assumptions regarding subjective input variables such as expected term, dividends, volatility and risk-free interest rate. The Company is also required to make estimates as to the probability of achieving the specific performance criteria. If actual results are not consistent with the Company's assumptions and judgments used in making these estimates, the Company may be required to increase or decrease compensation expense, which could be material to the Company's results of operations.

Equity awards granted to non-employees are valued using the Black-Scholes option pricing model. Stock-based compensation expense for nonemployee services is subject to remeasurement as the underlying equity instruments vest and is recognized as an expense over the period during which services are received.

### **Net Loss Per Common Share**

Basic net loss per share of common stock is based on the weighted average number of shares of common stock outstanding equivalents during the period. Diluted net loss per share of common stock is calculated as the weighted average number of shares of common stock outstanding adjusted to include the assumed exercises of stock options and common stock warrants, if dilutive.

The calculation of diluted loss per share also requires that, to the extent the average market price of the underlying shares for the reporting period exceeds the exercise price of the common stock warrants and the presumed exercise of such securities are dilutive to net loss per share for the period, adjustments to net loss used in the calculation are required to remove the change in fair value of the common stock warrant liability for the period. Likewise, adjustments to the denominator are required to reflect the related dilutive shares.

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In all periods presented, the Company's outstanding stock options and warrants were excluded from the calculation of diluted net loss per share because their effects were antidilutive. The Company's computation of basic and diluted net loss per share is as follows (in thousands, except share and per share amounts):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
<b>Numerator:</b>				
Net loss allocated to common stock-basic	\$ (8,929)	\$ (6,992)	\$ (14,280)	\$ (13,840)
Adjustments for revaluation of warrants	—	—	—	—
Net loss allocated to common stock-diluted	<u>\$ (8,929)</u>	<u>\$ (6,992)</u>	<u>\$ (14,280)</u>	<u>\$ (13,840)</u>
<b>Denominator:</b>				
Weighted average number of common stock shares outstanding—basic	28,752,451	23,447,003	27,687,110	23,447,003
Weighted average number of common stock shares outstanding—diluted	<u>28,752,451</u>	<u>23,447,003</u>	<u>27,687,110</u>	<u>23,447,003</u>
<b>Net loss per share—basic:</b>	\$ (0.31)	\$ (0.30)	\$ (0.52)	\$ (0.59)
<b>Net loss per share—diluted:</b>	\$ (0.31)	\$ (0.30)	\$ (0.52)	\$ (0.59)

The following table shows the total outstanding common stock equivalents considered anti-dilutive and therefore excluded from the computation of diluted net loss per share (in thousands).

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Warrants for common stock	1,667	1,667	1,667	1,667
Common stock options	4,130	2,415	4,130	2,415
Incentive awards	239	243	239	243
	<u>6,036</u>	<u>4,325</u>	<u>6,036</u>	<u>4,325</u>

## Recent Accounting Pronouncements

### *Accounting Standards Update 2014-09*

In May 2014, the FASB issued Accounting Standards Update 2014-09, *Revenue from Contracts with Customers and related amendments*. Subsequently, the Financial Accounting Standards Board (the FASB) issued the following standards related to ASU 2014-09: ASU No. 2016-08, Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations; ASU No. 2016-10, Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing; and ASU No. 2016-12, Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients. This guidance outlines a new, single comprehensive model for entities to use in accounting for revenue arising from contracts with customers and supersedes nearly all of the existing revenue recognition guidance, including industry-specific guidance. This new revenue recognition model provides a five-step analysis in determining when and how revenue is recognized. The new model will require revenue recognition to depict the transfer of promised goods or services to customers in an amount that reflects the consideration a company expects to receive in exchange for those goods or services.

The new revenue standard permits two methods of adoption: retrospectively to each prior reporting period presented (full retrospective method), or retrospectively with the cumulative effect of initially applying the guidance recognized at the date of initial application (the modified retrospective method). The Company plans to adopt the new revenue standard in the first quarter of 2018 using the modified retrospective method.

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While the Company has not completed an assessment of the impact of adoption, the adoption of this guidance may have a material effect on the Company's financial statements. At the end of 2016, the Company entered into a license agreement. Before executing this agreement, the Company has had no revenues for the last two years. The consideration that the Company is eligible to receive under this agreement includes an upfront payment, milestone payments, and royalties. This license agreement is unique and will need to be assessed separately under the five-step process under the new standard. The Company is currently analyzing this agreement to determine the differences in the accounting treatment under the new revenue standard compared to that of the current accounting treatment. The new revenue standard differs from the current accounting standard in many respects, such as in the accounting for variable consideration, including milestone payments and royalties. The Company expects that its evaluation of the accounting for this agreement under the new revenue standard could identify material changes from that of the current accounting treatment and it could also impact its condensed financial statement disclosures.

### ***Accounting Standards Update 2016-02***

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*. The new standard requires the recognition of assets and liabilities arising from lease transactions on the balance sheet and the disclosure of key information about leasing arrangements. Accordingly, a lessee will recognize a lease asset for its right to use the underlying asset and a lease liability for the corresponding lease obligation. Both the asset and liability will initially be measured at the present value of the future minimum lease payments over the lease term. Subsequent measurement, including the presentation of expenses and cash flows, will depend on the classification of the lease as either a finance or an operating lease. Initial costs directly attributable to negotiating and arranging the lease will be included in the asset. Lessees will also be required to provide additional qualitative and quantitative disclosures regarding the amount, timing and uncertainty of cash flows arising from leases. The new standard is effective for fiscal years beginning after December 15, 2018, and interim periods therein. Early adoption is permitted. The Company is currently evaluating the impact that this guidance will have on its condensed financial statements.

### ***Accounting Standards Update 2016-09***

In March 2016, the FASB issued ASU No. 2016-09, *Improvements to Employee Share-Based Payment Accounting*, which amends ASC Topic 718, Compensation – Stock Compensation (ASU 2016-09). This guidance simplifies the accounting for the taxes related to stock based compensation, requiring excess tax benefits and deficiencies to be recognized as a component of income tax expense rather than equity. This guidance also requires excess tax benefits and deficiencies to be presented as an operating activity on the statement of cash flows and allows an entity to make an accounting policy election to either estimate expected forfeitures or to account for them as they occur. The Company adopted ASU 2016-09 on January 1, 2017 following the modified retrospective approach. Under this guidance, on a prospective basis, the Company will no longer record excess tax benefits and certain tax deficiencies in additional paid-in capital (APIC). Instead, the Company will record all excess tax benefits and tax deficiencies as income tax expense or benefit in the income statement. In addition, the guidance eliminates the requirement that excess tax benefits be realized before companies can recognize them. The ASU requires a cumulative-effect adjustment for previously unrecognized excess tax benefits in opening retained earnings in the annual period of adoption. As of January 1, 2017, the Company had no material excess tax benefits for which a benefit could not be previously recognized. In addition and as provided for under this guidance, the Company made an accounting policy election to recognize forfeitures as they occur. This policy election did not have a material impact on the condensed financial statements.

### ***Accounting Standards Update 2017-09***

In May 2017, FASB issued ASU No. 2017-09, *Compensation-Stock Compensation (Topic 718)- Scope of Modification Accounting* (ASU 2017-09). The amendments included in this update provide guidance about which changes to the terms or conditions of a share-based payment award require an entity to apply modification accounting. The amendments in this update will be applied prospectively to an award modified on or after the adoption date. The amendments in ASU 2017-09 are effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2017. The adoption of this standard is not expected to have a material impact on the Company's condensed consolidated financial statements.

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### 3. Certain Balance Sheet Items

The following table shows certain balance sheet items (in thousands).

	<b>June 30, 2017</b>	<b>December 31, 2016</b>
	<b>(unaudited)</b>	
Accrued compensation	\$ 1,628	\$ 1,839
Accrued pre-clinical and clinical trial expenses	1,360	1,623
Accrued professional fees	364	982
Deferred revenue	207	—
Other accruals	33	57
Total accrued liabilities	<u>\$ 3,592</u>	<u>\$ 4,501</u>

### 4. Collaboration and License Agreements

#### *Kowa Pharmaceuticals America, Inc.*

On December 30, 2016, the Company entered into a license agreement with Kowa Pharmaceuticals America, Inc. Pursuant to the license agreement, the Company granted to Kowa an exclusive license, and right to sublicense, certain patent rights and technology related to arhalofenate. Kowa will have exclusive rights to, among other things, develop, use, manufacture, sell and otherwise exploit the licensed technology in the United States (including all possessions and territories). At Kowa's option, the Company may also facilitate the placement of arhalofenate product manufacturing orders under the terms of the Company's existing contract manufacturing agreements. In addition, the Company will complete specified in-process stability testing and non-clinical development services and will participate on a Joint Advisory Committee ("JAC"). Finally, the Company will transfer to Kowa certain arhalofenate product on hand.

Under the license agreement, Kowa agreed to pay the Company a non-refundable up-front payment of \$5 million upon contract execution which was subsequently received in mid-January 2017. The Company is also eligible to receive up to \$200 million in contingent payments based upon either the initiation or achievement of specified development and sales milestones. Finally, the Company will receive tiered, double digit royalties on any product sales and a percentage of any revenue earned by Kowa from sublicensing.

The Company identified the following three performance deliverables under the license agreement: 1) transfer of intellectual property rights, inclusive of the related technology know-how conveyance and contract manufacturing rights and privileges ("license and know-how"), 2) the obligation to perform specific ongoing research and non-clinical development services, and 3) the delivery of arhalofenate product on hand. The Company's participation on the JAC was not determined to be a deliverable because of the Company's ability to elect to terminate its participation. The Company concluded that the license, the know-how and contract manufacturing rights and privileges together represent a single deliverable, and therefore together should be accounted for as a single unit of accounting. The research and development services and delivery of arhalofenate product each also represent separate deliverables, and therefore each should be accounted for as separate units of accounting. There was no separate consideration identified in the agreement for the deliverables and there was no right of return under the agreement.

The Company considered the provisions of the multiple-element arrangement guidance in determining whether the deliverables outlined above have standalone value. The transfer of license and know-how has standalone value separate from the research and development services and delivery of arhalofenate product, as the agreement allows Kowa to sublicense its rights to the acquired license to a third party. Further, the Company believes that Kowa has research and development expertise with compounds similar to those licensed under the agreement, and the Company has also granted Kowa the rights to either order arhalofenate product from the Company's existing contract manufacturers, or to enter into arrangements with other third parties to develop and manufacture arhalofenate product, thereby allowing Kowa to realize the value of the license and know-how. The license and know-how revenue will be recognized upon the substantial completion of the transfer of know-how. The research and development services will be recognized as revenue over the estimated period services are delivered. The arhalofenate product will be recognized as revenue upon delivery.

The Company also determined the relative selling prices of the identified units of accounting in accordance with the multi-element arrangement guidance. The Company considered but did not use Vendor Specific Objective Evidence (VSOE) of fair value or third-party evidence (TPE) but instead selected management's best estimate of selling price (BESP) due to the uniqueness of the

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Kowa license arrangement and its lack of comparability to other licensing arrangements in the biopharmaceutical industry. The \$5 million upfront consideration paid was then allocated to the identified units of accounting using the relative selling price method, with revenue to be recognized based on the satisfaction of all revenue recognition criteria for each unit of accounting.

The Company completed all activities necessary to satisfy delivery of the license and knowhow deliverable and recognized \$4.8 million of upfront consideration associated with this deliverable as collaboration revenue during the six months ended June 30, 2017.

The Company determined the future contingent payments related to the development activities do not meet the definition of a milestone because the achievement of these events solely depends on Kowa's performance. Under current revenue recognition rules, these amounts will be allocated to the Kowa arrangements' three identified units of accounting when received and recognized as revenue based on the revenue recognition policy for those respective units of accounting. The future contingent payments related to the U.S. sales milestones are recognized upon achievement of the specific milestones. As of June 30, 2017, none of these contingent amounts had been received or recognized as revenue.

### ***Janssen Pharmaceutical NV and Janssen Pharmaceuticals, Inc.***

In June 2006, the Company entered into an exclusive worldwide, royalty-bearing license to seladelpar and certain other PPARd compounds (the "PPARd Products") with Janssen Pharmaceutical NV (Janssen NV), with the right to grant sublicenses to third parties to make, use and sell such PPARd Products. Under the terms of the agreement, the Company has full control and responsibility over the research, development and registration of any PPARd Products and is required to use diligent efforts to conduct all such activities. Janssen NV has the sole responsibility for the preparation, filing, prosecution, maintenance of, and defense of the patents with respect to, the PPARd Products. Janssen NV has a right of first negotiation under the agreement to license a particular PPARd Product from the Company in the event that the Company elects to seek a third party corporate partner for the research, development, promotion, and/or commercialization of such PPARd Products. Under the terms of the agreement Janssen NV is entitled to receive up to an 8% royalty on net sales of PPARd Products. No royalties have been paid to date under the agreement.

In June 2010, the Company entered into two development and license agreements with Janssen Pharmaceuticals, Inc. (Janssen), a subsidiary of Johnson and Johnson, to further develop and discover undisclosed metabolic disease target agonists for the treatment of T2DM and other disorders and received a one-time nonrefundable technology access fee related to the agreements. The Company received a termination notice from Janssen, effectively ending these development and licensing agreements in early April 2015. In December 2015, the Company exercised an option pursuant to the terms of one of the original agreements to continue work to research, develop and commercialize compounds with activity against an undisclosed metabolic disease target. Janssen granted the Company an exclusive, worldwide license (with rights to sublicense) under the Janssen know-how and patents to research, develop, make, have made, use, offer for sale and sell such compounds. The Company has full control and responsibility over the research, development and registration of any products developed and/or discovered from the metabolic disease target and is required to use diligent efforts to conduct all such activities.

### ***DiaTex, Inc.***

In June 1998, the Company entered into a license agreement with DiaTex, Inc. (DiaTex) relating to products containing arhalofenate, its enantiomers, derivatives, and analogs (the licensed products). The license agreement provides that DiaTex and the Company are joint owners of all of the patents and patent applications covering the licensed products and methods of producing or using such compounds, as well as certain other know-how (the covered IP). As part of the license agreement, the Company received an exclusive worldwide license, including as to DiaTex, to use the covered IP to develop and commercialize the licensed products. The Company also retained the right to sub-license the covered IP. The license agreement contains a \$2,000 per month license fee as well as a requirement to make additional payments for development achievements and royalty payments on any sales of licensed products. DiaTex is entitled to up to \$0.8 million for the future development of arhalofenate, as well as royalty payments on commercial sales of products containing arhalofenate. No development payments were made in the six months ended June 30, 2017 and 2016 and no royalties have been paid to date. In December 2016, the agreement was amended by the parties to change the timing of a specified development milestone.

## **5. Facility Loans**

### *2013 Term Loan Facility*

On September 30, 2013, the Company entered into a facility loan agreement with Silicon Valley Bank and Oxford Finance LLC (referred to herein as the lenders) for a total loan amount of \$10.0 million of which the first tranche of \$5.0 million was drawn as part of the Company's September 2013 financing, referred to herein as the 2013 Term Loan Facility. The loan had a fixed interest rate of 8.75% payable as interest only for twelve months and a thirty-six month loan amortization period thereafter, with a final interest



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payment of \$0.3 million at the end of the loan period. The second tranche of \$5.0 million became available to the Company upon its February 24, 2015 announcement of the achievement of positive Phase 2b data for the Company's product candidate arhalofenate and remained available to the Company until June 30, 2015. Loans under the second tranche would have incurred interest at a rate fixed at the time of borrowing equal to the greater of (i) 8.75% per annum and (ii) the sum of the Wall Street Journal prime rate plus 4.25% per annum. On June 30, 2015, the second tranche portion of the loan facility expired unused by the Company.

At the time the first \$5 million tranche of the facility loan was drawn down, the Company issued warrants exercisable for a total of 121,739 shares of the Company's common stock to the lenders at an exercise price of \$5.00 per share with a term of seven years. Upon issuance, the fair value of a warrant liability was recorded and is being revalued at each balance sheet date until the warrants are exercised or expire.

### *2015 Term Loan Facility*

On August 7, 2015, the Company entered into a Loan and Security Agreement pursuant to which it refinanced its existing 2013 Term Loan Facility with Oxford Finance LLC and Silicon Valley Bank, for an aggregate amount of up to \$15 million, referred to herein as the 2015 Term Loan Facility. The first \$10 million tranche of this new loan facility was made available to the Company immediately upon the closing and was used in part to retire all \$4.1 million of the Company's existing debt outstanding under the 2013 Term Loan Facility, and to settle accrued interest and closing costs with the lenders. The remaining \$5 million, referred to as the second tranche, was made available to the Company until March 31, 2016, for draw down upon the announcement of a qualified out-license or co-development arrangement for arhalofenate, the Company's gout therapy drug candidate, which includes an upfront payment of not less than \$35.0 million (the "second draw milestone"). Because the present value of the future cash flows under the modified loan terms did not exceed the present value of the future cash flows under the previous loan terms by more than 10%, the Company treated this refinancing as a modification. The remaining debt discount costs will be amortized over the remaining term of the Loan and Security Agreement using the effective interest rate method. As of March 31, 2016, the \$5 million second tranche expired unused as the second draw milestone was not achieved.

The first loan tranche bears interest at 8.77%, a rate which was determined on the advance date as being the greater of (i) 8.75% and (ii) the sum of 8.47% and the 90 day U.S. LIBOR rate reported in the Wall Street Journal three business days prior to the funding date of the first tranche. Under the first tranche, the Company is required to make 12 monthly interest only payments after the funding date followed by a repayment schedule equal to 36 equal monthly payments of interest and principal. Upon maturity, the remaining balance of the first tranche and a final payment equal to 6.50% of the original principal amount advanced of the applicable tranche are payable.

At the closing, the Company also agreed to pay a facility fee of 1.00% of the 2015 Term Loan Facility commitment. In addition, the Company issued warrants exercisable for a total of 114,436 shares of its common stock to the lenders at an exercise price of \$2.84 per share, and with a term of ten years. Upon issuance, the fair value of a warrant liability of \$0.3 million was recorded in the accompanying condensed balance sheets.

The 2015 Term Loan Facility contains customary representations and warranties and customary affirmative and negative covenants applicable to the Company, and also includes defined customary events of default which include but are not limited to a material adverse change in the Company's business, operations or condition (financial or otherwise), a material impairment of the prospect of repayment of any portion of the term loan, or a material impairment in the perfection or priority of the collateral agent's lien in the collateral or in the value of such collateral. As of June 30, 2017, the Company was in compliance with the term loan covenants and there were no events of default.

## **6. Commitments and Contingencies**

The Company leases 8,894 square feet of office space in Newark, California pursuant to a lease which commenced January 16, 2014 and expires on December 31, 2018. Rent expense was \$0.1 million for each of the three months ended June 30, 2017 and 2016, and \$0.2 million for each of the six months ended June 30, 2017 and 2016.

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Future minimum lease payments are as follows (in thousands):

	<b>Lease Payments</b>
Year ending December 31:	
2017 (from July to December)	\$ 111
2018	<u>228</u>
Total future minimum payments	<u>\$ 339</u>

## **7. Stockholders' Equity**

The Company is authorized to issue 10,000,000 shares of preferred stock with a par value of \$0.0001 per share as of June 30, 2017. The Company is authorized to issue 100,000,000 shares of common stock with a par value of \$0.0001 per share as of June 30, 2017.

As of June 30, 2017, and December 31, 2016, the Company had reserved shares of authorized but unissued common stock as follows:

	<b>June 30, 2017 (unaudited)</b>	<b>December 31, 2016</b>
Common stock warrants	1,667,398	1,667,398
Equity incentive plans	<u>4,629,121</u>	<u>3,456,771</u>
Total reserved shares of common stock	<u>6,296,519</u>	<u>5,124,169</u>

On February 7, 2017, pursuant to its shelf registration statement on Form S-3, the Company completed the issuance of 5,181,348 shares of its common stock at \$1.93 per share in an underwritten public offering (referred to as the February 2017 public offering). Net proceeds to the Company in connection with the February 2017 public offering were approximately \$9.2 million after deducting underwriting discounts, commissions and other offering expenses.

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## 8. Stock Plans and Stock-Based Compensation

### Stock Plans

On January 1, 2017, the share reserve of the Company's 2013 Equity Incentive Plan ("2013 Plan"), automatically increased by 1,172,350 shares. During the six months ended June 30, 2017, the Company granted options to purchase 1,490,801 of it is common stock to its employees, directors and a consultant. As of June 30, 2017, there were 260,765 shares available for grant under the 2013 Plan.

### Stock-Based Compensation Expense

Stock-based compensation expense recorded was as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
	(unaudited)		(unaudited)	
Research and development	\$ 268	\$ 223	\$ 628	\$ 445
General and administrative	1,572	347	2,490	685
Total	<u>\$ 1,840</u>	<u>\$ 570</u>	<u>\$3,118</u>	<u>\$1,130</u>

In connection with the retirement of the Company's President and Chief Executive Officer, the Company recognized stock-based compensation expense associated with the acceleration of vesting of his stock options of \$1.2 million and \$1.8 million for the three and six months ended June 30, 2017, respectively.

