

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

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**IN THE MATTER OF**

**GREGORY LEMELSON**

**Respondent.**

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) ADMINISTRATIVE PROCEEDING  
) FILE NO. 3-20828  
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**RESPONDENT'S MEMORANDUM IN OPPOSITION TO THE ENFORCEMENT  
DIVISION'S MOTION FOR SUMMARY DISPOSITION**

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## I. INTRODUCTION

Father Emmanuel Lemelson<sup>1</sup>—as he has from the beginning of the Enforcement Division’s (“Division”) investigation—maintains that he never committed securities fraud. It is black letter law that Fr. Lemelson should not be punished for asserting a vigorous defense—particularly where he prevailed in front of the jury on much of the Division’s case, including its scheme count and its principal misrepresentation theory. Indeed, the defenses Fr. Lemelson asserted at trial, in the pending motions to stay the injunction and for new trial before the District Court, as well as the defenses Fr. Lemelson intends to assert in any appeal, all weigh heavily in favor of this tribunal finding that an associational bar is not in the public interest. At minimum, the Commission should stay this proceeding until the District Court rules on the pending motion to stay the injunction.

Most tellingly, while the Division now claims that it is in the public interest to impose an associational bar on Fr. Lemelson, the Division chose not to seek an injunction *for over eight years* while this investigation and litigation were pending. During those eight years, Fr. Lemelson continued to manage his fund with no allegations of securities fraud. And notably, all of Fr. Lemelson’s investors are aware of the claims against Fr. Lemelson and the jury’s verdict, and all want Fr. Lemelson to continue to serve as their investment adviser.

There is no good basis in law or equity for Fr. Lemelson to be barred now. The jury *rejected* the Division’s key scheme liability theory. The jury only found Fr. Lemelson liable for three statements—one brief statement made in response to a question during a June 19, 2014 interview on an internet radio outlet named Benzinger, and two statements made in Fr. Lemelson’s July 3, 2014 report about Viking Therapeutics, with respect to which Fr. Lemelson

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<sup>1</sup> Referred to in the caption as Gregory Lemelson.

pointed readers to the written basis for his opinions. The evidence of materiality as to these three statements is either non-existent or remarkably thin and contrasts positions the Division has taken in other cases involving alleged “short and distort” claims.

Fr. Lemelson and Lemelson Capital Management (“LCM”) openly published all of the statements on behalf of his fund. Fr. Lemelson never denied making the statements or being responsible for their content. Additionally, all of Fr. Lemelson’s reports included disclaimers disclosing that his fund had taken a short position in Ligand, that the reports contained his opinions, that the reports were based on publicly available information, might contain errors, and the opinions may be subject to change.

Further, Ligand’s stock price movement on the days of the alleged misstatements is inconsistent with securities fraud, because the stock closed higher on those days than the previous trading days.

Moreover, unlike what one would expect from someone intentionally attempting to manipulate the market, Fr. Lemelson did not cover significant portions of his short position in Ligand on the days of the alleged misstatements. On June 19, 2014, Fr. Lemelson covered a small portion of his position at the request of his brokerage firm to address a small equity deficit. This transaction occurred approximately *six hours* after the statements were made. Fr. Lemelson did not cover any of his short position on July 3, 2014 or for the following month. Yet, as the Division has consistently argued in other cases, the impact of new information in the market is reflected in the stock price almost immediately.

These facts distinguish this case from every other short and distort claim previously brought by the Division. Typical hallmarks of short and distort claims include anonymous posts containing false information that have an immediate and significant impact on a company’s stock

price and shorts that are covered almost immediately. Fr. Lemelson's conduct was the exact opposite, as he published reports in his own name, disclosed his position in Ligand, and he held on to his fund's short position for months.

For all of the above reasons, it is not in the public interest to impose an associational bar against Fr. Lemelson. At minimum, any decision on whether to impose such a drastic remedy should be delayed until the District Court and First Circuit have ruled on Fr. Lemelson's pending motion to stay the injunction pending appeal.

## **II. STATEMENT OF UNDISPUTED FACTS**

Fr. Lemelson has published hundreds of reports and given interviews on an array of companies. Affidavit of Brian J. Sullivan in Support of Respondent's Opposition ("Sullivan Aff.") Ex. 1 at ¶ 4. These reports were published publicly and in the name of Fr. Lemelson and LCM. Sullivan Aff. Ex. 1 at ¶ 5; Division's Memorandum in Support of its Motion for Summary Disposition ("MSD") Ex. B, MSD Ex. J. Fr. Lemelson has only been accused of securities fraud in connection with a handful of statements regarding Ligand. Sullivan Aff. Ex. 1 at ¶ 4.

With regard to Ligand, Fr. Lemelson published five reports from June through August 2014; and multiple reports after that time period, including two letters to Congress. MSD Ex. B, MSD Ex. J; Sullivan Aff. Exs. 2-6. Following seven years of investigation and litigation, a jury found that only two statements in one of those reports (published on July 3, 2014) violated Rule 10b-5. MSD Ex. D.

The Division misleadingly included over five statements regarding Viking Therapeutics, Inc. ("Viking") and asserted that the "jury found that these statements violated" Rule 10b-5. MSD at 2. However, only two statements from the July 3, 2014 report were charged.

The statements were both based on Fr. Lemelson's analysis of Viking's public S-1 filing which Fr. Lemelson repeatedly cited in his report. MSD Ex. B at 7, 10. One of the statements for which Fr. Lemelson was found liable was: "Viking does not intend to conduct any preclinical studies or trials ..." MSD Ex. B at 7. This statement was literally true as Viking's own CEO testified that the company did not conduct preclinical studies, but rather that *third parties* would do so. Sullivan Aff. Ex. 7 at 182:14-20, 176:7-12, 187:14-16, 187:20-21, 193:10-12. This testimony was consistent with Viking's S-1, stating, "All clinical trials, preclinical studies and other analyses performed to date with respect to our drug candidates have been conducted by Ligand. *Therefore, as a company, we do not have any experience in conducting clinical trials for our drug candidates.*" Sullivan Aff. Ex. 8 (Viking's S-1 Dated July 1, 2014) at 17 (emphasis added). Viking further disclosed, ***IN BOLD***, "**We intend to rely on third parties to conduct our preclinical studies and clinical trials and perform other tasks for us.**" Sullivan Aff. Ex. 8 at 21 (emphasis in original). Based on these disclosures, Fr. Lemelson correctly concluded that: "***Viking*** does not intend to conduct any preclinical studies or trials ...." MSD Ex. B at 7 (emphasis added).

The Division argued that despite being truthful, the statement was misleading because it omitted that third parties would conduct the studies. Sullivan Aff. Ex. 9 at 9. However, this fact was expressly disclosed publicly in Viking's S-1, which was cited in Fr. Lemelson's report. Sullivan Aff. Ex. 8 at 17, 21. Further, the Division did not present a single witness that interpreted the statement in the manner the Commission suggested was misleading. In fact, Viking's CEO testified that *nobody* expressed any concern about drugs reaching the market that had not been subject to preclinical studies by at least some third party, even stating that such a scenario was "legally impossible." Sullivan Aff. Ex. 7 at 202:12-15, 203:1-4, 201:8-15.

Likewise, Viking’s CEO testified that nobody expressed concern to him regarding the other alleged false statement in the report; *i.e.*, that Viking had “yet to consult with [its auditors] on any material issues” and that the “financial statements provided in the S1 accordingly are unaudited.” Sullivan Aff. Ex. 7 at 202:12-15, 203:1-4, 201:25-202:4. Nor did the Division present any witness that testified this statement was misleading or had a material impact on any investment decision.

In addition to Fr. Lemelson’s five written reports, Fr. Lemelson discussed his position on Ligand in four interviews between June and October 2014 (and seven subsequent interviews after this time frame). MSD Ex. I; Sullivan Aff. Exs. 10-12. The only other statement found to violate Rule 10b-5 was made during the Benzinga interview. MSD Ex. D. The statement was: “I mean I had discussions with management just yesterday – excuse me, their IR firm, and they basically agreed. And they said, look, we understand Promacta is going away.” MSD Ex. I at 16:10-13. Fr. Lemelson relayed this information from a phone call he had with Mr. Voss on June 18, 2014, and he has contemporaneous notes that are consistent with this statement. Sullivan Aff. Ex. 13. This statement was made briefly in passing at the 16-minute mark of an interview that was over 21 minutes long. MSD Ex. I at 16:10-13.<sup>2</sup> Ligand never issued a public rebuttal to this statement. Sullivan Aff. Ex. 14 at 123:18-125:21.

While finding Fr. Lemelson liable for these three statements, the jury rejected the Division’s key scheme liability theory and rejected the Division’s claim that five statements about Ligand’s insolvency violated Rule 10b-5, which were the major thrust of the

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<sup>2</sup> Respondent has submitted a transcript of the interview, but strongly suggests that the Administrative Judge assigned to this matter listen to the interview in its entirety. It is available at <https://www.youtube.com/watch?v=P6ucSfDnO24&t=246s>.

Commission's case. MSD Ex. D. The jury also rejected the Division's theories of negligent and intentional violations of the Investment Advisers Act. MSD Ex. D.

In all of the reports and interviews in which Fr. Lemelson discussed Ligand, Fr. Lemelson disclosed his fund held a short position in Ligand. MSD Ex. B at 1-2, 11-12; MSD Ex. I at 15:5-18, MSD Ex. J at 1-2, 24-25; Sullivan Aff. Ex. 2 at 1-2, 7-8; Sullivan Aff. Ex. 3 at 1, 4-5; Sullivan Aff. Ex. 4 at 1; Sullivan Aff. Ex. 10 at 8:22-9:15; Sullivan Aff. Ex. 11 at 12:8-16; Sullivan Aff. Ex. 12 at 2:16-24.

Fr. Lemelson only covered a small amount of his fund's short position in Ligand on June 19, 2014, almost six hours after the Benzinga interview to meet a small equity deficit. MSD Ex. A at ¶ 11; Sullivan Aff. Ex. 15 at 5-8. Fr. Lemelson did not cover any of his fund's short position in Ligand on July 3, 2014 or for more than a month thereafter. MSD Ex. A at ¶ 11. Fr. Lemelson retained the majority of his short position in Ligand until October 2014, four months after initiating the position. MSD Ex. A at ¶ 11.

This case did not come to the Division's attention because of some dramatic stock price movement on the days of the alleged misstatements that benefited Fr. Lemelson's fund's short position in Ligand. In fact, Ligand's stock price closed higher on the two days of alleged misstatements than it had the previous days. Sullivan Aff. Ex. 16 at 4.

Rather, Ligand incessantly lobbied the Division to bring an enforcement action. Ligand initially hired a large, international law firm to meet with the Boston office of the Division on September 25, 2014. Sullivan Aff. Ex. 17. At that meeting, Ligand and its counsel presented a 60-slide PowerPoint presentation urging the Division to bring an enforcement action against Fr. Emmanuel. *Id.* Notably, that 60-slide PowerPoint *never* mentioned any of the three allegedly material misstatements which the Division now argues constitute "egregious" behavior. *See id.*

The presentation did, however, include a number of baseless accusations about Fr. Lemelson engaging in an “affinity fraud” by virtue of his vocation in the priesthood. *Id.* at 21-25.

The Boston office declined to open an investigation. Sullivan Aff. Ex. 18 at 64:15-65:3. Ligand then hired a second large, international law firm to continue lobbying the Division. Sullivan Aff. Ex. 19 at 254:11-255:4. Specifically, it hired an attorney, Brad Bondi, a former high-ranking Commission official who used to work at the D.C. office of the Commission. Sullivan Aff. Ex. 18 at 77:13-78:3; Sullivan Aff. Ex. 20 at 1. Despite having no geographical connection to the matter, Ligand was given a second meeting with the Division’s D.C. office on June 8, 2015, at which Ligand and its new counsel presented a 62-slide PowerPoint presentation. Sullivan Aff. Ex. 21. Again, Ligand did not mention either of the Viking statements in this second presentation. *Id.*

Mr. Bondi, on Ligand’s behalf, repeatedly emailed and called the Division urging them to bring an enforcement action against Fr. Lemelson. Sullivan Aff. Ex. 18 at 88:6-119:9. The Division told Mr. Bondi an investigation was in progress, information that was leaked to the media, which resulted in an article being published by Bloomberg (a global media outlet for which Mr. Bondi is a contributor). Sullivan Aff. Ex. 22 at 2; Sullivan Aff. Ex. 23. During the investigation, Fr. Lemelson was deposed over three days for approximately 27 hours. Sullivan Aff. Exs. 24-26. In response to a subpoena, Fr. Lemelson provided more than what was requested, essentially providing his entire hard drive,<sup>3</sup> including attorney-client communications. Sullivan Aff. Ex. 27 at ¶ 135. Despite his complete cooperation with the investigation and that the allegations related entirely to published statements that were openly attributed to Fr. Lemelson, the Division took four years to file their original complaint. Sullivan Aff. Ex. 28.

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<sup>3</sup> Fr. Lemelson only removed some personal family pictures.



During the nearly four years that this case has been pending, the Division never sought a preliminary injunction against Fr. Lemelson.

Finally, the Division continues to attribute the entire profit made by Fr. Lemelson's fund to the three statements despite having no remotely plausible basis to do so. MSD at 3, 9 n.4. The Division has consistently argued in other cases that the impact of public statements is reflected in stock prices immediately,<sup>4</sup> yet here argues that Fr. Lemelson's statements had a lingering impact over months, including nearly two months after any statement the Division charged. The Division's attribution of the entire profit ignores other market forces and the fact that the jury rejected the scheme liability theory. MSD Ex. D. Indeed, the District Court found that the Division could not and did not prove that Fr. Lemelson's statements had any impact on Ligand's stock price and thus rejected its request for disgorgement. MSD Ex. E at 22-23.

Fr. Lemelson has filed a motion for a new trial, as well as a motion to stay the court-ordered five-year injunction pending ruling on the motion for a new trial and/or appeal. Sullivan Aff. Exs. 29, 30. The District Court has not yet ruled on these motions.

Fr. Lemelson's investors in his current fund, Spruce Peak Fund, LP, and his former fund, The Amvona Fund LP, were all aware of the Division's allegations against Fr. Lemelson and the trial. Sullivan Aff. Ex. 31 at ¶ 4; Sullivan Aff. Ex. 32. Fr. Lemelson's investors are sophisticated, including a sitting federal district court judge (The Honorable Paul Magnuson, D. Minn.), CEOs, public figures, and other notable activist investors. Sullivan Aff. Ex. 31 at ¶¶ 5, 7. All of the Spruce Peak Fund investors who were able to do so (11 out of 14) submitted letters

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<sup>4</sup> See, e.g., *SEC v. Ustian*, No. 16 C 3885, 2019 WL 7486835, at \*27 (N.D. Ill. Dec. 13, 2019) (expert retained by SEC opined that stock at issue traded in efficient market meaning any news would be reflected in stock within one day and considered whether announcement at issue had material impact); *SEC v. Butler*, No. 00-1827, 2005 WL 5902637, at \*11-12 (W.D. Pa. Apr. 18, 2005) (SEC argued that evidence of efficient market and quick market reaction supported finding of materiality); *SEC v. Mangan*, 598 F. Supp. 2d 731, 733-36 (W.D.N.C. 2008) (SEC expert opined that stock traded in efficient market, and the SEC argued that the movement in stock proved materiality).

to the District Court on Fr. Lemelson's behalf.<sup>5</sup> Sullivan Aff. Ex. 31 at ¶¶ 4-6. In addition, six investors in Fr. Lemelson's predecessor fund, Amvona, also submitted letters in his support.

Sullivan Aff. Ex. 32.

### III. ARGUMENT

#### A. The Commission's ALJs are Too Insulated from Removal, which is Unconstitutional

As the Fifth Circuit recently held, "the statutory removal restrictions for SEC ALJs are unconstitutional." *Jarkesy v. SEC*, 34 F.4th 446, 463 (5th Cir. 2022). The ALJs for the Commission perform substantial executive functions, like in the present case considering whether to bar Fr. Lemelson from the industry. *Id.* "The President therefore must have sufficient control over the performance of their functions, and, by implication, he must be able to choose who holds the positions." *Id.* However, the *Jarkesy* court determined that:

SEC ALJs are inferior officers; they can only be removed by the SEC Commissioners if good cause is found by the Merits Systems Protection Board; SEC Commissioners and MSPB members can only be removed by the President for cause; so, SEC ALJs are insulated from the President by at least two layers of for-cause protection from removal, which is unconstitutional under *Free Enterprise Fund*.

*Id.* at 464 (citing *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 498 (2010)). Because the removal standards are unconstitutional, the executive branch lacks the constitutionally required oversight of SEC ALJs and, therefore, the SEC ALJs are not authorized to proceed in this administrative proceeding.

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<sup>5</sup> Judge Magnuson is unable to submit a letter due to judicial ethical considerations, another investor, who works in the securities industry, could not do so due employment guidelines, and the third could not be contacted before the deadline to submit letters to the District Court due to personal issues. Sullivan Aff. Ex. 31 at ¶¶ 4-6.

## **B. Standard for Summary Disposition**

If this proceeding goes forward despite the constitutional infirmity of the executive oversight of the ALJs, the regulations provide that “any party may make a motion for summary disposition on one or more claims or defenses, asserting that the undisputed pleaded facts, declarations, affidavits, documentary evidence or facts officially noted pursuant to § 201.323 show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law.” 17 C.F.R. § 201.250(b). The party opposing summary disposition “may not rely on bare allegations or denials but instead must present specific facts showing a genuine issue of material fact for resolution at a hearing.” *In the Matter of James S. Tagliaferri*, Release No. 4650, 2017 WL 632134, at \*7 (Feb. 15, 2017) (quoting *In the Matter of Daniel Imperato*, Release No. 74596, 2015 WL 1389046, at \*6 (March 27, 2015). “[A] respondent may present genuine issues with respect to facts that could mitigate his or her misconduct” and in such cases a motion for summary disposition should be denied. *See In re Brownson*, Release No. 46161, 2002 WL 1438186, at \*2 n.12 (July 3, 2002). Here, there are a number of mitigating factors that require denial of the Division’s motion.

## **C. Imposing an Associational Bar on Fr. Lemelson is Not in the Public Interest**

In determining whether to impose an associational bar, the ALJ should consider the following factors:

the egregiousness of the defendant’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant’s assurances against future violations, the defendant’s recognition of the wrongful nature of his conduct, and the likelihood that the defendant’s occupation will present opportunities for future violations.

*SEC v. Steadman*, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). “The Commission also considers the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and deterrence.” *In the*

*Matter of Donald J. Anthony, et al.*, Release No. 745, 2015 WL 779516, at \*103 (Feb. 25, 2015).  
*See also* 15 U.S.C. § 80b-3(i)(3). These factors weigh against an associational bar here.

**1. Fr. Lemelson's Actions Were Not Egregious**

As noted above, Fr. Lemelson's actions were in stark contrast to every other short and distort claim pursued by the Division. The fact that Fr. Lemelson published the reports in his own name, disclosed his short position, and held on to his short position for months after the alleged misstatements distinguishes Fr. Lemelson's actions from every other short and distort claim the Division has pursued and shows that his conduct was not egregious. *See Steadman*, 603 F.2d at 1140 (finding conduct egregious because defendant concealed his behavior); *In the Matter of William D. Bucci*, Release No. 1349, 2019 WL 580743, at \*4 (Feb. 12, 2019) (finding conduct egregious because respondent concealed his investments and stole \$3 million to his own benefit). While the Division has argued that Fr. Lemelson cannot "re-litigate" the District Court case, the arguments he asserted at trial, in his pending motions, and will assert in any appeal, are relevant to the equitable factors the ALJ should apply here.

With regard to the specific statements, context is critical. From over 50 pages of investor reports and four interviews that cumulatively were over one hour long, Fr. Lemelson was found liable for just three misstatements.

a. The June 19, 2014 Statement

The Benzinga interview happened three days after the publication of Fr. Lemelson's first report regarding Ligand on June 16, 2014. MSD Ex. J. Notably, the Division never alleged that any statement in this report was false. Moreover, despite Ligand's stock price decreasing significantly on June 16, Fr. Lemelson did not cover any of his short position that day. MSD Ex. A at ¶ 11.

While the jury found the Benzinga statement violated Rule 10b-5, it is notable that the statement was made at approximately the 16-minute mark of an over 21-minute interview. MSD Ex. A at ¶¶ 13-14. The statement itself was just over one second in duration. Fr. Lemelson never repeated the remark—in that interview or any of the four subsequent written reports and three radio interviews—and it generated no follow-up questions by the interviewer. *See* MSD Ex. I, MSD Ex. B, Sullivan Aff. Exs. 2-4, 10-12. While the Division stated that Fr. Lemelson never corrected this statement, it is notable that Ligand’s CEO, John Higgins, instructed Ligand’s IR representative, Mr. Voss, not to request any correction from Fr. Lemelson nor was there any public denial from Ligand. Sullivan Aff. Ex. 33 at 3. Further, Fr. Lemelson took notes of his June 18, 2014 phone call with Mr. Voss and his notes are consistent with Fr. Lemelson’s statement during the interview. Sullivan Aff. Ex. 13. Fr. Lemelson also testified that he believed his notes accurately reflected what Mr. Voss said and what Fr. Lemelson summarized during the Benzinga interview. Sullivan Aff. Ex. 34 at 187:16-188:22.

Ligand’s stock price closed higher on June 19, 2014 than it had the previous day. Sullivan Aff. Ex. 16 at 4. Fr. Lemelson covered a very small portion of his short position that day (less than 6% of his overall position), but he did so approximately six hours after his radio interview—and the price at which he covered was higher than it was at the close of the previous day of trading (meaning Fr. Lemelson’s short position decreased in value as compared to the previous day). *Compare* MSD Ex. A at 3 (noting Fr. Lemelson covered 4,050 shares at \$65.6873) *with* Sullivan Aff. Ex. 16 at 4 (listing closing price of Ligand stock on June 18, 2014, as \$65.63). Further, Fr. Lemelson covered these shares only at the request of his broker due to a change in the overnight equity requirements on the portfolio, having nothing to do with the particular statement or interview generally. Sullivan Aff. Ex. 15 at 5-8.

While the Division argued in its motion that Fr. Lemelson “used this misrepresentation as the tent-pole for their [*sic*] assertion that Ligand was worth \$0 per share,” (MSD at 8-9) this makes no sense chronologically. Fr. Lemelson had already published his opinion that Ligand had no intrinsic value on June 16, 2014. MSD Ex. J. Thus, it would be impossible for the later June 19, 2014 statement to be the “tent-pole” for this previously announced opinion.

Finally, while the Division argues this statement was “egregious,” it was not egregious enough for Ligand or its international law firm even to include in Ligand’s initial presentation to the Division on September 25, 2014. *See* Sullivan Aff. Ex. 17. And after four years of investigation and another four years of litigation, all the while with Ligand being an eager supporter, the Division was able to muster just two emails out of 251 trial exhibits that reflected Ligand investors even mentioning this statement. Sullivan Aff. Exs. 59, 60.

b. July 3, 2014 Viking Statements

The two remaining statements were about another company, Viking, which was non-public and whose stock Fr. Lemelson did not trade. *See* MSD Ex. B at 7, 10; Sullivan Aff. Ex. 27 at ¶ 41; Sullivan Aff. Ex. 8. The Division offered no evidence that Ligand’s stock price was impacted by these statements. In fact, Ligand’s stock price closed higher on July 3, 2014 than the previous trading day. Sullivan Aff. Ex. 16 at 4. Viking’s CEO testified that no Viking investors or employees raised any concern about these two statements. Sullivan Aff. Ex. 7 at 201:8-15; 201:25-202:4; 202:12-15, 203:1-4. Moreover, the report disclosed both the source of Fr. Lemelson’s opinions and his short position in Ligand. MSD Ex. B at 1-2; 7-12.

Specifically, in its S-1, Viking disclosed that it had terminated its auditor one month after hiring it and then disclosed the following concerning the new auditor:

From September 24, 2012 (Inception) through April 7, 2014, neither we nor anyone on our behalf consulted with Marcum regarding (1) the application of

accounting principles to a specified transaction, either completed or proposed, (2) the type of audit opinion that might be rendered on our financial statements, or (3) any matter that was either the subject of a disagreement, as described in Item 304(a)(1)(iv) of Regulation S-K and the related instructions thereto, or a “reportable event” as described in Item 304(a)(1)(v) of Regulation S-K.

Sullivan Aff. Ex. 8 at 9. *Immediately after quoting the above passage and expressly sourcing it as coming from Viking’s publicly filed S-1*, Fr. Emmanuel opined: “*In other words, Marcum was merely hired, but the company has not yet even consulted with the firm on any material issues. The financial statements provided on the S1 accordingly are unaudited.*” MSD Ex. B at 10 (emphasis added). In fact, the S-1 contained a combination of audited and unaudited statements. Sullivan Aff. Ex. 8. Fr. Lemelson acknowledged this statement was a mistake in his trial testimony, but noted that he based it off the above-quoted disclosure and the fact that the term “unaudited” appears 56 times in the S-1, while the term “audited” appears only seven times. Sullivan Aff. Ex. 34 at 195:15-196:11. *See also*, Sullivan Aff. Ex. 8.

Viking’s S-1 also disclosed details concerning that company’s *total inexperience* conducting preclinical studies and clinical trials. For example, the company disclosed that, “All clinical trials, preclinical studies and other analyses performed to date with respect to our drug candidates have been conducted by Ligand. *Therefore, as a company, we do not have any experience in conducting clinical trials for our drug candidates.*” Sullivan Aff. Ex. 8 at 17 (emphasis added). Viking further disclosed, ***IN BOLD***, “**We intend to rely on third parties to conduct our preclinical studies and clinical trials and perform other tasks for us.**” *Id.* at 21 (emphasis in original). Based on these disclosures, Fr. Lemelson correctly concluded that: “***Viking*** does not intend to conduct any preclinical studies or trials ....” MSD Ex. B at 7 (emphasis added).

Because Fr. Lemelson cited the source of his conclusions, the statements are protected speech under the First Amendment. *See, e.g., Phantom Touring, Inc. v. Affiliated Publications,*

953 F.2d 724, 730 (1st Cir. 1992); *McKee v. Cosby*, 874 F.3d 54, 61 (1st Cir. 2017) (quoting *Piccone v. Bartels*, 785 F.3d 766, 771 (1st Cir. 2015)) (“A statement, even if ‘couch[ed] . . . as an opinion,’ will give rise to liability if it ‘implies the existence of underlying [false and] defamatory facts’ as its basis; conversely, a statement is ‘immunize[d]’ so long as the speaker discloses all of the facts undergirding it and none of them are both false and defamatory.”) (emphasis added). Even if this tribunal will not consider this legal argument, at minimum, the fact that the data upon which Fr. Lemelson relied was cited and quoted, weighs heavily against finding these statements were an egregious attempt to mislead investors.

Further, with regard to the statement that Viking did not intend to conduct preclinical studies, that statement is objectively true. As Viking’s CEO testified, *third parties* were going to perform the preclinical studies. Sullivan Aff. Ex. 7 at 182:14-20, 176:7-12, 193:10-12. The Division’s only argument concerning this statement is that it was misleading because it omitted that third parties would conduct preclinical trials. Sullivan Aff. Ex. 9 at 9. However, as a matter of law, such an omission cannot be material because the information that third parties would conduct any trial already had been disclosed by Viking itself. *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976) (explaining that “total mix” includes information readily available in public domain or facts known or reasonably available to shareholders); *Whitehead v. Inotek Pharmaceuticals Corp.*, 17-cv-100025, 2018 WL 4732774, at \*6 (D. Mass. June 27, 2018) (alleged omissions of negative results in statements about progress of clinical studies “are not ‘material’ as required by Section 10(b) because the statistically significant results of the Phase II trials were disclosed in the publicly available SEC filings”); *In re Seagate Tech. II Sec. Litig.*, No. C 88-20489 RPA, 1989 WL 222969, at \*3 (N.D. Cal. May 3, 1989) (“However, at a threshold level, if the material containing the alleged omissions, actually discloses the facts



plaintiffs claim are absent, there is obviously no omission. In a similar vein, if the information to be disclosed is already known, even if through another source, it cannot be considered material”). Again, even if this tribunal ignores the legal argument, at minimum, it should consider the fact that the allegedly material omission was part of the public record that Fr. Lemelson explicitly cited in his report and therefore conclude that this behavior was not egregious.

Further, while the Division has made this theoretical material omission argument, no witness ever testified they were misled and interpreted Fr. Lemelson’s statements to mean that Viking would sell drugs that had not been subjected to preclinical studies by *someone*. Viking’s CEO testified that nobody expressed any such concern to him and that it would be “legally impossible” for that to happen. Sullivan Aff. Ex. 7 at 201:8-15.

Finally, while the Division argues these two Viking statements were egregious, Ligand and its lawyers *never* mentioned either of these statements in their multiple presentations to the Division. Sullivan Aff. Exs. 17, 21. In other words, Ligand itself and two different international law firms did not consider these statements important enough to even mention when urging the Division to bring an enforcement action, let alone that they were egregious.

c. Stock Price Movement and Statements After Summer 2014

Finally, the Division argues that the conduct was egregious because emails from Fr. Lemelson allegedly show him taking credit for the decline in Ligand’s stock price and his “continued campaign” against Ligand. MSD at 9-10. Both of these arguments should be disregarded as they rely on the scheme liability theory that the jury rejected, and ignore that Fr. Lemelson made numerous statements criticizing Ligand which the Division never argued, and the jury never found, to be false. That is crucial, because the email *never* suggests that the

decline in Ligand's stock price was due to the statements that were found to be actionable, as opposed to the hundreds of other statements that were not found to be actionable. The Division's reliance on these emails is thus incredibly misleading.

Specifically, the emails the Division claim show Fr. Lemelson taking credit for Ligand's drop in stock price,<sup>6</sup> discussed the impact on Ligand's stock price *generally* and none referenced any of the three statements at issue. MSD Exs. L, M, N, O. As noted above, the overwhelming majority of Fr. Lemelson's analysis was not challenged or determined to violate Rule 10b-5, and the jury rejected the Division's scheme liability theory. MSD Ex. D (finding liability for only three statements out of the entirety of MSD Exs. B, I, J, Sullivan Aff. Exs. 2-4, 10-12).

Further, Ligand's stock price was historically volatile by Ligand's own admission. Sullivan Aff. Ex. 35 at 32. The Division regularly uses expert evidence to show that statements had a material impact on the stock price.<sup>7</sup> The Division's decision not to present any such expert testimony in this case is telling. And, as asserted in the pending motion for new trial, Fr. Lemelson is challenging the finding of materiality because the stock price movement was inconsistent with a finding of materiality. Sullivan Aff. Ex. 30 at 2. The Third Circuit has held that stock price movement can be used as an objective means of determining materiality. *In re Burlington Coat Factory Securities Litig.*, 114 F.3d 1410, 1425 (3d Cir. 1997)) ("In the context of an 'efficient' market, the concept of materiality translates into information that alters the price of the firm's stock. . . . This is so because efficient markets are those in which information

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<sup>6</sup> The Division claimed that Fr. Lemelson boasted that he had "erased" \$500 million of Ligand's market capitalization, putting the term erased in quotation marks (*see* MSD at 9), but Fr. Lemelson never used that term in the exhibits cited.

<sup>7</sup> *See, e.g., SEC v. Aly*, No. 16 Civ 3853, 2018 WL 1581986, at \*15-16 (S.D.N.Y March 27, 2018) (SEC permitted to present evidence of expert's event study to prove materiality); *Mangan*, 598 F. Supp. 2d at 735 (SEC sought to avoid summary judgment by submitting expert event window analysis that concluded movement in stock price showed materiality); *SEC v. Goldstone*, CIV 12-0257 JB/LFG, 2016 WL 3135651, at \*46 (D.N.M. May 10, 2016) (SEC successfully argued for its expert's event study to be admitted to prove materiality).

important to reasonable investors (in effect, the market, is immediately incorporated into stock prices”); *Oran v. Stafford*, 226 F.3d 275, 282 (3d Cir. 2000) (materiality “may be measured post hoc by looking to the movement ... of the price of the firm’s stock”).

With regard to the Division’s contention that Fr. Lemelson “continued his campaign against Ligand” after the summer of 2014 in other published documents, the jury *rejected* the Division’s scheme liability theory and found no other statements to be false, so there is no *actionable* campaign here. MSD Ex. D. Further, the Division had access to these public documents for years and elected not to bring any claims relating to these statements. That the Division is relying on these *other* statements to show the “egregious” nature of the three statements demonstrates that the Division has no real evidence to support its “egregiousness” argument here, and instead is attempting to punish Fr. Lemelson for legitimate speech.

In sum, after a four-year investigation and four years of litigation, Fr. Lemelson was found liable for just three minor statements. These statements constituted just over one second of over an hour of interviews and two lines from over 50 pages of reports. There is no corresponding cover of Fr. Lemelson’s short position that would be consistent with an intent to defraud. In fact, Fr. Lemelson held on to the majority of his short position until October 2014—over three months after the last alleged misstatement. MSD Ex. A at ¶ 11. At all times, Fr. Lemelson acted in public, disclosed his identity, and disclosed his investment. This conduct is far from egregious and associational bars have been denied for conduct that was far worse where, as with Fr. Lemelson here, the respondents had no prior violations and did not benefit personally from the alleged misconduct. *See In re Piper Capital Management Inc.*, Release No. 2163, 2000 WL 1759455 (Nov. 30, 2000) (affirming ALJ’s denial of any industry bar where individual respondents engaged in knowingly, fraudulently inflating company’s NAV because they had

been “adequately sanctioned and rehabilitated through the conduct of this proceeding,” they had no prior blemishes on their records, and they did not benefit personally from the wrongdoing).

## **2. Fr. Lemelson’s Actions were Not Repetitive**

The alleged misstatements took place on just two different dates—June 19 and July 3, 2014—more than eight years ago. The statements were fundamentally different. The June 19 statement was made orally during an interview and was a he said/he said dispute regarding whether Mr. Voss “basically agreed” with Fr. Lemelson’s thesis that Promacta was going away at some point. MSD Ex. I. The July 3 statements were in a written report and consisted of Fr. Lemelson’s analysis of statements in Viking’s publicly-filed S-1, to which he directed readers. MSD Ex. B at 7, 10. None of the three statements were repeated in Fr. Lemelson’s subsequent reports or interviews. *See* MSD Ex. B, Sullivan Aff. Exs. 2-4, 10-12.

Further, the Division pursued a scheme liability theory and argued that Fr. Lemelson’s reports were part of a single pattern or scheme designed to drive down Ligand’s stock price. The jury rejected this theory. MSD Ex. D. Nevertheless, the Division continues to rely on the rejected claim to argue that Fr. Lemelson’s conduct was repetitive. That argument should be rejected.

## **3. The Verdict and Facts are More Consistent with a Finding of Recklessness Than Intentionality**

Recklessness is a lesser degree of scienter than intent to defraud. *See SEC v. Shanahan*, No. 07-2879, 2010 WL 173819, at \*14 (D. Minn. Jan. 13, 2010). Where the conduct at issue has been reckless, the Commission has ruled that an associational bar is not appropriate. *See In The Matter of Piper Capital Management Inc.*, Release No. 175, 2000 WL 1759455, at \*65 (Nov. 30, 2000) (declining to issue a bar and finding that behavior was not egregious where respondents’ behavior was found to be “inappropriate and reckless in significant degree”).

The jury here was not specifically asked to find whether it believed Fr. Lemelson acted intentionally or recklessly. However, the fact that the jury rejected (i) the Division's scheme liability theory, (ii) its claim related to the insolvency statements, and (iii) both its intentional and negligent Investment Advisers Act claims, is persuasive evidence that the jury did not find Fr. Lemelson acted intentionally with respect to the three statements. *See* MSD Ex. D.

Moreover, the evidence regarding the three statements militates in favor of a finding of recklessness. With regard to the Benzinga statement, Fr. Lemelson's *contemporaneous* notes indicated that Mr. Voss stated what Fr. Lemelson claimed he did. Sullivan Aff. Ex. 13. Fr. Lemelson made the statement in passing, never repeated it, and was never asked to correct it publicly. *See* MSD Ex. I; MSD Ex. B, Sullivan Aff. Exs. 2-4, 10-12. Fr. Lemelson disclosed his short position during the interview and did not cover any of his position until approximately six hours later when Ligand's stock was at a less advantageous price for Fr. Lemelson's position than the prior day, and which was only done to satisfy an overnight change in equity funding requirements. MSD Ex. I; Sullivan Aff. Ex. 36.

Likewise, Fr. Lemelson did not cover any of his position on the day the Viking statements were made (or during the following month). MSD Ex. A at 3. Further, Fr. Lemelson's July 2014 report included disclosures about his fund's short position in Ligand and specifically cited to the public filings upon which the two statements were based. *See* MSD Ex. B at 1-2, 7, 10, 11-12.

If one were to intentionally commit securities fraud by taking a short position and then making false statements to artificially drive down the price of the stock, that person would likely use an alias or make an anonymous post to avoid detection; the false statement would be something earth-shattering to cause as big of an impact as quickly as possible; the person would

use options to maximize profits; and the perpetrator would cover the short position quickly before the statement was determined to be false and the stock price recovered.<sup>8</sup> Fr. Lemelson published everything in his own name; included disclosures about his potential bias for having a short position; made one vague statement about an undisclosed IR representative “basically” agreeing with his thesis, never repeated it, and did not emphasize it in the interview; made two statements based on interpretations of cited public filings; did not use options; and held on to the majority of his short position for over three months after the last alleged misstatement was made. Fr. Lemelson’s conduct was nowhere close to being consistent with intentional and to the extent the jury’s verdict is upheld following the pending motions in District Court and appeal, the conduct should be considered reckless at worst. And purportedly reckless conduct should not be the basis for an associational bar.

#### **4. The Sincerity of Fr. Lemelson’s Assurances Against Future Violations and Acceptance of Responsibility**

Fr. Lemelson founded several successful businesses in the 17 years prior to launching a hedge fund in 2012, continued to operate a fund during the investigation and trial, and is currently operating a thriving hedge fund. Sullivan Aff. Ex. 31 at ¶ 2; MSD Ex. A at ¶ 3. Fr. Lemelson has not been charged with any securities violations before or since the present case despite intense scrutiny—the Division has pointed to nothing Fr. Lemelson allegedly has done wrong in the past eight years, despite closely monitoring Fr. Lemelson’s communications with investors and posts on his website for years (including having visited his website hundreds of

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<sup>8</sup> See, e.g. *Doe v. SEC*, No. C 11-80209, 2011 WL 5600513, at \*1 (N.D. Cal. Nov. 17, 2011) (denying motion to quash SEC’s subpoena to Google seeking the identity of anonymous email account suspected to be involved in pump-and-dump scheme); *SEC v. Curshen*, 372 Fed. App’x 872, 883 (10th Cir. 2010) (affirming liability and injunction against individual that shared false information about company by anonymous postings); Compl., *SEC v. Berliner*, No. 1:08-cv-03859-JES, ECF No. 1 (S.D.N.Y. Apr. 24, 2008) (SEC alleged defendant acted intentionally because he sold short 10,000 shares of stock “within minutes” of disseminating false information); *Aly*, 2018 WL 1581986, at \*23 (establishing scienter based on temporal proximity of defendant filing Schedule 13D with false information and then selling his call options within 10 minutes).

times since filing suit). Sullivan Aff. Ex. 31 at ¶ 10. Given Fr. Lemelson's extensive activity in the securities industry for four years prior to the relevant conduct in this case and the nearly eight years since, this tribunal can be assured that Fr. Lemelson will not commit future violations. Indeed, "it is difficult to believe that, after undergoing the present ordeal, [Fr. Lemelson] will be tempted to do so." *SEC v. Ingoldsby*, No. 88-1001-MA, 1990 WL 120731, at \*3 (D. Mass. May 15, 1990).

While Fr. Lemelson still maintains he is not liable, he never claimed he was not responsible for the content of the statements. Further, it is axiomatic that Fr. Lemelson should not be punished for asserting a vigorous defense. *Ingoldsby*, 1990 WL 120731, at \*3 ("Absent a showing of bad faith, the defendant should not be prejudiced for presenting a vigorous defense and requiring the SEC to meet its proper evidentiary burden both at trial and at the injunctive relief stage of the judicial proceedings"); *SEC v. Happ*, 295 F. Supp. 2d 189, 197 (D. Mass. 2003) (defendant "is not to be penalized" when his trial behavior was simply "consistent with setting forth a vigorous defense"). And, as noted above, Fr. Lemelson is still in the middle of pursuing his defense with pending motions before the District Court and, if necessary, an appeal. Sullivan Aff. Exs. 29, 30.

The examples the Division provided of not taking responsibility for his actions and being likely to violate securities laws in the future are inapplicable and misleading characterizations of events.

For example, the Division claimed that Ligand "thrived after Defendants' 2014 campaign against it, even selling the royalty rights to Promacta for about \$827 million in March 2019." MSD at 11. However, the Division failed to note that Ligand's stock price dramatically *underperformed* during that time period as compared to the standard S&P 500 benchmark and

the BTX pharmaceutical index. Sullivan Aff. Ex. 31 at ¶ 18; Sullivan Aff. Exs. 37, 38.

Additionally, while representing that the sale of the royalty rights to Promacta was indicative of Ligand's success, the Division did not mention that Ligand's stock price dropped dramatically after that sale was announced. Sullivan Aff. Ex. 16 at 1 (sale announced March 5, 2019, Ligand's stock price was down 13.7% by the end of that week). Further, and most critically, Fr. Lemelson acknowledged that he did not anticipate that Promacta revenues would grow as a result of dramatic price increases for the product. Sullivan Aff. Ex. 34 at 13. Fr. Lemelson subsequently learned that these price increases were successful in increasing revenues, because, despite there being a small patient population that used Promacta, that population consisted largely of vulnerable patients in developing countries who could not afford Sovaldi (which actually cured, not just treated, hepatitis-C and was even more expensive than Promacta). *See id.*

The Division then characterized a portion of Fr. Lemelson's deposition testimony as maintaining his position that Ligand committed fraud. MSD at 11. However, this is a protected opinion and based on far more than the characterization of Ligand as a pharmaceutical company. Fr. Lemelson published multiple reports and letters regarding his belief that Ligand committed and continues to commit fraud, and the Division has not asserted any claim based on that opinion nor has Ligand as a company. *See* MSD Exs. B, J; Sullivan Aff. Exs. 2-6. The Division's argument that this should be construed as evidence of Fr. Lemelson being likely to violate securities laws in the future should not be countenanced.

With regard to the tweets concerning the outcome of the District Court action, the Division's argument either reflects a misunderstanding of how Twitter works or is deliberately misleading. Fr. Lemelson's tweets that the Division claims were misleading were *tweets of a link from a well-known third-party legal news provider, Law360*. MSD Exs. S, T, U. Fr.



Lemelson did not draft that tweet, nor did he selectively excerpt anything into a tweet from his account; rather he simply copied the link to Law360's independent article and sent that as a tweet. The language with which the Division takes is the first sentence of Law360's article and is not anything that Fr. Lemelson drafted.

The Division then attacks Fr. Lemelson's comments that it claims Fr. Lemelson posted on his website and on Seeking Alpha. MSD at 12. As an initial matter, this release *was never posted on Seeking Alpha*, which Fr. Lemelson's counsel pointed out before the District Court, but which the Commission nonetheless knowingly falsely repeats here. Further, Fr. Lemelson's release accurately reflected the jury's verdict, and detailed that in addition to being found not liable for scheme liability, a number of statements relating to Ligand's insolvency, and the Investment Adviser Act claims, he *was* found liable for the three statements. MSD Ex. V at 1. In stark contrast, the Division issued a false and misleading press release with the headline: "SEC Wins Jury Trial Against Hedge Fund Adviser Who Ran Manipulative Short Scheme." Sullivan Aff. Ex. 39 (Division's Press Release Date November 5, 2021). It was patently false for the Division to claim that Fr. Lemelson ran a *manipulative short scheme* after the jury found him *not liable* for engaging in such a scheme. Further, the body of the Division's press release stated that Fr. Lemelson had been charged with a scheme, but incredibly failed to explain that the jury rejected this theory. *Id.* In fact, the Division failed to mention the jury's verdict with respect to *any* of the claims on which the jury found in Fr. Lemelson's favor against the Division *i.e.*, the short-and-distort scheme claim, the Investment Advisors Act claims, and the five separate statements concerning Ligand's insolvency. *Id.*

Moreover, even after removing its false press release from its website hours after it was posted (and only after Fr. Lemelson's counsel's demanded it do so), the Division distributed the

*same* false press release via mass-email. Sullivan Aff. Ex. 40. Notably, multiple journalists, including at least one global financial news outlet, pointed out the false and misleading nature of the Division’s press release. Sullivan Aff. Exs. 41, 42 (Barron’s reporting: “The SEC’s comments on the verdict might confuse the historical record. Its press release headline reads: ‘SEC Wins Jury Trial Against Hedge Fund Adviser Who Ran Manipulative Short Scheme.’ But the jury’s very first vote was a finding that the agency didn’t prove its allegations of a ‘scheme.’”; Law360 reporting: “The SEC said in a press release Friday that it won the trial, without mentioning the claims the jury rejected.”). Unfortunately, however, the Division’s false press release had the predictable result; other publications repeated the falsehoods from the Division’s press release and erroneously reported that Fr. Lemelson was found liable for engaging in a short-and-distort scheme. Sullivan Aff. Exs. 43-46.

The Division’s amended press release also wrongly included a purported quote from one of Fr. Lemelson’s reports that was not actually contained in it: “Ligand’s most profitable drug was on the brink of obsolescence.” Sullivan Aff. Ex. 47. Fr. Lemelson never made such a statement, which comes from a *draft* report that the Division erroneously included in the Complaint. See Sullivan Aff. Ex. 28 at ¶ 24. Fr. Lemelson’s counsel has repeatedly pointed out this error to the Division, along with a litany of other objectively false allegations in the Complaint, none of which the Division ever sought to correct in the public record (including in the Amended Complaint)—which is ironic considering its attempt to destroy Fr. Lemelson’s vocation for a handful of alleged misstatements. See, e.g., Sullivan Aff. Ex. 48 at 5.

The Division also points to Fr. Lemelson’s violation of a *protective order* in arguing that Fr. Lemelson is likely to repeat violations of the *securities laws*. MSD at 12-13. The Division cites no authority for this contention. Fr. Lemelson admitted his violation of the order and was

sanctioned by the Court accordingly. MSD Ex. AA at ¶¶ 2-3; MSD Ex. BB. To punish him again in a completely unrelated context would be improper and unfair.

The Division finally refers to Fr. Lemelson’s so-called “pugilistic attitude” in litigation, including allegedly sending a threatening letter to a priest. MSD at 13. The letter in question was drafted by Fr. Lemelson’s *counsel*, and should not be used as a basis to punish Fr. Lemelson. Further, the hypocrisy of the Division’s argument here is incredible. The Division wants to portray Fr. Lemelson as “pugilistic” and likely to violate securities laws in the future because of this letter to a priest, while the Division apparently has no issue in bringing an aggressive, unprecedented litigation against Fr. Lemelson who is a priest.

In addition, the Division presents a knowingly *false* narrative about the background of counsel’s letter. The Division sought to discredit Fr. Lemelson’s character by seeking evidence that he was not a priest—a highly inflammatory, irrelevant, and personal attack (particularly because Fr. Lemelson is a well-known public figure in his priest vocation). Sullivan Aff. Ex. 49 at 2. To do so, the Division spoke with another priest, Fr. Barbas. *Id.* Fr. Lemelson and Fr. Barbas had a prior dispute stemming from Fr. Lemelson siding with a victims’ rights group who called for Fr. Barbas’ ouster after he covered up the actions of a pedophile priest. Sullivan Aff. Ex. 50 at ¶¶ 42-49. In an effort to retaliate against Fr. Lemelson, Fr. Barbas lied to the Division, and claimed that Fr. Lemelson was not a Greek Orthodox Priest (a lie he had also previously tried to spread—thus the impetus for the demand letter sent by Fr. Lemelson’s counsel). *Id.* at ¶¶ 26-41.

Moreover, when the Division brought counsel’s letter to the District Court’s attention, the Division *falsely* represented to the District Court that the letter was improper because Fr. Barbas was a potential witness, despite having previously made clear he was not. *See* Sullivan Aff. Ex.

51 at 1, 2, 5-6; Sullivan Aff. Exs. 52-54. Of course, despite its false statement to the Court that Fr. Barbas was a potential witness, the Division *never* listed Fr. Barbas as a potential witness in its trial filings—much less actually called him as a witness at trial. Finally, Fr. Lemelson remains in good standing in the Greek Orthodox Church, where he serves actively as a priest. Sullivan Aff. Ex. 31 at ¶ 8. Attempting to portray a priest as a fraud and not a member of his church is a serious and personal attack, which is why Fr. Lemelson’s counsel wrote a forceful letter to Fr. Barbas to nip any such spurious allegations in the bud. There is no reason Fr. Lemelson should be punished for counsel’s letter.

The Division’s reliance on such tangential events to argue that Fr. Lemelson does not take responsibility for his conduct and is likely to violate the securities laws in the future shows that there is no real evidence to support that conclusion. Meanwhile, Fr. Lemelson’s track record of compliance over years and the threat to the survival of his business in the event of any future allegations of committing fraud weighs in favor of finding that Fr. Lemelson has provided adequate assurances against future violations of securities law. At a minimum, an evidentiary hearing would provide this tribunal a better opportunity to assess this factor and weighs against granting the motion for summary disposition.

#### **5. Fr. Lemelson’s Position at LCM**

While Fr. Lemelson continues to serve as Chief Investment Officer for LCM,<sup>9</sup> which manages the Spruce Peak Fund, LP, it should be noted that the Division took over four years to file a complaint despite the statements at issue being publicly made. Further, the litigation was pending for over four years. In that over eight years of time, the Division did not seek an

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<sup>9</sup> While the Division blithely claims that Fr. Lemelson “apparently los[t] all the money in The Amvona Fund in 2020,” (MSD at 14) the Amvona Fund is currently involved in an arbitration seeking return of the investors’ funds that were lost due to a broker’s misconduct.

injunction at any point in time and no new claims for securities violations have been made. This weighs against finding that an associational bar is in the public interest. *See In the Matter of Donald J. Anthony*, 2015 WL 779516, at \*103.

**6. General Equity Concerns Support Rejecting an Associational Bar in this Case**

On balance, the equities weigh against issuing an associational bar. Barring someone from their chosen profession is an extremely severe consequence. The circumstances of this case do not support the imposition of this “career death penalty.”

First, barring Fr. Lemelson from acting as an investment advisor would have a negative impact on his investors—all of whom specifically want Fr. Lemelson to serve as their investment advisor, after being fully informed about the verdict. Sullivan Aff. Ex. 32. As noted above, Fr. Lemelson’s investors are sophisticated (consisting of a sitting federal district court judge, CEOs, public figures, and other notable activist investors) and all who were able submitted letters on Fr. Lemelson’s behalf to the District Court. Sullivan Aff. Ex. 31 at ¶¶ 5-7.

Second, the conduct in question happened over eight years ago with no intervening allegations of misconduct.

Third, Fr. Lemelson did not personally benefit from the three statements and did not use any profits from the successful Ligand position to fund an extravagant lifestyle. Drawing a modest salary of \$100,000 per year from LCM, Fr. Lemelson used a significant amount of earnings from his professional career to fund charitable endeavors, including the construction of a Church to serve a community that otherwise lacked the resources for a place of worship. Sullivan Aff. Ex. 31 at ¶ 13. Moreover, Fr. Lemelson’s entire adult life has been spent in service to the Church, first as a layman, and later a clergyman, without any salary or benefits

whatsoever. Sullivan Aff. Ex. 31 at ¶ 9. As noted in the letters from investors and others, Fr. Lemelson has a history of charitable giving and honest character. Sullivan Aff. Ex. 32.

Fourth, there was no harm to investors or unjust enrichment in this case. As noted above, the Division did not present any expert testimony in this case to argue materiality was shown by stock price movement. When there is such favorable evidence, the Division routinely presents an expert regarding this topic. *See supra* n.7. Further, the Division routinely relies on the efficient market theory to argue that the impact of any public information is reflected in stock prices nearly immediately. *See supra* n.4. Even the Division's rebuttal expert in this case (who did not testify at trial), opined that the impact of any statements would be reflected in the stock price within 15 minutes. Sullivan Aff. Ex. 55 at ¶ 23. Fr. Lemelson did not cover his short position within that time period for any of the three statements. MSD Ex. A at ¶ 11. In fact, Fr. Lemelson covered a small portion of his short position six hours after the June 19 statement and did not cover any of his short position for over a month after the July 3 statements. *Id.*; Sullivan Aff. Ex. 36. There is no basis for the Division's argument that Fr. Lemelson was unjustly enriched in any way. Additionally, there is no evidence of any harm to investors. Nobody testified that they sold stock based on any of the three alleged misstatements. And, as the District Court reasoned, the historic volatility of Ligand's stock, the jury's rejection of the Division's scheme liability theory, and the lack of evidence regarding any alleged victims resulted in the Court denying the Division's request for disgorgement. MSD Ex. E at 22-23.

Fifth, Ligand's conduct in pressuring the Division to bring this case was disturbing. In contrast to Fr. Lemelson's transparency, Ligand decided not to issue any public rebuttal or denial of Fr. Lemelson's statements, or to sue him, but rather it hired an attorney with connections to the Commission to privately lobby the Division for years to bring this unprecedented

enforcement action in the hopes of “silencing” Fr. Lemelson. In addition to this lobbying, on the day of Ligand’s second meeting with the Division, a sitting U.S. Congressman (later convicted on federal criminal charges before being pardoned by then-President Trump) sent a letter, at Ligand’s behest, to the Division urging it to bring this enforcement action against Fr. Lemelson and demanding a response regarding the decision to investigate. Sullivan Aff. Ex. 56. At some point thereafter, the Washington D.C. office initiated the investigation. As the District Court noted, Ligand or its counsel, Mr. Bondi, likely leaked news of the Division’s non-public investigation to the media. Sullivan Aff. Ex. 57 at 55:7-22.<sup>10</sup> The leak of that information and this enforcement action had a severely negative impact on Fr. Lemelson’s business. Sullivan Aff. Ex. 58 at ¶ 27. For a period of years following the second meeting, Ligand’s politically-connected lawyer contacted the Division countless times seeking updates and urging action. Sullivan Aff. Ex. 18 at 88:6-119:9. Ultimately, Ligand got its way.

Despite there being no regulation that finding a violation of Rule 10b-5 automatically results in an associational bar, the Division pointed out that in virtually every case, the Commission has ordered such a bar. MSD at 15. However, as noted repeatedly during the litigation and never rebutted by the Division, this case is unprecedented. Specifically, as noted above, unlike any other short and distort claim brought by the Division, Fr. Lemelson published reports in his own name, disclosed his short position, cited to the public filings that were the sources of his conclusions, and held on to his short position for months. Further, the stock price on the dates the alleged misstatements were made closed higher than the respective previous

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<sup>10</sup> This Court, responding to a statement that the Division could have disclosed the investigation to someone who then leaked the investigation to the media stated, “I can imagine [who] that might be, can’t you?” and then stating, “Given the acrimony between Ligand and Father Emmanuel, I don’t know why you’d want me to draw the inference it was the SEC who leaked it.” *Id.*

trading days. If there were ever an example of a Rule 10b-5 violation not resulting in an associational bar, as the regulations contemplate, this is the case.

**D. The Division Misrepresented the District Court's Findings**

The Division includes a long, block quote in its memorandum that it purports to be the District Court's summary of the evidence at trial. MSD at 4. This quote is not from the source cited—MSD Ex. E at 4. At no point did the District Court make this statement as the Division claims. The statement appears to have been taken largely from the Commission's press release, but it is certainly not a quote from the District Court as the Commission falsely represents.

False statements have infected the Division's filings consistently throughout this case. As noted above, the complaint and amended complaint contain multiple objectively false allegations, including quotes from Fr. Lemelson's draft reports that were never published, which (despite knowledge of their falsity) the Division has refused to correct, as well as blatantly false financial figures and accounting theories. The Division issued a false press release that repeated false claims from the complaint and, most notably, falsely claimed that it prevailed on its key scheme liability theory at trial. Now, the Division is making the outlandish misrepresentation that language from its own false press release was contained in the District Court's order for judgment.

It is incongruous that the Division seeks to ban Fr. Lemelson for three alleged misstatements while the Division is making and refusing to correct blatant misrepresentations to achieve that goal in violation of the ethical rules of candor applicable to practicing attorneys. *See* American Bar Association Model Rules of Professional Conduct Rule 4.1; Massachusetts Rules of Professional Conduct, Rule 3.3(a).



#### IV. CONCLUSION

If the Commission decides to address this motion while its own constitutional authority is in question, Fr. Lemelson urges that this tribunal reject the summary disposition motion and deny the issuance of an associational bar. At minimum, this tribunal should hold a hearing to assess the public interest factors at play here.

In the alternative, this tribunal should stay these proceedings until the District Court and First Circuit rule on the motion to stay the injunction upon which this proceeding is premised.

Respectfully Submitted,

REV. FR. EMMANUEL LEMELSON,  
LEMELSON CAPITAL MANAGEMENT,  
LLC, and THE AMVONA FUND, LP

By: /s/ Douglas S. Brooks

Douglas S. Brooks (BBO No. 636697)  
Brian J. Sullivan (BBO No. 676186)  
Thomas M. Hoopes (BBO No. 239340)  
LIBBY HOOPES BROOKS, P.C.  
399 Boylston Street  
Boston, MA 02116  
Tel.: (617)-338-9300  
dbrooks@lhblaw.com  
bsullivan@lhblaw.com  
thoopes@lhblaw.com

Dated: July 29, 2022

## CERTIFICATE OF SERVICE

In accordance with Rules of Practice 150 and 151, 17 C.F.R. §§ 201.150 & 201.151, I certify that a copy of Respondent's Memorandum in Opposition to the Enforcement Division's Motion for Summary Disposition was served on the following on July 29, 2022, via email at the email addresses indicated below:

Marc J. Jones  
[jonesmarc@sec.gov](mailto:jonesmarc@sec.gov)  
Counsel for Division of Enforcement

Alfred A. Day  
[daya@sec.gov](mailto:daya@sec.gov)  
Counsel for Division of Enforcement

/s/ Brian J. Sullivan  
Brian J. Sullivan  
Counsel for Respondent

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

\_\_\_\_\_) )  
**IN THE MATTER OF** ) )

**GREGORY LEMELSON** ) )

**Respondent.** ) )  
\_\_\_\_\_) )

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-20828

**INDEX OF ATTACHMENTS**

<b><u>Attachment</u></b>	<b><u>Description</u></b>
A	July 29, 2022 Affidavit of Brian J. Sullivan
1	Exhibit 1 - Affidavit of Father Emmanuel Lemelson in Support of his Motion for Summary Judgment, dated September 30, 2020
2	Exhibit 2 - "Update: Lemelson Capital Further Increases Short Stake in Ligand Pharmaceuticals (NASDAQ: LGND) as LGND EPS Plunges 76 percent in Q2 2014," dated August 4, 2014
3	Exhibit 3 - "Lemelson Capital Says Ligand Pharmaceuticals' (NASDAQ: LGND) \$225M Debt Issuance Solidifies Company's Insolvency, Substantially Raises Specter of Bankruptcy," dated August 4, 2014
4	Exhibit 4 - "Ligand Pharmaceuticals (NASDAQ: LGND): Institutional holders wasting no time dumping stock in response to mounting insolvency and bankruptcy risks," dated August 22, 2014
5	Exhibit 5 - December 21, 2016 Letter from Fr. Emmanuel Lemelson to U.S. Senators Susan Collins and Claire McCaskill
6	Exhibit 6 - July 13, 2018 Letter from Fr. Emmanuel Lemelson to U.S. Representatives Trey Gowdy and Jeb Hensarling, U.S. Senators Michael Crapo, Susan Collins, and Claire McCaskill, and Inspector General Carl Hoecker.
7	Exhibit 7 - Excerpts from the Trial Testimony of Dr. Brian Lian

<b><u>Attachment</u></b>	<b><u>Description</u></b>
8	Exhibit 8 - Excerpts of Viking Therapeutics, Inc.'s Form S-1 Registration Statement filed with the United States Securities and Exchange Commission on July 1, 2014
9	Exhibit 9 - Division's Opposition to Fr. Emmanuel Lemelson's Motion for New Trial or to Alter or Amend the Judgment, dated May 11, 2022
10	Exhibit 10 - Fr. Emmanuel Lemelson's August 14, 2014 Benzinga Radio Interview Transcript
11	Exhibit 11 - Fr. Emmanuel Lemelson's September 16, 2014 Benzinga Radio Interview Transcript
12	Exhibit 12 - Fr. Emmanuel Lemelson's October 16, 2014 Benzinga Radio Interview Transcript
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16	Exhibit 16 - Historical Stock Prices of Ligand Pharmaceuticals, Inc. (LGND) for 2014 and March 2019
17	Exhibit 17 - Ligand's PowerPoint presentation to the Securities and Exchange Commission titled "Ligand Presentation to the SEC," dated September 25, 2014
18	Exhibit 18 - Excerpts from the August 6, 2020 Deposition Transcript of David Becker, Representative of the Securities and Exchange Commission Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure
19	Exhibit 19 - Excerpts from the December 11, 2019 Deposition Transcript of John Higgins
20	Exhibit 20 - Bradley J. Bondi's Wikipedia Page
21	Exhibit 21 - Ligand's PowerPoint presentation to the Securities and Exchange Commission titled "Ligand Presentation to the SEC," dated June 8, 2015

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24	Exhibit 24 - Excerpts from the July 20, 2016 Deposition Transcript of Fr. Emmanuel Lemelson
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26	Exhibit 26 - Excerpts from the July 22, 2016 Deposition Transcript of Fr. Emmanuel Lemelson
27	Exhibit 27 - Excerpts from Fr. Lemelson’s Reply to the Division’s Response to Fr. Lemelson’s Statement of Undisputed Facts and Response to the Division’s Statement of Additional Material Facts, dated November 13, 2020
28	Exhibit 28 - Division’s Original Complaint, dated September 12, 2018
29	Exhibit 29 - Fr. Lemelson’s Emergency Motion to Stay Pending Appeal and for Order that the “Bad Actor” Clause of Regulation D Not Apply to This Judgment,” dated April 15, 2022
30	Exhibit 30 - Fr. Lemelson’s Motion for New Trial or to Alter or Amend the Judgment, dated April 27, 2020
31	Exhibit 31 Affidavit of Fr. Lemelson in Support of His Opposition to the Division’s Motion for Entry of Final Judgment, dated January 20, 2022
32	Exhibit 32 - Letters Written to the United States District Court for the District of Massachusetts in Support of Fr. Lemelson, filed in the District Court Action on January 20, 2022
33	Exhibit 33 - June 20-23, 2014 Email Exchange between Bruce Voss, John Higgins, and Matt Foehr
34	Exhibit 34 - Excerpts from the Trial Testimony of Fr. Lemelson

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35	Exhibit 35 - Ligand Pharmaceuticals Incorporated's Amended Form 10-K filed with the United States Securities and Exchange Commission on December 31, 2013
36	Exhibit 36 - June 19, 2014 Email Exchange between Dennis Jacobi and Fr. Lemelson
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40	Exhibit 40 - November 5, 2021 Email from the Securities and Exchange Commission to Undisclosed Recipients
41	Exhibit 41 - November 10, 2021 Barron's Article Titled "The SEC Wins Mixed Verdict Against a Short Seller Who Wouldn't Settle"
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45	Exhibit 45 - November 5, 2021 Mondovisione Article Titled "SEC Wins Jury Trial Against Hedge Fund Adviser Who Ran Manipulative Short Scheme"
46	Exhibit 46 - December 13, 2021 ThinkAdviser Article
47	Exhibit 47 - Division's November 5, 2021 Amended Press Release titled "SEC Wins Jury Trial: Hedge Fund Adviser Found Liable for Securities Fraud"

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48	Exhibit 48 - Fr. Lemelson's Memorandum of Law in Support of his Motion to Dismiss, dated October 25, 2018
49	Exhibit 49 - March 9, 2020 Letter to the Honorable Patti Saris from Douglas S. Brooks
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51	Exhibit 51 - Division's Opposition to Fr. Lemelson's Motion for Sanctions and to Compel Greek Orthodox Metropolis of Boston to Produce Documents in Response to Subpoena, dated February 12, 2020
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60	Exhibit 60 - June 19, 2014 Email Exchange from David Hughes to Investor Relations at Ligand

# **Respondent Attachment A**





Insolvency, Substantially Raises Specter of Bankruptcy,” published by Lemelson Capital Management on August 14, 2014, submitted as Trial Exhibit 6 in the District Court Action.

5. Attached hereto as Exhibit 4 is a true and accurate copy of “Ligand Pharmaceuticals (NASDAQ: LGND): Institutional holders wasting no time dumping stock in response to mounting insolvency and bankruptcy risks,” published by Lemelson Capital Management on August 22, 2014, submitted as Trial Exhibit 7 in the District Court Action.

6. Attached hereto as Exhibit 5 is a true and accurate copy of a December 21, 2016 letter from Fr. Emmanuel Lemelson to the U.S. Senators Susan Collins and Claire McCaskill.

7. Attached hereto as Exhibit 6 is a true and accurate copy of a July 13, 2018 letter from Fr. Emmanuel Lemelson to U.S. Representatives Trey Gowdy and Jeb Hensarling, U.S. Senators Michael Crapo, Susan Collins, and Claire McCaskill, and Inspector General Carl Hoecker.

8. Attached hereto as Exhibit 7 is a true and accurate copy of excerpts from the trial testimony of Dr. Brian Lian.

9. Attached hereto as Exhibit 8 is a true and accurate copy of excerpts of Viking Therapeutics, Inc.’s Form S-1 Registration Statement filed with the United States Securities and Exchange Commission as filed on July 1, 2014, submitted as Trial Exhibit 58 in the District Court Action.

10. Attached hereto as Exhibit 9 is a true and accurate copy of the Division’s Opposition to Fr. Emmanuel Lemelson’s Motion for New Trial or to Alter or Amend the Judgment, dated May 11, 2022, filed in the District Court Action, ECF No. 288.

11. Attached hereto as Exhibit 10 is a true and accurate copy of Fr. Emmanuel Lemelson’s August 14, 2014 Benzinga radio interview transcript.

12. Attached hereto as Exhibit 11 is a true and accurate copy of Fr. Emmanuel Lemelson's September 16, 2014 Benzinga radio interview transcript.

13. Attached hereto as Exhibit 12 is a true and accurate copy of Fr. Emmanuel Lemelson's October 16, 2014 Benzinga radio interview transcript.

14. Attached hereto as Exhibit 13 is a true and accurate copy of Fr. Emmanuel's notes from the June 18, 2014 phone call between Mr. Voss and Fr. Emmanuel, submitted as Trial Exhibit 48 in the District Court Action.

15. Attached hereto as Exhibit 14 is a true and accurate copy of excerpts from the trial testimony of Mr. John Higgins.

16. Attached hereto as Exhibit 15 is a true and accurate copy of an email exchange between Fr. Lemelson and Dennis Jacobi between June 3, 2014 and June 26, 2014, submitted as Trial Exhibit 199 in the District Court Action.

17. Attached hereto as Exhibit 16 is a true and accurate copy of a printout of the historical stock prices of Ligand Pharmaceuticals, Inc. (LGND) for 2014 and March 2019. This data was taken from the NASDAQ historical data available at <https://www.nasdaq.com/market-activity/stocks/lgnd/historical>.

18. Attached hereto as Exhibit 17 is a true and accurate copy of Ligand's PowerPoint presentation to the Securities and Exchange Commission titled "Ligand Presentation to the SEC," dated September 25, 2014, submitted as Trial Exhibit 163 in the District Court Action.

19. Attached hereto as Exhibit 18 is a true and accurate copy of selected excerpts from the August 6, 2020 Deposition Transcript of David Becker, representative of the Securities and Exchange Commission Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure.

20. Attached hereto as Exhibit 19 is a true and accurate copy of excerpts from the December 11, 2019 Deposition Transcript of John Higgins.

21. Attached hereto as Exhibit 20 is a true and accurate copy of Bradley J. Bondi's Wikipedia page available at [https://en.wikipedia.org/wiki/Bradley\\_J.\\_Bondi](https://en.wikipedia.org/wiki/Bradley_J._Bondi). Under the section titled "Government Service" it states that Mr. Bondi "served three years on the executive staff of the Securities and Exchange Commission, working as counsel for enforcement actions and regulatory rule-making to Commissioners Paul S. Atkins and Troy Paredes, the former of whom Bondi has co-authored op-eds and journal articles on regulatory policy and securities law."

22. Attached hereto as Exhibit 21 is a true and accurate copy of Ligand's PowerPoint presentation to the Securities and Exchange Commission titled "Ligand Presentation to the SEC," dated June 8, 2015, submitted as Trial Exhibit 166 in the District Court Action.

23. Attached hereto as Exhibit 22 is a true and accurate copy of an email exchange between Bradley Bondi and Virginia Rosado-Desilets of the Securities and Exchange Commission between September 15, 2017 and September 18, 2017, filed in the District Court Action, ECF No. 86-18.

24. Attached hereto as Exhibit 23 is a true and accurate copy of a March 18, 2016 Bloomberg Article Titled "Hedge Fund Priest's Trades Probed by Wall Street Cop," filed in the District Court Action, ECF No. 86-10.

25. Attached hereto as Exhibit 24 is a true and accurate copy of selected excerpts from the July 20, 2016 Deposition Transcript of Fr. Emmanuel Lemelson.

26. Attached hereto as Exhibit 25 is a true and accurate copy of selected excerpts from the July 21, 2016 Deposition Transcript of Fr. Emmanuel Lemelson.

27. Attached hereto as Exhibit 26 is a true and accurate copy of selected excerpts from the July 22, 2016 Deposition Transcript of Fr. Emmanuel Lemelson.

28. Attached hereto as Exhibit 27 is a true and accurate copy of an excerpt from Fr. Lemelson's Reply to the Division's Response to Fr. Lemelson's Statement of Undisputed Facts and Response to the Division's Statement of Additional Material Facts, dated November 13, 2020, filed in the District Court Action, ECF No. 141.

29. Attached hereto as Exhibit 28 is a true and accurate copy of the Division's Original Complaint, dated September 12, 2018, filed in the District Court Action, ECF No. 1.

30. Attached hereto as Exhibit 29 is a true and accurate copy of Fr. Lemelson's Emergency Motion to Stay Pending Appeal and for Order that the "Bad Actor" Clause of Regulation D Not Apply to This Judgment," dated April 15, 2022, filed in the District Court Action, ECF No. 275.

31. Attached hereto as Exhibit 30 is a true and accurate copy of Fr. Lemelson's Motion for New Trial or to Alter or Amend the Judgment, dated April 27, 2022, filed in the District Court Action, ECF No. 280.

32. Attached hereto as Exhibit 31 is a true and accurate copy of the Affidavit of Fr. Lemelson in Support of His Opposition to the Division's Motion for Entry of Final Judgment, dated January 20, 2022, filed in the District Court Action, ECF No. 262.

33. Attached hereto as Exhibit 32 is a true and accurate copy of letters written to the United States District Court for the District of Massachusetts in support of Fr. Lemelson, filed in the District Court Action, ECF No. 261-1.

34. Attached hereto as Exhibit 33 is a true and accurate copy of a June 20-23, 2014 email exchange between Bruce Voss, John Higgins and Matt Foehr, submitted as Trial Exhibit 133 in the District Court Action.

35. Attached hereto as Exhibit 34 is a true and accurate copy of excerpts from the trial testimony of Fr. Lemelson.

36. Attached hereto as Exhibit 35 is a true and accurate copy of Ligand Pharmaceuticals Incorporated's Amended Form 10-K filed with the United States Securities and Exchange Commission on December 31, 2013, submitted as Trial Exhibit 13 in the District Court Action.

37. Attached hereto as Exhibit 36 is a true and accurate copy of a June 19, 2014 email exchange between Dennis Jacobi and Fr. Lemelson, submitted as Trial Exhibit 196 in the District Court Action.

38. Attached hereto as Exhibit 37 is a true and accurate copy of a printout of historical stock price changes of Ligand Pharmaceuticals Inc. (LGND) in comparison to the Arca Biotechnology Index (FBT) between July 2018 and January 2022, filed in the District Court Action, ECF No. 261-44.

39. Attached hereto as Exhibit 38 is a true and accurate copy of historical stock price changes of Ligand Pharmaceuticals Inc. (LGND) in comparison to the S&P 500 Index Between July 2018 and January 2022, filed in the District Court Action, ECF No. 261-45.

40. Attached hereto as Exhibit 39 is a true and accurate copy of the Division's November 5, 2021 Press Release titled "SEC Wins Jury Trial Against Hedge Fund Adviser Who Ran Manipulative Short Scheme," filed in the District Court Action, ECF No. 261-34.

41. Attached hereto as Exhibit 40 is a true and accurate copy of a November 5, 2021 email from the Securities and Exchange Commission to undisclosed recipients, filed in the District Court Action, ECF No. 261-35.

42. Attached hereto as Exhibit 41 is a true and accurate copy of a November 10, 2021 Barron's article titled "The SEC Wins Mixed Verdict Against a Short Seller Who Wouldn't Settle," filed in the District Court Action, ECF No. 261-36.

43. Attached hereto as Exhibit 42 is a true and accurate copy of a November 5, 2021 Law 360 article titled "Hedge Fund Priest Beats SEC Short-And-Distort Claims," filed in the District Court Action, ECF No. 261-37.

44. Attached hereto as Exhibit 43 is a true and accurate copy of a November 19, 2021 Compliance Watch article titled "SEC Wins HF Adviser Securities Fraud Trial," filed in the District Court Action, ECF No. 261-38.

45. Attached hereto as Exhibit 44 is a true and accurate copy of a November 5, 2021 Financial Analyst article titled "SEC Wins Jury Trial Against Hedge Fund Adviser Who Ran Manipulative Short Scheme," filed in the District Court Action, ECF No. 261-39.

46. Attached hereto as Exhibit 45 is a true and accurate copy of a November 5, 2021 Mondovisione article titled "SEC Wins Jury Trial Against Hedge Fund Adviser Who Ran Manipulative Short Scheme," filed in the District Court Action, ECF No. 261-40.

47. Attached hereto as Exhibit 46 is a true and accurate copy of a December 13, 2021 ThinkAdviser article, filed in the District Court Action, ECF No. 261-43.

48. Attached hereto as Exhibit 47 is a true and accurate copy of the Division's November 5, 2021 Amended Press Release titled "SEC Wins Jury Trial: Hedge Fund Adviser Found Liable for Securities Fraud," filed in the District Court Action, ECF No. 261-41.

49. Attached hereto as Exhibit 48 is a true and accurate copy of Fr. Lemelson's Memorandum of Law in Support of his Motion to Dismiss, dated October 25, 2018, filed in the District Court Action, ECF No. 11.

50. Attached hereto as Exhibit 49 is a true and accurate copy of a March 9, 2020 Letter to the Honorable Patti Saris from Douglas S. Brooks, filed in the District Court Action, ECF No. 96.

51. Attached hereto as Exhibit 50 is a true and accurate copy of the Affidavit of Fr. Lemelson Concerning Status as Greek Orthodox Priest, dated March 30, 2020, filed in the District Court Action, ECF No. 111.

52. Attached hereto as Exhibit 51 is a true and accurate copy of the Division's Opposition to Fr. Lemelson's Motion for Sanctions and to Compel Greek Orthodox Metropolis of Boston to Produce Documents in Response to Subpoena, dated February 12, 2020, filed in the District Court Action, ECF No. 64.

53. Attached hereto as Exhibit 52 is a true and accurate copy of the Division's Initial Disclosures, dated December 21, 2018, filed in the District Court Action, ECF No. 261-18.

54. Attached hereto as Exhibit 53 is a true and accurate copy of the Division's First Amended Initial Disclosures, dated July 24, 2019, filed in the District Court Action, ECF No. 261-19.

55. Attached hereto as Exhibit 54 is a true and accurate copy of the Division's Second Amended Initial Disclosures, dated October 8, 2019, filed in the District Court Action, ECF No. 261-20.

56. Attached hereto as Exhibit 55 is a true and accurate copy of excerpts of the Division's February 28, 2020 Expert Rebuttal Report of Erin Smith, Ph.D.



57. Attached hereto as Exhibit 56 is a true and accurate copy of a June 8, 2015 letter from former U.S. Representative Duncan Hunter to The Honorable Mary Jo White of the Securities and Exchange Commission, filed in the District Court Action, ECF No. 46-15.

58. Attached hereto as Exhibit 57 is a true and accurate copy of excerpts of the December 17, 2020 Summary Judgment Hearing Transcript in the District Court Action.

59. Attached hereto as Exhibit 58 is a true and accurate copy of the Affidavit of Fr. Lemelson in support of Response to Division's Motion for Order to Show Cause, dated February 28, 2020, filed in the District Court Action, ECF No. 88.

60 Attached hereto as Exhibit 59 is a true and accurate copy of a June 19, 2014 email exchange from Joseph Hunt to Investor Relations at Ligand, submitted as Trial Exhibit 214 in the District Court Action.

61. Attached hereto as Exhibit 60 is a true and accurate copy of a June 19, 2014 email exchange from David Hughes to Investor Relations at Ligand, submitted as Trial Exhibit 243 in the District Court Action.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed: July 29, 2022

/s/ Brian J. Sullivan  
Brian J. Sullivan

## CERTIFICATE OF SERVICE

In accordance with Rules of Practice 150 and 151, 17 C.F.R. §§ 201.150 & 201.151, I certify that a copy of the foregoing Affidavit of Brian J. Sullivan in Support of Respondent's Opposition to the Enforcement Division's Motion for Summary Disposition was served on the following on July 29, 2022, via email at the email addresses indicated below:

Marc J. Jones  
[jonesmarc@sec.gov](mailto:jonesmarc@sec.gov)  
Counsel for Division of Enforcement

Alfred A. Day  
[daya@sec.gov](mailto:daya@sec.gov)  
Counsel for Division of Enforcement

/s/ Brian J. Sullivan  
Brian J. Sullivan  
Counsel for Respondent

# **Respondent Exhibit 1**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
GREGORY LEMELSON and LEMELSON CAPITAL MANAGEMENT, LLC,	)	Civil Action No. 1:18-cv-11926-PBS
	)	
Defendants,	)	
	)	
and	)	
	)	
THE AMVONA FUND, LP,	)	
	)	
Relief Defendant	)	
	)	

**AFFIDAVIT OF FATHER EMMANUEL LEMELSON IN SUPPORT OF  
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

I, Father Emmanuel Lemelson, hereby swear and declare as follows:

1. I am a canonically ordained priest in the Greek Orthodox Church and have been identified in the Complaint to this action as Gregory Lemelson. I also serve as the Chief Investment Officer of Lemelson Capital Management, LLC. I am an activist investor. Lemelson Capital Management, LLC is the general partner to the Amvona Fund, LP, a pooled investment vehicle.

2. I started the Amvona Fund in 2012.

3. The Amvona Fund has focused on long-term commitments in common stocks, but has also occasionally shorted companies I believed were overvalued, exercised poor corporate governance, or engaged in fraud.

4. Since 2010, preceding the launch of the Amvona Fund, I have published approximately 200 pieces of research and commentary discussing amongst other things, economics, securitization fraud, and high-level security analysis of various common stocks. Of all my published materials and public commentary regarding stocks, the Securities and Exchange Commission has only sought charges related to my statements concerning Ligand Pharmaceuticals (“Ligand”).

5. I have consistently published materials regarding my positions (and the positions taken by the Amvona Fund) in various securities in an effort to be open, transparent, and to allow my analysis to be both didactic but also subject to public scrutiny. Consistent with my practice when publishing reports, all of my reports regarding Ligand disclosed that the Amvona Fund had taken a short position in Ligand’s stock and that it contained my opinion commentary.

6. In certain of my analyses, I have sought to appraise the intrinsic value of certain companies, as well as determining the true security interests of common shareholders, by carefully assessing the value of the company’s intangible assets, which in many cases resulted in an opinion that the intangible assets were either over or understated.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed: September 30, 2020

*Rev. Fr. Emmanuel Lemelson*  
\_\_\_\_\_  
Father Emmanuel Lemelson

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-participants on September 30, 2020.

/s/ Douglas S. Brooks

Douglas S. Brooks

## **Respondent Exhibit 2**



# Update: Lemelson Capital Further Increases Short Stake in Ligand Pharmaceuticals (NASDAQ: LGND) as LGND EPS Plunges 76 percent in Q2 2014

Lemelson Capital further increases short stake and reaffirms 100 percent downside risk in Ligand Pharmaceuticals (NASDAQ: LGND), revenue and earnings down across the board, while liabilities and dilution continue to rise dramatically.

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## Overview

- Despite a significant downward correction in the share price of Ligand Pharmaceuticals (NASDAQ: LGND) since the June 16, 2014 publication of its original research report on LGND, Lemelson Capital Management has since continued to increase its short position in the Company.
  - Lemelson Capital’s original June 16, 2014 report can be found [here](#).
  - Lemelson Capital’s appended 12-page update published on July 3, 2014, can be found [here](#).



- Between June 16, 2014 and August 1, 2014, a period of approximately six weeks, shares in Ligand Pharmaceuticals have plunged roughly 35 percent, losing approximately \$490 million in market capitalization.
- Q2 2014 EPS plunged 76% from Q2 2013.
- Collaborative Research and Development continue a multi-year slide with the release of the company's Q2 earnings report, dropping ~80% in just a matter of four years.
- When non-cash items are excluded, Q2 2014 revenue actually declined year over year.
- Ligand's press releases and communications with investors continue to paint an exceedingly and deceptively optimistic picture, including in its Q2 2014 earnings release this morning. Yet, the firm's SEC filings reveal a business whose key revenue streams and earnings continue to decline, or are likely to diminish entirely. Revenue and earnings are down 76 percent year over year, contingent liabilities are up roughly 148 percent while management continues a policy of extraordinary shareholder dilution through stock-based compensation that exceeds by a significant margin the company's net income from continuing operations.
- Once intangibles are removed from balance sheet, company shareholder equity is just \$21,000 to shield the common shareholder from the litany of growing liabilities and severe competitive threats the company faces.
- Promacta sales have not yet been impaired by new Hep C regimens that address multiple genotypes, but will be. Kyprolis, the company's other major royalty generating program also faces severe competitive threats.
- The financial condition of the company continues to erode rapidly offering essentially zero margin of safety to common shareholders.

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## Q2 2014 EPS Plunges 76 Percent

Q2 2014 EPS has plunged 76 percent year over year. Net income attributable to common shareholders for the second quarter of 2014 was just \$1.6 million, or \$0.07 per diluted share, compared with net income attributable to common shareholders for the second quarter of 2013 of \$6.1 million, or \$0.30 per diluted share.

Net income attributable to common shareholders for the first six months of 2014 was \$3.7 million, or \$0.17 per diluted share, compared with net income attributable to common shareholders of \$7.6 million, or \$0.37 per diluted share, for the same period in 2013, representing a decrease of 54.1 percent.

## Collaborative Research and Development Revenue Continues to Plummet

Collaborative research and development and other revenues declined to just ~\$4.3 million from ~\$5.0 million for the same period in 2013, a decrease of 14 percent year over year and continuing a multi-year trend.

Once the TG Therapeutics non-cash licensing agreement is backed out of revenue, collaborative research and development revenue declined even further, to just \$3 million for all of 1H 2014, or a decline of some 38 percent over the same period in 2013.

Collaborative R & D revenues (a substantial part of Ligand's overall sales and business model), have already declined 79 percent in just the last four years, continuing to further concentrate the Company's business into just two precariously fragile revenue streams.

## When Non-Cash Items are Removed, Q2 2014 Revenue Has Decreased

The company reported in the Q2 earnings release that revenues for the second quarter of 2014 were \$10.6 million, an increase of 11 percent compared with \$9.6 million for the same period in 2013. However, this presentation of the data is potentially misleading.

An upfront, non-cash license fee was received by Ligand from TG Therapeutics for the licensing of IRAK-4 in the second quarter of 2014. Under the terms of the agreement, Ligand received 125,000 shares of TG common stock, valued at approximately \$1.2 million at signing. As of the close of market on August 1, 2014, the 125,000 shares had a value of just \$917,500, a decrease in value to the company of some \$300,000.

Once this non-cash licensing fee is removed from the Q2 revenue figures, the company's revenue was only \$9.4 million, which is 2.1 percent less than the \$9.6 million of revenue the company had in Q2 2013.

A statement of cash flows would have revealed this, but cash flow reporting was oddly omitted from the company's Q2 2014 earnings release.

Material sales decreased approximately \$500,000, or 13 percent, to \$3.5 million from \$4.0 million for the same period in 2013, representing a drop of some 13 percent.

### Press Release vs. SEC filings: Net Income, Contingent Liabilities and Stock-based Compensation

Net income from continuing operations dropped from \$3,694,000 in Q2 of 2013 to just \$1,592,000 in Q2 2014, representing a drop of approximately 57 percent (a decline of approximately 76 percent in EPS when accounting for continued dilution).

Contingent liabilities to the company increased an extraordinary 147 percent during the same time period from \$-2,741,000 to \$1,312,000, while mark-to-market adjustments for investments would have taken another \$797,000 off the income statement had the company reported the more correct and accurate GAAP figures.

Despite the drop in revenues and the plunge in EPS, management continued to siphon off shareholder value through an extraordinary increase of approximately 100 percent in stock-based compensation during the first six months of 2014 alone.

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*"...Ligand which has only speculative value and virtually no perceptible insight into future revenue or profitability, while maintaining a spectrum of significant liabilities, including from the Company itself vis-à-vis spectacular dilution.*

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LIGAND PHARMACEUTICALS - SEVERE COMPETITIVE THREAT TO KEY ROYALTY PROGRAM AND "GOING CONCERN"  
RISK DRIVE 100 PERCENT DOWNSIDE

JUNE 16, 2014

While net income attributable to Ligand common shareholders fell by approximately 53 percent from 1H 2013 (\$7.6 million) to 1H 2014 (\$3.7 million), management increased their awards by more than 100 percent, to approximately \$5.1 million, or 27 percent greater than the company's entire 1H 2014 earnings, with the lions share likely going to the company's top two executives, validating the original research report that one of the greatest risk to Ligand earnings is from management itself.



## Competitive Threat to Promacta and Kyprolis Not Yet Realized

Promacta revenues (as was previously reported) from Hepatitis C patients are dependent on the use of interferon in Hepatitis C therapeutic regimens, which Lemelson Capital's industry sources expect to be reduced significantly, if not entirely, in the future due to approvals of the new oral Hepatitis C treatments including but not limited to Gilead's blockbuster therapy, Sovaldi.

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*In its first two industry record shattering quarters on the market, Sovaldi has racked up sales of \$5.8 billion despite reports that thousands of patients are still waiting for Gilead's two drugs in one pill combination treatment expected to gain U.S. approval in October.*

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UPDATE 2-GILEAD HEPATITIS C DRUG SOVALDI RACKS UP \$3.5 BLN IN QUARTER

REUTERS – JULY 23, 2014

It was only last December 2013 that the U.S. Food and Drug Administration (FDA) approved Sovaldi, an oral treatment for chronic Hepatitis C, for use with Ribavirin and interferon. Sovaldi also appears to be used "off label" with Johnson and Johnson's (NYSE:JNJ) Olysio. These new oral combination regimens present a severe competitive threat to future Promacta sales as outlined in the original June 16, research report. However, this has not yet shown up in GlaxoSmithKline's (NASDAQ: GSK) Promacta sales figures since prescribing physicians, as part of the initial regimens, have continued to prescribe the new treatments in combination with interferon (a point also outlined in the original June 16 report), a practice set to change.

Further, Sovaldi will gain additional future competition from drugs in development by AbbVie Inc. (NASDAQ:ABBV) and Merck & Company (NYSE:MRK), creating a more competitive market for the oral Hepatitis C drug market that will undoubtedly drive future promotional efforts, price points and parenthetically further pressure legacy indications such as Promacta, which without interferon have no commercially viable application in Hepatitis C treatment.

The key point is that doctors will eliminate interferon (an expensive indication) in the future when prescribing Sovaldi and other oral combination regimens.

Further clouding the issue is the fact that at least one vocal analyst has repeatedly promoted the idea that interferon will continue to be a mainstay of Hepatitis C treatment for certain genotypes outside of the U.S. However, prescribing information for Solvadi contradicts and invalidates such a suggestion.

Solvaldi Indications HCV Mono-infected and HCV/HIV-1 Co-infected	Treatment	Duration
Genotype 1 or 4	SOVALDI + peg-interferon alfa + ribavirin	12 weeks
Genotype 2	SOVALDI + ribavirin	12 weeks
Genotype 3	SOVALDI + ribavirin	24 weeks

SOURCE: SOLVALDI PRESCRIBING INFORMATION

Like Promacta, Kyprolis also faces an extraordinary competitive threat from two entrenched multiple myeloma (MM) indications, Celgene’s (NASDAQ:CELG) Revlimid and Takeda Pharmaceutical Company Limited’s (OTC:TKPYY) Velcade. Celgene also markets Pomalyst (Pomalidomide), another thalidomide analogue, which was approved in 2013 for the treatment of MM patients who have received at least two prior therapies including Revlimid and Velcade and have demonstrated disease progression on or within 60 days of completion of the last therapy.

Although Kyprolis has U.S. Orphan Drug designation with exclusivity through July 2019 and U.S. patents that extend until at least 2025, Velcade patent expires in the U.S. in 2017 and 2019 in the E.U, opening the door for much less expensive generics. Kyprolis’ future competition may also include Amgen’s pipeline product, Oprozomib, that is in Phase II development.

Summary: Financials Continue Eroding while Liabilities Continue Increasing. 100 Percent Downside Risk Reaffirmed

EPS has plunged 76 percent year-over year through Q2 2014 without explanation from management.

Collaborative research and development revenue has fallen 38 percent year-over-year (when non-cash items are backed out), continuing a multi-year trend.

The company has awarded its executives 47.4 percent more in stock-based compensation than the company has earned in Q2 2014, and ~27 more than the company earned in 1H 2014.

The company’s tangible equity is just \$21,000 against a comparatively monstrous market capitalization of approximately \$1.1 billion, while the company’s net earnings were just \$1.59 million in Q2 2014.

Liabilities continue to grow at a fast pace, while all of the company’s insipid earnings continue to be entirely eliminated by ever-increasing stock-based compensation.



The Company's business model as a "broker" of obscure, third-line, unknown and largely untested indications is inherently flawed and filled with extraordinary risk. It is worth considering why so much time, energy and resources are invested by the company in extraordinarily complex transactions that are often presented to the public in a different light than they are to the SEC.

A common shareholder is distinct from bond-holders or other forms of secured securities holders. Shares of Ligand have already lost approximately 35 percent since the publication of the original LCM report on June 16, 2014 through the close of market on August 1, 2014 (a loss of some \$490 million in market capitalization in slightly over six weeks).

Common shareholders of Ligand now have just \$21,000 in tangible equity to shield them from the slightest bad news which could send the company's \$1.1 billion market capitalization tumbling substantially further. Indeed the company's intangible and contingent liabilities could easily exceed \$21,000 in a day.

For this reason, as well as those enumerated in LCM's previous reports, the intrinsic value of Ligand shares must be reaffirmed as \$0 with downside risk justifiably calculated at 100 percent.

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## **Respondent Exhibit 3**



# Lemelson Capital Says Ligand Pharmaceuticals' (NASDAQ: LGND) \$225M Debt Issuance Solidifies Company's Insolvency, Substantially Raises Specter of Bankruptcy

- Published in [Finding Alpha \(/featured/finding-alpha\)](#)
- Read 12935 times



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Lemelson Capital short stake built as share price collapses on insolvency and bankruptcy risk

Rev. Father Emmanuel Lemelson, Founder and President of the Lantern Foundation and Chief Investment Officer of Lemelson Capital Management, appeared yesterday on Benzinga's Pre-Market Prep show in which he addressed recent geopolitical and global market developments and the firm's existing long and short investment positions, including Lemelson Capital's short position in Ligand Pharmaceuticals (NASDAQ: LGND), which the firm first announced on June 16, 2014. Lemelson Capital has continued to sell the stock short even as its share price has collapsed over the last six weeks.

Lemelson told Benzinga yesterday that Ligand's recent August 11, 2014 announcement that it would assume \$225 million in convertible debt to finance a \$200 million share repurchase further deepens the already significant concerns about Ligand's imminent insolvency and the company's substantial risk of bankruptcy.

Rev. Emmanuel Lemelson, CIO of Lemelson Capital Manag...



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Lemelson's August 13 Benzinga interview, including his comments on Ligand, can be heard [here](https://www.youtube.com/watch?v=V8UX2X24R1s&feature=youtu.be) (<https://www.youtube.com/watch?v=V8UX2X24R1s&feature=youtu.be>).

Lemelson Capital's previous research reports (PDF versions) on Ligand can be found [here](#) (</images/blog-images/The%20Short%20Case%20for%20LGND.pdf>), [here](#) (</images/blog-images/Ligand%20Pharmaceuticals%20-%20Appendix.pdf>) and [here](#) (</images/blog-images/Ligand%20Pharmaceuticals%20-%20Update.pdf>)

Lemelson Capital today raises several new points and concerns regarding Ligand's recently announced issuance of \$225 million in convertible senior debt, including

**1. July 17, 2014 announcement:** On July 17, Ligand announced that the company had authorized a \$10 million share repurchase. At that time, the company's cash position was a mere \$12.98 million and its current portion of long term debt totaled \$5.77 million. When Ligand announced its Q2 2014 earnings on August 4, however, the company had not repurchased any shares under this authorization.

**2. Debt issuance and large shareholders' sale of stock:** Less than four weeks later, on August 14, 2014, the company announced it intended to assume \$225 million in convertible notes to purchase, with proceeds from the debt, roughly \$200 million of shares of its stock. Included in the release was the following statement:

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*"Ligand intends to use a portion of the net proceeds from the offering of the notes to pay the cost of certain convertible note hedge transactions, taking into account the proceeds to Ligand of certain warrant transactions and to repurchase up to \$45 million of shares of Ligand's common stock in privately negotiated transactions..."*

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"LIGAND ANNOUNCES PROPOSED OFFERING OF \$225 MILLION OF CONVERTIBLE SENIOR NOTES AND ANNOUNCES \$200 MILLION SHARE REPURCHASE PROGRAM,"  
AUGUST 12, 2014

**3. Tangible equity:** On August 4, 2014, Ligand released their Q2 earnings report and financial statements in which the company boasted that it was debt free. Prior to this August 4 release, the company's liabilities exceeded tangible assets, meaning the company was insolvent. With the August 4, 2014 earnings release and its updated financials, the company presented tangible equity of just \$21,000 upon which rested an extraordinary market capitalization of approximately \$1.1 billion.

**4. Debt service expense and prospective dilution likely to increase exponentially:** On August 11, the company announced that they would be taking on \$225 million in new debt, vis-à-vis a new convertible debt offering. If the bond offering succeeds, the company's liabilities will again far exceed its assets, and the company will be technically insolvent once more. This means that the debt-free financial condition that Ligand boasted on August 4 will have lasted, according to its publicly-available financial reports, less than two weeks.

- Hypothetically, a reasonable coupon on the bond would be 5.5 percent, meaning debt service on the proposed notes should be roughly \$12 million. Under this hypothetical scenario, the addition of \$12 million in interest payments would be payable with the company's average net earnings from continuing operations over the last ten years of minus \$23.74 million. During the last twelve month alone, the company's EPS has declined some 76 percent. Trailing twelve month EPS through June was just \$7.52 million. The increased debt service will dramatically intensify going concern risk, which the company discussed at length in its 2013 annual report, and its prospects for bankruptcy.

**5. Real cost of debt disguised in up-front derivative hedge:** On August 13, two days after its announcement that it intended to assume \$225 million in convertible note debt to repurchase \$200 million worth of its shares, the company announced that merely \$40 million of the debt proceeds would be used

to repurchase shares at a price of 100% of their principal amount plus accrued interest. However, this pricing is misleading because (as the company had failed to note in its August 11 release) the company has been further required to insure the \$225 million debt offering with \$33.5 million in convertible hedge transactions, apparently in order to insure the debt issuers.

Convertible option of notes, if exercised, will substantially further dilute common shareholders. As Ligand stated in its announcement yesterday:

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*"Holders of the notes will have the right to require Ligand to repurchase all or some of their notes at 100% of their principal amount, plus any accrued and unpaid interest, upon the occurrence of certain corporate events."*

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"LIGAND PRICES OFFERING OF \$225 MILLION OF CONVERTIBLE SENIOR NOTES,"  
AUGUST 13, 2014

This creates a real debt cost to Ligand and its shareholders of an extraordinary 15 percent in upfront fees (a percentage higher than most consumer credit card debt). This is before the 0.75 percent interest payment becomes due and reflects the real risk premium demanded by Ligand's new lenders who have incorporated a call feature that would force the company to potentially repurchase the notes at 100 percent of their principle amount plus interest. If triggered, as it could be, this would likely force the company into bankruptcy.

- The real purpose of the transaction appears to be to enable large institutional Ligand shareholders to unload large numbers of shares in private transactions that will not negatively affect the prices of the shares traded in public markets. The proof of this is that the company has already acknowledged that \$45 million of the \$225 million will be used immediately for this purpose.
- Large, institutional common equity holders are trading in unsecured securities for secured debt instruments, which have an upfront payment of 15 percent. Between the derivative hedge transaction (\$33.5 million), the private transaction (\$45 million), and the \$40 million repurchase, \$118.5 million of the \$225 million, or 53 percent, will be used immediately, therefore making it impossible for the company to make "repurchases up to a total of \$200 million" as it had stated in its press release just two days previously.
- While the vast majority of the \$118 million will not benefit the common shareholder, the common shareholder will be left with the tangible costs of the full \$225 million in new debt and its associated risks.

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## **Respondent Exhibit 4**

# Ligand Pharmaceuticals (NASDAQ: LGND): Institutional holders wasting no time dumping stock in response to mounting insolvency and bankruptcy risks

Ligand's largest Shareholder BVF, Inc. sells 484,524 shares

## Overview

Raising prospects for a continued deterioration in the stock price of Ligand Pharmaceuticals (NASDAQ: LGND), the largest shareholder in the company has moved to unload shares of the troubled company in a private transactions. Earlier this week, on August 19, BVF, Inc., the company's largest shareholder, offloaded 484,524 shares in a private transaction, the terms of which are both costly and indicative of institutional sentiment.

Lemelson Capital has built a substantial short position in Ligand since the firm's original June 16, 2014 research report, which recounted that the company was essentially insolvent, offensively overvalued and facing severe competitive threats to its limited and contracting revenue streams. As predicted in Lemelson Capital's June 16 and subsequent reports, large institutional shareholders, likely fearing imminent substantial downward corrections in the stock and possible bankruptcy, are moving to sell in non-open market transactions at extraordinary cost to remaining shareholders. The BVF sale is likely only the first of a series of such transactions.

Lemelson Capital's previous research reports (PDF versions) on Ligand can be found [here](#), [here](#) and [here](#).

## A Prescient Interview



Last week, on August 13, 2014, Rev. Father Emmanuel Lemelson, Founder and President of the Lantern Foundation and Chief Investment Officer of Lemelson Capital Management, appeared on Benzinga's Pre-Market Prep show in which he discussed and reiterated the firm's short position in Ligand Pharmaceuticals (NASDAQ: LGND), which the firm first announced on June 16, 2014.

In the interview, Lemelson commented:

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*You read these press releases carefully, and you have to ask yourself, why is the company doing press releases? Do you think it is for institutional holders? I don't think so. These guys have a direct line to the CEO and the board of directors. Those things are for retail investors. If you read it carefully, it looks a lot like institutional holders trying to get out of the common equity.*

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REV. EMMANUEL LEMELSON, CIO OF LEMELSON CAPITAL MANAGEMENT – PRE-MARKET PREP  
AUGUST 13, 2014

Lemelson's August 13 Benzinga interview, including his comments on Ligand, can be heard [here](#).

On August 14, 2014, Lemelson Capital published [its report on LGND's](#) new debt issuance, which concluded that:

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*The real purpose of the transaction appears to be to enable large institutional Ligand shareholders to unload large numbers of shares in private transactions that will not negatively affect the prices of the shares traded in public markets...*

*Large, institutional common equity holders are trading in unsecured securities for secured debt instruments, which have an upfront payment of 15 percent.*

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“LEMELSON CAPITAL SAYS LIGAND PHARMACEUTICALS' (NASDAQ: LGND) \$225M DEBT ISSUANCE SOLIDIFIES COMPANY'S INSOLVENCY, SUBSTANTIALLY RAISES SPECTER OF BANKRUPTCY”  
AUGUST 14, 2014

On August 18, Ligand filed a form 8-K with the Securities and Exchange Commission (SEC), revealing that the company had issued \$245 million in new debt against the company's tangible equity of just \$21,000, giving rise to a debt to tangible equity ratio of 11,667-to-1 (that is to say, \$11,667 dollars in debt for every \$1 dollar in tangible common shareholder equity).

Six days earlier the company stated:

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*Ligand intends to use a portion of the net proceeds from the offering of the notes to pay the cost of certain convertible note hedge transactions, taking into account the proceeds to Ligand of certain warrant transactions and to repurchase up to \$45 million of shares of Ligand's common stock in privately negotiated transactions...*

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"LIGAND ANNOUNCES PROPOSED OFFERING OF \$225 MILLION OF CONVERTIBLE SENIOR NOTES AND ANNOUNCES \$200 MILLION SHARE REPURCHASE PROGRAM,"  
AUGUST 12, 2014

### Debt at Usury Rates: The SEC Filings

According to Ligand's August 18 SEC filing, the company spent \$6 million of the \$245 Million of debt (approximately 2.4%) on initial purchaser's discounts and commissions. The company then spent a further \$36.5 million of the proceeds (a figure substantially higher than the \$32.5 million the company originally reported in its August 12 release on the terms of the debt offering) to pay the cost of privately-negotiated convertible note hedge transactions.

These privately-negotiated convertible note hedge transactions, which represent a stunning expense of approximately 15 percent of the total proceeds, afford no benefit to either the note or common equity holder. When combined with the 2.4 percent in commission and the 0.75 percent annual coupon, they create a sum total transaction cost of the bond offering in the first year of a whopping 18.5 percent.

Ligand's August 18 SEC filing included the following statement:

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*The Convertible Note Hedge Transactions and the Warrant Transactions are separate transactions, in each case, entered into by the Company with the Option Counterparties, and are not part of the terms of the Notes and will not affect any holder's rights under the Notes. **Holder's of the Notes will not have any rights** with respect to the Convertible Note Hedge Transactions or the Warrant Transactions.*

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LIGAND PHARMACEUTICALS INC. – FORM 8-K  
AUGUST 18, 2014

The real upfront cost of the new debt was \$45.3 million, or six times the company's trailing twelve months (TTM) net earnings, which had already been fully consumed (and then some) by stock awards to Ligand management. As such, it would take six years of operations at current profitability (which itself is unsustainable) to pay for just the transaction costs of the new debt issued by the company.

Alternatively, Ligand could have simply contacted Capital One and applied for a consumer credit card with a very large line of credit, which undoubtedly would have had a lower lending cost. Indeed, the cost of Ligand's debt issuance exceeds that offered by most loan sharks and payday lenders, both of which would have likely offered more favorable terms.

Why then did the company go through all of the trouble of a formal bond offering with extraordinarily complex, privately-negotiated derivative transactions? Answer: To accommodate a few large institutional shareholders in private, out-of-market transactions, that would not affect Ligand's quoted prices in the open market while allowing large blocks of Ligand shares to be unloaded and a select group of common shareholders to get out of the troubled company at great expense (\$45.3 million to be exact) to remaining and ongoing common shareholders.

As the August 14 Lemelson Capital research report anticipated, buyers of the Ligand bonds would be the very same common shareholders who want to hastily unload Ligand shares. In other words, the institutions lending Ligand the money through the bond offering have done so with a mandate that the company use these funds to buy out their shares. This leaves Ligand's remaining common shareholders, mostly retail investors, to pay a premium ~\$45 million to facilitate the company's intent to permit a few large institutions to sell their shares in private, out-of-market transactions. In case there is any doubt regarding the drivers of Ligand's recent high cost debt offering, consider the following:

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*...approximately \$37.8 million of the net proceeds [from the bond offering] to repurchase shares of the Company's common stock from purchasers of the Notes in privately negotiated transactions concurrently with the offering*

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LIGAND PHARMACEUTICALS INC. – FORM 8-K  
AUGUST 18, 2014

## Wasting No Time

On August 21, the SEC published form [13G/A filed by BVF, Inc.](#), which revealed that Ligand's largest shareholder was reporting that, pursuant to SEC rule 13-d, the company had sold 484,524 shares of Ligand stock as of August 19, the first date that funds from Ligand's new debt became available.

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*Holder of the notes will have the right to require Ligand to repurchase all or some of their notes at 100% of their principal amount, plus any accrued and unpaid interest, upon the occurrence of certain corporate events.*

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"LIGAND PRICES OFFERING OF \$225 MILLION OF CONVERTIBLE SENIOR NOTES,"  
AUGUST 13, 2014

There is no question that the cost of this preferential treatment of a few large Ligand shareholders at the expense of remaining investors places a burden on Ligand and its shareholders that is both unsustainable and further deepens the company's insolvency and likelihood of liquidation or reorganization under Chapter 7 or Chapter 11 of the bankruptcy code under which remaining Ligand common shareholders have only the protection of \$21,000 in tangible equity to shield them from \$245 million in debt.

Should the call feature of Ligand's debt be exercised, as is possible and even likely, common shareholders would be wiped out immediately.

## **Respondent Exhibit 5**

Rev. Fr. Emmanuel Lemelson  
The Lantern Foundation  
225 Cedar Hill Street Suite # 200  
Marlborough, MA 01752

December 21, 2016

Honorable Susan M. Collins  
Chairman  
U.S. Senate Special Committee on Aging  
G31 Dirksen Senate Office Building  
Washington, D.C. 20510

Honorable Claire McCaskill  
Ranking Member  
U.S. Senate Special Committee on Aging  
628 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senators Collins and McCaskill:

Having followed and appreciated the Committee's hearings and investigations into pharmaceutical pricing and other industry abuses that have proven extremely burdensome to patients, U.S. taxpayers and investors, I commend you for uncovering unethical and sometimes criminal behavior on the part of unscrupulous pharmaceutical companies.

I write to call your attention to a similar but even more egregious case than those the Committee has evaluated to date: Ligand Pharmaceuticals, a publicly-traded U.S. pharmaceutical company. Ligand may be the industry's most significant abuser of these standards and laws. These include multiple abuses and violations of existing pharmaceutical classification, reimbursement, and accounting statutes and standards by Ligand. In particular, Ligand Pharmaceuticals' so-called "licensing" model is a nexus for a new breed of unethical pharmaceutical companies whose primary goal is to reap extraordinary profits on the backs of patients, taxpayers and shareholders by (among other things) abusing the Orphan Drug Act of 1983 as well as a litany of accounting loopholes.

Under this model, Ligand essentially plays the role of a special purpose acquisition company to licensees that, with superior resources, stifle access to these drugs by generic drug companies through misuse of the Orphan Drug Act, ensuring these drugs are sourced and licensed by Ligand, a company that now lies at the heart of this new, unethical breed of pharmaceutical companies. In turn, Ligand receives excessive royalties from the enormous increase in revenues generated from these drugs' price increases.

The Ligand business model is very much at the center of the larger, emerging crisis in spiraling health care costs that is threatening patients and the fiscal stability of our country.

Public policy must be constructed and enforced in ways that account not only for the companies driving these unethical and likely illegal entities, but also their enablers, who work for a cut of the profits. In addition to investigating these abuses by Ligand, Congress must act swiftly to tighten the Orphan Drug Act to ensure drugs meet the legitimate purpose intended under this statute to prevent these abuses, and ensure policy reforms to fast-track the approval of generics are passed.

Separately, this past January, after several years of research into Ligand, a whistleblower report was filed with the U.S. Securities and Exchange Commission (SEC) regarding Ligand's material misrepresentations to investors.

I am attaching a more detailed report on Ligand's extensive abuses of pharmaceutical classification, pricing, accounting and other regulations, standards and statutes.

I strongly encourage the Committee to commence an investigation into Ligand. I also will gladly make myself available to the Committee to review and understand these abuses and to testify under Congressional oath on them.

Thank you for your attention to this important matter.

Sincerely,

*Rev. Fr. Emmanuel Lemelson*

Rev. Fr. Emmanuel Lemelson  
Founder and President  
The Lantern Foundation

Enclosure

cc:

U.S. Senate Special Committee on Aging members  
Kevin L. Kelley, Staff Director  
Derron Reynard Parks, Staff Director  
Mia Lenee Woodward, Investigative Counsel



## **Background**

Ligand Pharmaceuticals' so-called "licensing" model is a nexus for a new breed of unethical pharmaceutical companies whose primary goal is to reap extraordinary profits on the backs of patients, taxpayers and shareholders by (among other things) abusing the Orphan Drug Act of 1983 as well as a litany of accounting standards. In fact, it is Ligand that systemized the monopoly pricing practices that has given rise to similar accounting and regulatory abuses subsequently adopted by Valeant, Martin Shkreli's Retrophin, Mylan and other pharmaceutical companies, which the Committee previously has called as witnesses.

The Ligand business model is not based on finding the best drugs to cure or treat rare conditions, as the Orphan Drug Act, which Ligand is exploiting, encourages. Instead, Ligand's model consists of locating drugs whose price, through the Orphan Drug Act, can be continually and radically increased with negligible benefit to patients with these rare conditions.

## **Exploiting the Orphan Drug Act of 1983: An Overview**

Ligand is in the business of locating drugs that are candidates for orphan drug status. Once the enhanced patent-like protections under the Orphan Drug Act of 1983 are granted, providing seven years of protection against generic competition, these drugs are then pre-packaged as drug monopolies for licensees. When Ligand engages in this activity, the U.S. taxpayer underwrites the cost of the subsidies and incentives that are granted to Ligand through the orphan drug designation program. Then, in turn, Ligand through its licensees drastically increases the price of these drugs, which are then billed (under federal Medicare and state Medicaid programs), to the very same taxpayers.

The Orphan Drug Act was enacted by Congress with laudable intentions, namely to incentivize research-based pharmaceutical companies to invest in clinical research and development of therapies to treat rare diseases that (absent the Act) would not likely be discovered or developed. However, under the leadership of Ligand CEO John Higgins, who has run the company since 2007, Ligand's research and development spending, which the Act was designed to stimulate, has been gutted from \$44.6 million in 2007 to \$13.4 million in 2015, a decrease of seventy percent, even though the company now has substantially more drugs under orphan drug status today than it did in 2007.

## **Ligand's fleecing patients and taxpayers**

The structure of Ligand's business model consists of:

- (1) Ligand acquires licensing rights to older, sole-sourced drugs that face no generic competition. These usually include drugs that serve a small patient population since few patients typically means less regulatory scrutiny and less motivation for competitors to enter the market;
- (2) Ligand then misrepresents these drugs as the "gold standard" for the condition or symptoms it treats, so that health care providers are dissuaded from prescribing equally and often more suitable substitutes at lower prices;

- (3) Ligand seeks and obtains “orphan drug” designation for these drugs, which then bars generic competition and enables virtually unlimited price increases because of the veritable monopoly the designation creates for these drugs; and
- (4) Ligand then licenses these monopolistic drugs to companies that raise the price on these low-profile medications, which are now protected from competition due to their orphan drug status.

What sets Ligand apart from Retrophin, Turing, Valeant, Mylan and others is that, unlike these companies which have exploited the opportunity for nearly limitless price increases on some of their drugs, this is Ligand’s exclusive mission and function. In fact, no company is currently more engaged than Ligand in abusing the Orphan Drug Act for the purpose of grossly increasing drug prices that are ultimately absorbed by taxpayers.

As is the case with both of Ligand’s primary royalty-generating drugs, both of which have been granted orphan drug status, Ligand is generating massive royalties from drugs for which vastly cheaper and typically equally and if not more effective alternatives exist.

The first disgraceful example is Ligand’s licensing of Kyprolis<sup>1</sup>, a failed oncology drug that has shown no progression-free survival benefit over its much less expensive competitors.<sup>2</sup> Despite Kyprolis’ lack of clinical efficacy, however, the federal Medicare program was billed roughly \$280,000 per round of treatment per patient for Kyprolis for a total of \$228 million in 2015 alone, an increase of 43 percent over 2014, and \$387 million over 2014 and 2015. Outrageously and unjustifiably, this now makes Kyprolis one of the most expensive drugs billed to the Centers for Medicare and Medicaid Services (CMS).<sup>3 4</sup>

A second outrageous example can be found in Ligand’s other primary revenue-generating drug Promacta<sup>5</sup>. Ligand represents that Promacta is primarily used to treat idiopathic thrombocytopenic purpura (ITP), an extremely rare condition. In these cases, Promacta is sold to these patients at the exorbitant price of \$10,196 for 30 75 mg. tablets. Promacta is not a cure for ITP and it will not make a patient’s platelet counts normal if the patient has this condition<sup>6</sup>.

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<sup>1</sup> Kyprolis is a drug that uses Captisol (a Ligand product) in its formulation. Ligand has a license agreement with Amgen and receives royalties on Kyprolis sales.

<sup>2</sup> Lemelson Capital reported in August 2014 that Kyprolis was facing extraordinary competitive threats from two entrenched multiple myeloma (MM) indications, Celgene’s Revlimid and Takeda Pharmaceutical’s Velcade. The Lemelson Capital report was subsequently proven correct when Amgen Executive Vice President of Research and Development Sean Harper noted recently that a late-stage Kyprolis study did not meet its goal in improving progression-free survival versus Velcade in patients who had not yet been treated for the disease.

See “Update: Lemelson Capital Further Increases Short Stake in Ligand Pharmaceuticals (NASDAQ: LGND) as LGND EPS Plunges 76 percent in Q2 2014,” available here: [Link](#)

<sup>3</sup> See: “Rough Month: A Closer Look at Ligand's Fall From All-Time Highs,” available here: [Link](#)

<sup>4</sup> See: “How Much Will Amgen's Carfilzomib for Multiple Myeloma Cost?” available here: [Link](#)

<sup>5</sup> Promacta is an oral thrombopoietin receptor agonist

<sup>6</sup> See: “What is Promacta?” Drugs.com, (available here: [Link](#)).

### **Accounting, fiduciary and corporate governance violations**

In addition to Ligand's abuse of the Orphan Drug Act, its gross overpricing of drugs billed to public payers systems under the Act, and the clinically unconvincing value and designation of these extraordinarily expensive drugs, our organization has previously uncovered and reported on Ligand's clear violations of Sections 10(b) of the Securities Exchange Act of 1934, which prohibits any act or omission resulting in fraud or deceit in connection with the purchase or sale of a public security.<sup>7</sup> Specifically, in 2014, we reported that much of Ligand management's commentary was knowingly and materially false and misleading.<sup>8</sup>

Over the past several weeks, ten U.S. law firms have announced investigations into Ligand for breaching their fiduciary duties to shareholders and for securities fraud. During this same period, eleven U.S. law firms have filed class action lawsuits against Ligand, alleging materially false and misleading statements by the company and its management.

Ligand has made demonstrably false and misleading statements and failed to disclose other negative material facts, including:

- (1) In 2015, Ligand grossly overstated the value of certain deferred tax assets by approximately \$27.5 million;
- (2) As of December 31, 2015, Ligand's outstanding convertible senior unsecured notes, due 2019, were misleadingly misclassified as long-term debt rather than (as the company stated over a year later) short-term debt; and
- (3) In November 2016, Ligand acknowledged that it did not maintain effective controls over the accuracy and presentation of its accounting and financial reporting, as is required of publicly-traded companies such as Ligand.

Since Higgins' appointment in 2007 as Ligand CEO, stock option awards and compensation packages to Ligand executives and board members have increased exponentially. These insiders have then methodically sold their stock awards at prices artificially inflated as a direct byproduct of their unduly optimistic misrepresentations of the company's financial condition. Ligand executives and board members have thus benefited directly from their material misrepresentation of the company's value. Based largely on these and other misrepresentations, Ligand stock price rocketed 1,550 percent higher between January 1, 2011 and June 30, 2016, a period of just five and half years, even as the company's GAAP earnings declined dramatically in recent years.

Further, Ligand has made materially misleading statements to investors regarding its debt expense and made excessive use of non-GAAP measures to disguise the true cost of the company's stock awards to its management. Ligand's unethical engineering of its financial statements has allowed the company to raise more capital from public markets both directly and indirectly through proxies, which has allowed the company to obtain the rights to even more orphan drug candidates whose prices can be unjustifiably increased under the respective market monopolies afforded them.

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<sup>7</sup> Lemelson Capital Management, LLC published five research reports between June and August of 2014 outlining materially misleading statements made by Ligand Pharmaceuticals.

<sup>8</sup> Since 2011, Ligand has amended their quarterly and annual reports an extraordinary 14 times

In addition to these substantial abuses and misrepresentations, a significant part of the proceeds from Ligand's misclassified 2014 debt offering was used to acquire one of Ligand's largest investors' (BVF Partners) stake in Ligand in a private transaction at extraordinary and misrepresented expense to Ligand shareholders.

Finally, Grant Thornton, Ligand's auditor, has also been complicit in these abuses, wrongly providing a clean audit opinion to Ligand's material misrepresentations.

Ligand's documentable record of accounting, regulatory and ethical abuses is one of the worst in the history of modern public markets. Further, the company's management team and board of directors are operating consistently in ways that represent exclusively their own self-interests and not, as is required of fiduciaries, those of the company's shareholders.

### **Variable interest entity abuses and conflicts of interest**

Ligand also has significantly abused other accounting standards, including the variable interest entity (VIE) standard. Ligand's abuse of the VIE has been designed to disguise the company's true operating expenses and create phantom profits in ways very much like Enron criminally misused special purpose entities (SPEs).

On May 4, 2015, Viking Therapeutics, a pharmaceutical startup closely intertwined with Ligand and initially a tenant in its La Jolla, California office building, began trading publicly on the NASDAQ stock exchange. Ligand is mentioned 348 times in Viking's 2015 10-K<sup>9</sup>. At the time of this IPO, Viking was operating effectively as a Ligand proxy with Ligand sponsorship. As part of the offering, Viking sold three million shares of its common stock at a public offering price of \$8.00 per share. In connection with the IPO, Ligand received 3.4 million Viking shares in part for agreeing to purchase \$9 million worth of Viking's stock, or 38 percent of the total offering, creating both a market for the shares and a trading price that were both engineered in advance.

Shortly after the IPO, Ligand then deconsolidated its equity stake in Viking off their balance sheet, claiming the company was no longer a VIE. Ligand recorded a \$28.2 million gain on the deconsolidation for the year ended December 31, 2015 related primarily to the equity milestone received from Viking upon the close of the IPO. However, Ligand retained the intellectual property in the Viking transaction and virtually controlled Vikings stock and board<sup>10</sup> while Viking booked the significant losses related to developing the Ligand assets it licensed to Viking.

In 2015, Viking went on to lose approximately \$23.4 million, or \$3.68 per share, developing assets owned by Ligand.

Despite the IPO support from the Ligand purchases, Viking shares recently traded as low as \$0.94 per share, a decline in value of 88.25 percent from its offering price, while Ligand's 49.4 percent initial stake in Viking common stock virtually eliminated the ability of other shareholders to influence corporate

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<sup>9</sup> Viking Therapeutics, Inc. Form 10-K available here: [Link](#)

<sup>10</sup> Matthew Foehr, Ligand's Executive Vice President and Chief Operating Officer serves on Viking's board of directors.

matters at the company, contradicting Ligand's claim that Viking was no longer a VIE at the time of its deconsolidation off their balance sheet. Barely a year and a half later, Viking now faces almost certain delisting from the NASDAQ stock exchange.

As of October 31, 2016, Viking had a market capitalization of approximately \$21 million (roughly 23 percent less than the value of the approximately \$28 million initial entry on Ligand's statement of income), which was to represent only 49.4 percent of the company's outstanding shares.

The unethically cozy relationship between Ligand and Viking's IPO underwriter Roth Capital also has developed into a glaring conflict of interest with Roth Capital receiving transactional banking fees for Ligand's proxy Viking while absurdly placing "strong buy" ratings on Ligand stock and predicting even higher future trading prices for it. In so doing, Roth Capital fails to disclose clearly its conflict of interest to existing and prospective investors, driving Ligand stock higher and enabling stock awards and subsequent sales by Ligand insiders.

Ligand has used Viking and other equity partners, such as Shkreli's Retrophin and TG Therapeutics, to create a pyramid-type equity scheme used to indirectly harvest capital from public markets. This, in turn, has been fed upstream to the effective sponsor, Ligand, which has used the entries to artificially buttress their statement of income while their legitimate expenses have been disavowed and attributed to surrogates further down the pyramid. Absent any scrutiny of this unethical practice by regulators or lawmakers, Ligand now appears ready to conduct a similar transaction with Seelos Therapeutics, a company whose website consists of just one page with an indiscernible logo and 18 characters of text (their name) and their address<sup>11</sup>. Yet, Ligand is already representing to investors that it stands to make millions from the licensing arrangement with Seelos and undoubtedly a future IPO.

### **Material misrepresentations lead to vast overvaluation**

Based on Ligand's multiple misrepresentations and omissions, even though the company's total revenue increased a very modest \$7 million between 2014 and 2015, its market capitalization more than doubled (by 104 percent) from roughly \$1.04 billion at FYE 2014 to approximately \$2.16 billion at FYE 2015, and recently has exploded further to nearly \$3 billion. Further, in the first nine months of 2016, Ligand's income from continuing operations was just \$759,000 against a market capitalization at September 30 of \$2.1 billion, or an extraordinary 2,800 times trailing nine-month income from continuing operations.

Ligand's real income (excluding non-cash items) is down 80.8 percent<sup>12</sup> year over year through year-end 2015, cash and cash equivalents have dropped by roughly 40 percent year over year<sup>13</sup>, and the company's long-term debt has increased from \$196 million to \$205 million in the same timeframe.

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<sup>11</sup>Available here: [Link](#)

<sup>12</sup> When the roughly \$255 million non-cash entry (deferred tax asset of \$219.6 million from the release of valuation allowance, a \$28.2 million gain on deconsolidation of Viking) are removed from the statement of operations, Ligand's income fell from \$12 million at FYE 2014 to approximately \$2.3 million at FYE 2015, representing a decrease of 80.8 percent. The deferred tax assets were recently further written down.

<sup>13</sup> Cash and cash equivalents fell from approximately \$160 million at FYE 2014 to roughly \$97 million at FYE 2015, representing a drop of approximately 40 percent.

Meanwhile, Ligand has taken equity in three companies (not including its recent transaction announced with Seelos Therapeutics) with combined deficits of \$268.9 million and combined losses in 2015 of \$137.1 million while representing its stake in these companies as \$30.4 million in income on its statement of operations, an accounting abuse that is entirely misleading.

### **Ligand CEO Higgins' ties with Shkreli**

The U.S. Senate Special Committee on Aging, led by Senators Susan Collins (R-ME) and Claire McCaskill (D-MO), has properly investigated the fraudulent schemes of Martin Shkreli and the companies he founded, Retrophin (a Ligand partner) and Turing Pharmaceuticals, which set out to obtain licenses on out-of-patent medicines and increase the prices on them dramatically in pursuit of windfall profits without either of Shkreli's companies needing to develop and bring its own drugs to market. Since markets for out-of-patent drugs are often small, and obtaining regulatory approval to manufacture a generic version is expensive, Shkreli calculated or perhaps was shown that, with closed distribution for the product and no competition, his companies could set nearly limitlessly high prices for these drugs.

Less known, however, is the fact that it was Ligand CEO John Higgins who set Shkreli up as a biotech executive in 2012,<sup>14</sup> helping Shkreli establish this monopoly business model<sup>15</sup> at Retrophin through the licensing of DARA (dual acting receptor antagonist of angiotensin and endothelin receptors) intended to be developed for orphan indications of severe kidney disease<sup>16</sup> from Ligand.

In fact, in 2012, announcing his partnership with Shkreli, Ligand's Higgins issued a press release praising Shkreli and the unethical monopoly business model that he helped Shkreli establish, stating:

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*““This is an attractive deal for Ligand and our shareholders. We have partnered DARA with a team that has great credentials, is highly motivated to advance the program and has a compelling development plan. This is another valuable asset in our late-stage portfolio.”<sup>17</sup> and*

*“The leadership at Retrophin has shown tremendous passion and commitment to advance this important program, working with the FDA and raising additional capital.”<sup>18</sup>*

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Shkreli, in turn, recently appeared as cognoscenti in an interview, praising Ligand as “a very well run business.”<sup>19</sup> In fact, Ligand's relationship with Shkreli's is so close that Retrophin director John W. Kozarich

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<sup>14</sup> See: “The next Sage? Shkreli partner Ligand puts together another sweet startup package deal for Seelos” available here: [Link](#)

<sup>15</sup> See: “Sudden Price Spikes in Decades-Old Rx Drugs: Inside the Monopoly Business Model” available here: [Link](#)

<sup>16</sup> See: Ligand Licenses DARA Program to Retrophin, available here: [Link](#)

<sup>17</sup> See: Ligand Licenses DARA Program to Retrophin, available here: [Link](#)

<sup>18</sup> See: Ligand receives equity milestone payment from Retrophin: [Link](#)

<sup>19</sup> See: “Martin Shkreli Thinks Jazz Pharmaceuticals Could Be Worth \$20 Billion, While Mast Therapeutics Is 'Worthless’” available at the 10 minute, 45 second mark here: [Link](#)

simultaneously serves as Ligand's chairman of the board. However, Higgins has been even more deceptive than Shkreli since price hikes of Ligand drugs such as DARA are both carried out and buried in third-party licensees, allowing Ligand to focus almost singularly on the task of sourcing new drug monopolies under the Orphan Drug Act.

After the publication of our June 16, 2014 report criticizing Ligand, Roth Capital (a firm both Ligand surrogate Viking<sup>20</sup> and Shkreli's Retrophin utilize for underwriting<sup>21</sup>) vigorously defended Ligand's unethical business model. About two weeks later, on July 1, 2014, Roth Capital appeared as an underwriter of the Viking IPO, which later would directly account for \$28 million in ghost profits on Ligand's income statement as described above.

### **Conclusion**

Ligand Pharmaceuticals' free-for-all money grab, like Shkreli's Retrophin, Valeant and Mylan, has not played out in a vacuum; it has real public policy and health-care ramifications for real patients, real taxpayers and real shareholders.

The company's licensing model has multiplied its price gauging scheme exponentially and has, in turn, held patient's hostage, burdening the U.S. taxpayer, preventing generic competition, fleecing shareholders and enriching Ligand executives. Even with Shkreli and former Valeant executives having been arrested and charged with fraud in what the U.S. Department of Justice correctly labeled "a trifecta of lies, deceit and greed,"<sup>22</sup> and the Justice Department engaged in an ongoing multi-year federal antitrust investigation into anticompetitive conduct in the pharmaceutical industry, Ligand CEO John Higgins, who is the key node in this web of pharmaceutical industry malfeasance, is still shamelessly pushing the unethical Ligand model forward at astonishing cost to patients, taxpayers, and investors.

Legitimate questions remain unanswered about the company's radical price increases of Kyprolis and Promacta as well as analysis used by Ligand relating to the pricing or market share of the two drugs.

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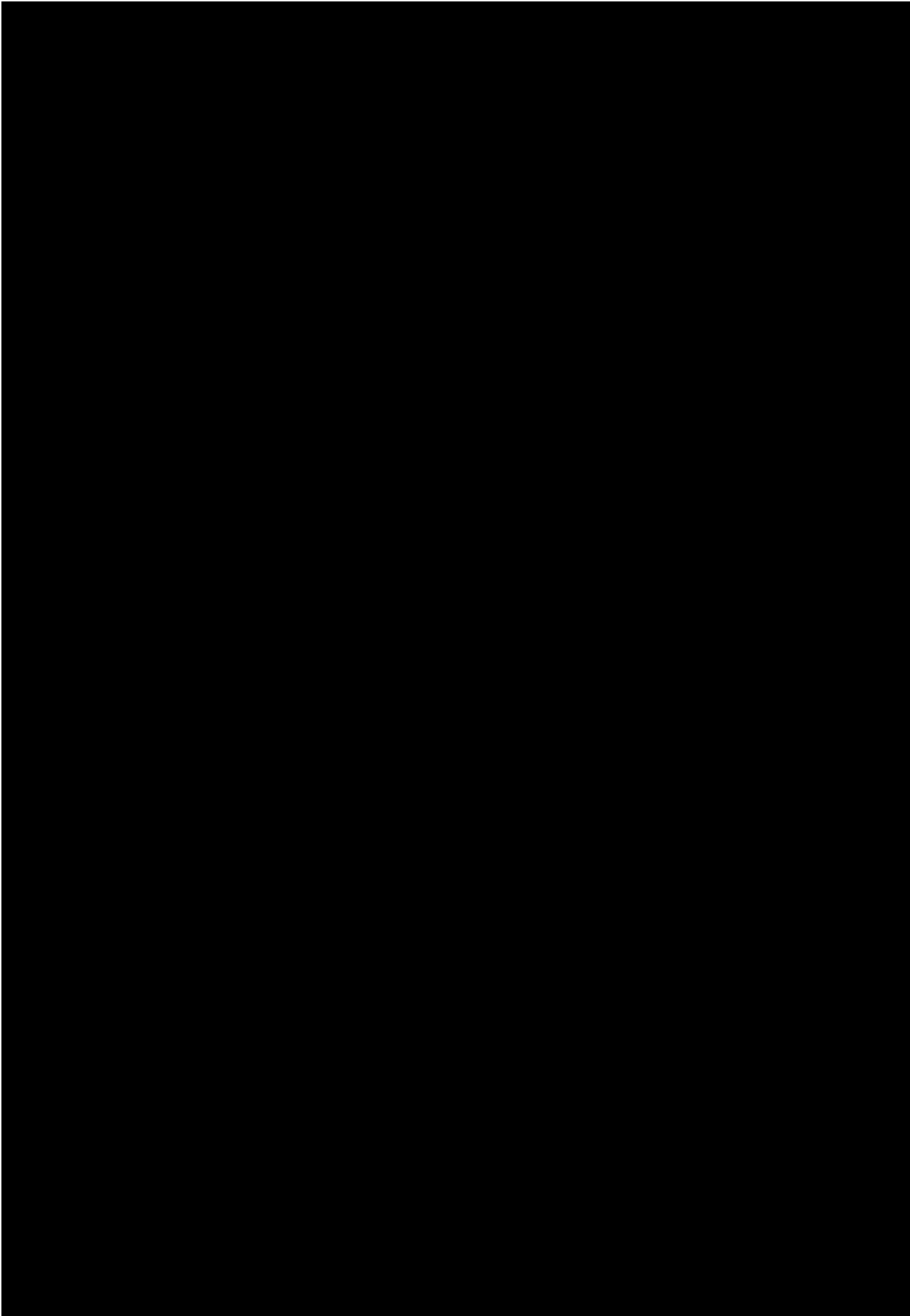
<sup>20</sup> See: Page 153 of the Viking S-1 available here: [Link](#).

