

**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 8-K/A**

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**CURRENT REPORT**  
**Pursuant to Section 13 or 15(d)**  
**of the Securities Exchange Act of 1934**

**Date of Report (date of earliest event reported): March 6, 2017**

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**CAPNIA, INC.**  
(Exact name of registrant as specified in its charter)

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

**001-36593**  
(Commission  
File No.)

**77-0523891**  
(IRS Employer  
Identification Number)

**1235 Radio Road, Suite 110**  
**Redwood City, CA 94065**  
(Address of principal executive offices)

**(650) 213-8444**  
(Registrant's telephone number, including area code)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 8.01 Other Events.**

As previously disclosed, on March 7, 2017, Capnia, Inc., a Delaware corporation, ("Capnia") completed the previously announced merger (the "Merger") with Essentialis, Inc., a Delaware corporation ("Essentialis") pursuant to the Agreement and Plan of Merger, dated December 22, 2016 (the "Merger Agreement") by and among Capnia, Essentialis, Company E Merger Sub, Inc., a wholly-owned subsidiary of Capnia ("Merger Sub"), and Neil Cowen, in his capacity as stockholders' representative. In accordance with the Merger Agreement, Merger Sub was merged with and into Essentialis, with Essentialis as the surviving corporation and wholly-owned subsidiary of Capnia. This Current Report on Form 8-K/A (the "Amended Report") updates the Current Report on Form 8-K filed on March 8, 2017 (the "Original Report") to include the audited financial statements of Essentialis and the unaudited pro forma financial information in accordance with Item 9.01 of Form 8-K. No other amendments to the Original Report are being made by the Amended Report.

**Item 9.01 Financial Statements and Exhibits.**

(a) Financial Statements of Business Acquired.

The audited consolidated financial statements of Essentialis, Inc. for the fiscal years ended December 31, 2016 and 2015 are attached hereto as Exhibit 99.1 and are incorporated by reference into this Item 9.01(a) and made a part hereof.

(b) Pro Forma Financial Information.

The unaudited pro forma financial information of Capnia is attached hereto as Exhibit 99.2 and is incorporated by reference into this Item 9.01(b) and made a part hereof: (i) unaudited condensed combined pro forma balance sheet at December 31, 2016 and notes thereto, and (ii) unaudited condensed combined pro forma statements of operations for the fiscal years ended December 31, 2016 and December 31, 2015 and notes thereto.

(c) Exhibits.

99.1 Audited consolidated financial statements of Essentialis, Inc. for the years ended December 31, 2016 and 2015.

99.2 Unaudited condensed combined pro forma balance sheet at December 31, 2016 and notes thereto, and unaudited condensed combined pro forma statements of operations for the fiscal year ended December 31, 2016 and December 31, 2015 and notes thereto.

99.3 Consent of Independent Auditor

**SIGNATURES**

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

Date: April 10, 2017

CAPNIA, INC.

By: /s/ David O'Toole

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David O'Toole

Senior Vice President, Chief Financial Officer

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**ESSENTIALIS, INC.**

**FINANCIAL STATEMENTS  
FOR THE YEARS ENDED DECEMBER 31, 2016 AND 2015**

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**ESSENTIALIS, INC.**  
**Financial Statements**

Years Ended December 31, 2016 and 2015

**Contents**

Independent Auditors' Report	2
Financial Statements	4
Balance Sheets	4
Statements of Operations	5
Statements of Changes in Stockholders' Deficit	6
Statements of Cash Flows	7
Notes to the Financial Statements	8

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Accountants and  
business advisers

## INDEPENDENT AUDITORS' REPORT

Board of Directors and Stockholders of  
Essentialis, Inc.

We have audited the accompanying financial statements of Essentialis, Inc. (a Delaware corporation) (the "Company"), which comprise the balance sheets as of December 31, 2016 and 2015, and the related statements of operations, changes in stockholders' deficit, and cash flows for the years then ended, and the related notes to the financial statements.

### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditor's Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Opinion**

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Essentialis, Inc. as of December 31, 2016 and 2015, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

**Uncertainty Regarding Going Concern**

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the financial statements, during the years ended December 31, 2016 and 2015, the Company incurred net losses of approximately \$1,222,000 and \$977,000, respectively. Future working capital requirements are dependent on the Company's ability to achieve and maintain profitable operations, and to continue its present short-term financing or obtain alternative financing as required. It is not possible to predict the outcome of future operations or whether the necessary alternative financing may be arranged, if needed. Those conditions raise substantial doubt about the Company's ability to continue as a going concern. The financial statements do not include any adjustments that might result from the outcome of this uncertainty. Our opinion is not modified with respect to that matter.

**Subsequent Event**

As discussed in Note 10 to the financial statements, on March 7, 2017, the Company completed a merger with Capnia, Inc., a Delaware corporation. Our opinion is not modified with respect to that matter.

March 27, 2017  
San Diego, California

*PKF, LLP*

PKF, LLP  
(formerly, PKF  
Certified Public Accountants  
Professional Corporation)

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## ESSENTIALIS, INC.