## 9. Related-Party Transactions

### *Scientific and Advisory Consulting Arrangement*

The Company paid a former member of its Board of Directors, who is also a member of its Scientific and Clinical Advisory Boards, a total of \$60,000 in the year ended December 31, 2016 and \$30,000 for the six months ended June 30, 2017, in monthly cash retainers. The Company has also issued options to purchase shares of common stock and incentive awards to this individual in his capacity as a member of its Scientific Advisory Board.

## 10. Subsequent Events

On July 24, 2017, pursuant to its shelf registration statement on Form S-3, the Company completed the issuance of 14,950,000 shares of its common stock at \$6.50 per share in an underwritten public offering, which the Company refers to as the July 2017 public offering. Net proceeds to the Company in connection with the July 2017 public offering were approximately \$91.1 million after deducting underwriting discounts, commissions and other offering expenses. In connection with the July 2017 public offering, the Company terminated its \$25 million ATM facility with JonesTrading Institutional Services LLC.

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### **Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations**

*Operating results for the three and six months ended June 30, 2017, are not necessarily indicative of results that may occur in future interim periods or for the full fiscal year.*

*This Quarterly Report on Form 10-Q contains statements indicating expectations about future performance and other forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Securities Exchange Act of 1934, or the Exchange Act, that involve risks and uncertainties. We usually use words such as “may,” “will,” “could,” “expect,” “plan,” “anticipate,” “believe,” “estimate,” “intend,” or the negative of these terms or similar expressions to identify these forward-looking statements. These statements appear throughout this Quarterly Report on Form 10-Q and are statements regarding our current expectation, belief or intent, primarily with respect to our operations and related industry developments. Examples of these statements include, but are not limited to, statements regarding the following: our business and scientific strategies; the progress of our and our collaborators’ product development programs, including clinical testing, and the timing of results thereof; our corporate collaborations and revenues that may be received from our collaborations and the timing of those potential payments; our expectations with respect to regulatory submissions and approvals; our drug discovery technologies; our research and development expenses; protection of our intellectual property; sufficiency of our cash and capital resources and the need for additional capital; and our operations and legal risks. You should not place undue reliance on these forward-looking statements. Our actual results could differ materially from those anticipated in these forward-looking statements for many reasons, including as a result of the risks and uncertainties discussed under the heading “Risk Factors” in Item 1A of Part II of this Quarterly Report on Form 10-Q, and under the heading “Risk Factors” in Item 1A of our Annual Report on Form 10-K, filed with the SEC on March 23, 2017. Any forward-looking statement speaks only as of the date on which it is made, and we undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events. New factors emerge from time to time, and it is not possible for us to predict which factors will arise. In addition, we cannot assess the impact of each factor on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.*

#### **Overview**

CymaBay Therapeutics, Inc. is a clinical-stage biopharmaceutical company focused on developing and providing access to innovative therapies for patients with liver and other chronic diseases with high unmet medical need.

We are currently developing seladelpar for the treatment of primary biliary cholangitis (PBC), an autoimmune disease that causes progressive destruction of the bile ducts in the liver. Seladelpar is a potent and selective agonist of PPAR $\delta$ , a nuclear receptor that regulates genes involved in bile acid/sterol, lipid and glucose metabolism and inflammation. In July 2017, we announced positive interim results from an ongoing low-dose Phase 2 study of seladelpar in patients with PBC. In the first part of the study, patients with an inadequate response to ursodeoxycholic acid (UDCA), as characterized by a persistent elevation in alkaline phosphatase (AP), or who were intolerant to UDCA, received either 5 mg or 10 mg of seladelpar once-daily. A planned interim analysis of these two dose groups demonstrated after 12 weeks of treatment a significant AP reduction from baseline of 39% and 45% for the 5 mg and 10 mg groups, respectively. On seladelpar treatment, 45% of patients in the 5 mg and 82% of patients in the 10 mg dose groups, had AP values < 1.67 times the upper limit of normal (ULN). AP is a recognized biomarker of cholestasis, and reaching a level of < 1.67 ULN after one year of treatment is the key component in the composite endpoint used for regulatory approval. In addition to the reduction in AP, patients in both dose groups experienced decreases in other liver markers of cholestasis including gamma glutamyl transferase and total bilirubin. Seladelpar also improved metabolic and inflammatory markers with patients experiencing decreases in low-density lipoprotein-C and high sensitivity C-reactive protein. There were no serious adverse events and no safety transaminase signal was observed at either dose. Instead, mean transaminase levels decreased over the course of treatment, further supporting seladelpar’s anti-inflammatory activity. Consistent with prior studies, there was no signal for drug-induced pruritus. After sharing preliminary results from the study, the U.S. Food and Drug Administration (FDA) has agreed to allow continuation of seladelpar treatment beyond six months for the 5 mg and 10 mg doses. We intend to start a Phase 3 study of seladelpar in patients with PBC in the second half of 2018.

In November 2016, the FDA granted orphan drug designation to seladelpar for the treatment of PBC. In October 2016, seladelpar received European Medicines Agency (EMA) PRiority MEdicines (PRIME) designation for the treatment of PBC.

We believe that seladelpar could also have utility in the treatment of nonalcoholic steatohepatitis (NASH). As presented at the American Association for the Study of Liver Disease 2016 Liver Meeting, seladelpar was found to reverse NASH pathology, decrease fibrosis, inflammation, hepatic lipids and reverse insulin resistance in the foz/foz mouse which is a diabetic obese model of NASH. In May 2017, the FDA agreed to allow dosing of seladelpar for patients with NASH beyond six months. We continue to evaluate the opportunity to develop seladelpar in NASH.

Arhalofenate, is being developed for the treatment of gout. Arhalofenate has been studied in five Phase 2 clinical trials in patients with gout and consistently demonstrated the ability to reduce gout flares and reduce serum uric acid (sUA). Gout flares are recurring and painful episodes of joint inflammation that are triggered by the presence of monosodium urate crystals that form as a

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result of elevated sUA levels. We believe the potential for arhalofenate to prevent or reduce flares while also lowering sUA could differentiate it from currently available treatments for gout and classify it as the first potential drug in what we believe could be a new class of gout therapy referred to as Urate Lowering Anti-Flare Therapy (ULAFT). Arhalofenate has established a favorable safety profile in clinical trials involving over 1,100 patients exposed to date. We have completed end of Phase 2 discussions with the FDA and scientific advice discussions with the EMA. In late December 2016, we entered into an exclusive licensing agreement with Kowa Pharmaceuticals America, Inc. for the development and commercialization of arhalofenate in the U.S. (including all possessions and territories). Under the terms of the agreement, we have received an up-front payment of \$5 million, and will receive potential milestone payments of up to \$10 million based on the initiation of specific development activities, and are eligible to receive up to an additional \$190 million in payments based upon the achievement of specific development and sales milestones. We are also eligible to receive tiered, double digit royalties on future sales of arhalofenate products. Kowa will be responsible for all development and commercialization costs. We retain full development and commercialization rights for the rest of the world and intend to partner arhalofenate in geographies outside the U.S. and its possessions and territories.

We are an “emerging growth company,” as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards and, therefore, are subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

### **Equity Financings**

On July 25, 2014, we completed a public offering of 4,600,000 shares of our common stock at \$5.50 per share which we refer to as our 2014 public offering. Net proceeds to us in connection with the 2014 public offering were approximately \$23.0 million after deducting underwriting discounts, commissions and offering expenses.

On November 7, 2014, we filed a \$100 million registration statement on Form S-3 with the SEC, which registration statement included an at-the-market facility (ATM) with Cantor Fitzgerald & Co to sell up to \$25 million of common stock under the registration statement. As of June 30, 2017, we sold shares of common stock under the ATM with aggregate net proceeds to us of \$4.5 million, including 124,100 shares for net proceeds of \$158,000 in January 2017, but made no sales of common stock under this ATM since January 2017. We terminated the ATM in March 2017.

On July 27, 2015, pursuant to our shelf registration statement on Form S-3, we completed the issuance of 8,188,000 shares of our common stock at \$2.81 per share which we refer to as our 2015 public offering. Net proceeds to us in connection with the 2015 public offering were approximately \$21.1 million after deducting underwriting discounts, commissions and other offering expenses.

On February 7, 2017, pursuant to our shelf registration statement on Form S-3, we completed the issuance of 5,181,348 shares of our common stock at \$1.93 per share which we refer to as our February 2017 public offering. Net proceeds to us in connection with the February 2017 public offering were approximately \$9.2 million after deducting underwriting discounts, commissions and other offering expenses.

On May 11, 2017 we filed a new \$100 million shelf registration statement on Form S-3, which was declared effective on June 29, 2017, and terminated our prior shelf registration statement. This new shelf registration statement included an at-the-market facility (New ATM) to sell up to \$25 million of common stock under the new registration statement. We terminated the New ATM in July 2017.

On July 24, 2017, pursuant to a new \$100 million shelf registration statement on Form S-3, we completed the issuance of 14,950,000 shares of our common stock at \$6.50 per share, which we refer to as our July 2017 public offering. Net proceeds to us in connection with the July 2017 public offering were approximately \$91.1 million after deducting underwriting discounts, commissions and other offering expenses.

### **Critical Accounting Policies and Use of Estimates**

Our management’s discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. We consider certain accounting policies including, but not limited to, revenue recognition, research and development expenses and clinical accruals, stock-based compensation and valuation of warrant liabilities to be critical policies. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenues and expenses during the reporting periods. We base our estimates on historical experience and on various other factors that we believe to be materially reasonable under the circumstances and review our estimates on an ongoing basis. Actual results may materially differ from these estimates under different assumptions or conditions. For further information on all of our significant accounting policies, refer to our Annual Report on Form 10-K for the fiscal year ended December 31, 2016, filed with the SEC on March 23, 2017.

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### *Stock-Based Compensation*

We measure employee and director stock-based compensation cost at the grant date, based on the estimated fair-value of the awards, and we recognize as an expense the portion that is ultimately expected to vest as an expense over the related vesting periods. We estimate the grant date fair-value based of stock options using the Black-Scholes option-pricing model and recognize compensation expense over the requisite service period using the straight-line attribution method. For performance-based stock options, we evaluate the probability of achieving each performance-based condition at each reporting date. We begin to recognize the expense when it is deemed probable that a performance-based condition will be met using the accelerated attributed method over the requisite service period.

We adopted ASU 2016-09 in the first quarter of 2017, which among other items, provides reporting entities an accounting policy election to account for forfeitures either when they actually occur or by estimating expected forfeitures. Prior to January 1, 2017, we recognized stock expense net of estimated forfeitures; however, in connection with the adoption of ASU 2016-09, we elected to change our accounting policy to reflect the impact of forfeitures as they occur. Accordingly, share-based compensation expense for the three and six months ended June 30, 2017 was calculated based on actual forfeitures in our condensed statements of operations. In making this policy change, the Company was required to record a cumulative effect of this change in retained earnings on January 1, 2017. As the cumulative effect was not material, retained earnings were not impacted due to the adoption of this standard and our decision to change our forfeiture accounting policy.

### **Results of Operations**

#### *General*

To date, we have not generated any income from operations. As of June 30, 2017, we had an accumulated deficit of \$437.2 million, primarily as a result of expenditures for research and development and general and administrative expenses from inception to that date. While we have periodically generated contract and collaboration revenues and may in the future generate revenue from a variety of sources, including product sales, royalties, license fees, and milestone payments in connection with strategic partnerships, our product candidates are still under clinical development and may never be successfully developed or commercialized. Accordingly, we expect to continue to incur substantial losses from operations for the foreseeable future and there can be no assurance that we will ever generate significant revenue to achieve and sustain profitability. A summary of our results of operations are detailed in the table below:

	Three Months Ended June 30,			Six Months Ended June 30,		
	2017	2016	Variance	2017	2016	Variance
(\$ in thousands)						
Collaboration revenue	\$ —	\$ —	\$ —	\$ 4,793	\$ —	\$ 4,793
Operating expenses:						
Research and development	4,044	4,131	(87)	\$ 8,085	\$ 8,559	\$ (474)
General and administrative	3,582	2,215	1,367	7,283	4,676	2,607
Loss from operations	(7,626)	(6,346)	(1,280)	(10,575)	(13,235)	2,660
Interest expense, net	(239)	(288)	49	(507)	(567)	60
Other income (expense), net	(1,064)	(358)	(706)	(3,198)	(38)	(3,160)
Net loss	<u>\$ (8,929)</u>	<u>\$ (6,992)</u>	<u>\$ (1,937)</u>	<u>\$ (14,280)</u>	<u>\$ (13,840)</u>	<u>\$ (440)</u>

#### *Collaboration Revenue*

There was no collaboration revenue for each of the three months ended June 30, 2017 and 2016. For the six months ended June 30, 2017 and 2016, collaboration revenue was \$4.8 million and none, respectively. The increase in collaboration revenue was the result of the satisfaction of the delivery of the license and knowhow deliverable identified in the first quarter in 2017 in our Kowa license and collaboration agreement.

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### **Research & Development Expenses**

Conducting research and development is central to our business model. For the three months ended June 30, 2017 and 2016, research and development expenses were \$4.0 million and \$4.1 million, respectively. For the six months ended June 30, 2017 and 2016, research and development expenses were \$8.1 million and \$8.6 million, respectively. Research and development expenses are detailed in the table below:

(\$ in thousands)	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2017	2016	2017	2016
	(unaudited)		(unaudited)	
Seladelpar Phase 2 Clinical Studies	\$ 1,461	\$ 1,849	\$3,043	\$3,443
Seladelpar Drug Manufacturing & Toxicity Studies	1,019	586	1,756	1,639
Seladelpar Other Studies	26	—	55	4
Arhalofenate Projects	61	113	127	249
Other Projects	24	43	32	69
<b>Total Project Costs</b>	<u>2,591</u>	<u>2,591</u>	<u>5,013</u>	<u>5,404</u>
Internal Research and Development Costs	<u>1,453</u>	<u>1,540</u>	<u>3,072</u>	<u>3,155</u>
<b>Total Research and Development</b>	<u>\$ 4,044</u>	<u>\$ 4,131</u>	<u>\$8,085</u>	<u>\$8,559</u>

Our project costs consist primarily of:

- expenses incurred under agreements with contract research organizations, investigative sites and consultants that conduct our clinical trials and a substantial portion of our preclinical activities;
- the cost of acquiring and manufacturing clinical trial and other materials; and
- other costs associated with development activities, including additional studies.

Internal research and development costs consist primarily of salaries and related fringe benefits costs for our employees (such as workers compensation and health insurance premiums), stock-based compensation charges, travel costs, lab supplies and overhead expenses. Internal costs generally benefit multiple projects and are not separately tracked per project.

Total project costs remained consistent at \$2.6 million for the three months ended June 30, 2017 and 2016. Project costs for the three months ended June 30, 2017 and 2016 consisted primarily of PBC Phase 2 clinical trial and drug manufacturing expenses for seladelpar and were relatively consistent for each period. Internal research and development costs remained consistent for the three months ended June 30, 2017, as compared to June 30, 2016, and consist primarily of employee compensation expenses to support our clinical development activities.

Total project costs decreased by \$0.4 million to \$5.0 million from \$5.4 million for the six months ended June 30, 2017 and 2016, respectively. Project costs for the six months ended June 30, 2017 and 2016 consisted primarily of PBC Phase 2 clinical trial and drug manufacturing expenses for seladelpar. Project costs declined in the six months ended June 30, 2017 when compared to 2016 primarily because we incurred less costs for our currently ongoing lower dose seladelpar phase 2 study as a result of having fewer patients and clinical sites than we did for our higher dose seladelpar phase 2 study which was conducted in the prior year.

We expect to continue to incur substantial expenses related to our development activities for the foreseeable future as we continue product development for seladelpar. Since product candidates in later stages of clinical development generally have higher development costs than those in earlier stages of clinical development, primarily due to the increased size and duration of later stage clinical trials, we expect that our research and development expenses will increase in the future. In addition, as a result of the interim results for our product seladelpar that we announced in July 2017, we are currently planning to start a Phase 3 study of seladelpar in patients with PBC in the second half of 2018, and expect to incur substantial costs to prepare for this potential Phase 3 clinical trial and related activities.

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### ***General and Administrative Expenses***

General and administrative expenses consist principally of personnel-related costs, professional fees for legal, consulting, audit services, and other general operating expenses not otherwise included in research and development. General and administrative expenses increased by \$1.4 million to \$3.6 million from \$2.2 million for the three months ended June 30, 2017 and 2016, respectively, primarily due to the recognition of \$1.2 million in accelerated stock-based compensation expenses in the second quarter of 2017 to reflect the impact of vesting acceleration and an extension of time to exercise certain stock options. These benefits were provided in connection with the retirement of Dr. Harold Van Wart, our former President and Chief Executive Officer, effective as of April 15, 2017.

General and administrative expenses increased by \$2.6 million to \$7.3 million from \$4.7 million for the six months ended June 30, 2017 and 2016, respectively, primarily due to the recognition of \$2.6 million in severance benefits expense associated with the retirement of Dr. Van Wart. Accordingly, total estimated severance expenses consisted of \$0.8 million in cash severance payments to be paid out within 12 months of Dr. Van Wart's separation date as well as \$1.8 million in stock-based compensation to reflect the vesting acceleration and an extension of time to exercise certain of his stock options.

### ***Interest Expense, Net***

Interest expense, net consists primarily of interest expense related to our loan facility partially offset by interest income from our marketable securities. Interest expense, net remained relatively consistent at \$0.2 million and \$0.3 million for the three months ended June 30, 2017 and 2016, respectively, and \$0.5 million and \$0.6 million for the six months ended June 30, 2017 and 2016, respectively.

### ***Other Income (Expense), Net***

Other income (expense), net primarily includes gains and losses resulting from the remeasurement of our investor and lender warrant liabilities at fair value. We use a binomial lattice option pricing model to value our warrants at each reporting date and the warrant valuations have historically changed primarily as a result of variations in the price of our common stock which is an input to our valuation model. However, binomial lattice option pricing models incorporate a number of other input variables, such as expected term, volatility, and other factors which, depending on the circumstances, can also impact our warrant liability valuations. A decline in the value of our warrant liabilities results in the recognition of a remeasurement gain. Conversely, an increase in the value of our warrant liabilities results in the recognition of a remeasurement loss.

Other income (expense), net reflected a loss of \$1.1 million and \$0.4 million the three months ended June 30, 2017 and 2016, respectively, in each case due to the remeasurement of our warrant liabilities at fair value. During the three months ended June 30, 2017 and 2016, the loss recognized was due primarily to an increase in the price of our common stock from \$4.30 at March 31, 2017 to \$5.76 at June 30, 2017, and from \$1.35 at March 31, 2016 to \$1.74 at June 30, 2016.

Other income (expense), net reflected a loss of \$3.2 million and \$39,000 for the six months ended June 30, 2017 and 2016, respectively, in each case due to the remeasurement of our warrant liabilities at fair value. During the six months ended June 30, 2017, the loss recognized was due primarily to an increase in the price of our common stock from \$1.73 at December 31, 2016 to \$5.76 at June 30, 2017. During the six months ended June 30, 2016, the loss recognized was primarily due to an increase in the price of our common stock from \$1.69 at December 31, 2015 to \$1.74 at June 30, 2016.

### **Liquidity and Capital Resources**

We have financed our operations primarily through the sale of equity securities, licensing fees, issuance of debt and collaborations with third parties. At June 30, 2017, we had cash, cash equivalents and marketable securities of \$16.7 million, compared to \$17.0 million at December 31, 2016.

During January 2017, we sold 124,100 shares of our common stock for net proceeds of \$158,000 under our ATM facility with Cantor Fitzgerald & Co.

On February 7, 2017, pursuant to our 2014 shelf registration statement on Form S-3, we completed the issuance of 5,181,348 shares of our common stock at \$1.93 per share in an underwritten public offering, which we refer to as the February 2017 public offering. Net proceeds to us in connection with the February 2017 public offering were approximately \$9.2 million after deducting underwriting discounts, commissions and other offering expenses.

In March 2017, we terminated our ATM facility with Cantor Fitzgerald & Co. In June 2017, our new \$100 million shelf registration statement on Form S-3 was declared effective, terminating our prior registration statement. Under this new registration statement, we entered into a new \$25 million ATM facility pursuant to a Capital on Demand™ Sales Agreement with JonesTrading Institutional Services LLC.



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On July 24, 2017, pursuant to our new \$100 million shelf registration statement on Form S-3, we completed the issuance of 14,950,000 shares of our common stock at \$6.50 per share in an underwritten public offering, which we refer to as the July 2017 public offering. Net proceeds to us in connection with the July 2017 public offering were approximately \$91.1 million after deducting underwriting discounts, commissions and other offering expenses. In connection with the July 2017 public offering, we terminated the Capital on Demand™ Sales Agreement with JonesTrading Institutional Services LLC.

### *2015 Term Loan Facility*

On August 7, 2015, we entered into a new Loan and Security Agreement, pursuant to which we refinanced our previous term loan facility with Oxford Finance LLC and Silicon Valley Bank, for an aggregate amount of up to \$15 million, which we refer to as the 2015 term loan facility. The first \$10 million tranche of this new loan facility was made available to us immediately upon the closing and was used in part to retire all \$4.1 million of our existing term loan debt outstanding on the closing date, and to settle closing costs with the lenders. The remaining \$5 million, referred to as the second tranche, was available to us until March 31, 2016, for draw down upon the announcement of a qualified out-license or co-development arrangement for arhalofenate, our gout therapy drug candidate, which includes an upfront payment of not less than \$35,000,000 (the “second draw milestone”). As of March 31, 2016, the \$5 million second tranche expired unused as the second draw milestone was not achieved.