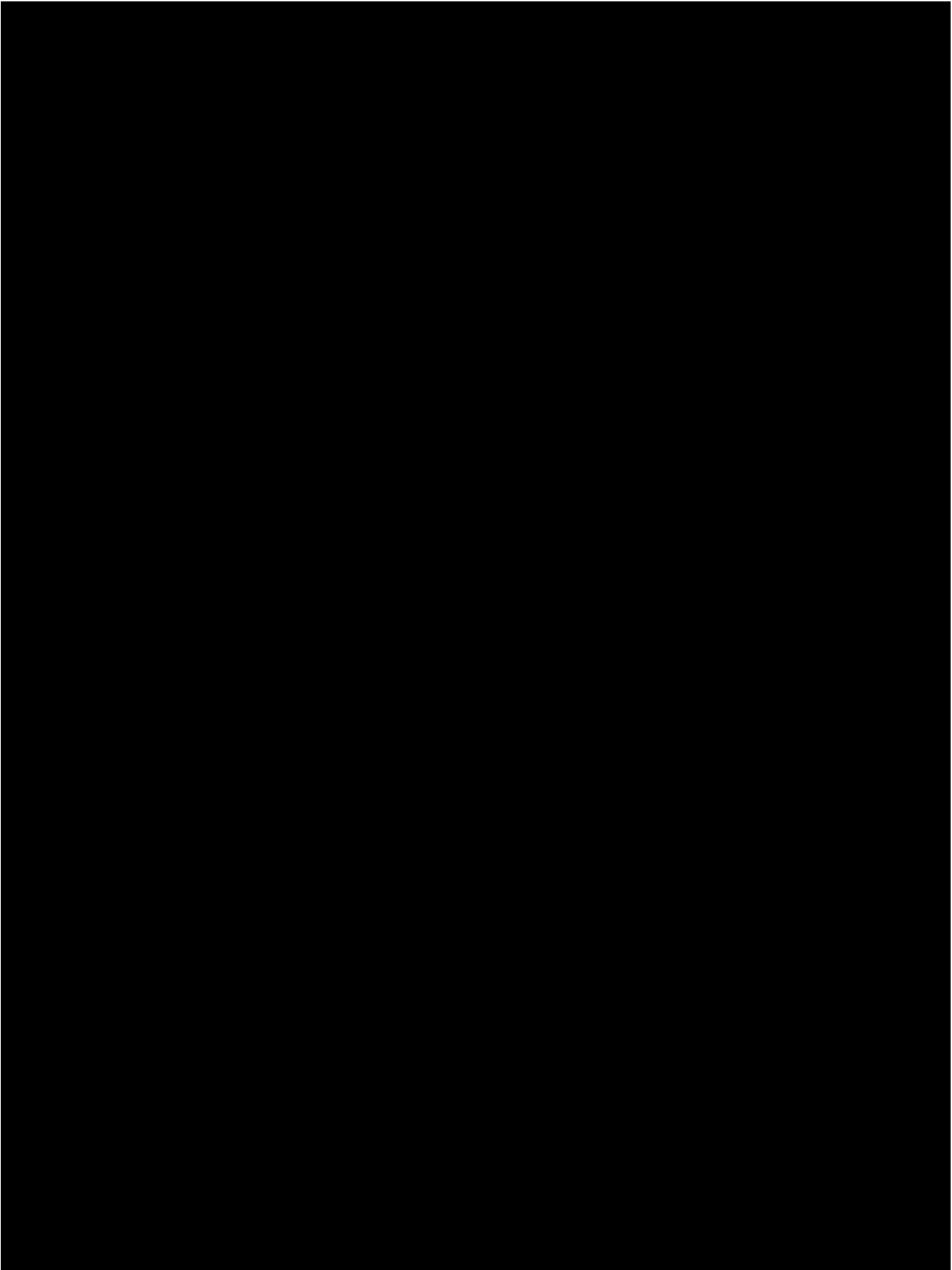
<sup>21</sup> "Shkreli began with receiving a \$4 million series A funding round, followed by a pipe deal with Roth Capital Partners valued at \$10 million that was raised at a deep discount and had warrants attached. From here, Shkreli was able to acquire the rights to Thiola and Chenodal, and subsequently raise the price of each drug. Thiola was marked up nearly 20 times its original price, while Chenodal was raised around five times its beginning price," See: "Exclusive: Why Martin Shkreli Feels He Has Been Vindicated" available here: [Link](#)

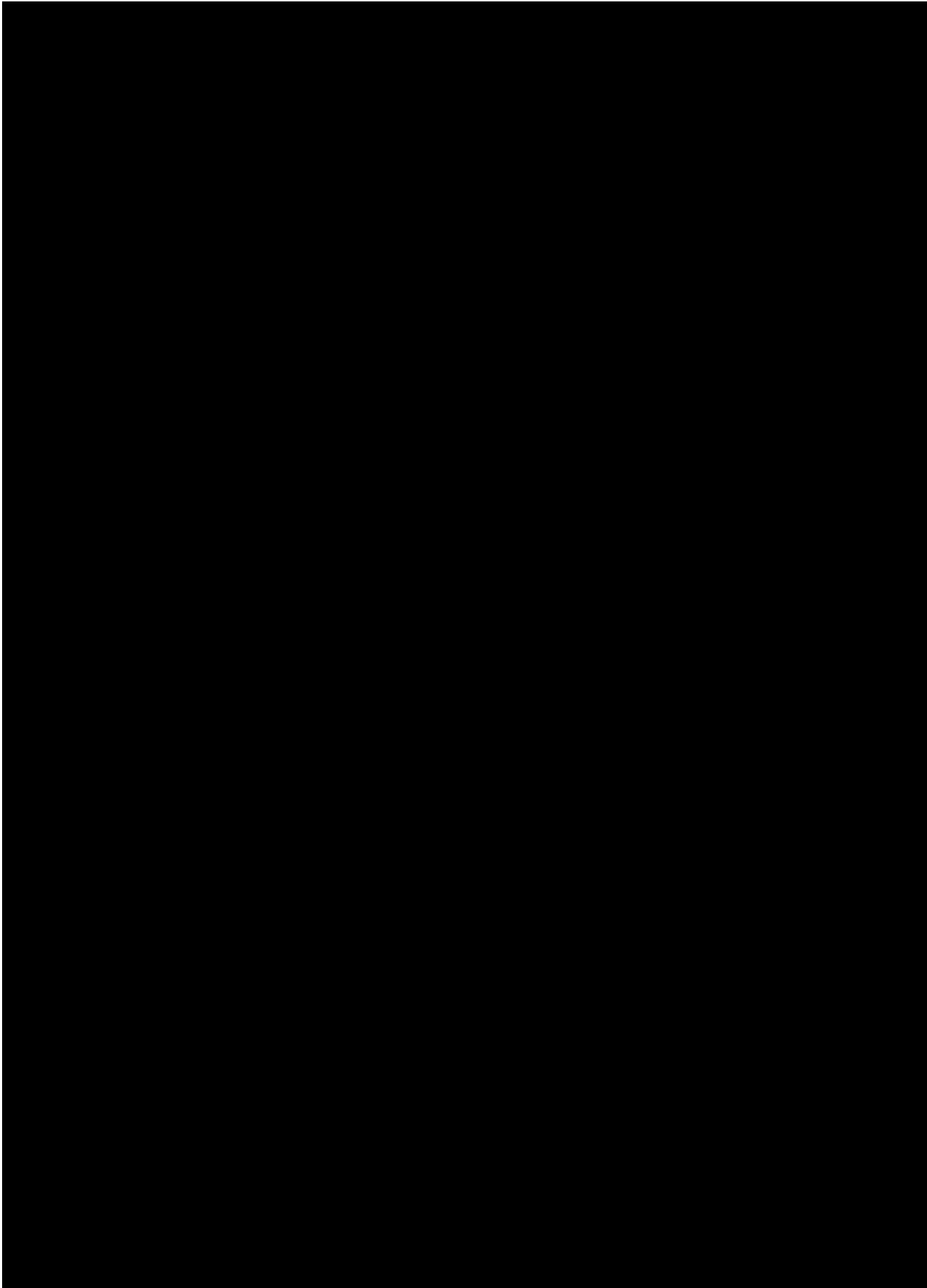
<sup>22</sup> See: Former Hedge Fund Manager And New York Attorney Indicted In Multimillion Dollar Fraud Scheme, available here: [Link](#)

## **Respondent Exhibit 6**

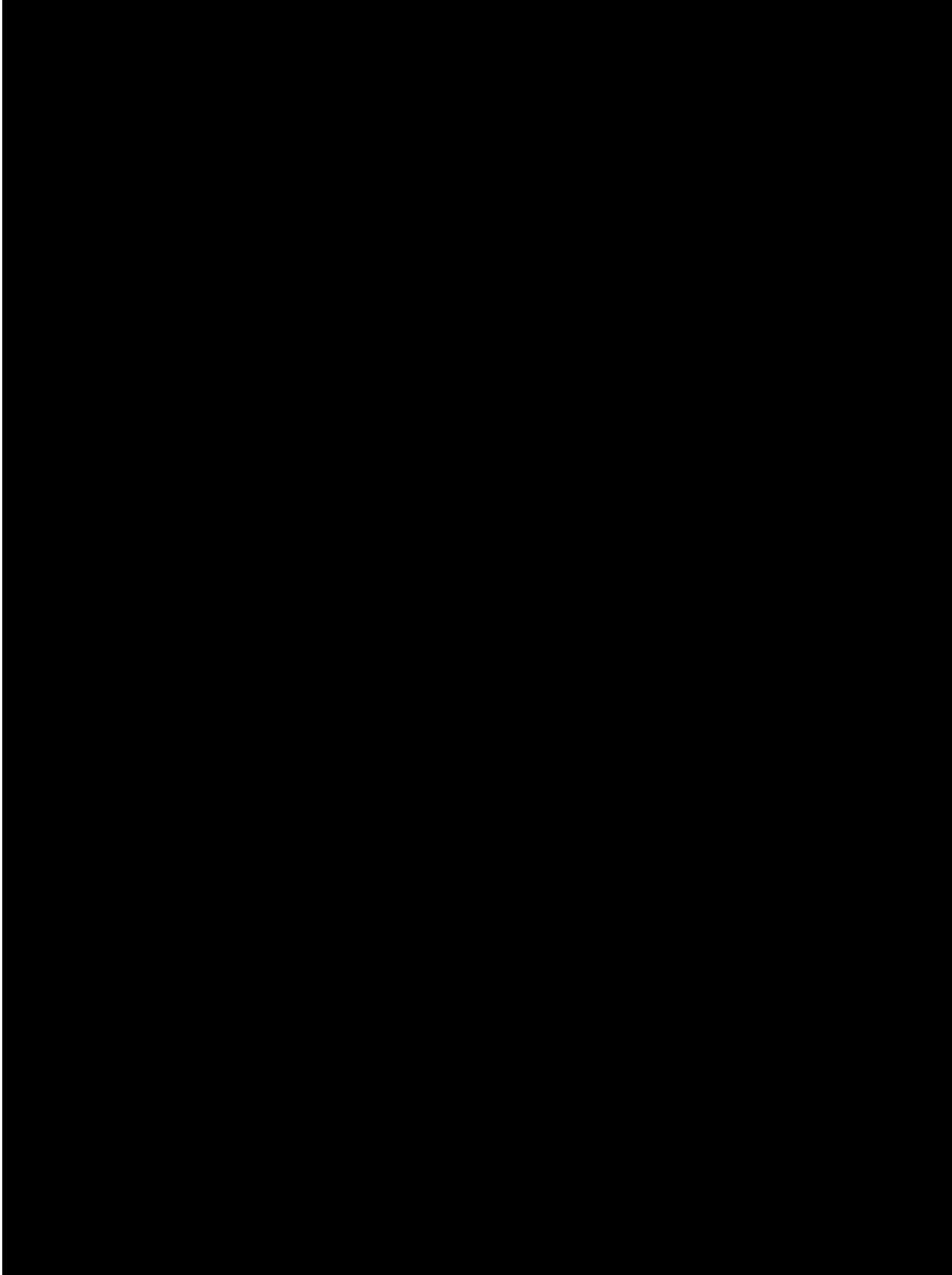


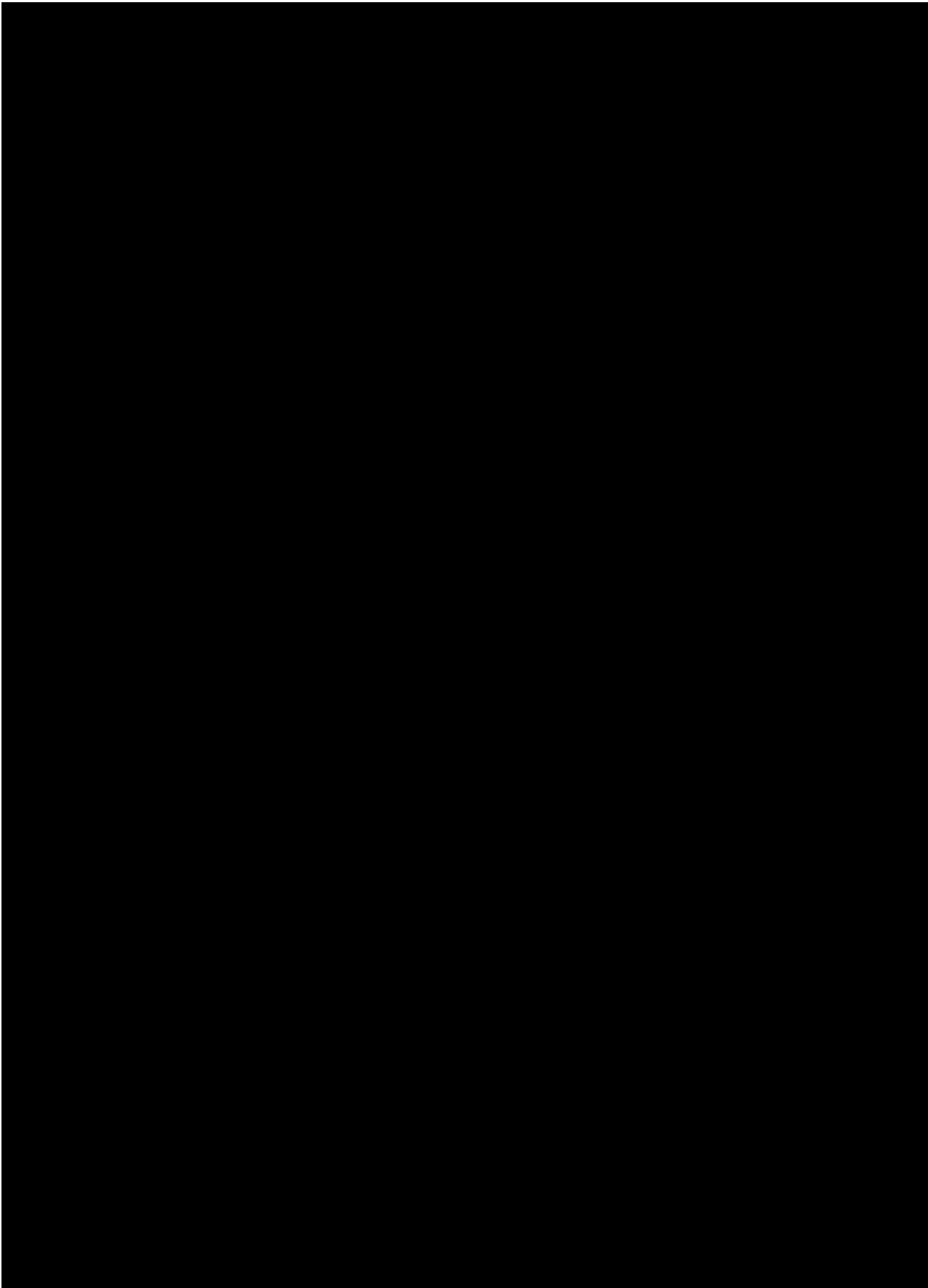


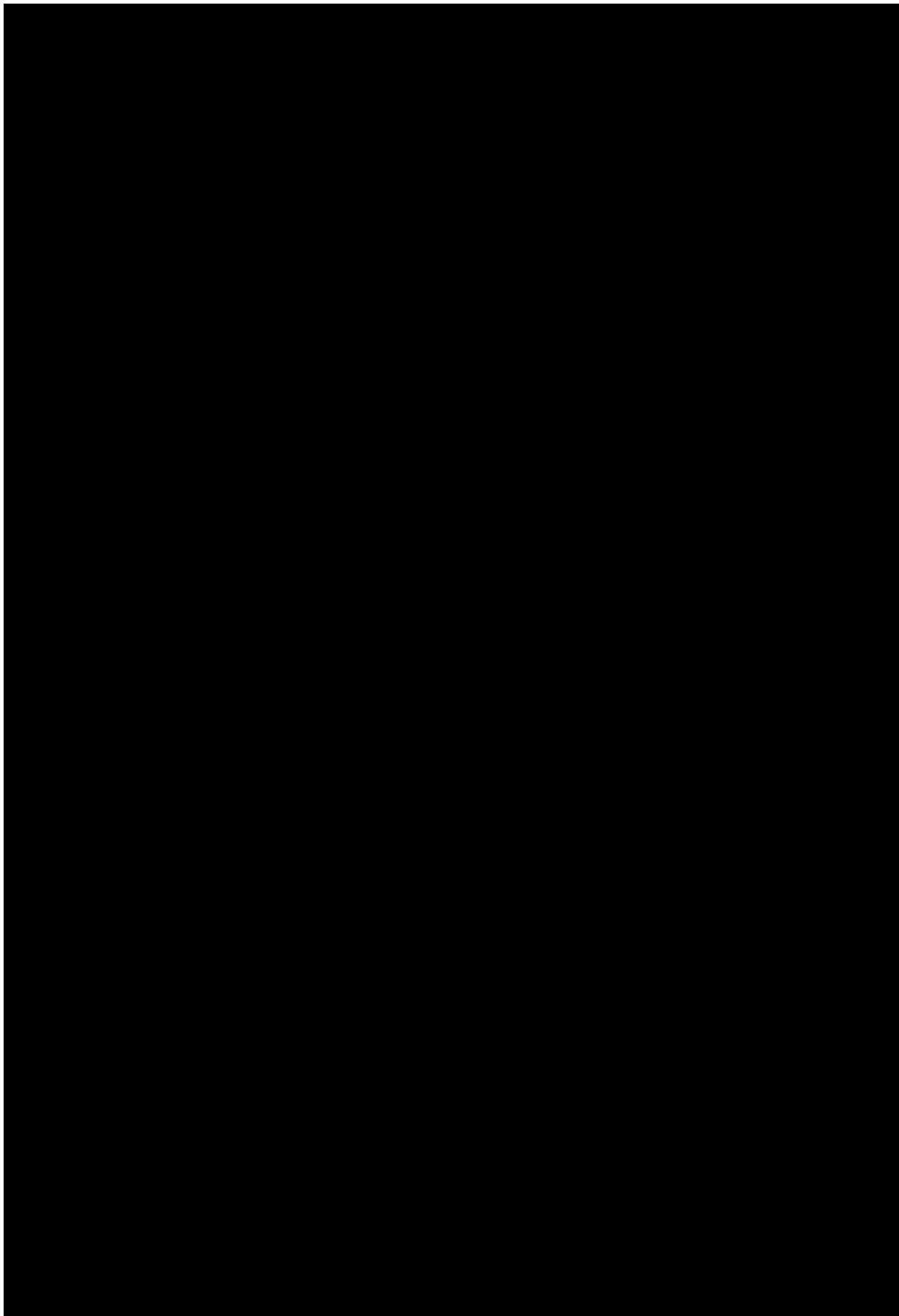


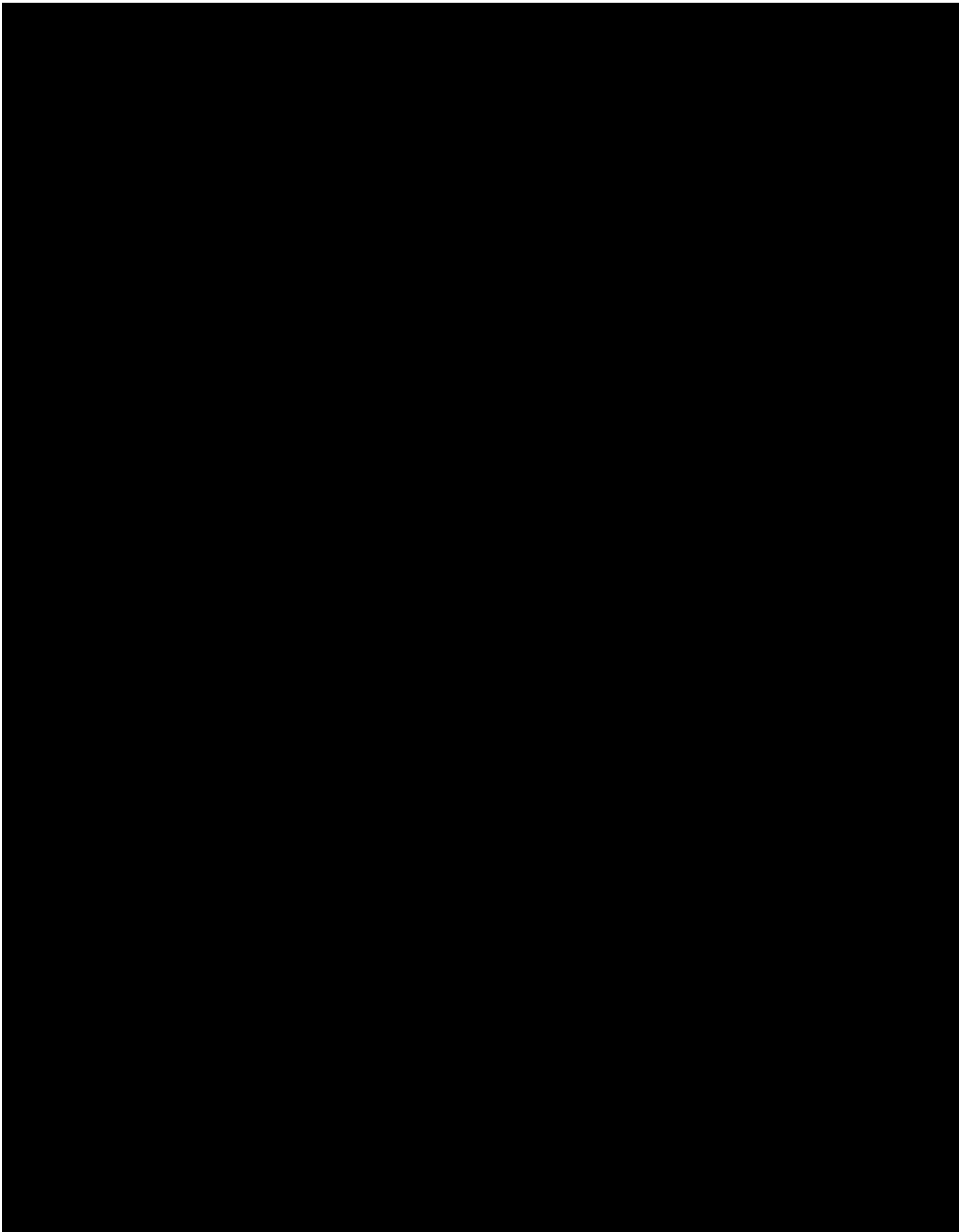




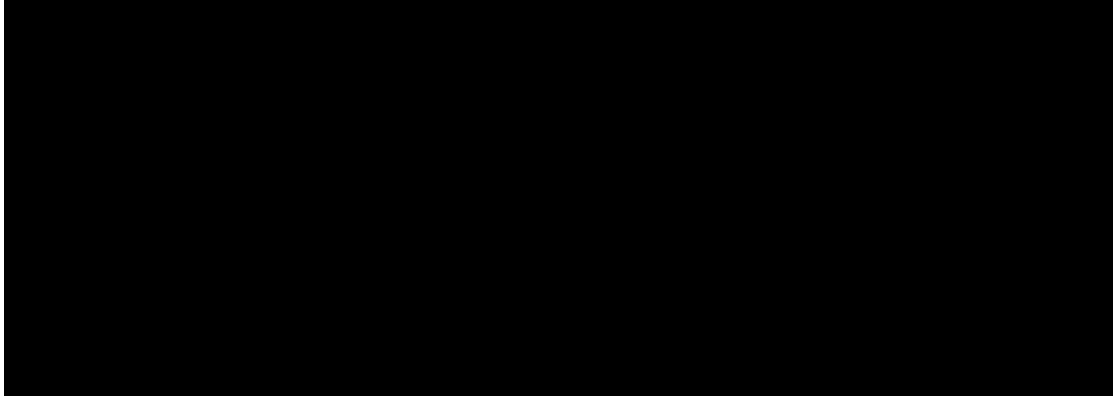


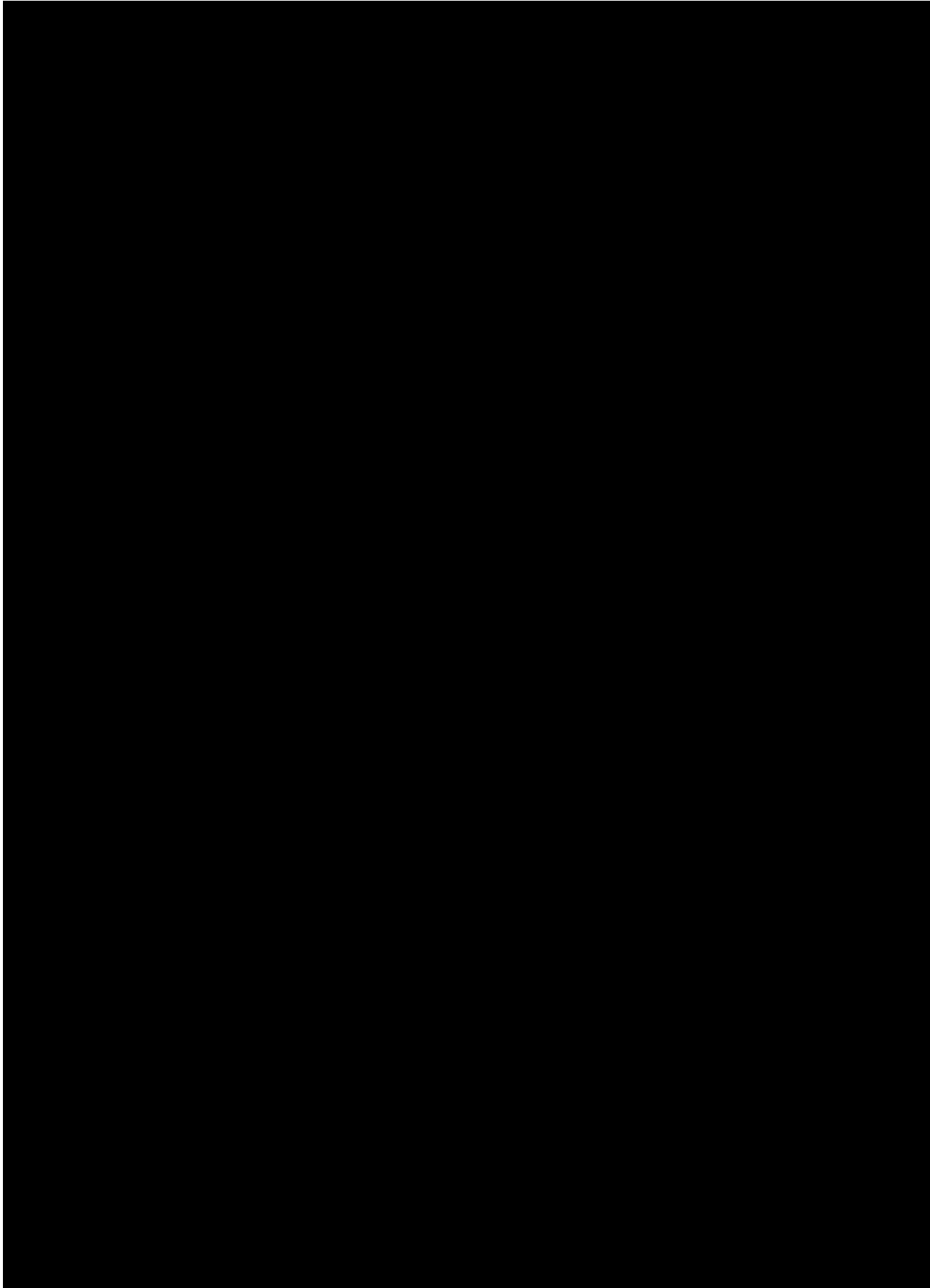


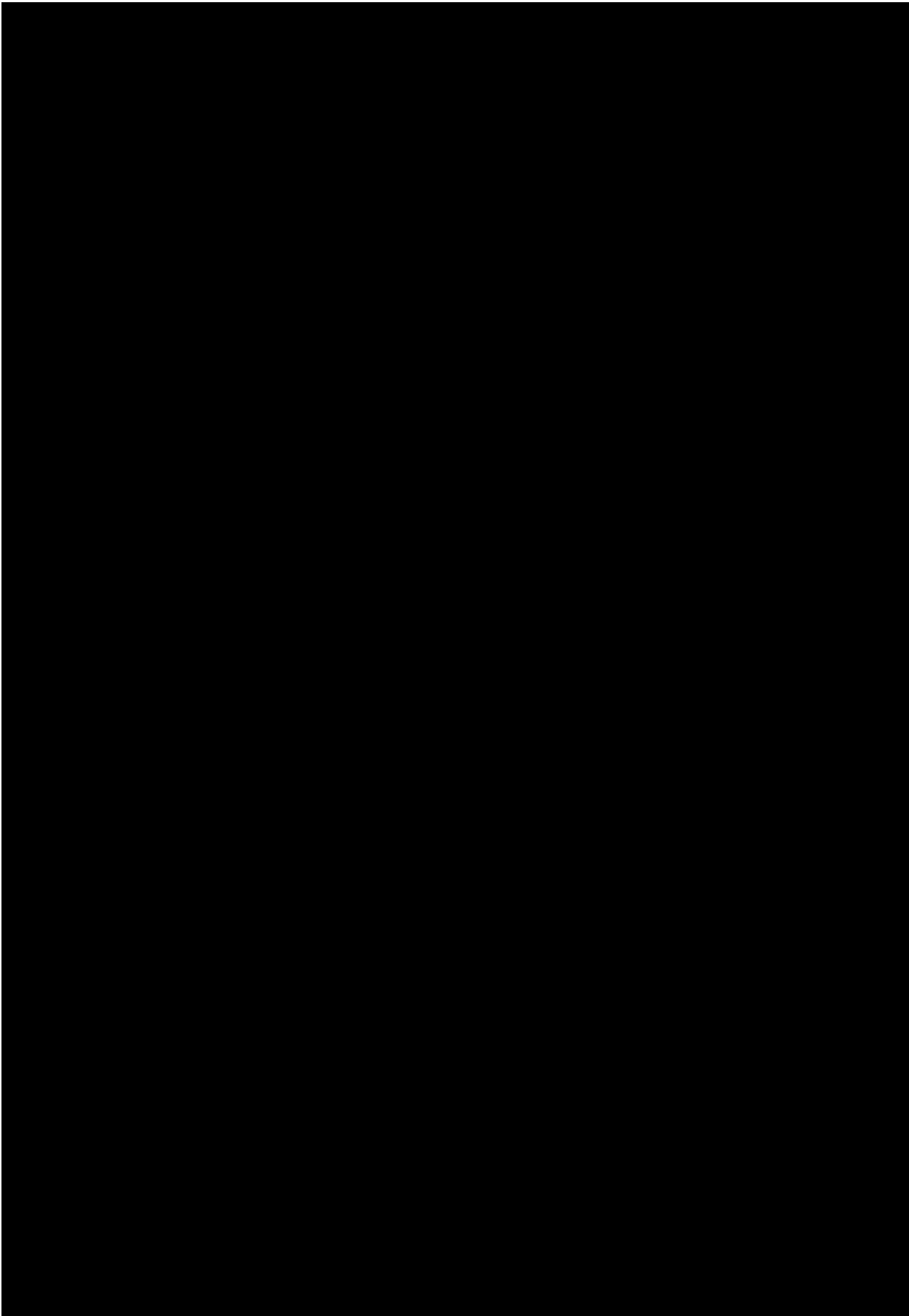


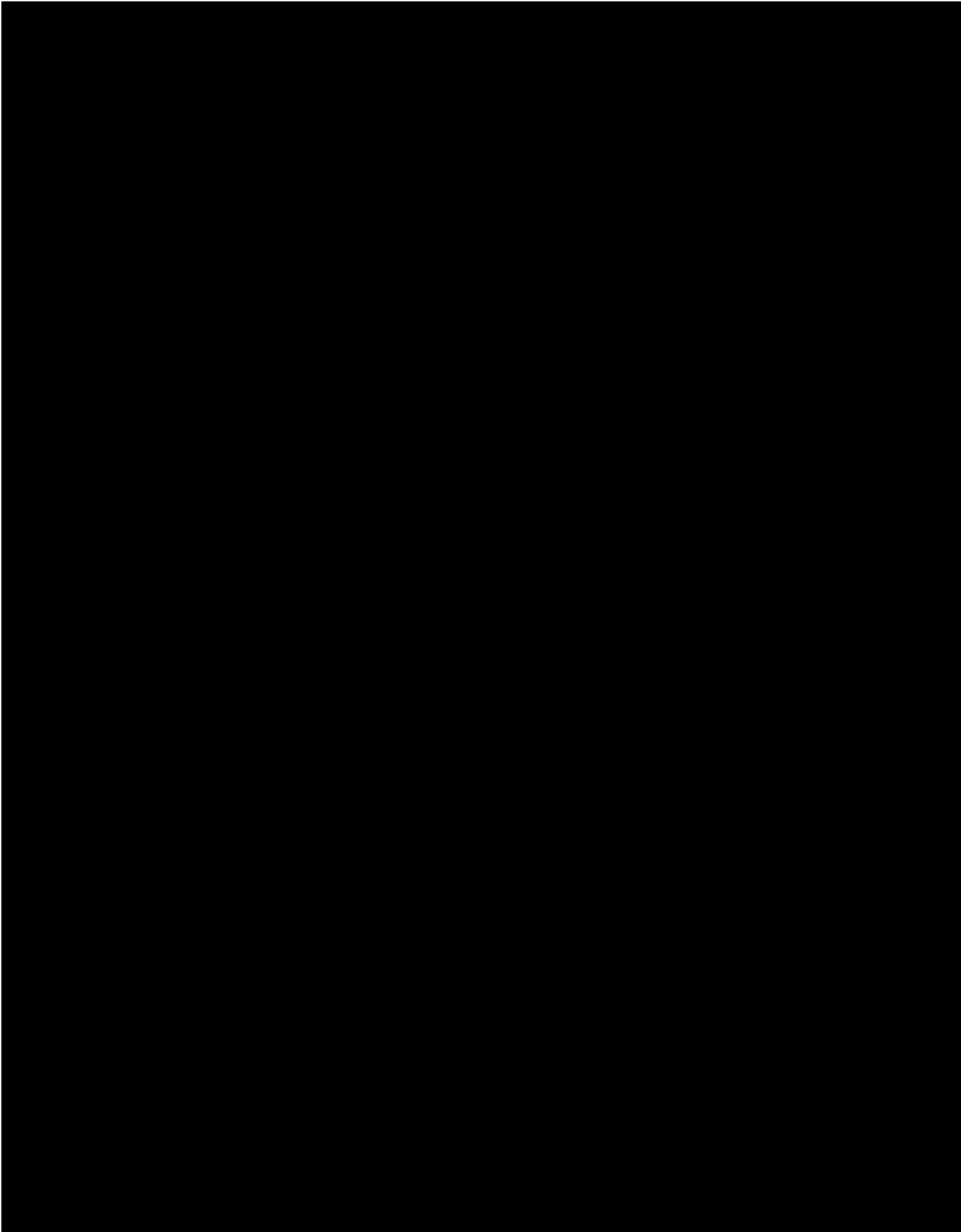


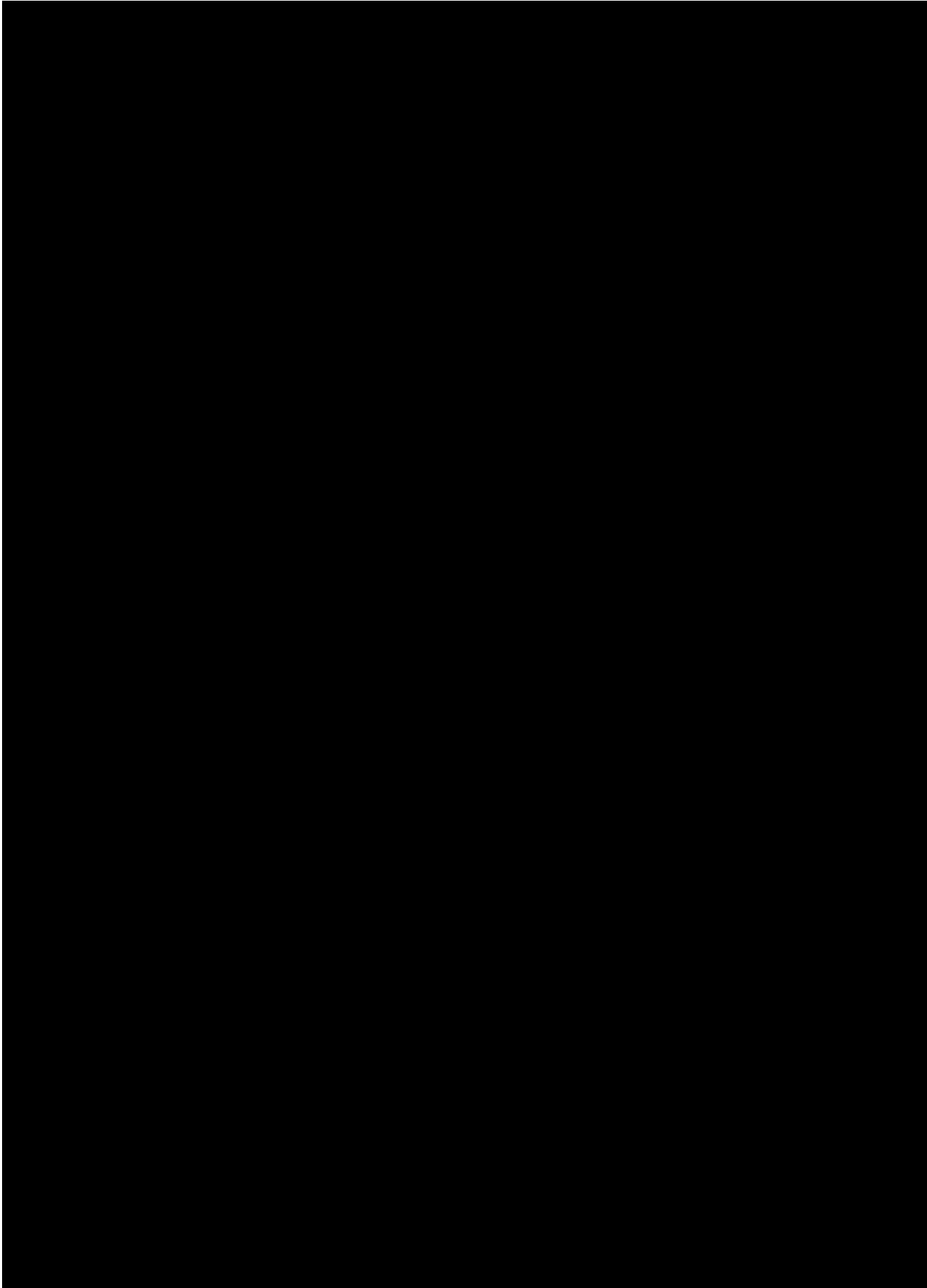


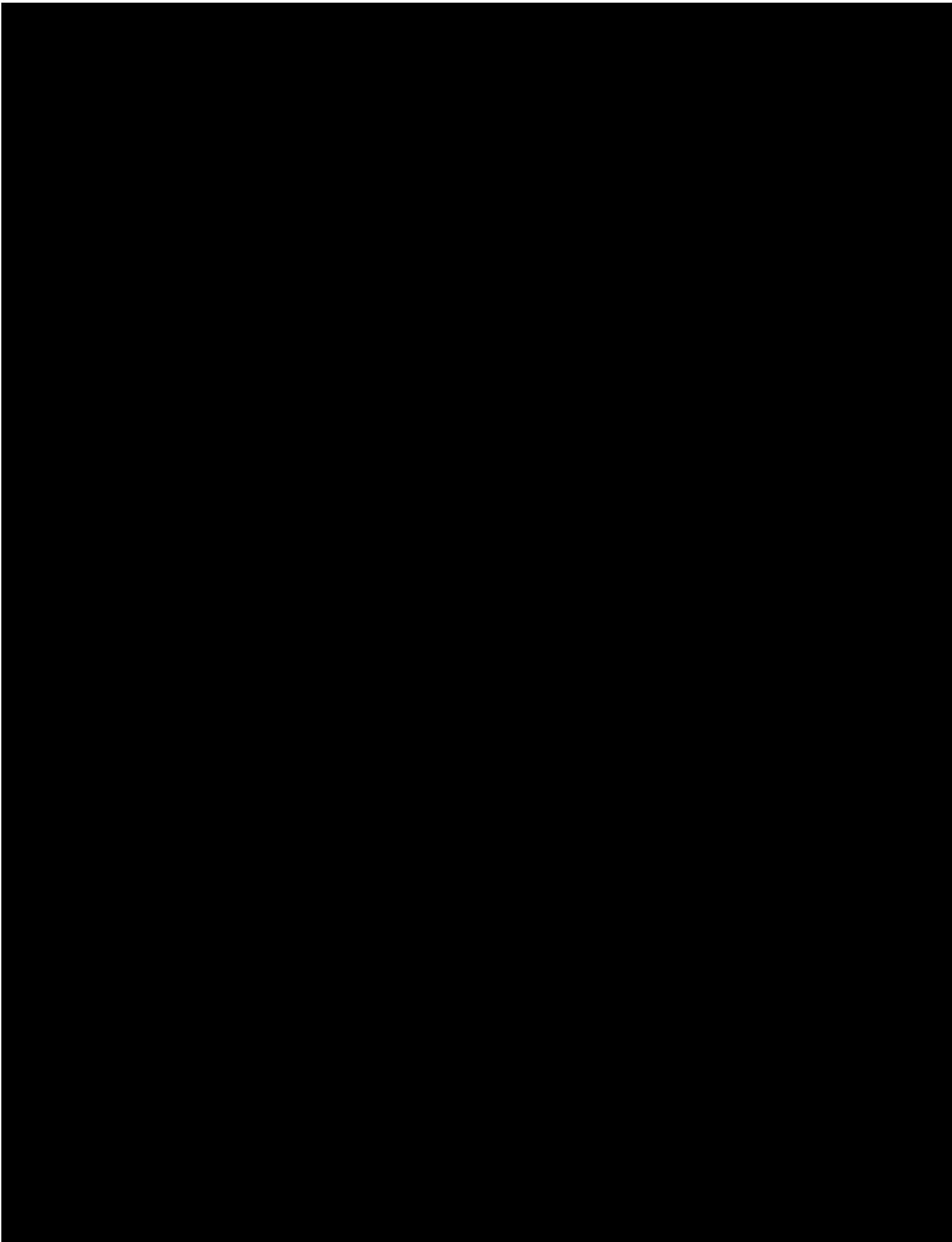


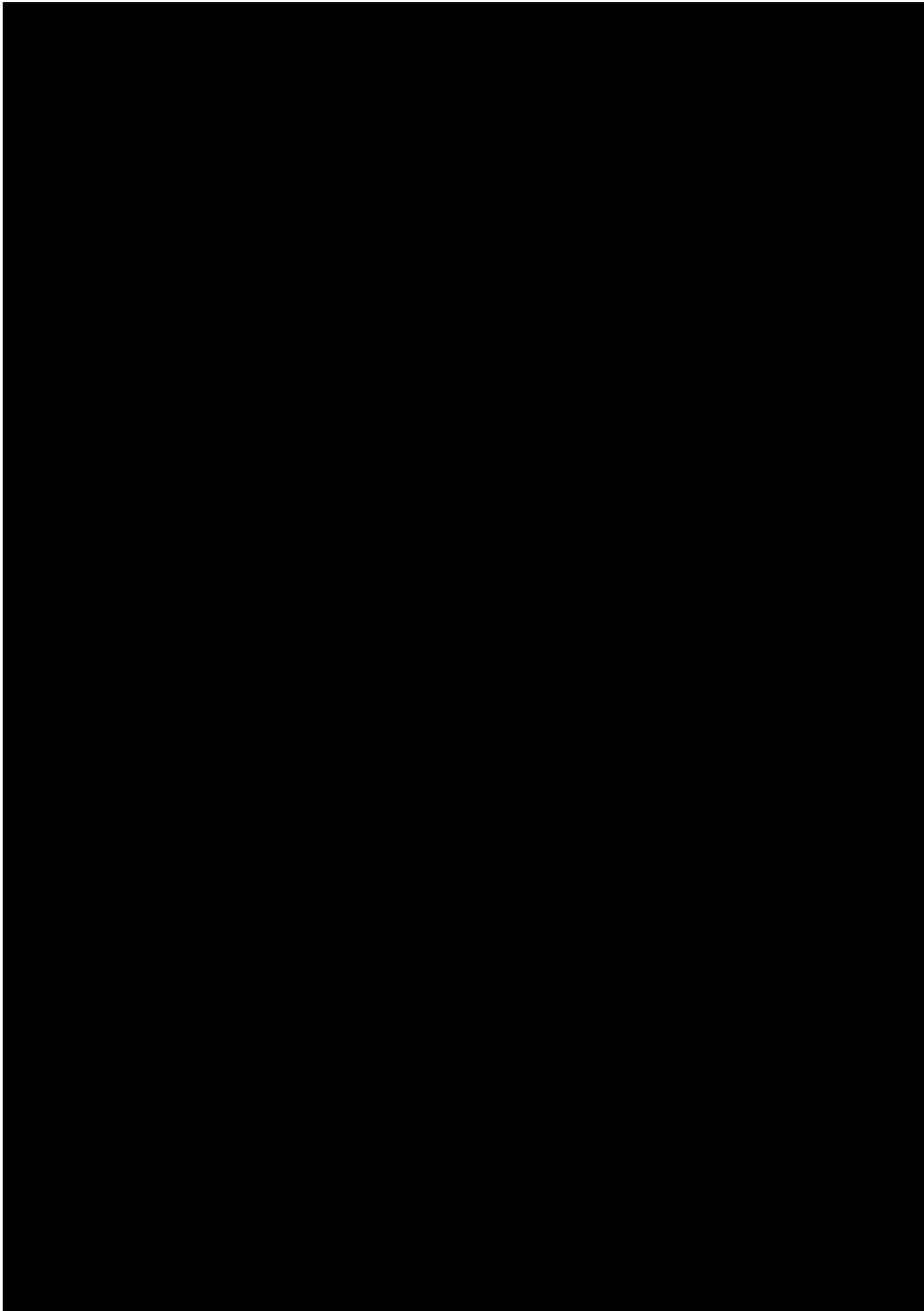


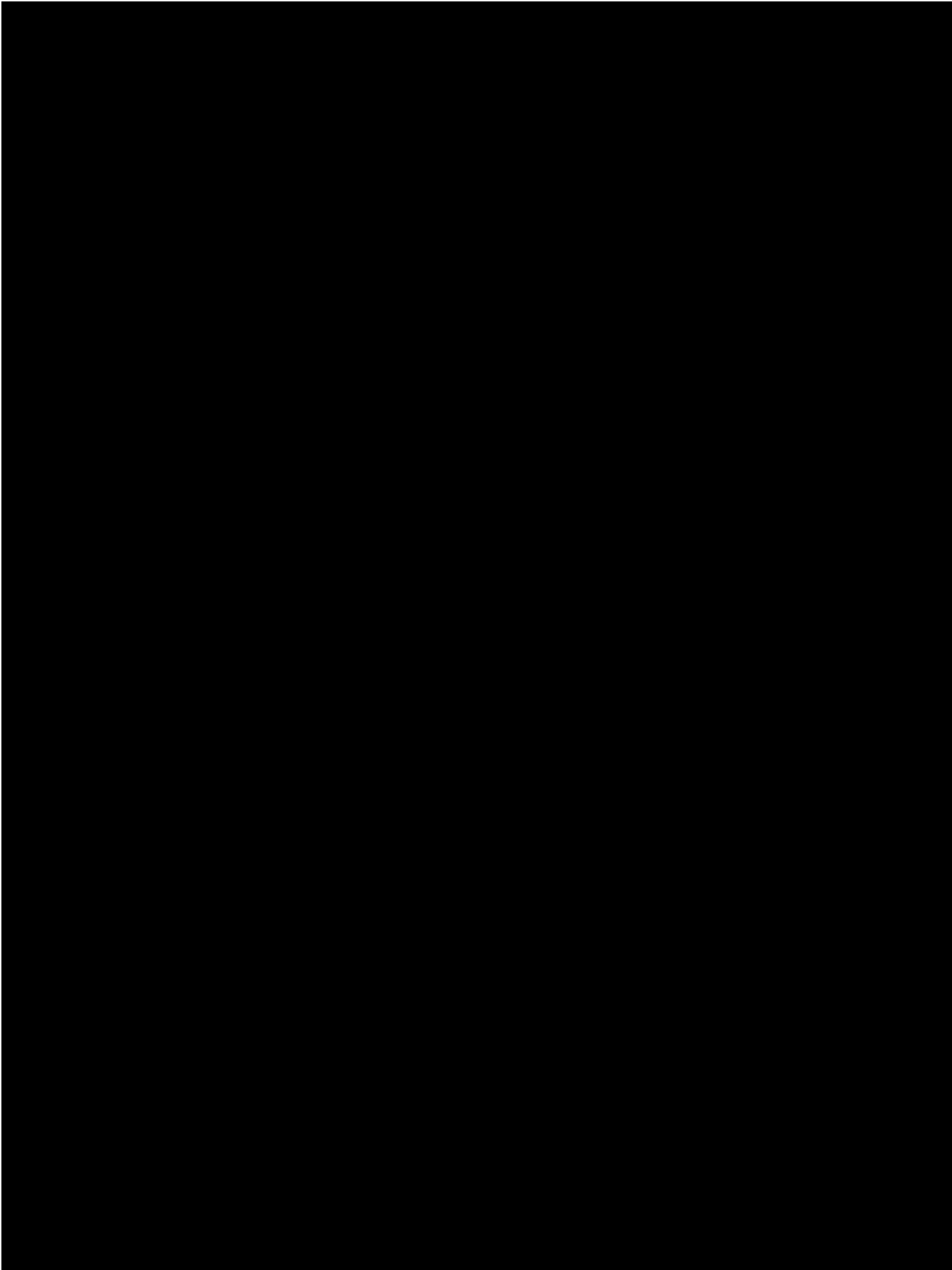




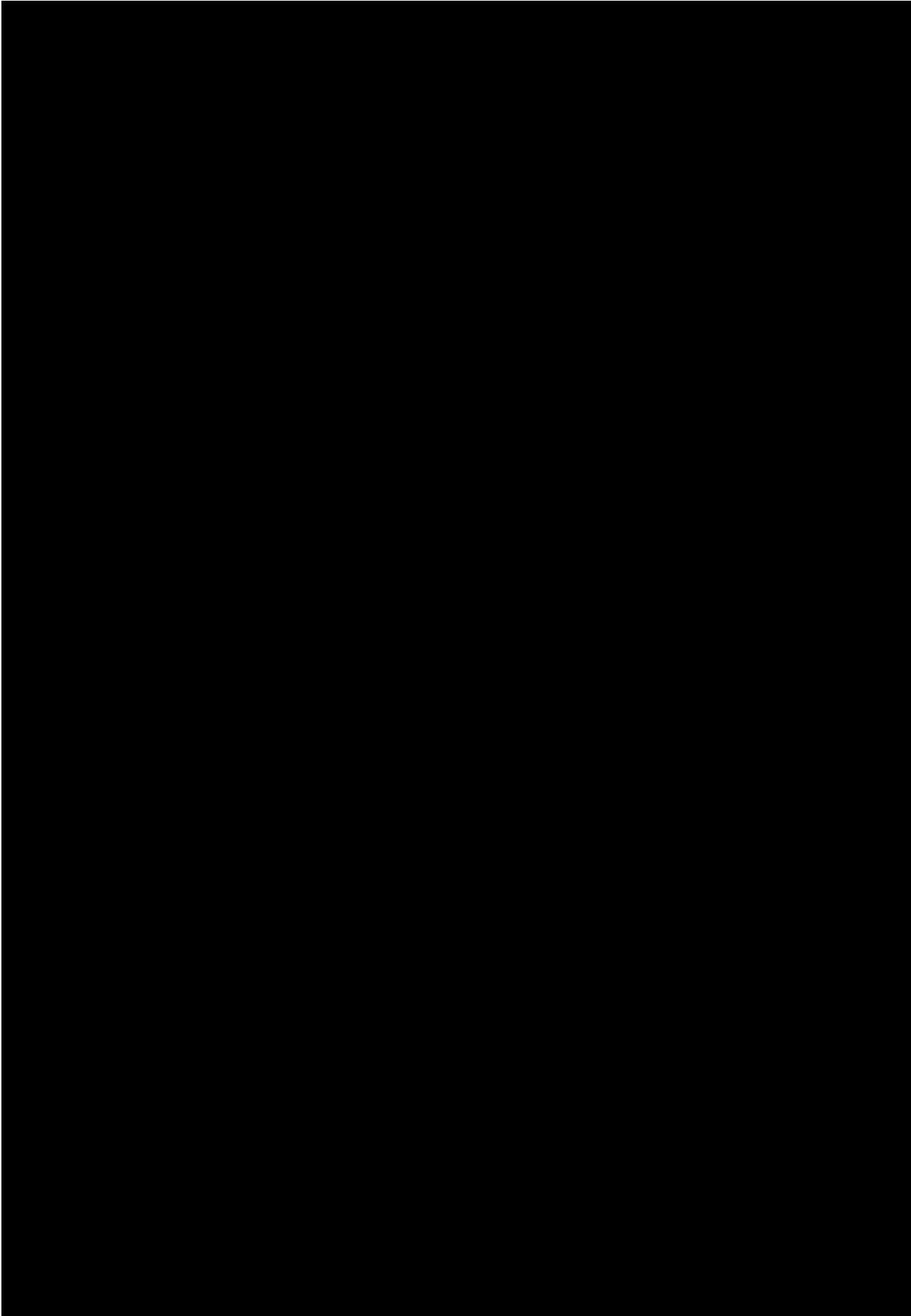


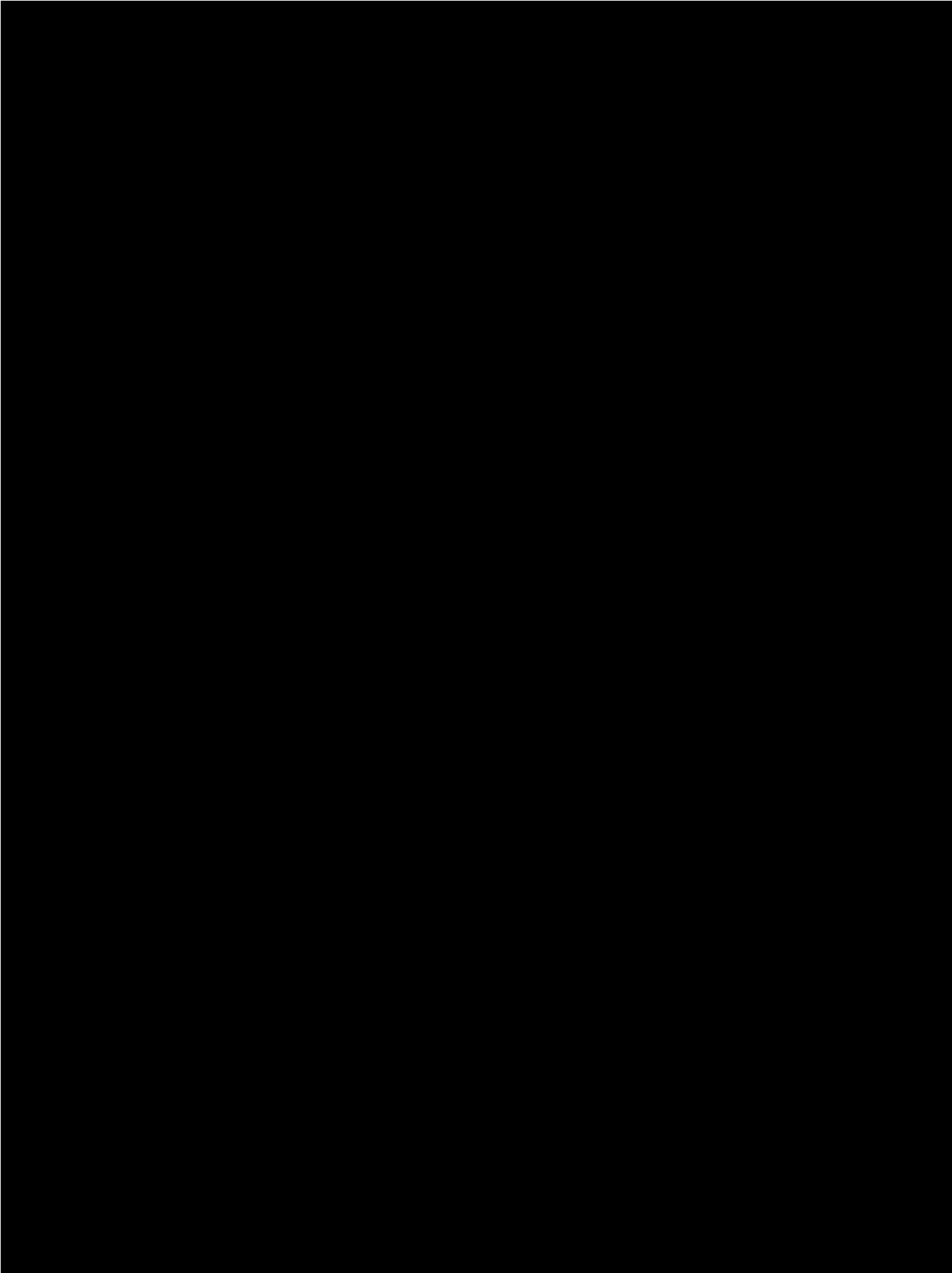


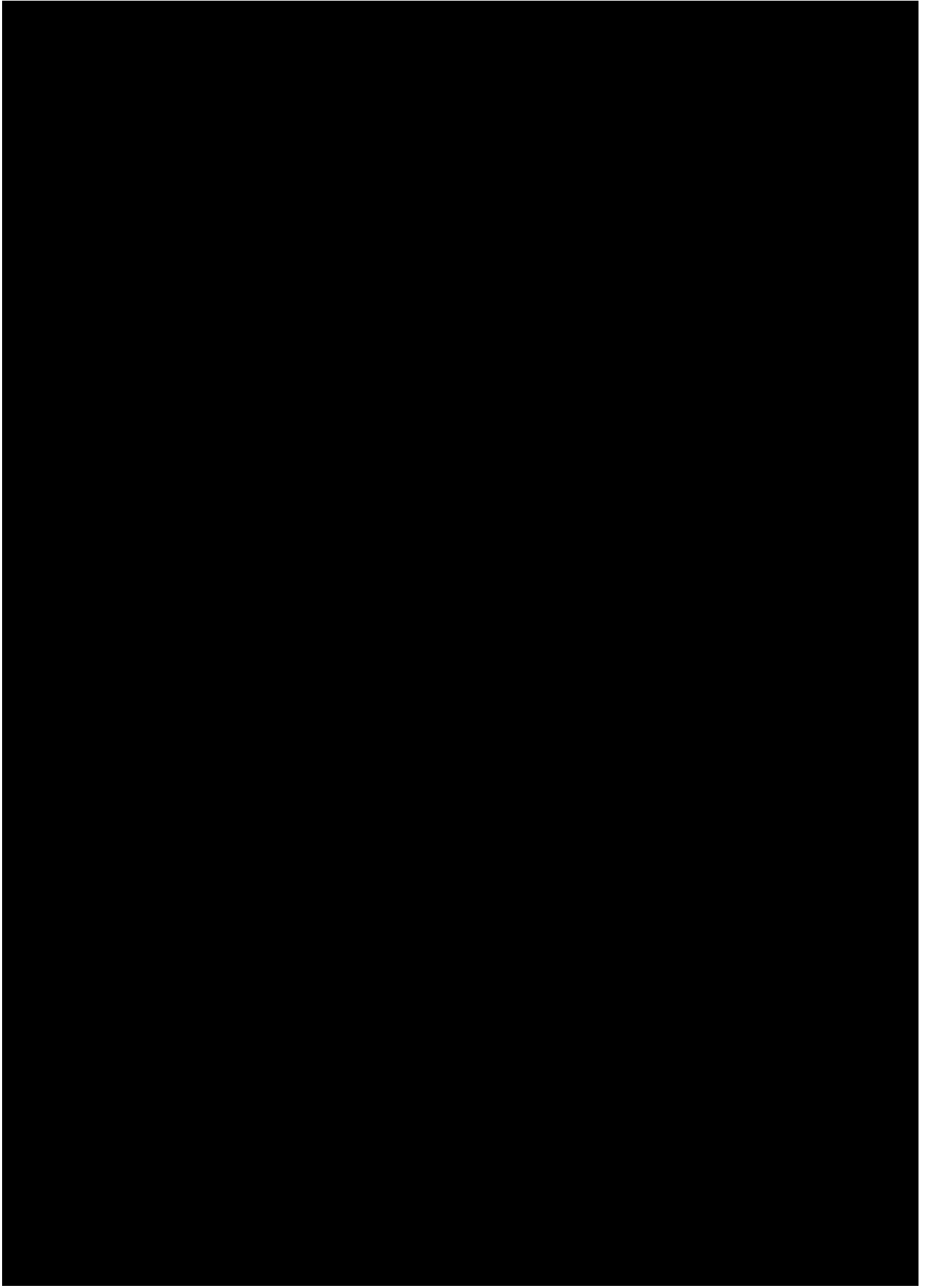


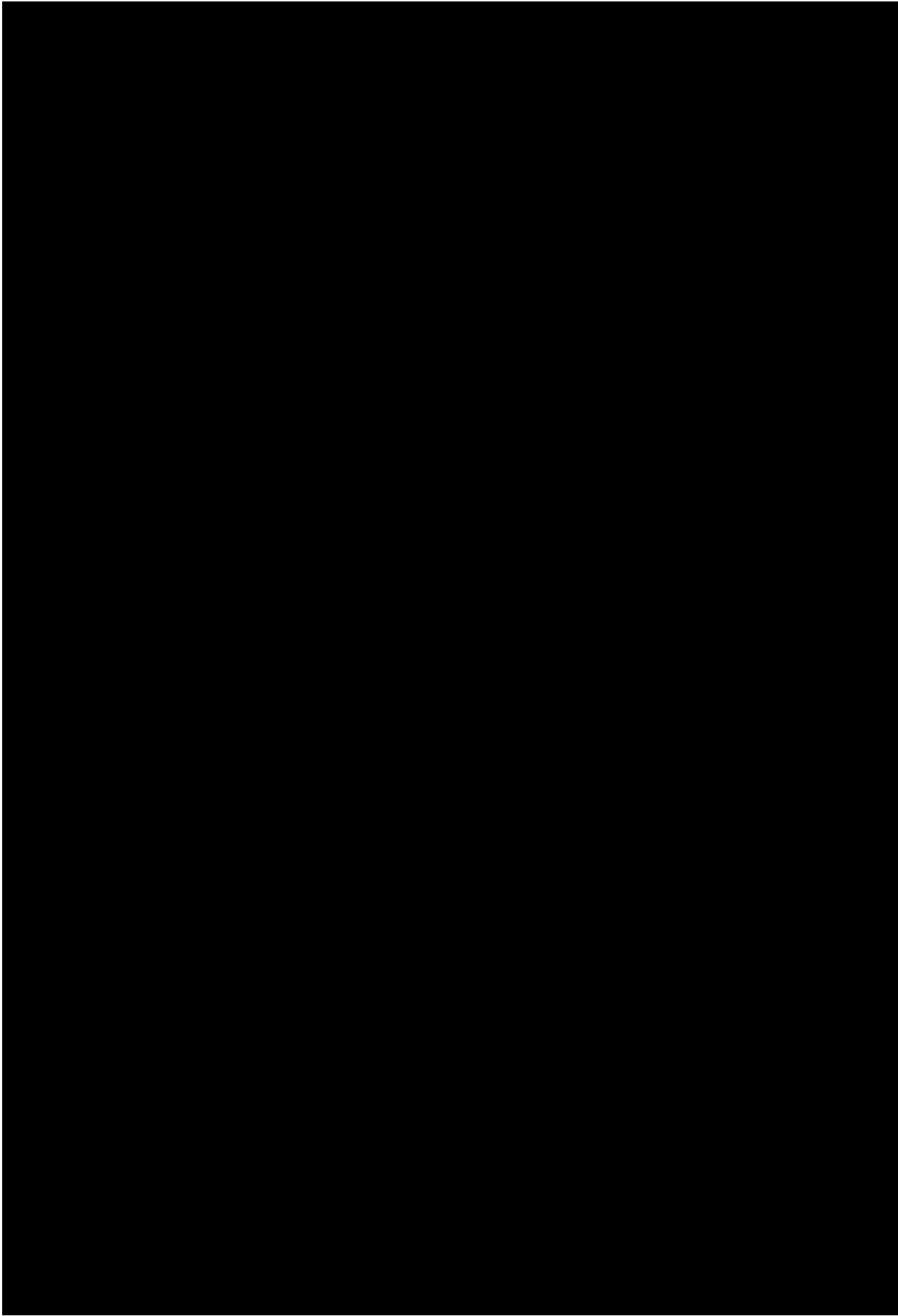












## **Respondent Exhibit 7**

1 SEC v. Lemelson - Trial Day 2

2 Kathy Silva, court reporter kathysilva@verizon.net

3

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25

UNEDITED DRAFT TRANSCRIPT

1 MR. DAY: Objection.

2 THE COURT: Sustained.

3 MR. HOOPEES: No other questions.

4 THE COURT: You may step down. Who's the next  
5 witness.

6 MR. DAY: Your Honor, the Commission calls Dr. Brian  
7 Lian. Dr. Lian.

8 **BRIAN LIAN, Ph.D., sworn**

9 THE CLERK: You may be seated, speaking into the  
10 microphone, could you please state and spell your name for the  
11 record.

12 THE WITNESS: Yes. My name is Brian.

13 THE COURT: You can take your mask off as a witness.  
14 The rest of us are going to keep them on unless we're speaking.  
15 Thank you sir.

16 THE WITNESS: My name is Brian Lian. Brian is  
17 B-r-i-a-n. Lian is spelled L-i-a-n.

18 DIRECT EXAMINATION

19 BY MR. DAY:

20 Q. Good afternoon, Dr. Lian before I get into my questions,  
21 could we switch the monitors over to -- is it HDMI two -- 3,  
22 sorry.

23 Thank you.

24 BY MR. DAY:

25 Q. Dr. Lian, where do you work?

UNEDITED DRAFT TRANSCRIPT

1 A. Yes, they did.

2 Q. And did they issue an audit opinion as to 2012 and 2013?

3 A. Yes, they did. It was a clear -- I forget the term --  
4 comfort letter.

5 Q. And that was incorporated into the S-1 as well?

6 A. Correct, yes.

7 Q. Did Viking in 2014 plan to use third party vendors to  
8 conduct preclinical studies and clinical trials?

9 A. Yes. And that's kind of the way the business works. You  
10 hire contractors to perform your preclinical studies your  
11 clinical studies so we certainly did. 80 percent of the  
12 industry does their business that way.

13 Q. Was that how Microcide operated?

14 A. Microcide, yeah. Well, on the manufacturing side  
15 certainly. We had manufacturing vendors. Microcide had a lot  
16 of internal workers as well. So there was a little bit of both  
17 at Microcide.

18 Now, in the 2010 and beyond range, this sort of  
19 outsourcing is much more common than it was in the early 2000s,  
20 late '90s.

21 Q. Since raising money in the IOP in 2015, has Viking  
22 continued development of the five programs we were just talking  
23 about?

24 A. We've continued development of four different programs --  
25 so a program is kind of an umbrella term and there can be



1 Q. And as far as you're aware, this is the only report that  
2 mentions Viking?

3 A. It's the only one I think I've seen.

4 Q. You said you weren't aware, but two of the four, so 50  
5 percent of the challenge statements in this case come from this  
6 report, okay?

7 A. Okay.

8 Q. All right. So let's go to -- I think it's page 7.

9 Q. Do you see the second paragraph. You were shown this on  
10 direct. Viking does not intend to conduct any preclinical  
11 studies or trials." Do you see that, the first part of that  
12 sentence?

13 A. Yes.

14 Q. And I believe you testified on direct that it's your  
15 opinion that statement was false?

16 A. That is false. We planned to conduct -- and conduct here  
17 it's sort of understood in a small biotech company conduct  
18 means you're going to contract somebody to perform those for  
19 you. So they're one and the same in the small cap, small  
20 biotechnology universe.

21 Q. Let's explore that a little bit then. Can we look at  
22 Exhibit 58. I believe you were also shown this. This is the  
23 someone statement that up testified about, right?

24 A. That's correct, yes.

25 Q. And I think you referred to this as a really useful

1 A. Yes. We'd have to grow. As different programs matured.  
2 We were only five people so we were going to have to grow to  
3 help manage of the external vendors, yes, absolutely.

4 Q. I think we're saying the same thing here. So you didn't  
5 say, as you just acknowledged, that you were going to hire  
6 people in-house to actually conduct the studies. In fact, you  
7 said the exact opposite in this document, right, if we to page  
8 17?

9 MR. DAY: Objection.

10 A. It says we hire additional personnel. That means us, too.  
11 I mean everybody, external, internal. We were going to grow.

12 THE COURT: But were you going to hire these people to  
13 conduct trials in house.

14 THE WITNESS: We were going to hire people to manage  
15 the vendors that conduct those clinical trials. We don't -- I  
16 mean, small companies typically don't conduct trials.

17 THE COURT: Right. I'm just asking what you meant.  
18 Did you mean here you were going to hire your own people to do  
19 it in-house or hire your own people --

20 THE WITNESS: We were going to hire people in-house to  
21 manage the external vendors that would conduct the studies.

22 Q. I think we're getting there. Dr. Lian if you look on the  
23 page that's up on the screen do you see about halfway down  
24 there's a paragraph in bold.

25 A. Yeah.

1 control certain aspects of their activities." So you plan to  
2 rely on the same exact third parties that Ligand had been  
3 relying on?

4 A. Some were the same, some were different. It wasn't a  
5 hundred percent overlap there.

6 Q. And just -- what we just read, you wrote that you were  
7 going to rely on them for the execution of our preclinical  
8 studies and clinical trials, right?

9 A. That's correct. That's right.

10 Q. So Viking was going to have third parties conduct the  
11 preclinical and clinical trials, right?

12 A. Correct.

13 Q. And these third parties were also going to execute the  
14 preclinical and clinical trials?

15 A. Yes. It's a little bit of a mix there. I mean, when you  
16 conduct a study, the design element. You'll talk to a vendor  
17 during the study, you know if a dose needs to be changed, if a  
18 dose needs to be increased. So there's definitely  
19 co-management during a study of any kind. When we had our  
20 vendors make drug substance, we always had a person on site to  
21 help them with the specific steps.

22 Q. Yet Paul Hastings didn't see the need to include any of  
23 that in this document, right?

24 A. Well, I think that would be several hundred pages long.

25 Q. Right. If they had several hundred pages to include that,

1 clinical trials done on the drugs? Nobody expressed that  
2 concern to you, did they?

3 A. The way that that report was ever -- whenever it was  
4 brought up, it was brought up I saw this report on Seeking  
5 Alpha published. It talked about licensor Viking being a fraud  
6 or stuff like that, it just came up in that context. It wasn't  
7 anybody talking about specifics in the report.

8 Q. Right. So nobody as far as you knew misunderstood and  
9 said oh, my God these drugs are going to go to market and no  
10 one's going to have done any trials on them. Right?

11 A. No one would ever think that. They could never get to  
12 market.

13 Q. It would be impossible. It would be physically  
14 impossible. That could never happen?

15 A. I think it's legally impossible.

16 Q. Maybe a better term. It would never happen it has never  
17 happened you're in this industry you've never heard of every of  
18 such a thing, correct?

19 A. Not recently, no.

20 Q. And nobody ever came up to you and said whoa, why are your  
21 financial statements in the S-1 unaudited how could you do such  
22 a thing nobody ever expressed such a concern to you did they?

23 A. Well, the quarters in that document are unaudited because  
24 they don't audit the quarters. They audit the years. So.

25 Q. We're on the same page. My question is simply nobody ever

1 came up to you and expressed exacerbation like how could you  
2 file an S-1 with unaudited -- with unaudited financials?  
3 Nobody ever expressed that concern to you?

4 A. No. Everybody understand an S-1 has audited financials.

5 Q. So as far as you know, nobody cared about the two  
6 statements that the SEC is challenging in Father Lemelson's  
7 July 3, 2014 report about Viking, correct?

8 A. I don't know, as I sit here --

9 Q. I'm asking as far as you know?

10 A. I don't know what drove investor decisions, if it was  
11 something in the report.

12 THE COURT: Listen to his question did any investor  
13 call you up or call anyone in the company and say I'm worried  
14 about these two statements?

15 THE WITNESS: No.

16 Q. Okay. When you became aware of Father Lemelson's report  
17 in July of 2014 we saw you forwarded it to the people up worked  
18 with at Viking, right?

19 A. That's right.

20 Q. And none of the people you worked with at Viking ever  
21 expressed any concern about that report?

22 A. Well, because I told them don't worry about it basically.  
23 I did that to head off any potential concerns because some of  
24 these people hadn't worked in the equities industry ora startup  
25 or anything like that. So wanted to head off --

1 Q. My question is simply after you forwarded them the report  
2 nobody you worked with ever expressed any concern to you about  
3 it, correct?

4 A. After I reported the report, they did not.

5 Q. Right. And that was the first time they saw the report,  
6 right, as far as you know?

7 A. As far as I know, yeah.

8 Q. Right. And you personally weren't concerned about Father  
9 Lemelson's report that mentioned Viking, right?

10 A. Well, I knew the facts. So I wasn't concerned.

11 Q. And Viking never issued any kind of public statement that  
12 Father Lemelson's statements in this report were false, did it?

13 A. As a private company, you typically wouldn't issue a  
14 rebuttal.

15 Q. So is that a no?

16 A. We did not issue any statement about it.

17 Q. Now, Ligand -- Ligand issued a lot of press releases in  
18 2014, right? You were following Ligand?

19 A. Not really closely, no, I was not.

20 Q. Do you know whether Ligand issued any press releases?

21 A. I'm sure they issued press releases I'm not on there  
22 subscription list.

23 Q. They issued more than 40 press releases in 2014?

24 A. I don't know.

25 Q. Spigot out almost one a week in 2014, right?

## **Respondent Exhibit 8**

S-1 1 d711611ds1.htm S-1

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As filed with the Securities and Exchange Commission on July 1, 2014

Registration No. 333-

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

**FORM S-1  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**Viking Therapeutics, Inc.**

(Exact name of Registrant as specified in its charter)

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

**2834**  
(Primary Standard Industrial  
Classification Code Number)

**46-1073877**  
(I.R.S. Employer  
Identification Number)

**Viking Therapeutics, Inc.**  
1119 North Torrey Pines Road, Suite 50  
San Diego, CA 92037  
(858) 550-7810

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

**Brian Lian, Ph.D.**  
President and Chief Executive Officer  
Viking Therapeutics, Inc.  
1119 North Torrey Pines Road, Suite 50  
San Diego, CA 92037  
(858) 550-7810

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copies to:*

**Jeffrey T. Hartlin, Esq.**  
Paul Hastings LLP  
1117 S. California Avenue  
Palo Alto, California 94304  
(650) 320-1804

**Michael D. Maline, Esq.**  
Thomas S. Levato, Esq.  
Goodwin Procter LLP  
The New York Times Building  
620 Eighth Avenue  
New York, New York 10018  
(212) 813-8800

**Approximate date of commencement of proposed sale to the public:** As soon as practicable after this registration statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

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

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of  
Securities to be Registered

Proposed  
Maximum

Amount of  
Registration Fee(3)



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- our drug candidates may cause undesirable side effects that delay or preclude regulatory approval or limit their commercial use or market acceptance, if approved;
- collaborators who may be responsible for the development of our drug candidates may not devote sufficient resources to these clinical trials or other preclinical studies of these candidates or conduct them in a timely manner; or
- we may face delays in obtaining regulatory approvals to commence one or more clinical trials.

Success in early development does not mean that later development will be successful because, for example, drug candidates in later-stage clinical trials may fail to demonstrate sufficient safety and efficacy despite having progressed through initial clinical trials.

We in-license all of the intellectual property related to our drug candidates from Ligand pursuant to the Master License Agreement. All clinical trials, preclinical studies and other analyses performed to date with respect to our drug candidates have been conducted by Ligand. Therefore, as a company, we do not have any experience in conducting clinical trials for our drug candidates. Since our experience with our drug candidates is limited, we will need to train our existing personnel and hire additional personnel in order to successfully administer and manage our clinical trials and other studies as planned, which may result in delays in completing such planned clinical trials and preclinical studies. Moreover, to date our drug candidates have been tested in less than the number of patients that will likely need to be studied to obtain regulatory approval. The data collected from clinical trials with larger patient populations may not demonstrate sufficient safety and efficacy to support regulatory approval of these drug candidates.

We currently do not have strategic collaborations in place for clinical development of any of our current drug candidates. Therefore, in the future, we or any potential future collaborative partner will be responsible for establishing the targeted endpoints and goals for development of our drug candidates. These targeted endpoints and goals may be inadequate to demonstrate the safety and efficacy levels required for regulatory approvals. Even if we believe data collected during the development of our drug candidates are promising, such data may not be sufficient to support marketing approval by the FDA, EMA or comparable foreign authorities. Further, data generated during development can be interpreted in different ways, and the FDA, EMA or comparable foreign authorities may interpret such data in different ways than us or our collaborators. Our failure to adequately demonstrate the safety and efficacy of our drug candidates would prevent our receipt of regulatory approval, and ultimately the potential commercialization of these drug candidates.

Since we do not currently possess the resources necessary to independently develop and commercialize our drug candidates, including our core metabolic and endocrine disease assets, VK0612 and VK5211, our earlier-stage assets, VK0214 and the EPOR and DGAT-1 programs, or any other drug candidates that we may develop, we may seek to enter into collaborative agreements to assist in the development and potential future commercialization of some or all of these assets as a component of our strategic plan. However, our discussions with potential collaborators may not lead to the establishment of collaborations on acceptable terms, if at all, or it may take longer than expected to establish new collaborations, leading to development and potential commercialization delays, which would adversely affect our business, financial condition and results of operations.

### **We expect to continue to incur significant research and development expenses, which may make it difficult for us to attain profitability.**

We expect to expend substantial funds in research and development, including preclinical studies and clinical trials of our drug candidates, and to manufacture and market any drug candidates in the event they are approved for commercial sale. We also may need additional funding to develop or acquire complementary companies, technologies and assets, as well as for working capital requirements and other operating and general corporate purposes. Moreover, our planned increases in staffing will dramatically increase our costs in the near and long-term.

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- recruiting and enrolling patients to participate in one or more clinical trials; and
- the failure of our collaborators to adequately resource our drug candidates due to their focus on other programs or as a result of general market conditions.

In addition, once a clinical trial has begun, it may be suspended or terminated by us, our collaborators, the institutional review boards or data safety monitoring boards charged with overseeing our clinical trials, the FDA, EMA or comparable foreign authorities due to a number of factors, including:

- failure to conduct the clinical trial in accordance with regulatory requirements or clinical protocols;
- inspection of the clinical trial operations or clinical trial site by the FDA, EMA or comparable foreign authorities resulting in the imposition of a clinical hold;
- unforeseen safety issues; or
- lack of adequate funding to continue the clinical trial.

If we experience significant delays in the commencement or completion of clinical trials, our drug development costs may increase, we may lose any competitive advantage associated with early market entry and our ability to establish strategic collaborations may be delayed or limited. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of a drug candidate.

**We intend to rely on third parties to conduct our preclinical studies and clinical trials and perform other tasks for us. If these third parties do not successfully carry out their contractual duties, meet expected deadlines, or comply with regulatory requirements, we may not be able to obtain regulatory approval for or commercialize our drug candidates and our business, financial condition and results of operations could be substantially harmed.**

Ligand, the licensor of our development programs, has relied upon and plans to continue to rely upon third-party CROs, medical institutions, clinical investigators and contract laboratories to monitor and manage data for our licensed ongoing preclinical and clinical programs. We have relied and expect to continue to rely on these parties for execution of our preclinical studies and clinical trials, and we control only certain aspects of their activities. Nevertheless, we maintain responsibility for ensuring that each of our clinical trials and preclinical studies is conducted in accordance with the applicable protocol, legal, regulatory, and scientific standards and our reliance on these third parties does not relieve us of our regulatory responsibilities. We and our CROs and other vendors are required to comply with current requirements on good manufacturing practices, or cGMP, good clinical practices, or GCP, and good laboratory practice, or GLP, which are a collection of laws and regulations enforced by the FDA, EMA or comparable foreign authorities for all of our drug candidates in clinical development. Regulatory authorities enforce these regulations through periodic inspections of preclinical study and clinical trial sponsors, principal investigators, preclinical study and clinical trial sites, and other contractors. If we or any of our CROs or vendors fails to comply with applicable regulations, the data generated in our preclinical studies and clinical trials may be deemed unreliable and the FDA, EMA or comparable foreign authorities may require us to perform additional preclinical studies and clinical trials before approving our marketing applications. We cannot assure you that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials comply with GCP regulations. In addition, our clinical trials must be conducted with products produced consistent with cGMP regulations. Our failure to comply with these regulations may require us to repeat clinical trials, which would delay the development and regulatory approval processes.

If any of our relationships with these third-party CROs, medical institutions, clinical investigators or contract laboratories terminate, we may not be able to enter into arrangements with alternative CROs on commercially reasonable terms, or at all. In addition, our CROs are not our employees, and except for remedies available to us under our agreements with such CROs, we cannot control whether or not they devote sufficient time and

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## Legal Matters

Paul Hastings LLP, Palo Alto, California, which has acted as our counsel in connection with this offering, will pass upon the validity of the shares of common stock being offered by this prospectus. The underwriters have been represented by Goodwin Procter LLP, New York, New York.

## Changes in and Disagreements with Independent Registered Public Accounting Firm on Accounting and Financial Disclosure

On March 4, 2014, we engaged MaloneBailey LLP, or MaloneBailey, to audit our financial statements as of and for the fiscal years ended December 31, 2012 and 2013. On April 7, 2014, our board of directors approved the dismissal of MaloneBailey as our independent registered public accounting firm, effective immediately.

MaloneBailey did not issue any reports with respect to our financial statements. Accordingly, there were no reports issued by MaloneBailey with respect to us that contained an adverse opinion or disclaimer of opinion and MaloneBailey did not issue any report that was qualified or modified as to uncertainty, audit scope or accounting principles.

From September 24, 2012 (Inception) through April 7, 2014: (1) there were no disagreements between us and MaloneBailey on any matters of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which, if not resolved to the satisfaction of MaloneBailey, would have caused MaloneBailey to make reference to the matter in any report they would have issued; and (2) there were no “reportable events” as that term is described in Item 304(a)(1)(v) of Regulation S-K.

We provided MaloneBailey with a copy of the foregoing disclosures and requested that MaloneBailey provide a letter addressed to the SEC stating whether it agrees with the foregoing statements. MaloneBailey furnished such a letter, dated July 1, 2014, and a copy of such letter is filed as Exhibit 16.1 to the registration statement of which this prospectus forms a part.

Effective as of April 7, 2014, our board of directors appointed Marcum LLP, or Marcum, as our independent registered public accounting firm to audit our financial statements as of and for the fiscal years ended December 31, 2012 and 2013, and for the fiscal year ending December 31, 2014. From September 24, 2012 (Inception) through April 7, 2014, neither we nor anyone on our behalf consulted with Marcum regarding (1) the application of accounting principles to a specified transaction, either completed or proposed, (2) the type of audit opinion that might be rendered on our financial statements, or (3) any matter that was either the subject of a disagreement, as described in Item 304(a)(1)(iv) of Regulation S-K and the related instructions thereto, or a “reportable event” as described in Item 304(a)(1)(v) of Regulation S-K.

## Experts

The audited financial statements for the period from September 24, 2012 (Inception) through December 31, 2012 and for the year ended December 31, 2013 have been included herein in reliance upon the report of Marcum LLP, an independent registered public accounting firm, and upon the report of such firm given upon their authority as experts in accounting and auditing.

## Where You Can Find Additional Information

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of common stock offered by this prospectus. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement, some of which is

## **Respondent Exhibit 9**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GREGORY LEMELSON and LEMELSON  
CAPITAL MANAGEMENT, LLC,

Defendants.

Civil Action No. 1:18-cv-11926-PBS

**PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION FOR  
NEW TRIAL OR TO ALTER OR AMEND THE JUDGMENT**

The Court should reject Defendants bid to overturn the jury’s verdict and undo this Court’s Final Judgment. In their motion, Defendants rehash arguments that this Court has repeatedly rejected. They also add a handful of alleged errors at trial that they say require a redo. But there were no errors at trial—certainly none that require a do-over.

Defendants’ contempt for this proceeding, the jury’s verdict, and the Court’s final judgment is galling. In stating that “the jury gave the Commission a win on the more trivial claims as a compromise or consolation prize” (Br. at 1), Defendants remain unwilling to accept the reality that the jury found them liable for securities fraud under the core antifraud provision of the federal securities laws, Exchange Act Section 10(b). Violations of that section are among the most serious charges that the Commission and the United States Department of Justice pursue in financial fraud cases. Far from being trivial, defendants routinely face both stiff civil and criminal sanctions for violating the statute. Yet Defendants argue that they should face no career consequences from their fraudulent conduct.

Defendants go on to distort the trial record to fit their misleading view of this proceeding. They say, for example, that the trial was mostly about the Commission’s “scheme liability” claim under Rule 10b-5(a) and (c) and that scheme evidence “overwhelmed” evidence concerning Lemelson’s false and fraudulent statements. (Br. at 1-2.) This is a gross mischaracterization of the trial, which was fundamentally about the four charged fraudulent statements, as to which the jury found Defendants liable for three. Indeed, Defendants insisted throughout the trial that the misstatements were the scheme, that the two claims (scheme and misstatement) were co-extensive, and that the scheme claim could not be conceived of separately. (*E.g.*, Ex. 1 (Tr. Nov. 2, 2021 hearing) at 86 (Mr. Brooks: “We’ve always talked about this as a statements case, and that really without the statements there can be no scheme.”).) Defendants’ position now that scheme evidence overwhelmed misstatement evidence is quite the pivot.

Defendants’ arguments all fail. First, they rehash their flawed argument that Lemelson’s fraudulent statements were opinions, materiality cannot be proven without an event study, and there was insufficient evidence of materiality. These are dead issues in this case, having been resolved against Defendants at the motion to dismiss, motion for summary judgment, motion for directed verdict, jury verdict, and motion for judgment as a matter of law stages.

Second, Defendants say the Court got a handful on evidentiary rulings wrong. They say that Ligand investor Robert Fields shouldn’t have been allowed to testify, even though the Court ruled there was no unfair surprise and they were fully informed of the subject matter of his testimony. They repeat their argument that irrelevant evidence about the Commission’s purported “bias” should have been allowed, despite their “selective enforcement” defense having been stricken on summary judgment and despite the Court allowing substantial leeway for Defendants to question witnesses on the subject. And, finally, they say a letter from former Rep. Duncan

Hunter addressed to the Commission should have been admitted into evidence, even though they were permitted to question witnesses about it. These rulings were well within the Court's discretion. And Defendants have made no showing that these rulings, individually or in the aggregate, had any impact on the jury's verdict.

Lastly, Defendants ask this Court to modify the judgment to scrap the five-year injunction, as they worry the injunction may result in Lemelson being barred from the industry in a separate Commission administrative proceeding. The Commission has indeed commenced a separate action to determine what, if any, additional remedial sanctions should flow from the jury's verdict and the Court's final judgment. This is not some vendetta, as Defendants' suggest—it is the Commission fulfilling its Congressional mandate under Advisers Act Section 203(f) to determine whether a fraudster should retain the privilege of serving as an investment adviser. The result of that proceeding is neither imminent nor preordained and should not result in undoing the considered remedies this Court imposed.

All of Defendants' arguments fall far short of justifying a new trial or amending the judgment, and their motion should be denied.

## **ARGUMENT**

### **I. DEFENDANTS' MOTION FOR NEW TRIAL SHOULD BE DENIED**

#### **A. Defendants Cannot Meet the Standard for a New Trial**

Defendants suggest that this Court has unbridled discretion to reweigh the trial evidence *de novo* in their favor. In doing so, they fail to recognize that the First Circuit has “often emphasized that a ‘district judge cannot displace a jury’s verdict merely because he disagrees with it’ or because ‘a contrary verdict may have been equally . . . supportable.’” *Jennings v. Jones*, 587 F.3d 430, 436 (1st Cir. 2009) (quotations omitted). Critically, “trial judges do not sit

as thirteenth jurors, empowered to reject any verdict with which they disagree.” *Id.* (citing *Coffran v. Hitchcock Clinic, Inc.*, 683 F.2d 5, 6 (1st Cir.1982)). For this reason, when, as here, “a motion for new trial [is], at bottom, based on sufficiency of the evidence, the standards under Rule 50 [JMOL] and Rule 59 [new trial] effectively ‘merge.’” *Rodriguez-Valentin v. Doctors’ Ctr. Hosp. (Manati), Inc.*, 27 F.4th 14, 21 (1st Cir. 2022) (quoting *Dimanche v. Mass. Bay Transp. Auth.*, 893 F.3d 1, 8 n.9 (1st Cir. 2018)).

Defendants’ first challenge to the jury’s verdict, which found the charged statements material, focuses entirely on the sufficiency of the evidence. They argue that there was “scarcely any” or “scant” or “essentially no” evidence of materiality. (Br. at 4, 6, 8.) While this is not in fact true (*see* Part I.B, below), these arguments are directed at the quantum of evidence the Commission adduced at trial, *i.e.*, whether there was sufficient evidence undergirding the jury’s verdict. Defendants further admit the possibility that “a jury *might* have found the statements material so as to satisfy the JMOL standard” and go on to argue that the jury should have sided with them. (Br. at 4.) Defendants thus invite the Court to do exactly what the First Circuit prohibits on a motion for a new trial—to sit as a “thirteenth juror” and “displace [the] jury’s verdict” because “‘a contrary verdict may have been equally . . . supportable.’” *Jennings*, 587 F.3d at 436 (quotations omitted). The Court should therefore reject Defendants’ sufficiency and weight arguments, as it did in summarily denying Defendants’ motion for judgment as a matter of law. (ECF No. 243.)

**B. There Was Ample Evidence Supporting the Jury’s Verdict**

Defendants are, in any event, wrong about the sufficiency of the evidence. The materiality of a misstatement is often a question for the jury, as it was here. *Shaw v. Digital Equip. Corp.*, 82 F.3d 1194, 1217 (1st Cir. 1996); *SEC v. Johnston*, 310 F. Supp. 3d 265, 270 (D.



Mass. 2018). The materiality standard is an objective one and it is well-settled: “[T]here must be a substantial likelihood that the [fact] would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.” *Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (cleaned up). The jury was properly instructed on this materiality standard and, to reach their verdict, necessarily found Lemelson’s fraudulent statements material. (Ex. 2 (Jury Charge) at 18-19.) And their verdict was grounded in ample evidence, any one category of which would have been sufficient to support the verdict:

- Lemelson’s choice to include the four misstatements of fact in his reports shows that he thought these were important assertions about Ligand and its stock value. Lemelson wrote his reports to convince others that Ligand stock was worthless. The points he made in those reports, including the ones charged as misstatements, were there specifically to convince investors and potential investors of his thesis about Ligand stock’s value. He wouldn’t have written about Promacta and Viking and featured his falsehoods about them in his reports if he didn’t think these facts would be important to persuade a reasonable investor that Ligand was, as Defendants claimed, a fraud. Indeed, the title of the June 16 report that preceded the Benzinga interview was “Severe competitive threat to key royalty program [*i.e.*, Promacta] and ‘going concern’ risk drive 100 percent downside” and Defendants’ claims about Viking appear prominently in the summary of the July 3 report containing the falsehoods. (Exs. 3 (Trial Ex. 1), and 4 (Trial Ex. 4).) Defendants plainly considered these subject matters material and this is itself enough for the jury to have concluded the charged statements material.
- Multiple instances in which Lemelson took credit for his reports and public statements sinking Ligand’s stock price. (Exs. 5-9, Trial Exs. 51, 63, 72, 82, 90.)
- Testimony from multiple witnesses that Lemelson’s fraudulent statements concerned important aspects of Ligand’s business. (*E.g.*, Ex. 10, Tr. Trial Day 1 (Marschke) at 139:22-140:4; Ex. 11, Tr. Trial Day 2 (Foehr) at 53:25-55:12; 81:19-25; Ex. 12, Trial Ex. 34.)
- Testimony from Ligand witnesses about having received inquiries from worried investors about Lemelson’s statements. (*E.g.*, Ex. 13,

Tr. Trial Day 2 (Foehr) at 84:16-85:16; Ex. 14, Tr. Trial Day 3 (Voss) at 28:8-16; Ex. 15, Tr. Trial Day 4 (Higgins) at 73:25-80:8.)

- Email inquiries from worried investors about Defendants’ falsehoods. (Exs. 16-21, Trial Exs. 243-248.)
- Testimony from a Ligand investor, Robert Fields, that Lemelson’s reports contained misstatements that were of great concern to his firm. (Ex. 22, Tr. Trial Day 6 (Fields) at 57-69.)

The jury was also free to conclude under the objective “reasonable investor” standard that Lemelson’s fraudulent statements were material on their face, rendering a “sufficiency of the evidence” inquiry irrelevant. *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 450 (1976) (statement material if “obviously important to an investor”) (cleaned up).

The evidence Defendants cite to argue that the jury could have found for them on materiality was all presented to and rejected by the jury. And their efforts to minimize the import of other evidence (*e.g.* the downplaying of the Promacta statement as unimportant because it was in the middle of a longer interview) is nothing more than second-guessing what the jury found. Even if the Court were to conclude that the jury *could* have reached a different verdict, that’s no reason to grant a new trial. *Jennings*, 587 F.3d at 436. There was no lack of evidence; the jury simply didn’t view the evidence the same way Defendants did.

Moreover, Defendants distort the record. For example, they say that Ligand investor Robert Fields testified that Cardinal Capital, where Mr. Fields works, “*bought more* Ligand stock shortly after the Benzinga interview.”<sup>1</sup> (Br. at 7 (emphasis in original).) Mr. Fields said no such thing: “Q: You got this information [about the Benzinga interview] in June 2014, did Cardinal

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<sup>1</sup> Defendants do not explain how this cuts against a finding of materiality. If Cardinal Capital ultimately believed that Ligand’s stock was undervalued as a result of Defendants false statements, it would make sense to buy and hold until a rebound in price when the truth came out.

Capital start buying more stock in Ligand? A: *I don't remember.*" (Ex. 23 (Trial Tr. Day 6 (Fields) at 75 (objection omitted, emphasis added).) They also insinuate that Ligand itself didn't think the Benzinga Promacta falsehood was material (Br. at 4), citing Ligand's first PowerPoint presentation to the Commission that actually contains 11 pages of discussion about the falsity of Lemelson's Promacta "thesis." (ECF No. 282-4 at 3, 40-50.) And, while misleadingly citing to that first presentation, Defendants gloss over the second PowerPoint, in which "Promacta going away" features prominently in the very excerpt they attach to their motion.<sup>2</sup> (ECF No. 282-5 at 2.) Defendants record cites throughout their brief are rife with similar mischaracterizations. (*See* Ex. B (appendix addressing Defendants' record cites).)

Defendants also repeat their argument that the Commission was required to introduce an event study to prove materiality. This Court has repeatedly rejected this argument. (ECF No. 146 at 13-20 (order denying Defendants' motion for summary judgment); ECF No. 29 (order denying motion to dismiss in which defendants argued that statements were not material and were protected opinions); ECF No. 243 (order denying Defendants' motion for judgment as a matter of law.) Indeed, the case law states that no evidence of price movement (let alone a statistical event study) is required: "[W]hether a public company's stock price moves up or down or stays the same . . . does not establish the materiality of the statements made, though stock movement is a factor the jury may consider relevant." *United States v. Bilzerian*, 926 F.2d 1285, 1298 (2d Cir. 1991); *see SEC v. Monterosso*, 768 F. Supp. 2d 1244, 1265 (S.D. Fla. 2011).

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<sup>2</sup> In denying Defendants' motion for summary judgment, the Court held that any "failure to highlight these statements in these presentations does not render them immaterial as a matter of law" (ECF No. 146 at 19-20), leaving it to the jury to decide the probative value of the evidence.

### C. Lemelson’s Statements about Viking Did Not Express Opinions

Defendants again argue that Lemelson’s fraudulent statements about Viking<sup>3</sup> are not actionable because he was allegedly expressing his opinions. As this Court held at summary judgment, each of the statements, on their face, were statements of existing fact concerning a “thing happened.” (ECF No. 146 at 23-26; *see* ECF No. 29 (order denying Defendants’ motion to dismiss); ECF No. 243 (order denying Defendants’ motion for judgment as a matter of law).) Defendants offer nothing new and their “opinion” argument should be rejected.

Further, the Court put the question to the jury. The jury was instructed, consistent with the Supreme Court’s decision in *Omnicare*, on how to determine whether a statement is an actionable assertion of fact or a protected expression of opinion. (Ex. 24 (Jury Charge) at 21-23.) *See Omnicare, Inc. v. Laborers Dist. Council Const. Indus. Pension Fund*, 575 U.S. 175, 190 (2015); *MAZ Partners LP v. Shear*, 218 F. Supp. 3d 132, 135-37 (D. Mass. 2016). Significantly, Defendants did not object to the *Omnicare* instruction, in effect conceding that the question was proper for the jury to decide. (Ex. 25 (Rough Tr. Trial Day 6) at 105 (“we’re good with that instruction”).) Applying the *Omnicare* standard, the jury concluded that Lemelson’s three fraudulent statements were actionable.

Defendants also rehash their argument that investors could have discovered their falsehoods by hunting around in public documents. (Br. at 8-9.) It is not, and has never been, clear how this observation—which was argued to the jury—would convert a misstatement of fact into an opinion, as the Court previously observed. (ECF No. 146 at 26 (“Lemelson does not show how this context might have converted his characterizations of fact about Viking’s reliance

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<sup>3</sup> Defendants do not argue that Lemelson’s Promacta falsehood during the Benzinga interview was an opinion.

on auditors and its intent to conduct clinical trials into opinion evidence”).) The fact that, in some cases, accurate information contradicting Lemelson’s misstatements was available in other public documents is no defense. *See, e.g., In re Credit Suisse-AOL Sec. Litig.*, 465 F. Supp. 2d 34, 51 (D. Mass. 2006); *Brumbaugh v. Wave Sys. Corp.*, 416 F. Supp. 2d 239, 251-52 (D. Mass. 2006); *Swack*, 383 F. Supp. 2d at 237; *SEC v. Mozilo*, No. CV 09-3994-JFW, 2010 WL 3656068, at \*9 (C.D. Cal. Sept. 16, 2010); *SEC v. Reys*, 712 F. Supp. 2d 1170, 1175-76 (W.D. Wash. 2010).

Defendants’ lastly argue that the jury’s finding that Lemelson’s two falsehoods about Viking violated Section 10(b) was “against the weight of the evidence.” They argue that Lemelson’s false statement that “Viking does not intend to conduct any preclinical studies or trial” is “objectively true” (Br. at 9), because, they say, third parties would be conducting such trials. The Court already rejected this argument, stating that, in context, “the jury could reasonably conclude that [Lemelson’s statement about clinical trials] is a misleading half-truth.” (ECF. No. 146 (summary judgment order) at 24-25.) The jury was instructed accordingly:

The fact that a statement is literally accurate does not preclude liability. Some statements, although literally accurate, can become misleading if, in their context and manner of presentation, they would mislead investors. This includes what are sometimes called half-truth statements that are literally true but create a materially misleading impression.

(Ex. 2 (jury charge) at 18-19.) Even if the jury believed that the statement was literally accurate—which the evidence showed it was not—they could find Defendants liable nonetheless.<sup>4</sup>

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<sup>4</sup> Viking’s CEO, Brian Lian, PhD, testified that Viking’s preclinical and clinical studies were conducted in collaboration with third parties pursuant to Viking’s design and under its supervision, which is typical in the

## II. THERE WERE NO EVIDENTIARY ERRORS AT TRIAL

“Unless justice requires otherwise, no error in admitting or excluding evidence . . . is ground for granting a new trial . . . . At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party’s substantial rights[.]” Fed. R. Civ. P. 61.

Evidentiary rulings are governed by the “abuse of discretion” standard and even if “an abuse of discretion occurred, we will not order a new trial unless we also find that the error in admitting evidence had a substantial and injurious effect on the jury’s verdict.” *In re PHC, Inc.*

*Shareholder Litig.*, 894 F.3d 419, 439 (1st Cir. 2018) (new trial not required after district court admitted stock price evidence over R. 403 objection). Here, Defendants identify no abuse of discretion and no substantial and injurious effect. They instead merely disagree with the Court’s evidentiary rulings, which is insufficient to establish error. *U.S. v. Ayer*, 770 F.3d 83, 95 (1st Cir. 2014) (that “reasonable minds could disagree” about an evidentiary ruling “cannot be an abuse of discretion”) (citation omitted).

### A. The Court Did Not Abuse Its Discretion in Allowing Ligand Investor Robert Fields to Testify

Defendants’ contend that the Court erred in permitting Ligand investor Robert Fields of Cardinal Capital to testify. They first complain that the Commission did not disclose Mr. Fields as a potential witness until after the close of discovery. (Br. at 10-12.) This issue was extensively briefed in connection with Defendants’ motion in limine to exclude Mr. Fields’ testimony. In short, Defendants claimed unfair surprise and the Commission argued that Defendants were well aware of Mr. Fields, having asked several witnesses about him during

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industry. (*E.g.*, Ex. 26, Tr. Trial Day 2 (Lian) at 176:7-17, 208:10-209:6.); *see* ECF No. 214 at 24-25 (citing Dr. Lian’s deposition testimony that “the model of Viking, and 75% of the industry, is to hire third parties to conduct their experiments.”).)

depositions. (See ECF Nos. 179 (Defendants' motion) and 185 (Commission's opposition). The Court denied Defendants' motion because Defendants had sufficient notice the Ligand investors might testify. (ECF No. 210.) Defendants offer nothing new here, so there is no reason for the Court now to reverse its prior ruling.

Defendants also falsely claim that "counsel had no prior notice [of the scope of Mr. Fields' testimony], negatively impacting counsel's ability to prepare for cross examination."<sup>5</sup> (Br. at 14.) At the October 14, 2021 pretrial conference, the Court directed Commission counsel to make a proffer to Defendants' counsel as to the scope of Mr. Fields testimony. Commission counsel did so on October 18:

Mr. Fields is expected to testify about their Cardinal Capital's position in Ligand in 2014, when and how he became aware of Defendants' public statements about Ligand in 2014, his reaction to those statements (including whether they considered the subject matters of the statements as having the potential to significantly alter total mix of information available to Ligand investors), and communications with Ligand personnel and others about Defendants' statements. Mr. Fields will testify that:

- He was a senior analyst at Cardinal Capital in 2014 responsible for Cardinal's long position in Ligand;
- He is now a partner;
- He became aware of Defendants after reading the June 16, 2014 report when it came out;
- He noted a negative market reaction to the first report;
- He considered Defendants' report to be replete with factual misstatements;
- He considered important Defendants' claims about Promacta, Viking, intangible assets having no value, the 2014 debt offering, and insolvency;
- He discussed Defendants' reports with Ligand management approximately eight times.

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<sup>5</sup> Defendants do not explain how they were "negatively impacted" in their ability to prepare for cross examination.

(Ex. 27, October 18, 2021 email from Day to Sullivan.) Each allegedly “undisclosed” topic Defendants list (Br. 13-14) is disclosed in the Commission’s proffer. Defendants never responded to the proffer and Commission counsel had no reason to believe that any of the proffered topics were off limits.

**B. There Was No Error in Limiting Defendants’ Claim of Commission Bias**

Defendants claim that (i) the Commission improperly “vouched” in closing argument and (ii) more evidence<sup>6</sup> of “Commission bias” should have been allowed. As an initial matter, Defendants never objected to any purported vouching. Their claim of error is thus waived. *U.S. v. Coady*, 809 F.2d 119, 123-24 (1st Cir. 1987) (claim of error waived absent timely objection to summation).

In any event, there was no vouching. The portion of the Commission’s summation to which Defendants untimely object was a response to their argument at trial and in their closing argument that the alleged omissions in Ligand’s presentation meant that Lemelson’s falsehoods were not material. (*E.g.*, Ex. 31, Tr. Trial Day 7 at 41:25-42:14.) Counsel noted that the Commission does its own investigation and charges what it charges, irrespective of what a third party did or did not tell it. (ECF No. 282-12 at 80 (“the SEC does an investigation. . . and comes up with its own reasons, own evidence, own theory why the law was violated”).) This is not vouching because it is not commentary on counsel’s own or a witness’s credibility. *U.S. v. Williams*, 97 F.3d 240, 245 (8th Cir. 1996) (cited by Defendants at page 15 of their brief).

Further, “[w]here the prosecutor, his witnesses, or the work of the government agents is

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<sup>6</sup> While the Court excluded evidence of Commission “bias” generally, it allowed Defendants to introduce evidence of Ligand witnesses’ alleged bias and, to the extent that evidence also went to the Commission’s alleged bias, it was allowed. (Ex. 28 (Tr. Final Pretrial Conference) at 17-19.)



attacked [by defense counsel], counsel is entitled to make a fair response and rebuttal.” *Id.* (quoting *United States v. Lee*, 743 F.2d 1240, 1253 (8th Cir.1984). That’s exactly what happened here. From opening statements to closing arguments, Defendants’ counsel repeatedly insinuated that Ligand was engaged in some un-American effort to “silence” Lemelson using the Commission as its puppet. (*E.g.*, Ex. 29, Tr. Trial Day 1 at 88:17-25 (Defendants’ opening statement: “Why didn't they just speak up like we do in America?”); Ex. 30, Tr. Trial Day 7 at 34:5-10 (Defendant’s summation: “We’re not in North Korea.”).) Counsel specifically called out the alleged omission of the Promacta and Viking statements from Ligand’s presentations to the Commission, the precise argument addressed by Commission counsel in closing. (*E.g.*, Ex. 29, Tr. Trial Day 1 at 88:4-16; Ex. 31, Tr. Trial Day 7 at 41:25-42:14.)

### **C. The Hunter Letter Was Properly Excluded**

Defendants next claim that the Court should have admitted a letter addressed to the Commission composed by former Rep. Duncan Hunter. (ECF No. 282-17.) The letter contained certain allegations about Defendants’ conduct and encouraged the Commission to investigate. (*Id.*) The Court excluded the letter itself but allowed Defendants to question witnesses about it. (Ex. 32, Tr. Final Pretrial Conference at 79.) And Defendants’ counsel did in fact cross examine Ligand CEO John Higgins about the letter. (*E.g.*, Ex. 33, Tr. Trial Day 4 at 130:9-132:9.)

Defendants now claim that “the effectiveness of the examination was severely diminished as the witness testified he did not remember” certain specifics about the letter, including the date it was sent. (Br. at 16.) They claim this resulted in “the jury [hearing] only ambiguous testimony about a letter it did not get to see.” (*Id.*) But nothing prevented counsel from refreshing the witness’s recollection with the letter to establish both the date it was sent, to whom it was addressed, and its contents. Defendants chose not to do so at trial and cannot now be

heard to complain that they were hamstrung in presenting their case.

### **III. THERE WAS NO ERROR IN COURT’S INSTRUCTION TO THE JURY ON MATERIALITY**

Defendants argue that the Court’s jury charge on materiality was erroneous because it did not instruct the jury that the Commission was required to introduce an event study to prove materiality. As noted above, this Court found no merit to Defendants’ event study argument—repeatedly.<sup>7</sup> (ECF No. 146 at 13-20 (order denying Defendants’ motion for summary judgment); ECF No. 230 (order denying Defendants’ motion for judgment as a matter of law.) No event study is required to prove materiality: “[W]hether a public company’s stock price moves up or down or stays the same . . . does not establish the materiality of the statements made, though stock movement is a factor the jury may consider relevant.” *United States v. Bilzerian*, 926 F.2d 1285, 1298 (2d Cir. 1991); *SEC v. Monterosso*, 768 F. Supp. 2d 1244, 1265 (S.D. Fla. 2011) (same). An event study may be probative but it is not dispositive. (ECF No. 146 (order denying Defendants’ motion for summary judgment) at 17.) Defendants’ arguments will eventually be addressed in the Court of Appeals. In the meantime, Defendants offer no new reason that the Court should reverse course and grant a new trial on this basis.

### **IV. THE COURT SHOULD NOT AMEND THE FINAL JUDGMENT**

Defendants lastly ask the Court to vacate the five-year injunction it imposed as part of the final judgment in this case. (Br. at 19.) As in their motion to stay the judgment, Defendants claim that the Commission seeks to “weaponize” the injunction to seek additional remedies in a separate administrative proceeding. (*Id.*) Defendants already made this argument in opposition

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<sup>7</sup> This issue has been repeatedly briefed and argued throughout this case, most extensively in the context of Defendants motion for summary judgment. (See ECF Nos. 125 (Defendants’ brief in support of motion for summary judgment), 131 (Commission’s opposition), and 138 (Defendants’ reply).) The Commission will not repeat the parties’ argument in detail here.

to the Commission's motion for entry of final judgment and it was the subject of extended discussion at the remedies hearing. (ECF No. 260 at 8-11 (arguing that no injunction should enter because it may lead to an industry bar).) The Court issued the five-year injunction with full knowledge of the potential consequences in a separate Commission administrative proceeding. There is no reason for the Court to reverse its prior ruling now.

Further, as explained in the Commission's opposition to Defendants' motion to stay the final judgment, Congress expressly authorized follow-on proceedings against investment advisers arising from an injunction. *See* 15 U.S.C. § 80b-3(e)(4). While that separate proceeding before the Commission may result in Lemelson being barred from serving as an investment adviser, that is only one of the possible sanctions the Commission could impose. 15 U.S.C. § 80b-3(e) (authorizing Commission to "censure or place limitations on the activities of . . . or suspend . . . or bar" an enjoined investment adviser). The Order Instituting Proceedings is thus silent as to the remedy the Commission may ultimately impose. (ECF No. 282-22.) Further, any sanction that might be imposed in those follow-on proceedings is not preordained and would only be imposed "after notice and opportunity for hearing" that the sanction was appropriate and in the public interest. *See* 15 U.S.C. § 80b-3(e). Defendants also would have the opportunity to seek judicial review of any final Commission order imposing any sanction. *See* 15 U.S.C. § 78y(a)(1). A potential industry bar at some future date is not a reason to vacate the Court's injunction now.

### **CONCLUSION**

Defendants remain unwilling to accept that the jury found them liable for securities fraud under the core antifraud provision of the federal securities laws, Exchange Act Section 10(b). There are consequences that flow from being found to have committed fraud, particularly when

the fraudster is a fiduciary. Defendants plainly disagree with the jury's verdict and certain of the Court's rulings, but offer no real grounds for a new trial. The Commission therefore asks the Court to deny Defendants' Motion for New Trial.

Dated: May 11, 2022

Respectfully submitted,

**SECURITIES AND EXCHANGE  
COMMISSION**

By its Attorneys,

/s/ Alfred A. Day

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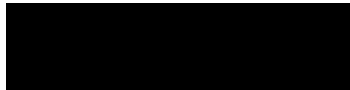
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**CERTIFICATE OF SERVICE**

I certify that on May 11, 2022, a copy of the foregoing was electronically filed through the ECF system and will be sent electronically to all persons identified in the Notice of Electronic Filing and that paper copies will be sent to those indicated as non-registered participants.

/s/ Alfred A. Day

## **Respondent Exhibit 10**



***Benzinga***  
***Interview\_20140813\_Amended***

***8/2/2021***

**Condensed Transcript**

**Prepared by:**

Shanice Fortes



Wednesday, August 4, 2021

Page 1

1 THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
2  
3 In the Matter of: )  
4 ) File No. [REDACTED] A  
5 GREGORY LEMELSON ) AMENDED 8-2-2021  
6  
7 SUBJECT: Rev. Emmanuel Lemelson, CIO of Lemelson  
8 Capital Management - #PreMarket Prep for August 13, 2014  
9 PAGES: 1 through 19  
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16 VIDEO TRANSCRIPTION  
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24 Diversified Reporting Services, Inc.  
25 (202) 467-9200

Page 2

1 PROCEEDINGS  
2 Rev. Emmanuel Lemelson, CIO of Lemelson Capital  
3 Management - #PreMarket Prep for August 13, 2014  
4 (Music playing)  
5 MALE SPEAKER: Welcome back traders and  
6 investors. We have Reverend Emmanuel Lemelson on the  
7 line, founder and president of the Lantern Foundation  
8 and chief investment officer of Lemelson Capital  
9 Management.  
10 Reverend, how are you doing today?  
11 MR. LEMELSON: Good. Thank you. How are you  
12 Joel?  
13 MALE SPEAKER: We're doing good here. The  
14 markets are still trading up this morning, so trying to  
15 get back to new all-time highs. And that just kind of  
16 leads me to my first question. The markets had a  
17 significant selloff over the last few days. We've  
18 battled back here. I know you're an individual stock  
19 picker and, you know, pay attention to the overall  
20 market, but just getting through the earnings season  
21 here, the rebound that we have, you know, do you think  
22 the market is stabilized and ready to go back up to new  
23 all-time highs or do you think we have some work to do  
24 on the downside?  
25 MR. LEMELSON: It's certainly possible, Joel.

Page 3

1 It seems to me that nobody really knows where markets  
2 will head tomorrow or next week or even next year. But  
3 there are things we can know when we look at the  
4 historical data. We can look at things like margin debt  
5 and its relationship to prices in the market against  
6 historical averages. And the current environment looks  
7 awfully expensive. It's not terribly unlike 1999 or  
8 1929. And, you know, these things can't go up forever.  
9 You never know when they're going to go down.  
10 But I think investors should be very cautious and very,  
11 very much aware of -- of those things. I'm not  
12 convinced that earnings and economic activity really is  
13 connected very closely now to these rising prices. It's  
14 starting increasingly looking like a -- a real  
15 speculative bubble.  
16 MALE SPEAKER: And I guess you could throw  
17 1987 in there, too, if you're talking about (laughter)  
18 (inaudible).  
19 MR. LEMELSON: You -- you certainly could.  
20 Absolutely. Of course, asset prices recovered quickly  
21 in 1987, unlike the late 90s and early 2000s, or the  
22 early 30s for that matter.  
23 MALE SPEAKER: So --  
24 MR. LEMELSON: But yeah -- and I think some of  
25 the things we can observe that are a little bit more

Page 4

1 tangible is just what's sort of the -- the general  
2 mindset of, you know, these groups of participants in  
3 public markets and have they begun to believe that  
4 prices can only go up. Do they believe that no matter  
5 what happens, tomorrow, prices will be higher? Because  
6 that's really the definition of speculation.  
7 MALE SPEAKER: Correct.  
8 MR. LEMELSON: And speculation is -- is a  
9 fallacy, right? Because nobody really knows what's  
10 going to happen tomorrow.  
11 MALE SPEAKER: Right.  
12 MR. LEMELSON: God knows, but we don't know.  
13 MALE SPEAKER: (Laughter) That's -- that's a  
14 great point. So boy, the geopolitical events have  
15 really been -- really took a toll on the market last  
16 week, took the market down and then when it looks like  
17 the (inaudible) are backing off from the border, brought  
18 us right back up on Friday. You know, how -- how  
19 closely do you follow the geopolitical events?  
20 MR. LEMELSON: Well, I think it's important  
21 for everyone to follow them. Absolutely. Geopolitical  
22 events can precipitate a change in sentiment,  
23 absolutely. But we don't necessarily know the outcome,  
24 I mean, of wars and so forth and its impact on crisis,  
25 per se. I mean speaking out about these previous, you

<p style="text-align: right;">Page 5</p> <p>1 know, pull backs, the pull backs in the markets in -- in  2 history, it -- it was -- geopolitical in Iraq when we  3 eventually went to war actually helped pull us out of  4 that. There's no way of knowing, but people in Europe  5 can't be very happy and, you know, in the US, we should  6 be very cognizant of the fact that Russia is behaving in  7 a very aggressive way in Ukraine. And, you know, these  8 people are suffering in other parts of the world, in the  9 Middle East, in Israel and Palestine and so forth.  10 It -- it's very tragic and, and in Iraq, you  11 know, probably not enough news coverage on it, but  12 what's happening with ISIS and the Christian communities  13 there in Iraq, I mean a whole slew of martyrs being  14 made. And we -- we need to be aware of these things. I  15 mean the world is full of turmoil. We don't always see  16 it in our country, in our backyard because, frankly, we  17 have a \$600 billion military budget, which isolates us.  18 But it doesn't mean that there isn't turmoil. And  19 there's always some turmoil in the world, but it seems  20 like there's an awful lot of tragedy and innocent loss  21 of life right now.  22 MALE SPEAKER: Yeah. I mean it's --  23 MR. LEMELSON: So we have to pray that that --  24 that that ends.  25 MALE SPEAKER: Yeah, we do. I mean -- I mean</p>	<p style="text-align: right;">Page 7</p> <p>1 Orthodox Christians, so it's something to be aware of.  2 MALE SPEAKER: Certainly. And I think you  3 touched on this with your opening statement, the earning  4 season here, it's kind of seeing, you know, a lot of  5 stocks have gotten nice pops. In fact, you know --  6 MR. LEMELSON: Sure.  7 MALE SPEAKER: -- several stocks have traded  8 much higher in the afterhours or premarket trading and  9 then given back all of those gains.  10 MR. LEMELSON: (Inaudible)  11 MALE SPEAKER: And kind of -- and some of them  12 even ended up in the red. My first question would be, do  13 you pay attention to the -- to the afterhours, the  14 premarket trading for price -- you know, for price  15 action? And, you know, would you also, you know, agree  16 with that overall statement that things kind of have been  17 selling the pops here, you know, on the good news in the  18 earning season?  19 MR. LEMELSON: Yeah. Well, I think those  20 expressions and terminology is really commensurate with  21 the trading activity, which I couldn't really speak  22 intelligently to. If traders have some edge or some  23 knowledge, I wouldn't be aware of it. I mean I think  24 the soundest thing you can do with your capital is try  25 to make wise investing decisions. Price is in the near</p>
<p style="text-align: right;">Page 6</p> <p>1 the Arab-Israeli conflict has only been going on for a  2 couple thousand years, so there's --  3 MR. LEMELSON: Yeah. That's a very good  4 point.  5 MALE SPEAKER: So there's probably going to be  6 no quick resolution to that, so we'll just have to see  7 what happens on that front. So you mentioned it earlier  8 --  9 MR. LEMELSON: More -- more specifically --  10 more specifically, though, I think Christians -- you  11 know, of every -- of every flavor, I mean really all the  12 different denominations should really be engaged in  13 conversation and dialogue in unity about what's  14 happening in Iraq, which probably isn't getting enough  15 coverage. This is a very ancient Christian community  16 that's being ruthlessly persecuted and openly  17 persecuted. We should have an open -- more of an open  18 discussion on that. You're right about, you know,  19 Palestine and Israel and so forth.  20 But what's happening in Iraq -- I mean this  21 shouldn't be happening in our modern times. It really  22 shouldn't. And it ties, in some ways, of course, with  23 the Kurdish issue in Turkey and the issues of religious  24 freedom there. And what's been ongoing but subtle  25 religious persecution in Turkey for a very long time of</p>	<p style="text-align: right;">Page 8</p> <p>1 term, whether it's in the premarket or the post-market  2 or even tomorrow or next week, aren't usually relevant  3 in the long run.  4 And, you know, really, wealth creation occurs  5 over a long period of time and usually involves owning a  6 piece of a great company, which is going to produce  7 consistent earnings with a, you know, first rate  8 management team. I think when you get into these  9 shorter and shorter slices of time and these smaller and  10 smaller permutations in price, it looks an awful lot  11 like a -- a losing proposition when it comes to capital  12 allocation.  13 So my thought would be to try to stay away  14 from watching that stuff so carefully. Get back to  15 trying to understand where you can put your money, where  16 it's going to be. First and foremost, where the  17 principle is going to be safe and where when you're  18 handing your capital over to a company, they're going to  19 take it and they're going to produce better than average  20 results in terms of the return on -- the return on your  21 equity.  22 MALE SPEAKER: Okay. So let's -- let's go to  23 your Ligand Pharmaceutical position. It's definitely --  24 since the last time you were on the show, it's  25 definitely, you know, working its way in your favor.</p>



<p style="text-align: right;">Page 9</p> <p>1 Has, you know, anything changed in the fundamentals for  2 you to -- to reevaluate your analysis?  3 MR. LEMELSON: No, absolutely not. You know,  4 when we published the original report on June 16th,  5 shares were trading around \$69 just before that report  6 came out. By August 1st, they were under \$50. I mean  7 they trade around \$47, \$48. So the company had lost  8 about 35 percent in about six weeks.  9 The company recently reported its Q2 earnings.  10 And the way it presented those earnings really deserves  11 close scrutiny. I mean they talk about an 11 percent  12 increase in revenues compared to the \$9.6 million figure  13 for the same period in 2013. But when you back out non-  14 cash items, it's really not what's happening with this  15 company on the top or the bottom line.  16 There was an upfront non-cash licensing fee,  17 which was received by the company from TG Therapeutics.  18 When that's backed out, the company's earnings were  19 actually declined year-over-year. And if you look at  20 all of the major equity generating programs, they're down  21 across the board. So the result is an EPS that has actually  22 fallen 76 percent. But reading the company's press releases, that  23 wouldn't be immediately obvious.  24 There's a lot of talk also, you know, about  25 their technology platform, the Capitsol program. But if</p>	<p style="text-align: right;">Page 11</p> <p>1 you know, this 53 percent in this first half from \$7.6  2 million to only \$3.7 million, management stock awards  3 actually increased 100 percent to \$5.1 million, which is  4 27 percent greater than the company's entire first half  5 of 2014 earnings.  6 So, you know, getting back to what we can know  7 and what we can't know, we don't know the price of  8 Ligand tomorrow or next week. But we do know what the  9 company's performance has been year-after-year and we  10 look at performances recently. Right?  11 MALE SPEAKER: (Inaudible)  12 MR. LEMELSON: So I -- I think in terms of  13 understanding, you know, safety of principle and this  14 sort of proverbial (inaudible) margin of safety, you're  15 talking about a company that if the definition of  16 insolvency is liabilities exceeding assets and that's  17 the legal definition -- in practice, people refer to an  18 ability to pay bills. But when you back out  19 intangibles from this company before their August 4th  20 release, they were technically insolvent if you're  21 looking at -- you know, removing these intangibles,  22 which are questionable to begin with. By August 4th, the  23 company, you know, released its earnings. And they had  24 just \$21,000 in equity to buttress a market  25 capitalization of almost \$1.2 billion.</p>
<p style="text-align: right;">Page 10</p> <p>1 you look at that closely, it was actually down \$500,000  2 and 13 percent year-over-year. And, you know, these  3 things aren't immediately obvious to the average retail  4 investor reading these press releases. There's no  5 statement of cashflows. And the company is consistently  6 using non-GAAP earnings measures.  7 Non-GAAP measures have a place when the  8 company has exceptional one-time items to report, but  9 they really shouldn't be used on an ongoing basis as  10 Ligand has done. And if you look carefully at the  11 records, basically non-GAAP and GAAP, really what it's  12 doing, it's really only cloaking one thing and that's  13 awards to management.  14 So, for example, the net income from  15 continuing operations dropped from \$3.17 million in Q2  16 of 2013 to just \$1.5 million in 2014. This is a drop of  17 57 percent. But if you take into account the company's  18 ongoing dilution, it's actually a drop of, like I said,  19 of 76 percent of the EPS. At the same time, contingent  20 liabilities increased 147 percent. There's \$800,000  21 missing from the income statements in the way of its  22 adjustments for investments. This is a company that, by  23 no definition, can say that its fundamentals have  24 improved. They've only declined.  25 And while net income tools allow (inaudible)</p>	<p style="text-align: right;">Page 12</p> <p>1 I mean that should be very scary to a common  2 shareholder. And in that August 4th report, it concluded  3 with a -- what wound up being a very prescient --  4 prescient statement that common shareholders are not the  5 same as bond-holders or other forms of security holders.  6 And you're probably aware, yesterday, the company  7 released an announcement that it would be doing a bond  8 offering for \$225 million. This is a company that  9 enjoyed six days of solvency. If they're going to take  10 on \$225 million in new debt, there's going to be a debt  11 service associated with that.  12 And it's going to be very hard to -- to refer  13 to the company as solvent, even if you include the  14 intangibles. If -- if that coupon is 5.5 percent, you're talking  15 about almost \$13 million in debt service. In the last  16 12 months, the company only earned \$7.5 million. All of  17 which, of course, was consumed by stock awards to  18 management, you know?  19 MALE SPEAKER: (Laughter) Well, no --  20 MR. LEMELSON: So I would say to the average  21 shareholder in the most academic and sophisticated terms  22 I can think of (laughter), you know, "run Bambi, run," is  23 the only thought that comes to mind for the common  24 shareholder because things like that start to look a lot  25 like they're tanking. Again, you know, you read these</p>

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1 press releases carefully. And you have to ask yourself  
2 why is the company doing press releases. I mean do you  
3 think it's for institutional holders? I don't think so.  
4 I mean these guys have a direct line to the CEO and the  
5 board of directors. Those things are for retail  
6 investors. And if you read it carefully, I mean it  
7 looks a lot like institutional holders trying to get out  
8 of the common equity. That's \$50 million almost, \$47  
9 million of that bond offering is going to be a private  
10 transaction.  
11 MALE SPEAKER: Wow.  
12 MR. LEMELSON: I guarantee you that's not  
13 somebody at home with their Scottrade account.  
14 MALE SPEAKER: (Laughter)  
15 MR. LEMELSON: And those are transactions that  
16 are going to take place outside of the public markets.  
17 I mean if you've got 280 mutual funds that own the stock  
18 and some of these guys want to get out, they -- they  
19 can't do it on a -- on an issue that only has 200,000  
20 shares traded a day.  
21 MALE SPEAKER: Correct.  
22 MR. LEMELSON: These kinds of things are  
23 negotiated in private transactions. And you have to ask  
24 yourself why would a company with \$21,000 in tangible  
25 equity, why would they take on \$225 million in debt.

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1 And then this extraordinary \$20 million share repurchase  
2 program. But because they're convertible notes, I mean,  
3 of course, that in itself would lead to tremendous  
4 dilution in the future --  
5 MALE SPEAKER: Wow.  
6 MR. LEMELSON: -- if they were (inaudible).  
7 But who's going to sell into that tender offer?  
8 Presumably, it's these large institutional holders. I  
9 mean we know at least \$50 million, more or less, is  
10 going to be an institutional holder. And why do these  
11 guys want out? I think the average retail investor  
12 needs to be very cognizant of that. You know, Ligand is  
13 attracting a certain type of investor, I mean people who  
14 would buy a lottery ticket. They want to get rich  
15 quick. They like to trade.  
16 MALE SPEAKER: Right.  
17 MR. LEMELSON: And if you read these press  
18 releases carefully, that's -- that's really what they're  
19 selling.  
20 MALE SPEAKER: Well, no one -- no one can  
21 accuse you of not doing your homework, that's for sure.  
22 You just ripped through that financial statement with -  
23 - with a lot of knowledge. So target price for LGND?  
24 MR. LEMELSON: Well, you know, you never know  
25 a target price because you never know what the market is

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1 going to do. But I think you can certainly delineate  
2 between price and value.  
3 MALE SPEAKER: Okay.  
4 MR. LEMELSON: And to use Buffett's words,  
5 "Price is what you pay and value is  
6 what you get." If you're getting \$21,000 in tangible  
7 equity, but you're paying \$1.2 billion for it, there's  
8 not anything else really that can be said.  
9 MALE SPEAKER: Do the math. Right.  
10 MR. LEMELSON: I -- I mean in -- in a company  
11 that -- they'll tell you that business is great and  
12 they've got all of these great royalty programs and  
13 there are all of these, you know, press releases out  
14 there. I mean I can't even get -- keep track of the  
15 press releases anymore. But, you know, if you look at  
16 the financials, this thing is going straight down. How  
17 could -- and they talk about beating guidance, they're  
18 talking about a company that lost 76 percent year-over-  
19 year and what's supposed to be increasing sales on a key  
20 Capitsol technology program and Promacta and so  
21 forth. Those things are going to go away.  
22 I mean people say well, "Promacta is used  
23 for ITP." Well, no, it's not. I mean if you look at the  
24 annual reports, the company describes it very  
25 specifically having a Hep C indication. The company also

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1 talks in their, their annual report about going  
2 concern risk. If you want to increase going concern  
3 risk, just add another \$225 million in debt.  
4 MALE SPEAKER: In debt, right. Right.  
5 MR. LEMELSON: (Inaudible) in earnings. That  
6 should be very, very scary.  
7 MALE SPEAKER: Okay. And just finally, to end  
8 the broadcast, and this is kind of the way you and I  
9 became connected, through an article that I did on WWE  
10 and that was after you announced your short position and  
11 disclosed it to the public. And then when I had you on  
12 the show, it was wallowing at the \$10 area. Now,  
13 correct me if I'm wrong, but I -- I thought you said you  
14 were nibbling at it on the long side. Did you? And are  
15 you still holding?  
16 MR. LEMELSON: Yeah. We took a long position  
17 after we covered our short position in the \$10 range.  
18 And that -- that's done very well. I mean I -- I think  
19 it's up 20 percent or something since that time. So --  
20 MALE SPEAKER: Still holding on?  
21 MR. LEMELSON: You know, WWE -- yeah,  
22 absolutely. I mean WWE has value. There's no question.  
23 MALE SPEAKER: Okay.  
24 MR. LEMELSON: It's not a situation  
25 like Ligand. You have two situations where management

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1 has both perhaps not been as careful with their  
2 fiduciary responsible to investors as they should have  
3 been. With WWE -- when the truth emerged that this was  
4 really a heavily promoted stock -- I mean there were  
5 five law firms invested in the company. And in  
6 hindsight, it was (inaudible). Hindsight is 20/20,  
7 right?  
8 With Ligand, you know, you have a promotional  
9 CEO and they're promoting the stock heavily. Maybe they  
10 believe in it. We really can't judge, but the point is  
11 is that if the truth emerges that this company is not  
12 going to ever have earnings that can justify this market  
13 capitalization, there's going to be a lot of angry  
14 shareholders. I mean they're going to feel duped. I  
15 mean, here, with WWE you had real value. It  
16 was just overpriced and a real monopoly, in a long  
17 enduring franchise that actually made money consistently  
18 for a very long time.  
19 And on the other hand, you have nothing but a  
20 company that's lost money for a very long period of  
21 time. So that company is worth holding. And there is  
22 real value there. And I think the stock price  
23 appreciation is -- is certainly justified, especially  
24 since the company -- I mean is heeding, really, the  
25 calls of the investors. I mean we called for changes in

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1 the management team. The company recently knocked off 70  
2 percent of its staff. I mean this is a management team that's  
3 listening. And -- and I think that's really important.  
4 They -- they've kept the dialogue open and they deserve  
5 a lot of credit for that.  
6 MALE SPEAKER: Okay. Well, thanks for coming  
7 on today, Reverend Emmanuel Lemelson, founder and  
8 president of Lantern Foundation and chief investment  
9 officer of Lemelson Capital Management talking about a  
10 couple of his positions. Thanks again for coming on and  
11 we hope to have you on again soon.  
12 MR. LEMELSON: Absolutely. Thanks for the  
13 invitation, Joel. And I really enjoy the show and the  
14 site, as always. You guys are doing fantastic work.  
15 MALE SPEAKER: Okay. Thank you very much.  
16 MR. LEMELSON: Thank you so much. All right.  
17 Bye-bye.  
18 (End of recording)  
19 \* \* \* \* \*  
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25

Page 19

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3 I, Wendy Smith, hereby certify that the foregoing  
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8 GREGORY LEMELSON  
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10 File: Rev. Emmanuel Lemelson, CIO of Lemelson Capital Management  
11 - #PreMarket Prep for August 13, 2014  
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## **Respondent Exhibit 11**

**In the Matter of:**

*SEC vs*

*Lemelson, et al*

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*Emmanuel Lemelson*

*September 16, 2014*

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VIDEO OF:  
PREMARKET INTERVIEW WITH BENZINGA

SPEAKER: JOEL ELCONIN

GUEST: EMMANUEL LEMELSON

DATE: SEPTEMBER 16, 2014

RE: SEC V. LEMELSON, ET AL

CASE NO.: 1:18-CV-11926

MARY INDOMENICO, ACT, CET

official Court Transcriber

1 MR. ELCONIN: welcome back traders and

1 investors. We have Father Emmanuel on the line, and he  
2 has been active as a short seller, also as a long  
3 player in a couple of different stocks. And we're  
4 going to talk about them today.

5 How are you doing Father?

6 FATHER EMMANUEL: Good, thank you, Joel. How  
7 are you?

8 MR. ELCONIN: We're doing good. Okay.

9 First, we've got to talk about your MNova  
10 fund. And you -- you like to play both sides of the  
11 market.

12 would you say that your splendid returns, you  
13 profited more from the long side or the short side, or  
14 is it about equal?

15 FATHER EMMANUEL: Well, the MNova Fund's done  
16 very well on the short side. But definitely we've made  
17 far more on the long side. It's a long biased fund,  
18 and in a perfect world, we'd probably be long all the  
19 time. But in a stubborn market, it keeps rising. I  
20 think any manager has to look at the short side as  
21 well. And thank God, those -- those have done well,  
22 those positions.

23 MR. ELCONIN: Okay. What's the basis of your  
24 value models, and did you create them on your own?

1 FATHER EMMANUEL: Well, you know, going back  
2 to 2010, I picked up a copy of Ben Graham's, The  
3 Intelligent Investor, and I really just committed it to  
4 memory and I did the same thing with Security Analysis.

5 Going through and in those early days and  
6 (indiscernible) expecting financial statements and  
7 rebuilding them, I did some of that in Excel and so  
8 forth, just really looking at the anatomy of these, you  
9 know, very (indiscernible) income statements and cash  
10 flows. But after some time, I really just stopped  
11 doing that. It's really just done in my head to tell  
12 you the truth all the time. I mean very quickly you  
13 can look at a company and usually you can figure out  
14 you know, in thirty seconds, if its worth exploring  
15 further. And you can do pretty well just by knowing  
16 what not to look into and what to avoid.

17 So, there's no real models or anything like  
18 that or formula.

19 MR. ELCONIN: Really?

20 FATHER EMMANUEL: It's something that's unique  
21 --

22 MR. ELCONIN: You don't have any fancy  
23 computers out there you're putting all this data into -  
24 -



1 FATHER EMMANUEL: No.

2 MR. ELCONIN: -- or consultants --

3 FATHER EMMANUEL: No.

4 MR. ELCONIN: -- that you're leaning on?

5 You're not -- you're not out there crunching the  
6 numbers every day and getting your read outs?

7 FATHER EMMANUEL: No.

8 MR. ELCONIN: You're just doing it the old  
9 fashioned way?

10 FATHER EMMANUEL: Yeah, yeah. I don't have a  
11 Bloomberg terminal. I had a pretty dysfunctional  
12 computer up until recently. And it's pretty old  
13 school, to tell you the truth. I mean I love  
14 technology as much as anyone else, and it has an  
15 important role to play. I don't want to downplay it.  
16 But it just -- it's just not going to turn out the way  
17 -- you know, I think really good investment decisions,  
18 they come to us in, you know, in the silence. And  
19 that's where we really -- we get onto something that  
20 might -- other people might be overlooking. And you  
21 know, a moment of you know, quiet reflection after  
22 absorbing a lot of information.

23 MR. ELCONIN: Okay. With such spectacular  
24 gains over the last two years, have you been getting

1 more assets to manage?

2 FATHER EMMANUEL: Oh, sure. Our asset  
3 management have grown about seven fold in the last  
4 twenty-four months. And we have just an enormous  
5 amount of interest in the thought that -- I'm sure  
6 that, you know, more than a hundred investors have  
7 expressed interest recently. And it looks like, you  
8 know, in the next twenty-four months perhaps we could  
9 get to four or five hundred million or something like  
10 that.

11 So, I mean the fund started very, very small,  
12 only about \$2.7 million --

13 MR. ELCONIN: Really?

14 FATHER EMMANUEL: -- of what we lost --

15 MR. ELCONIN: Wow.

16 FATHER EMMANUEL: -- it's really grown very  
17 quickly. Sure.

18 MR. ELCONIN: Did you start with any of your  
19 own money?

20 FATHER EMMANUEL: Well, I personally don't own  
21 anything. You know? I have a pretty simple life. I  
22 don't own a car or anything like that or --

23 MR. ELCONIN: You don't own a car?

24 FATHER EMMANUEL: Very basic material

1 possessions, but the Lemelson family, you know, I've  
2 done my best to actively try to get them involved.  
3 They do constitute a fairly large percentage of the  
4 fund.

5 MR. ELCONIN: Okay. Are you --

6 FATHER EMMANUEL: Their interest should be  
7 aligned. I think its hugely important. When I heard a  
8 fund manager has a very small stake in a fund, I -- I  
9 wonder why that is often times. I wonder if that's  
10 because the strategy of other people's money is  
11 differently with your own or the people you love. But  
12 the Lemelson family accounts for about, you know,  
13 thirty-nine percent of the fund or something like that  
14 -- a very large percentage.

15 MR. ELCONIN: Hmm, that's interesting. Are  
16 you afraid that, you know, you're getting these new  
17 clients that are coming in that their expectations may  
18 be based too high in your last two years of  
19 performance?

20 FATHER EMMANUEL: Absolutely. It's on my mind  
21 all the time. And every opportunity I get to speak  
22 with investors or read anything, I'm constantly  
23 reminding them that it's not possible to not have down  
24 quarters or even down years. Maybe if you were a

1 trader somehow you could escape that. But if you're  
2 really an investor, you can get a pretty good  
3 approximate sense of the value of an asset. But you  
4 know, you never know when the market's going to agree  
5 on timing. So, you -- if anything, I mean, a lot of  
6 these ideas wind up being, you know, every day investor  
7 is, I believe is going to have a eureka moment, and the  
8 next day, the market's going to figure it out after he  
9 places his commitment. But usually it takes much  
10 longer for the market to come around to any form of  
11 agreement on that. So, it's just not possible to have  
12 up quarters and up years every year.

13 I do worry a great deal. You know, I tell my  
14 investors all the time. "Look guys, don't -- don't  
15 expect these returns in the future." And jokingly they  
16 say, "Well Father, you know, we do expect them," but --  
17 so, there's certainly a risk there, absolutely.

18 MR. ELCONIN: Okay. So, you've had a pretty -  
19 - pretty benign market over the last -- well, you  
20 started your fund in 2010, correct, or 2012?

21 FATHER EMMANUEL: well, no -

22 MR. ELCONIN: 2012?

23 FATHER EMMANUEL: -- I started managing money  
24 in 2010.

1 MR. ELCONIN: Oh, okay.

2 FATHER EMMANUEL: And I did not -- it's purely  
3 on a -- really a volunteer basis. I mean for almost  
4 three years I managed money informally. I was offered  
5 pay, and I didn't accept that. And I wrote mostly for  
6 articles. I mean (indiscernible) to publish articles  
7 that were in some way didacted. And those things  
8 really spread and took on a little bit further reach  
9 than I thought they would have. And I really --  
10 investors really -- in 2012, it was really start a fund  
11 -- and we wanted to start this fund, and eventually  
12 acquiesced in September 2012.

13 MR. ELCONIN: Okay. Do you think that you'll  
14 be able to produce, you know, bang up returns like DIF  
15 if we go into a full fledge bare market?

16 FATHER EMMANUEL: Well, that's really a great  
17 question, Joel. And you know, in our annual report we  
18 point out constantly that the (indiscernible) has only  
19 existed in the -- in the rising market, and that's  
20 noteworthy actual track record which I never looked at.

21 But we're going into our third year now. So,  
22 we can't really say it's totally a new fund. And then  
23 you know, a lot of our gains really have been from  
24 short sales in a rising market. So, --

1 MR. ELCONIN: That's amazing. That's amazing.

2 FATHER EMMANUEL: So, I mean if you -- you  
3 know, getting smart gains on short sales in a declining  
4 market, you'd say this is really following, you know,  
5 the indexes or something like that. But when you're  
6 getting large gains from short sales in a rising  
7 market, maybe there's some ability there. I mean it  
8 might not just be, you know, coincidence or something  
9 like that. If there is such a thing as coincidence.

10 MR. ELCONIN: Okay. So, let's get to some of  
11 your holdings here. Let's start with WWE. I did that  
12 article a few weeks ago. And believe me, I know how  
13 hard it is to get on one side of a winning trade, but  
14 to get on both sides of a trade, that's a whole other  
15 story. You picked a short position in this thing based  
16 on your metrics. The bottom fell out, and I mean you  
17 talk about market timing, I mean you turned around on  
18 the day that it made the exact low, you reversed your  
19 position, which is very, very difficult to do, from a  
20 short to a long, and now you're riding the long up here  
21 and back over \$15. How are you feeling about that  
22 position now on the long side?

23 FATHER EMMANUEL: You know, glory be to God,  
24 as I always say. You know, I mean -- we ask our -- our

1 work would be blessed. And that morning when WWE  
2 tanked, it's interesting -- 'cause when you're -- when  
3 you're selling short, I think you tend to maybe be a  
4 little bit more careful in analyzing companies. We  
5 were scrutinizing 'cause short sellers have unlimited  
6 liability, unlike long. And I think, you know, people  
7 -- as unpopular as short sellers are, they're usually  
8 providing analysis -- it's a little bit more thorough  
9 than the long. So, you're really getting to know a  
10 company when you're shorting them.

11           And when you're looking at at the WWE  
12 franchise, you see a great business there for a very  
13 long time. I mean I can certainly remember as a young  
14 man, the years when we were living in the U.S. having a  
15 real affinity for Hulk Hogan, and Andre the Giant,  
16 benevolent role models almost. And it's been around  
17 for a very long time, the business. And you look and  
18 you say well, this is not going to go anywhere, 'cause  
19 there's no replacement, there's no real competitors.  
20 You go into a Toys-R-Us or something and you see an  
21 entire aisle dedicated to, you know, WWE branded  
22 products.

23           And you know, but at any price. I mean at 31  
24 it didn't makes sense. But once you get to know the

1 business and -- you see what they're doing. You know,  
2 when we were in that \$10 range we said really it was  
3 going to be in that range. And we said between -- I  
4 think we said between actually \$9, \$11 a share. We  
5 looked at it that morning, and we just -- we took a  
6 long position. We said, you know, this is what we said  
7 it was worth at the time. And if there were to be any  
8 changes in the model, then you know, this price -- this  
9 stock price would appreciate. And we did make changes  
10 and we called for changes. They didn't make exactly  
11 the changes we wanted, but they did cut their stock  
12 price seven percent. We get F & L Cagen (phonetic),  
13 the media outlet, that we didn't think they'd make  
14 their OTT subscriber numbers. But that didn't mean it  
15 just didn't have value. And sure enough, you know,  
16 only a few months later they were saying they were  
17 going to need more time, they were going to need more  
18 subscribers to break even. Of course the original  
19 short piece has also pointed that out. That, you know,  
20 they probably were not going to meet their OTT  
21 subscriber numbers.

22 But I think this is a perfect example of the  
23 market overreacting on both sides.

24 MR. ELCONIN: Do you remember -- do you



1 remember Dick the Bruiser?

2 FATHER EMMANUEL: No, I don't, sorry.

3 MR. ELCONIN: Yeah, that was -- he was a local  
4 favorite. Or The Sheik -- how about The Sheik?

5 FATHER EMMANUEL: Yeah, actually I do remember  
6 him, actually yes. He would come out with his -- all  
7 his garb on, sure.

8 MR. ELCONIN: All right. Let's talk about a  
9 couple other of your holdings here. You've been  
10 nailing on the short side here: Ligand Pharmaceutical.  
11 You're sticking with your short thesis on this issue?

12 FATHER EMMANUEL: Yes. I believe they're  
13 trading around fifty now. So, they're still down about  
14 thirty percent from when we first (indiscernible).  
15 It's just been a couple of months. I think there's  
16 more downside there for sure. I don't know. I mean  
17 maybe in a raging bull market and you have this sort of  
18 sub bubble and (indiscernible) you know, as Candy Owens  
19 quickly pointed out, you know, just a few weeks after  
20 we -- we released our comments. But that's something  
21 that will change. I think -- I think the party's  
22 already over, and people don't know it yet. I mean  
23 they may not have pooled out a lot of money, but  
24 certainly Ligand's (indiscernible) share would be the

1 (indiscernible) stock. And you know, markets when  
2 they're at their best, I mean they're really a  
3 mechanism to gather capital around enterprises that  
4 will be good for our economy and really the advancement  
5 of our society. But at their worst, they become a  
6 wealth of transfer mechanism. So, when you see an  
7 example like Ligand, it's hard not to see it that way.  
8 You really see sort of early investors, part of a hype  
9 machine. You know, they're in there, they're building  
10 this price up, they're driving, transferring their  
11 shares really, to correct less sophisticated investors.

12           And you see it -- again, when the markets are  
13 not working the way they should be at their worst,  
14 that's what's going on. And executive competition of  
15 course, reflects the success of that activity. I mean  
16 there's \$7 million in that earnings or something like  
17 that in the last twelve months, (indiscernible) thing,  
18 so you know, fifty percent of that amount. You have to  
19 wonder, is he really -- is he really thinking clearly  
20 about -- did he share responsibilities with  
21 shareholders and why are these (indiscernible - audio  
22 cuts) going out? They know, usually, a lot more than  
23 your average Joe at home with a, you know, Scottrade  
24 trade account.

1           MR. ELCONIN: Okay. And you've got a couple  
2 of longs here. Kulicke and Soffa Industries. This one  
3 is part of your long portfolio. How's that working --  
4 how's that working out for you?

5           FATHER EMMANUEL: Well, it's just been great.  
6 You know, Kulicke and Soffa is a fantastic company. We  
7 wrote a letter to the CEO of you know, Gilmark back in  
8 April, (indiscernible) share repurchase program; we  
9 took a very large stake in the company. We released  
10 that letter publicly; the shares appreciated about ten  
11 percent within a few minutes.

12           And just recently, I believe it was August  
13 27<sup>th</sup>, after that exchange, the company announced they  
14 would, in fact, be initiating share repurchase program,  
15 which is what we've called for. We called for a little  
16 bit of a larger share repurchase being off the \$100  
17 million. But you know, you'd be hard pressed to find a  
18 company with more potential and more value than Kulicke  
19 and Soffa. The management team has done a great job  
20 operationally. They've really turned the company  
21 around. They have a very bright future in  
22 (indiscernible) packing technology. It seems very  
23 clear they're going to be a leader in that area.  
24 Sitting on an enormous amount of cash. You know,

1 there's probably few places that you could put your  
2 money that it would be safer and have greater potential  
3 than kulicke and soffa. That's --

4 MR. ELCONIN: Wow.

5 FATHER EMMANUEL: That's (indiscernible -  
6 audio cuts) a long time for us.

7 MR. ELCONIN: That's pretty -- pretty strong  
8 words there. Okay. Boy, now I'm dying to ask you  
9 about Apple. I know you also have a holding in that.  
10 Holy mackerel.

11 FATHER EMMANUEL: Yeah.

12 MR. ELCONIN: Do you watch quotes intraday or  
13 do you just - do you just like pull things up at the  
14 end of the day? How -- how -- before we go to Apple,  
15 how closely do you watch the markets intraday?

16 FATHER EMMANUEL: Well, you know, not too  
17 closely to tell you the truth. You know, I mean  
18 there's a big difference between trading and investing.  
19 And there's a big difference between, you know,  
20 investing and speculation. Price movements in small  
21 segments of time are not too productive most of the  
22 time. And the Apple commitment, it was a very large  
23 commitment for us. We made it between March and July  
24 of last year, 2013, but Apple's trading like \$400 a

1 share. I mean you couldn't find any positive news on  
2 the company. I mean if you were reading the news, you  
3 would think that everyone would be owning a Galaxy  
4 phone and nobody was on an Apple phone within twelve  
5 months time, and we didn't agree with that at all.

6           So, we have a fairly large commitment in  
7 Apple, something -- \$20 million dollars or something  
8 like that. And we bought it very, very aggressively.  
9 With dividends, we've returned something like seventy  
10 percent of that in a little over a year, which is  
11 unusual. I mean you're talking about owning the  
12 world's largest company by market cap. And you would  
13 think with the coverage its had on the (indiscernible)  
14 the market at large, you know, amateur analysts, how  
15 could you have such a huge error in price value --  
16 disparity between the price and value. But it just  
17 goes to show you the markets can be very inefficient.  
18 But Apple is an extraordinary company. I mean it's  
19 just -- it would be hard for us to find something  
20 that's better run. Just look at -- look at the sales  
21 figures. I mean four million phones in their first day  
22 of their pre-orders. I wouldn't be surprised if their  
23 first weekend was twelve million units sold of the  
24 Iphone 6 plus. You know, you're talking about doubling

1 that (indiscernible) the first weekend, so -- for pre-  
2 orders. It's (indiscernible - audio cuts) with the  
3 business. It's more diversified than people think.  
4 It's more of a service business than people think.

5           You know, Google's been very popular, but you  
6 look at the underlying businesses, and I would say  
7 Google's a more concentrated business. With declining  
8 market and so forth, and (indiscernible) is far greater  
9 than those of Apple. So, I don't think its overvalued  
10 at its current price at all.

11           MR. ELCONIN: No? No? What was shot is  
12 (indiscernible) wants to see if Apple stock still has  
13 your blessing here at the hundred dollar level.

14           FATHER EMMANUEL: Absolutely. I mean they've  
15 got, I think, sixty billion in their share repurchase  
16 base, a very healthy dividend. I mean of course we're  
17 -- we're collecting a larger dividend than people who  
18 are buying at 100, because we were buying it around  
19 400.

20           MR. ELCONIN: Correct. Wow.

21           FATHER EMMANUEL: We're at the equivalent of  
22 700 now, right, I mean before the split. But -- you  
23 know, those (indiscernible) are meaningful. A share  
24 buy back is meaningful. It's just -- like any

1 technology company, they track through all the  
2 speculation. And who knows what sort of things are  
3 going on and people trying to get in and out of stock  
4 on an intraday basis, but (indiscernible) in price, you  
5 know, four or five percent in a week or something. But  
6 over the long run, it looks awfully safe. And I  
7 suspect if the market's going to pull back, Apple would  
8 look even safer to most people. When you take cash  
9 into account, I mean it's (indiscernible - audio cuts)  
10 especially going forward, really, really, conservative.  
11 I don't know where you can find that sort of entity and  
12 trading at that price.

13 MR. ELCONIN: You going to buy an I watch?

14 FATHER EMMANUEL: Oh, yes. Oh, yeah. It's --  
15 I'm very interested in that, certainly. We have a lot  
16 of Apple products in our home, and --

17 MR. ELCONIN: Oh, really? Okay.

18 FATHER EMMANUEL: Sure, sure.

19 MR. ELCONIN: All right Father Emmanuel. Any  
20 final tips for our investors here? You play both sides  
21 of the markets. We've pulled off the all-time high  
22 just -- any final words of advice for traders and  
23 investors?

24 FATHER EMMANUEL: Well, be conservative. It's

1 a marathon; not a sprint. You know, nobody ever  
2 regrets being too conservative, but lots of people  
3 regret taking on excess risk. And you know, think  
4 about the power of timing over the long run. You don't  
5 have to have a huge amount of capital, and you don't  
6 have to have off the charts returns to do very well.  
7 You know, slow and steady wins the race, that sort of  
8 Aesop's fable wisdom, if you will. And really, you  
9 know, try to do your own work and think for yourself.  
10 There's a lot of noise out there that will lead you  
11 down (indiscernible - audio cuts) sale. But the path  
12 to success is pretty narrow, actually. It requires a  
13 lot of focus and hard work. Nothing comes easy. I  
14 mean if you find yourself inclined to trying to get  
15 rich quick in the stock market, you probably will be  
16 better off finding a good value manager and having  
17 (indiscernible) to that. So, knowing yourself and  
18 being honest with yourself is huge. There's not that  
19 many people who can operate in the market without an  
20 inclination to speculation. And that doesn't usually  
21 work out very well in the long run. So, there's got to  
22 be sort of (indiscernible) I think.

23 MR. ELCONIN: Okay. Father Emmanuel Lemelson,  
24 founder and president of Lantern Foundation, and Chief



1 Investment Officer of Lemelson Capital Management, one  
2 of the top rated hedge fund manager in the world. So  
3 glad to have you on the show. We love your insights  
4 into your individual issues as your wisdom in the  
5 markets and just life in general. Really enjoy having  
6 you on, and I'm sure we're going to get you on again  
7 soon.

8 FATHER EMMANUEL: Thank you, so much Joel. I  
9 really enjoyed being on your show. I'm humbled and  
10 grateful as always for the invitation. And your site's  
11 just done a phenomenal job. I mean the service you're  
12 providing to investors really happy to be a part of it.  
13 So, thank you.

14 MR. ELCONIN: Okay. No, thank you. We'll  
15 talk to you again soon.

16 FATHER EMMANUEL: All right. Take care. Bye-  
17 bye.

18

19 (End of audio.)

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## **Respondent Exhibit 12**

**In the Matter of:**

*SEC vs*

*Lemelson, et al*

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*Emmanuel Lemelson*

*October 16, 2014*

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VIDEO OF:  
PREMARKET INTERVIEW WITH BENZINGA

SPEAKER: JOEL ELCONIN  
GUEST: EMMANUEL LEMELSON

DATE: OCTOBER 16, 2014

RE: SEC V. LEMELSON, ET AL  
CASE NO.: 1:18-CV-11926

MARY INDOMENICO, ACT, CET  
Official Court Transcriber

1 MR. ELCONIN: Welcome back traders and  
2 investors. We have Reverend Emmanuel Lemelson on the  
3 line. He's the founder and president of Lantern  
4 Foundation and the Chief Investment Officer of Lemelson  
5 Capital Management. He also happens to be rated by  
6 Barclay's Hedge Reports, just one of the top hedge fund  
7 managers in the world.

8 How are you doing today, Reverend?

9 FATHER EMMANUEL: I'm good. Thank you, Joel,  
10 how are you?

11 MR. ELCONIN: Doing good here. Boy, we can --  
12 we'll get to the overall markets here in a minute. But  
13 just want to talk about some of your current positions  
14 in the market. And how you have -- how you're letting  
15 the recent sell off affect your -- your positions?

16 I guess, first start with your big -- your  
17 short position in Ligand Pharmaceuticals. I know the  
18 company has come out with, you know, some statements  
19 trying to be a little bit positive. But I know you  
20 were talking to Brent the other day. And it didn't  
21 seem like you were really buying what they had to sell.

22 FATHER EMMANUEL: Yeah, that's -- that's  
23 basically true.

24 I mean we're still short Ligand. And I think

1 the pre-announcement has become part of a pattern of  
2 reporting non gap earnings.

3           There's a place for non gap earnings, but I  
4 don't think that place is Ligand. If you read this  
5 company's annual reports and if you dig into what  
6 Ligand using these measures, in this most recent  
7 earnings synopsis -- pre-earnings synopsis, it's really  
8 again just sort of cloak the stock option awards to  
9 management. And secondly, it's the cloak with  
10 extremely expensive bond offering with about eighteen-  
11 and-a-half percent, the cost of their debt.

12           And so I think anyone interested prospectively  
13 in investing in Ligand, should probably take a close  
14 look at what real EPS would be, gap EPS. Because those  
15 would be the earnings belonging to the owners -- the  
16 shareholders. And that's extremely finite then. It's  
17 immaterial, actually. So, the suggestion that these  
18 non gap EPS shareholders are never going to see that  
19 money, and I think that's important to understand if  
20 you're a Ligand shareholder.

21           MR. ELCONIN: Do you think that this is, you  
22 know, something that's specific to this company? Or,  
23 do you think that they're, you know, other companies  
24 that you're doing research on, you know, that follow

1 this pattern of reporting as well, in you know,  
2 disbursements of earnings?

3 FATHER EMMANUEL: No, it's not unique. I mean  
4 Berkshire (indiscernible) for example, use non gap  
5 earnings all the time for very good reasons. The way  
6 they look at the value of their company and how it  
7 generates cash flow and increase in book value, they're  
8 identifying accounting pronouncements and gap fit are  
9 not really relevant to the way that company's  
10 functioning. They're not trying to cover over anything  
11 like stock option awards or real cost to the debt.

12 So, there's a spectrum of companies out there  
13 in the way they report, and not all management teams  
14 are equal. So, you know, you have to look at each  
15 company and each management team uniquely and ask  
16 yourself, "what's the quality of this leadership team?"  
17 And "why would they be using non gap measures versus  
18 gap?"

19 MR. ELCONIN: Okay.

20 FATHER EMMANUEL: Okay.

21 MR. ELCONIN: Yeah, no that's - that explains  
22 it. All right. So, let's -- let's move on to some of  
23 your current positions here.

24 You've been riding out the Apple wave here.

1 And the stock has made --

2 FATHER EMMANUEL: Yeah.

3 MR. ELCONIN: -- new all-time highs. And I'm  
4 sure you like Carl Icahn's prediction that its going to  
5 200. Interestingly, the street thought a little bit  
6 different. I actually noticed when he was on -- on  
7 CNBC last week, that the stock actually sold off during  
8 it.

9 FATHER EMMANUEL: Yeah.

10 MR. ELCONIN: But you know, you hung around  
11 that all-time high for a long time. The \$100 level  
12 really equates nicely with the former all-time high at  
13 705.

14 FATHER EMMANUEL: Sure.

15 MR. ELCONIN: And then you know, it's just --  
16 finally it was holding up there, holding up there, it  
17 was ignoring the market. Then the last couple of --  
18 you know, yesterday really, you know, the bottom fell  
19 out.

20 FATHER EMMANUEL: Yeah.

21 MR. ELCONIN: Are you looking -- I mean you  
22 getting a little nervous here? Are you trying to sell  
23 some calls, buying some downside puts, or --

24 FATHER EMMANUEL: No. Not at --



1 MR. ELCONIN: -- adding to your position here?

2 FATHER EMMANUEL: -- not at all, Joel. You  
3 know, I wish we could add to our position. I mean I'm  
4 basically looking under the couch pillows for spare  
5 change to buy more stock to tell you the truth.

6 Carl Ichan is a very smart man, and I had no  
7 idea of course -- nobody knew he'd write this letter  
8 and publish it. Maybe its slightly aggressive on a  
9 (indiscernible) target, but talking about Apple at \$100  
10 a share is not the same as it was two years ago,  
11 because there's fewer shares outstanding, revenues have  
12 increased, and it appears profits are certainly going  
13 to increase in the near future. I don't know a company  
14 that could offer more than what -- you know, what Apple  
15 has offered its shareholders and its owners recently.  
16 I mean there's tremendous demand for the product, and  
17 they're growing every -- every business just about,  
18 except for the ones that I think they (indiscernible) -  
19 - and the iPod business has actually gone away; it's  
20 immaterial.

21 But you know, (indiscernible) very, very  
22 cheap, and Apple is going to be fairly safe. I think  
23 this fall off is very temporary. Even if Carl Icahn  
24 was wrong -- and he's a very smart man and he has a lot

1 of experience -- but if he was wrong, let's say Apple  
2 was only worth \$150 a share and not \$200, you always  
3 have a fifty percent upside. And that's probably going  
4 to materialize in the next year or two, I would  
5 imagine.

6 MR. ELCONIN: Wow. So, you don't -- so you  
7 don't have -- you don't have any --

8 FATHER EMMANUEL: I think it's -- it's hard to  
9 say -- with Carl Icahn to say you know, how far off --  
10 how far off -- how far apart could he be  
11 (indiscernible). I don't think he'd put his reputation  
12 on the line. But you know, that has nothing to do with  
13 our opinion with Apple. Our opinion with Apple is  
14 formed with our own research and ideas and take the  
15 position, you know, it's kind of holding for a long  
16 time.

17 MR. ELCONIN: So, you -- you don't have any  
18 sell orders out there at all? And you really seem to  
19 be --

20 FATHER EMMANUEL: No.

21 MR. ELCONIN: No? No? And unshaken by it.  
22 Okay. All right. Good extreme confidence. Okay.

23 Another one of your holdings -- and I love the  
24 way you played this one from both the long side and the

1 short side. WWE here -- had a -- I believe it got up  
2 near the \$15 -- oh, excuse me, it got up near \$16, I  
3 believe last time we were on the show. It kind of  
4 pulled back with the market, holding the \$14 level  
5 here. Looks like it's trying to build a nice base here  
6 to rally back up. Any -- any thoughts on WWE?

7 FATHER EMMANUEL: Well, we're still long with  
8 that. Again, it's a great business, virtual monopoly.  
9 Their undergoing, you know, a bit of a turnaround  
10 there. And I think that will take a little time, but I  
11 do think they'll reemerge and I think that franchise  
12 will be around for a very long time.

13 So, the fact -- we don't like to sell things.  
14 WWE is a lot more fairly priced now than it was before.  
15 Its not the same deal it was at \$10 or \$11 a share.  
16 But if you look into the future, down the road four or  
17 five years, even these price movements of \$2 or \$3 a  
18 share in the case of WWE, they may seem large today,  
19 but they're not going to seem large down the road. And  
20 the same is true with Apple, actually. You know, the  
21 longer your term, your horizon is, the more you're  
22 projecting into the future, the less these short term  
23 price movements really have any effect at all. I mean  
24 again, they may seem large today, but enough years down

1 the road, they're going to be completely immaterial.

2 MR. ELCONIN: Okay. And the other one that  
3 I'm looking at here -- Kulicke and Soffa or Soffa  
4 there, that stock's had a little bit of problems here,  
5 dipped back down to the \$12 level, but now seem to be  
6 recovering. You're still sticking with your thesis on  
7 that one?

8 FATHER EMMANUEL: Oh, absolutely. I mean if  
9 you have to mortgage your grandmother's house to buy  
10 those shares, do it is my thought.

11 MR. ELCONIN: Oh, what?

12 FATHER EMMANUEL: You know, if you're talking  
13 about -- you know (indiscernible) value \$300 million,  
14 something like \$700 million cash, they can buy back  
15 over fifty percent of their shares at that price,  
16 approximately. You know, there's -- there's nothing  
17 wrong with that business at all. But that shows really  
18 the power of fear in the markets. And you know, a CO  
19 of another ship manufacturing concern made a comment  
20 about a slow down in semi conductors is very volatile.  
21 But once (indiscernible - audio skips) volatility with  
22 -- in terms of value of the company and its underlying  
23 business, which is very sound in the case of Kulicke  
24 and Soffa.

