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8 Counsel for Plaintiff

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 _____, Individually and on behalf of
12 all others similarly situated,

13 Plaintiff,

14 v.

15 LIGAND PHARMACEUTICALS
16 INCORPORATED, JOHN L. HIGGINS,
17 and MATTHEW KORENBERG,

18 Defendants.

Case No.

CLASS ACTION

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

JURY TRIAL DEMANDED

19
20 Plaintiff _____ (“Plaintiff”), individually and on behalf of all other persons
21 similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s Complaint against
22 Defendants (defined below), alleges the following based upon personal knowledge as to
23 Plaintiff and Plaintiff’s own acts, and upon information and belief as to all other matters,
24 based upon, *inter alia*, on the investigation conducted by and through Plaintiff’s attorneys,
25 which included, among other things, a review of U.S. Securities and Exchange
26 Commission (“SEC”) filings by Ligand Pharmaceuticals Incorporated (“Ligand” or the
27 “Company”), as well as media and analyst reports about the Company. Plaintiff believes
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1 that substantial evidentiary support will exist for the allegations set forth herein after a
2 reasonable opportunity for discovery.

3 **NATURE OF THE ACTION**

4 1. This is a federal securities class action on behalf of a class consisting of all
5 persons other than Defendants who purchased the securities of Ligand between November
6 9, 2015 and November 14, 2016, inclusive, (the “Class Period”) seeking to recover
7 compensable damages caused by Defendants’ violations of federal securities laws and
8 pursue remedies under the Securities Exchange Act of 1934 (the “Exchange Act”).

9 **JURISDICTION AND VENUE**

10 2. The claims asserted herein arise under and pursuant to Sections 10(b) and
11 20(a) of the Exchange Act, (15 U.S.C. §78j (b) and 78t (a)), and Rule 10b-5 promulgated
12 thereunder (17 C.F.R. §240.10b-5).

13 3. This Court has jurisdiction over the subject matter of this action pursuant to
14 §27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. § 1331.

15 4. Venue is proper in this District pursuant to §27 of the Exchange Act (15
16 U.S.C. §78aa) and 28 U.S.C. §1391(b) as the Company is headquartered in this district
17 and a significant portion of the Defendants’ actions and the subsequent damages took place
18 within this District.

19 5. In connection with the acts, conduct and other wrongs alleged in this
20 Complaint, Defendants, directly or indirectly, used the means and instrumentalities of
21 interstate commerce, including but not limited to, the United States mails, interstate
22 telephone communications and the facilities of the national securities exchange.

23 **PARTIES**

24 6. Plaintiff, as set forth in the accompanying certification, incorporated by
25 reference herein, purchased Ligand securities at artificially inflated prices during the Class
26 Period and has been damaged thereby.
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1 7. Defendant Ligand is a biopharmaceutical company that focuses on
2 developing and acquiring technologies that help pharmaceutical companies discover and
3 develop medicines worldwide. The Company is incorporated in Delaware and its principal
4 executive offices are located at 3911 Sorrento Valley Boulevard, Suite 110, San Diego,
5 CA. Ligand’s securities trade on NASDAQ under the ticker symbol “LGND.”

6 8. Defendant John L. Higgins (“Higgins”) has been the Chief Executive Officer
7 (“CEO”) at Ligand since January 16, 2007, and has served as the President of Ligand
8 from January 16, 2007 until February 2, 2015.

9 9. Defendant Matthew Korenberg (“Korenberg”) has been the Chief Financial
10 Officer (“CFO”) and Vice President of Finance at Ligand since August 06, 2015, and has
11 been its Principal Accounting Officer since September 20, 2016.

12 10. The Defendants referenced above in ¶¶ 8 – 9 are sometimes referred to herein
13 as the “Individual Defendants.”