The first loan tranche bears interest at 8.77%, a rate determined on the advance date as being the greater of (i) 8.75% and (ii) the sum of 8.47% and the 90-day U.S. LIBOR rate reported in the Wall Street Journal three business days prior to the funding date of the first tranche. Under the first tranche, we are required to make 12 monthly interest only payments after the funding date followed by a repayment schedule equal to 36 equal monthly payments of interest and principal. Upon maturity, the remaining balance and a final payment equal to 6.50% of the original principal amount advanced are payable.

We are permitted to make voluntary prepayments of the term loans with a prepayment fee equal to 3% of the principal amount of any term loans prepaid. We are required to make mandatory prepayments of the outstanding term loans upon the acceleration by the lenders of such loans following the occurrence of an event of default, along with a payment of the final payment, the prepayment fee and any all other obligations that are due and payable at the time of the prepayment.

Our obligations under the term loan facility are secured, subject to customary permitted liens and other agreed upon exceptions, by a perfected first priority interest in all of our tangible and intangible assets, excluding our intellectual property. We also entered into a negative pledge agreement with the lenders pursuant to which we have agreed not to encumber any of our intellectual property.

The 2015 term loan facility contains customary representations and warranties and customary affirmative and negative covenants applicable to us, including, among other things, restrictions on dispositions, changes in business, management, ownership or business locations, mergers or acquisitions, indebtedness, encumbrances, distributions, investments, transactions with affiliates and subordinated debt. The representations and warranties contained in the 2015 loan facility were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to such agreement to allocate risk and may be subject to limitations agreed upon by the parties; accordingly, they should not be relied upon by investors as to assertions of factual matters. The 2015 term loan facility also includes customary events of default, including but not limited to the nonpayment of principal or interest, violations of covenants, material adverse change, attachment, levy, restraint on business, bankruptcy, material judgments and misrepresentations. Upon an event of default, the lenders may, among other things, accelerate the loans and foreclose on the collateral. As of June 30, 2017, we were in compliance with the terms of the term loan covenants and there were no identified events of default.

At the closing of the 2015 term loan facility, we also agreed to pay a facility fee of 1.00% of the 2015 term loan facility commitment. In addition, we issued warrants exercisable for a total of 114,436 shares of our common stock to the lenders at an exercise price of \$2.84 per share, and with a term of ten years.

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### Cash Flows

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

	Six Months Ended	
	June 30,	
	2017	2016
Net cash used in operating activities	\$(8,094)	\$(12,210)
Net cash (used in) provided by investing activities	(722)	16,915
Net cash provided by financing activities	7,830	—
Net (decrease) increase in cash and cash equivalents	<u>\$ (986)</u>	<u>\$ 4,705</u>

*Operating Activities:* Net cash used in operating activities for the six months ended June 30, 2017 was \$8.1 million primarily due to a net loss of \$14.3 million resulting from ongoing drug development activities and \$0.1 million of net changes in working capital, offset by a \$3.2 million noncash loss recorded to revalue our warrant liability, \$3.1 million of stock-based compensation, and other non-cash items.

*Investing Activities:* Net cash used in investing activities was \$0.7 million for the six months ended June 30, 2017, due to net purchases of marketable securities.

*Financing Activities:* Net cash provided by financing activities for the six months ended June 30, 2017 was \$7.8 million, due to net proceeds of \$9.4 million received from equity financings in early 2017, offset in part by \$1.5 million of principal repayments of our loan facility.

### Capital Requirements

As of June 30, 2017, our cash, cash equivalents and marketable securities totaled \$16.7 million. We believe these funds, together with net proceeds of approximately \$91.1 million received in our July 2017 public offering, are sufficient to fund our liquidity requirements for at least the next 12 months. We expect to incur substantial expenditures in the future for the development and potential commercialization of our product candidates. Because of this, we expect our future liquidity and capital resource needs will be impacted by numerous factors, including but not limited to, the repayment of our facility loan, the timing and conduct of clinical trials, including our ongoing phase 2 clinical trials and planned phase 3 clinical trial to fully study the therapeutic benefits of seladelpar on patients with PBC. We will therefore continue to require additional financing to develop our products and fund future operating losses and will seek funds through equity financings, debt, collaborative or other arrangements with existing and new corporate sources, or through other sources of financing. It is unclear if or when any such financing transactions will occur, on satisfactory terms or at all. Our failure to raise capital as and when needed could have a negative impact on our financial condition and our ability to pursue our business strategies. If adequate funds are not available to us, it could have a material adverse effect on our business, results of operations, and financial condition.

### Contractual Obligations and Commitments

There have been no significant changes to our aggregate contractual obligations as compared to the disclosures in our Annual Report on Form 10-K for the year ended December 31, 2016 as filed with the SEC on March 23, 2017.

### Off-Balance Sheet Arrangements

We do not currently have, nor have we ever had, any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. In addition, we do not engage in trading activities involving non-exchange traded contracts.

### Item 3. Quantitative and Qualitative Disclosures About Market Risk

This item is not applicable to us as a smaller reporting company.

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### Item 4. Controls and Procedures

- (a) *Evaluation of Disclosure Controls and Procedures.* Based on the evaluation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), our principal executive officer and principal financial officer have concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective at the reasonable assurance level.
- (b) *Limitations on the Effectiveness of Controls.* A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the controls are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within a company have been detected. Accordingly, our disclosure controls and procedures are designed to provide reasonable, not absolute, assurance that the objectives of our disclosure control system are met and, as set forth above, our principal executive officer and principal financial officer have concluded, based on their evaluation as of the end of the period covered by this report, that our disclosure controls and procedures were sufficiently effective to provide reasonable assurance that the objectives of our disclosure control system were met.
- (c) *Changes in Internal Controls.* There were no changes in our internal control over financial reporting that occurred during the quarter ended June 30, 2017, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### Item 1A. Risk Factors

*During the six months ended June 30, 2017, there were no material changes to the risk factors included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2016 other than the risk factor disclosed below. In evaluating our business, you should carefully consider the information set forth in this Quarterly Report on Form 10-Q and the risk factors discussed in Part I, "Item 1A. Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2016, which could materially affect our business, financial condition or future results. The risks described in our Annual Report on Form 10-K for the year ended December 31, 2016, as well as other risks and uncertainties, could materially and adversely affect our business, results of operations and financial condition, which in turn could materially and adversely affect the trading price of shares of our common stock. Additional risks not currently known or currently material to us may also harm our business.*

#### ***We will need additional capital in the future to sufficiently fund our operations and research.***

We have incurred significant net losses in each year since our inception, including a net loss of approximately \$14.3 million for the six months ended June 30, 2017, and \$26.7 million and \$15.5 million for the years ended December 31, 2016, and 2015, respectively. We anticipate that we will continue to incur significant losses for the foreseeable future, and we may never achieve or maintain profitability. As of June 30, 2017, we had cash, cash equivalents and marketable securities of approximately \$16.7 million. We believe these funds, together with net proceeds of \$91.1 million received in the Company's July 2017 public offering, are sufficient to fund our liquidity requirements for at least the next 12 months. We will need to raise additional capital to continue our operations thereafter. Our monthly spending levels vary based on new and ongoing development and corporate activities. Developing pharmaceutical products, including conducting preclinical studies and clinical trials, is a time-consuming, expensive and uncertain process that takes years to complete. We expect our research and development expenses to increase in connection with our ongoing activities, particularly as we advance development of our lead clinical product candidate seladelpar.

In the event we do not successfully raise sufficient funds in financing our product development activities, particularly related to the ongoing development of seladelpar, it will be necessary to curtail our product development activities commensurate with the magnitude of the shortfall or our product development activities may cease altogether. To the extent that the costs of the ongoing development of seladelpar exceed our current estimates and we are unable to raise sufficient additional capital to cover such additional costs, we will need to reduce operating expenses, enter into a collaboration or other similar arrangement with respect to development and/or commercialization rights to seladelpar, out-license intellectual property rights to seladelpar, sell assets or effect a combination of the above. No assurance can be given that we will be able to effect any of such transactions on acceptable terms, if at all. Failure to progress the development of seladelpar will have a negative effect on our business, future prospects and ability to obtain further financing on acceptable terms (if at all).

Beyond the plan of operations outlined above, our future funding requirements and sources will depend on many factors, including but not limited to the following:

- the rate of progress and cost of our clinical studies, including in particular the Phase 2 studies of seladelpar;
- the extent to which we receive the milestone payments under our licensing agreement with Kowa;
- the extent to which we are able to out-license arhalofenate outside of the United States;
- the need for additional or expanded clinical studies;
- the rate of progress and cost of our Chemistry, Manufacturing and Control development, registration and validation program;

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- the timing, economic and other terms of any licensing, collaboration or other similar arrangement into which we may enter;
- the costs and timing of seeking and obtaining FDA and other regulatory approvals;
- the extent of our other development activities;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights; and
- the effect of competing products and market developments.

If we are unable to raise additional capital in sufficient amounts or on terms acceptable to us, we will be prevented from pursuing development and commercialization efforts, which will have a material adverse effect on our business, operating results and prospects and on our ability to develop our product candidates.

### **Item 6. Exhibits**

See the Exhibit Index which follows the signature page of this Quarterly Report on Form 10-Q, which is incorporated herein by reference.

**SIGNATURES**

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

CYMABAY THERAPEUTICS, INC.

By: /s/ Sujal Shah  
Sujal Shah  
Interim President and Chief Executive Officer  
(Principal Executive Officer)

Date: August 10, 2017

By: /s/ Daniel Menold  
Daniel Menold  
Vice President, Finance  
(Principal Financial and Accounting Officer)

Date: August 10, 2017

**INDEX TO EXHIBITS**

<b><u>Exhibit Number</u></b>	<b><u>Description of Document</u></b>
3.1	Amended and Restated Certificate of Incorporation (Filed with the SEC as Exhibit 3.1 to our Amendment No. 2 to Registration Statement on Form 10, filed with the SEC on October 17, 2013, SEC File No. 000-55021).
3.2	Amended and Restated By-Laws. (Filed with the SEC as Exhibit 3.2 to our Amendment No. 2 to Registration Statement on Form 10, filed with the SEC on October 17, 2013, SEC File No. 000-55021).
4.1	Reference is made to Exhibits 3.1 and 3.2.
4.2	Form of Registration Rights Agreement (Filed with the SEC as Exhibit 4.2 to our Amendment No. 2 to Registration Statement on Form 10, filed with the SEC on October 17, 2013, SEC File No. 000-55021).
4.3	Form of 2013 Financing Warrant (Filed with the SEC as Exhibit 4.3 to our Amendment No. 2 to Registration Statement on Form 10, filed with the SEC on October 17, 2013, SEC File No. 000-55021).
4.4	Amendment No. 1 to Registration Rights Agreement. (Filed with the SEC as Exhibit 4.4 to our Form 10-K, filed with the SEC on March 31, 2014, SEC File No. 000-55021).
10.1	Separation Agreement, dated April 14, 2017, between CymaBay Therapeutics, Inc. and Harold Van Wart.
10.2	Amendment to Offer Letter, dated August 7, 2017, between CymaBay Therapeutics, Inc. and Patrick O'Mara.
10.3	Offer Letter, dated June 5, 2017, between CymaBay Therapeutics, Inc. and Klara Dickinson.
10.4	Amendment to Offer Letter, dated August 2, 2017, between CymaBay Therapeutics, Inc. and Daniel Menold.
10.5	Compensation Arrangements with certain Executive Officers (Filed with the SEC under Item 5.02 of our Form 8-K, filed with the SEC on May 3, 2017, SEC File No 001-36500).
31.1	Certification of Interim President and Chief Executive Officer (Principal Executive Officer) pursuant to Rule 13-a-14(a) or Rule 15(d)-14(a) of the Exchange Act
31.2	Certification of Vice President, Finance (Principal Financial and Accounting Officer) pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Exchange Act
32.1	Certification of Interim President and Chief Executive Officer (Principal Executive Officer) and Vice President, Finance (Principal Financial and Accounting Officer) pursuant to 13a-14(b) or 15d-14(b) of the Exchange Act
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Schema Linkbase Document
101.CAL	XBRL Taxonomy Calculation Linkbase Document
101.DEF	XBRL Taxonomy Definition Linkbase Document
101.LAB	XBRL Taxonomy Labels Linkbase Document
101.PRE	XBRL Taxonomy Presentation Linkbase Document

Cross references to other filings in the table above incorporate such agreements and descriptions above by reference here.

March 23, 2017

**Re: Separation Agreement**

Dear Hal:

This letter sets forth the terms of the separation agreement (the “**Agreement**”) between you and CymaBay Therapeutics (the “**Company**”) regarding your employment transition.

**1. SEPARATION DATE; FINAL PAY.** Your last date of employment with the Company will be April 15, 2017 (the “**Separation Date**”). On the Separation Date, the Company will pay you all accrued salary and all accrued but unused vacation, subject to standard payroll deductions and withholdings. You are entitled to these payments regardless of whether you sign this Agreement. After the Separation Date, you will no longer be employed as Chief Executive Officer and President of the Company, or hold any other employment or officer position with the Company or any of its subsidiaries or affiliated entities. In addition, you agree, no later than the date that you sign this Agreement, to sign and return to the Company a Board resignation letter, which provides for your resignation as a director on the Company’s Board of Directors (the “**Board**”), and your resignations from the boards of directors (and from any other positions or offices held by you) of any subsidiary entities of the Company, domestic and foreign, on which you serve, such resignations to be effective on the Separation Date.

**2. SEVERANCE BENEFITS.** In full satisfaction of any obligations to provide you severance benefits for a “Termination Without Cause” under the terms of your employment agreement entered into between you and the Company dated November 21, 2013 (the “**Employment Agreement**”), if: (i) you return this fully signed Agreement to the Company on or within twenty-one (21) days of your receipt of it; (ii) allow the releases contained herein to become effective; and (iii) agree to notify the Company promptly of any amount earned by you from other employment or consulting engagement while you are receiving the Severance Benefits; then the Company will pay you the following as your sole severance benefits:

**(a) Severance Payment.** The Company will pay you, as severance, the equivalent of twelve (12) months of your base salary in effect as of the Separation Date, subject to standard payroll deductions and withholdings (the “**Severance Payment**”). The Severance Payment will be paid in equal installments on the Company’s regular payroll schedule over a twelve (12)-month period following the Separation Date; provided, however, that no payments will be made prior to the 60th day following the Separation Date (the “**Payment Date**”). On the

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first payroll date after the Payment Date, the Company will pay you in a lump sum the Severance Payment that you would have received on or prior to such date under the original schedule but for the delay while waiting for the Payment Date, with the balance of the Severance Payment being paid as originally scheduled. The Severance Payment shall be reduced by any amounts you receive from any future employment obtained by you during the 12-month period following the Separation Date, except for (i) any fees paid to you for your service as a member of any entity's technical or advisory board, or board of directors, or (ii) any civic and not-for-profit activities.

**(b) Discretionary 2017 Bonus Payment.** You will be eligible to receive a bonus for 2017 of fifty percent (50%) of your annual base salary in effect as of the Separation Date. The Bonus Payment shall be subject to standard deductions and withholdings and shall be paid at the same time as other bonuses for 2017 are paid to Company employees, but in no event later than March 15, 2018. Except as expressly provided herein, you will not be eligible to receive any bonus payments after the Separation Date.

**(c) Health Insurance.** To the extent provided by the federal COBRA law or, if applicable, state insurance laws (collectively, "COBRA"), and by the Company's current group health insurance policies, you will be eligible to continue your group health insurance benefits at your own expense. Later, you may be able to convert to an individual policy through the provider of the Company's health insurance, if you wish; You will be provided with a separate notice more specifically describing your rights and obligations to continuing health insurance coverage under COBRA on or after the Separation Date. As an additional benefit under this Agreement, provided that you timely elect continued coverage under COBRA, then the Company shall pay the COBRA premiums to continue your health insurance coverage (including coverage for eligible dependents, if applicable) through the period starting on the Separation Date and ending on the earliest to occur of: (i) twelve (12) months following the Separation Date; (ii) the date you become eligible for group health insurance coverage through a new employer; or (iii) the date you cease to be eligible for COBRA coverage for any reason (the "**COBRA Premium Period**"). You must promptly notify the Company in writing if you become eligible for group health insurance coverage through a new employer during the COBRA Premium Period. Notwithstanding the foregoing, if the Company determines, in its sole discretion, that it cannot pay the COBRA premiums without a substantial risk of violating applicable law, then the Company instead shall pay you on the Payment Date a fully taxable cash payment equal to the COBRA premiums due under this Section 2(c), subject to applicable tax withholdings, which you may, but are not obligated to, use toward the cost of COBRA premiums.

**(d) Accelerated Vesting and Extension of Exercise Period.** You were granted a number of options to purchase shares of the Company's common stock (collectively, the "**Options**"), pursuant to the Company's Equity Incentive Plan (the "**Plan**"). Effective as of the Separation Date, all of your unvested Options shall be immediately accelerated and become vested in full. Your Options shall continue to be governed by the terms of the applicable stock option agreements and the Plan. Notwithstanding the previous sentence, and any contrary terms of such agreements and the Plan, you may exercise your right to purchase any of the shares that are subject to the Options at any time on or before April 15, 2018.



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**3. No OTHER COMPENSATION OR BENEFITS.** You acknowledge and agree that the Severance Benefits, and other benefits provided herein are in full and complete satisfaction of the Company's obligations, if any, to pay you severance benefits pursuant to your Employment Agreement, or any other agreements. You further acknowledge that, except as expressly provided in this Agreement, you have not earned and will not receive from the Company any additional compensation, severance, or benefits on or after the Separation Date, with the exception of any vested right you may have under the express terms of a written ERISA - qualified benefit plan (e.g., 401(k) account). By way of example, you acknowledge that you have not earned and are not owed any bonus, vacation, incentive compensation, commissions, or equity.

**4. EXPENSE REIMBURSEMENT.** You agree that, within thirty (30) days of the Separation Date, you will submit your final documented expense reimbursement statement reflecting all business expenses you incurred through the Separation Date, if any, for which you seek reimbursement. The Company will reimburse you for such expenses pursuant to its regular business practice and policies.

**5. RETURN OF COMPANY PROPERTY.** By no later than ten (10) days after the date you signed this Agreement, you agree to return to the Company all Company documents (and all copies thereof) and other Company property that you have had in your possession at any time, including, but not limited to, Company files, notes, drawings, records, business plans and forecasts, financial information, specifications, computer-recorded information, tangible property (including, but not limited to, computers), credit cards, entry cards, identification badges and keys; and, any materials of any kind that contain or embody any proprietary or confidential information of the Company (and all reproductions thereof). You agree that you will make a diligent search to locate any such documents, property and information within the timeframe referenced above. In addition, if you have used any personally-owned computer, server, e-mail system, mobile phone, or portable electronic device (e.g., iPhone), (collectively, "**Personal Systems**") to receive, store, prepare or transmit any Company confidential or proprietary data, materials or information, then by no later than ten (10) days after the close of business on the date you signed this Agreement, you will make reasonable efforts to permanently delete and expunge all such Company confidential or proprietary information from such Personal Systems without retaining any copy or reproduction in any form and, if the Company requests, will provide a written certification to that effect. **Your timely compliance with the provisions of this Section 5 is a precondition to your receipt of the benefits provided hereunder. Provided, however, that you may retain the Company iPhone (and telephone number) that was provided to you in connection with your employment, and the Company will work with you to transfer your iPhone telephone number to a personal cellular telephone service account of your choosing.**

**6. PROPRIETARY INFORMATION OBLIGATIONS.** You acknowledge your continuing obligations under your Employee Agreement on Confidential Information and Inventions

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**(“Confidential Information Agreement”)**, which includes, but is not limited to your obligation to use or disclose confidential or proprietary information of the Company. A copy of your Confidential Information Agreement is attached hereto as **Exhibit A**.

**7. NONDISPARAGEMENT.** You agree not to disparage the Company, or the Company’s officers, directors, employees, shareholders, parents, subsidiaries, affiliates, and agents, in any manner likely to be harmful to them or their business, business reputation or personal reputation; provided that you may respond accurately and fully to any request for information if required by legal process or in connection with a government investigation. In addition, nothing in this provision or this Agreement is intended to prohibit or restrain you in any manner from making disclosures that are protected under the whistleblower provisions of federal law or regulation or under other applicable law or regulation. The Company agrees that none of its officers or directors will disparage you in any manner likely to be harmful to you, your business reputation, or your personal reputation; provided that the Company’s officers and directors may respond accurately and fully to any request for information if required by legal process or in connection with a government investigation.

To the extent that the Company makes any internal or external announcement concerning the reason for your separation from employment with the Company, it shall state only that you elected to retire from your employment. In addition, if the Company makes any public filing or issues any press release in connection with your separation from employment with the Company, the Company shall provide you with a draft of such filing/press release at least 48 hours prior to its filing/release, and shall give good faith consideration to any modifications that you request be made to such filing/press release.

