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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

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

13 Plaintiff,

14 v.

15 LION BIOTECHNOLOGIES, INC., MANISH
16 SINGH, MICHAEL HANDELMAN, and
17 ELMA HAWKINS,

18 Defendants.

Case No:

CLASS ACTION COMPLAINT FOR
VIOLATION OF THE FEDERAL
SECURITIES LAWS

JURY TRIAL DEMANDED

19 Plaintiff Leonard Desilvio (“Plaintiff”), individually and on behalf of all other persons
20 similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants
21 (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s
22 own acts, and information and belief as to all other matters, based upon, inter alia, the investigation
23 conducted by and through Plaintiff’s attorneys, which included, among other things, a review of
24 the defendants’ public documents, conference calls and announcements made by defendants,
25 United States Securities and Exchange Commission (“SEC”) filings, wire and press releases
26 published by and regarding Lion Biotechnologies, Inc. (“Lion” or the “Company”), analysts’
27 reports and advisories about the Company, and information readily obtainable on the Internet.
28 Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein
after a reasonable opportunity for discovery.

1 **NATURE OF THE ACTION**

2 1. This is a federal securities class action on behalf of a class consisting of all persons
3 and entities other than Defendants who purchased or otherwise acquired the publicly traded
4 securities of Lion between November 14, 2013 and April 10, 2017, both dates inclusive (the “Class
5 Period”). Plaintiff seeks to recover compensable damages caused by Defendants’ violations of the
6 federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities
7 Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder.
8

9 **JURISDICTION AND VENUE**

10 2. The claims asserted herein arise under and pursuant to §§9(a), 9(f), 10(b) and
11 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and §78t(a)) and Rule 10b-5 promulgated
12 thereunder by the SEC (17 C.F.R. §240.10b-5).

13 3. This Court has jurisdiction over the subject matter of this action under 28 U.S.C.
14 §1331 and §27 of the Exchange Act.

15 4. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act (15
16 U.S.C. §78aa) and 28 U.S.C. §1391(b) as Defendants conduct business and maintain offices in this
17 Judicial District, and Defendant Lion is headquartered in this Judicial District.

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

23 **PARTIES**

24 6. Plaintiff, as set forth in the accompanying Certification, purchased Lion securities at
25 artificially inflated prices during the Class Period and was damaged upon the revelation of the
26 alleged corrective disclosures.

27 7. Defendant Lion is a clinical-stage biotechnology company that focuses on
28 developing and commercializing cancer immunotherapy products. The Company is incorporated in

1 Nevada and its principal executive offices are located at 999 Skyway Road, Suite 150, San Carlos,
2 California 94070. Lion's common stock is traded on the NASDAQ Global Market ("NASDAQ")
3 under the ticker symbol "LBIO."

4 8. Defendant Manish Singh ("Singh") served as the Chief Executive Officer ("CEO")
5 of Lion between July 24, 2013 and December 31, 2014, and served as its President from July 2013
6 until August 20, 2014.

7 9. Defendant Michael Handelman ("Handelman") served as the Chief Financial Officer
8 ("CFO") and Secretary of Lion between February 7, 2011 and June 8, 2015.

9 10. Defendant Elma Hawkins ("Hawkins") served as the President of Lion between
10 August 21, 2014 and June 1, 2016, and served as its CEO between January 1, 2015 and June 1,
11 2016.

12 11. Defendants Singh, Handelman, and Hawkins are sometimes referred to herein as the
13 "Individual Defendants."
14

15 12. Each of the Individual Defendants:

- 16 (a) directly participated in the management of the Company;
17 (b) was directly involved in the day-to-day operations of the Company at the highest
18 levels;
19 (c) was privy to confidential proprietary information concerning the Company and its
20 business and operations;
21 (d) was directly or indirectly involved in drafting, producing, reviewing and/or
22 disseminating the false and misleading statements and information alleged herein;
23 (e) was directly or indirectly involved in the oversight or implementation of the
24 Company's internal controls;
25 (f) was aware of or recklessly disregarded the fact that the false and misleading
26 statements were being issued concerning the Company; and/or
27 (g) approved or ratified these statements in violation of the federal securities laws.
28

1 attesting to the accuracy of financial reporting, the disclosure of any material changes to the
2 Company's internal controls over financial reporting, and the disclosure of all fraud.

3 19. On March 16, 2015, the Company filed a Form 10-K for the fiscal year ended
4 December 31, 2014 (the "2014 10-K") with the SEC, which provided the Company's year-end
5 financial results and position. The 2014 10-K was signed by Defendants Hawkins and Handelman.
6 The 2014 10-K also contained signed SOX certifications by Defendants Hawkins and Handelman
7 attesting to the accuracy of financial reporting, the disclosure of any material changes to the
8 Company's internal controls over financial reporting, and the disclosure of all fraud.