### Balance Sheets

December 31, 2016    December 31, 2015

#### ASSETS

Cash	\$	100	\$	74,701
Total assets	\$	100	\$	74,701

#### LIABILITIES AND STOCKHOLDERS' DEFICIT

Liabilities				
Accounts payable	\$	678,936	\$	322,025
Bank overdraft		12,439		—
Accrued expenses		1,151,253		839,742
Notes payable		153,662		75,000
Bridge loans		4,352,013		3,980,760
Total liabilities		6,348,303		5,217,527

Commitments and contingencies (Notes 4, 5, 9 and 10)

#### Stockholders' deficit

Series B Convertible Preferred stock, \$0.001 par value; 15,500,000 shares authorized, 11,688,040 shares issued and outstanding		11,688		11,688
Series A Convertible Preferred stock, \$0.001 par value; 21,700,000 shares authorized, 19,890,922 shares issued and outstanding		19,891		19,891
Common stock, \$0.001 par value; 50,000,000 shares authorized, 4,420,687 shares issued and outstanding		4,420		4,420
Additional paid-in capital		23,814,035		23,797,191
Accumulated deficit		(30,198,237)		(28,976,016)
Total stockholders' deficit		(6,348,203)		(5,142,826)
Total liabilities and stockholders' deficit	\$	100	\$	74,701

The accompanying notes are an integral part of the financial statements.



## ESSENTIALIS, INC.

### Statement of Operations

	Year ended December 31, 2016	Year ended December 31, 2015
Grant revenue	\$ —	\$ 37,800
Operating expenses:		
Legal and professional	562,372	133,264
Salaries and wages	161,774	162,052
General and administrative	134,131	43,464
Contract research	98,019	174,035
Consulting	6,170	145,128
	<u>962,466</u>	<u>657,943</u>
Total operating expenses	962,466	657,943
Loss from operations	(962,466)	(620,143)
Other income (expense):		
Interest expense	(326,435)	(356,635)
Gain on extinguishment of debt	66,680	—
	<u>(259,755)</u>	<u>(356,635)</u>
Total other expense	(259,755)	(356,635)
Net loss	<u>\$ (1,222,221)</u>	<u>\$ (976,778)</u>

The accompanying notes are an integral part of the financial statements.

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**ESSENTIALIS, INC.**  
**Statements of Changes in Stockholders' Deficit**  
**For the years ended December 31, 2016 and 2015**

	Series B Convertible Preferred Shares	Series A Convertible Preferred Shares	Amount	Common Stock Shares	Amount	Additional Paid- In Capital	Accumulated Deficit	Total Stockholders' Deficit
Balance, December 31, 2014	11,688,040	19,890,922	\$ 31,579	4,420,687	\$ 4,420	\$ 23,707,089	\$ (27,999,238)	\$ (4,256,150)
Warrant debt discount with bridge loan financing	—	—	—	—	—	90,102	—	90,102
Net loss	—	—	—	—	—	—	(976,778)	(976,778)
Balance, December 31, 2015	11,688,040	19,890,922	31,579	4,420,687	4,420	23,797,191	(28,976,016)	(5,142,826)
Warrant debt discount with bridge loan financing	—	—	—	—	—	16,844	—	16,844
Net loss	—	—	—	—	—	—	(1,222,221)	(1,222,221)
Balance, December 31, 2016	11,688,040	19,890,922	\$ 31,579	4,420,687	\$ 4,420	\$ 23,814,035	\$ (30,198,237)	\$ (6,348,203)

The accompanying notes are an integral part of the financial statements.

# ESSENTIALIS, INC.

## Statements of Cash Flows

	Year ended December 31, 2016	Year ended December 31, 2015
Cash flows from operating activities:		
Net loss	\$ (1,222,221)	\$ (976,778)
Adjustments to reconcile net loss to net cash used in operating activities:		
Debt discount expense	16,844	90,102
Accrued interest	309,511	266,447
Change in operating assets and liabilities:		
Accounts payable	508,164	(22,884)
Bank overdraft	12,439	—
Accrued expenses	2,000	(37,600)
	<u>(373,263)</u>	<u>(680,713)</u>
Cash flows from financing activities:		
Proceeds from bridge loans	320,000	600,000
Payments on note payable	(21,338)	—
	<u>298,662</u>	<u>600,000</u>
Net decrease in cash	(74,601)	(80,713)
Cash at beginning of year	<u>74,701</u>	<u>155,414</u>
Cash at end of year	<u>\$ 100</u>	<u>\$ 74,701</u>
SUPPLEMENTAL DISCLOSURE OF NON-CASH FINANCING INFORMATION:		
Conversion of accounts payable to note payable	<u>\$ 100,000</u>	<u>—</u>
Conversion of accrued expenses to bridge loan	<u>\$ 51,253</u>	<u>—</u>

The accompanying notes are an integral part of the financial statements.

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ESSENTIALIS, INC.  
Notes to the Financial Statements

**Note 1 – Organization**

Essentialis, Inc. (the "Company") was incorporated May 21, 2003 for the purpose of developing pharmaceutical products. The Company is focused on the development of breakthrough medicines to treat rare complex neurobehavioral/metabolic with significant morbidity and mortality. The Company is a development stage business.

**Note 2 – Summary of Significant Accounting Policies**

*Basis of Accounting* - The Company's policy is to use the accrual method of accounting and to prepare and present the financial statements in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP").

*Use of Estimates* - The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

*Liquidity* - For the years ended December 31, 2016 and 2015, the Company had net losses of \$1,222,221 and \$976,778, respectively, and accumulated deficit at December 31, 2016 of \$30,198,237. In addition, for the years ended December 31, 2016 and 2015, the Company had negative cash flows from operations of \$373,263 and \$680,713, respectively. Those conditions raise substantial doubt about the Company's ability to continue as a going concern. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

The Company's future cash requirements will depend on many factors, including continued scientific progress in its research and development programs, the scope and results of pre-clinical and clinical trials, the time and costs involved in obtaining regulatory approvals, the costs involved in filing, prosecuting and enforcing patents, competing technological and market developments, and the cost of product commercialization. The Company does not expect to generate a positive cash flow from operations at least until the commercial launch of its first product and possibly later given the expected spending for research and development programs and the cost of commercializing product candidates. Management plans to seek additional debt and/or equity financing through private or public offerings or through a business combination or strategic partnership. There can be no assurance that such capital will be available on favorable terms or at all.