**8. No VOLUNTARY ADVERSE ACTION; COOPERATION.** You agree that you will not voluntarily provide assistance, information or advice, directly or indirectly (including through agents or attorneys), to any person or entity in connection with any claim or cause of action of any kind brought against the Company, nor shall you induce or encourage any person or entity to bring such claims. However, it will not violate this Agreement if you testify truthfully when required to do so by a valid subpoena or under similar compulsion of law. In addition, nothing in this provision or this Agreement is intended to prohibit or restrain you in any manner from making disclosures that are protected under the whistleblower provisions of federal law or regulation or under other applicable law or regulation. Further, you agree to voluntarily cooperate with the Company, if you have knowledge of facts relevant to any threatened or pending claim, investigation, audit or litigation against or by the Company, by making yourself reasonably available without further compensation for interviews with the Company or its legal counsel, for preparing for and providing deposition testimony, and for preparing for and providing trial testimony. The Company shall promptly reimburse you for any reasonable, documented, out-of-pocket expenses that you incur in the course of providing the cooperation described in the previous sentence.

**9. No ADMISSIONS.** Nothing contained in this Agreement shall be construed as an admission by you or the Company of any liability, obligation, wrongdoing or violation of law.

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## 10. RELEASE OF CLAIMS.

**(a) General Release.** In exchange for the Severance Benefits and other consideration offered to you under this Agreement that you are not otherwise entitled to receive, you hereby generally and completely release the Company, its parent and subsidiary entities, and its and their current and former directors, officers, employees, shareholders, partners, agents, attorneys, predecessors, successors, insurers, affiliates, and assigns (collectively, the **“Released Parties”**) of and from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to or on the date you sign this Agreement (collectively, the **“Released Claims”**).

**(b) Scope of Release.** The Released Claims include, but is not limited to: (i) all claims arising out of or in any way related to your employment with the Company or the termination of that employment; (ii) all claims related to your compensation or benefits from the Company, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (iii) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (iv) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (v) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys’ fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) (**“ADEA”**), and the California Fair Employment and Housing Act (as amended).

**(c) ADEA Waiver.** You acknowledge that you are knowingly and voluntarily waiving and releasing any rights you have under the ADEA, and that the consideration given for the waiver and release you have given in this Agreement is in addition to anything of value to which you were already entitled. You further acknowledge that you have been advised, as required by the ADEA, that: (i) your waiver and release does not apply to any rights or claims that arise after the date you sign this Agreement; (ii) you should consult with an attorney prior to signing this Agreement (although you may choose voluntarily not to do so); (iii) you have twenty-one (21) days to consider this Agreement (although you may choose voluntarily to sign it sooner); (iv) you have seven (7) days following the date you sign this Agreement to revoke this Agreement (in a written revocation delivered to me); and (v) this Agreement will not be effective until the date upon which the revocation period has expired, which will be the eighth day after you sign this Agreement provided that you do not revoke it (the **“Effective Date”**).

**(d) Section 1542 Waiver.** In giving the releases set forth in this Agreement, which include claims which may be unknown to you at present, you acknowledge that you have read and understand Section 1542 of the California Civil Code which reads as follows: **“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”** You hereby expressly waive and relinquish all rights and benefits under that section and any law or legal principle of similar effect in any jurisdiction with respect to the releases granted herein, including but not limited to the release of unknown and unsuspected claims granted in this Agreement.

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(e) **Excluded Claims.** Notwithstanding the foregoing, the following are not included in the Released Claims (the “**Excluded Claims**”): (i) any rights or claims for indemnification you may have pursuant to any written indemnification agreement with the Company to which you are a party, the charter, bylaws, or operating agreements of the Company, or under applicable statutory or common law (including, without limitation, California Labor Code Section 2802); (ii) any vested rights or benefits under any Company 401(k) or other retirement plan; (iii) any rights which are not waivable as a matter of law; and (iv) any claims for breach of this Agreement. You hereby represent and warrant that, other than the Excluded Claims, you are not aware of any claims you have or might have against any of the Released Parties that are not included in the Released Claims.

(f) **Protected Rights.** You understand that nothing in this Agreement limits your ability to file a charge or complaint with the Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal, state or local governmental agency or commission (“**Government Agencies**”). You further understand this Agreement does not limit your ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Company. While this Agreement does not limit your right to receive an award for information provided to the Securities and Exchange Commission, you understand and agree that, to maximum extent permitted by law, you are otherwise waiving any and all rights you may have to individual relief based on any claims that you have released and any rights you have waived by signing this Agreement.

**11. REPRESENTATIONS.** You hereby represent and warrant that: (i) you have been paid all compensation owed and for all time worked (excluding your final pay); (ii) you have received all the leave and leave benefits and protections for which you are eligible pursuant to FMLA, any applicable law or Company policy; and (iii) you have not suffered any on-the-job injury or illness for which you have not already filed a workers’ compensation claim.

**12. COMPLIANCE WITH SECTION 409A.** It is the intent of the parties to this Agreement that all payments made hereunder will either comply with the provisions of Section 409A of the Internal Revenue Code of 1986, as amended, and the regulations and other guidance issued thereunder (“**Section 409A**”) or comply with an exemption from Section 409A such that no payments made under this Agreement are includible in income pursuant to Section 409A, and the terms and conditions of this Agreement shall be construed and interpreted consistent with such intent. All payments made under this Agreement shall be treated as separate payments and shall not be aggregated with any other payment for purposes of Section 409A.

**13. MISCELLANEOUS.** This Agreement, including Exhibit A, constitutes the complete, final and exclusive embodiment of the entire agreement between you and the Company with regard to its subject matter. It is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein, and it supersedes any

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other such promises, agreements, or representations. This Agreement may not be modified or amended except in a written agreement signed by both you and a duly authorized officer of the Company. This Agreement will bind the heirs, personal representatives, successors and assigns of both you and the Company, and inure to the benefit of both you and the Company, and their heirs, successors and assigns. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination will not affect any other provision of this Agreement and the provision in question shall be deemed modified so as to be rendered enforceable in a manner consistent with the intent of the parties, insofar as possible under applicable law. Any ambiguity in this Agreement shall not be construed against either party as the drafter. Any waiver of a breach of this Agreement, or rights hereunder, shall be in writing and shall not be deemed to be a waiver of any successive breach or rights hereunder. This Agreement shall be deemed to have been entered into, and shall be construed and enforced, in accordance with the laws of the State of California without regard to conflicts of law principles. This Agreement may be executed in counterparts, each of which shall be deemed to be part of one original, and facsimile signatures shall be equivalent to original signatures.

If this Agreement is acceptable to you, please sign and date it below, and return the fully signed Agreement no later than **within twenty-one (21) days**. If you do not sign and return it to the Company by this date, the Company's offer to enter into this Agreement will expire.

We wish you the best in your future endeavors.

Sincerely,

**CYMABAY THERAPEUTICS**

By: /s/ Robert J. Wills  
Robert J. Wills, Ph.D.  
Chairman of the Board

**Exhibit A – Employee Confidential Information and Inventions Assignments Agreement**

**UNDERSTOOD AND AGREED:**

/s/ Harold Van Wart  
**Harold Van Wart**

April 14, 2017  
**Date**

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**EXHIBIT A**

**Employee Confidential Information and Inventions Assignments Agreement**



January 1, 2017

Dear Patrick:

CymaBay Therapeutics (the "Company") is pleased to offer you employment as Senior Vice-President of Business Development on the following terms:

**1. Position, Duties and Responsibilities.** Subject to the terms set forth herein, the Company agrees to employ you in the position of Senior Vice-President of Business Development and you hereby accept such employment effective immediately. You will report to the Company's Chief Executive Officer ("CEO") and will perform the duties customarily associated with this position and such other duties as are assigned to you by the CEO. You will devote your full business time and attention to the business affairs of the Company, except for reasonable vacations and periods of illness or incapacity permitted by the Company's general employment policies. The employment relationship between you and the Company shall also be governed by the general employment policies and practices of the Company, including those relating to protection of confidential information and assignment of inventions, except that when the terms of this letter agreement differ from or are in conflict with the Company's general employment policies or practices, this letter agreement shall control.

**2. Compensation and Employee Benefits.**

**2.1 Base Salary.** Your base salary will be three hundred and two thousand, four hundred and sixty two dollars (\$302,462) on an annualized basis, less payroll deductions and required withholdings, paid according to the Company's regular payroll schedule and procedures. Subject to the other terms of this letter agreement, your base salary may be modified by the Company in its sole discretion. Your salary will be effective as of January 1, 2017.

**2.2 Discretionary Bonus.** You will be eligible to participate in the Company's annual bonus program pursuant to the terms of that program and you will be eligible to receive a bonus of up to thirty-five percent (35%) of your annual base salary. Your actual bonus, if any, will be determined by the Company's Board of Directors, or the Compensation subcommittee thereof (the "Board"), in its sole discretion, based upon its evaluation of your performance, the Company's performance, and any other considerations it deems relevant. You must be employed through the bonus payment date to be eligible for, and to earn, any such bonus. Any bonus payment will be subject to payroll deductions and required withholdings.

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**2.3 Employee Benefits.** You will be entitled to all employee benefits, including vacation accrual of twenty (20) days per year and health and disability benefits for which you are eligible under the terms and conditions of the standard Company benefit plans which may be in effect from time to time and provided by the Company to its senior executive-level employees generally. Currently, such benefits include twelve paid holidays, as well as paid sick leave of up to ten days per year. Notwithstanding the foregoing, the Company reserves the right to adopt, amend or discontinue any employee benefit plan or policy, including changes required by applicable law.

**2.4 Stock Options.** Subject to the approval of the Board pursuant to the Company's equity incentive plan you may from time to time be granted stock options of shares of Company common stock at a per share exercise price equal to the per share fair market value of the Company's common stock on the date of grant as determined by the Board. Option grants are made at regular Board meetings held approximately once each calendar quarter. Such stock options will vest as determined by the Board, as long as you remain in continuous service with the Company and a portion of the shares subject to your outstanding options may vest on an accelerated basis pursuant to Sections 7 or 8. Except as provided herein, such stock option will be subject to the provisions of the equity incentive plan of the Company under which the options are granted and the applicable form of stock option agreement there under (the "Plan Documents").

### **3. Other Activities During Employment.**

**3.1 Activities.** Except with the prior written consent of the CEO, you will not, during your employment with the Company, undertake or engage in any other employment, occupation or business enterprise, other than ones in which you are a passive investor. You may engage in civic and not-for-profit activities so long as such activities do not interfere with the performance of your job duties for the Company.

**3.2 Investments and Interests.** Except as permitted by the first sentence of Section 3.1 and by Section 3.3, during your employment you agree not to acquire, assume or participate in, directly or indirectly, any position, investment or interest known by you to be adverse or antagonistic to the Company, or its business or prospects, financial or otherwise.

**3.3 Noncompetition.** During the term of your employment by the Company, except on behalf of the Company, you will not directly or indirectly, whether as an officer, director, stockholder, partner, proprietor, associate, representative, consultant, or in any capacity whatsoever engage in, become financially interested in, be employed by or have any business connection with any other person, corporation, firm, partnership or other entity whatsoever that competes with the Company anywhere in the world, in any line of business engaged in (or planned to be engaged in) by the Company; *provided, however*, that anything above to the contrary notwithstanding, you may own, as a passive investor, securities of any entity, so long as your direct holdings in any one such corporation do not in the aggregate constitute more than one percent (1%) of the voting stock of such corporation.

**4. Company Policies; Confidential Information and Inventions Agreement.** You acknowledge your obligations under the Company's Employee Agreement on Confidential Information and Inventions, a copy of which is attached as Exhibit A. You further acknowledge your obligation to abide by the Company's rules, policies and procedures.



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**5. Immigration.** The Immigration Reform and Control Act of 1986 requires that every person present proof to the Company of their identity and eligibility and/or authorization to accept employment with the Company. In order to comply with this law you must provide appropriate documentation to prove both your identity and legal eligibility to be employed at the Company.

**6. Your Representations and Warranties.**

**6.1 No Breach of Contract.** You represent and warrant that the execution and delivery of this letter agreement by you and the performance of your obligations hereunder will not conflict with or breach any agreement, order or decree to which you are a party or by which you are bound. You warrant that you are subject to no employment agreement or restrictive covenant preventing full performance of your duties under this letter agreement.

**6.2 No Conflict of Interest.** You warrant that you are not, to the best of your knowledge and belief, involved in any situation that might create, or appear to create, a conflict of interest with your loyalty to or duties for the Company.

**6.3 Notification of Materials or Documents from Other Employers.** You further warrant that you have not brought and will not bring to the Company or use in the performance of your responsibilities at the Company any materials or documents of a former employer that are not generally available to the public, unless you have obtained express written authorization from the former employer for their possession and use.

**6.4 Notification of Other Post-Employment Obligations.** You also understand that, as part of your employment with the Company, you are not to breach any obligation of confidentiality that you have to former employers, and you agree to honor all such obligations to former employers during your employment with the Company.

**7. Termination of Employment.**

**7.1 At-Will Employment Relationship.** Your employment with the Company shall be at-will. Either you or the Company may terminate the employment relationship at any time, with or without Cause, and with or without advance notice.

**7.2 Termination for Cause.**

(a) If the Company terminates your employment at any time for Cause (as defined below), your salary shall cease on the date of termination and you shall not be entitled to severance pay, COBRA premium payments, pay in lieu of notice or any other such compensation other than payment of accrued salary and vacation and such other benefits as expressly required by applicable law or the terms of applicable benefit plans. The continued vesting of any Equity Awards held by you shall cease on your employment termination date, and your right to exercise vested Equity Awards shall be governed by the Plan Documents.

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**(b) Definition of Cause.** For purposes of this agreement, “Cause” means the occurrence of any one or more of the following: (i) your conviction of, or plea of no contest, with respect to any felony or any crime involving fraud, dishonesty or moral turpitude; (ii) your participation in a fraud or act of dishonesty that results in material harm to the Company; (iii) your intentional material violation of any contract or agreement between you and the Company, including but not limited to this letter agreement or your Employee Agreement on Confidential Information and Inventions, or your violation of any statutory duty that you owe to the Company, but only if you do not correct any such violation within thirty (30) days after written notice thereof has been provided to you (if such notice is reasonably practicable); or (iv) your gross negligence or willful neglect of your job duties, as determined by the Board in good faith, but only if you do not correct such violation within thirty (30) days after written notice thereof has been provided to you (if such notice is reasonably practicable).

### **7.3 Severance Benefits For Termination Without Cause or Resignation for Good Reason.**

**(a)** If the Company terminates your employment without Cause and other than as a result of your death or disability, or if you resign your employment for Good Reason (defined below), and provided such termination constitutes a “separation from service” (as defined under Treasury Regulation Section 1.409A-1(h), without regard to any alternative definition thereunder, a “Separation from Service”), you will be eligible to receive the severance benefits described in this Section 7.3.

**(b)** You will be eligible to receive, subject to payroll deductions and required withholdings and net of any amounts earned by you pursuant to any employment or consulting arrangements obtained by you following such termination (other than the activities described in the last sentence of Section 3.1), continuation for twelve (12) months of the greater of: (i) your base salary in effect as of such termination date; or (ii) your base salary as set forth in Section 2.1. In addition, you will be eligible to receive your potential annual discretionary bonus amount set forth in Section 2.4, determined as if all performance targets established by the Board have been satisfied, pro-rated for the number of months elapsed in the year in which your employment terminates, but in no event will you receive a bonus pro-rated for less than nine (9) months. You agree to notify the Company promptly of any amount earned by you from other employment or a consulting engagement while you are receiving severance payments under this letter agreement.

**(c)** If you timely elect and remain eligible for continued coverage of your group health insurance under COBRA, the Company will pay your premiums for COBRA coverage for up to twelve (12) months following your Separation from Service, provided that such payments shall cease if you obtain full-time employment, or cease to be eligible for COBRA, within such period. You agree to notify the Company promptly if you obtain full-time employment while the Company is paying your COBRA premiums under this letter agreement. On the 60<sup>th</sup> day following your Separation from Service, the Company will make the first payment under this clause equal to the aggregate amount of payments that the Company would have paid through such date had such payments commenced on the Separation from Service through such 60<sup>th</sup> day, with the balance of the payments paid thereafter on the schedule described above. If you become eligible for coverage under another employer’s group health plan or

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otherwise cease to be eligible for COBRA during the period provided in this clause, you must immediately notify the Company of such event, and all payments and obligations under this clause will cease.

(d) You will receive acceleration of vesting of all of your then-outstanding and then-unvested stock Option grants as of the date of termination as to the number of shares that would have vested in their vesting schedules as if you had been in service for an additional nine (9) months as of your Separation from Service.

(e) Your receipt of any severance benefits under this Section 7.3 is contingent upon your signing and making effective within sixty (60) days after the termination date, a full, general release of all claims against the Company in a form acceptable to the Company containing the language set forth in the Release Agreement attached as Exhibit B on or after the termination date. The base salary and bonus severance will be paid in substantially equal installments over the nine (9) month period following your Separation in Service according to the Company's payroll procedures; provided, however, that no payments will be made to you prior to the 60th day following your Separation from Service. On the first payroll pay day following the 60th day after your Separation from Service, the Company will pay you the cash severance amounts you would have received on or prior to such date in a lump sum in compliance with Code Section 409A and the effectiveness of the release, with the balance of the cash payments being made as originally scheduled.

(f) **Definition of Good Reason.** For purposes of this letter agreement, "Good Reason" shall mean any one of the following events that occurs without your consent: (i) the material reduction in your responsibilities, authorities or functions as an employee of the Company (but not merely a change in reporting relationships); (ii) a material reduction in your level of compensation (including base salary, fringe benefits and target bonus under any corporate-performance based bonus or incentive programs); (iii) a material change of your place of employment that results in an increase to your round trip commute of more than twenty (20) miles; or (iv) the Company's material breach of this letter agreement. Notwithstanding the foregoing, you must provide written notice to the General Counsel of the Company within thirty (30) days after the date on which such event first occurs, and allow the Company thirty (30) days thereafter (the "Cure Period") during which the Company may attempt to rescind or correct the matter giving rise to Good Reason. If the Company does not rescind or correct the conduct giving rise to Good Reason to your reasonable satisfaction by the expiration of the Cure Period, your employment will then terminate with Good Reason as of such thirtieth day.

**7.4 Voluntary or Mutual Termination.** You may voluntarily terminate your employment with the Company at any time without Good Reason. If you terminate without Good Reason or if your employment terminates as a result of your death or disability, your salary shall cease on the date of termination and you shall not be entitled to severance, pay in lieu of notice or any other such compensation other than payment of accrued salary and vacation and such other benefits as expressly required in such event by applicable law or the terms of applicable benefit plans. The continued vesting of any compensatory equity awards held by you shall cease on the termination date, and your right to exercise vested awards (or be issued shares under such vested awards) shall be governed by the terms of the Company's applicable compensatory equity plans and the corresponding award agreements.

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**7.5 Application of Section 409A.** If the Company (or, if applicable, the successor entity thereto) determines that the severance payments and benefits provided for in this letter agreement (the “Agreement Payments”) constitute “deferred compensation” under Section 409A of the Internal Revenue Code (together, with any state law of similar effect, “Section 409A”) and you are a “specified employee” of the Company or any successor entity thereto, as such term is defined in Section 409A(a)(2)(B)(i) (a “Specified Employee”), then, solely to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the timing of the Agreement Payments shall be delayed as follows: on the earliest to occur of (i) the date that is six months and one day after the termination date or (ii) the date of your death (such earliest date, the “Delayed Initial Payment Date”), the Company (or the successor entity thereto, as applicable) shall (A) pay to you a lump sum amount equal to the sum of the Agreement Payments that you would otherwise have received through the Delayed Initial Payment Date if the commencement of the payment of the Agreement Payments had not been delayed pursuant to this Section 7.5 and (B) commence paying the balance of the Agreement Payments in accordance with the applicable payment schedules set forth in this letter agreement. For the avoidance of doubt, it is intended that (1) each installment of the Agreement Payments provided in this letter agreement is a separate “payment” for purposes of Section 409A, (2) all Agreement Payments satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under of Treasury Regulation 1.409A-1(b)(4) and 1.409A-1(b)(9)(iii), and (3) the Agreement Payments consisting of COBRA premiums also satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under Treasury Regulation 1.409A-1(b)(9)(v).

## **8. Change in Control.**

### **8.1 Definitions.**

(a) “Change in Control” shall mean an Ownership Change Event (as defined below) or a series of related Ownership Change Events (collectively, a “Transaction”) wherein the stockholders of the Company immediately before the Transaction do not retain direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding securities of the Company or, in the case of a Transaction described in Section 8.1(b)(iii), the corporation or other business entity to which the assets of the Company were transferred (the “Transferee”), as the case may be. For purposes of the preceding sentence, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities that own the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities.

(b) An “Ownership Change Event” shall be deemed to have occurred if any of the following occurs with respect to the Company: (i) the direct or indirect sale or exchange in a single or series of related transactions by the stockholders of the Company of more than fifty percent (50%) of the voting stock of the Company; (ii) a merger or consolidation in which the Company is a party; or (iii) the sale, exchange or transfer of all or substantially all of the assets of the Company.