14 11. Each of the Individual Defendants:

- 15 (a) directly participated in the management of the Company;
16 (b) was directly involved in the day-to-day operations of the Company at
17 the highest levels;
18 (c) was privy to confidential proprietary information concerning the
19 Company and its business and operations;
20 (d) was involved in drafting, producing, reviewing and/or disseminating
21 the false and misleading statements and information alleged herein;
22 (e) was aware of or recklessly disregarded the fact that the false and
23 misleading statements were being issued concerning the Company;
24 and
25 (f) approved or ratified these statements in violation of the federal
26 securities laws.
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1 17. On February 26, 2016, the Company filed a Form 10-K for the fiscal year
2 ended December 31, 2015 (the “2015 10-K”) with the SEC, which provided the
3 Company’s year-end financial results and position and stated that the Company’s internal
4 control over financial reporting and disclosure controls and procedures were effective as
5 of December 31, 2015. The 2015 10-K was signed by Defendants Higgins and Korenberg.
6 The 2015 10-K also contained signed SOX certifications by Defendants Higgins and
7 Korenberg attesting to the accuracy of financial reporting, the disclosure of any material
8 changes to the Company’s internal controls over financial reporting, and the disclosure of
9 all fraud.

10 18. On May 9, 2016, the Company filed a Form 10-Q for the quarter ended March
11 31, 2016 (the “1Q 2016 10-Q”) with the SEC, which provided the Company’s first quarter
12 2016 financial results and position and stated that the Company’s disclosure controls and
13 procedures were effective as of March 31, 2016. The 1Q 2016 10-Q also disclosed that, as
14 of March 31, 2016, “there have not been any changes in our internal control over financial
15 reporting (as defined in Rule 13a-15(f) and 15d-15(f) under the Exchange Act) during the
16 quarter of the fiscal year to which this report relates that have materially affected, or are
17 reasonably likely to materially affect, our internal control over financial reporting.” The
18 1Q 2016 10-Q was signed by Defendant Korenberg. The 1Q 2016 10-Q also contained
19 signed SOX certifications by Defendants Higgins and Korenberg attesting to the accuracy
20 of financial reporting, the disclosure of any material changes to the Company’s internal
21 controls over financial reporting, and the disclosure of all fraud.

22 19. On August 4, 2016, the Company filed a Form 10-Q for the quarter ended
23 June 30, 2016 (the “2Q 2016 10-Q”) with the SEC, which provided the Company’s second
24 quarter 2016 financial results and position and stated that the Company’s disclosure
25 controls were effective as of June 30, 2016. The 2Q 2016 10-Q also disclosed that, as of
26 June 30, 2016, “there have not been any changes in our internal control over financial
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1 reporting (as defined in Rule 13a-15(f) and 15d-15(f) under the Exchange Act) during the
2 quarter of the fiscal year to which this report relates that have materially affected, or are
3 reasonably likely to materially affect, our internal control over financial reporting.” The
4 2Q 2016 10-Q was signed by Defendant Korenberg. The 2Q 2016 10-Q also contained
5 signed SOX certifications by Defendants Higgins and Korenberg attesting to the accuracy
6 of financial reporting, the disclosure of any material changes to the Company’s internal
7 controls over financial reporting, and the disclosure of all fraud.

8
9 20. The statements referenced in ¶¶ 16 – 19 above were materially false and/or
10 misleading because they misrepresented and failed to disclose the following adverse facts
11 pertaining to the Company’s business, operational and financial results, which were
12 known to Defendants or recklessly disregarded by them. Specifically, Defendants made
13 false and/or misleading statements and/or failed to disclose that: (1) Ligand overstated the
14 value of certain Deferred Tax Assets (“DTA”) by approximately \$27.5 million or 13%;
15 (2) Ligand’s outstanding convertible senior unsecured notes due 2019 should have been
16 classified as short-term debt rather than long-term debt as of December 31, 2015; (3)
17 Ligand did not maintain effective controls over the accuracy and presentation of the
18 accounting for income taxes related to complex transactions; (4) in turn, Ligand lacked
19 effective internal control over financial reporting; and (5) as a result, Defendants’
20 statements about Ligand’s business, operations and prospects were materially false and
21 misleading and/or lacked a reasonable basis at all relevant times.