9 20. The statements referenced in ¶¶ 16 - 19 above were materially false and/or
10 misleading because they misrepresented and failed to disclose the following adverse facts pertaining
11 to the Company's business, operational and financial results, which were known to Defendants or
12 recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements
13 and/or failed to disclose that: (1) Lion, through Defendant Singh, engaged in a scheme to mislead
14 investors by commissioning over 10 internet publications and 20 widely distributed emails
15 promoting Lion to potential investors that purported to be independent from the company when, in
16 fact, they were paid promotions; (2) Defendant Singh engaged a notorious stock promotion firm to
17 pay writers to publish articles about Lion on investment websites as well as to coordinate the
18 distribution of articles to thousands of electronic mailboxes; (3) Defendant Singh actively
19 participated in Lidingo's promotional work for Lion and understood that Lidingo was using writers
20 who would not disclose that Lion was indirectly compensating them for their publications; and (4)
21 as a result, Defendants' public statements were materially false and misleading at all relevant times.

22 21. On May 14, 2014, Lion filed the 1Q 2014 10-Q wherein Lion stated that it received a
23 subpoena from the SEC, stating in pertinent part:
24

25 On April 23, 2014, the Company received a subpoena from the Securities
26 Exchange Commission (the "SEC") that stated that the staff of the SEC is
27 conducting an investigation *In the Matter of Galena Biopharma, Inc. File No. HO*
28 *12356* and that the subpoena was issued to the Company as part of the foregoing
investigation. Galena Biopharma is an unaffiliated, publicly-held

1 biopharmaceutical company. In the Form 10-K that Galena Biopharma, Inc. filed
2 with the SEC on March 17, 2014, Galena Biopharma stated that the SEC is
3 investigating certain matters relating to Galena Biopharma and an outside
4 investor-relations firm that it retained in 2013. The SEC's subpoena and
5 accompanying letter do not indicate whether the Company is, or is not, under
6 investigation. The Company has contacted the SEC's staff regarding the
7 subpoena, and the Company is cooperating with the SEC.

8 The subpoena requires the Company to give the SEC, among other
9 materials, all communications between anyone at the Company and certain
10 persons and entities (which include investor-relations firms and persons
11 associated with the investor-relations firms), all documents related to the listed
12 persons and entities, all articles regarding the Company posted on certain equity
13 research or other financial websites, and documents and communications related
14 to individuals who post or have posted articles regarding the Company on equity
15 research or other financial websites.

16 22. On this news, shares of Lion fell \$1.23 per share, or over 13.9%, over two trading
17 days to close at \$7.95 per share on May 15, 2014, damaging investors.

18 23. On November 12, 2014, during aftermarket hours, Lion issued a press release
19 entitled "Lion Biotechnologies Announces Management Change," announcing the resignation of
20 Defendant Singh, stating in pertinent part:

21 **Lion Biotechnologies Announces Management Change**

22 Company Remains on Track to Achieve Strategic Objectives

23 *November 12, 2014 16:05 ET* | **Source:** Lion Biotechnologies, Inc.

24 LOS ANGELES, Nov. 12, 2014 (GLOBE NEWSWIRE) -- Lion Biotechnologies,
25 Inc. (OTCBB:L BIO), a biotechnology company that is developing novel cancer
26 immunotherapies based on tumor infiltrating lymphocytes (TILs), today
27 announced that its chief executive officer Manish Singh, PhD, is resigning for
28 personal reasons, effective December 31, 2014. In addition, Dr. Singh is stepping
down as a director of Lion, effective immediately. The company's board of
directors intends to appoint a new CEO prior to Dr. Singh's departure.

29 24. On this news, shares of Lion fell \$0.75 per share, or over 11%, from its previous
closing price to close at \$5.95 per share on November 13, 2014, damaging investors.

30 25. On April 10, 2017, the SEC found that between "September 2013 to March 2014,
Lion, through its former Chief Executive Officer, Manish Singh, engaged in a scheme to mislead
investors by commissioning over 10 internet publications and 20 widely distributed emails

1 promoting Lion to potential investors that purported to be independent from the company when, in
2 fact, they were paid promotions. Singh engaged Lidingo Holdings, a stock promotion firm, to pay
3 writers to publish articles about Lion on investment websites as well as to coordinate the
4 distribution of articles to thousands of electronic mailboxes. Singh actively participated in Lidingo's
5 promotional work for Lion and understood that Lidingo was using writers who would not disclose
6 that Lion was indirectly compensating them for their publications.”