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**8.2 Severance.** On the consummation of any Change in Control (i) any remaining unvested portion of your stock options will be accelerated such that fifty percent (50%) of your outstanding and then-unvested options become fully vested and exercisable as of the date of the Change in Control (the “Acceleration”) and (ii) 100% of the shares subject to the Incentive Award shall accelerate and be fully exercisable immediately prior to the consummation of any Change of Control. If on or within twelve (12) months following a Change in Control, the Company or a successor corporation terminates your employment without Cause and other as a result of your death or disability, or you resign for Good Reason (a “Change in Control Termination”), and provided that such termination constitutes a Separation from Service, then subject to your obligations below, and in lieu of any severance benefits set forth in Section 7.3 herein, you will be entitled to receive (collectively, the “Change in Control Severance Benefits”):

(a) Subject to payroll deductions and required withholdings and net of any amounts earned by you pursuant to any employment or consulting arrangements obtained by you following such termination (other than the activities described in the last sentence of Section 3.1), continuation for twelve (12) months of the greater of: (i) your base salary in effect as of such termination date; or (ii) your base salary as set forth in Section 2.1. In addition, you will be eligible to receive 125% of your potential annual discretionary bonus amount set forth in Section 2.4, determined as if all performance targets established by the Board have been satisfied.

(b) You will receive acceleration of vesting of all of your then-outstanding and then-unvested stock option grants as of the date of termination such that the remaining fifty percent (50%) of your unvested options following the Acceleration become fully vested and exercisable.

(c) If you timely elect and remain eligible for continued coverage of your group health insurance under COBRA, the Company will pay your premiums for COBRA coverage for up to fifteen (15) months following your Separation from Service, provided that such payments shall cease if you obtain full-time employment, or cease to be eligible for COBRA, within such period. You agree to notify the Company promptly if you obtain full-time employment while the Company is paying your COBRA premiums under this letter agreement. On the 60<sup>th</sup> day following your Separation from Service, the Company will make the first payment under this clause equal to the aggregate amount of payments that the Company would have paid through such date had such payments commenced on the Separation from Service through such 60<sup>th</sup> day, with the balance of the payments paid thereafter on the schedule described above. If you become eligible for coverage under another employer’s group health plan or otherwise cease to be eligible for COBRA during the period provided in this clause, you must immediately notify the Company of such event, and all payments and obligations under this clause will cease.

(d) As a precondition of receiving the Change in Control Severance Benefits, you must first sign and make effective on or after the termination date a full, general release of claims against the Company in a form acceptable to the Company containing the language set forth in the Release Agreement attached as Exhibit B.

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### 8.3 Parachute Payments.

(a) If any payment or distribution in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) to you or for your benefit, whether under this letter agreement or otherwise (a "Payment"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code") (together with any interest or penalties imposed with respect to such excise tax, the "Excise Tax"), then you will be entitled to receive from the Company an additional payment (the "Gross-Up Payment") in an amount equal to (i) all Excise Taxes (including any interest or penalties imposed with respect to such taxes) on the Payment (the "First Reimbursement Payment"), (ii) all federal, state and local income taxes and employment taxes on the First Reimbursement Payment, and (iii) all Excise Taxes (including any interest or penalties imposed with respect to such taxes) on the First Reimbursement Payment.

(b) All determinations required to be made under this Section 8.3 including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by the nationally recognized certified public tax accounting firm used by the Company or, if such firm declines to serve, such other nationally recognized certified public tax accounting firm as you may designate (the "Accounting Firm"). The Accounting Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good-faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Accounting Firm shall provide its calculations, together with detailed supporting documentation, to the Company and you within thirty (30) calendar days after the date on which your right to a Payment is triggered (if requested at that time by the Company or you) and/or at such other times as requested by the Company or you. If the Accounting Firm determines that no Excise Tax is payable with respect to a Payment, it shall furnish the Company and you with an opinion reasonably acceptable to you that no Excise Tax will be imposed with respect to such Payment. If the Accounting Firm determines that an Excise Tax is payable with respect to a Payment, it shall furnish to the Company and you an opinion reasonably acceptable to you of the amount of Excise Tax payable with respect to the Payments and the amount of Gross-Up Payment due to you. The Company will pay the Gross-Up Payment to you within thirty (30) days of the date the Company receives the Accounting Firm's opinion, but in no event later than the end of your tax year following your tax year in which you pay the Excise Tax. The Company shall bear all reasonable expenses with respect to the determinations by the Accounting Firm required to be made hereunder. Any determination by the Accounting Firm shall be binding upon the Company and you.

### 9. General Provisions.

**9.1 Dispute Resolution.** To aid in the rapid and economical resolution of any disputes which may arise under this Agreement, the parties agree that any and all claims, disputes or controversies of any nature whatsoever arising from or regarding the interpretation, performance, negotiation, execution, enforcement or breach of this Agreement, or your relationship with the Company, including statutory claims, shall be resolved by confidential, final and binding arbitration conducted before a single arbitrator with Judicial Arbitration and Mediation Services, Inc. ("JAMS") in San Francisco, California, in accordance with JAMS' then-applicable employment arbitration rules (which may be reviewed at [www.jamsadr.com/rules-employment-arbitration/](http://www.jamsadr.com/rules-employment-arbitration/)). **The parties acknowledge that by agreeing**

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**to this arbitration procedure, they waive the right to resolve any such dispute through a trial by jury, judge or administrative proceeding.** The parties will have the right to be represented by legal counsel at any arbitration proceeding. The arbitrator shall: (i) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be available under applicable law in a court proceeding; and (ii) issue a written statement signed by the arbitrator regarding the disposition of each claim and the relief, if any, awarded as to each claim, the reasons for the award, and the arbitrator's essential findings and conclusions on which the award is based. The Company shall bear all JAMS' arbitration fees and administrative costs in excess of the amount of administrative fees (e.g., filing fees) that you would otherwise be required to pay if the dispute were decided in a court of law. Nothing in this Agreement shall prevent any party from obtaining injunctive or other provisional relief in court to prevent irreparable harm pending the conclusion of any arbitration proceeding.

**9.2 Severability.** Whenever possible, each provision of this letter agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but such invalid, illegal or unenforceable provision will be reformed, construed and enforced in such jurisdiction so as to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

**9.3 Notices.** Any notices provided hereunder must be in writing and shall be deemed effective upon the earlier of personal delivery (including personal delivery by fax) or the next day after sending by overnight courier, to the Company at its primary office location and to you at your address as listed on the Company payroll.

**9.4 Waiver.** If either party should waive any breach of any provisions of this letter agreement, you or the Company shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of this letter agreement.

**9.5 Entire Agreement.** This letter agreement, together with its exhibits, constitutes the entire and exclusive agreement between you and the Company, and it supersedes any prior agreement, promise, representation, or statement, written or otherwise, between you and the Company with regard to this subject matter. It is entered into without reliance on any promise, representation, statement or agreement other than those expressly contained or incorporated herein, and it cannot be modified or amended except in a writing signed by you and a duly authorized officer of the Company.

**9.6 Counterparts.** This letter agreement may be executed in separate counterparts, any one of which need not contain signatures of more than one party, but all of which taken together will constitute one and the same letter agreement.

**9.7 Headings.** The headings of the sections hereof are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

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**9.8 Successors and Assigns.** This letter agreement is intended to bind and inure to the benefit of and be enforceable by you, the Company and your and its respective successors, assigns, heirs, executors and administrators, except that you may not assign any of your duties hereunder and you may not assign any of your rights hereunder without the written consent of the Company.

**9.9 Governing Law.** All questions concerning the construction, validity and interpretation of this letter agreement will be governed by the law of the State of California as applied to contracts made and to be performed entirely within California.

**9.10 Attorneys' Fees.** If either party hereto brings any action to enforce your or its rights hereunder, the prevailing party in such action shall be entitled to be paid by the other party such prevailing party's reasonable attorneys' fees and costs incurred in such action.

Enclosed is your Employee Agreement on Confidential Information and Inventions, which you should read carefully.

To indicate your acceptance of the Company's offer, please sign this letter agreement in the space provided below and return it to me.

Sincerely,

**CYMABAY THERAPEUTICS**

By: /s/ Sujal Shah

**Sujal Shah**

Interim Chief Executive Officer

**Accepted and agreed:**

/s/ Patrick O'Mara

**Patrick O'Mara**

**EXHIBIT A** - Employee Agreement on Confidential Information and Inventions

**EXHIBIT B** - Release Agreement



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**EXHIBIT A**

**CymaBay Therapeutics, Inc.**  
7999 Gateway Blvd., Suite 130  
Newark, CA 94560-1144  
Phone 510 293-8800 Fax 510 293-9090

January 1, 2017

**EMPLOYEE AGREEMENT ON CONFIDENTIAL  
INFORMATION AND INVENTIONS**

THIS AGREEMENT is between CymaBay Therapeutics, Inc. a Delaware Corporation (“the Company”), and Patrick O’Mara, (the “Employee”).

**PURPOSE OF AGREEMENT**

I want to be employed by the Company, and the Company wants to employ me, provided that, in so doing, it can protect its trade secrets and inventions, ideas, information, business, and good will.

In consideration of this purpose, and the mutual promises in this Agreement, I agree with the Company as follows:

1. **Term**

(A) My employment with the Company is an at-will relationship that may be terminated by either the Company or me with or without cause for any reason whatsoever at any time upon notice to the other party.

(b) If my employment is terminated for any reason, I will be entitled only to the compensation earned by me as of the date of termination.

2. **Confidential Information.** I will hold in confidence and use only for the benefit of the Company during the term of my employment and for five years after the termination of my employment all Confidential Information of the Company, its Affiliates, and all Confidential Information of companies or persons other than the Company given to the Company under an agreement prohibiting its disclosure. “Confidential Information” refers to valuable technical or business information that is not known by the public. By way of example, Confidential Information may include information relating to: inventions or products, including unannounced products; research and development activities; requirements and specifications of specific customers and potential customers; nonpublic financial information; and quotations or proposals given to customers.

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These restrictions on disclosure do not apply if the information is or becomes publicly known through no wrongful act on my part or the information is explicitly approved for release under such circumstances by an officer of the Company.

3. Disclosure and Assignment of Inventions. I hereby assign to the Company my entire right, title and interest in all inventions. "Inventions" refer to (a) all technical or business innovations, whether or not patentable or copyrightable, made by me during the term of my employment; and (b) all technical or business innovations, whether or not patentable, based upon the Company's Confidential Information and made by me after leaving the Company's employ. I will keep adequate written records of all inventions made by me, such as notebooks, sketches, program listings and the like, which are the property of the Company. Notwithstanding the foregoing, I am not required to assign to the Company, although I must disclose, any inventions: (a) for which no equipment, supplies, facilities or Confidential Information of the Company were used and which was developed entirely on my own time; (b) which at the time of conception or reduction to practice did not relate directly to the business of the Company or the Company's actual or demonstrably anticipated research or development and (c) which did not result from any work I performed for the Company. The disclosure of such inventions must be made so that the parties can make a determination whether such inventions do in fact qualify for exclusion from assignment to the Company. The Company will keep confidential any such information I disclose. I will take all steps necessary to assist the Company in securing any patents, copyrights or other protection for inventions which I am required to assign to the Company as provided above. If I am unable or unwilling, whether during my employment or after termination, to sign any papers needed to apply for or pursue any patent or copyright registrations for inventions, I agree that the Company is my attorney-in-fact for that purpose and can sign such papers as my agent and take any other actions necessary to pursue these registrations.

4. List of Inventions I Own. I have attached as Exhibit A a list of inventions I own, which is a complete list of all technical or business innovations I own either alone or jointly with others on the date of this Agreement. I agree that I will not incorporate any of these prior inventions into products being developed for the Company without the prior knowledge and written consent of the Company. Should the Company wish to use any of my inventions in its business, the Company will negotiate with me for a purchase of or license to use such invention on mutually agreeable terms. If no such list is attached, or if no such inventions are listed thereon, I represent that I do not own any inventions at the time of signing this Agreement.

5. Tangible Materials. All tangible materials that incorporate Confidential Information are the Company's property, and I will give all of these materials and any other documents and materials which are the property of the Company, including but not limited all notes of any research or other work which I have performed for the Company and all biological materials created, used or held by me in the course of my work for the Company, back to the Company at the termination of my employment or earlier upon the Company's request.

6. Solicitation of Employees. I understand that information about the Company's employees, such as their skills, performance ratings, and salary histories, constitutes Confidential Information owned by the Company. I agree that, for a period of twelve (12) months after termination of my employment for any reason, I will not, either directly or indirectly, solicit,

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induce, recruit or encourage any of the Company's employees to leave their employment, or take away such employees, or attempt to do any of these things, whether on my own behalf or on behalf of any other person, since to do so would necessarily involve using Confidential Information.

8. Termination. In the event of termination of my employment for any reason, I agree that, as requested by the Company, I will sign and deliver a "Termination Certification" in the form attached to this Agreement as Exhibit B. I also agree that the Company may give notice to my new employer of my duties under this Agreement.

9. Duty of Loyalty. During my employment with the Company, I will not engage in any business activity (either for my own profit or for anyone else) that competes with the Company's business.

10. Duties to Third Parties. I represent that, to the best of my knowledge, compliance with the terms of this Agreement will not violate any duty that I may have to anyone other than the Company (such as a former employer) to keep such person's proprietary information in confidence or to refrain from using that person's patents or copyrights. If at any time during my employment with the Company, I am asked by the Company to perform work which I believe may cause me to violate a duty I have to someone other than the Company, I will immediately inform an officer of the Company so that an assessment of the situation may be made. I also agree that I will not, during my employment with the Company, bring onto the Company's premises, use or disclose to the Company any proprietary information or trade secrets of any former employer or any other person without that person's consent.

11. Miscellaneous. This is the only agreement between the Company and myself about confidential information and the ownership of inventions, and may not be modified, amended or terminated, in whole or in part, except in a writing signed by me and by an officer of the Company. Any later change in my title, compensation or duties will not affect this Agreement. This Agreement will survive termination of my employment for any reason, and will continue for the benefit of and will be binding upon the successors, assigns, heirs and legal representatives of the Company and myself. Any waiver by the Company of a breach of any of the obligations of this Agreement by me will not operate or be construed as a waiver of any other or subsequent breach by me. In the event any provision of this Agreement is held to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way. The prevailing party in any legal action brought by one party against the other and arising out of this Agreement shall be entitled, in addition

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to any other rights and remedies it may have, to reimburse for its expenses, including court costs and reasonable attorney's fees. This Agreement will be governed by the laws of the State of California governing contracts between residents to be performed in the State of California.

CymaBay Therapeutics, Inc.

Employee

By: /s/ Sujal Shah  
Sujal Shah  
Interim Chief Executive Officer

By: /s/ Patrick O'Mara  
Signature  
Patrick O'Mara

August 7, 2017  
Date

August 7, 2017  
Date

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**EXHIBIT A**

**List of Inventions I Own (see para. 4.)**

15.

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**EXHIBIT B**

**Termination Certificate**

This is to certify that I do not have in my possession, nor have I failed to return, any devices, records, data, notes, reports, proposals, lists, equipment, computer programs or listings, other documents or property or any reproductions of any of these materials belonging to CymaBay Therapeutics, Inc., a Delaware corporation, its subsidiaries, successors or assigns (collectively, the "Company").

I further certify that I have complied with all the terms of the Company's Employee Confidential Information and Inventions Agreement signed by me, including the reporting of any inventions and original works of authorship (as defined in that agreement) conceived or made buy me (solely or jointly with others) covered by that agreement.

I further agree that, in compliance with the Employee Confidential Information and Inventions Agreement, I will preserve as confidential all trade secrets, confidential knowledge, data or other proprietary information relating to inventions or products, including but not limited to unannounced products, research and development activities, requirements and specifications of specific customers and potential customers, nonpublic financial information, and quotations or proposals given to customers, including any information disclosed to the Company in confidence by any third party.

I further agree that for twelve (12) months from this date, I will not solicit, induce, recruit or encourage any of the Company's employees to leave their employment.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

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**EXHIBIT B**

**RELEASE AGREEMENT**

**(To be signed on or after the Separation Date)**

I understand that my employment with CymaBay Therapeutics (the “Company”) terminated effective \_\_\_\_\_, (the “Separation Date”). The Company has agreed that if I choose to sign this Release Agreement (“Release”), the Company will provide certain severance benefits (minus the required withholdings and deductions) pursuant to the terms of the employment agreement dated \_\_\_\_\_ (as amended, the “Letter Agreement”). I understand that I am not entitled to such severance benefits unless I sign this Release, and it becomes fully effective.

I understand that this Release, together with the Letter Agreement, constitutes the complete, final and exclusive embodiment of the entire agreement between the Company and me with regard to the subject matter hereof. I am not relying on any promise or representation by the Company that is not expressly stated therein.

I hereby confirm my obligations under my Employee Agreement on Confidential Information and Inventions with the Company.

I hereby represent that I have been paid all compensation owed and for all hours worked, have received all the leave and leave benefits and protections for which I am eligible, pursuant to the Family and Medical Leave Act or otherwise, and have not suffered any on-the-job injury for which I have not already filed a claim.

In exchange for the consideration provided to me by this Release that I am not otherwise entitled to receive, I hereby generally and completely release Company and its current and former directors, officers, employees, shareholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to my signing this Release. This general release includes, but is not limited to: (a) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (b) all claims related to my compensation or benefits from the Company, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (c) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (d) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (e) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys’ fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) (“*ADEA*”), and the California Fair Employment and Housing Act (as amended).

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Nothing in this Release shall prevent me from filing, cooperating with, or participating in any proceeding before the Equal Employment Opportunity Commission, the Department of Labor, or the California Department of Fair Employment and Housing, except that I hereby acknowledge and agree that I shall not recover any monetary benefits in connection with any such proceeding.

I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA ("**ADEA Waiver**"). I also acknowledge that the consideration given for the ADEA Waiver is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (a) my ADEA Waiver does not apply to any rights or claims that arise after the date I sign this Release; (b) I should consult with an attorney prior to signing this Release; (c) I have twenty-one (21) days to consider this Release (although I may choose to voluntarily sign it sooner); (d) I have seven (7) days following the date I sign this Release to revoke the ADEA Waiver; and (e) the ADEA Waiver will not be effective until the date upon which the revocation period has expired unexercised, which will be the eighth day after I sign this Release.

I acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: "**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**" I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to my release of any claims hereunder.

I acknowledge that to become effective, I must sign and return this Release to the Company so that it is received not later than twenty-one (21) days following the date it is provided to me.

**I accept and agree to the terms and conditions stated above:**

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Date

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Patrick O'Mara





June 2, 2017

Klara Dickinson

Dear Klara:

CymaBay Therapeutics (the "Company") is pleased to offer you employment as **Senior Vice President, Regulatory Affairs and Quality Assurance** on the following terms:

**1. Position, Duties and Responsibilities.** Subject to the terms set forth herein, the Company agrees to employ you in the position of **Senior Vice President, Regulatory Affairs and Quality Assurance** and you hereby accept such employment effective immediately. You will report to the Company's **President and CEO** and will perform the duties customarily associated with this position and such other duties as are assigned to you by the CEO. You will devote your full business time and attention to the business affairs of the Company, except for reasonable vacations and periods of illness or incapacity permitted by the Company's general employment policies. The employment relationship between you and the Company shall also be governed by the general employment policies and practices of the Company, including those relating to protection of confidential information and assignment of inventions, except that when the terms of this letter agreement differ from or are in conflict with the Company's general employment policies or practices, this letter agreement shall control.

**2. Compensation and Employee Benefits.**

**2.1 Base Salary.** Your base salary will be **three hundred thousand and thirty five dollars (\$335,000)** on an annualized basis, less payroll deductions and required withholdings, paid according to the Company's regular payroll schedule and procedures. Subject to the other terms of this letter agreement, your base salary may be modified by the Company in its sole discretion.

**2.2 Discretionary Bonus.** You will be eligible to participate in the Company's annual bonus program pursuant to the terms of that program and you will be eligible to receive a bonus of up to **thirty five percent (35%)** of your annual base salary. Your actual bonus, if any, will be determined by the Company's Board of Directors, or the Compensation subcommittee thereof (the "Board"), in its sole discretion, based upon its evaluation of your performance, the Company's performance, and any other considerations it deems relevant. You must be employed through the bonus payment date to be eligible for, and to earn, any such bonus. Any bonus payment will be subject to payroll deductions and required withholdings.

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**2.3 Employee Benefits.** You will be entitled to all employee benefits, including vacation accrual of **twenty (20) days** per year and health and disability benefits for which you are eligible under the terms and conditions of the standard Company benefit plans which may be in effect from time to time and provided by the Company to its senior executive-level employees generally. Currently, such benefits include twelve paid holidays, as well as paid sick leave of up to ten days per year. Notwithstanding the foregoing, the Company reserves the right to adopt, amend or discontinue any employee benefit plan or policy, including changes required by applicable law.

**2.4 Stock Options.** Subject to the approval of the Board pursuant to the Company's equity incentive plan you will be granted a stock option of **(two hundred thousand (200,000))** shares of Company common stock at a per share exercise price equal to the per share fair market value of the Company's common stock on the date of grant as determined by the Board. Option grants are made at regular Board meetings held approximately once each calendar quarter. Your option grant will be considered at the first regular Board meeting following the execution of this Agreement. The term of such stock option will be ten (10) years, subject to earlier expiration in the event of the termination of your service with the Company. Such stock option will vest as determined by the Board, as long as you remain in continuous service with the Company and a portion of the shares subject to your outstanding option may vest on an accelerated basis pursuant to Sections 7 or 8. Except as provided herein, such stock option will be subject to the provisions of the equity incentive plan of the Company under which the options are granted and the applicable form of stock option agreement thereunder (the "Plan Documents").