*Stock-Based Compensation* - The Company uses the fair value based method of accounting for all its stock-based compensation in accordance with Financial Accounting Standards Board Accounting Standards Codification ("ASC") 718, *Compensation – Stock Compensation*. The estimated fair value of the options and warrants that are ultimately expected to vest based on performance related conditions, as well as the options and warrants that are expected to vest based on future service, is recorded over the instrument's requisite service period and charged to stock-based compensation. In determining the amount of options and warrants that are expected to vest, the Company takes into account, voluntary termination behavior as well as trends of actual option and warrant forfeitures. The Company estimated future unvested forfeitures at 0% for all periods presented.

The Company accounts for stock-based awards based on the fair market value of the instrument using the Black-Scholes option pricing model utilizing certain weighted average assumptions including stock price volatility, expected term and risk-free interest rates at the grant date. The risk-free interest rate assumption is based upon observed interest rates appropriate for the expected term of the stock based award. The expected volatility is based on the historical volatility of the Company's common stock on monthly intervals. The computation of the expected option term is based on the "simplified method," as the Company issuances are considered "plain vanilla" options. For stock based awards with defined vesting, the Company recognizes compensation expense over the requisite service period or when designated milestones have been achieved.

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**Note 2 – Summary Significant Accounting Policies (continued)**

*Reclassifications* - Certain financial statement amounts related to prior year presentation have been reclassified in order to conform to the current year presentation.

*Prior Period Adjustment* - In 2017, the Company discovered that a past employee had vested 21,875 shares of common stock. The number of shares was adjusted retrospectively in the 2016 and 2015 Statement of Changes in Stockholders' Deficit to account for these shares. This adjustment did not have any impact on total stockholders' deficit or net loss as of and for the years ended December 31, 2016 and 2015.

*Research and Development Costs* - The Company expenses its research and development costs as incurred. Research and development expenses are comprised of costs incurred in performing research and development activities, including salaries and benefits, facility costs, overhead costs, clinical trial costs, contract services, license agreements and other outside costs.

*Income Taxes* - The Company accounts for income taxes under ASC 740, *Income Taxes*, using the asset and liability method. The objective of the asset and liability method is to establish deferred tax assets and liabilities for the temporary differences between the financial reporting basis and the tax basis for the Company's assets and liabilities at enacted tax rates expected to be in effect when such amounts are realized or settled. The Company provides a valuation allowance for deferred tax assets for which it does not consider realization of such assets to be more likely than not.

ASC 740 addresses the determination of whether tax benefits claimed or expected to be claimed on a tax return should be recorded in the financial statements. Under ASC 740, the Company may recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position should be measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement. ASC 740 also provides guidance on de-recognition, classification, interest and penalties on income taxes, accounting in interim periods and requires increased disclosures. At the date of adoption and as of December 31, 2016 and 2015, the Company did not have a liability for unrecognized tax benefits.

The Company's policy is to record interest and penalties on uncertain tax positions as income tax expense. As of December 31, 2016 and 2015, the Company has no accrued interest or penalties related to uncertain tax positions.

**Note 3 – Accrued Expenses**

Accrued expenses consisted of the following at December 31:

	2016	2015
Accrued interest	\$ 1,068,023	\$ 758,512
Other	83,230	81,230
	<u>\$ 1,151,253</u>	<u>\$ 839,742</u>

**Note 4 – Notes Payable**

In February 2014, a vendor to whom the Company was indebted for services provided, agreed to convert the outstanding balance of account payable into a note payable amounting to \$75,000. The note is unsecured, bears interest at 8% per annum and was due February 28, 2017 or sooner if there is a change of control, as defined. The balance on this note was \$75,000 at December 31, 2016 and 2015, which was paid in full subsequent to year end.

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**Note 4 – Notes Payable (continued)**

In May 2016, a vendor to whom the Company was indebted for services provided, agreed to convert the outstanding balance of an account payable into a note payable amounting to \$100,000. The note is unsecured, bears interest at 8% per annum, has monthly principal payments of \$3,000, and was due January 2, 2017. The remaining balance of this note was \$78,662 at December 31, 2016, which was paid in full subsequent to year end.

**Note 5 – Bridge Loans**

The Company enters into bridge loan agreements with its preferred stockholders through the issuance and sale of secured, convertible promissory notes that typically mature one year after issuance. As each tranche of bridge loans is issued, certain provisions of the previous bridge loans are modified to include the previous balances along with any new financing received and the terms are updated to reflect the most recent agreement. Each time a bridge loan is issued, the Company grants warrants to cover a certain percentage of the financing (“warrant coverage”).

In June 2015, the Company entered into additional bridge loans with its preferred stockholders totaling \$600,000, originally set to mature in June 2016. In May 2016, the Company entered into additional bridge loans with its preferred stockholders totaling to \$75,000, originally set to mature May 2017. In June 2016, the Company entered into additional bridge loans with its preferred stockholders totaling to \$45,000, originally set to mature June 2017. In July 2016, the Company entered into additional bridge loans with its preferred stockholders totaling to \$140,000, originally set to mature July 2017. In November 2016, the Company entered into additional bridge loans with its preferred stockholders totaling to \$60,000, originally set to mature November 2017. The maturity date for all prior bridge loans was extended to November 17, 2017 in conjunction with the new bridge loan financing. The loans bear an interest rate of 8% per annum and automatically convert into the Company’s Series B Preferred Stock upon a Qualified Equity Financing or change of control, as defined. Due to the issuance of new bridge loans in 2017, all of the bridge loans were further extended through March 2018, however, as a part of the merger with Capnia, Inc. in March 2017, all bridge loans were converted into Company Series B Preferred Stock, which were then surrendered in exchange for shares of Capnia, Inc. common stock (Note 10).

