



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

AG ONCON, LLC, AG OFCON, LTD, )  
CALAMOS MARKET NEUTRAL )  
INCOME FUND, CAPITAL )  
VENTURES INTERNATIONAL, )  
CITADEL EQUITY FUND, LTD, OPTI )  
OPPORTUNITY MASTER FUND, )  
POLYGON CONVERTIBLE )  
OPPORTUNITY MASTER FUND, and )  
WOLVERINE FLAGSHIP FUND )  
TRADING LIMITED, )

Plaintiffs, )

v. )

LIGAND PHARMACEUTICALS INC., )

Defendant. )

C.A. No. \_\_\_\_\_

**VERIFIED COMPLAINT**

Plaintiffs AG Oncon, LLC, AG Ofcon, Ltd., Calamos Market Neutral Income Fund, Capital Ventures International, Citadel Equity Fund Ltd., Opti Opportunity Master Fund, Polygon Convertible Opportunity Master Fund, Wolverine Flagship Fund Trading Limited (“Plaintiffs”), by and through their attorneys, for their complaint against defendant, Ligand Pharmaceuticals Inc. (“Ligand”), allege as follows:

**NATURE OF THE ACTION**

1. This is an action for violation of the Trust Indenture Act of 1939, 15

U.S.C. §§ 77aaa-77bbbb (the “Trust Indenture Act”), and breach of contract.

Plaintiffs seek declaratory relief with respect to an indenture by defendant Ligand.

2. Ligand is a Delaware corporation that was incorporated in 1987.

Upon information and belief, Ligand is a biopharmaceutical company focused on developing or acquiring biopharmaceutical assets and related revenue streams. As of 2014, Ligand remained a venture struggling to create a sustainably profitable business model around the more risky aspects of biopharmaceuticals: drug discovery and reformulations.

3. On August 18, 2014, Ligand issued approximately \$245 million in principal amount of 0.75% Convertible Senior Notes (the “Convertible Notes”) that were purchased by four underwriters.

4. Ligand and the underwriters are sophisticated parties and were each represented by sophisticated law firms internationally recognized as preeminent practitioners in the financial services arena, including for their expertise in convertible debt offerings.

5. Immediately, after purchasing the Convertible Notes, the underwriters sold them to investors. Over time, some of those investors, in turn, sold the Convertible Notes to other investors.

6. Despite struggling to maintain its growth, Ligand intended to use the proceeds from the offering for repurchases of its common stock.

7. Given the low interest rate attached to the Convertible Notes, an investment in them would be rewarding to investors only if Ligand's common stock (into which the Convertible Notes were convertible) appreciated in value.

8. As of August 15, 2014, the last trading day before Ligand issued the Convertible Notes, the closing price of Ligand's stock was \$56.59 per share.

9. On July 26, 2018, the day before Plaintiffs' filed this complaint, Ligand's common stock closed at a price of \$232.55 per share.

10. The Convertible Notes are governed by an indenture dated as of August 18, 2014 (the "Indenture") by and between Ligand and Wilmington Trust, National Association, as trustee (the "Trustee"). A true and correct copy of the Indenture is attached hereto as Exhibit A.

11. The Indenture governs the relationship between Ligand and the holders of the Convertible Notes (the "Holders") and represents the final and complete agreement between the parties concerning the subject matter thereof.

12. Article 10 of the Indenture gives the Holders the right to convert their Convertible Notes into cash and/or shares of Ligand common stock after December 31, 2014 so long as the common stock trades at 130% of the applicable conversion price on the last trading day of the preceding fiscal quarter for at least 20 out of the final 30 days of that fiscal quarter.

13. Upon conversion of the Convertible Notes, Section 10.03(a) of the

Indenture provides that Ligand must deliver to the Holders an amount of cash and/or a number of shares of its common stock as determined by the price of the stock during the subsequent fifty day trading period.

14. Plaintiffs relied on the clear and unambiguous language of the Indenture to determine the terms and conditions under which they could convert their Convertible Notes and to establish what they would receive from Ligand upon conversion.