1           So, there's really almost no risk there. And  
2 you probably noticed as the market sold off their  
3 share, Kulicke and Soffa is actually up and it's not  
4 really surprising. It's really undervalued at that  
5 price. Any company that has, you know, almost seventy  
6 percent of its share price in cash, and is aggressively  
7 buying back its own shares, you're going to be very  
8 safe. And of course the key to wise investment policy,  
9 Joel, as you know is -- it's just always thinking about  
10 protecting the -- your principle. It's not wondering  
11 what price its going to be tomorrow. It's really  
12 entirely defensive all the time. So, it's very, very  
13 defensive stock I think, Kulicke and Soffa.

14           MR. ELCONIN: Okay. This one I don't think we  
15 talked about before. And American Eagle Outfitters  
16 stock has had a nice run. You know, give us your  
17 thoughts on that. How long you've been active in it?  
18 These teen retailers are just so up and down. Do you  
19 think this has maybe some take out value in it, or  
20 what's your -- what's your thesis on American Eagle  
21 Outfitters?

22           FATHER EMMANUEL: well, actually, I think in  
23 with our first interview (indiscernible), I think you  
24 had asked for some advice on different sectors. And I

1 think I might have mentioned that speciality retail at  
2 the time.

3           You know, American Eagle really came down with  
4 the whole sector. And there are some retailers who are  
5 going to be in trouble like American -- excuse me,  
6 Aeropostale era. Those are special situations. Very  
7 risky, hard to know what's going to happen. And the  
8 underlying thesis there is that mall traffic is  
9 declining because online purchase is going up. And  
10 that's true; I mean that's a secular change. But it's  
11 not actually going to happen overnight, and it doesn't  
12 mean companies like American Eagle won't be able to  
13 participate more in internet sales. But that company I  
14 think with a (indiscernible) that really has serious  
15 problems like ARO.

16           And if you look to what AEO was, it was still  
17 (indiscernible) much better capital (indiscernible), so  
18 we bought aggressively last fall. And (indiscernible)  
19 purchase price was in the 11's and their stock is very  
20 low. I mean we bought them really through I think  
21 either May or June of 2014 when it hit lows. And then  
22 you know, you didn't have to have a crystal ball to  
23 realize that people are going to go back to school and  
24 go shopping and so forth. You know, the price

1 appreciated tremendously; I think August was up  
2 thirty-nine percent. So, we still have a long position  
3 in that company, not a very large one. I mean it's  
4 really much closer to fairly priced now. Specialty  
5 retail is not for all investors; it's very risky, very  
6 volatile.

7 MR. ELCONIN: So --

8 FATHER EMMANUEL: I think competition's  
9 fierce. But that was a situation where the value was  
10 clearly rated on the price when we were buying it.

11 MR. ELCONIN: So, you -- are you -- have been  
12 pairing your position or you're still maintaining it?

13 FATHER EMMANUEL: We have a small position in  
14 the company still, but we took a --

15 MR. ELCONIN: Okay.

16 FATHER EMMANUEL: -- significant -- we took a  
17 significant profit on it.

18 MR. ELCONIN: That's -- you never go broke  
19 taking a profit. Okay. All right. Let's -- let's --  
20 let's just talk about the overall market here. Holy  
21 smokes. We've come almost two hundred points off the  
22 all-time high. A lot of fear in the market. You know,  
23 whether its justified or not, we'll have to see.

24 Are you shaken by this at all? This pull back

1 that we have? I mean -- I guess you can look at it one  
2 perspective that that hey, you know, here's a great  
3 opportunity, we pull back two hundred points off all-  
4 time highs. You know, if you're looking at things from  
5 the other perspective is, you know, we're still way off  
6 the lows, the moves and stuff and could -- still see  
7 some considerable downside before we turn around.

8 How -- how are you approaching this recent  
9 sell off in the market?

10 FATHER EMMANUEL: Sure. Well, it's not  
11 totally unexpected. I mean in our Q1 letter that we  
12 sent to our investors, we talked about the levels of  
13 margin debt in the market. And I think we may have  
14 talked about this as well in one of your prior shows.  
15 But interface has been very well and people borrow  
16 money in the market to buy stocks, and this can drive  
17 the prices higher. There's also, you know, this  
18 increase in the money supply which leads to inflation.  
19 And that -- you know common stocks are assets,  
20 inflation value.

21 So, the markets are expensive, and they've  
22 gone up pretty steadily for five years. I mean it's  
23 just been a stubborn march higher. So, let's go back -  
24 - I mean it's really a good thing; I mean its healthy,



1 actually. People have to remember markets can go down.

2

3 In the case of the (indiscernible - audio  
4 skips), it really worked out extremely well. I mean  
5 it's just unbelievable what -- we did extremely well on  
6 our longs, believe it or not.

7 First we -- we had some, you know, huge  
8 profits on our short side. We went into this crash  
9 with a -- a very greatly enlarged circle, all of those  
10 did well across the board. We took a huge amount of  
11 profits, reinvested them, and some issues, that frankly  
12 we couldn't believe the price. I mean it just -- there  
13 were some companies you could buy most tangible assets,  
14 and we were getting productive companies that were  
15 profitable for their entire life basically for free.  
16 That happened in a very short period of time. So, this  
17 volatility which really served us very well.

18 Yesterday, for example, when the market was  
19 down 406, we were up dramatically on our loss, mind  
20 you. So, you know, it's worked out well for us. You  
21 know, we were down a little bit in September overall.  
22 But in effect, we're going to have a great fourth  
23 quarter. So --

24 MR. ELCONIN: Okay. So, standing in the face

1 of fear, Reverend Emmanuel Lemelson is looking at this  
2 market, looking for bargains based on his models and  
3 sticking to them and doing well for you. As we could  
4 tell by your returns, being one of the top hedge fund  
5 managers.

6 Just final words of advice for investors in  
7 this volatile market, and you know, different --  
8 different things going on besides, you know, the actual  
9 earnings, the numbers with the Ebola, what final advice  
10 do you have for our listeners?

11 FATHER EMMANUEL: Well, you know, first it's  
12 important not to be overcome by fear. Fear is really  
13 the enemy. And try to think long term. The longer you  
14 can live in the future, the less likely you are to be  
15 affected by these forces in the interim, which will  
16 lead you to emotional states of mind, fear or greed. If  
17 you have CNBC, turn it off; it won't help.

18 And then in terms of Ebola, I mean first and  
19 foremost, it's not an economic event; it's a human  
20 event. And we have to pray for all those people who  
21 are sick, suffering, and afflicted, which are many  
22 thousands of people. I mean I read an article that  
23 said there were assisting 10,000 cases a week. These  
24 people are the work of God's hands. And we all have to

1 pray for them, because the Lord hears the prayers of  
2 everybody. And we have to pray also for their care  
3 givers who put their own safety on the line to try to  
4 save these people.

5 But I don't think the outbreak will spread in  
6 the U.S. as it has in West Africa, because the U.S. is  
7 very organized and has a very robust medical system,  
8 probably one of the best in the world.

9 So, we should keep it in perspective. And  
10 maybe it's also a reminder to us, and particularly in  
11 the financial world that, you know, life is short, and  
12 we should value life a great deal. And not to get too  
13 caught up in the day to day things. You know, it might  
14 seem very important in your term, but in the greater  
15 scheme of things, aren't really that important. I mean  
16 outlook and so forth and financial markets. So, Ebola,  
17 if anything, should be a reminder of that. I hope that  
18 answers the question.

19 MR. ELCONIN: It surely does and it answers it  
20 very well, putting things in a proper perspective.

21 Reverend Emmanuel Lemelson, founder and  
22 president of Lantern Foundation, and chief investment  
23 officer of Lemelson Capital Management.

24 where else can you hear the top rated hedge

1 fund manager in the world?

2 Thanks for coming on. Thanks for being a big  
3 supporting of Benzinga. Love having you on the show  
4 Reverend. We'll talk to you again soon.

5 FATHER EMMANUEL: Nice being with you, Joel.  
6 Again, thank you for the invitation. It's always a  
7 pleasure being on your show. Take care.

8

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10 (End of recording.)

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## **Respondent Exhibit 13**

Notes – June 18<sup>th</sup>, 2014

Received two calls from Bruce Voss at – PR firm for LGND. Called Bruce back at approx... 1 p.m. on Tuesday June 18<sup>th</sup>, 2014.

He introduced himself as the company's PR firm for the last seven years and said John Higgins brought him over from the last firm that was sold.

He asked me if I was a priest and said he had done some background checks on me... and that it was the first time he had spoken with a priest on wall street.

Explained to him that there is a balance between not wanting to say something negative about a company, protecting shareholders.

He asked about the WWE short, and what our intentions were with LGND, and if we had published or given the report to anyone else other than SeekingAlpha. Responded simply that the anyone would hope there investment reports were read, and that that is why it was published on SeekingAlpha. In hindsight he seemed very concerned about the parallel to WWE.

He asked if we had spoken to anyone who worked in countries where the new Hep C medications perhaps would not be used (perhaps b/c of the expense).

I pointed out that much of the response to the report appeared to be directed by the company, but he said the company has not made a response and has no control of what others write. I pointed out the updated Roth capital report, and he said something about that being "Joseph", but I told him that was not the name of the analysts at Roth.

Got the feeling immediately that he was not only fishing for information, but also trying to figure out if they could get me to change my position.

Also felt he was quite disingenuous, and trying to get me to believe there was material, non-public information that would prove I was wrong.

He had a list of questions he wanted to ask on the phone, realized through the conversation he was taking notes of the answers.

He asked about AUM, long vs. short in the fund, etc. etc. – told him none of that info. was available.

He kept trying to press what we were going to do with the information that might come out of the CC.

I asked him if the sole purpose of his call was simply vet if the 4 p.m. call made sense... he said that was the purpose of the call, but was continually surprised that he was taking notes.

He seemed to want to continue to extrapolate information out...

He said that the only way a company could be worth zero if there was fraud or not pipeline, I pointed out that the outstanding risks were greater than any possible measurable benefit.

EXHIBIT

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18-cv-11926-PBS



## **Respondent Exhibit 14**

1 (Friday, October 29, (Friday, October 29, 2021, SEC v. Gregory  
2 Lemelson, jury trial day 4, Debra Joyce

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16 SHALL BE DESTROYED.

17 (Start at 9:08 a.m.)

18 THE CLERK: All rise.

19 THE COURT: Good morning. The first witness is he --

09:08 20 MR. JONES: The first witness is here, it's John  
21 Higgins, the CEO of Amvona.

22 THE COURT: Good.

23 (Jury entered the courtroom.)

24 THE COURT: Good morning to everyone. Anybody see  
25 anything in the press, speak about the case, do any independent

1 research?

2 I find the jury has complied. It's a little warm in  
3 here, but Mary Ellen is trying to get that rectified. So --

4 Okay. Mr. Higgins. You may be seated. Let's getting  
5 about.

6 MR. JONES: Your Honor, for the record, the Commission  
7 calls John Higgins.

8 JOHN HIGGINS, having been duly sworn by the Clerk, was  
9 examined and testified as follows:

09:09 10 THE CLERK: Could you please state and spell your name  
11 for the record.

12 THE WITNESS: John Higgins.

13 THE CLERK: You can be seated.

14 THE COURT: Thank you.

15 DIRECT EXAMINATION

16 BY MR. JONES:

17 Q. Good morning, Mr. Higgins.

18 A. Good morning.

19 Q. If you could just pull that microphone right up close to  
09:09 20 you, sometimes it needs to be close to pick you up.

21 Let me try that.

22 Good morning.

23 A. Good morning, sir.

24 Q. Excellent, thank you.

25 Mr. Higgins, are you currently employed?



1 creates an environment where other analysts can ride the  
2 coattails and put out other faults reports.

3 The collateral damage from these faults reports and  
4 the lies was multifaceted.

5 Q. So here's what we're trying to understand, sir.

6 Okay. You've leaned on the SEC and the SEC is here  
7 today and it's asking these ladies and gentlemen of the jury  
8 too decide something, right?

9 A. Correct.

10 Q. And you know that they're not deciding whether things are  
11 true or false, they're deciding whether or not Father Lemelson  
12 had a good faith belief in the matters that he state, right?

13 MR. JONES: Your Honor objection, your Honor, this  
14 mischaracterizes the entire case.

15 It also is a legal conclusion that he's asking --

16 THE COURT: Yes, I'll sustain that.

17 BY MR. HOOPES:

18 Q. You are familiar with a NASDAQ rule that permits you in  
19 certain circumstances for a company to -- it may also be  
12:33 20 appropriate to publicly deny false or inaccurate rumors which  
21 are likely to have or have had an effect on trading in its  
22 securities or would likely have an influence on investment  
23 decisions. You're familiar with that rule, are you not, sir?

24 A. Yes.

25 Q. And you want to explain what NASDAQ is to the ladies and

1 gentlemen of the jury?

2 A. It's a stock exchange, there's the New York Stock  
3 Exchange, NASDAQ is another exchange where companies are listed  
4 and stocks trade.

5 Q. And according to that rule, back in June or July or  
6 August, you could have responded publicly, correct?

7 A. We could have, yes.

8 Q. I mean, no offense, but you're a pretty articulate guy.  
9 You've said all these things here today. Why couldn't you have  
10 just said that publicly back in June, July or August and killed  
11 whatever you thought was a crisis?

12 A. Why couldn't we have said what?

13 Q. Just what you said today when the SEC was asking you  
14 questions. You said that you thought --

15 THE COURT: There's multiple questions, start again.  
16 What's the question?

17 MR. HOOPES: The question is very simple.

18 Let's assuming the following: You're the CEO of  
19 Ligand, correct.

12:34 20 A. Yes.

21 Q. Okay. You seem pretty comfortable in explaining yourself  
22 and speaking in public, right?

23 A. I can handle questions, yes.

24 Q. Yeah. So why didn't you get on TV or get in front of a  
25 public bunch of investors and say exactly in response -- you

1 could have called Mr. Jones, they asked you the questions, why  
2 didn't you say that back in June?

3 THE COURT: Again, there was again, five or six  
4 questions there.

5 MR. HOOPES: Why didn't you say that all back in June.

6 THE COURT: Excuse me.

7 Why didn't you express your concerns in June publicly?

8 THE WITNESS: We did. We were very active in  
9 answering questions, in meetings, on earnings calls. Our  
10 public disclosures not only correctly, accurately reflected our  
11 financials, but we would respond to these other questions in  
12 our narrative in Qs and Ks in addressing, we may not have  
13 called Father Lemelson out by name, but we did publicly address  
14 disclosure around liquidity, insolvency, about the health of  
15 the Promacta business. And so we did publicly address this.  
16 Q. So to be clear, picking up on what you said, you never  
17 said Father Lemelson said X but the truth is Y, right?  
18 Correct?

19 A. Correct.

12:36 20 Q. Yes nor.

21 A. Correct.

22 Q. Okay. And you also could have brought your own lawsuit  
23 back then, right? They talked about that, you're a private  
24 entity, you've got the right to initiate litigation, right?

25 A. Correct.

## **Respondent Exhibit 15**

**To:** Emmanuel Lemelson - Lemelson Capital Management, LLC  
(el@lemelsoncapital.com)[el@lemelsoncapital.com]  
**From:** Jacobi, Dennis  
**Sent:** Tue 6/3/2014 8:13:39 AM  
**Importance:** Normal  
**Subject:** Reports  
[image001.gif](#)  
[Amvona 0602.pdf](#)

Dear Emmanuel

Please note the account is in a House Call of 93,445.00.

Dennis

Dennis Jacobi | Senior Vice President | Prime Brokerage | 825 Third Avenue, 6th Floor  
New York, NY 10022 | (212) 527-3519 | Fax: 212-593-4488 | AOL IM: djacobi@btig.com  
|Email: djacobi@btig.com

Disclaimer: <https://btig.com/disclaimer.php> --



**To:** Emmanuel Lemelson - Lemelson Capital Management, LLC  
(el@lemelsoncapital.com)[el@lemelsoncapital.com]  
**From:** Jacobi, Dennis  
**Sent:** Mon 6/16/2014 8:00:34 AM  
**Importance:** Normal  
**Subject:** Reports  
[image001.gif](#)  
[Amvona 0613.pdf](#)

Security

Description

Request

Approve

Unappr

Rate

Status

Locate Id

LGND

LIGAND PHARMAC

10,000

10,000

0

GC

APPROVED



Emmanuel:

Good morning. Hope you had a nice Father's Day.

Account is in a House Call *for* (\$66,375.00)

Dennis Jacobi | Senior Vice President | Prime Brokerage | 825 Third Avenue,  
6th Floor New York, NY 10022 | (212) 527-3519 | Fax: 212-593-4488 | AOL IM:  
djacobi@btig.com | EMail: djacobi@btig.com

Disclaimer: <https://btig.com/disclaimer.php> --

**To:** Emmanuel Lemelson - Lemelson Capital Management, LLC  
(el@lemelsoncapital.com)[el@lemelsoncapital.com]  
**From:** Jacobi, Dennis  
**Sent:** Tue 6/17/2014 8:12:01 AM  
**Importance:** Normal  
**Subject:** Reports  
[image001.gif](#)  
[Amvona 0616.pdf](#)

Emmanuel

The house call has risen to \$ 164,588 and there is a Fed Call of 131,285 due to trading yesterday.

I will let you know what action needs to be taken.

Dennis

Dennis Jacobi | Senior Vice President | Prime Brokerage | 825 Third Avenue, 6th Floor  
New York, NY 10022 | (212) 527-3519 | Fax: 212-593-4488 | AOL IM: djacobi@btig.com  
|Email: djacobi@btig.com

Disclaimer: <https://btig.com/disclaimer.php> --



**To:** Emmanuel Lemelson - Lemelson Capital Management, LLC  
(el@lemelsoncapital.com)[el@lemelsoncapital.com]  
**From:** Jacobi, Dennis  
**Sent:** Thur 6/19/2014 8:35:31 AM  
**Importance:** Normal  
**Subject:** Reports  
[image001.gif](#)  
[Amvona 0618.pdf](#)

Dear Emmanuel

Fed Call of 131,269 must be met today. You will need to sell or cover 2 times this amount. Let's speak later.

Due to market movements, account is also in a House Call for 223,519

Dennis

Dennis Jacobi | Senior Vice President | Prime Brokerage | 825 Third Avenue, 6th Floor  
New York, NY 10022 | (212) 527-3519 | Fax: 212-593-4488 | AOL IM: djacobi@btig.com  
|Email: djacobi@btig.com

Disclaimer: <https://btig.com/disclaimer.php> --

**To:** 'Jacobi, Dennis'[djacobi@btig.com]  
**From:** + Emmanuel Lemelson  
**Sent:** Thur 6/19/2014 3:07:13 PM  
**Importance:** Normal  
**Subject:** Fed Call

Dear Dennis,

Thank You for the email.

Per our conversation this AM, in order to cover the Fed Call, will cover ~262k in LGND short (~4006 shares) – please confirm your understanding that this will eliminate the Fed Call – thank you!

Warm Regards,

+ Emmanuel Lemelson

Chief Investment Officer



Lemelson-Capital-Management\_\_Logo - resized to 220

px

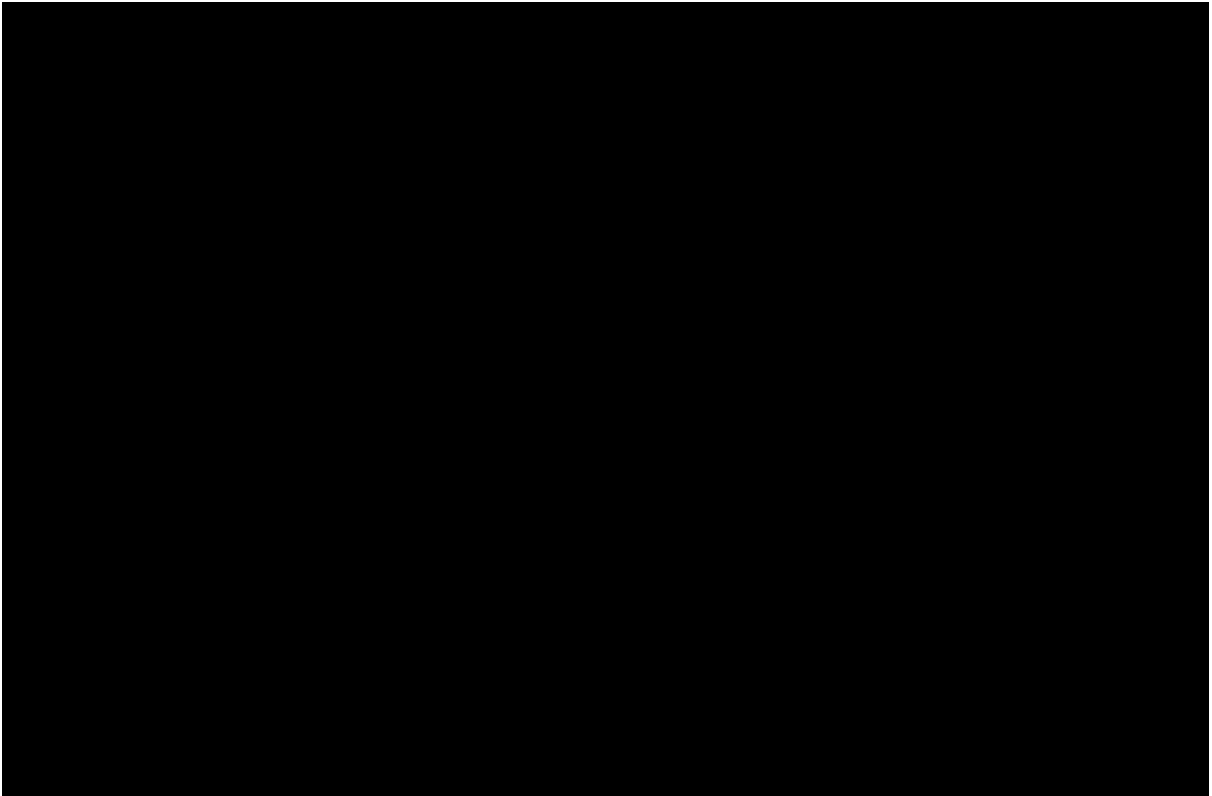
[www.lemelsoncapital.com](http://www.lemelsoncapital.com)

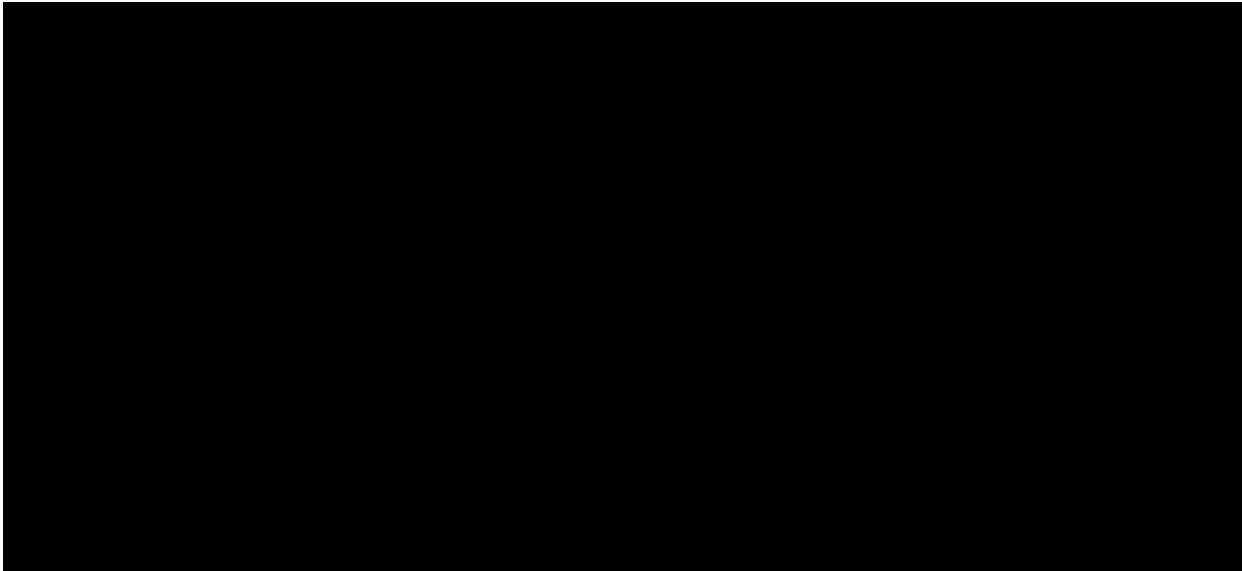
225 Cedar Hill Street  
Suite 200  
Marlborough, MA 01752

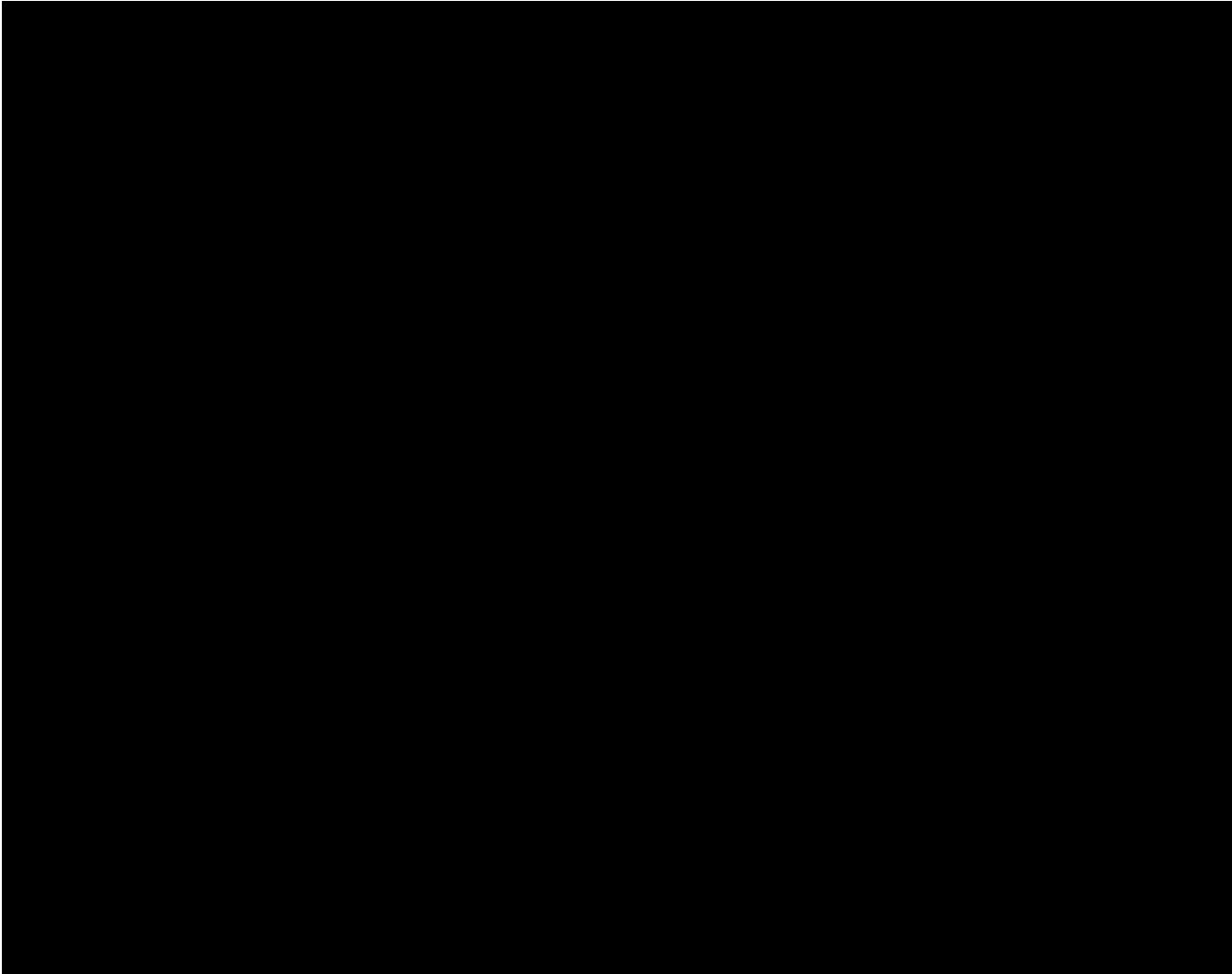
Tel. 508-630-2281

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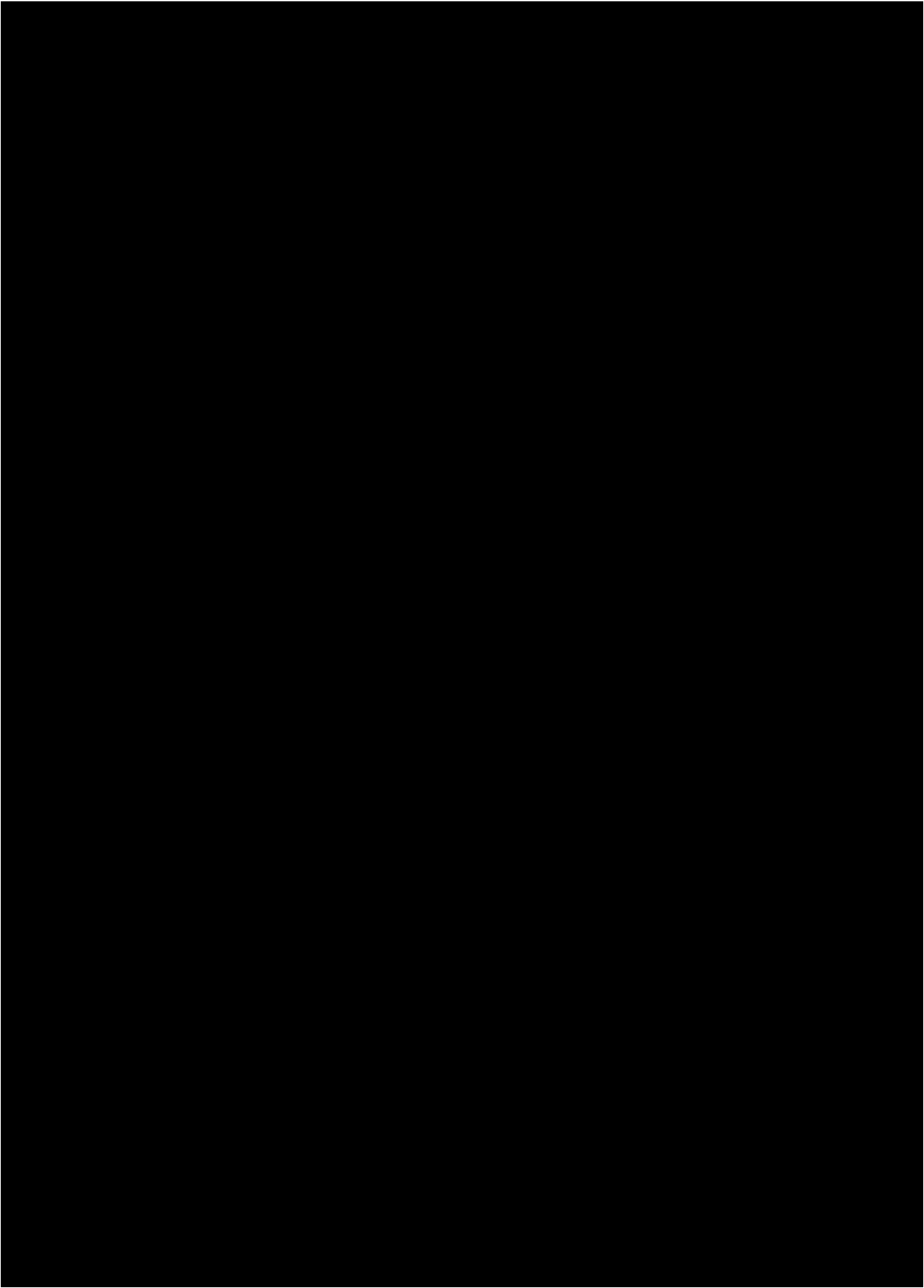


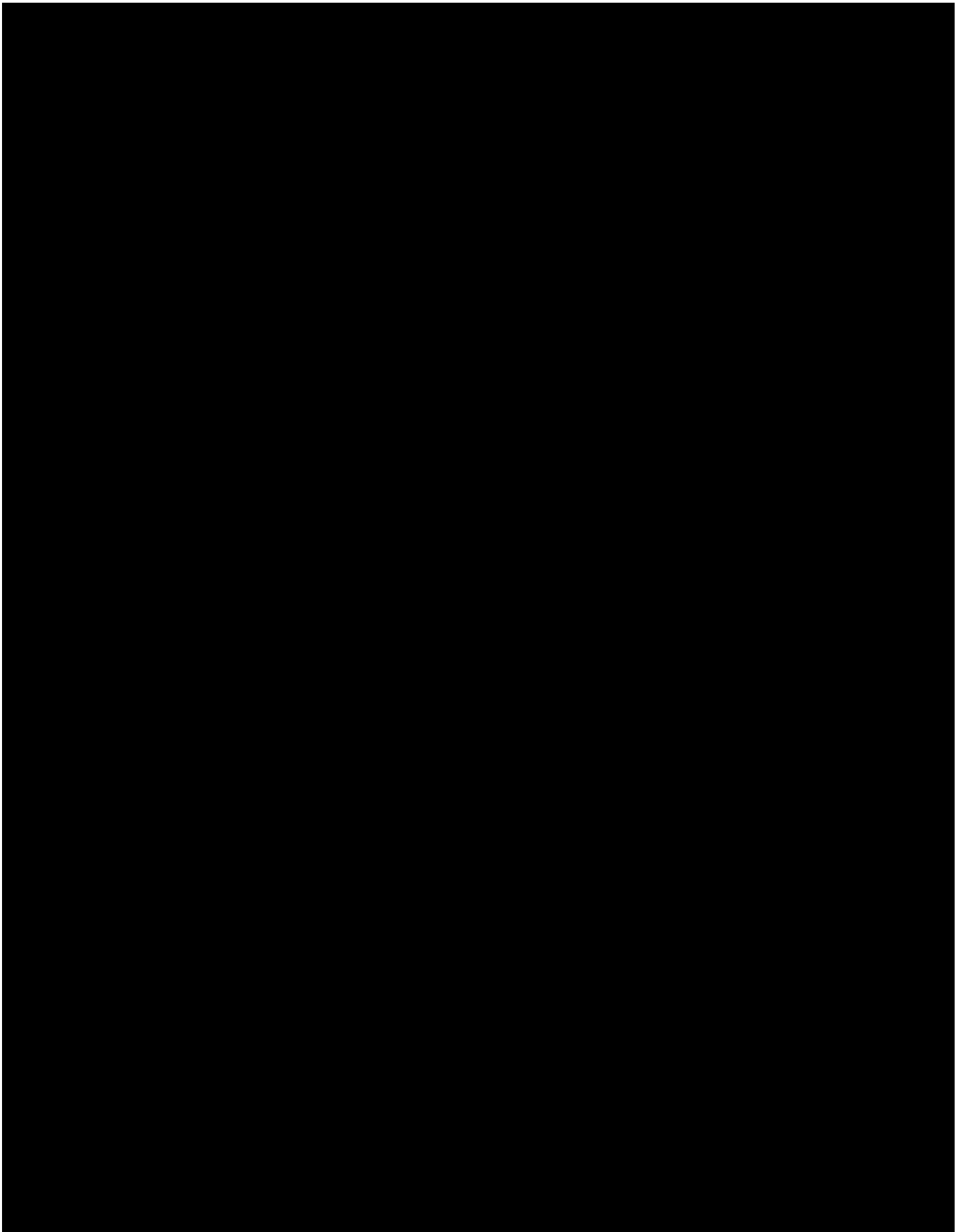


Any questions please let me know.

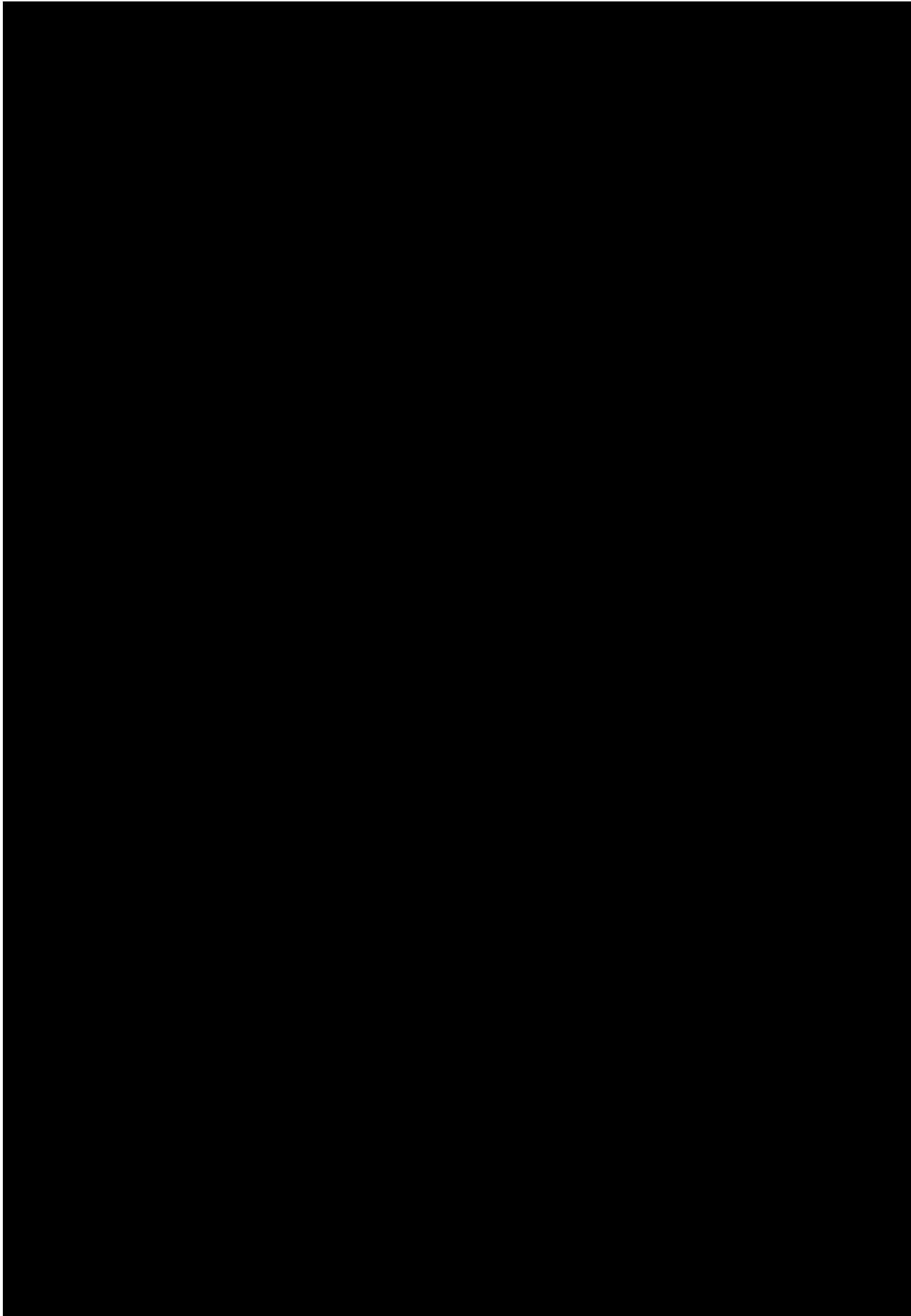
Description: Description: Description: Description: Description: Description:  
cid:image001.gif@01CBE222.338FD220 Peter Trani | Associate | Prime Brokerage |  
Ph:(212) 527-3520 | Fax:(212) 593-4488 |825 3rd Ave New York, NY 6th Floor 10022

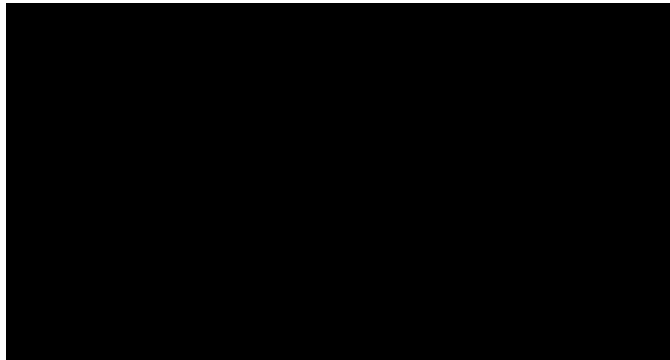
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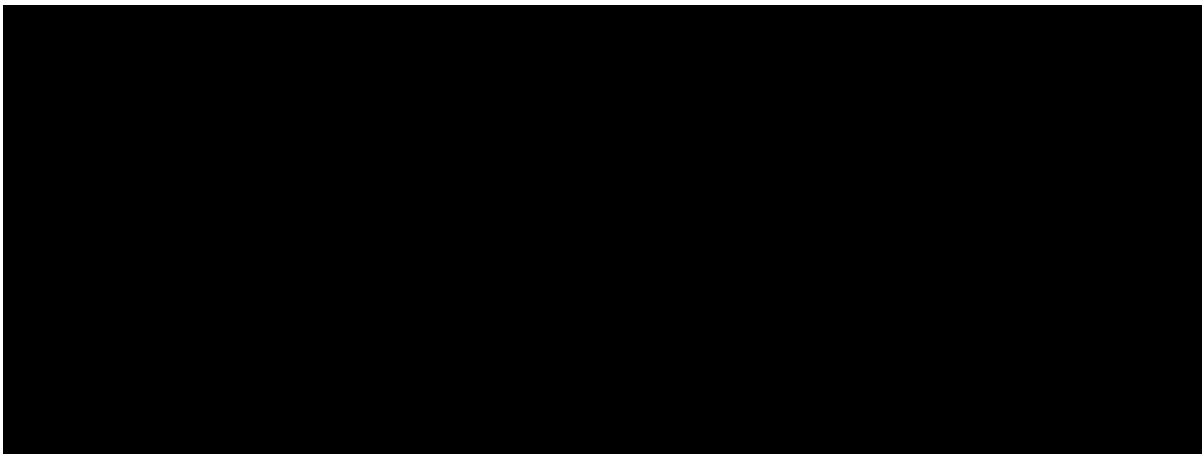




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## **Respondent Exhibit 16**

Date	Close/Last	Volume	Open	High	Low
3/29/2019	\$125.71	337670	\$124.65	\$126.60	\$123.72
3/28/2019	\$123.53	198272	\$120.82	\$123.69	\$120.73
3/27/2019	\$120.81	291832	\$123.11	\$123.21	\$120.37
3/26/2019	\$123.14	369281	\$124.35	\$124.46	\$121.25
3/25/2019	\$123.13	396364	\$124.46	\$125.83	\$121.86
3/22/2019	\$124.86	556496	\$128.06	\$129.57	\$124.85
3/21/2019	\$129.17	632345	\$122.40	\$129.50	\$121.65
3/20/2019	\$123.70	481770	\$124.02	\$125.88	\$121.98
3/19/2019	\$124.02	639306	\$125.59	\$125.59	\$122.26
3/18/2019	\$124.63	840091	\$119.99	\$125.90	\$118.90
3/15/2019	\$119.03	1474075	\$118.06	\$119.29	\$115.67
3/14/2019	\$118.20	549524	\$116.31	\$119.59	\$116.31
3/13/2019	\$116.31	581414	\$114.29	\$117.51	\$112.51
3/12/2019	\$113.35	451570	\$112.13	\$113.76	\$109.63
3/11/2019	\$110.98	566333	\$106.42	\$111	\$105.73
3/8/2019	\$105.93	1036185	\$105.37	\$107.15	\$104.48
3/7/2019	\$106.40	903698	\$106.28	\$107.38	\$104.63
3/6/2019	\$106.52	3593396	\$117.65	\$118.25	\$104.28
3/5/2019	\$120.61	255077	\$123	\$123	\$120.52
3/4/2019	\$122.69	359767	\$127.23	\$127.38	\$120.18
3/1/2019	\$126.34	337138	\$125.24	\$127.06	\$124.19
1/30/2015	\$56.92	318111	\$56.93	\$58.66	\$55.33
1/29/2015	\$57.03	185643	\$57.75	\$57.92	\$56.20
1/28/2015	\$57.42	248359	\$59.46	\$59.98	\$57.10
1/27/2015	\$58.56	423079	\$55.70	\$59.98	\$55.70
1/26/2015	\$56.56	233461	\$54.48	\$56.65	\$54.28
1/23/2015	\$54.67	237706	\$56	\$56.14	\$54.14
1/22/2015	\$55.83	246492	\$55	\$55.96	\$53.09
1/21/2015	\$54.76	346818	\$54.71	\$55.62	\$53.30
1/20/2015	\$54.73	219976	\$54.64	\$55.39	\$53.33
1/16/2015	\$54.38	148152	\$51.38	\$54.46	\$51.38
1/15/2015	\$51.58	172117	\$52.71	\$52.91	\$51.45
1/14/2015	\$52.47	137127	\$51.44	\$52.84	\$51.31
1/13/2015	\$52.04	268905	\$51.76	\$53.69	\$51.55
1/12/2015	\$51.54	265451	\$55.18	\$55.65	\$51.49
1/9/2015	\$54.95	347881	\$55.09	\$55.53	\$53.05
1/8/2015	\$54.94	295270	\$54.32	\$55.19	\$54
1/7/2015	\$53.74	194415	\$52.55	\$53.88	\$51.43
1/6/2015	\$52.10	261079	\$53.44	\$54.06	\$51.28
1/5/2015	\$53.38	208950	\$53.22	\$54.79	\$52.88
1/2/2015	\$53.73	208776	\$53.67	\$54.83	\$52.65
12/31/2014	\$53.21	238731	\$52.26	\$53.96	\$52.26
12/30/2014	\$52.22	151852	\$52.14	\$53.02	\$51.85
12/29/2014	\$52.37	125147	\$53.02	\$53.86	\$52.07
12/26/2014	\$52.96	129873	\$52.18	\$53.69	\$52.18
12/24/2014	\$51.79	72398	\$50.56	\$53.75	\$50.56

Date	Close/Last	Volume	Open	High	Low
12/23/2014	\$50.57	209780	\$54.22	\$54.52	\$50.50
12/22/2014	\$54.01	184976	\$52.08	\$54.18	\$51.85
12/19/2014	\$52.32	750488	\$52.04	\$53.11	\$51.91
12/18/2014	\$52.13	306107	\$52.89	\$52.89	\$51.76
12/17/2014	\$52.04	390585	\$51.52	\$52.29	\$51
12/16/2014	\$51.54	237066	\$52	\$53.14	\$51.29
12/15/2014	\$52.24	277223	\$52.99	\$54.05	\$51.62
12/12/2014	\$52.52	252925	\$53.07	\$53.55	\$52.40
12/11/2014	\$53.89	170085	\$53.78	\$55.08	\$53.42
12/10/2014	\$53.36	310632	\$54.81	\$55.22	\$52.65
12/9/2014	\$54.81	286130	\$54.54	\$55.46	\$54.05
12/8/2014	\$55.35	293534	\$54.24	\$55.65	\$54.12
12/5/2014	\$54.10	287607	\$53.42	\$54.53	\$53.36
12/4/2014	\$53.44	223453	\$54.56	\$55.27	\$53
12/3/2014	\$54.77	257997	\$55.08	\$55.71	\$54.31
12/2/2014	\$55.22	423288	\$53.54	\$55.83	\$53.54
12/1/2014	\$52.57	265037	\$53.72	\$54.04	\$52.43
11/28/2014	\$53.85	139246	\$53.61	\$54.85	\$53.61
11/26/2014	\$53.70	220137	\$53.83	\$54.48	\$53.40
11/25/2014	\$53.99	205660	\$54.09	\$54.77	\$53.61
11/24/2014	\$54.08	241700	\$53.21	\$54.45	\$53.03
11/21/2014	\$53.05	203429	\$54.43	\$54.50	\$52.61
11/20/2014	\$53.51	356713	\$53.58	\$54.31	\$52.34
11/19/2014	\$53.90	311622	\$54.59	\$55.06	\$53.02
11/18/2014	\$54.59	476400	\$57.02	\$58.44	\$53.82
11/17/2014	\$56.95	296271	\$57.80	\$58.12	\$56.57
11/14/2014	\$57.79	282041	\$58	\$58.24	\$56.89
11/13/2014	\$57.96	271378	\$58.03	\$58.48	\$56.88
11/12/2014	\$57.70	213265	\$56.23	\$57.91	\$56.01
11/11/2014	\$56.90	430540	\$55.78	\$58.26	\$55.60
11/10/2014	\$55.68	319639	\$54.17	\$55.73	\$53.18
11/7/2014	\$53.94	387424	\$54.75	\$54.80	\$53.15
11/6/2014	\$54.91	349908	\$55.29	\$56.09	\$54.24
11/5/2014	\$55.29	315318	\$56.68	\$56.75	\$54.63
11/4/2014	\$56.27	387996	\$56.05	\$57.14	\$55.78
11/3/2014	\$56.49	398873	\$55.20	\$56.64	\$54.61
10/31/2014	\$55.27	359983	\$55.60	\$57.32	\$54.80
10/30/2014	\$54.37	222664	\$53.15	\$54.52	\$52.57
10/29/2014	\$53.33	508844	\$52.50	\$53.57	\$50.63
10/28/2014	\$51.89	509092	\$54.78	\$55.37	\$50.77
10/27/2014	\$54.23	557008	\$54.52	\$55.25	\$51.76
10/24/2014	\$53.97	406224	\$54.35	\$54.35	\$52.84
10/23/2014	\$54.13	496468	\$51.79	\$54.82	\$51.69
10/22/2014	\$50.67	258485	\$50.64	\$51.36	\$49.74
10/21/2014	\$50.65	240460	\$50.50	\$51.49	\$49.73
10/20/2014	\$50.24	355296	\$49.89	\$51.07	\$49.50

Date	Close/Last	Volume	Open	High	Low
10/17/2014	\$50.07	484250	\$49.61	\$50.11	\$47.58
10/16/2014	\$48.86	496200	\$45.61	\$49.88	\$45.61
10/15/2014	\$46.28	379920	\$45.11	\$46.71	\$45.11
10/14/2014	\$45.83	440667	\$45.24	\$46.61	\$44.23
10/13/2014	\$44.78	424432	\$44.28	\$45.51	\$43.28
10/10/2014	\$44.44	739460	\$42.84	\$46.06	\$42.84
10/9/2014	\$42.36	415385	\$43.62	\$44.03	\$41.99
10/8/2014	\$43.69	577146	\$44.56	\$44.89	\$42.80
10/7/2014	\$42.91	325112	\$44.17	\$44.72	\$42.88
10/6/2014	\$44.60	201124	\$45.49	\$46.56	\$44.30
10/3/2014	\$45.46	431436	\$46.29	\$47.10	\$44.93
10/2/2014	\$45.72	324551	\$45.51	\$46.10	\$44.47
10/1/2014	\$45.54	450608	\$47.09	\$47.50	\$45.12
9/30/2014	\$46.99	568236	\$47.49	\$48.04	\$46.32
9/29/2014	\$47.61	450730	\$47.34	\$48.31	\$46.50
9/26/2014	\$47.92	394127	\$48.79	\$48.87	\$47.21
9/25/2014	\$48.31	455487	\$50	\$50.65	\$47.79
9/24/2014	\$50.09	431417	\$46.99	\$50.47	\$46.99
9/23/2014	\$46.99	452605	\$47.80	\$49.14	\$46.92
9/22/2014	\$48.08	785565	\$48.47	\$48.70	\$47.03
9/19/2014	\$48.74	1048761	\$50.93	\$51.43	\$48.33
9/18/2014	\$50.79	368038	\$51.42	\$52.01	\$50.25
9/17/2014	\$51.13	298656	\$51.03	\$51.68	\$49.86
9/16/2014	\$50.85	501170	\$50.20	\$51.05	\$48.81
9/15/2014	\$50.43	187491	\$52.25	\$52.25	\$50.03
9/12/2014	\$52.46	314346	\$53.36	\$53.81	\$51.87
9/11/2014	\$53.36	482194	\$52.33	\$53.42	\$52.10
9/10/2014	\$52.84	421796	\$49.63	\$53	\$49.63
9/9/2014	\$49.61	369266	\$52.03	\$52.10	\$49.30
9/8/2014	\$52.03	158476	\$51.05	\$52.21	\$50.77
9/5/2014	\$51.18	207185	\$52.87	\$52.87	\$50.87
9/4/2014	\$53	224688	\$53.63	\$53.92	\$52.91
9/3/2014	\$53.63	545587	\$53.64	\$54.53	\$53.25
9/2/2014	\$53.30	360501	\$52.71	\$53.74	\$52.56
8/29/2014	\$52.04	139717	\$51.96	\$52.17	\$51.28
8/28/2014	\$51.96	349395	\$51.60	\$53.67	\$51.20
8/27/2014	\$52.03	278336	\$51.96	\$52.59	\$51.17
8/26/2014	\$51.85	336509	\$49.87	\$52.07	\$49.01
8/25/2014	\$49.85	393861	\$51.53	\$51.93	\$49.40
8/22/2014	\$51.24	365471	\$51.75	\$52.22	\$50.85
8/21/2014	\$51.75	374295	\$54.22	\$54.22	\$51.52
8/20/2014	\$54.17	465072	\$55.10	\$55.74	\$54.01
8/19/2014	\$55.30	599531	\$57.80	\$57.92	\$55.15
8/18/2014	\$57.95	512998	\$57	\$58.34	\$55.89
8/15/2014	\$56.59	477263	\$55.46	\$56.75	\$54.35
8/14/2014	\$54.98	584503	\$54.43	\$56.02	\$53.22

Date	Close/Last	Volume	Open	High	Low
8/13/2014	\$54.89	1653184	\$55.67	\$56.78	\$54.55
8/12/2014	\$55.59	774283	\$53.70	\$56.67	\$51.54
8/11/2014	\$53.65	300340	\$52.02	\$53.71	\$51.01
8/8/2014	\$51.49	237656	\$50.61	\$52	\$49.71
8/7/2014	\$50.34	278214	\$53.51	\$53.51	\$50.02
8/6/2014	\$53.07	344341	\$52.36	\$54.04	\$51.57
8/5/2014	\$52.87	484028	\$53.39	\$53.98	\$52.24
8/4/2014	\$54.05	1088830	\$52.50	\$56	\$51.44
8/1/2014	\$49.08	292841	\$49.32	\$49.85	\$47.57
7/31/2014	\$49.17	273638	\$50.42	\$51.67	\$48.92
7/30/2014	\$51.17	198288	\$51.69	\$52.40	\$50.13
7/29/2014	\$51.09	418465	\$48.43	\$51.13	\$48.28
7/28/2014	\$48.08	409783	\$50	\$50.07	\$47.48
7/25/2014	\$50.06	183547	\$50.65	\$51.16	\$49.52
7/24/2014	\$51.08	242192	\$52	\$52.07	\$50.57
7/23/2014	\$51.65	622529	\$49.31	\$52.07	\$49.31
7/22/2014	\$49.14	863572	\$51.92	\$51.92	\$48.67
7/21/2014	\$51.45	354787	\$51.32	\$51.98	\$50.27
7/18/2014	\$51.32	499888	\$50.55	\$51.93	\$50.07
7/17/2014	\$50.66	467600	\$53	\$54.50	\$50.41
7/16/2014	\$53.04	884118	\$57.12	\$57.37	\$52.63
7/15/2014	\$56.85	456791	\$59.50	\$60.36	\$56.75
7/14/2014	\$59.56	377975	\$64.21	\$64.21	\$59.21
7/11/2014	\$63.70	172384	\$63.36	\$64.21	\$62.91
7/10/2014	\$63.26	203488	\$61.09	\$63.85	\$60.20
7/9/2014	\$62.65	212140	\$61.54	\$63.59	\$60.63
7/8/2014	\$61.50	408761	\$63.65	\$63.79	\$60.73
7/7/2014	\$64.02	685890	\$61.93	\$64.12	\$61
7/3/2014	\$64.52	196567	\$64.18	\$65.66	\$63.42
7/2/2014	\$63.81	180267	\$63.59	\$65.26	\$63.41
7/1/2014	\$63.52	304756	\$62.59	\$64.45	\$61.89
6/30/2014	\$62.29	394667	\$61.51	\$62.97	\$60.39
6/27/2014	\$61.78	547476	\$61.73	\$62.45	\$60.55
6/26/2014	\$62.19	149704	\$62.71	\$62.99	\$61.61
6/25/2014	\$62.91	280296	\$61.12	\$63.42	\$60.40
6/24/2014	\$60.67	855985	\$62.88	\$63.42	\$58.18
6/23/2014	\$62.35	400105	\$66.27	\$66.38	\$62
6/20/2014	\$66.27	461670	\$66.19	\$66.80	\$64.90
6/19/2014	\$65.70	170505	\$66.04	\$66.27	\$64.36
6/18/2014	\$65.63	220362	\$63.55	\$65.78	\$63.55
6/17/2014	\$63.76	345204	\$64.26	\$65.64	\$62.58
6/16/2014	\$64.89	604321	\$67.26	\$69.84	\$63.27
6/13/2014	\$66.75	150816	\$66.01	\$67.53	\$65.51
6/12/2014	\$66.61	138173	\$66.88	\$67	\$65.89
6/11/2014	\$67.34	142450	\$68.54	\$69.21	\$66.70
6/10/2014	\$69.22	143404	\$68.55	\$69.65	\$68.38

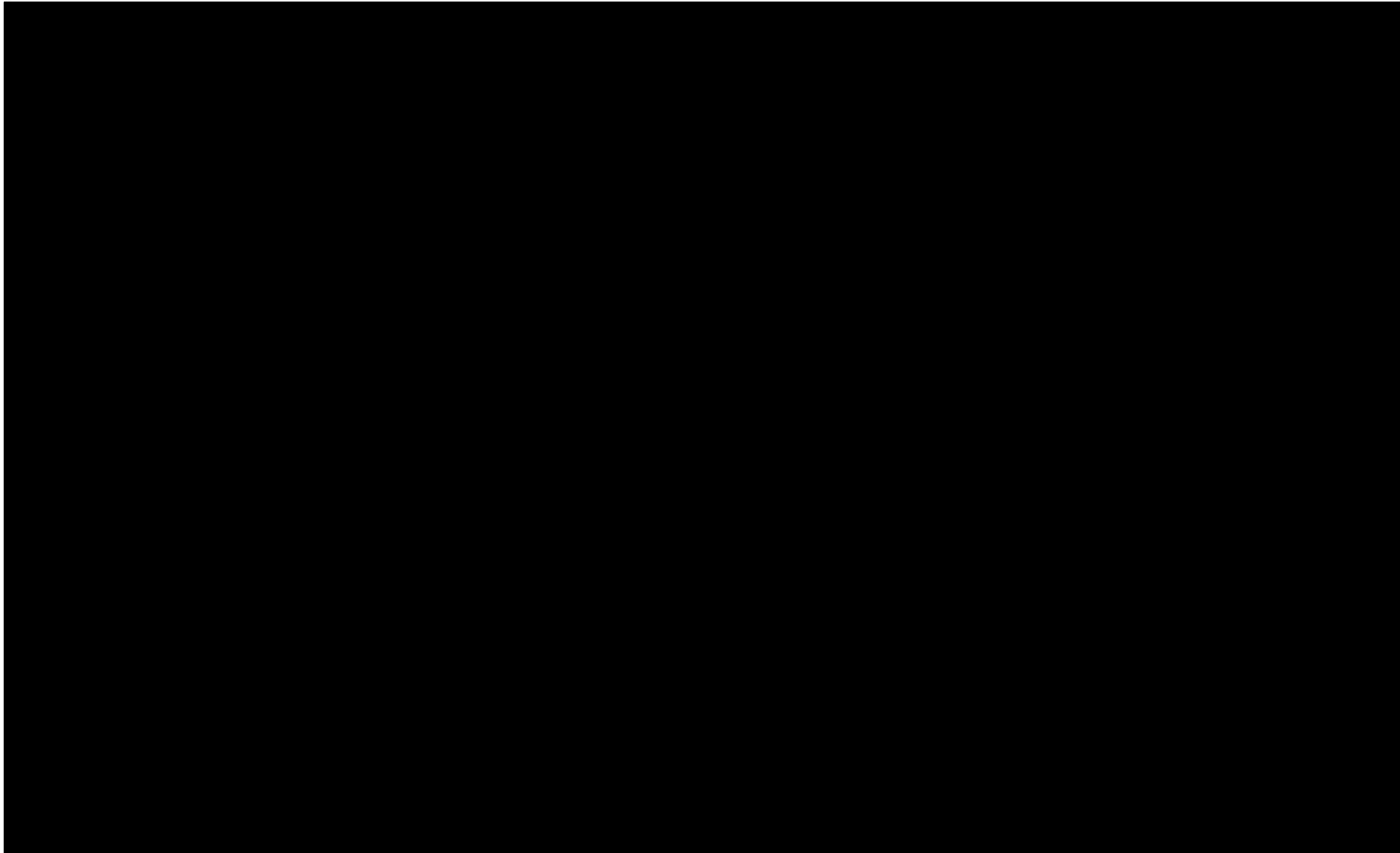
Date	Close/Last	Volume	Open	High	Low
6/9/2014	\$68.64	263922	\$68.11	\$71.44	\$67.41
6/6/2014	\$67.94	152777	\$69.10	\$69.10	\$67.53
6/5/2014	\$68.91	158144	\$68.17	\$69.10	\$67.06
6/4/2014	\$67.53	115374	\$66.08	\$67.63	\$65.36
6/3/2014	\$66.48	262210	\$68.47	\$68.93	\$66.35
6/2/2014	\$68.62	307383	\$66.63	\$68.94	\$65.26
5/30/2014	\$66.71	274494	\$67.53	\$67.95	\$65.44
5/29/2014	\$67.03	163278	\$67.35	\$67.40	\$66.64
5/28/2014	\$66.86	157529	\$66.96	\$67.47	\$65.62
5/27/2014	\$67.10	211406	\$66.73	\$67.50	\$66.08
5/23/2014	\$66.15	109322	\$65.15	\$66.48	\$64.55
5/22/2014	\$65.09	153762	\$63.26	\$65.99	\$62.76
5/21/2014	\$63.19	97259	\$63.09	\$63.99	\$62.07
5/20/2014	\$62.77	161590	\$64.67	\$64.67	\$62.01
5/19/2014	\$65.01	183235	\$64.30	\$66.57	\$63.60
5/16/2014	\$64.77	166186	\$64.06	\$64.98	\$62.18
5/15/2014	\$63.87	208161	\$62.67	\$64.67	\$60.52
5/14/2014	\$63.27	155571	\$64	\$64.99	\$62.05
5/13/2014	\$64.04	156709	\$65.05	\$66.31	\$63.55
5/12/2014	\$65	209136	\$61.51	\$66.72	\$61.51
5/9/2014	\$62.83	166226	\$62.05	\$63.17	\$60.48
5/8/2014	\$62.17	273196	\$64.96	\$67.96	\$61.85
5/7/2014	\$65.37	434839	\$62.50	\$65.45	\$60.39
5/6/2014	\$64.05	291403	\$64.96	\$65.55	\$63.66
5/5/2014	\$65.10	178897	\$61.49	\$65.40	\$61.17
5/2/2014	\$62.27	243217	\$63.46	\$63.46	\$61.58
5/1/2014	\$63.46	436363	\$63.15	\$64.83	\$61.81
4/30/2014	\$63.17	403161	\$65.63	\$67.22	\$62.68
4/29/2014	\$65.82	193020	\$63.94	\$67.08	\$63
4/28/2014	\$63.39	487673	\$65.61	\$66.71	\$59.61
4/25/2014	\$65.11	200290	\$67.86	\$68.58	\$64.61
4/24/2014	\$68.72	286413	\$69.66	\$69.84	\$65.47
4/23/2014	\$69.18	390362	\$69.69	\$70.20	\$65.26
4/22/2014	\$70.19	391528	\$66.23	\$70.47	\$66.23
4/21/2014	\$65.79	243161	\$64.40	\$66.50	\$62.49
4/17/2014	\$64.13	364140	\$62.51	\$66.21	\$61.28
4/16/2014	\$62.90	384788	\$60.62	\$63.06	\$58.70
4/15/2014	\$59.74	357803	\$60.33	\$62.39	\$55.90
4/14/2014	\$60.17	371090	\$61.95	\$64.31	\$58.47
4/11/2014	\$61.23	367222	\$63.37	\$66.54	\$61.02
4/10/2014	\$63.93	462652	\$69.67	\$70.46	\$63.25
4/9/2014	\$69.97	252985	\$66.50	\$70.19	\$66.38
4/8/2014	\$66.20	226142	\$64.92	\$66.77	\$64
4/7/2014	\$64.66	362703	\$63	\$65.96	\$61.90
4/4/2014	\$63.03	413353	\$64.02	\$66.43	\$60.44
4/3/2014	\$63.52	234671	\$66.01	\$66.05	\$62.80



Date	Close/Last	Volume	Open	High	Low
4/2/2014	\$66.01	267368	\$69	\$69.31	\$64.51
4/1/2014	\$68.48	231438	\$67.27	\$69.39	\$66.93
3/31/2014	\$67.27	445968	\$63.62	\$67.96	\$63.07
3/28/2014	\$63.28	494547	\$68.38	\$69.16	\$62.64
3/27/2014	\$68.21	217304	\$67.77	\$70.00	\$66.13
3/26/2014	\$67.75	213397	\$69.33	\$70.93	\$67.74
3/25/2014	\$68.48	316119	\$70.68	\$72.35	\$68.29
3/24/2014	\$70.07	573816	\$72.18	\$72.82	\$66.68
3/21/2014	\$72.12	826650	\$77.30	\$78.03	\$71.90
3/20/2014	\$77.01	157548	\$77.84	\$79.29	\$76.58
3/19/2014	\$77.67	272818	\$79.75	\$80.21	\$76.75
3/18/2014	\$79.58	263280	\$77.34	\$79.93	\$77.20
3/17/2014	\$76.95	390225	\$75.67	\$79.28	\$75.66
3/14/2014	\$75.39	442740	\$72.30	\$75.76	\$71.08
3/13/2014	\$72.46	391719	\$73.77	\$76.11	\$71.42
3/12/2014	\$73.20	228931	\$69.95	\$73.37	\$69.02
3/11/2014	\$70.57	437586	\$70.33	\$73.06	\$69.50
3/10/2014	\$70.20	272374	\$69.48	\$71.22	\$68.43
3/7/2014	\$69.78	271515	\$69.93	\$70.31	\$66.66
3/6/2014	\$69.25	322239	\$74.18	\$74.31	\$69.16
3/5/2014	\$73.93	421391	\$73.99	\$76.45	\$73.55
3/4/2014	\$73.54	515217	\$70.22	\$73.86	\$70.22
3/3/2014	\$69.10	251930	\$68.91	\$69.57	\$67
2/28/2014	\$69.75	472562	\$71.50	\$74.38	\$69.04
2/27/2014	\$71.45	295606	\$72.23	\$73.01	\$71.01
2/26/2014	\$72.36	240930	\$73.65	\$74.55	\$71.78
2/25/2014	\$73.72	568565	\$74.84	\$77.44	\$73.64
2/24/2014	\$74.46	292149	\$75	\$76.96	\$74.38
2/21/2014	\$74.43	401139	\$73.27	\$75.40	\$72.38
2/20/2014	\$73.08	513664	\$72.95	\$73.46	\$72.28
2/19/2014	\$72.53	372465	\$73.95	\$75.76	\$72.13
2/18/2014	\$73.94	773993	\$77.47	\$78.40	\$72.80
2/14/2014	\$76.92	553155	\$79.28	\$80.42	\$76.10
2/13/2014	\$79.15	672812	\$73.23	\$79.69	\$73
2/12/2014	\$74.42	1259530	\$71.11	\$76.77	\$70.00
2/11/2014	\$71.37	1261187	\$62.96	\$71.92	\$62.96
2/10/2014	\$62.70	371523	\$61.26	\$62.92	\$59.50
2/7/2014	\$60.10	265563	\$56.85	\$60.84	\$56.85
2/6/2014	\$56.82	191510	\$57.42	\$58.39	\$56.14
2/5/2014	\$57.15	425285	\$58.70	\$58.94	\$54.61
2/4/2014	\$59.33	209677	\$59.34	\$60.16	\$58.67
2/3/2014	\$58.97	330918	\$61.81	\$61.99	\$57.21
1/31/2014	\$61.94	139832	\$61.15	\$62.49	\$60.30
1/30/2014	\$62.92	160068	\$62.42	\$63.86	\$62.23
1/29/2014	\$61.68	173344	\$60.93	\$63.19	\$60.52
1/28/2014	\$61.44	258667	\$59.18	\$62.00	\$58.79

Date	Close/Last	Volume	Open	High	Low
1/27/2014	\$58.76	421088	\$60.79	\$60.79	\$56.84
1/24/2014	\$60.26	460998	\$65.12	\$65.12	\$59.23
1/23/2014	\$65.78	246988	\$65.24	\$65.82	\$63.71
1/22/2014	\$65.47	166546	\$65.50	\$65.50	\$63.45
1/21/2014	\$65.47	295285	\$64.51	\$65.66	\$62.05
1/17/2014	\$64.26	270153	\$64.33	\$65.64	\$63.66
1/16/2014	\$64.21	207682	\$63.14	\$64.45	\$62.37
1/15/2014	\$62.98	297709	\$61.88	\$63.29	\$61.87
1/14/2014	\$61.81	220247	\$59.56	\$62.04	\$59.56
1/13/2014	\$59.38	332861	\$59.30	\$61.92	\$58.66
1/10/2014	\$59.31	224398	\$58.01	\$59.48	\$56.58
1/9/2014	\$57.93	259869	\$55.81	\$57.98	\$55.48
1/8/2014	\$55.45	347591	\$53.18	\$55.50	\$52.43
1/7/2014	\$53.27	246560	\$51.77	\$53.85	\$51.50
1/6/2014	\$51.54	242407	\$51.86	\$52.65	\$50.73
1/3/2014	\$52.02	200750	\$51.70	\$52.72	\$51.70
1/2/2014	\$51.52	304030	\$52.45	\$52.99	\$51.02
12/31/2013	\$52.60	330737	\$53.67	\$53.67	\$51.90
12/30/2013	\$53.71	171273	\$54.23	\$54.51	\$53.26
12/27/2013	\$54.09	117749	\$54.39	\$54.96	\$53.57
12/26/2013	\$54.47	123262	\$54.97	\$55.50	\$54.24
12/24/2013	\$54.94	97863	\$55.48	\$55.98	\$54.46

## **Respondent Exhibit 17**



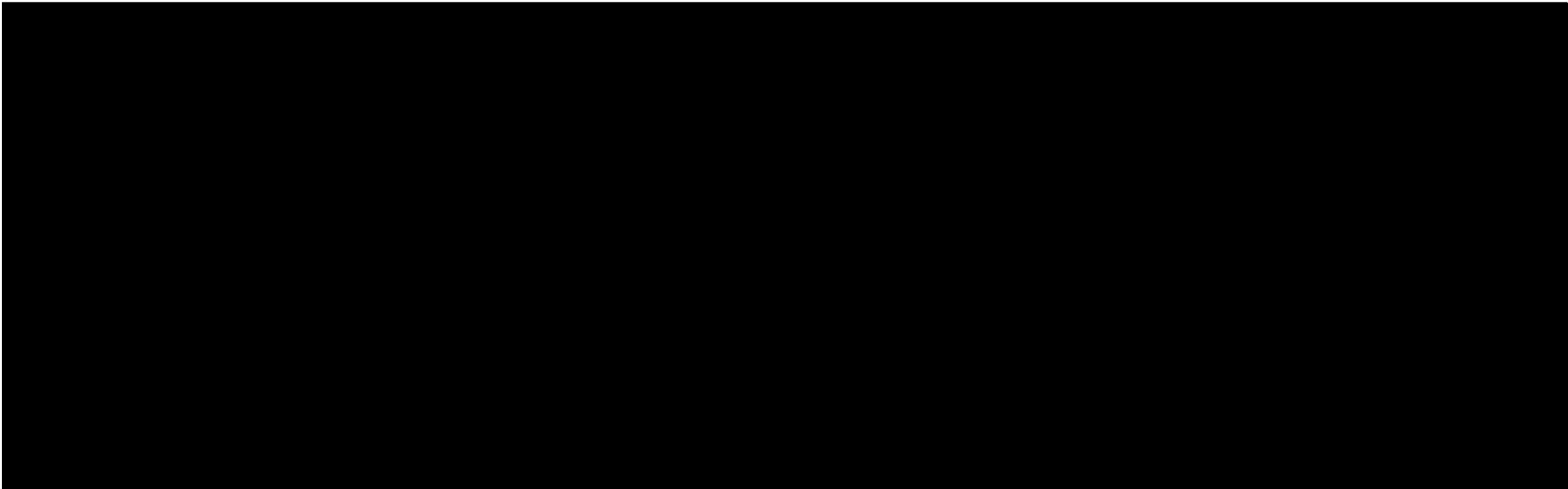
FOIA CONFIDENTIAL TREATMENT REQUESTED  
5 U.S.C. § 552  
17 C.F.R. § 200.83

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.



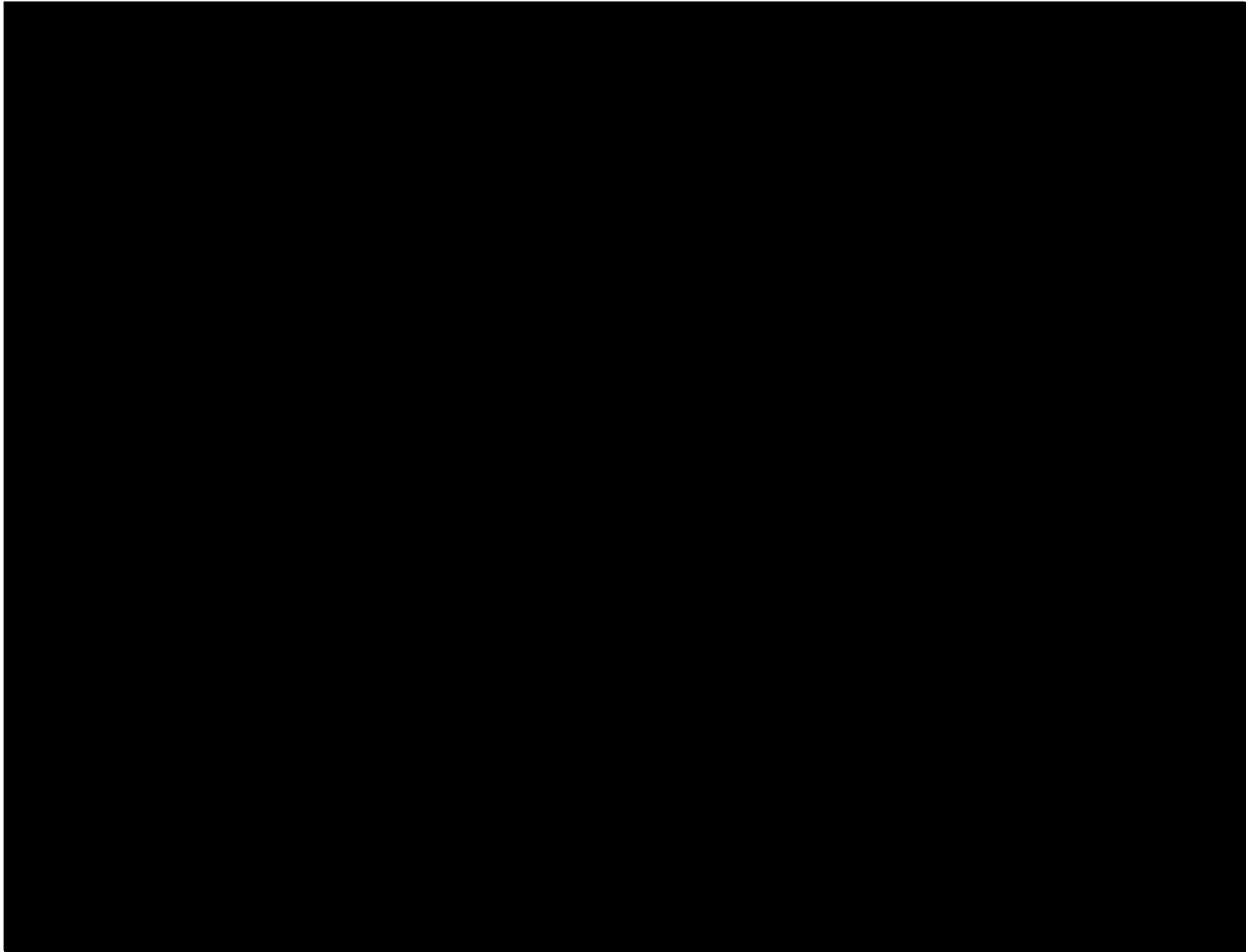
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FOIA CONFIDENTIAL TREATMENT REQUESTED  
5 U.S.C. § 552  
17 C.F.R. § 200.83

Confidential Treatment Requested by  
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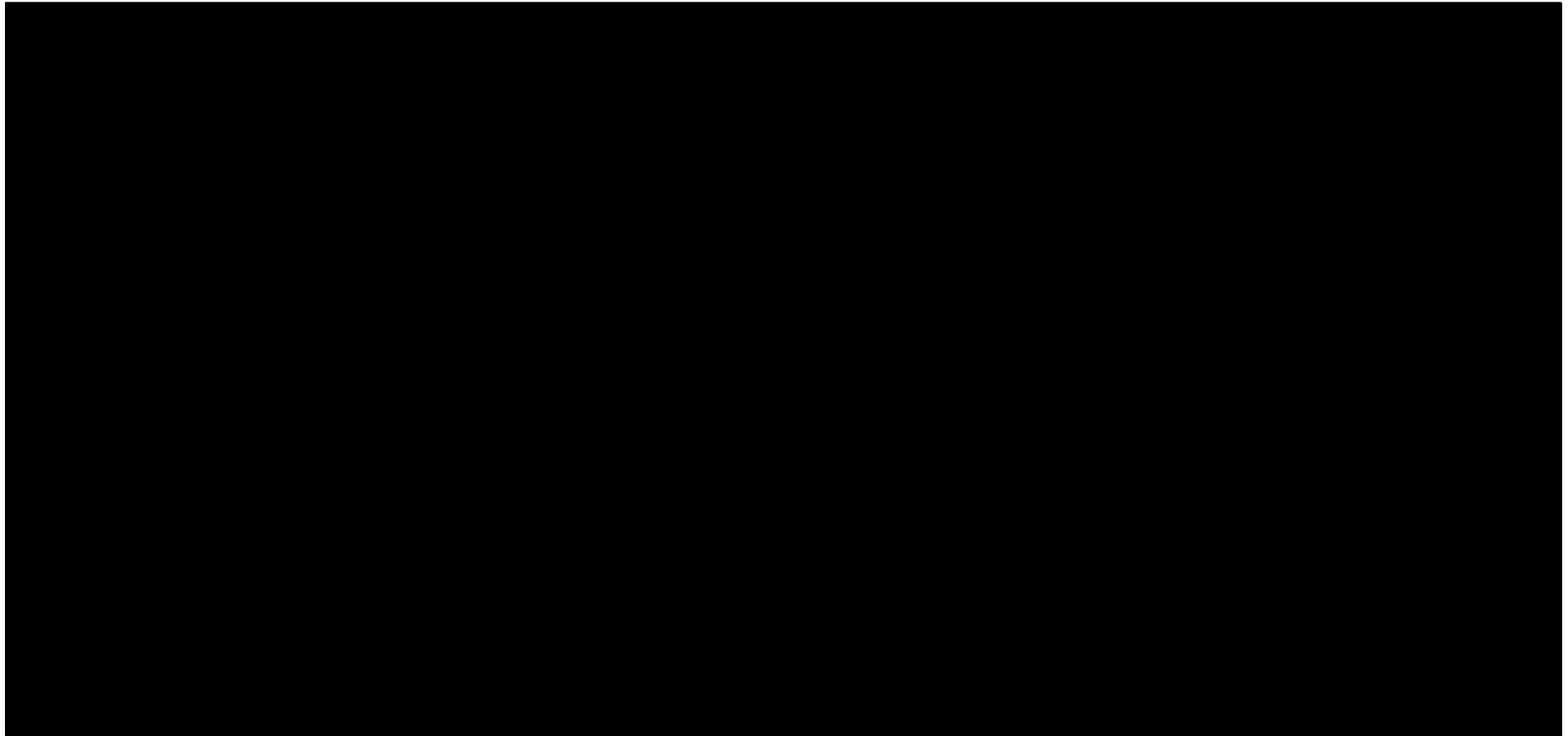
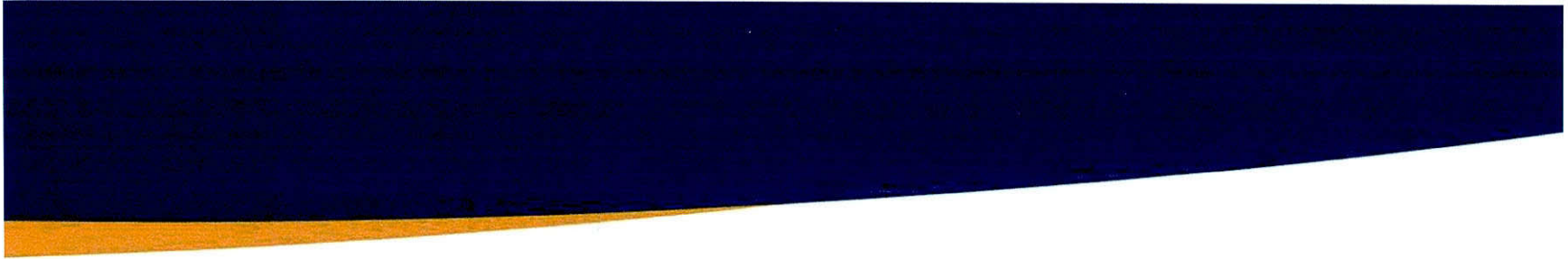


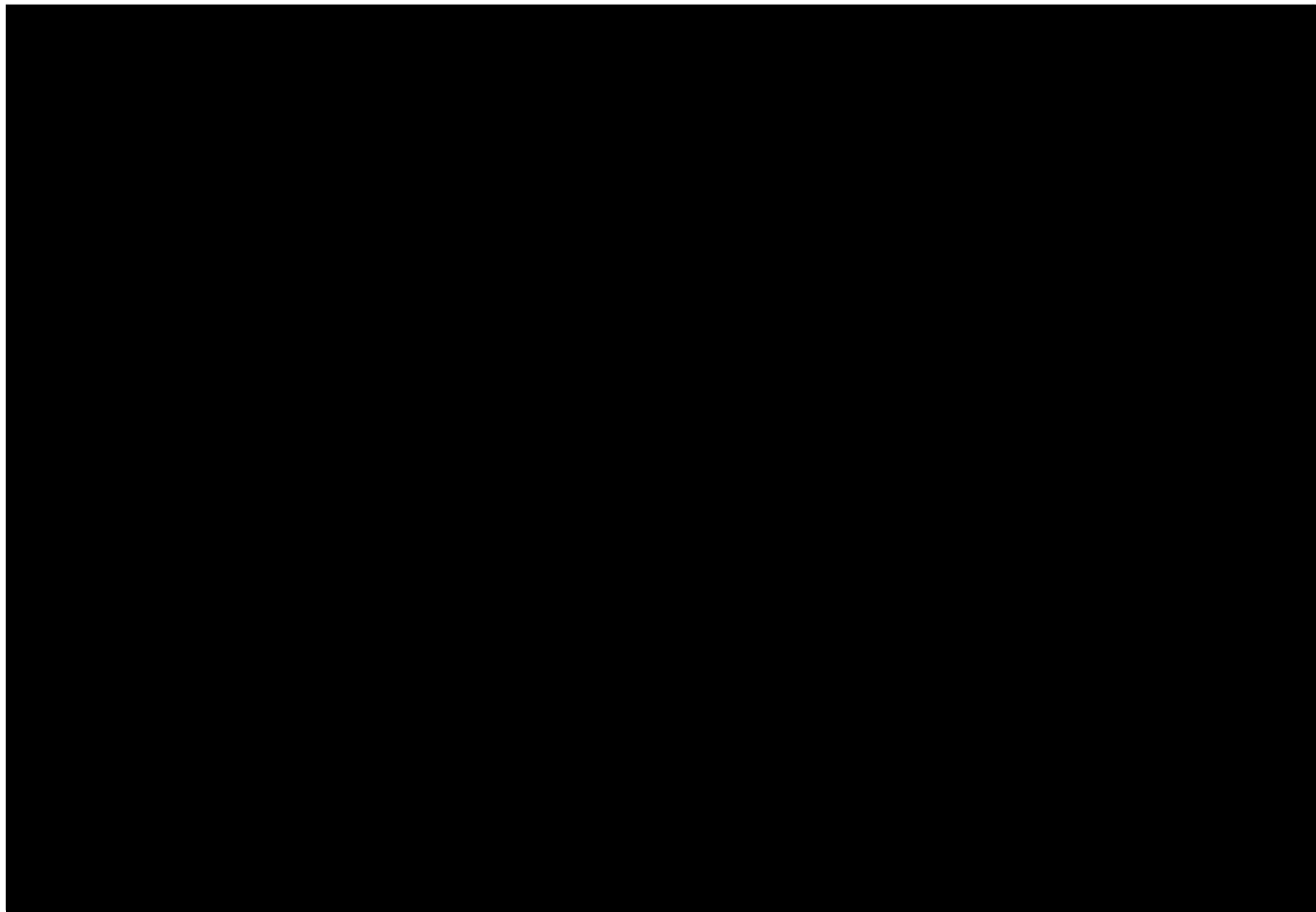


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17 C.F.R. § 200.83

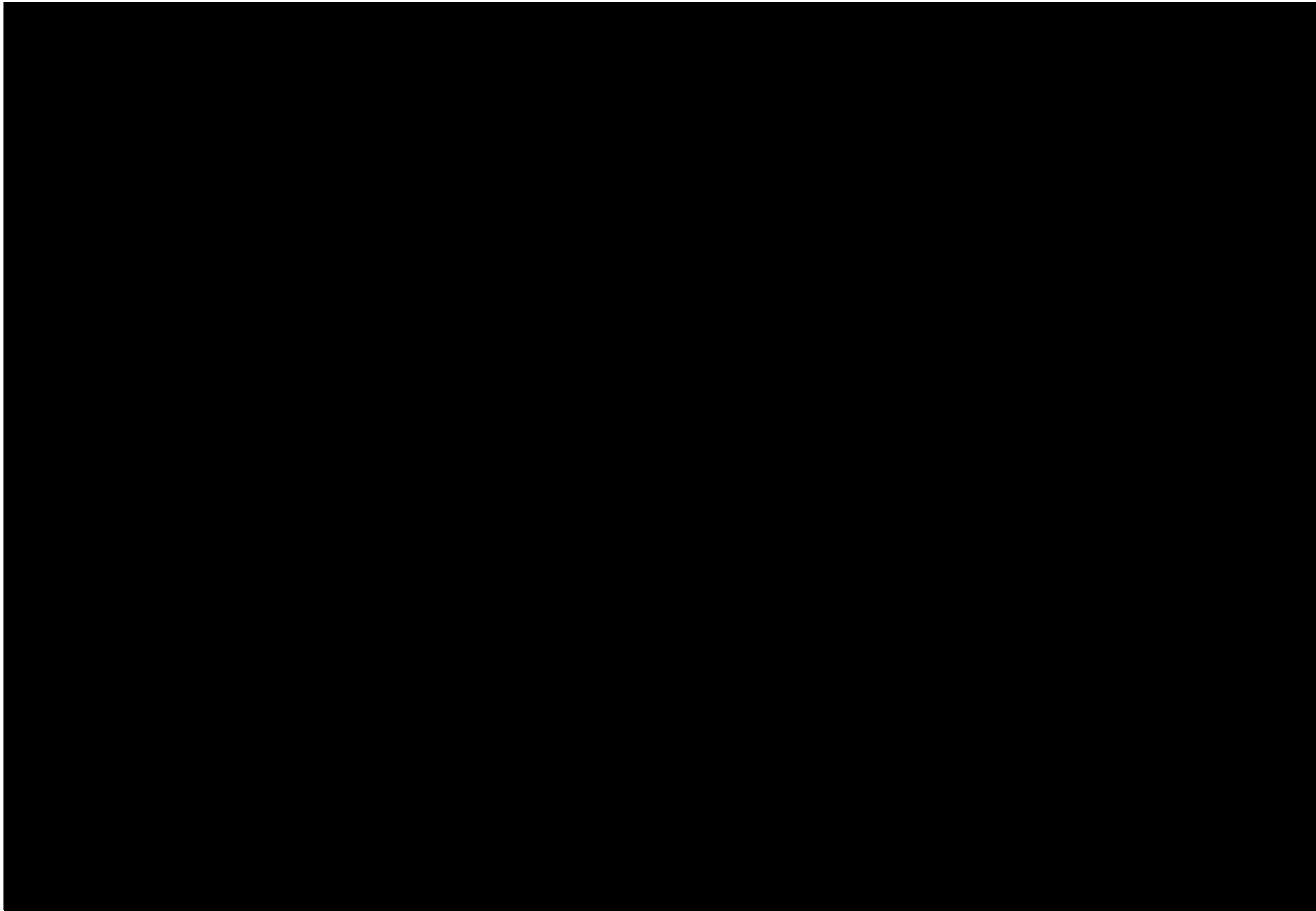
Confidential Treatment Requested by  
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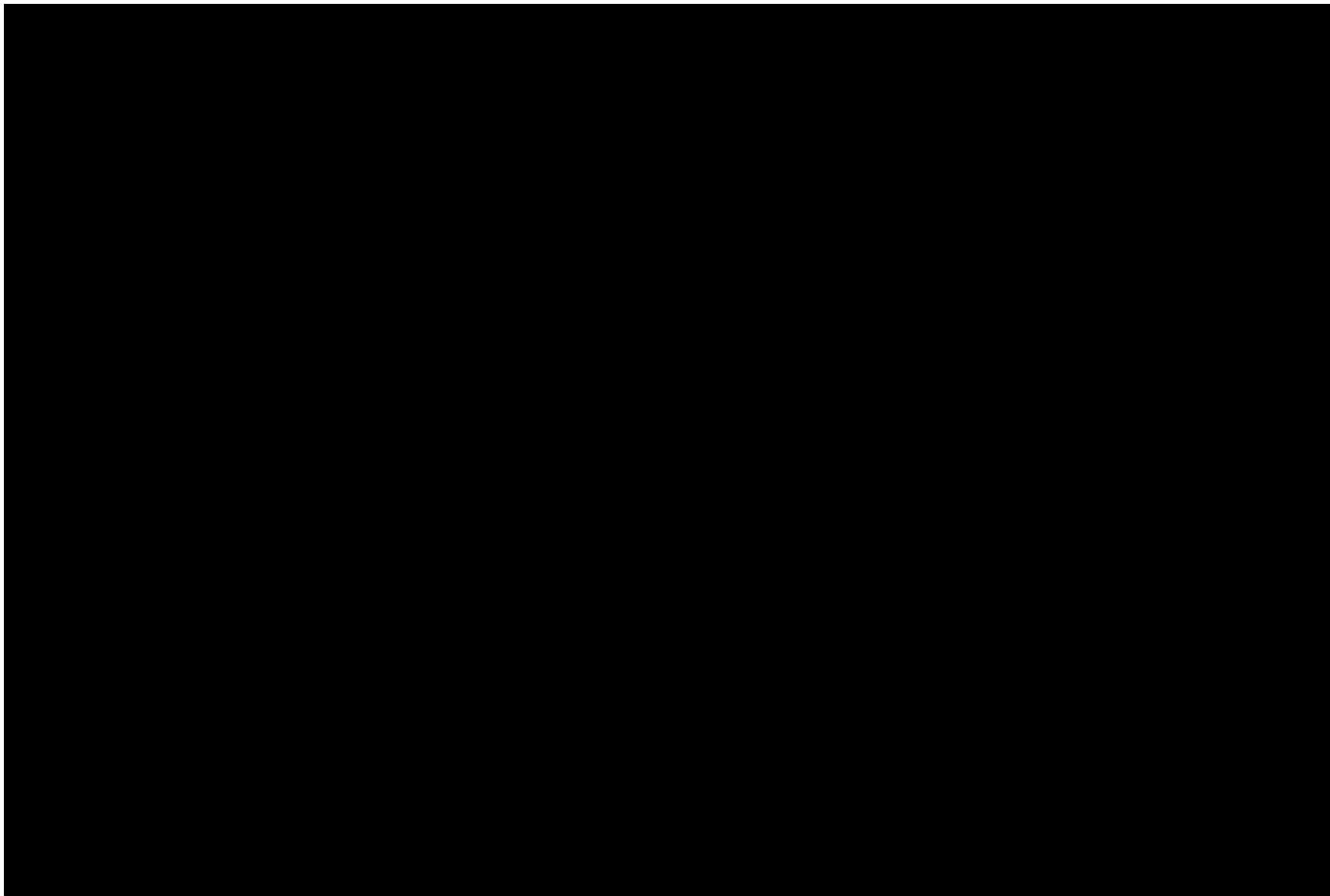




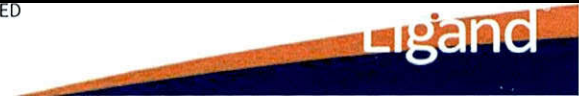


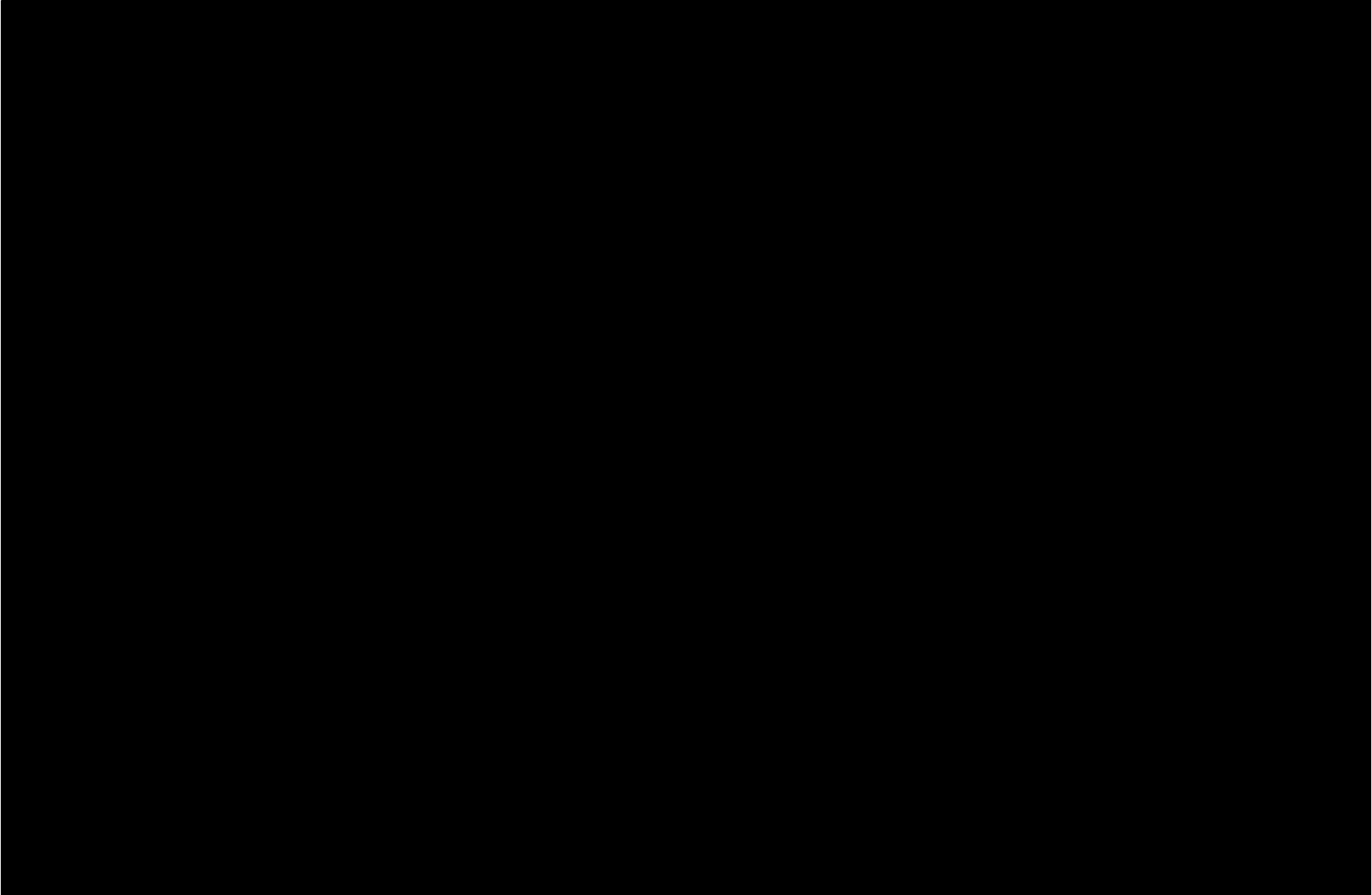
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5 U.S.C. § 552  
17 C.F.R. § 200.83





FOIA CONFIDENTIAL TREATMENT REQUESTED  
5 U.S.C. § 552  
17 C.F.R. § 200.83

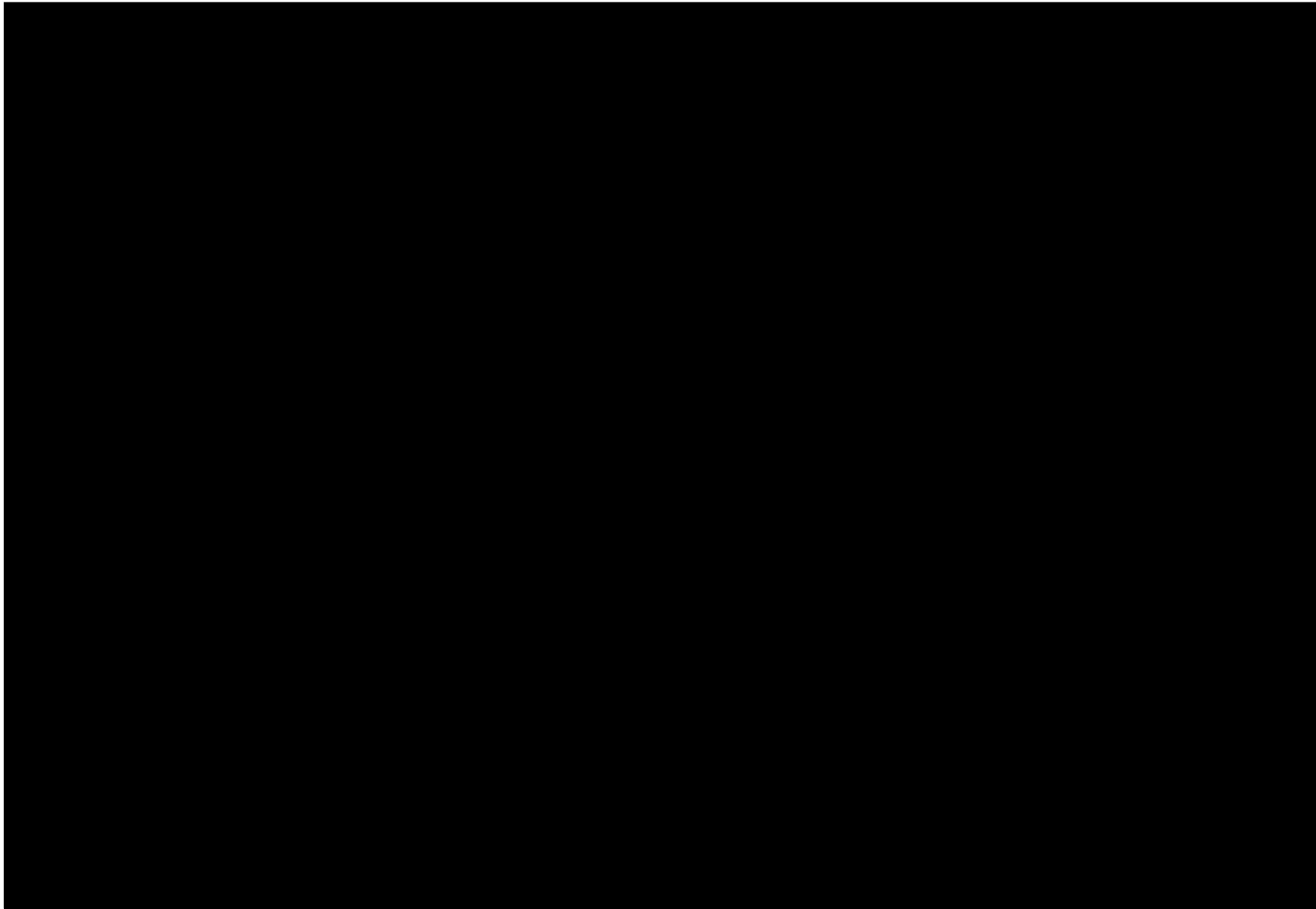




FOIA CONFIDENTIAL TREATMENT REQUESTED  
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17 C.F.R. § 200.83

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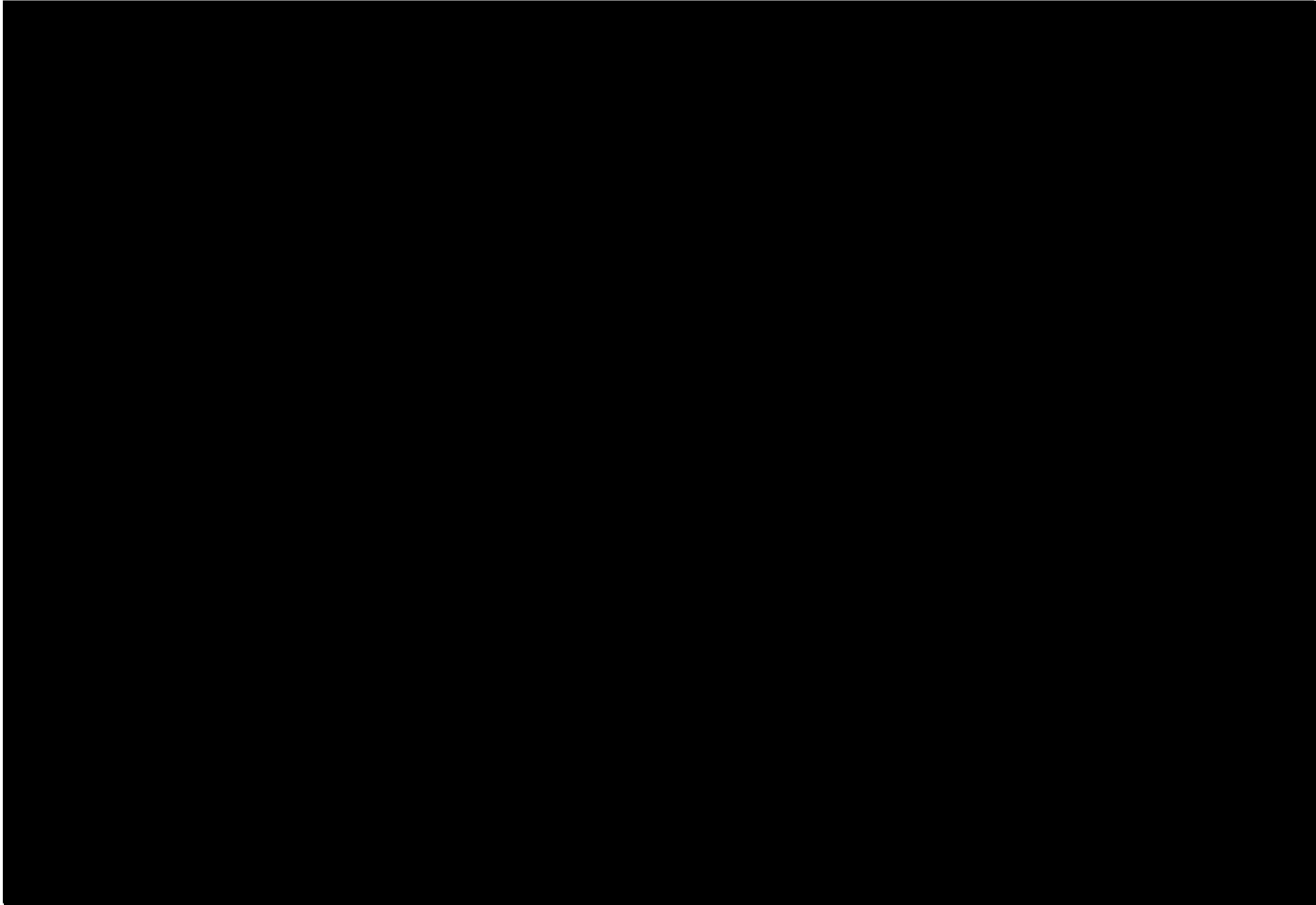




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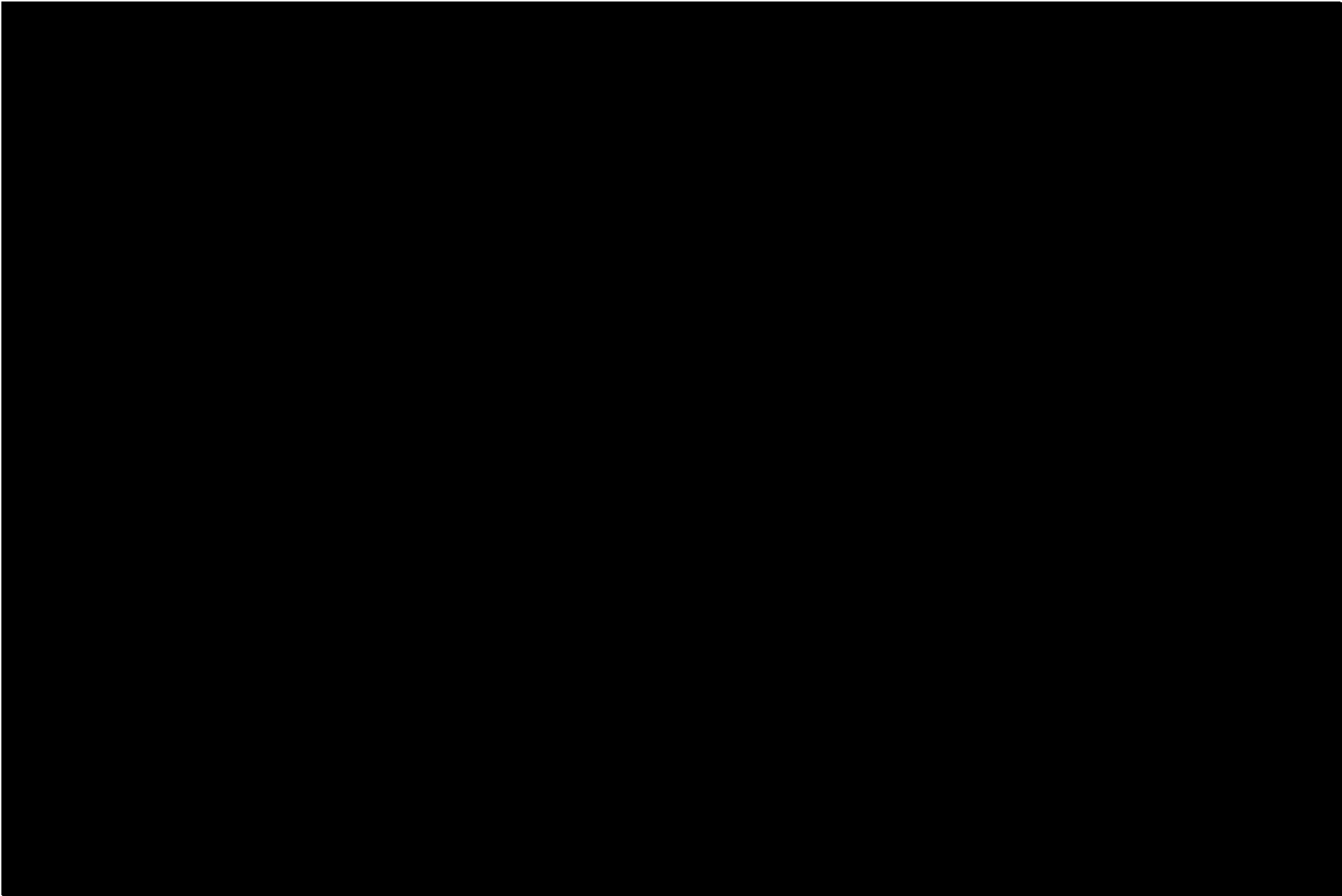


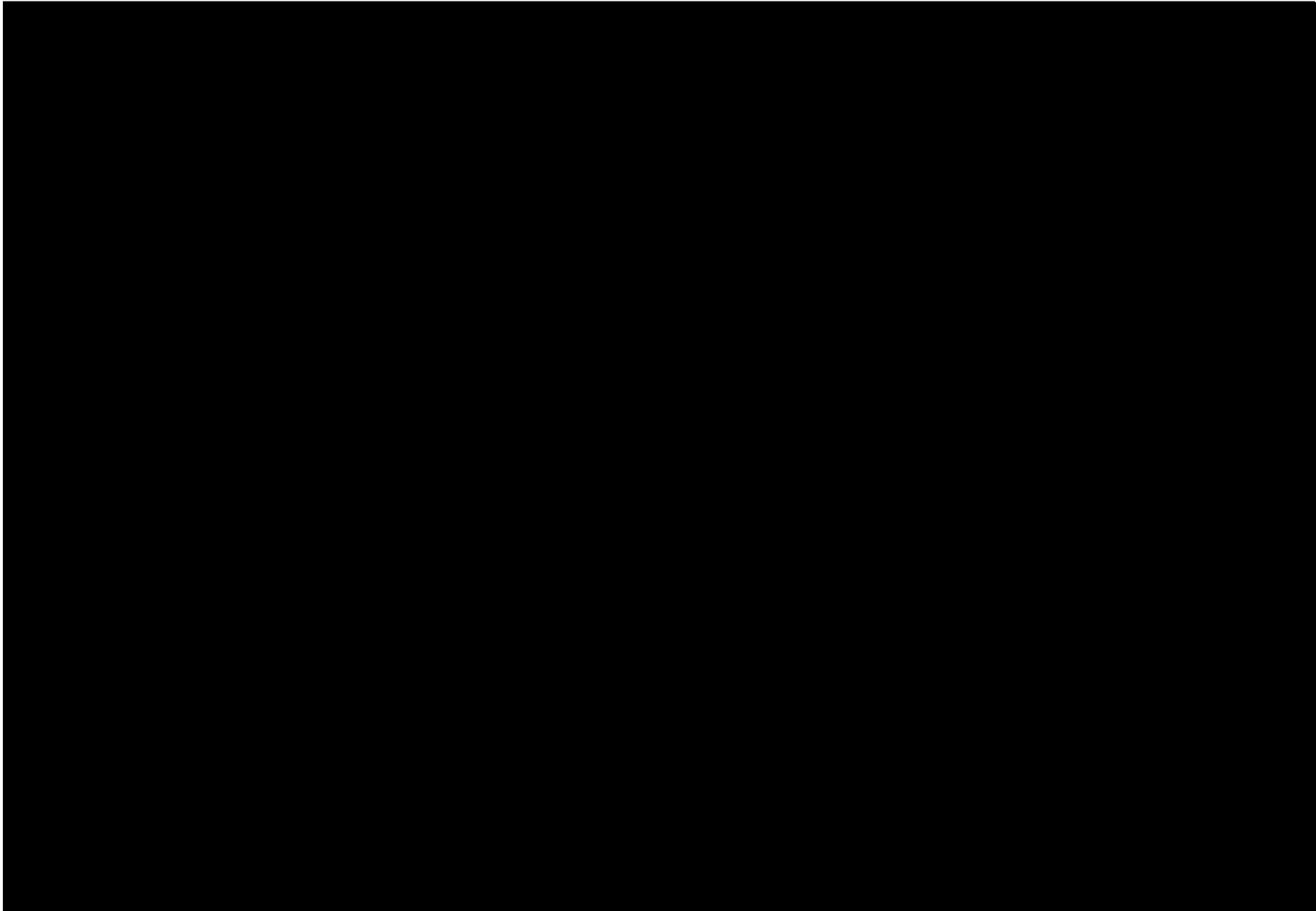


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5 U.S.C. § 552  
17 C.F.R. § 200.83

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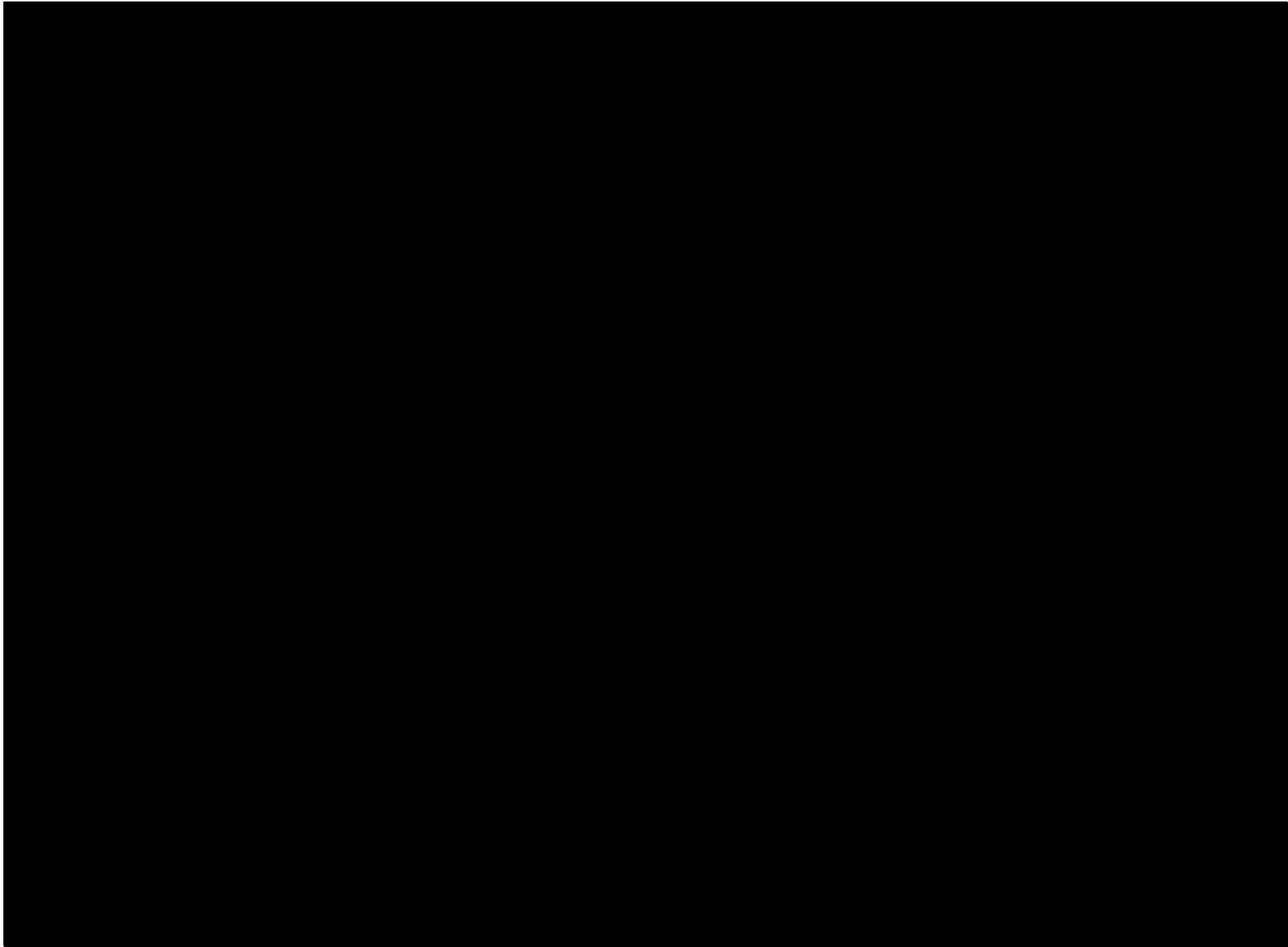




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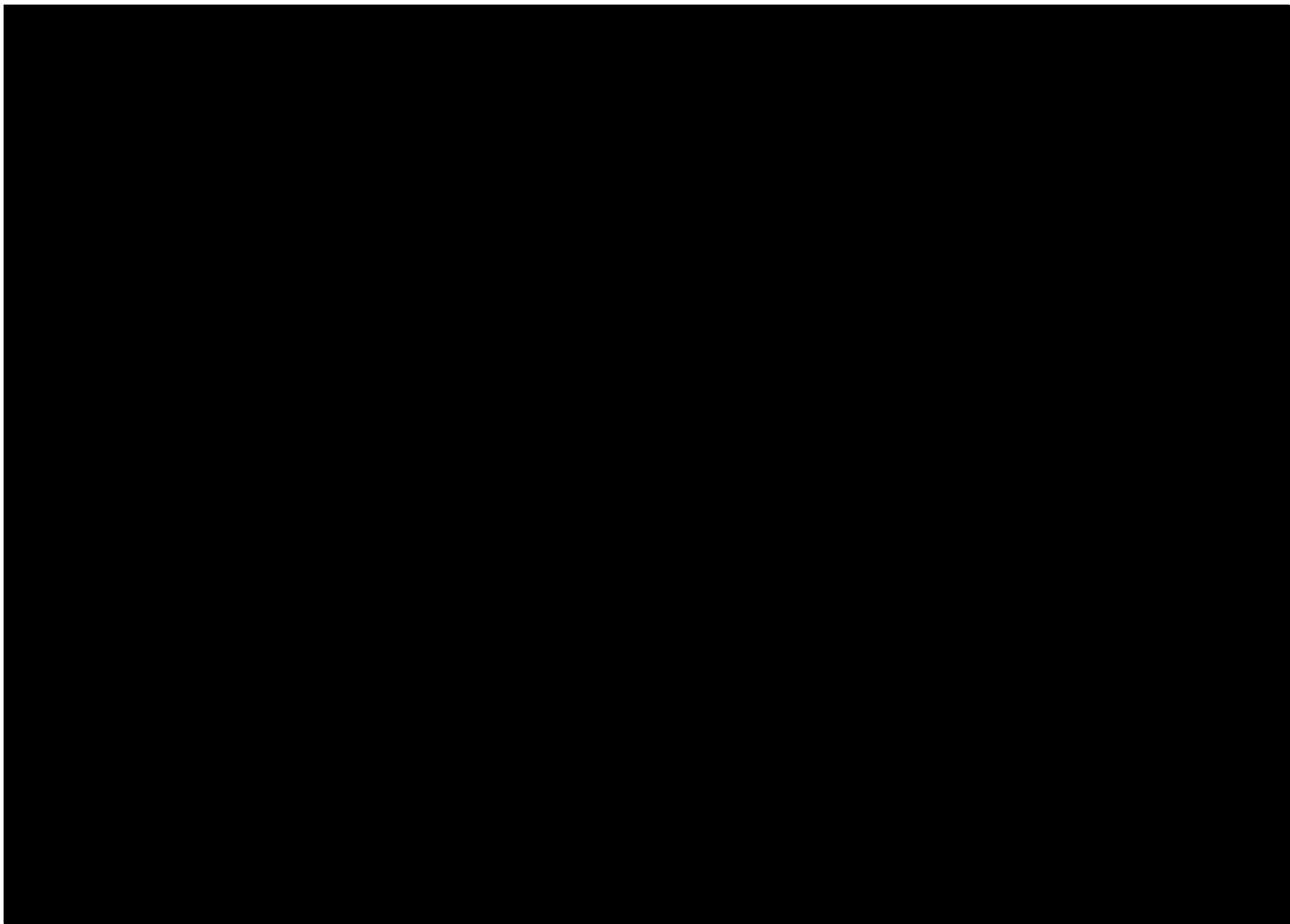


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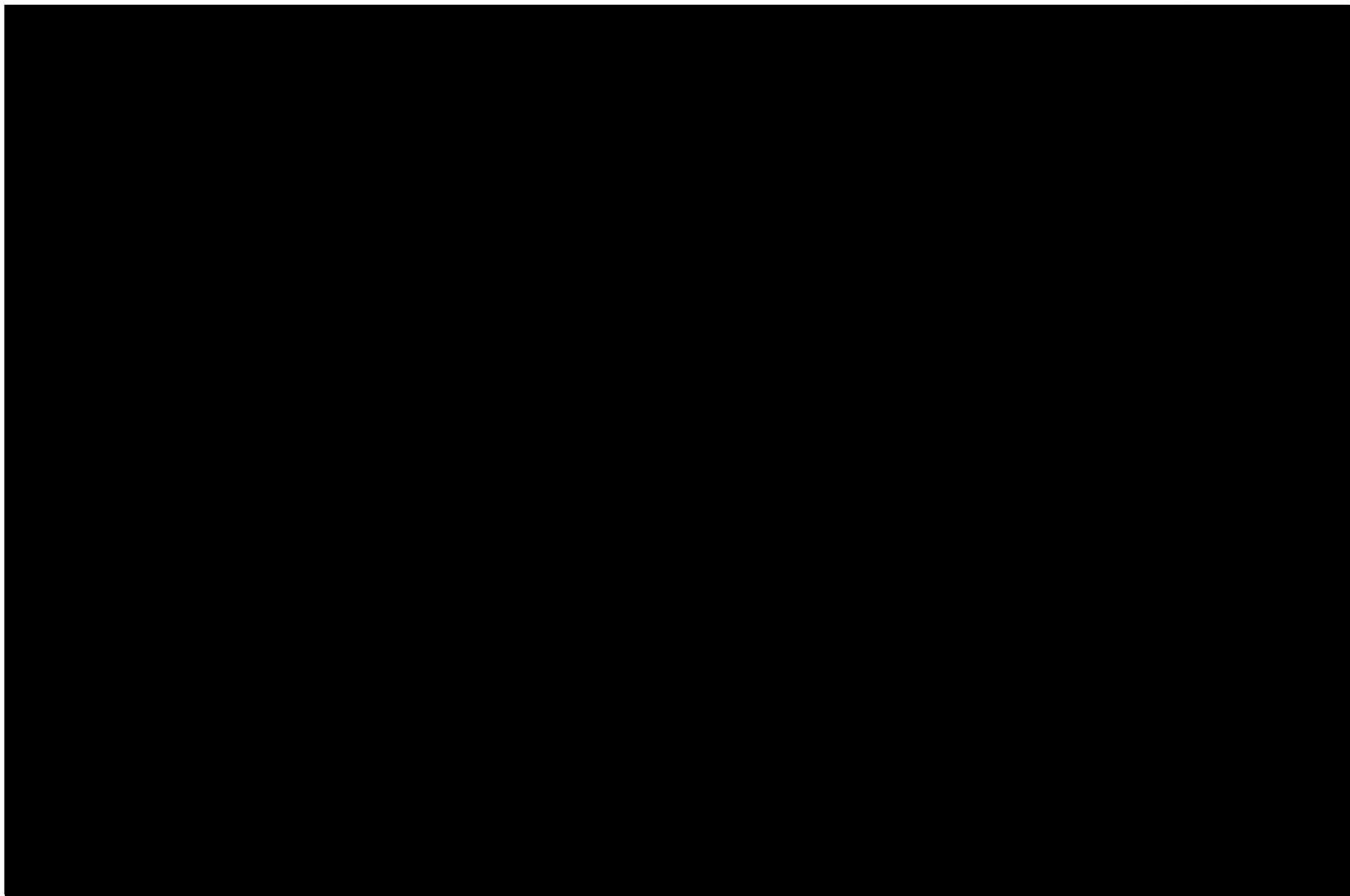




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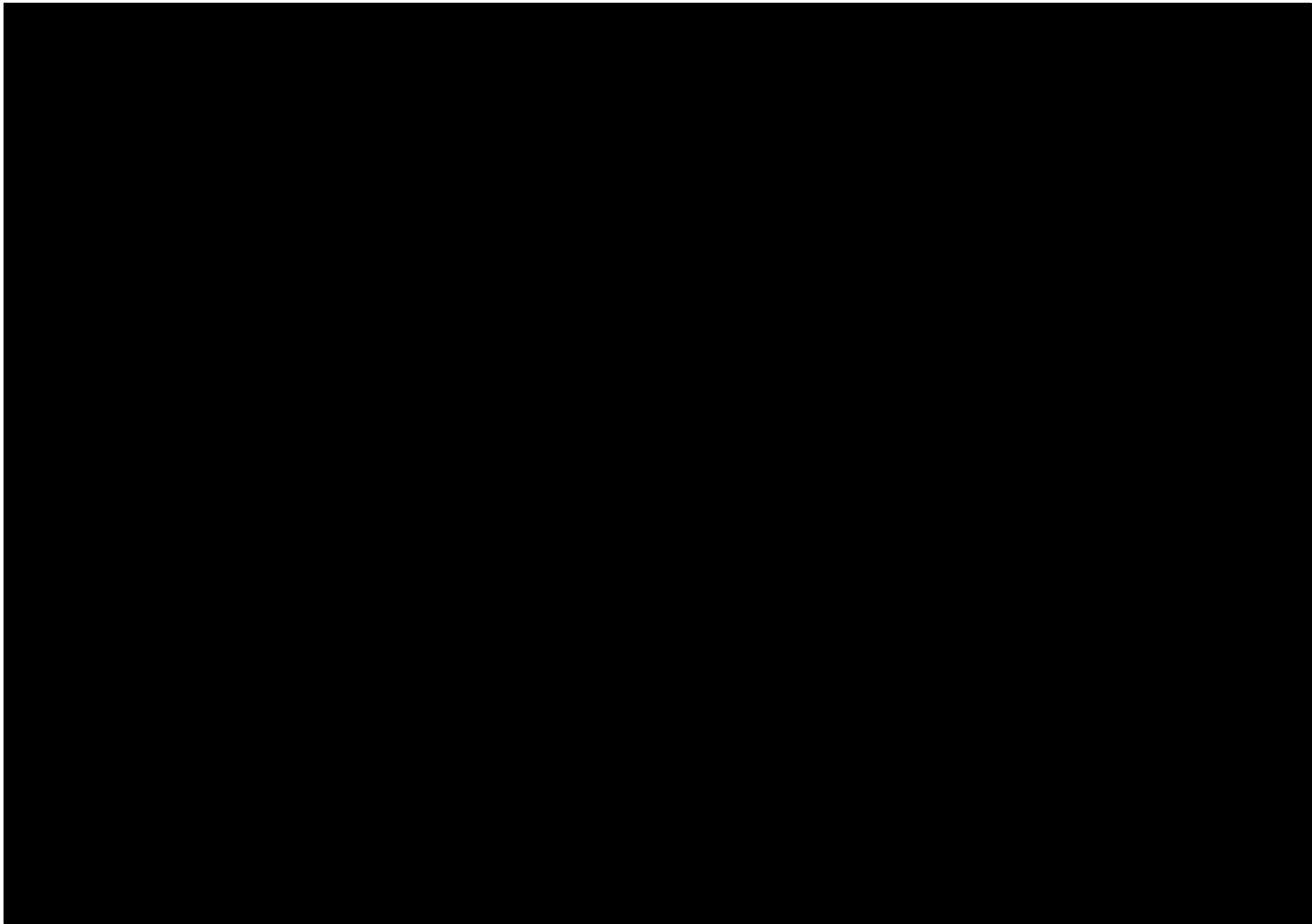




FOIA CONFIDENTIAL TREATMENT REQUESTED  
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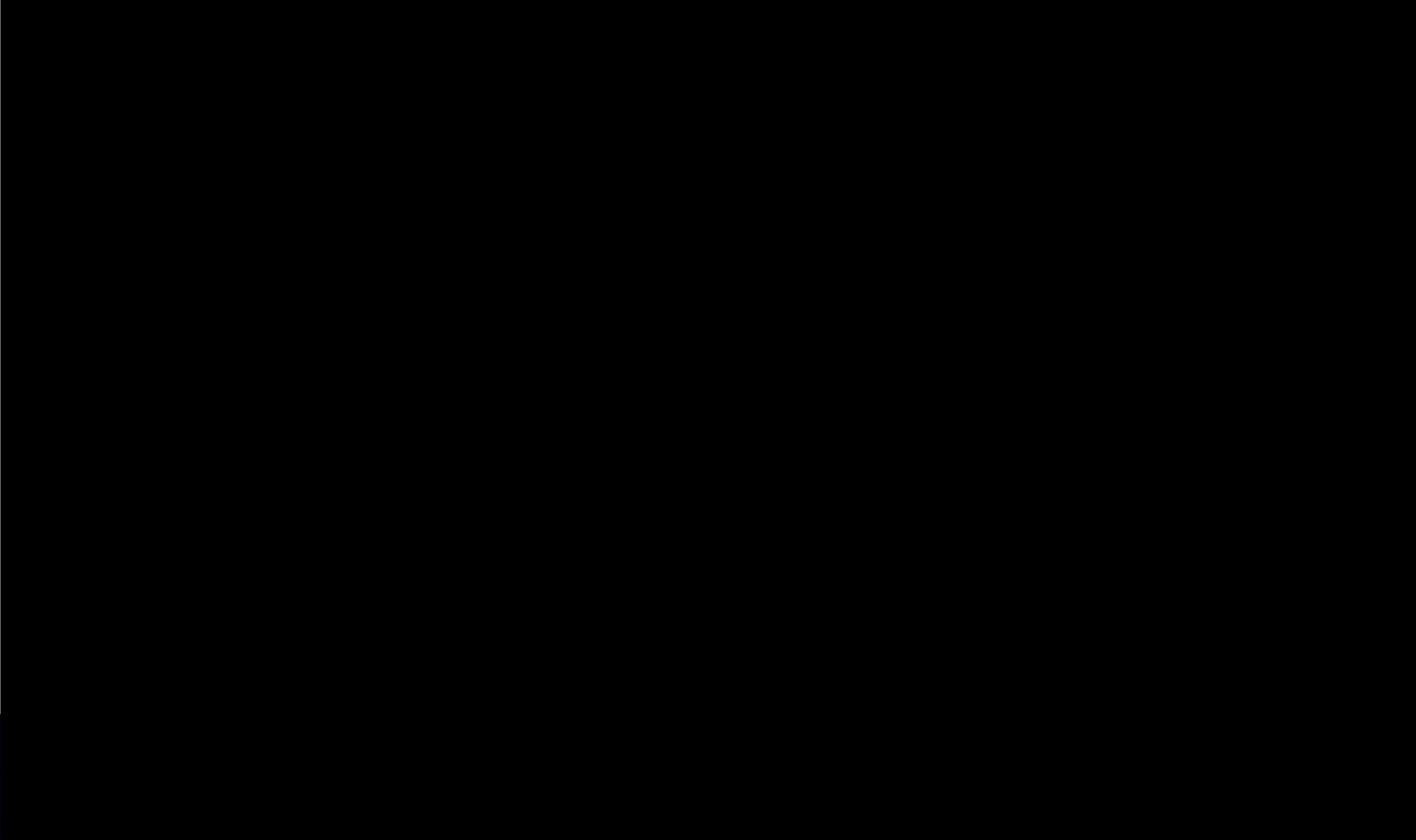
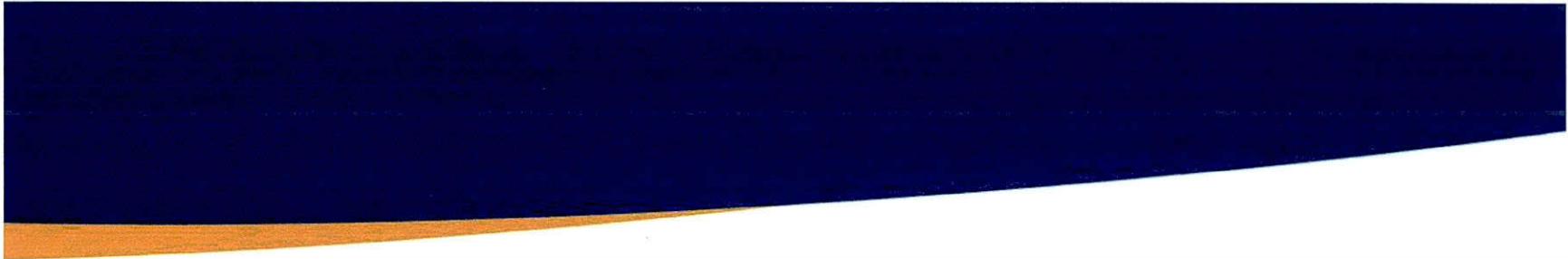


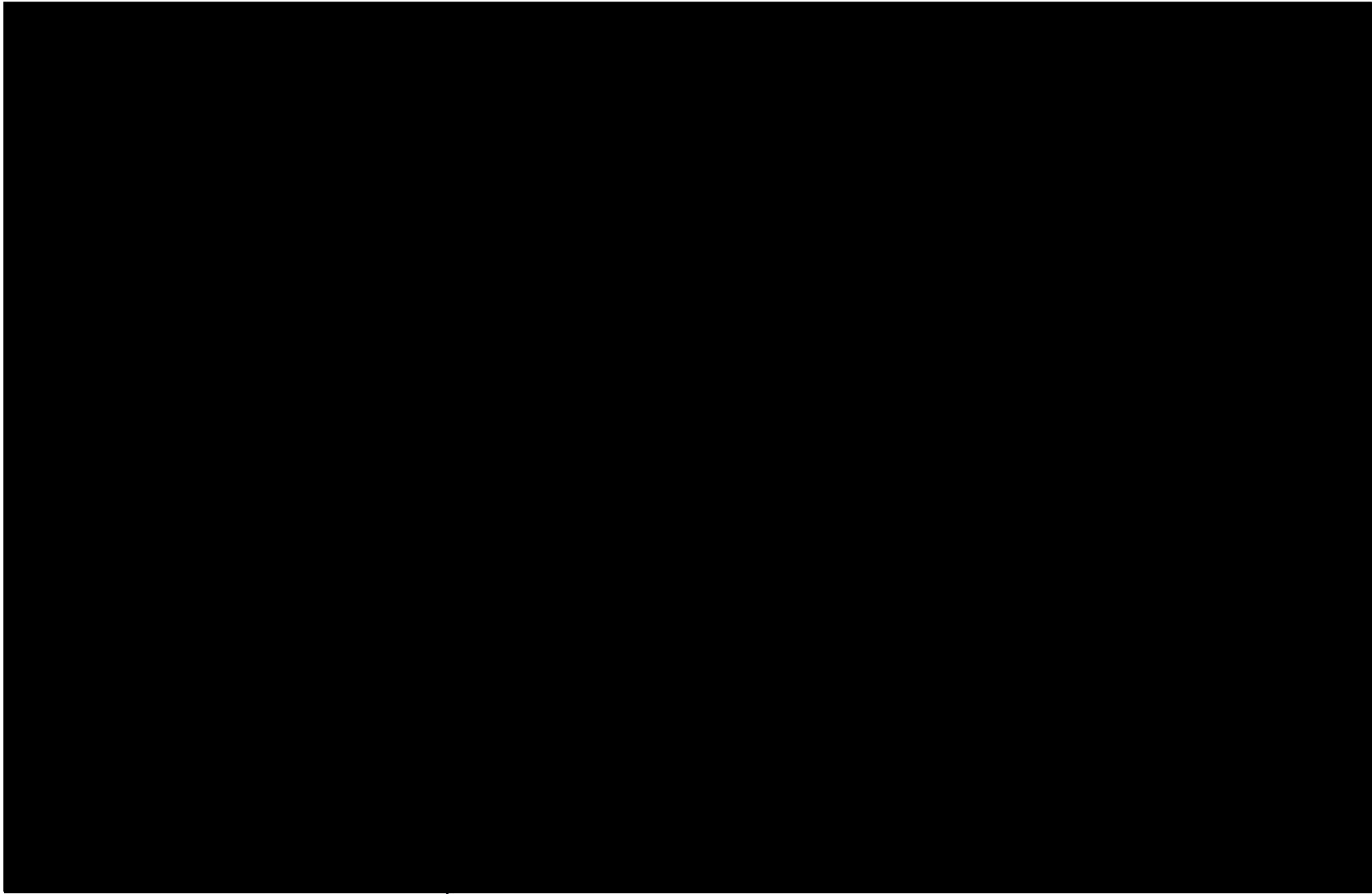


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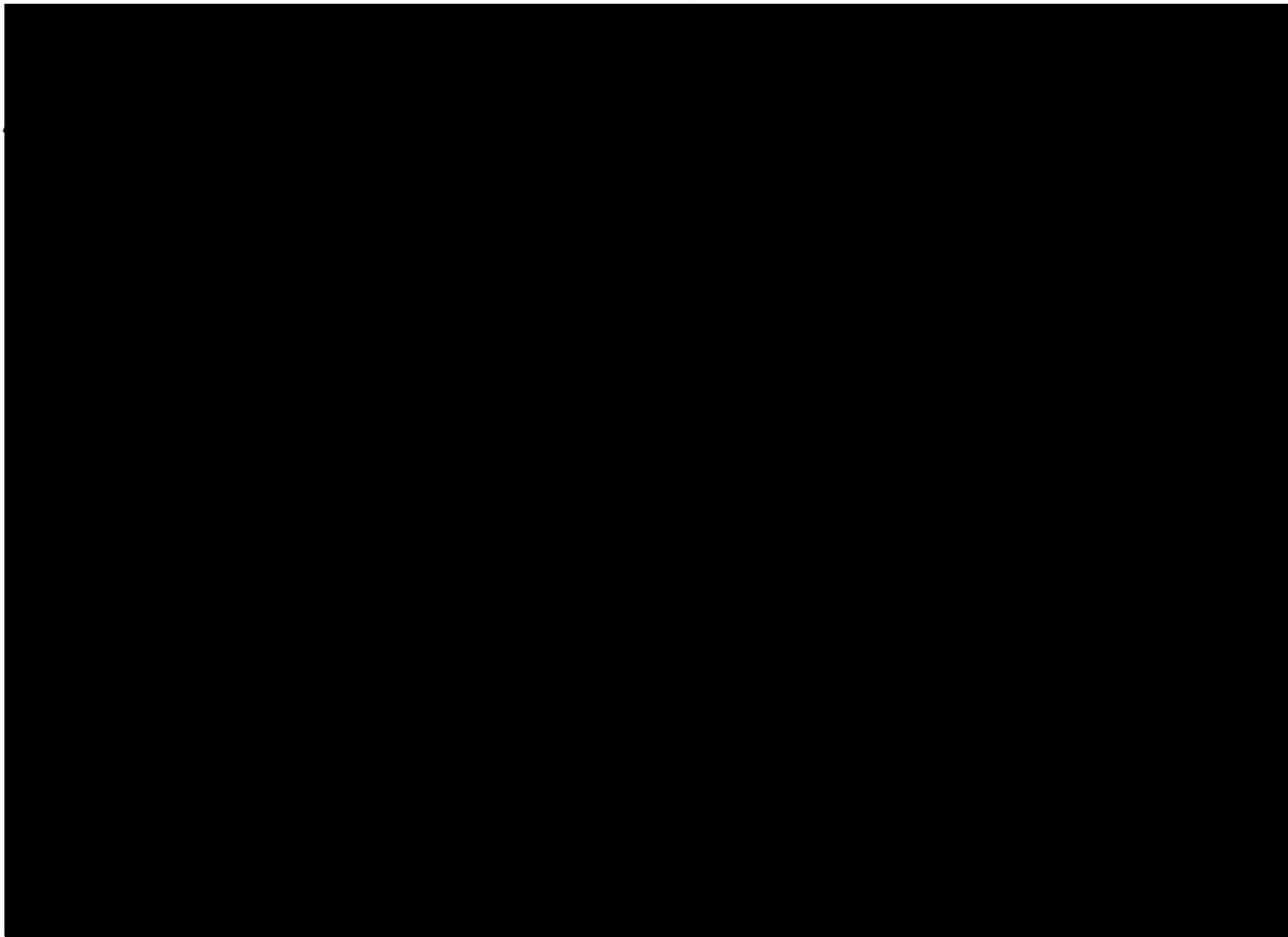




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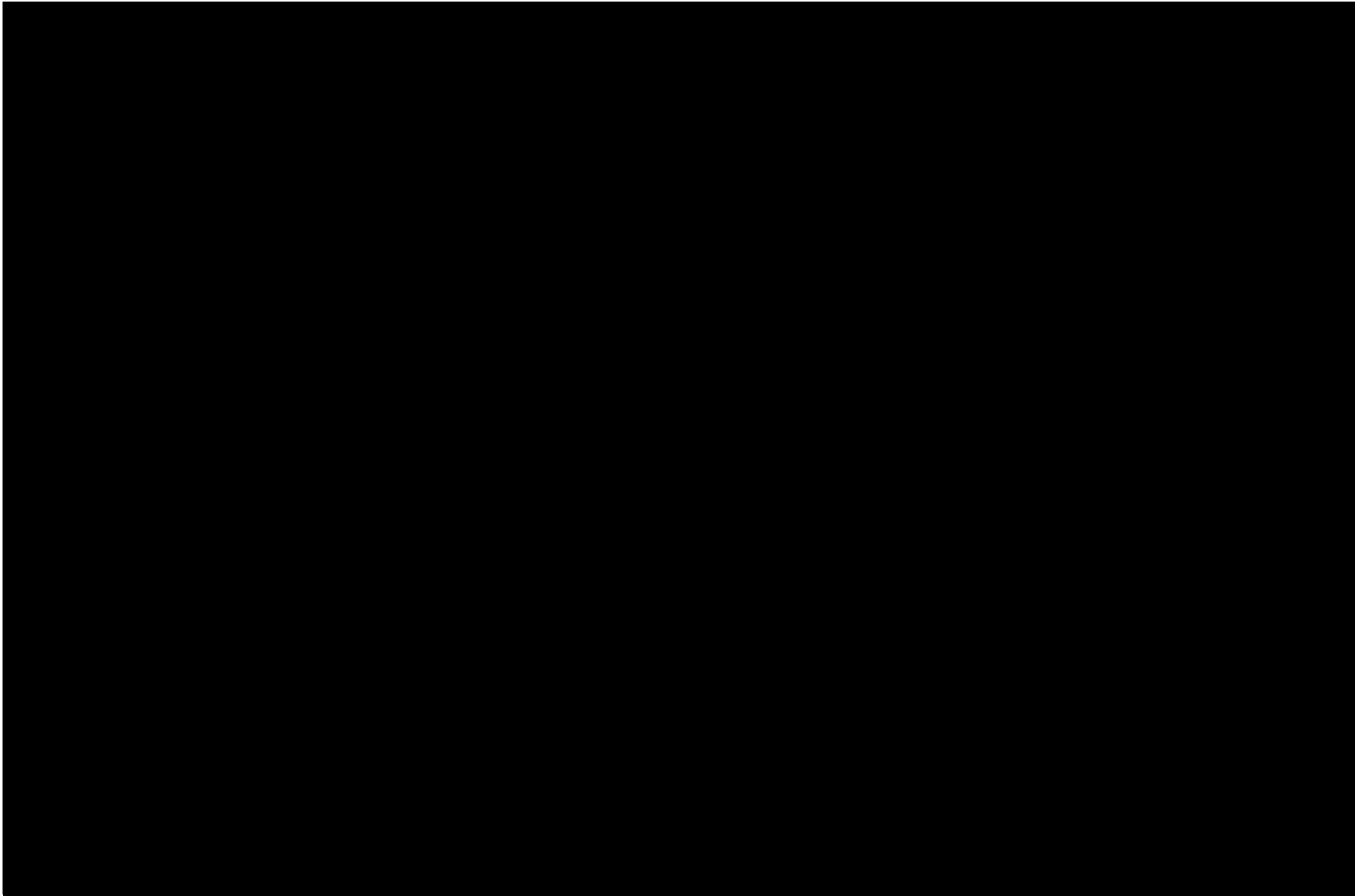




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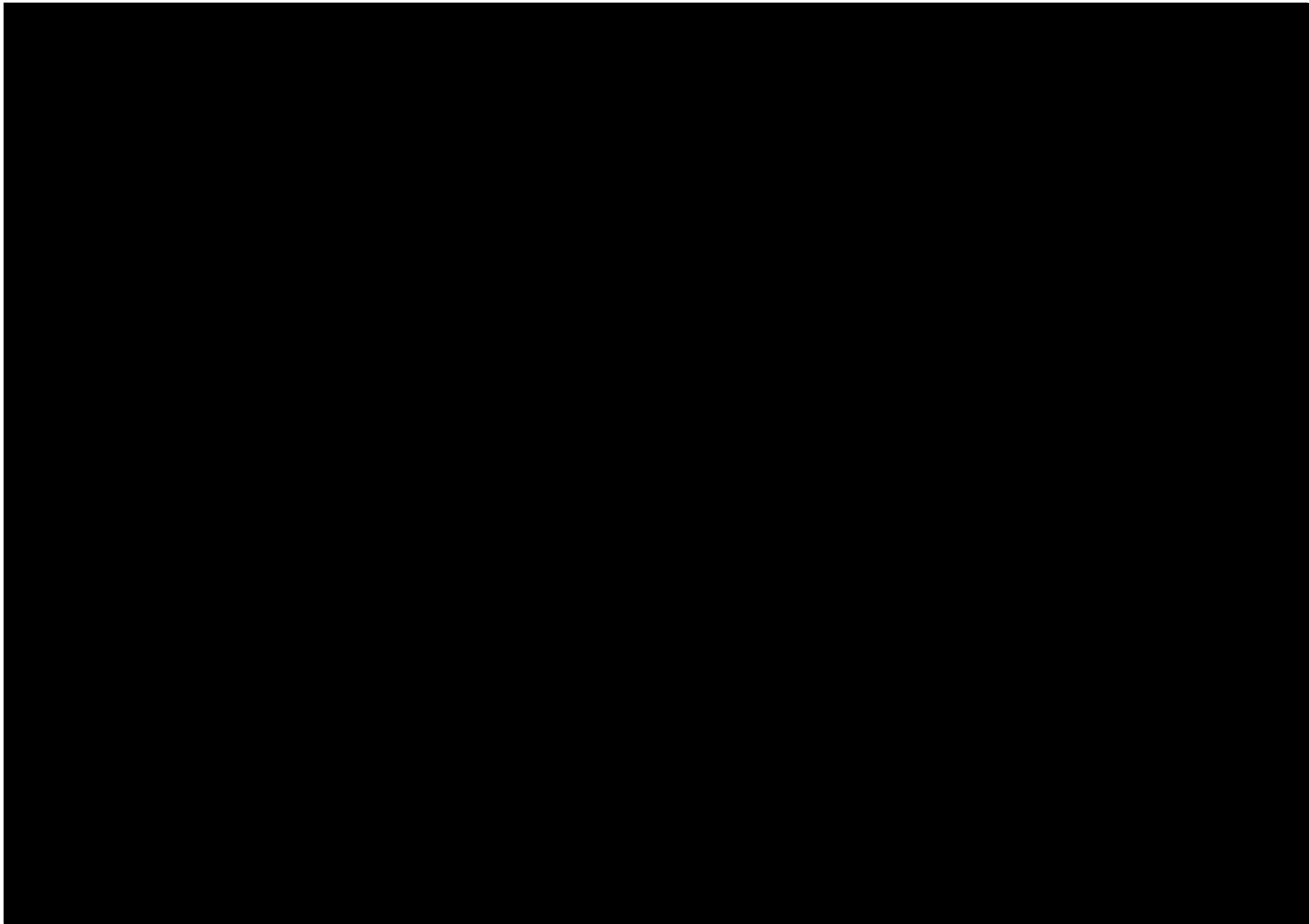