**2.5 Background Check** Employment at the Company is conditioned upon passing a background check. Waivers necessary to authorize this process will be sent to you by email from our authorized vendor. Please sign and return the waiver forms electronically according to the instructions you will receive from them.

### **3. Other Activities During Employment.**

**3.1 Activities.** Except with the prior written consent of the CEO, you will not, during your employment with the Company, undertake or engage in any other employment, occupation or business enterprise, other than ones in which you are a passive investor. You may engage in civic and not-for-profit activities so long as such activities do not interfere with the performance of your job duties for the Company.

**3.2 Investments and Interests.** Except as permitted by the first sentence of Section 3.1 and by Section 3.3, during your employment you agree not to acquire, assume or participate in, directly or indirectly, any position, investment or interest known by you to be adverse or antagonistic to the Company, or its business or prospects, financial or otherwise.

**3.3 Noncompetition.** During the term of your employment by the Company, except on behalf of the Company, you will not directly or indirectly, whether as an officer, director, stockholder, partner, proprietor, associate, representative, consultant, or in any capacity whatsoever engage in, become financially interested in, be employed by or have any business connection with any other person, corporation, firm, partnership or other entity whatsoever that

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competes with the Company anywhere in the world, in any line of business engaged in (or planned to be engaged in) by the Company; *provided, however*, that anything above to the contrary notwithstanding, you may own, as a passive investor, securities of any entity, so long as your direct holdings in any one such corporation do not in the aggregate constitute more than one percent (1%) of the voting stock of such corporation.

**4. Company Policies; Confidential Information and Inventions Agreement.** You acknowledge your obligations under the Company's Employee Agreement on Confidential Information and Inventions, a copy of which is attached as Exhibit A. You further acknowledge your obligation to abide by the Company's rules, policies and procedures.

**5. Immigration.** The Immigration Reform and Control Act of 1986 requires that every person present proof to the Company of their identity and eligibility and/or authorization to accept employment with the Company. In order to comply with this law you must provide appropriate documentation to prove both your identity and legal eligibility to be employed at the Company.

**6. Your Representations and Warranties.**

**6.1 No Breach of Contract.** You represent and warrant that the execution and delivery of this letter agreement by you and the performance of your obligations hereunder will not conflict with or breach any agreement, order or decree to which you are a party or by which you are bound. You warrant that you are subject to no employment agreement or restrictive covenant preventing full performance of your duties under this letter agreement.

**6.2 No Conflict of Interest.** You warrant that you are not, to the best of your knowledge and belief, involved in any situation that might create, or appear to create, a conflict of interest with your loyalty to or duties for the Company.

**6.3 Notification of Materials or Documents from Other Employers.** You further warrant that you have not brought and will not bring to the Company or use in the performance of your responsibilities at the Company any materials or documents of a former employer that are not generally available to the public, unless you have obtained express written authorization from the former employer for their possession and use.

**6.4 Notification of Other Post-Employment Obligations.** You also understand that, as part of your employment with the Company, you are not to breach any obligation of confidentiality that you have to former employers, and you agree to honor all such obligations to former employers during your employment with the Company.

**7. Termination of Employment.**

**7.1 At-Will Employment Relationship.** Your employment with the Company shall be at-will. Either you or the Company may terminate the employment relationship at any time, with or without Cause, and with or without advance notice.

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## 7.2 Termination for Cause.

(a) If the Company terminates your employment at any time for Cause (as defined below), your salary shall cease on the date of termination and you shall not be entitled to severance pay, COBRA premium payments, pay in lieu of notice or any other such compensation other than payment of accrued salary and vacation and such other benefits as expressly required by applicable law or the terms of applicable benefit plans. The continued vesting of any stock options held by you shall cease on your employment termination date, and your right to exercise vested options shall be governed by the Plan Documents.

(b) **Definition of Cause.** For purposes of this agreement, “Cause” means the occurrence of any one or more of the following: (i) your conviction of, or plea of no contest, with respect to any felony or any crime involving fraud, dishonesty or moral turpitude; (ii) your participation in a fraud or act of dishonesty that results in material harm to the Company; (iii) your intentional material violation of any contract or agreement between you and the Company, including but not limited to this letter agreement or your Employee Agreement on Confidential Information and Inventions, or your violation of any statutory duty that you owe to the Company, but only if you do not correct any such violation within thirty (30) days after written notice thereof has been provided to you (if such notice is reasonably practicable); or (iv) your gross negligence or willful neglect of your job duties, as determined by the Board in good faith, but only if you do not correct such violation within thirty (30) days after written notice thereof has been provided to you (if such notice is reasonably practicable).

## 7.3 Severance Benefits For Termination Without Cause or Resignation for Good Reason.

(a) If the Company terminates your employment without Cause and other than as a result of your death or disability, or if you resign your employment for Good Reason (defined below), and provided such termination constitutes a “separation from service” (as defined under Treasury Regulation Section 1.409A-1(h), without regard to any alternative definition thereunder, a “Separation from Service”), you will be eligible to receive the severance benefits described in this Section 7.3.

(b) You will be eligible to receive, subject to payroll deductions and required withholdings and net of any amounts earned by you pursuant to any employment or consulting arrangements obtained by you following such termination (other than the activities described in the last sentence of Section 3.1), continuation for nine (9) months of the greater of: (i) your base salary in effect as of such termination date; or (ii) your base salary as set forth in Section 2.1. In addition, you will be eligible to receive your potential annual discretionary bonus amount set forth in Section 2.2, determined as if all performance targets established by the Board have been satisfied, pro-rated for the number of months elapsed in the year in which your employment terminates, but in no event will you receive a bonus pro-rated for greater than nine (9) months. You agree to notify the Company promptly of any amount earned by you from other employment or a consulting engagement while you are receiving severance payments under this letter agreement.

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(c) If you timely elect and remain eligible for continued coverage of your group health insurance under COBRA, the Company will pay your premiums for COBRA coverage for up to nine (9) months following your Separation from Service, provided that such payments shall cease if you obtain full-time employment, or cease to be eligible for COBRA, within such period. You agree to notify the Company promptly if you obtain full-time employment while the Company is paying your COBRA premiums under this letter agreement. On the 60<sup>th</sup> day following your Separation from Service, the Company will make the first payment under this clause equal to the aggregate amount of payments that the Company would have paid through such date had such payments commenced on the Separation from Service through such 60<sup>th</sup> day, with the balance of the payments paid thereafter on the schedule described above. If you become eligible for coverage under another employer's group health plan or otherwise cease to be eligible for COBRA during the period provided in this clause, you must immediately notify the Company of such event, and all payments and obligations under this clause will cease.

(d) You will receive acceleration of vesting of all of your then-outstanding and then-unvested stock option grants as of the date of termination as to the number of shares that would have vested in their vesting schedules as if you had been in service for an additional nine (9) months as of your Separation from Service.

(e) Your receipt of any severance benefits under this Section 7.3 is contingent upon your signing and making effective within sixty (60) days after the termination date, a full, general release of all claims against the Company in a form acceptable to the Company containing the language set forth in the Release Agreement attached as Exhibit B on or after the termination date. The base salary and bonus severance will be paid in substantially equal installments over the twelve (12) month period following your Separation in Service according to the Company's payroll procedures; provided, however, that no payments will be made to you prior to the 60<sup>th</sup> day following your Separation from Service. On the first payroll pay day following the 60<sup>th</sup> day after your Separation from Service, the Company will pay you the cash severance amounts you would have received on or prior to such date in a lump sum in compliance with Code Section 409A and the effectiveness of the release, with the balance of the cash payments being made as originally scheduled.

(f) **Definition of Good Reason.** For purposes of this letter agreement, "Good Reason" shall mean any one of the following events that occurs without your consent: (i) the material reduction in your responsibilities, authorities or functions as an employee of the Company (but not merely a change in reporting relationships); (ii) a material reduction in your level of compensation (including base salary, fringe benefits and target bonus under any corporate-performance based bonus or incentive programs); (iii) a material change of your place of employment that results in an increase to your round trip commute of more than fifty (50) miles; or (iv) the Company's material breach of this letter agreement. Notwithstanding the foregoing, you must provide written notice to the General Counsel of the Company within thirty (30) days after the date on which such event first occurs, and allow the Company thirty (30) days thereafter (the "Cure Period") during which the Company may attempt to rescind or correct the matter giving rise to Good Reason. If the Company does not rescind or correct the conduct giving rise to Good Reason to your reasonable satisfaction by the expiration of the Cure Period, your employment will then terminate with Good Reason as of such thirtieth day.

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**7.4 Voluntary or Mutual Termination.** You may voluntarily terminate your employment with the Company at any time without Good Reason. If you terminate without Good Reason or if your employment terminates as a result of your death or disability, your salary shall cease on the date of termination and you shall not be entitled to severance, pay in lieu of notice or any other such compensation other than payment of accrued salary and vacation and such other benefits as expressly required in such event by applicable law or the terms of applicable benefit plans. The continued vesting of any compensatory equity awards held by you shall cease on the termination date, and your right to exercise vested awards (or be issued shares under such vested awards) shall be governed by the terms of the Company's applicable compensatory equity plans and the corresponding award agreements.

**7.5 Application of Section 409A.** If the Company (or, if applicable, the successor entity thereto) determines that the severance payments and benefits provided for in this letter agreement (the "Agreement Payments") constitute "deferred compensation" under Section 409A of the Internal Revenue Code (together, with any state law of similar effect, "Section 409A") and you are a "specified employee" of the Company or any successor entity thereto, as such term is defined in Section 409A(a)(2)(B)(i) (a "Specified Employee"), then, solely to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the timing of the Agreement Payments shall be delayed as follows: on the earliest to occur of (i) the date that is six months and one day after the termination date or (ii) the date of your death (such earliest date, the "Delayed Initial Payment Date"), the Company (or the successor entity thereto, as applicable) shall (A) pay to you a lump sum amount equal to the sum of the Agreement Payments that you would otherwise have received through the Delayed Initial Payment Date if the commencement of the payment of the Agreement Payments had not been delayed pursuant to this Section 7.5 and (B) commence paying the balance of the Agreement Payments in accordance with the applicable payment schedules set forth in this letter agreement. For the avoidance of doubt, it is intended that (1) each installment of the Agreement Payments provided in this letter agreement is a separate "payment" for purposes of Section 409A, (2) all Agreement Payments satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under of Treasury Regulation 1.409A-1(b)(4) and 1.409A-1(b)(9)(iii), and (3) the Agreement Payments consisting of COBRA premiums also satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under Treasury Regulation 1.409A-1(b)(9)(v).

## **8. Change in Control.**

### **8.1 Definitions.**

(a) "Change in Control" shall mean an Ownership Change Event (as defined below) or a series of related Ownership Change Events (collectively, a "Transaction") wherein the stockholders of the Company immediately before the Transaction do not retain direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding securities of the Company or, in the case of a Transaction described in Section 8.1(b)(iii), the corporation or other business entity to which the assets of the Company were transferred (the "Transferee"), as the case may be. For purposes of the preceding sentence, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities that own the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities.

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**(b)** An “Ownership Change Event” shall be deemed to have occurred if any of the following occurs with respect to the Company: (i) the direct or indirect sale or exchange in a single or series of related transactions by the stockholders of the Company of more than fifty percent (50%) of the voting stock of the Company; (ii) a merger or consolidation in which the Company is a party; or (iii) the sale, exchange or transfer of all or substantially all of the assets of the Company.

**8.2 Severance.** On the consummation of any Change in Control, any remaining unvested portion of your stock options will be accelerated such that fifty percent (50%) of your outstanding and then-unvested options become fully vested and exercisable as of the date of the Change in Control (the “Acceleration”). If on or within twelve (12) months following a Change in Control, the Company or a successor corporation terminates your employment without Cause and other as a result of your death or disability, or you resign for Good Reason (a “Change in Control Termination”), and provided that such termination constitutes a Separation from Service, then subject to your obligations below, and in lieu of any severance benefits set forth in Section 7.3 herein, you will be entitled to receive (collectively, the “Change in Control Severance Benefits”):

**(a)** Subject to payroll deductions and required withholdings and net of any amounts earned by you pursuant to any employment or consulting arrangements obtained by you following such termination (other than the activities described in the last sentence of Section 3.1), continuation for (12) months of the greater of: (i) your base salary in effect as of such termination date; or (ii) your base salary as set forth in Section 2.1. In addition, you will be eligible to receive 100% of your potential annual discretionary bonus amount set forth in Section 2.2, determined as if all performance targets established by the Board have been satisfied.

**(b)** You will receive acceleration of vesting of all of your then-outstanding and then-unvested stock option grants as of the date of termination such that the remaining fifty percent (50%) of your unvested options following the Acceleration become fully vested and exercisable.

**(c)** If you timely elect and remain eligible for continued coverage of your group health insurance under COBRA, the Company will pay your premiums for COBRA coverage for up to twelve (12) months following your Separation from Service, provided that such payments shall cease if you obtain full-time employment, or cease to be eligible for COBRA, within such period. You agree to notify the Company promptly if you obtain full-time employment while the Company is paying your COBRA premiums under this letter agreement. On the 60<sup>th</sup> day following your Separation from Service, the Company will make the first payment under this clause equal to the aggregate amount of payments that the Company would have paid through such date had such payments commenced on the Separation from Service through such 60<sup>th</sup> day, with the balance of the payments paid thereafter on the schedule described above. If you become eligible for coverage under another employer’s group health plan or otherwise cease to be eligible for COBRA during the period provided in this clause, you must immediately notify the Company of such event, and all payments and obligations under this clause will cease.

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(d) As a precondition of receiving the Change in Control Severance Benefits, you must first sign and make effective on or after the termination date a full, general release of claims against the Company in a form acceptable to the Company containing the language set forth in the Release Agreement attached as Exhibit B.

### 8.3 Parachute Payments.

(a) If any payment or distribution in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) to you or for your benefit, whether under this letter agreement or otherwise (a "Payment"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code") (together with any interest or penalties imposed with respect to such excise tax, the "Excise Tax"), then you will be entitled to receive from the Company an additional payment (the "Gross-Up Payment") in an amount equal to (i) all Excise Taxes (including any interest or penalties imposed with respect to such taxes) on the Payment (the "First Reimbursement Payment"), (ii) all federal, state and local income taxes and employment taxes on the First Reimbursement Payment, and (iii) all Excise Taxes (including any interest or penalties imposed with respect to such taxes) on the First Reimbursement Payment.

(b) All determinations required to be made under this Section 8.3 including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by the nationally recognized certified public tax accounting firm used by the Company or, if such firm declines to serve, such other nationally recognized certified public tax accounting firm as you may designate (the "Accounting Firm"). The Accounting Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good-faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Accounting Firm shall provide its calculations, together with detailed supporting documentation, to the Company and you within thirty (30) calendar days after the date on which your right to a Payment is triggered (if requested at that time by the Company or you) and/or at such other times as requested by the Company or you. If the Accounting Firm determines that no Excise Tax is payable with respect to a Payment, it shall furnish the Company and you with an opinion reasonably acceptable to you that no Excise Tax will be imposed with respect to such Payment. If the Accounting Firm determines that an Excise Tax is payable with respect to a Payment, it shall furnish to the Company and you an opinion reasonably acceptable to you of the amount of Excise Tax payable with respect to the Payments and the amount of Gross-Up Payment due to you. The Company will pay the Gross-Up Payment to you within thirty (30) days of the date the Company receives the Accounting Firm's opinion, but in no event later than the end of your tax year following your tax year in which you pay the Excise Tax. The Company shall bear all reasonable expenses with respect to the determinations by the Accounting Firm required to be made hereunder. Any determination by the Accounting Firm shall be binding upon the Company and you.



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## 9. General Provisions.

**9.1 Dispute Resolution.** To aid in the rapid and economical resolution of any disputes which may arise under this Agreement, the parties agree that any and all claims, disputes or controversies of any nature whatsoever arising from or regarding the interpretation, performance, negotiation, execution, enforcement or breach of this Agreement, or your relationship with the Company, including statutory claims, shall be resolved by confidential, final and binding arbitration conducted before a single arbitrator with Judicial Arbitration and Mediation Services, Inc. ("JAMS") in San Francisco, California, in accordance with JAMS' then-applicable employment arbitration rules (which may be reviewed at [www.jamsadr.com/rules-employment-arbitration/](http://www.jamsadr.com/rules-employment-arbitration/)). **The parties acknowledge that by agreeing to this arbitration procedure, they waive the right to resolve any such dispute through a trial by jury, judge or administrative proceeding.** The parties will have the right to be represented by legal counsel at any arbitration proceeding. The arbitrator shall: (i) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be available under applicable law in a court proceeding; and (ii) issue a written statement signed by the arbitrator regarding the disposition of each claim and the relief, if any, awarded as to each claim, the reasons for the award, and the arbitrator's essential findings and conclusions on which the award is based. The Company shall bear all JAMS' arbitration fees and administrative costs in excess of the amount of administrative fees (e.g., filing fees) that you would otherwise be required to pay if the dispute were decided in a court of law. Nothing in this Agreement shall prevent any party from obtaining injunctive or other provisional relief in court to prevent irreparable harm pending the conclusion of any arbitration proceeding.

**9.2 Severability.** Whenever possible, each provision of this letter agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but such invalid, illegal or unenforceable provision will be reformed, construed and enforced in such jurisdiction so as to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

**9.3 Notices.** Any notices provided hereunder must be in writing and shall be deemed effective upon the earlier of personal delivery (including personal delivery by fax) or the next day after sending by overnight courier, to the Company at its primary office location and to you at your address as listed on the Company payroll.

**9.4 Waiver.** If either party should waive any breach of any provisions of this letter agreement, you or the Company shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of this letter agreement.

**9.5 Entire Agreement.** This letter agreement, together with its exhibits, constitutes the entire and exclusive agreement between you and the Company, and it supersedes any prior agreement, promise, representation, or statement, written or otherwise, between you and the Company with regard to this subject matter. It is entered into without reliance on any promise, representation, statement or agreement other than those expressly contained or incorporated herein, and it cannot be modified or amended except in a writing signed by you and a duly authorized officer of the Company.

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**9.6 Counterparts.** This letter agreement may be executed in separate counterparts, any one of which need not contain signatures of more than one party, but all of which taken together will constitute one and the same letter agreement.

**9.7 Headings.** The headings of the sections hereof are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

**9.8 Successors and Assigns.** This letter agreement is intended to bind and inure to the benefit of and be enforceable by you, the Company and your and its respective successors, assigns, heirs, executors and administrators, except that you may not assign any of your duties hereunder and you may not assign any of your rights hereunder without the written consent of the Company.

**9.9 Governing Law.** All questions concerning the construction, validity and interpretation of this letter agreement will be governed by the law of the State of California as applied to contracts made and to be performed entirely within California.

**9.10 Attorneys' Fees.** If either party hereto brings any action to enforce your or its rights hereunder, the prevailing party in such action shall be entitled to be paid by the other party such prevailing party's reasonable attorneys' fees and costs incurred in such action.

Enclosed is your Employee Agreement on Confidential Information and Inventions, which you should read carefully.

To indicate your acceptance of the Company's offer, please sign this letter agreement in the space provided below and return it to me along with the signed Employee Agreement on Confidential Information and Inventions. This offer shall expire on April 20, 2015 if not accepted prior to such date. If you have any questions regarding this letter agreement, feel free to contact me.

Sincerely,

**CYMABAY THERAPEUTICS**

By: /s/ Sujal Shah

**Sujal Shah**

Interim President and Chief Executive Officer

**Accepted and agreed:**

/s/ Klara Dickinson

**Klara Dickinson**

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**EXHIBIT A** - Employee Agreement on Confidential Information and Inventions

**EXHIBIT B** - Release Agreement

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**EXHIBIT A**

**CymaBay Therapeutics, Inc.**  
7999 Gateway Blvd., Suite 130  
Newark, CA 94560-1144  
Phone 510 293-8800 Fax 510 293-9090

June 1, 2017

**EMPLOYEE AGREEMENT ON CONFIDENTIAL  
INFORMATION AND INVENTIONS**

THIS AGREEMENT is between CymaBay Therapeutics, Inc. a Delaware Corporation (“the Company”), and Klara Dickinson, (the “Employee”).

**PURPOSE OF AGREEMENT**

I want to be employed by the Company, and the Company wants to employ me, provided that, in so doing, it can protect its trade secrets and inventions, ideas, information, business, and good will.

In consideration of this purpose, and the mutual promises in this Agreement, I agree with the Company as follows:

1. **Term**

(A) My employment with the Company is an at-will relationship that may be terminated by either the Company or me with or without cause for any reason whatsoever at any time upon notice to the other party.

(b) If my employment is terminated for any reason, I will be entitled only to the compensation earned by me as of the date of termination.

2. **Confidential Information.** I will hold in confidence and use only for the benefit of the Company during the term of my employment and for five years after the termination of my employment all Confidential Information of the Company, its Affiliates, and all Confidential Information of companies or persons other than the Company given to the Company under an agreement prohibiting its disclosure. “Confidential Information” refers to valuable technical or business information that is not known by the public. By way of example, Confidential Information may include information relating to: inventions or products, including unannounced products; research and development activities; requirements and specifications of specific customers and potential customers; nonpublic financial information; and quotations or proposals given to customers.