15. On February 20, 2018, nearly three and a half years after issuing the Convertible Notes, when Ligand's common stock was trading at sustained highs in the range of \$150-\$155 per share for the first consistent period since issuance of the Convertible Notes, and immediately prior to the common stock appreciating by an additional 50%, Ligand purported to enter into a First Supplemental Indenture (the "Purported Amendment"). Upon information and belief, a copy of the Purported Amendment is attached hereto as Exhibit B.

16. Ligand's attempt to enter into the Purported Amendment was done without prior notice or disclosure to the Holders and without the Holders' consent.

17. The Purported Amendment was an effort to materially and adversely amend the terms of the Indenture concerning the consideration Holders' were entitled to receive upon conversion. Specifically, the Purported Amendment sought to alter the conversion formula in the Indenture by substituting the words

“Daily Principal Portion for such Trading Day” with the words “Daily VWAP for a VWAP Trading Day” in the definition of “Daily Share Amount.” In doing so, Ligand sought to amend the core payment terms of the Convertible Notes without the Holders’ consent.

18. As a result, Ligand’s attempt to reform the Indenture through the Purported Amendment violated the Trust Indenture Act and breached the terms of the Indenture.

19. After executing the Purported Amendment, Ligand, upon information and belief, promised the Trustee it would disclose the Purported Amendment publicly with the United States Securities and Exchange Commission (the “SEC”). Ligand did not file, and to date has not filed, the Purported Amendment with the SEC. Ligand’s failure to file the Purported Amendment with the SEC prevented Holders from learning about Ligand’s efforts and materially alters and impairs the conversion rights associated with the Convertible Notes as set forth in the Indenture.

20. Plaintiffs purchased a portion of the Convertible Notes at various times following the underwriters’ purchase of such notes from Ligand. Collectively, Plaintiffs beneficially own approximately \$212 million or 95% of the issued and outstanding Convertible Notes.

21. Based on the terms of the Indenture, if Plaintiffs were to convert all of

their Convertible Notes, utilizing the stock price for the fifty trading day period prior to the filing of this complaint, Plaintiffs would be owed approximately \$3,877,011,480.00 in the aggregate.

22. On July 27, 2018, Plaintiffs converted a portion of their Convertible Notes in reliance on the language in the Indenture. Despite the clear and unambiguous terms of the Indenture providing that Ligand is required to deliver to them the Daily Share Amount as defined in the Indenture, Ligand has definitively stated in writing that it will not honor its obligations under the Indenture to pay Plaintiffs the amounts required upon conversion of the Convertible Notes and, instead, will deliver the amount calculated pursuant to the Purported Amendment.

23. Plaintiffs will suffer damages as a result of Ligand's violation of the Trust Indenture Act and breach of the terms of Plaintiffs' investment in the Convertible Notes.

24. Plaintiffs bring this action for damages resulting from Ligand's violation of the Trust Indenture Act and breach of contract seeking a declaration that Ligand is required to honor the terms of the Indenture, and that the Purported Amendment is invalid.

### **THE PARTIES**

25. Plaintiff AG Oncon, LLC is a Delaware Limited Liability Company with its principal place of business located at 245 Park Avenue, New York, NY

10167.

26. Plaintiff AG Ofcon, Ltd. is a Cayman Exempt Company with its principal place of business located at 245 Park Avenue, New York, NY 10167.

27. Plaintiff Calamos Market Neutral Income Fund is a U.S. regulated investment company, a series of the Calamos Investment Trust, a Massachusetts business trust, with its principal place of business located at 2020 Calamos Court, Naperville, Illinois 60563.

28. Plaintiff Capital Ventures International is an exempted company formed in the Cayman Islands with its registered address at The Harbour Trust Co. Ltd., Winward 1, Regatta Office Park, West Bay Road, P.O. Box 897, Grand Cayman, KY1-1103 Cayman Islands.

29. Plaintiff Citadel Equity Fund Ltd. is a Cayman Limited Company by Shares with its registered address at Maples Corporate Services Limited, PO Box 309, Grand Cayman, KY1-1104, Cayman Islands.

