

OCERA THERAPEUTICS, INC.

FORM 8-K (Current report filing)

Filed 03/31/17 for the Period Ending 03/29/17

Address	555 TWIN DOLPHIN DRIVE SUITE 615 REDWOOD CITY, CA 94063
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UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

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 29, 2017**

OCERA THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

DELAWARE

(State or other jurisdiction
of
incorporation)

001-35119

(Commission File Number)

63-1192270

(I.R.S. Employer
Identification No.)

**525 University Avenue, Suite 610
Palo Alto, CA**

(Address of principal executive offices)

94301

(Zip Code)

Registrant's telephone number, including area code **(650) 475-0150**

Not applicable

(Former name or former address, if changed since last report)

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 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Grais Employment Agreement Amendment

On March 29, 2017, Ocera Therapeutics, Inc. (the “Company”) and Linda Grais entered into an amendment (the “Grais Amendment”) to her Amended and Restated Agreement of Employment dated April 8, 2016 (the “Grais Employment Agreement”). Pursuant to the Grais Amendment, in the event Ms. Grais’ employment is terminated without Cause (as defined in the Grais Employment Agreement) or for Good Reason (as defined in the Grais Employment Agreement) in anticipation of and within three months before, concurrently with, or within 12 months following a Change of Control (as defined in the Grais Employment Agreement), Dr. Grais will be entitled to (i) a cash amount equal to 18 months of her then-current monthly base salary, (ii) 1.5 times her annual bonus (based on the percentage of bonus paid relative to base salary in the prior year), (iii) a cash payment equal to 18 months of her cost of group health insurance and (iv) full acceleration of all stock options and other equity awards with time-based vesting. The foregoing description of the Grais Amendment is a summary and does not purport to be complete. Such description is qualified in its entirety by reference to the text of the Grais Amendment, which is filed with this Current Report on Form 8-K as Exhibit 10.1, and is incorporated herein by reference.

Byrnes Employment Agreement Amendment

On March 29, 2017, the Company and Michael Byrnes entered into an amendment (the “Byrnes Amendment”) to his Amended and Restated Agreement of Employment dated January 6, 2016 (the “Byrnes Employment Agreement”). Pursuant to the Byrnes Amendment, in the event Mr. Byrnes’ employment is terminated without Cause (as defined in the Byrnes Employment Agreement) or for Good Reason (as defined in the Byrnes Employment Agreement), Mr. Byrnes will be entitled to receive (i) a cash amount equal to 9 months of his then-current monthly base salary, (ii) a pro rated target bonus, (iii) a cash payment equal to 9 months of his cost of group health insurance and (iv) 9 months of accelerated vesting of all stock options and other equity awards with time-based vesting. In addition, if such a termination is in anticipation of and within three months before, concurrently with, or within 12 months following a Change of Control (as defined in the Byrnes Employment Agreement), Mr. Byrnes will be entitled to (i) a cash amount equal to 12 months of his then-current monthly base salary, (ii) an amount equal to his annual bonus (based on the percentage of bonus paid relative to base salary in the prior year), (iii) a cash payment equal to 12 months of his cost of group health insurance and (iv) full acceleration of all stock options and other equity awards with time-based vesting. The foregoing description of the Byrnes Amendment is a summary and does not purport to be complete. Such description is qualified in its

entirety by reference to the text of the Byrnes Amendment, which is filed with this Current Report on Form 8-K as Exhibit 10.2, and is incorporated herein by reference.

Board Matter

On March 31, 2017, Michael Powell, Ph.D., informed the Board of Directors (the “Board”) of the Company of his intention not to stand for re-election at the Company’s 2017 Annual Meeting of Shareholders (the “Annual Meeting”), and to retire from the Board effective as of the date of the Annual Meeting. Dr. Powell currently serves as a member of the Audit Committee and the Nominating and Corporate Governance Committee of the Board. The decision by Dr. Powell not to stand for reelection was not a result of any disagreement with the Company or the Board.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
10.1	Amendment to Amended and Restated Agreement for Employment by and between the Company and Linda Grais dated March 29, 2017.
10.2	Amendment to Amended and Restated Agreement for Employment by and between the Company and Michael Byrnes dated March 29, 2017.