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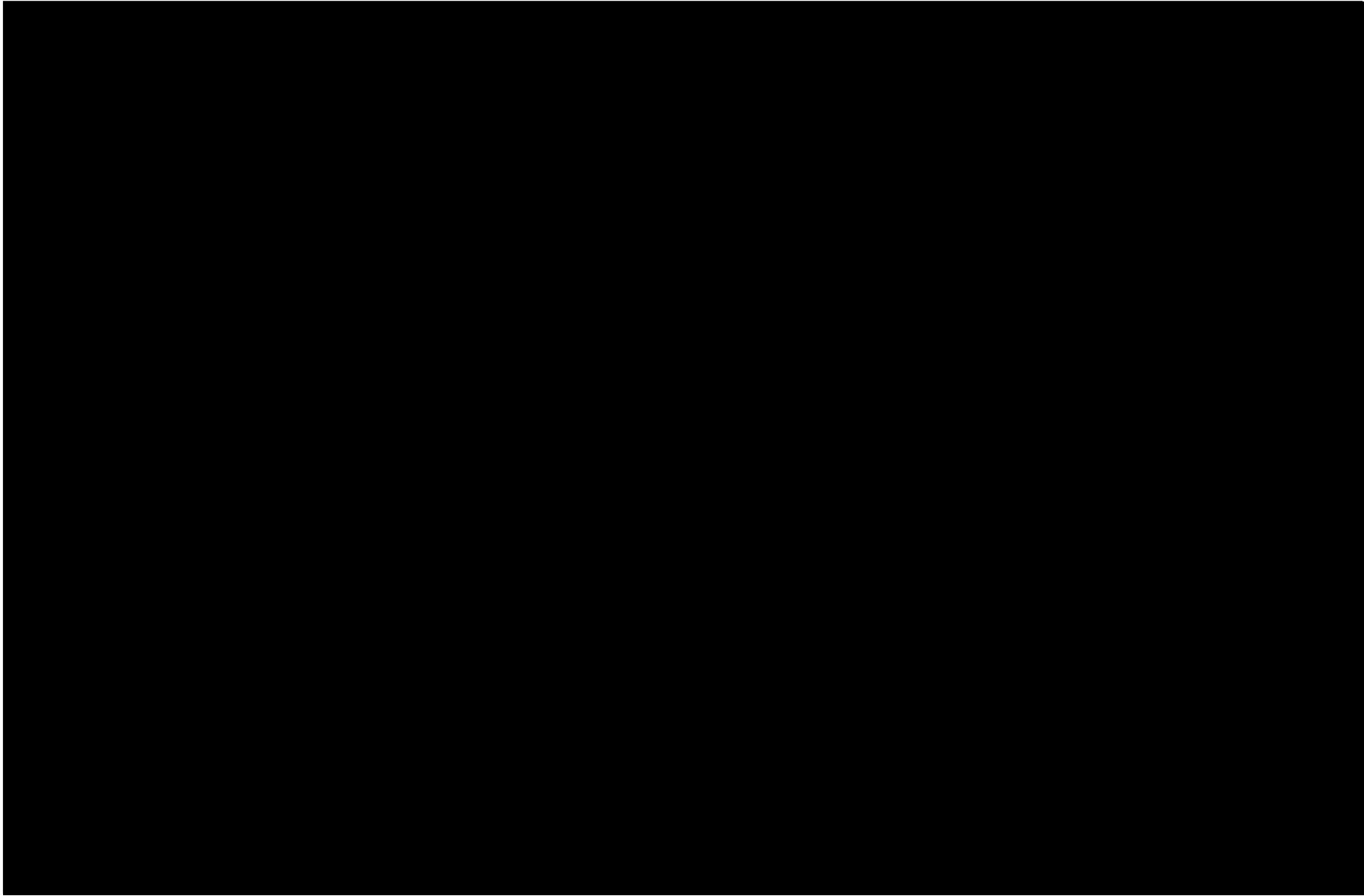


FOIA CONFIDENTIAL TREATMENT REQUESTED  
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17 C.F.R. § 200.83

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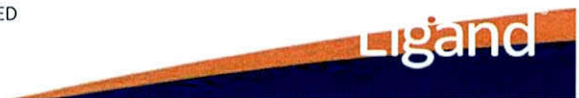
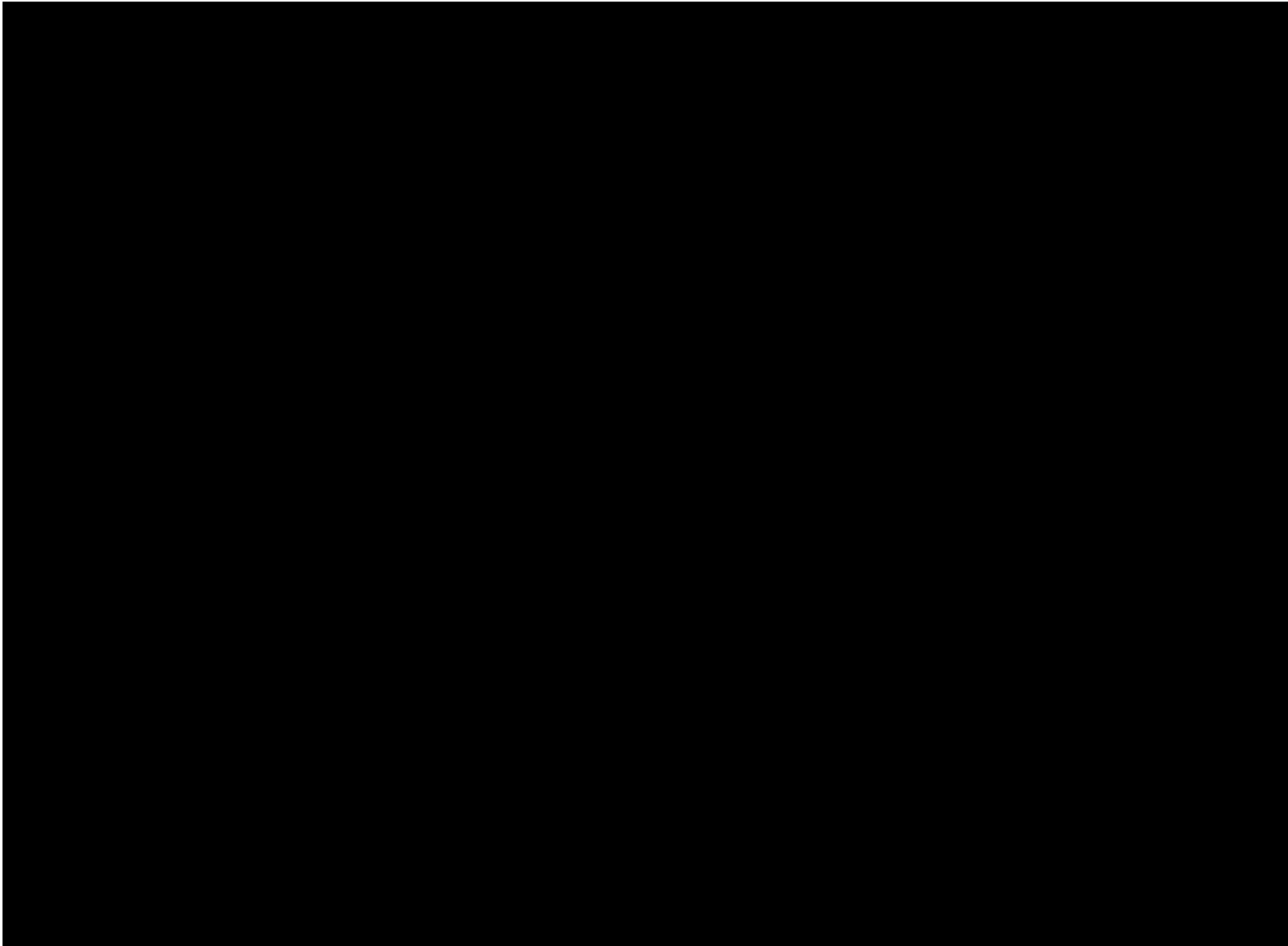


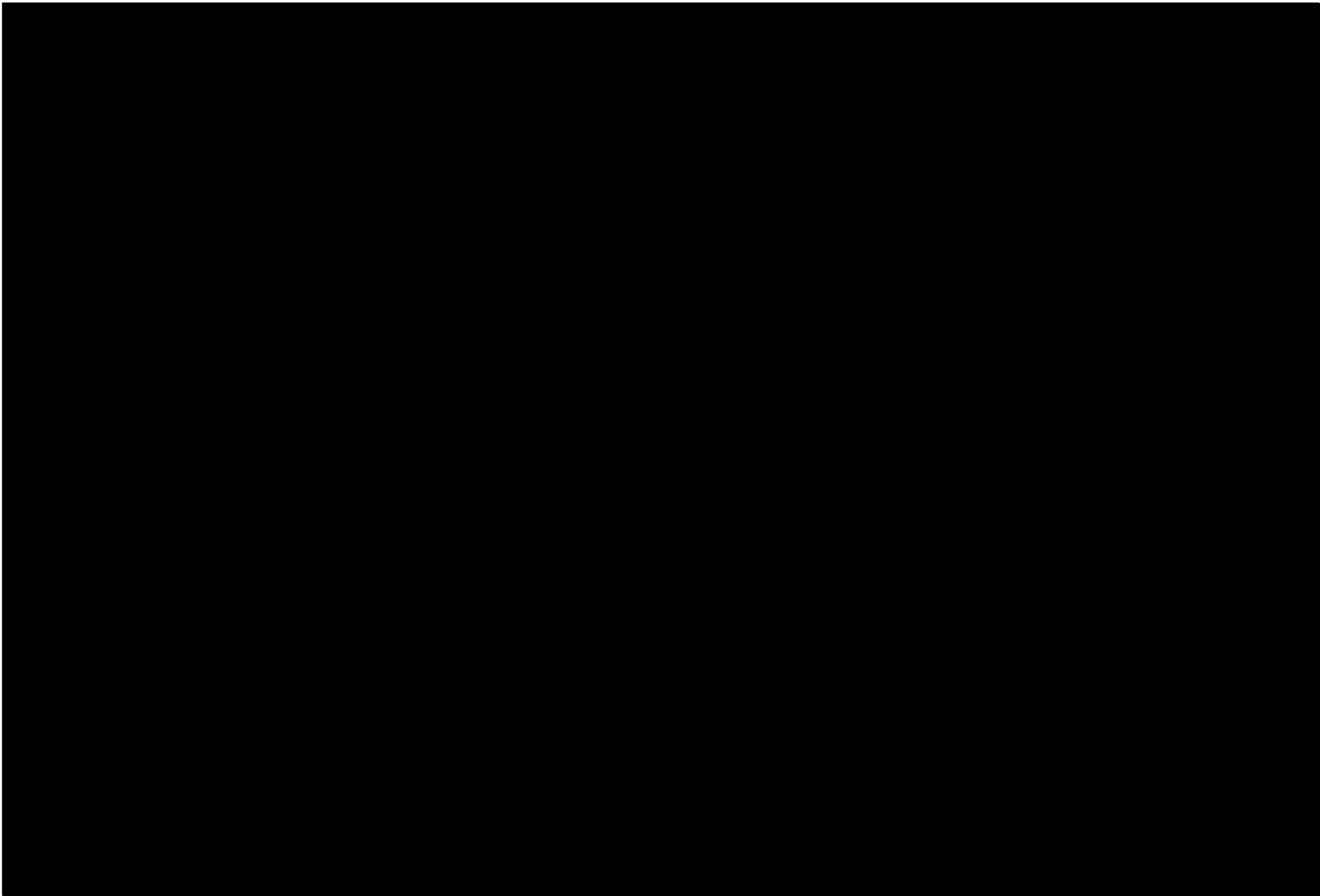


FOIA CONFIDENTIAL TREATMENT REQUESTED  
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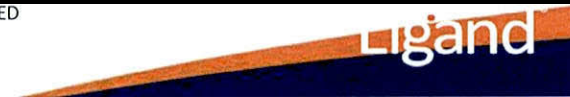
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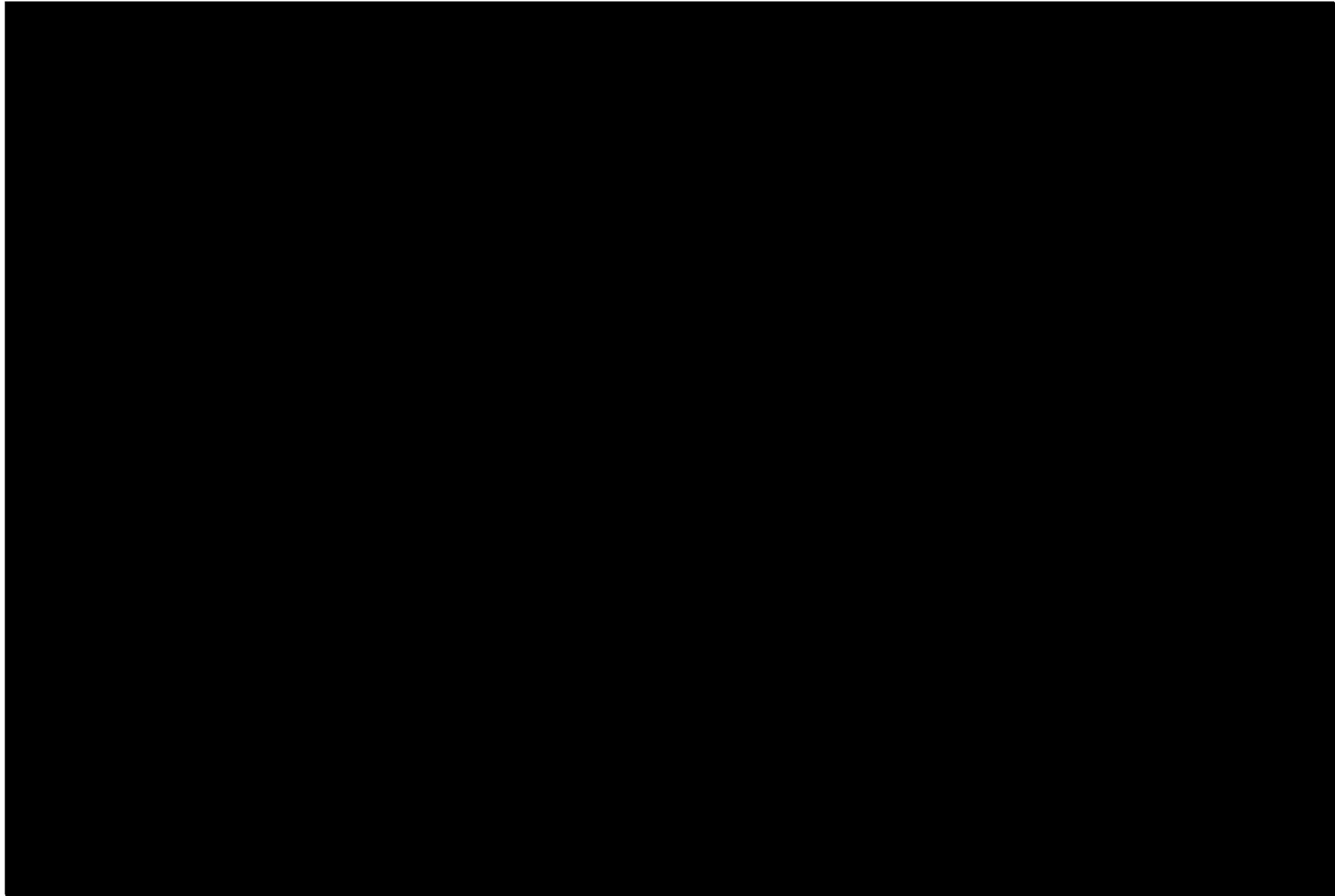
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FOIA CONFIDENTIAL TREATMENT REQUESTED  
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17 C.F.R. § 200.83

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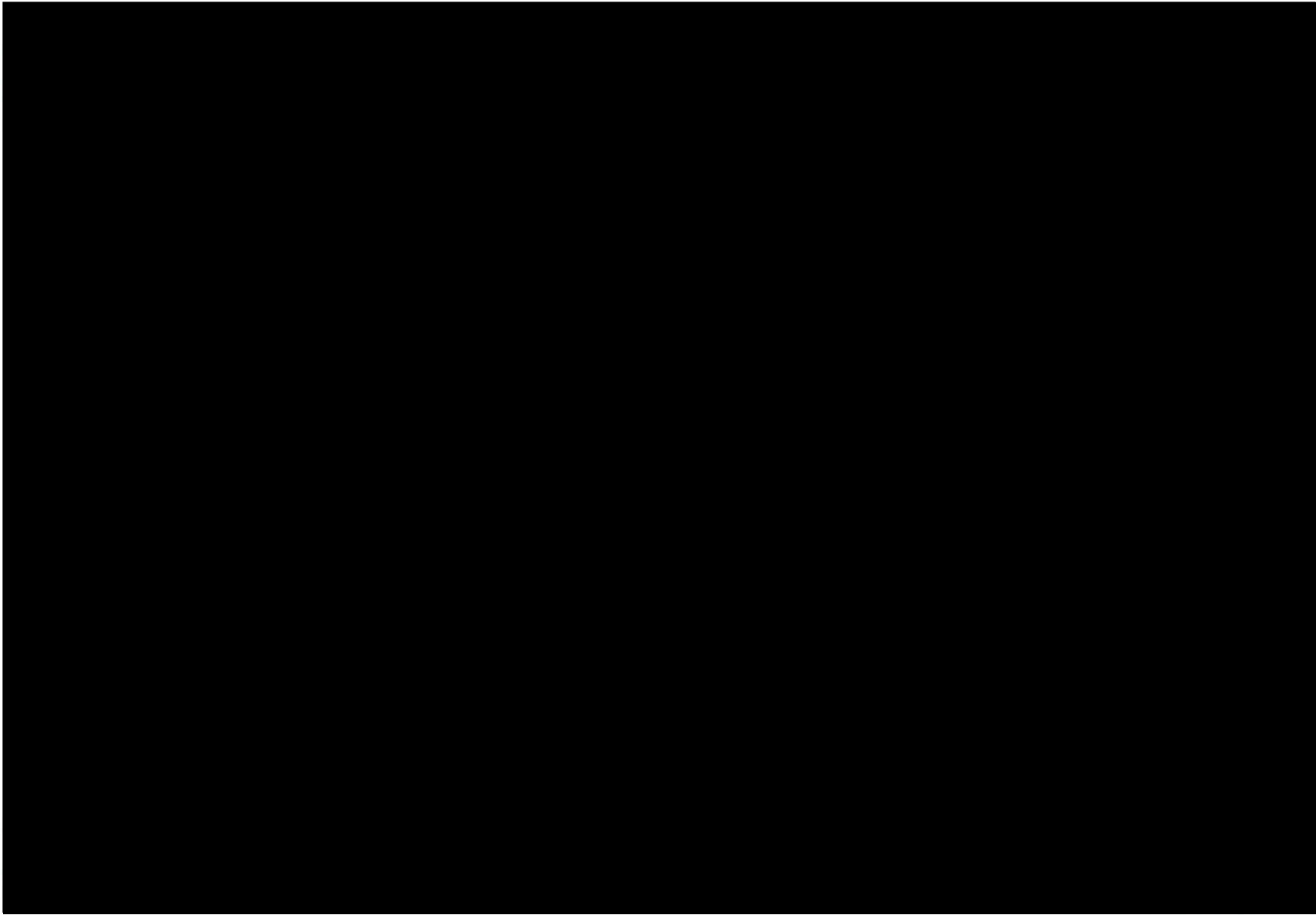




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5 U.S.C. § 552  
17 C.F.R. § 200.83

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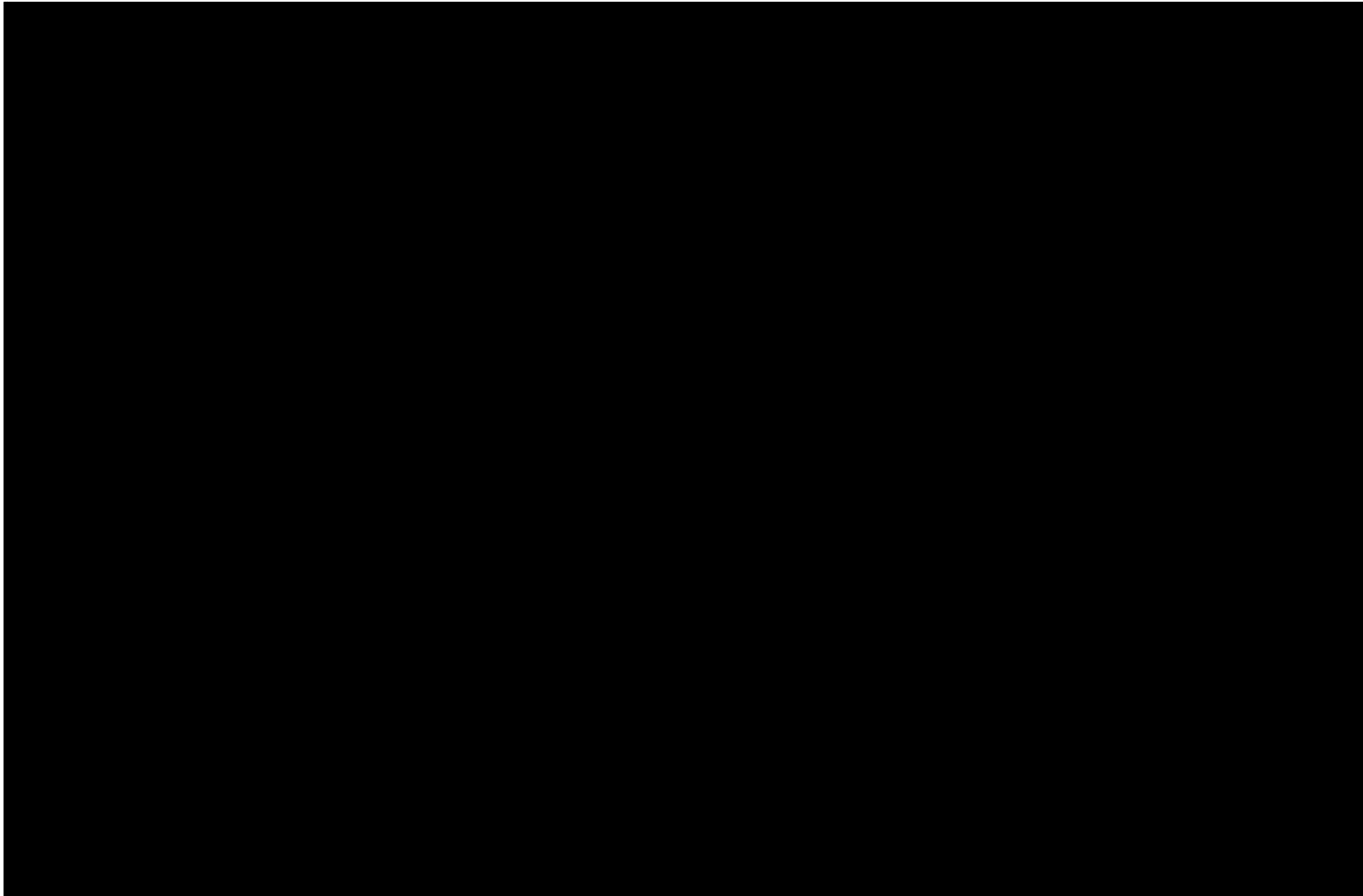


OS Received 07/29/2022

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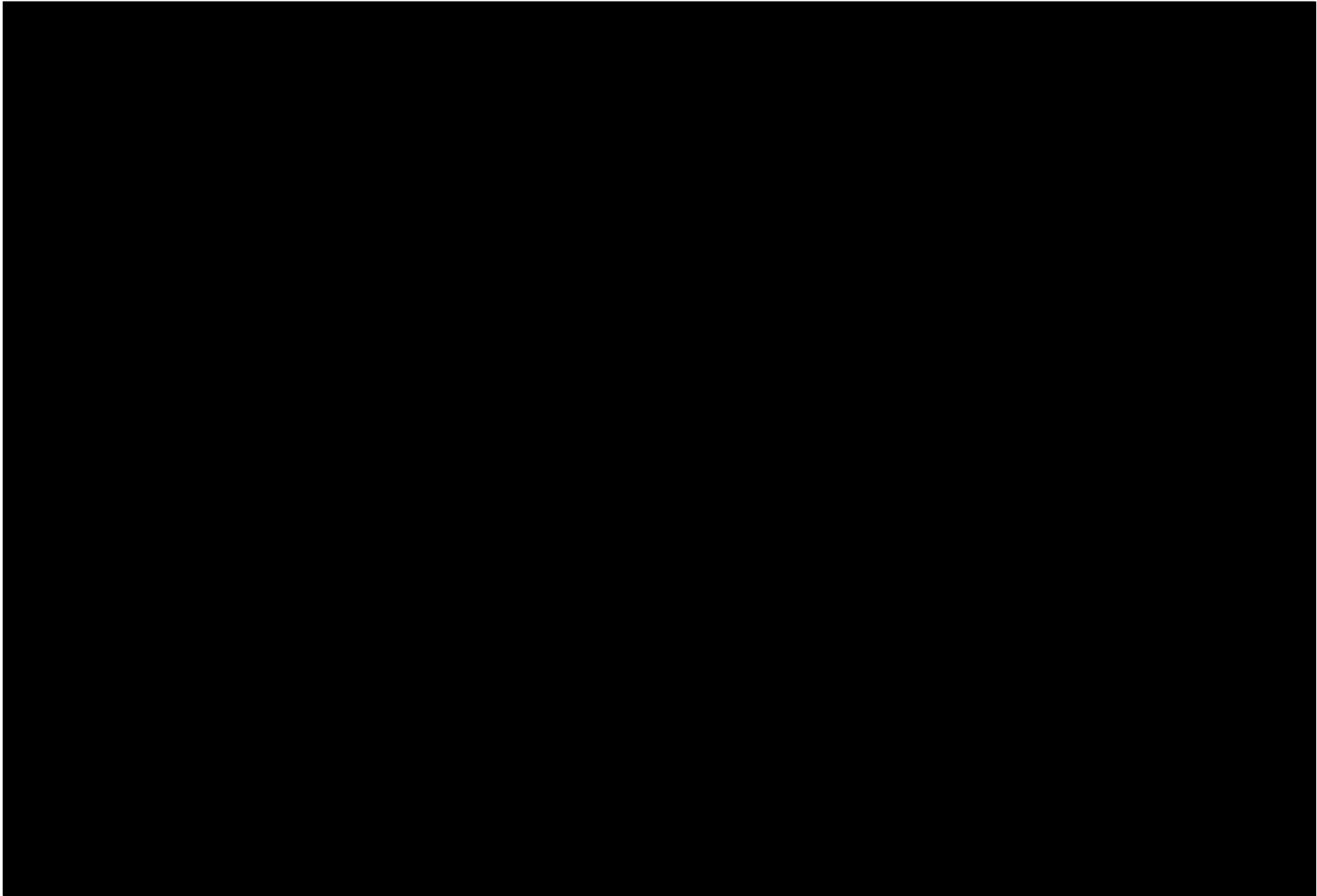


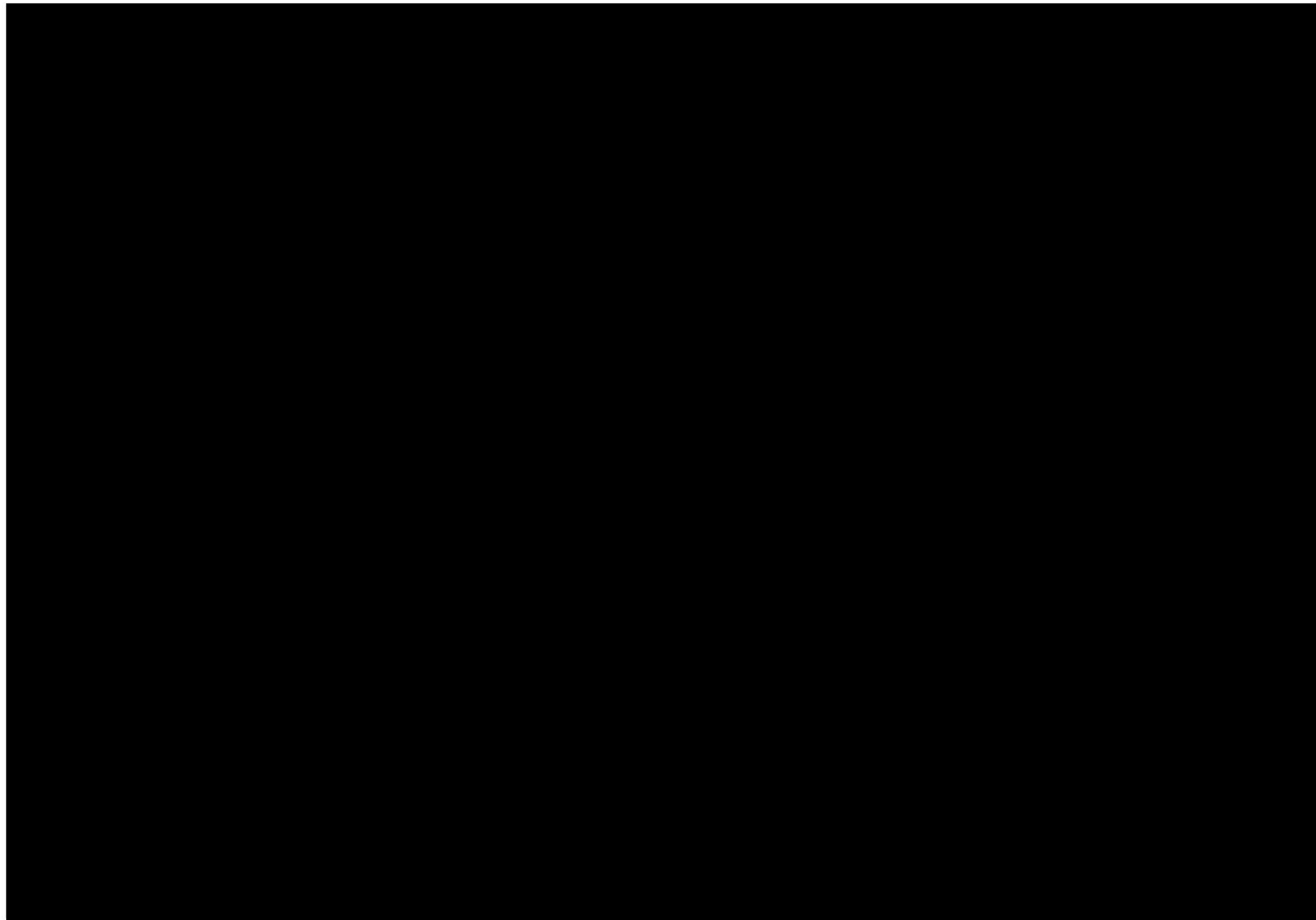
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17 C.F.R. § 200.83

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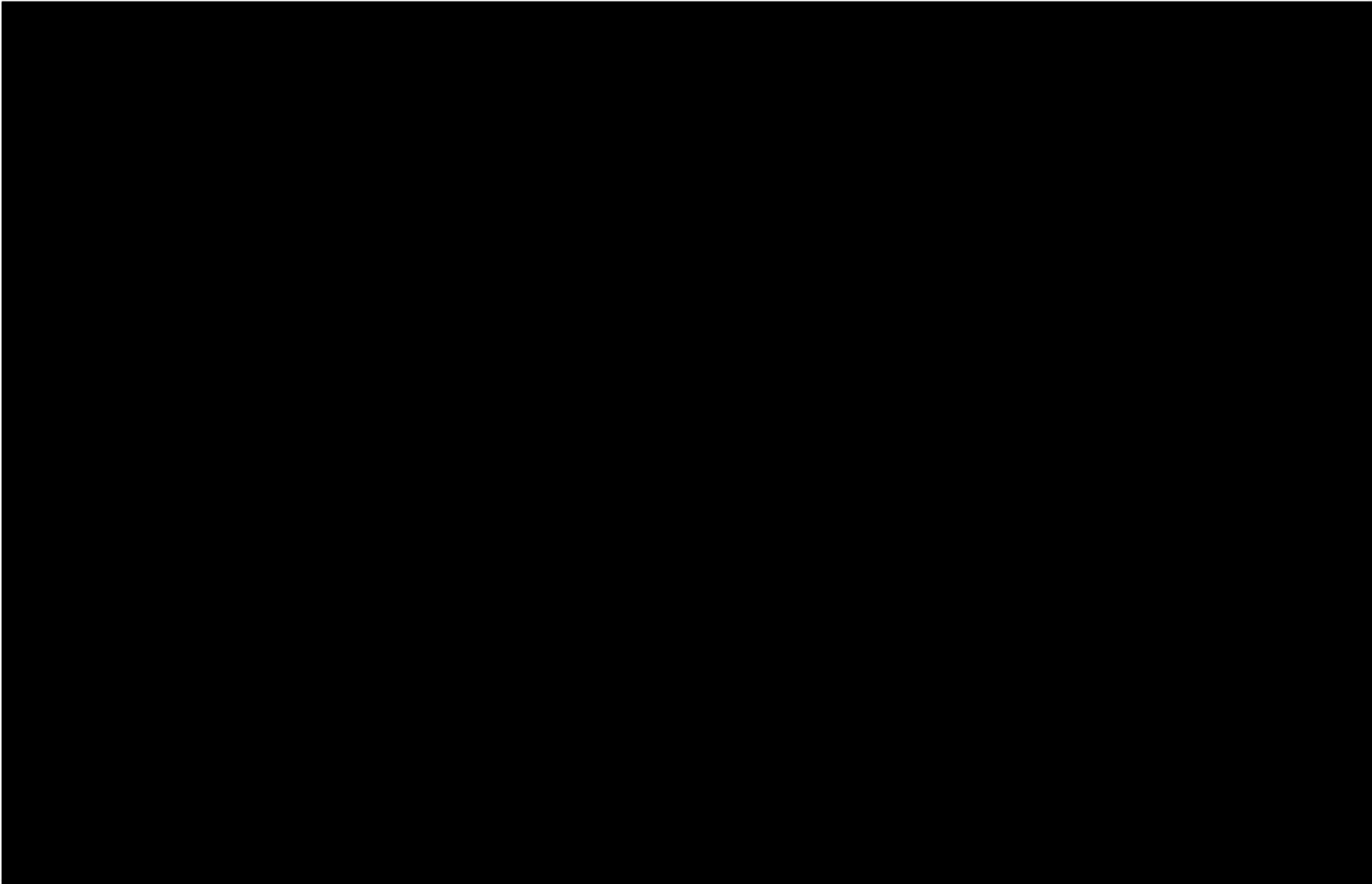




FOIA CONFIDENTIAL TREATMENT REQUESTED  
5 U.S.C. § 552  
17 C.F.R. § 200.83

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Ligand Pharmaceuticals, Inc.

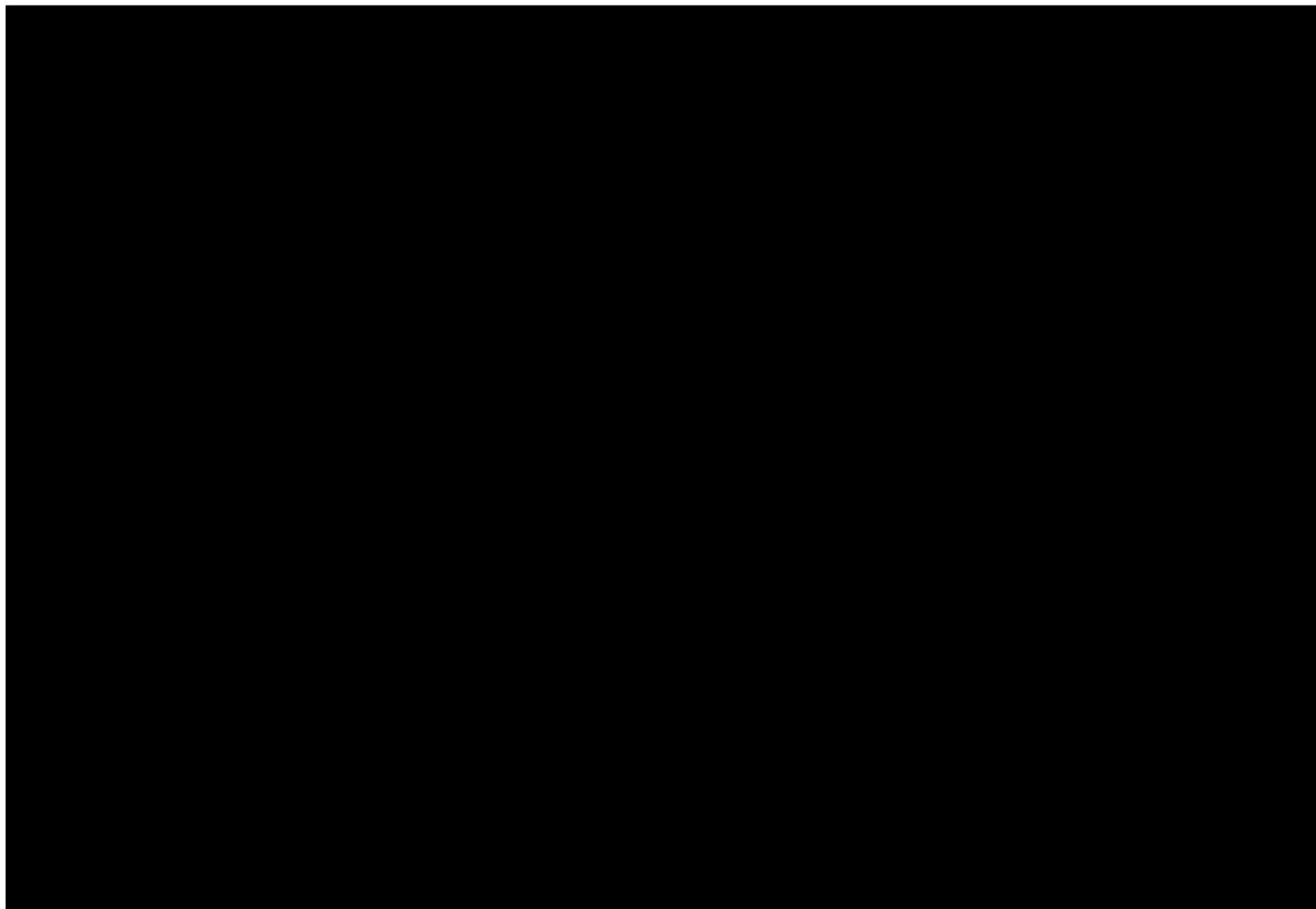




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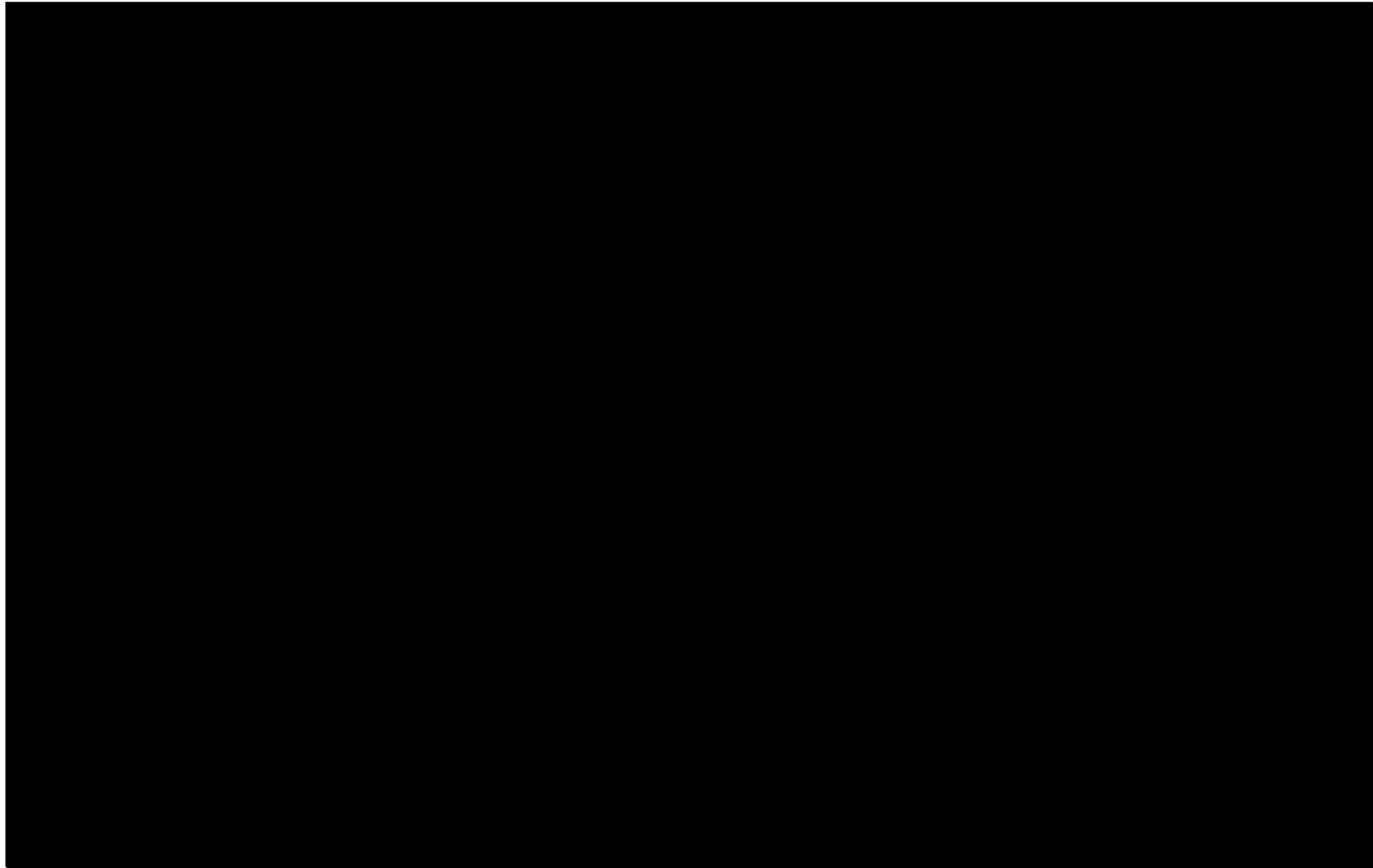




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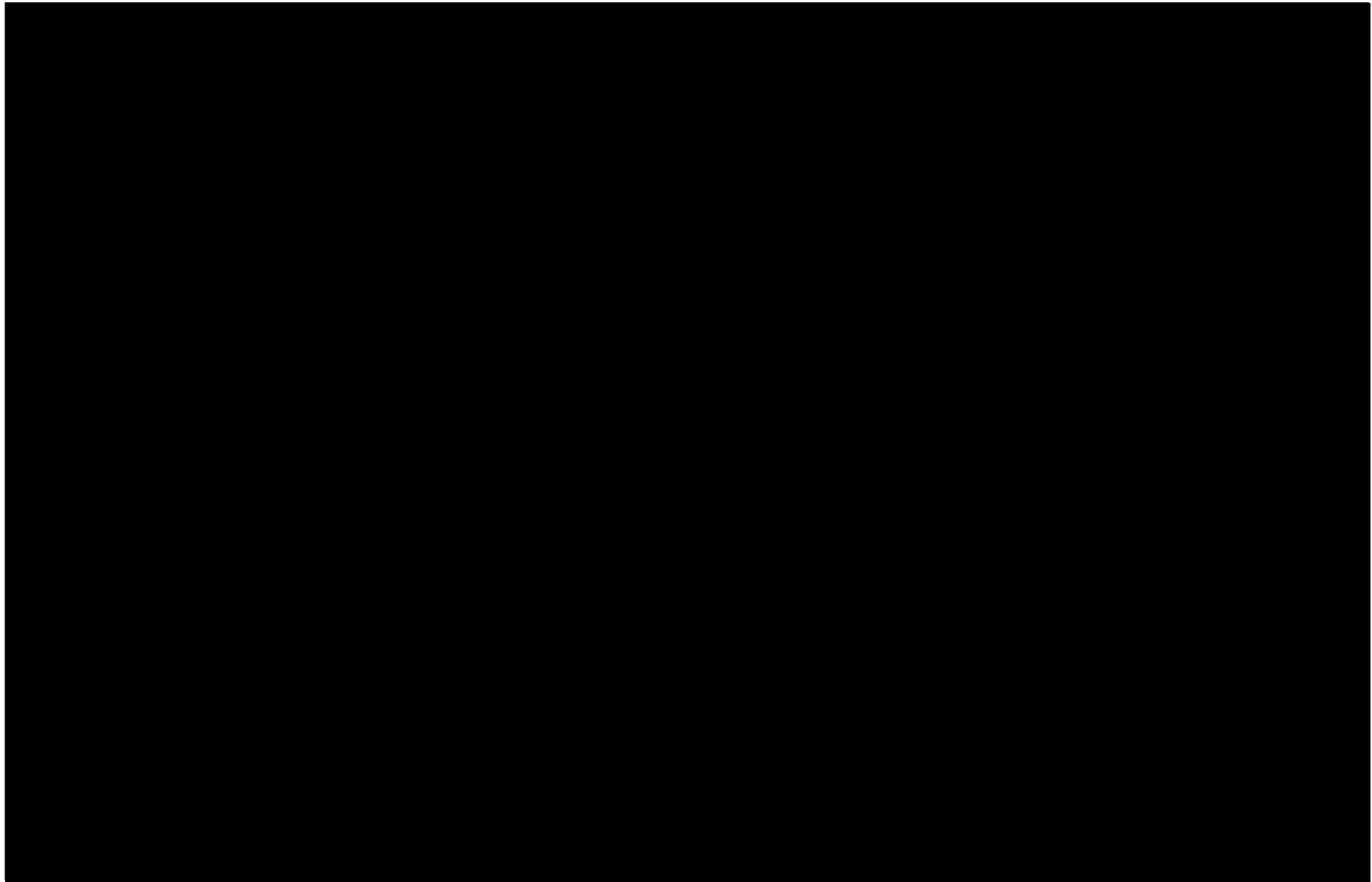




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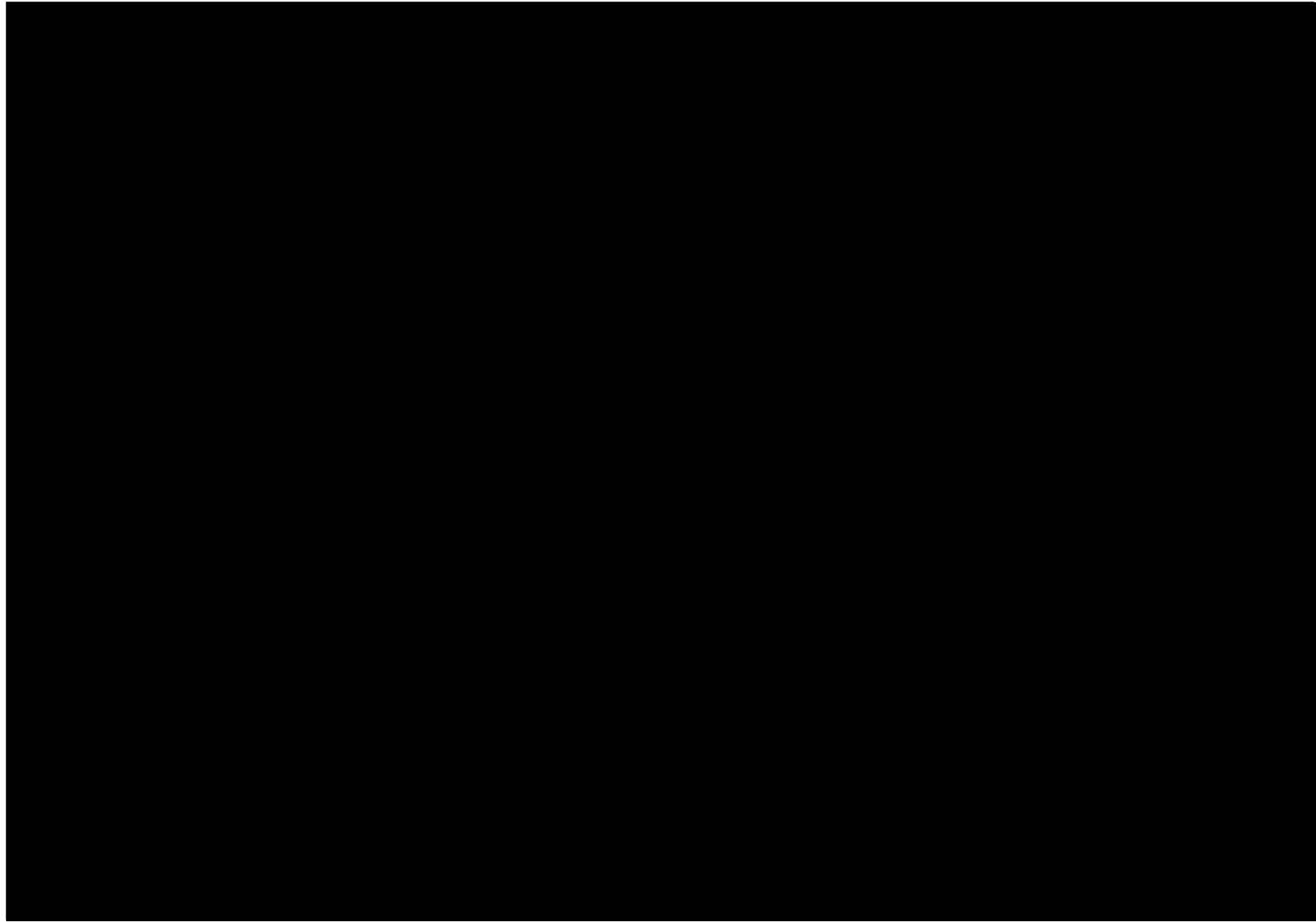




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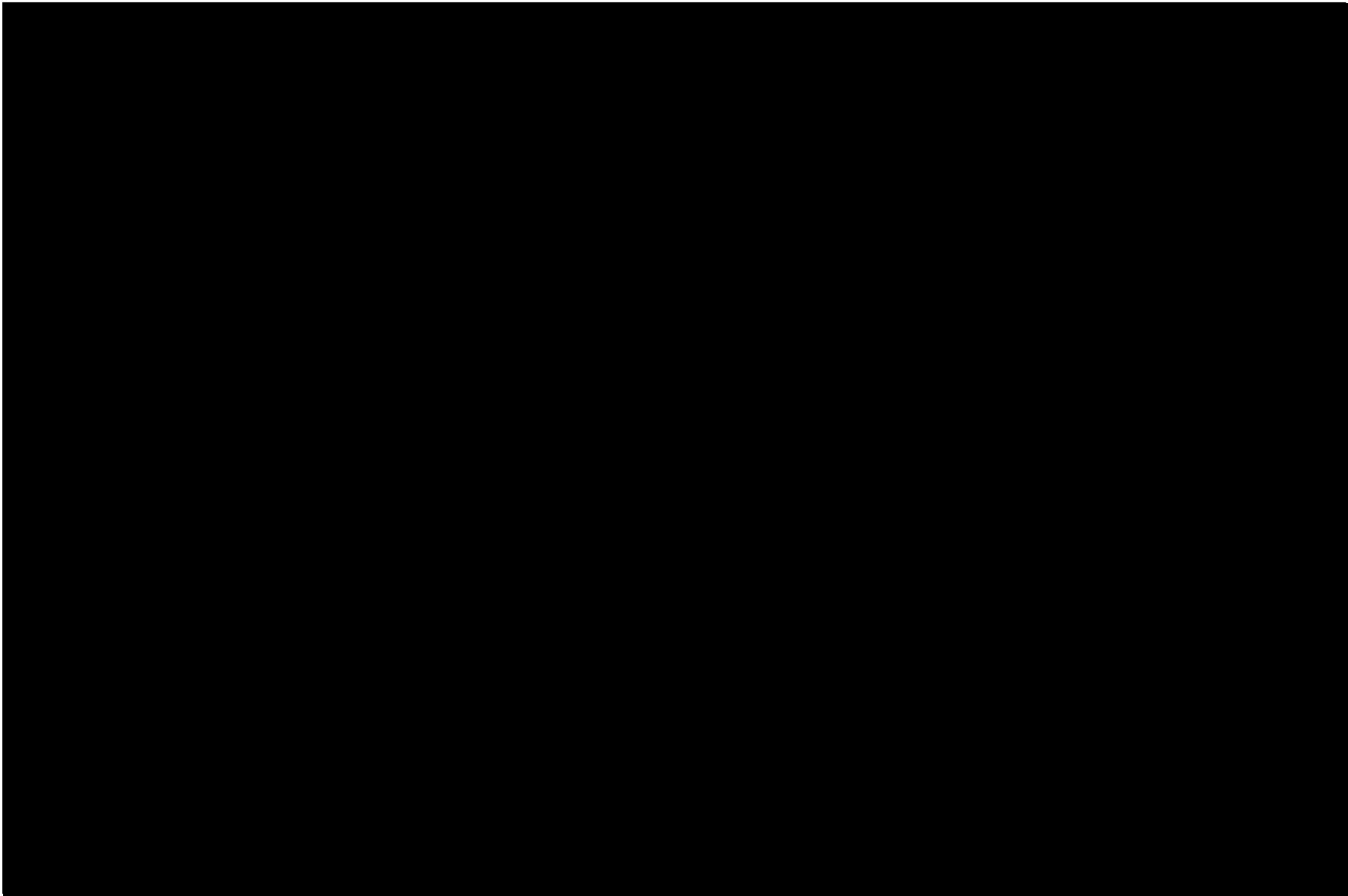


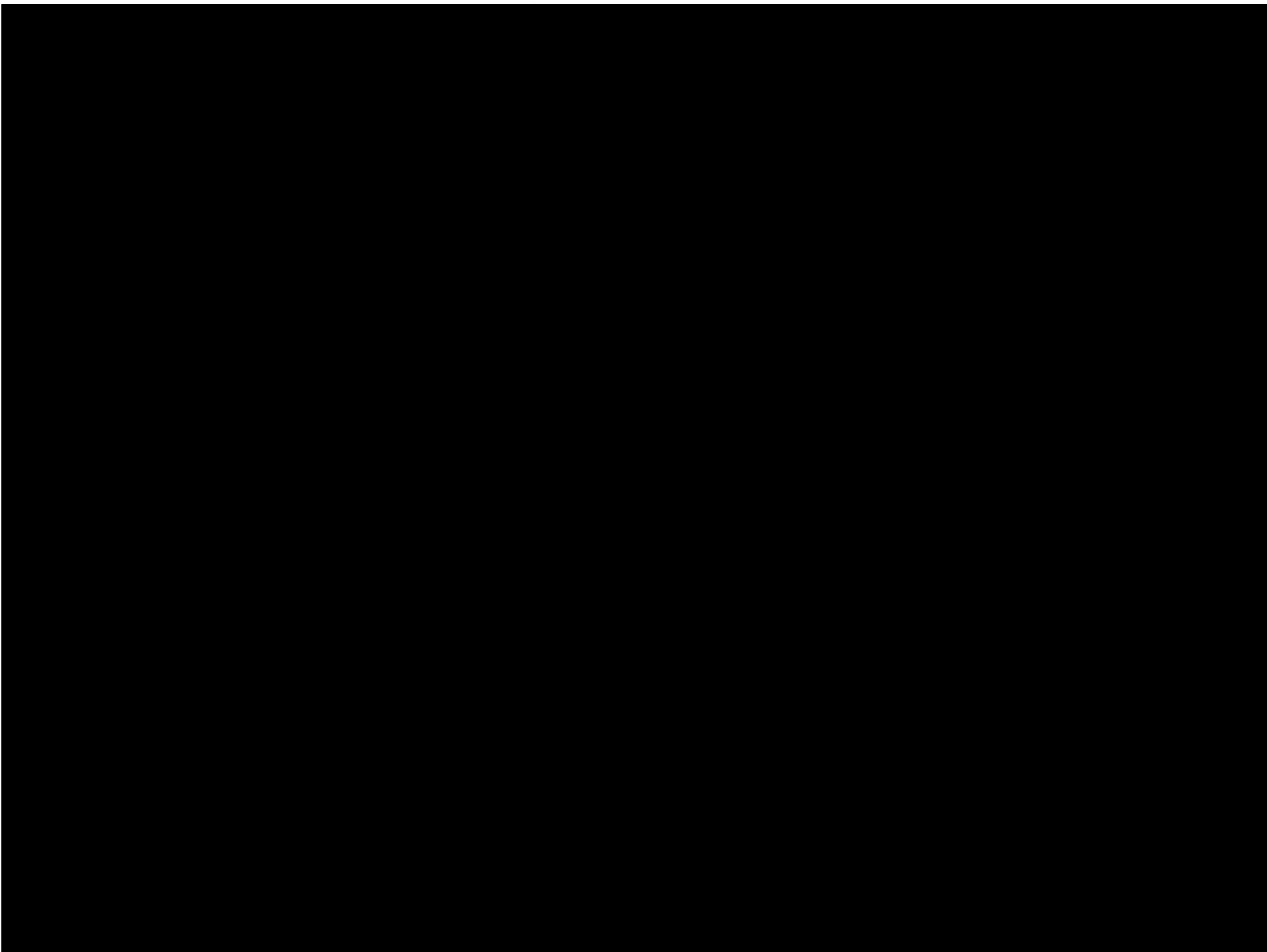


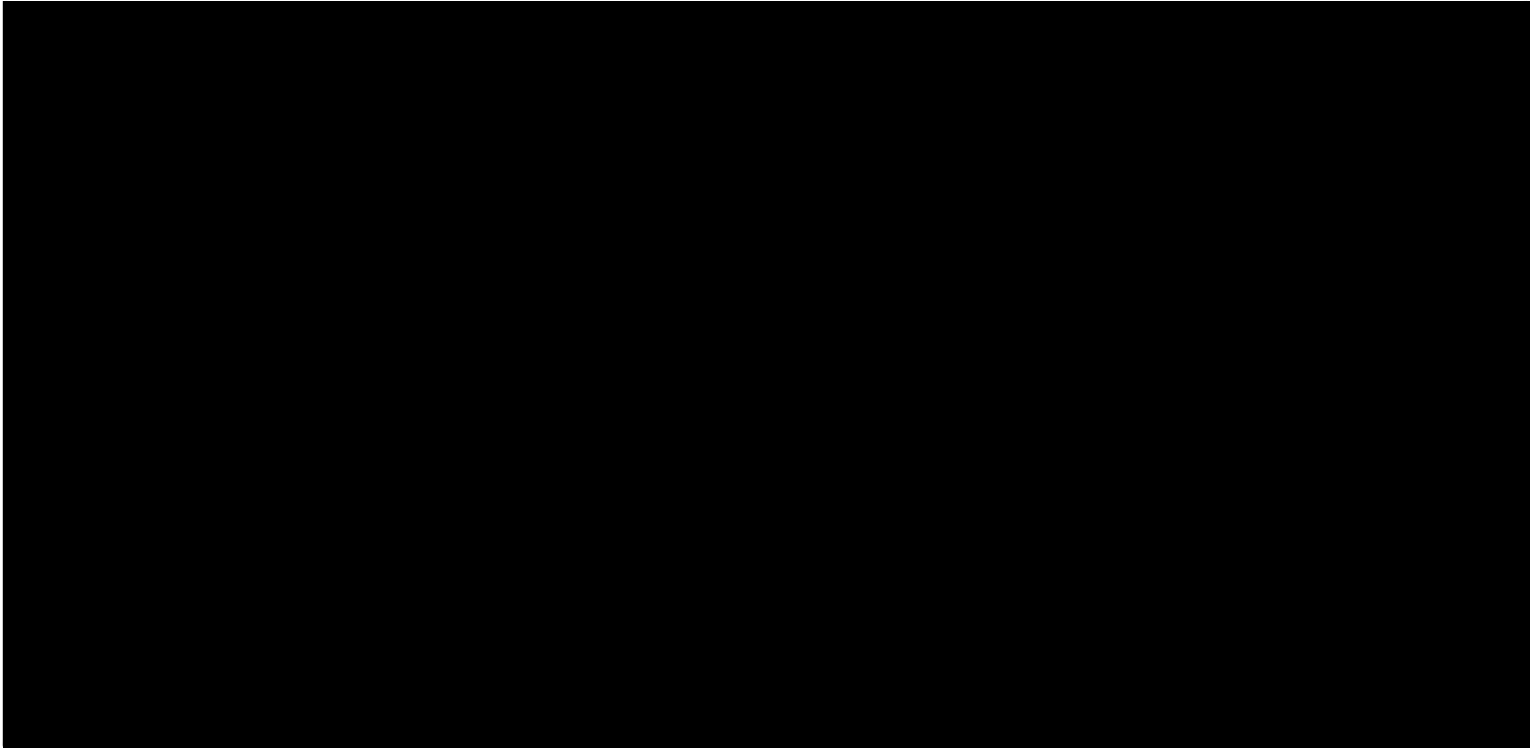
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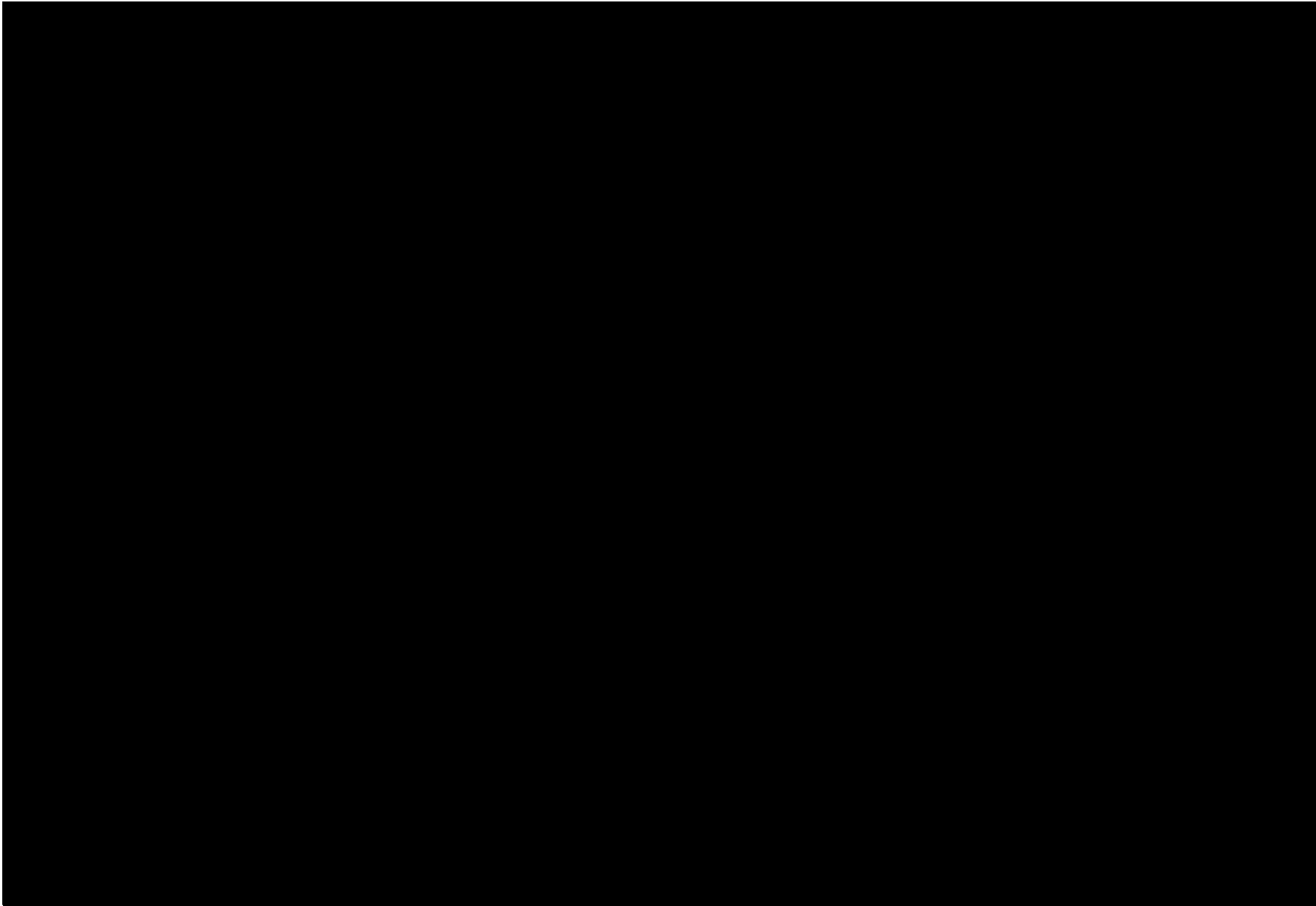


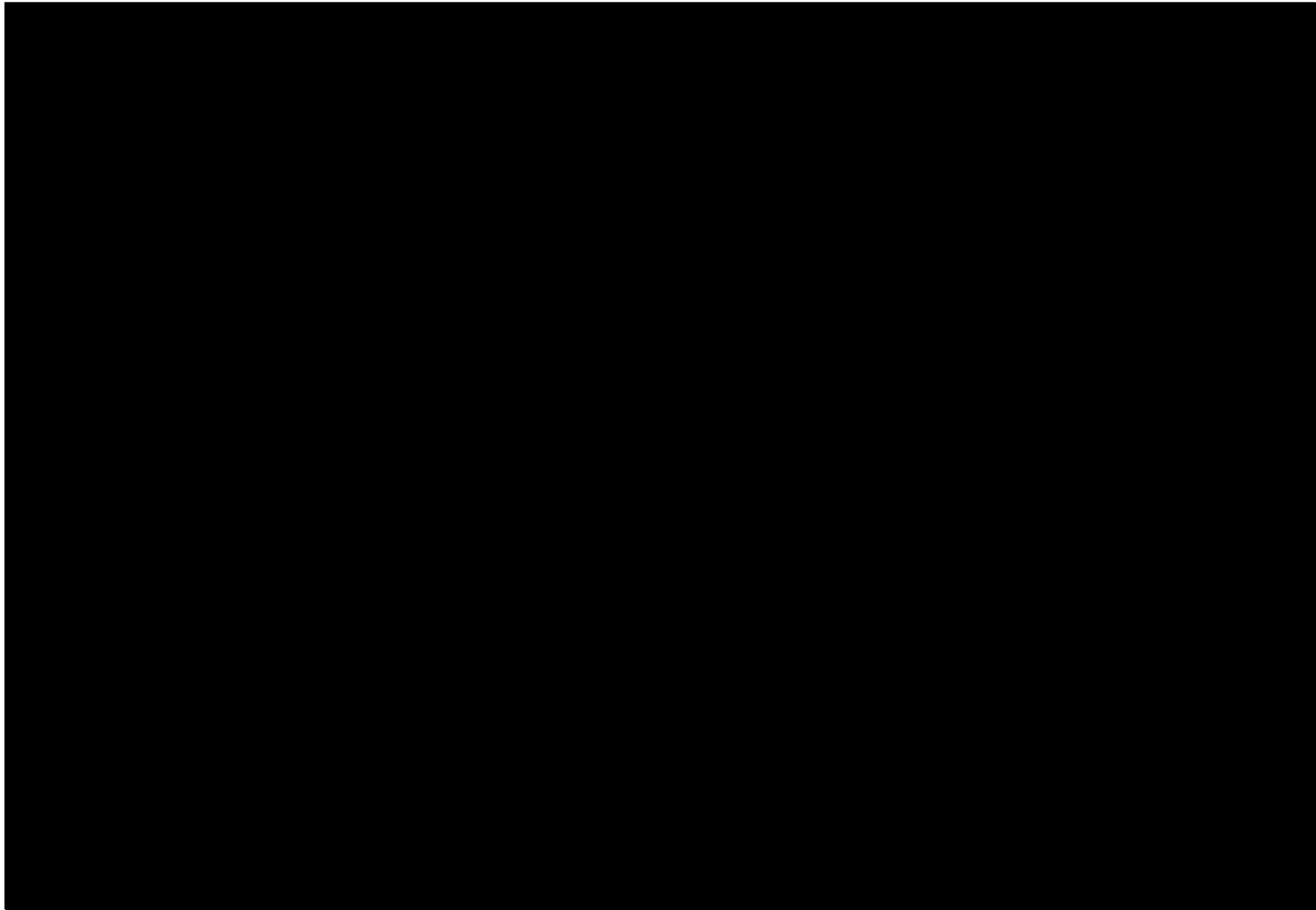
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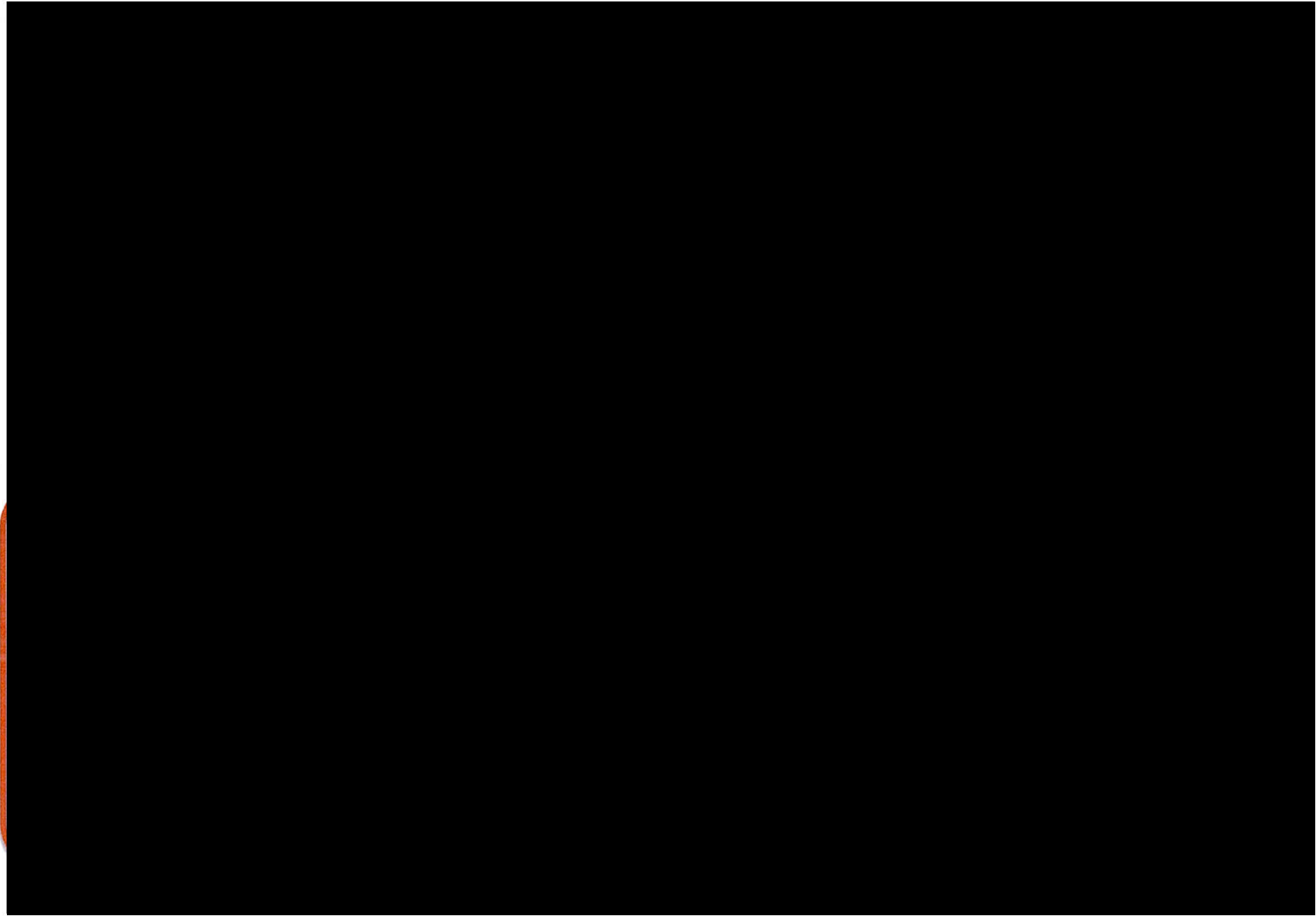
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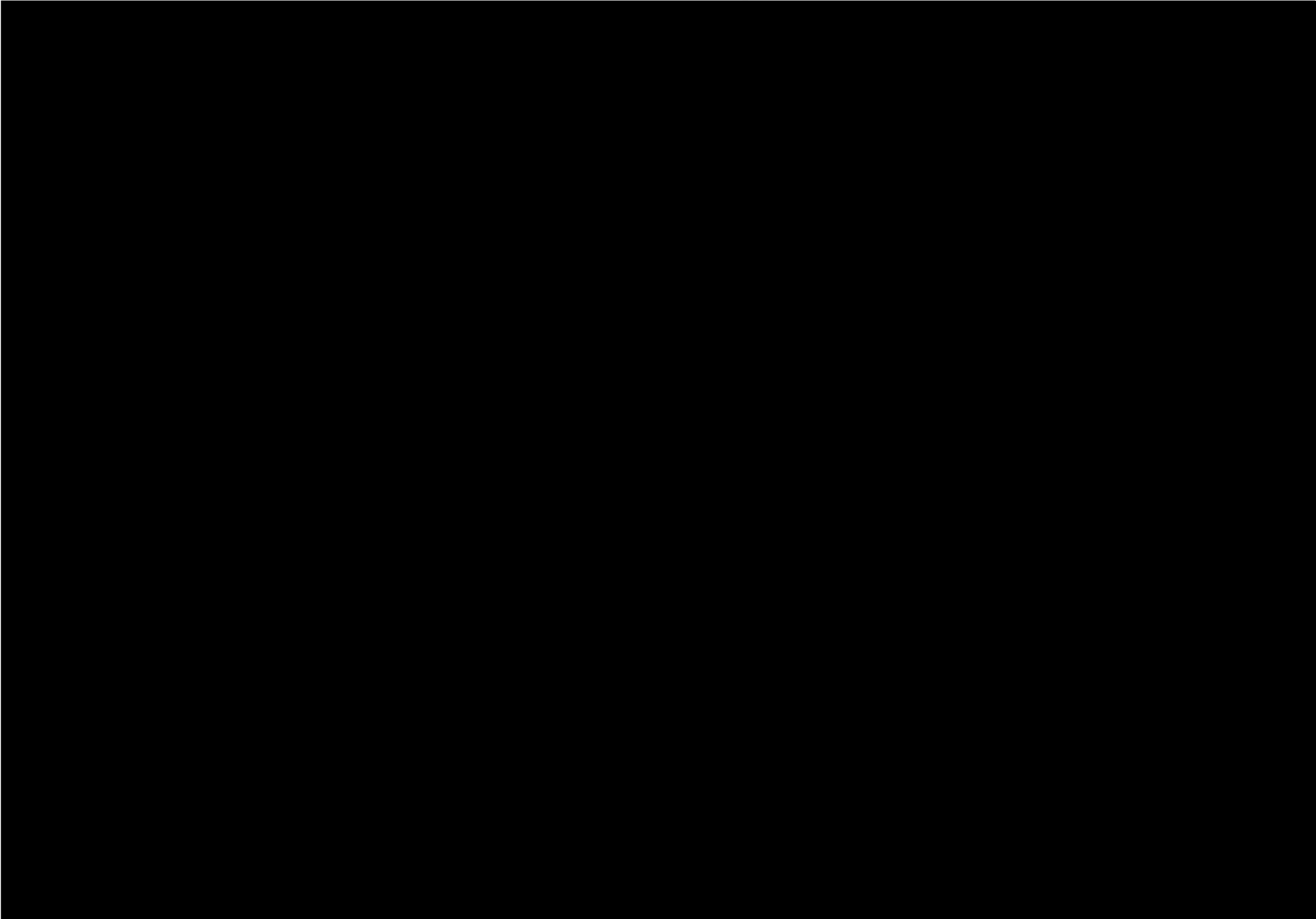
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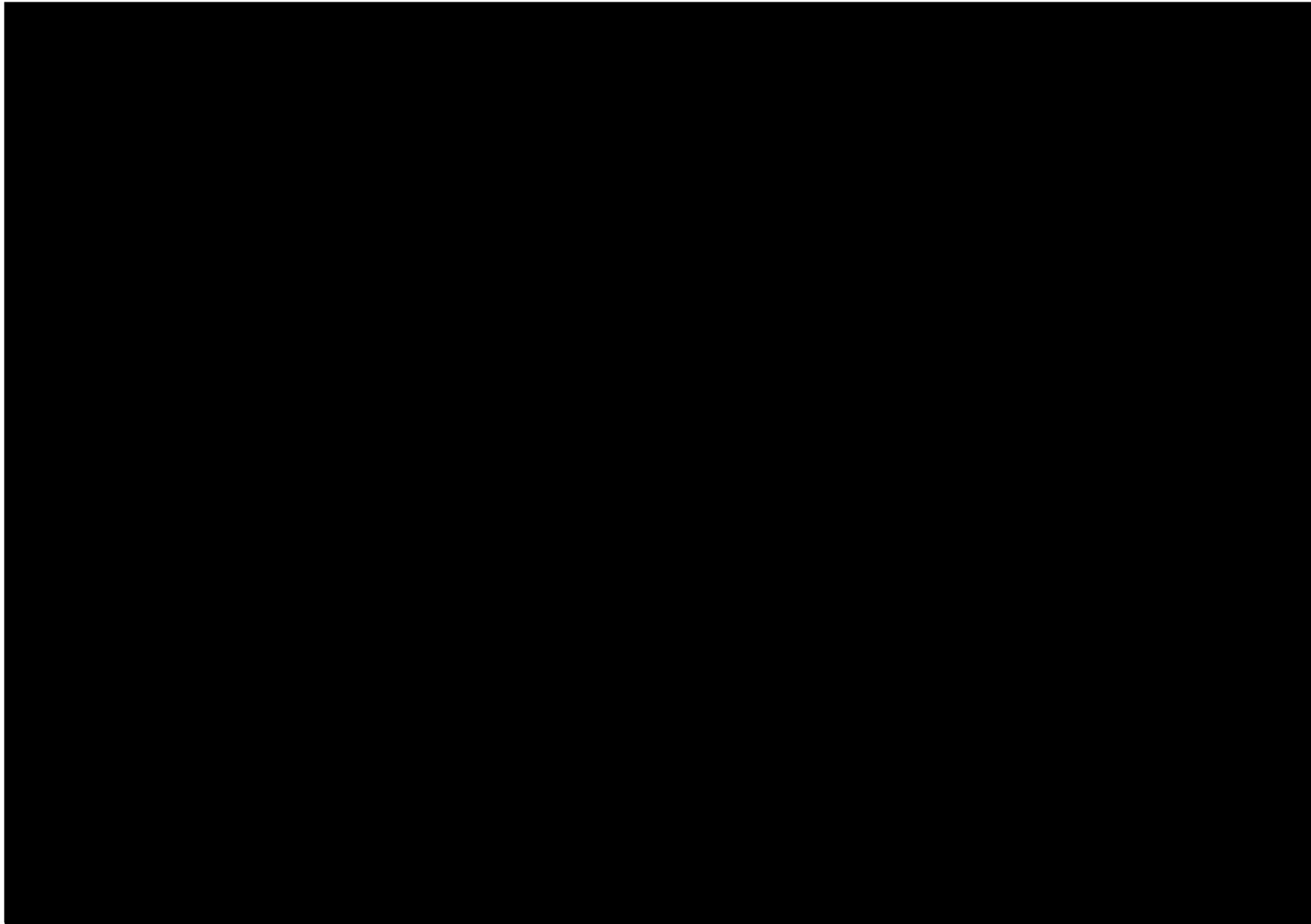
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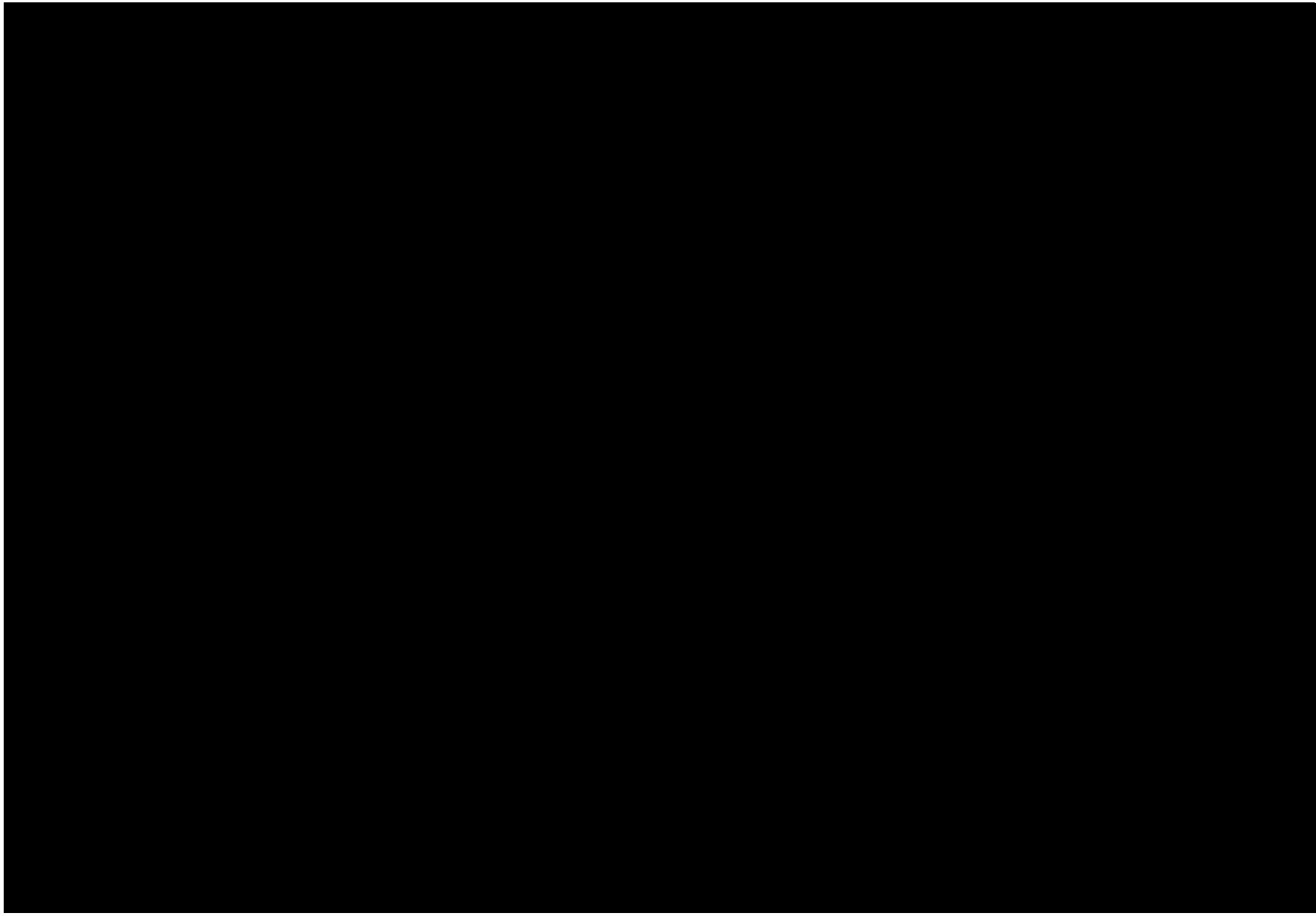




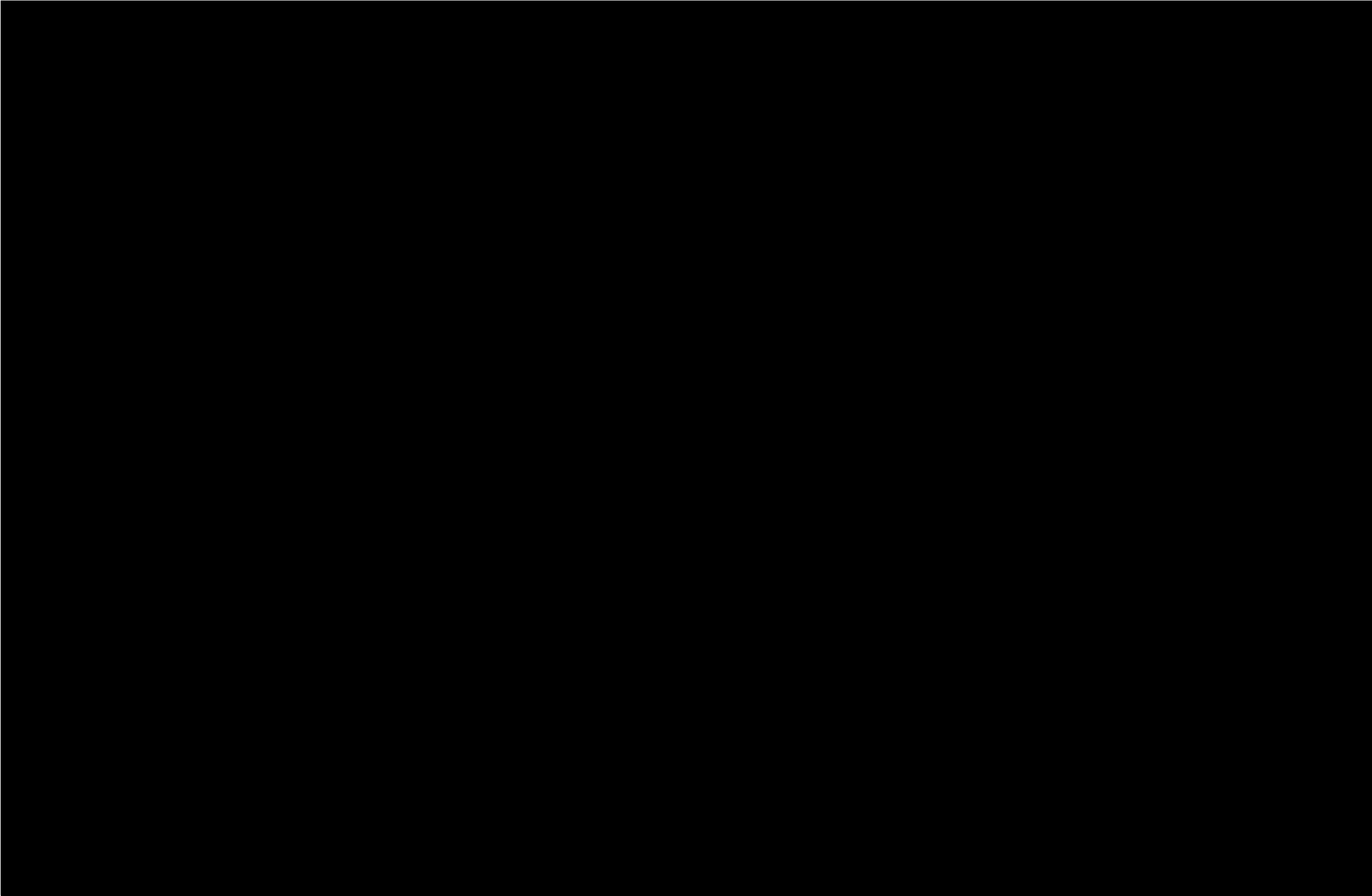




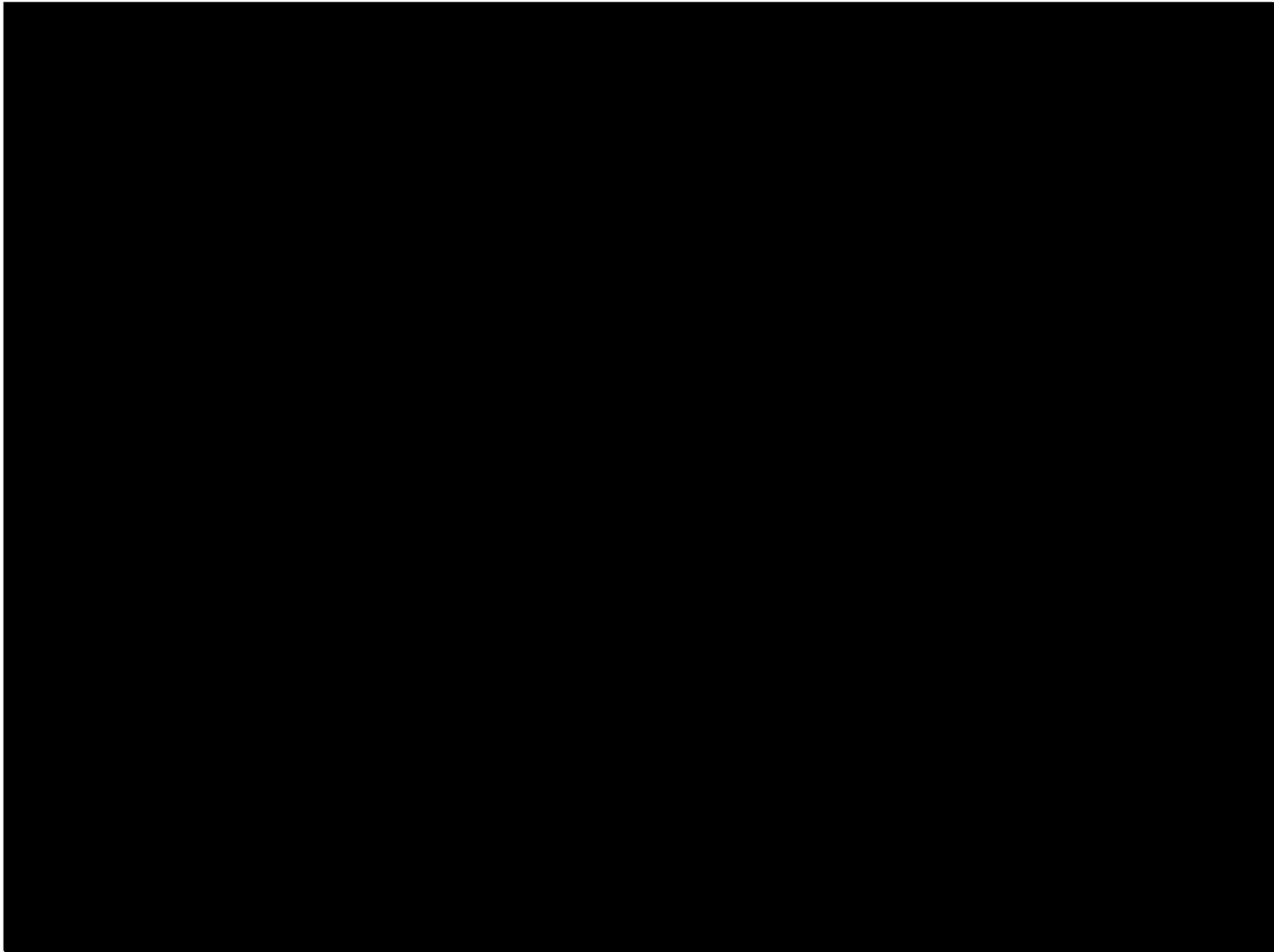








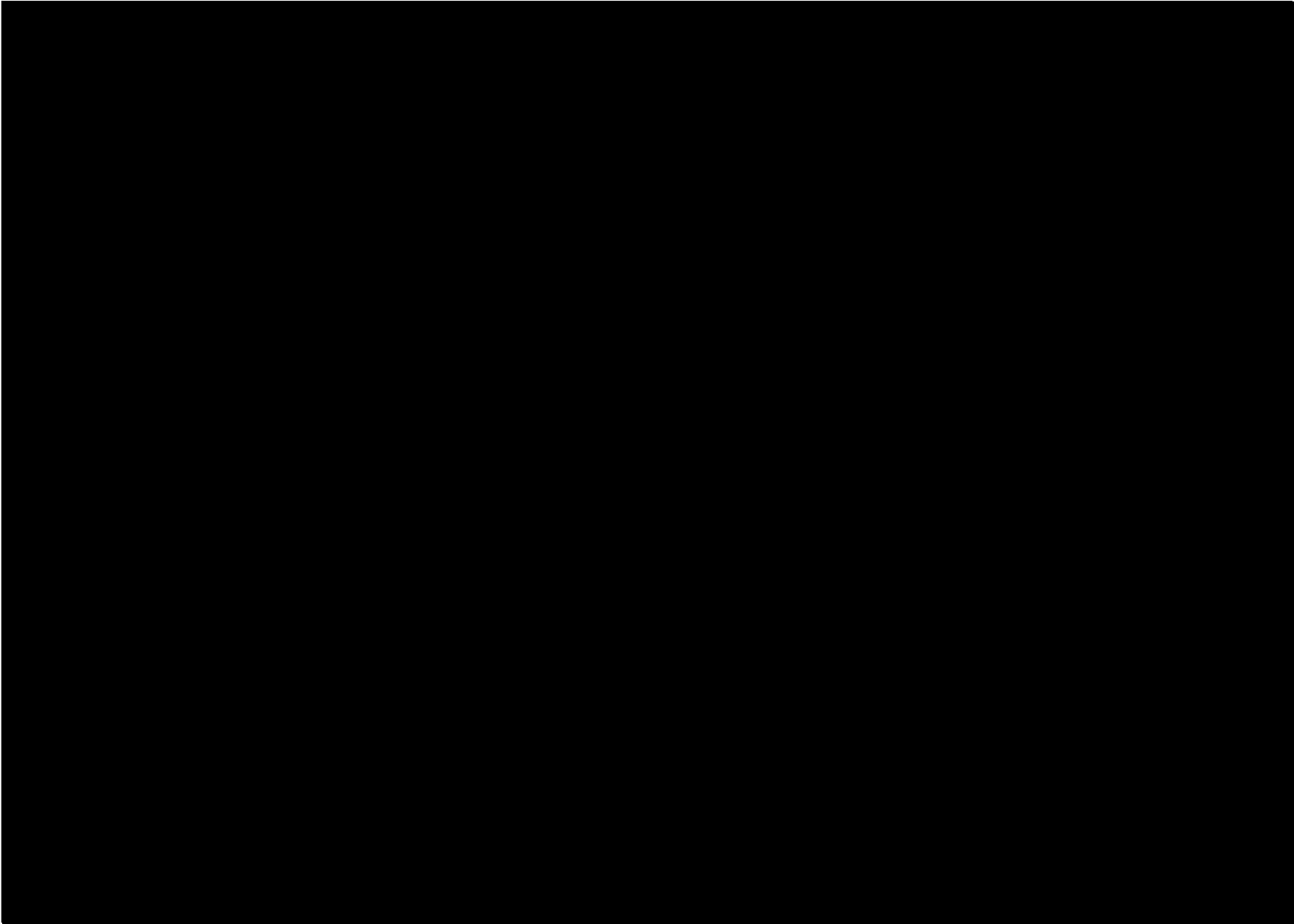
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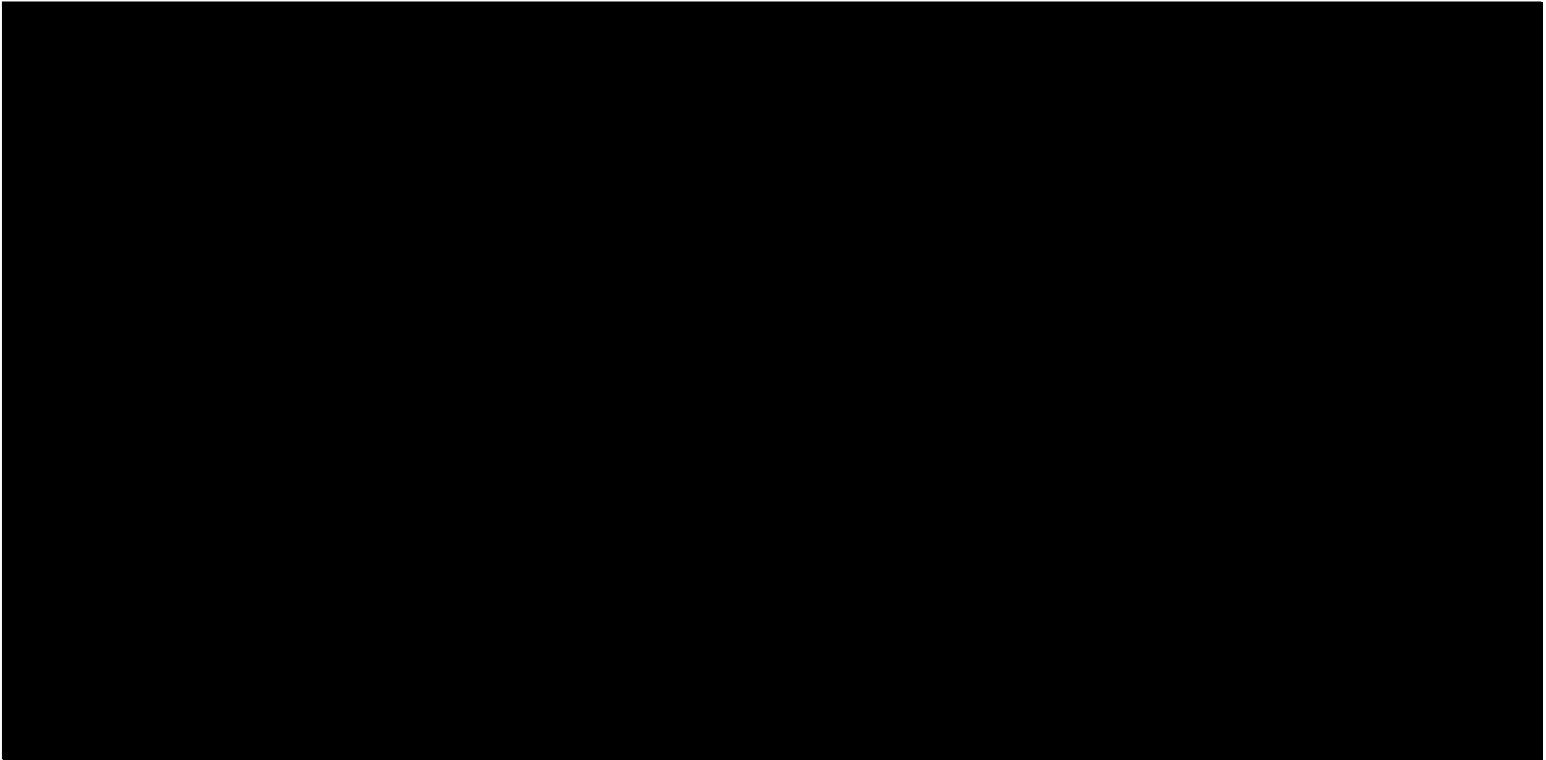


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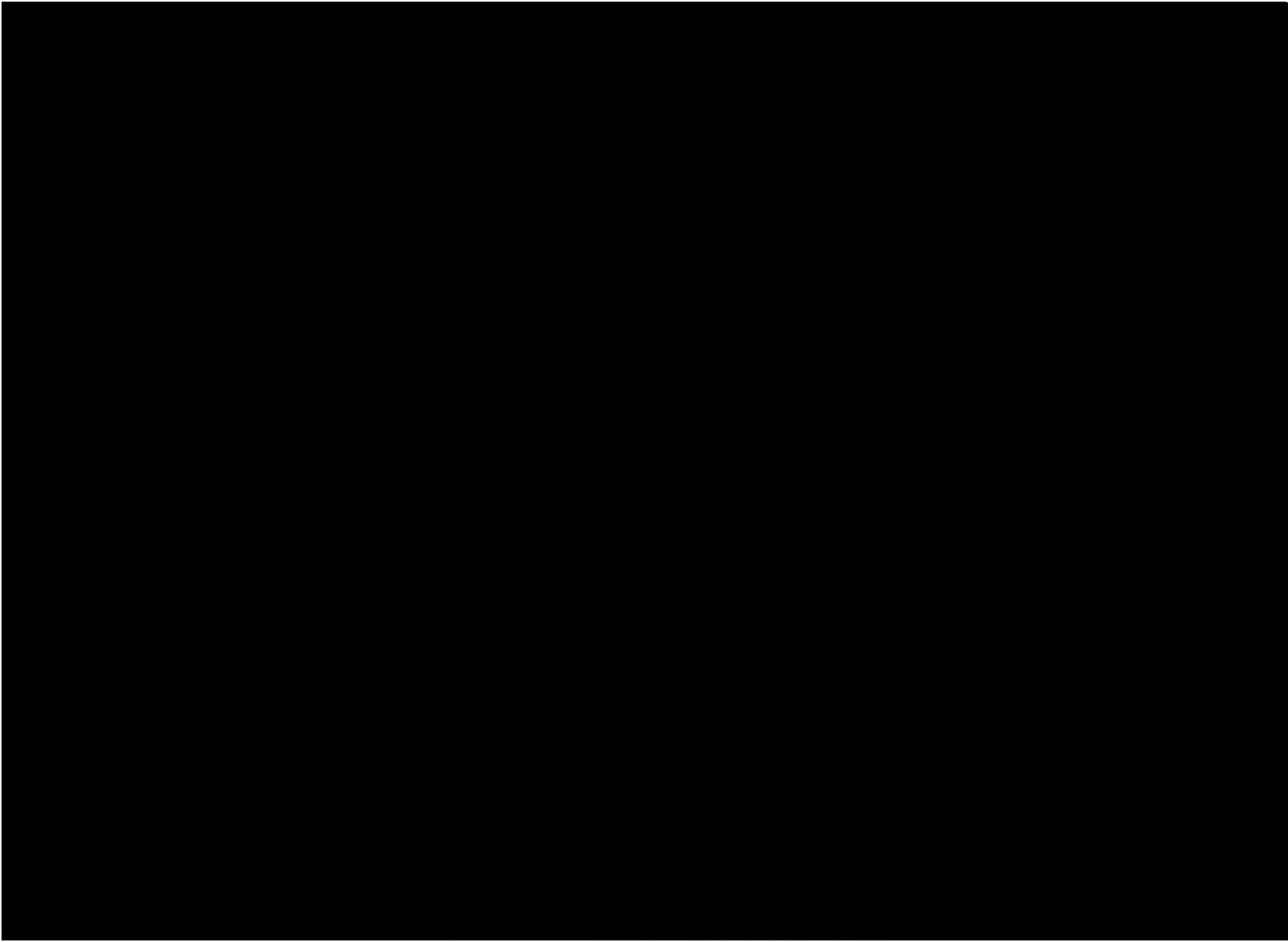


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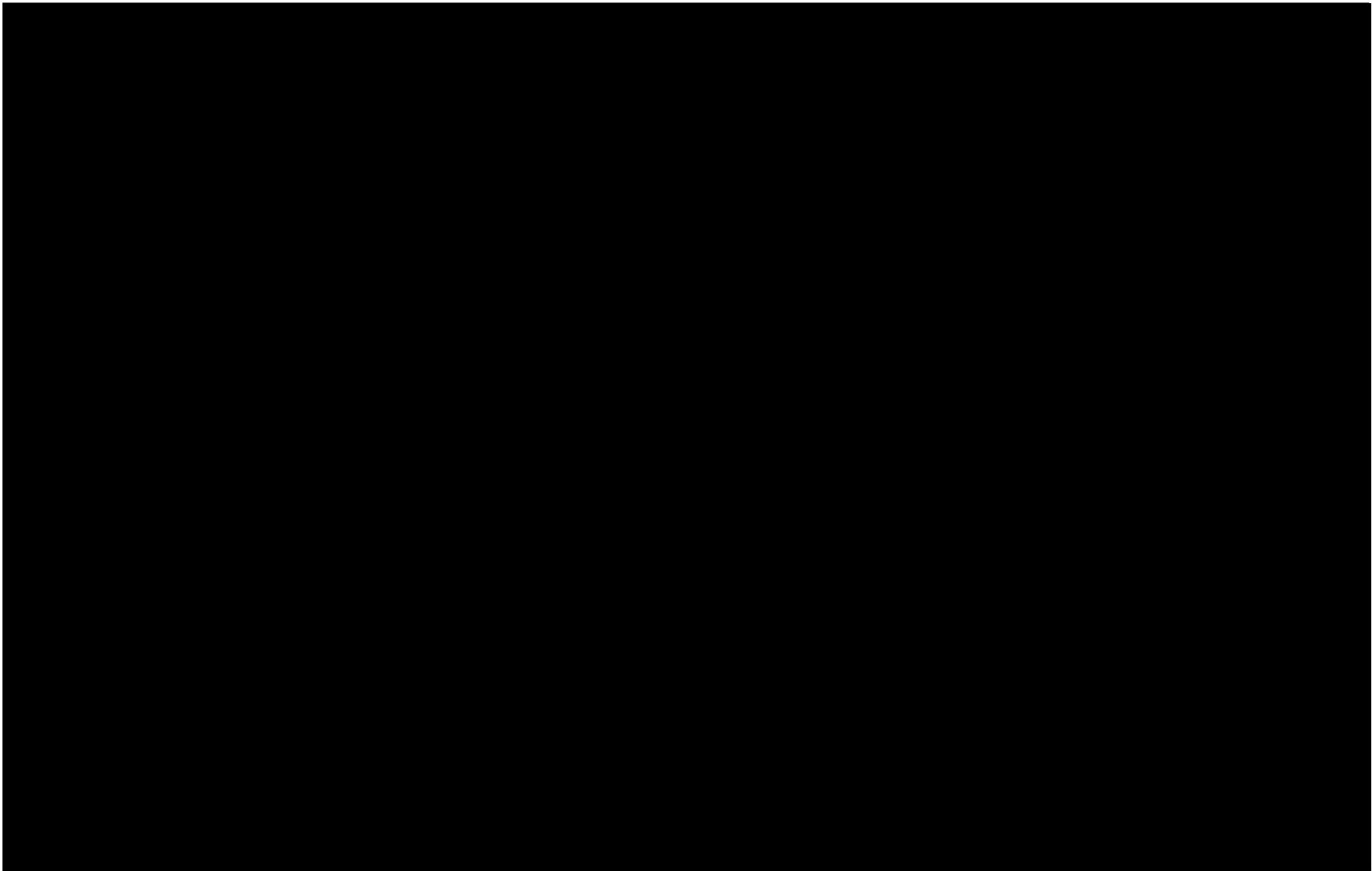
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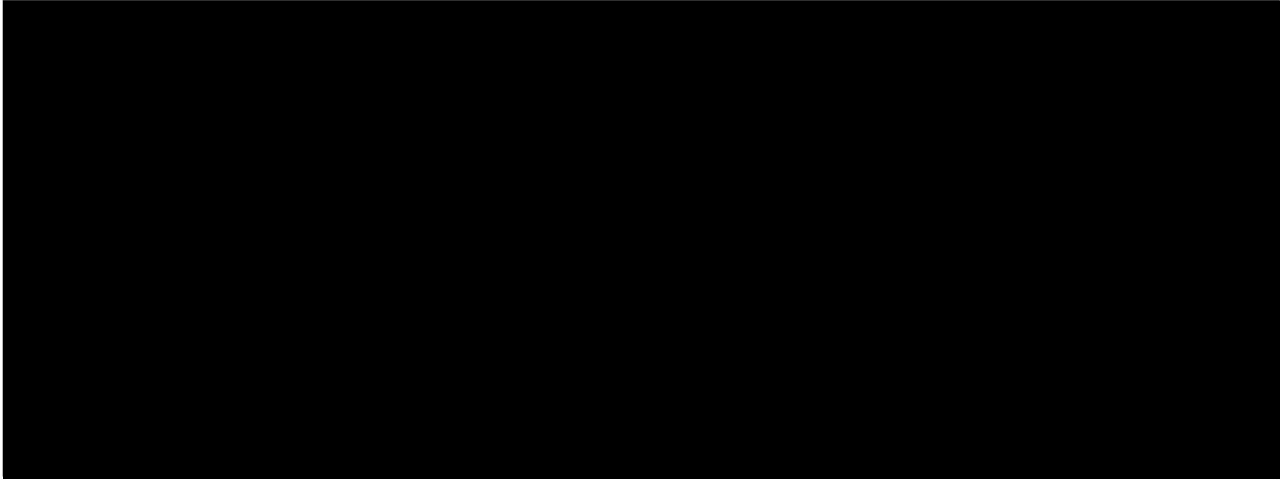
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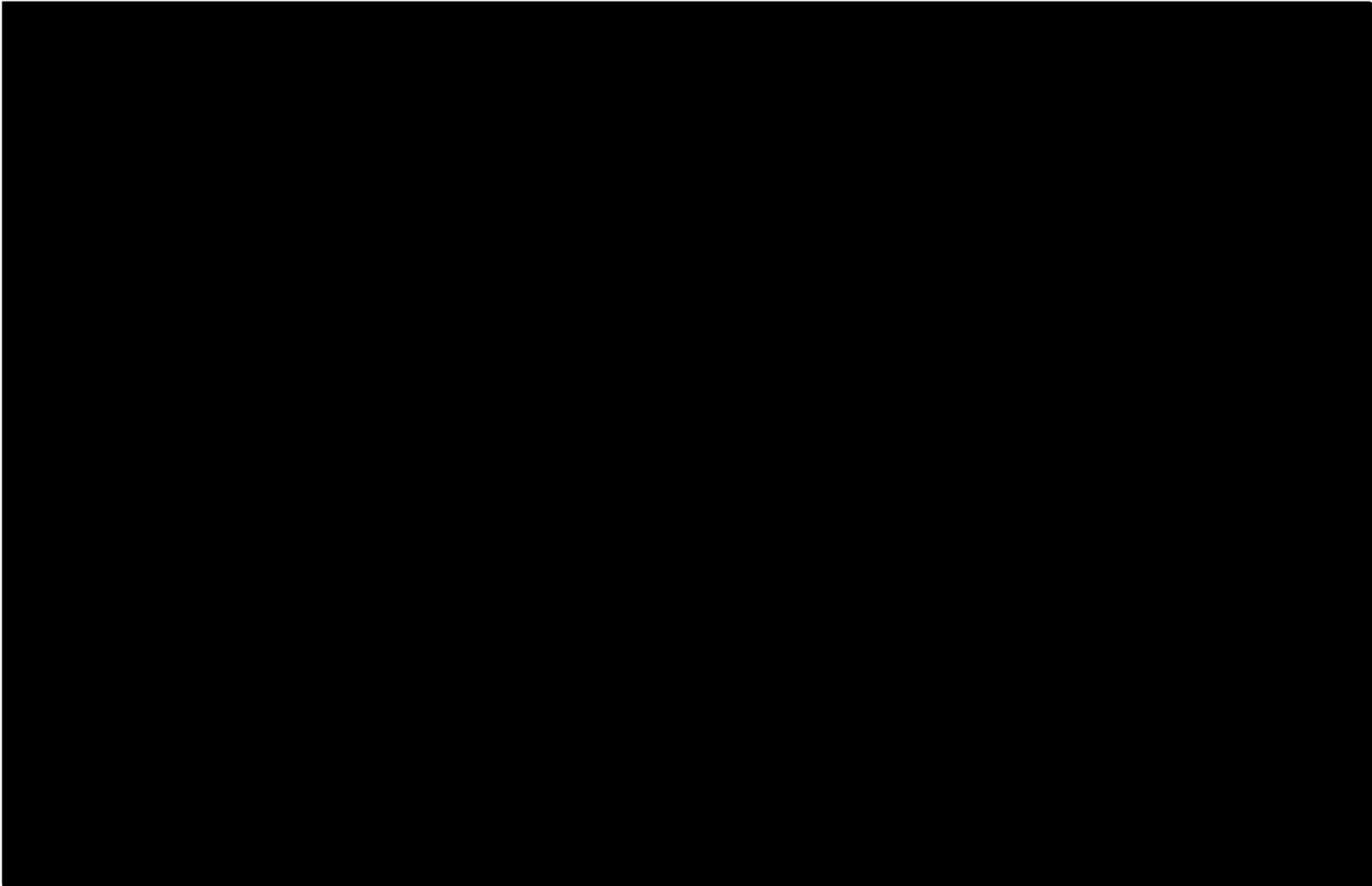


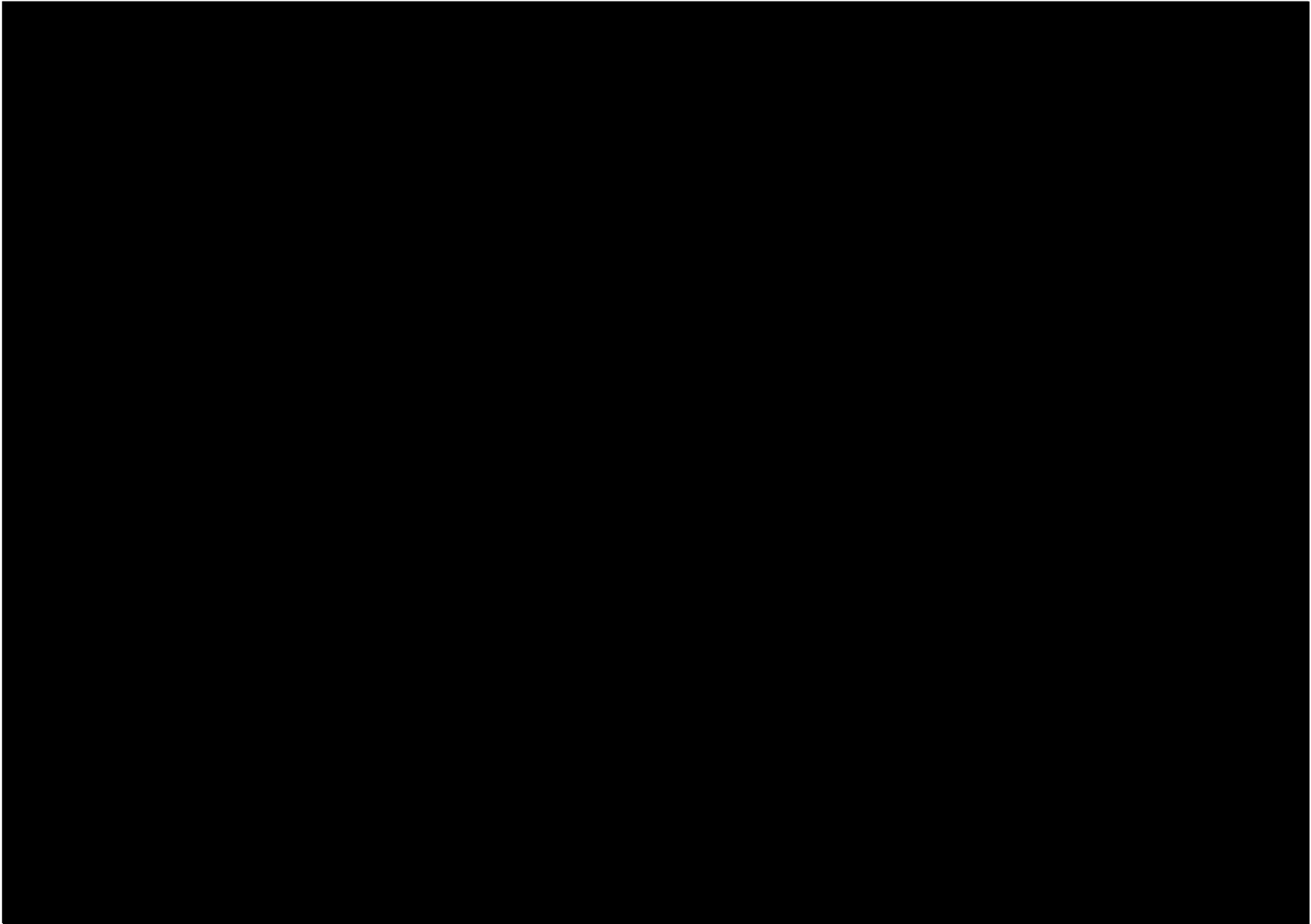
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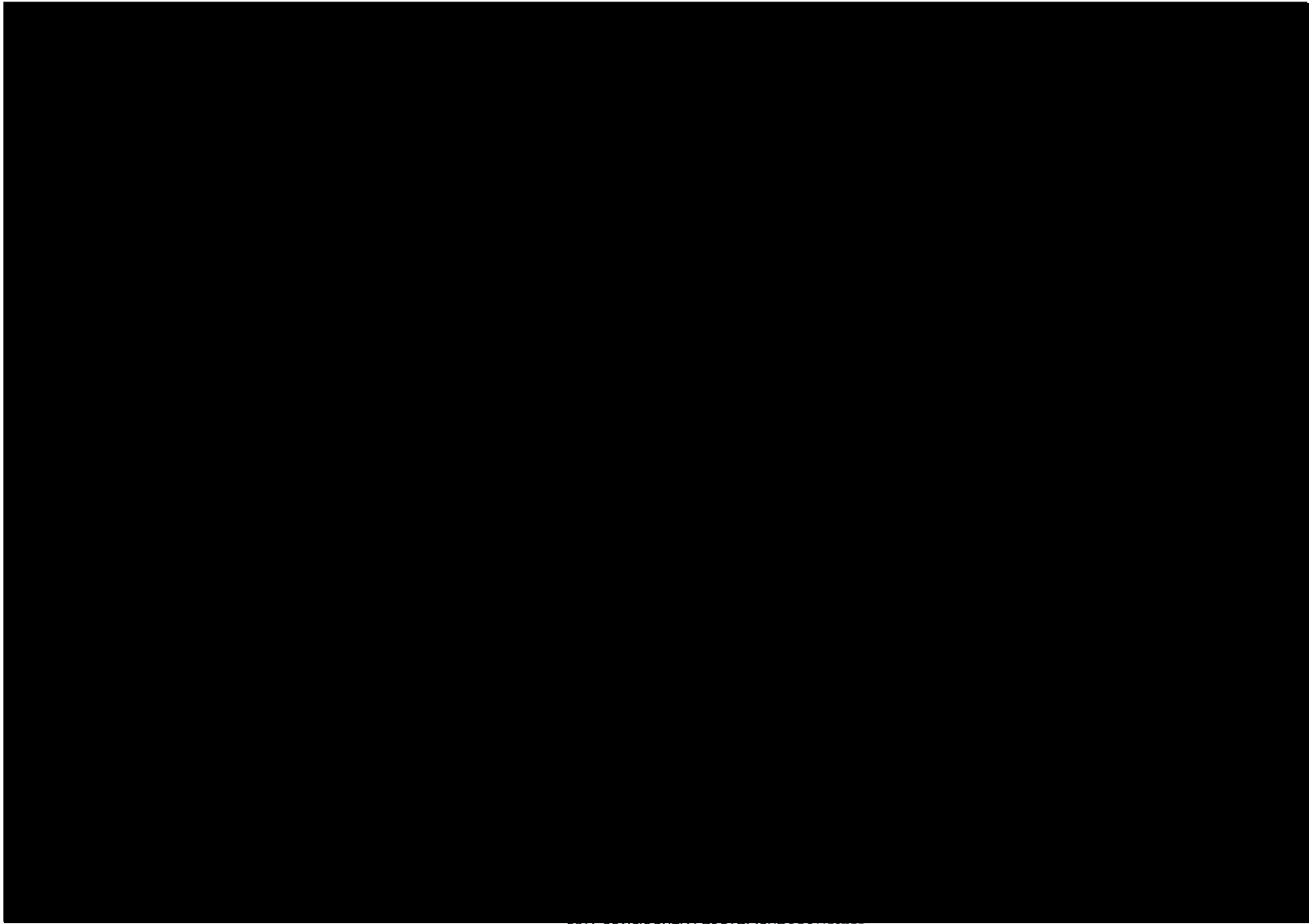
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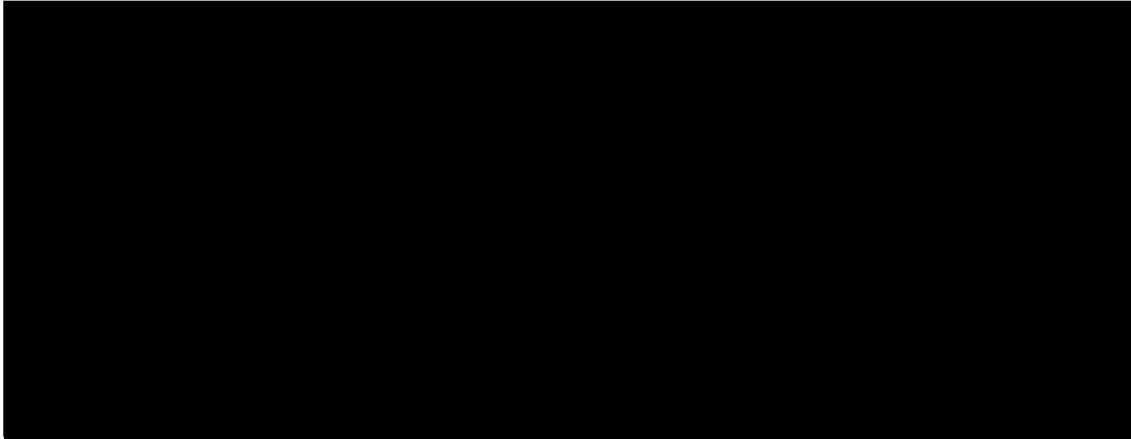
Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

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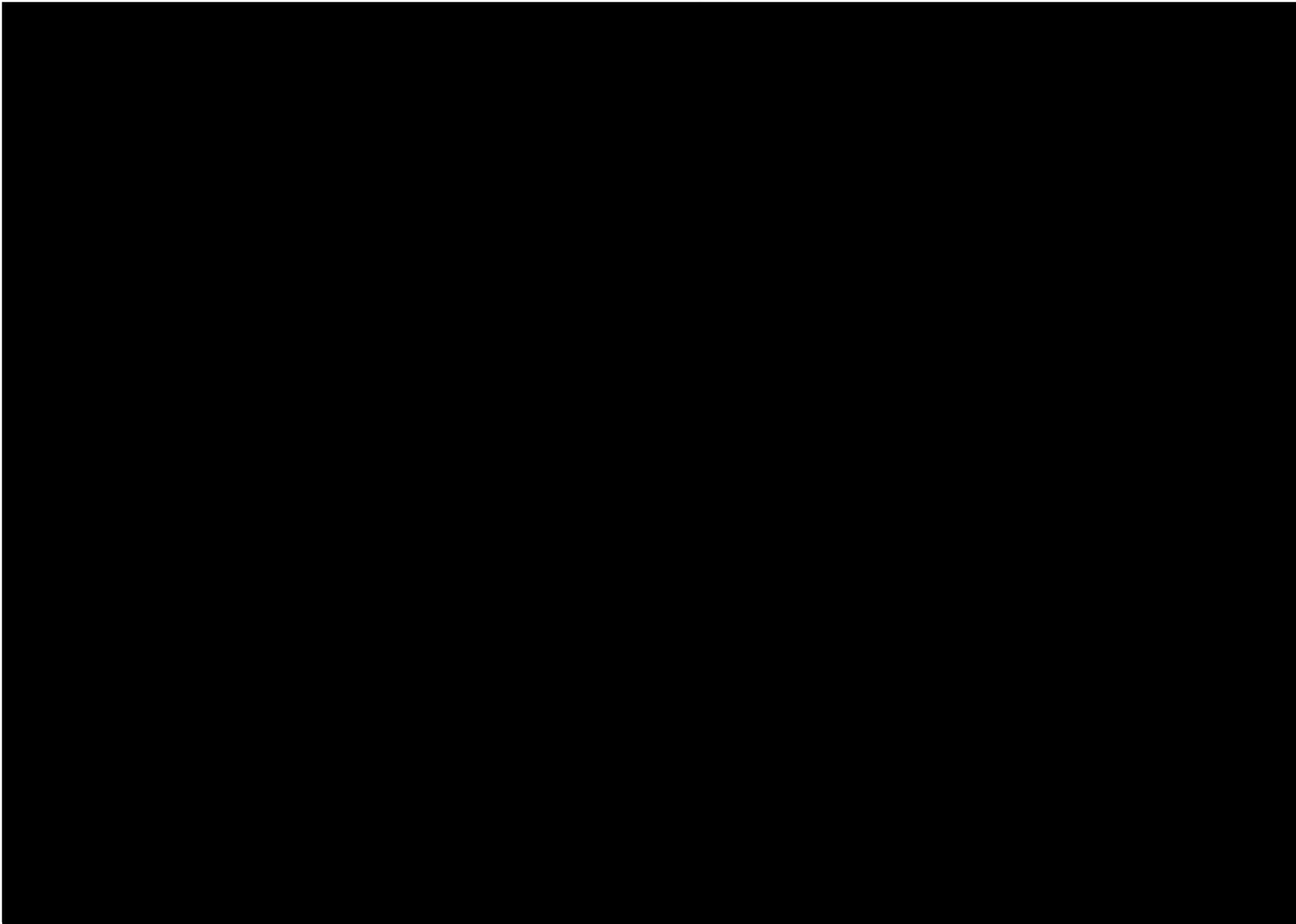


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5 U.S.C. § 552  
17 C.F.R. § 200.83

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Ligand Pharmaceuticals, Inc.

LGND\_0080736



## **Respondent Exhibit 18**



1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
3 CIVIL ACTION NO. 1:18-CV-11926-PBS  
4

5 \_\_\_\_\_  
6 SECURITIES AND EXCHANGE COMMISSION,  
7 PLAINTIFF,

8 V.

9 GREGORY LEMELSON AND LEMELSON CAPITAL  
10 MANAGEMENT, LLC,  
11 DEFENDANTS,

12 AND

13 THE AMVONA FUND, LP,  
14 RELIEF DEFENDANT.  
15 \_\_\_\_\_

16  
17  
18 30(b)(6) DEPOSITION OF:  
19 DAVID BECKER ON BEHALF OF THE SEC  
20 CONDUCTED REMOTELY  
21 BETHESDA, MARYLAND  
22 THURSDAY, AUGUST 6TH, 2020 AT 9:43 A.M.  
23  
24

A P P E A R A N C E S

ON BEHALF OF THE SECURITIES AND EXCHANGE COMMISSION:

MARC JONES

AL DAY

33 ARCH STREET, 24TH FLOOR

BOSTON, MASSACHUSETTS 02110

TELEPHONE NO. (617) 573-8900

E-MAIL: JONESMARC@SEC.GOV

ON BEHALF OF DEFENDANTS, GREGORY LEMELSON, ET AL.:

DOUGLAS S. BROOKS

BRIAN J. SULLIVAN

LIBBYHOOPES, P.C.

399 BOYLSTON STREET

BOSTON, MASSACHUSETTS 02116

TELEPHONE NO. (617) 338-9300

FACSIMILE NO. (617) 338-9911

E-MAIL: DBROOKS@LIBBYHOOPES.COM

BSULLIVAN@LIBBYHOOPES.COM

ALSO PRESENT:

FATHER EMANUEL LEMELSON

1 didn't respond?

2 A. As far as I'm aware, he did not.

3 Q. Okay. After October 27th, 2014, what was the next  
4 communication between the SEC and Ligand's representatives?

5 A. On November 12th, 2014, Mr. Sikora e-mailed Mr.  
6 Kelcourse asking to touch base regarding the TCR.

7 Q. Does the SEC have that e-mail?

8 A. I would expect so, but I don't know.

9 Q. Did Mr. Kelcourse respond to Mr. Sikora's November  
10 12th, 2014 e-mail?

11 A. Mr. Kelcourse recalls a telephone call to follow up.

12 Q. When did that phone call take place?

13 A. I believe it took place the same day, but I'm not  
14 certain.

15 Q. Okay. What was said on the phone call that took place  
16 on or around November 12th, 2014?

17 A. Okay, I should take back -- I don't know when this  
18 phone call took place. I don't even know whether to say I  
19 believe it took place the same day, so it was after that.

20 Q. Okay.

21 A. What was discussed on the phone call? I believe Mr.  
22 Kelcourse informed Mr. Sikora that the Boston regional office  
23 didn't currently have the resources to pursue the allegations  
24 that Ligand was making against Defendants and that the matter

1 was being referred to the Massachusetts Securities Division, and  
2 he provided a contact point at the Massachusetts Securities  
3 Division to Mr. Sikora.

4 Q. Who was that contact point?

5 A. I'm sorry?

6 Q. Who was the contact point --

7 A. I don't know.

8 Q. -- at the Massachusetts Securities Division?

9 A. Yes, I don't know.

10 Q. What else, if anything, was said on this telephone  
11 call between Mr. Kelcourse and Mr. Sikora?

12 A. Mr. Kelcourse doesn't recall if he raised this or if  
13 this was a question that Mr. Sikora had brought up, but he  
14 advised Mr. Sikora that the Boston office didn't have any  
15 objection to Latham approaching the home office of the SEC  
16 about the TCR.

17 Q. I'm sorry, you broke up a little there. He didn't  
18 have any objection to Latham approaching?

19 A. To Latham approaching the home office, which is  
20 Washington, of the SEC about the TCR.

21 Q. Did Latham approach the home office of the SEC about  
22 the TCR?

23 A. It appears that they did, yes.

24 Q. Okay. So when was that?

1 Q. Okay. This particular e-mail chain runs from May 18th  
2 to May 21, 2015; do you see that?

3 A. Yes.

4 Q. Okay. Other than what's contained in Exhibit 172,  
5 were there any communications between the SEC and any  
6 representatives of Ligand between May 18th and May 21, 2015?

7 A. I'm just looking to see whether or not this is  
8 included in the e-mail string that we're looking at now.

9 All right, so as not to take up a bunch of time, on  
10 May 20th, Ligand e-mailed Scott Friestad through Mr. Bondi about  
11 the impact of Defendants' short reports on the company; and  
12 whether that's part of this chain or not, I can't actually tell.

13 Q. Do you know who Mr. Bondi is?

14 A. Generally, yes.

15 Q. Okay. Are you aware of whether Mr. Bondi used to work  
16 at the SEC?

17 A. I am aware that he did, yes.

18 Q. Okay. Do you know what his role was at the SEC?

19 A. I know that at a certain point in time he was counsel  
20 to two different commissioners.

21 Q. Do you know which commissioners those were?

22 A. I believe it was Commissioner Troy Paredes and Paul  
23 Atkins. I should mention that at some point while he was  
24 employed at the SEC, he was also detailed to the Financial

1 Crisis Inquiry Commission as deputy general counsel; that's not  
2 within in the SEC, but it's something that he did while he was,  
3 I believe, still on the SEC's payroll.

4 Q. Okay. I had previously asked you whether Mr. Bondi  
5 had a relationship with Mr. Friestad prior to May 2015, let me  
6 ask: Did Mr. Bondi have any relationship with Jeffrey Finnell  
7 prior to May 2015?

8 A. I don't believe so other than a general awareness of  
9 who the other person is.

10 Q. Prior to May 2015, did Mr. Bondi have any relationship  
11 with Virginia Rosado Desilets?

12 A. No.

13 MR. JONES: Doug, can we just clarify, by  
14 relationship, do you mean like a personal relationship,  
15 socializing, having worked closely with the person; that's what  
16 you mean, right?

17 MR. BROOKS: I mean personal or professional.

18 THE WITNESS: I mean I guess a question I have when  
19 you say professional relationship, does that potentially  
20 include, you know, just being aware of who the other person is,  
21 does it include having worked on matters on the other side, it's  
22 a little unclear.

23 BY MR. BROOKS:

24 Q. well, let's -- but, yeah, I get it -- let's do this,

1 representatives of the SEC's Boston regional office concerning  
2 Defendants.

3 MR. JONES: Okay, yeah, we can check that at the  
4 break.

5 BY MR. BROOKS:

6 Q. After the June 8th, 2015 meeting, what was the next  
7 communication between the SEC and any representatives for  
8 Ligand?

9 A. On July 1st of 2015, Mr. Bondi forwarded Scott  
10 Friestad an article on Ligand from Forbes.

11 Q. Did Mr. Friestad respond to that July 1st, 2015 e-mail  
12 from Mr. Bondi?

13 A. I don't believe so.

14 Q. Okay. After that July 1st, 2015 e-mail, what was the  
15 next communication between the SEC and any representative of  
16 Ligand concerning the defendants?

17 A. On July 10th of 2015, Mr. Bondi forwarded Scott  
18 Friestad an announcement that Mr. Lemelson would be on the  
19 Benzinga show that upcoming Friday, and I think Mr. Tonolli also  
20 told Virginia Rosado Desilets the same thing.

21 Q. Okay. Did Mr. Friestad respond to Mr. Bondi's July  
22 10th, 2015 e-mail?

23 A. I don't believe so.

24 Q. Did Ms. Desilets -- well, strike that.

1           How did Mr. Tonolli communicate that information to  
2 Ms. Rosado Desilets?

3           A. I don't know. I'm not certain if that was an e-mail  
4 or a phone call.

5           Q. Do you know how, if at all, Ms. Rosado Desilets  
6 responded to the information provided by Mr. Tonolli?

7           A. I do not know.

8           Q. Okay. So I understand of course, unfortunately, that  
9 Mr. Friestad has passed away and you were of course unable to  
10 talk to him, does the SEC have any records reflecting any  
11 telephone conversations between Mr. Bondi and Mr. Friestad in  
12 2015?

13          A. In 2015, no.

14          Q. Did the SEC take any steps in preparation of today's  
15 deposition to determine whether phone calls occurred between Mr.  
16 Friestad and Mr. Bondi concerning the defendants?

17          A. Yes.

18          Q. What were those steps?

19          A. We looked at internal e-mails that would have  
20 reflected such communications, and we looked at notes that would  
21 have reflected such communications.

22          Q. Okay. Anything else?

23          A. No, not that I'm aware of.

24          Q. Is it fair to say then as part of the preparation for



1 this deposition, the SEC did not ask Mr. Bondi about any  
2 telephone conversations he had with Mr. Friestad?

3 A. Your question was as part of the preparation for this  
4 deposition?

5 Q. Yes.

6 A. That is correct.

7 Q. At any time has the SEC inquired of Mr. Bondi about  
8 communications he had with the SEC concerning Defendants?

9 A. I'm not sure understand your --

10 MR. JONES: If you know, David.

11 A. If I know? I don't know.

12 Q. Okay. Turning back, after the July 10th, 2015 e-mail  
13 from Mr. Bondi to Mr. Friestad concerning the fact that Father  
14 Emmanuel Lemelson was going to be on the Benzinga radio program,  
15 what was the next communication between the SEC and any  
16 representatives of Ligand concerning the defendants?

17 A. On July 30th, 2015, Mr. Bondi e-mailed Scott Friestad  
18 a link to certain additional statements that Defendant Lemelson  
19 had made in which he called Ligand a pyramid scheme.

20 Q. Did Mr. Friestad respond to that?

21 A. I don't believe so.

22 Q. And was the link, just so I understand, was the link  
23 to something that Father Emmanuel Lemelson had either written or  
24 spoken about?

1 A. Yes.

2 Q. Do you know specifically what that link was?

3 A. Off the top of my head, no.

4 Q. Okay. After July 30th, 2015, when was the next  
5 communication between the SEC and any representative of Ligand  
6 concerning the defendants?

7 A. On August 5th of 2015, Mr. Bondi forwarded to Scott  
8 Friestad a screen capture of a Tweet from Defendant Lemelson and  
9 a link to an article that he had published on Benzinga.com about  
10 Ligand.

11 Q. And what was the Tweet about?

12 A. I don't know.

13 Q. Okay. Did Mr. Friestad respond to Mr. Bondi's August  
14 5th, 2015 e-mail?

15 A. Can I back up for a just a moment? I believe that the  
16 Tweet related to Ligand, beyond that I don't know.

17 Okay, sorry, the next question was?

18 Q. Was whether Mr. Friestad responded to Mr. Bondi's  
19 August 5th, 2015 e-mail?

20 A. I don't believe he did.

21 Q. After August 5th, 2015, what is the next communication  
22 between the SEC and any representative of Ligand concerning the  
23 defendants?

24 A. On October 29th of 2015, Mr. Bondi forwarded to Scott

1 Friestad, Jeff Finnell, and Virginia Rosado Desilets a letter  
2 concerning recent media activities of Defendant Lemelson.

3 MR. BROOKS: Brian, can you pull up tab 13.

4 (EXHIBIT 174 MARKED FOR IDENTIFICATION)

5 MR. SULLIVAN: I have just distributed what will be  
6 Exhibit 174, and I can represent that the Bates numbers are  
7 EPROD-SEC-LIT-E-001189342 through 45.

8 MR. JONES: I have it. Do you have it, David?

9 THE WITNESS: I do.

10 BY MR. BROOKS:

11 Q. So, Mr. Becker, turning your attention to kind of the  
12 bottom of the third page of this four-page document, there's an  
13 e-mail from Mr. Bondi to a number of people at the SEC and he  
14 specifically addresses Mr. Friestad dated October 29th, 2015 at  
15 6:59 p.m.; do you see that?

16 A. I do.

17 Q. Is that the communication that you just referred to?

18 A. Yes.

19 Q. Okay. If you turn to the top of the first page in  
20 Exhibit 174, there's an e-mail from Ms. Rosado Desilets to Mr.  
21 Bondi dated November 6th, 2015; do you see that?

22 A. Yes.

23 Q. And Ms. Desilets writes: "Thanks for forwarding these  
24 materials. We don't currently have any further questions for

1 you, but I noted that in your letter you requested a meeting or  
2 a telephone call. If you have additional information you'd like  
3 to share with us, and if you think a telephone call would be  
4 productive, I can set one up. Just let me know your  
5 availability."

6 Do you see that?

7 A. I do.

8 Q. Do you know if a telephone call was set up between Mr.  
9 Bondi and the SEC as a result of this e-mail?

10 A. I don't believe so. And I'd also note that there was  
11 no meeting that was set up as a result of this, although Mr.  
12 Bondi asked on at least one or two occasions.

13 Q. Okay. So let's step back. Other than the e-mails  
14 reflected in Exhibit 174, were there any communications between  
15 the SEC and any representatives of Ligand between October 29th,  
16 2015 and November 6th, 2015?

17 A. Give me a moment to flip through this to make sure I'm  
18 capturing anything that's not included in this e-mail  
19 string.

20 [Witness reviews document]

21 Other than what's captured in this e-mail string, no.

22 Q. So after the e-mail that is at the top of page 1 of  
23 Exhibit 174 which is dated November 6th, 2015, what was the next  
24 communication between the SEC and any representative of Ligand

1 concerning Defendants?

2 A. On March 21st of 2016, Mr. Bondi wrote to request a  
3 copy of the formal order of investigation in this matter.

4 Q. Had anyone at the SEC informed Mr. Bondi that there  
5 was a formal order of investigation in this matter?

6 A. I don't know that he was informed in those terms, and  
7 I don't recall -- or I don't know when requests for documents  
8 and material were issued to Ligand in this matter, but the cover  
9 letter for those would typically indicate whether there was a  
10 formal investigation occurring; and if it was issued in a  
11 subpoena, there has to be a formal investigation.

12 Q. As part of -- you broke up a little bit. So if it  
13 wasn't a subpoena, what's the other way that it, what would the  
14 cover letter have been to that you were talking about? I just  
15 didn't hear.

16 A. Well, a cover letter that accompanies a subpoena will  
17 typically indicate that there's a formal order of investigation,  
18 but that's almost irrelevant because you can't issue a subpoena  
19 without a formal order. So the existence of a subpoena  
20 indicates that there was a formal order.

21 Q. But did the SEC send a subpoena to any representative  
22 of Ligand in this matter?

23 A. I don't know the answer to that.

24 Q. Okay. But that would be a communication between

1 Ligand and the SEC, right?

2 A. It would, yes.

3 Q. Right. So fair to say presumably it would be  
4 contained in the summary provided to you by counsel, right?

5 A. I believe so, yes.

6 Q. Okay. So sitting here today, do you know how Mr.  
7 Bondi learned that there was a formal order of investigation as  
8 of March 21st, 2016?

9 A. I don't know.

10 Q. Okay. And, I'm sorry, that March 21st, 2016 e-mail  
11 from Mr. Bondi, was that to Mr. Friestad?

12 A. Yes.

13 Q. Was anyone else copied?

14 A. No -- well, I don't know the answer to that.

15 Q. Okay. Did Mr. Friestad respond to that?

16 A. He didn't respond directly. The formal order was sent  
17 to Mr. Bondi from Virginia Rosado Desilets on April 4th of 2016.

18 Q. And why did she do that?

19 [Zoom meeting interruption]

20 Q. -- is that consistent with SEC protocol-?

21 COURT REPORTER: Excuse me, I'm sorry, I didn't get  
22 the answer to that last question, my screen froze. The question  
23 was: "why did she do that?"

24 THE WITNESS: The answer was it was in response to the

1 March 21st, 2016 request.

2 BY MR. BROOKS:

3 Q. So is it consistent with SEC's policies to provide a  
4 third-party with a formal order of investigation?

5 MR. JONES: I'm going to object that SEC policies is  
6 beyond the scope of topic 3 or 1 or 2.

7 David, to the extent you know from the course of your  
8 work at the SEC, you can answer that one.

9 THE WITNESS: My understanding of SEC policies is  
10 that, you know, until an action is actually implemented against  
11 somebody, everybody is a third-party. But people who could  
12 potentially be impacted by or implicated in an investigation may  
13 request a copy of the formal order, and if the commission  
14 doesn't have reason to believe that improper use will be made of  
15 the formal order, it is typically provided, subject to certain  
16 restrictions.

17 Q. What are those restrictions?

18 A. That you can't use it for any purpose other than the  
19 investigation at hand and cannot distribute it to anybody else.

20 Q. And I apologize for the back and forth, I may have  
21 asked this and I apologize, but do you know how Mr. Bondi  
22 learned of the formal order of investigation here?

23 A. No.

24 Q. Okay. When Ms. Rosado forwarded the formal order of

1 investigation to Mr. Bondi on April 4th, 2016, did she write  
2 anything else or did she just forward it to him?

3 A. I don't have the document in front of me, but we have  
4 a standard letter that goes when we provide a formal order to  
5 somebody, pursuant to their request, which sets forth the  
6 restrictions under which it's being provided.

7 Q. Okay. Between March 21st, 2016 and April 4th, 2016,  
8 were there any communications between the SEC and any  
9 representative of Ligand concerning the defendants?

10 A. I don't believe so.

11 Q. Did Mr. Bondi respond to Ms. Rosado Desilets' April  
12 4th, 2016 e-mail forwarding the formal order of investigation?

13 A. No.

14 Q. Was anyone else copied on Ms. Rosado Desilets' April  
15 4th, 2016 e-mail?

16 A. Not that I'm aware of.

17 Q. When was the --strike that.

18 After Ms. Rosado --

19 A. I'm sorry, but --

20 Q. Go ahead.

21 A. Are you asking anybody within the SEC or outside? It  
22 doesn't matter because I'm not aware one way or the another.

23 Q. I was asking for everybody, but that clarifies it,  
24 thanks.



1           After Ms. Rosado Desilets' April 4th, 2016 e-mail  
2 forwarding the formal order of investigation to Mr. Bondi, when  
3 was the next communication between the SEC and any  
4 representative of Ligand concerning the defendants.

5           A.    On October 18th, 2016 -- I'm sorry, not October. Did  
6 I say October? August 18th, 2016, Mr. Bondi left Scott Friestad  
7 a voicemail regarding a Benzinga article that related to Ligand  
8 and e-mailed the link to the article.

9           Q.    Did you say that was August 18th?

10          A.    August 18th, 2016, yes.

11          Q.    Does the SEC have a copy of that voicemail?

12          A.    Of the voicemail?

13          Q.    Yes.

14          A.    I don't know.

15          Q.    How does the SEC know about that voicemail?

16          A.    I don't know, it would be speculating to state how.

17          Q.    Okay. Did Mr. Friestad respond either to Mr. Bondi's  
18 e-mail or voicemail of August 18th, 2016?

19          A.    I don't believe so.

20          Q.    After August 18th, 2016, when was the next  
21 communication between the SEC and any representative of Ligand  
22 concerning the defendants?

23          A.    On August 25th, 2016, Mr. Bondi left a voicemail for  
24 Virginia Rosado Desilets asking for a call. And Ms. Rosado

1 Desilets returned the call the next day, August 26th, and  
2 informed Mr. Bondi that we couldn't share any information with  
3 him about the investigation other than that the investigation  
4 was ongoing and that we would let them know if we needed  
5 anything further from them; and if they had any additional  
6 information that they thought would be helpful, we would be  
7 happy to receive it.

8 Q. And did Ms. Rosado Desilets describe for Mr. Bondi  
9 what investigation she was talking about?

10 MR. JONES: Objection, vague.

11 A. I'm not sure I understand that question.

12 Q. Well, she said she couldn't confirm anything about the  
13 investigation other than the investigation was ongoing, what  
14 investigation was Ms. Rosado Desilets referring to?

15 A. Well, I think that Mr. Bondi's e-mail referred to the  
16 investigation relating to the defendants in this case and  
17 Ligand, and the understanding was that that was the  
18 investigation that was being referred to.

19 Q. Why did Ms. Rosado Desilets confirm the existence of  
20 the ongoing investigation to Mr. Bondi?

21 MR. JONES: Objection. You're asking for why a  
22 particular attorney did a particular thing at the SEC, that's  
23 attorney-client privilege and attorney work product; so, David,  
24 you can't answer that.

1 MR. BROOKS: Well, it can't be attorney-client  
2 privilege because she was talking to Mr. Bondi. And are you  
3 taking the position that her conversation with Mr. Bondi  
4 confirming the existence of the investigation was in  
5 anticipation of litigation?

6 MR. JONES: No, I'm not taking that. I'm taking the  
7 -- well, first of all, everything about an investigation is in  
8 anticipation of litigation, you're trying to decide whether  
9 you're going to file a piece of litigation. Second of all,  
10 opinion work product covers, you know, the thought process of  
11 the attorneys. In terms of attorney-client communication to the  
12 extent that Ms. Rosado Desilets communicated it to another  
13 attorney or supervisor or someone else at the SEC, that would be  
14 intra-attorney-client communication. And we're not taking the  
15 position that's the communication between Rosado Desilets and  
16 Bondi, but you asked why she did a particular thing and that's  
17 the objectionable part. The fact that she did it, it's  
18 absolutely fair game; "why" is off limits I think.

19 BY MR. BROOKS:

20 Q. How long did that conversation between Mr. Bondi and  
21 Ms. Rosado Desilets last?

22 A. My understanding is that it was a very brief call,  
23 beyond that, I don't know.

24 Q. Other than what you've already testified to, what else

1 was discussed on that call?

2 A. Other than what I've already testified to, I don't  
3 believe anything else was discussed on that call.

4 Q. After the call between Mr. Bondi and Ms. Rosado  
5 Desilets on August 26th, 2016, what was the next communication  
6 between the SEC and any representative of Ligand concerning the  
7 defendants?

8 A. On December 22nd, 2016, Mr. Bondi left voicemails for  
9 both Mr. Friestad and Virginia Rosado Desilets and followed up  
10 with an e-mail regarding Mr. Lemelson's letter to Senators  
11 Collins and McCaskill.

12 Q. Okay. Does the SEC have copies of these voicemails?

13 A. I don't know.

14 MR. BROOKS: Brian, can you pull up tab 15.

15 (EXHIBIT 175 MARKED FOR IDENTIFICATION)

16 MR. SULLIVAN: So I've distributed what is Exhibit 175  
17 that has Bates numbers beginning EPROD-SEC-LIT-E-001188712  
18 through 24.

19 THE WITNESS: I don't have this yet, so we may need to  
20 reboot here. You said Exhibit 175, Brian?

21 MR. SULLIVAN: That is correct, 175.

22 THE WITNESS: Okay, got it.

23 BY MR. BROOKS:

24 Q. So again, Mr. Becker, take whatever time you need, but

1 my question is whether or not the e-mail on page 1 of Exhibit  
2 175 dated December 22th, 2016 is the e-mail you just referenced?