22 The Truth Emerges

23 21. On November 14, 2016, Ligand filed a Form 8-K with the SEC during
24 aftermarket hours revealing that its consolidated financial statements as of September 30,
25 2015, December 31, 2015, March 31, 2016 and June 30, 2016 need to be restated and its
26 internal control over financial reporting was not effective as of December 31, 2015, stating
27 in pertinent part:
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1 **Item 4.02(a) Non-Reliance on Previously Issued Financial**
2 **Statements or a Related Audit Report or Completed Interim**
3 **Review.**

4 As previously disclosed on November 3, 2016, in the Earnings Release,
5 as identified above in Item 2.02, the Company conducted a review of
6 the amount of net operating loss carryforwards recorded as a result of
7 certain acquisitions accounted for prior to February of 2010. These net
8 operating loss carryforwards resulted in a portion of our deferred tax
9 assets (“DTA”) of approximately \$209 million and a tax benefit of \$220
10 million as of and for the third quarter of 2015. As a result of this review,
11 management has determined that the Company overstated the value of
12 the DTA by approximately \$27.5 million, or 13% of the DTA initially
13 recorded in the third quarter of 2015. The adjustment reduces the
14 discrete DTA gain and reduces GAAP net income for that period by the
15 same amount. As restated, the Company’s balance sheet for the third
16 quarter of 2015 and every subsequent period should reflect the
17 reduction in DTA.

18 Further, management determined that the Company’s outstanding
19 convertible senior unsecured notes due 2019 (the “Convertible Notes”)
20 should have been classified as short-term debt rather than long-term
21 debt as of December 31, 2015 because the Convertible Notes were
22 convertible according to their terms as of such date. In addition, the
23 related unamortized discount of \$39.6 million previously included
24 within stockholders' equity was reclassified as temporary equity
25 component of currently redeemable convertible notes on our
26 Consolidated Balance Sheet. The change to the classification of the
27 Convertible Notes has no effect on GAAP net income.

28 Section 404 of Sarbanes Oxley Act

Management has evaluated the effect of the restatement on the
Company’s prior conclusions on the effectiveness of its internal control
over financial reporting and disclosure controls and procedures as of
December 31, 2015. In connection with management’s re-evaluation of
the effectiveness of the Company’s internal control over financial
reporting as of December 31, 2015, management determined that the
Company did not maintain effective controls over the accuracy and
presentation of the accounting for income taxes relate to complex

1 transactions, including the income tax provision and related tax assets
2 and liabilities and controls over the financial reporting classification of
3 convertible debt and temporary equity. The Company will amend its
4 disclosures pertaining to its evaluation of such controls and procedures
5 in the Form 10-K/A to report a material weakness in those controls and
6 procedures and will report that its internal control over financial
reporting and its disclosure controls and procedures were not effective
as of December 31, 2015.

7 Consequently, on November 14, 2016, the Audit Committee of the
8 Company's board of directors, in consultation with management,
9 determined that the consolidated financial statements as of and for each
10 of the following financial periods contain a material error, should not
11 be relied upon and need to be restated: September 30, 2015, December
12 31, 2015, March 31, 2016 and June 30, 2016 (collectively, the
13 "Previously Issued Financial Statements").

14 22. On this news, shares of Ligand fell \$5.60 per share or approximately 5% over
15 two trading days to close at \$103.85 per share on November 16, 2016, damaging investors.

16 23. As a result of Defendants' wrongful acts and omissions, and the precipitous
17 decline in the market value of the Company's securities, Plaintiff and other Class members
18 have suffered significant losses and damages.

19 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

20 24. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
21 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or
22 otherwise acquired Ligand securities traded on NASDAQ during the Class Period (the
23 "Class"); and were damaged upon the revelation of the alleged corrective disclosure.
24 Excluded from the Class are Defendants herein, the officers and directors of the Company,
25 at all relevant times, members of their immediate families and their legal representatives,
26 heirs, successors or assigns and any entity in which Defendants have or had a controlling
27 interest.
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1 25. The members of the Class are so numerous that joinder of all members is
2 impracticable. Throughout the Class Period, Ligand securities were actively traded on
3 NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time
4 and can be ascertained only through appropriate discovery, Plaintiff believes that there are
5 hundreds or thousands of members in the proposed Class. Record owners and other
6 members of the Class may be identified from records maintained by Ligand or its transfer
7 agent and may be notified of the pendency of this action by mail, using the form of notice
8 similar to that customarily used in securities class actions.

9 26. Plaintiff's claims are typical of the claims of the members of the Class as all
10 members of the Class are similarly affected by Defendants' wrongful conduct in violation
11 of federal law that is complained of herein.