30. Plaintiff Opti Opportunity Master Fund, LP is a Cayman Limited Partnership with its registered address at Ogier Fiduciary Service (Cayman) Limited, 89 Nexus Way, Camana Bay, Grand Cayman, KY1-9007, Cayman Islands.

31. Plaintiff Polygon Convertible Opportunity Master Fund is a company by limited shares with its registered address at Maples Corporate Services Limited,

Active, P.O. Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY101104, Cayman Islands.

32. Plaintiff Wolverine Flagship Fund Trading Limited is a Cayman Corporation located at 20 Genesis Close, DMS House, 2nd Floor, Grand Cayman, KY1-1104, Cayman Islands.

33. Upon information and belief, Ligand is a Delaware corporation with headquarters located at 11119 North Torrey Pines Road, Suite 200, La Jolla, CA 92037.

### **JURISDICTION AND VENUE**

34. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C. § 77vvv and 15 U.S.C. § 77v. This Court also has subject matter jurisdiction over this matter pursuant to 8 *Del. C.* § 111(a)(2)—because this action seeks to interpret, apply, enforce or determine the validity of provisions of the Indenture and the Purported Amendment, through which Ligand offered to create certain rights and options with respect to its stock; pursuant to 10 *Del. C.* § 341—because Plaintiffs seek equitable relief; and pursuant to 10 *Del. C.* § 6501—because Plaintiffs seek a declaratory judgment.

35. Exercise of personal jurisdiction is proper because Ligand is a Delaware corporation.



## **FACTS RELEVANT TO THE CLAIMS FOR RELIEF**

### ***Ligand's Issuance of the Convertible Notes***

36. In August 2014, Ligand set out to raise capital through the issuance of the Convertible Notes.

37. At that time Ligand's shares traded at approximately \$56.59.

38. The offering of the Convertible Notes was marketed through an offering memorandum dated August 12, 2014 (the "Offering Memorandum"). A true and correct copy of the Offering Memorandum is attached hereto as Exhibit C.

39. The Offering Memorandum contained, *inter alia*, a summary of the terms of an investment in the Convertible Notes.

40. The Offering Memorandum made clear that the offering was being conducted on a "strictly confidential" basis and that the offering was "personal" to each offeree and not an offer for sale to the public:

This offering memorandum is ***strictly confidential*** and has been prepared by us solely for use in connection with the proposed offering of the notes described in this offering memorandum. This offering memorandum is ***personal*** to each offeree and does not constitute an offer to any other person or the public generally to subscribe for or otherwise acquire the notes. Distribution of this offering memorandum to any person other than the offeree and those persons, if any, retained to advise such offeree with respect to this offering memorandum is unauthorized and any disclosure of any of its contents without our prior written consent is prohibited. By accepting delivery of this offering memorandum, you agree to the foregoing and not to make any photocopies,

in whole or in part, of this offering memorandum or any documents delivered in connection with this offering memorandum. [Emphasis added.]

41. The Offering Memorandum also stated that it did not represent a final agreement between Ligand and the underwriters, who would be the initial purchasers of the Convertible Notes, as to the terms of the Convertible Notes themselves. The Offering Memorandum expressly provided that the underwriters would offer the Convertible Notes for subsequent sale only in the form issued and acquired from Ligand under the terms of the Indenture:

The initial purchasers are offering the notes, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the notes, and other conditions contained in the purchase agreement, such as the receipt by the initial purchasers of officer's certificates and legal opinions. The initial purchasers reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

42. The Offering Memorandum also provided that the Indenture (and not the Offering Memorandum) defined the rights of the Holders:

***The following description is a summary of the material provisions of the notes and the indenture and does not purport to be complete. This summary is subject to, and is qualified by reference to, all of the provisions of the notes and the indenture, including the definitions of certain terms used in the notes and the indenture. We urge you to read these documents because they, and not this description, define your rights as a holder of the notes.*** [Emphasis added.]