3 A. Yes.

4 Q. Okay. And as you indicated in your testimony, Mr.  
5 Bondi writes in this e-mail that he left voicemails for both Mr.  
6 Friestad and Ms. Rosado Desilets; right?

7 A. Correct.

8 Q. Okay. And he's asking them him to contact him; do you  
9 see that?

10 A. Yes.

11 Q. Do you know whether either Ms. Rosado Desilets or Mr.  
12 Friestad contacted Mr. Bondi in response to the e-mail on the  
13 first page of Exhibit 175?

14 A. The next communications between the SEC and Mr. Bondi  
15 occurred on January 5th, and it's not clear to me whether or not  
16 that was in response to the December 22nd voicemail or not.

17 Q. Okay. Let's --

18 A. Other than that -- I should say -- other than that,  
19 no.

20 Q. Okay. So since you've said the next communication was  
21 January 5th, 2017, can you describe the nature of that  
22 communication?

23 A. Sure. There was an exchange of voicemails with Mr.  
24 Bondi. I believe that Ms. Rosado Desilets tried to reach him;

1 was unable to reach him. Mr. Bondi also called back and left a  
2 message indicating that he just wanted to make the staff aware  
3 of Mr. Lemelson's letter to the Senate subcommittee, and it does  
4 not appear that the staff and Mr. Bondi ever actually spoke  
5 about that.

6 Q. After those communications that you just testified  
7 about on January 5th, 2017, what was the next communication  
8 between the SEC and any representative for Ligand concerning the  
9 defendants?

10 A. On January 30th of 2017, Scott Friestad received an  
11 e-mail from Mr. Bondi, apparently he received the e-mail the  
12 previous week -- not positive when exactly that occurred, but it  
13 was in the week leading up to January 30th -- and in that  
14 voicemail, Mr. Bondi was complaining that the Defendant Lemelson  
15 had been talking publicly about the letter he sent to the  
16 Senate.

17 Q. I'm sorry, so before January 30, 2017, Mr. Bondi had  
18 left a voicemail for Mr. Friestad?

19 A. Yes.

20 Q. And then on January 30th, 2017, Mr. Bondi left an  
21 e-mail for Mr. Friestad?

22 A. No, there's no e-mail. Sorry for confusing this.  
23 January 30th, 2017 is when Mr. Friestad communicated that  
24 voicemail to other members of the investigative team; he

1 received it earlier, we don't know exactly when he received it.

2 Q. Okay. So after Mr. Bondi's voicemail -- well, first  
3 of all, other than what you've testified to, was there anything  
4 else communicated by Mr. Bondi in the voicemail he left for Mr.  
5 Friestad sometime prior to January 30th, 2017?

6 A. I don't believe so.

7 Q. Okay. So after that January 2017 voicemail, when's  
8 the next time the SEC had any communication with any  
9 representative of Ligand concerning the defendants?

10 A. On March 14th of 2017, Mr. Bondi e-mailed to inform  
11 the team of Mr. Lemelson's recent misleading Tweets about  
12 Ligand.

13 MR. BROOKS: Okay, so, Brian, can you pull up tab  
14 16.

15 (EXHIBIT 176 MARKED FOR IDENTIFICATION)

16 MR. SULLIVAN: So I just distributed what is now  
17 Exhibit 176. It's an e-mail with Bates numbers  
18 EPROD-SEC-LIT-E-001188427 through 30.

19 MR. JONES: I see it.

20 MR. BROOKS: And do you have that, Mr. Becker?

21 THE WITNESS: I have it as well.

22 BY MR. BROOKS:

23 Q. So, Mr. Becker, I would ask you to turn to, once  
24 you've had a chance to review it, the second page of Exhibit

1 176. And, I don't know, halfway or two-thirds down, there's an  
2 e-mail from Mr. Bondi to Mr. Friestad, Ms. Rosado Desilets, and  
3 Ms. Torrico dated March 14th, 2017; do you see that?

4 A. Yes.

5 Q. Is this the e-mail you were just referring to?

6 A. Yes, it is.

7 Q. All right. And prior to this e-mail, had anyone at  
8 the SEC communicated to Mr. Bondi that Ms. Torrico was working  
9 on the matter?

10 A. I don't know.

11 Q. Do you know when Ms. Torrico began working on this  
12 matter?

13 A. I don't. Probably not long before this e-mail, but I  
14 don't know.

15 Q. All right. And we'll see on the first page of Exhibit  
16 176, do you see an e-mail from Mr. Tonolli to the SEC dated  
17 March 21, 2017?

18 A. I see that.

19 Q. Were there any communications between the SEC and any  
20 representatives for Ligand between March 14th and March 21st,  
21 2017 other than what's reflected in Exhibit 176?

22 A. I don't believe so.

23 Q. Okay. And then you'll also see at the top there's  
24 sort of a confirmation e-mail for Ms. Rosado Desilets to



1 Mr. Tonolli and Mr. Bondi dated the following day, March 22nd,  
2 2017?

3 A. I see that.

4 Q. Were there any other communications between the SEC  
5 and any representatives for Ligand on March 21st or March 22nd,  
6 2017 other than those that are reflected in Exhibit 176?

7 A. I don't believe so, no.

8 Q. Okay. Did Ms. Torrico and Mr. Bondi have any prior  
9 relationship before 2017?

10 A. Ms. Torrico and Mr. Bondi?

11 Q. Yes.

12 A. No.

13 MR. BROOKS: So can we go off the record quickly?

14 MR. JONES: Sure.

15 (OFF THE RECORD, 1:08 P.M. TO 1:21 P.M.)

16 MR. BROOKS: First off, is there any clarifications on  
17 any answers necessary?

18 MR. JONES: We have a couple of things that you had  
19 asked us about earlier that we can clarify for you that we  
20 agreed to check on during the break. David, we'll start with  
21 the notes of the home office meeting and about Rachel Leggett,  
22 can you clarify your answers on those?

23 THE WITNESS: Sure. I think you had asked whether or  
24 not it was discussed at the June 8th, 2015 meeting at the home

1 office whether or not there had been a previous meeting with  
2 Boston office staff and I think we said we'd go back and check,  
3 and there's nothing in our records to indicate that there was  
4 any discussion of that.

5 MR. BROOKS: Got it, thank you.

6 THE WITNESS: With respect to Ms. Leggett, I think you  
7 had asked if she was still employed with the commission and I  
8 said I didn't think so unless she was hired by a different  
9 division. It turns out that she actually is currently with the  
10 Office of Compliance Inspections and Examinations' National Exam  
11 Program. I don't know how long she has held that position.

12 MR. BROOKS: Okay, thank you. Is that it for  
13 clarifications?

14 MR. JONES: I believe so.

15 MR. BROOKS: Okay.

16 BY MR. BROOKS:

17 Q. Right before the break we had looked at an e-mail from  
18 Ms. Rosado Desilets to Mr. Tonolli and Mr. Bondi dated March  
19 22nd, 2017, when was the next communication between the SEC and  
20 Ligand concerning Defendants?

21 A. August 27th -- I'm sorry, August 31st, 2017, there was  
22 a call between Mr. Bondi, Mr. Tonolli, Virginia Rosado Desilets,  
23 and Sonia Torrico.

24 Q. How long was that call?

1 A. It looks like it was 13, 14 minutes.

2 Q. Okay. What was discussed on that call?

3 A. Mr. Bondi asked what the status of the investigation  
4 was and requested a meeting with the co-directors, Mr. Friestad,  
5 and the investigating team. And we informed Mr. Bondi that he  
6 should forward any statements by Mr. Lemelson to us and that we  
7 can't comment on the status of the investigation, and he would  
8 need to wait a few weeks to see if it made any sense for him to  
9 try and set up a meeting with the co-directors.

10 Q. Okay. How did Mr. Bondi respond to that?

11 A. I don't think we have any record of how he responded.

12 Q. Do you know which member of the SEC told him that  
13 during that call?

14 A. I don't. It's typically the lead staff attorney who  
15 makes the call, which would have been Ms. Rosado Desilets, but I  
16 don't know for a fact that it was her on that occasion.

17 Q. Other than what you just testified about, are you  
18 aware of anything else that was said on that call?

19 A. No.

20 Q. Did anyone from the SEC take notes on that call?

21 A. I believe we have notes of that call, yes.

22 Q. After the August 31st, 2017 telephone call that you  
23 just discussed, when was the next communication between the SEC  
24 and any representative for Ligand concerning Defendants?

1           A.    On August 31st, 2017, same date, Mr. Tonolli e-mailed  
2 a link to the investigating staff to an August 25th, 2017  
3 Benzinga appearance by Defendant Lemelson.

4           Q.    After that e-mail from Mr. Tonolli, when was the next  
5 communication between the SEC and any representative to Ligand  
6 concerning the defendants?

7           A.    On September 15th, 2017, Mr. Bondi e-mailed the team  
8 with additional Tweets by Mr. Lemelson regarding Ligand and  
9 asked again for an opportunity to speak regarding the status of  
10 our investigation.

11                   MR. BROOKS:  Okay, Brian, can you pull up tab 18.

12                   (EXHIBIT 177 MARKED FOR IDENTIFICATION)

13           MR. SULLIVAN:  So I've distributed what's now marked  
14 as Exhibit 177.  It's a document that's Bates labeled  
15 EPROD-SEC-LIT-E-001189502 through 505.

16 BY MR. BROOKS:

17           Q.    So, Mr. Becker, my first question will be to turn your  
18 attention to page 3 of Exhibit 177, and you'll see an e-mail  
19 from Mr. Bondi to various people dated September 15th, 2017; do  
20 you see that?

21           A.    Yes.

22           Q.    Is that the e-mail you were just referring to?

23           A.    Yes.

24           Q.    Okay.  One of the cc's is Michael wheatley, is that

1 somebody at the SEC?

2 A. I don't believe so.

3 Q. Okay. If you turn to page 2 of Exhibit 177, you'll  
4 see an e-mail from Ms. Rosado Desilets dated September 18, 2017?

5 A. Yes.

6 Q. Was this the first communication between the SEC and  
7 any representative of Ligand concerning the defendants after Mr.  
8 Bondi's September 15th, 2017 e-mail?

9 A. Yes.

10 Q. And Ms. Desilets writes: "Brad, unfortunately, we  
11 cannot share information about our non-public investigation in  
12 the matter of Trading in the Securities of Ligand  
13 Pharmaceuticals, Inc. beyond what we shared last time, i.e.,  
14 that the investigation is ongoing."

15 what was she referring to when she stated "last time"?

16 A. I don't know specifically. I think we've discussed a  
17 couple of e-mails or other communications in which we advised  
18 counsel for Ligand that we can't share any information about the  
19 investigation other than that it's ongoing, but I don't know  
20 specifically what she's referring to here.

21 Q. Okay. And then she writes, "If you still wish to  
22 speak, Sonia and I are available," and she lists some times; do  
23 you see that?

24 A. Yes.

1 Q. Was there a follow-up telephone call as a result of  
2 this e-mail?

3 A. There was.

4 Q. When did that phone call take place?

5 A. Same day.

6 Q. Okay. And who was on that phone call?

7 A. Mr. Bondi, Mr. Tonolli, Michael Wheatley -- who I  
8 believe was from Cahill to answer your earlier question -- and  
9 Charles Berkman from Ligand was also on the line.

10 Q. Okay. Who from the SEC?

11 A. I believe it was Ms. Rosado Desilets and Ms. Torrico.  
12 I see an indication in the e-mail that Marc Jones may join. I  
13 actually don't know one way or another whether he was there.

14 Q. Okay. Did Mr. Bondi and Mr. Jones know each other prior to  
15 September 18th, 2017?

16 A. Mr. Bondi and Mr. Jones?

17 Q. Yes.

18 A. I don't believe so.

19 Q. Okay. What was discussed on the September 18, 2017  
20 telephone call that you just testified about?

21 A. Mr. Bondi expressed ongoing concern about Defendant  
22 Lemelson's conduct with respect to Ligand, and he asked for an  
23 update on the investigation again and requested a meeting with  
24 Steven Peikin or Stephanie Avakian, who are the co-directors of

1 the Division of Enforcement. Ms. Rosado Desilets told him that  
2 we can't comment on status only to say that the investigation is  
3 ongoing and that we would pass along his request for a meeting  
4 with co-directors of enforcement.

5 Q. How did Mr. Bondi respond?

6 A. I don't know that we have a record of that, I don't  
7 know.

8 Q. Did Mr. Bondi ever meet with Mr. Peikin or Ms. Avakian  
9 concerning Defendants?

10 A. No.

11 Q. Did the SEC ever respond to Mr. Bondi's request that  
12 he meet with Mr. Peikin or Ms. Avakian?

13 A. Do you mean did we ever tell him that that request for  
14 a meeting is being declined?

15 Q. Or something to that effect.

16 A. I'd say it's likely, but I don't actually know of a  
17 specific record that says so.

18 Q. Okay. How long was the telephone conversation on  
19 September 18th, 2017?

20 A. I believe it was about 18 minutes or so.

21 Q. And other than the e-mails reflected in Exhibit 177  
22 and the telephone call that you've just discussed, were there  
23 any communications between the SEC and any representatives for  
24 Ligand between September 15th and September 18th, 2017?

1 A. I don't believe so, no.

2 Q. So after the telephone conversation that you've  
3 described on September 18th, 2017, when was the next  
4 communication between the SEC and any representative of Ligand  
5 concerning Defendants?

6 A. On October 20th of 2017, Mr. Bondi e-mailed Scott  
7 Friestad and Virginia Rosado to note certain additional Tweets  
8 by Mister -- Defendant Lemelson regarding Ligand and also  
9 mentioned a positive analyst report on Ligand.

10 Q. Okay. And, I'm sorry, could you repeat that date  
11 again?

12 A. October 20th, 2017.

13 Q. Okay. Did the SEC ever respond to Mr. Bondi's October  
14 20th, 2017 e-mail?

15 A. No.

16 Q. So after that e-mail, when was the next communication  
17 between the SEC and any representative of Ligand concerning  
18 Defendants?

19 A. On December 18th, 2017, Mr. Bondi left a voicemail for  
20 Virginia Rosado Desilets, and I believe that Mr. Tonolli was  
21 also on the voicemail in which they noted an additional Tweet  
22 from Defendant Lemelson that linked to a Washington Post article  
23 that did not mention Ligand. They also asked about the status  
24 of the investigation and indicated that they thought that



1 Defendant Lemelson's campaign against Ligand was escalating.

2 Q. What was the nature of the Washington Post article?

3 A. Other than the fact that the article did not mention  
4 Ligand, I don't know the answer to that.

5 Q. After that December 18th, 2017 -- strike that.

6 Did you say that was a voicemail?

7 A. That was a voicemail, yes.

8 Q. I've asked this before about other voicemails, but  
9 does the SEC have a copy of that voicemail?

10 A. I don't believe so.

11 Q. All right. Are you aware of whether the SEC has  
12 copies of any voicemails from Mr. Bondi or Mr. Tonolli  
13 concerning the defendants?

14 A. I'm not aware of any -- and if you're talking about an  
15 audio file of voicemails, I'm not aware of any copies of those  
16 communications. I will say that to the extent that there was  
17 any substance in those communications, they would have been  
18 memorialized in either a note or an e-mail that was distributed  
19 to other members of the team.

20 MR. JONES: Doug, let me just jump in here. I'll  
21 confirm that we've looked for voicemails and we don't have them,  
22 and so to the extent that we're testifying about voicemails,  
23 it's because we have some other record of them usually in some  
24 sort of attorney note.

1 MR. BROOKS: Okay, thanks.

2 BY MR. BROOKS:

3 Q. And just one quick follow-up: As of 2017, did the SEC  
4 have a system that if a particular staff member received a  
5 voicemail, that they would also receive an audio file by e-mail?

6 A. I don't believe we've ever had such a system.

7 Q. Okay.

8 MR. JONES: That would be nice.

9 Q. I may have missed -- let me just ask again because I  
10 may have missed -- so if I leave somebody at the SEC a  
11 voicemail, they don't get an e-mail notification of that?

12 A. No. I wish.

13 MR. JONES: Me too.

14 Q. Okay. So I think the last thing we talked about was a  
15 December 18th, 2017 e-mail -- oh, sorry, voicemail from Mr.  
16 Bondi; after that, when is the next communication between the  
17 SEC and any representative for Ligand concerning the defendants?

18 A. The following day, December 19th, 2017, Ms. Rosado  
19 Desilets and Ms. Torrico had a call with Mr. Bondi and Mr.  
20 Tonolli.

21 Q. And how long did that call last?

22 A. Ten minutes.

23 Q. What was discussed on that call?

24 A. Mr. Bondi asked what was happening with the

1 investigation. Ms. Rosado Desilets responded that we didn't  
2 have any updates to share, but that the investigation was  
3 ongoing. Beyond that, I don't believe there was any substance.

4 Q. How did Mr. Bondi respond to what Ms. Rosado Desilets  
5 said?

6 A. We don't have any record that he responded one way or  
7 the other.

8 Q. Okay. After this December 19, 2017 telephone  
9 conversation, when's the next communication between the SEC and  
10 any representative of Ligand's concerning Defendants?

11 A. On February 27th, 2017, Ms. Rosado Desilets received  
12 an e-mail -- or, I'm sorry, a voicemail from Mr. Bondi, yeah.

13 Q. And what was the nature of that e-mail?

14 A. I corrected that, I think it's a voicemail, not an  
15 e-mail.

16 Q. Oh, I'm sorry, I didn't hear that.

17 And what did Mr. Bondi say in that voicemail?

18 A. I believe it was just a request for a callback.

19 Q. And that was to Ms. Rosado Desilets?

20 A. Yes.

21 Q. Did Ms. Rosado Desilets call back Mr. Bondi?

22 A. Not that day. There was another call which ended up  
23 being with Mr. Tonolli on March 5th which may have been in  
24 response to that voicemail.

1 Q. Were there any communications between the SEC and any  
2 representative of Ligand between February 27th, 2018 and March  
3 5th, 2018?

4 A. No.

5 Q. Okay. How long was the telephone conversation on  
6 March 5th, 2018?

7 A. I don't know if we have a record of that, but let me  
8 check.

9 I don't know.

10 Q. What was discussed on the March 5th, 2018 telephone  
11 call?

12 A. So I believe I mentioned that the call ended up being  
13 with Mr. Tonolli rather than Mr. Bondi, and I gather that Mr.  
14 Bondi was just not available at that time. I'm sorry,  
15 Ms. Rosado Desilets left a message for Mr. Bondi, but then  
16 called Mr. Tonolli who said that they had just called to ask for  
17 an update and asked if they should try to meet with anyone at  
18 the commission and to ask what the timeline was for the case; in  
19 other words, when it might be either pursued or shut down.

20 Q. Go ahead. What was the response?

21 A. And the response was that we didn't -- we, the staff,  
22 did not see any benefit to them meeting with anyone else at the  
23 commission and that the investigation was ongoing and we could  
24 not provide any information other than saying that.

1 MR. BROOKS: Marc, are you... Marc? Oh. I think  
2 Marc got cut off so let's hold on. It's actually great because  
3 he can't object so it's sort of perfect.

4 THE WITNESS: Can I do my own objections?

5 MR. BROOKS: Yeah, absolutely.

6 Kelley, let's go off the record while Marc -- because  
7 my screen is showing he's not connected to the audio, so let's  
8 wait for him. We can go off the record.

9 (OFF THE RECORD, 1:41 P.M. TO 1:42 P.M.)

10 BY MR. BROOKS:

11 Q. You were describing, Mr. Becker, the conversation  
12 between Ms. Rosado Desilets and Mr. Tonolli on March 5th, 2018,  
13 other than what you've already testified to, what else was  
14 discussed during that call?

15 A. I don't think there was anything else discussed. I  
16 will note that the call lasted four minutes based on the record  
17 that I was able to find.

18 COURT REPORTER: It looks like his audio has cut out  
19 again.

20 MR. BROOKS: Marc's?

21 COURT REPORTER: Mr. Jones, can you hear us? Off the  
22 record?

23 MR. BROOKS: Yeah, let's go off the record.

24 (OFF THE RECORD, 1:43 P.M. TO 1:44 P.M.)

1 BY MR. BROOKS:

2 Q. Mr. Becker, I think you said that the call lasted  
3 about four minutes according to your records?

4 A. Yes.

5 Q. And after that March 5th, 2018 call, what was the next  
6 communication between the SEC and any representative of Ligand  
7 concerning Defendants?

8 A. Prior to the litigation, I don't believe there were  
9 any additional communications.

10 Q. So no one at the SEC alerted Mr. Bondi that the SEC  
11 would be filing a complaint against the defendants prior to  
12 actually doing so?

13 A. I don't have any record of that occurring, no.

14 Q. I did my best to go through methodically to capture  
15 it, but were there any investigations between any representative  
16 of Ligand and the SEC starting in 2014 up through the filing of  
17 the complaint in September 2018 that we haven't discussed yet?

18 MR. JONES: Did you say communications or  
19 investigations, Doug?

20 MR. BROOKS: Let me rephrase that because I think I  
21 said a bunch of things wrong there.

22 BY MR. BROOKS:

23 Q. So other than what you've already testified to, were  
24 there any communications between the SEC and any representative

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Please refer to Page 142 for Errata Sheet instructions and  
distribution instructions.

PAGE	LINE	CHANGE	REASON

I have read the foregoing transcript of my deposition,  
and except for any corrections or changes noted above, I hereby  
subscribe to the transcript as an accurate record of the  
statements made by me.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_

DAVID BECKER

COMMONWEALTH OF MASSACHUSETTS

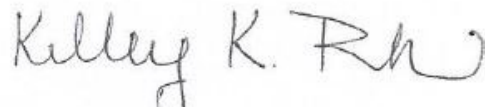
HAMPSHIRE, SS.

I, KELLEY K. BOHAN, a Court Reporter and Notary Public  
duly commissioned and qualified in and for the Commonwealth of  
Massachusetts, do hereby certify that there came before me on  
the 6th day of August, 2020, at 9:43 a.m., the person

1 hereinbefore named, identification as prescribed by Executive  
2 Order 455 (03-13) issued by the Governor of the Commonwealth of  
3 Massachusetts, was by me duly sworn to testify to the truth and  
4 nothing but the truth of his knowledge concerning the matters in  
5 controversy in this cause; that he was thereupon examined upon  
6 his oath, and his examination reduced to typewriting under my  
7 direction; and that this is a true record of the testimony given  
8 by the witness to the best of my ability.

9 I further certify that I am neither attorney or  
10 counsel for, nor related to or employed by, any of the parties  
11 to the action in which this deposition is taken, and further,  
12 that I am not a relative or employee of any attorney or counsel  
13 employed by the parties hereto or financially interested in the  
14 action.

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My Commission Expires: December 25, 2026



Kelley K. Bohan  
Court Reporter/Notary Public



## **Respondent Exhibit 19**

United States District Court  
District of Massachusetts

Securities and Exchange	)	
Commission,	)	
Plaintiff,	)	1:18-cv-11926-PBS
v.	)	
Gregory Lemelson and Lemelson	)	
Capital Management, LLC,	)	
Defendants,	)	
and	)	
The Amvona Fund, LP,	)	
Relief Defendant.	)	

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Highly Confidential

30(b)(6) Video Deposition of LIGAND PHARMACEUTICALS

JOHN HIGGINS

San Diego, California

December 11, 2019

Reported by:

Veronica S. Thompson

CSR 6056, RPR, CRR, CCRR

KEY Discovery Job 371

United States District Court  
District of Massachusetts

Securities and Exchange	)	
Commission,	)	
Plaintiff,	)	1:18-cv-11926-PBS
v.	)	
Gregory Lemelson and Lemelson	)	
Capital Management, LLC,	)	
Defendants,	)	
and	)	
The Amvona Fund, LP,	)	
Relief Defendant.	)	

---

Highly Confidential

30(b)(6) Video Deposition of Ligand Pharmaceuticals

JOHN HIGGINS

was taken on behalf of Defendants at 600 West Broadway,  
Suite 300, San Diego, California 92101, commencing at  
9:03 AM and ending at 7:03 PM, on Wednesday,  
December 11, 2019, before Veronica S. Thompson,  
CSR 6056.

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For Defendants:

Libby Hoopes  
By: Douglas A. Brooks, Esq.  
399 Boylston Street  
Boston, Massachusetts 02116  
617-338-9300  
dbrooks@libbyhoopes.com

For Ligand Pharmaceuticals, John Higgins, and Viking  
Therapeutics:

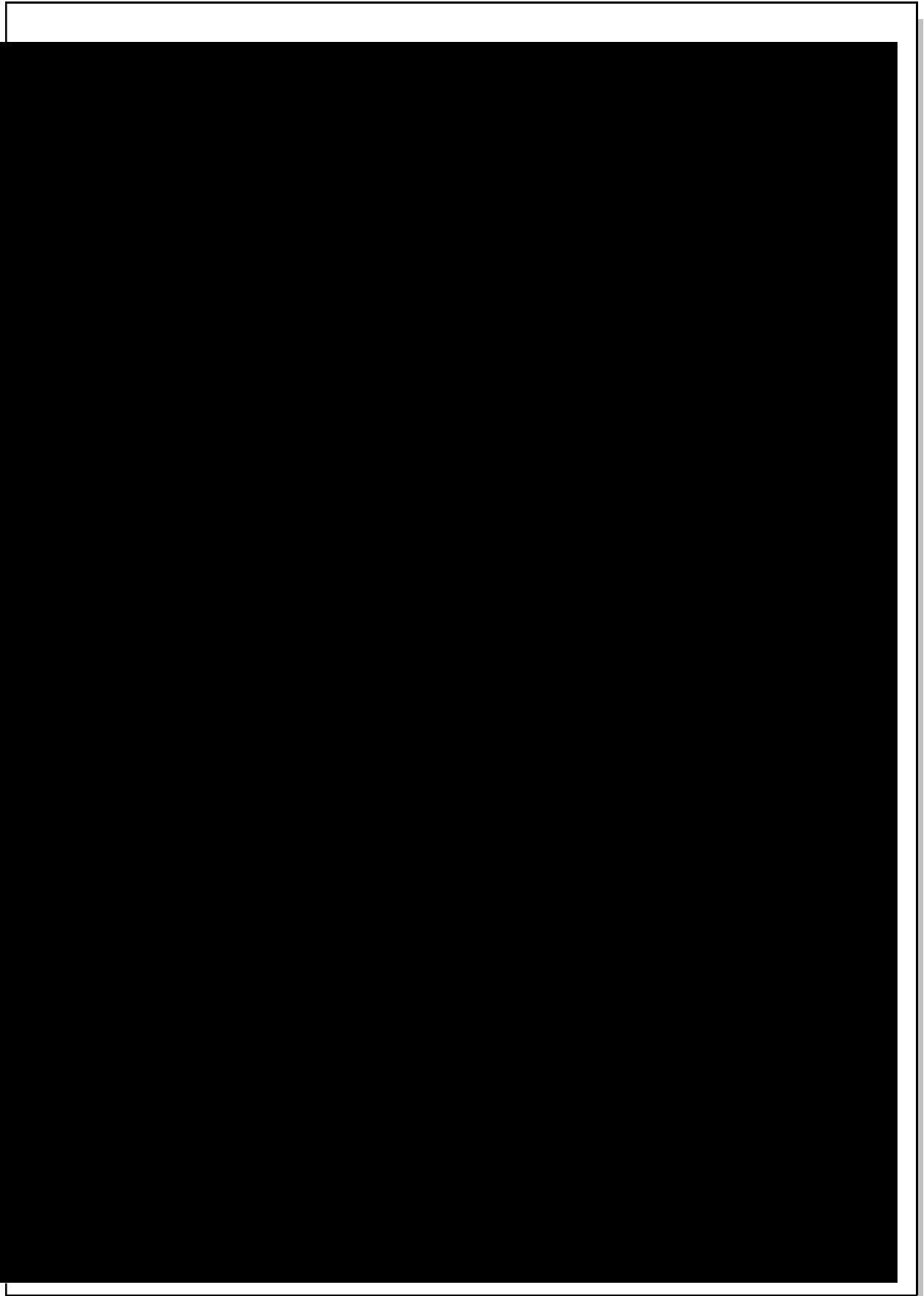
Cahill Gordon & Reindel LLP  
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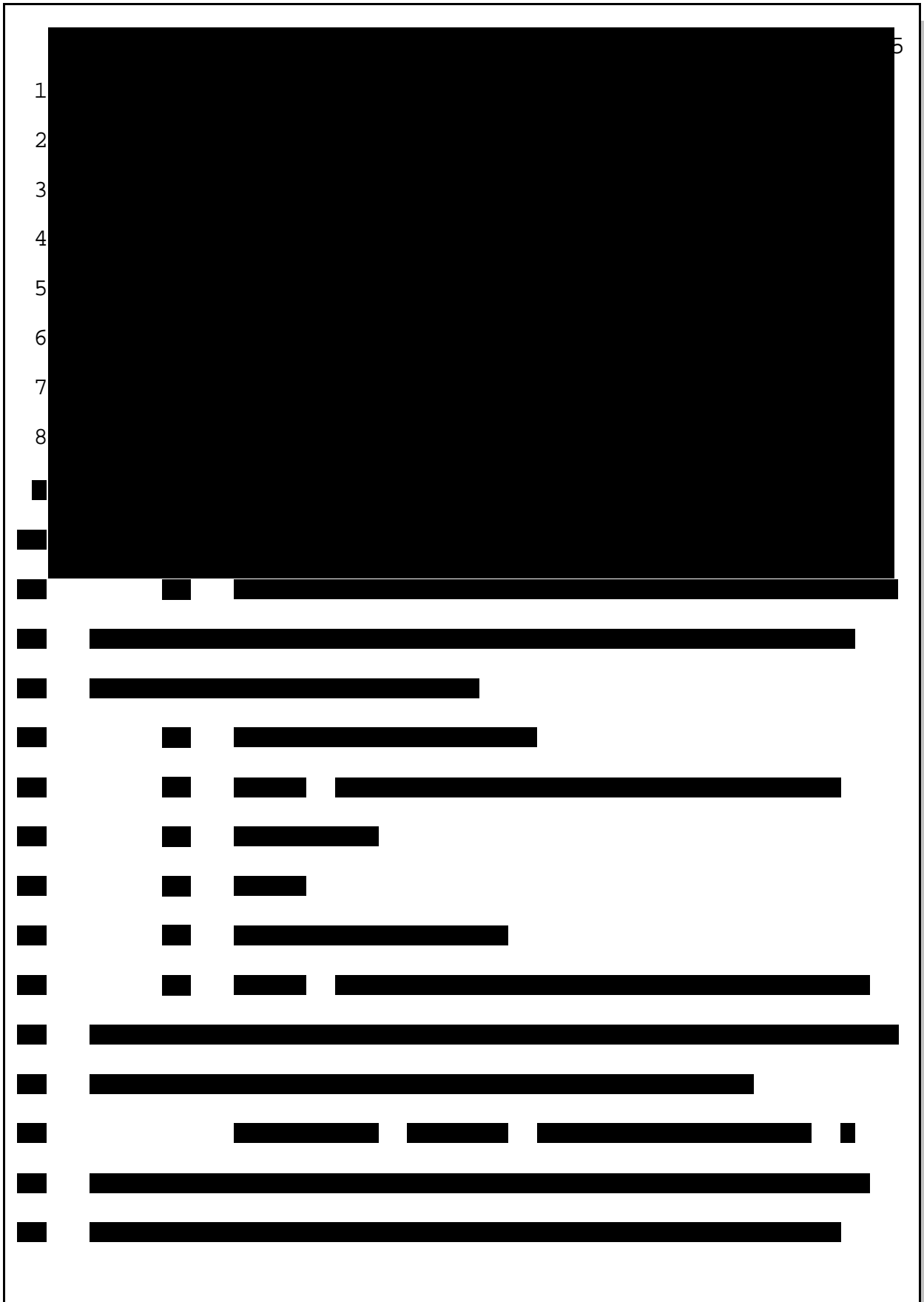
Also Present:

Fr. Emmanuel Lemelson

Videographer:

Daniel Bermudez, KEY Discovery





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[Redacted text block]

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[Redacted text block]

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20 Dated: December 27, 2019

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*Veronica S Thompson*

24

Veronica S. Thompson  
CSR 6056, RPR, CRR, CCRR

## **Respondent Exhibit 20**



WIKIPEDIA

## Bradley J. Bondi

**Bradley J. Bondi** is an American lawyer, law professor<sup>[1][2]</sup> and partner at Cahill Gordon & Reindel, where he is the Chair of the firm's White Collar and Government Investigations Practice Group.<sup>[3]</sup> He has also served on the executive staff of the Securities and Exchange Commission (SEC),<sup>[4]</sup> he was appointed to the Financial Crisis Inquiry Commission (FCIC) in the wake of the 2007-2008 financial crisis to investigate its causes<sup>[5]</sup> and he served in a leadership role on the 2016-2017 presidential transition team.<sup>[6]</sup>

He appears regularly as a legal analyst and commentator on television, including CNBC<sup>[7][8][9]</sup> and Bloomberg Television,<sup>[10][11]</sup> and is often quoted in the *Wall Street Journal*,<sup>[12][13][14]</sup> the *New York Times*,<sup>[15]</sup> the *Washington Post*,<sup>[16]</sup> *Forbes*<sup>[17]</sup> and others.

Bondi has provided expert Congressional testimony (<https://web.archive.org/web/20180613234337/https://financialservices.house.gov/uploadedfiles/hhrg-115-ba16-wstate-bbondi-20180613.pdf>) on securities law enforcement<sup>[18]</sup> and is a senior fellow at the Center for Financial Stability (<http://www.centerforfinancialstability.org/>), a think tank focusing on domestic and international securities and banking regulation, financial markets, corporate governance and the financial crisis.<sup>[19]</sup> He is also a member of the board of advisors of the Economic Crime and Cybersecurity Institute (<http://www.ecii.edu/>), which supports education and research in economic crime and information security.<sup>[20]</sup>

### Contents

#### Career

- Education

- Government Service

- Private Sector

#### Publications

- Academic and Journal Articles

#### References

## Career

### Education

Bondi received a B.S. degree with highest honors in finance, an M.B.A. in finance and management and a J.D.<sup>[21]</sup> with highest honors from the University of Florida Levin College of Law. He earned an L.L.M. with distinction in Securities and Financial Regulations from Georgetown University Law Center where he received the Thomas Bradbury Chetwood, S.J. Prize for best academic record in his class. He also holds a Certificate in Executive Leadership from Cornell University and a Certificate in Management Excellence from Harvard Business School.<sup>[22]</sup>

Upon graduation from law school, he clerked for Judge Edward E. Carnes of the U.S. Court of Appeals for the Eleventh Circuit.<sup>[22]</sup>

### Government Service

Bondi served three years on the executive staff of the Securities and Exchange Commission, working as counsel for enforcement actions and regulatory rule-making to Commissioners Paul S. Atkins and Troy Paredes,<sup>[23]</sup> the former of whom Bondi has co-authored op-eds and journal articles on regulatory policy and securities law.<sup>[24][25]</sup> While at the SEC, he served as a Special Assistant United States Attorney.<sup>[26]</sup>

In the wake of the financial crisis, Bondi was appointed from the SEC to the Financial Crisis Inquiry Commission (FCIC), as an assistant director and deputy general counsel.<sup>[27][28]</sup> The Commission was signed into law in 2009 and charged with examining "the causes, domestic and global, of the current financial and economic crisis in the United States."<sup>[29]</sup> While with the FCIC, Bondi led one of the three teams examining the causes of the financial crisis,<sup>[30]</sup> and questioned prominent figures in the financial world including Warren Buffett,<sup>[31]</sup> former Chairman and CEO of Citigroup Charles Prince, former US Secretary of the Treasury Robert Rubin, former Citigroup executive John Reed, hedge fund manager William Ackman, then-CEO of Citigroup Vikram Pandit, Eric Kolchinsky, Thomas Maheras and David Bushnell.<sup>[32]</sup> He has been credited with assisting Peter Wallison, a commissioner of the Financial Crisis Inquiry Commission, with research that went into Wallison's dissenting report.<sup>[33]</sup>

### Private Sector

Securities Docket called Bondi "the first choice among Boards of Directors and Audit Committees of the Fortune 500 when their company is faced with SEC or DOJ problems."<sup>[34]</sup> Today, Bondi represents companies and boards of directors in significant legal crises such as enforcement actions involving the SEC and the Department of Justice (DOJ), internal investigations and significant litigation.<sup>[35]</sup> He is the Chair of Cahill's White Collar and Government Investigations Practice Group.<sup>[36]</sup>

Among his notable clients that are public, Bondi led the representation of Tesla before the SEC in an enforcement case stemming from tweets by its CEO concerning a potential going-private transaction in 2018.<sup>[37][38][39]</sup> The *Wall Street Journal* described the SEC action as, "Among the highest-profile cases in years."<sup>[38]</sup>

Bondi also led an internal investigation for the board of directors of the Washington Metropolitan Area Transit Authority that exposed misconduct by a prominent D.C. Council Member.<sup>[40]</sup> The *Washington Post* said the "devastating"<sup>[41]</sup> and "meticulous report cited incontrovertible evidence" of misconduct.<sup>[42]</sup> The paper credited the report for leading to the Council Member's re-election defeat, following his public reprimand.<sup>[43]</sup>

Bondi defended the Salix subsidiary of Valeant Pharmaceuticals in a securities class action in 2017.<sup>[44]</sup> In 2018, Bondi defended Salix before the SEC in an enforcement action that resulted in no monetary penalties against the company.<sup>[45]</sup> The SEC's press release stated that, "The settlement with Salix reflects the company's self-report to the Commission and its significant cooperation with the investigation." The SEC also acknowledged that, "Salix's proactive remediation included conducting an extensive internal investigation that led to [the CFO's] resignation."<sup>[46]</sup>

In 2016, Bondi represented Princess Cruise Lines in connection with a criminal case involving the illegal discharge from one of its ships.<sup>[47]</sup>

Bondi successfully represented the investment bank Morgan Stanley<sup>[48]</sup> before the Supreme Court of the United States, in the case Credit Suisse First Boston Ltd. v. Billing (interpreting securities laws as implicitly precluding the application of anti-trust laws in the IPO process). He also served as the counsel of record for two other Supreme Court *amicus curiae* briefs: Yates v. United States<sup>[49]</sup> (construing Sarbanes-Oxley's criminal provision for document destruction) and Salman v. United States<sup>[50]</sup> (concerning the personal benefit element of insider trading law).

Bondi teaches securities law as an adjunct professor at both Georgetown University Law Center<sup>[51]</sup> and George Mason University's Antonin Scalia Law School.<sup>[52]</sup>

In 2016-2017, Bondi served on the transition team for the incoming Trump administration, advising on issues relating to the financial services sector and leading the landing team to the Export-Import Bank of the United States.<sup>[53]</sup>

## Publications

Bondi has authored numerous academic articles on securities law, criminal law and corporate governance. He also has authored two book chapters on white-collar criminal defense strategy for the series *Inside the Minds* (Aspatore Books, 2007).<sup>[54]</sup> He serves as a regular contributor to *Directorship Magazine*, a publication of the National Association of Corporate Directors.<sup>[55]</sup>

In 2018, he provided Congressional testimony concerning securities law enforcement.<sup>[56]</sup>

## Academic and Journal Articles

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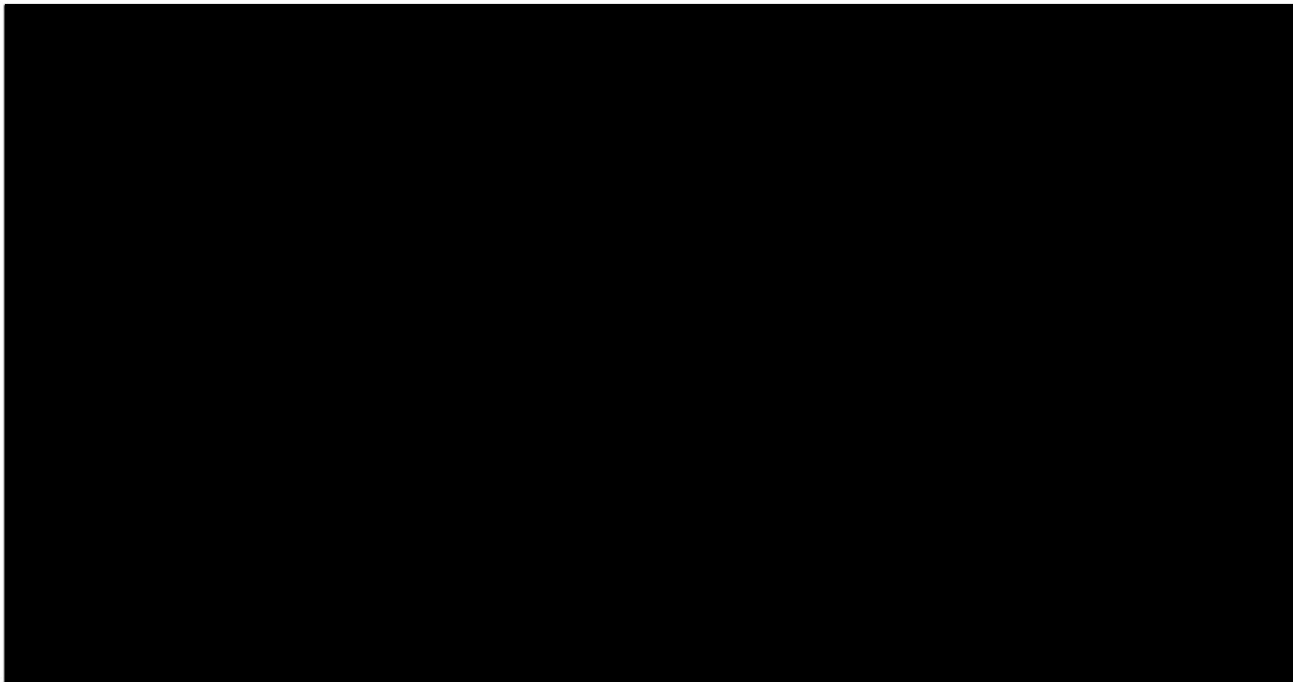
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## **Respondent Exhibit 21**



Confidential

FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

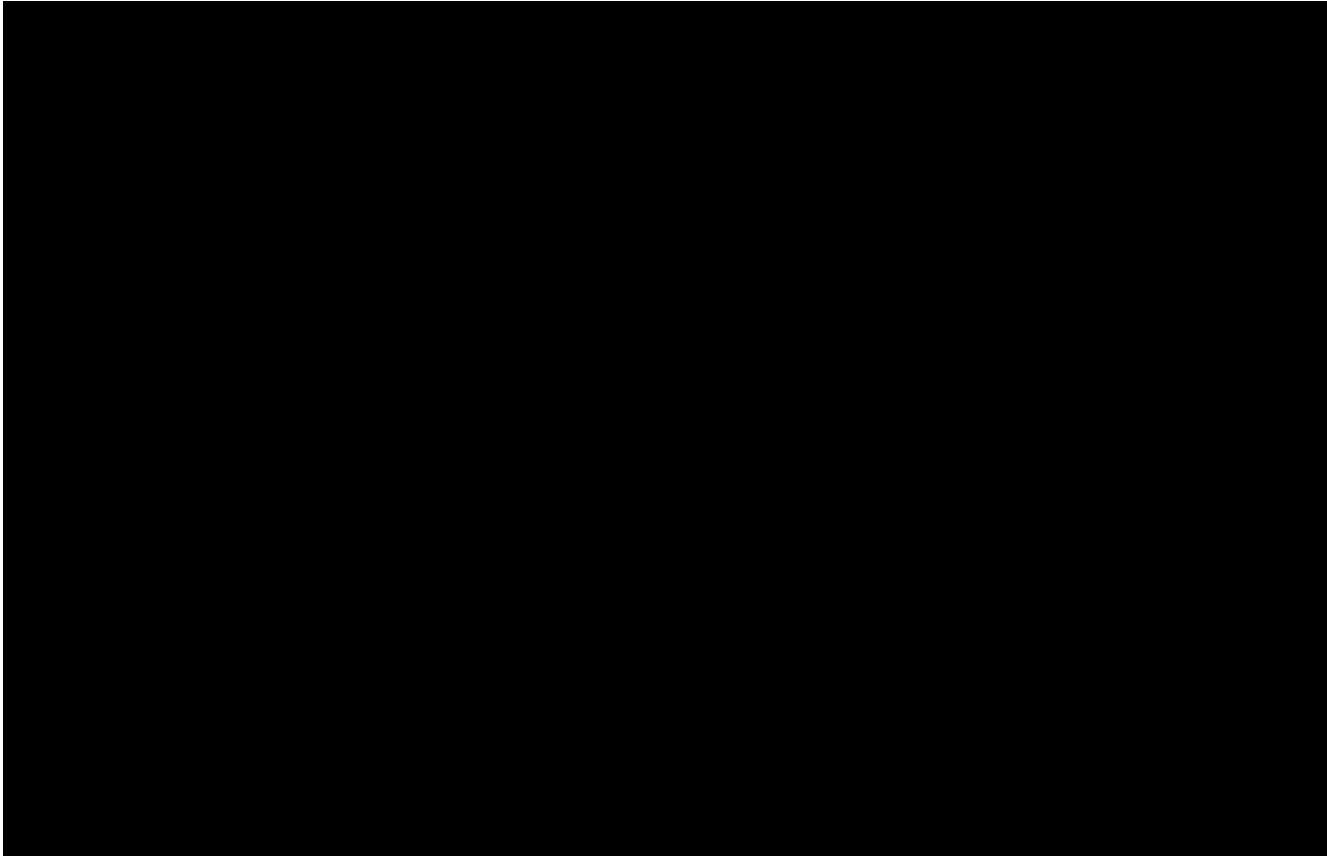


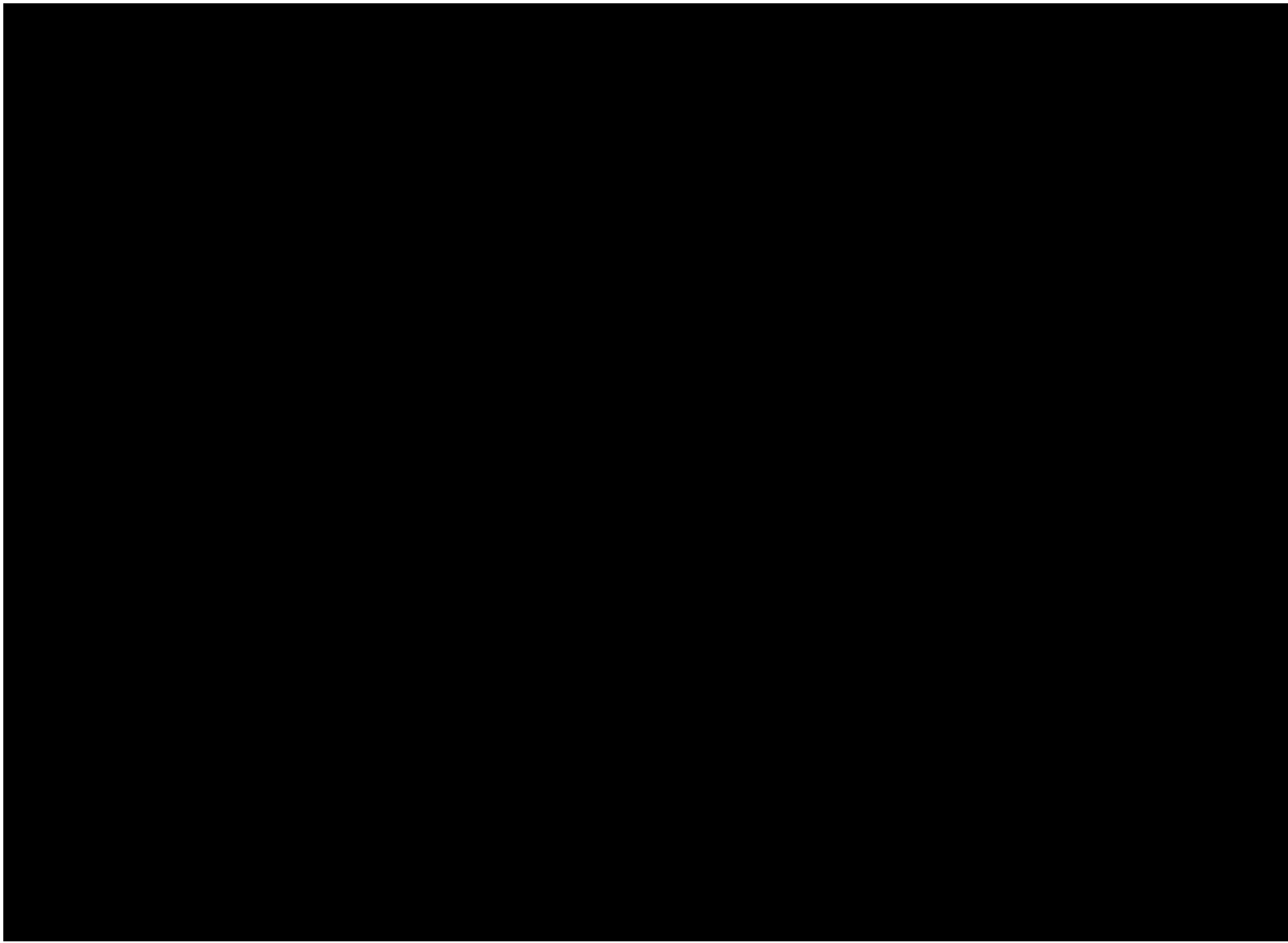
Ligand

LGND\_0080738

OS Received 07/29/2022





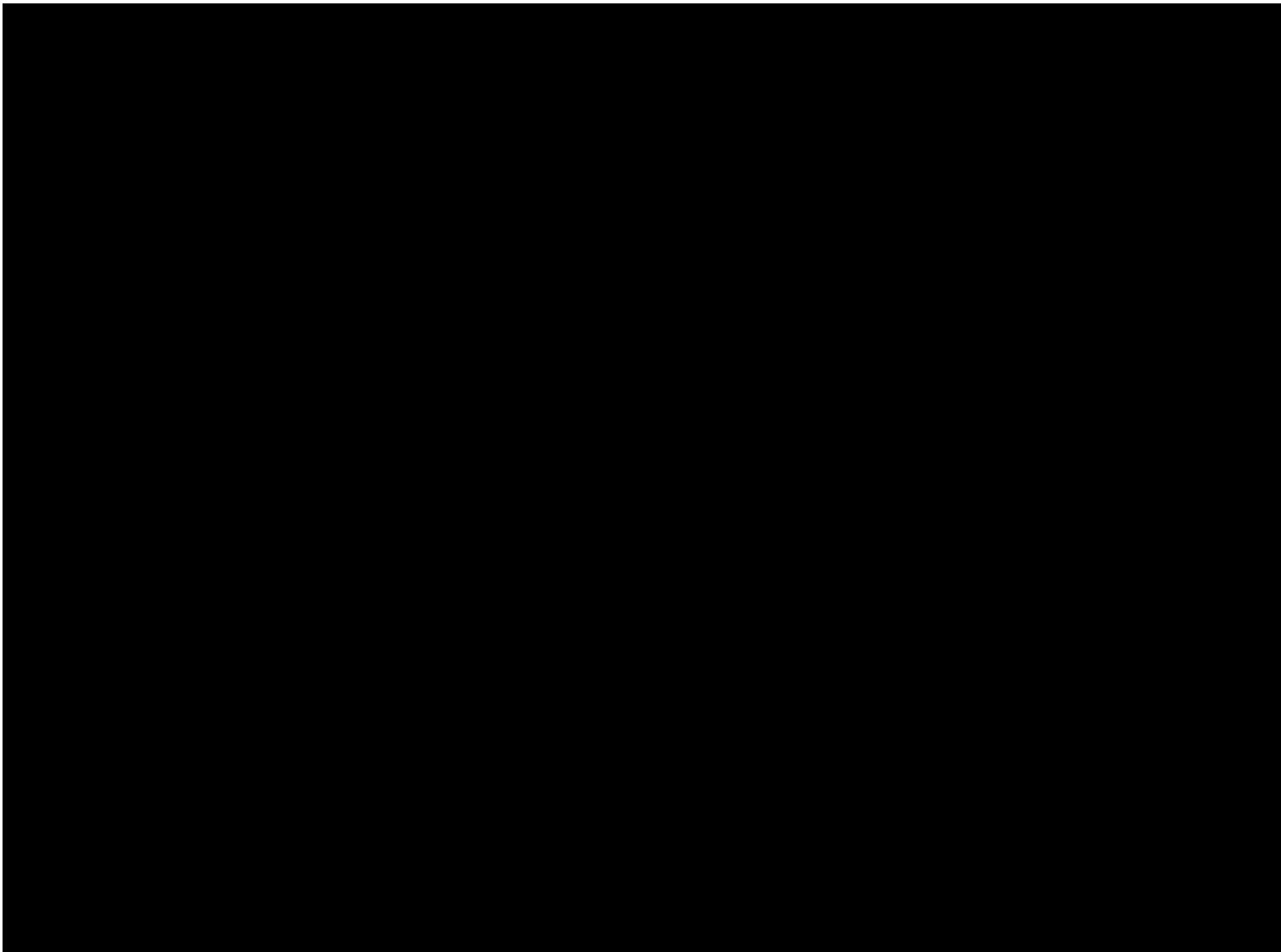


Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080740

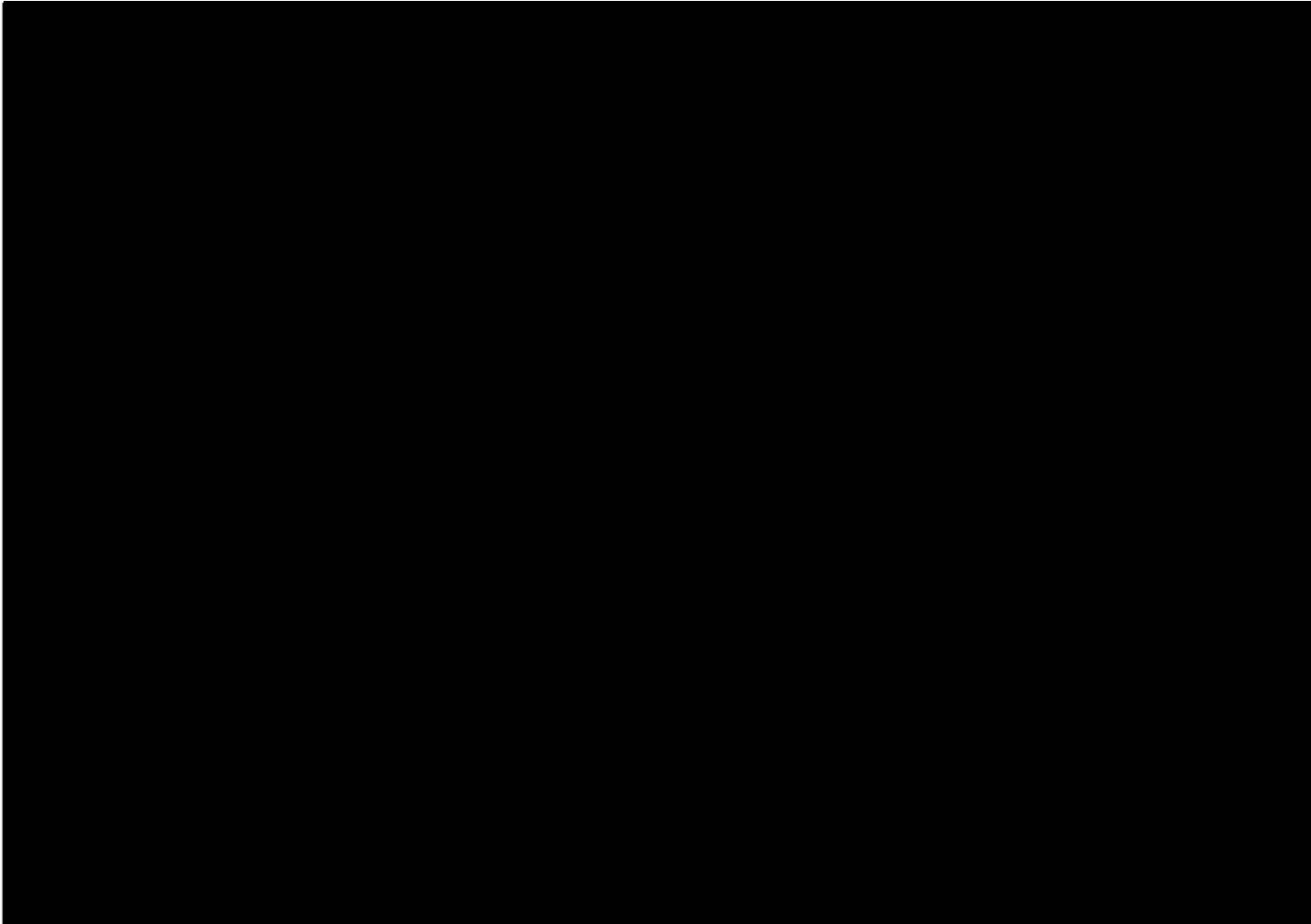




Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080741

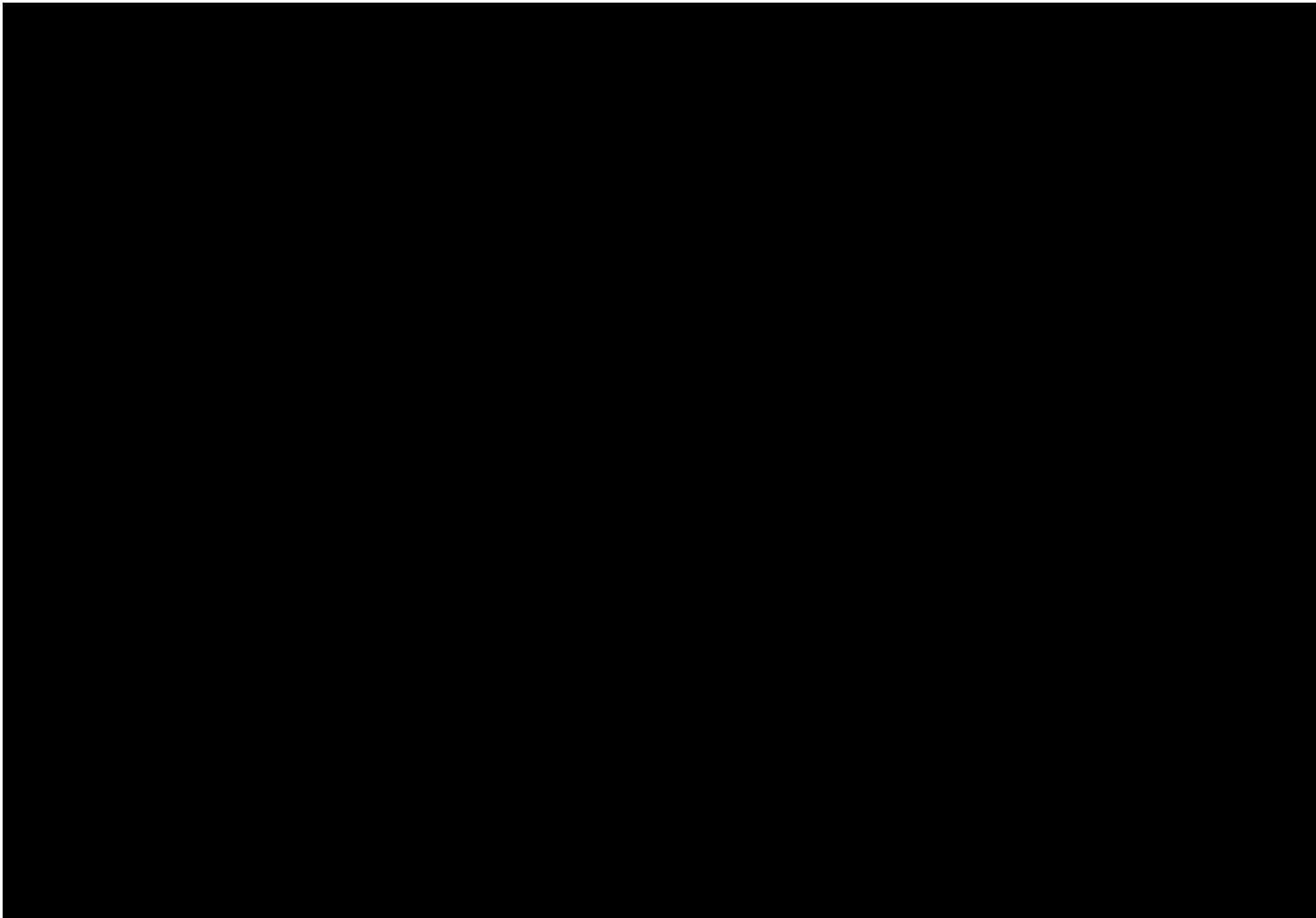


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080742



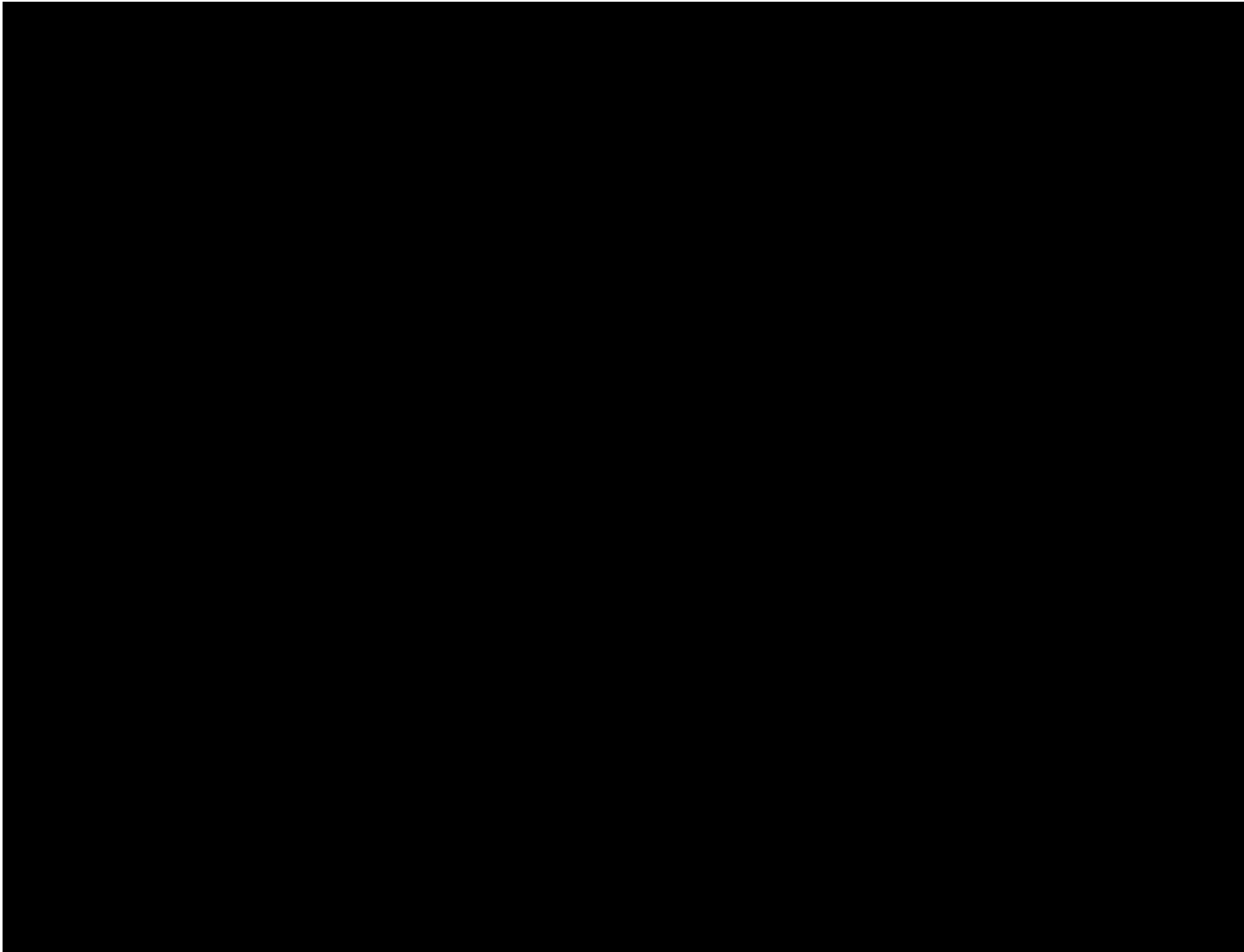


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080744

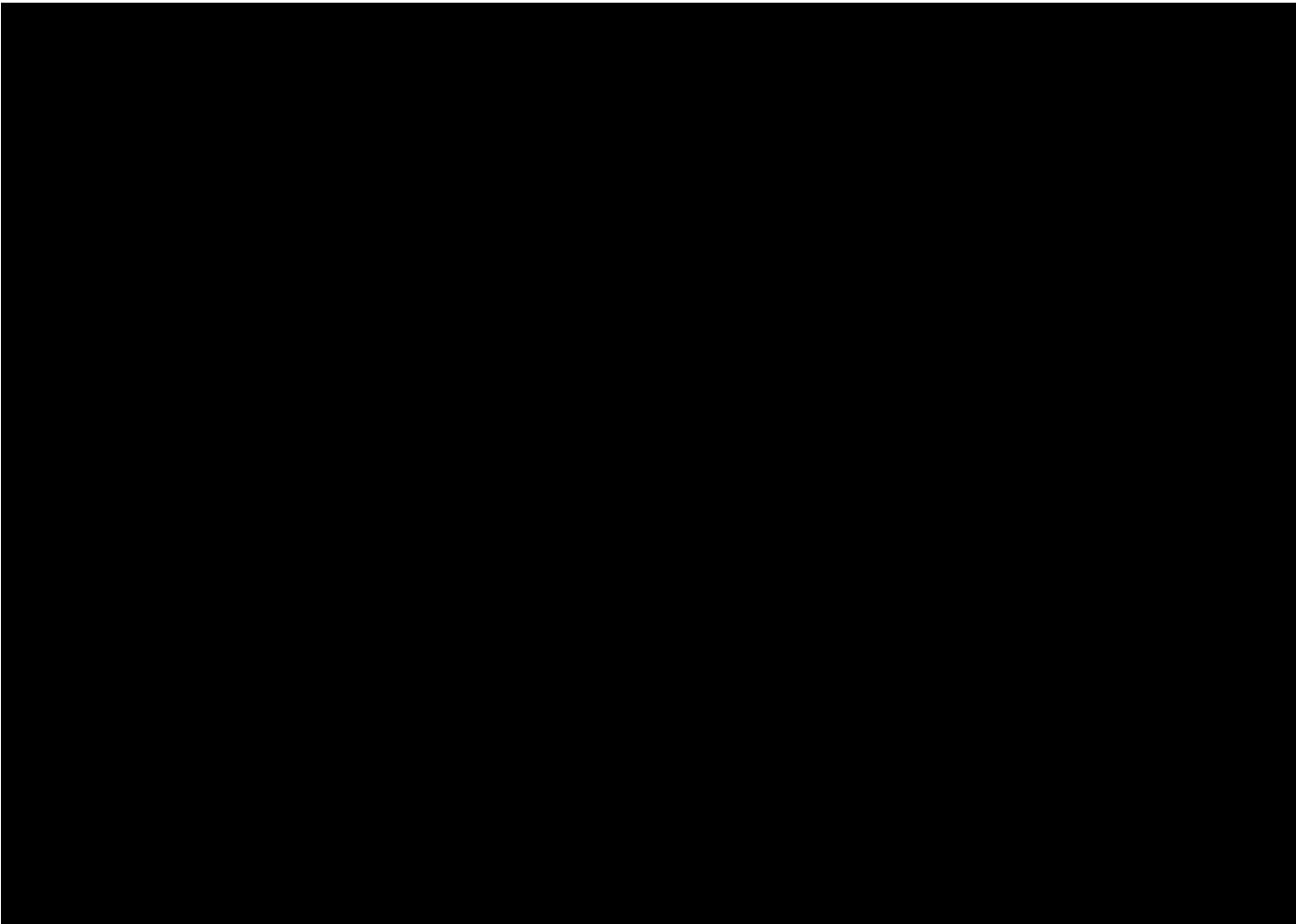


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080745



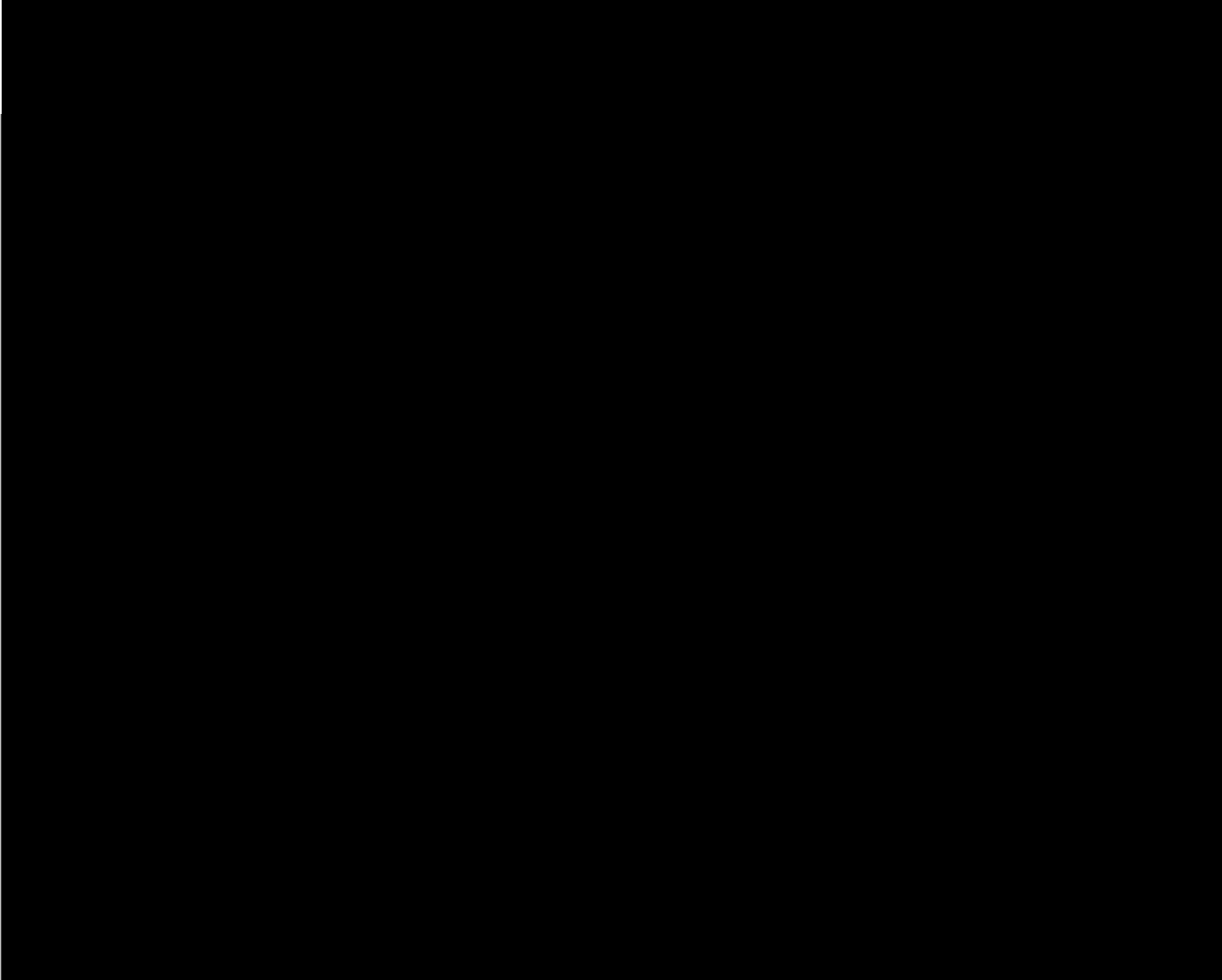
FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080746

Ligand



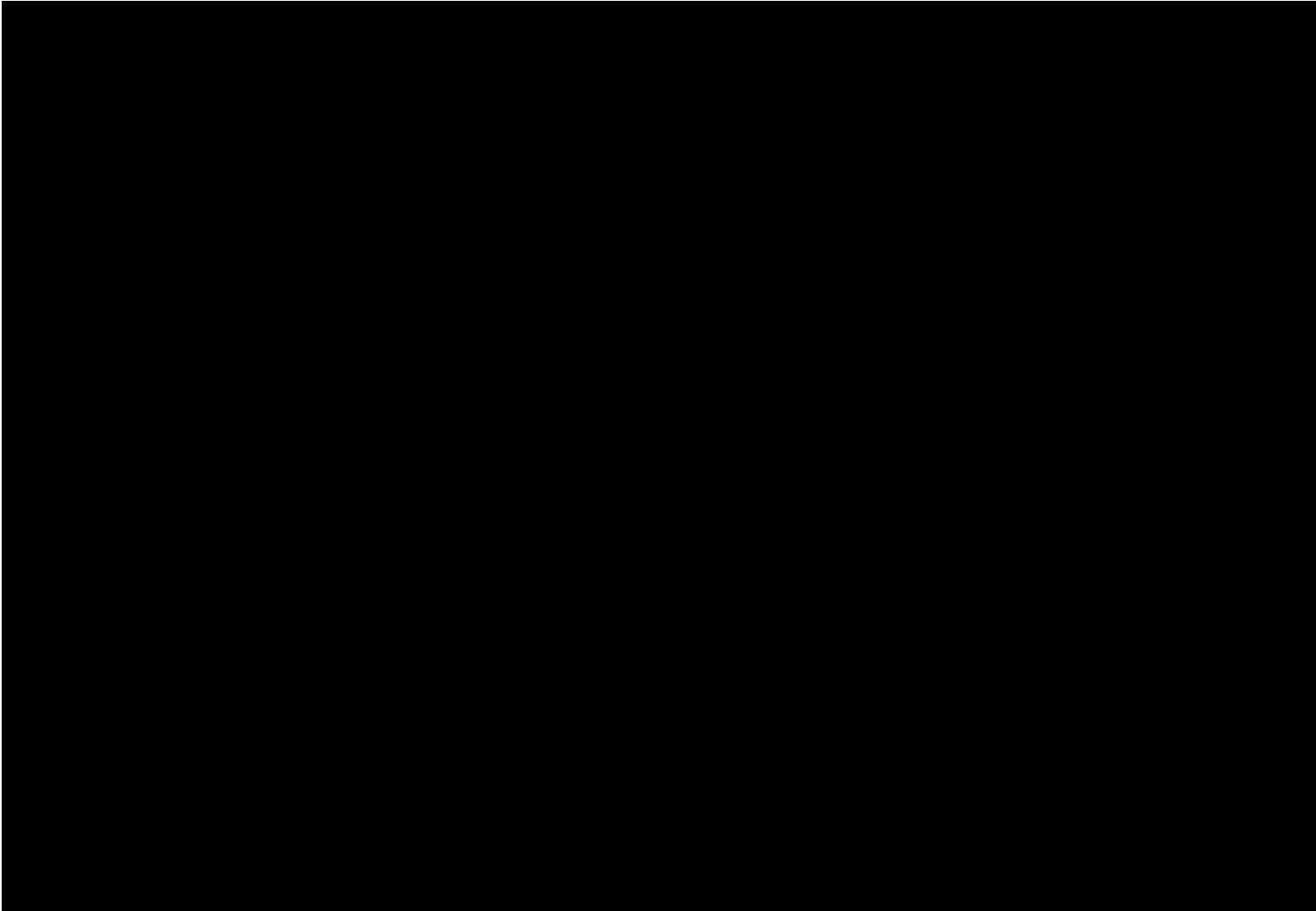
FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080747

OS Received 07/29/2022



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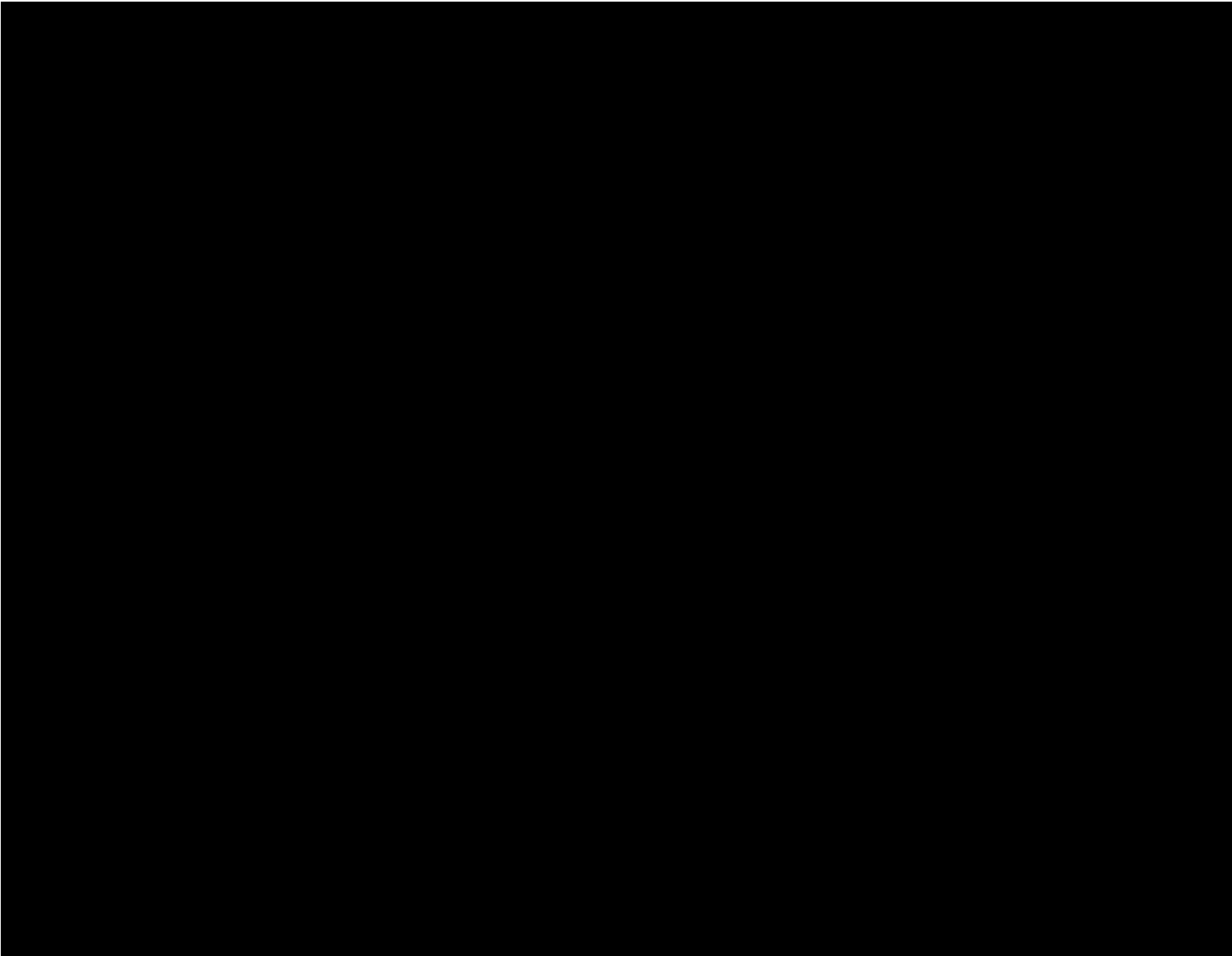
Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080748

OS Received 07/29/2022



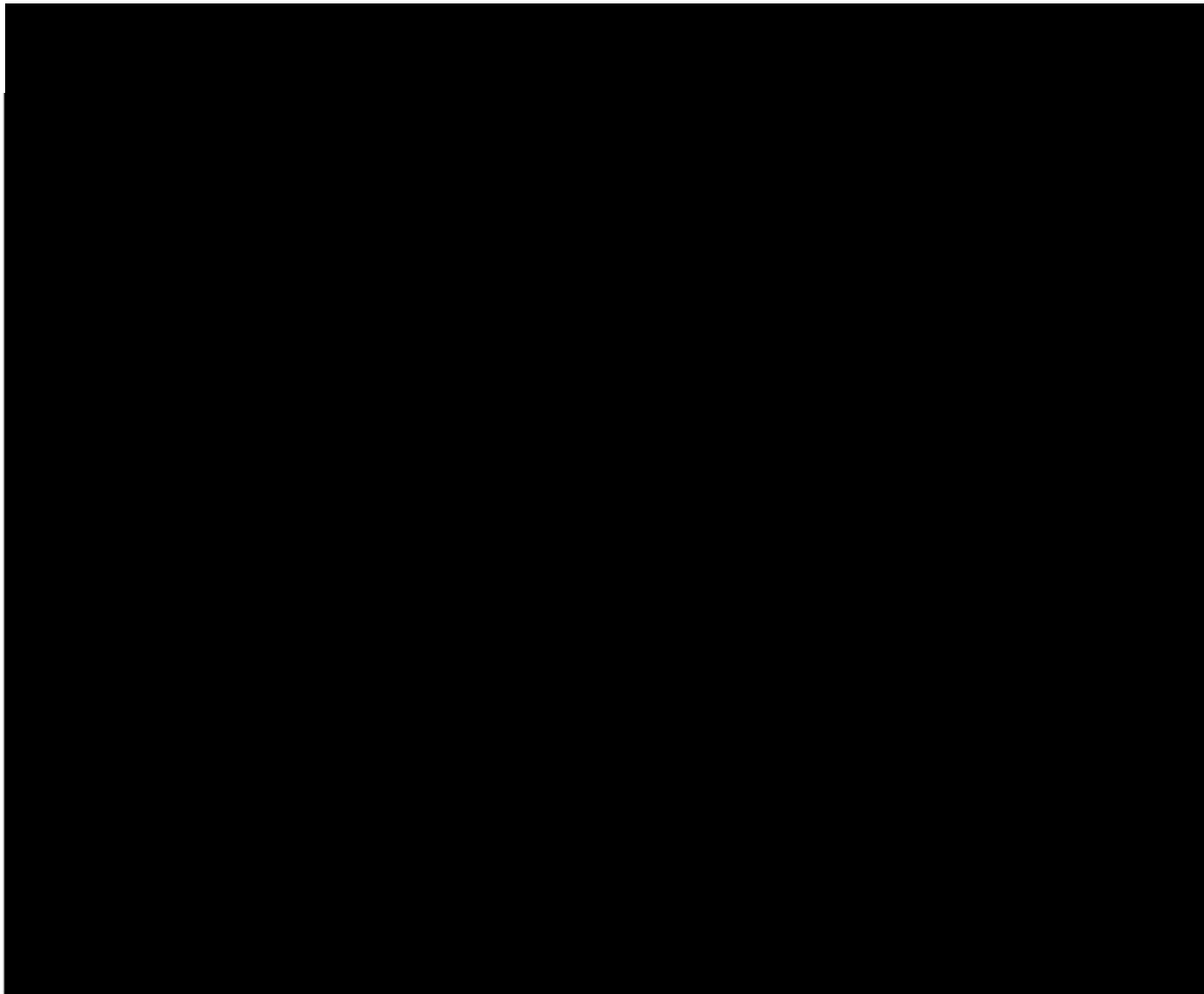


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080749



FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

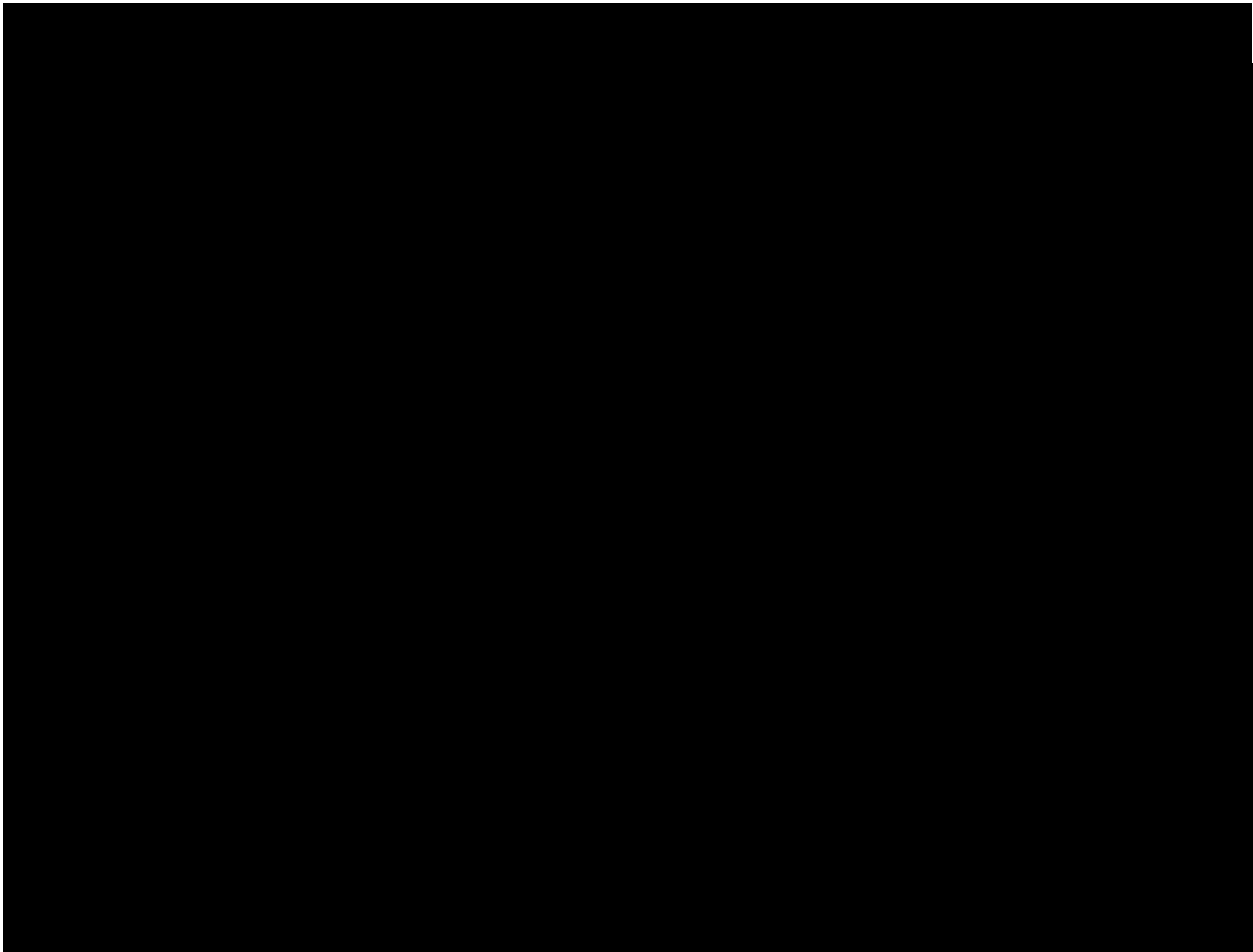
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Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080751

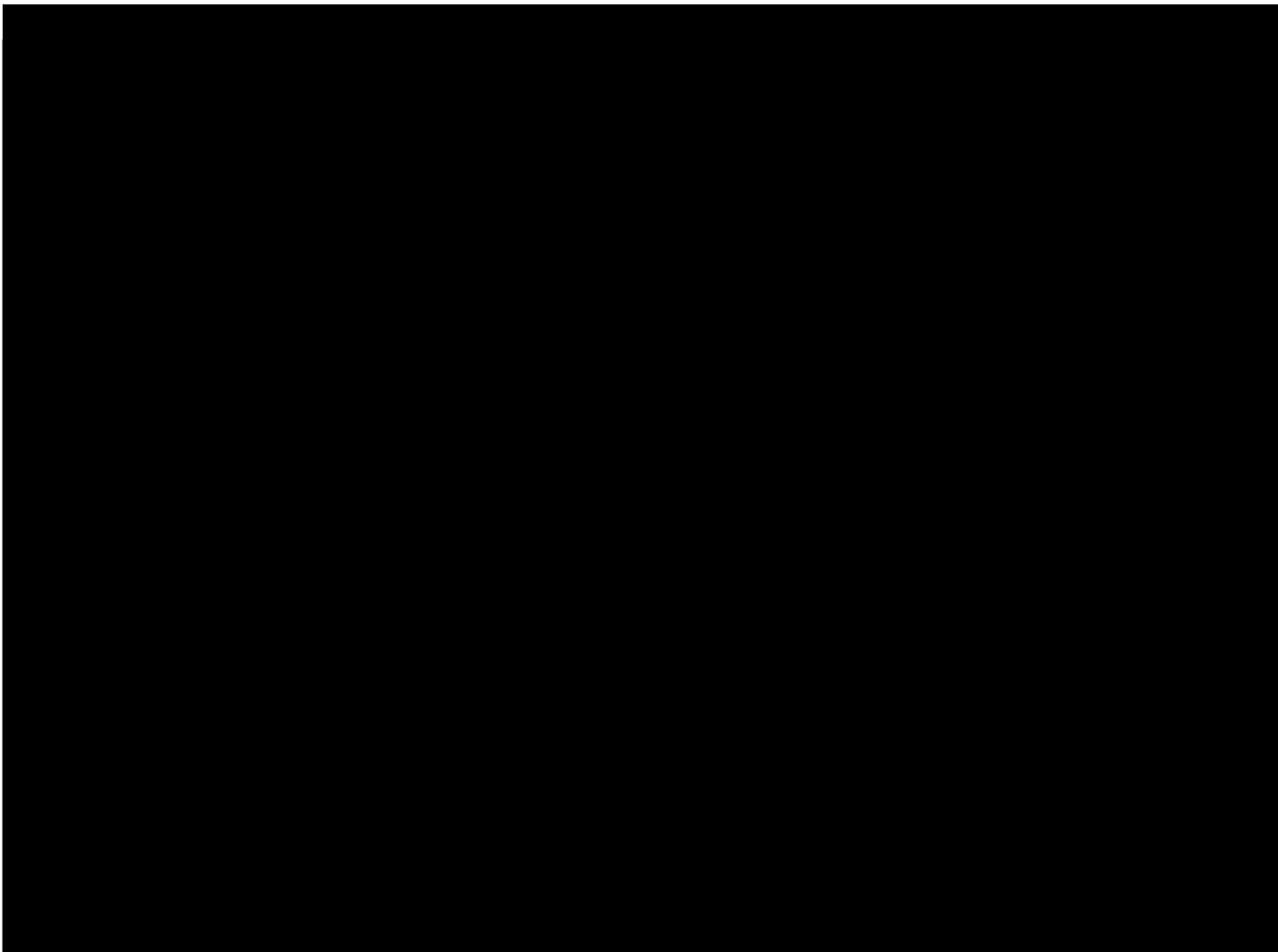


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080752

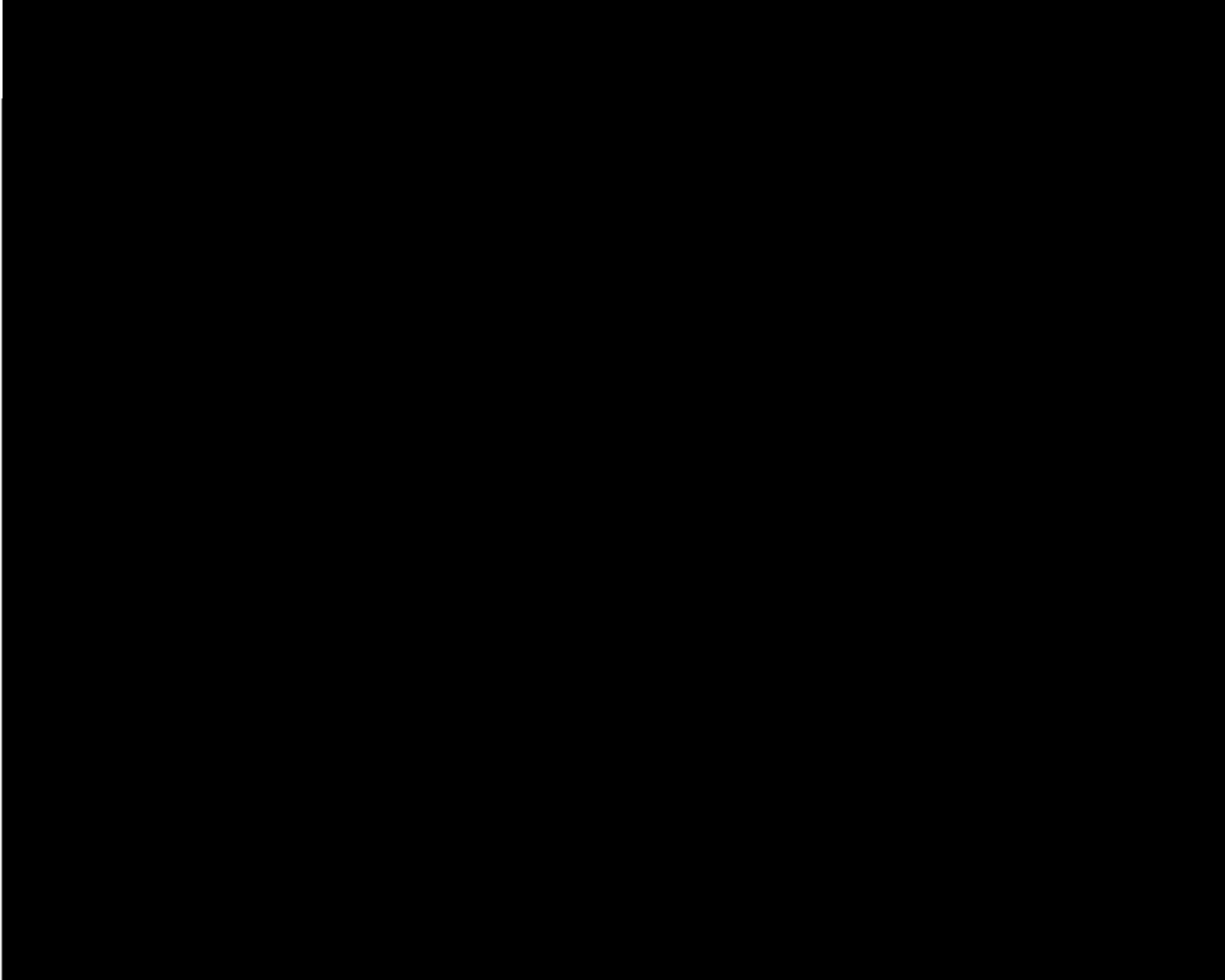


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080753

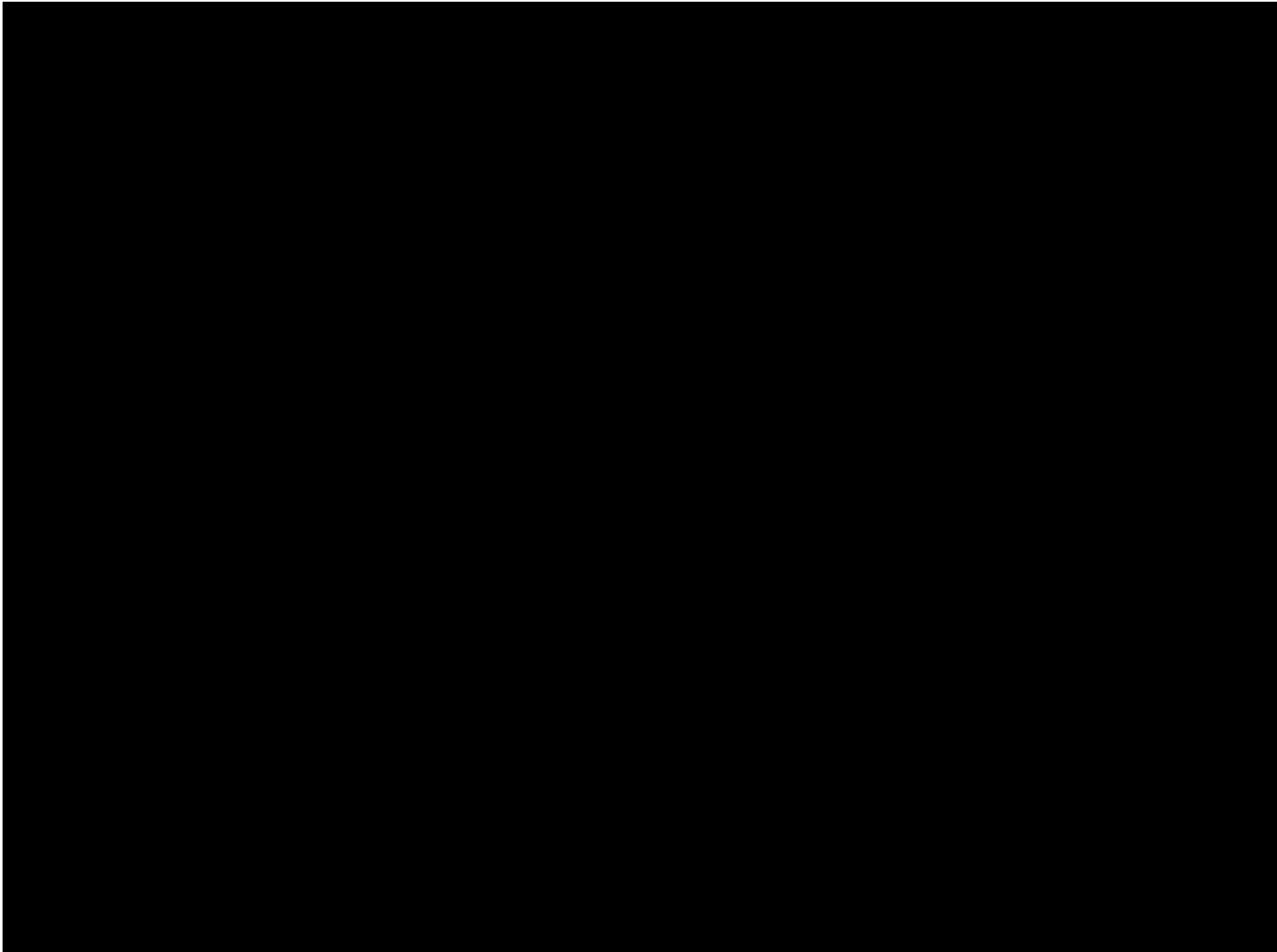


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080754



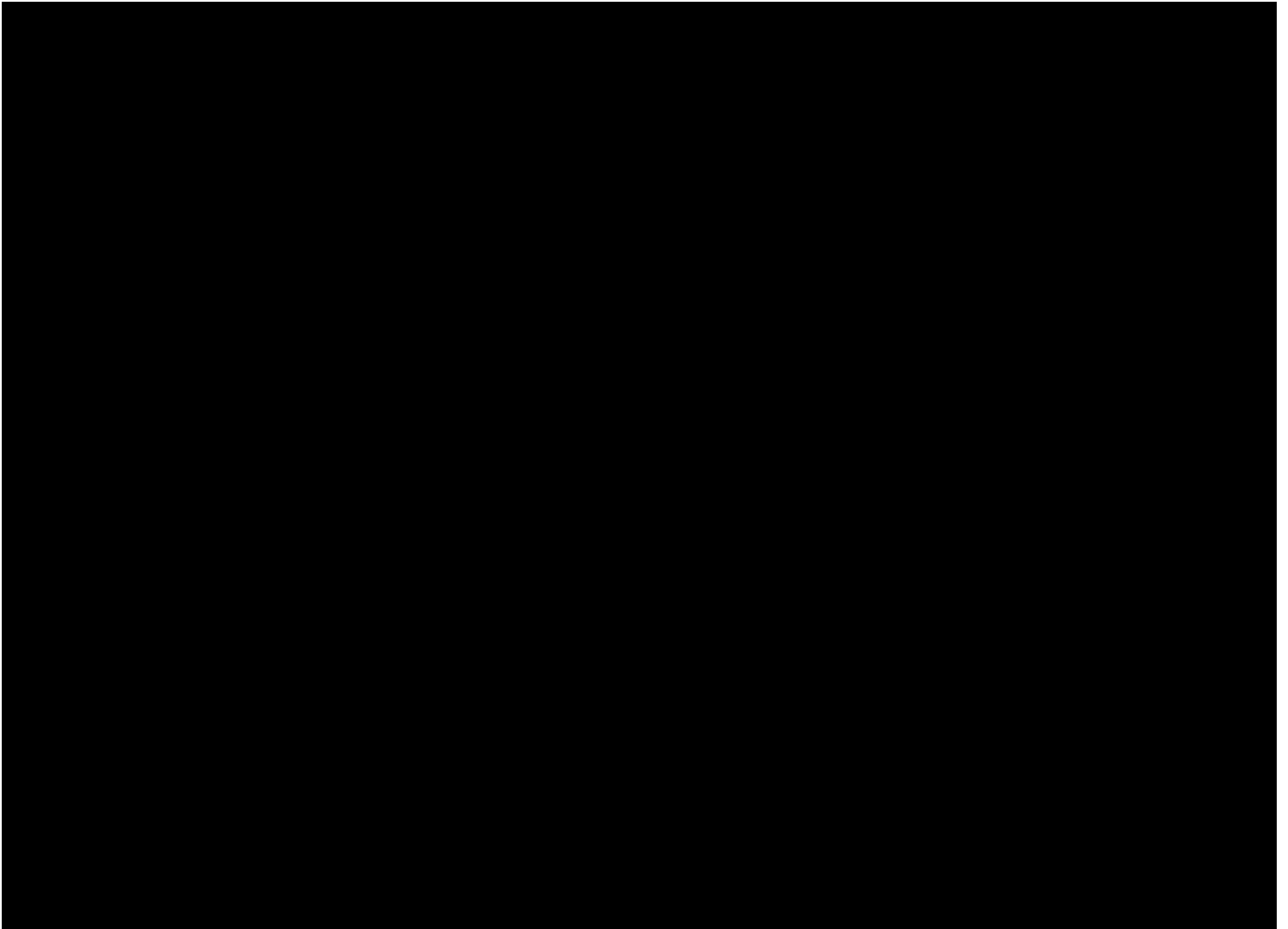
FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080755

OS Received 07/29/2022



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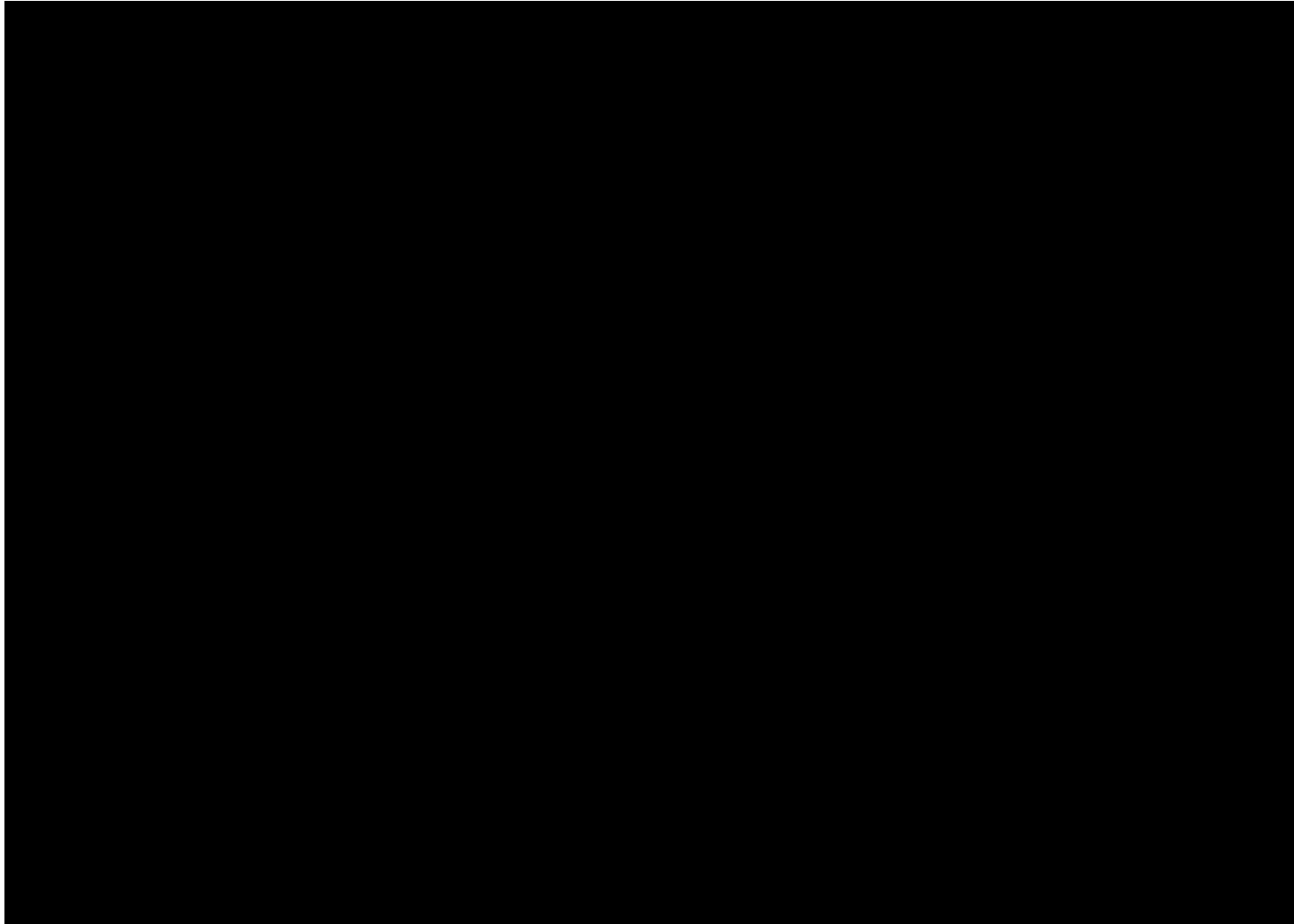
Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080756

OS Received 07/29/2022



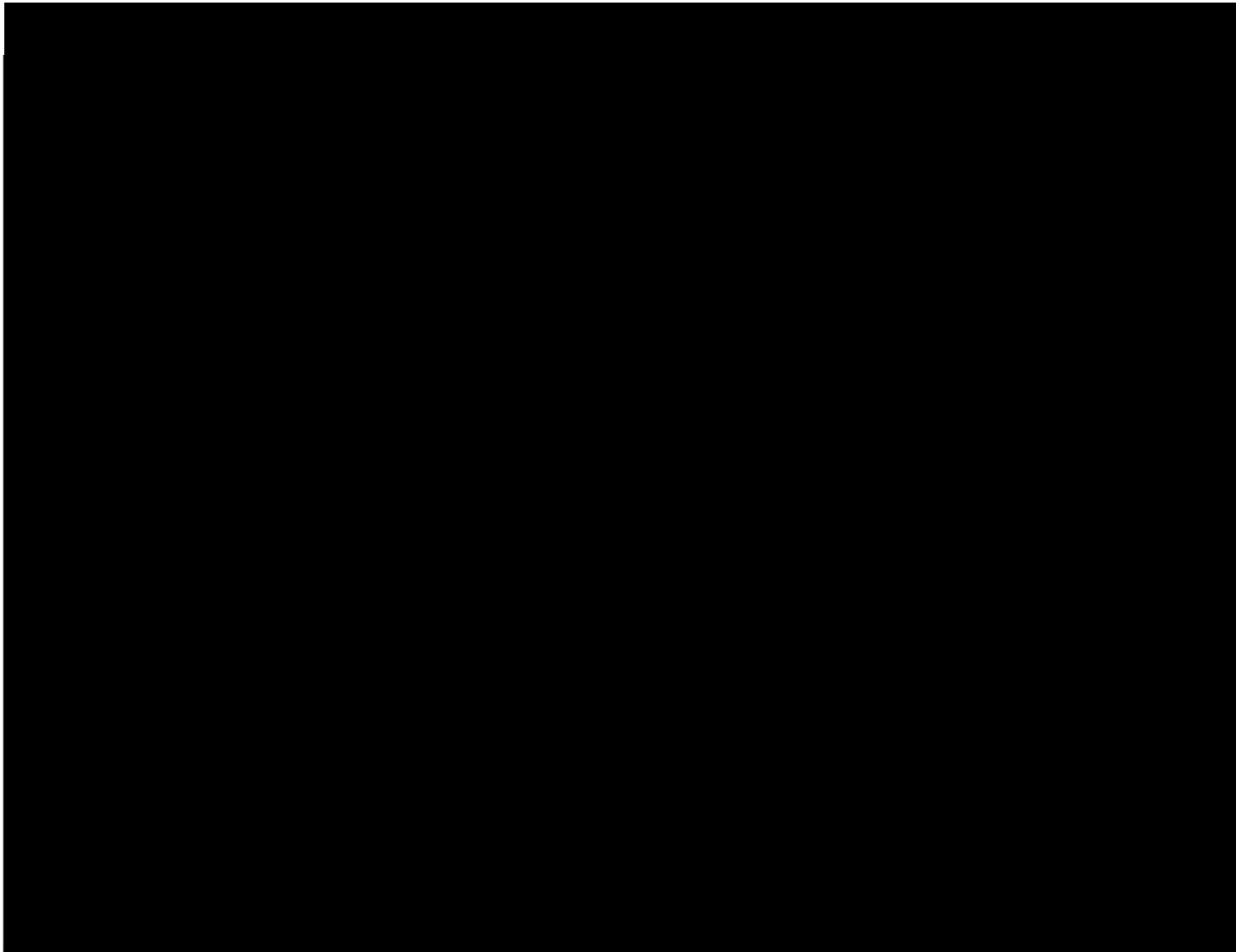


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080757

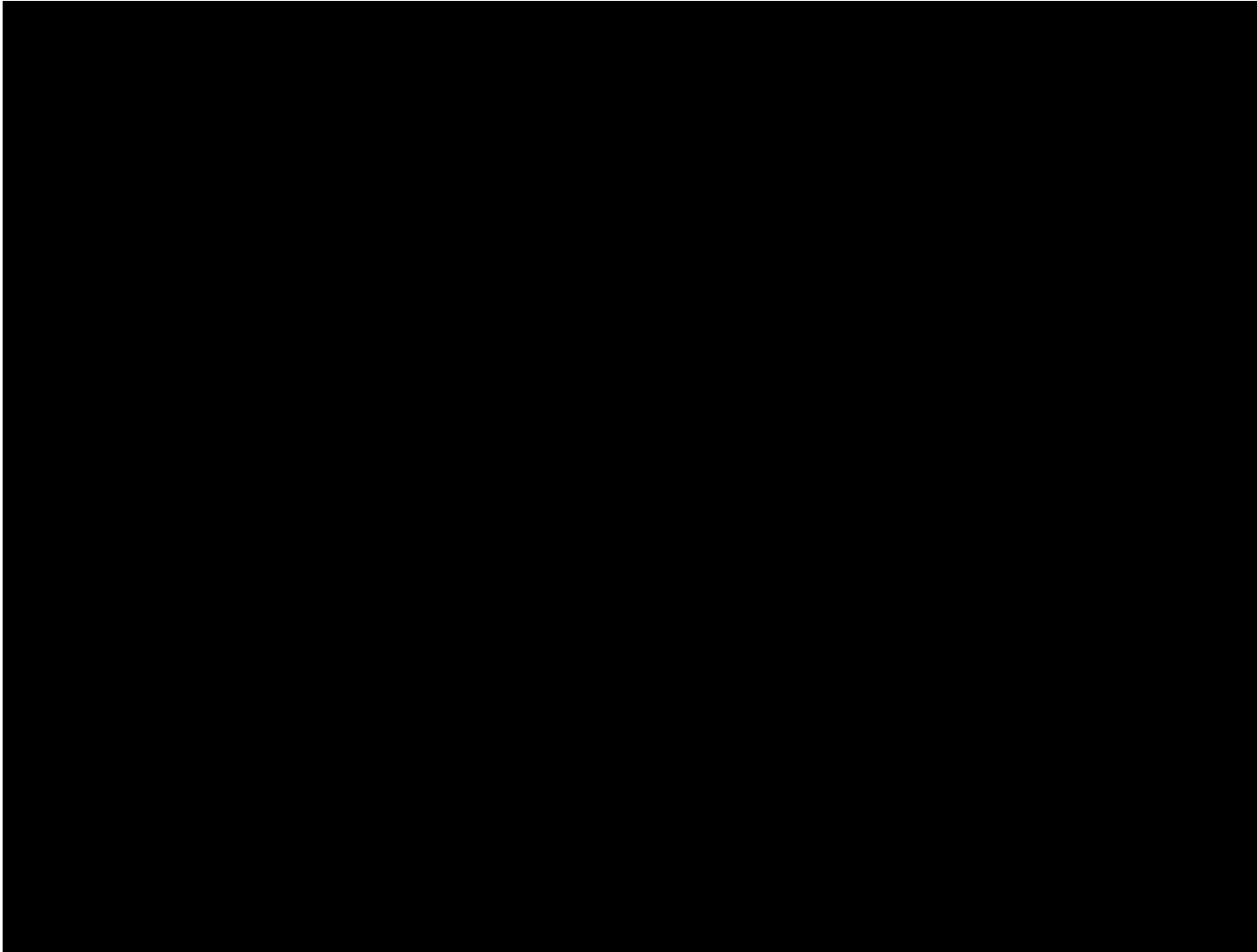


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080758

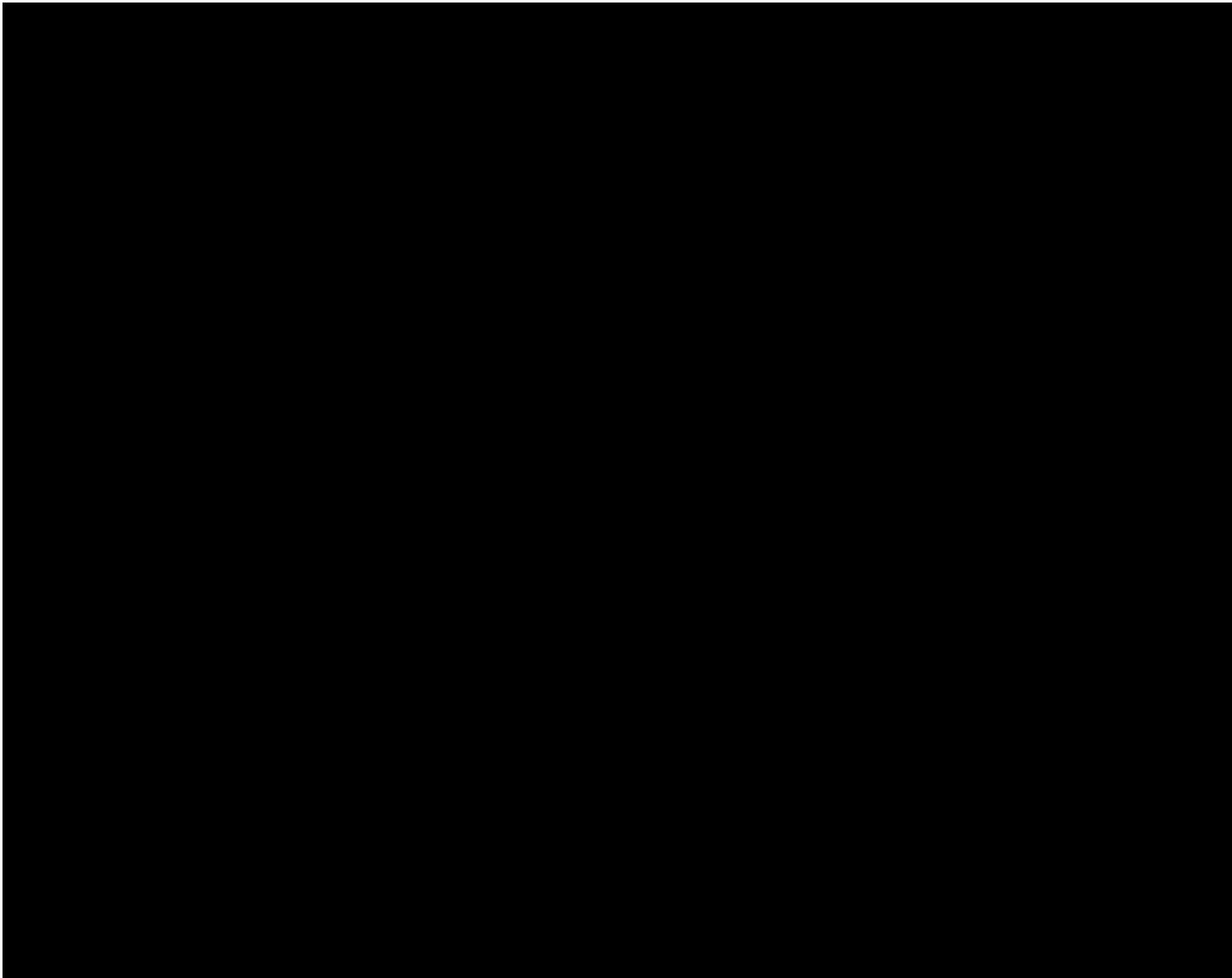


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080759

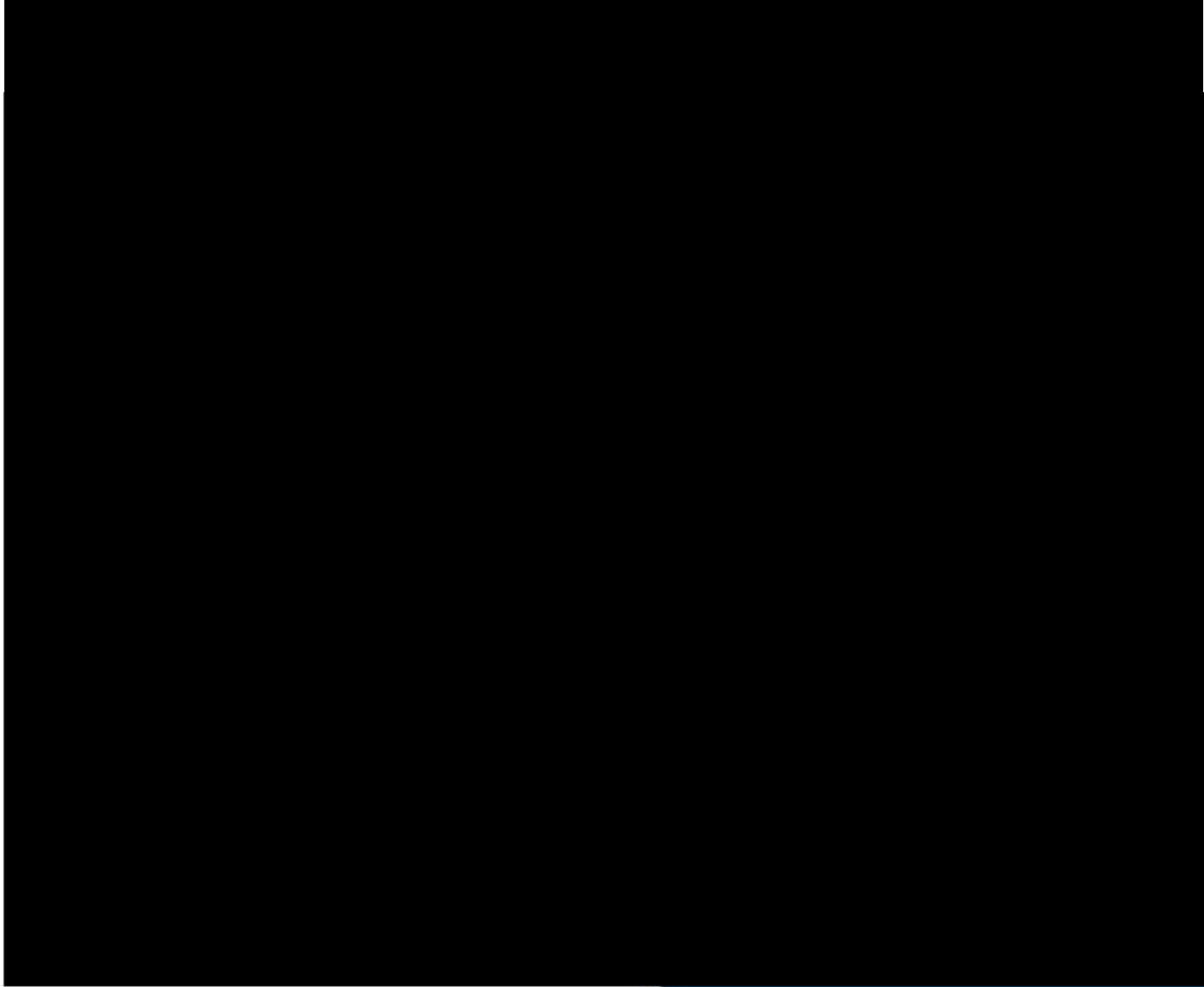


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080760



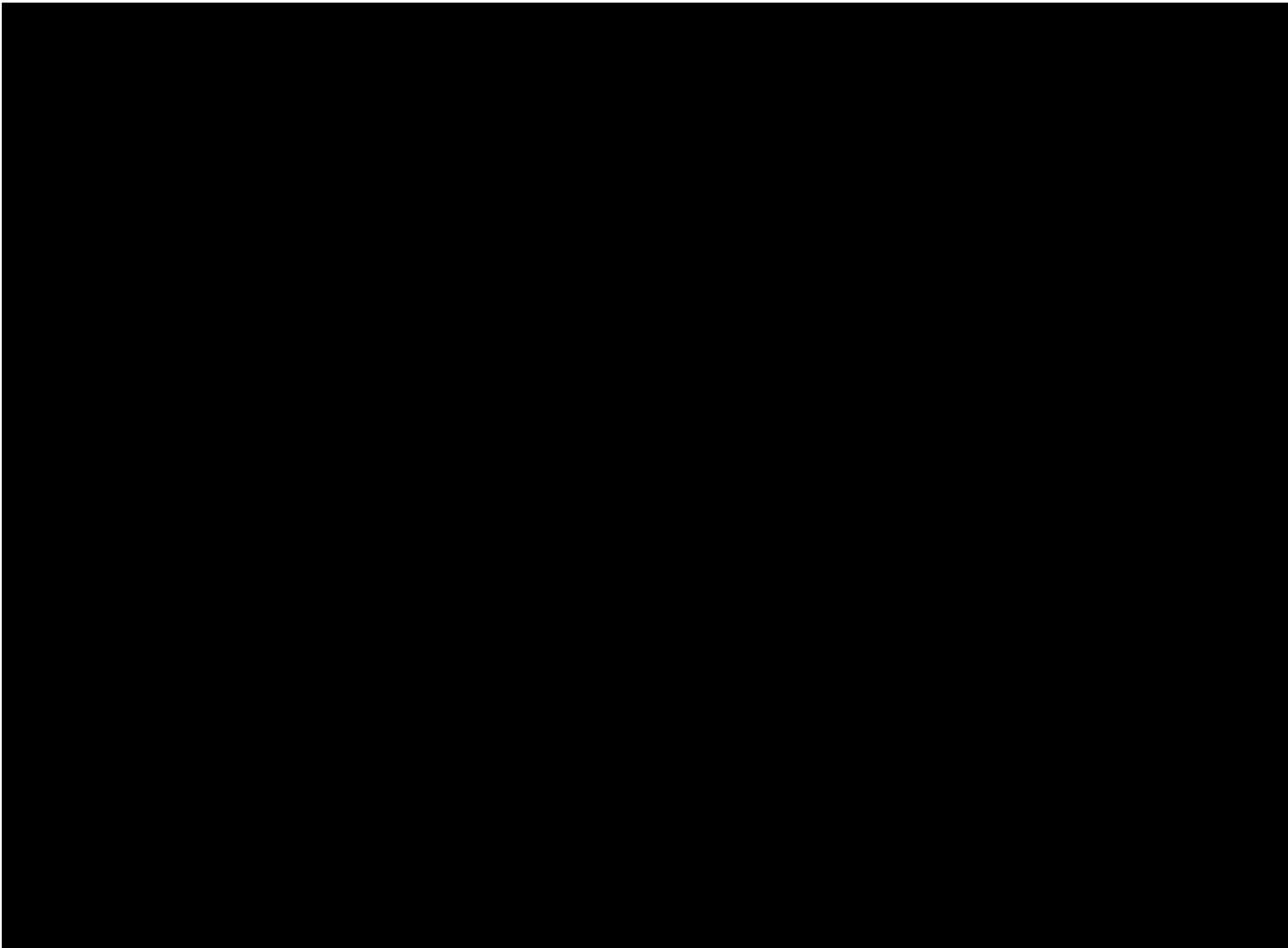
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Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080761

OS Received 07/29/2022

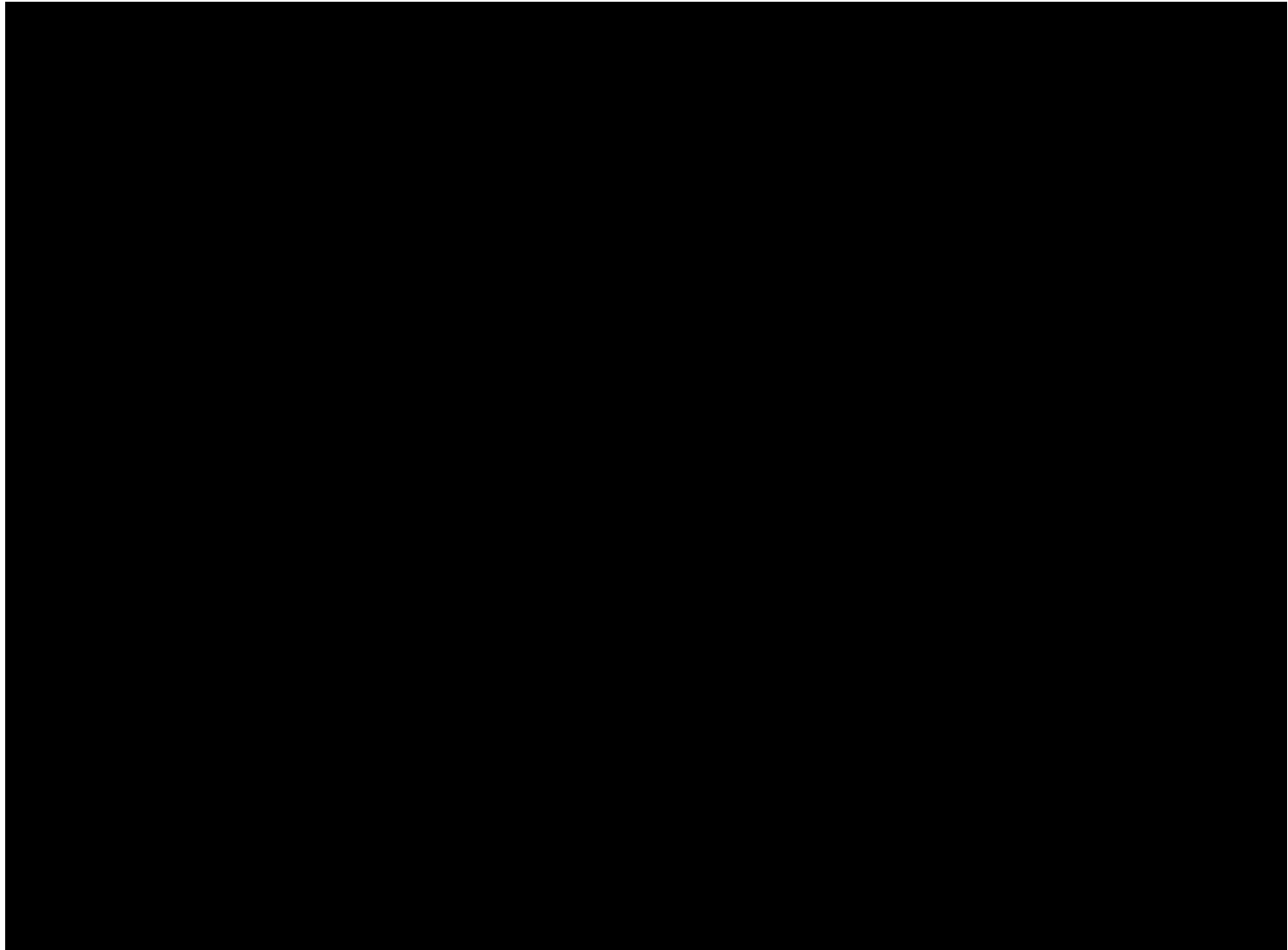


Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080762

OS Received 07/29/2022

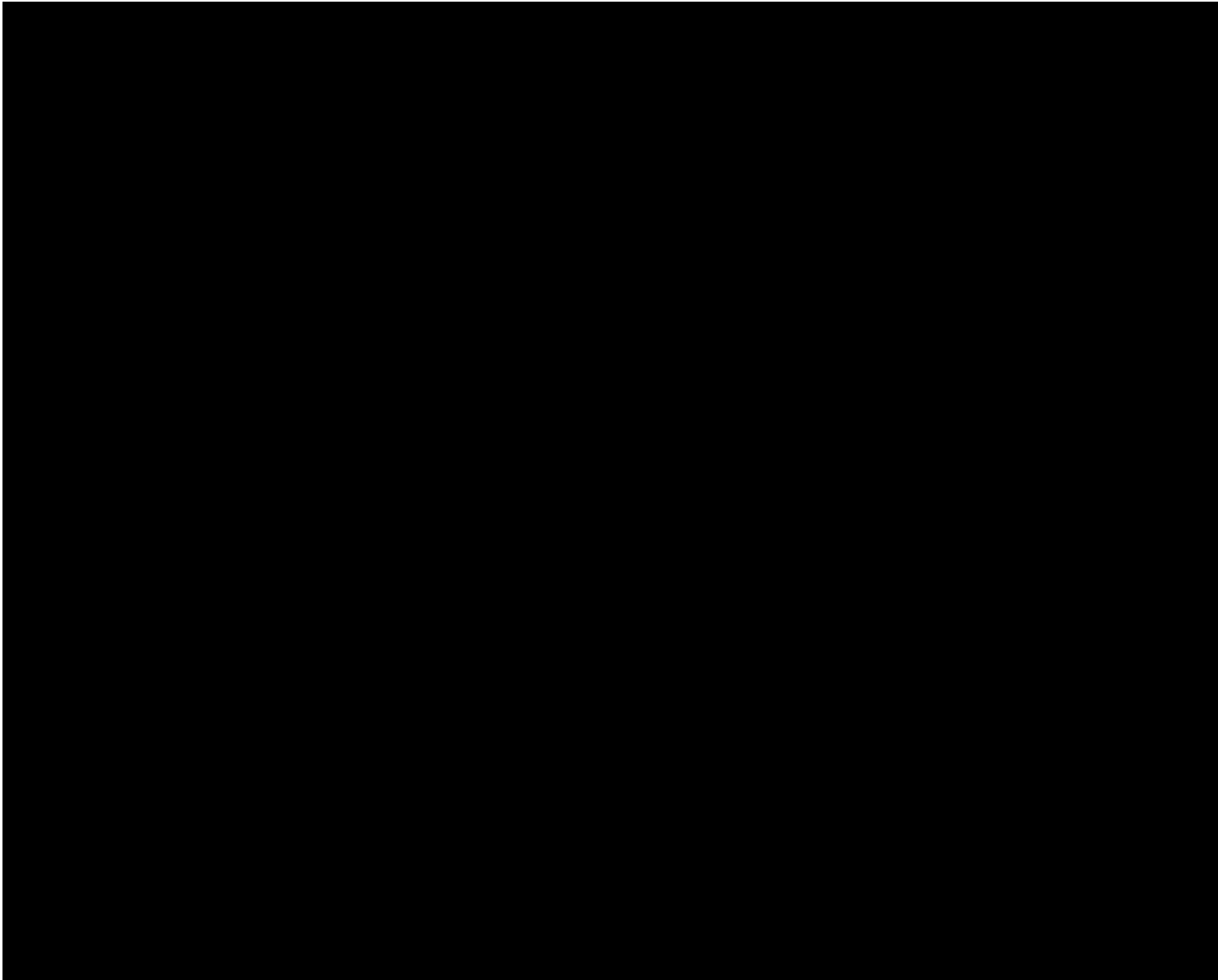


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080763



FOIA CONFIDENTIAL TREATMENT REQUESTED

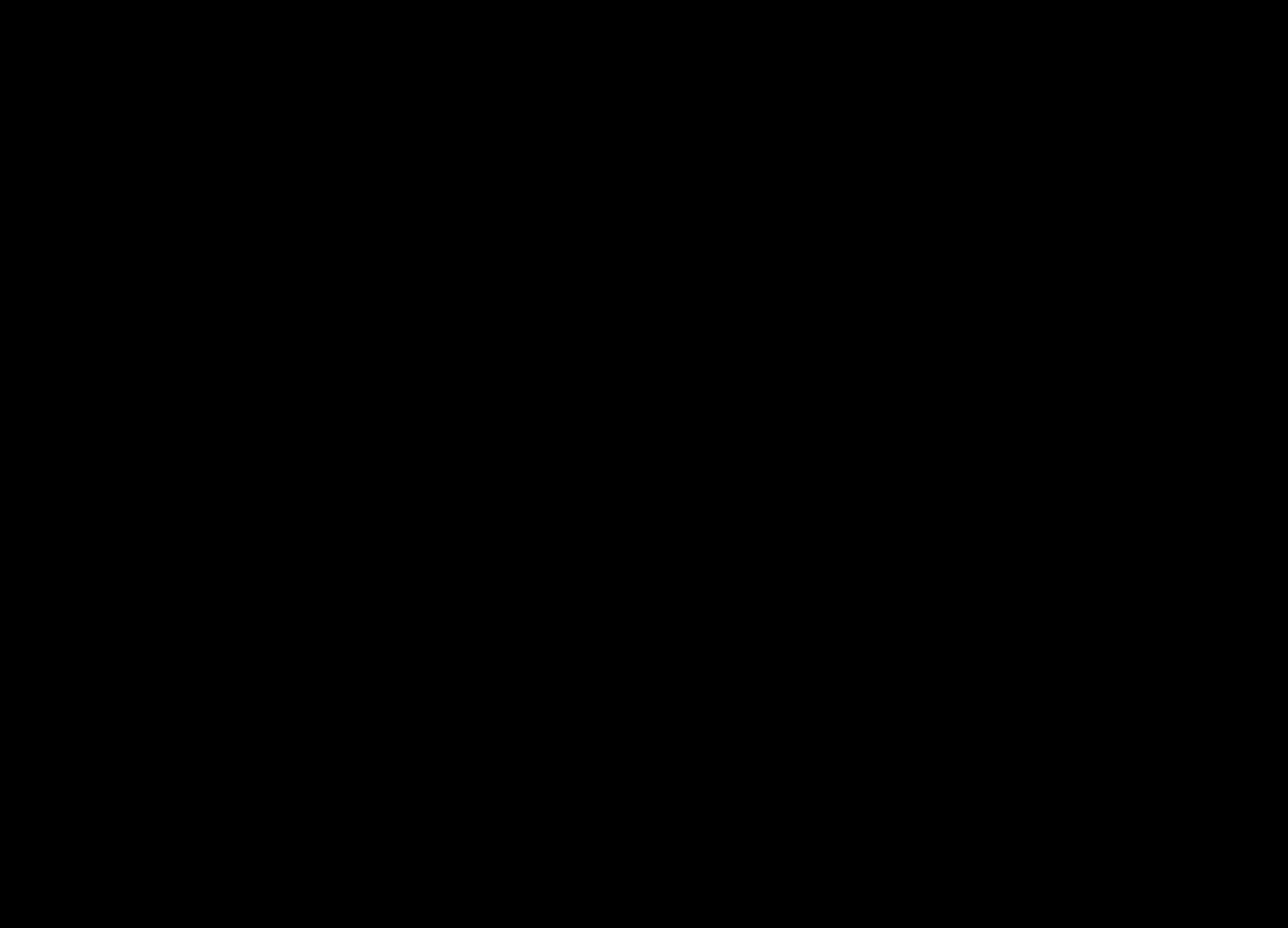
Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080764

OS Received 07/29/2022





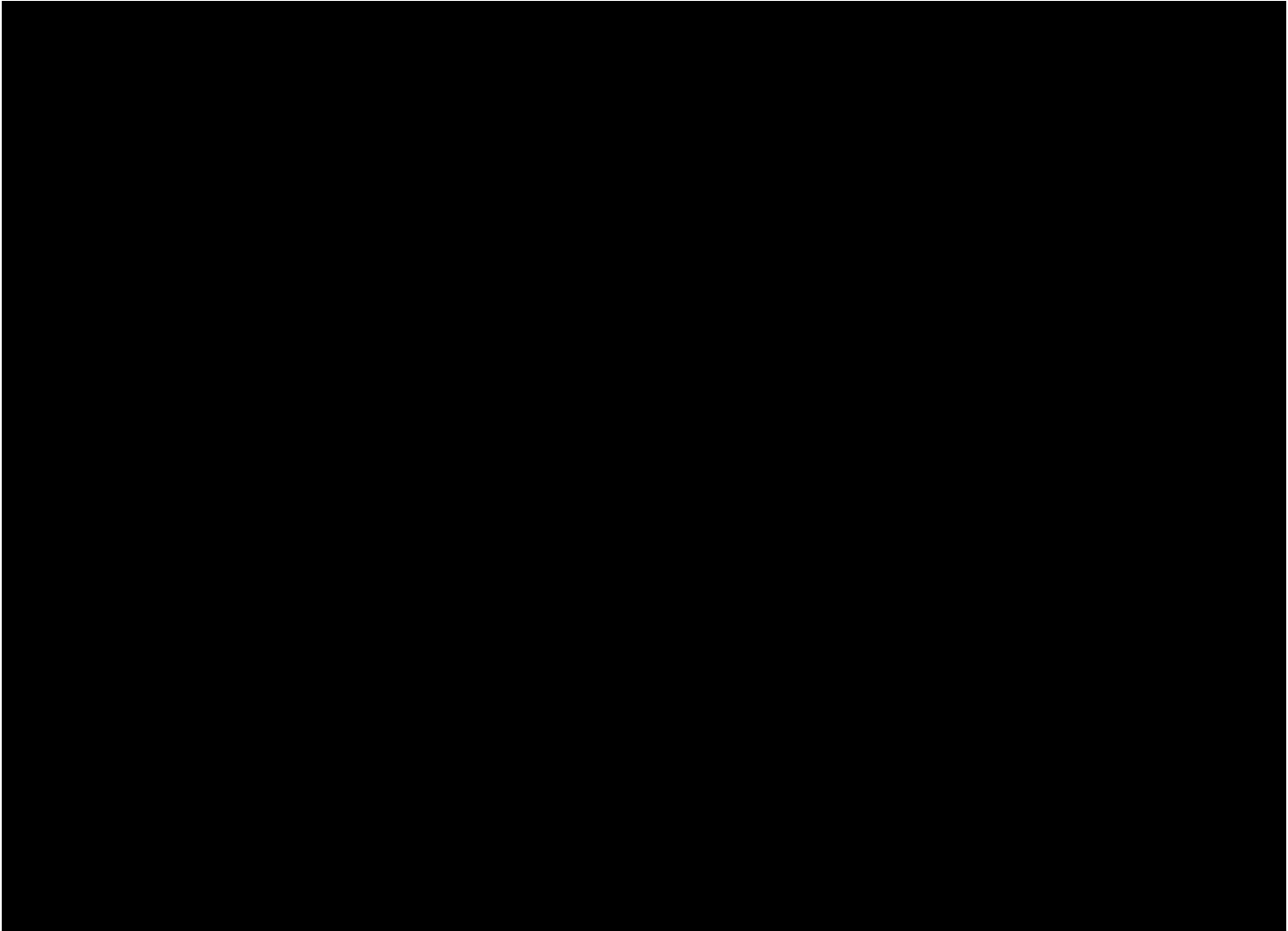
FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080765

OS Received 07/29/2022

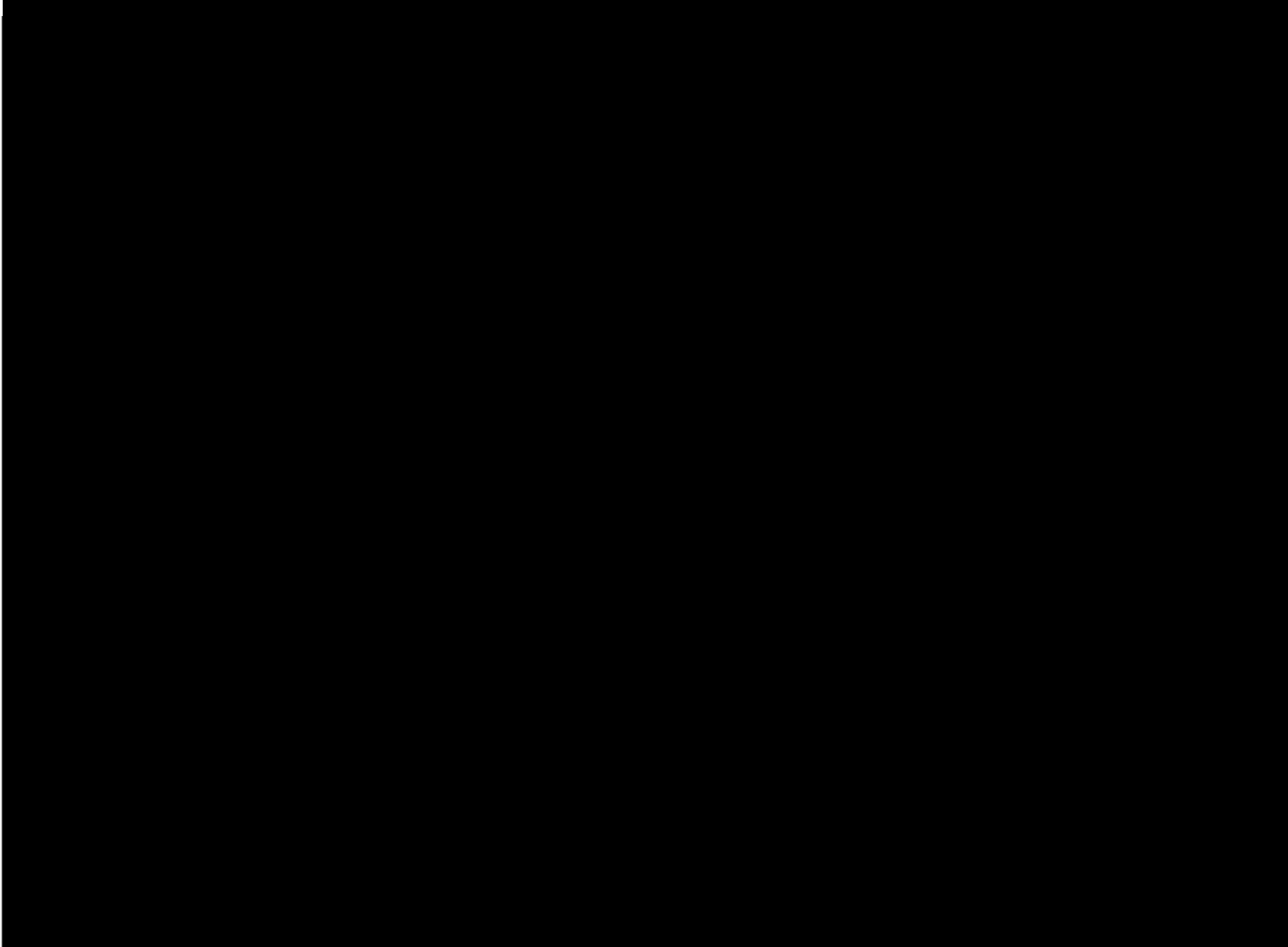


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

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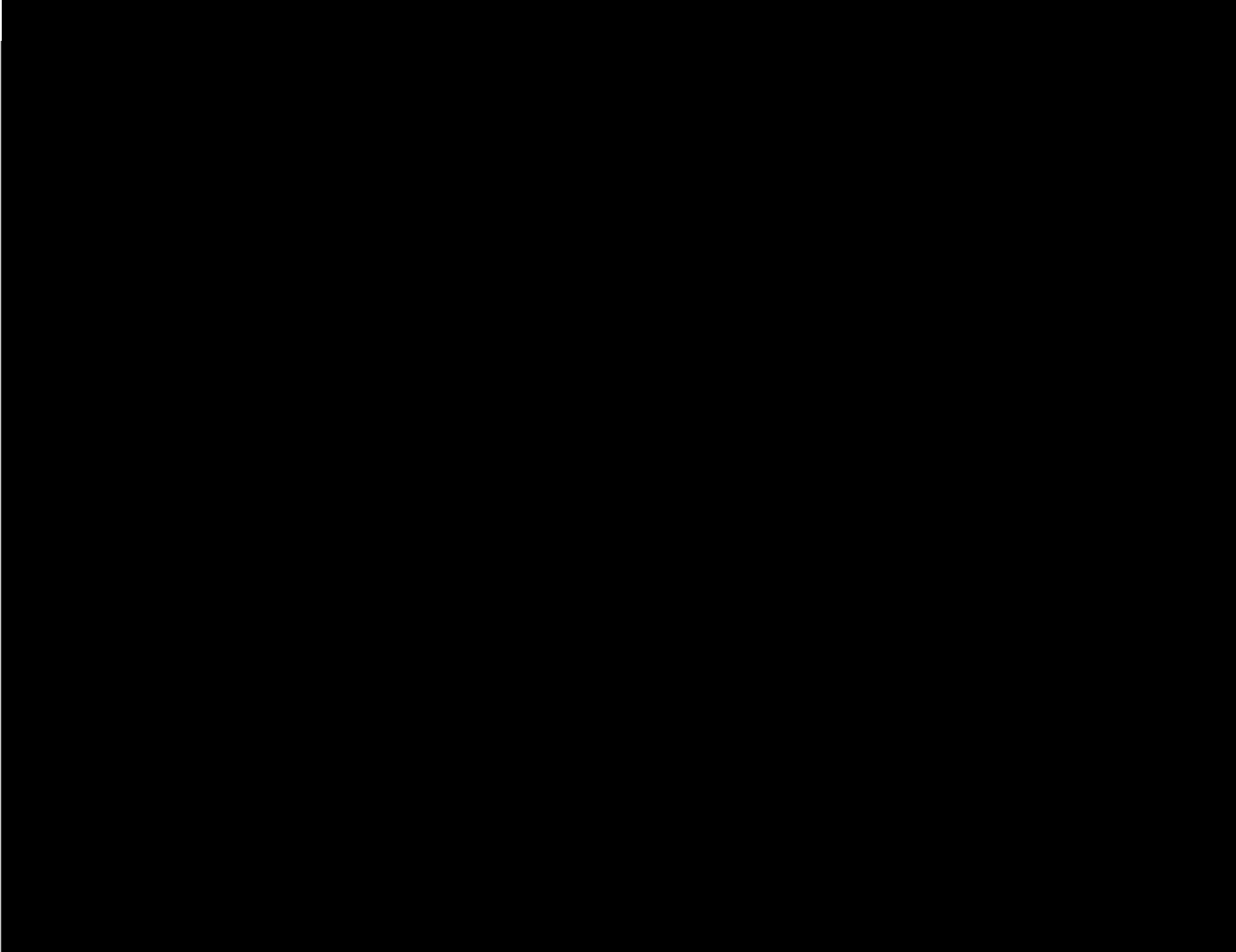