If there is a change of control, the bridge loans plus any accrued interest are converted into preferred stock at \$0.73 per share; otherwise, the bridge loans are due and payable in cash. In March 2017, all bridge loans were converted into Company Series B Preferred Stock (Note 10). In addition to the bridge financing, each series of financing included warrants issued to each lender based on their pro-rata share of financing as described in Note 7. The book value of the bridge loans would have been discounted by the value of the warrants issued, however, as the amortization of the discount is typically over one year, the term of each bridge loan, the unamortized discount at each extension and remaining at each year-end is immaterial and has been expensed to interest expense.

In July 2016, one of the Company’s professional service providers to whom the Company was contractually obligated for certain accrued compensation amounts, converted an aggregate of \$51,253 past due amounts for prior services initially included in accrued expenses into a bridge loan for the same amount, along with warrants to purchase 7,021 shares of Series B Preferred Stock.

Typically, the Company would record a beneficial conversion feature associated with the conversion feature of the bridge financing as a debt discount and amortize this balance to interest expense using the effective interest method over the life of the bridge loans. However, management believes that there is no value associated with the conversion feature of the convertible bridge loans as of December 31, 2016. Although the Company experienced a change in control with its acquisition by Capnia, Inc., the bridge loans converted to Company Series B Preferred Stock in March 2017 (Note 10).

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ESSENTIALIS, INC.  
Notes to the Financial Statements

**Note 5 – Bridge Loans (continued)**

Bridge loans consisted of the following at December 31:

Issuance year	Interest rate	Warrant coverage	2016	2015
2011	6%	20%	\$ 1,000,000	\$ 1,000,000
2012	6%	20%	750,000	750,000
2012	8%	10%	600,000	600,000
2013	8%	10%	660,000	660,000
2014	8%	10%	370,760	370,760
2015	8%	10%	600,000	600,000
2016	8%	10%	371,253	—
			<u>\$ 4,352,013</u>	<u>\$ 3,980,760</u>

Interest expense associated with the bridge loans for the years ended December 31, 2016 and 2015 was \$315,844 and \$350,549, respectively, which included debt discount expenses of \$16,844 and \$90,102, respectively.

**Note 6 – Convertible Preferred Stock**

On July 23, 2012, the Company amended and restated its authorized number of shares available to 50,000,000 designated as common stock and 37,200,000 designated as preferred stock, each with a par value of \$0.001 per share. The preferred stock currently can be issued in two designated series, 21,700,000 shares of Series A Preferred Stock and 15,500,000 shares of Series B Preferred Stock.

Significant terms of the Series A and B Preferred Stock are as follows:

*Conversion* - Each share of Series A and B Preferred Stock shall be convertible, at the option of the holder, at any time after the date of issuance of such shares. The conversion price for Series A is the original Series A price divided by the conversion price for the Series A Preferred Stock in effect at the time of the conversion. The conversion price for Series B is \$0.73 divided by the conversion price for the Series B Preferred Stock in effect at the time of conversion.

Each share of Series A and B Preferred Stock automatically converts into common stock immediately upon the earlier of (i) the Company's sale of at least \$0.40 per share of its common stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended, with aggregate gross proceeds to the Company of at least \$30,000,000 or (ii) upon consent of at least 60% of the voting power represented by the then outstanding shares of Preferred Stock.

*Liquidation Preference* - Upon any liquidation, dissolution, or winding up of the Company, either voluntary or involuntary, the assets and funds of the Company available for distribution to stockholders shall be distributed as follows:

First, the holders of shares of Series B Preferred Stock then outstanding shall be entitled to receive, out of the assets of the Corporation available for distribution to its stockholders, before any payment shall be made in respect of the Series A Preferred Stock or common stock, an amount equal to \$3.65 per share of Series B, as adjusted for any recapitalization event plus all declared and unpaid dividends thereon.

Second, after the full Series B liquidation preference has been paid or set aside, the holders of shares of Series A Preferred Stock shall be entitled to receive an amount of \$0.73 per share of Series A preferred stock, as adjusted for any recapitalization event plus all declared and unpaid dividends thereon.

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ESSENTIALIS, INC.  
Notes to the Financial Statements

**Note 6 – Convertible Preferred Stock (continued)**

Lastly, after the full Series B and A Liquidation Preference due to holders of Series B and A Preferred Stock have been paid or set aside, the remaining assets of the Company available for distribution to its stockholders, if any, shall be distributed to the holders of common stock, Series A Preferred and Series B Preferred ratably in proportion to the number of shares of common stock then held, or issuable upon conversion of shares of Series A and B then held by each holder until such holders have received an aggregate of three times the original Series A price.

*Voting* - Each holder of preferred stock shall be entitled to a number of votes equal to the number of whole shares of common stock into which such holder's shares of Series B Preferred Stock could then be converted and, except as otherwise required by law, shall have voting rights and powers equal to the voting rights and powers of the common stock.

*Dividends* - The holders of the issued Series A and B Preferred Stock shall be entitled to receive or simultaneously receive, when, as and if declared by the Board of Directors out of assets legally available therefore, prior and in preference to any declaration or payment of any dividend to common stock dividends at the per share annual rate of \$0.0584 per share of Series A and B Preferred Stock. The right to dividends on shares shall not be cumulative and no right shall accrue to holders of Series A and B Preferred Stock nor shall any undeclared or unpaid dividend bear or accrue interest. To date, the Board of Directors has not declared any dividends.