43. Ligand thus offered to sell the Convertible Notes pursuant to the terms of the Indenture, not the terms of the Offering Memorandum. The underwriters also agreed to acquire the Convertible Notes subject to the terms of the Indenture, not the terms of the Offering Memorandum. The underwriters then sold the Convertible Notes to investors pursuant to the terms of the Indenture, not the Offering Memorandum.

44. Plaintiffs never negotiated, or had the opportunity to negotiate, the terms of the Indenture. Ligand prepared the Offering Memorandum at its sole discretion. It was not a negotiated agreement.

45. Indeed, on August 11, 2014, Ligand issued a press release stating, “The initial conversion rate, interest rate and certain other terms of the notes *will be determined by negotiations between Ligand and the [underwriters].*” (Emphasis added.) A true and correct copy of Ligand’s August 11, 2014 press release is attached hereto as Exhibit D.

46. Ligand chose not to file the Offering Memorandum with the SEC before or after issuing the Convertible Notes.

47. On August 12, 2014, after dating the Offering Memorandum, Ligand prepared a form 8-K which was later filed with the SEC concerning its proposed issuance of the Convertible Notes (the “August 2014 8-K”). A true and correct copy of the August 2014 8-K is attached hereto as Exhibit E.

48. The August 2014 8-K informed investors that the Indenture would control the Convertible Notes and that Investors should look to the Indenture (and not the summary of the Convertible Notes contained in the August 2014 8-K) to determine their rights with respect to the Convertible Notes.

The foregoing description of the Indenture and the Notes is qualified in its entirety by reference to the Indenture (including the form of the Note), which is attached hereto as Exhibit 4.1 and incorporated herein by reference. The foregoing description of the Convertible Note Hedge Transactions and the Warrant Transactions is qualified in its entirety by reference to the confirmations for the Convertible Note Hedge Transactions and the Warrant Transactions, which are attached as Exhibits 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7 and 10.8 and incorporated herein by reference.

49. The August 2014 8-K made no mention of the Offering Memorandum or the calculation used to determine the amount Ligand had to deliver upon conversion of the Convertible Notes.

50. On August 18, 2014, six days after the Offering Memorandum was dated and the August 2014 8-K was drafted, Ligand entered into the Indenture and simultaneously filed the August 2014 8-K with the SEC. The underwriters then acquired and accepted the Convertible Notes as issued under the Indenture and thereafter sold them to investors who were free to hold or sell them.

51. Upon information and belief, Ligand entered into the Indenture with full knowledge and understanding that the Indenture, not the Offering

Memorandum, would govern the rights of the Holders and obligations of Ligand.

This is consistent with the language of the Offering Memorandum, which provided:

The following description is a summary of the material provisions of the notes and the indenture and does not purport to be complete. ***This summary is subject to, and is qualified by reference to, all of the provisions of the notes and the indenture, including the definitions of certain terms used in the notes and the indenture.*** We urge you to read these documents because they, and not this description, define your rights as a holder of the notes. [Emphasis added.]

52. The Indenture states that Ligand will provide prospective investors with a copy of the Indenture upon request. The Indenture did not state that Ligand would provide a copy of the Offering Memorandum to prospective investors upon request.

53. Accordingly, Ligand's own statements admit that the Offering Memorandum is not material to the Indenture and does not govern the Holders' Convertible Notes.

54. The Convertible Notes issued by Ligand pursuant to the Indenture expressly incorporate the terms of the Indenture. In contrast, the Convertible Notes issued by Ligand pursuant to the Indenture do not incorporate the terms of the Offering Memorandum.

55. Upon information and belief, the Indenture and the Convertible Notes

issued pursuant thereto were validly authorized following receipt of all necessary corporate power and approvals and executed by an authorized officer of Ligand.

56. Upon information and belief, upon entry into the Indenture, Ligand's counsel issued a legal opinion in which it opined that Ligand's entry into the Indenture was duly authorized by all corporate action and that the Indenture represented a valid and enforceable agreement, binding on Ligand in accordance with the terms thereof.