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

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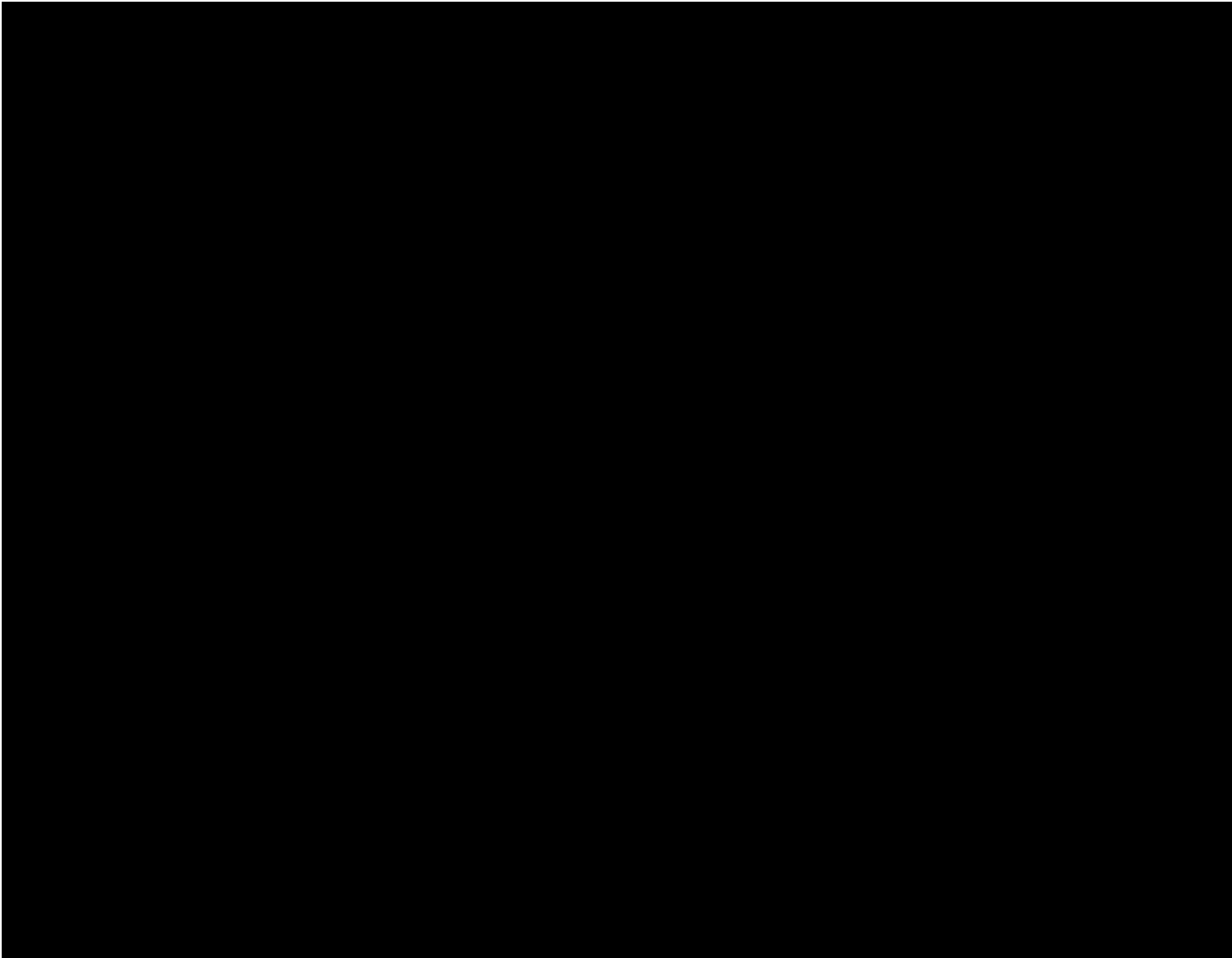


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080768

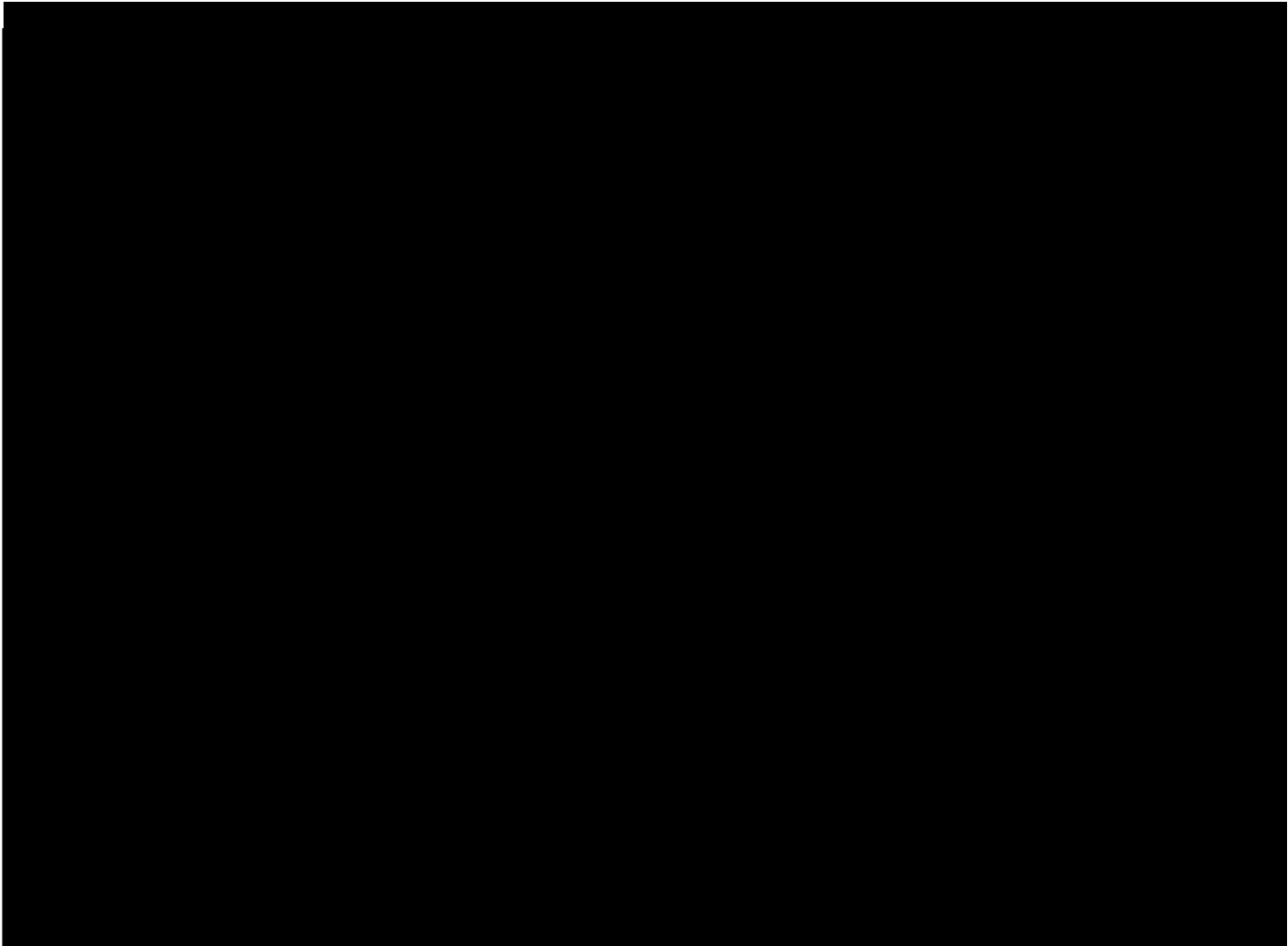


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080769



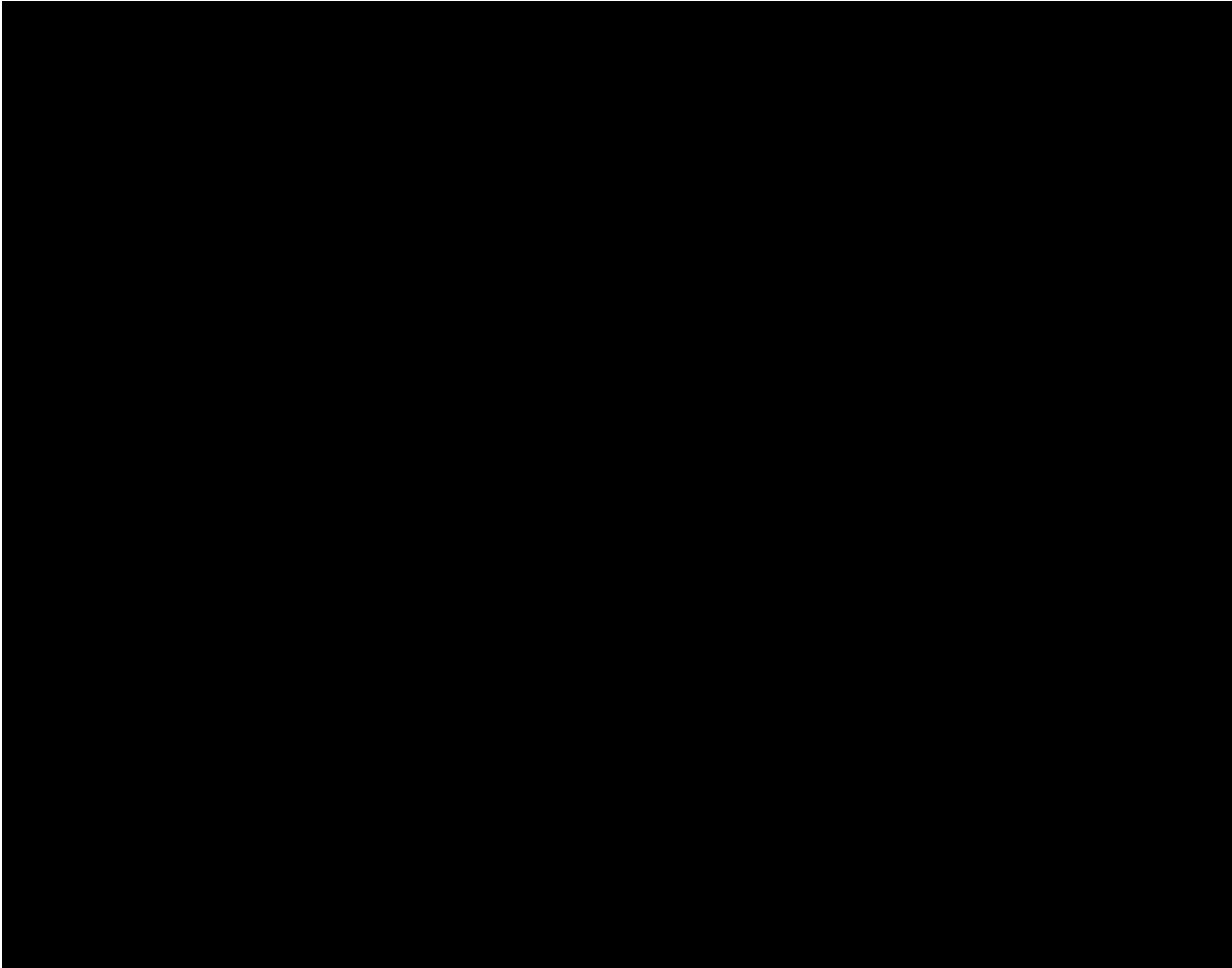
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Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080770

OS Received 07/29/2022



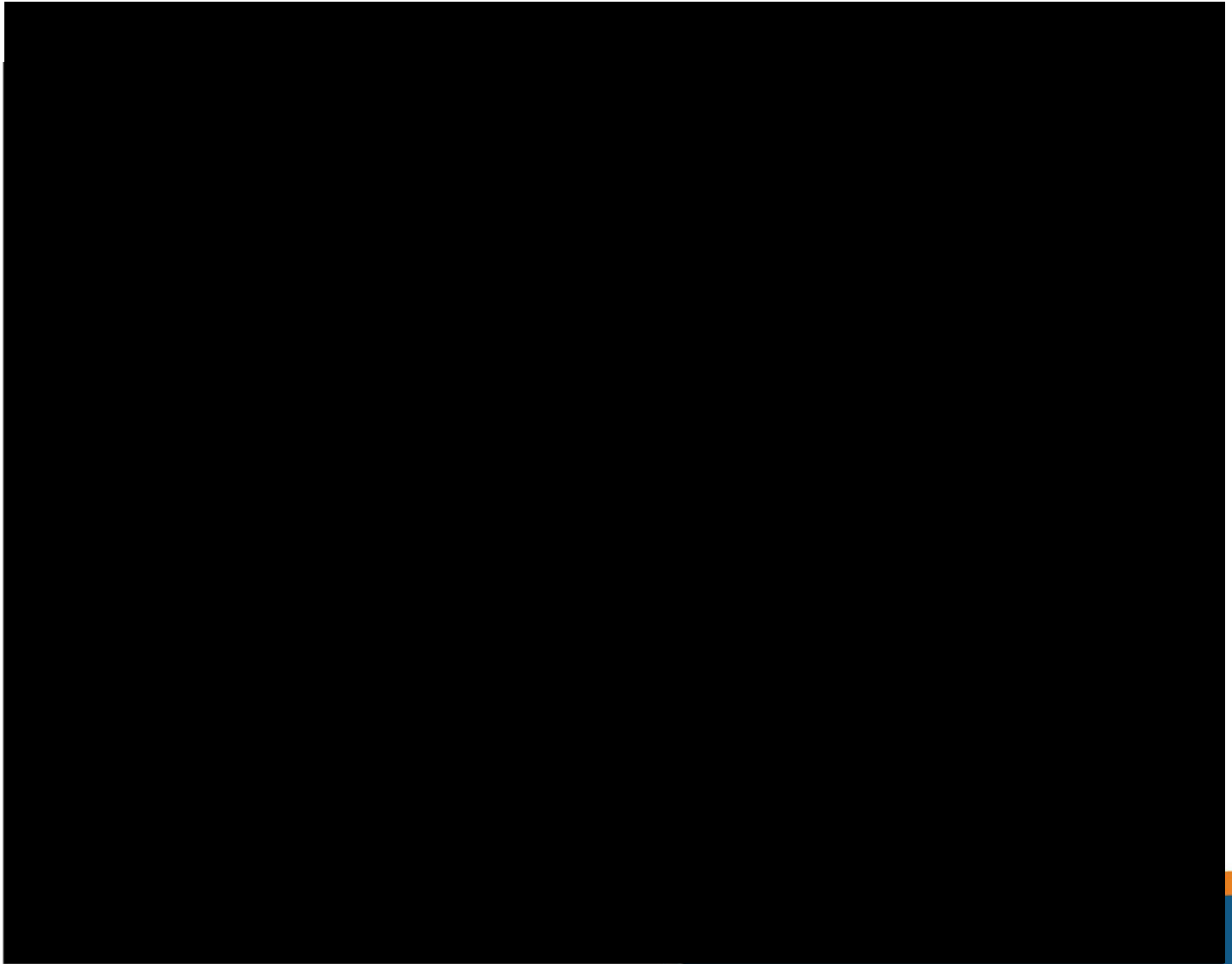
FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080771

OS Received 07/29/2022



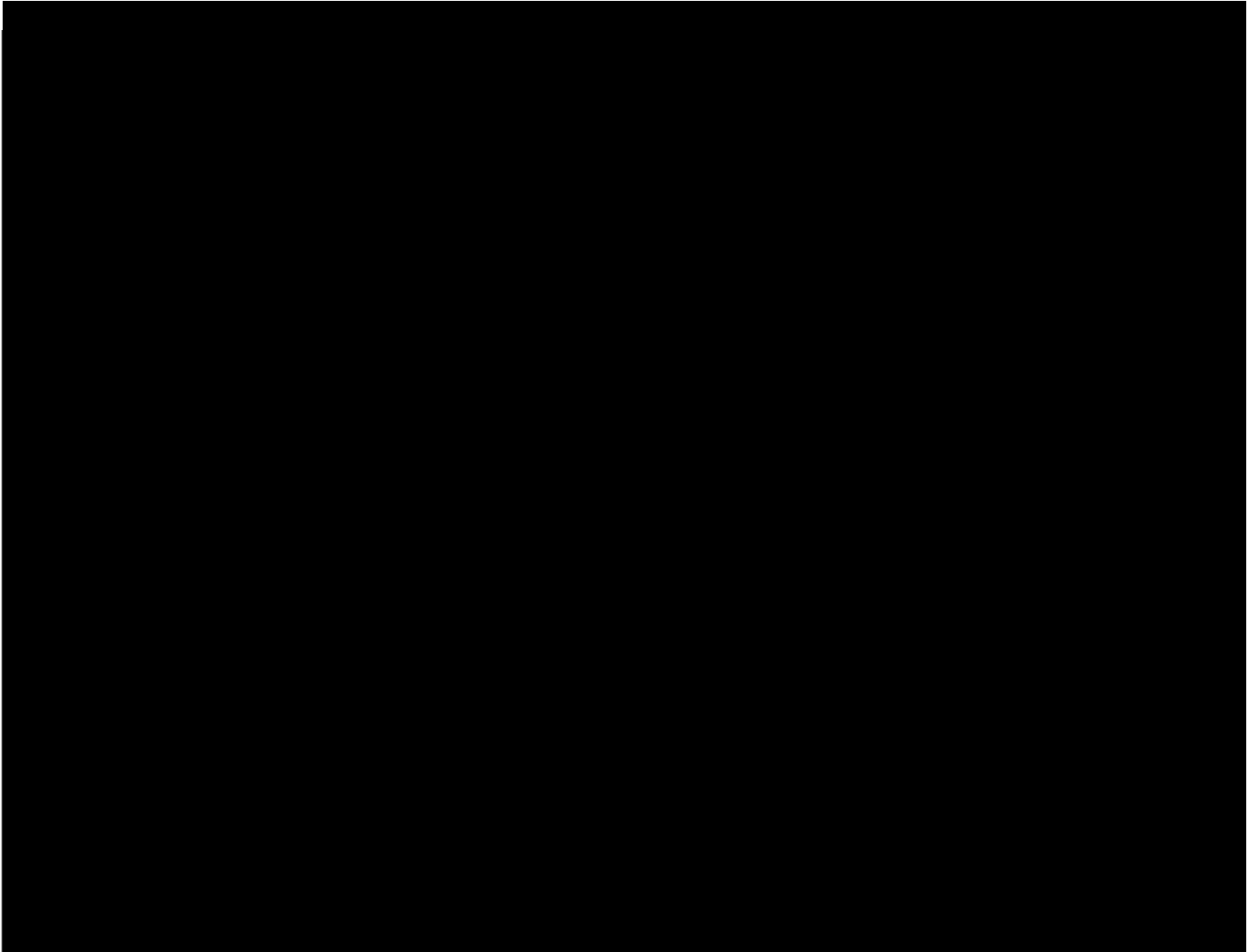
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Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080772



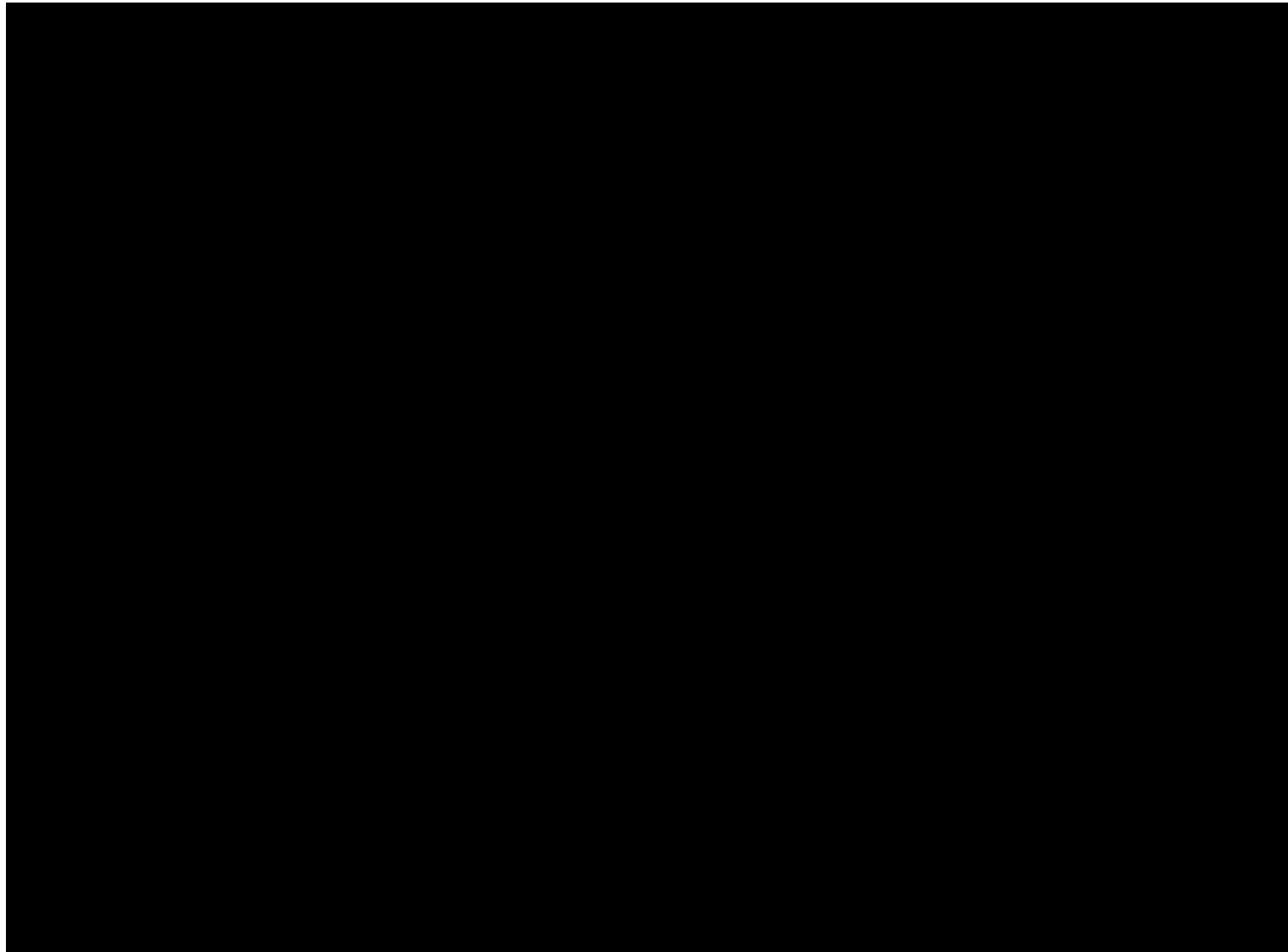


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080773

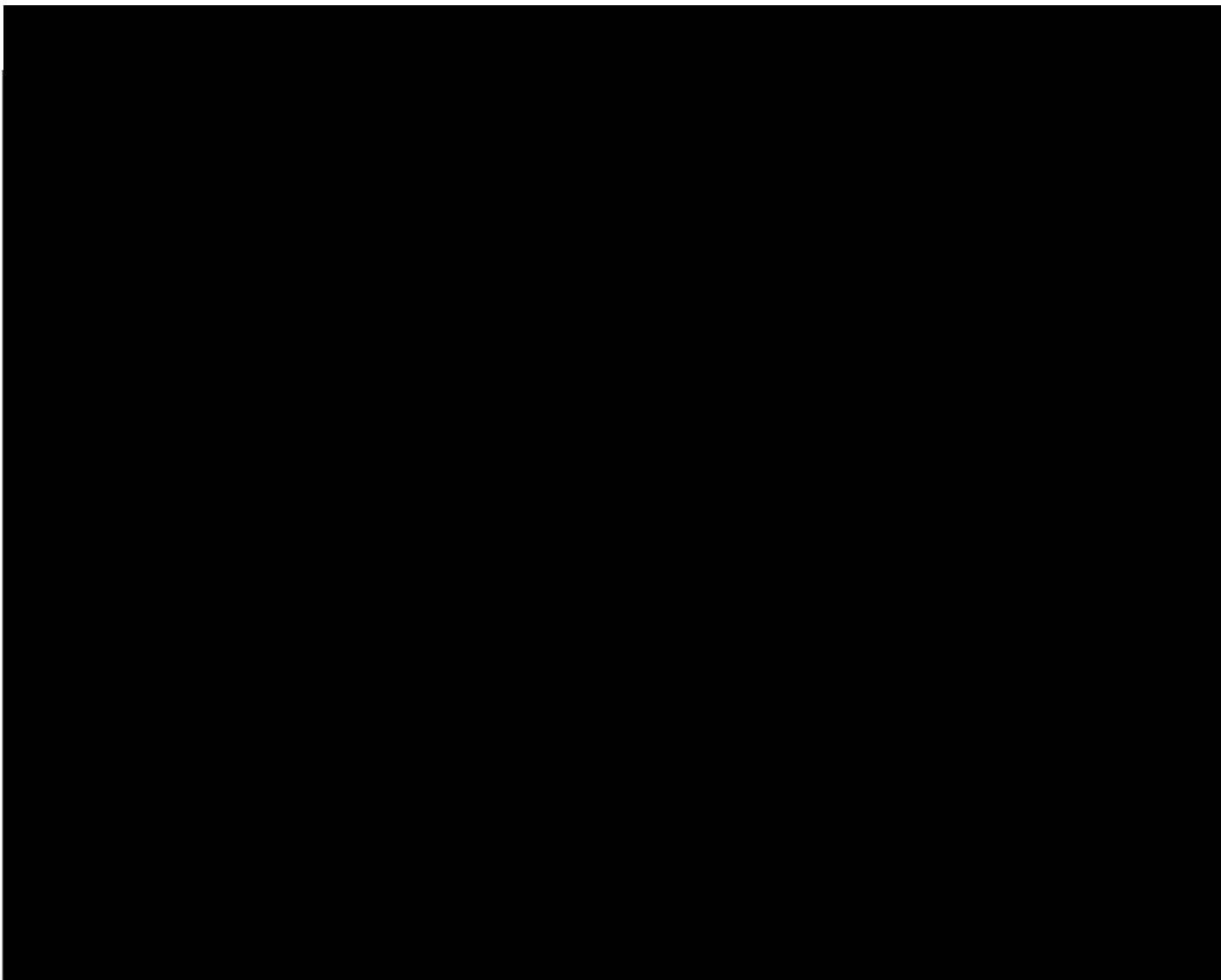


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

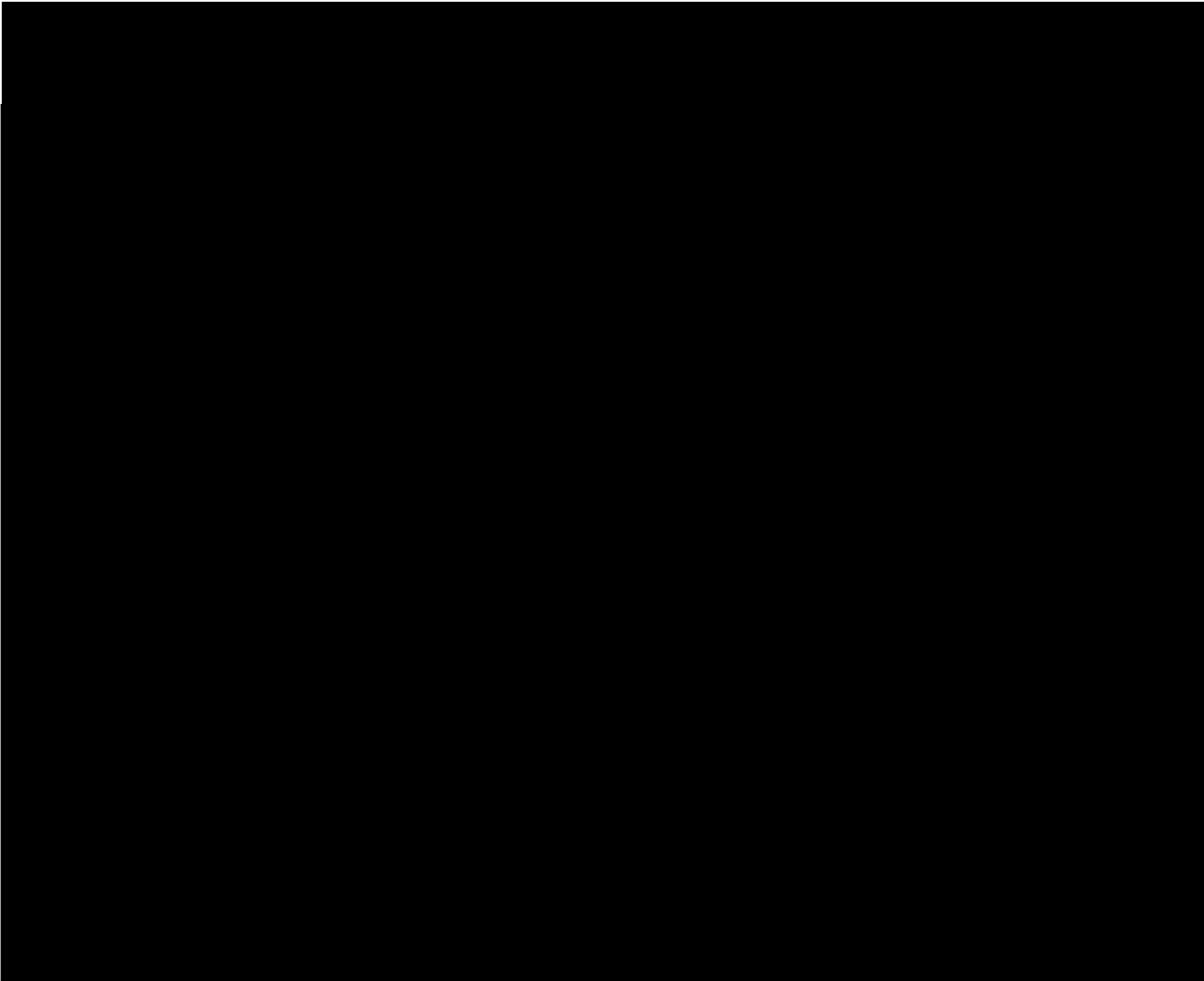
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Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080775



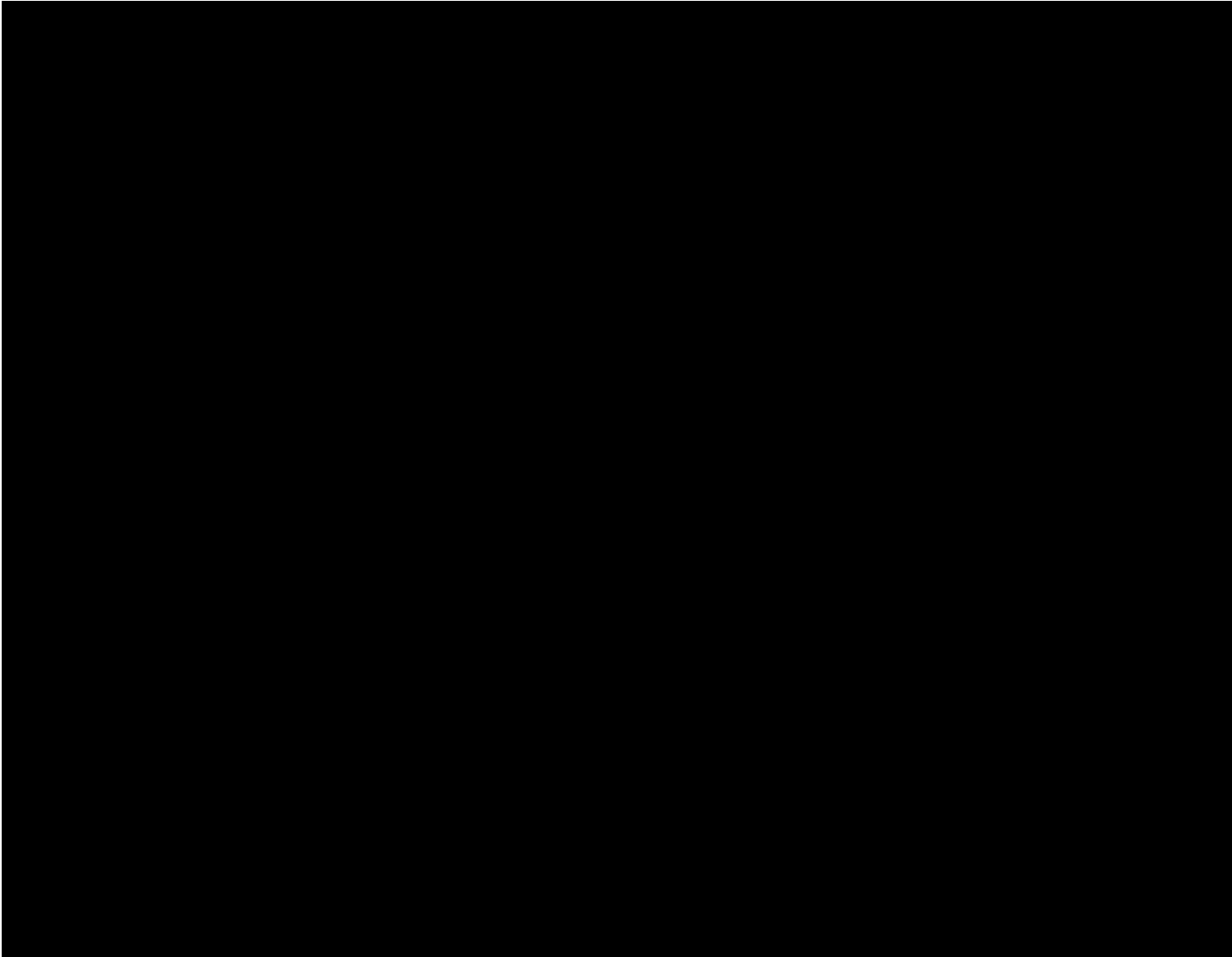
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Confidential

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Ligand Pharmaceuticals, Inc.

LGND\_0080776

OS Received 07/29/2022



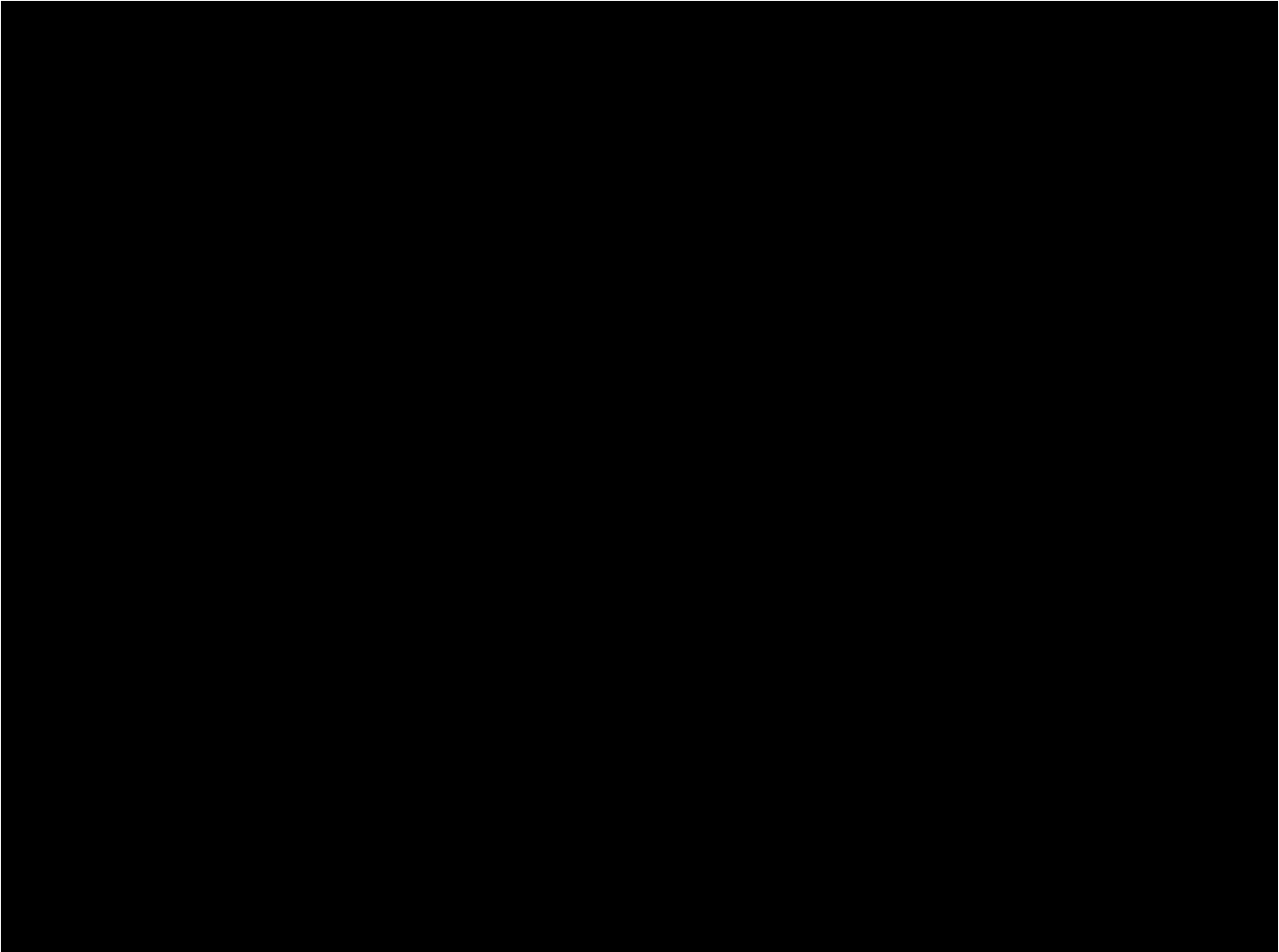
FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080777

**OS Received 07/29/2022**

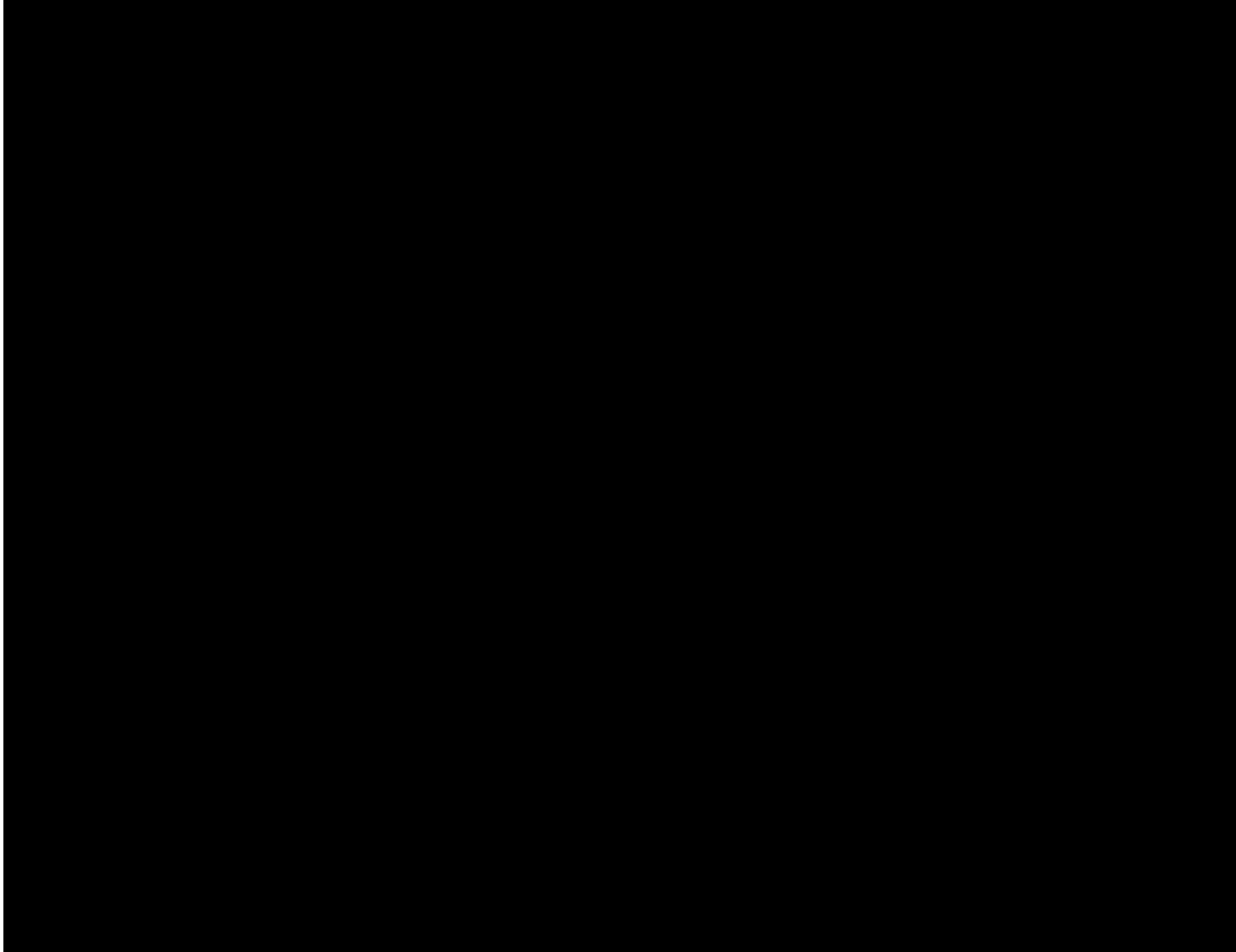


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080778

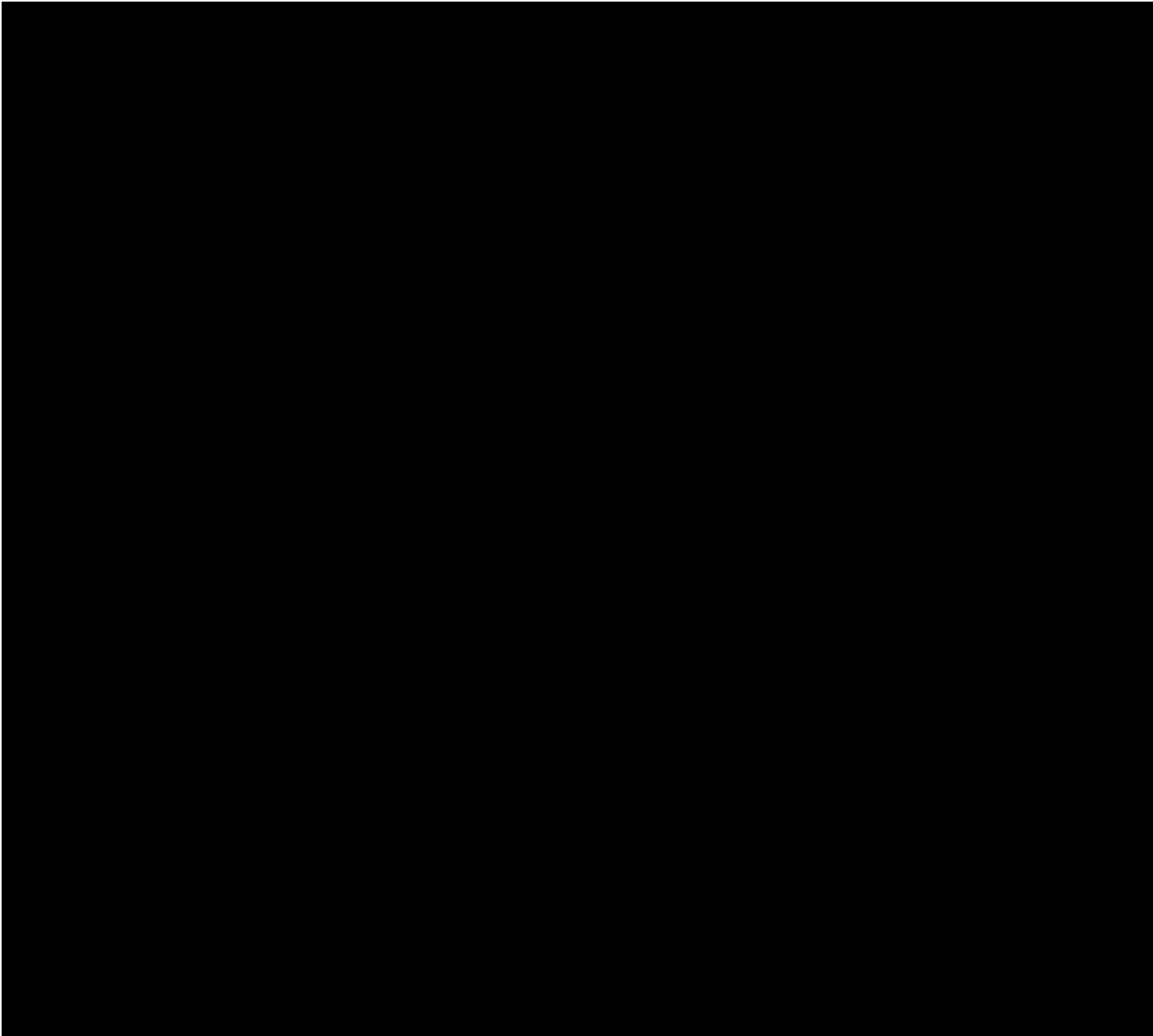


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080779



FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080780





FOIA CONFIDENTIAL TREATMENT REQUESTED

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Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080781

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FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080782

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080783

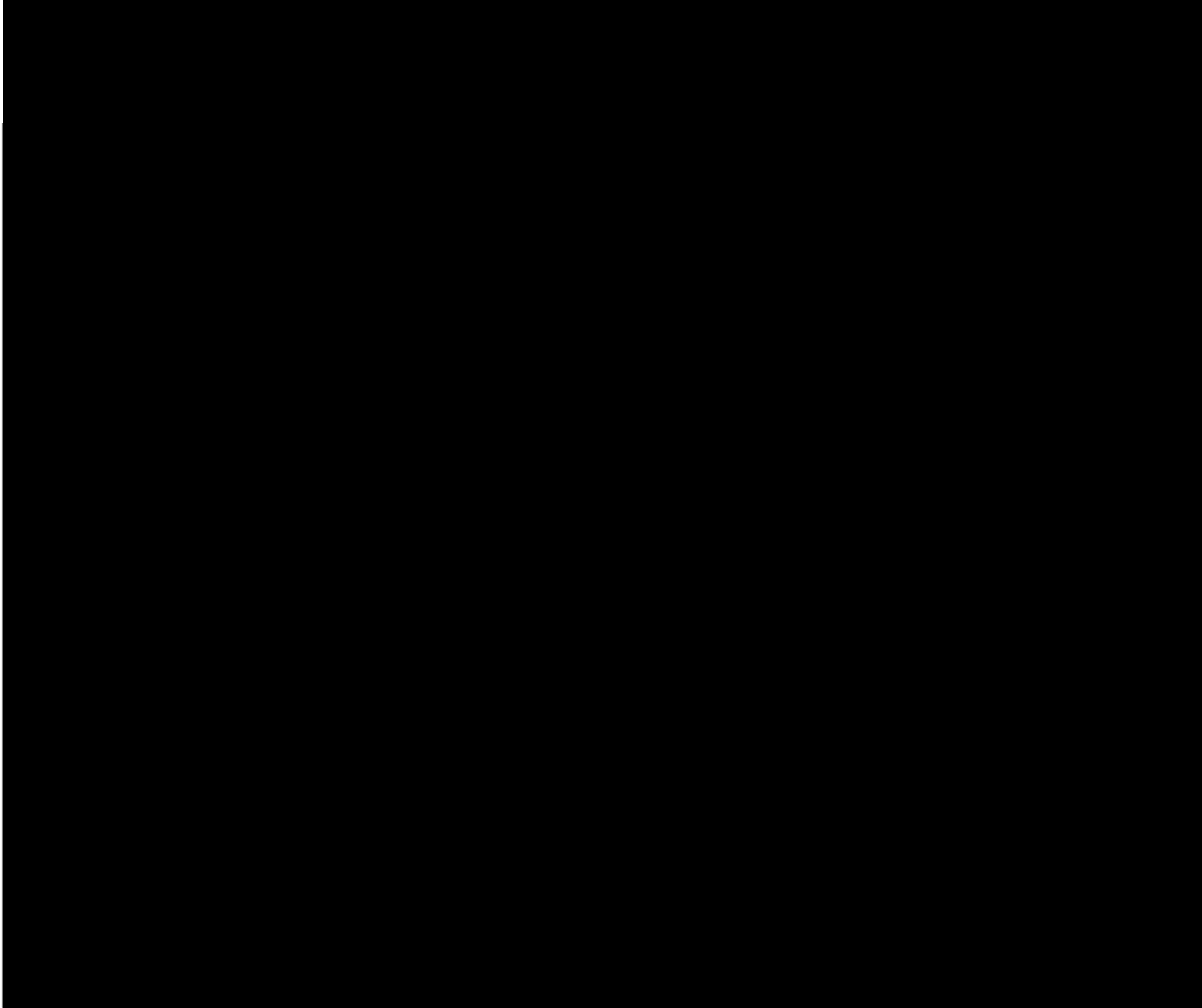
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Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080784

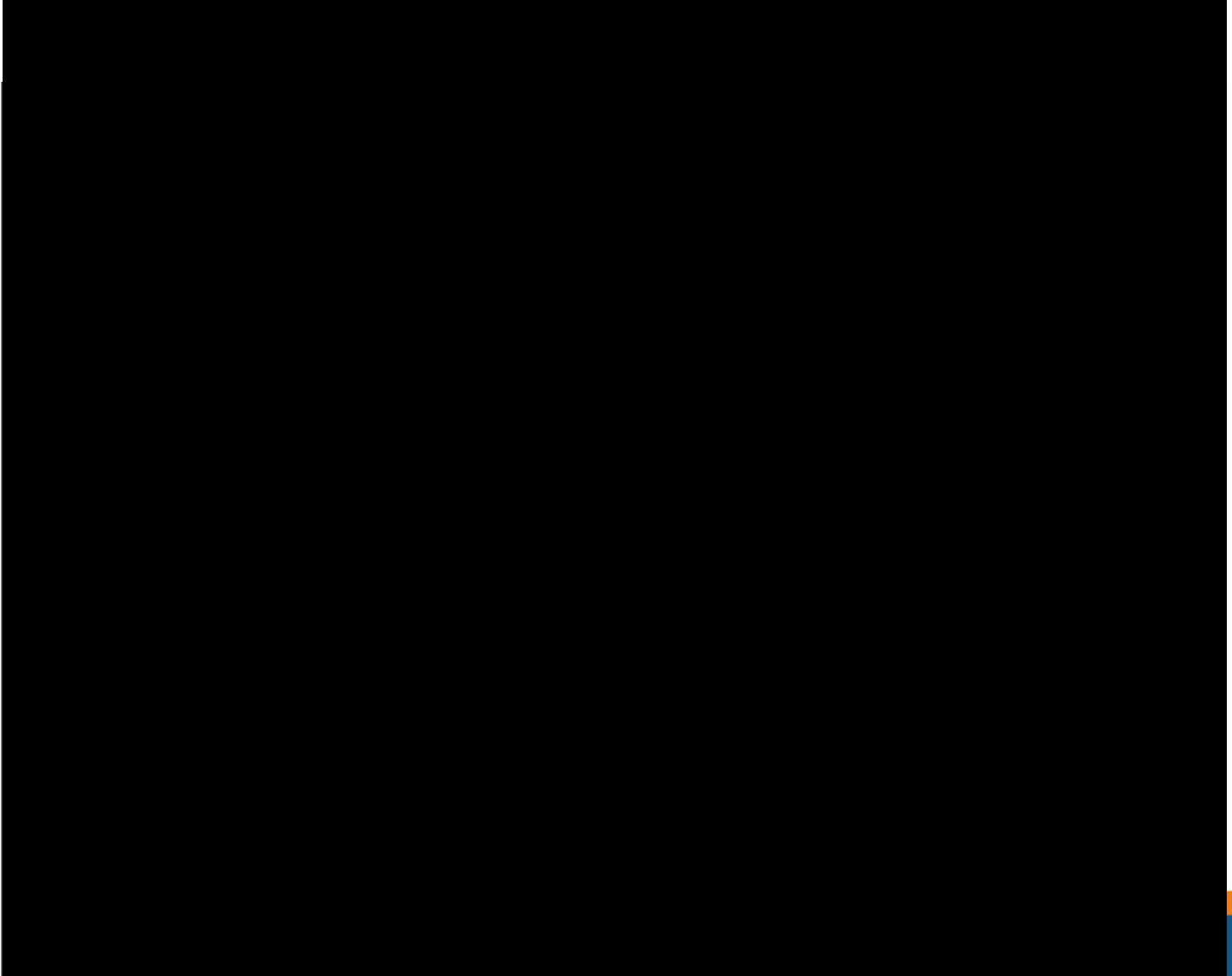


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080785

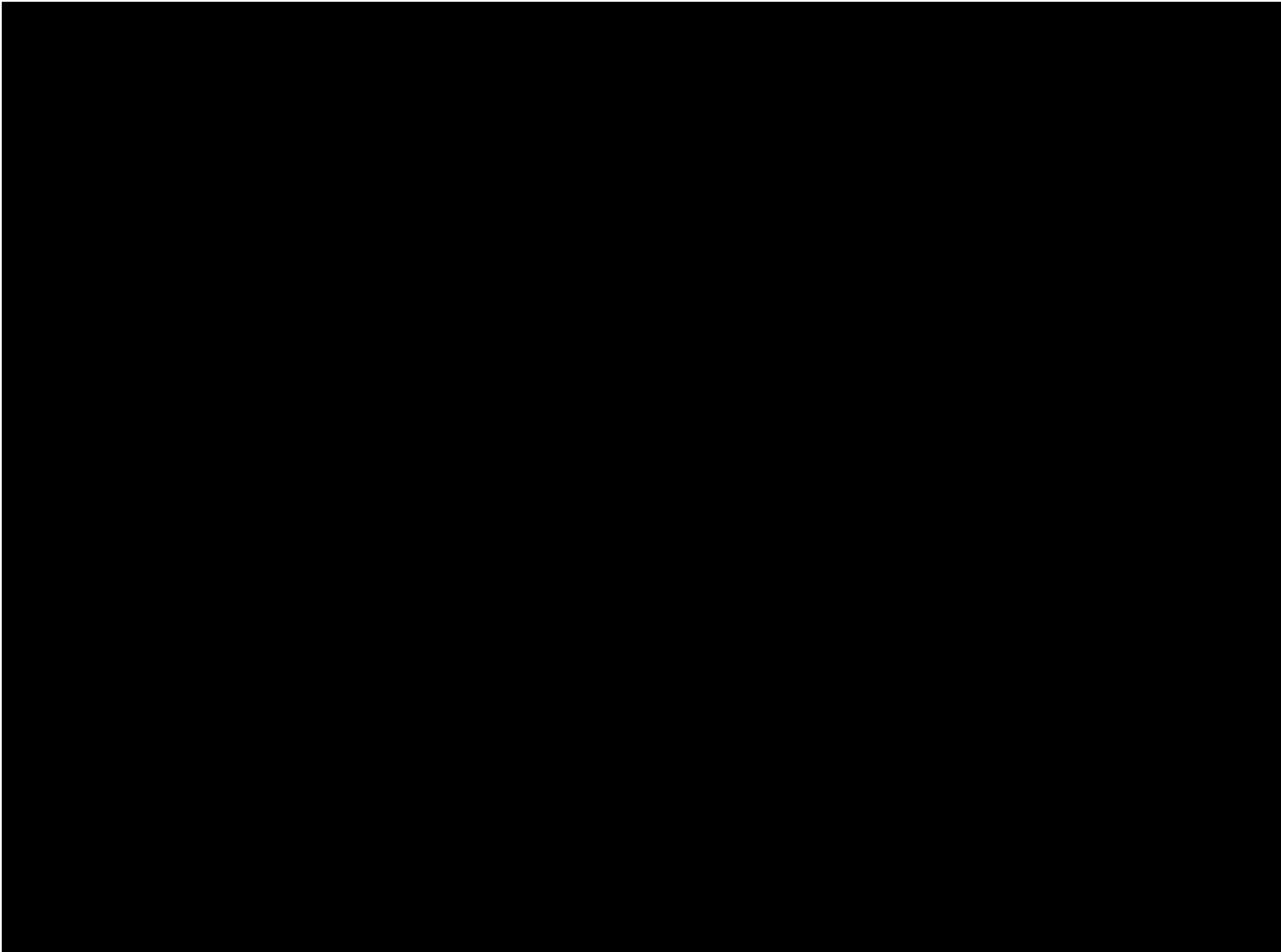


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080786

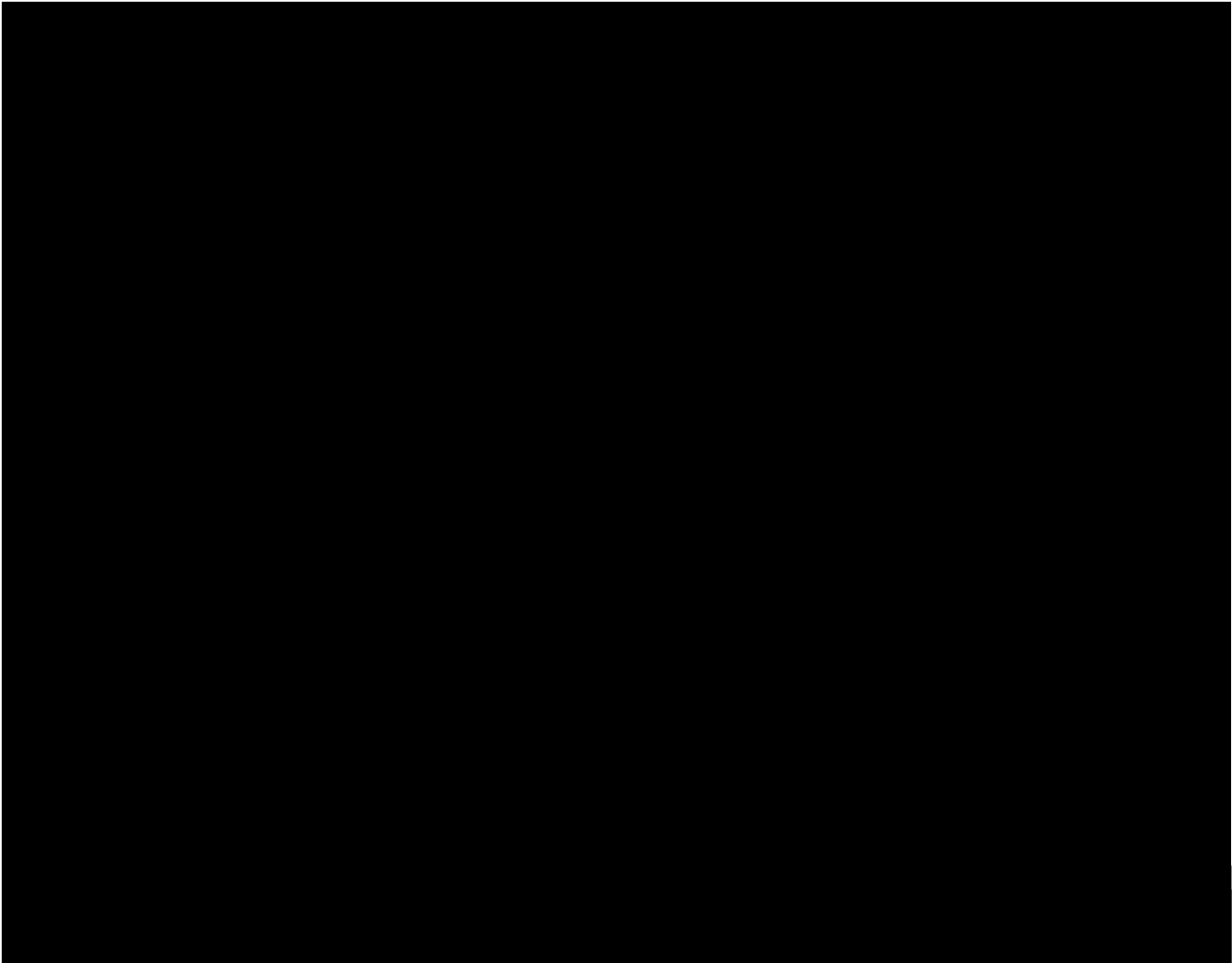


FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080787

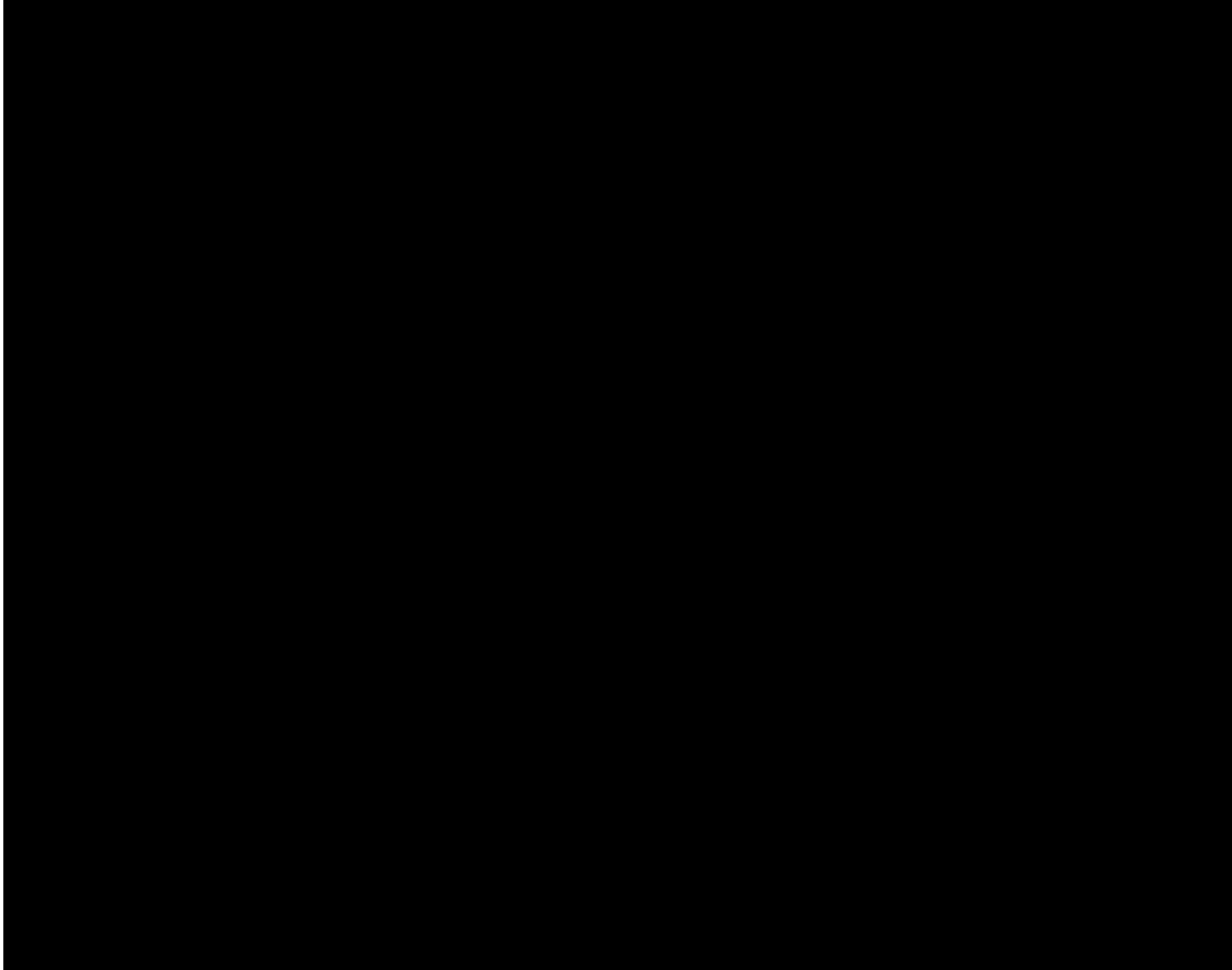


Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080788





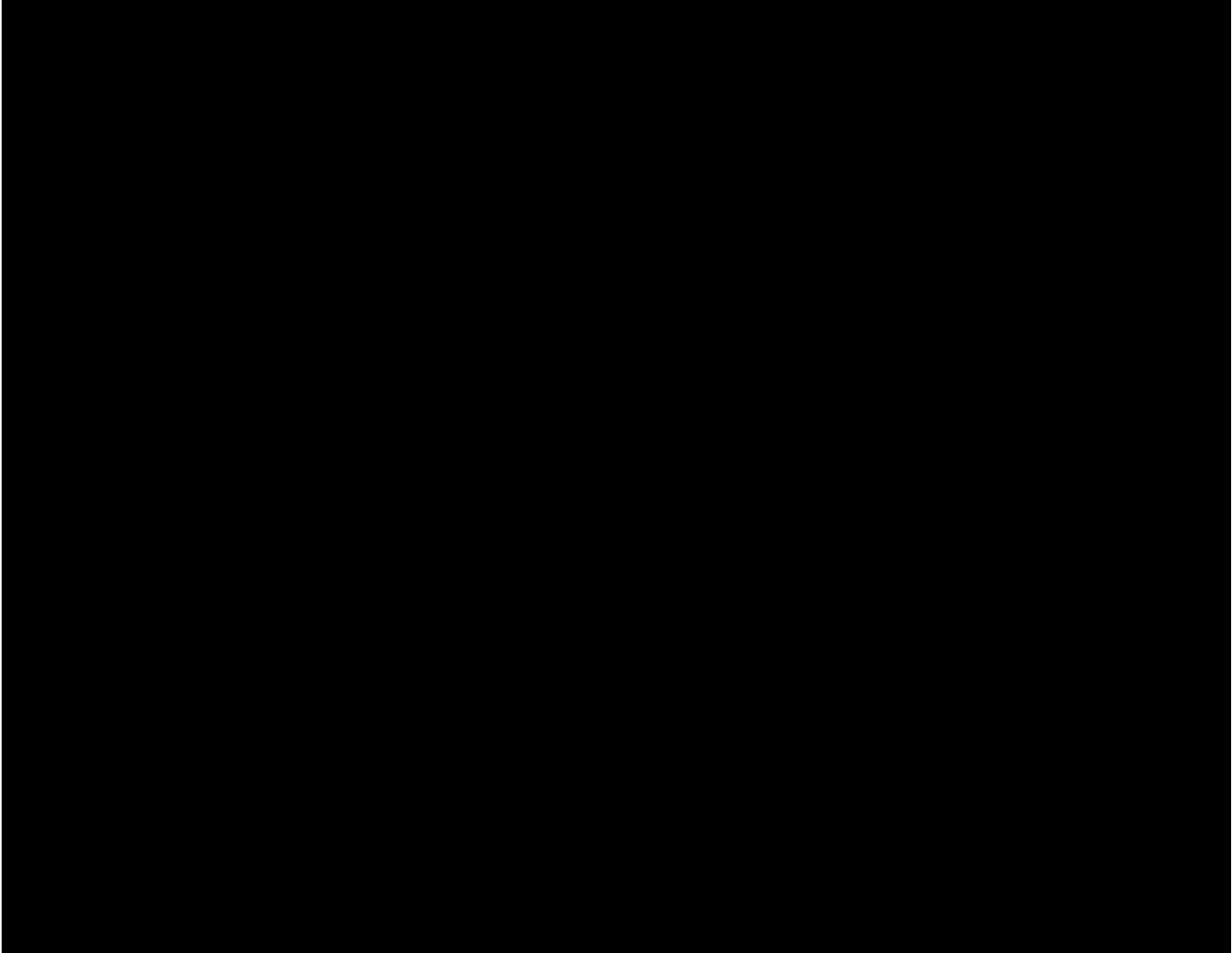
FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080789

OS Received 07/29/2022



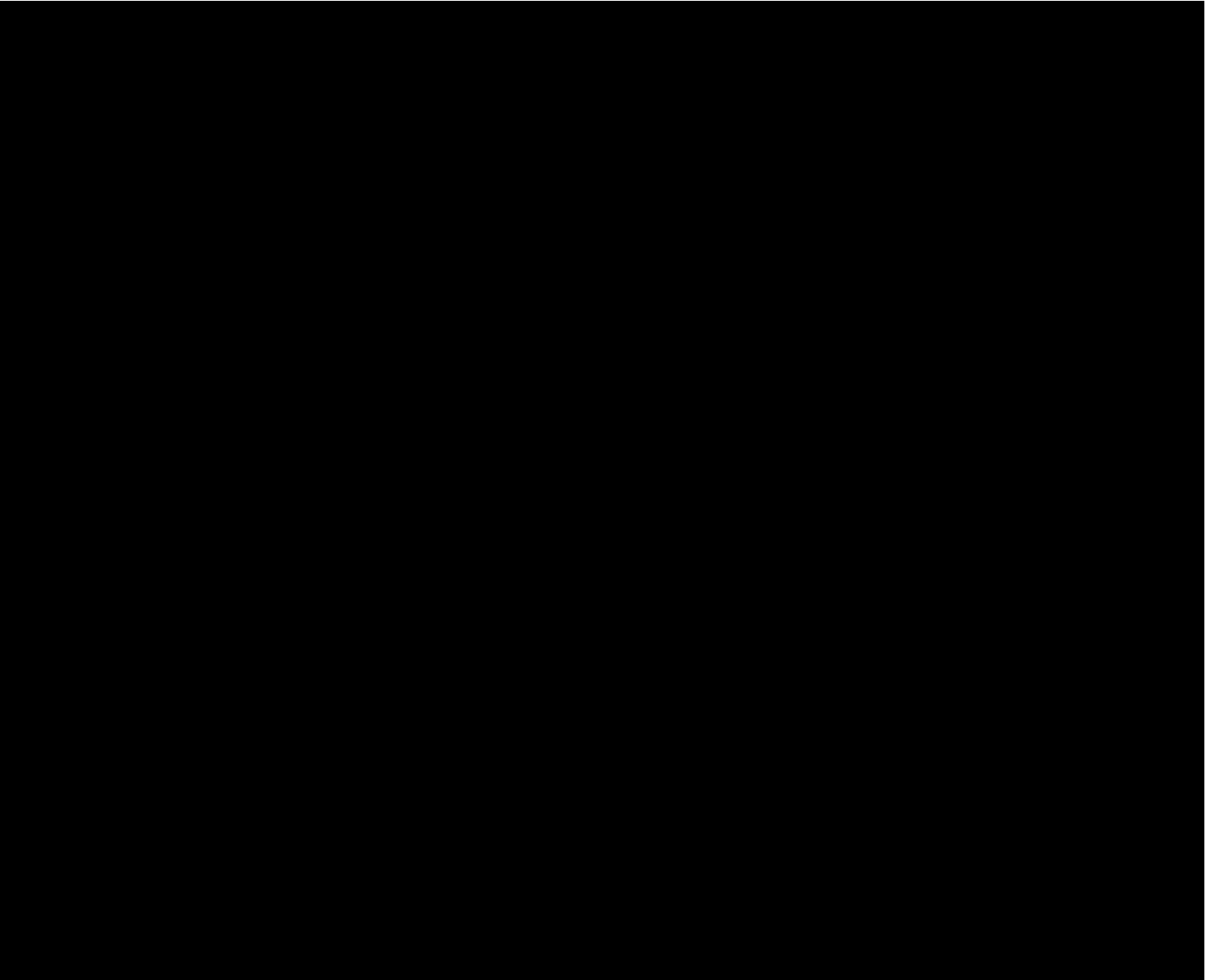
FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080790

OS Received 07/29/2022



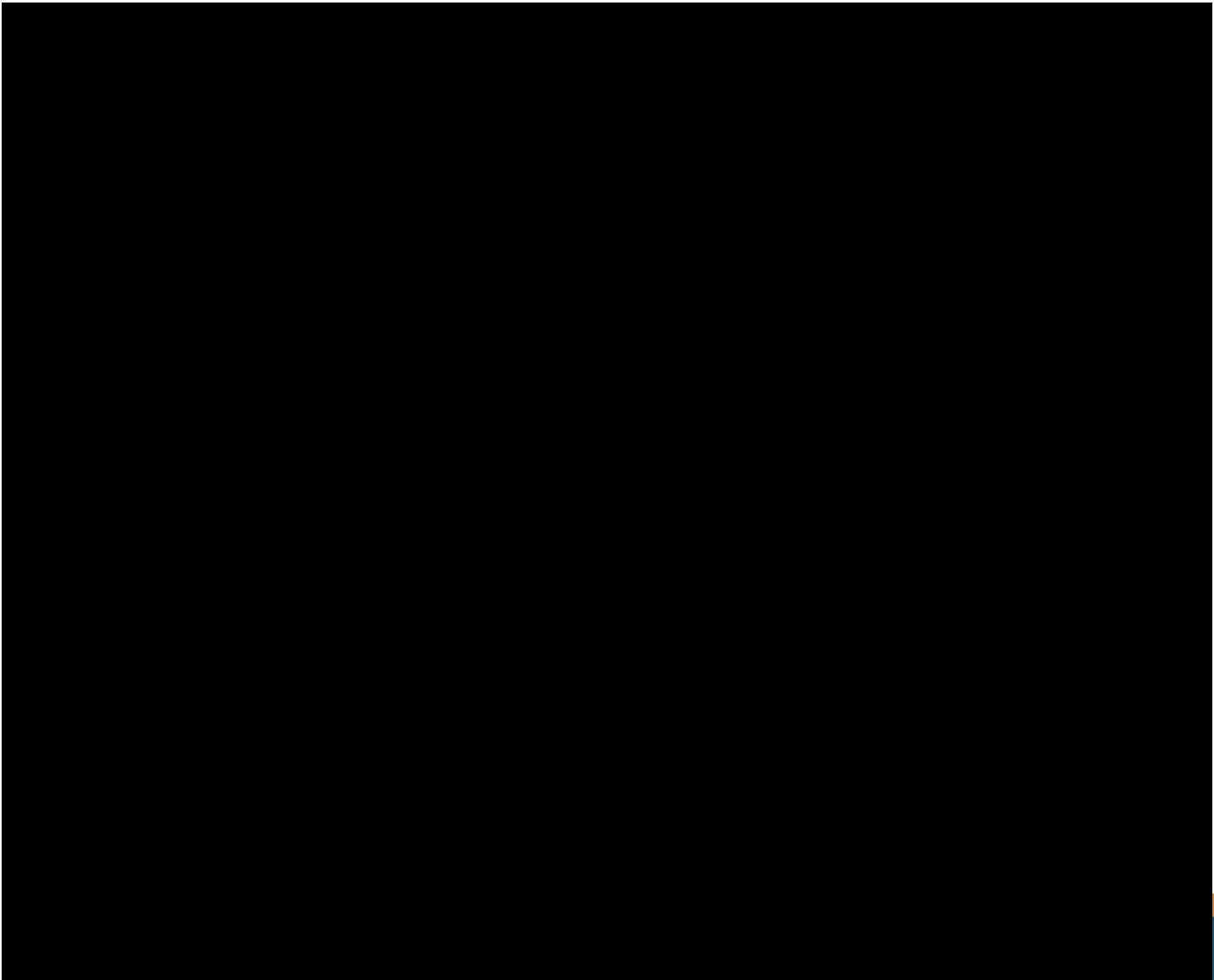
FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080791

OS Received 07/29/2022



FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080792



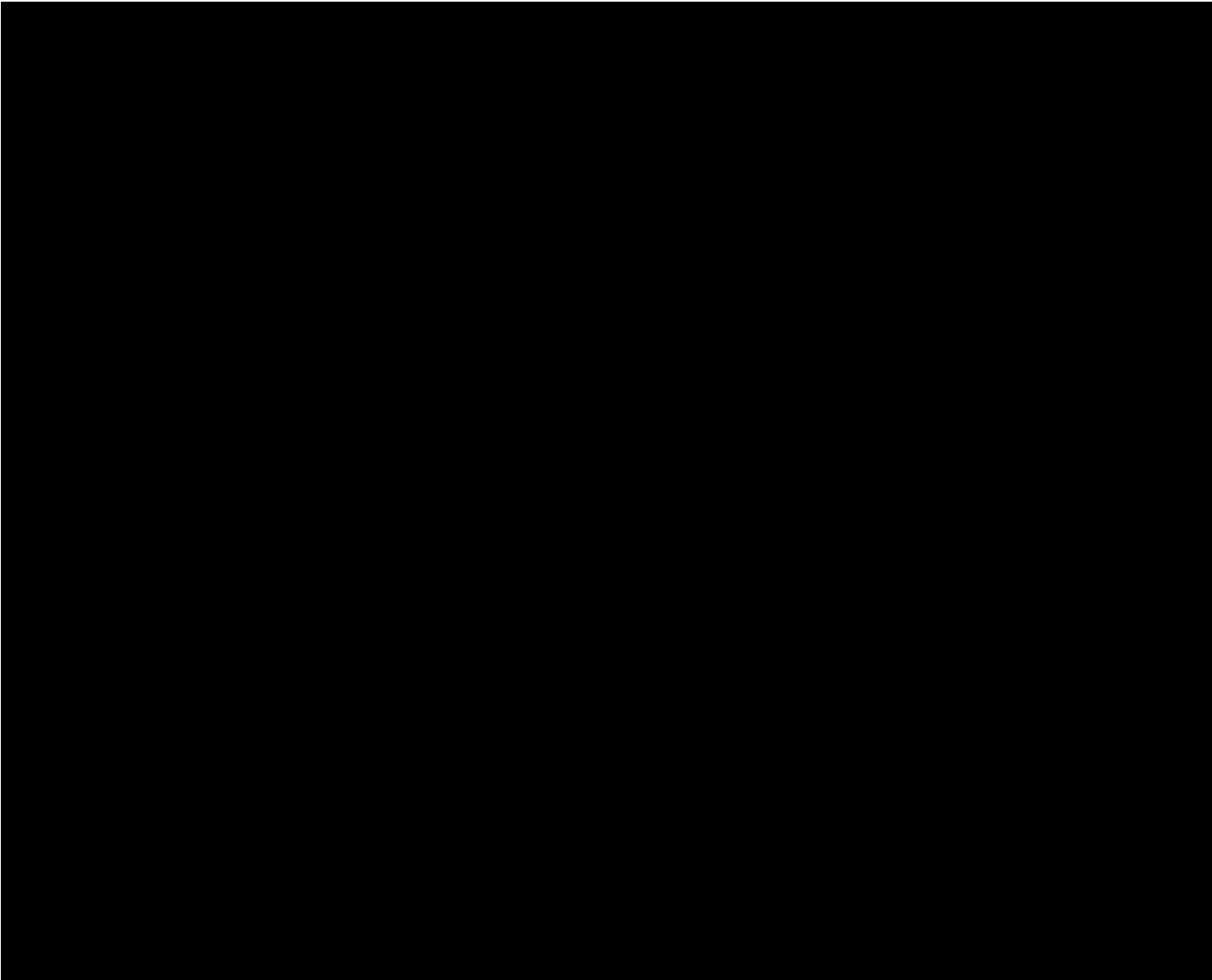
FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080793

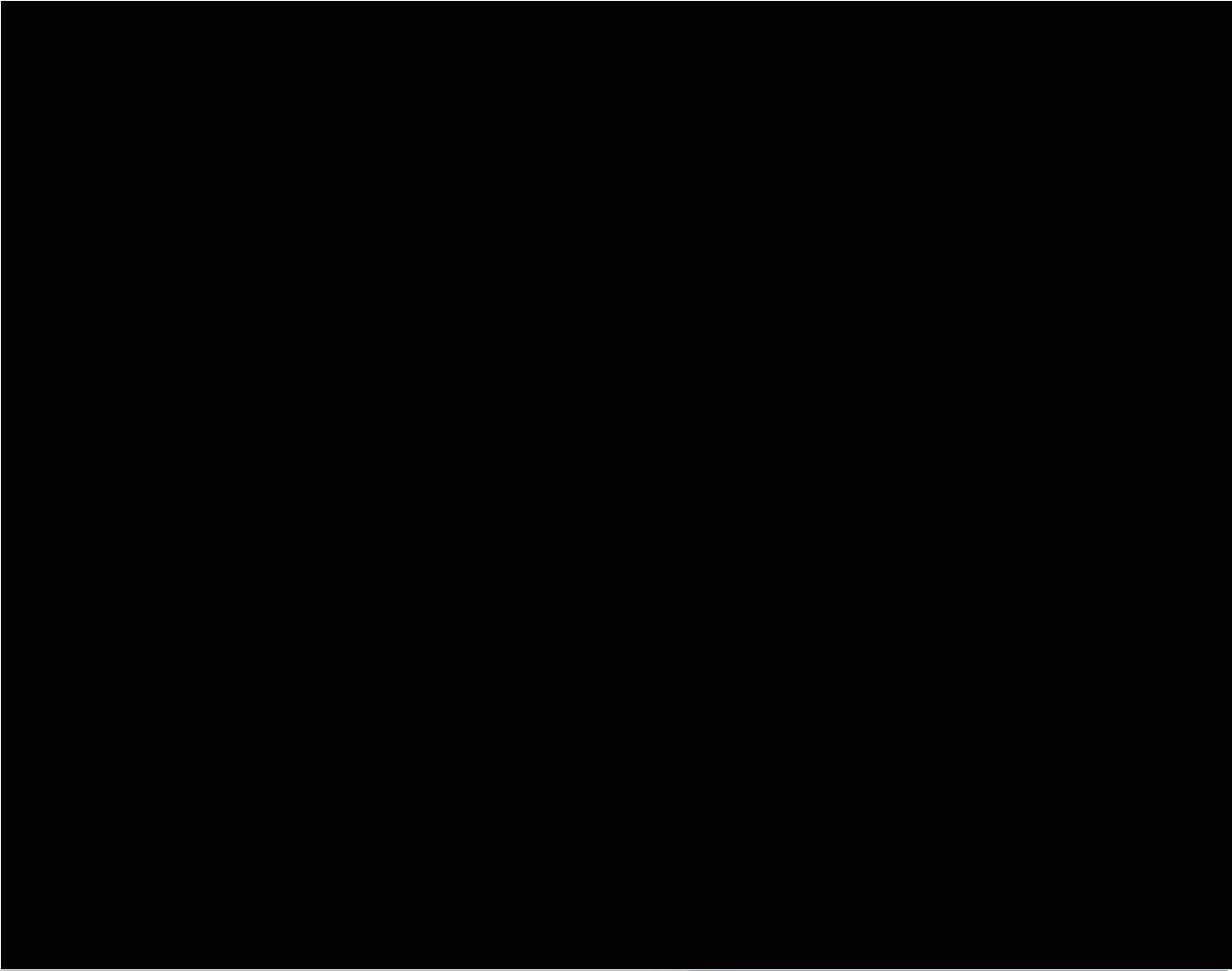
OS Received 07/29/2022



Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080794



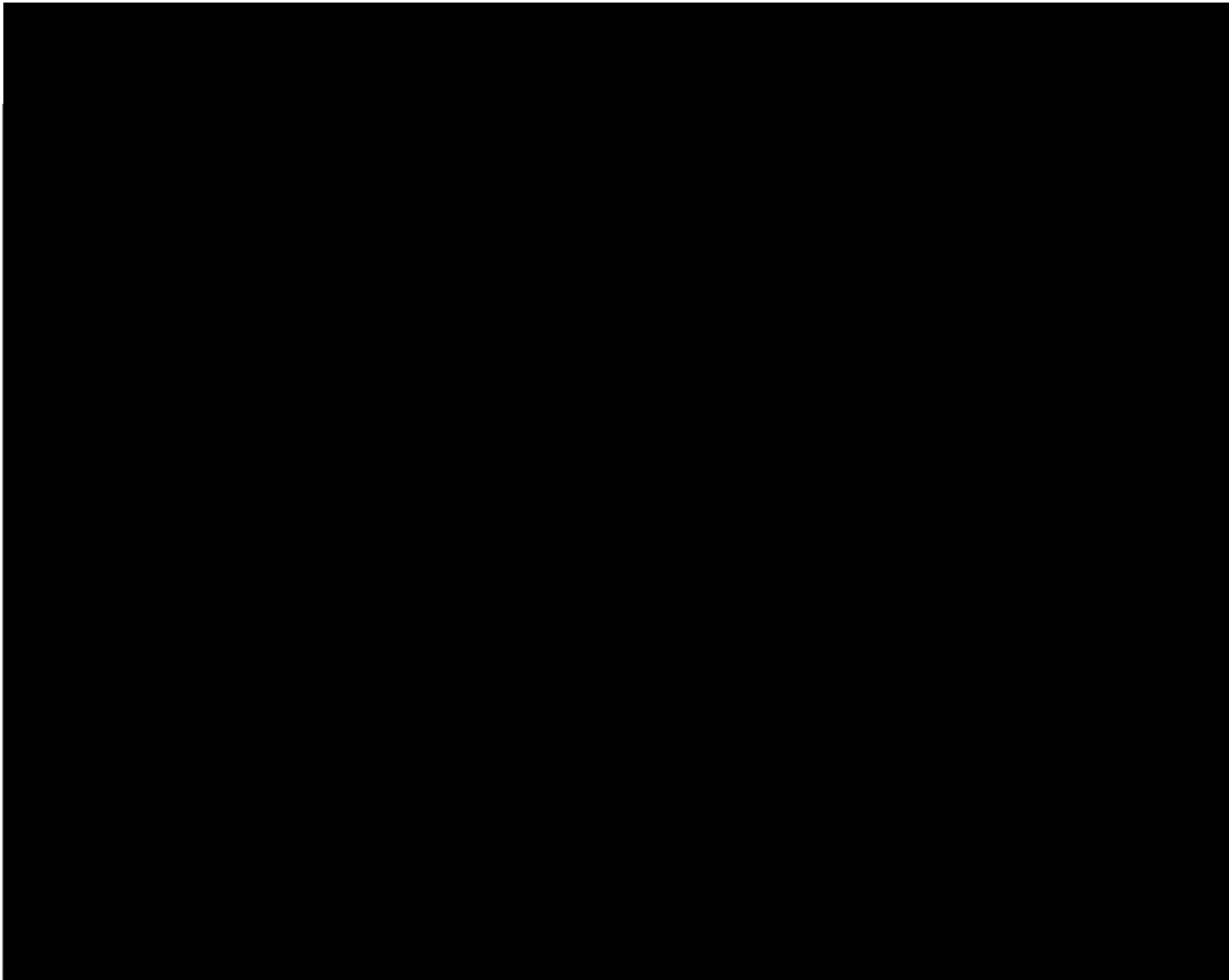
FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080795

OS Received 07/29/2022



FOIA CONFIDENTIAL TREATMENT REQUESTED

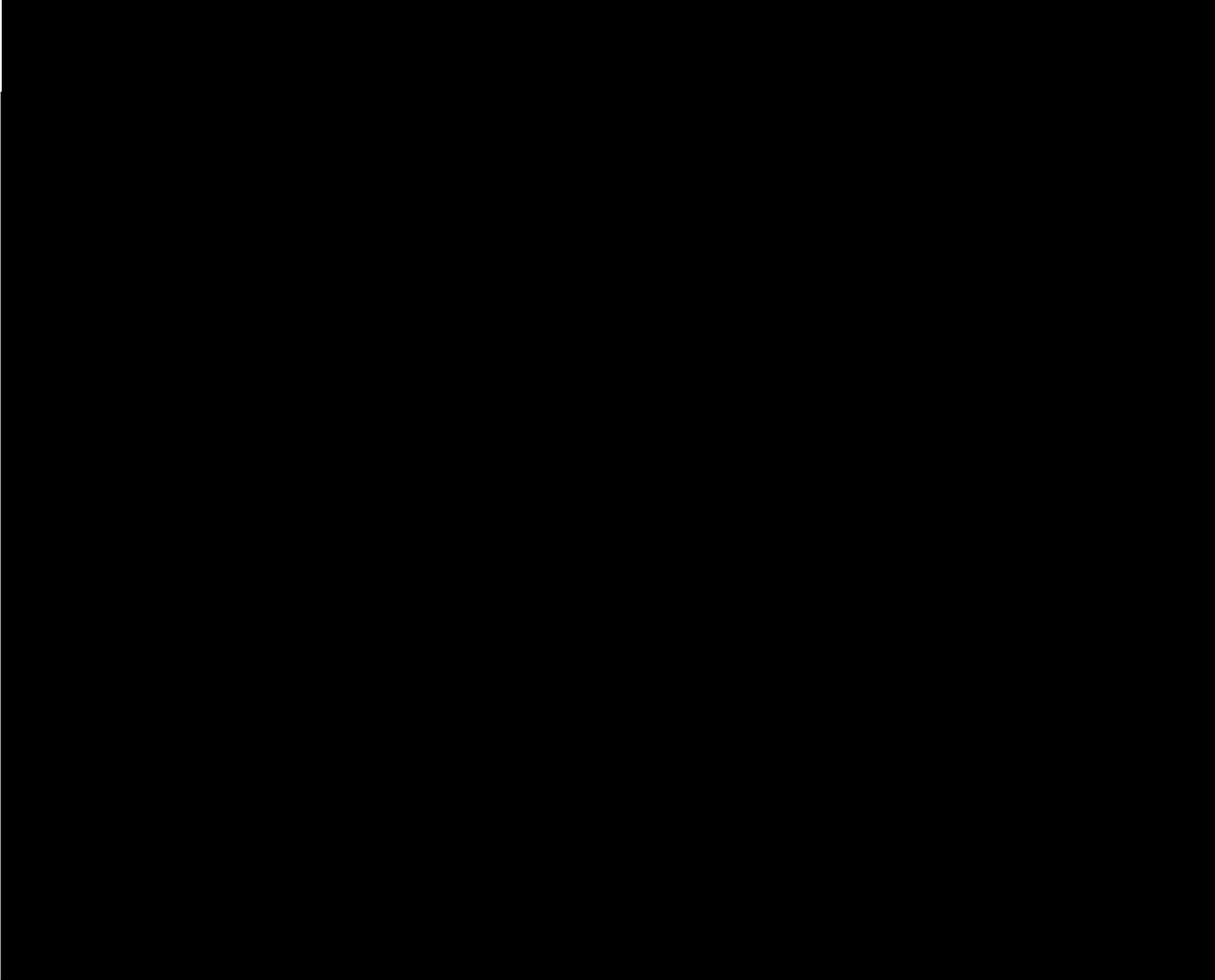
Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080796

OS Received 07/29/2022





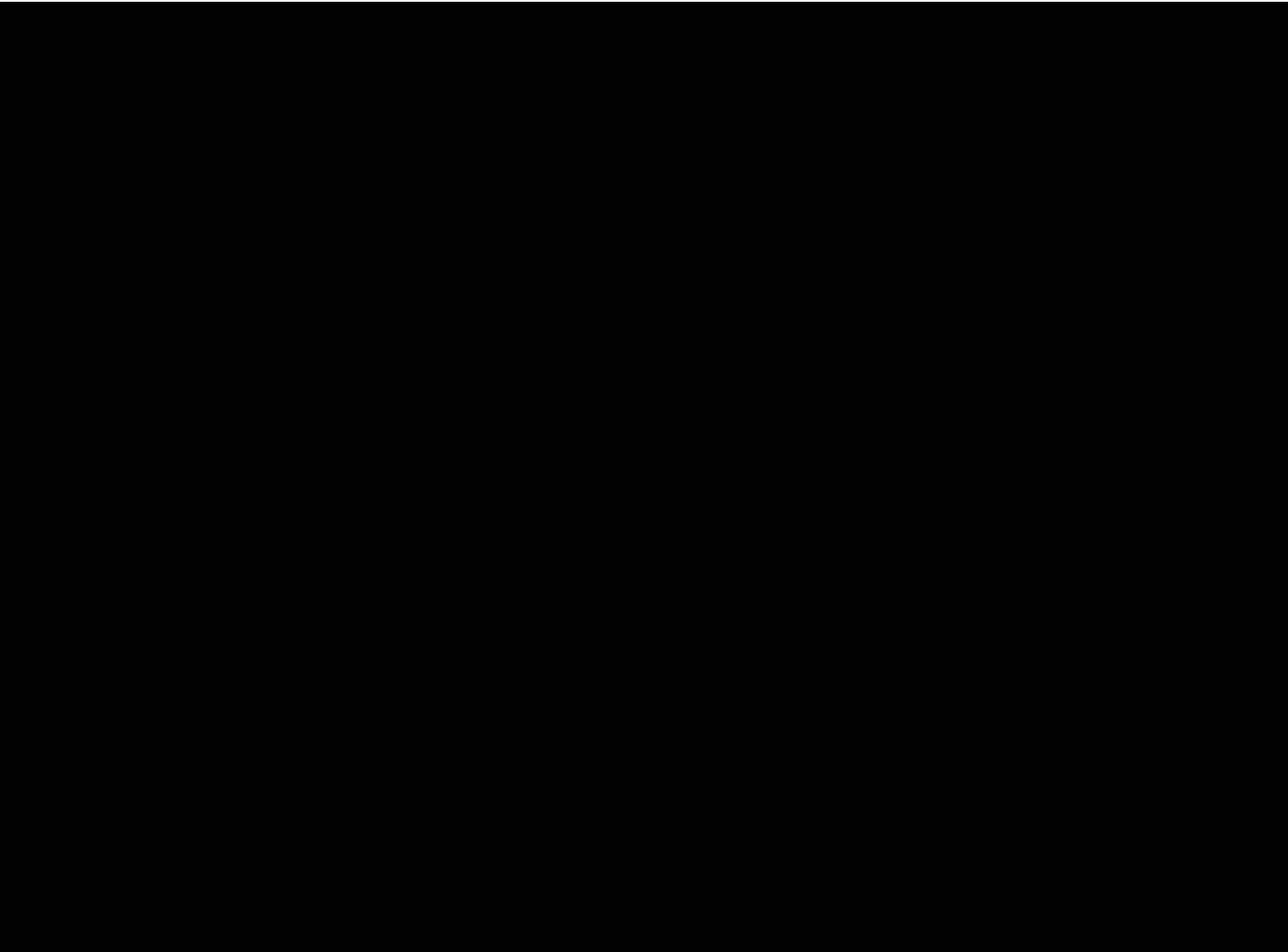
FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

LGND\_0080797

OS Received 07/29/2022



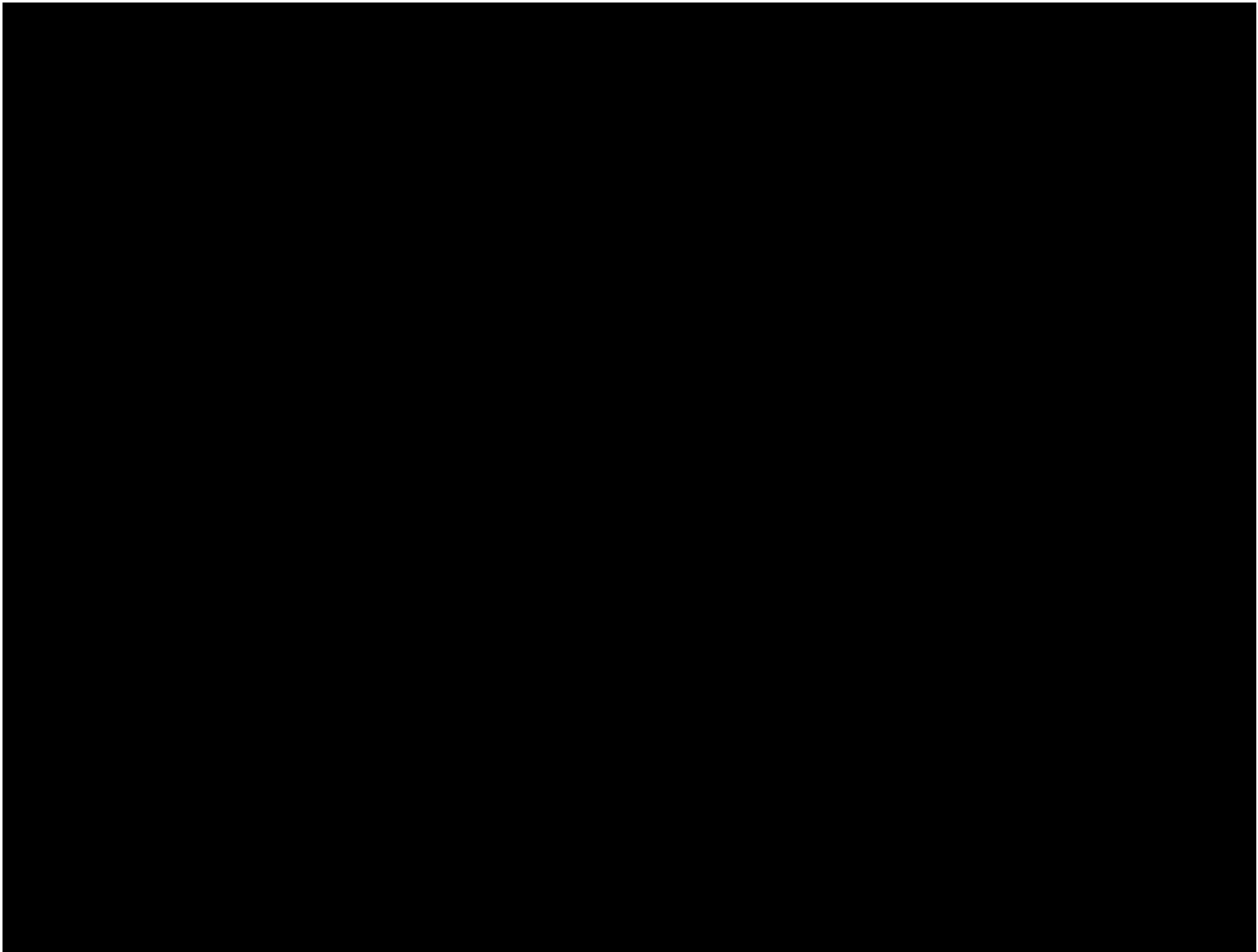
FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential

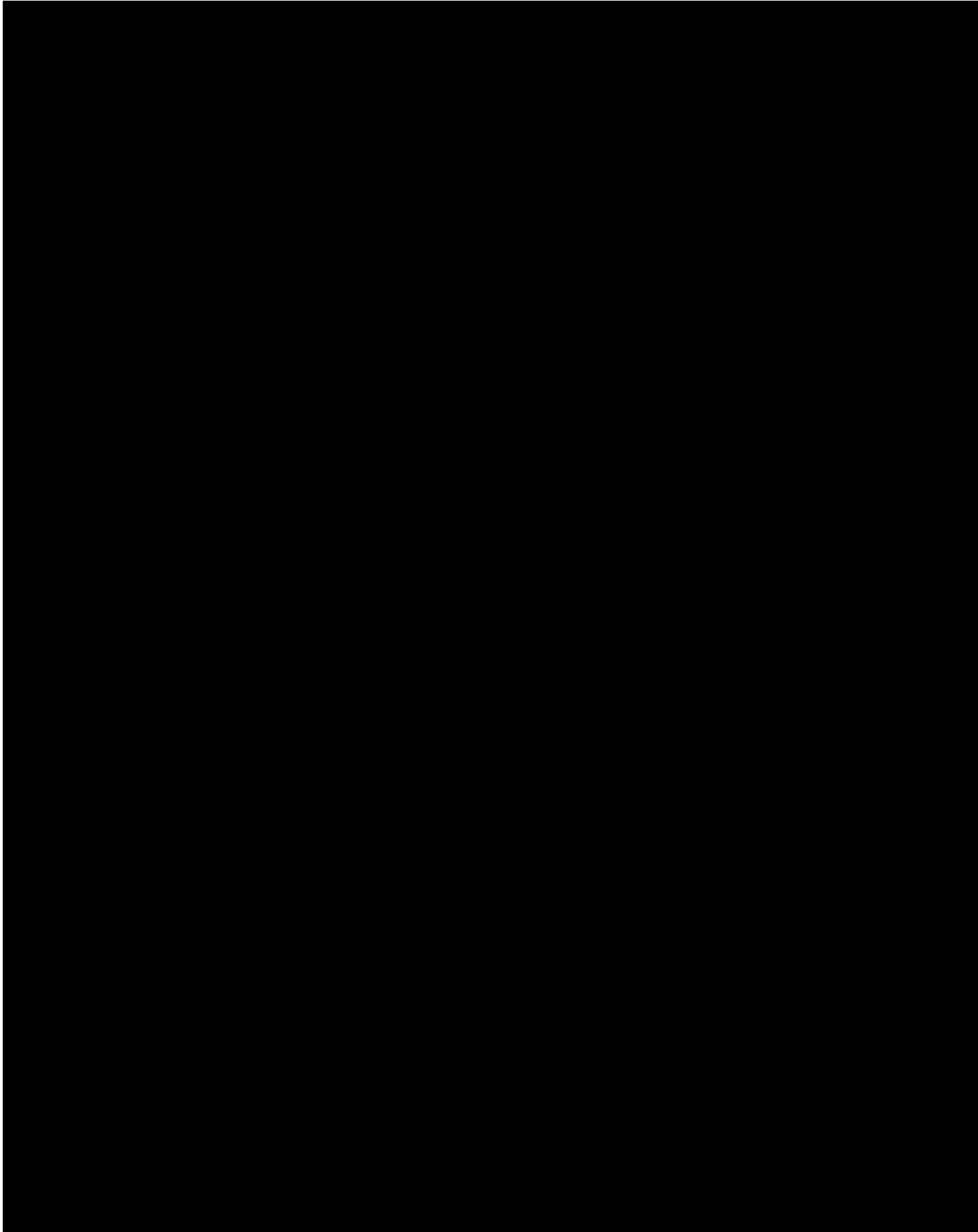
Confidential Treatment Requested by  
Ligand Pharmaceuticals, Inc.

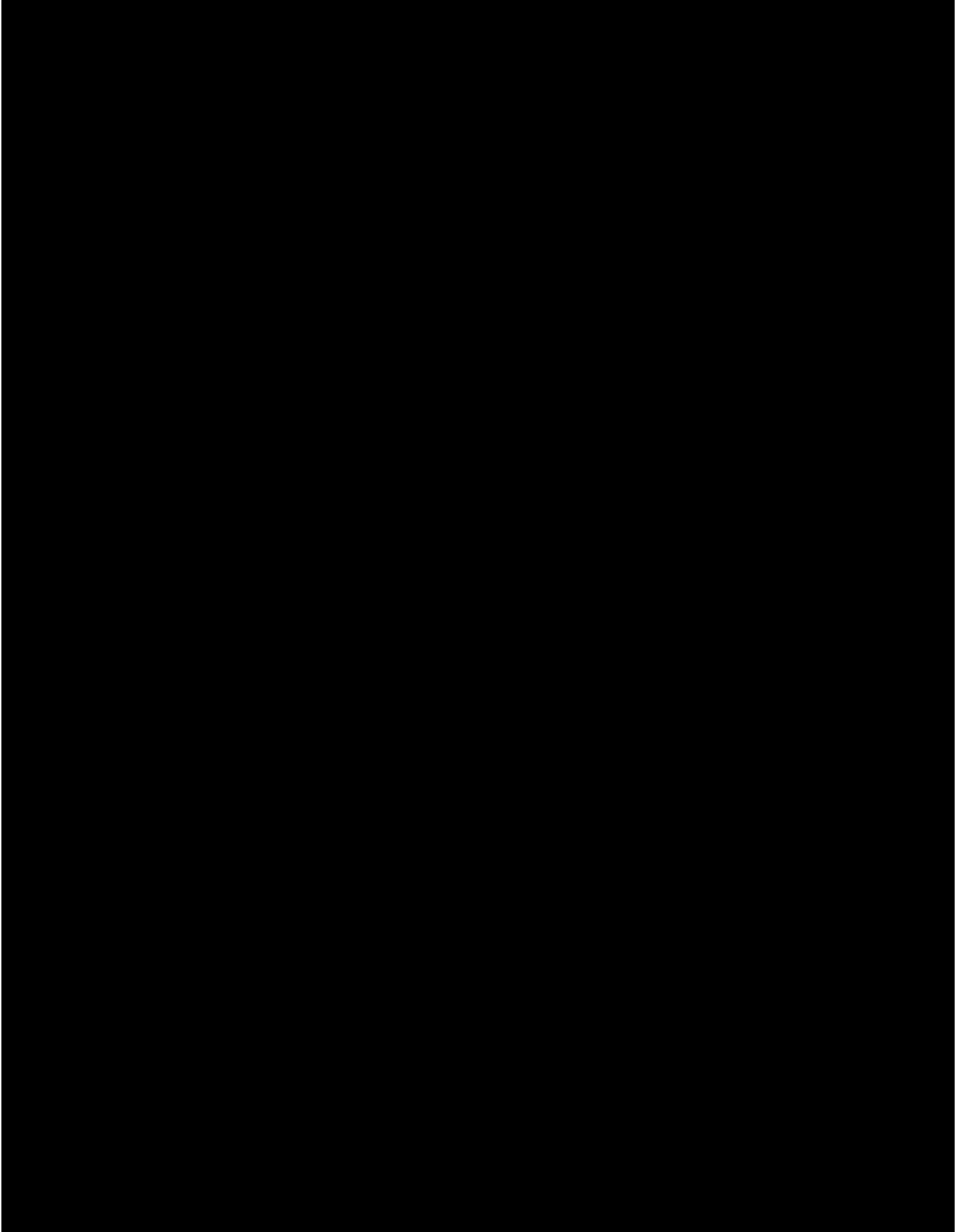
LGND\_0080798

OS Received 07/29/2022

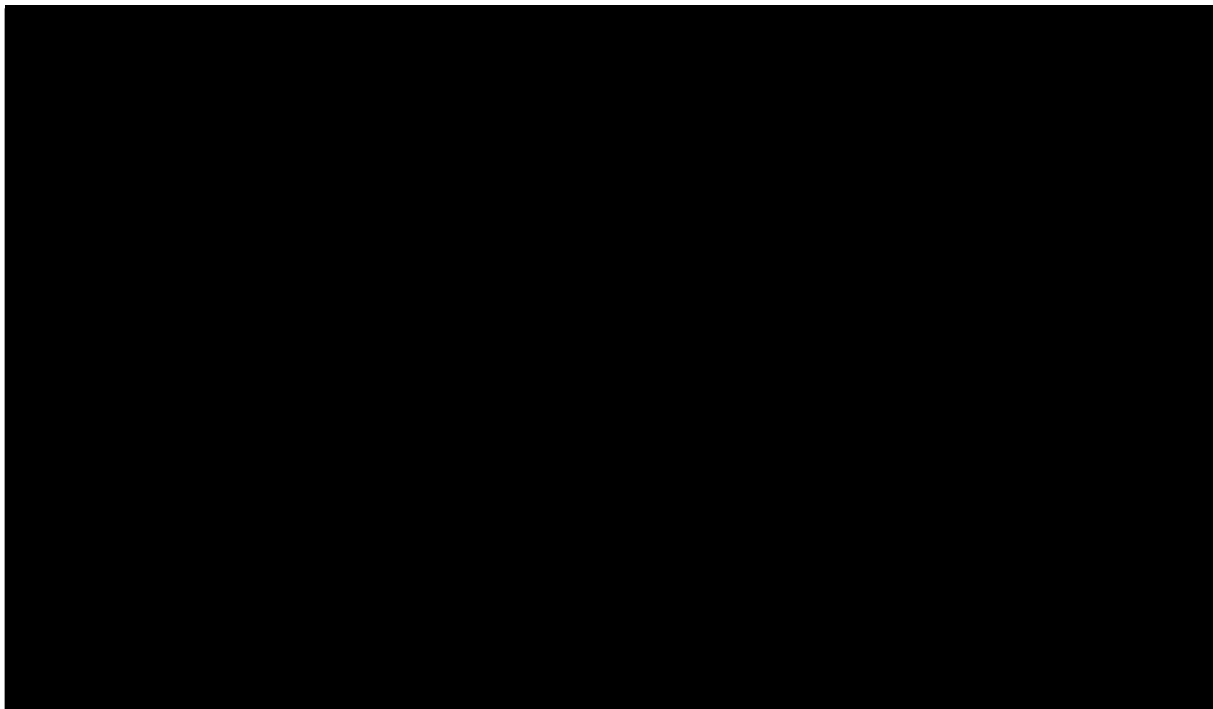


## **Respondent Exhibit 22**









\*\*\*\*\*

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## **Respondent Exhibit 23**

# Hedge Fund Priest's Trades Probed by Wall Street Cop

Matt Robinson

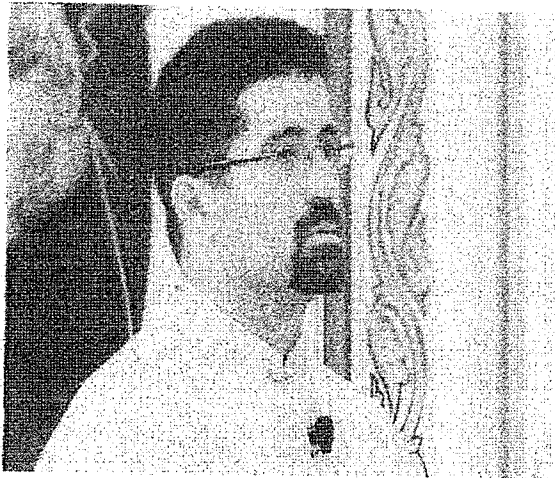
robinsonmatt

March 18, 2016 — 10:32 AM EDT

Updated on March 18, 2016 — 4:47 PM EDT

- 
- ▶ SEC examining whether he spread false statements about stocks
  - ▶ Priest says there is no regulatory probe of his firm

A priest who sidelines as a hedge-fund manager is being investigated by U.S. regulators for possible stock manipulation, prompting scrutiny of trading skills that the cleric has described as a “gift from God,” according to people with knowledge of the matter.



Emmanuel Lemelson

Source: Wikimedia

The Securities and Exchange Commission is examining whether the Reverend Emmanuel Lemelson of Massachusetts made false statements about companies he was shorting, said the people who asked not to be named because the probe isn't public. Securities laws prohibit traders from betting a company's shares will fall and then trying to drive down the price by publishing information that they know isn't true.

OS Received 07/29/2022

The SEC started its investigation after companies complained to the regulator that Lemelson, 39, had made potentially inaccurate comments about their firms in public forums, the people said. The opening of an SEC probe is typically a preliminary step and doesn't mean Lemelson, who hasn't been accused of wrongdoing, will ever face an enforcement action.

"There is not now, nor has there ever been, any SEC or other regulatory investigation targeting our firm," Lemelson said in a statement Friday. "Nor is there a basis for one."

Ryan White, an SEC spokesman, declined to comment.

### Divine Gift

While Lemelson's Amvona Fund is a minnow in the \$2.9 trillion hedge fund industry, he gained attention after the Wall Street Journal published a profile of him in October.

The article said Lemelson managed about \$20 million, had made millions of dollars for his investors and quoted him as saying, "my whole life I always knew things before they happened. I guess it's just a gift from God." The newspaper also reported that Lemelson personally blessed Republican presidential front-runner Donald Trump at a town hall in New Hampshire.

Lemelson was ordained by the Greek Orthodox Church, which allows priests to marry and hold jobs outside their religious duties.

Investors are free to criticize companies and their management, but they can't spread inaccurate information in order to profit. The SEC sued a short seller in 2008 for telling brokerage firms that Blackstone Group LP was renegotiating its takeover of Alliance Data Systems Corp., a false rumor that sent the company's shares down by about 17 percent. Without admitting or denying the allegations, the trader settled the case by returning the illicit gains and agreeing to pay a \$130,000 fine.

### Record Sales

In the Lemelson investigation, the SEC is examining commentaries about companies including Ligand Pharmaceuticals Inc., World Wrestling Entertainment Inc. and Skechers U.S.A. Inc., according to one of the people.

A report published on the financial markets website Seeking Alpha in June 2014 under the pseudonym Amvona said Ligand was in imminent risk of declaring bankruptcy and that demand for one of its drugs, Promacta, was rapidly declining. Within minutes, Ligand shares fell more than 7 percent. Since then,

OS Received 07/29/2022

Promacta sales reached an all-time quarterly high and shares of the La Jolla, California-based company have increased 50 percent to \$97.22 through yesterday.

The comments in the Seeking Alpha report on Ligand are attributed to Lemelson Capital, the name of Lemelson's hedge-fund management company. The exact same report was also posted on Lemelson Capital's website.

Historically, the SEC has had difficulty in bringing "short-and-distort" cases, since the regulator has to prove a misstatement of fact rather than opinion, according to Stephen Crummins, a former SEC attorney who's now with the firm Murphy & McGonigle. Wall Street executives famously complained that short-sellers were spreading false rumors about their banks during the 2008 financial crisis, but the allegations didn't result in SEC enforcement actions.

The SEC has had more success suing "pump-and-dump" fraudsters, where scammers promote stocks with fake information to inflate prices and then sell out.

Before it's here, it's on the Bloomberg Terminal.

## Read this next

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- ▶ [Ken Griffin's Main Citadel Funds Drop 8% in 2016 Market Swings](#)

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OS Received 07/29/2022

## **Respondent Exhibit 24**

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of: )  
 ) File No. ██████████ -A  
TRADING IN THE SECURITIES OF )  
LIGAND PHARMACEUTICALS, INC. )

WITNESS: Gregory Lemelson  
PAGES: 1 through 360  
PLACE: Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C.  
DATE: Wednesday, July 20, 2016

The above-entitled matter came on for hearing,  
pursuant to notice, at 9:25 a.m.

Diversified Reporting Services, Inc.  
(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 VIRGINIA M. ROSADO DESILETS, ESQ.

5 JEFFREY FINNELL, ESQ.

6 SONIA TORRICO, ESQ.

7 Securities and Exchange Commission

8 100 F Street Northeast

9 Washington, D.C. 20549

10 (202) 5510-4955

11

12 On behalf of the Witness:

13 DOUGLAS F. MacLEAN, ESQ.

14 Armor Compliance

15 22 Batterymarch Street

16 Boston, Massachusetts 02109

17 (617) 501-2055

18

19 ALSO PRESENT:

20 LUCY GAUTHIER, Intern

21

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23

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1	C O N T E N T S		
2			
3	WITNESS		EXAMINATION
4	Gregory Lemelson		5
5			
6	EXHIBITS	DESCRIPTION	IDENTIFIED
7	1	Form 1662	7
8	2	Subpoena	8
9	3	Subpoena	15
10	4	Subpoena	15
11	5	Background Questionnaire	25
12	6	Fund Information	110
13	7	E-mail	120
14	8	E-mail	161
15	9	Report	198
16	10	Prequin Ranking	202
17	11	Barron Ranking	203
18	12	Barron Ranking	204
19	13	Barclays Ranking	206
20	14	Descriptions	246
21	15	Summary	261
22	16	Summary	262
23	17	Report	270
24	18	Report	271
25	19	Report	272



C O N T E N T S (CONT.)

1		
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3	EXHIBITS	IDENTIFIED
4	20 Report	274
5	21 Report	275
6	22 E-mail	287
7	23 E-mail	289
8	24 Article	349
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1 P R O C E E D I N G S

2 MS. DESILETS: On the record at 9:25 a.m.

3 Can you raise your right hand, please. Do  
4 you swear or affirm to tell the truth, the whole truth  
5 and nothing but the truth?

6 THE WITNESS: I do.

7 Whereupon,

8 GREGORY LEMELSON

9 was called as a witness and, having been first duly  
10 sworn, was examined and testified as follows:

11 EXAMINATION

12 BY MS. DESILETS:

13 Q Please state and spell your full name for  
14 the record.

15 A My legal name is Gregory M. Lemelson, but  
16 I'm referred to as Father Emmanuel Lemelson, which is  
17 my ecclesiastical name or baptismal name.

18 Q You can put your hand down.

19 A Oh, sorry.

20 Q So would you prefer it if we refer to you as  
21 Father Lemelson today?

22 A Father Emmanuel.

23 Q My name is Virginia Rosado Desilets. This  
24 is Sonia Torrico, and this is Lucy Gauthier.

25 MS. DESILETS: Did I pronounce that right?

1 important, I think, than this (indicating). This is  
2 almost, like, just a funny article I wrote for myself.  
3 The other ones are really more intense analysis.

4 MS. DESILETS: Sure. If there's any  
5 documents that you want to provide to us today, we can  
6 make a copy of those now when we go off the record and  
7 give you the originals back.

8 So we're going to go off the record at 6:20  
9 p.m.

10 (Whereupon, at 6:20 p.m., the examination  
11 was concluded.)

12 \* \* \* \* \*

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## **Respondent Exhibit 25**

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of: )  
 ) File No. ██████████-A  
TRADING IN THE SECURITIES OF )  
LIGAND PHARMACEUTICALS, INC. )

WITNESS: Gregory Lemelson  
PAGES: 361 through 707  
PLACE: Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C.  
DATE: Wednesday, July 21, 2016

The above-entitled matter came on for hearing,  
pursuant to notice, at 9:25 a.m.

Diversified Reporting Services, Inc.  
(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 VIRGINIA M. ROSADO DESILETS, ESQ.

5 JEFFREY FINNELL, ESQ.

6 SONIA TORRICO, ESQ.

7 Securities and Exchange Commission

8 100 F Street Northeast

9 Washington, D.C. 20549

10 (202) 5510-4955

11

12 On behalf of the Witness:

13 DOUGLAS F. MacLEAN, ESQ.

14 Armor Compliance

15 22 Batterymarch Street

16 Boston, Massachusetts 02109

17 (617) 501-2055

18

19 ALSO PRESENT:

20 LUCY GAUTHIER, Intern

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1	C O N T E N T S		
2			
3	WITNESS		EXAMINATION
4	Gregory Lemelson		365
5			
6	EXHIBITS	DESCRIPTION	IDENTIFIED
7	25	E-mail	368
8	26	E-mail	370
9	27	E-mail	389
10	28	E-mail	396
11	29	E-mail	413
12	30	E-mail	414
13	31	E-mail	417
14	32	E-mail	421
15	33	E-mail	422
16	34	E-mail	427
17	35	E-mail	428
18	36	Press Release	453
19	37	10-Q	494
20	38	E-mail	518
21	39	E-mail	520
22	40	E-mail	528
23	41	Statements	539
24	42	Information	556
25	43	Statements	578



C O N T E N T S (CONT.)

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EXHIBITS	DESCRIPTION	IDENTIFIED
44	Article	585
45	E-mail	628
46	E-mail	629
47	E-mail	631
48	Transcript	641

1 P R O C E E D I N G S

2 MS. DESILETS: Back on the record at

3 9:25 a.m.

4 Whereupon,

5 GREGORY LEMELSON

6 was recalled as a witness and, having been

7 previously duly sworn, was examined and testified

8 further as follows:

9 EXAMINATION

10 BY MS. DESILETS:

11 Q Good morning, Father Emmanuel. Welcome  
12 back.

13 A Good morning. Thank you.

14 Q Before we continue, I wanted to summarize a  
15 conversation that we had after we went off the record  
16 last night. You had asked us about the formal order  
17 of investigation and whether we are investigating  
18 Ligand or any other parties, and I informed you that  
19 that wasn't information we were at liberty to share or  
20 are really ever at liberty to share.

21 You also asked whether it was customary for  
22 us to ask background questions about a witness, and  
23 particularly about your wife, and I explained that we  
24 do usually ask background questions about the witness,  
25 and in this particular case, your wife is the owner of

1 Welcome back, Father Emmanuel.

2 THE WITNESS: Thank you.

3 BY DESILETS:

4 Q While we were off the record, did you have  
5 any substantive communications with the staff of the  
6 SEC?

7 A No.

8 Q So we're going to recess for the evening,  
9 and meet back at 9 a.m. tomorrow, if that's okay with  
10 you?

11 A Yes.

12 MS. DESILETS: Okay. Going off the record at  
13 6:20. I'm sorry?

14 THE WITNESS: Should we plan on being here  
15 the whole day tomorrow?

16 MS. DESILETS: I think so. Yes. I think it  
17 probably will be the whole day tomorrow.

18 THE WITNESS: Okay.

19 MS. DESILETS: So off the record at 6:20 p.m.

20 (Whereupon, the proceedings adjourned  
21 at 6:20 p.m.)

22 \* \* \* \* \*

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## **Respondent Exhibit 26**

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of: )  
 ) File No. ██████████-A  
TRADING IN THE SECURITIES OF )  
LIGAND PHARMACEUTICALS, INC. )

WITNESS: Gregory Lemelson  
PAGES: 708 through 1009  
PLACE: Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C.  
DATE: Friday, July 22, 2016

The above-entitled matter came on for hearing,  
pursuant to notice, at 9:15 a.m.

Diversified Reporting Services, Inc.  
(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 VIRGINIA M. ROSADO DESILETS, ESQ.

5 JEFFREY FINNELL, ESQ.

6 SONIA TORRICO, ESQ.

7 Securities and Exchange Commission

8 Division of Enforcement

9 100 F Street Northeast

10 Washington, D.C. 20549

11 (202) 5510-4955

12

13 On behalf of the Witness:

14 DOUGLAS F. MacLEAN, ESQ.

15 Armor Compliance

16 22 Batterymarch Street

17 Boston, Massachusetts 02109

18 (617) 501-2055

19

20 ALSO PRESENT:

21 LUCY GAUTHIER, Intern

22

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## C O N T E N T S

1			
2			
3	WITNESS		EXAMINATION
4	Gregory Lemelson		712
5			
6	EXHIBITS	DESCRIPTION	IDENTIFIED
7	50	Agreement	721
8	51	Form S-1	722
9	52	Excel Document	794
10	53	Form 8-K	826
11	55	E-mail	851
12	56	Spreadsheet	854
13	57	E-mail	903
14	58	E-mail	913
15	59	E-mail	915
16	61	E-mail	931
17	62	Correspondence	937
18	63	E-mail	958
19	64	Article	968
20	65	Response	969
21	66	Response	970
22	67	Article	974
23			
24			
25			



C O N T E N T S (CONT.)

1			
2			
3	EXHIBITS	DESCRIPTION	IDENTIFIED
4	68	Article	975
5	69	Press Release	989
6	70	E-mail	1001
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1 P R O C E E D I N G S

2 MS. DESILETS: Going back on the record at  
3 9:15 a.m.

4 Whereupon,

5 GREGORY LEMELSON

6 was recalled as a witness and, having been  
7 previously duly sworn, was examined and testified  
8 further as follows:

9 EXAMINATION

10 BY MS. DESILETS:

11 Q Welcome back, Father Emmanuel.

12 A Thank you.

13 Q While we were off the record, did you have  
14 any substantive communications with the staff of the  
15 SEC?

16 A No. But I did want to say that yesterday  
17 off the record, I did have a -- I don't think it's  
18 substantive at all, but I did just discuss with our  
19 transcriptionist, you know, her work and transcribing  
20 and so forth, where she used to work, that kind of  
21 thing. I don't think it's substantive, but just in  
22 the interest of having full disclosure.

23 Q Sure. Sure. That's not what we would  
24 typically consider substantive. I think you're right  
25 about that, but it's fine to summarize just so that

1 MS. DESILETS: Thank you.

2 Counsel, do you have any clarifying  
3 questions?

4 MR. MacLEAN: No clarifying questions.  
5 Thanks for your time.

6 MS. DESILETS: Thank you, Father Emmanuel.

7 We have no further questions at this time.

8 We may, however, call you again to testify in this  
9 investigation. Should this be necessary, we will  
10 contact your counsel.

11 Off the record at 4:55 p.m.

12 (Whereupon, at 4:55 p.m., the examination  
13 was concluded.)

14 \* \* \* \* \*

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## **Respondent Exhibit 27**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

_____	)	
SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	
GREGORY LEMELSON and LEMELSON CAPITAL	)	
MANAGEMENT, LLC,	)	Civil Action No. 1:18-cv-11926-PBS
	)	
Defendants,	)	
	)	
and	)	
	)	
THE AMVONA FUND, LP,	)	
	)	
Relief Defendant	)	
_____	)	

**DEFENDANTS’ REPLY TO PLAINTIFF’S RESPONSE TO DEFENDANTS’  
STATEMENT OF UNDISPUTED FACTS AND RESPONSE TO  
PLAINTIFF’S STATEMENT OF ADDITIONAL MATERIAL FACTS**

Pursuant to Fed. R. Civ. P. 56 and Local Rule 56.1, Defendants Fr. Emmanuel Lemelson (f/k/a Gregory Lemelson), Lemelson Capital Management, LLC, and the Amvona Fund, LP (collectively referred to as “Fr. Emmanuel”) reply to Plaintiff’s Response to Defendants’ Statement of Undisputed Facts in Support of their Motion for Summary Judgment and respond to Plaintiff’s Statement of Additional Material Facts submitted in support of Plaintiff’s Opposition to Defendants’ Motion for Summary Judgment.

**I. The Amvona Fund’s Origins and Routine Business Practices**

1. Fr. Emmanuel formed a hedge fund, the Amvona Fund LP, in 2012. Affidavit of Douglas S. Brooks (“Brooks Aff.”) Exhibit (“Ex.”) 1 at 32:4-13.

**SEC Response:** Undisputed.

41. Fr. Emmanuel did not hold a short position in Viking at the time these statements were made. Brooks Ex. 5 at 47:7-14.

**SEC Response:** Undisputed, but immaterial. It is undisputed that Lemelson held a short position in Ligand through LCM/Amvona at all relevant times. Undisputed that Lemelson did not hold any position in Viking, but irrelevant and immaterial because the statements about Viking were intended to cast doubt on the legitimacy of the Ligand-Viking transaction and cast aspersions on Ligand's management.

**Fr. Emmanuel's Reply:** See reply to paragraph 40. Fr. Emmanuel also disputes the unsupported accusation in the Commission's response that "the statements about Viking were intended to cast doubt on the legitimacy of the Ligand-Viking transaction and cast aspersions on Ligand's management," which is inadequate under Fed. R. Civ. P. 56 and Local Rule 56.1.

42. The first statement from this report that the Commission challenged is: "the company [Viking] has not yet even consulted with the firm [auditors] on any material issues." Brooks Aff. Ex. 8 at 3; Brooks Aff. Ex. 7 ¶¶ 44-50.

**SEC Response:** Disputed in part. The Commission also challenges the statement and the report as a whole as part of Defendants' fraudulent scheme.

**Fr. Emmanuel's Reply:** As a matter of law, the Commission cannot support a claim that legal conduct, such as publishing a report containing no challenged statements, can be a part of a "scheme" under Rule 10b-5. *See* Reply Memorandum in Support of Defendants' Motion for Summary Judgment at 4-5.

43. In the July 3, 2014 report, Fr. Emmanuel quoted Viking's S-1 statement and noted that Viking engaged MaloneBailey to audit their financial statements for the fiscal year ending December 31, 2012, but then Viking terminated MaloneBailey on April 7, 2014. Brooks Aff. Ex. 15 at 9.

**SEC Response:** Disputed in part and not supported. The Commission disputes in part the statement in paragraph 43, which is not supported by the exhibit cited. Specifically, the report only partially and selectively quoted from Viking's S-1 statement and noted that Viking

testimony that Fr. Emmanuel did not believe in the veracity of his opinions at the time of publication, which the Commission does not dispute in its response.

135. Fr. Emmanuel produced his entire hard drive to the Commission in this case, including all communications with counsel to aid in the Commission's investigation. Brooks Aff. Ex. 1 at 16:2-19:20; Brooks Aff. Ex. 5 at 106:11-25, 328:2-9; Brooks Aff. Ex. 48 at 51:10-52:2, 153:8-154:9.

**SEC Response:** Disputed. The Commission disputes the facts asserted in paragraph 135, specifically that Defendant Lemelson produced his entire hard drive to the Commission in this case. Lemelson testified under oath in 2016 that he searched his hard drive and Outlook for relevant documents and produced to the Commission what he found, which included all of the emails in his .pst email file related to Lemelson Capital Management and The Amvona Fund, including sent files. [Brooks Aff. Ex. 1 at 16:2-19:20.] Lemelson's cover letter at the time of his initial production confirms that he provided a 32 GB flash storage device, on which he copied all of his business-related files and emails. [Ex. 63 (9/14/15 Lemelson Production Letter) 1-2.]

136. There is no document in Fr. Emmanuel's hard drive that indicates Fr. Emmanuel did not believe in the veracity of his opinions when he published them.

**SEC Response:** Disputed and unsupported. Defendants offer no evidentiary support for the facts asserted in paragraph 136, contrary to Rule 56 and Local Rule 56.1. The Commission believes that many of the documents produced by Defendants, some of which are cited in the Commission's Statement of Material Facts below, show Defendants' motivations to lie. The Commission also disputes Defendants' characterization of the reports in their entirety as "opinions." As the Commission argues in its brief, Lemelson's reports contain statements of fact to support his theses. [See Commission's response to paragraph 134 (citing Lemelson's statements that this reports were factual and contained facts).]

**Fr. Emmanuel's Reply:** It is impossible to provide a citation to the absence of evidence. The Commission bears the burden of proof in this claim and has failed to present any



## **Respondent Exhibit 28**

**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**GREGORY LEMELSON and LEMELSON CAPITAL  
MANAGEMENT, LLC,**

**Defendants,**

**and**

**THE AMVONA FUND, LP,**

**Relief Defendant.**

Civ. No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff, the United States Securities and Exchange Commission (the “Commission”), alleges the following against Defendants Gregory Lemelson (“Lemelson”) and Lemelson Capital Management, LLC, and Relief Defendant The Amvona Fund, LP, and hereby demands a trial by jury:

**SUMMARY OF ALLEGATIONS**

1. Between May and October of 2014, Lemelson devised and carried out a fraudulent scheme in which he purchased “short positions” in the stock of Ligand Pharmaceuticals, Inc. (“Ligand”) and then sought to manipulate the stock price to make a profit. A short position is an investment technique whereby an investor seeks to profit when the price of a stock falls. Lemelson publicly disseminated a series of false statements about Ligand to drive

down the price of the stock, while engaging in a series of purchases and sales of Ligand stock that enabled him to profit from the lowered stock price.

2. An investor takes a “short position” in a stock by borrowing a company’s stock from a broker. The investor then sells the stock at its current market price (which the investor hopes is overvalued and will soon drop). If the price of the stock goes down, the investor profits from the “short sale” by purchasing the stock at the lower price, referred to as “covering” the short sale, returning the borrowed stock to the broker, and keeping the difference between the initial sale and the later purchase at a lower price.

3. Beginning in May 2014 and continuing through October 2014, Lemelson took short positions in Ligand stock through his hedge fund, The Amvona Fund, LP (“Amvona”). He then orchestrated a public campaign attacking Ligand with the intent to convince the investing public that Ligand’s stock was overvalued. As part of his campaign, Lemelson made a series of false statements of material fact about Ligand that were intended to shake investor confidence in the company, drive down the price of Ligand’s stock, and, consequently, increase the value of Lemelson’s short positions.

4. Starting in June 2014 and continuing through August 2014, Lemelson authored and published multiple “research reports” that contained false statements of material fact about Ligand and that were intended to create a negative view of the company and its value and, consequently, to drive down the price of the company’s stock. Further, between June and October of 2014, Lemelson participated in live and written interviews in which he made additional false statements of material fact about Ligand which also were intended to create a negative view of the company and its value and, consequently, to drive down the price of the company’s stock.

5. Each of Lemelson's false statements was intended to drive down the price of Ligand's stock. For example, in a June 2014 report, Lemelson stated that Ligand's flagship drug product, and main source of licensing revenue, was imminently "going away." To bolster and lend credence to his report, Lemelson, in a widely available radio interview, falsely stated that a Ligand representative agreed with his analysis. Lemelson also falsely claimed that Ligand engaged in a sham licensing transaction with another pharmaceutical company and had run up so much debt that the company had virtually no value. None of these statements was true, none had a reasonable basis in fact, and each concerned significant aspects of Ligand's financial condition, business dealings, and the viability of its products that reasonable investors would consider important in evaluating Ligand's prospects. Lemelson made each of these false statements intentionally or recklessly for the purpose of driving down Ligand's stock price.

6. Between June and October 2014, Lemelson publicly and widely disseminated false statements about Ligand in press releases, on Amvona's blog, through social media, in various other media outlets, and also in appearances on radio shows. In doing so, Lemelson intended to create a negative view of the company and its value and, consequently, to drive down the price of the company's stock.

7. In addition to deceiving the investing public by making false statements of material fact about Ligand, Lemelson and Lemelson Capital Management, LLC ("LCM") deceived investors and prospective investors in The Amvona Fund by making and disseminating false statements about Ligand as part of their efforts to obtain and retain Amvona Fund investors. Defendants further misled investors and potential investors by not disclosing that The Amvona Fund's positive returns from its short position in Ligand were based on Defendants' stock price manipulation.

8. As Lemelson intended, the price of Ligand stock fell during his scheme to mislead investors about its value. The day Lemelson began disseminating his false statements, June 16, 2014, Ligand's opening share price was \$67.26. By October 13, 2014, Ligand's share price had dropped by nearly than \$23—a decline of approximately 34 percent. Also by that time, Lemelson had “covered” the vast majority of Amvona's short position in Ligand generating approximately \$1.3 million in illegal profits. Ligand's stock price subsequently recovered, and today, Ligand stock trades at over \$250 per share.

9. By engaging in this conduct, Lemelson and LCM violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rules 10b-5(a), (b), and (c) thereunder [17 C.F.R. § 240.10b-5(a)-(c)], and both Lemelson and LCM violated Section 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

10. The Commission seeks injunctive relief, disgorgement of ill-gotten gains together with prejudgment interest, and civil penalties.

### **JURISDICTION AND VENUE**

11. The Commission brings this action pursuant to the enforcement authority conferred upon it by Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)]. The Commission seeks the imposition of a civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

12. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa], and Sections 209(d), 209(e) and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d), 80b-9(e), 80b-14], and 28 U.S.C. § 1331.

13. Venue is proper in this district pursuant to 28 U.S.C. § 1331(b)(2), Sections 21(d)-(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)-(e) and 78aa], and Sections 209(d) and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d) , 80b-14], because a substantial part of the acts constituting the alleged violations occurred in the District of Massachusetts, Lemelson lived and worked in Massachusetts during the relevant time period, and the principal place of business of Amvona and Lemelson Capital Management LLC (“LCM”) is in Massachusetts.

14. In connection with the conduct alleged in this Complaint, Lemelson directly or indirectly made use of the means or instruments of transportation or communication in interstate commerce, the facilities of national securities exchanges, or the mails.

15. Lemelson’s conduct involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss, or significant risk of substantial loss, to other persons.

16. Unless enjoined, Lemelson will continue to engage in the securities law violations alleged herein, or in similar conduct that would violate federal securities laws.

#### **DEFENDANTS AND RELIEF DEFENDANTS**

17. **Gregory Lemelson**, 42, resides in Mansfield, Massachusetts. He is the Chief Investment Officer and portfolio manager of Lemelson Capital Management LLC, a private investment firm he founded to manage The Amvona Fund, LP. At all relevant times, Lemelson was an “investment adviser” within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. §80b-2(a)(11)]. Lemelson is LCM’s founder, Chief Investment Officer, and portfolio manager. In those capacities, Lemelson controls LCM and makes all decisions on behalf of LCM.

18. **Lemelson Capital Management, LLC** is a Massachusetts company formed on June 14, 2012, with its principal office in Marlborough, Massachusetts. LCM is an Exempt

Reporting Adviser registered with the Commission and the Commonwealth of Massachusetts. LCM is the investment manager and investment adviser to The Amvona Fund, LP. At all relevant times, LCM was an “investment adviser” within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. §80b-2(a)(11)].

19. **The Amvona Fund, LP** is a Delaware company formed on July 24, 2012, with its principal office in Marlborough, Massachusetts. Amvona is a pooled investment vehicle under Rule 206(4)-8(b) promulgated under the Advisers Act [17 C.F.R. § 275.206(4)-8] and Sections 3(a) and 3(c)(1) of the Investment Company Act of 1940 [15 U.S.C. § 80a-3(a) and (c)(1)]. Lemelson is the General Partner of Amvona. Lemelson launched Amvona as a hedge fund in September 2012, and began accepting limited partner investments shortly thereafter. On January 4, 2013, Lemelson formed The Amvona Fund Ltd. (“Amvona Limited”) in the British Virgin Islands. Amvona Limited operates as a feeder fund into Amvona (Amvona Limited and Amvona are hereinafter referred to together as “Amvona”). Lemelson is the Director of Amvona Limited. Amvona advertises itself as a long-position fund, *i.e.*, a fund that seeks to profit from appreciation in the price of securities it holds. Amvona has approximately \$15 million of assets under management, more than half of which belong to Lemelson and his family.

#### **RELATED ENTITIES**

20. **Ligand Pharmaceuticals, Inc.** (“Ligand”) is a Delaware corporation with its principal place of business in San Diego, California. Ligand is a biopharmaceutical company involved in the development and licensing of medicines and technologies. Ligand’s common stock is registered with the Commission under Section 12(b) of the Exchange Act and trades on NASDAQ under the symbol “LGND.”

21. **Viking Therapeutics, Inc.** (“Viking”) is a Delaware corporation with its principal place of business in San Diego, California. Viking is a clinical-stage biotherapeutics

company focused on developing treatments for metabolic and endocrine disorders. Viking's common stock is registered with the Commission under Section 12(b) of the Exchange Act and trades on NASDAQ under the symbol "VKTX." Through a Master License Agreement between Ligand and Viking dated May 2014, Ligand became a 49.8% owner of Viking common stock.

### **FACTS**

#### **A. Lemelson Published and Disseminated Negative Reports about Ligand While Increasing Amvona's Short Position in Ligand**

22. On May 22, 2014, Lemelson and LCM took an initial short position in Ligand of 579 shares on behalf of Amvona. Shortly thereafter, Lemelson began publicly disseminating negative information about Ligand—including a series of false and misleading statements—as part of a fraudulent scheme to drive down Ligand's share price and profit from his short position.

23. Between June 16 and August 22, 2014, Lemelson published a total of five reports that discussed Ligand. Lemelson was the sole author and solely responsible for the content of each report. All of Lemelson's reports about Ligand were negative and took a dim view of the company's value and prospects. Certain of the reports also contained false and misleading statements of material fact, as detailed in Part B below. Lemelson used these false and misleading statements to bolster and lend credence to the overall attack levied against Ligand and its valuation.

24. Lemelson published the first of his negative reports about Ligand on June 16, 2014, titled "Ligand Pharmaceuticals (NASDAQ: LGND)" (the "June 16th Report"). As detailed below, Lemelson stated, without a reasonable basis in fact, that Ligand's primary source of licensing revenue, the drug Promacta, was on the brink of obsolescence. Lemelson then doubled down on this misstatement by falsely claiming in a June 19 interview that a Ligand representative stated the company knew Promacta was "going away." Lemelson thus concluded



that “Ligand’s fair value is roughly \$0 per share, or 100 percent below the current stock price.” By this time, Lemelson had increased his short position in Ligand by borrowing and selling short 68,528 shares for approximately \$4.6 million. In the days following the June 16 report Ligand’s stock price dropped approximately 16%.

25. Lemelson continued his efforts to drive Ligand’s stock price even lower. In his next report, dated July 3, 2014 and titled “Ligand Pharmaceuticals (NASDAQ: LGND); Appendix” (the “July 3rd Report”), Lemelson characterized a transaction between Ligand and Viking as a sham by making false statements about Viking’s finances and operations. Lemelson went on to state that “the intrinsic value of Ligand shares must be reaffirmed as \$0 with downside risk justifiably calculated at 100%.”

26. Lemelson’s next report, dated August 4, 2014 and titled “Update: Lemelson Capital Further Increases Short Stake in Ligand Pharmaceuticals (NASDAQ: LGND) as LGND EPS Plunges 76 percent in Q2 2014” (the “August 4th Report”), repeated his false statement about Promacta becoming obsolete and concluded that “the intrinsic value of Ligand shares must be reaffirmed as \$0 with downside risk justifiably calculated at 100 percent.”

27. In another report dated August 14, 2014, titled “Lemelson Capital Says Ligand Pharmaceuticals’ (NASDAQ: LGND) \$225M Debt Issuance Solidifies Company’s Insolvency, Substantially Raises Specter of Bankruptcy” (the “August 14th Report”), Lemelson claimed that Ligand was teetering on the brink of bankruptcy.

28. Finally, on August 22, 2014, Lemelson issued a report titled “Ligand Pharmaceuticals’ (NASDAQ: LGND) – Institutional Holders waste no time dumping stock in response to Insolvency and bankruptcy risk” (the “August 22nd Report”), in which he

mischaracterized Ligand's financial condition, as detailed below, and claimed that "common shareholders could be wiped out almost entirely without notice."

29. Lemelson published his Ligand reports under the heading of LCM; posted them on Amvona's website; distributed them to various press sources – among them, PR Newswire, Globe Newswire, Seeking Alpha, Benzinga, Street Insider, Value Walk, and USA Today – the day they were published; and posted links to the reports on various social media accounts under his control. The published press releases contained abbreviated summaries of the report and included links to the reports on Amvona's website.

30. Between June and October 2014, Lemelson also conducted various audio and written interviews in which he stated that Ligand's stock had no intrinsic value and provided additional commentary on Ligand. He conducted many such interviews with Benzinga, an online financial media outlet, including appearing on Benzinga's "Premarket Prep" show, which provides investors with information prior to market open. Lemelson discussed Ligand in at least four of these live and written interviews:

- a. On June 19, 2014, Lemelson appeared on Benzinga's Premarket Prep show, for an audio interview (the "June 19th Interview") in which he falsely stated that a Ligand representative agreed with Lemelson's statements about Promacta in the June 16 Report and subsequently reiterated in the August 4 report.
- b. On August 13, 2014, Lemelson appeared for a second time on the Benzinga Premarket Prep Show for an audio interview (the "August 13th Interview").
- c. On September 16, 2014, Lemelson appeared for a third time on the Benzinga Premarket Prep Show for an audio interview (the "September 16th Interview").
- d. On October 16, 2014, Lemelson appeared for a fourth time on the Benzinga Premarket Prep Show for an audio interview (the "October 16th Interview").

31. The purpose of Lemelson's reports and interviews was to shake investor confidence in Ligand and drive down Ligand's share price. For example, in a solicitation to a prospective Amvona investor, Lemelson touted the June 19th Interview and asserted that "[s]hares of Ligand dropped ~2% during the interview." Similarly, a major financial news organization noted that Ligand's stock price "fell more than 7 percent" after Lemelson published his report claiming that demand for Promacta was rapidly declining.

32. Lemelson took affirmative steps to suppress commentary that highlighted his bias, his lack of familiarity with the pharmaceutical industry, and his motivation to drive down the price of Ligand stock. For example, Lemelson successfully petitioned Seeking Alpha to remove commentary on his Ligand-related reports on or around at least the following dates:

- a. June 22, 2014 (five separate comments by five separate accounts removed),
- b. June 23, 2014,
- c. June 24, 2014,
- d. August 4, 2014 (two separate comments by two separate accounts removed),
- e. August 23, 2014 (two separate comments by two separate accounts removed),
- f. August 26, 2014, and
- g. May 1, 2015.

Lemelson also unsuccessfully attempted to remove comments critical of his Ligand-related reports on July 7, 2014.

33. Lemelson expanded Amvona's short position in Ligand stock between May 22 and August 4, 2014, to 65,736 shares. He covered a significant portion of this position in August 2014, after Ligand's share price dropped from \$68.72 on June 16, 2014, to \$51.75 on August 22, 2014, in the wake of Lemelson's negative reports and interviews. Lemelson covered the bulk of Amvona's remaining short position in October 2014. In total, Lemelson sold short (and bought to cover) 77,836 shares of Ligand in 2014.

34. Amvona profited by approximately \$1.3 million from this trading, and, as a part owner of Amvona, Lemelson personally profited from his fraudulent trading activity.

**B. Lemelson's False and Misleading Statements Concerning Ligand.**

35. Lemelson presented his negative reports on Ligand as a purported exposé on the company's inner workings, and claimed that his statements about Ligand were based on extensive research and discussions with the company's representatives and with medical experts. In his reports and other public statements, Lemelson intentionally or recklessly made the following material misstatements of fact.

**1) Lemelson Falsely States that Ligand's Flagship Product was "Going Away."**

36. The central thesis of Lemelson's June 16th Report was that Promacta, Ligand's flagship drug and primary source of revenue, was facing competitive pressure from a new competing drug, Sovaldi, which would soon render Promacta obsolete. Lemelson subsequently sought to lend credence to his thesis by falsely stating that a Ligand representative agreed with him and acknowledged that Promacta was going to become obsolete.

37. Specifically, following publication of the June 16 Report, Lemelson appeared on Benzinga's Pre-Market Prep show on June 19, 2014. During the June 19th Interview, Lemelson made the following false statement of material fact: "I had discussions with [Ligand] management just yesterday – excuse me, their [Ligand's] IR [investor relations] firm. And they basically agreed. They said, "Look, we understand Promacta's going away.'"

38. Lemelson's statement referenced a conversation he had on June 18, 2014, with a representative of Ligand's investor relations firm (the "IR Representative"). The IR Representative, however, never made any such statement. The IR representative notified Lemelson of that fact via email after hearing Lemelson's Benzinga interview. Lemelson never

responded to the email. Nor did Lemelson correct or withdraw his false statement, or disclose that the IR Representative denied having made the statement Lemelson attributed to him.

39. Lemelson made this false statement of material fact to support his argument that one of Ligand's main revenue sources—royalties from licensing Promacta—was imperiled and that Ligand's stock was therefore overvalued.

40. Lemelson also attempted to bolster his false representation that Promacta was on the brink of obsolescence by misleading the readers of his reports about other “evidence” he had about Promacta. The June 16 Report cites information provided by “an Associate Clinical Professor of Medicine and Surgery at one of the largest transplant Hepatology departments at a major U.S. university hospital and also with the Chief of abdominal surgery and transplantation at a major European university hospital.” This statement was itself misleading because: a) Lemelson did not disclose that the European hospital doctor was actually Amvona's largest investor (and thus had a significant financial interest in making Ligand's stock price fall), and b) Lemelson never spoke with the U.S. hospital doctor, relying only on a report from his largest investor on what the U.S. hospital doctor had said.

41. Further, none of the information Lemelson identified as the source of his statement about Promacta suggested that Sovaldi would render Promacta obsolete. Specifically, Lemelson cited two articles in the June 16th Report as “references to the obsolete nature of [Hepatitis C] supportive care treatments such as Promacta,” despite the fact that neither article discussed Promacta, and neither article could be fairly construed as implying or suggesting that Sovaldi would render Promacta obsolete.

42. In sum, Lemelson's false statements about Promacta were falsely attributed to Ligand and had no other reasonable basis in fact. He either intentionally lied about Promacta's viability, or was reckless as to the truth or falsity of his statements.

43. Lemelson's false statements about Promacta were material. Each concerned the viability of one of Ligand's main sources of revenue. These material falsehoods supported Lemelson's misrepresentations that Ligand's revenue streams were in peril, and were thus central to his scheme to drive down Ligand's stock price.

**2) Misstatements About Viking Therapeutics, Inc.**

44. Lemelson published another report about Ligand on July 3, 2014. In that report, in addition to repeating his claims about Promacta, Lemelson also took aim at Ligand's business relationship with Viking. Lemelson stated that "Ligand appears to be indirectly creating a shell company through Viking to generate paper profits to stuff its own balance sheet." He further stated that Ligand had "engaged in a 'creative transaction' with an affiliate shell company called Viking Therapeutics" to the detriment of Ligand shareholders. To bolster and lend credence to these accusations, Lemelson made material misstatements of fact regarding Ligand's licensing agreement with Viking and Viking's Form S-1 registration statement (the form the SEC requires initially to register securities for public sale).

45. Viking was not a "shell." It was in the business of developing treatments for certain kinds of illnesses. Ligand had five drugs that it licensed to Viking to develop. Ligand had also invested in Viking and bought just under half of the company before Lemelson started trying to drive Ligand's stock price down. In short, Viking was working on developing certain of Ligand's drugs with financial support from Ligand.