**Note 7 – Stock Options and Warrants**

*Stock Options* - The Company follows the guidance of the accounting provisions of ASC 718 *Compensation – Stock Compensation*, which requires the use of the fair-value based method to determine compensation for all arrangements under which employees and others receive shares of stock or equity instruments (warrants and options). In August 2005, the Company's Board of Directors approved the 2005 Stock Plan (the "Plan"). Under the Plan, the Company may grant up to 2,750,000 shares of incentive stock options to eligible persons, including employees, nonemployees, members of the Board of Directors, consultants, and other independent advisors who provide services to the Company. In general, options are granted with an exercise price equal to the fair value of the underlying common stock on the date of the grant. Options granted typically have a contractual life of 10 years and vest over periods ranging from being fully vested as of the grant date to four years.

	Years Ended December 31,					
	2016			2015		
	Units	Weighted Average Exercisable Price	Weighted Average Contractual Life	Units	Weighted Average Exercisable Price	Weighted Average Contractual Life
Outstanding at beginning of year	342,000	\$ 0.10		342,000	\$ 0.10	
Granted at fair value	—			—		
Exercised	—			—		
Canceled/Forfeited	(180,000)	0.10		—		
Outstanding at end of year	<u>162,000</u>	<u>\$ 0.10</u>	<u>1.1</u>	<u>342,000</u>	<u>\$ 0.10</u>	<u>2.5</u>
Fully vested at end of year	<u>162,000</u>	<u>\$ 0.10</u>	<u>1.1</u>	<u>342,000</u>	<u>\$ 0.10</u>	<u>2.5</u>

No options were granted, exercised, or canceled during the years ended December 31, 2016 and 2015. The number of forfeited options was 180,000 and 0 during the years ended December 31, 2016 and 2015, respectively. Intrinsic value represents the amount by which the market price of the common stock exceeds the exercise price of the options. The intrinsic value of exercisable options at December 31, 2016 and 2015 was \$45,360 and \$88,920, respectively. There is no unrecognized compensation cost for unvested stock-based compensation awards as of December 31, 2016. In March 2017, the Company merged with Capnia, Inc., and all unexercised options were terminated (Note 10).



**Note 7 – Stock Options and Warrants (continued)**

*Warrants* - In connection with the series of bridge financing with its preferred stockholders, the Company issued warrants to purchase shares of Series A and Series B Preferred Stock. The number of warrants issued was variable and is determined by the loan amount multiplied by the warrant coverage and divided by the warrant stock price at the time of issuance. The warrant stock price is either the share price of the Qualified Equity Financing (as defined as a capital raise with a minimum value issued to non-related investors, as defined) or \$0.73 per share if no Qualified Equity Financing is raised by maturity date or if there is a change of control. In March 2017, the Company merged with Capnia, Inc., and all Company warrants were either exercised in full or, if not exercised in full, terminated, canceled, or automatically converted into shares of Company common stock or preferred stock (Note 10).

For the May and December 2009 and the January and May 2010 bridge loans issued (the bridge loans were converted into shares of Series A Preferred Stock in 2011), the warrant coverage was 20% of the bridge loan plus 5% per month for each month the bridge loan was outstanding up to 50%. For the December 2011 and March 2012 series of bridge loans issued, the warrant coverage was equal to 20% of the total bridge financing. For the series of bridge loans issued from July 2012 through November 2016, the warrant coverage was equal to 10% of the total bridge financing.

For the years ended December 31, 2016 and 2015, the fair value of the warrants issued totaled \$996,770 and \$979,926, respectively, using an estimated exercise price of \$0.73 per share. This value was recorded to additional paid-in capital and as a discount to the book value of the bridge loans and was to be amortized over the term of the bridge loans to interest expense. However, as each modification to the original warrant is made based on the extension and new bridge financing, each warrant's life is extended and the fair value is re-computed based on the new estimated fair value, management has elected to expense each modification and new debt discount as each new bridge financing is made. For the years ended December 31, 2016 and 2015, the Company recognized \$16,844 and \$90,102 of interest expense associated with the debt discount, respectively.

The Company used the Black-Scholes option pricing model to calculate both the initial debt discount and the change in fair value due to each modification, with the following assumptions for the years ended December 31:

	2016	2015
Expected dividend yield	—%	—%
Risk free interest rate	1.2% - 1.7%	1.7%
Expected life in years	5.0	5.0
Volatility	105.7% - 107.7%	116.1%

The remaining warrants available to exercise at December 31, 2016 are as follows:

	Number of shares exercisable	Exercise price	Expiration date
Summary of outstanding warrants:			
Series A Preferred Stock warrants	330,249	\$0.01	1/26/2017
Series A Preferred Stock warrants	511,265	\$0.01	5/5/2017
Series B Preferred Stock warrants	835,889	\$0.73	11/17/2026
	1,677,403		

There were 684,932 and 0 Series A Preferred Stock warrants cancelled during the years ended December 31, 2016 and 2015, respectively.

ESSENTIALIS, INC.  
Notes to the Financial Statements

**Note 8 – Income Taxes**

At December 31, 2016, the Company had net operating loss carry forwards available to reduce future taxable income, if any, of approximately \$29,145,000 for Federal income tax purposes. The Federal net operating loss carry forwards begin to expire in 2026. At December 31, 2016, the Company had California net operating losses carry forwards of approximately \$25,681,000 that expire in various years beginning in 2017. During the year ended December 31, 2016, \$2,810,000 of California net operating losses expired. Pursuant to Internal Revenue Code Sections 382 and 383, use of the Company's net operating loss carry forwards may be limited if a cumulative change in ownership of more than 50% occurs within a three-year period.