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These restrictions on disclosure do not apply if the information is or becomes publicly known through no wrongful act on my part or the information is explicitly approved for release under such circumstances by an officer of the Company.

3. Disclosure and Assignment of Inventions. I hereby assign to the Company my entire right, title and interest in all inventions. "Inventions" refer to (a) all technical or business innovations, whether or not patentable or copyrightable, made by me during the term of my employment; and (b) all technical or business innovations, whether or not patentable, based upon the Company's Confidential Information and made by me after leaving the Company's employ. I will keep adequate written records of all inventions made by me, such as notebooks, sketches, program listings and the like, which are the property of the Company. Notwithstanding the foregoing, I am not required to assign to the Company, although I must disclose, any inventions: (a) for which no equipment, supplies, facilities or Confidential Information of the Company were used and which was developed entirely on my own time; (b) which at the time of conception or reduction to practice did not relate directly to the business of the Company or the Company's actual or demonstrably anticipated research or development and (c) which did not result from any work I performed for the Company. The disclosure of such inventions must be made so that the parties can make a determination whether such inventions do in fact qualify for exclusion from assignment to the Company. The Company will keep confidential any such information I disclose. I will take all steps necessary to assist the Company in securing any patents, copyrights or other protection for inventions which I am required to assign to the Company as provided above. If I am unable or unwilling, whether during my employment or after termination, to sign any papers needed to apply for or pursue any patent or copyright registrations for inventions, I agree that the Company is my attorney-in-fact for that purpose and can sign such papers as my agent and take any other actions necessary to pursue these registrations.

4. List of Inventions I Own. I have attached as Exhibit A a list of inventions I own, which is a complete list of all technical or business innovations I own either alone or jointly with others on the date of this Agreement. I agree that I will not incorporate any of these prior inventions into products being developed for the Company without the prior knowledge and written consent of the Company. Should the Company wish to use any of my inventions in its business, the Company will negotiate with me for a purchase of or license to use such invention on mutually agreeable terms. If no such list is attached, or if no such inventions are listed thereon, I represent that I do not own any inventions at the time of signing this Agreement.

5. Tangible Materials. All tangible materials that incorporate Confidential Information are the Company's property, and I will give all of these materials and any other documents and materials which are the property of the Company, including but not limited all notes of any research or other work which I have performed for the Company and all biological materials created, used or held by me in the course of my work for the Company, back to the Company at the termination of my employment or earlier upon the Company's request.

6. Solicitation of Employees. I understand that information about the Company's employees, such as their skills, performance ratings, and salary histories, constitutes Confidential Information owned by the Company. I agree that, for a period of twelve (12) months after termination of my employment for any reason, I will not, either directly or indirectly, solicit,

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induce, recruit or encourage any of the Company's employees to leave their employment, or take away such employees, or attempt to do any of these things, whether on my own behalf or on behalf of any other person, since to do so would necessarily involve using Confidential Information.

8. Termination. In the event of termination of my employment for any reason, I agree that, as requested by the Company, I will sign and deliver a "Termination Certification" in the form attached to this Agreement as Exhibit B. I also agree that the Company may give notice to my new employer of my duties under this Agreement.

9. Duty of Loyalty. During my employment with the Company, I will not engage in any business activity (either for my own profit or for anyone else) that competes with the Company's business.

10. Duties to Third Parties. I represent that, to the best of my knowledge, compliance with the terms of this Agreement will not violate any duty that I may have to anyone other than the Company (such as a former employer) to keep such person's proprietary information in confidence or to refrain from using that person's patents or copyrights. If at any time during my employment with the Company, I am asked by the Company to perform work which I believe may cause me to violate a duty I have to someone other than the Company, I will immediately inform an officer of the Company so that an assessment of the situation may be made. I also agree that I will not, during my employment with the Company, bring onto the Company's premises, use or disclose to the Company any proprietary information or trade secrets of any former employer or any other person without that person's consent.

11. Miscellaneous. This is the only agreement between the Company and myself about confidential information and the ownership of inventions, and may not be modified, amended or terminated, in whole or in part, except in a writing signed by me and by an officer of the Company. Any later change in my title, compensation or duties will not affect this Agreement. This Agreement will survive termination of my employment for any reason, and will continue for the benefit of and will be binding upon the successors, assigns, heirs and legal representatives of the Company and myself. Any waiver by the Company of a breach of any of the obligations of this Agreement by me will not operate or be construed as a waiver of any other or subsequent breach by me. In the event any provision of this Agreement is held to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way. The prevailing party in any legal action brought by one party against the other and arising out of this Agreement shall be entitled, in addition

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to any other rights and remedies it may have, to reimburse for its expenses, including court costs and reasonable attorney's fees. This Agreement will be governed by the laws of the State of California governing contracts between residents to be performed in the State of California.

CymaBay Therapeutics, Inc.

Employee

By: /s/ Sujal Shah  
Sujal Shah  
Interim President and Chief Executive Officer

By: /s/ Klara Dickinson  
Klara Dickinson

June 5, 2017

Date

June 4, 2017

Date

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**EXHIBIT A**

**List of Inventions I Own (see para. 4.)**

16.



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**EXHIBIT B**

**Termination Certificate**

This is to certify that I do not have in my possession, nor have I failed to return, any devices, records, data, notes, reports, proposals, lists, equipment, computer programs or listings, other documents or property or any reproductions of any of these materials belonging to CymaBay Therapeutics, Inc., a Delaware corporation, its subsidiaries, successors or assigns (collectively, the "Company").

I further certify that I have complied with all the terms of the Company's Employee Confidential Information and Inventions Agreement signed by me, including the reporting of any inventions and original works of authorship (as defined in that agreement) conceived or made buy me (solely or jointly with others) covered by that agreement.

I further agree that, in compliance with the Employee Confidential Information and Inventions Agreement, I will preserve as confidential all trade secrets, confidential knowledge, data or other proprietary information relating to inventions or products, including but not limited to unannounced products, research and development activities, requirements and specifications of specific customers and potential customers, nonpublic financial information, and quotations or proposals given to customers, including any information disclosed to the Company in confidence by any third party.

I further agree that for twelve (12) months from this date, I will not solicit, induce, recruit or encourage any of the Company's employees to leave their employment.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

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**EXHIBIT B**

**RELEASE AGREEMENT**

**(To be signed on or after the Separation Date)**

I understand that my employment with CymaBay Therapeutics (the “Company”) terminated effective \_\_\_\_\_, (the “Separation Date”). The Company has agreed that if I choose to sign this Release Agreement (“Release”), the Company will provide certain severance benefits (minus the required withholdings and deductions) pursuant to the terms of the employment agreement dated \_\_\_\_\_ (as amended, the “Letter Agreement”). I understand that I am not entitled to such severance benefits unless I sign this Release, and it becomes fully effective.

I understand that this Release, together with the Letter Agreement, constitutes the complete, final and exclusive embodiment of the entire agreement between the Company and me with regard to the subject matter hereof. I am not relying on any promise or representation by the Company that is not expressly stated therein.

I hereby confirm my obligations under my Employee Agreement on Confidential Information and Inventions with the Company.

I hereby represent that I have been paid all compensation owed and for all hours worked, have received all the leave and leave benefits and protections for which I am eligible, pursuant to the Family and Medical Leave Act or otherwise, and have not suffered any on-the-job injury for which I have not already filed a claim.

In exchange for the consideration provided to me by this Release that I am not otherwise entitled to receive, I hereby generally and completely release Company and its current and former directors, officers, employees, shareholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to my signing this Release. This general release includes, but is not limited to: (a) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (b) all claims related to my compensation or benefits from the Company, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (c) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (d) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (e) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys’ fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) (“*ADEA*”), and the California Fair Employment and Housing Act (as amended).

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Nothing in this Release shall prevent me from filing, cooperating with, or participating in any proceeding before the Equal Employment Opportunity Commission, the Department of Labor, or the California Department of Fair Employment and Housing, except that I hereby acknowledge and agree that I shall not recover any monetary benefits in connection with any such proceeding.

I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA ("**ADEA Waiver**"). I also acknowledge that the consideration given for the ADEA Waiver is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (a) my ADEA Waiver does not apply to any rights or claims that arise after the date I sign this Release; (b) I should consult with an attorney prior to signing this Release; (c) I have twenty-one (21) days to consider this Release (although I may choose to voluntarily sign it sooner); (d) I have seven (7) days following the date I sign this Release to revoke the ADEA Waiver; and (e) the ADEA Waiver will not be effective until the date upon which the revocation period has expired unexercised, which will be the eighth day after I sign this Release.

I acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: "**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**" I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to my release of any claims hereunder.

I acknowledge that to become effective, I must sign and return this Release to the Company so that it is received not later than twenty-one (21) days following the date it is provided to me.

**I accept and agree to the terms and conditions stated above:**

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Date

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Klara Dickinson



April 27, 2017

Dear Dan:

CymaBay Therapeutics (the "Company") is pleased to offer you employment as Vice President of Finance on the following terms:

**1. Position, Duties and Responsibilities.** Subject to the terms set forth herein, the Company agrees to employ you in the position of as Vice President of Finance and you hereby accept such employment effective immediately. You will report to the Company's President and Chief Executive Officer ("CEO") and will perform the duties customarily associated with this position and such other duties as are assigned to you by the CEO. You will devote your full business time and attention to the business affairs of the Company, except for reasonable vacations and periods of illness or incapacity permitted by the Company's general employment policies. The employment relationship between you and the Company shall also be governed by the general employment policies and practices of the Company, including those relating to protection of confidential information and assignment of inventions, except that when the terms of this letter agreement differ from or are in conflict with the Company's general employment policies or practices, this letter agreement shall control.

**2. Compensation and Employee Benefits.**

**2.1 Base Salary.** Your base salary will be two hundred and fifty thousand dollars (\$250,000) on an annualized basis, less payroll deductions and required withholdings, paid according to the Company's regular payroll schedule and procedures. Subject to the other terms of this letter agreement, your base salary may be modified by the Company in its sole discretion. Your salary will be effective as of April 27, 2017.

**2.2 Discretionary Bonus.** You will be eligible to participate in the Company's annual bonus program pursuant to the terms of that program and you will be eligible to receive a bonus of up to thirty percent (30%) of your annual base salary. Your actual bonus, if any, will be determined by the Company's Board of Directors, or the Compensation subcommittee thereof (the "Board"), in its sole discretion, based upon its evaluation of your performance, the Company's performance, and any other considerations it deems relevant. You must be employed through the bonus payment date to be eligible for, and to earn, any such bonus. Any bonus payment will be subject to payroll deductions and required withholdings.

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**2.3 Employee Benefits.** You will be entitled to all employee benefits, including vacation accrual of twenty (20) days per year and health and disability benefits for which you are eligible under the terms and conditions of the standard Company benefit plans which may be in effect from time to time and provided by the Company to its senior executive-level employees generally. Currently, such benefits include twelve paid holidays, as well as paid sick leave of up to ten days per year. Notwithstanding the foregoing, the Company reserves the right to adopt, amend or discontinue any employee benefit plan or policy, including changes required by applicable law.

**2.4 Stock Options.** Subject to the approval of the Board pursuant to the Company's equity incentive plan you may from time to time be granted stock options of shares of Company common stock at a per share exercise price equal to the per share fair market value of the Company's common stock on the date of grant as determined by the Board. Option grants are made at regular Board meetings held approximately once each calendar quarter. Such stock options will vest as determined by the Board, as long as you remain in continuous service with the Company and a portion of the shares subject to your outstanding options may vest on an accelerated basis pursuant to Sections 7 or 8. Except as provided herein, such stock option will be subject to the provisions of the equity incentive plan of the Company under which the options are granted and the applicable form of stock option agreement there under (the "Plan Documents").

### **3. Other Activities During Employment.**

**3.1 Activities.** Except with the prior written consent of the CEO, you will not, during your employment with the Company, undertake or engage in any other employment, occupation or business enterprise, other than ones in which you are a passive investor. You may engage in civic and not-for-profit activities so long as such activities do not interfere with the performance of your job duties for the Company.

**3.2 Investments and Interests.** Except as permitted by the first sentence of Section 3.1 and by Section 3.3, during your employment you agree not to acquire, assume or participate in, directly or indirectly, any position, investment or interest known by you to be adverse or antagonistic to the Company, or its business or prospects, financial or otherwise.

**3.3 Noncompetition.** During the term of your employment by the Company, except on behalf of the Company, you will not directly or indirectly, whether as an officer, director, stockholder, partner, proprietor, associate, representative, consultant, or in any capacity whatsoever engage in, become financially interested in, be employed by or have any business connection with any other person, corporation, firm, partnership or other entity whatsoever that competes with the Company anywhere in the world, in any line of business engaged in (or planned to be engaged in) by the Company; *provided, however*, that anything above to the contrary notwithstanding, you may own, as a passive investor, securities of any entity, so long as your direct holdings in any one such corporation do not in the aggregate constitute more than one percent (1%) of the voting stock of such corporation.

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**4. Company Policies; Confidential Information and Inventions Agreement.** You acknowledge your obligations under the Company's Employee Agreement on Confidential Information and Inventions, a copy of which is attached as Exhibit A. You further acknowledge your obligation to abide by the Company's rules, policies and procedures.

**5. Immigration.** The Immigration Reform and Control Act of 1986 requires that every person present proof to the Company of their identity and eligibility and/or authorization to accept employment with the Company. In order to comply with this law you must provide appropriate documentation to prove both your identity and legal eligibility to be employed at the Company.

**6. Your Representations and Warranties.**

**6.1 No Breach of Contract.** You represent and warrant that the execution and delivery of this letter agreement by you and the performance of your obligations hereunder will not conflict with or breach any agreement, order or decree to which you are a party or by which you are bound. You warrant that you are subject to no employment agreement or restrictive covenant preventing full performance of your duties under this letter agreement.

**6.2 No Conflict of Interest.** You warrant that you are not, to the best of your knowledge and belief, involved in any situation that might create, or appear to create, a conflict of interest with your loyalty to or duties for the Company.

**6.3 Notification of Materials or Documents from Other Employers.** You further warrant that you have not brought and will not bring to the Company or use in the performance of your responsibilities at the Company any materials or documents of a former employer that are not generally available to the public, unless you have obtained express written authorization from the former employer for their possession and use.

**6.4 Notification of Other Post-Employment Obligations.** You also understand that, as part of your employment with the Company, you are not to breach any obligation of confidentiality that you have to former employers, and you agree to honor all such obligations to former employers during your employment with the Company.

**7. Termination of Employment.**

**7.1 At-Will Employment Relationship.** Your employment with the Company shall be at-will. Either you or the Company may terminate the employment relationship at any time, with or without Cause, and with or without advance notice.

**7.2 Termination for Cause.**

(a) If the Company terminates your employment at any time for Cause (as defined below), your salary shall cease on the date of termination and you shall not be entitled to severance pay, COBRA premium payments, pay in lieu of notice or any other such compensation other than payment of accrued salary and vacation and such other benefits as expressly required by applicable law or the terms of applicable benefit plans. The continued vesting of any stock options held by you shall cease on your employment termination date, and your right to exercise vested options shall be governed by the Plan Documents.

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**(b) Definition of Cause.** For purposes of this agreement, “Cause” means the occurrence of any one or more of the following: (i) your conviction of, or plea of no contest, with respect to any felony or any crime involving fraud, dishonesty or moral turpitude; (ii) your participation in a fraud or act of dishonesty that results in material harm to the Company; (iii) your intentional material violation of any contract or agreement between you and the Company, including but not limited to this letter agreement or your Employee Agreement on Confidential Information and Inventions, or your violation of any statutory duty that you owe to the Company, but only if you do not correct any such violation within thirty (30) days after written notice thereof has been provided to you (if such notice is reasonably practicable); or (iv) your gross negligence or willful neglect of your job duties, as determined by the Board in good faith, but only if you do not correct such violation within thirty (30) days after written notice thereof has been provided to you (if such notice is reasonably practicable).

### **7.3 Severance Benefits For Termination Without Cause or Resignation for Good Reason.**

**(a)** If the Company terminates your employment without Cause and other than as a result of your death or disability, or if you resign your employment for Good Reason (defined below), and provided such termination constitutes a “separation from service” (as defined under Treasury Regulation Section 1.409A-1(h), without regard to any alternative definition thereunder, a “Separation from Service”), you will be eligible to receive the severance benefits described in this Section 7.3.

**(b)** You will be eligible to receive, subject to payroll deductions and required withholdings and net of any amounts earned by you pursuant to any employment or consulting arrangements obtained by you following such termination (other than the activities described in the last sentence of Section 3.1), continuation for nine (9) months of the greater of: (i) your base salary in effect as of such termination date; or (ii) your base salary as set forth in Section 2.1. In addition, you will be eligible to receive your potential annual discretionary bonus amount set forth in Section 2.2, determined as if all performance targets established by the Board have been satisfied, pro-rated for the number of months elapsed in the year in which your employment terminates, but in no event will you receive a bonus pro-rated for greater than nine (9) months. You agree to notify the Company promptly of any amount earned by you from other employment or a consulting engagement while you are receiving severance payments under this letter agreement.

**(c)** If you timely elect and remain eligible for continued coverage of your group health insurance under COBRA, the Company will pay your premiums for COBRA coverage for up to nine (9) months following your Separation from Service, provided that such payments shall cease if you obtain full-time employment, or cease to be eligible for COBRA, within such period. You agree to notify the Company promptly if you obtain full-time employment while the Company is paying your COBRA premiums under this letter agreement. On the 60<sup>th</sup> day following your Separation from Service, the Company will make the first payment under this clause equal to the aggregate amount of payments that the Company would

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have paid through such date had such payments commenced on the Separation from Service through such 60<sup>th</sup> day, with the balance of the payments paid thereafter on the schedule described above. If you become eligible for coverage under another employer's group health plan or otherwise cease to be eligible for COBRA during the period provided in this clause, you must immediately notify the Company of such event, and all payments and obligations under this clause will cease.

(d) You will receive acceleration of vesting of all of your then-outstanding and then-unvested stock option grants as of the date of termination as to the number of shares that would have vested in their vesting schedules as if you had been in service for an additional nine (9) months as of your Separation from Service.

(e) Your receipt of any severance benefits under this Section 7.3 is contingent upon your signing and making effective within sixty (60) days after the termination date, a full, general release of all claims against the Company in a form acceptable to the Company containing the language set forth in the Release Agreement attached as Exhibit B on or after the termination date. The base salary and bonus severance will be paid in substantially equal installments over the nine (9) month period following your Separation in Service according to the Company's payroll procedures; provided, however, that no payments will be made to you prior to the 60th day following your Separation from Service. On the first payroll pay day following the 60th day after your Separation from Service, the Company will pay you the cash severance amounts you would have received on or prior to such date in a lump sum in compliance with Code Section 409A and the effectiveness of the release, with the balance of the cash payments being made as originally scheduled.

(f) **Definition of Good Reason.** For purposes of this letter agreement, "Good Reason" shall mean any one of the following events that occurs without your consent: (i) the material reduction in your responsibilities, authorities or functions as an employee of the Company (but not merely a change in reporting relationships); (ii) a material reduction in your level of compensation (including base salary, fringe benefits and target bonus under any corporate-performance based bonus or incentive programs); (iii) a material change of your place of employment that results in an increase to your round trip commute of more than fifty (50) miles; or (iv) the Company's material breach of this letter agreement. Notwithstanding the foregoing, you must provide written notice to the Chief Financial Officer of the Company within thirty (30) days after the date on which such event first occurs, and allow the Company thirty (30) days thereafter (the "Cure Period") during which the Company may attempt to rescind or correct the matter giving rise to Good Reason. If the Company does not rescind or correct the conduct giving rise to Good Reason to your reasonable satisfaction by the expiration of the Cure Period, your employment will then terminate with Good Reason as of such thirtieth day.

**7.4 Voluntary or Mutual Termination.** You may voluntarily terminate your employment with the Company at any time without Good Reason. If you terminate without Good Reason or if your employment terminates as a result of your death or disability, your salary shall cease on the date of termination and you shall not be entitled to severance, pay in lieu of notice or any other such compensation other than payment of accrued salary and vacation and such other benefits as expressly required in such event by applicable law or the terms of applicable benefit plans. The continued vesting of any compensatory equity awards held by you



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shall cease on the termination date, and your right to exercise vested awards (or be issued shares under such vested awards) shall be governed by the terms of the Company's applicable compensatory equity plans and the corresponding award agreements.

**7.5 Application of Section 409A.** If the Company (or, if applicable, the successor entity thereto) determines that the severance payments and benefits provided for in this letter agreement (the "Agreement Payments") constitute "deferred compensation" under Section 409A of the Internal Revenue Code (together, with any state law of similar effect, "Section 409A") and you are a "specified employee" of the Company or any successor entity thereto, as such term is defined in Section 409A(a)(2)(B)(i) (a "Specified Employee"), then, solely to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the timing of the Agreement Payments shall be delayed as follows: on the earliest to occur of (i) the date that is six months and one day after the termination date or (ii) the date of your death (such earliest date, the "Delayed Initial Payment Date"), the Company (or the successor entity thereto, as applicable) shall (A) pay to you a lump sum amount equal to the sum of the Agreement Payments that you would otherwise have received through the Delayed Initial Payment Date if the commencement of the payment of the Agreement Payments had not been delayed pursuant to this Section 7.5 and (B) commence paying the balance of the Agreement Payments in accordance with the applicable payment schedules set forth in this letter agreement. For the avoidance of doubt, it is intended that (1) each installment of the Agreement Payments provided in this letter agreement is a separate "payment" for purposes of Section 409A, (2) all Agreement Payments satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under of Treasury Regulation 1.409A-1(b)(4) and 1.409A-1(b)(9)(iii), and (3) the Agreement Payments consisting of COBRA premiums also satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under Treasury Regulation 1.409A-1(b)(9)(v).