57. Plaintiffs each acquired Convertible Notes pursuant to the Indenture in good faith, for value, and without notice of defect, with the belief that the terms of the Indenture were the complete and final agreement governing the Convertible Notes.

58. In statements both prior to and immediately following entry into the Indenture, including press releases filed with the SEC, Ligand communicated that the Indenture, and not the Offering Memorandum, represented the final and complete agreement between it and investors, including Plaintiffs, who would acquire the Convertible Notes and that the Indenture, including the material terms and definitions contained therein, not the Offering Memorandum, would govern the terms of the Convertible Notes and, importantly, the Holders' conversion rights.

59. Ligand's statements resulted in notice to investors, including

Plaintiffs, that the Indenture, and not the Offering Memorandum, was controlling, could be relied as the final and definitive agreement governing the Convertible Notes and therefore, that it was valid and enforceable.

***The Indenture's Payment Terms***

60. The Indenture is a valid and enforceable contract governing the relationship between Ligand and the Holders and the rights of the Holders with respect to the Convertible Notes.

61. The terms of the Indenture are clear and unambiguous.

62. Pursuant to Section 10.01(a)(i) of the Indenture, a Holder may elect to convert its Convertible Notes at any time after December 31, 2014, but only “if, for at least 20 Trading Days (whether or not consecutive) during the 30 consecutive Trading Day period ending on the last Trading Day of the immediately preceding fiscal quarter, the Last Reported Sale Price of the Common Stock on such Trading Day is greater than 130% of the applicable conversion price on such Trading Day.”

63. The Holders, including Plaintiffs, were incentivized to hold their Convertible Notes for as long as possible because, due to the ultra-low interest rate of the Convertible Notes, a significant increase in stock price was required for the Holders to gain a return on their investment.

64. Section 10.03(a) of the Indenture provides that, upon conversion of a Convertible Note, Ligand shall deliver to the converting Holder a specified amount

of cash and a number of shares of its common stock, if any, equal to the Daily Settlement Amounts over a fifty-day trading or “observation” period (the “Observation Period”).

65. At the conclusion of the Observation Period, Ligand must convert the principal amount of the surrendered Convertible Notes into an aggregate sum equal to the Daily Settlement Amount for each VWAP Trading Day (as defined in the Indenture) of the fifty VWAP Trading Days during the Observation Period for each Convertible Note.

66. The Indenture defines the “Daily Settlement Amount” as:  
“for each consecutive fifty VWAP Trading Days in the Observation Period for a Note:

- (a) the Daily Principal Portion; and
- (b) to the extent the Daily Conversion Value for such VWAP Trading Day exceeds the Daily Principal Portion for such VWAP Trading Day, a number of shares equal to the Daily Share Amount.”

67. The Indenture defines Daily Principal Portion “as an amount of cash equal to the lesser of (i) one-fiftieth (1/50th) of \$1,000 and (ii) the Daily Conversion Value for such VWAP Trading Day.”

68. The Indenture defines “Daily Conversion Value” as “for each of the



50 consecutive VWAP Trading Days in the Observation Period for a Note, one-fiftieth (1/50th) of the product of (i) the Conversion Rate on such VWAP Trading Day and (ii) the Daily VWAP on such VWAP Trading Day.”

69. Upon information and belief, the current Conversion Rate of the Convertible Notes is 13.3251 per 1,000 in principal amount of Convertible Notes.

70. On February 20, 2018, nearly three and a half years after issuing the Convertible Notes, and just as the stock price began to climb, Ligand purported to enter into the Purported Amendment without the consent of the Holders.

71. In the Purported Amendment, Ligand sought to amend the definition of “Daily Share Amount,” a material defined term appearing in the definition of Daily Settlement Amount.

72. A material amendment to the definition of Daily Share Amount, itself a material and substantive component of the Daily Settlement Amount, or any of the conversion mechanism’s other components would impair the Holders’ conversion rights.

73. The Indenture defines “Daily Share Amount” as a number of shares equal to (i) the excess of the Daily Conversion Value for such VWAP Trading Day over the Daily Principal Portion for such VWAP Trading Day, *divided by (ii) the Daily Principal Portion for such Trading Day.*” (Emphasis added.)