12 27. Plaintiff will fairly and adequately protect the interests of the members of the
13 Class and has retained counsel competent and experienced in class and securities litigation.
14 Plaintiff has no interests antagonistic to or in conflict with those of the Class.

15 28. Common questions of law and fact exist as to all members of the Class and
16 predominate over any questions solely affecting individual members of the Class. Among
17 the questions of law and fact common to the Class are:

- 18
- 19 • whether the federal securities laws were violated by Defendants' acts as
20 alleged herein;
 - 21 • whether statements made by Defendants to the investing public during the
22 Class Period misrepresented material facts about the business, operations and
23 management of Ligand;
 - 24 • whether the Individual Defendants caused Ligand to issue false and
25 misleading financial statements during the Class Period;
 - 26 • whether Defendants acted knowingly or recklessly in issuing false and
27 misleading financial statements;
- 28

- 1 • whether the prices of Ligand securities during the Class Period were
2 artificially inflated because of the Defendants' conduct complained of herein;
3 and
4 • whether the members of the Class have sustained damages and, if so, what is
5 the proper measure of damages.

6 29. A class action is superior to all other available methods for the fair and
7 efficient adjudication of this controversy since joinder of all members is impracticable.
8 Furthermore, as the damages suffered by individual Class members may be relatively
9 small, the expense and burden of individual litigation make it impossible for members of
10 the Class to individually redress the wrongs done to them. There will be no difficulty in
11 the management of this action as a class action.

12 30. Plaintiff will rely, in part, upon the presumption of reliance established by the
13 fraud-on-the-market doctrine in that:

- 14 • Defendants made public misrepresentations or failed to disclose material
15 facts during the Class Period;
16 • the omissions and misrepresentations were material;
17 • Ligand securities are traded in an efficient market;
18 • the Company's shares were liquid and traded with moderate to heavy volume
19 during the Class Period;
20 • the Company traded on NASDAQ and was covered by multiple analysts;
21 • the misrepresentations and omissions alleged would tend to induce a
22 reasonable investor to misjudge the value of the Company's securities; and
23 • Plaintiff and members of the Class purchased, acquired and/or sold Ligand
24 securities between the time the Defendants failed to disclose or
25 misrepresented material facts and the time the true facts were disclosed,
26 without knowledge of the omitted or misrepresented facts.
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1 36. Pursuant to the above plan, scheme, conspiracy and course of conduct, each
2 of the Defendants participated directly or indirectly in the preparation and/or issuance of
3 the annual reports, SEC filings, press releases and other statements and documents
4 described above, including statements made to securities analysts and the media that were
5 designed to influence the market for Ligand securities. Such reports, filings, releases and
6 statements were materially false and misleading in that they failed to disclose material
7 adverse information and misrepresented the truth about Ligand's disclosure controls and
8 procedures.

9 37. By virtue of their positions at Ligand, Defendants had actual knowledge of
10 the materially false and misleading statements and material omissions alleged herein and
11 intended thereby to deceive Plaintiff and the other members of the Class, or, in the
12 alternative, Defendants acted with reckless disregard for the truth in that they failed or
13 refused to ascertain and disclose such facts as would reveal the materially false and
14 misleading nature of the statements made, although such facts were readily available to
15 Defendants. Said acts and omissions of Defendants were committed willfully or with
16 reckless disregard for the truth. In addition, each defendant knew or recklessly disregarded
17 that material facts were being misrepresented or omitted as described above.

18 38. Information showing that Defendants acted knowingly or with reckless
19 disregard for the truth is peculiarly within Defendants' knowledge and control. As the
20 senior managers and/or directors of Ligand, the Individual Defendants had knowledge of
21 the details of Ligand's internal affairs.

22 39. The Individual Defendants are liable both directly and indirectly for the
23 wrongs complained of herein. Because of their positions of control and authority, the
24 Individual Defendants were able to and did, directly or indirectly, control the content of
25 the statements of Ligand. As officers and/or directors of a publicly-held company, the
26 Individual Defendants had a duty to disseminate timely, accurate, and truthful information
27 with respect to Ligand's businesses, operations, future financial condition and future
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1 prospects. As a result of the dissemination of the aforementioned false and misleading
2 reports, releases and public statements, the market price of Ligand securities was
3 artificially inflated throughout the Class Period. In ignorance of the adverse facts
4 concerning Ligand's business and financial condition which were concealed by
5 Defendants, Plaintiff and the other members of the Class purchased or otherwise acquired
6 Ligand securities at artificially inflated prices and relied upon the price of the securities,
7 the integrity of the market for the securities and/or upon statements disseminated by
8 Defendants, and were damaged thereby.