## **8. Change in Control.**

### **8.1 Definitions.**

**(a)** "Change in Control" shall mean an Ownership Change Event (as defined below) or a series of related Ownership Change Events (collectively, a "Transaction") wherein the stockholders of the Company immediately before the Transaction do not retain direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding securities of the Company or, in the case of a Transaction described in Section 8.1(b)(iii), the corporation or other business entity to which the assets of the Company were transferred (the "Transferee"), as the case may be. For purposes of the preceding sentence, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities that own the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities.

**(b)** An "Ownership Change Event" shall be deemed to have occurred if any of the following occurs with respect to the Company: (i) the direct or indirect sale or exchange in a single or series of related transactions by the stockholders of the Company of more than fifty percent (50%) of the voting stock of the Company; (ii) a merger or consolidation in which the Company is a party; or (iii) the sale, exchange or transfer of all or substantially all of the assets of the Company.

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**8.2 Severance.** On the consummation of any Change in Control (i) any remaining unvested portion of your stock options will be accelerated such that fifty percent (50%) of your outstanding and then-unvested options become fully vested and exercisable as of the date of the Change in Control (the “Acceleration”) and (ii) 100% of the shares subject to the Incentive Award shall accelerate and be fully exercisable immediately prior to the consummation of any Change of Control. If on or within twelve (12) months following a Change in Control, the Company or a successor corporation terminates your employment without Cause and other as a result of your death or disability, or you resign for Good Reason (a “Change in Control Termination”), and provided that such termination constitutes a Separation from Service, then subject to your obligations below, and in lieu of any severance benefits set forth in Section 7.3 herein, you will be entitled to receive (collectively, the “Change in Control Severance Benefits”):

(a) Subject to payroll deductions and required withholdings and net of any amounts earned by you pursuant to any employment or consulting arrangements obtained by you following such termination (other than the activities described in the last sentence of Section 3.1), continuation for twelve (12) months of the greater of: (i) your base salary in effect as of such termination date; or (ii) your base salary as set forth in Section 2.1. In addition, you will be eligible to receive 100% of your potential annual discretionary bonus amount set forth in Section 2.2, determined as if all performance targets established by the Board have been satisfied.

(b) You will receive acceleration of vesting of all of your then-outstanding and then-unvested stock option grants as of the date of termination such that the remaining fifty percent (50%) of your unvested options following the Acceleration become fully vested and exercisable.

(c) If you timely elect and remain eligible for continued coverage of your group health insurance under COBRA, the Company will pay your premiums for COBRA coverage for up to twelve (12) months following your Separation from Service, provided that such payments shall cease if you obtain full-time employment, or cease to be eligible for COBRA, within such period. You agree to notify the Company promptly if you obtain full-time employment while the Company is paying your COBRA premiums under this letter agreement. On the 60<sup>th</sup> day following your Separation from Service, the Company will make the first payment under this clause equal to the aggregate amount of payments that the Company would have paid through such date had such payments commenced on the Separation from Service through such 60<sup>th</sup> day, with the balance of the payments paid thereafter on the schedule described above. If you become eligible for coverage under another employer’s group health plan or otherwise cease to be eligible for COBRA during the period provided in this clause, you must immediately notify the Company of such event, and all payments and obligations under this clause will cease.

(d) As a precondition of receiving the Change in Control Severance Benefits, you must first sign and make effective on or after the termination date a full, general release of claims against the Company in a form acceptable to the Company containing the language set forth in the Release Agreement attached as Exhibit B.

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### 8.3 Parachute Payments.

(a) If any payment or distribution in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) to you or for your benefit, whether under this letter agreement or otherwise (a "Payment"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code") (together with any interest or penalties imposed with respect to such excise tax, the "Excise Tax"), then you will be entitled to receive from the Company an additional payment (the "Gross-Up Payment") in an amount equal to (i) all Excise Taxes (including any interest or penalties imposed with respect to such taxes) on the Payment (the "First Reimbursement Payment"), (ii) all federal, state and local income taxes and employment taxes on the First Reimbursement Payment, and (iii) all Excise Taxes (including any interest or penalties imposed with respect to such taxes) on the First Reimbursement Payment.

(b) All determinations required to be made under this Section 8.3 including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by the nationally recognized certified public tax accounting firm used by the Company or, if such firm declines to serve, such other nationally recognized certified public tax accounting firm as you may designate (the "Accounting Firm"). The Accounting Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good-faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Accounting Firm shall provide its calculations, together with detailed supporting documentation, to the Company and you within thirty (30) calendar days after the date on which your right to a Payment is triggered (if requested at that time by the Company or you) and/or at such other times as requested by the Company or you. If the Accounting Firm determines that no Excise Tax is payable with respect to a Payment, it shall furnish the Company and you with an opinion reasonably acceptable to you that no Excise Tax will be imposed with respect to such Payment. If the Accounting Firm determines that an Excise Tax is payable with respect to a Payment, it shall furnish to the Company and you an opinion reasonably acceptable to you of the amount of Excise Tax payable with respect to the Payments and the amount of Gross-Up Payment due to you. The Company will pay the Gross-Up Payment to you within thirty (30) days of the date the Company receives the Accounting Firm's opinion, but in no event later than the end of your tax year following your tax year in which you pay the Excise Tax. The Company shall bear all reasonable expenses with respect to the determinations by the Accounting Firm required to be made hereunder. Any determination by the Accounting Firm shall be binding upon the Company and you.

### 9. General Provisions.

**9.1 Dispute Resolution.** To aid in the rapid and economical resolution of any disputes which may arise under this Agreement, the parties agree that any and all claims, disputes or controversies of any nature whatsoever arising from or regarding the interpretation, performance, negotiation, execution, enforcement or breach of this Agreement, or your relationship with the Company, including statutory claims, shall be resolved by confidential, final and binding arbitration conducted before a single arbitrator with Judicial Arbitration and Mediation Services, Inc. ("JAMS") in San Francisco, California, in accordance with JAMS'

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then-applicable employment arbitration rules (which may be reviewed at [www.jamsadr.com/rules-employment-arbitration/](http://www.jamsadr.com/rules-employment-arbitration/)). **The parties acknowledge that by agreeing to this arbitration procedure, they waive the right to resolve any such dispute through a trial by jury, judge or administrative proceeding.** The parties will have the right to be represented by legal counsel at any arbitration proceeding. The arbitrator shall: (i) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be available under applicable law in a court proceeding; and (ii) issue a written statement signed by the arbitrator regarding the disposition of each claim and the relief, if any, awarded as to each claim, the reasons for the award, and the arbitrator's essential findings and conclusions on which the award is based. The Company shall bear all JAMS' arbitration fees and administrative costs in excess of the amount of administrative fees (e.g., filing fees) that you would otherwise be required to pay if the dispute were decided in a court of law. Nothing in this Agreement shall prevent any party from obtaining injunctive or other provisional relief in court to prevent irreparable harm pending the conclusion of any arbitration proceeding.

**9.2 Severability.** Whenever possible, each provision of this letter agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but such invalid, illegal or unenforceable provision will be reformed, construed and enforced in such jurisdiction so as to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

**9.3 Notices.** Any notices provided hereunder must be in writing and shall be deemed effective upon the earlier of personal delivery (including personal delivery by fax) or the next day after sending by overnight courier, to the Company at its primary office location and to you at your address as listed on the Company payroll.

**9.4 Waiver.** If either party should waive any breach of any provisions of this letter agreement, you or the Company shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of this letter agreement.

**9.5 Entire Agreement.** This letter agreement, together with its exhibits, constitutes the entire and exclusive agreement between you and the Company, and it supersedes any prior agreement, promise, representation, or statement, written or otherwise, between you and the Company with regard to this subject matter. It is entered into without reliance on any promise, representation, statement or agreement other than those expressly contained or incorporated herein, and it cannot be modified or amended except in a writing signed by you and a duly authorized officer of the Company.

**9.6 Counterparts.** This letter agreement may be executed in separate counterparts, any one of which need not contain signatures of more than one party, but all of which taken together will constitute one and the same letter agreement.

**9.7 Headings.** The headings of the sections hereof are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

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**9.8 Successors and Assigns.** This letter agreement is intended to bind and inure to the benefit of and be enforceable by you, the Company and your and its respective successors, assigns, heirs, executors and administrators, except that you may not assign any of your duties hereunder and you may not assign any of your rights hereunder without the written consent of the Company.

**9.9 Governing Law.** All questions concerning the construction, validity and interpretation of this letter agreement will be governed by the law of the State of California as applied to contracts made and to be performed entirely within California.

**9.10 Attorneys' Fees.** If either party hereto brings any action to enforce your or its rights hereunder, the prevailing party in such action shall be entitled to be paid by the other party such prevailing party's reasonable attorneys' fees and costs incurred in such action.

Enclosed is your Employee Agreement on Confidential Information and Inventions, which you should read carefully.

To indicate your acceptance of the Company's offer, please sign this letter agreement in the space provided below and return it to me.

Sincerely,

**CYMABAY THERAPEUTICS**

By: /s/ Sujal Shah

**Sujal Shah**

Interim President and Chief Executive Officer

**Accepted and agreed:**

/s/ Dan Menold

**Dan Menold**

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**EXHIBIT A** - Employee Agreement on Confidential Information and Inventions

**EXHIBIT B** - Release Agreement

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**EXHIBIT A**

**CymaBay Therapeutics, Inc.**  
7999 Gateway Blvd., Suite 130  
Newark, CA 94560-1144  
Phone 510 293-8800 Fax 510 293-9090

April 27, 2017

**EMPLOYEE AGREEMENT ON CONFIDENTIAL  
INFORMATION AND INVENTIONS**

THIS AGREEMENT is between CymaBay Therapeutics, Inc. a Delaware Corporation (“the Company”), and Dan Menold, (the “Employee”).

**PURPOSE OF AGREEMENT**

I want to be employed by the Company, and the Company wants to employ me, provided that, in so doing, it can protect its trade secrets and inventions, ideas, information, business, and good will.

In consideration of this purpose, and the mutual promises in this Agreement, I agree with the Company as follows:

1. **Term**

(A) My employment with the Company is an at-will relationship that may be terminated by either the Company or me with or without cause for any reason whatsoever at any time upon notice to the other party.

(b) If my employment is terminated for any reason, I will be entitled only to the compensation earned by me as of the date of termination.

2. **Confidential Information.** I will hold in confidence and use only for the benefit of the Company during the term of my employment and for five years after the termination of my employment all Confidential Information of the Company, its Affiliates, and all Confidential Information of companies or persons other than the Company given to the Company under an agreement prohibiting its disclosure. “Confidential Information” refers to valuable technical or business information that is not known by the public. By way of example, Confidential Information may include information relating to: inventions or products, including unannounced products; research and development activities; requirements and specifications of specific customers and potential customers; nonpublic financial information; and quotations or proposals given to customers.

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These restrictions on disclosure do not apply if the information is or becomes publicly known through no wrongful act on my part or the information is explicitly approved for release under such circumstances by an officer of the Company.

3. Disclosure and Assignment of Inventions. I hereby assign to the Company my entire right, title and interest in all inventions. "Inventions" refer to (a) all technical or business innovations, whether or not patentable or copyrightable, made by me during the term of my employment; and (b) all technical or business innovations, whether or not patentable, based upon the Company's Confidential Information and made by me after leaving the Company's employ. I will keep adequate written records of all inventions made by me, such as notebooks, sketches, program listings and the like, which are the property of the Company. Notwithstanding the foregoing, I am not required to assign to the Company, although I must disclose, any inventions: (a) for which no equipment, supplies, facilities or Confidential Information of the Company were used and which was developed entirely on my own time; (b) which at the time of conception or reduction to practice did not relate directly to the business of the Company or the Company's actual or demonstrably anticipated research or development and (c) which did not result from any work I performed for the Company. The disclosure of such inventions must be made so that the parties can make a determination whether such inventions do in fact qualify for exclusion from assignment to the Company. The Company will keep confidential any such information I disclose. I will take all steps necessary to assist the Company in securing any patents, copyrights or other protection for inventions which I am required to assign to the Company as provided above. If I am unable or unwilling, whether during my employment or after termination, to sign any papers needed to apply for or pursue any patent or copyright registrations for inventions, I agree that the Company is my attorney-in-fact for that purpose and can sign such papers as my agent and take any other actions necessary to pursue these registrations.

4. List of Inventions I Own. I have attached as Exhibit A a list of inventions I own, which is a complete list of all technical or business innovations I own either alone or jointly with others on the date of this Agreement. I agree that I will not incorporate any of these prior inventions into products being developed for the Company without the prior knowledge and written consent of the Company. Should the Company wish to use any of my inventions in its business, the Company will negotiate with me for a purchase of or license to use such invention on mutually agreeable terms. If no such list is attached, or if no such inventions are listed thereon, I represent that I do not own any inventions at the time of signing this Agreement.

5. Tangible Materials. All tangible materials that incorporate Confidential Information are the Company's property, and I will give all of these materials and any other documents and materials which are the property of the Company, including but not limited all notes of any research or other work which I have performed for the Company and all biological materials created, used or held by me in the course of my work for the Company, back to the Company at the termination of my employment or earlier upon the Company's request.

6. Solicitation of Employees. I understand that information about the Company's employees, such as their skills, performance ratings, and salary histories, constitutes Confidential Information owned by the Company. I agree that, for a period of twelve (12) months after termination of my employment for any reason, I will not, either directly or indirectly, solicit,



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induce, recruit or encourage any of the Company's employees to leave their employment, or take away such employees, or attempt to do any of these things, whether on my own behalf or on behalf of any other person, since to do so would necessarily involve using Confidential Information.

8. Termination. In the event of termination of my employment for any reason, I agree that, as requested by the Company, I will sign and deliver a "Termination Certification" in the form attached to this Agreement as Exhibit B. I also agree that the Company may give notice to my new employer of my duties under this Agreement.

9. Duty of Loyalty. During my employment with the Company, I will not engage in any business activity (either for my own profit or for anyone else) that competes with the Company's business.

10. Duties to Third Parties. I represent that, to the best of my knowledge, compliance with the terms of this Agreement will not violate any duty that I may have to anyone other than the Company (such as a former employer) to keep such person's proprietary information in confidence or to refrain from using that person's patents or copyrights. If at any time during my employment with the Company, I am asked by the Company to perform work which I believe may cause me to violate a duty I have to someone other than the Company, I will immediately inform an officer of the Company so that an assessment of the situation may be made. I also agree that I will not, during my employment with the Company, bring onto the Company's premises, use or disclose to the Company any proprietary information or trade secrets of any former employer or any other person without that person's consent.

11. Miscellaneous. This is the only agreement between the Company and myself about confidential information and the ownership of inventions, and may not be modified, amended or terminated, in whole or in part, except in a writing signed by me and by an officer of the Company. Any later change in my title, compensation or duties will not affect this Agreement. This Agreement will survive termination of my employment for any reason, and will continue for the benefit of and will be binding upon the successors, assigns, heirs and legal representatives of the Company and myself. Any waiver by the Company of a breach of any of the obligations of this Agreement by me will not operate or be construed as a waiver of any other or subsequent breach by me. In the event any provision of this Agreement is held to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way. The prevailing party in any legal action brought by one party against the other and arising out of this Agreement shall be entitled, in addition

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to any other rights and remedies it may have, to reimburse for its expenses, including court costs and reasonable attorney's fees. This Agreement will be governed by the laws of the State of California governing contracts between residents to be performed in the State of California.

CymaBay Therapeutics, Inc.

Employee

By: /s/ Sujal Shah  
Sujal Shah  
Interim President and Chief Executive Officer

By: /s/ Dan Menold  
Dan Menold

June 26, 2017  
Date

August 2, 2017  
Date

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**EXHIBIT A**

**List of Inventions I Own (see para. 4.)**

16.

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**EXHIBIT B**

**Termination Certificate**

This is to certify that I do not have in my possession, nor have I failed to return, any devices, records, data, notes, reports, proposals, lists, equipment, computer programs or listings, other documents or property or any reproductions of any of these materials belonging to CymaBay Therapeutics, Inc., a Delaware corporation, its subsidiaries, successors or assigns (collectively, the "Company").

I further certify that I have complied with all the terms of the Company's Employee Confidential Information and Inventions Agreement signed by me, including the reporting of any inventions and original works of authorship (as defined in that agreement) conceived or made buy me (solely or jointly with others) covered by that agreement.

I further agree that, in compliance with the Employee Confidential Information and Inventions Agreement, I will preserve as confidential all trade secrets, confidential knowledge, data or other proprietary information relating to inventions or products, including but not limited to unannounced products, research and development activities, requirements and specifications of specific customers and potential customers, nonpublic financial information, and quotations or proposals given to customers, including any information disclosed to the Company in confidence by any third party.

I further agree that for twelve (12) months from this date, I will not solicit, induce, recruit or encourage any of the Company's employees to leave their employment.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Dan Menold

\_\_\_\_\_  
Date

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**EXHIBIT B**

**RELEASE AGREEMENT**

**(To be signed on or after the Separation Date)**

I understand that my employment with CymaBay Therapeutics (the “Company”) terminated effective \_\_\_\_\_, (the “Separation Date”). The Company has agreed that if I choose to sign this Release Agreement (“Release”), the Company will provide certain severance benefits (minus the required withholdings and deductions) pursuant to the terms of the employment agreement dated \_\_\_\_\_ (as amended, the “Letter Agreement”). I understand that I am not entitled to such severance benefits unless I sign this Release, and it becomes fully effective.

I understand that this Release, together with the Letter Agreement, constitutes the complete, final and exclusive embodiment of the entire agreement between the Company and me with regard to the subject matter hereof. I am not relying on any promise or representation by the Company that is not expressly stated therein.

I hereby confirm my obligations under my Employee Agreement on Confidential Information and Inventions with the Company.

I hereby represent that I have been paid all compensation owed and for all hours worked, have received all the leave and leave benefits and protections for which I am eligible, pursuant to the Family and Medical Leave Act or otherwise, and have not suffered any on-the-job injury for which I have not already filed a claim.

In exchange for the consideration provided to me by this Release that I am not otherwise entitled to receive, I hereby generally and completely release Company and its current and former directors, officers, employees, shareholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to my signing this Release. This general release includes, but is not limited to: (a) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (b) all claims related to my compensation or benefits from the Company, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (c) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (d) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (e) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys’ fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) (“*ADEA*”), and the California Fair Employment and Housing Act (as amended).

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Nothing in this Release shall prevent me from filing, cooperating with, or participating in any proceeding before the Equal Employment Opportunity Commission, the Department of Labor, or the California Department of Fair Employment and Housing, except that I hereby acknowledge and agree that I shall not recover any monetary benefits in connection with any such proceeding.

I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA ("**ADEA Waiver**"). I also acknowledge that the consideration given for the ADEA Waiver is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (a) my ADEA Waiver does not apply to any rights or claims that arise after the date I sign this Release; (b) I should consult with an attorney prior to signing this Release; (c) I have twenty-one (21) days to consider this Release (although I may choose to voluntarily sign it sooner); (d) I have seven (7) days following the date I sign this Release to revoke the ADEA Waiver; and (e) the ADEA Waiver will not be effective until the date upon which the revocation period has expired unexercised, which will be the eighth day after I sign this Release.

I acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: "**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**" I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to my release of any claims hereunder.

I acknowledge that to become effective, I must sign and return this Release to the Company so that it is received not later than twenty-one (21) days following the date it is provided to me.

**I accept and agree to the terms and conditions stated above:**

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Date

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Dan Menold

## CERTIFICATIONS

I, Sujal Shah, certify that:

1. I have reviewed this Form 10-Q of CymaBay Therapeutics, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 10, 2017

/s/ Sujal Shah

Sujal Shah

Interim President and Chief Executive Officer  
(Principal Executive Officer)

## CERTIFICATIONS

I, Daniel Menold, certify that:

1. I have reviewed this Form 10-Q of CymaBay Therapeutics, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 10, 2017

/s/ Daniel Menold

Daniel Menold

Vice President, Finance

(Principal Financial and Accounting Officer)



**CERTIFICATION**

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), each of Sujal Shah, Interim President and Chief Executive Officer, and Daniel Menold, Vice President, Finance of CymaBay Therapeutics, Inc. (the “Company”), hereby certifies that, to the best of his knowledge:

1. The Company’s Quarterly Report on Form 10-Q for the period ended June 30, 2017, to which this Certification is attached as Exhibit 32.1 (the “Periodic Report”), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act, and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

In Witness Whereof, the undersigned has set his hand hereto as of August 10, 2017.

/s/ Sujal Shah

Sujal Shah

Interim President and Chief Executive Officer

(Principal Executive Officer)

/s/ Daniel Menold

Daniel Menold

Vice President, Finance

(Principal Financial and Accounting Officer)

This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of CymaBay Therapeutics, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.