74. The Purported Amendment sought to materially impair the Holders’

conversion rights by amending clause (ii) in that definition to read the “Daily VWAP for such VWAP Trading Day.”

75. This would change the equation used to calculate the Daily Share Amount by increasing the denominator contained therein from 20 to a number that could exceed 200. The effect would be to significantly reduce the value of the Daily Share Amount and, as a result, the amount Ligand would owe to the Holders upon conversion.

76. As the Purported Amendment would materially and adversely impair the conversion rights of the Holders, and was not consented to by the Holders, the Purported Amendment violates Section 316(b) of the Trust Indenture Act and is a breach of, *inter alia*, Sections 6.07 and 9.02 of the Indenture.

***The Indenture Prohibits Amendments to a Holder’s Conversion Rights Without Written Consent***

77. Because the conversion rights contained in the Indenture are so integral to the value of the Convertible Notes, the Indenture contains critical protections prohibiting Ligand from amending or modifying Holders’ conversion rights without their informed written consent.

78. Specifically, Section 6.07 of the Indenture protects the Holder’s conversion rights by providing:

***Notwithstanding any other provision of this Indenture,***  
the right of any Holder . . . to receive consideration due  
upon conversion of Notes in accordance with Article 10,

shall not be impaired or affected without the consent of such Holder and shall not be subject to the requirements of Section 6.06. [Emphasis added.]

79. Additionally, Section 9.02 of the Indenture prohibits amendments to the Indenture without the consent of the Holders in instances where an amendment would, *inter alia*, “make any change that impairs or adversely affects the conversion rights of any Notes under Article 10 hereof” or impair the right of any Holder to receive payment with respect to principal.

80. The Indenture further provides that with respect to the conversion rights of the Holders, Ligand and the Trustee, without the consent of any Holder, may only make administrative “provisions with respect to the conversion of the Notes in accordance with Section 10.06 of the Indenture.” Indenture at 91.

***The Trust Indenture Act Prohibits Amendments to a Holder’s Rights to Receive Payment of the Convertible Notes Without Consent***

81. The Trust Indenture Act governs the terms of the Indenture and the Convertible Notes. 15 U.S.C. § 77ccc.

82. Sections 1.02, 9.06, and 12.01 of the Indenture, expressly provide that the Convertible Notes and the Indenture would be subject to and qualified by the terms of the Trust Indenture Act.

83. Section 316(b) of the Trust Indenture Act prohibits Ligand from impairing Plaintiffs’ rights to receive payment on the Convertible Notes without Plaintiffs’ consent. Specifically, Section 316(b) provides:

Notwithstanding any other provision of the indenture to be qualified, *the right of any holder of any indenture security to receive payment of the principal of and interest on such indenture security*, on or after the respective due dates expressed in such indenture security, or to institute suit for the enforcement of any such payment on or after such respective dates, *shall not be impaired or affected without the consent of such holder* .

....

15 U.S.C. § 77ppp (emphasis added).

84. By attempting to alter the Holders’ conversion rights under the Indenture, Ligand’s Purported Amendment violates the Trust Indenture Act because conversion is the right “to receive payment of the principal of and interest” under the Indenture.

85. Further, the Trust Indenture Act prohibits parties from waiving compliance with the Act, providing that, “Any condition, stipulation, or provision binding any person to waive compliance with any provision of this subchapter or with any rule, regulation, or order thereunder shall be void.” 15 U.S.C. § 77aaaa.

86. Therefore, the Trust Indenture Act also prohibits amendment provisions to the extent they allow an issuer to amend an indenture in violation of the Trust Indenture Act.

***Ligand Purports to Amend the Indenture’s Core Payment Terms Without Plaintiffs’ Consent***

87. Upon information and belief, on February 20, 2018, nearly three and a half years after Ligand issued the Convertible Notes, Ligand attempted to amend

the core terms of the Indenture through the Purported Amendment.