The Company files income taxes in the U.S. Federal jurisdiction and the state of California. The Company is subject to U.S. federal or state income tax examinations by tax authorities for years after 2013. During the periods open to examination, the Company has net operating losses carry forwards for U.S. Federal and state tax purposes that have attributes from closed periods. Since these net operating losses and tax credit carry forwards may be utilized in future periods, they remain subject to examination.

For the years ended December 31, 2016 and 2015, the Company generated research credits but has not conducted a study to document the qualified activities. This study may result in an adjustment to the Company's research and development credit carryforwards; however, until a study is completed and any adjustment is known, no amounts are being presented as research and development credits for these years. If an adjustment is required, this adjustment would be offset by an adjustment to the deferred tax asset established for the research and development credit carryforwards and the valuation allowance.

Temporary differences between the carrying amounts of assets for financial reporting purposes and the amounts used for income tax purposes and net operating loss carry forwards give rise to the Company's deferred tax assets. The components of the Company's deferred tax assets as of December 31, 2016 and 2015 are as follows:

	2016	2015
Deferred tax assets		
Net operating loss carry forwards	\$ 11,408,000	\$ 12,141,000
Acquisition costs	161,000	—
Intangibles	13,000	17,000
Other	2,000	2,000
Total deferred tax assets	<u>11,584,000</u>	<u>12,160,000</u>
Valuation allowance	<u>(11,584,000)</u>	<u>(12,160,000)</u>
Net deferred tax assets	<u>—</u>	<u>—</u>

A valuation allowance has been recorded against the deferred tax assets, as the ultimate realization of these assets are considered uncertain at this early development stage of the Company. The change in the valuation allowance for the years ended December 31, 2016 and 2015 amounted to approximately (\$576,000) and \$356,000, respectively.

ESSENTIALIS, INC.  
Notes to the Financial Statements

A reconciliation of the effective tax with the Federal statutory rate is as follow

	2016	2015
Federal income tax benefit at statutory rate	\$ (416,000)	\$ (332,000)
Non-deductible expenses	—	31,000
True-ups and expired net operating losses	992,000	—
Change in federal valuation allowance	(576,000)	301,000
Total benefit from taxes	—	—

**Note 9 – Commitments and Contingencies**

*Licenses* – In July 2014, the Company entered into a research agreement with a foundation which also provided a grant. Under the terms of the grant and research arrangement, the Company is obligated to pay the foundation a royalty of one percent of all revenues realized from the sale or usage of any product derived from the research. These royalty payments are payable each quarter until the royalty paid equals six times the grant received by the Company.

*Litigation* - Other than normally recurring legal action, there has not been any additional claims instituted against the Company and management does not believe that there are any matters that may result in litigation that will have a material adverse effect on the financial position of the Company.

*Leases* - The Company has a month-to-month storage lease in Carlsbad, California.

**Note 10 – Subsequent Events**

Management has evaluated subsequent events, as defined by ASC 855, *Subsequent Events*, through the date that the financial statements were available to be issued on March 27, 2017.

The Company entered into two additional bridge loan tranches in 2017 for approximately \$1,546,000 with an interest rate of 8% and with warrant coverage of 10%.

On December 21, 2016, the Company entered into a merger agreement (“Merger Agreement”) with Capnia, Inc., a Delaware corporation (“Capnia”). On March 7, 2017, the merger was closed and a certificate of merger was executed. Effective on the date of closing, all Company options that were not exercised were terminated and all Company warrants were either exercised in full or, if not exercised in full, terminated, canceled, or automatically converted into shares of Company common stock or preferred stock. All Company common stock were automatically cancelled and retired. All bridge loans were automatically converted into Company Series B Preferred Stock at \$0.73 per share. In conjunction with the merger, Capnia issued 18,916,940 shares of Capnia common stock to stockholders of the Company. Capnia held back 913,379 shares of common stock as partial recourse to satisfy indemnification claims, and such shares will be issued to the Company’s stockholders on the 1 year anniversary of the closing of the merger. Capnia is also obligated to issue an additional 4,566,948 shares of common stock to the Company’s stockholders upon the achievement of a development milestone. Assuming that Capnia issues all of the shares of common stock held back and the development milestone is achieved, Capnia would issue a total of 24,397,267 shares of common stock to the Company’s stockholders. Additionally, upon the achievement of certain commercial milestones associated with the sale of the Company’s product in accordance with the terms of the Merger Agreement, Capnia is obligated to make cash earnout payments of up to a maximum of \$30 million to the Company’s stockholders. The merger consideration described above will be reduced by any such shares of common stock issuable, or cash earnout payments payable, to the Company’s management carve-out plan participants and other service providers of the Company in each case, in accordance with the terms of the Merger Agreement. As a result of the merger, Capnia obtained 100% ownership of the Company.

Capnia, Inc.

#### UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL STATEMENTS

On December 22, Capnia, Inc. (the “Company”) agreed to acquire Essentialis, Inc. (“Essentialis”) a privately-held development stage company. The Company completed the merger on March 7, 2017. The Company acquired all outstanding shares of Essentialis in exchange for 24.4 million shares of Capnia common stock and cash payments contingent on attainment of cumulative future revenue milestones. The following unaudited pro forma condensed combined balance sheet as of December 31, 2016 is based on the historical consolidated financial statements of the Company, the historical financial statements of Essentialis and the impact of the acquisition of Essentialis on the Company’s financial position. The unaudited pro forma condensed combined statement of income present the combined results of the Company’s operations with Essentialis as if the acquisition of the assets had occurred at the beginning of the period presented and include adjustments that are directly attributable to the acquisition, are expected to have a continuing impact on the combined results, and are factually supportable. The unaudited pro forma condensed combined financial statements are not necessarily indicative of what our financial position or results of operations actually would have been had we completed the acquisition of the assets at the dates indicated. In addition, the unaudited pro forma condensed combined financial information does not purport to project the future financial position or operating results of the combined company.