46. In the July 3rd Report, Lemelson falsely stated that, as of the filing of Viking's July 1, 2014 Form S-1 registration statement, Viking had "yet to consult with [its auditors] on

any material issues” and that the “financial statements provided in the S1 accordingly are unaudited.” Lemelson also falsely stated in the same report that “Viking does not intend to conduct any preclinical studies or trials.” None of these statements were true, and each was made to support Lemelson’s false claim that Viking was “an affiliate shell company” that Ligand used to “create almost a veritable pyramid scheme of shell companies” that was “guaranteed to lose money.”

47. Lemelson’s statements about auditors and financial statements were false and contradicted by Viking’s July 1, 2014 Form S-1, which Lemelson relied upon when writing his July 3 report. The Form S-1 contains a letter from Viking’s new auditors stating that they have “audited the balance sheets of Viking . . . as of December 31, 2012, and 2013.”

48. Further, the May 21, 2014 Master License Agreement between Ligand and Viking, which was attached to the Viking Form S-1, stated that “Viking is engaged in the research, development, manufacturing and commercialization of pharmaceuticals products.” Through the Master License Agreement, Viking obtained licenses to develop drugs, and leased space from Ligand to conduct the necessary research and development activities, which include preclinical studies and trials. Lemelson’s statement that “Viking does not intend to conduct any preclinical studies or trials” is thus contradicted by the very document Lemelson supposedly relied upon.

49. In short, each of Lemelson’s false statements about Viking is contradicted by the source Lemelson supposedly relied upon. Lemelson therefore either intentionally lied about, or was reckless as to the truth or falsity of, his statements.

50. Lemelson’s falsehoods about Viking were material. Each concerned a significant financial transaction and sought to both cast doubt on the stated benefits of the transaction to

Ligand and to allege misconduct by Ligand management. These material falsehoods supported Lemelson's false claim that the Ligand-Viking business relationship was a sham or fraud designed to artificially inflate Ligand's profits, and were thus central to his scheme to drive down Ligand's stock price.

**3) Lemelson Makes False and Misleading Statements about Ligand's Finances.**

51. In his August 14 and August 22 Reports, Lemelson stated that Ligand was saddled with crippling debt and therefore insolvent. To support this claim, Lemelson falsely stated that Ligand "issued 245 million in new debt, against tangible equity of just \$21,000, giving rise to a debt to tangible equity ratio of 11,667 to 1 (that is \$11,667 dollars (sic) in debt for every \$1 in tangible common shareholder equity)" and that "shareholders have only the protection of \$21,000 in tangible equity to shield them from \$245 million in debt."

52. In calculating Ligand's "debt to equity ratio of 11,667 to 1," Lemelson included the new debt but not the proceeds of the loan, which would have yielded a debt-to-equity ratio closer to 1:1. Lemelson intentionally misstated Ligand's debt-to-equity ratio, or was reckless as to the truth or falsity of his statement.

53. This false statement was material. Lemelson made his false statement about Ligand's debt-to-equity ratio to support his argument that Ligand had rendered itself insolvent by issuing excessive debt. Lemelson's false statement went to the heart of Ligand's overall financial viability and supported his argument that Ligand's stock was worthless.

**C. Lemelson and LCM Misled Prospective Investors.**

54. Both LCM and Lemelson, intentionally or recklessly, and by failing to exercise reasonable care, disseminated the material false statements of fact detailed above to LCM's investors and prospective investors. By doing so, and by omitting to disclose material



information, they caused disclosures by Lemelson and LCM about Amvona's investment strategy and about Lemelson's abilities as a financial adviser to be materially misleading.

55. Lemelson and LCM sent Lemelson's reports and links to his interviews, which contained multiple misstatements of material fact as detailed above, to current and prospective Amvona investors, including in emails dated June 16, June 19 (boasting that Ligand shares dropped two percent during his interview), July 2, July 3, and July 18, 2014. He also touted his results in driving down Ligand's stock price in communications to investors and prospective investors, including in an email dated July 18, 2014; letters to Amvona Fund partners dated July 17, 2014 (claiming that Lemelson's research report and appendix on Ligand "have begun to be proven correct") and October 9, 2014 (citing the decline in Ligand's stock price); an investor presentation dated September 4, 2014 (falsely noting that Lemelson Capital had been credited with the drop in Ligand's market capitalization by certain media outlets); and in multiple posts to his Amvona website. In addition, in using Lemelson's reports to solicit potential investors to entrust their funds to him, Lemelson and LCM did not disclose that the profitability of their short-selling strategy depended upon Lemelson's fraudulent manipulation of Ligand stock through false statements, rather than his ability to identify a company whose stock would decrease on its own based on its inherent lack of value. This omission also made other disclosures about Amvona's value-focused investing strategy materially false and misleading.

**FIRST CLAIM FOR RELIEF**

**Fraud in the Purchase or Sale of Securities in  
Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

**(Lemelson and LCM)**

56. The Commission realleges and incorporates by reference paragraphs 1 through 55 above, as if set forth fully herein.

57. As detailed above, Defendants Lemelson and LCM engaged in a fraudulent scheme through a series of fraudulent acts, statements, and material omissions designed to drive Ligand's stock price down and profit from a short position in Ligand stock.

58. By engaging in the conduct above, these Defendants, directly or indirectly, acting intentionally, knowingly, or recklessly, by the use of means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) have employed or are employing devices, schemes, or artifices to defraud; (b) have made or are making untrue statements of material fact or have omitted or are omitting to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) have engaged or are engaging in acts, practices, or courses of business which operate as a fraud or deceit upon certain persons, or, in the alternative, aided and abetted these violations.

59. The conduct of these Defendants involved fraud, deceit, manipulation, and/or deliberate or reckless disregard of regulatory requirements and directly or indirectly resulted in losses to other persons.

60. By engaging in the foregoing conduct, Lemelson violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**SECOND CLAIM FOR RELIEF**

**Fraudulent, Deceptive, or Manipulative Act or Practice  
to Investors or Potential Investors in Pooled Investment Vehicle in  
Violation of Section 206(4) of the Investment Advisers Act and Rule 206(4)-8 Thereunder  
(Lemelson and LCM)**

61. The Commission realleges and incorporates by reference paragraphs 1 through 60 above.

62. Section 206(4) of the Advisers Act prohibits an investment adviser from, directly or indirectly, engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative. Rule 206(4)-8(a)(1) prohibits an adviser to a pooled investment vehicle from making any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled vehicle.

63. By the actions described above, Lemelson and LCM, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, acting intentionally, knowingly, recklessly, or negligently made untrue statements of material fact and omissions that rendered Lemelson's statements misleading to investors and prospective investors in Amvona.

64. At all relevant times, Lemelson and LCM were "investment advisers" within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. §80b-2(a)(11)]. Lemelson was an "investment adviser" by virtue of his ownership, management and control of LCM, and his provision of investment advice to Amvona. Both Lemelson and LCM were in the business of providing investment advice concerning securities, for compensation.

65. At all relevant times, Amvona was a "pooled investment vehicle" within the meaning of Rule 206(4)-8(b) promulgated under the Advisers Act [17 C.F.R. § 275.206(4)-8]

and Sections 3(a) and 3(c)(1) of the Investment Company Act of 1940 [15 U.S.C. § 80a-3(a) and (c)(1)].

66. By engaging in the conduct described above, Lemelson and LCM violated, and unless enjoined will continue to violate, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

**THIRD CLAIM FOR RELIEF**

**Other Equitable Relief, Including  
Unjust Enrichment and Constructive Trust**

**(As to Relief Defendant The Amvona Fund, LP)**

67. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 66 above as if set forth fully herein.

68. Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)] states: “In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.”

69. Relief Defendant Amvona has received investor funds derived from the unlawful acts or practices of the Defendants under circumstances dictating that, in equity and good conscience, they should not be allowed to retain such funds.

70. Further, specific property acquired by Relief Defendant Amvona is traceable to Defendants’ wrongful acts and there is no reason in equity why Relief Defendant should be entitled to retain that property.

71. As a result, Relief Defendant Amvona is liable for unjust enrichment and should be required to return its ill-gotten gains, in an amount to be determined by the Court. The Court

should also impose a constructive trust on property in the possession of the Relief Defendant that is traceable to Defendants' wrongful acts.

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully request that the Court enter Final Judgment:

**I.**

Permanently restraining and enjoining Defendants, and their agents, servants, employees, attorneys and those persons in active concert or participation with them, who receive actual notice of the order by personal service or otherwise, from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8];

**II.**

Ordering Defendants and Relief Defendant to disgorge the proceeds their ill-gotten gains, plus prejudgment interest;

**III.**

Ordering Lemelson and LCM to pay appropriate civil monetary penalties under Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. §80b-9(e)];

**IV.**

Retaining jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application of motion for additional relief within the jurisdiction of this Court; and

V.

Granting such other and further relief as this Court may determine to be just and necessary.

Dated: September 12, 2018

Respectfully submitted,

/s/ Alfred A. Day

Alfred A. Day (BBO #654436)  
Marc J. Jones (BBO #645910)  
Securities and Exchange Commission  
Boston Regional Office  
33 Arch Street, 24<sup>th</sup> Floor  
Boston, MA 02110  
617-573-4537 (Day)  
617-573-8947 (Jones)  
DayA@sec.gov  
JonesMarc@sec.gov  
Attorneys for Plaintiff

Virginia M. Rosado Desilets  
Sonia G. Torrico  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Securities and Exchange Commission

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Marc J. Jones, (617) 573-8947, Alfred A. Day, (617) 573-4537
Securities and Exchange Commission, Boston Regional Office
33 Arch St, 24th Floor, Boston, MA 02110

DEFENDANTS

Gregory Lemelson and Lemelson Capital Management, LLC

County of Residence of First Listed Defendant Worcester

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Douglas S. Brooks, (617) 338-9300
LibbyHoopes, P.C.
399 Boylston St, Boston, MA 02116

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. 78j(b), 15 U.S.C. 80b-6(4)

Brief description of cause: Securities Fraud

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE

September 12, 2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Alfred A. Day, Senior Trial Counsel, U.S. Securities and Exchange Commission

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

OS Received 07/29/2022

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) \_\_\_\_\_  
\_\_\_\_\_

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- \_\_\_ I. 410, 441, 470, 535, 830\*, 835\*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- \_\_\_ II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820\*, 840\*, 850, 870, 871.
- \_\_\_ III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 376, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 485, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

\*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

\_\_\_\_\_

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES  NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES  NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE NO. \_\_\_\_\_

(CategoryForm9-2018.wpd )



## **Respondent Exhibit 29**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

_____	)	
SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	
GREGORY LEMELSON and LEMELSON CAPITAL	)	Civil Action No. 1:18-cv-11926-PBS
MANAGEMENT, LLC,	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
THE AMVONA FUND, LP,	)	
	)	
Relief Defendant	)	
_____	)	

**DEFENDANTS’ EMERGENCY MOTION TO STAY PENDING APPEAL AND  
FOR ORDER THAT THE “BAD ACTOR” CLAUSE OF REGULATION D  
NOT APPLY TO THIS JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 62(d), Defendants respectfully seek an immediate stay of the injunction against Defendants set forth in the Court’s Judgment, dated March 30, 2022 (ECF No. 274), pending determination of its forthcoming motion for new trial and/or appeal. The injunction will have a devastating impact on Defendants’ business and preclude Fr. Lemelson from pursuing other potential endeavors. In contrast, there is no credible threat to the public in light of Defendants having not violated securities laws in the three years prior and eight years subsequent to the alleged statements in this case. The lack of any credible threat to the public is further buttressed by the Commission electing not to seek a preliminary injunction while this investigation and litigation have been pending, despite their authority to do so. Defendants’ forthcoming motion for new trial and/or appeal will raise serious and difficult

issues of law, including (1) whether the Commission is required to prove stock price movement to establish materiality, an issue over which there is a circuit split and the First Circuit has yet to weigh in, and (2) whether two of three challenged statements constituted non-actionable statements of opinion concerning disclosed facts. Therefore, and for the additional reasons set forth in the accompanying memorandum in support of this Motion, Defendants request this Court issue a stay pending the determination of their forthcoming motion for new trial and/or appeal.

In addition, Defendants request that this Court issue an order that pursuant to Rule 506(d)(2)(iii), they should not be disqualified under the “bad actor” clause of Regulation D of the Securities Act of 1933. Such relief is contemplated by the Rule. Without such an order from the Court, the Defendants would be prohibited from raising additional capital for the existing managed fund and Fr. Lemelson, who has spent his career establishing and growing multiple businesses (in addition to his role as clergy for which he is unpaid) would be prevented from raising capital for any prospective new and unrelated ventures. This would effectively prohibit Fr. Lemelson from earning a living to support his family (including four school-age children), prevent him from financing the charities to which Fr. Lemelson has given substantial amounts of his earnings, and interfere with Fr. Lemelson’s religious ministries that typically serve poor and needy communities, at Fr. Lemelson’s insistence. Accordingly, and for the additional reasons set forth in the accompanying memorandum, Defendants request that the Court issue an order that disqualification under Rule 506(d)(1) should not arise as a result of the Judgment in this case.

Respectfully Submitted,

REV. FR. EMMANUEL LEMELSON,  
LEMELSON CAPITAL MANAGEMENT,  
LLC, and THE AMVONA FUND, LP

By: /s/ Douglas S. Brooks  
Douglas S. Brooks (BBO No. 636697)  
Brian J. Sullivan (BBO No. 676186)  
Thomas M. Hoopes (BBO No. 239340)  
LIBBY HOOPES BROOKS, P.C.  
399 Boylston Street  
Boston, MA 02116  
Tel.: (617)-338-9300  
dbrooks@lhblaw.com  
bsullivan@lhblaw.com  
thoopes@lhblaw.com

Dated: April 15, 2022

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(2)**

I hereby certify that Defendants' counsel conferred with counsel for the Securities and Exchange Commission in an attempt to resolve or narrow the issues but was unable to do so.

/s/ Douglas S. Brooks  
Douglas S. Brooks

**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-participants on April 15, 2022.

/s/ Douglas S. Brooks  
Douglas S. Brooks

## **Respondent Exhibit 30**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	
GREGORY LEMELSON and LEMELSON CAPITAL MANAGEMENT, LLC,	)	Civil Action No. 1:18-cv-11926-PBS
	)	
Defendants,	)	
	)	
and	)	
	)	
THE AMVONA FUND, LP,	)	
	)	
Relief Defendant	)	

**DEFENDANTS’ MOTION FOR NEW TRIAL  
OR TO ALTER OR AMEND THE JUDGMENT**

Pursuant to Fed. R. Civ. P. 59, Defendants Father Emmanuel Lemelson and Lemelson Capital Management (Fr. Lemelson) hereby respectfully move the Court for a new trial, or, in the alternative, to alter or amend the Judgment. As support for this Motion, Fr. Lemelson, relies upon and incorporates the accompanying memorandum and affidavit, and further states as follows:

1. The jury’s verdict as to the three statements for which Fr. Lemelson was found liable was against the great weight of the evidence. The jury’s finding that the three statements were material was based on extraordinarily thin evidence, which was overwhelmed by the Commission’s presentation of evidence concerning its debunked scheme liability claim and the five insolvency statements for which Fr. Lemelson was not found liable, and drops in the price of Ligand stock that were never tied to the three statements. In addition, the jury’s finding that the

Viking statements were not protected opinions was also against the great weight of the evidence, given that Fr. Lemelson's written statements directed readers to the statements he was characterizing, and his statements concerning Viking Therapeutics did not purport to comprise any non-public information. Finally, the jury's finding as false or misleading Fr. Lemelson's statement that Viking would not be conducting preclinical studies—which its CEO admitted during his testimony—was also against the weight of the evidence.

2. Certain evidentiary rulings were erroneous and prejudicial. The Court should not have excluded evidence of the Commission's bias, which then allowed the Commission in closing argument to bolster its own case (including with respect to materiality) by asserting its supposed lack of bias. The Court also should not have allowed Robert Fields, the Ligand investor, to testify (including with respect to materiality) given the Commission's failure to disclose him as a witness; at minimum, his testimony should have been limited consistent with the Court's pre-trial ruling. In addition, the Court should not have excluded as hearsay a letter written on behalf of Ligand by former Congressman Duncan Hunter, urging the Commission to charge Fr. Lemelson, which would have demonstrated that the Commission was not pursuing Fr. Lemelson in the unbiased manner it claimed before the jury.

3. The jury should have been instructed that the Commission needed to prove the statements at issue caused the stock price of Ligand to decrease in order to prove materiality. If it had been, the jury could not have found Fr. Lemelson liable for the three challenged statements because the Commission has no evidence that the three statements moved Ligand's stock price.

4. Alternatively, this Court should amend or alter the judgment to eliminate the injunction, which is unjustified and could result in the wildly excessive penalty of Fr. Lemelson being barred from the securities industry for life.

WHEREFORE, Fr. Lemelson respectfully requests that the Court Allow this Motion.

Respectfully Submitted,

REV. FR. EMMANUEL LEMELSON,  
LEMELSON CAPITAL MANAGEMENT,  
LLC, and THE AMVONA FUND, LP

By: /s/ Douglas S. Brooks  
Douglas S. Brooks (BBO No. 636697)  
Brian J. Sullivan (BBO No. 676186)  
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[bsullivan@lhblaw.com](mailto:bsullivan@lhblaw.com)  
[thoopes@lhblaw.com](mailto:thoopes@lhblaw.com)

Dated: April 27, 2022

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(2)**

I hereby certify that I conferred with counsel for the Securities and Exchange Commission in an attempt to resolve or narrow the issues but was unable to do so.

/s/ Douglas S. Brooks  
Douglas S. Brooks

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(d), Defendants request to be heard at oral argument on this Motion.

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-participants on April 27, 2022.

/s/ Douglas S. Brooks  
Douglas S. Brooks



## **Respondent Exhibit 31**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

<hr/>		)
SECURITIES AND EXCHANGE COMMISSION,		)
		)
Plaintiff,		)
		)
v.		)
		)
GREGORY LEMELSON and LEMELSON CAPITAL		)
MANAGEMENT, LLC,	Civil Action No. 1:18-cv-11926-PBS	)
		)
Defendants,		)
		)
and		)
		)
THE AMVONA FUND, LP,		)
		)
Relief Defendant		)
<hr/>		)

**AFFIDAVIT OF FATHER EMMANUEL LEMELSON IN SUPPORT OF  
DEFENDANTS’ OPPOSITION TO PLAINTIFF’S MOTION FOR ENTRY OF FINAL  
JUDGMENT**

I, Father Emmanuel Lemelson, hereby swear and declare as follows:

1. I am a canonically ordained Greek Orthodox priest and have been identified in the Complaint to this action as Gregory Lemelson. I also serve as the Chief Investment Officer of Lemelson Capital Management, LLC. I am an activist investor. Lemelson Capital Management, LLC is the general partner to the Amvona Fund, LP, a pooled investment vehicle.

2. Prior to forming the Amvona Fund in 2012, I founded and managed a number of companies including:

- a. Progressive Imaging (1993-1998) – a photo studio that catered to high school dances and senior portraits.
- b. Amvona.com (1998-2010) – a hybrid e-commerce and social networking platform that sold photo accessories designed and developed by the company;

- c. Emmanuel Holdings, LLC (2005-2009) – a commercial real estate company;
  - d. Epiphany Labs, LLC (2006-2010) – a company that developed software and technology for both a social network and social shopping platform; and
  - e. The Lemelson Group (2020 – present) – a property management company.
3. In 2021, I launched The Spruce Peak Fund, LP.
  4. All the investors in The Spruce Peak Fund, LP, who were able to, have submitted letters in support for me in this matter.
  5. In addition to the investors that have submitted letters herewith, one of my investors is the Honorable Paul A. Magnuson, a presiding federal judge in the District of Minnesota. Judge Magnuson told me that he cannot submit a letter due to judicial ethical rules, but that he wants to continue investing with me. In fact, Judge Magnuson previously indicated that he was inclined to increase his investment.
  6. There are only two other investors in The Spruce Peak Fund, LP that have not submitted letters in support. One of those individuals expressed to me that he cannot submit a letter due to his employer's guidelines, which is also within the securities industry, but that he otherwise happily would have. This investor, like others, has expressed an interest in increasing his investment. The last investor has been unreachable lately because of personal issues.
  7. All of the investors in both The Spruce Peak Fund, LP and the Amvona Fund, LP are sophisticated investors and include investment managers, a retired financial planner, an executive consultant in risk management, activist investors, an individual who runs his own hedge fund, an attorney and CEO, a managing director of national accounts for an asset management firm, a certified public accountant, and a CEO of a social impact company.

8. I have never been ecclesiastically disciplined, I remain in good standing in the Greek Orthodox Church, where I still actively serve as a priest.

9. I have served the Greek Orthodox Church in various capacities my entire adult life; first as a layman, and later a clergyman. I have not accepted any salary or other financial benefits (apart from small honorariums which did not even cover my travel costs, and which I typically donated) for providing any of these services.

10. I have software that tracks the visitors to my websites Amvona.com and Lemelsoncapital.com. Since the original complaint was filed in this action on September 12, 2018, these sites have been visited by an IP address associated with the Securities and Exchange Commission hundreds of times.

11. The Wall Street Journal article, titled “Hedge-Fund Priest: Thou Shalt Make Money” contains a number of misrepresentations, which I addressed in two public rebuttals posted through public press releases and also on the Amvona website in November 2015 (before this litigation was ever filed and before I was aware that I would eventually become the target of the investigation in this case). Also, as a result of my clear public rebuttals, and pointing out the demonstrably false nature of the WSJ piece, news sites, such as Christian Today, retracted their coverage of the story. Those rebuttals are available, among other places, at [Amvona - Lemelson Capital Management Releases Response to Wall Street Journal Profile](#) and [Amvona - Lemelson Capital Management Releases Second of Two Critical Responses of Wall Street Journal Profile](#). With regard to the present matter, and as clearly stated in my public releases, I deny ever making the statement that I could “crash stocks,” and pointed this fact out to the SEC as early as 2015.

12. While my wife, Anjeza, is listed as the owner of Lemelson Capital Management, she plays no active role in the management of the investments or operations.

13. I have used a significant portion of the money earned from my work over my professional career, including with the Amvona Fund for various charitable purposes including but not limited to the following:

- a. \$15,000 donation to an orphanage in Uganda;
- b. \$10,000 donation to the Taxiarche Greek Orthodox Church;
- c. A \$15,000 donation to the St. Nektarios Greek Orthodox Church
- d. \$15,000 donation to the Magis Center;
- e. \$50,000 donation to Ecumenical Patriarchate to fund a foundation that they asked me to establish (which I did); and
- f. \$100,000 in expenses to re-establish the Greek Orthodox Church of the Epiphany in Lugano, Switzerland; and
- g. \$15,000 donation to the Greek Orthodox Metropolis of Bursa, for the restoration of ancient churches.
- h. \$700,000 to date to construct St. Katherine Church for a community that would otherwise not be able to afford a place to worship (based on current estimates, I plan to spend a total of over \$1,000,000 to complete construction of this church). I currently fund approximately \$10,000 per year in operating costs for the church which does not collect any stewardship fees from the faithful.

14. Float is an industry term meaning the total number of shares that are available for public investors to buy and sell. The short percentage of float is the percentage of a company's stock that has been borrowed from the float and sold short by investors, compared to the number of shares of a company's stock that are available to the public. A short percentage of float above 20% is considered very high. *See*

<https://www.investopedia.com/ask/answers/05/shortexceed50.asp#:~:text=The%20short%20percentage%20of%20float,are%20available%20to%20the%20public.>

15. From June to October 2014, the short percentage of float for Ligand was between 18%-25%. Subsequently, Ligand's short percentage of float continued to grow, peaking at over 87% in 2020. This data is reflected in Exhibits FF, RR-SS to the Opposition to the Plaintiff's Motion for Entry of Judgment. The data comes from YCharts, which is a software company for which I have paid to access financial data to assist with investment research.

16. The S&P 500 index is the most popular measure to assess the stock market's performance. It measures the value of stocks of the 500 largest corporations by market capitalization listed on the New York Stock Exchange or NASDAQ composite. The S&P 500 is calculated by taking the sum of the adjusted market capitalization of all S&P 500 stocks and then dividing it with an index divisor, which is a proprietary figure developed by Standard & Poor's.

<https://www.investopedia.com/ask/answers/040215/what-does-sp-500-index-measure-and-how-it-calculated.asp#:~:text=The%20S%26P%20500%20measures%20the,Stock%20Exchange%20or%20Nasdaq%20Composite.>

17. The NYSE Arca Biotechnology Index is an index designed to measure the performance of a cross section of small, mid and large capitalization companies in the biotechnology industry that are primarily involved in the use of biological processes to develop products or provide services. <https://www.marketwatch.com/investing/index/btk>. See also, [https://www.nyse.com/publicdocs/nyse/indices/BTK\\_Index\\_Methodology\\_Version\\_2.pdf](https://www.nyse.com/publicdocs/nyse/indices/BTK_Index_Methodology_Version_2.pdf)

18. Since the Commission filed the Complaint in this matter, Ligand has underperformed the S&P 500 index by 111.3% and underperformed the NYSE Arca

Biotechnology Index by 52.67%. This data is reflected in Exhibits RR, SS to the Opposition to the Plaintiff's Motion for Entry of Judgment. The data comes from YCharts, as described above.

19. Since the Commission filed the Complaint in this matter, Viking Therapeutics has underperformed the S&P 500 index by 119.44% and underperformed the NYSE Arca Biotechnology Index by 60.85%. This data is reflected in Exhibits TT, UU to the Opposition to the Plaintiff's Motion for Entry of Judgment. The data comes from YCharts, as described above.

20. As of close of market on January 20, 2022, Ligand's stock price was 113.68 per share and Viking's stock price \$3.95 per share.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United State of America that the foregoing is true and correct.

Executed: January 20, 2022

Rev. Fr. Emmanuel Lemelson  
Father Emmanuel Lemelson

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-participants on January 20, 2022.

/s/ Douglas S. Brooks  
Douglas S. Brooks



## **Respondent Exhibit 32**

FROM THE DESK OF  
FR. JOHN A. PECK

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Monday January 10, 2022

I'm writing this letter in support of Fr. Emmanuel Lemelson.

I've known Fr. Emmanuel in his capacity as a priest for about 7 years. During this time I have come to know him as one of the most honest, humble, and courageously forthright clergymen I've ever known. He is exceptionally clear in his communications, and particularly with regard to investments (I only recently took advantage of Fr. Emmanuel's financial expertise).

He is professional, and completely transparent, and has always taken the time to explain difficult (for me) concepts and ideas with regard to investing, and I have been aware of his suit in court, and I am aware of the SEC case and verdict.

I hope and pray that the court will permit Fr. Emmanuel to serve as my financial investment advisor. Again, I wish to continue to invest with Fr. Emmanuel's investment funds under his guidance and leadership.

In Christ,

A handwritten signature in blue ink, appearing to read "Fr. John A. Peck". The signature is fluid and cursive, with a long horizontal stroke at the end.

Fr. John A. Peck  
Rector, All Saints of North America Orthodox Church  
Dean, GreatMartyr Euphemia Orthodox Theological Academy

**One Horizon Foundation**

a world that works for everyone

Lennox Paton Corporate  
Services, Ltd.  
P.O. Box N-4875  
Fort Nassau Centre  
Marlborough Street  
Nassau, The Bahamas

January 3, 2021

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Regarding: SEC v. Lemelson

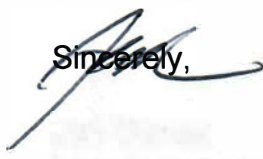
Dear Judge Saris:

I am the investment manager of a charitable endowment fund, the One Horizon Foundation, that seeks to invest a portion of its capital with Father Lemelson. I have known Father Lemelson since 2016, having closely followed his investments and found him to be an outstanding and trustworthy advisor, in every way an excellent steward of his clients' funds.

Having closely followed SEC v. Lemelson, I was satisfied to see that the jury found he did not engage in a scheme to defraud. Frankly speaking, the findings of misleading statements are not of any concern to me, as all the challenged statements were immaterial to any investment in Ligand. To put it simply, there were a dozen valid and serious red flags raised by Father Lemelson surrounding Ligand, and the SEC was only able to take issue with very minor points. The jury realized this and settled the matter when they cleared Lemelson of the alleged "scheme to defraud," or any violations of the Advisors Act. It is tragic that the SEC ignored the verdict and nonetheless issued a false press release in which they claimed the jury had found Lemelson engaged in a scheme to defraud.

Therefore, I humbly ask you to impose no penalties against Father Lemelson, who has already been plagued by years of abusive prosecution by the SEC who seem to care more about defending Ligand than protecting the public interest. In contrast to the dereliction by the SEC, Father Lemelson's voice and leadership in the market over many years have helped countless investors steer clear of bad companies like Ligand. He needs to be allowed to continue his public effort and remain as a licensed investment advisor serving as a trusted steward of his clients' funds and livelihoods.

Sincerely,

  
Jon Carnes  
Investment Manager

November 27, 2021

Re: Father Emmanuel Lemelson

To Whom It May Concern:

We have known Father Lemelson since he arrived in Keene after being appointed by the Archdiocese of Boston as our priest at St. George Greek Orthodox Church in Keene, NH. He has since become not only our spiritual leader but a wonderful friend and our financial advisor. Father has come to our house with his son and our doors are always open to him. We have complete trust and confidence in him as a family man, religious leader and Chief Investment Officer of Lemelson Capital Management.

We have investments in the Axia and Spruce Peak Funds and are familiar with the ongoing trials by the SEC and their findings so far. Emmanuel has always been transparent about this case and with all his financial investments. He has always advised us to do our own research and background checks into any investments so we are completely informed and able to make educated investments. He has provided us with information whenever we need clarification concerning our investments and with the methodology of his investment strategies. It is refreshing to know that he actually delves deeper into the workings of a company before he invests than any other financial advisors we have dealt with and are familiar with. It is our fervent hope that Emmanuel Lemelson's case with the SEC is totally resolved in a fully positive manner and that he is allowed to continue being a financial advisor extraordinaire. We have complete faith and confidence in him and his ability to provide the best financial advice available. We fully intend to keep investing our hard earned money with him and his firm.

We are both fully retired after spending a lifetime in financial planning, the securities business and education. Louis has been a financial planner with the John Hancock company and Senior Manager for Boston Consulting Group. Sue-Ellan has spent over 30 years in public education.

Sincerely,

Louis N. Kolivas

Sue-Ellan Kolivas

BERNARD PETER ROBICHAU | 801 EAST NORTH STREET | GREENVILLE, SC 29601

1 December 2021

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Your Honor,

I am writing in regard to Rev. Fr. Emmanuel Lemelson, whom I have known for two years. During this time, we have shared meals together and spoken about business, faith and family, and we maintain this friendship to this day through telephone calls, text messages and emails on holidays/special occasions. I consider him a friend and someone that I would seek out for trusted advice (both personal and financial). He has managed a portion of my investment funds for over a year now, and I believe that he has always been transparent with me about the risks and rewards associated with his investment practices (which I believe are based on value as opposed to speculation).

I have been working in the field of risk management as an executive consultant for over a decade now, and Fr. Emmanuel embodies what a CIO at a hedge fund should be, where risks and rewards are truly "hedged" in order to afford participants in the fund a balanced and sound opportunity for investment that is not driven by speculation or unreasonable risk. Steady growth, and to moon shot speculation, is what I have invested in with Fr. Emmanuel.

As our professional and personal networks overlap, I was aware of the SEC case brought against Fr. Emmanuel before I met him personally, and any questions that might have existed in my mind (based on hear-say and media reports) were put to rest as our relationship progressed. I don't agree with him in every matter, but I trust him and believe that he operates from a place of integrity and sincerity. I have followed the SEC case as it progressed, and I was disappointed to see that some of the lesser charges were not vacated along with the primary charges (where he was found not liable).

It is my hope that Fr. Emmanuel will continue to act as my investment advisor for many years to come. I have, in fact, provided Fr. Emmanuel's cell number to my wife, and asked her to contact Fr. Emmanuel personally for advice on the handling of life insurance funds if I should die before she does. I know that he will not only offer sage financial advice but will also act in a caring and compassionate manner as she is faced with complex and difficult decisions.

Sincerely,



B. Peter Robichau  
Principal, Category 3 Partners, LLC

November 26, 2021

Randy E. Hardin

[REDACTED]  
[REDACTED]

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Dear Judge Saris:

I first reached out to Fr. Emmanuel by email after reading about his presentation at the annual meeting of Berkshire Hathaway in 2017. As an Orthodox Christian, I wanted to know more about him and his unusual twin occupations of priest and investment advisor. I was surprised when he responded right away and asked for my telephone number. He called and we enjoyed a personal conversation that I did not expect.

Over the subsequent years, we have stayed in contact and developed a valued friendship. Although we come from different cultural, educational, and professional backgrounds, he has always treated me with respect and I have learned to trust and respect him. Both in our personal conversations and our periodic virtual meetings with other investors, he has been forthright and honest about the SEC case. I have also followed the case through online news sources.

During our conversations, I shared that I retired from the U. S. Navy in 2004 and have been self-employed in my own businesses most of the time since then. I asked about investing in his fund but expressed my concern that I could not meet the published minimum investment requirement. He accepted a lower amount from me with the hope that I would add more as I am able to do so. I have continued to invest and will add more in the future.

I have deep respect of our laws and system of justice; however, I've also seen cases where clear mistakes have been made. I pray that God will bless you with wisdom and discernment and you will recognize Fr Emmanuel as the man of high integrity that I know.

Sincerely,



Randy E. Hardin  
Command Master Chief  
U. S. Navy (Retired)



**THOMAS R. MASON**  
**LAW OFFICE OF THOMAS MASON**  
1500 District Ave.  
Burlington, MA 01803  
Phone: 781-238-0260  
[thomasmasonlaw@gmail.com](mailto:thomasmasonlaw@gmail.com)  
[attytmason@gmail.com](mailto:attytmason@gmail.com)

January 18, 2021

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Re: CA. No. 18-11926, SEC v. Lemelson

Dear Judge Saris:

I am writing to you regarding the disposition regarding the outcome of the above-referenced case. To introduce myself, I have been a practicing attorney in good standing with the Massachusetts Bar since 1989. I have also been a member of this district's bar as well as the First Circuit Court of Appeals. Throughout the years, I have made many appearances in federal and state courts. I graduated from the University of Pennsylvania's Wharton School with a B.S. in Economics in 1984 and Boston University Law School in 1987. Throughout the years, I have practiced in many different courts. I have appeared in federal as well as state courts and am still actively practicing law without ever being disciplined. My main law office has been located in Burlington, Massachusetts since 2008.

I have known Fr. Emmanuel Lemelson for approximately the last seven years. I first became acquainted with him as a friend, then as a client, and finally as a priest and spiritual advisor to me. I also know Fr. Emmanuel as a husband and a parent. Getting to interact with Fr. Emmanuel has been a great experience for me. Since I first met Fr. Emmanuel, I have been in the position to learn about many details about his life, his philosophy, and his vocations. But I think the thing which I appreciate best is that he is a fine husband, father, and friend. I have found Fr. Emmanuel to be a person who tries to help others be their best. He is somebody who has courage to take a stand and be outspoken about his beliefs, even if its not fashionable and popular. I think sometimes he is a harder judge on himself than others. When I have had health difficulties and personal loss, I have found Fr. Emmanuel to be a kind and compassionate friend.

-2-

I know Fr. Emmanuel well and I have always found him to be honest and trustworthy. In fact, recently I decided to invest with Fr. Emmanuel, and I hope he will continue to be an investment advisor to me and my family for many years to come.

In reviewing the case, I can see no evidence that anyone was ever misled by Fr. Emmanuel. I see no evidence that anyone was ever harmed by Fr. Emmanuel's giving honest opinions about publicly traded securities. As a citizen, I am concerned about the involvement of private companies in this case. I have a concern that the remedies sought by the Securities and Exchange Commission could be affected by Fr. Emmanuel's strongly held opinions and beliefs. Before making a decision about remedies and penalties, I hope you keep in mind my comments as a citizen. If you have any further questions, please do not hesitate to contact me.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Thomas R. Mason", with a long horizontal flourish extending to the right.

Thomas R. Mason, Esq



Honorable Judge Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Dear Judge Saris,

My name is Daniel David, and I am writing to you today on behalf of Father Emmanuel Lemelson. Over the past four years Father Emmanuel has become a positive, influential voice in my life. My first interaction with Father Emmanuel was in 2018 at a stressful, chaotic, and confusing time for me. I was taking daily abuse running for Congress, dissolving a 12-year business partnership, and garnering bizarre added attention from my role as a lead protagonist in what became a popular documentary movie.

Father Emmanuel saw the documentary, and he reached out to me to offer his unsolicited congratulations. During this call Father Emmanuel and I discovered we had much in common as activist investors, and with me having been raised Orthodox Catholic, and Father Emmanuel a Greek Orthodox Priest. Our conversations related to investing came easy, and I was astonished at Father Emmanuel's breadth of knowledge in finance. Talking to extremely intelligent financial professionals is not unusual for me. Speaking with a Priest who is fluent, educated, and passionate about finance is highly usual for anyone.

During this conversation, our common religion came up. I found myself in familiar uncomfortable territory. I would have to tell Father Emmanuel that I am not a true believer. My lack of faith has been a great source of frustration, and at times embarrassment, for me especially with my own family, many of whom including my wife are deeply devout. My frustration has always been that I truly want to believe, but when I say I do believe, I feel that I am lying. Asking God for help has always felt wrong, too, since God must know my doubts. And so, I have just not yet been able to get myself to the point of absolute belief.

Over the course of my life, I have asked for help from several Priests and even a Bishop in my own Church. I have also approached other devout practitioners hoping to get help, guidance, and most of all understanding. What I have gotten in return, for my honest admission of troubled or uncertain faith, has been anything but understanding. Their help and guidance revolved around directing me to read the Bible or other books, and to pray. This has not worked for me and has only driven me deeper into my self-exile from religion.

When I explained my lack of faith to Father Emmanuel, he told me something shocking, something that that I had never heard before. He told me that it was OK to have doubts, and that we all do, and that anyone who says they haven't had doubts is lying to themselves. He told me that faith is a gift that one can only give to themselves, and that not he, nor anyone else, could or should try to make me believe. But, he added, if I truly was searching, he would be happy to guide me, without judgment, and to the best of his abilities.

Father Emmanuel has stayed in touch with me, and we have become what I consider good friends. Of course, with a true friendship our talks are not just about finance or religion. We also speak freely of

our common interests, hobbies, and life goals, and of the joys and concerns of our families, especially during these uneasy times. Father Emmanuel called unsolicited to offer prayers when my father was sick with Covid, again when my stepmother was infirmed, and then, when she recently passed away.

Judgment is a hallmark of and necessity in the professional world in which I live. Because of this, it is nice to have someone in that life with me who is not quick to judge. It is the more remarkable in him, because I have witnessed firsthand the kind of adverse judgment and religious bigotry to which Father Emmanuel can be subject in that world. A couple of years ago I invited Father Emmanuel to an out of town, across the country for him, event that was an exclusive invite-only affair for the top activist investors in the world. By this time, I knew Father Emmanuel's financial acumen was on par with or even beyond that of many who were attending. I thought his inclusion would be positive for all who attended, showing the intellectual diversity of our unique profession.

To my surprise, at the event I heard many disturbing comments from attendees. Most of these did not know that I had invited Father Emmanuel. These attendees made openly bigoted comments about the way he dressed and his collar, one person asking, "Does he have to wear that thing?" I interrupted and explained that yes, growing up and to this day, Priests in my church do wear the "collar". The most shocking comment was "Who is that Priest with that young boy?" That young boy was Father Emmanuel's son. It turns out that most people are not aware that Priests in the Eastern Orthodox faith can marry. I was furious at the insults and let the people who made these comments know as much. My anger was palpable and obvious. Father Emmanuel unfortunately also became aware of some of the comments made. His reaction, however, was cheerful and understanding. He said that the Church has made some grievous mistakes, and that all he can do is offer his hand to these critics in friendship, hoping for the best.

Throughout our entire relationship, Father Emmanuel has never asked me for anything tangible, only for my friendship and from time to time for advice. It is so refreshing to encounter a Priest who does not pretend to have all the answers, and who seeks advice from his friends. I still struggle with my faith in God, and even so, I have asked Him for help from time to time. As uncomfortable as this felt to me, I think it helped me to ask. I appreciate Father Emmanuel advising me to allow myself that small thing, to allow myself to ask.

My struggles with questions of religious faith notwithstanding, I do not struggle at all with my faith in Father Emmanuel. I know our friendship with continue to grow. I plan on becoming an investor with Father Emmanuel's fund. I have my own hedge fund as well, so I am well acquainted with this type of investment. While Father Emmanuel did not invite me to be a part of his fund, never mentioned the possibility, I recently asked him if I could be. I soon will be. The sentimental human faith that I put in Father Emmanuel through my friendship will be matched by the professional trust of my tangible investment with him. I can think of no greater testament to my belief in him as a good businessman, and a good man.

Regards,



Daniel David

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

January 3rd, 2022

Dear Judge Saris,

I am writing with respect to the recent decision regarding the SEC vs. Father Emmanuel Lemelson. I have known Father Emmanuel since 2015 both as a fund administration client of my firm, and as a trusted friend. During that time, I have come to know him both professionally and personally as I have also served as his firm's outsourced CFO. I know him to be a devoted family man as I have met his wife and children on more than one occasion through the years.

I was amazed at Father Emmanuel's effort to build a Greek Orthodox Chapel in the backwoods of Vermont. He financed the project totally from his own pocket as he believed the area's faith community was vastly under-served. While this was totally a labor of love for him, you can imagine the stress of seeing this project through while at the same time, battling the SEC in an effort to clear his name from these charges.

Regarding our professional relationship, I can say without any doubt, that Father Emmanuel has treated his investors (I am also an investor in his Amvona Fund) and his service providers with utmost transparency and honesty. I have been in the hedge fund business since 1980 and the first thing I said to Father when I saw one of his letters to his investors was that I had never seen a hedge fund manager who provided his investors with more information regarding the fund and their investment than he did. I think the reason for this lies in his desire to teach his investors how to analyze companies balance sheets and most importantly, how to make informed investment decisions, whether they invest in his hedge fund or not. I truly believe Father Emmanuel derives far more pleasure from educating his investors than he does from earning any financial reward for himself.

I am aware of the verdict in the case brought by the SEC and I certainly would like to continue to work with Father Emmanuel for many years and I hope that the court will allow that to be the case.

A handwritten signature in black ink, appearing to read "John Zorain", followed by a vertical line.

John Zorain

15 November 2021

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Re: Father Emmanuel Lemelson

Dear Judge Saris:

My name is Lester Firstenberger. I am an attorney licensed and in good standing in New Hampshire, Ohio and West Virginia, with my New Hampshire license active. I live in Philadelphia and am currently the President and CEO of AiCurio Technology Solutions, Inc., an artificial intelligence company that performs loan level analytics for the US residential mortgage loan market.

I have known Father Emmanuel ("Emmanuel") for approximately four (4) years and have been an investor in the Amvona Fund ("Fund") for approximately three (3) years. I have served as a formal advisor to the Fund but would most accurately describe my relationship to Emmanuel as a friend and informal advisor to Emmanuel personally.

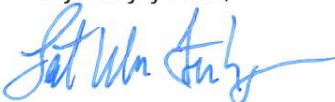
As an investor to the Fund, I am fully aware of the SEC litigation and the various findings of the jury to date. In connection with any future decisions that you may make, I wanted to convey my individual opinions and beliefs regarding Emmanuel and his administration of the Fund, conduct as a person, and ask you to consider the following:

It is my opinion and belief that:

1. Emmanuel is a genuinely kind, compassionate, empathetic, open and honest individual.
2. He is truthful and without guile and would not knowingly make a statement he does not believe to be true; nor would he in context knowingly omit to make a statement when such omission would leave a listener or reader with an inaccurate understanding of his belief or intention.
3. He has been forthright, open and honest with the Investors of the Fund about all investment activities and his investment thesis and opinions of value in his various investment positions.
4. I trust Emmanuel to continue to manage funds I have invested and want him to continue in that capacity.

In closing I ask that you consider the foregoing and allow Emmanuel to continue to help investors that chose to invest with him and Funds he manages.

Very truly yours,



Lester Firstenberger



The Honorable Patti B. Saris  
United States District Court, Massachusetts  
One Courthouse Way  
Boston, Massachusetts 02210

January 11, 2022

Dear Judge Saris:

I am writing you today in defense of Father Emmanuel Lemelson.

I am an investor in the Amvona Fund, having known Father Emmanuel for over two years. I am a professional in the investments industry as a registered investment advisor for over 18 years, having served in various capacities including wealth planning, compliance, sales and operations management. I currently serve in a leadership role with Fidelity Investments.

I was surprised and disappointed to see the original complaint filed by the SEC. I have always known Father Emmanuel to courageously articulate the truth in his many reports over the years.

I know Father Emmanuel to not only possess a fine investment acumen, but also conduct himself with complete honesty and candor. He exemplifies the highest integrity of anyone I have met in the investment industry.

I kindly urge you to strongly consider allowing Father Emmanuel continue to do the good work that he has done, helping individuals with investment needs. Certainly, I would welcome the opportunity to invest with him if he could continue to work in our industry.

Please feel free to contact me at [REDACTED] or 614.496.2288 if you have any questions or wish to discuss this matter.

Sincerely,



Metin B. Kurkcu

November 14, 2021

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Your Honor:

I am writing as a character witness for Father Emmanuel Lemelson. I've known him for over three years and he has been a spiritual advisor and friend for that entire time. I am the CEO and Founder of a social impact company entitled, HealRWorld.

I invited him to speak at a major event for me in Germany in support of the Sustainable Development Goals of the United Nations and interfaith dialogue which is how we met. He was very transparent in the meetings and extremely professional. So much so, that after the meetings my husband and I both decided to invest with Father Lemelson.

I am fully aware of the SEC Case and the verdict...and fully support Father in appealing the adverse parts verdict.

We certainly hope that the courts will allow him to continue to serve as our investment advisor.

Sincerely,

*Michele A. Bongiovanni*

Michele A. Bongiovanni  
Founder & CEO  
HealRWorld LLC  
78 N. Bridge Street  
Somerville, NJ 08876



***Robert K. Bongiovanni, CPA***

78 North Bridge Street Somerville, NJ 08876 Ph:908-450-7313 Fx:908-450-7316

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November 15, 2021

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Your Honor:

I am writing in regard to Father Emmanuel Lemelson. I have known him for over three years. We met in Germany where he spoke in support of the sustainable goals developed by the United Nations. Over the years he has become a good friend.

I am fully aware of the SEC case and the verdict...and fully support Father Lemelson in appealing the adverse parts verdict.

I find him to be transparent and trustworthy and he has kept me fully aware of the SEC case and the verdict. Hoping the courts resolve this matter allowing him to continue to be an investment advisor.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert K. Bongiovanni', with a long horizontal flourish extending to the right.

Robert K. Bongiovanni, CPA

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Dear Your Honor:

January 4, 2022

I am writing on behalf of Father Emmanuel Lemelson, whom I have known since 2015. I met him when he came to serve as priest at the parish I attended, Saint George Greek Orthodox Church in Keene, New Hampshire. As someone who served in the altar and led the congregational singing, I worked closely with him. I am grateful for this experience, because we became friends and I benefitted from his guidance. At that time, I was considering applying to seminary. But, being a recent convert to the faith and not looking like the typical seminary student, I was unsure. Fr. Emmanuel, however, encouraged me to apply. After I was accepted, my final obstacle was to obtain a letter of recommendation from a bishop. Fr. Emmanuel introduced me to his bishop, who went on to support me. I can honestly say that I do not think I would have gone to seminary without Fr. Emmanuel.

Sometimes I also wonder if I would have finished seminary without him. He continued to encourage me and believed in me at times when I didn't believe in myself. I graduated two years ago and am on track for ordained ministry. As I prepare, I always look to Fr. Emmanuel's example of parish ministry as a model to follow. He demonstrated kindness, wisdom, humor, and patience. His sermons inspired us to lead better lives. At the conclusion of the church service, Fr. Emmanuel was under no obligation to stay, but he went to coffee hour, moving from table to table and speaking with each parishioner. He had a positive impact on many lives and the interactions seemed to bring him joy as well. Our community also noted his honesty and generosity. On the final Sunday that he served us, he donated all of his wages back to the parish.

While our paths have taken us to different places, Fr. Emmanuel and I have remained in contact. I greatly value our relationship. He is open with me and is someone that I can be honest with. I was upset to hear about his case with the SEC. The accusations against him do not reflect the person that I know. While he has been partially vindicated by the jury finding him not liable for some of the allegations, I would like to see him cleared of all of the allegations and the restoration of his name as an honorable and upright man.

I would be happy to answer any additional questions concerning Father Emmanuel Lemelson. Thank you.

Sincerely,



David Cornelius Schuster, MDiv







magis center January 6, 2022

The Honorable Patti B. Saris  
 United States District Court for the District of Massachusetts  
 1 Courthouse Way  
 Boston, MA 02210

Your Honor,

I have known Fr. Lemelson for 28 years (1994 through 2022) as a professor of philosophy at Seattle University, and later as a fellow priest with an interest in business ethics. I was a professor of philosophy/ethics at Georgetown University and Seattle University (where I taught business ethics and held the Frank Shrontz Chair of Professional Ethics). I then assumed the presidency of Gonzaga University in Spokane, Washington for eleven years (1998-2009), during which time I held the John Aram Chair of Business Ethics.

Fr. Lemelson was a philosophy student of mine for two years at Seattle University. He always had a keen interest in the big questions from metaphysics to philosophy of science to ethics. His outstanding performance came not only from his intelligence, but his enthusiasm to pursue the truth and do the right thing – a character attribute that remains to this day. Fr. Emmanuel and I remained in contact after he graduated from Seattle University, particularly when he indicated that he was interested in pursuing a religious vocation in the Orthodox Catholic Church. I was not surprised at his religious commitment, because it was consistent with his character and desire to make a positive difference in the world and for the kingdom of God.

Though some may think it is a strange combination to be interested in religion, ethics, and business investment, I did not think this was unusual because I shared in those same interests myself. There is a good deal of overlap of these areas, particularly in the area of investment ethics and transparency. Fr. Emmanuel knows this area and has written about it, and I am confident that he would never knowingly violate a trust, perpetrate a fraud, hide information significant to investors, or ignore his responsibilities as a fiduciary. I believe I am a good judge of his character because I have not only discussed these matters with him but seen how he carries out his professional tasks with utmost responsibility and compliance with the law.

I have always found Fr. Lemelson to be transparent, accurate, and honest both as a student of mine, a business professional, and a priest. Throughout the last 28 years, I can attest that I have *never* witnessed him doing something dishonest, deceitful, or destructive to anyone in any situation. To my knowledge, he has kept his business interests and professional writing on the same level of integrity as his religious practice before God.

I have read many of Fr. Lemelson's company assessments over the years because I have a particular interest in business ethics. I have found his analyses to be very perceptive and honest, revealing ethical challenges not only in particular companies, but also in the way that Wall Street carries out its affairs and supposed transparency. I find it utterly incomprehensible and beyond credibility that he would have done anything to deliberately deceive investors or harm a company for his personal benefit. It is completely outside of his character, religious commitments, ethical commitments, and his life mission to bring greater transparency and honesty in reporting to marketplaces suffering from these challenges.

If you have any questions regarding this character reference, I would be happy to respond to them. Contact me at [spitzer@magiscenter.com](mailto:spitzer@magiscenter.com) or 949-271-2727 ext 1. Thank you for your attention to this matter.

Sincerely,

Fr. Robert J. Spitzer, S.J., Ph.D.  
 President



The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

January 3, 2022

Dear Honorable Patti B. Saris,

My name is Ashley Haseotes, I am the President and Founder of One Mission, a pediatric cancer charity based in Massachusetts, established in 2010. Please accept this letter as my personal character assessment of my friend, Rev. Fr. Emmanuel Lemelson. Fr. Emmanuel and I have known one another since 2011. We first meet as our children attended school together. It was not just his white collar that allowed me to instantly trust and admire Fr., it was his demeanor; he was and continues to still be a kind, thoughtful, and caring man. He cares about his friends and will often put his own needs and schedule aside to help those in need. He did this for me in 2019 when I became terribly ill. Fr. drove eight hours to come and see me with an hour's notice for a thirty-minute blessing that I asked him to perform. He did not hesitate to come to my aid.

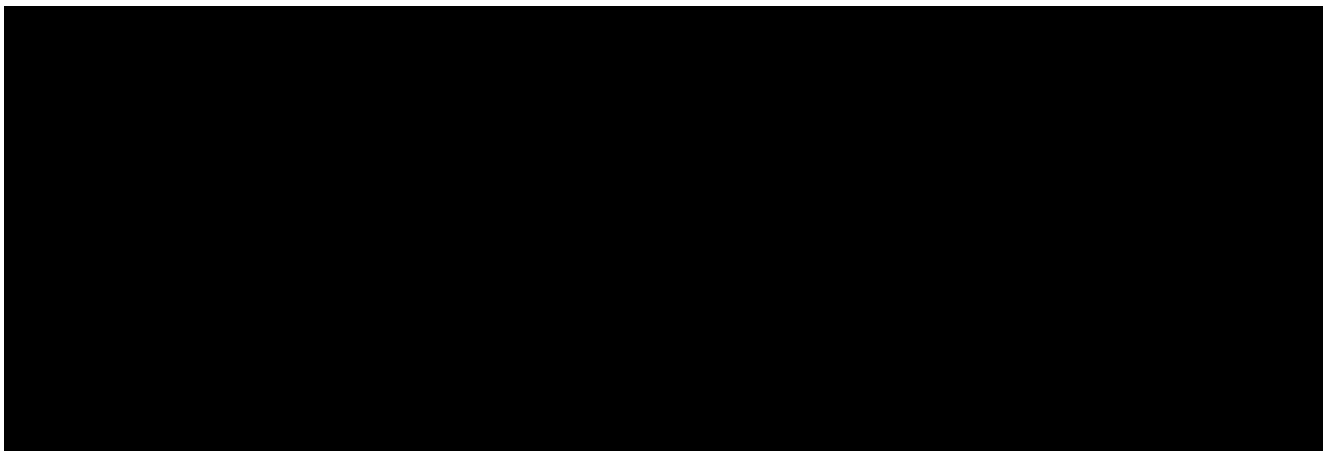
When our children were young, I allowed mine to play with his children, as I have always trusted Fr. implicitly. Once he and his family moved from Massachusetts, our contact became less, as school parties and pick up run ins stopped. However, we kept in contact via phone and text. He has become a trusted friend and mentor to me and my family.

Fr. Emmanuel is special to me in many ways. I am married to a Greek man, and because I was baptized Catholic, I did not need to convert to Greek Orthodox to be married in the Greek church. Later in my life it became important to me to become baptized. Fr. Emmanuel was the first person I called; he was the only priest whom I wanted to share this special moment with. This sacrament is one that was not required of me, rather I chose it, making me able to pick any priest and I chose my trusted friend.

I am aware of the SEC case and verdict, and I believe that Fr. Emmanuel's intentions have always been to speak the truth. I have been watching him put aside his own safety, and emotional needs as he fights for justice in this case as well. Fr. is willing to take the risk in speaking the truth in an effort to protect others from harm.

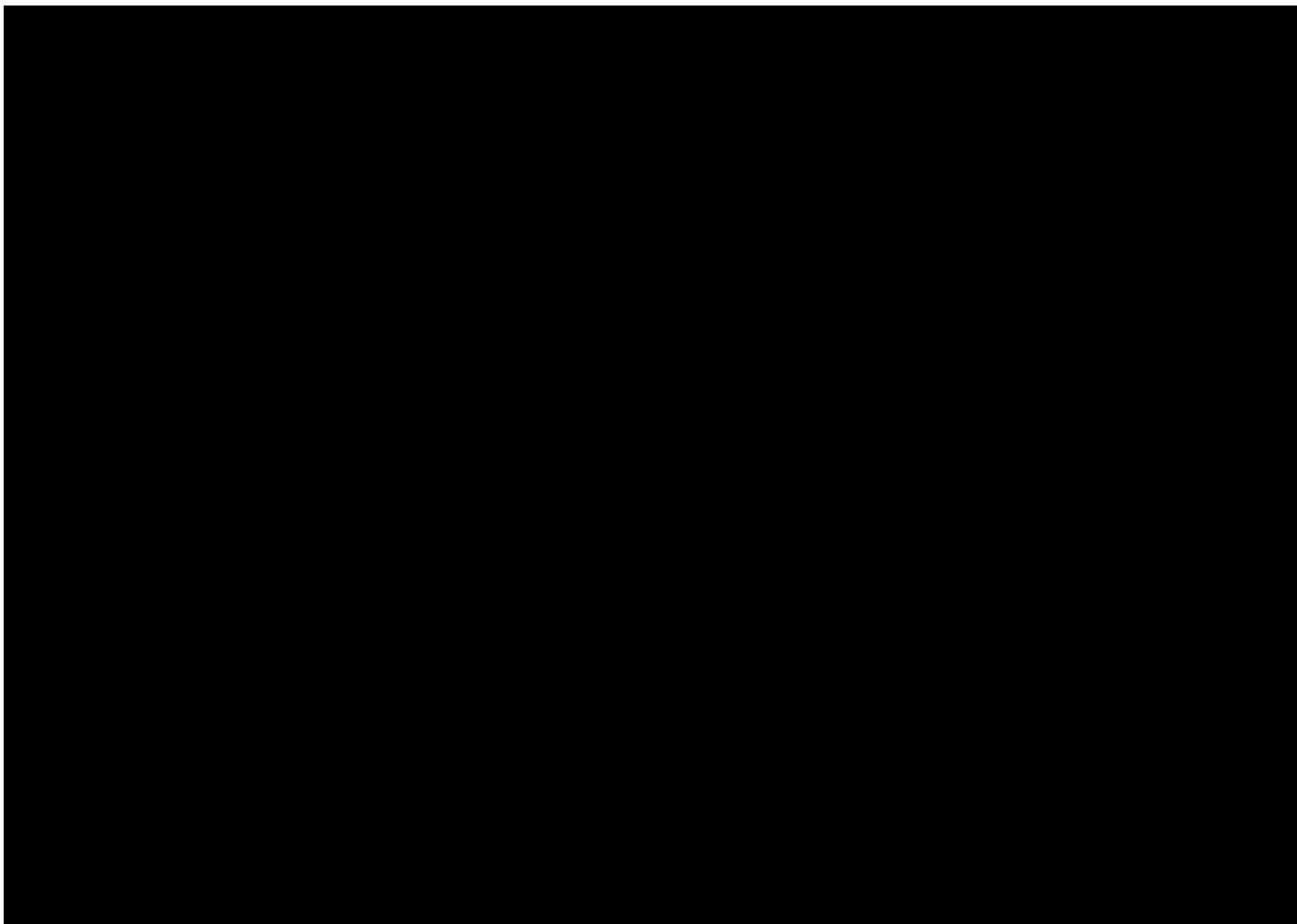
Thank you for your time.

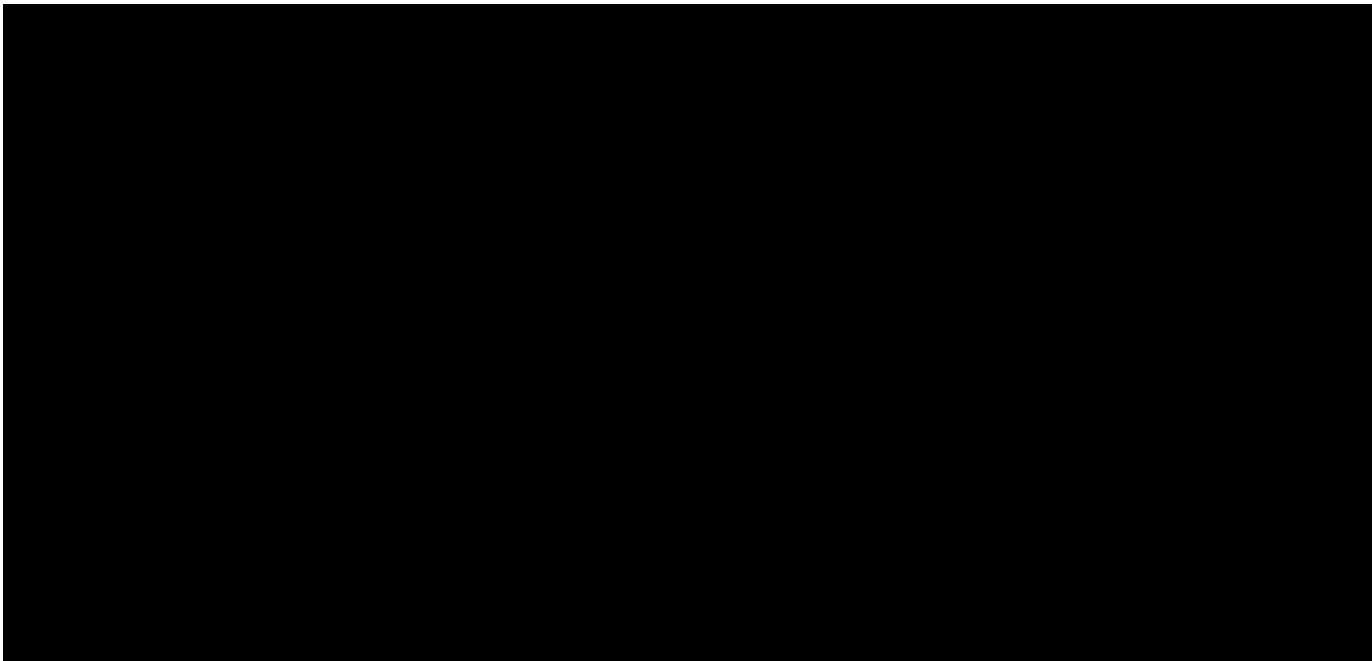
  
With Respect,  
Ashley Haseotes  
ashley@onemission.org



January 11, 2022

**VIA E-MAIL**  
**PERSONAL AND CONFIDENTIAL**





Please don't hesitate to contact me if I can be of assistance.

Very truly yours,

A handwritten signature in blue ink that reads "Joshua M. Stone". The signature is written in a cursive style.

Joshua M. Stone

**Dr. Nikolas K. Gvosdev**  
**1751 Ministerial Road**  
**South Kingstown, RI 02879**  
[nearoma@hotmail.com](mailto:nearoma@hotmail.com)

November 16, 2021

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Dear Judge Saris:

I am writing on behalf of the Rev. Emmanuel Lemelson. I have been following the SEC case against him and received the news of the verdict delivered by the jury, particularly that he was found “not liable” for the most critical allegations made against him. I am aware that he is appealing the adverse portions of the verdict, but that, while that process is underway, he may still be subject to the imposition of penalties. I would appreciate the opportunity to share with you my knowledge and opinion of Father Emmanuel as you consider that question.

I have known him for a decade, and was introduced to him through my father, the late V. Rev. Kirrill V. Gvosdev (also a priest in the Orthodox Church). Our association has both been personal (in terms of our families and children spending time together) but also professional and intellectual, in that I have benefited from his vast experience in matters concerning finance and investment while I have been able to share, from my background, developments in both domestic and international politics and to discuss with him trends in both geopolitics and geo-economics that might have an impact on markets, especially in terms of commodities. (I hold teaching appointments at the U.S. Naval War College and the Harvard Extension school, and senior fellowships at the Carnegie Council for Ethics and International Affairs, and the Foreign Policy Research Institute. Let me note here I am writing solely in a personal capacity.) While I have not been blessed with a large net worth of my own, I have always benefited from the advice and perspective Father Emmanuel shares about investing, how to value companies and how to move beyond the public relations statements to assess the true or accurate value of a firm’s stock. I trust his counsel and judgement and believe that he should be able to continue as an investment advisor to serve those who have entrusted him with their funds and resources.

I have always found his presentations and statements to be based on facts and on his assessments. He always explains his investment philosophy and metrics; he offers detailed commentary with substantial sourcing to explain the sources of his information and the basis for his conclusions. He maintains a high degree of transparency which is the basis for the trust that I and others have in his judgments and conclusions. This is because he calls the situation as he sees it, without fear or favoritism.

Beyond his investment advice, he is also a proponent of good stewardship and the importance of using one’s blessings for the good of others and the advancement of the community. I have been blessed to

watch, over the years, the construction of St. Katherine's chapel in Stowe, VT, an endeavor solely financed and supported by Father Emmanuel, which is gifting to the larger community not only a beautiful building whose art and architecture enhances the surrounding community, but as a place for spiritual refuge and counsel.

Should you require further information, I am at your disposal.

With kind regards,

A handwritten signature in blue ink, appearing to be 'Nikolas K. Gvosdev', written in a cursive style.

Nikolas K. Gvosdev

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Your Honor,

My name is Thierry Maison and I met Gregory Lemelson in 2007 Circa3, LLC / Epiphany Labs when I started to work for him as a Chief Technical Officer. As an employee of Epiphany Labs, I could observe Gregory as a fair CEO and Owner of the company, respectful to his employees. Giving them attention to their issues, open to their suggestions, and initiatives. It was a very pleasant working environment.

Mutual respect opened the door to friendship. We separated our business relationship as the company was closed, but the friendship endures.

The friendship grew to include meeting his family, participating in personal events like his ordainment into the Orthodox priesthood, traveling together to meet the Orthodox Patriarch, and many more events.

I guess that his business acuity and analytical skills let him to become an investment advisor, and I become fascinated to see a person able to separate religion and money. Probably because a personal goal of him becoming an investment professional was to help people, rather than selecting an enrichment path at the depend on others.

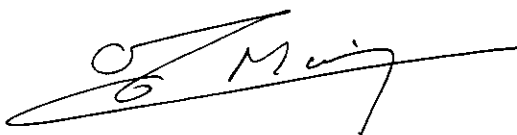
There are two kinds of people on this earth, Takers and Givers. Gregory (now Emmanuel as his priest-given name) is a Giver and always free to help, I honor that.

Today, many conversations, phone calls, let me understand his philosophy in providing advice to his clients and I wish he continues to give such wonderful advice.

Help is something Emmanuel is always ready to give, and I always feel no restrictions in providing the same in my field to technical knowledge on my side.

I am trusting Emmanuel entirely in his actions, knowledge, and advice, and I feel that the court gives him the opportunity of trusting him the same way.

Respectfully and sincerely,

A handwritten signature in black ink, appearing to read 'Thierry Maison', with a long horizontal line extending to the right.

Thierry Maison

*Joan Marie Jacoby*

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

January 13, 2022

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Your Honor,

It has been an honor and privilege to know Fr. Emmanuel Lemelson since 2009, and I am humbled to be given the opportunity to attest to his exemplary character. I was introduced to Fr. Lemelson by a Jesuit priest, Fr. Robert Spitzer, Ph.D., with whom I have worked closely for thirteen years. Fr. Spitzer was Fr. Lemelson's professor at Seattle University in 1994 and has remained a close friend and mentor to Fr. Lemelson. I, too, have become an associate and close friend of Fr. Lemelson's. He has counseled me in financial matters, his professional specialty, and spiritual matters as a priest.

Fr. Lemelson is a brilliant hedge fund manager who performs a valuable service with his talent as an excellent financial strategist. He taught me about stewardship of money and the responsibility we have managing our assets for not only ourselves but our families and communities. One specific example is very telling of his integrity and strategic ability. A few years ago, I wanted to get into his capital fund group; however, I did not meet the group's financial requirements. He could not make an exception for me because he has a responsibility and fiduciary duty to his investors. He advised me on which stocks to buy, and I did very well. When on one occasion, I did not follow his advice and purchased Aurora Cannabis following a neighbor's tip, Fr. Lemelson cautioned me to get out of it immediately. I suffered a loss however managed to sell it before the stock declined by 80%. I have learned more from him about managing assets than earning an MBA from Pepperdine University. He has also counseled me and taught me the value of praying for our enemies, whether perceived or real. He has demonstrated in his own life the importance of committing ourselves to God and trusting God throughout tribulations. His counsel to me on specific financial and moral matters has been invaluable.

In the course of many conversations over the years with Fr. Lemelson and a few visits, I got to know his magnificent family. His wife Anja and their four children are the epitome of what a family looks like that is in awe of God and considers God first in all decisions. His children are joyful, disciplined, bright, educated, and beautiful. They have already demonstrated their understanding of contributing to society as a greater source of happiness than just living to enjoy life on a comparative level or even just to satisfy appetites. His wife and children are outstandingly



good-looking, but their inner beauty is the true illustration of their values and lifestyle. His relationship with his wife, whom I perceive as loving each other only under God, is admirable. Besides her beauty and devotion to her husband, their four children are their fruit – it is, again as I perceive, a true manifestation of reaping what you sow.

Fr. Lemelson is a brilliant hedge fund manager. He could not turn a blind eye to fraud, deceit, and corruption in public markets, which ultimately led to him becoming an activist. Fr. Lemelson has exposed improprieties at multiple publicly traded companies during his career– often to his detriment, including death threats and other threats to his livelihood *and even his family*. His work in uncovering accounting and securities fraud is usually classic David versus Goliath since he is willing to take on much bigger entities than himself.

The Fr. Lemelson I know is honest to a fault. What would an Orthodox priest gain by manufacturing any lie or exaggerating any truth? What could he possibly gain? Conversely, he has everything to lose, but being the man he is, he does not back down when he feels there is wrongdoing. His courage to pursue truth and expose wrongdoing has been a part of his life, seemingly since the beginning. He does this because he knows the truth will do immense good for all of us! We often turn a blind eye to corruption and greed and deceit because we don't have the intelligence, courage, or tenacity to do otherwise. Fr. Lemelson has picked up his slingshot and fired at Goliath more than once in his life. He is not one to “do nothing!” As Edmund Burke and/or John Stuart Mill said, “The only thing necessary for the triumph of evil is for a few good men to do nothing.”

Fr. Lemelson, in my estimation, is a genius on many levels. Still, more remarkable than his marvelous intellect is his courage – which can only be attributed to his unflinching faith in God. Fr. Lemelson has risen to the challenge and well understands the Lucan quote (Lk. 12:48) “To whom much is given, much will be required.” It is my belief that God chose Fr. Lemelson because he is a braver, stronger, more brilliant, faith-filled man than most and is equipped with the armor of God to pursue truth, goodness, and fairness against all odds.

It is an honor to submit this testament to the character of Fr. Emmanuel Lemelson. I am happy to provide any further information.

Sincerely,



Joan Marie Jacoby  
Executive Assistant to the President  
Robert, J. Spitzer, S.J., Magis Center

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Dear Judge Saris,

My name is Savvas T Stefanides. I have been in the practice of law for over 25 years. I am the panel Chairman of the State Bar of Texas Grievance Committee. My law practice focuses on immigration law. I am familiar with the case against Fr. Emmanuel and the verdict. I am compelled as an officer of the court to provide firsthand knowledge of Fr. Emmanuel Lemelson.

I have known Father Lemelson for almost a decade. We are both personal friends, and he is my spiritual guide. Father is a genuine person that will give his honest and unbiased feeling and opinion. He focuses on the positive and provides guidance on neutralizing the negative. He cares about the well-being of others and is protective of the weak. I have personally experienced his generosity, unfiltered love, and caring for the weak and unfortunate. Those in need benefit from his success and talent. He is a real-life servant for the benefit of the minority in our society.

Father Emmanuel has never refused a request to help an immigrant family or individual in need. He is available to counsel or provides any way he can without question.

Father Lemelson provides religious and spiritual guidance to those who might feel unworthy or outsiders in society. He always sees with love and not selfishness or biased. He sees people as individuals that matter and are important to society.

Fr. Emmanuel is transparent and honest. I personally trust him and have never seen or known him to be misleading or deceptive. His focus is family, helping his fellow man, and faith. Father Lemelson has been a guiding light and a beacon of hope and positive energy in my life directly. In my personal time of need, he has made himself available with a pure and open heart without judgment.

I have known Father Lemelson guide the young who feel lost and confused to know that they are loved and not judged. He has reinforced their importance to society and the planet.

I respectfully pray the court does not impose a harsh penalty and allow him to continue doing good to society and the planet.

Sincerely

*Savvas Stefanidis*  
Savvas Stefanides

S T Stefanides  
[REDACTED]  
[REDACTED]  
[REDACTED]

To

The Honorable Patti B. Saris

United States District Court for the District of Massachusetts

1 Courthouse Way

Boston, MA 02210

Your Honour,

I am writing in accordance with Fr Emmanuel Lemelson's SEC case and the allegations of the adverse parts of lack of fidelity and reliability.

My name is Anargyros Skaliotis and I am a professional iconographer. I have owned and run a Byzantine art studio in Athens, Greece since 1996. I have created many icons for churches, private collections in Greece and abroad, and also worked church decorations with murals and restoration.

I first met Fr Emmanuel Lemelson in 2018 in Athens for professional reasons as he was interested in having some Byzantine icons and murals painted for Saint Catherine's Greek Orthodox chapel in Vermont.

I visited him in Vermont about 2 years ago where I had the chance to meet his whole family and see in person how much he loves and adores his wife and his 4 adorable children whom he raises according to

the Greek Orthodox faith and devotion. I have also attended two AMVONA FUND meetings/conferences, one in Athens and one in Vermont, where I discussed with his friends and business partners, all of whom honour and trust him as I do.

I am grateful that in my whole life, God has protected me and kept me away from evil people and my path has only been crossed with people of good soul.

One of these people is Fr Emmanuel Lemelson.

At first, it sounded a bit weird and unorthodox to me for an Orthodox priest to be involved in financial funds but the magnificent is the fact that despite this, his soul and personality have remained pure and unspoiled.

I trust Fr Emmanuel Lemelson one hundred percent even with my life.

He is a person of great integrity who stands up to injustice and deceit of any kind and extent.

He would treat in the same way and attitude a little child who stole some candy and a powerful multinational corporation that could crush him to the ground.

His reaction would be the same: DON'T STEAL, it's a sin against God and people. I wish I had the courage to do such a thing.

Between us there has always been mutual trust and respect and I know that he has been fully honest to me. Both our professional and financial transactions can be marked as totally transparent.

I clearly remember the day he described to me the unfortunate ending of his cooperation with the Greek representative of his fund in Greece.

When I asked him the reason, he answered, -"He lied to us, twice".

From his reaction I could easily come to the conclusion that all he asks for, from the people he works with, is to be as honest and reliable as he is because truth always comes first.. That's it!

He could have settled with the SEC but that would mean betraying his principles and accepting the unfairness he is trying to extinguish.

He belongs to that rare category of human beings that you cannot believe really exists because he is the one who will bravely raise his voice against injustice when all the others will remain cowardly silent, he is the one who will lead the way for the others to follow. A true hero. A David of our days against an incredibly powerful Goliath.

I strongly believe that if all people were as intolerant to injustice as Fr. Lemelson is, our world would be much better.

I am aware of the SEC case as well as the mixed jury verdict and I hope and wish that justice will ultimately fully prevail because he is like St. John the Baptist, a crying voice in the desert, a ray of light in the thick evil darkness we live in.

I trust that you will treat him as a man who is standing his ground, fighting for a better world for all of us.

Yours faithfully,

Anargyros Skaliotis



ANARGYROS  
SKALIOTIS

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Dear Judge Saris,

I write this letter on behalf of Fr. Emmanuel Lemelson, after learning of his recent trial and verdict.

During that time that I got to know him, I was a parishioner and the Chanter at the Greek Orthodox Church in Keene, New Hampshire.

I now live in Connecticut, and I haven't seen him for a while, though we keep contacting at least twice a year by phone

In Keene, the church where I met him serves around 60 families that live around that area.

The attendance of the church is small, and it couldn't afford a permanent priest. We belong to the Greek Orthodox Metropolis of Boston who is responsible to assign a priest to serve our community every weekend. We were assigned to be served by priest who were available to come to Keene which is about 2hr far away from Boston.

In May 2015, Fr Lemelson was assigned to serve in our church. He impressed us with his character and enthusiasm, so we asked the Metropolis if we can have him every Sunday to do the service.

It was an honor to serve under him. He chants really good, and he taught me a lot about chanting, the needs of the church and how to have a better outlook of the future.

I grow up in Greece and we had a lot of common things to talk about since he had lived in Greece for a few years.

His sermons were great. We all enjoyed listening to him because his sermons had a more realistic view of Christianity towards faith, believe, the institution of Church and society.

We all enjoyed talking to him that we were keeping him much longer after the coffee hr. so we can talk to him.

We were also impressed that his whole family with their newborn baby was coming from Boston to attend the liturgy.

He is well travelled, and he has been exposed to people from other cultures. Living in Keene, NH is not so great, kind small city mentality and having to talk to such full of energy family was an inspiration to many other people into our community.

Knowing his background and his other occupations, you may easily misjudge him, however, if you really get to know him, you will realize that he is very kind, honest, personable, and very humble person.

I believe, in August 2015, a reporter from Wall Street Journal was writing an article about the Orthodox Church.

I believe he visit us twice and he spoke to all of us. We showed him how generous Greek people can be and we showed him the Sacraments Father was performing during a service. We were genially nice to him.

We were also very excited that a reporter from such a prestigious newspaper will write about our Orthodox Church.

The Orthodox church tries not to proselytize people. We want humble people who believe in Christ come to our church.

In October 28, 2015, (it happens to be the day that the Greek people opposed to Italy and Germany to allow Axis forces enter the Greek territory during the 2<sup>nd</sup> WW) we read a horrifying story about our principles and Fr Lemelson. The article had distorted everything we had said to the reporter. He published parts of our statements in such a way to make our church and Father look bad.

We could not believe it. Indeed, one of the saddest moments weekends of our lives.

The following Sunday, our bishop, Metropolitan Methodios sent a different priest.

We tried to reach out to the Metropolitan to ask his Eminence that we wanted Father Lemelson back, but he refused to talk to us.

We send a letter to the Metropolitan, but he never acknowledged us.

We all called Fr. Lemelson quite a few times and we asked him what he would have liked us to do, but he always spoke to us in a humble way that, "the truth will shine".

We saw him again on the baptism of his daughter Isadora which was at the Chapel of the Holy Cross in Brookline MA.

I kept our friendship because I value him as a person.

Please do not hesitate to contact me if needed or to testify.

Sincerely,

*Peter Andonellis*

Peter Andonellis

Plant Manager



Culture Fresh Foods, Inc.

162 Spring Street

Naugatuck, CT 06770

Cell: (603) 903 4177



The honorable Patti B. Saris  
United States District Court  
For the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

When I first met Rev. Father Emmanuel Lemelson, I learned that, in addition to his mother being from the Greek island of Crete where my father was born, he shared my father's first name. These coincidences helped establish a bond of friendship and respect that has strengthened over the last several years that I have known him.

On an impromptu visit with two friends, to the unfinished chapel that he was building, Father Emmanuel cheerfully invited us inside and enthusiastically described the background and construction of this building that he was so proud of.

When the chapel was completed, my 17-year-old granddaughter, Olivia, and sometimes my daughter would join me in attending Sunday Liturgy. Having never experienced Greek Orthodox services, Olivia embraced this new discovery, largely due to Father Emmanuel's influence. She loves attending services and even joins in singing the Greek hymns. Father encouraged her participation and even invited her to present a reading one Sunday.

If we miss a Sunday, Father often texts to check on us. More than once he has asked if I needed a ride, if I was not up to driving the 15-minute trip. Father said he always looked forward to seeing my face in the congregation.

One week he asked me to make the sacramental bread which is offered to each person at the end of the liturgy. He always wraps a few pieces for me to take to my daughter and her husband.

I am also impressed by Father Emmanuel's thoughtful consideration for the limitations of my age -- 87 years old. He often signals to me to sit during the services so that I do not get too tired.

These are just a few of the countless examples of his kindness and genuine concern for our well-being. Father Emmanuel's thoughtfulness and graciousness is with us always.

Sincerely,

*Renee Lampros Brown*

Renee Lampros Brown

[REDACTED]  
[REDACTED]



Charles Davis



1/18/2022

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Re: Fr. Emmanuel Lemelson

Dear Judge Saris,

The purpose of this letter is to explain the outstanding positive character of Fr. Emmanuel Lemelson. My name is Charles Davis, I am a self-employed small business owner in New Mexico. I know Fr. Emmanuel in the capacity of being an investor in his actively managed fund. I have been an investor with Fr. Emmanuel since April 2021. Although I don't have extensive time knowing Fr. Emmanuel I have spent a large amount of time over the last 9 months getting to know him personally and professionally. Speaking strictly as an investor, it takes a large amount of trust to invest hard earned money with a fund manager. Not only do you have to trust their ability to make prudent financial decisions but also trust their character and integrity to do well by their investors. Fr. Emmanuel is like no other fiduciary that I have ever met. He is extremely transparent and makes it a point to temper expectations rather than promise specific returns. Rather than try to hide the SEC allegations and case he has openly spoken about the case and made investors aware of the ongoing trial. Most fund managers trying to recruit investors would try to hide this case or at least not call any attention to it, where-as Fr. Emmanuel has gone out of his way to inform me of the allegations.

Fr. Emmanuel takes his warm experience as a Greek Orthodox Priest and applies it to his relationships and his investing strategy. He genuinely cares about his investors as though they are part of his congregation, as if he is a Shepherd caring for his flock. As an example, Fr. Emmanuel regularly checks in on my family and sends kind messages on holidays to send his regards. Our conversations are not the general "small talk" type as he remembers specifics about my life and family. I imagine that I am one of his smaller investors, monetarily speaking, however he makes me feel like I am his only investor. I cannot think of one other fund manager that takes personal time on Christmas to reach out and send regards. It is my hope that this letter of character reference is used to show that Fr. Emmanuel is a good man of strong character and integrity. I firmly support and stand by him and will continue to rely on Fr. Emmanuel as my investment advisor.

Respectfully,

A handwritten signature in cursive script that reads "Charles J Davis".

Charles J Davis

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Judge Saris,

I would like to take just a moment of your time to pen this letter of endorsement for Father Emmanuel Lemelson. I have known Fr Lemelson for a short five months and have been an investor for the last three. I was introduced to Fr Lemelson by a mutual colleague with whom I work and trust.

The first conversation I had with Fr Lemelson we spoke for more than an hour and before we finished our first conversation the lawsuit with the SEC was brought to my attention.

Not only did Fr Lemelson tell me the specifics of the case; He insisted that I do my own research regarding the case with the SEC to make sure I was comfortable with all that had transpired. I then, independent of the Fr Lemelson's team, read and followed the case before I became an investor.

Please know that Fr Lemelson has been more than transparent regarding the facts and outcomes of the case and I have informed Fr Lemelson that I would like him to continue as my investment advisor.

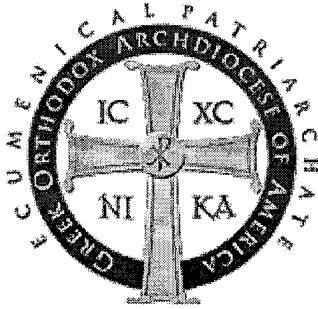
I have found Fr Lemelson to be a honest, sincere and capable man with whom I am proud to be associated with. I do not know any investment advisor that will spend the time that he does with his investors trying to make sure we are all well-educated and informed. He went as far as sending me a reading list of books to make sure I am growing as an investor under his tutelage.

I hope that this letter will display the admiration and respect I have for Fr Lemelson.

Sincerely,



Graves Erskine



**CHURCH of the LIFE-GIVING FOUNTAIN**  
**“ZODOCHOS PEGHE”**  
**GREEK ORTHODOX ARCHDIOCESE OF AMERICA**  
**ΙΕΡΑ ΑΡΧΙΕΠΙΣΚΟΠΗ ΑΜΕΡΙΚΗΣ**  
**314 North Fifth Street Martins Ferry, OH 43935**  
**Telephone: (740) 633-3707**

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

January 18, 2022

I am writing with regard to Fr. Emmanuel Lemelson.

I have known Fr. Lemelson for twenty years, since we were both students at Holy Cross School of Theology in Boston. I am aware of the SEC case involving him and Ligand Pharmaceuticals and the verdict in that case.

As long as I have known Fr. Lemelson he has been a bit of an entrepreneur. While other students worked odd jobs, he ran his own business. I observed something of his business dealings even while we were students. He seemed at that time to be a man of integrity, dealing professionally, competently and ethically both with his suppliers and employees. I was particularly impressed that he seemed to take care that his suppliers treated their own workers with integrity. This went beyond mere good business practice. I have always found him to be truthful and honest to the best of his knowledge of any situation. I observed that he was charitable with his earnings. Also that he was loyal and careful in caring for his family. It is not unusual for Greek Orthodox clergy in this country to have had previous careers. Nor in the broader case of Orthodox clergy in this country is it particularly unusual for clergy to have a second employment aside from priestly service. I know clergy who are teachers, laboratory supervisors, software programmers and EPA inspectors.

Respectfully,

Fr. Michael Ziebarth  
Pastor of Life-Giving Fountain Greek Orthodox Church  
Martins Ferry, Ohio 43935

**Rev. Father Nicholas M. Kastanas  
11 Frank Street  
North Chelmsford, MA 01863**

**January 19, 2022**

**The Honorable Patti B. Saris  
United States District Court for  
the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210**

**Re: Letter of support on behalf of the Rev. Father Emmanuel  
Lemelson**

**It is my distinct pleasure to offer a note of support on behalf of Rev.  
Father Emmanuel Lemelson whom I have known since 1999.**

**Father Emmanuel was my student between the Fall 1999 and the  
Spring of 2003 at our Holy Cross Greek Orthodox Theological  
School of Graduate Studies at 50 Goddard Avenue, Brookline, MA,  
where I have served as Professor for 39 years.**

**I found Fr. Emmanuel to be studious, reverent, respectful, and of  
high moral character. He was very dedicated to his mission of being  
faithful and preparing to serve the Greek Orthodox Church of  
America as a Greek Orthodox Priest.**

**Case specifically, he was always honest, transparent, and diligent in  
every interaction with me in and out of the classroom setting. I  
clearly remember how impressed I was by his words and actions  
being in sync. There was nothing deceptive or fraudulent about him.**



-2-

**Furthermore, I am fully aware of the SEC case and the verdict. I am convinced that Fr. Emmanuel has always exercised the highest standard of ethical integrity. It is visible in his verbal dealings with me which confirm that he speaks and acts with sincerity, decency, and kindness.**

**In conclusion, it my rich blessing to offer this character letter in unconditional support of Father Emmanuel Lemelson and his superior character. He is a fine, upstanding Priest whom I know to be trustworthy in every way, shape, and form.**



**Rev. Father Nicholas M. Kastanas  
Greek Orthodox Priest of 37 years  
Of the Greek Orthodox Archdiocese of America  
Professor of Byzantine Hymnology  
Holy Cross Greek Orthodox Graduate School of  
Theology, Brookline, MA (39 years)  
Parish Priest of The St. Athanasius Greek  
Orthodox Parish for 28 years (retired)  
Frnmk@aol.com  
Mobile 978 799-8237  
978 758 5411**

January 18, 2022

Rolando & Irene Silva  
[REDACTED]  
[REDACTED]

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, Ma 02210

Honorable Patti B. Saris:

My wife Irene and I both met Fr. Lemelson at the Trapp Family Lodge in Stowe, Vermont on July 30<sup>th</sup>, 2018, where we own a vacation Home. We typically spend one week in the summer and another at New Years' time with our entire family. We have owned property at the Trapp's for over 30 years. We live in Miami Florida and we welcome the change of scenery. We were attending the Kids' Adventure Games, a race in which 6 of our 8 grandchildren were participating that summer. Fr. Lemelson's daughter was also participating. We were both casually waiting under a tree enjoying the shade and cool mountain breezes when we casually struck a conversation about the day's events. We were both waiting for the Award ceremonies to begin. Four of our grandchildren ended up receiving award medals that afternoon and so did Fr. Lemelson's daughter. As in all things of God, we connected immediately, and we began to talk. It turned out that we had a great deal in common and many mutual interests: Faith, Religion, love of the mountains, outdoor activities, and family values to name but a few.

Irene and I are actively involved in our parish at St. Hugh Catholic Church in Miami where we live. Irene and I have been married for 47 years and we are blessed with and very close to our family. We volunteer in our church, we lead a Marriage Ministry, belong to the Parish Council, Financial Council, etc. etc.

We left Stowe after our vacation was completed, not knowing at the time that we had gained a new friend. We have continued our long-distance communication over the years. When we returned to Stowe the following winter, we visited St. Katherine Orthodox Chapel. I, being an Architect, and Irene, an Engineer, were truly impressed at the effort, attention to details and the love that Fr. Lemelson had devoted to building this beautiful gem of a chapel in the middle of the Vermont woods in Stowe.

Gradually, we also became interested in some financial aspects, when Fr. Lemelson introduced us to the Spruce Peak Fund, a Fund that he runs and of which he is the Chief Investment Officer. We were impressed with the financial achievement of this fund and trusting him implicitly after learning about this Fund, we decided to give it a try and invest \$300,000.00 in this fund.

We have no qualms or doubts as to whether to continue investing with Fr. Emmanuel and as a matter of fact, we are even considering increasing our financial exposure and would like him to continue as our financial advisor. We feel extremely comfortable with Fr. Lemelson being at the helm of this fund. We have always found him to be a person of character, trustworthy, truthful, and transparent in all of our exchanges. We also find him to be extremely knowledgeable in matters of Religion and in financial matters as well as a very intelligent person.

I became fully aware of the case against him and have read most of the information regarding the case against him. We were proud and elated to find out he had prevailed on key allegations in the case brought by the SEC. It is my understanding, however, that the jury did find him liable for other statements, in which a fine or penalties could still be assessed. To the extent that we can influence the Court, we offer our wholehearted and enthusiastic support to Fr. Lemelson. We recommend if it is possible to have these possible penalties waived in their entirety if the court pleases and ultimately judge in his favor so that he can finally clear his good name and restore his good standing, an end befitting of Fr. Lemelson's good character.

Please feel free to contact me and /or Irene at 305-519-3019 [rsilva@silvaarc.com](mailto:rsilva@silvaarc.com) & [ifraga@fragaeng.com](mailto:ifraga@fragaeng.com) if we can be of any further assistance or need further clarifications.

Sincerely yours,

*Rolando & Irene Silva*

Rolando & Irene Silva.

**Rolando Silva, AIA**

**SILVA ARCHITECTS**

135 San Lorenzo Avenue

Suite 880

Coral Gables, FL 33146

The Honorable Patti B. Saris  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Re: Father Emmanuel Lemelson

Dear Judge Saris,

I am writing to you about Father Lemelson and my experiences with him as an investment advisor. I've known Father Lemelson for approximately 6 years. I read about Father Lemelson and his hedge fund in one of the investment newsletters I subscribe to. I reached him to find out more about his fund and investment philosophy. Father Lemelson was gracious enough to return my call. We spent about 30 minutes on the phone discussing value investing and analysis. I was not in a position to invest with his fund at that time, but he shared his funds quarterly reports and securities analysis.

About 18 months ago I had an opportunity to invest in a new fund with Father Lemelson. He did make me aware of his SEC case. I did my due diligence on the case and still felt comfortable investing in his fund. The case to me was an example of a large corporation leveraging the SEC to silence a critic. It would be a shame if Father Lemelson were restricted from continuing his responsibilities as the fund manager and investment advisor. In my opinion, Father Lemelson cares about all of his clients, large and small, and has their best interest at heart. We would do well to have more fund managers like Father Lemelson in the industry.

Thank you for your time and consideration your Honor.

Respectfully,



Rodney J Bennett  
President  
Commercial Capital, Inc.



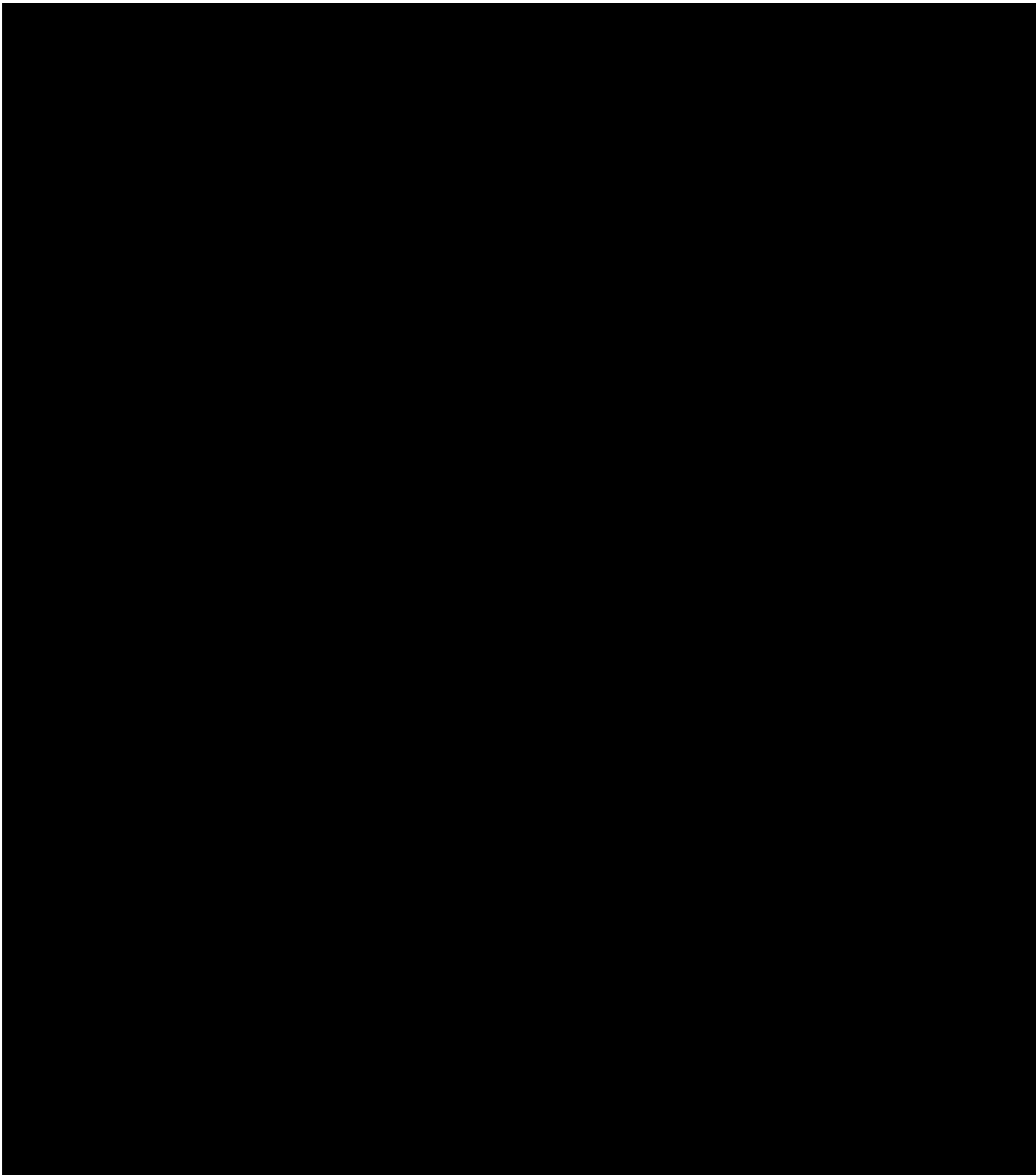
## **Respondent Exhibit 33**

**From:** Bruce Voss  
**To:** Higgins, John L.  
**CC:** Foehr, Matt  
**Sent:** 6/23/2014 9:51:45 AM  
**Subject:** Re: Lemelson email - draft

EXHIBIT

133

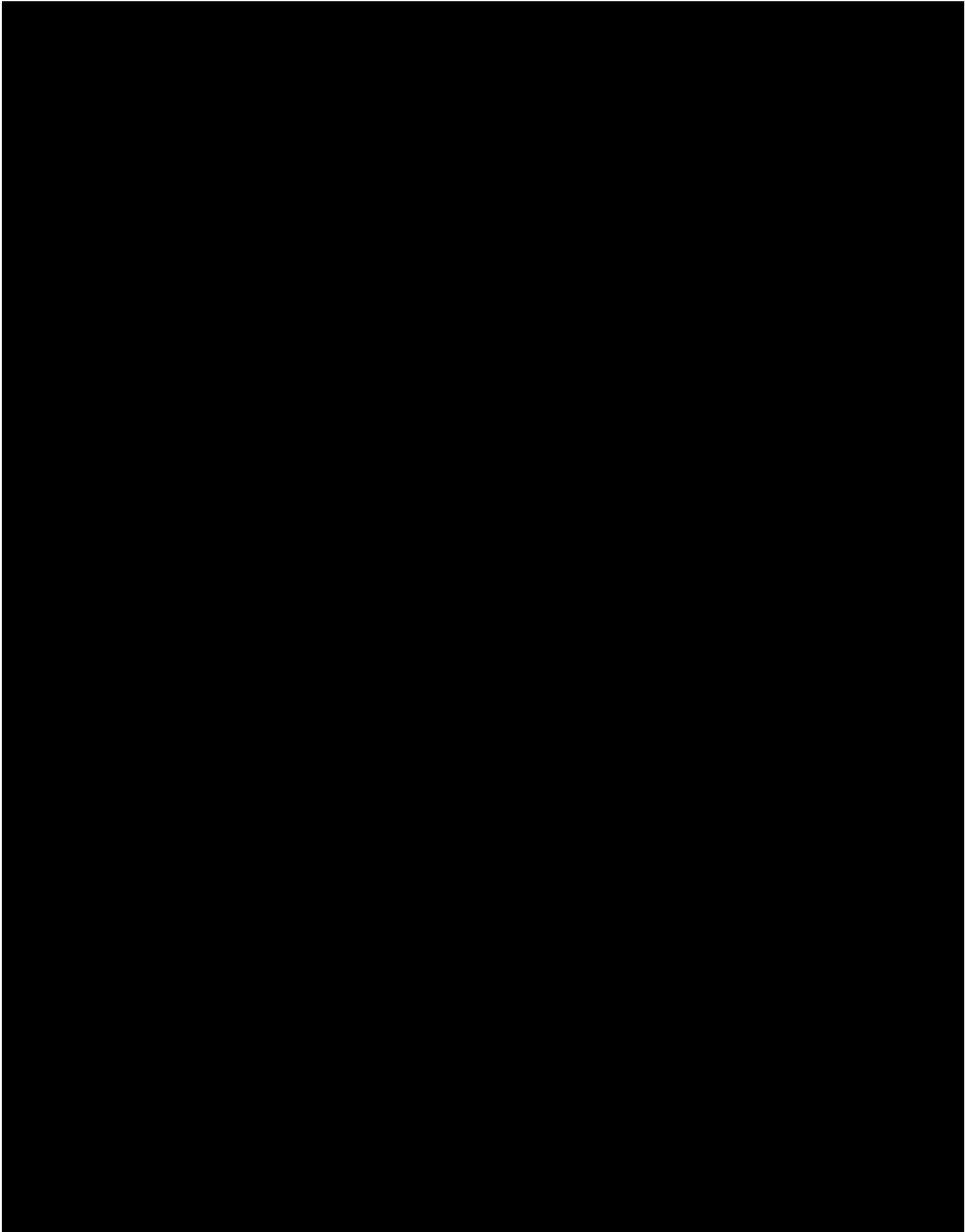
18-cv-11926-PBS



Confidential Treatment Requested by Bruce Voss  
Subject to Protective Order in D. Mass. Case No. 18-cv-11926-PBS

LCM\_SEC0000346  
EPROD-SEC-LIT-E-000000429

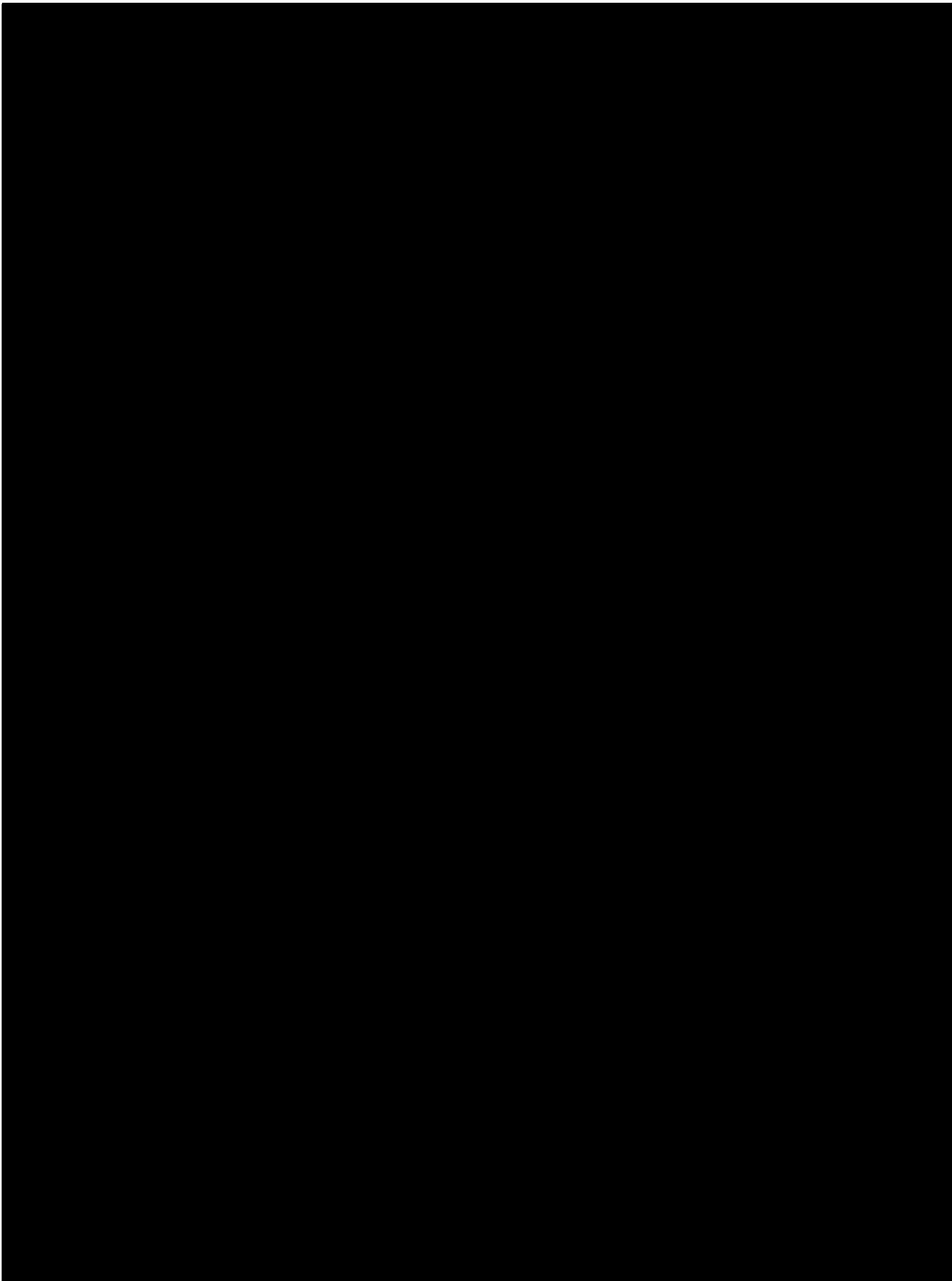
OS Received 07/29/2022



Confidential Treatment Requested by Bruce Voss  
Subject to Protective Order in D. Mass. Case No. 18-cv-11926-PBS

LCM\_SEC0000347  
EPROD-SEC-LIT-E-000000430

OS Received 07/29/2022



Confidential Treatment Requested by Bruce Voss  
Subject to Protective Order in D. Mass. Case No. 18-cv-11926-PBS

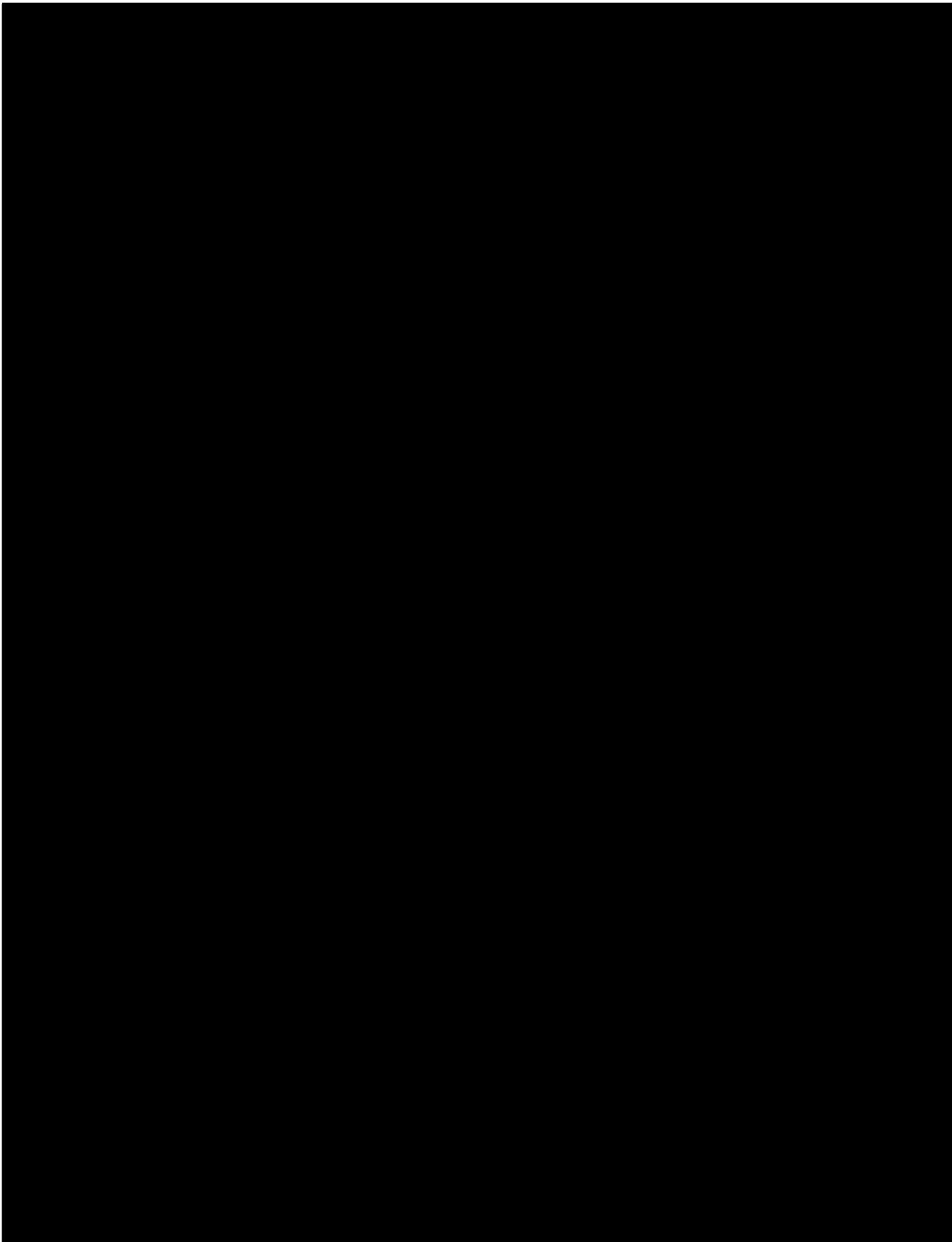
LCM\_SEC0000348  
EPROD-SEC-LIT-E-00000431

OS Received 07/29/2022

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Subject to Protective Order in D. Mass. Case No. 18-cv-11926-PBS

LCM\_SEC0000349  
EPROD-SEC-LIT-E-00000432

OS Received 07/29/2022



Confidential Treatment Requested by Bruce Voss  
Subject to Protective Order in D. Mass. Case No. 18-cv-11926-PBS

LCM\_SEC0000350  
EPROD-SEC-LIT-E-00000433

OS Received 07/29/2022

## **Respondent Exhibit 34**

1 SEC v. Lemelson

2

3

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22 THEREOF SHALL BE DESTROYED.

23

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24

25



1 do with COVID. I should mention when people are being excused  
2 it doesn't mean it has anything to do with could he have had.  
3 I had a family emergency Friday afternoon sorry for the delay  
4 and she had one over the weekend with somebody in her family.  
5 Did anyone speak about the case? Anyone see anything in the  
6 press or do any research. I find the jury has complied. We're  
7 going to get going with our next witness.

8 MR. JONES: Your Honor, the Commission calls Father  
9 Emmanuel Lemelson.

10 THE COURT: You may be seated.

11 MR. DAY: While Father Lemelson is coming up we have a  
12 few handouts for the jury. Just to put it on the record, we  
13 have the statements that are charged in this case. We have the  
14 stipulations, the agreed-to facts between the parties and we  
15 have a set of binders that contain some of the exhibits for  
16 today.

17 THE CLERK: Father could you please stand and raise  
18 your right hand.

19 THE WITNESS: Yes, of course.

20 **EMMANUEL LEMELSON, sworn.**

21 THE CLERK: You may be seated. Could you please state  
22 and spell your name for the record.

23 THE WITNESS: Father Emmanuel Lemelson.  
24 E-m-m-a-n-u-e-l.

25 THE CLERK: Thank you.

1 A. Yes, but at the time it was unclear if he was doing PR for  
2 them or IR. So they did have an internal IR person as well.

3 Q. Do you have an IR firm?

4 A. No.

5 Q. Why didn't you talk to somebody directly at Ligand instead  
6 of their kind of third-party IR guy?

7 A. I tried to. I called repeatedly.

8 Q. So just generally, because I think we've heard a lot about  
9 that call, but what were your impressions. Tell me what your  
10 impressions were of the call you had with Mr. Voss?

11 A. That he was not being genuine with me. I didn't get the  
12 feeling that this was really an attempt to connect with me, but  
13 rather it was sort of an fishing expeditious and I didn't get a  
14 good feeling from him. I didn't think he could be trusted what  
15 he was saying on the phone.

16 Q. So you're aware that the first challenge statement in this  
17 case is when you attributed to Mr. Voss that he basically  
18 agreed and said, you know, look we understand Promacta is going  
19 away. You understand that, right?

20 A. Yes.

21 Q. Was that a true statement when you made it?

22 A. Yes.

23 Q. Sitting here today do you still believe it to be true?

24 A. Yes.

25 Q. So the day after your?

1 THE COURT: So what words did he use?

2 THE WITNESS: Well, I took the notes Your Honor  
3 immediately after the phone call and I tried to record as much  
4 as the phone call as I could. That's J it's almost two pages  
5 and I believe I recorded the substance of what he told me as  
6 accurately as possible.

7 THE COURT: I'm just trying to understand. Did he say  
8 Promacta is going away?

9 THE WITNESS: I suspect that he said that.

10 THE COURT: No, no. I'll strike that.

11 What do you remember now? Do you remember his exact  
12 words?

13 THE WITNESS: I don't remember his exact words, no  
14 seven years later, just what I have in my notes but I know I'm  
15 a judicious note taker and I try to record accurately.

16 THE COURT: Okay. You've answered. Go ahead.

17 Q. Let me just follow up on that. I think would be a little  
18 odd if you could remember his exact words seven years later?

19 THE COURT: I'll strike that. Just ask him.

20 Q. Do your notes, to the best of your memory reflect the  
21 substance of what Mr. Voss said about Promacta?

22 A. Yes.

23 Q. Now, you went on an Internet radio -- I don't know --  
24 station called Benzinga the next day?

25 A. Yes.

1 Q. Now, at the top you wrote, and we've talked about this so  
2 we'll go over it briefly. In the second paragraph do you see  
3 "Viking does not intend to conduct any preclinical studies or  
4 trials"?

5 A. Yes.

6 Q. At the time you wrote that did you believe it to be true?

7 A. Yes.

8 Q. Sitting here today do you believe it to be true?

9 A. Yes.

10 Q. Based on what?

11 A. The S-1.

12 Q. Can we go to the bottom of page 9. So at the bottom of  
13 page 9 is a direct quote from the S-1. Is that right.

14 A. Yes.

15 Q. Okay. And then can we go to the top of the next page.

16 Okay. So you then write in other words" what were you  
17 referring to when you wrote in other words?

18 A. The S-1.

19 Q. The language you had just quoted?

20 A. Yes.

21 Q. You wrote Marcum was merely hired but the company is not  
22 yet even consulted with the firm on any material issues." Was  
23 that true?

24 A. No.

25 Q. When you wrote that did you know it was not true?

1 A. No. I was just transcribing off the S-1, but there was an  
2 oversight that they had enough time since then to meet with  
3 them.

4 Q. Okay. And then based on that you read the financial  
5 statements provided on the S-1 accordingly are unaudited. Do  
6 you see that?

7 A. Yes.

8 Q. Those were the statements we looked at earlier that's a  
9 combination of audited and unaudited?

10 A. Right but there's a heavy reliance on the unaudited  
11 statements in that report.

12 Q. By the way, when you published this on July 3, 2014, did  
13 you cover any portion of your short on the day that you issued  
14 this report?

15 A. No.

16 Q. Can we pull up Exhibit 5. Okay. And so just kind of  
17 going through time, is this the third report you wrote on  
18 Ligand dated August 4, 2014?

19 A. Yes.

20 Q. And what, if any, challenge statements are contained in  
21 this report, if you know?

22 A. I don't know. I don't think there are any in this report  
23 if memory serves me correctly.

24 Q. By the way, do you know what happened to Ligand's stock on  
25 August 4, 2014 the day you published this report?

(COURT REPORTER: Debra Joyce).

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THE CLERK: All rise.

THE COURT: Good morning everyone.

I understand that -- I was upstairs still working on the jury instructions, but Mary Ellen tells me that the exhibits are all marked -- thanks -- are the paralegals here?

THE CLERK: Cara is here; Alyssa is with the SEC -- there she is.

THE COURT: Wait a minute. These paralegals stayed late last night with Mary Ellen, applause to them.

(Discussion off the record.)

MR. BROOKS: Can I proceed, your Honor?

THE COURT: Yes.

MR. BROOKS: Could we have Exhibit 218.

REDIRECT-EXAMINATION

BY MR. BROOKS:

Q. Good morning, Father Lemelson.

A. Good morning.

Q. Now, on recross, do you recall Mr. Jones showing you this document, Exhibit 218, press release talking about how GSK had a record second quarter in 2014 with Promacta?

A. Yes.

Q. Did you view this press release as inconsistent with your thesis of Promacta?

A. No. As I testified yesterday, we modeled Promacta growth through the end of 2015, and we never gave an indication when we thought it would go away.

But as we subsequently learned in my seven-year dedication to this, you know, GSK and later Novartis and Ligand created a billion-dollar drug, a blockbuster of Promacta. But at the end of the day, they made a block buster and a million dollars on a fully curable disease. If this was fully known --

MR. JONES: Your Honor, we're beyond the question at this point.

BY MR. BROOKS:

## **Respondent Exhibit 35**





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

**FORM 10-K/A  
Amendment No. 2**

Mark One

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the Fiscal Year Ended December 31, 2013  
OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission File No. 001-33093

**LIGAND PHARMACEUTICALS INCORPORATED**  
(Exact name of registrant as specified in its charter)

<p style="text-align: center;"><b>Delaware</b> (State or other jurisdiction of incorporation or organization)</p> <p style="text-align: center;"><b>11119 North Torrey Pines Rd., Suite 200</b> <b>La Jolla, CA</b> (Address of Principal Executive Offices)</p>	<p><b>77-0160744</b> (IRS Employer Identification No.)</p> <p><b>92037</b> (Zip Code)</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------

**Registrant's telephone number, including area code: (858) 550-7500**  
**Securities registered pursuant to Section 12(b) of the Act:**

<u>Title of Each Class</u>	<u>Name of Each Exchange on Which Registered</u>
Common Stock, par value \$.001 per share	The NASDAQ Global Market of The NASDAQ Stock Market LLC
Preferred Share Purchase Rights	The NASDAQ Global Market of The NASDAQ Stock Market LLC

**Securities registered pursuant to Section 12(g) of the Act:**  
**None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934. Yes  No

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large Accelerated Filer  Accelerated Filer  Non-accelerated Filer  Smaller reporting company

(Do not check if a smaller reporting company)

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

The aggregate market value of the Registrant's voting and non-voting stock held by non-affiliates was approximately \$676.8 million based on the last sales price of the Registrant's Common Stock on the NASDAQ Global Market of the NASDAQ Stock Market LLC on June 30, 2013. For purposes of this calculation, shares of Common Stock held by directors, officers and 10% stockholders known to the Registrant have been deemed to

[Table of Contents](#)***Our stock price has been volatile and could experience a sudden decline in value.***

Our common stock has experienced significant price and volume fluctuations and may continue to experience volatility in the future. As a result, you may not be able to sell your shares quickly or at the latest market price if trading in our stock is not active or the volume is low. Many factors may have a significant impact on the market price of our common stock, including, but not limited to, the following factors: results of or delays in our preclinical studies and clinical trials; the success of our collaboration agreements; publicity regarding actual or potential medical results relating to products under development by us or others; announcements of technological innovations or new commercial products by us or others; developments in patent or other proprietary rights by us or others; comments or opinions by securities analysts or major stockholders; future sales of our common stock by existing stockholders; regulatory developments or changes in regulatory guidance; litigation or threats of litigation; economic and other external factors or other disaster or crises; the departure of any of our officers, directors or key employees; period-to-period fluctuations in financial results; and limited daily trading volume.

***Impairment charges pertaining to goodwill, identifiable intangible assets or other long-lived assets from our mergers and acquisitions could have an adverse impact on our results of operations and the market value of our common stock.***

The total purchase price pertaining to our acquisitions in recent years of Pharmacoepia, Neurogen, Metabasis and CyDex have been allocated to net tangible assets, identifiable intangible assets, in-process research and development and goodwill. To the extent the value of goodwill or identifiable intangible assets or other long-lived assets become impaired, we will be required to incur material charges relating to the impairment. Any impairment charges could have a material adverse impact on our results of operations and the market value of our common stock.

***The occurrence of a catastrophic disaster could damage our facilities beyond insurance limits or we could lose key data which could cause us to curtail or cease operations.***

We are vulnerable to damage and/or loss of vital data from natural disasters, such as earthquakes, tornadoes, power loss, fire, floods and similar events, as well as from accidental loss or destruction. If any disaster were to occur, our ability to operate our business could be seriously impaired. We have property, liability, and business interruption insurance which may not be adequate to cover our losses resulting from disasters or other similar significant business interruptions, and we do not plan to purchase additional insurance to cover such losses due to the cost of obtaining such coverage. Any significant losses that are not recoverable under our insurance policies could seriously impair our business, financial condition and prospects.

**Item 1B. Unresolved Staff Comments**

None.

**Item 2. Properties**

We currently occupy premises consisting of approximately 16,500 square feet of office and laboratory space in San Diego, leased through June 2019 which serves as our corporate headquarters. We believe this facility is adequate to meet our space requirements for the foreseeable future.

We lease approximately 1,500 square feet of laboratory space located at the Bioscience and Technology Business Center in Lawrence, Kansas, leased through December 2014.

We lease approximately 99,000 square feet in three facilities in Cranbury, New Jersey under leases that expire in 2016. We also sublease approximately 19,473 square feet of these facilities with subleases expiring in 2014 through 2016. We fully vacated these facilities in September 2010.

We also lease a 52,800 square foot facility in San Diego that is leased through July 2015. In January 2008, we began subleasing the 52,800 square foot facility under a sublease agreement through July 2015. We fully vacated this facility in February 2008.

## **Respondent Exhibit 36**

**To:** Emmanuel Lemelson - Lemelson Capital Management, LLC  
(el@lemelsoncapital.com)[el@lemelsoncapital.com]  
**Cc:** Trani, Peter[ptrani@btig.com]  
**From:** Jacobi, Dennis  
**Sent:** Thur 6/19/2014 4:07:26 PM  
**Importance:** Normal  
**Subject:** Fed Call  
[image001.gif](#)

**Unapprove**

AE

Dest

Portfolio

Action

Quantity

Security

Type

Avg Px

Broker

Comm

OtherFees

Net Amount

T Date

Curr

**Details**

Details

Dennis

TSMR



ImI10366

Cover

4,050.00

LGND

csus

65.6873

BTIG

30.3800

0

-266,063.9450

06/19/2014

USD

OK

Dear Emmanuel

Per my calculations, the above trade should cover your current Fed Call.

Also, per your instructions, the closing methodology for the above trade will be LIFO.

Dennis

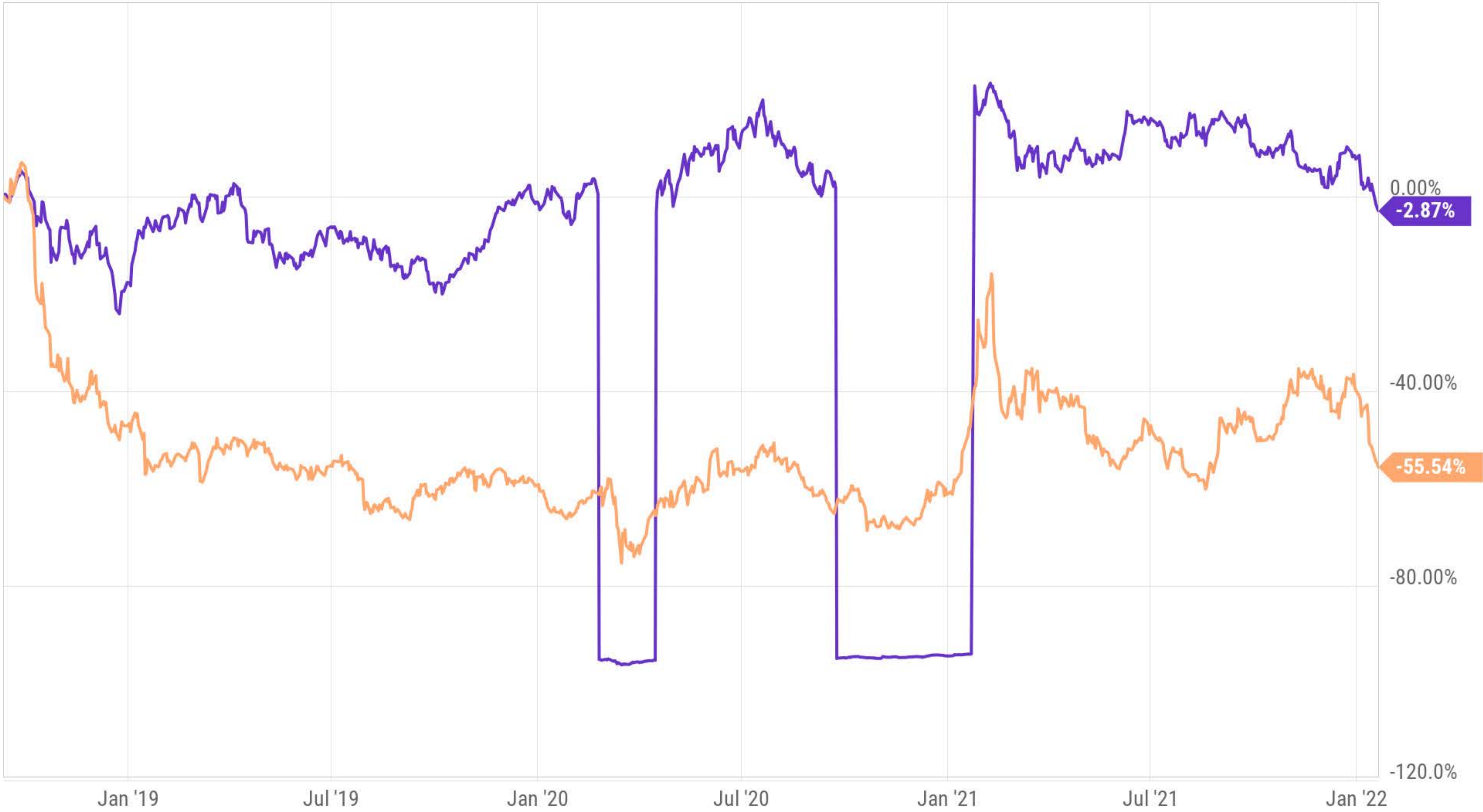
Dennis Jacobi | Senior Vice President | Prime Brokerage | 825 Third Avenue,

6th Floor New York, NY 10022 | (212) 527-3519 | Fax: 212-593-4488 | AOL IM:  
djacobi@btig.com | EMail: djacobi@btig.com

Disclaimer: <https://btig.com/disclaimer.php> --

## **Respondent Exhibit 37**

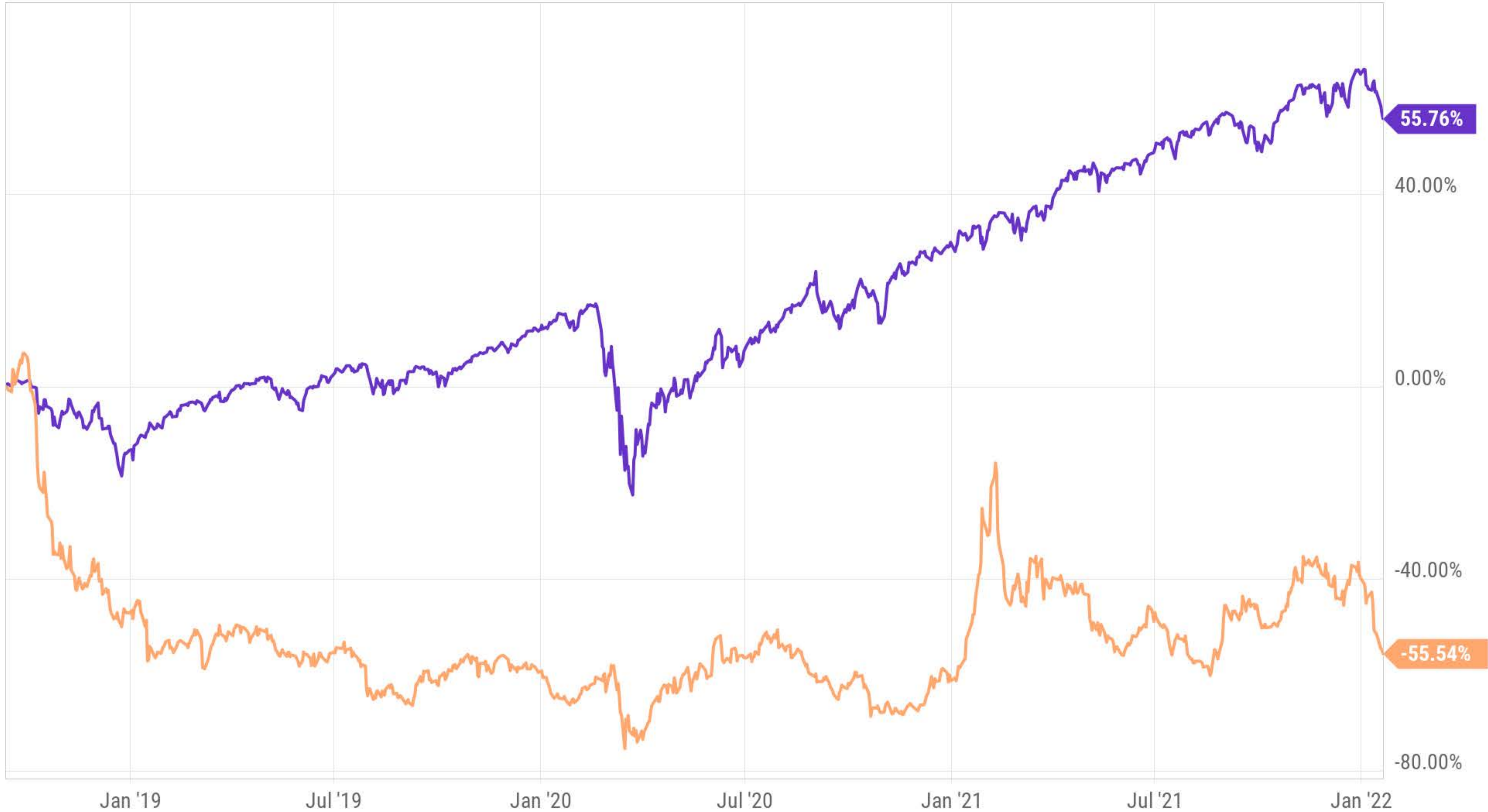
- NYSE Arca Biotechnology Index Level % Change
- Ligand Pharmaceuticals Inc Price % Change





## **Respondent Exhibit 38**

- S&P 500 Level % Change
- Ligand Pharmaceuticals Inc Price % Change



## **Respondent Exhibit 39**



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## Press Release



# SEC Wins Jury Trial Against Hedge Fund Adviser Who Ran Manipulative Short Scheme

## Related Materials

- [SEC Complaint](#)

### FOR IMMEDIATE RELEASE 2021-224

Washington D.C., Nov. 5, 2021 — Jurors in Boston federal court today returned a verdict in the Securities Exchange Commission's favor against a hedge fund adviser and his investment advisory firm.

Gregory Lemelson and Massachusetts-based Lemelson Capital Management LLC were charged with fraud in September 2018 for reaping more than \$1.3 million in illegal profits through a scheme to drive down the price of San Diego-based Ligand Pharmaceuticals Inc. The SEC's evidence at trial showed that after establishing a short position in Ligand through his hedge fund, Lemelson made a series of false statements to shake investor confidence in Ligand and lower its stock price, increasing the value of his fund's position. The false statements included assertions that Ligand's investor relations firm had agreed that Ligand's most profitable drug was on the brink of obsolescence and that Ligand had entered into a sham transaction with an unaudited shell company in order to pad its balance sheet. The evidence also showed that Lemelson had boasted about bringing down Ligand's stock price through his "multi-month battle" against the company.

The jury found Lemelson and Lemelson Capital Management liable for fraudulent misrepresentations. The court will determine remedies at a later date.

"Investment professionals play a crucial role in our markets and when they break the law they undermine investors' trust," said Gurbir S. Grewal, Director of the SEC's Division of Enforcement. "We'll continue to use all of the tools in our toolkit to hold wrongdoers accountable, including litigating whenever necessary. This verdict underscores that commitment as well as our staff's ability, tenacity, and experience to win those trials."

The SEC's litigation was conducted by Marc J. Jones and Alfred A. Day of the Boston Regional Office. The SEC's investigation was conducted by Virginia Rosado Desilets, Sonia Torrico, and Jennifer Clark, and supervised by David A. Becker and Carolyn Welshhans.

###

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## **Respondent Exhibit 40**

**From:** Securities and Exchange Commission <[sec@service.govdelivery.com](mailto:sec@service.govdelivery.com)>  
**Sent:** Friday, November 5, 2021 11:09 PM  
**To:** [REDACTED]  
**Subject:** Securities and Exchange Commission Daily Digest Bulletin



## U.S. SECURITIES AND EXCHANGE COMMISSION

### Securities and Exchange Commission - Notice of Effectiveness from the Division of Corporation Finance Update

11/05/2021

You are subscribed to receive information about Notice of Effectiveness from the Division of Corporation Finance of the Securities and Exchange Commission. This information has recently been updated and is now available.

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## Nicole Creola Kelly Named Chief of SEC Whistleblower Office

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Chair of the Securities and Exchange Commission  
PCAOB Rule 6100 to Fulfill Obligations under the HFCAA  
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**Steven F. Muntin**

11/05/2021

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SEC Charges Michigan Investment Adviser with Fraud

**SEC Approves PCAOB Rule to Establish A Framework for Determinations Under the Holding Foreign Comp**

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Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanction

## Joseph A. Cammarata, et al.

11/05/2021

### [Joseph A. Cammarata, et al.](#)

SEC Obtains Emergency Relief in Case Charging Claims Aggregator and Principals with Multi-Million Dollar Fraud

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## **Respondent Exhibit 41**

# BARRON'S

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## The SEC Wins Mixed Verdict Against a Short Seller Who Wouldn't Settle

Bill Alpert

Nov. 10, 2021 5:47 pm ET



Last week, a federal jury awarded the SEC a partial victory in one of the rare civil fraud cases it's brought against an outspoken short.

**CHIP SOMODEVILLA/GETTY IMAGES**

The U.S. Securities and Exchange Commission brings too few enforcement cases against loudmouthed short sellers, according to the thinking of some [stockholders](#) and [public companies](#). Last week, a federal jury awarded the SEC a partial victory in one of the rare civil fraud cases it's brought against an outspoken short.

On Nov. 5, the jury in Boston's federal district court found that hedge-fund manager Gregory Lemelson had made three false statements in his public criticism of the drug company [Ligand Pharmaceuticals](#) (ticker: LGND) and a related company [Viking Therapeutics](#) (VKTX) in 2014, when his fund was short Ligand stock. Lemelson's tiny fund made \$1.3 million when Ligand shares declined. The Boston jury found the SEC had not proven four other charges against Lemelson, including a claim that he'd operated a manipulative scheme.

Sometime in the coming months, federal judge Patti Saris will decide on any remedies. *Barron's* [wrote last year about Ligand's campaign to get SEC charges against Lemelson](#), who is a Greek Orthodox priest as well as a money manager.

Lemelson's attorney Douglas Brooks, of Boston's Libby Hoopes Brooks, says his client will appeal the verdict. "We are grateful that the jury found Father Lemelson not liable for the most serious charges brought by the SEC," Brooks told *Barron's*. "[H]e didn't engage in a scheme to defraud either Ligand's investors or his own fund investors. It's disappointing the jury found Father Lemelson liable for making a few statements about two pharma companies, and we intend to appeal that portion of the jury's verdict."

The SEC's comments on the verdict might confuse the historical record. Its press release headline reads: "SEC Wins Jury Trial Against Hedge Fund Adviser Who Ran Manipulative Short Scheme." But the jury's very first vote was a finding that the agency didn't prove its allegations of a "scheme."

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The vast majority of civil enforcement cases brought by the SEC are settled by the defendants—often before the action is even announced. Insisting on his innocence, and free speech rights as an investor, Lemelson refused agency settlement offers. That led to the jury trial.

In his trial testimony, Lemelson continued to criticize Ligand and Viking. Two of Lemelson's 2014 statements that jurors found false were actually statements about Viking—the Ligand spinoff whose shares weren't yet trading in 2014. A short sale of Viking would have proven the better long-term bet. Since June 2014, when Lemelson first irked Ligand with his criticism, Ligand shares are up 147% to a recent \$164, and have slightly outperformed the S&P 500 index over that time. Since Viking's 2015 initial offering, its stock is down 20%, to \$6.22.

## **Respondent Exhibit 42**



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## Hedge Fund Priest Beats SEC Short-And-Distort Claims

By **Brian Dowling**

Law360 (November 5, 2021, 12:23 PM EDT) -- A Boston federal jury on Friday absolved a Greek Orthodox priest of some fraud claims in a U.S. Securities and Exchange Commission suit alleging he launched a short-and-distort scheme through his hedge fund aimed at tanking a biotech company's stock price.

The mixed verdict also rejected the SEC's claims that Rev. Emmanuel Lemelson violated the Investment Advisers Act by forwarding his critical reports about Ligand Pharmaceuticals Inc. to investors in the hedge fund. At the same time, the jury found Lemelson liable for fraud when he made untrue, material statements in three of the four examples put forward by the SEC.

After dismissing the jury, U.S. District Judge Patti B. Saris said the ramifications of the mixed verdict weren't immediately clear and that she would hear arguments from the parties. An SEC attorney told the court the agency may seek disgorgement or an injunction against Lemelson on the false-statements claims.

Lemelson's attorney, Douglas S. Brooks of Libby Hoopes Brooks PC, told Law360 after the verdict that his client intends to appeal the jury's finding on the alleged misstatements, which involved claims about Ligand and a partner company.

"We are grateful that the jury found Father Lemelson not liable for the most serious charges brought by the SEC — he did not engage in a scheme to defraud either Ligand's investors or his own fund investors," Brooks said. "It's disappointing the jury found Father Lemelson was reckless in making a few statements about two pharma companies, and we intend to appeal that portion of the jury's verdict."

The SEC said in a press release Friday that it won the trial, without mentioning the claims the jury rejected.

"Investment professionals play a crucial role in our markets and when they break the law they undermine investors' trust," Gurbir S. Grewal of the SEC's enforcement division said in a statement. "We'll continue to use all of the tools in our toolkit to hold wrongdoers accountable, including litigating whenever necessary. This verdict underscores that commitment as well as our staff's ability, tenacity, and experience to win those trials."

The SEC alleged that Lemelson published five reports about Ligand and gave multiple media interviews in mid-to-late 2014 criticizing the California drug company as a fraud with critical insolvency risks, all while making a \$4.6 million bet that the stock would plummet. The bet paid off for Lemelson, whose Amvona Fund made \$1.3 million when it covered the short position in October 2014, the SEC said. By then, Ligand had lost \$500 million of its market cap.

During the trial, Ligand CEO John Higgins testified that Lemelson was "**a bully**" who engineered the drop in the company's stock price by issuing his "relentless" reports.

The SEC told the jury in closing arguments that Lemelson was out to "rock the stock" by scaring off "**Bambi**" investors, profiting handsomely off his short bet, and showing off his ability to crash a stock in order to attract more investors in his hedge fund.

But Lemelson's defense team **argued** that the four statements challenged by the SEC were made in good faith, backed up by his research, and protected by the First Amendment.

The litigation, which kicked off in 2018, has been contentious throughout. Lemelson has called the suit unprecedented and said the SEC acted in bad faith, going after him only because of extensive lobbying by Ligand attorneys and even making his religion part of the investigation.

The SEC and Ligand accused Lemelson before trial of trying to "poison the well" with selective leaks of confidential documents to a financial reporter and attempting to influence the testimony of a potential witness — another priest — by threatening to sue him unless he recanted earlier statements to the agency and paid \$10,000.

A spokeswoman for the SEC declined to comment when reached after the verdict Friday.

The SEC is represented in-house by Alfred A. Day and Marc J. Jones.

Lemelson and his company, Lemelson Capital Management LLC, are represented by Thomas M. Hoopes, Douglas S. Brooks and Brian J. Sullivan of Libby Hoopes Brooks PC.

The case is SEC v. Lemelson et al., case number 1:18-cv-11926, in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Chris Villani. Editing by Alyssa Miller.

*Update: This article has been updated to include comments from the SEC. It has been updated to clarify the counts Lemelson faced at trial.*

## **Respondent Exhibit 43**



# SEC wins HF adviser securities fraud trial

*The Commission persuaded a jury that a HF adviser and its principal engaged in a "short-and-distort" scheme*

By **Hugh Kennedy** - 23 hours ago

The **SEC** has persuaded a jury that a hedge fund adviser and its principal engaged in a "short-and-distort" scheme. The verdict, returned in a Boston federal court, went against **Gregory Lemelson** and his investment advisory firm **Lemelson Capital Management**. The charges date to September 2018 when Lemelson and his firm were found to have reaped more than \$1.3 million in illegal profits from a manipulative short scheme involving **Ligand Pharmaceuticals**.

The Commission originally **charged** that Lemelson and Lemelson Capital took a short position in Ligand in May 2014 for The Amvona Fund, a hedge fund advised and partly owned by Lemelson. A barrage of written reports, interviews and social media were then employed by Lemelson to spread false claims about the San Diego-based pharmaceuticals company.

## Stock plummeted under scheme

The SEC's complaint claimed Lemelson went so far as to state that Ligand was "teetering on the brink of bankruptcy" and that its flagship hepatitis drug was going to become obsolete. The scheme worked. Ligand's stock lost more than one-third of its value during the course of Lemelson's damaging activities.

The jury ultimately determined that Lemelson and Lemelson Capital violated the anti-fraud provisions of Exchange Act rule 10b-5. At a later date, the Boston court will determine remedies.

## **Respondent Exhibit 44**

# SEC Wins Jury Trial Against Hedge Fund Adviser Who Ran Manipulative Short Scheme

By [Securities and Exchange Commission](#) - November 5, 2021

Jurors in Boston federal court today returned a verdict in the Securities Exchange Commission’s favor against a hedge fund adviser and his investment advisory firm. Gregory Lemelson and Massachusetts-based Lemelson Capital Management LLC were...

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## SEC Wins Jury Trial Against Hedge Fund Adviser Who Ran Manipulative Short Scheme

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Gregory Lemelson and Massachusetts-based Lemelson Capital Management LLC **were charged with fraud in September 2018** for reaping more than \$1.3 million in illegal profits through a scheme to drive down the price of San Diego-based Ligand Pharmaceuticals Inc. The SEC’s evidence at trial showed that after

establishing a short position in Ligand through his hedge fund, Lemelson made a series of false statements to shake investor confidence in Ligand and lower its stock price, increasing the value of his fund’s position. The false statements included assertions that Ligand’s investor relations firm had agreed that Ligand’s most profitable drug was on the brink of obsolescence and that Ligand had entered into a sham transaction with an unaudited shell company in order to pad its balance sheet. The evidence also showed that Lemelson had boasted about bringing down Ligand’s stock price through his “multi-month battle” against the company.

The jury found Lemelson and Lemelson Capital Management liable for fraudulent misrepresentations. The court will determine remedies at a later date.

“Investment professionals play a crucial role in our markets and when they break the law they undermine investors’ trust,” said Gurbir S. Grewal, Director of the SEC’s Division of Enforcement. “We’ll continue to use all of the tools in our toolkit to hold wrongdoers accountable, including litigating whenever necessary. This verdict underscores that commitment as well as our staff’s ability, tenacity, and experience to win those trials.”

The SEC’s litigation was conducted by Marc J. Jones and Alfred A. Day of the Boston Regional Office. The SEC’s investigation was conducted by Virginia Rosado Desilets, Sonia Torrico, and Jennifer Clark, and supervised by David A. Becker and Carolyn Welshhans.

### Related Materials

[SEC Complaint](#)



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### 8. Gregory Lemelson

A Boston jury recently found (https://www.thinkadvisor.com/2021/11/11/jury-finds-priest-serving-as-hedge-fund-advisor-made-false-statements/) that Greek Orthodox priest Gregory Lemelson (also known as Father Emmanuel Lemelson) intentionally or recklessly made untrue statements of a material fact or omitted to state a material fact to his clients while serving as an unregistered advisor. But the jury found that he did not intentionally or recklessly engage in a scheme to defraud clients.

The Securities and Exchange Commission had alleged (https://www.thinkadvisor.com/2018/09/13/priest-bore-false-witness-to-reap-profits-in-his-hedge-fund-sec-says/) in a complaint (https://www.sec.gov/litigation/complaints/2018/comp24267.pdf) filed Sept. 12, 2018, in U.S. District Court for the District of Massachusetts that Lemelson and Massachusetts-based Lemelson Capital Management LLC (https://www.lemelsoncapital.com/management) illegally profited from a

News December 13, 2021 at 02:21 PM Share & Print

This past year offered such an extensive list of registered advisors and brokers who qualified for the dubious distinction of being among the worst financial advisors of the year that ThinkAdvisor didn't even bother to include bogus brokers and advisors in the recent **10 Worst Financial Advisors in America** (https://www.thinkadvisor.com/2021/12/03/10-worst-financial-advisors-in-america-2021/).

Instead, ThinkAdvisor decided to devote this separate report to those accused of leading investors astray who lacked the proper credentials to give advice.





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clients and creating elaborate investment scams in 2021.

One fraudster on this list even threatened to murder a client. (It should be noted that not all of these bogus brokers and artificial advisors have been convicted of crimes.)

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ThinkAdvisor searched enforcement actions from the Securities and Exchange Commission, Financial Industry Regulatory Authority and others, as well as local news outlets, to find some of the worst advisors of the year. Check them out in the gallery above.

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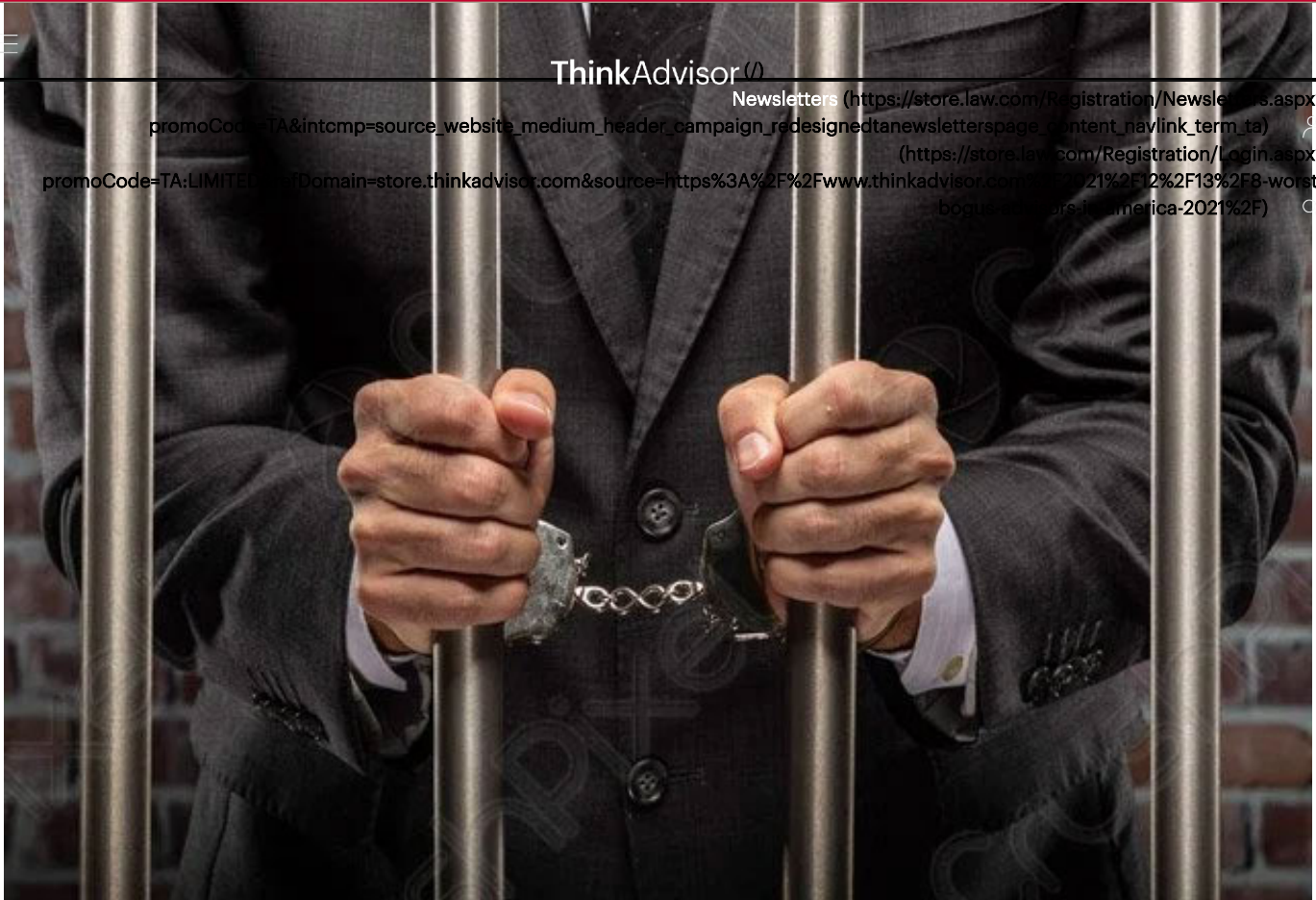
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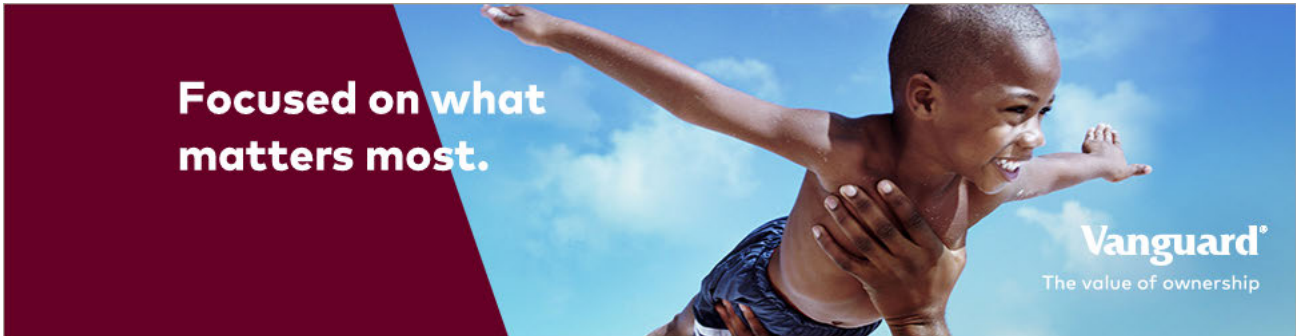


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## **Respondent Exhibit 47**

## Press Release

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# SEC Wins Jury Trial: Hedge Fund Adviser Found Liable for Securities Fraud

### FOR IMMEDIATE RELEASE

2021-224

Washington D.C., Nov. 5, 2021 — Jurors in Boston federal court today returned a verdict in the Securities Exchange Commission’s favor against a hedge fund adviser and his investment advisory firm.