88. Upon information and belief, Ligand waited until the following month to direct the Trustee to deliver an unexecuted copy of the Purported Amendment to the Depository Trust Company, the depository for the Convertible Notes.

89. Upon information and belief, the Depository Trust Company informed the Holders that the definition of Daily Share Amount was as set forth in the Indenture, not the Offering Memorandum.

90. Upon information and belief, Ligand notified the Trustee that the Purported Amendment would be made available through the SEC.

91. Ligand failed to file the Purported Amendment with the SEC.

92. None of the Plaintiffs consented to Ligand's Purported Amendment and Ligand did not seek their consent.

93. Upon information and belief, no other Holders consented to the Purported Amendment.

94. The Purported Amendment sought to reform the Indenture by modifying the definition of "Daily Share Amount" in Section 10 of the Indenture to replace the words "the Daily Principal Portion for such Trading Day" in clause (ii) with the words "Daily VWAP for such VWAP Trading Day."

95. By putting forth this change, Ligand attempted to materially and adversely amend the core payment rights of the Holders by altering the Indenture's

conversion mechanism—i.e. the right to the payment of the principal of and interest on their Convertible Notes—in Ligand’s favor.

96. This purported change would materially and adversely reduce the amount Ligand must deliver to Plaintiffs upon conversion of their Convertible Notes.

97. The Trust Indenture Act and the terms of the Indenture prohibit amendments affecting the Holders’ conversion rights absent their informed written consent and any provision in Indenture to the contrary is void.

98. By attempting to adopt the Purported Amendment, Ligand violated the Trust Indenture Act and breached its obligations under the Indenture.

99. Ligand further breached the Indenture by entering into the Purported Amendment because, pursuant to Section 9.06 of the Indenture, every supplemental indenture must conform to the Trust Indenture Act: “*Conformity with Trust Indenture Act*. Every supplemental indenture executed pursuant to this Article shall comply with the TIA.”

100. As a result, the Purported Amendment is invalid and Plaintiffs are not bound to its terms.

***Ligand States It Will Refuse To Honor The Terms Of The Indenture If Plaintiffs Convert***

101. As a result of SEC filings made in late May 2018, Plaintiffs learned Ligand entered into a second supplemental indenture (the “Second Supplemental

Indenture”).

102. It was only through filing the Second Supplemental Indenture that Plaintiffs learned of the Purported Amendment. By letter dated June 1, 2018, after discovering the Purported Amendment, Plaintiffs notified Ligand that the Purported Amendment was not binding on them because it violated the Trust Indenture Act and the terms of the Indenture. A true and correct copy of the June 1, 2018 letter is attached hereto as Exhibit F.

103. By letter dated June 12, 2018, Ligand, through its counsel, informed Plaintiffs in writing that it believes the Indenture permitted Ligand to enter into the Purported Amendment and that Ligand would only honor conversion requests and make conversion calculations in accordance with the Purported Amendment, not the Indenture. A true and correct copy of the June 12, 2018 letter is attached hereto as Exhibit G.

104. By clearly, and unequivocally stating that it would not honor the terms of the Indenture and by entering into the Purported Amendment, Ligand breached its obligations to Plaintiffs under the Indenture.

***Plaintiffs Convert Their Convertible Notes***

105. On, July 27, 2018, in accordance with the conditions set forth in Article 10 of the Indenture, Plaintiff’s placed conversion notices for a portion their Convertible Notes as follows:

Plaintiff AG Oncon, LLC converted one Convertible Note;

Plaintiff AG Ofcon, Ltd. converted one Convertible Note;

Plaintiff Calamos Market Neutral Income Fund converted one  
Convertible Note;

Plaintiff Capital Ventures International converted 100 Convertible  
Notes;

Plaintiff Citadel Equity Fund Ltd. converted 35,000 Convertible  
Notes;

Plaintiff Opti Opportunity Master Fund, LP converted one  
Convertible Note;

Plaintiff Polygon Convertible Opportunity Master Fund converted  
14,750 Convertible Notes; and

Plaintiff Wolverine Flagship Fund Trading Limited converted one  
Convertible Note.