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.

March 31, 2017

Ocera Therapeutics, Inc.

By: /s/ Linda S. Grais, M.D.

Name: Linda S. Grais, M.D.

Title: President and Chief Executive Officer

AMENDMENT TO AMENDED AND RESTATED AGREEMENT OF EMPLOYMENT

This Amendment (“Amendment”) is entered into effective March 29, 2017 , by and between **Linda S. Grais, M.D.** (hereinafter referred to as “Executive”), and **Ocera Therapeutics, Inc.** , a corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as the “Company”).

WHEREAS , the Company and Executive entered into an Amended and Restated Agreement of Employment dated April 8, 2016 (the “Employment Agreement”); and

WHEREAS , the Company and Executive wish to amend certain provisions of the Employment Agreement.

NOW, THEREFORE , for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound, the parties hereto agree as follows:

1. Section 7(e) of the Employment Agreement is hereby deleted in its entirety and replaced with the following:

“(e) Change of Control. If Executive’s employment is terminated: (i) by the Company for any reason other than for Cause, other than by reason of her death or permanent disability, or (ii) by Executive for Good Reason, in either case, in anticipation of and within three (3) months before, concurrently with, or within twelve (12) months following a Change of Control, and provided that Executive executes a general release substantially in the form attached as **Appendix A** hereto and such release becomes effective no later than 60 days after the date of termination, then all stock options and other stock-based awards held by Executive that are subject to time-based vesting shall vest and become exercisable in full as of immediately prior to such termination, or Change of Control, if later, and the Company shall pay Executive:

(i) an amount equal to eighteen (18) months of her then-current monthly base salary (less all applicable deductions for withholding taxes and the like) payable in a single lump sum;

(ii) an amount equal to 1.5 times: (i) the percentage of her annual base salary Executive received as a bonus payment for the calendar year immediately preceding the year of termination, multiplied by (ii) the base salary Executive received in the year of termination (excluding payments made pursuant to Section 7(f)(i) hereof), such amount to be paid in a single lump sum; and

(iii) an amount equal to Executive’s monthly cost of coverage for group health benefits immediately prior to the Termination Event, times eighteen (18).

Amounts due under this Section 7(e) are in lieu of amounts payable under Section 7(b) and shall be paid without mitigation or offset for any other amount earned by Executive. If all conditions necessary to establish Executive's entitlement to the payments specified in this Section 7(e) have been satisfied, such payments shall be paid in full within five (5) business days after the effectiveness of the release described above, and in any event no later than March 15 of the calendar year following the calendar year in which Executive's employment terminated. Notwithstanding the foregoing, if the 60-day period for providing a general release spans two calendar years, payment shall be made only in the second calendar year."

2. Except as so amended, the Employment Agreement is in all other respects hereby confirmed and defined terms used but not defined herein shall have the meanings set forth in the Employment Agreement.
3. This Amendment may be signed and delivered in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same document. The execution and delivery of this Amendment may be evidenced by a facsimile or electronically.

[Signature Page Follows]

AMENDMENT TO AMENDED AND RESTATED AGREEMENT OF EMPLOYMENT

This Amendment (“Amendment”) is entered into effective March 29, 2017, by and between **Michael Byrnes** (hereinafter referred to as “Executive”), and **Ocera Therapeutics, Inc.**, a corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as the “Company”).