These Unaudited Pro Forma Condensed Financial Statements should be read in conjunction with the:

- Separate historical financial statements of the Company as of and for the year ended December 31, 2016 included in the Company’s Annual Report on Form 10K; and
- Separate historical financial statements of Essentialis as of and for the years ended December 31, 2016 and December 31, 2015 as Exhibit 99.1;

The transaction has been accounted for as an asset acquisition under the acquisition method of accounting. Accordingly, the identifiable intangible assets acquired have been recorded at fair value based on an independent valuation. The Company’s historical consolidated financial information has been adjusted to give effect to the impact of the consideration paid in connection with the acquisition. The amounts allocated to the assets in the Unaudited Pro Forma Condensed Combined Balance Sheet are based on an independent valuation of the fair value of the assets as of March 7, 2017. The Company did not assume any liabilities that would be recorded on the Unaudited Pro Forma Condensed Combined Balance Sheet.

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**Capnia, Inc.****Unaudited Pro Forma Condensed Consolidated Statements of Operations****Year Ended December 31, 2016***(In thousands, except share and per share data) (unaudited)*

	<b>Capnia</b>	<b>Essentialis</b>	<b>Proforma Adjustments (Note 3)</b>	<b>Pro Forma Combined</b>
Revenue	\$ 1,451	\$ —	\$ —	\$ 1,451
Cost of product revenue	1,509	—	—	1,509
Gross profit	(58)	—	—	(58)
<b>Expenses</b>				
Research and development	5,185	265	1,420	(a) 6,870
Sales and marketing	1,631	—	—	1,631
General and administrative	6,736	697	—	7,433
Total expenses	13,552	962	1,420	15,934
Operating income (loss)	(13,610)	(962)	(1,420)	(15,992)
Other income (expense)	—	67	—	67
Interest Expense	—	(327)	—	(327)
Change in fair value of warrants liabilities	1,667	—	—	1,667
Cease-use expense	(94)	—	—	(94)
Other expense	(7)	—	—	(7)
Loss before provision for deferred taxes	(12,044)	(1,222)	\$ (1,420)	(14,686)
Provision for deferred taxes	21	—	—	21
Net loss	(12,065)	(1,222)	\$ —	(13,287)
Loss on extinguishment of convertible preferred stock	(3,651)	—	—	(3,651)
Net loss attributable to common stockholders	\$ (15,716)	\$ (1,222)	\$ (1,420)	\$ (18,358)
<b>Net loss per common share:</b>				
Basic and diluted	\$ (1.01)			\$ (0.36)
<b>Weighted-average common shares outstanding used to calculate net loss per common share:</b>				
Basic and diluted	15,507,484		34,813,972	(b)(k)(l) 50,321,456

**Capnia, Inc.**

**Unaudited Pro Forma Condensed Combined Balance Sheet**

**As of December 31, 2016**

*(In thousands, except share data) (unaudited)*

	<u>Capnia</u>	<u>Essentialis</u>	<u>Proforma Adjustments (Note 3)</u>		<u>Pro Forma Combined</u>
<b>Assets</b>					
<b>Current assets</b>					
Cash and cash equivalents	\$ 2,726	—	\$ 10,000	(d)(e)(k)(l)	\$ 12,726
Accounts receivable	133	—	—		133
Restricted cash	35	—	—		35
Inventory	660	—	—		660
Prepaid expenses and other current assets	247	—	—		247
<b>Total current assets</b>	<b>3,801</b>	<b>—</b>	<b>10,000</b>		<b>13,801</b>
<b>Long-term assets</b>					
Property and equipment, net	103	—	—		103
Goodwill	718	—	—		718
Other intangible assets, net	817	—	20,449	(f)	21,266
Other assets	126	—	—		126
<b>Total assets</b>	<b>\$ 5,565</b>	<b>—</b>	<b>\$ 30,449</b>		<b>\$ 36,014</b>
<b>Liabilities and stockholders' equity (deficit)</b>					
<b>Current liabilities</b>					
Accounts payable	\$ 538	\$ 691	\$ (118)	(c)(d)	\$ 1,111
Accrued interest expense	—	\$ 1,068	(1,068)	(i)	\$ —
Notes payable	—	4,506	(4,506)	(i)	—
Accrued compensation and other current liabilities	1,169	83	4,136	(d)(h)	5,388
<b>Total current liabilities</b>	<b>1,707</b>	<b>6,348</b>	<b>(1,556)</b>		<b>6,499</b>
<b>Long-term liabilities</b>					
Series A warrant liability	194	—	—		194
Series C warrant liability	86	—	—		86
Other long-term liabilities	143	—	1,090	(g)	1,233
<b>Total liabilities</b>	<b>2,130</b>	<b>6,348</b>	<b>(466)</b>		<b>8,012</b>
<b>Stockholders' equity (deficit)</b>					
<b>Preferred Stock, \$0.001 par value, 10,000,000 shares authorized:</b>					
Series A convertible stock, 10,000 shares designated; zero issued and outstanding as of December 31, 2016	—	—	—		—
Series B convertible stock, 13,780 shares designated; 12,780 issued and outstanding as of December 31, 2016	—	—	—		—
Series A convertible preferred stock, \$0.001 par value	—	20	(20)	(j)	—
Series B convertible preferred stock, \$0.001 par value	—	12	(12)	(j)	—
Common stock, \$0.001 par value, 100,000,000 shares authorized, 16,786,952 shares issued and outstanding at December 31, 2016	17	—	35	(b)(j)(k)(l)	52
Common stock, \$0.001 par value	—	4	(4)	(j)	—
Additional paid-in-capital	101,730	23,814	718	(d)(e)(f)(j)	126,262
Accumulated deficit	(98,312)	(30,198)	30,198	(c)(j)	(98,312)
<b>Total stockholders' equity (deficit)</b>	<b>3,435</b>	<b>(6,348)</b>	<b>30,915</b>		<b>28,002</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 5,565</b>	<b>—</b>	<b>\$ 30,449</b>		<b>\$ 36,014</b>