106. Ligand's failure to honor the terms of the Indenture would damage  
Plaintiffs in amounts to be determined at the end of the Observation Period, as  
defined by the Indenture.

**FIRST CAUSE OF ACTION**  
**(Violation of the Trust Indenture Act)**

107. Plaintiffs repeat and reallege each and every allegation contained in  
Paragraphs 1 through 106 as if fully set forth herein.



108. Pursuant to, *inter alia*, Sections 1.02, 9.06, and 12.01 of the Indenture, the Convertible Notes and the Indenture are subject to and qualified by the terms of the Trust Indenture Act.

109. Section 316(b) of the Trust Indenture Act provides that “the right of any holder of any indenture security to receive payment of the principal of and interest on such indenture security . . . shall not be impaired or affected without the consent of such holder.”

110. Ligand violated the Trust Indenture Act by issuing the Purported Amendment, which purports to materially and adversely amend the core payment rights of the Holders by altering the Indenture’s conversion mechanism, without Plaintiffs’ consent.

**SECOND CAUSE OF ACTION**  
**(Breach of the Indenture)**

111. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 107 through 110 as if fully set forth herein.

112. The Indenture is a valid and enforceable contract governing the relationship between Ligand and the Holders and the rights of the Holders with respect to the Convertible Notes.

113. Sections 6.07 and 9.02 of the Indenture prohibit Ligand from amending or modifying Plaintiffs’ conversion rights without their informed written consent.

114. Ligand breached the Indenture by adopting the Purported Amendment, which purports to materially and adversely amend the core payment rights of the Holders by altering the Indenture's conversion mechanism, without Plaintiffs' informed written consent.

115. Ligand did not seek informed consent from the Holders in connection with entering into the Purported Amendment and did not take steps to ensure that all investors, including the Plaintiffs, would receive notice of the Purported Amendment by publically filing notice of the amendment with the SEC.

**THIRD CAUSE OF ACTION**  
**(Declaratory Judgment)**

116. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 111 through 115 as if fully set forth herein.

117. The Indenture is a valid and enforceable contract governing the relationship between Ligand and the Holders and the rights of the Holders with respect to the Convertible Notes.

118. An actual case or controversy exists regarding the interpretation of the Indenture, specifically with respect to whether Ligand can amend the Indenture via the Purported Amendment, which purports to materially and adversely amend the core payment rights of the Holders by altering the Indenture's conversion mechanism, without Plaintiffs' informed written consent.

119. In order to resolve this controversy, Plaintiffs request that the Court

declare the appropriate interpretation of the Indenture.

120. Based on the foregoing, Plaintiffs are entitled to a declaratory judgment that Ligand is required to honor the terms of the Indenture and that the Purported Amendment is invalid.

**WHEREFORE**, Plaintiffs request that judgment be entered in their favor and against Ligand as follows:

- a) declaring that Ligand is required to honor the terms of the Indenture and that the Purported Amendment is invalid;
- b) awarding Plaintiffs damages and attorneys' fees resulting from Ligand's violation of the Trust Indenture Act;
- c) awarding Plaintiffs damages and attorneys' fees resulting from Ligand's breach of the Indenture;
- d) awarding Plaintiffs pre- and post-judgment interest; and
- e) granting such other relief as the Court deems just and equitable under the circumstances.

OF COUNSEL:

HAYNES AND BOONE, LLP

Keith N. Sambur

David Fleischer

Charles L. Glover

30 Rockefeller Plaza, 26th Floor

New York, NY 10112

Telephone: (212) 659-7300

Facsimile: (212) 918-8989

Keith.Sambur@haynesboone.com

David.Fleischer@haynesboone.com

Charles.Glover@haynesboone.com

YOUNG CONAWAY STARGATT &  
TAYLOR, LLP

/s/ Elena C. Norman

Elena C. Norman (No. 4780)

Daniel M. Kirshenbaum (No. 6047)

Rodney Square

1000 North King Street

Wilmington, DE 19899

(302) 571-6600

*Attorneys for Plaintiffs*

Dated: July 27, 2018