WHEREAS, the Company and Executive entered into an Amended and Restated Agreement of Employment dated January 6, 2016 (the “Employment Agreement”); and

WHEREAS, the Company and Executive wish to amend certain provisions of the Employment Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound, the parties hereto agree as follows:

1. Section 7(b) of the Employment Agreement is hereby deleted in its entirety and replaced with the following:

“(b) Termination by Company Without Cause or by Executive with Good Reason. If Executive’s employment with the Company is terminated: (i) by the Company without Cause; or (ii) by Executive for Good Reason (each a “Severance Event”), provided that Executive executes a general release substantially in the form attached as **Appendix A** hereto and such release becomes effective no later than 60 days after the date of termination, the Company shall: (A) pay Executive the Accrued Benefit; (B) continue to pay Executive, in accordance with the Company’s regular periodic payroll practices in place immediately prior to such termination, an amount equal to Executive’s Base Salary for nine (9) months from the effective date of Executive’s termination (the “Severance Term”); (C) pay Executive an amount equal to Executive’s Target Bonus multiplied by a fraction, the numerator of which is the number of days Executive was employed during the calendar year during which the date of termination occurs and the denominator of which is 365; and (D) pay an amount throughout the Severance Term equal to Executive’s monthly cost of coverage with respect to health benefits immediately prior to the Termination Event, with payment of such benefits to be made in any event no later than the end of the calendar year immediately following the calendar year in which Executive’s employment terminated. Amounts due under Section 7(b)(A) and (C) shall commence within 60 days after the effectiveness of the release described above; provided that if the 60-day period for providing a general release spans two calendar years, payment shall commence to be made in the second calendar year with a catch-up payment for amounts that would have commenced earlier but for the operation of this sentence. Amounts due under this Section 7(b) shall be paid without mitigation or offset for any other amount earned by Executive. Upon termination of Executive’s employment

as the result of a Severance Event, all of Executive's stock options and other stock-based awards that are subject to time-based vesting and that would otherwise have vested during the nine (9) month period following the effective date of such termination (assuming no termination had occurred) shall immediately accelerate and become fully exercisable or nonforfeitable as of the date of such termination."

2. Section 7(e) of the Employment Agreement is hereby deleted in its entirety and replaced with the following:

"(e) Change of Control. If Executive's employment is terminated: (i) by the Company for any reason other than for Cause, other than by reason of his death or permanent disability, or (ii) by Executive for Good Reason, in either case, in anticipation of and within three (3) months before, concurrently with, or within twelve (12) months following a Change of Control, and provided that Executive executes a general release substantially in the form attached as **Appendix A** hereto and such release becomes effective no later than 60 days after the date of termination, then all stock options and other stock-based awards held by Executive that are subject to time-based vesting shall vest and become exercisable in full as of immediately prior to such termination, or Change of Control, if later, and the Company shall pay Executive:

(i) an amount equal to twelve (12) months of his then-current monthly base salary (less all applicable deductions for withholding taxes and the like) payable in a single lump sum;

(ii) an amount equal to: (i) the percentage of his annual base salary Executive received as a bonus payment for the calendar year immediately preceding the year of termination, multiplied by (ii) the base salary Executive received in the year of termination (excluding payments made pursuant to Section 7(f)(i) hereof), such amount to be paid in a single lump sum; and

(iii) an amount equal to Executive's monthly cost of coverage for group health benefits immediately prior to the Termination Event, times twelve (12).

Amounts due under this Section 7(e) are in lieu of amounts payable under Section 7(b) and shall be paid without mitigation or offset for any other amount earned by Executive. If all conditions necessary to establish Executive's entitlement to the payments specified in this Section 7(e) have been satisfied, such payments shall be paid in full within five (5) business days after the effectiveness of the release described above, and in any event no later than March 15 of the calendar year following the calendar year in which Executive's employment terminated. Notwithstanding the foregoing, if the 60-day period for providing a general release spans two calendar years, payment shall be made only in the second calendar year."

3. Except as so amended, the Employment Agreement is in all other respects hereby confirmed and defined terms used but not defined herein shall have the meanings set forth in the Employment Agreement.

4. This Amendment may be signed and delivered in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same document. The execution and delivery of this Amendment may be evidenced by a facsimile or electronically.

[Signature Page Follows]