**NOTES TO THE UNAUDITED PRO FORMA CONDENSED  
COMBINED FINANCIAL STATEMENTS**

**Note 1: Description of transaction and basis of presentation**

On December 22, 2016, Capnia, Inc. or the Company agreed to acquire Essentialis, Inc. or Essentialis, a privately-held development stage business, to accelerate the development of new therapeutics for selected rare diseases. On March 7, 2017, the Company completed the merger and acquired all outstanding shares of Essentialis in exchange for 24.4 million shares of the Company common stock and future cash payments if certain cumulative revenue milestones are achieved from oral dosage products containing diazoxide choline as an active pharmaceutical ingredient. As of March 7, 2017, the merger was valued at approximately \$19.9 million based on the closing price of Capnia common stock and the estimated fair value of the milestone payments. The milestone payments of \$10 million and \$20 million when cumulative net sales equal \$100 million and \$200 million, respectively, were valued at \$1.1 million, the discounted present value. The Company's obligation to make milestone payments expires December 31, 2030. The Company incurred transaction costs of \$0.6 million that were capitalized.

At the close on March 7, 2017, the Company released seventy-seven percent (18.9 million shares) of the stock consideration. Four percent (0.9 million shares) was held back for one year and reserved for potential breaches of representations and warranties. Twenty percent (4.6 million shares) of the Capnia common stock to be issued will be released upon the initiation of a Phase II/III clinical trial on or before December 31, 2020 for an oral dosage product containing diazoxide choline as an active pharmaceutical ingredient. The Company believes it is likely that such a Phase II/III clinical will be initiated in 2017 and therefore, the fair value of these shares has not been discounted.

In accordance with ASC 2017-01, the Company early adopted the guidance and accounted for the transaction as an asset acquisition, as it was determined that all of the fair value of the gross assets acquired was concentrated in a single identifiable asset.

**Note 2: Purchase price**

The aggregate purchase price consideration is as follows (in thousands):

Fair value of Capnia Common Stock Consideration	\$	18,786
Fair value of contingent cash consideration		1,090
	Total	<u>\$ 19,876</u>

At the closing, the Company does not anticipate acquiring any assets other than intellectual property, or assuming any significant liabilities. On March 7, 2017, Essentialis had a negative net working capital of approximately \$16,000.

The agreement to make milestone payments in the future resulted in the recognition of a contingent consideration, which is recognized at the inception of the transaction, and subsequent changes to the estimated amounts of contingent consideration to be paid will be recognized as charges or credits in the statement of operations. Based on studies which document the likelihood of all drug indications moving from Phase II through approval, the probability of paying the contingent cash consideration was estimated at 15.3%. In the event of success, the fair value of \$1,090,125 was determined by discounting the payments at a rate of 21% to 30%, which is commensurate with the Company's cost of capital.

For the purpose of this pro forma analysis, the purchase price has been allocated entirely to an identifiable intangible asset based on its estimated fair value, as follows:

Patents and intellectual property	\$	19,876
Asset acquisition costs		573
	Total	<u>\$ 20,449</u>

**Note 3: Pro forma adjustments**

Pro forma adjustments are necessary to reflect the estimated purchase price and the fair valuation of acquired assets. The pro forma adjustments included in the unaudited pro forma condensed combined financial statements are as follows:

- (a) The adjustment for the amortization of the intellectual property acquired over the legal remaining patent life of 14 years assuming that the acquisition of the intellectual property occurred as of January 1, 2015.
- (b) The adjustment for the issuance of 24.4 million shares of Capnia common stock in the merger.
- (c) The adjustment to accrue estimated transaction costs of \$572,594 for Capnia.
- (d) The adjustment to payoff \$1.5 million of liabilities of Essentialis prior to the completion of the merger
- (e) The adjustment for \$1.5 million of additional capital required by Essentialis to satisfy all liabilities prior to closing.
- (f) The adjustment for the purchase price of the intangible asset of \$19.9 million, plus acquisition costs of \$572,594 (See Note 2).
- (g) The adjustment to record the discounted present value of \$1.1 million for the cash milestone payments
- (h) The adjustment to record the value of \$4.2 million for the holdback and milestone shares.
- (i) The pre-merger adjustment to the balance sheet of Essentialis, Inc. to convert \$4.5 million of related party debt and \$1.1 million of accrued interest to equity.
- (j) The adjustment to eliminate the Convertible preferred stock, common stock, additional paid in capital and accumulated deficit of Essentialis.
- (k) The issuance of 8.3 million shares of Capnia common stock at \$0.96 per share for gross proceeds of \$8 million in the merger financing.
- (l) The issuance of 2.1 million shares of Capnia common stock at \$0.96 per share for gross proceeds of \$2 million from Aspire Capital LLC in the Aspire financing.



**CONSENT OF INDEPENDENT AUDITOR**

April 10, 2017

We consent to the use in this Current Report on Form 8-K (8-K/A) of Capnia, Inc. of our report dated March 27, 2017 on the financial statements of Essentialis, Inc. as of December 31, 2016 and 2015 and for the years then ended.

/s/ PKF, LLP  
PKF, LLP  
(formerly PKF  
Certified Public Accountants  
a Professional Corporation)