9 40. During the Class Period, Ligand securities were traded on an active and
10 efficient market. Plaintiff and the other members of the Class, relying on the materially
11 false and misleading statements described herein, which the Defendants made, issued or
12 caused to be disseminated, or relying upon the integrity of the market, purchased or
13 otherwise acquired shares of Ligand securities at prices artificially inflated by Defendants'
14 wrongful conduct. Had Plaintiff and the other members of the Class known the truth, they
15 would not have purchased or otherwise acquired said securities, or would not have
16 purchased or otherwise acquired them at the inflated prices that were paid. At the time of
17 the purchases and/or acquisitions by Plaintiff and the Class, the true value of Ligand
18 securities was substantially lower than the prices paid by Plaintiff and the other members
19 of the Class. The market price of Ligand securities declined sharply upon public disclosure
20 of the facts alleged herein to the injury of Plaintiff and Class members.

22 41. By reason of the conduct alleged herein, Defendants knowingly or recklessly,
23 directly or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5
24 promulgated thereunder.

25 42. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff
26 and the other members of the Class suffered damages in connection with their respective
27 purchases, acquisitions and sales of the Company's securities during the Class Period.

1 **COUNT II**
2 **Violations of Section 20(a) of The Exchange Act**
3 **Against The Individual Defendants**

4 43. Plaintiff repeats and realleges each and every allegation contained in the
5 foregoing paragraphs as if fully set forth herein.

6 44. During the Class Period, the Individual Defendants participated in the
7 operation and management of Ligand, and conducted and participated, directly and
8 indirectly, in the conduct of Ligand's business affairs. Because of their senior positions,
9 they knew the adverse non-public information about Ligand's operations, current financial
10 position and future business prospects.

11 45. As officers and/or directors of a publicly owned company, the Individual
12 Defendants had a duty to disseminate accurate and truthful information with respect to
13 Ligand's business practices, and to correct promptly any public statements issued by
14 Ligand which had become materially false or misleading.

15 46. Because of their positions of control and authority as senior officers, the
16 Individual Defendants were able to, and did, control the contents of the various reports,
17 press releases and public filings which Ligand disseminated in the marketplace during the
18 Class Period concerning the Company's disclosure controls and procedures. Throughout
19 the Class Period, the Individual Defendants exercised their power and authority to cause
20 Ligand to engage in the wrongful acts complained of herein. The Individual Defendants
21 therefore, were "controlling persons" of Ligand within the meaning of Section 20(a) of
22 the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which
23 artificially inflated the market price of Ligand securities.

24 47. Each of the Individual Defendants, therefore, acted as a controlling person of
25 Ligand. By reason of their senior management positions and/or being directors of Ligand
26 each of the Individual Defendants had the power to direct the actions of, and exercised the
27 same to cause, Ligand to engage in the unlawful acts and conduct complained of herein.
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1 Each of the Individual Defendants exercised control over the general operations of Ligand
2 and possessed the power to control the specific activities which comprise the primary
3 violations about which Plaintiff and the other members of the Class complain.

4 48. By reason of the above conduct, the Individual Defendants are liable pursuant
5 to Section 20(a) of the Exchange Act for the violations committed by Ligand.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

8 A. Determining that the instant action may be maintained as a class action under
9 Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class
10 representative;

11 B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by
12 reason of the acts and transactions alleged herein;

13 C. Awarding Plaintiff and the other members of the Class prejudgment and post-
14 judgment interest, as well as reasonable attorneys' fees, expert fees and other costs; and

15 D. Awarding such other and further relief as this Court may deem just and
16 proper.
17

18 **DEMAND FOR TRIAL BY JURY**

19 Plaintiff hereby demands a trial by jury.

20 Dated: November __, 2016

Respectfully submitted,

21
22 **THE ROSEN LAW FIRM, P.A.**

23 By: _____
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