Gregory Lemelson and Massachusetts-based Lemelson Capital Management LLC were charged with fraud in September 2018 for reaping more than \$1.3 million in illegal profits by making false statements to drive down the price of San Diego-based Ligand Pharmaceuticals Inc. The SEC’s evidence at trial showed that after establishing a short position in Ligand through his hedge fund, Lemelson made a series of false statements to shake investor confidence in Ligand and lower its stock price, increasing the value of his fund’s position. The false statements included assertions that Ligand’s investor relations firm had agreed that Ligand’s most profitable drug was on the brink of obsolescence and that Ligand had entered into a sham transaction with an unaudited shell company in order to pad its balance sheet. The evidence also showed that Lemelson had boasted about bringing down Ligand’s stock price through his “multi-month battle” against the company.

The jury found Lemelson and Lemelson Capital Management liable for fraudulent misrepresentations. The court will determine remedies at a later date.

“Investment professionals play a crucial role in our markets and when they break the law they undermine investors’ trust,” said Gurbir S. Grewal, Director of the SEC’s Division of Enforcement. “We’ll continue to use all of the tools in our toolkit to hold wrongdoers accountable, including litigating whenever necessary. This verdict underscores that commitment as well as our staff’s ability, tenacity, and experience to win those trials.”

The SEC’s litigation was conducted by Marc J. Jones and Alfred A. Day of the Boston Regional Office. The SEC’s investigation was conducted by Virginia Rosado Desilets, Sonia Torrico, and Jennifer Clark, and supervised by David A. Becker and Carolyn Welshhans.

###

## Related Materials

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- [SEC Complaint](#)

## **Respondent Exhibit 48**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

_____	)	
SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil Action No. 1:18-cv-11926-PBS
GREGORY LEMELSON and LEMELSON CAPITAL	)	
MANAGEMENT, LLC,	)	
	)	
Defendants,	)	<b>ORAL ARGUMENT REQUESTED</b>
	)	
and	)	
	)	
THE AMVONA FUND, LP,	)	
	)	
Relief Defendant	)	
_____	)	

**DEFENDANTS’ MEMORANDUM OF LAW  
IN SUPPORT OF THEIR MOTION TO DISMISS**

Douglas S. Brooks (BBO No. 636697)  
LIBBYHOOPES, P.C.  
399 Boylston Street  
Boston, MA 02116  
Tel.: (617) 338-9300  
[dbrooks@libbyhoopes.com](mailto:dbrooks@libbyhoopes.com)



Defendants Rev. Fr. Emmanuel Lemelson (identified in the Complaint as “Gregory Lemelson”) and Lemelson Capital Management, LLC (“LCM”) (collectively, “Lemelson”), along with Relief Defendant The Amvona Fund, LP (“Amvona”), submit this memorandum in support of their motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6).

The SEC alleges Lemelson violated Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, through allegedly false and misleading statements concerning Ligand Pharmaceuticals, Inc. (“Ligand”), a public company in which LCM, through Amvona, had taken, and very publicly disclosed, a “short” position. Lemelson’s challenged conduct is radically different from the conduct present in *all* previous so-called “short and distort” cases brought by the SEC. In every one of those prior cases, the defendant used artifice and deceit to promulgate a deliberately false rumor or “breaking news”-type story about the company he had shorted, and then, immediately after publishing the intentional falsehood, covered the short position to profit from the sudden drop in the share price he had fraudulently and surreptitiously caused. Here, by contrast, Lemelson always operated openly and transparently, with notice to all that he was short Ligand and was offering his own opinions and views about what he believed to be Ligand’s overvaluation and materially misleading statements in its disclosures. Further, he held the vast majority of his short position for about four months, thus exposing himself and his fund to the risk of tremendous loss.

Not surprisingly given the absence of such “short and distort” conduct, in an effort to cast Lemelson’s statements as securities fraud, the SEC resorts to distorting the facts, claiming as false statements that are demonstrably true, misrepresenting what Lemelson actually said, and ignoring the plain language of the very documents upon which it purportedly relies. In sum, the SEC’s Complaint fails to state a viable claim under 10b-5 because: (1) at least four of the

allegedly false statements were demonstrably true; (2) several others constitute constitutionally protected opinions that the SEC fails (fatally) to allege Lemelson did not actually hold; and (3) to the extent that the lone remaining challenged statement can be deemed false or misleading at the motion to dismiss stage, it—like *all* the statements at issue—was immaterial as a matter of law.

The SEC also alleges Lemelson violated Section 206(4) of the Investment Advisers Act, 15 U.S.C. § 80b-6, and Rule 206(4)-8 thereunder, 17 C.F.R. 275.206(4)-8, by sharing the allegedly false and misleading statements about Ligand with Amvona’s investors and by failing to disclose that the profitability of the fund depended on the alleged manipulation of Ligand’s stock. The first theory is based on a novel interpretation of Section 206(4) that the SEC has never previously put forward—because Section 206(4) does not cover such conduct. The latter theory fails for the additional reason that Lemelson did not manipulate Ligand’s stock.

Therefore, because the SEC cannot establish either its Section 10(b) or 206(4) claims as a matter of law, the Complaint must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

### **BACKGROUND**

Lemelson is a canonically ordained priest in the Greek Orthodox Church. He also serves as the Chief Investment Officer of LCM. Compl. ¶ 17. LCM is the general partner to Amvona, a pooled investment vehicle. *Id.* ¶¶ 18, 19.

In 2014, Lemelson publicly shorted and criticized Ligand, which he believes was engaged in accounting and securities fraud. Lemelson’s criticism of Ligand included his belief that (1) Ligand’s product, Promacta, a fourth-line indication used in conjunction with interferon-based Hepatitis C treatments, faced a serious competitive threat from a new drug, Sovaldi, which cures Hepatitis C, and (2) Viking Therapeutics, Inc. (“Viking”), a company to which Ligand

loaned money and entered into a licensing agreement, as well as a tenant that leased space from Ligand, was nothing more than a “shell” or an alter-ego of Ligand.<sup>1</sup>

The SEC alleges that certain of Lemelson’s criticisms of Ligand and Viking were false and misleading and drove down Ligand’s stock price, thus constituting securities fraud. Compl.

¶¶ 1, 3-4. The SEC alleges the following statements Lemelson made are false or misleading:

1. That he “‘had discussions with [Ligand] management just yesterday – excuse me, their [Ligand’s] IR [investor relations] firm. And they basically agreed. They said, ‘Look, we understand Promacta’s going away.’”” *Id.* ¶ 37 (quoting June 19, 2014 interview);
2. That he had information about Promacta from “‘an Associate Clinical Professor of Medicine and Surgery at one of the largest transplant Hepatology departments at a major U.S. university hospital and also with the Chief of abdominal surgery and transplantation at a major European university hospital.’” *Id.* ¶ 40 (quoting June 16, 2014 report);
3. That “‘Ligand appears to be indirectly creating a shell company through Viking to generate paper profits to stuff its own balance sheet,’” “Ligand had ‘engaged in a “creative transaction” with an affiliate shell company called Viking Therapeutics’ to the detriment of Ligand shareholders,” and “Viking was ‘an affiliate shell company’ that Ligand used to ‘create almost a veritable pyramid scheme of shell companies’ that was ‘guaranteed to lose money.’” *Id.* ¶¶ 44, 46 (quoting July 3, 2014 report);
4. That “Viking had ‘yet to consult with [its auditors] on any material issues’ and that the ‘financial statements provided in the S1 accordingly are unaudited.’” *Id.* ¶ 46 (quoting July 3, 2014 report);
5. That “‘Viking does not intend to conduct any preclinical studies or trials.’” *Id.* ¶ 46 (quoting July 3, 2014 report);
6. That “Ligand ‘issued 245 million in new debt, against tangible equity of just \$21,000, giving rise to a debt to tangible equity ratio of 11,667 to 1 (that is \$11,667 dollars (sic) in debt for every \$1 in tangible common shareholder equity)’” and that Ligand “‘shareholders have only the protection of \$21,000 in tangible equity to shield them from \$245 million in debt.’” *Id.* ¶ 51 (quoting August 14 & 22, 2014 reports).<sup>2</sup>

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<sup>1</sup> Lemelson felt (and continues to feel) so strongly in his opinions about Ligand that in January 2016—more than 2.5 years before the SEC filed this action—he filed a whistleblower complaint with the SEC against Ligand and has continued to declaim publicly against what he sees as a massive accounting and securities fraud.

<sup>2</sup> Remarkably, among the more than 650 allegations Lemelson raised concerning Ligand and Viking in his reports, interviews, and tweets, the SEC identified only a handful as allegedly false or misleading—another example of how this case differs from all the SEC’s other short-and-distort cases.

The SEC alleges Amvona earned \$1.3 million from its short position in Ligand. *Id.* ¶ 8.<sup>3</sup>

### **LEGAL STANDARD**

To survive a Rule 12(b)(6) motion, the complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678 (citing *Twombly*, 550 U.S. at 556). “Plausible, of course, means something more than merely possible, and gauging a pleaded situation’s plausibility is a context-specific job that compels [the court] to draw on [its] judicial experience and common sense.” *Henderson v. Bank of New York Mellon Corp.*, 146 F. Supp. 3d 438, 441 (D. Mass. 2015) (quotation omitted).<sup>4</sup>

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<sup>3</sup> Ligand’s share price was extremely volatile during 2014, frequently experiencing sharp declines before Lemelson issued any of his reports, and climbing on some of the days he issued his allegedly misleading statements. *See, e.g.*, Yahoo! Finance, NASDAQ:LGND Historical Share Price (Jan. 2, 2014-Dec. 31, 2014), available at <https://finance.yahoo.com/quote/LGND/history?period1=1388552400&period2=1420002000&interval=1d&filter=history&frequency=1d>; *see also* Ligand, Form 10-Q (May 7, 2014) at 41 (“Our stock price has been volatile and could experience a sudden decline in value.”). Indeed, Ligand’s share price continues to be volatile, dropping (as of market close the day prior to filing the instant motion) *more than 40% and more than \$111 per share* in October 2018 alone. Yahoo! Finance, NASDAQ: LGND Historical Share Price (Oct. 1-24, 2018), available at <https://finance.yahoo.com/quote/LGND/history?period1=1506830400&period2=1540353600&interval=1d&filter=history&frequency=1d>. Accordingly, the SEC’s promotional language concerning Ligand’s stock price in its Complaint that “today, Ligand’s stock trades at over \$250.00,” Compl. ¶ 8, is not only irrelevant to its claims but also a completely improper effort to trumpet the company’s purported value and success.

<sup>4</sup> “In deciding a motion to dismiss a securities action, a court may properly consider the relevant entirety of a document integral to or explicitly relied upon in the complaint, even though not attached to the complaint, without converting the motion into one for summary judgment.” *Shaw v. Digital Equip. Corp.*, 82 F.3d 1194, 1220 (1st Cir. 1996) (citations omitted) (superseded by statute on other grounds). Thus, Defendants submit herewith the Declaration of Douglas S. Brooks (Oct. 25, 2018) (hereafter, “Ex. [#]”), with the relevant reports and other documents relied upon in the Complaint attached.

## ARGUMENT

### **I. THE SEC’S SECTION 10(b) AND RULE 10b-5 CLAIM FAILS.**

For its Section 10(b) claim to survive, the SEC must allege that Lemelson (1) “engaged in fraudulent conduct; (2) in connection with the purchase or sale of securities; (3) through the means or instruments of transportation or communication in interstate commerce or the mails; and (4) with the requisite scienter.” *SEC v. Tambone*, 417 F. Supp. 2d 127, 131 (D. Mass. 2006) (citing *Aaron v. SEC*, 446 U.S. 680, 695 (1980)). To establish that Lemelson engaged in fraud, the SEC must show he “(1) made an untrue statement of material fact; (2) omitted a fact that rendered a prior statement misleading; or (3) committed a manipulative or deceptive act as part of a scheme to defraud.” *Id.* at 132 (citing *Gross v. Summa Four, Inc.* 93 F.3d 987, 992 (1st Cir. 1996) (superseded by statute on other grounds)). The SEC cannot meet its burden.

#### **A. At Least Four of the Challenged Statements Were Demonstrably True.**

The documents on which the SEC purports to rely show that at least four of the challenged statements are undeniably true. Perhaps in tacit acknowledgement of the meritless nature of its claims, the SEC attributes inflammatory language to Lemelson that he never said and makes erroneous factual assertions. For example, the SEC claims Lemelson said that (1) Ligand was “teetering on the brink of bankruptcy,” Compl. ¶ 27 (citing August 14 report), despite that Lemelson *never* used that phrase in his August 14 report or elsewhere;<sup>5</sup> (2) Ligand “was saddled with crippling debt,” *id.* ¶ 51, although Lemelson never used those words to describe Ligand’s financial situation; (3) Ligand’s drug was on the “brink of obsolescence,” another phrase that the SEC fabricates rather than accurately quoting Lemelson; and (4) the

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<sup>5</sup> See generally Ex. 4 (August 14 report). The SEC unfairly exacerbates this untrue allegation by placing quotations around that specific language in its press release announcing its filing of this lawsuit, thereby misleading readers that Lemelson actually uttered those exact words. See SEC, “SEC Charges Hedge Fund Adviser with Short-and-Distort Scheme” (Sept. 12, 2018), available at <https://www.sec.gov/news/press-release/2018-190>.

Viking-Ligand business relationship was a “sham” or “fraud,” despite that he never used those words to describe the relationship. *See id.* ¶¶ 5, 25, 50. Finally, the SEC purports to *quote* Lemelson as saying Ligand’s ““common shareholders could be wiped out almost entirely without notice,”” *id.* ¶ 28 (purportedly quoting August 22 report), although Lemelson did not say that and his actual quote on the subject was vastly different. It makes a mockery of Fed. R. Civ. P. 9(b)’s particularity requirement for the SEC to *invent* Lemelson’s words to boost its case, rather than simply rely on what he *actually* said.

The Complaint also contains clear misstatements of fact to bolster its claims. For example, the SEC alleges that as of July 3, 2014 “Ligand had bought just under half of [Viking] before Lemelson started trying to drive Ligand’s stock price down.” Compl. ¶ 45. This is false. Under the Master License Agreement between Viking and Ligand, Viking was to provide Ligand with \$29 million worth of shares “upon the consummation by Viking of a firmly underwritten public offering,” an event which did not occur until April 2015. Ex. 7 (Master License Agreement) at Art. 5.1(b); Viking, “Viking Therapeutics, Inc. Announces Pricing of Initial Public Offering” (April 29, 2015), *available at* <http://ir.vikingtherapeutics.com/2015-04-29-Viking-Therapeutics-Inc-Announces-Pricing-of-Initial-Public-Offering>. In any event, even where the SEC accurately quotes Lemelson, its allegations fail to state a claim.

***1. The July 3 report accurately describes that Viking did not intend to conduct preclinical studies or trials.***

The SEC claims Lemelson’s statement that ““Viking does not intend to conduct any preclinical studies or trials,””—made to support his thesis that Viking was a “shell” of a company—was false. Compl. ¶ 46 (quoting July 3 report). As Viking’s S-1 unequivocally shows, however, Lemelson accurately reported this information from Viking’s own disclosures. In support of its erroneous position, the SEC curiously seeks to establish Viking’s *bona fides* by

asserting that Viking “leased space from Ligand to conduct the necessary research and development activities, *which include preclinical studies and trials.*” *Id.* ¶ 48 (emphasis added). The italicized language, however, is *directly contradicted* by Viking’s S-1, where Viking explicitly stated that, “as a company, we do not have any experience in conducting clinical trials for our drug candidates.” Ex. 6 (Viking S-1) at 13. Viking then disclosed:

***We intend to rely on third parties to conduct our preclinical studies and clinical trials and perform other tasks for us. . . .***

*Id.* at 17 (bold in original, italics added). Thus, as Lemelson correctly put it, “*Viking* does not intend to conduct any preclinical studies or trials.” Ex. 2 (July 3 report) at 7 (emphasis added). Lemelson never claimed—and the SEC does not allege otherwise—that *no* clinical studies would be performed. Indeed, the focus of Lemelson’s July 3 report was not the unremarkable fact that preclinical studies would be performed *by someone*, but on Lemelson’s belief that Viking was merely a “single-purpose vehicle created to raise more capital from public markets for its sponsor, Ligand Pharmaceuticals.” *Id.* at 7. Consistent with the above, Lemelson simply related Viking’s disclosure that Viking, as an entity, did not intend to conduct any preclinical studies or trials. Accordingly, Lemelson’s statement is unequivocally true.<sup>6</sup>

**2. *Lemelson’s Statement Concerning the Debt-to-Tangible Equity Ratio Arising from Ligand’s Bond Offering Was Demonstrably True.***

In alleging that Lemelson falsely stated Ligand’s debt-to-tangible equity ratio, the SEC cites to the following language in his reports: “Ligand ‘issued 245 million in new debt, against

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<sup>6</sup> Lemelson’s statements about Viking fail to state a claim under Section 10(b) or Rule 10b-5 for the additional reason that Lemelson did not make them “in connection with the purchase or sale” of Viking securities. The SEC does not allege that Defendants “shorted” Viking or otherwise traded in Viking securities. Indeed, Viking did not undergo its IPO until April 2015 (8 months after Lemelson published his last report), and Ligand did not own any shares of Viking until that time. Therefore, any impact on Viking could not reasonably have impacted the financial condition or share price of Ligand. *See* Viking Therapeutics, Inc. Announces Pricing of Initial Public Offering, *supra*; Ex. 7 at Art. 5.1(b).



tangible equity of just \$21,000, giving rise to a debt to tangible equity ratio of 11,667 to 1 (that is \$11,667 dollars (sic) in debt for every \$1 in tangible common shareholder equity)” and that Ligand “shareholders have only the protection of \$21,000 in tangible equity to shield them from \$245 million in debt.” Compl. ¶ 51 (quoting August 14 & 22 reports). From this, the SEC mistakenly concludes:

In calculating Ligand’s ‘debt to equity’<sup>7</sup> ratio of 11,667 to 1, Lemelson included the new debt but not the proceeds of the loan, which would have yielded a debt-to-equity ratio closer to 1:1. Lemelson intentionally misstated Ligand’s debt-to-equity ratio, or was reckless as to the truth or falsity of the statement.

*Id.* ¶ 52. The SEC’s allegation is flat-out wrong and exposes a complete lack of understanding of the most elementary principles of accounting. *See, e.g., SEC’s Beginners Guide to Financial Statements.*<sup>8</sup> That Ligand received \$245 million in cash from its bond offering has no bearing whatsoever on Ligand’s *equity*, but obviously increases its *debt*. *See generally id.*<sup>9</sup> Accordingly, the SEC’s contention that Ligand’s true debt-to-equity ratio was closer to 1:1 is false and misleading. Indeed, contrary to the SEC’s assertion, it would have violated basic accounting principles for Lemelson to include “the new proceeds of the loan” in any valid debt-to-tangible equity ratio. His statement concerning that ratio was therefore undeniably true.

**3. The June 16 report does not mislead readers about information Lemelson obtained from a European and American doctor.**

The SEC alleges that the “June 16 Report cites information provided by ‘an Associate Clinical Professor of Medicine and Surgery at one of the largest transplant Hepatology departments at a major U.S. university hospital and also with the Chief of abdominal surgery and

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<sup>7</sup> Here again, the SEC misquotes Lemelson, as his calculation related to the common shareholder’s “*tangible*” equity—a word which the SEC conveniently omits from this quotation.

<sup>8</sup> Available at <https://www.sec.gov/oiea/reportspubs/investor-publications/beginners-guide-to-financial-statements.html>.

<sup>9</sup> The SEC confuses the very distinct concepts of “assets,” “liabilities,” and “equity.”



transplantation at a major European university hospital,” which misled readers about “other ‘evidence’ [Lemelson] had about Promacta” to “bolster his false representation that Promacta was on the brink of obsolescence.” Compl. ¶ 40. Contrary to the SEC’s assertion, however, Lemelson’s June 16 report does *not* cite the information from the two doctors to suggest that Promacta was “on the brink of obsolescence.” Rather, the June 16 Report states:

The purpose and applicability of Promacta® was discussed with an Associate Clinical Professor of Medicine and Surgery at one of the largest transplant Hepatology departments at a major U.S. university hospital and also with the Chief of abdominal surgery and transplantation at a major European university hospital, with *the latter* commenting after consultation with his US counter-part:

“I spoke to one of my colleague[s] (the chief of transplant Hepatology at the largest liver transplant program in the US) regarding the future of Hep C treatment: he is very impressed by the new drug from Gilead (Sovaldi®) in his patients, it is very well tolerated even in patients with advanced disease (including ones with thrombocytopenia). Though the drug is used with or without interferon currently he expects that in the near future with more drugs close to being approved on the market he sees a shorter treatment cycle without interferon and with even better tolerance...”

Chief of abdominal surgery and transplantation  
Major European university hospital  
June 12<sup>th</sup>, 2014.

Ex. 1 at 6-7 (emphasis added). Lemelson never claimed that either doctor said Promacta was “on the brink of obsolescence,” as the SEC erroneously alleges. Compl. ¶ 40. Rather, the entire quotation concerned the prospects of another drug, Sovaldi, with no comment on Promacta.<sup>10</sup>

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<sup>10</sup> Likewise, the SEC alleges that “Lemelson cited two articles in the June 16th Report as ‘references to the obsolete nature of [Hepatitis C] supportive care treatments such as Promacta,’ despite the fact that neither article discussed Promacta, and neither article could be fairly construed as implying or suggesting that Sovaldi would render Promacta obsolete.” Compl. ¶ 41 (brackets in original). But Lemelson never claimed the articles discussed Promacta or its prospects. *See generally* Ex. 1. He simply cited them in support of his *opinion* that sales of Sovaldi—the prospects of which both articles discuss, including that “Wall Street has already declared a winner in the race to develop new treatments for hepatitis C” and Sovaldi was “already the best drug launch ever with \$2.3 billion in sales in its first quarter, is set to dominate this new [Hepatitis C] market”—posed a serious threat to Promacta royalties. *Id.* at 7.

The SEC nevertheless alleges Lemelson’s statement constituted securities fraud because he “did not disclose that the European hospital doctor was actually Amvona’s largest investor (and thus had a significant financial interest in making Ligand’s stock price fall),” and that he “never spoke with the U.S. hospital doctor, relying only on a report from his largest investor on what the U.S. hospital doctor had said.” Compl. ¶ 40. Again, the SEC is distorting the facts to sustain its claims. Lemelson never alleged to have spoken to the U.S. doctor directly; in fact, he explicitly disclosed that it was the European doctor—not Lemelson—who spoke to the U.S. doctor. *See* Ex. 1 at 6-7. Further, it is not clear how the failure to disclose the European doctor’s investment in Amvona could possibly be deemed materially misleading, especially where (i) the SEC does not allege that the European doctor conspired to commit securities fraud; (ii) the SEC has not challenged the veracity of the U.S. doctor, who had no financial interest in Amvona; and (iii) the European doctor did not comment—*at all*—on Promacta, but rather merely conveyed his American colleague’s view on *another drug*. *See also* Section I.C., *infra*.

**4. *The July 3 report accurately stated that Viking’s 2014 financial statements were unaudited.***

The SEC also claims Lemelson’s statements that “as of the filing of Viking’s July 1, 2014 Form S-1 registration statement, Viking had ‘yet to consult with [its auditors] on any material issues’ and that the ‘financial statements provided in the S1 accordingly are unaudited,’” Compl. ¶ 46 (quoting July 3, 2014 report), are untrue. The SEC alleges the statements are false because Viking’s S-1 “contains a letter from Viking’s new auditors stating that they have ‘audited the balance sheets of Viking . . . as of December 31, 2012, and 2013.’” *Id.* ¶ 47.

The SEC, however, ignores that certain financial statements provided in the S-1, including the three months ended March 31, 2013 and the cumulative period from inception through March 31, 2014, *were* unaudited. *See, e.g.*, Ex. 6 at 9 (“The summary statement of

operations data for the three months ended March 31, 2013 and 2014 and the cumulative period from September 24, 2012 (Inception) through March 31, 2014, and the balance sheet data as of March 31, 2014, are derived from our *unaudited* financial statements included elsewhere in this prospectus.”) (with subsequent charts identifying unaudited numbers) (emphasis added).<sup>11</sup> Particularly where Lemelson cited the S-1 such that investors could easily identify which financials were audited and which were not, his statement is not false or misleading.<sup>12</sup>

**B. Several of the Statements the SEC Challenges Are Protected Opinions.**

“Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.” *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-40 (1974). It is “fundamental” that liability “will not lie for misstatements of opinion, as distinguished from those of fact.” *MHC Mutual Conversion Fund, L.P. v. Sandler O’Neill & Partners, L.P.*, 761 F.3d 1109, 1111 (10th Cir. 2014). While “matters of belief and opinion are not beyond the purview of” the securities laws, “liability lies only to the extent that the statement was both objectively false and *disbelieved by the defendant at the time it was expressed.*” *Fait v. Regions Fin. Corp.*, 655 F.3d 105, 110 (2d Cir. 2011) (citing *Virginia Bankshares v. Sandberg*, 501 U.S. 1083, 1095-96 (1991)) (emphasis added); *MHC Mutual*, 761 F.3d at 1113 (“To warrant liability on this view, then, a plaintiff must show *both* that the defendant expressed an opinion that wasn’t his real opinion (sometimes called ‘subjective disbelief’) *and* that the opinion didn’t prove out in

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<sup>11</sup> See also *id.* at 56, 65, 67, F-2, F-3, F-5, F-6 (“Information as of March 31, 2014 and thereafter and for the three months ended March 31, 2013 and 2014 is unaudited . . . . The financial statements as of March 31, 2014, for the three months ended March 31, 2013 and 2014, and for the cumulative period from September 24, 2012 (Inception) through March 31, 2014 are unaudited.”).

<sup>12</sup> Of note, the word “unaudited” appears 56 times in Viking’s S-1, whereas the word “audited” appears only 7, demonstrating the heavy reliance of the S-1 on *unaudited* financial statements.

the end (sometimes called ‘objective falsity’.)” (emphasis in original); *Mayer v. Mylod*, 988 F.2d 635, 639 (6th Cir. 1993) (“Material statements which contain the speaker’s opinion are actionable under Section 10(b) of the Securities Exchange Act if the speaker does not believe the opinion and the opinion is not factually well-grounded.”) (citations omitted).

The opinion statements the SEC challenges include that (1) Ligand’s product Promacta was “going to become obsolete”; (2) “Ligand appears to be indirectly creating a shell company through Viking to generate paper profits to stuff its own balance sheet”; (3) “Ligand had ‘engaged in a “creative transaction”<sup>13</sup> with an affiliate shell company called Viking Therapeutics’ to the detriment of Ligand shareholders”; and (4) “Viking was ‘an affiliate shell company’ that Ligand used ‘to create almost a veritable pyramid scheme of shell companies’ that was ‘guaranteed to lose money.’” Compl. ¶¶ 36, 44, 46. Critically, the SEC *never* alleges that Lemelson did not believe these opinions. This failure is fatal. *See Fait*, 655 F.3d 105 (affirming dismissal where plaintiff failed to allege defendant did not believe allegedly misleading opinions when made); *MHC Mutual*, 761 F.3d at 1114 (affirming dismissal where plaintiffs did “not include any plausible allegations in their complaint suggesting that the defendants’ expressed opinion wasn’t their true opinion”); *see also id.* at 1114 (“the failure of an opinion about future events just isn’t enough, standing all by itself, to suggest plausibly that the opinion was an insincere (or untrue or misleading) one”).

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<sup>13</sup> In just another egregious example of an erroneous allegation in the Complaint, the SEC targets Lemelson for referring to the Viking-Ligand licensing deal as a “creative transaction,” even though Lemelson was simply quoting *Ligand’s own President and CEO*, who referred to the deal as a “creative transaction” in a May 22, 2014 press release. *See Ex. 2* at 7 (quoting Viking, “Viking Signs Broad Licensing Deal with Ligand Pharmaceuticals for Rights to Five Novel Therapeutic Programs” (May 22, 2014), available at <https://www.vikingtherapeutics.com/2014/05/22/viking-signs-broad-licensing-deal-with-ligand-pharmaceuticals-for-rights-to-five-novel-therapeutic-programs/>).

Lemelson anticipates the SEC may argue these statements were not opinions, but fact. Such an argument is belied by the SEC’s own words, which, for example, describe Lemelson’s “thesis” about the future of Promacta. Compl. ¶ 36. Further, Lemelson’s figurative and hyperbolic language, the overall context of his statements, and their inability to be characterized as true or false demonstrate the nature of the statements as opinions. *See, e.g., Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 21 (1990) (to determine fact versus opinion, the court must (1) examine whether the language used is “loose, figurative, or hyperbolic . . . which would negate the impression that the writer” was stating fact and (2) look at the context and “general tenor” of the article); *Ollman v. Evans*, 750 F.2d 970, 979, 983 (D.C. Cir. 1984) (to determine whether statement is opinion or fact, a court should (1) consider the author’s choice of words; (2) decide whether the challenged statement is “capable of being objectively characterized as true or false”; (3) examine the context of the challenged statement within the writing as a whole; and (4) consider “the broader social context into which the statement fits”); *Potomac Valve & Fitting, Inc. v. Crawford Fitting Co.*, 829 F.2d 1280, 1288 (4th Cir. 1987) (if “defendant’s words cannot be described as either true or false, they are not actionable”).

Lemelson’s discussion of Viking as a “shell company” designed to create “paper profits” to “stuff” its balance sheet is exactly the type of “loose, figurative, [and] hyperbolic” language that “negate[s] the impression that the writer” is stating a fact. *Milkovich*, 497 U.S. at 21. Similarly, Lemelson’s statement about a “veritable pyramid scheme of shell companies” is hyperbole that lacks any verifiable meaning. *See Levinsky’s Inc. v. Wal-Mart Stores, Inc.*, 127 F.3d 122, 129 (1st Cir. 1997) (“The vaguer the term, or the more meanings it reasonably can convey, the less likely it is to be actionable.”); *Wynn v. Chanos*, 75 F. Supp. 3d 1228, 1238 (N.D. Cal. 2014) (that statement was “clearly hyperbolic and cannot be considered to be defamatory,”

provided “further proof that [defendant’s] earlier statements were opinions, and not factual assertions”). Indeed, the overall vague and hyperbolic tone and tenor of Lemelson’s reports demonstrate the nature of his statements as opinions. *Biospherics, Inc. v. Forbes, Inc.*, 151 F.3d 180, 184 (4th Cir. 1998) (finding “breezy rather than solemn tone” of article demonstrated a context and tone that “reflect[] the writer’s subjective and speculative supposition”). As the SEC notes, Lemelson several times claimed that Ligand’s “fair value is roughly \$0 per share, or 100 percent below the current stock price,” Compl. ¶ 24 (quoting June 16 report); *see also id.* ¶¶ 25-26, and that common shareholders could be “wiped out.” *Id.* ¶ 28 (quoting August 22 report). This is not the language of factual assertions, but of strongly held opinions.

What is more, Lemelson always cited the bases for his opinions—most notably Ligand and Viking’s respective securities filings—which weighs heavily in favor of finding that these statements were unactionable opinions. *See Chapin v. Knight-Rider, Inc.*, 993 F.2d 1087, 1093 (4th Cir. 1993) (when “the bases for the . . . conclusion are fully disclosed, no reasonable reader would consider the term anything but the opinion of the author drawn from the circumstances related”); *see also Wynn*, 75 F. Supp. 3d at 1233 (“when the facts underlying a statement of opinion are disclosed, readers will understand they are getting the author’s interpretation of the facts presented; they are therefore unlikely to construe the statement as insinuating the existence of additional, undisclosed facts”) (quoting *Standing Comm’n on Discipline of U.S. Dist. Court for Cent. Dist. of California v. Yagman*, 55 F.3d 1430, 1439 (9th Cir. 1995)). Indeed, the SEC itself alleges that “each of Lemelson’s false statements about Viking is contradicted by the source Lemelson supposedly relied upon.” Compl. ¶ 49. Rather than demonstrate that these statements are actionable under 10b-5, as the SEC posits, this allegation unequivocally renders

the statements protected opinions, because they show Lemelson disclosed the bases for his opinions and left it to his readers to evaluate his interpretation of the facts presented.

Lemelson also qualified his statements with cautionary language, including, most notably, full disclosure that he was “shorting” Ligand.<sup>14</sup> Starting with the *first* sentence of his *first* report on Ligand, and continuing from there, Lemelson disclosed that “Lemelson Capital is short shares of (NASDAQ:LGND).” Ex. 1 at 1.<sup>15</sup> This alone renders the above statements protected opinions. *See Silvercorp Metals Inc. v. Anthion Mgmt. LLC*, 959 N.Y.S.2d 92 (Table), 2012 WL 3569952 (N.Y. Sup. Ct. 2012). In that case, the court held that a declared short’s public statements (like Lemelson’s) laying out his analysis were not actionable for defamation because they revealed “the author’s self-interest through the disclosure that he ‘works for a firm that currently has a short position’ in Silvercorp.” *Id.* at \*9. The court noted: “[T]hat [the author] disclosed its short position, namely to the particular group of addressees who would appreciate the significance of a short-position, is sufficient to indicate to these particular readers that [the author] was not disinterested,” and the author’s obvious “motive” “indicates to the reader that the author is expressing his opinion.” *Id.*

Lemelson additionally disclosed that “[a]ll content in this report represents the *opinions* of Lemelson Capital.” Ex. 1 at 24 (emphasis added).<sup>16</sup> Such qualifications further demonstrate

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<sup>14</sup> As far as the undersigned is aware, Lemelson’s acknowledgment that he was short Ligand distinguishes this case from all other short-and-distort actions brought by the SEC.

<sup>15</sup> Lemelson continued with more fulsome disclosures at the end of each report that, “[a]s of the publication date of this report, Lemelson Capital Management LLC has a short position in the Company covered herein (Ligand Pharmaceuticals) and stands to realize gains in the event that the price of the stock declines.” Ex. 1 at 24.

<sup>16</sup> *See also id.* (“All expressions of opinion are subject to change without notice, and Lemelson Capital does not undertake to update or supplement this report or any information contained herein . . . . The information included in this document . . . reflects prevailing conditions and Lemelson Capital’s views as of this date, all of which are accordingly subject to change. Lemelson Capital’s opinions and estimates constitute a best efforts judgment and should be regarded as indicative, preliminary and for illustrative purposes only . . . . This report’s estimated fundamental value only represents a best efforts estimate of the potential fundamental valuation of a specific

these statements are opinions. *See MHC Mutual*, 761 F.3d at 1120 (finding statements were opinions because none “was definite; all were qualified; all provided reasonable notice to the recipient that the speaker might be wrong [and] . . . each necessarily required the speaker to exercise judgment about matters on which reasonable minds could well come to different conclusions”); *id.* at 1119 (“The more a speaker qualifies a statement, the less people will be misled if the statement turns out to be false.”) (quotations omitted); *see also Shaw v. Digital Equip. Corp.*, 82 F.3d 1194, 1213 (1st Cir. 1996) (“if a statement is couched in or accompanied by prominent cautionary language that clearly disclaims or discounts the drawing of a particular inference, any claim that the statement was materially misleading because it gave rise to that very inference may fail as a matter of law”) (quotation omitted).

**C. All the Challenged Statements Are Immaterial as a Matter of Law.**

A misrepresentation or omission is material if there is “a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix of information made available.’” *Basic v. Levinson*, 485 U.S. 224, 231-32 (1988) (quotations and citations omitted).

To be sure, “[i]n most circumstances, disputes over the materiality of allegedly false or misleading statements must be reserved for the trier of fact.” *Shaw*, 82 F.3d at 1217. But where, as here, statements are “so vague, so lacking in specificity, or so clearly constituting the opinions of the speaker, that no reasonable investor could find them important to the total mix of information available,” the Court may find them immaterial as a matter of law. *Id.* (citations omitted). Likewise, statements that “any reasonable investor . . . would easily recognize as

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security, and is not expressed as, or implied as, assessments of the quality of a security, a summary of past performance, or an actionable investment strategy for an investor . . . Lemelson Capital may benefit from any change in the valuation of any other companies, securities, or commodities discussed in this document.”).



nothing more than a kind of self-directed corporate puffery” are immaterial as a matter of law. *Id.* at 1218 (discussing materiality in context of fraud on the market theory); *see also Parnes v. Gateway 2000, Inc.*, 122 F.3d 539, 546 (8th Cir. 1997) (“Where a reasonable investor could not have been swayed by an alleged misrepresentation, . . . a court may determine, as a matter of law, that the alleged misrepresentation is immaterial.”) (citation omitted).

“To determine whether a statement is mere puffery, the Court must examine whether a statement is so ‘exaggerated’ or ‘vague’ that no reasonable investor would rely on the statement when considering the total mix of available information.” *In re Metawave Comm’ns Corp. Sec. Litig’n*, 298 F. Supp. 2d 1056, 1086 (W.D. Wash. 2003) (quoting *Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 200-0 (3d Cir. 1990), and *In re Splash Tech. Holdings, Inc. Sec. Litig’n*, 160 F. Supp. 2d 1059, 1076 (N.D. Cal. 2001)) (finding alleged misstatements “vague and opinions that a reasonable investor would not rely on in making investment decisions”); *see also Parnes*, 122 F.3d at 546-47 (statements that “are so vague and such obvious hyperbole that no reasonable investor would rely upon them” are immaterial as a matter of law). Lemelson’s opinions that Viking was a “shell company” and Ligand is worth \$0/share are precisely the type of “exaggerated” and “vague” statements that do not alter the total mix of information available.

Statements are also immaterial if they “present or conceal such insignificant data that, in the total mix of information, it simply would not matter to a reasonable investor.” *Parnes*, 122 F.3d at 546-47; *see also TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 448 (1976) (“Some information is of such dubious significance that insistence on its disclosure may accomplish more harm than good.”); *MHC Mutual*, 761 F.3d at 1117 (“Requiring more extensive disclosure of evidence tending to undermine a sincerely held opinion may, in the view of some, do more to invite information overload than materially benefit the consumer.”) (citations omitted). As

discussed above, that the European doctor Lemelson quoted was one of Amvona's largest investors is of dubious significance where the doctor was sharing the views of his non-investor American colleague, not his own, and the view expressed was favorable toward Solvadi, with no comment on how—if at all—it would affect Promacta's prospects. Similarly, the failure to disclose that *some* of the financials in Viking's S-1 were audited cannot be deemed material where any investor could see this by reviewing the S-1 specifically cited in the report.

Finally, Lemelson's "cautionary statements rendered immaterial all [his] alleged misrepresentations" because "[o]nly by discarding common sense and ignoring the multitude of explicit and on-point warnings contained in [his reports] could investors be misled by the misrepresentations allegedly made." *Parnes*, 122 F.3d at 548-49. Thus, the lone remaining challenged statement—that Lemelson "had discussions with [Ligand] management just yesterday – excuse me, their [Ligand's] IR [investor relations] firm. And they basically agreed. They said, 'Look, we understand Promacta's going away,'" Compl. ¶ 37 (quoting a June 19, 2014 interview)—is immaterial given the extensive cautionary statements included in his reports and his interview statement that he was shorting Ligand. *See also Virginia Bankshares*, 501 U.S. at 1097 ("true statements may discredit the other one so obviously that the risk of real deception drops to nil").

Moreover, to the extent the Court allows this case to proceed on the basis of this sole alleged misstatement, it is worth noting that it comes down to "he said/he said" (where Ligand's investment relations firm had an incentive to deny that it told Lemelson that Promacta was "going away") and is hardly sufficient to establish a fraudulent scheme under Section 10(b).<sup>17</sup>

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<sup>17</sup> In addition, it is also noteworthy that Ligand's stock *rose* on both the day of this interview as well as the next day, and including the day of the interview, rose 7 of the 11 following days. *See Yahoo! Finance*, *supra* n.3. It cannot seriously be argued that Lemelson's statement was material when, in immediate response, Ligand's stock price rose.

## **II. THE SEC'S 206(4) CLAIM FAILS AS A MATTER OF LAW.**

Section 206(4) of the Advisers Act prohibits an investment adviser from (1) “employ[ing] any device, scheme, or artifice to defraud any client or prospective client”; (2) “engag[ing] in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client”; or (3) engag[ing] in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.” Rule 206(4)-8 prohibits the (1) “mak[ing] any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle”; or (2) “otherwise engag[ing] in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.”

### **A. Rule 206(4)-8 Was Not Intended for, Has Never Been Used to Address, and Does Not Apply to, Statements Like Those at Issue Here.**

Even if one were to accept the SEC's view of the challenged statements as false and misleading, such a view places the statements in the “short and distort” line of cases, to which Rule 206(4)-8 is plainly inapplicable. The Final Rule concerning 206(4)-8 provides five examples the SEC intended the rule to prohibit: (1) “the experience and credentials of the adviser (or its associated persons)”; (2) “the risks associated with an investment in the pool”; (3) “the performance of the pool or other funds advised by the adviser”; (4) “the valuation of the pool or investor accounts in it”; and (5) “practices the adviser follows in the operation of its advisory business such as how the adviser allocates investment opportunities.” 72 Fed. Reg. 44756, 44759 (Aug. 9, 2007). While not exhaustive, these examples nonetheless make clear that 206(4)-8 was intended to target misleading statements that fund managers make about *the fund or the manager*

*himself*—and not to punish a fund manager’s statements concerning a publicly traded stock.<sup>18</sup>

The SEC’s proposed use of Rule 206(4)-8 (and its lower negligence standard) here is nothing more than an impermissible end run around Rule 10b-5’s scienter requirement.

**B. Because the SEC Cannot Establish the Underlying “Fraudulent Manipulation” of Ligand Stock, Its 206(4) Claim Fails.**

The SEC also bases its 206(4) claim on Lemelson’s alleged failure to “disclose that the profitability of their short-selling strategy depended upon Lemelson’s fraudulent manipulation of Ligand stock through false statements, rather than his ability to identify a company whose stock would decrease on its own based on its inherent lack of value.” Compl. ¶ 55. As established above, however, the SEC cannot establish that Lemelson engaged in any “fraudulent manipulation” of Ligand stock. Thus, where the SEC’s 10b-5 claim fails, its 206(4) claim based on the same conduct likewise fails as a matter of law.<sup>19</sup>

**CONCLUSION**

For the foregoing reasons, Defendants respectfully request that their Motion to Dismiss be ALLOWED and the Court dismiss the Complaint with prejudice in its entirety.

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<sup>18</sup> Not surprisingly, in the 11 years since Rule 206(4)-8’s promulgation, the SEC has *never* used it to bring an enforcement action against a fund manager for statements concerning a specific stock. Counsel surveyed the 1082 litigation releases, 30 enforcement releases, and 31 news and public statement releases (and associated complaints, judgments, and orders) concerning Rule 206(4)-8 available on [www.sec.gov](http://www.sec.gov) as of October 24, 2018, as well as the 70 cases and 57 administrative decisions concerning the Rule available on Westlaw as of October 24, 2018, and have not found a single instance (besides this case) in which the SEC brought an enforcement action against an investment advisor under Rule 206(4)-8 for statements about another company.

<sup>19</sup> Further, the SEC’s novel theory would require finding a 206(4) violation in *every* 10(b) case involving a fund manager—something clearly beyond the intended purview of the rule.

Respectfully submitted,

REV. FR. EMMANUEL LEMELSON,  
LEMELSON CAPITAL MANAGEMENT, LLC,  
and THE AMVONA FUND, LP

By: /s/ Douglas S. Brooks  
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Dated: October 25, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-participants on October 25, 2018.

/s/ Douglas S. Brooks  
Douglas S. Brooks

## **Respondent Exhibit 49**



DOUGLAS S. BROOKS  
Email: dbrooks@libbyhoopes.com

March 9, 2020

**BY EMAIL**

The Honorable Patti B. Saris  
United States District Court Judge  
United States District Court for the District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

**Re: SEC v. Lemelson, et al.; No. 18-cv-11926-PBS**

Your Honor:

This Firm represents Defendants in the above-referenced civil action. The undersigned is lead counsel on this matter. We write to respond to the letter that Plaintiff Securities and Exchange Commission (the “Commission”) sent to Your Honor at 5:15 p.m. on Friday, March 6, 2020, in which the Commission hurls patently false and scurrilous allegations against the undersigned, while failing to disclose critical information to this Court.

**First**, the Commission’s claims that the undersigned sought to influence a “*potential witness*” (Fr. Theodore Barbas) are directly contrary to the Commission’s prior representations filed with this Court and provided to Defendants in discovery making clear that Fr. Barbas is *not* a potential witness. **Second**, the undersigned relied in good faith on the Commission’s prior representations in initiating a separate civil demand letter—sent to Fr. Barbas’s counsel outside the context of this case and *after* it was clear that Fr. Barbas was *not* a potential witness here—in a good-faith attempt to settle an independent dispute between Fr. Barbas and Defendant Fr. Emmanuel Lemelson and complying with all applicable laws and Rules. **Third**, by *knowingly* contradicting its prior representations filed with this Court, and failing to disclose same, the Commission’s letter intentionally withheld critical information from this Court.<sup>1</sup> For these reasons, as set forth in more detail below, the Court should reject the Commission’s attempt to smear the reputation of the undersigned as both baseless and brought in bad faith.

**1. The Commission’s Allegations Run Directly Contrary to Its Prior Representations to this Court.**

The Commission alleges that the undersigned engaged in *criminal misconduct* by seeking to influence the testimony of a “potential witness” (Fr. Barbas) in this matter. This allegation is groundless, and ***it runs directly contrary to the Commission’s prior representations to this Court*** in its Opposition to Defendants’ Motion for Sanctions and to Compel Greek Orthodox

<sup>1</sup> See Massachusetts Rules of Professional Conduct 3.3 (Candor Toward the Tribunal).





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Metropolis of Boston to Produce Documents in Response to Subpoena (ECF No. 64), in which the Commission made clear that ***any information Fr. Barbas has is irrelevant to this case, thus disavowing any notion that Fr. Barbas was or could ever be a potential witness in this case.*** The Commission's failure to disclose this to the Court in its March 6 letter while simultaneously impugning the integrity of a fellow member of the Bar, is grossly inappropriate.<sup>2</sup>

By way of relevant background, according to the Commission, Fr. Barbas told it three things—all related to issues ***which the Commission has claimed are irrelevant to this case***; i.e., issues that involve Defendant Fr. Emmanuel Lemelson's religious affiliation, namely: (1) Fr. Emmanuel was not a Greek Orthodox Priest; (2) Fr. Emmanuel applied to the Greek Orthodox Metropolis of Boston to be ordained but was denied; and (3) Fr. Emmanuel was never officially assigned to any Greek Orthodox parish and has never been affiliated with the Greek Orthodox Metropolis of Boston. See ECF No. 64 at 3-4 & ECF No. 65-5 at 1.

After Fr. Barbas made the above (false) statements to the Commission, counsel for the Commission told Defendants' counsel that it intended to send a documents subpoena to the Greek Orthodox Metropolis of Boston (not to Fr. Barbas, its Chancellor, individually). The Commission represented that it was seeking documents to support these (false) statements about Fr. Emmanuel to undermine his credibility. Therefore, ***purely as a result of the Commission's stated intention***, Defendants' counsel issued its own subpoena to the Greek Orthodox Metropolis of Boston to ensure that it received the necessary documents to prove that the information provided to the Commission about Fr. Emmanuel's religious affiliation was false in the event the Commission decided to try to call anyone affiliated with the Metropolis as a witness.

In response to Defendants' subpoena, the Metropolis of Boston produced certain documents but withheld others under a specious claim of privilege. After lengthy discussions failed, Defendants filed a motion to compel the production of the wrongly withheld documents. Although the Metropolis did not file an Opposition, the Commission did. Critically, in that Opposition, the Commission made the following representations (for the first time) to this Court, demonstrating that it did *not* consider Fr. Barbas to be a potential witness in this case:

- ***"The documents Lemelson seeks . . . has (sic) no bearing on whether he committed fraud when he shorted the stock of Ligand Pharmaceuticals, Inc. ("Ligand") 2014."***
- ***"Undersigned counsel did not—and does not—view Lemelson's religious affiliation as relevant to this case . . ."***

<sup>2</sup> The undersigned notes that the Commission's frivolous letter follows Magistrate Judge Cabell's allowance of a 30(b)(6) deposition ***of the Commission*** concerning potential Commission wrongdoing.





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- ***“Perhaps there is a misunderstanding, mutual or otherwise, between Lemelson and the Greek Orthodox Metropolis of Boston. Perhaps someone is dissembling. But in either case, this is not the forum to sort it out.”***

(Emphases added). In other words, the Commission represented that the information provided by Fr. Barbas was both irrelevant to this case and, to the extent disputed by Fr. Emmanuel, should be sorted out in a different forum than the present litigation.

Ultimately, with the motion to compel still pending, the Metropolis produced the wrongly withheld documents voluntarily, and, after defense counsel immediately notified the Court about the production, Magistrate Judge Cabell issued an order finding the motion moot. *See* ECF Nos. 78 & 79.

Based on the above representations of counsel for the Commission (as well as the termination of the motion to compel and the review of the previously withheld documents), the undersigned came to the only logical conclusion possible, that Fr. Barbas ***could no longer be considered*** (if he ever was) a potential witness in this matter. Otherwise, the Commission’s above statements to the Court would have been false, as there is no way to reconcile Fr. Barbas remaining a “potential witness” in this matter with the Commission’s express representations that his statements were irrelevant to this case and that any dispute concerning them ***should not be sorted out in this forum.***<sup>3</sup>

In addition, despite its current claim that Fr. Barbas is a “potential witness,” the Commission has ***never*** listed Fr. Barbas as a person with even discoverable information—much less a potential witness. The Commission has ***twice*** amended its Initial Disclosures—***each time***

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<sup>3</sup> Moreover, in a classically-Commission-“reservation-of-rights” footnote in its Opposition to the motion to compel, the Commission purported to reserve its right to challenge Fr. Emmanuel’s credibility “[i]f further facts establish that Lemelson made misleading statements about his religious affiliation . . . .” ECF No. 64 at 1, n.1 (emphasis added). Given that the Commission had already communicated on multiple occasions with Fr. Barbas—who at that point had provided the Commission with inconsistent information—clearly the “additional evidence” the Commission contemplated *had nothing to do with Fr. Barbas*. Accordingly, the Commission’s reservation of rights provides further proof that it does not consider Fr. Barbas a potential witness in this case.

Indeed, it was largely as a result of the Commission’s gratuitous and internally inconsistent reservation of rights that Defendants felt compelled to continue to press for the remaining documents from the Metropolis of Boston (not Fr. Barbas individually) even after the Commission filed its Opposition. *See generally* ECF No. 75 (Defendants’ reply memorandum in support of motion to compel). In other words, Defendants wanted to ensure they had all available documents to demonstrate Fr. Emmanuel had never misrepresented his religious affiliation in the event the Commission purported to later come up with “additional evidence” separate and apart from Fr. Barbas. Notably, having now reviewed those documents (something the undersigned did *before* sending the civil demand letter at issue), none of those documents support either the Commission’s credibility arguments about Fr. Emmanuel or the notion that Fr. Barbas could be a potential witness in this case.





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*to specifically add people with discoverable information as new potential witnesses.* Tellingly, it did not do so to list Fr. Barbas. To “pop out of the box” now and claim that Fr. Barbas is a witness—and therefore the undersigned’s civil demand letter constituted a *criminal act*—is outrageous.

It is also worth noting that it is clear from the materials the Commission has provided to defense counsel that Fr. Barbas has made inconsistent statements to the Commission. ***Does the Commission really expect this Court to believe that it considers an individual with only irrelevant information who has provided it with inconsistent statements to be a potential witness for it at trial in this case?*** Such a position strains all credulity. And, of course, *Defendants* have no reason to call Fr. Barbas as a witness in this case—agreeing wholeheartedly with the Commission’s *prior* representations that the false statements he made to the Commission are irrelevant to *this* litigation and should be sorted out in another forum (*i.e.*, Fr. Emmanuel’s planned civil suit against Fr. Barbas).

**2. The Undersigned Relied in Good Faith on the Commission’s Representations, and There was Nothing Illegal or Unethical About the Civil Demand to Fr. Barbas’ Counsel.**

Based on the above, the undersigned unequivocally believed that Fr. Barbas was not a potential witness in this matter and accordingly sent the demand letter in good faith to his counsel (the General Counsel for the Greek Orthodox Archdiocese of America)—***completely independent of this case and not in any way to “influence a potential witness.”*** That demand letter had ***nothing*** to do with any potential testimony in this case; indeed, it couldn’t, as the Commission had already told this Court that Fr. Barbas was irrelevant to this case. Moreover, as set forth below, the undersigned believed—and continues to believe—that the demand letter constituted a good-faith attempt to settle a civil dispute prior to litigation and complied with all applicable laws and Rules.

Although not expressly mentioned in its letter to the Court, in a subsequent telephone conversation the undersigned had with counsel for the Commission, the Commission took the position that the civil demand letter to Fr. Barbas’s counsel constituted misconduct, because Fr. Emmanuel has no viable defamation claim arising from the false statements that Fr. Barbas made to the Commission as they would fall under the “litigation privilege” (and thus, the Commission’s argument apparently goes, the demand letter must have been sent for the improper purpose alleged by the Commission). Counsel for the Commission’s assertion about the litigation privilege is legally incorrect. First, that privilege only applies to statements made in the course of judicial proceedings that ***“pertain to that proceeding.”*** See *Patriot Group, LLC v. Edmands*, 96 Mass. App. Ct. 478, 483-84 (2019) (quoting *Correllas v. Viveiros*, 410 Mass. 314, 319 (1991)) (emphasis added). ***As the Commission has expressly represented to this Court, Fr. Barbas’s statements to it concerning Fr. Emmanuel’s religious affiliation did not—and do***





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***not—pertain to this proceeding.*** See generally, ECF No. 64. Accordingly, while Fr. Emmanuel’s planned suit against Fr. Barbas includes—but notably will not be limited to—false statements that Fr. Barbas made to the Commission, those statements do not pertain in any way to this proceeding, and thus the litigation privilege does not apply. Second, Fr. Barbas is not a “witness” in this judicial proceeding such that his malicious false statements would be covered by the litigation privilege.<sup>4</sup>

While it is none of the Commission’s business given its lack of relevance to *this* case, to the extent the Commission is alleging that there is anything wrong with the settlement demand itself, such a claim also has no merit. *Defense counsel believes every statement in the proposal to be true and accurately reflect the facts concerning Fr. Emmanuel’s religious affiliation.* Fr. Barbas has been on a retaliatory campaign of making disparaging statements about Fr. Emmanuel (after Fr. Emmanuel publicly advocated for Fr. Barbas’s ouster). The proposed settlement demand was therefore made for the ***legitimate purpose*** of having Fr. Barbas agree in writing to nine (true) facts and confirming the specifics of his false statements to the Commission, with the intent of avoiding protracted litigation while also stopping Fr. Barbas from making further false statements about Fr. Emmanuel ***outside of the context of this case.*** ***It was not intended (nor could it be)—as the Commission recklessly alleges—to impact any testimony in this case.***

Further, the Commission also seems to indicate that the settlement demand of \$10,000 somehow constitutes misconduct. It does not. That number reflects a *conservative* estimate of the legal fees that Fr. Emmanuel incurred—completely unnecessarily—based on Fr. Barbas’s willful refusal to comply with the subpoena, his delay tactics, and his frivolous claims of privilege. Fr. Emmanuel has every right to try to recoup this amount as part of any settlement—***again, separate and apart from anything to do with trial in this case.***

### **3. The Commission’s Letter Failed to Properly Disclose the Commission’s Prior Representations Critical to This Issue.**

Should the Court believe a hearing as requested by the Commission is necessary, the undersigned respectfully requests that the Court inquire of counsel for the Commission as to how its claim that Fr. Barbas is a “potential witness” in this case can be reconciled with its prior position that “it did not—and does not—view Lemelson’s religious affiliation as relevant to this case” and “***this is not the forum*** to sort [] out” issues involving any dispute between Fr. Emmanuel and Fr. Barbas concerning the former’s religious affiliation. The undersigned also respectfully suggests that the Court inquire of Commission counsel about their willful failure to

<sup>4</sup> Indeed, the Commission itself acknowledges that it only spoke to Fr. Barbas by happenstance, when it reached out to the Greek Orthodox Metropolis of Boston for the purpose of determining where to direct a document subpoena aimed at undermining Fr. Emmanuel’s credibility. See ECF No. 64 at 3.



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disclose these prior representations (among the other things set forth above) in their March 6, 2020 letter to this Court. The lawyers who signed the March 6 letter apparently believe they have the unfettered power to falsely accuse a fellow member of the Bar of committing a criminal act, while at the same time withholding from the Court critical information demonstrating the falsity of their accusations. They do not.

Sincerely,

/s/ Douglas S. Brooks

Douglas S. Brooks

## **Respondent Exhibit 50**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
GREGORY LEMELSON and LEMELSON CAPITAL	)	
MANAGEMENT, LLC,	)	Civil Action No. 1:18-cv-11926-PBS
	)	
Defendants,	)	
	)	
and	)	
	)	
THE AMVONA FUND, LP,	)	
	)	
Relief Defendant	)	
	)	

**AFFIDAVIT OF DEFENDANT FR. EMMANUEL LEMELSON**

I, Fr. Emmanuel Lemelson, do hereby depose and state as follows:

1. I am a Defendant in the above-captioned case (under the name of Gregory Lemelson, which is my given name and which I went by prior to being ordained as a Greek Orthodox Priest in July 2011).

2. I submit this Affidavit concerning my status as a Greek Orthodox Priest (and relevant related issues) pursuant to the Court’s instruction during its March 18, 2020 hearing. I make this Affidavit based on personal knowledge except where specifically stated.

**A. Overview**

3. *As set forth in more detail below and in answering the Court’s questions and stated concerns posed during the March 18, 2020 hearing:*

- a. *I am a Greek Orthodox Priest, having, among other things, (i) graduated with a Master of Divinity Degree from the Holy Cross Greek Orthodox School of Theology in Brookline, Massachusetts in 2003, (ii) been ordained as a Greek Orthodox Priest by the (now) Greek Orthodox Archbishop of America at the Chapel at Holy Cross Greek Orthodox School of Theology in July 2011; and (iii) served as a Greek Orthodox Priest in many Greek Orthodox churches both in the United States and abroad over the past eight-plus years.*
- b. *Fr. Ted Barbas made knowingly false and defamatory statements about my religious affiliation to the SEC, which followed similarly false and defamatory statements he made about me over a four- and one-half-year period to both the media and others within the Greek Orthodox Church.*
- c. *My counsel's demand letter to Fr. Barbas contained nine factually accurate statements about my religious affiliation, all of which I firmly believe were known to Fr. Barbas, for the purpose of seeking to end Fr. Barbas' four- and one-half-year campaign of spreading false and defamatory statements about me, while trying to avoid litigation.*

**B. My Background as it Concerns My Greek Orthodox Priesthood**

4. I have spent the bulk of my life in service of the Greek Orthodox Church—*both before and after I became ordained as a Greek Orthodox Priest in July 2011.*<sup>1</sup> By way of relevant background to help answer the questions the Court posed on March 18, 2020:

5. I am half-Greek on my mother's side. My mother's uncle was the Greek Orthodox Archbishop of Crete, Greece's largest island. From ages six to twenty-two, I alternated living between Greece and the United States.

6. In or about 1980, I was baptized in a Greek Orthodox Church in Phoenix, Arizona.

7. From 1992-1999, I was a parishioner at St. Demetrios Greek Orthodox Church in Seattle, Washington.

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<sup>1</sup> My work for the Greek Orthodox Church has been voluntarily. I have never asked for or been offered a salary from the Church. Conversely, my contributions to the Greek Orthodox Church between 1999 and 2019 exceeded \$1,000,000.

8. In 1999, I graduated from Seattle University, a Jesuit school, with a Bachelor of Arts in Theology and Religious Studies.

9. In that same year, I moved to Massachusetts and entered the Greek Orthodox Seminary; specifically, Holy Cross Greek Orthodox School of Theology in Brookline, Massachusetts, which is under the direct jurisdiction of the Greek Orthodox Archdiocese of America. In order to enter the Greek Orthodox Seminary, I needed to satisfy (which I did) the following requirements: (i) provide a copy of my baptismal certificate from the Greek Orthodox Church; (ii) provide a letter of recommendation from the parish priest at the Greek Orthodox Church which I attended (in this case, Fr. John Angelis of St. Demetrios in Seattle); and (iii) obtain the blessing of the Greek Orthodox Bishop of my diocese (in this case, Metropolitan (a title given to a senior bishop) Anthony, the primate (presiding bishop) of the Greek Orthodox Metropolis of San Francisco).

10. In 2000, I met my future wife, Anjeza, who was a student at Hellenic College in Brookline, Massachusetts. In 2002, Anjeza and I became engaged. At the direction of Fr. Barbas, as is required of all couples to be married in the Greek Orthodox Metropolis of Boston, Anjeza and I participated in pre-marriage counseling. Fr. Barbas directed us to the program and provided all the materials (which he reviewed with us personally), and which cleared the way for us to get married in the Greek Orthodox Church, and more specifically, the Greek Orthodox Metropolis of Boston. Metropolitan Methodios, the primate of the Greek Orthodox Metropolis of Boston and currently Fr. Barbas' direct superior, signed the Certificate of Attendance. A true and accurate copy of the Certificate of Attendance is attached hereto as Exhibit A.

11. Between 2002-2004, I was assigned to the Greek Orthodox Church of Taxiarches in Watertown, Massachusetts as part of my "field study" in the Greek Orthodox Seminary. The



presiding priest at the Greek Orthodox Church of Taxiarches was Fr. Emmanuel Metaxas. The assisting priest was Fr. Barbas. I served as a layperson, and occasionally chanter (one who chants responses and hymns in the services of the church), for nearly three years with both Fr. Metaxas and Fr. Barbas.

12. Meanwhile, in 2003, I completed and received a Master of Divinity Degree from the Holy Cross Greek Orthodox School of Theology. The Archbishop of the Greek Orthodox Archdiocese of America signed my diploma. The President and Dean of the seminary, both Greek Orthodox Priests, also signed the diploma. A true and accurate copy of my diploma is attached hereto as Exhibit B.

13. In 2004, Metropolitan Methodios, the primate of the Greek Orthodox Metropolis of Boston, during an in-person meeting, invited me to “submit [my] dossier” for ordination. Believing I was not yet ready, I respectfully declined.

14. On July 4, 2004, Anjeza and I were married at the chapel of Holy Cross, at the Greek Orthodox Seminary, under the direct jurisdiction of the Greek Orthodox Archdiocese of America and in the geographic region overseen by the Greek Orthodox Metropolis of Boston. Fr. Metaxas, a Greek Orthodox Priest and Fr. Barbas’ direct superior at the time, as well as Bishop Ilija Katre, presided over our wedding. Our marriage certificate (a true and attached copy of which is attached hereto as Exhibit C) was signed by Metropolitan Methodios.

15. All four of our children were baptized in Greek Orthodox Churches (specifically in churches of the Greek Orthodox Metropolis of Boston), by Greek Orthodox Clergy, with Greek Orthodox godparents. Accordingly, all four children’s baptismal certificates indicate that they are members of the Greek Orthodox Church, via their canonical baptisms.

16. From 2004-2011, I served as a layperson (and sometimes chanter) in the altar at both St. Nektarios Greek Orthodox Church in Roslindale, Massachusetts and St. Anargyroi Greek Orthodox Church in Marlborough, Massachusetts. During this time, I served alongside Fr. Barbas and Metropolitan Methodios on several occasions.

17. In 2011, I received a message that a hierarch of the Ecumenical Patriarchate, the highest ruling body within the Greek Orthodox Church (among other Orthodox Churches)<sup>2</sup> wished to come to Boston to ordain me. The Greek Orthodox Archdiocese, which includes the Greek Orthodox Metropolis of Boston, is under the direct jurisdiction of the Ecumenical Patriarchate.

18. In July 2011, I was ordained as a Greek Orthodox Deacon and then, the next day, as a **Greek Orthodox Priest**, at the Chapel at Holy Cross Greek Orthodox School of Theology.<sup>3</sup> My ordination took place with the express consent of both the (then) Greek Orthodox Archbishop of America, Demetrios, as well as Metropolitan Methodios of the Greek Orthodox Metropolis of Boston. I was ordained by Metropolitan Elpidophoros Lambriniadis, the (now) Greek Orthodox Archbishop of America. Many Greek Orthodox Priests, deacons and seminarians of the Metropolis of Boston attended the ordination. A true and accurate photograph from my ordination as a Greek Orthodox Priest is attached hereto as Exhibit D.<sup>4</sup>

19. Simultaneous with my ordination, Archbishop Lambriniadis assigned me temporarily to the Albanian Orthodox diocese, pending my transfer to the Greek Orthodox

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<sup>2</sup> Historically, the term "Greek Orthodox" has been used to describe *all* Eastern Orthodox Churches in general, since "Greek" in "Greek Orthodox" can refer to the heritage of the Byzantine Empire. *See* [https://en.wikipedia.org/wiki/Greek\\_Orthodox\\_Church](https://en.wikipedia.org/wiki/Greek_Orthodox_Church). The administrative Structure of the Ecumenical Patriarchate can be found here: <https://www.patriarchate.org/administrative-structure-of-the-ecumenical-patriarchate>.

<sup>3</sup> One must become a Deacon before becoming a Priest in the Greek Orthodox Church.

<sup>4</sup> I can provide additional photographs of many of the events described herein to the Court upon request.

Archdiocese of Switzerland, plans for which were already underway. Like the Greek Orthodox Church in America, the Albanian Orthodox diocese is under the direct jurisdiction of the Ecumenical Patriarchate.<sup>5</sup> See n.1, above. Accordingly, my letter of ordination appears on the letterhead of Albanian Orthodox Archdiocese of America. Nonetheless, it is signed by the Greek Orthodox Archbishop of America, who, as set forth above, ordained me. A true and accurate copy of my letter of ordination is attached hereto as Exhibit E.<sup>6</sup>

20. The letter of “witness” to my ordination, a critical document required for ordination of a Greek Orthodox Priest by the Greek Orthodox Church, is signed by Fr. Vassilios Bebis, a Greek Orthodox Priest of the Greek Orthodox Metropolis of Boston.<sup>7</sup>

21. Following my ordinations as a Greek Orthodox Deacon and Priest, I initially spent time continuing to train as a Greek Orthodox Priest at St. Nektarios Greek Orthodox Church in Roslindale, Massachusetts. I then spent approximately two months as the temporary priest at the Albanian Orthodox church in Boston. After serving there for two months, the Albanian Diocese obtained a visa for a full-time Albanian priest (which the Albanian Diocese had been working on for years), and I returned to serving at St. Nektarios Greek Orthodox Church, a parish of the Greek Orthodox Metropolis of Boston, where I served for nearly two years, including concelebrating alongside Metropolitan Methodios. Prior to my arrival at the Albanian church, the prior two priests who served there were Greek Orthodox Priests of the Metropolis of Boston. Fr. Barbas was and is the point of contact to locate Greek Orthodox

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<sup>5</sup> I had asked that Bishop Ilia Katre, the primate of the Albanian diocese, perform at least one of my ordinations, this request was refused by the current Greek Orthodox Archbishop of America.

<sup>6</sup> At the time of my ordination as a Greek Orthodox Priest, I had never set foot in an Albanian Orthodox church.

<sup>7</sup> I have a video recording of Fr. Bebis reading the letter at my ordination, which I can provide to the Court should it wish to view it.

Priests to fill in at the Albanian church (the Albanian priest mentioned above lasted there only for a short time).

22. In April 2013, at the request of the Greek Orthodox Metropolitan of Hong Kong, I served as a Greek Orthodox Priest at the Greek Orthodox Church in Hong Kong for a brief period, including during Holy Week and Easter.

23. In November 2013, I received from the Greek Orthodox Metropolitan of Switzerland a letter of assignment to the Greek Orthodox Parish of the Epiphany in Lugano, Switzerland. A true and accurate copy of the letter of assignment is attached hereto as Exhibit F. The Greek Orthodox Archbishop of Switzerland signed the letter of assignment. While in Switzerland, I served as the presiding priest at the Greek Orthodox Parish in Lugano.

24. In April 2014, after I located a full-time priest for the Greek Orthodox Church in Lugano, I returned to the United States to continue my service as a priest to the Greek Orthodox Church in this country. As set forth in detail below, immediately upon my return, Fr. Barbas began requesting that I serve as a Greek Orthodox Priest in various churches of the Greek Orthodox Metropolis of Boston.<sup>8</sup>

25. In June 2015, Metropolitan Methodios asked the Greek Orthodox Archbishop of America if I would accept a position as a *full-time priest* at a parish of the Greek Orthodox Metropolis of Boston.<sup>9</sup> A true and accurate copy of my communication with the Archbishop regarding this request is attached hereto as Exhibit G. I immediately, but respectfully, declined. *See Exhibit G.*

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<sup>8</sup> Contrary to statements Fr. Barbas has made, I have never asked to serve the Metropolis of Boston.

<sup>9</sup> As Metropolitan Methodios' Chancellor, I am confident Fr. Barbas knew of this request and my corresponding declination.

**C. Fr. Barbas' Knowingly False and Defamatory Statements About My Religious Affiliation.**

**a. Fr. Barbas Made Knowingly False and Defamatory Statements About Me to the SEC.**

26. During my deposition, the SEC attorney asked me a number of (seemingly irrelevant) questions about my religious affiliation. I later learned this was due, at least in large part, to false and defamatory statements Fr. Barbas had made to the SEC about me. Based on documentation the SEC provided to my counsel in this case, Fr. Barbas initially told the SEC (1) that I was not, and never had been, affiliated with the Greek Orthodox Metropolis of Boston and that the Metropolis had no records relating or referring to me; and (2) I had applied to the Greek Orthodox Metropolis of Boston to be ordained but that application was declined. A true and accurate copy the email communication between Fr. Barbas and the SEC demonstrating the above is attached hereto as Exhibit H.

27. When the SEC later pressed Fr. Barbas for confirmation in writing as to the above two points, Fr. Barbas claimed he never said the first to the SEC (and went so far as to claim the SEC's attorney's statement to the contrary was "misleading"). *See* Exhibit H.

28. Fr. Barbas did, however, continue to falsely maintain that I had applied for ordination by the Metropolis of Boston and been denied, notwithstanding that, as he knew, the exact opposite was true. *See id.*

29. Contrary to the statements the SEC claims Fr. Barbas made to it (that I have never had any "affiliation" with the Greek Orthodox Metropolis of Boston and that the Metropolis has no records relating to me) during the period of April 2014 to October 2015 alone, Fr. Barbas repeatedly requested—and I faithfully complied whenever possible—that I serve (as a Greek Orthodox Priest) at various parishes of the Greek Orthodox Metropolis of Boston. While not

exhaustive, a sample of my email and text messages from Fr. Barbas during this time demonstrates the following:<sup>10</sup>

- a. On April 9, 2014, Fr. Barbas requested that I serve both the Greek Orthodox Church in New London, Connecticut and the Greek Orthodox Church in Springfield, Massachusetts.
- b. On April 19, 2014, Fr. Barbas requested that I serve the Greek Orthodox Church in Roslindale, Massachusetts.
- c. On April 26, 2014, Fr. Barbas requested that I serve the Greek Orthodox Church in Andover, Massachusetts.
- d. On May 30, 2014, Fr. Barbas requested that I serve the Greek Orthodox Church in Lowell, Massachusetts.
- e. Later on May 30, 2014, Fr. Barbas requested that I instead serve the Greek Orthodox Church in Webster, Massachusetts.
- f. On July 4, 2014, Fr. Barbas requested that I serve the Greek Orthodox Church in Chicopee, Massachusetts.
- g. On July 9, 2014, Fr. Barbas requested that I serve the Greek Orthodox Church in Lexington, Massachusetts.
- h. On July 14, 2014, Fr. Barbas requested that I serve the Greek Orthodox Church in Keene, New Hampshire.
- i. On July 15, 2014, Fr. Barbas requested that I serve the Greek Orthodox Church in Newburyport, Massachusetts.
- j. On July 24, 2014, Fr. Barbas requested that I serve the Greek Orthodox Church in Newburyport, Massachusetts.
- k. On August 22, 2014, Fr. Barbas requested that I serve the Greek Orthodox Church in Norwich, Connecticut.
- l. On September 5, 2014, Fr. Barbas requested that I serve the Greek Orthodox Church in Holyoke, Massachusetts.
- m. On September 19, 2014, Fr. Barbas requested that I serve the Greek Orthodox Church in Portsmouth, New Hampshire.

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<sup>10</sup> True and accurate copies of the emails and text messages are attached hereto as Exhibit I.

- n. On September 20, 2014, Fr. Barbas requested that I serve the Greek Orthodox Church in Weston, Massachusetts.
- o. On October 3, 2014, Fr. Barbas requested that I serve the Greek Orthodox Church in Newport, New Hampshire.
- p. On October 3, 2014, Fr. Barbas requested that I serve the Greek Orthodox Church in Clinton, Massachusetts.
- q. On January 3, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Lexington, Massachusetts.
- r. On January 16, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Manchester, New Hampshire.
- s. On January 17, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Newport, Rhode Island.
- t. On January 19, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Danielson, Connecticut for the following four Sundays.
- u. On February 26, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Southbridge, Massachusetts.
- v. On February 27, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Manchester, New Hampshire.
- w. On March 5, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Southbridge, Massachusetts.
- x. On March 12, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Manchester, New Hampshire.
- y. On March 15, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Manchester, New Hampshire.
- z. On April 3, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Somersworth, New Hampshire.
- aa. On April 16, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Concord, New Hampshire.
- bb. On April 23, 2015, Fr. Barbas requested that I serve at either the Greek Orthodox Church in Somersworth, New Hampshire or the Greek Orthodox Church in Concord, New Hampshire.
- cc. On May 1, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Ipswich, Massachusetts.

- dd. On May 2, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Keene, New Hampshire.
- ee. On May 16, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Keene, New Hampshire.
- ff. On May 27, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Keene, New Hampshire.
- gg. On June 6, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Keene, New Hampshire.
- hh. On June 13, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Keene, New Hampshire.
- ii. On June 20, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Keene, New Hampshire.
- jj. On July 3, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Keene, New Hampshire, for the following four Sundays.
- kk. On July 14, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Keene, New Hampshire.
- ll. On July 17, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Newport, Rhode Island.
- mm. On July 23, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Keene, New Hampshire.
- nn. On July 24, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Newburyport, Massachusetts.
- oo. On July 30, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Laconia, New Hampshire. I was unable to do so as I was already scheduled to serve the Greek Orthodox Church in Keene, New Hampshire on the date requested.
- pp. On August 9, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Keene, New Hampshire.
- qq. On August 14, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Keene, New Hampshire.
- rr. On August 21, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Keene, New Hampshire.



- ss. On August 28, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Keene, New Hampshire.
- tt. On September 3, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Keene, New Hampshire.
- uu. On September 19, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Keene, New Hampshire.
- vv. On September 26, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Keene, New Hampshire.
- ww. On October 3, 2015, Fr. Barbas requested that I serve the Greek Orthodox Church in Keene, New Hampshire.

30. In addition to the above, I have numerous voicemail messages from Fr. Barbas during this time frame asking me to serve at various Greek Orthodox Churches belonging to the Greek Orthodox Metropolis of Boston. I would be happy to provide these to the Court upon request.

31. Also during this time frame, on behalf of the Greek Orthodox Metropolis of Boston, Fr. Barbas invited me to multiple events for *Greek Orthodox clergy*. For example, on February 27, 2015, he invited me to the Clergy Lenten Retreat, and on April 15, 2015, he invited me to a Clergy Easter Luncheon. True and accurate copies of these written invitations are attached hereto as Exhibit J. I respectfully declined both requests. Fr. Barbas also invited my family and me to stay at the Greek Orthodox camp in New Hampshire, an invitation I also respectfully declined.

32. Moreover, in but one such example, and in direct contradiction to Fr. Barbas' statements to the SEC, on April 9, 2015, I received from Fr. Barbas a copy of Metropolitan Methodios' Paschal Reflection *as part of a listserv going to all clergy of the Greek Orthodox Metropolis of Boston* and expressly addressed "To the Reverend Clergy of the Metropolis of Boston." A true and accurate copy of this email is attached hereto as Exhibit K.

**b. Fr. Barbas Made False Statements to the Wall Street Journal About Me.**

33. Fr. Barbas' false and defamatory statements about my religious affiliation to the SEC in 2019 were strikingly similar to previous false and defamatory statements he made about me beginning in 2015.

34. In approximately June 2015, a reporter from the Wall Street Journal contacted me and asked if he could conduct research for an article that he planned to write about me.

35. From June 2015 until October 21, 2015, my communications with the Wall Street Journal reporter were all positive.

36. On October 21, 2015, the reporter called me, and his tone was entirely different than it ever had been. He accused me of lying about the reasons why the (now) Archbishop of the Greek Orthodox Archdiocese of America, rather than Metropolitan Methodios, had ordained me. At the time, I had no idea why the reporter suddenly and erroneously believed my ordination as a Greek Orthodox Priest had not transpired as I had truthfully explained. As set forth below, it later became clear to me that the reporter's source for this false information was Fr. Barbas.

37. On October 28, 2015, the Wall Street Journal ran a negative article about me, entitled "Hedge-Fund Priest: Thou Shalt Make Money." A true and accurate copy of this article is attached hereto as Exhibit L. The article contained many factual misrepresentations and distortions. I believe Fr. Barbas' false statements to the Wall Street Journal were the cause of the negative and defamatory tenor of the article.<sup>11</sup> Specifically, Fr. Barbas was quoted in the article as follows: "'He doesn't belong to us,' said Chancellor Theodore Barbas of the Boston Metropolis, which oversees the faith in New England. Mr. Barbas said he has at times allowed

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<sup>11</sup>This article had a severe impact on my vocation both as a priest and as a professional in the finance industry.

Mr. Lemelson to fill in temporarily at New England churches that don't have a full-time priest.”  
*See* Exhibit L. As set forth in Exhibit G, however, *I* turned down the invitation to become a full-time priest for the Metropolis of Boston, explaining to the Greek Orthodox Archbishop of America, “Love and care for the communities and individuals that have had the privilege of serving—but have come to accept that this is how it is going to be, and how it was meant to be (not a parish priest, not belonging in any one place).”

38. Fr. Barbas' false and misleading statements to the Wall Street Journal were made notwithstanding the multitude of requests he made, set forth above, that I serve various parishes on behalf of the Metropolis of Boston, as well as the explicit request by his superior that I take a full-time position in the Metropolis. *See* Exhibits G & I.

**c. Fr. Barbas Made False and Defamatory Statements About Me Within the Church.**

39. In addition, on November 7, 2015, after the publication of the Wall Street Journal article, Fr. Barbas sent an email to Joseph Truman, Parish Council President of the St. George Greek Orthodox Church in Keene, New Hampshire, where I had regularly been serving over the previous months. A true and accurate copy of the email is attached hereto as Exhibit M. That email included the following in which Fr. Barbas falsely told Mr. Truman that:

- a. “Fr. Lemelson is NOT a priest of the Greek Orthodox Archdiocese of America nor of the Metropolis of Boston. He belongs to the Metropolis of Switzerland and therefore was never a candidate for assignment to any parish here in America. The Metropolitan allowed him to fill in at parishes where there was a need, but only on a temporary basis.” (Emphasis in original).
- b. “On behalf of the Metropolitan I ask that you immediately remove all links, videos, and references to Fr. Lemelson and to the media attention is has sought (sic).”
- c. “We request that this information and all references to Fr. Lemelson be immediately removed from both the parish website and the parish publications.”

40. I understand that at Fr. Barbas' instruction, Mr. Truman read Fr. Barbas' false and defamatory letter to St. George's parish council – which the Court can see was slanderous.

41. That is, Fr. Barbas made these false statements despite knowing that, as set forth above, (i) I had been ordained by the (now) Greek Orthodox Archbishop of America, and (ii) in June 2015, Metropolitan Methodios of the Greek Orthodox Metropolis of Boston requested that I accept a full-time position serving the Metropolis of Boston, which I respectfully declined. *See* Exhibit G.

**D. The Demand Letter Contained Nine Factually Accurate Statements and Was Appropriate Under the Circumstances.**

**a. I Called for Fr. Barbas' Removal Based on his Complicity in a Church Sexual Abuse Scandal.**

42. I understand from the hearing on March 18, 2020, that the Court was troubled by my counsel's "hardball" demand letter to a member of the clergy. As a member of the clergy myself, I respectfully submit that someone who repeatedly makes false and defamatory statements against another individual over a four-and-a-half-year period, as Fr. Barbas has done, should not be able to hide behind the cloth as a defense.

43. Moreover, Fr. Barbas is no stranger to being sued—both by those within and those outside the church. I believe one such suit has a direct bearing (*i.e.*, retaliation) on why, in 2019—years after Fr. Barbas began making defamatory statements about me—Fr. Barbas made material misrepresentations to the SEC about my religious affiliation, despite his having no legitimate involvement in this proceeding whatsoever.

44. In March 2015, Fr. Adam Metropoulos, a Greek Orthodox Priest in Bangor, Maine within the Greek Orthodox Metropolis of Boston, was sentenced to 12 years in prison for sexually abusing an altar boy.

45. In 2016, the victim of the sexual abuse sued Fr. Barbas personally for his alleged complicity.

46. In October 2016, the Survivors Network of those Abused by Priests (“SNAP”) publicly called for the removal of Fr. Barbas who, according to SNAP, was responsible for the oversight of Metropoulos. In that press release, the director of SNAP wrote, “Barbas was almost certainly complicit or at least grossly negligent in this and potentially other sexual abuse cases.” True and accurate copies of newspaper articles from The Boston Globe and The Bangor Daily News discussing the press release, dated October 12, 2016 and October 14, 2016, respectively, are attached hereto as Exhibit N.

47. SNAP also quoted the victim’s attorney who singled-out Fr. Barbas for his alleged complicity in the tragic incident: “As we’ve investigated this case, we’ve encountered repeated and disturbing evidence that the public record of credible allegations of sexual misconduct with children, including a 1983 pedophilia charge, against Metropoulos almost certainly was available to the chancellor [Barbas].” Further, “[a]s the chancellor directly responsible for Metropoulos, Barbas had the ethical duty to ensure that this priest, who also was appointed to the Boston Diocese Camp, where he was granted unmitigated and unsupervised access to children, was not a predator. Barbas failed categorically in this capacity, resulting in lifelong physical, psychological and spiritual damage to this child victim.” *See* Exhibit N.

48. Given what I knew about the tragic and heart-wrenching situation, I felt ethically compelled to contribute to SNAP’s press release calling for Fr. Barbas’ removal based on his role in the sexual abuse scandal. The Boston Globe article referenced above and attached as Exhibit N, included the following: “‘Chancellor [Barbas] must be promptly removed to maintain the integrity of the church,’ said Rev. Father Emmanuel Lemelson, a Greek Orthodox priest and

president of the Lantern Foundation<sup>12</sup> in the statement. Lemelson said that ‘this horrific incident points to some serious deficiencies in the procedures and protocols used for the oversight of clergy, and those deficiencies require our urgent attention.’”

49. In addition, the Metropolis of Boston, of which Fr. Barbas is the Chancellor, is currently embroiled in litigation brought by another of its priests stemming from that priest’s removal from his parish. *See Rev. Fr. Nicholas Kastanas v. Greek Orthodox Metropolis of Boston, Inc.*, No. 17-2312-L2 (Middlesex Superior Court). After his removal, Fr. Kastanas sued the Metropolis of Boston for wrongfully retaining his personal belongings. On December 16, 2019, the Middlesex Superior Court (Krupp, J.) dismissed the Metropolis of Boston’s First Amended Counterclaim against Fr. Kastanas. As far as I am aware, Fr. Kastanas’ lawsuit against the Metropolis remains ongoing.<sup>13</sup>

**b. Fr. Barbas Ignored My Previous Attempts to Address His False and Defamatory Statements About Me.**

50. On December 7, 2015, I wrote and emailed a letter to Fr. Barbas about his false and defamatory statements to the Wall Street Journal and Mr. Truman, discussed above. A true and accurate copy of this letter is attached hereto as Exhibit O. Among other things, I wrote, in part:

- a. “I was surprised and disappointed to read your quote in the Wall Street Journal that has caused controversy and significant harm. I am also writing to you to have you explain what exactly your full quote was to the reporter.”

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<sup>12</sup> Archbishop Lambriniadis sits on the Board of Advisors of The Lantern Foundation. I formed The Lantern Foundation in 2012, the first of its kind charitable foundation established in the United States to assist the Ecumenical Patriarchate, at the request of Archbishop Lambriniadis. *See* <http://phanarion.org/>.

<sup>13</sup> Moreover, the Metropolis of Boston and Fr. Barbas have been involved in a string of high-profile controversies and scandals involving parishes and priests. *See, e.g.*, <https://www.thenationalherald.com/5864/methodios-bars-sacraments-at-st-georges/>; <https://www.thenationalherald.com/170688/arlington-ma-parish-devastated-over-priests-removal-boos-methodios/>; and <https://www.ipetitions.com/petition/methodios-barbas-dictatorial-regime-needs-to-end>.

- b. “I would like to discuss your retraction and clarification of a number of misstatements made by you.”
- c. “In your role as Chancellor of Greek Orthodox Metropolis of Boston you are in the unique position to influence the reputation of priests. Unfortunately, your apparent misstatements noted above have done so in a significantly negative and harmful manner. I would like you to immediately cure and clarify your statements regarding my service to the metropolis.”

51. Fr. Barbas did not respond to my December 7, 2015 letter.<sup>14</sup> Accordingly, I wrote to him again on December 12, 2015, stating: “Fr. Ted, It is important that you respond to the attached letter per the email below sent to you on December 7, 2015.” A true and accurate copy of this email is attached hereto as Exhibit P. Fr. Barbas never responded to either of these communications or otherwise tried to explain why he made repeated false and defamatory statements about me.

**c. The SEC Made Clear that Fr. Barbas Was Not a Potential Witness in This Matter.**

52. In its Opposition to Defendants’ motion to compel documents from the Greek Orthodox Metropolis of Boston (ECF No. 64), the SEC took the position that the information Fr. Barbas provided to it was irrelevant to the case, and any dispute between Fr. Barbas and me concerning my religious affiliation should be sorted out in a different forum. *See id.* In addition, Fr. Barbas specifically denied making certain of the statements the SEC attributed to him, and outright accused the SEC of being “misleading” in doing so. *See* Exhibit H (emphasis added). Given the SEC’s stated, written position, it became clear that Fr. Barbas was not—and could never be—a potential witness in this matter. Accordingly, with my authorization, my counsel sent the demand letter to Fr. Barbas’ counsel. Notably, I understand that my counsel did so in direct response to *Fr. Barbas’ counsel’s* express request for a written demand after a telephone

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<sup>14</sup> I copied several other members of the Greek Orthodox Clergy of the Metropolis of Boston, as well as Bishop Ilia, on my letter to Fr. Barbas.

conversation concerning potential resolution of the dispute. A copy of my counsel's demand letter sent to Fr. Barbas' counsel is attached hereto as Exhibit Q.

53. As set forth above and in the accompanying exhibits, every one of the nine assertions in my counsel's demand letter was true and, I am confident, known to Fr. Barbas. Because this was not the first (or even second) time Fr. Barbas lied about my religious affiliation and related matters, and because after four and one-half years, I have every reason to believe it will not be the last, as well as the fact that Fr. Barbas was unresponsive to my previous, more gentle, efforts, I decided that I would either (i) get Fr. Barbas to commit in writing to the truth so as to prevent further defamation; or (ii) sue him for defamation for the significant harm he has caused me both within and outside the Greek Orthodox Church. The purpose of my counsel's letter was to attempt to stop the continued, recalcitrant defamation and secure the truth without the need to bring litigation against Fr. Barbas. It appears that attempt failed, and I have no choice but to sue Fr. Barbas in separate litigation to protect my reputation and to recover the senseless costs I incurred associated with compelling him to comply with a lawful subpoena. While the motivations for Fr. Barbas' four- and one-half-year defamatory campaign are unclear, what is certain is that he will not stop unless forced to do so through litigation—where he can explain to a court why he believes he is above the law.




Signed under the penalties of perjury, this 30th day of March 2020.

*Rev. Fr. Emmanuel Lemelson*

Rev. Fr. Emmanuel Lemelson

Emmanuel  
Lemelson

 Digitally signed by Emmanuel  
Lemelson  
Date: 2020.03.30 11:45:55 -04'00'

## **Respondent Exhibit 51**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GREGORY LEMELSON and LEMELSON CAPITAL  
MANAGEMENT, LLC,

Defendants,

and

THE AMVONA FUND, LP,

Relief Defendant.

Civil Action No. 1:18-cv-11926-PBS

**PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION FOR SANCTIONS  
AND TO COMPEL GREEK ORTHODOX METROPOLIS OF BOSTON TO  
PRODUCE DOCUMENTS IN RESPONSE TO SUBPOENA**

Defendant Lemelson, who describes himself as a Greek Orthodox priest, seeks to compel production of a small number of emails from the Greek Orthodox Metropolis of Boston. The documents Lemelson seeks—internal emails among “hierarchs and chancellors” of the Greek Orthodox Church sent in December 2015 (more than a year after the conduct underlying this case) (*see* ECF No. 60-3 at 1)—is not responsive to his subpoena and has no bearing on whether he committed fraud when he shorted the stock of Ligand Pharmaceuticals, Inc. (“Ligand”) in 2014.<sup>1</sup> His motion should therefore be denied.

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<sup>1</sup> If further facts establish that Lemelson made misleading statements about his religious affiliation, the Commission reserves the right to challenge Lemelson’s credibility at trial on that ground.

There appears to be some animosity between Lemelson and the Greek Orthodox Metropolis of Boston dating back to at least 2015 when Lemelson says he was “removed” from a parish as a result of media scrutiny of his investment activities. (*E.g.*, Day Decl. Exh. D at 71-74; ECF No. 60-3 at 2). The discovery he now seeks appears to address that feud (and not this case).

This is not the first time that Lemelson has sought to use this litigation as a forum to air (and obtain discovery about) unrelated grievances. For example, Lemelson sued Bloomberg for defamation and lost at the motion to dismiss stage and in the First Circuit. *See Lemelson v. Bloomberg L.P.*, 903 F.3d 19 (1st Cir. 2018). Lemelson nevertheless subpoenaed Bloomberg in this case for documents that might have been relevant to his ill-fated defamation suit, but have no relevance here. (Day Decl. Exh. A.) And, relatedly, as the Court is aware, Lemelson has noticed a Rule 30(b)(6) deposition of the Commission to probe whether the Commission was the source of certain information contained in the Bloomberg article (which it was not, and Lemelson has produced no evidence to the contrary).<sup>2</sup> (ECF Nos. 41 & 51.)

With respect to why we are even talking about Lemelson’s affiliation with the Greek Orthodox Metropolis of Boston, some background is in order. Lemelson holds himself out as a Greek Orthodox priest. (*E.g.*, Day Decl. Exh. B (excerpt from the “Management” page of the Lemelson Capital Management website: “Rev. Fr. Emmanuel Lemelson is a Greek Orthodox priest”).) Undersigned counsel did not—and does not—view Lemelson’s religious affiliation as relevant to this case and had no reason to doubt his assertion that he is a member of the Greek

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<sup>2</sup> Contrary to his baseless position that the SEC “leaked” information to Bloomberg, the First Circuit noted that Lemelson “alleged in his complaint that Bloomberg published its story ‘without contacting anyone at the SEC to verify whether or not Plaintiff was being investigated.’” 903 F.3d at 25. The court further noted that “Lemelson also concede[d] that it was not possible to get anyone at the SEC to verify or refute the existence of an investigation.” *Id.*

that is a distinction without a difference. (*Compare* Day Decl. Exh. D at 10 (Lemelson: “It is one church: Romanian Orthodox, Albanian Orthodox, Russian Orthodox, Greek Orthodox. It’s all one church.”) *with* Day Decl. Exh. F (Father Barbas indicating that Lemelson is under the “spiritual jurisdiction” of the Albanian Orthodox Diocese).)

Lemelson subsequently subpoenaed documents from the Greek Orthodox Metropolis of Boston for reasons that are, frankly, unclear. (ECF No. 60-1 (subpoena to Greek Orthodox Metropolis of Boston dated December 3, 2019).) The materials Lemelson sought were communications between the Greek Orthodox Metropolis of Boston, on the one hand, and “the media,” “the SEC,” and the “parish council on Keane, New Hampshire,” on the other. (*See id.* at 5.) The Greek Orthodox Metropolis produced a number of documents in response. The three withheld documents—all of which are *internal* church emails (and none of which appear to be communications with the SEC, the media, or the Keane parish council) (*see* ECF No. 60-3 at 1)—are not obviously responsive to Defendants’ subpoena, much less relevant to this case. Instead, the materials Lemelson seeks to compel appear to be aimed at finding out what senior members of the Greek Orthodox Church said to each other about Lemelson in December 2015—a topic related to another of Lemelson’s side-grievances<sup>5</sup> that has no place in this litigation.

In the end, the story of Lemelson’s religious affiliation and connection to the Greek Orthodox Metropolis of Boston appears to be complicated and disputed. The only thing that is clear is that Lemelson’s status is unclear. (*Compare, e.g.,* Day Decl. Exh. D at 13-14 (Lemelson: “he”—referring to the Metropolitan of Boston—“moved forward with my [Lemelson’s] ordination” in 2011) *with* Day Decl. Exh. F (Defendants’ counsel: “In 2011, a Hierarch of the Ecumenical Patriarchate of Constantinople asked to Ordain Fr. Emmanuel.”).) Perhaps there is a

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<sup>5</sup> Lemelson alleged in his Bloomberg lawsuit that he became a “pariah” as a result of press coverage of his investment activities and that he was “remov[ed] from his parish” as a result. (Day Decl. Ex. D at 71-74.)

misunderstanding, mutual or otherwise, between Lemelson and the Greek Orthodox Metropolis of Boston. Perhaps someone is dissembling. But in either case, this is not the forum to sort it out.

With respect to the instant motion, none of what Lemelson seeks to compel from the Greek Orthodox Metropolis of Boston is responsive to his subpoena or relevant to the question of whether he committed securities fraud in connection with his short position in Ligand in 2014. The Commission therefore respectfully opposes Defendants' motion.

Dated: February 12, 2020

Respectfully submitted,

/s/ Alfred A. Day

Alfred A. Day (BBO #654436)

Marc J. Jones (BBO #645910)

Securities and Exchange Commission

Boston Regional Office

33 Arch Street, 24<sup>th</sup> Floor

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617-573-8947 (Jones)

[DayA@sec.gov](mailto:DayA@sec.gov)

[JonesMarc@sec.gov](mailto:JonesMarc@sec.gov)

Attorneys for Plaintiff

## **Respondent Exhibit 52**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GREGORY LEMELSON and LEMELSON CAPITAL  
MANAGEMENT, LLC,

Defendants,

and

THE AMVONA FUND, LP,

Relief Defendant.

Civil Action No. 1:18-cv-11926-PBS

**PLAINTIFF'S INITIAL DISCLOSURES**

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, plaintiff, the United States Securities and Exchange Commission (the "Commission"), makes the following initial disclosures:

**I. Individuals Likely to Have Discoverable Information**

The following individuals and entities currently known to the Commission who are likely to have discoverable information that the Commission may use to support its claims. While the Commission may not rely on all of the listed persons, it discloses these persons to defendants as persons who may have discoverable information. The Commission reserves the right to supplement and/or amend this list as discovery progresses.



1. Gregory Lemelson  
c/o Douglas S. Brooks  
LibbyHoopes, P.C.  
399 Boylston Street  
Boston, MA 02116
2. Lemelson Capital Management, LLC  
c/o Douglas S. Brooks  
LibbyHoopes, P.C.  
399 Boylston Street  
Boston, MA 02116
3. The Amvona Fund, LP  
c/o Douglas S. Brooks  
LibbyHoopes, P.C.  
399 Boylston Street  
Boston, MA 02116
4. Michael Johns  
4341 Knollwood Drive  
Emmaus, PA 18049

Communications with Defendant Lemelson, information concerning Defendants' false and misleading statements, and services provided to Defendants.

5. Bruce Voss  
c/o Bradley J. Bondi, Esq.  
Cahill Gordon & Reindell LLP  
1990 K Street NW, Suite 950  
Washington, DC 20006

Communications with Defendant Lemelson concerning Ligand.

6. Lippert/Heilshorn & Associates  
c/o Bradley J. Bondi, Esq.  
Cahill Gordon & Reindell LLP  
1990 K Street NW, Suite 950  
Washington, DC 20006

Communications with Defendant Lemelson concerning Ligand.

7. Dr. Nicolas Jabbour  
139 Rugby Road  
Longmeadow, MA 01106

Communications with Defendant Lemelson concerning The Amvona Fund and Promacta.

8. Viking Therapeutics, Inc.  
c/o Jeffrey T. Hartlin, Esq.  
Paul Hastings, LLP  
1117 S. California Avenue  
Palo Alto, CA 94304

Viking's business and relationship with Ligand, and related SEC filings.

9. Ligand Pharmaceuticals Inc.  
c/o Bradley J. Bondi, Esq.  
Cahill Gordon & Reindell LLP  
1990 K Street NW, Suite 950  
Washington, DC 20006

Ligand's business and relationship with Viking, its 2014 financial condition and debt financing transaction, the impact of Defendants' scheme on Ligand's business, shareholders, and share price.

10. Goldman Sachs & Co.  
c/o Ms. Joanne Cook, Vice President  
200 West Street  
15th Floor – Legal Department  
New York, NY 10282-2198

Defendants' 2014 trading activities.

11. JP Morgan Chase & Co.  
c/o Mr. Brent T. Starks, VP Assistant General Counsel  
4 New York Plaza, 19th Floor  
New York, NY 10004

Defendants' 2014 trading activities.

12. BTIG, LLC  
c/o Mr. Austin Hamilton, Chief Compliance Officer  
600 Montgomery Street, 6th Floor  
San Francisco, CA 94111

Defendants' 2014 trading activities.

**II. Documents That May Be Used to Support the Commission's Claims**

Pursuant to Rule 26(a)(1)(A)(ii), the Commission is producing documents marked with Bates numbers EPROD-SEC-LIT-E-000000001 through EPROD-SEC-LIT-E-001191869.

**III. Computation of Damages**

Through the conduct alleged in the Complaint, Defendants committed fraud in connection with the purchase and sale of securities, and, while acting as investment advisers to a pooled investment vehicle, have engaged in fraudulent, deceptive, or manipulative acts or practices which operated as a fraud on the investors in the Amvona Fund, the pooled investment vehicle advised by the Defendants. By doing so, Defendants have violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 206(4) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8]. As alleged in the Complaint, Defendants profited by approximately \$1.3 million from their fraudulent scheme and should disgorge that money, along with any additional fees received from investors and other compensation flowing from their unlawful conduct in an amount to be determined through discovery.

The Commission does not seek “damages” in this case, as damages are not an element of the Commission’s claims. The Commission instead seeks the following remedies, each of which is committed to the Court’s discretion upon a finding of liability:

- a. entry of appropriate permanent injunctions, including an injunction prohibiting Defendants from further violations of the relevant provisions of the federal securities laws;
- b. disgorgement of Defendants’ ill-gotten gains, plus pre-judgment interest;
- c. imposition of civil penalties in an amount to be determined by the Court due to the egregious nature of Defendants’ violations; and
- d. such other relief as the Court deems just and equitable.

Dated: December 21, 2018

Respectfully submitted,

/s/ Alfred A. Day

Alfred A. Day (BBO #654436)  
Marc J. Jones (BBO #645910)  
Securities and Exchange Commission  
Boston Regional Office  
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617-573-8947 (Jones)  
[DayA@sec.gov](mailto:DayA@sec.gov)  
[JonesMarc@sec.gov](mailto:JonesMarc@sec.gov)  
Attorneys for Plaintiff

Virginia M. Rosado Desilets  
Sonia G. Torrico  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

### **CERTIFICATE OF SERVICE**

I hereby certify that the forgoing document was served on the following counsel of record  
via electronic mail on December 21, 2018:

Douglas S. Brooks  
LibbyHoopes, P.C.  
399 Boylston Street  
Boston, MA 02116  
Counsel for Defendants

/s/ Alfred A. Day

## **Respondent Exhibit 53**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GREGORY LEMELSON and LEMELSON CAPITAL  
MANAGEMENT, LLC,

Defendants,

and

THE AMVONA FUND, LP,

Relief Defendant.

Civil Action No. 1:18-cv-11926-PBS

**PLAINTIFF’S FIRST AMENDED INITIAL DISCLOSURES**

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, plaintiff, the United States Securities and Exchange Commission (the “Commission”), hereby amends and updates its initial disclosures as follows:

**I. Individuals Likely to Have Discoverable Information**

The following individuals and entities currently known to the Commission who are likely to have discoverable information that the Commission may use to support its claims. While the Commission may not rely on all of the listed persons, it discloses these persons to defendants as persons who may have discoverable information. The Commission reserves the right to supplement and/or amend this list as discovery progresses.

1. Gregory Lemelson  
c/o Douglas S. Brooks  
LibbyHoopes, P.C.  
399 Boylston Street  
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2. Lemelson Capital Management, LLC, including Lester Firstenberger, John Zoraian,  
and Brett Logan  
c/o Douglas S. Brooks  
LibbyHoopes, P.C.  
399 Boylston Street  
Boston, MA 02116
3. The Amvona Fund, LP  
c/o Douglas S. Brooks  
LibbyHoopes, P.C.  
399 Boylston Street  
Boston, MA 02116
4. Michael Johns  
4341 Knollwood Drive  
Emmaus, PA 18049

Communications with Defendant Lemelson, information concerning Defendants' false and misleading statements, and services provided to Defendants.

5. Bruce Voss  
c/o Bradley J. Bondi, Esq.  
Cahill Gordon & Reindell LLP  
1990 K Street NW, Suite 950  
Washington, DC 20006

Communications with Defendant Lemelson concerning Ligand.

6. Lippert/Heilshorn & Associates  
c/o Bradley J. Bondi, Esq.  
Cahill Gordon & Reindell LLP  
1990 K Street NW, Suite 950  
Washington, DC 20006

Communications with Defendant Lemelson concerning Ligand.

7. Dr. Nicolas Jabbour  
139 Rugby Road  
Longmeadow, MA 01106

Communications with Defendant Lemelson concerning The Amvona Fund and Promacta.

8. Viking Therapeutics, Inc.

c/o Bradley J. Bondi, Esq.  
Cahill Gordon & Reindell LLP  
1990 K Street NW, Suite 950  
Washington, DC 20006

Viking's business and relationship with Ligand, and related SEC filings.

9. Brian Lian, PhD, CEO, Viking Therapeutics, Inc.  
c/o Bradley J. Bondi, Esq.  
Cahill Gordon & Reindell LLP  
1990 K Street NW, Suite 950  
Washington, DC 20006

Viking's business and relationship with Ligand, Viking's intent in 2014 to conduct preclinical studies and clinical trial with respect to the five drug programs it licensed from Ligand, actual preclinical studies and clinical trials performed by Viking from 2014 to present, and Viking's SEC filings.

10. Ligand Pharmaceuticals Inc.  
c/o Bradley J. Bondi, Esq.  
Cahill Gordon & Reindell LLP  
1990 K Street NW, Suite 950  
Washington, DC 20006

Ligand's business and relationship with Viking, its 2014 financial condition and debt financing transaction, the impact of Defendants' scheme on Ligand's business, shareholders, and share price.

11. John Higgins, CEO, Ligand Pharmaceuticals Inc.  
c/o Bradley J. Bondi, Esq.  
Cahill Gordon & Reindell LLP  
1990 K Street NW, Suite 950  
Washington, DC 20006

Ligand's business and relationship with Viking, its 2014 financial condition and debt financing transaction, Ligand's revenue from Promacta from 2013 through 2019, the impact of Defendants' scheme on Ligand's business, shareholders, and share price.



12. Matthew Foehr, COO, Ligand Pharmaceuticals Inc.  
c/o Bradley J. Bondi, Esq.  
Cahill Gordon & Reindell LLP  
1990 K Street NW, Suite 950  
Washington, DC 20006

Ligand's business and relationship with Viking, its 2014 financial condition and debt financing transaction, Ligand's revenue from Promacta from 2013 through 2019, the impact of Defendants' scheme on Ligand's business, shareholders, and share price.

13. Keith Marschke, PhD, SVP, Biology and Scientific Affairs,  
Ligand Pharmaceuticals Inc.  
c/o Bradley J. Bondi, Esq.  
Cahill Gordon & Reindell LLP  
1990 K Street NW, Suite 950  
Washington, DC 20006

The discovery, development, and licensing of Promacta; Ligand's partnerships with GlaxoSmithKline and Novartis regarding Promacta; Promacta's FDA-approved indications; Promacta's FDA-approved indication as a secondary therapy for certain Hepatitis C patients; Solvadi; and Ligand's revenue derived from Promacta.

14. Matthew Korenberg, CFO, Ligand Pharmaceuticals Inc.  
c/o Bradley J. Bondi, Esq.  
Cahill Gordon & Reindell LLP  
1990 K Street NW, Suite 950  
Washington, DC 20006

Mr. Korenberg's knowledge of Ligand's operations and finances since joining the company in August 2015, including Ligand's business relationship with Viking, Ligand's 2014 debt financing transaction, and Ligand's sale of its rights in Promacta in 2019.

15. Goldman Sachs & Co.  
c/o Ms. Joanne Cook, Vice President  
200 West Street  
15th Floor – Legal Department  
New York, NY 10282-2198

Defendants' 2014 trading activities.

16. JP Morgan Chase & Co.  
c/o Mr. Brent T. Starks, VP Assistant General Counsel  
4 New York Plaza, 19th Floor  
New York, NY 10004

Defendants' 2014 trading activities.

17. BTIG, LLC  
c/o Mr. Austin Hamilton, Chief Compliance Officer  
600 Montgomery Street, 6th Floor  
San Francisco, CA 94111

Defendants' 2014 trading activities.

18. Benzinga.com/Joel Elconin  
One Campus Martius  
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Detroit, MI 48226

Lemelson's 2013-15 interviews; statements made by Lemelson.

19. Marcum LLP  
750 3<sup>rd</sup> Avenue  
11<sup>th</sup> Floor  
NY, NY 10017

Audits of Viking Therapeutics.

20. Grant Thornton LLP  
171 N. Clark Street, Suite 200  
Chicago, IL 60601

Ligand Pharmaceuticals audit work.

21. GlaxoSmithKline plc  
5 Crescent Drive  
Philadelphia, PA 19112

Promacta related information, including agreements with Ligand Pharmaceuticals, and Promacta sales.

22. Novartis AG  
Lichtstrasse 35  
4056 Basel  
Switzerland

Promacta-related information, including agreements with Ligand Pharmaceuticals, and Promacta sales.

## **II. Documents That May Be Used to Support the Commission's Claims**

Pursuant to Rule 26(a)(1)(A)(ii), the Commission is producing documents marked with Bates numbers EPROD-SEC-LIT-E-000000001 through EPROD-SEC-LIT-E-001191869. The Commission may also rely on certain publicly-available documents, such as Ligand's and Viking's public SEC filings, records of historical stock price, and other materials produced in the course of discovery in this matter.

## **III. Computation of Damages**

Through the conduct alleged in the Complaint, Defendants committed fraud in connection with the purchase and sale of securities, and, while acting as investment advisers to a pooled investment vehicle, have engaged in fraudulent, deceptive, or manipulative acts or practices which operated as a fraud on the investors in the Amvona Fund, the pooled investment vehicle advised by the Defendants. By doing so, Defendants have violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 206(4) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8]. As alleged in the Complaint, Defendants profited by approximately \$1.3 million from their fraudulent scheme and should disgorge that money, along with any additional fees received from investors and other compensation flowing from their unlawful conduct in an amount to be determined through discovery.

The Commission does not seek “damages” in this case, as damages are not an element of the Commission’s claims. The Commission instead seeks the following remedies, each of which is committed to the Court’s discretion upon a finding of liability:

- a. entry of appropriate permanent injunctions, including an injunction prohibiting Defendants from further violations of the relevant provisions of the federal securities laws;
- b. disgorgement of Defendants’ ill-gotten gains, plus pre-judgment interest;
- c. imposition of civil penalties in an amount to be determined by the Court due to the egregious nature of Defendants’ violations; and
- d. such other relief as the Court deems just and equitable.

Dated: July 24, 2019

Respectfully submitted,

/s/ Alfred A. Day

Alfred A. Day (BBO #654436)

Marc J. Jones (BBO #645910)

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[JonesMarc@sec.gov](mailto:JonesMarc@sec.gov)

Attorneys for Plaintiff

Virginia M. Rosado Desilets

Sonia G. Torrico

Securities and Exchange Commission

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Washington, DC 20549

**CERTIFICATE OF SERVICE**

I hereby certify that the forgoing document was served on the following counsel of record  
via electronic mail on July 24, 2019:

Douglas S. Brooks  
LibbyHoopes, P.C.  
399 Boylston Street  
Boston, MA 02116  
Counsel for Defendants

*/s/ Alfred A. Day* \_\_\_\_\_

## **Respondent Exhibit 54**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GREGORY LEMELSON and LEMELSON CAPITAL  
MANAGEMENT, LLC,

Defendants,

and

THE AMVONA FUND, LP,

Relief Defendant.

Civil Action No. 1:18-cv-11926-PBS

**PLAINTIFF'S SECOND AMENDED INITIAL DISCLOSURES**

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, plaintiff, the United States Securities and Exchange Commission (the "Commission"), hereby amends and updates its initial disclosures as follows:

**I. Individuals Likely to Have Discoverable Information**

The following individuals and entities currently known to the Commission who are likely to have discoverable information that the Commission may use to support its claims. While the Commission may not rely on all of the listed persons, it discloses these persons to defendants as persons who may have discoverable information. The Commission reserves the right to supplement and/or amend this list as discovery progresses.

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Emmaus, PA 18049

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5. Bruce Voss  
c/o Bradley J. Bondi, Esq.  
Cahill Gordon & Reindell LLP  
1990 K Street NW, Suite 950  
Washington, DC 20006

Communications with Defendant Lemelson concerning Ligand.

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c/o Bradley J. Bondi, Esq.  
Cahill Gordon & Reindell LLP  
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Washington, DC 20006

Communications with Defendant Lemelson concerning Ligand.



7. Dr. Nicolas Jabbour  
139 Rugby Road  
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1990 K Street NW, Suite 950  
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Viking's business and relationship with Ligand, and related SEC filings.

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Ligand Pharmaceuticals Inc.  
c/o Bradley J. Bondi, Esq.  
Cahill Gordon & Reindell LLP  
1990 K Street NW, Suite 950  
Washington, DC 20006

The discovery, development, and licensing of Promacta; Ligand's partnerships with GlaxoSmithKline and Novartis regarding Promacta; Promacta's FDA-approved indications; Promacta's FDA-approved indication as a secondary therapy for certain Hepatitis C patients; Solvadi; and Ligand's revenue derived from Promacta.

14. Matthew Korenberg, CFO, Ligand Pharmaceuticals Inc.  
c/o Bradley J. Bondi, Esq.  
Cahill Gordon & Reindell LLP  
1990 K Street NW, Suite 950  
Washington, DC 20006

Mr. Korenberg's knowledge of Ligand's operations and finances since joining the company in August 2015, including Ligand's business relationship with Viking, Ligand's 2014 debt financing transaction, and Ligand's sale of its rights in Promacta in 2019.

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c/o Ms. Joanne Cook, Vice President  
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c/o Mr. Austin Hamilton, Chief Compliance Officer  
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One Campus Martius  
Suite 200  
Detroit, MI 48226

Lemelson's 2013-15 interviews; statements made by Lemelson.

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11<sup>th</sup> Floor  
New York, NY 10017

Audits of Viking Therapeutics.

20. Grant Thornton LLP  
171 N. Clark Street, Suite 200  
Chicago, IL 60601

Ligand Pharmaceuticals audit work.

21. GlaxoSmithKline plc ("GSK")  
Stephen Pessagno, Alliance Director, GSK  
5 Crescent Drive  
Philadelphia, PA 19112

Promacta-related information, the relationship between Ligand and GSK, agreements with Ligand Pharmaceuticals, and Promacta sales.

22. Novartis AG  
Lichtstrasse 35  
4056 Basel  
Switzerland

Promacta-related information, including agreements with Ligand Pharmaceuticals, and Promacta sales.

23. Stephen Sabba, MD  
Director and Chair of Audit Committee  
Ligand Pharmaceuticals Inc.  
c/o Bradley J. Bondi, Esq.  
Cahill Gordon & Reindell LLP  
1990 K Street NW, Suite 950  
Washington, DC 20006

Dr. Sabba's knowledge of Ligand's operations, audits, and finances.

24. Matthew Singleton  
Director and Chair of Audit Committee  
Viking Therapeutics, Inc.  
c/o Bradley J. Bondi, Esq.  
Cahill Gordon & Reindell LLP  
1990 K Street NW, Suite 950  
Washington, DC 20006

Mr. Singleton's knowledge of Ligand's operations, audits, and finances.

25. David John Kuter, MD, Dphil  
Director, Center for Hematology  
Massachusetts General Hospital  
55 Fruit Street  
Boston, MA 02114

Dr. Kuter's participation in clinical trials of Promacta and knowledge of Promacta's indications.

## **II. Documents That May Be Used to Support the Commission's Claims**

Pursuant to Rule 26(a)(1)(A)(ii), the Commission is producing documents marked with Bates numbers EPROD-SEC-LIT-E-000000001 through EPROD-SEC-LIT-E-001191869. The Commission may also rely on certain publicly-available documents, such as Ligand's and

Viking's public SEC filings, GSK's public filings, Novartis's public filings, records of historical stock price, and other materials produced in the course of discovery in this matter.

### **III. Computation of Damages**

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- c. imposition of civil penalties in an amount to be determined by the Court due to the egregious nature of Defendants' violations; and
- d. such other relief as the Court deems just and equitable.

Dated: October 8, 2019

Respectfully submitted,

/s/ Alfred A. Day

Alfred A. Day (BBO #654436)  
Marc J. Jones (BBO #645910)  
Securities and Exchange Commission  
Boston Regional Office  
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Attorneys for Plaintiff

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100 F Street, N.E.  
Washington, DC 20549

### CERTIFICATE OF SERVICE

I hereby certify that the forgoing document was served on the following counsel of record  
via electronic mail on October 8, 2019:

Douglas S. Brooks  
LibbyHoopes, P.C.  
399 Boylston Street  
Boston, MA 02116  
Counsel for Defendants

/s/ Alfred A. Day

## **Respondent Exhibit 55**





22. Intraday event studies are a standard method used in academic research and accepted in U.S. courts to disentangle the impact of confounding information.<sup>32</sup> The method is based on the finding that stocks react to news very quickly, typically within five to fifteen minutes of the announcement.<sup>33</sup> Thus, the impact of an event on the stock price can be measured by the change in the stock price immediately surrounding the announcement. This approach allows for more precise estimates as it excludes the impact of other confounding news and trading noise irrelevant to the event.<sup>34</sup> Accordingly, intraday event studies can detect smaller price effects than daily event studies.<sup>35</sup> Notably, in his prior work, Mr. Dolgoff advocated for using intraday event studies for measuring stock price reactions to news.<sup>36</sup> The Dolgoff report, however, does not contain intraday event study analyses.

23. I followed the intraday event study methodology used in academic research. I measured the event return from 15 minutes prior to the event, excluding pre-market trading and the opening price, to 15 minutes following the event.<sup>37</sup> For over-night events, I used the return from the previous close of trading to 15 minutes after the opening of trading on the following day.<sup>38</sup> I calculated expected returns using Mr. Dolgoff's model estimates for the year ended May 31, 2014.<sup>39</sup> I used returns of the most liquid ETFs that track Mr. Dolgoff's market and industry indices: SPDR S&P 500 ETF (SPY) and iShares NASDAQ Biotechnology Index ETF (IBB),

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<sup>32</sup> See, for example, *Bricklayers and Trowel Trades Int'l Pension Fund v. Credit Suisse First Boston*, 853 F. Supp. 2d 181, 190-91 (D. Mass. 2012).

<sup>33</sup> Patell, James M., and Mark A. Wolfson. "The intraday speed of adjustment of stock prices to earnings and dividend announcements." *Journal of Financial Economics* 13.2 (1984): 223-252.

<sup>34</sup> See Laura Starks, "Discussion of 'Market Microstructure: An Examination of the Effects on Intraday Event Studies.'" *Contemporary Accounting Research* 10.2 (1994): 383-386.

<sup>35</sup> Mucklow, Belinda, "Market Microstructure: An Examination of the Effects on Intraday Event Studies," *Contemporary Accounting Research* 10.2 (1994): 355-382.

<sup>36</sup> "Although it is typical to evaluate stock price reactions between two days' prices at close of trading, prices can adjust faster than over the course of a trading day. Moreover, the release of multiple pieces of information during a day may confound the analysis of a particular disclosure's price impact. In these circumstances, it may be useful to analyze price reactions throughout the trading day." (Dolgoff, Aaron and Tiago Duarte-Silva, "Price impact of disclosures before, during, or after a trading day: Implications for event studies." *CRA Insights: Financial Markets* (2014))

<sup>37</sup> Bradley, Daniel, Jonathan Clarke, Suzanne Lee, and Chayawat Ornthanalai, "Are analysts' recommendations informative? Intraday evidence on the impact of time stamp delays." *Journal of Finance* 69.2 (2014): 645-673.

<sup>38</sup> Kim, Sok Tae, Ji-Chai Lin, and Myron B. Slovin, "Market structure, informed trading, and analysts' recommendations." *Journal of Financial and Quantitative Analysis* 32.4 (1997): 507-524.

<sup>39</sup> Dolgoff Report, Backup Exhibit 1.

respectively. The abnormal return is the difference between the actual and expected return measured over the event time interval. I then calculated a t-statistic, which is the ratio of the event abnormal return to the standard deviation of abnormal returns measured over the same time interval for all trading days for the year ended May 31, 2014. A t-statistic with an absolute value greater than 1.645, 1.96, and 2.58 means the abnormal return is statistically significant at the 90%, 95%, and 99% confidence level, respectively. I summarized results of my intraday event studies for each of the events that Mr. Dolgoff considered in his report and other events of the campaign in Exhibit 4.

24. I performed a number of robustness checks to ensure my results were not sensitive to the choice of the event time interval,<sup>40</sup> measurement of abnormal returns,<sup>41</sup> or distributional assumptions.<sup>42</sup> (see Appendix 3)

**A. I found that two of the four campaign events that Mr. Dolgoff considered are associated with statistically significant intraday declines in Ligand’s stock price.**

*Lemelson’s Radio Interview on June 19, 2014 (Dolgoff Event #1)*

25. Lemelson’s interview on June 19, 2014 was the first of Mr. Dolgoff’s four event dates.<sup>43</sup> By considering Ligand’s full day return, which includes the impact of other confounding

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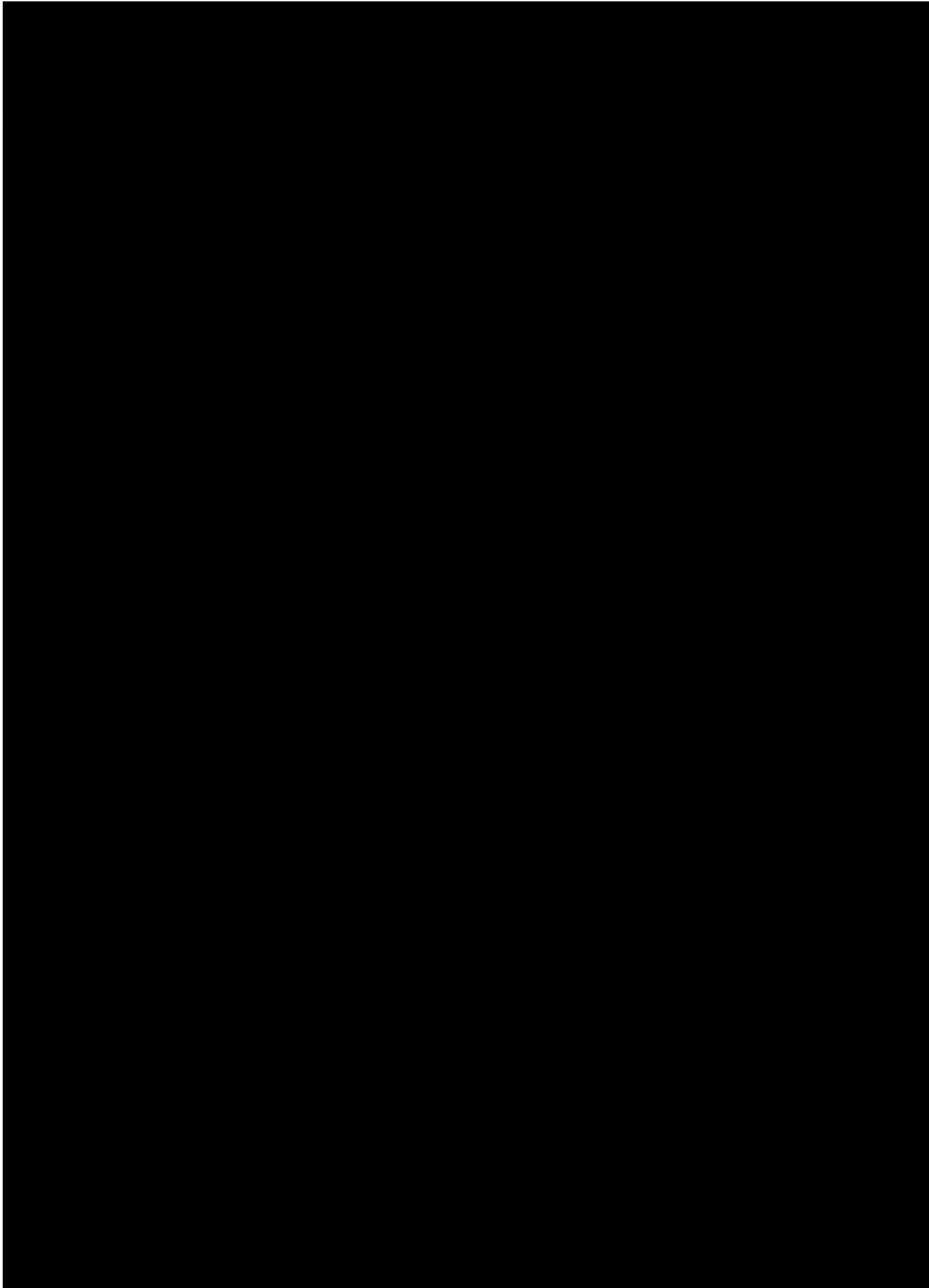
<sup>40</sup> I considered alternative time intervals for measuring event returns such as: (i) measuring from 1 minute prior to the event, as opposed to 15 minutes prior to the event (similar to Adams, Greg, Grant McQueen, and Robert Wood, “The effects of inflation news on high frequency stock returns.” *Journal of Business* 77.3 (2004): 547-574); and (ii) Measuring up to 5 minutes after the event, as opposed to 15 minutes after, based on the finding that, for NYSE stocks, most price reactions occur within five minutes. (Kim, Sok Tae, Ji-Chai Lin, and Myron B. Slovin, “Market structure, informed trading, and analysts’ recommendations.” *Journal of Financial and Quantitative Analysis* 32.4 (1997): 507-524)

<sup>41</sup> I used alternative measures of abnormal returns: (i) mean-adjusted (Mucklow, Belinda, “Market Microstructure: An Examination of the Effects on Intraday Event Studies,” *Contemporary Accounting Research* 10.2 (1994): 355-382); and (ii) based on the high correlation between Ligand’s stock and the industry index, I also provided intraday results using Ligand’s excess return relative to the industry index.

<sup>42</sup> I also performed a non-parametric test for statistical significance as suggested in Campbell, Lo and MacKinlay (1997). (Campbell, J., Andrew Lo, and Craig MacKinlay, (1997). *The Econometrics of Financial Markets*. Princeton University press, pp. 173). I used a non-parametric “SQ test” based on the portion of days in the control period with more extreme returns than the event date. According to the test, the result is statistically significant at the 95% confidence level if that portion is less than 5% of the control period observations. (Gelbach, Jonah, Eric Helland, and Jonathan Klick. “Valid inference in single-firm, single-event studies.” *American Law and Economics Review* 15.2 (2013): 495-541)

<sup>43</sup> Dolgoff Report, par.30.

## **Respondent Exhibit 56**





## **Respondent Exhibit 57**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE	)	
COMMISSION,	)	
	)	
Plaintiff	)	
	)	CA No. 18-11926-PBS
-VS-	)	Pages 1 - 67
	)	
GREGORY LEMELSON, et al,	)	
	)	
Defendants	)	

**MOTION HEARING BY VIDEO**

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts 02210  
December 17, 2020, 9:35 a.m.

LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 7200  
Boston, MA 02210  
leemarz@aol.com

1     A P P E A R A N C E S:

2             ALFRED A. DAY, ESQ. and MARC J. JONES, ESQ.,  
3     United States Securities and Exchange Commission,  
4     33 Arch Street, 23rd Floor, Boston, Massachusetts, 02110-1424,  
5     for the Plaintiff.

6             DOUGLAS S. BROOKS, ESQ. and BRIAN SULLIVAN, ESQ.,  
7     Libby Hoopes Brooks, P.C., 399 Boylston Street Suite 200,  
8     Boston, Massachusetts, 02116, for the Defendants.

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1 offensive and seems like they're focused on his religion, which  
2 should be totally irrelevant. None of the fund's clients are,  
3 were, or ever have been parishioners of his. So it would be a  
4 different story if there were allegations of affinity fraud,  
5 et cetera, but I think that's the beginning of the SEC  
6 injecting his religion into it.

7           You know, again, with malice, we've said that during  
8 the pendency of what was supposed to be a confidential  
9 investigation, someone leaked the existence of it to Bloomberg,  
10 which ran a hit piece on Father Emmanuel. Now, I get it, the  
11 SEC says they didn't, but they must have leaked it to somebody  
12 who then leaked it to Bloomberg. I think that's another  
13 fact --

14           THE COURT: I can imagine that might be, can't you?

15           MR. BROOKS: I'm sorry, what's that, your Honor? I  
16 missed that.

17           THE COURT: Given the acrimony between Ligand and  
18 Father Emmanuel, I don't know why you'd want me to draw the  
19 inference it was the SEC who leaked it.

20           MR. BROOKS: The SEC shouldn't have been telling  
21 Ligand what was going on in the investigation. We've alleged  
22 that --

23           THE COURT: Is that the "under investigation, it's  
24 still under investigation" quote?

25           MR. BROOKS: This is while it was still under

C E R T I F I C A T E

1  
2  
3 UNITED STATES DISTRICT COURT )  
4 DISTRICT OF MASSACHUSETTS ) ss.  
5 CITY OF BOSTON )  
6

7 I, Lee A. Marzilli, Official Federal Court Reporter,  
8 do hereby certify that the foregoing transcript, Pages 1  
9 through 67 inclusive, was recorded by me stenographically at  
10 the time and place aforesaid in Civil Action No. 18-11926-PBS,  
11 Securities and Exchange Commission v. Gregory Lemelson, et al,  
12 and thereafter by me reduced to typewriting and is a true and  
13 accurate record of the proceedings.

14 Dated this 8th day of June, 2021.  
15  
16  
17  
18

19 /s/ Lee A. Marzilli

20 \_\_\_\_\_  
21 LEE A. MARZILLI, CRR  
22 OFFICIAL COURT REPORTER  
23  
24  
25

## **Respondent Exhibit 58**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

_____	)	
SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
GREGORY LEMELSON and LEMELSON CAPITAL	)	
MANAGEMENT, LLC,	)	Civil Action No. 1:18-cv-11926-PBS
	)	
Defendants,	)	
	)	
and	)	
	)	
THE AMVONA FUND, LP,	)	
	)	
Relief Defendant	)	
_____	)	

**AFFIDAVIT OF FATHER EMMANUEL LEMELSON IN SUPPORT OF DEFENDANTS’ RESPONSE TO THE SECURITIES AND EXCHANGE COMMISSION’S MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING PROTECTIVE ORDERS**

I, Father Emmanuel Lemelson, hereby swear and declare as follows:

1. I am a canonically ordained priest in the Greek Orthodox Church and have been identified in the Complaint to this action as Gregory Lemelson. I also serve as the Chief Investment Officer of Lemelson Capital Management, LLC. I am an activist investor. Lemelson Capital Management, LLC is the general partner to the Amvona Fund, LP, a pooled investment vehicle.
2. I violated the Protective Orders entered in this case by providing certain documents that were produced by Ligand in this matter, to a journalist at Barron’s.
3. I apologize to the Court for violating the Protective Orders and I take full responsibility for my actions.

OS Received 07/29/2022

4. I have not provided discovery materials produced in this litigation to anyone else or otherwise violated the Protective Orders.

5. I will not violate the Protective Orders again during the remainder of this litigation.

6. I was first contacted by the journalist of Barron's in the Fall of 2018, shortly after the original Complaint was filed in this action. This journalist briefly discussed this litigation in an article in October 2018. I communicated with this same journalist again in January 2020.

7. Prior to being contacted by Barron's, multiple media outlets had written about this litigation, with the majority of the articles simply parroting the allegations made by the Securities and Exchange Commission.

8. By January 2020, I held a firm conviction that the present enforcement action and Ligand's role in it was demonstrably unfair.

9. On January 23, 2020, I improperly acted by providing an assortment of 50 pages that Ligand produced in this litigation to Barron's because I believed a fair and objective investigative journalist could help counter the existing false public narrative about this litigation.

10. The 50 pages Ligand produced in this litigation that I provided to the journalist at Barron's are identified by Bates-page number in the table below:

LGND 0010818	LGND 0048124
LGND 0010837	LGND 0048125
LGND 0010838	LGND 0048126
LGND 0010839	LGND 0048127
LGND 0018523	LGND 0048128
LGND 0018524	LGND 0048129
LGND 0019421	LGND 0052230
LGND 0019422	LGND 0052231
LGND 0020052	LGND 0056231
LGND 0020054	LGND 0056234
LGND 0020055	LGND 0056235
LGND 0020056	LGND 0056236

LGND 0020057	LGND 0056237
LGND 0020061	LGND 0056270
LGND 0022923	LGND 0056271
LGND 0022924	LGND 0056272
LGND 0022932	LGND 0056273
LGND 0048070	LGND 0056274
LGND 0048091	LGND 0056275
LGND 0048113	LGND 0057394
LGND 0048118	LGND 0057402
LGND 0048119	LGND 0061987
LGND 0048120	LGND 0061988
LGND 0048122	LGND 0062003
LGND 0048123	LGND 0062004

11. In addition to these 50 pages that Ligand produced, I also provided the journalist at Barron's with letters from Ligand's counsel, dated December 18, 2019 and January 13, 2020, a New York Post article, and a portion of the June 16, 2014 report I published.

12. I did not realize that some of the materials I sent had been subject to clawback requests from Ligand for containing attorney-client communications or attorney work product. However, I was present at the deposition when Ligand's counsel clawed back some of these pages and I have been provided notice of Ligand's written clawback request.

13. I am in the process of destroying all electronic copies of the materials subject to the clawback request from my computer. As I am currently traveling, I have been unable to destroy all hard copies of these documents that I may possess, but I will do so no later than March 2, 2020.

14. I started the Amvona Fund in 2012. Since that time, we have had a growing number of investors. I am not aware of any Amvona Fund's investors submitting any complaints about the Amvona Fund, Lemelson Capital Management, or myself to the Securities and Exchange Commission or any other regulatory body.

15. The Amvona Fund has focused on long-term commitments in common stocks, but has also occasionally shorted companies I believed were overvalued, exercised poor corporate governance, or engaged in fraud.

16. Since 2010, preceding the launch of the Amvona Fund, I have published approximately 200 pieces of research and commentary discussing amongst other things, economics, securitization fraud, and high-level security analysis of various common stocks. Of all my published materials and public commentary regarding stocks, the Securities and Exchange Commission has only sought charges related to my statements concerning Ligand.

17. In 2014, I identified Ligand as a company that in my opinion was overvalued in the stock market and had engaged in fraud.

18. I have consistently published materials regarding my positions (and the positions taken by the Amvona Fund) in various securities in an effort to be open, transparent, and to allow my analysis to be subject to public scrutiny. Consistent with my practice when publishing reports, all of my reports regarding Ligand disclosed that the Amvona Fund had taken a short position in Ligand's stock and that it contained my opinion commentary.

19. Since the short report published by Empire Asset Management on August 5, 2014, at least five other entities have published reports criticizing Ligand, and in most cases, also disclosed short positions in Ligand, or referenced sources that had short positions in Ligand. On the date one of those reports was issued, January 16, 2019, Ligand's stock price dropped as much as 25% intra-day.

20. The Amvona Fund did not have a short position in Viking on July 3, 2014.

21. I covered a small portion of the Amvona Fund's short position in Ligand on June 19, 2014. I covered the bulk of the Amvona Fund's short position on August 22, 2014 and October 10 and 13, 2014.

22. Under my direction, the Amvona Fund had over 150% net return on investments in 2019 alone.

23. None of the investors in the Amvona Fund are or ever have been one of my parishioners.

24. All of the investors in the Amvona Fund are accredited investors, and by definition are "sophisticated."

25. In the initial 24 months that the Amvona Fund was launched, the Amvona Fund experienced a 257% gain overall.

26. Full annual reports from 2012-2016, which include audited financial statements for the Amvona Fund are publicly available on the website for Lemelson Capital Management, available at <https://lemelsoncapital.com/reports>.

27. Following the March 18, 2016 article from Bloomberg that reported the Securities and Exchange Commission was investigating me and the Amvona Fund, a number of current and prospective service providers either stopped conducting business or declined to do business with Lemelson Capital Management, The Amvona Fund, myself, and members of my family. In some instances, favorable business terms were reversed and in other instances, restrictions on capital allocation decisions were put in place. These effects cost the Amvona Fund and its investors millions of dollars.

28. I covered my profitable Ligand and Viking short positions , on February 13 and 14, 2020.



Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United State of America that the foregoing is true and correct.

Executed: 02-27-20

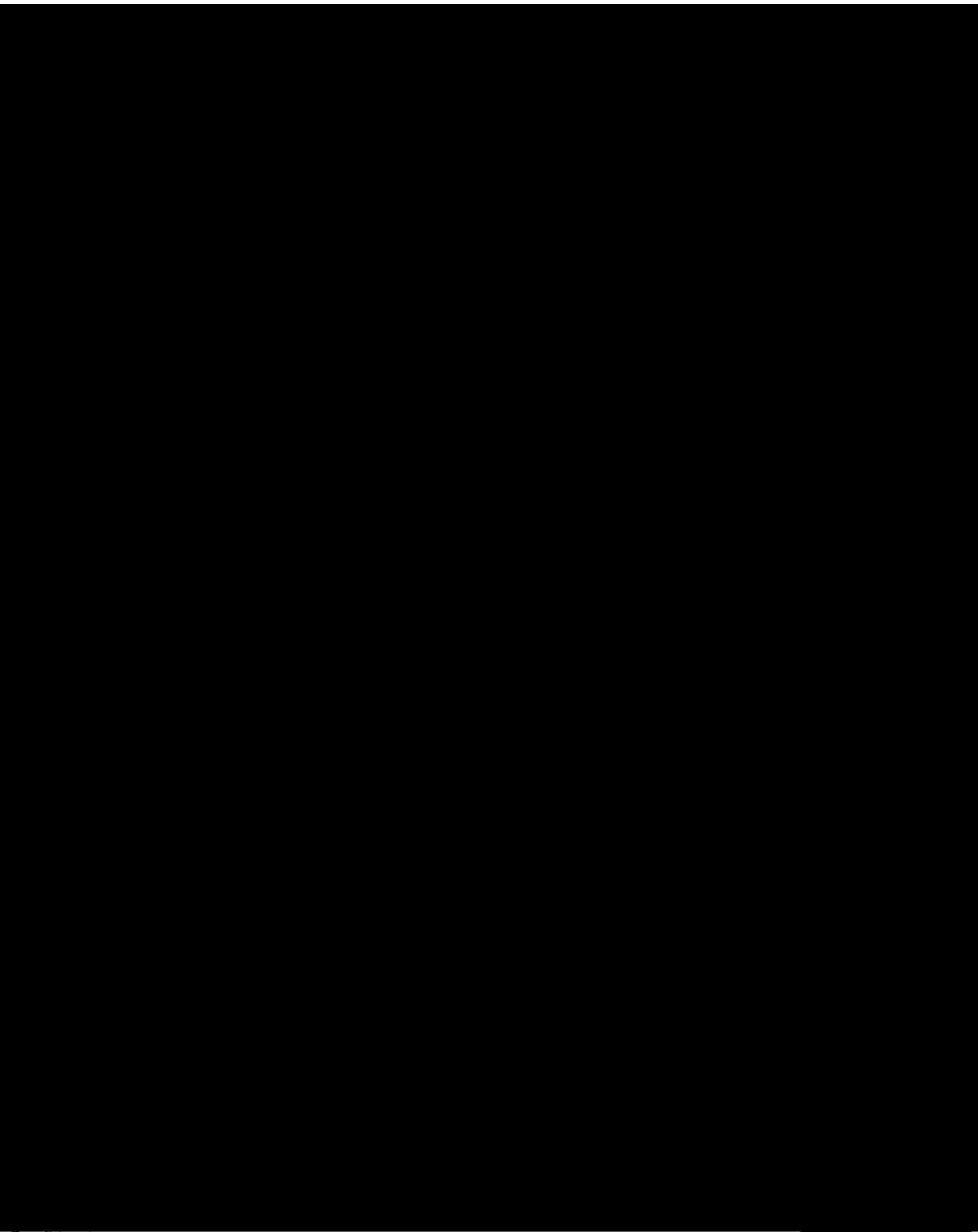
  
\_\_\_\_\_  
Father Emmanuel Lemelson

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-participants on February 28, 2020.

/s/ Douglas S. Brooks  
Douglas S. Brooks

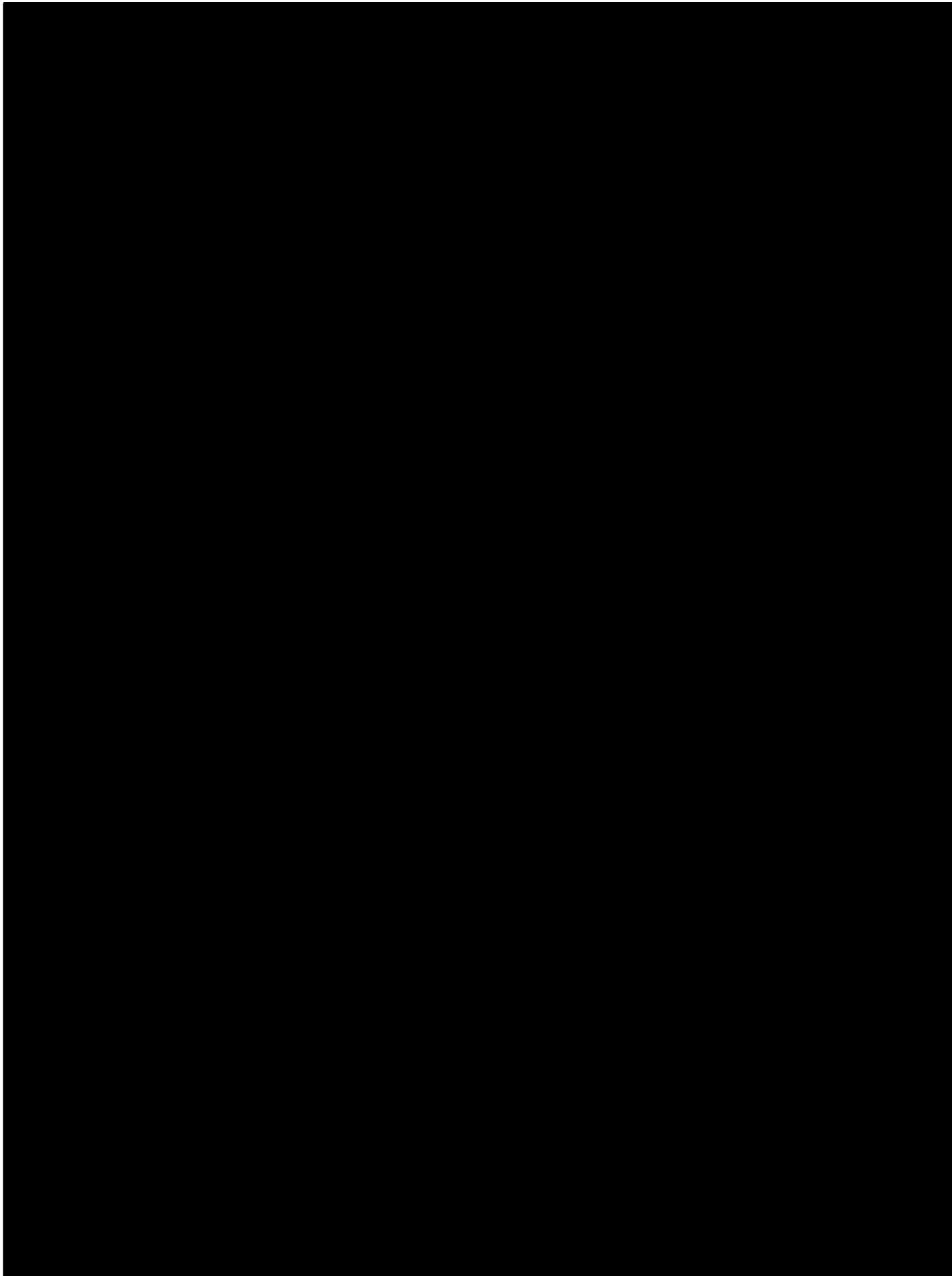
## **Respondent Exhibit 59**



Confidential Treatment Requested by Bruce Voss  
Subject to Protective Order in D. Mass. Case No. 18-cv-11926-PBS

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EPROD-SEC-LIT-E-00000407

OS Received 07/29/2022

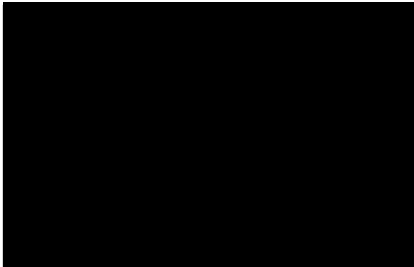
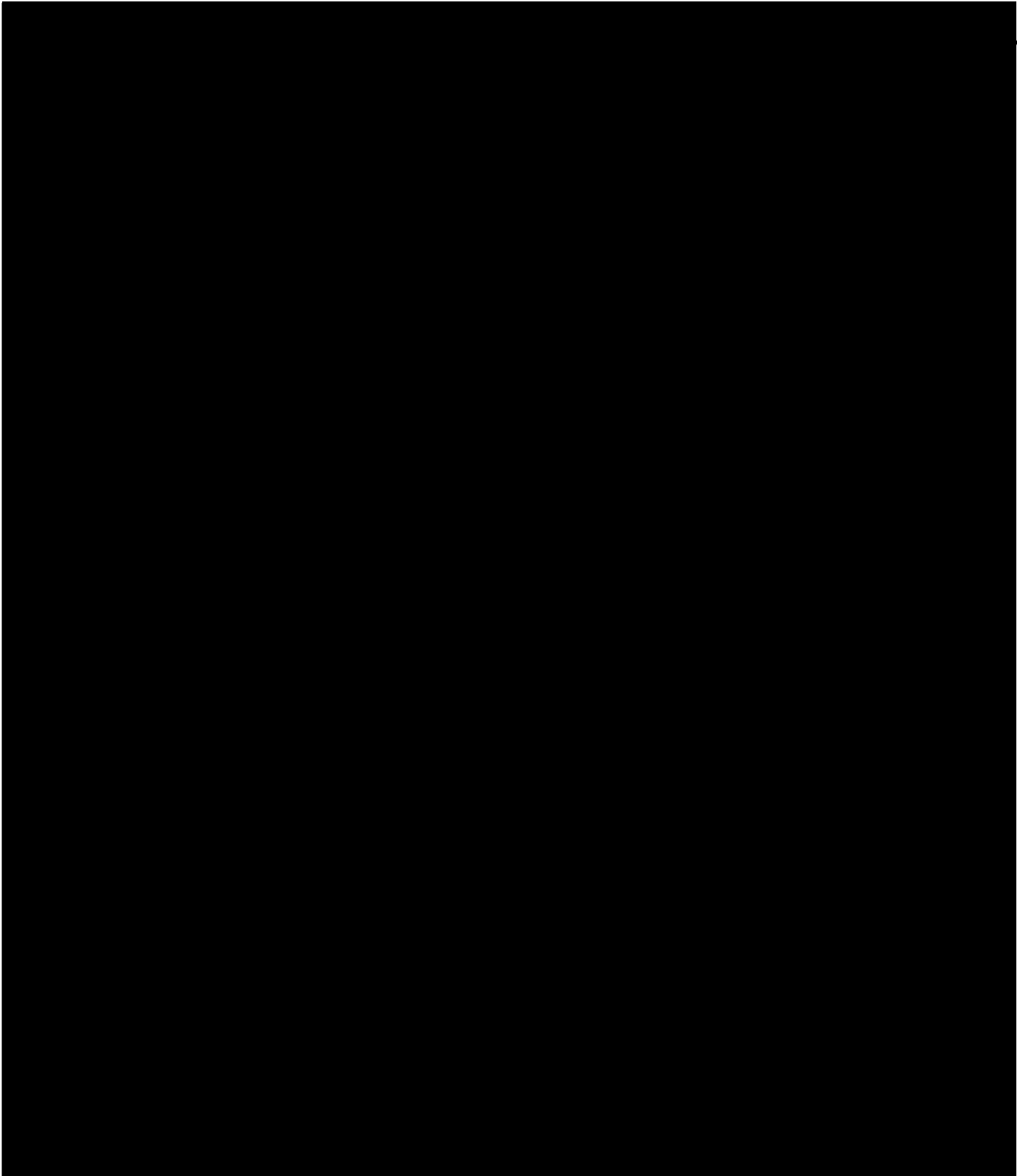


Confidential Treatment Requested by Bruce Voss  
Subject to Protective Order in D. Mass. Case No. 18-cv-11926-PBS

LCM\_SEC0000325  
EPROD-SEC-LIT-E-00000408

OS Received 07/29/2022

## **Respondent Exhibit 60**



**OS Received 07/29/2022**