7 26. On this news, shares of Lion fell \$0.20 per share, or over 3%, from its previous
8 closing price to close at \$6.35 per share on April 10, 2017, damaging investors.

9 27. As a result of Defendants' wrongful acts and omissions, and the precipitous decline
10 in the market value of the Company's securities, Plaintiff and other Class members have suffered
11 significant losses and damages.

12 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

13 28. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
14 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise
15 acquired Lion securities publicly traded on the NASDAQ during the Class Period (the "Class"); and
16 were damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class
17 are Defendants herein, the officers and directors of the Company, at all relevant times, members of
18 their immediate families and their legal representatives, heirs, successors or assigns and any entity
19 in which Defendants have or had a controlling interest.

20 29. The members of the Class are so numerous that joinder of all members is
21 impracticable. Throughout the Class Period, Lion securities were actively traded on the NASDAQ.
22 While the exact number of Class members is unknown to Plaintiff at this time and can be
23 ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or
24 thousands of members in the proposed Class. Record owners and other members of the Class may
25 be identified from records maintained by the Company or its transfer agent and may be notified of
26 the pendency of this action by mail, using the form of notice similar to that customarily used in
27 securities class actions.

28

1 30. Plaintiff's claims are typical of the claims of the members of the Class as all
2 members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal
3 law that is complained of herein.

4 31. Plaintiff will fairly and adequately protect the interests of the members of the Class
5 and has retained counsel competent and experienced in class and securities litigation. Plaintiff has
6 no interests antagonistic to or in conflict with those of the Class.

7 32. Common questions of law and fact exist as to all members of the Class and
8 predominate over any questions solely affecting individual members of the Class. Among the
9 questions of law and fact common to the Class are:

- 10 • whether the federal securities laws were violated by Defendants' acts as alleged
11 herein;
- 12 • whether statements made by Defendants to the investing public during the Class
13 Period misrepresented material facts about the financial condition, business,
14 operations, and management of the Company;
- 15 • whether Defendants' public statements to the investing public during the Class
16 Period omitted material facts necessary to make the statements made, in light of the
17 circumstances under which they were made, not misleading;
- 18 • whether the Individual Defendants caused the Company to issue false and misleading
19 SEC filings and public statements during the Class Period;
- 20 • whether Defendants acted knowingly or recklessly in issuing false and misleading
21 SEC filings and public statements during the Class Period;
- 22 • whether the prices of Lion securities during the Class Period were artificially inflated
23 because of the Defendants' conduct complained of herein; and
- 24 • whether the members of the Class have sustained damages and, if so, what is the
25 proper measure of damages.

26 33. A class action is superior to all other available methods for the fair and efficient
27 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
28 damages suffered by individual Class members may be relatively small, the expense and burden of

1 individual litigation make it impossible for members of the Class to individually redress the wrongs
2 done to them. There will be no difficulty in the management of this action as a class action.

3 34. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-
4 on-the-market doctrine in that:

- 5 • Defendants made public misrepresentations or failed to disclose material facts during
6 the Class Period;
- 7 • the omissions and misrepresentations were material;
- 8 • Lion securities are traded in efficient markets;
- 9 • the Company's securities were liquid and traded with moderate to heavy volume
10 during the Class Period;
- 11 • the Company traded on the NASDAQ, and was covered by multiple analysts;
- 12 • the misrepresentations and omissions alleged would tend to induce a reasonable
13 investor to misjudge the value of the Company's securities; and
- 14 • Plaintiff and members of the Class purchased and/or sold Lion securities between the
15 time the Defendants failed to disclose or misrepresented material facts and the time
16 the true facts were disclosed, without knowledge of the omitted or misrepresented
17 facts.

18 35. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a
19 presumption of reliance upon the integrity of the market.

20 36. Alternatively, Plaintiff and the members of the Class are entitled to the presumption
21 of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United*
22 *States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their
23 Class Period statements in violation of a duty to disclose such information, as detailed above.

24 **COUNT I**

25 **Violation of Section 10(b) of The Exchange Act and Rule 10b-5**
26 **Against All Defendants**

27 37. Plaintiff repeats and realleges each and every allegation contained above as if fully
28 set forth herein.

1 38. This Count is asserted against the Company and the Individual Defendants and is
2 based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated
3 thereunder by the SEC.

4 39. During the Class Period, the Company and the Individual Defendants, individually
5 and in concert, directly or indirectly, disseminated or approved the false statements specified above,
6 which they knew or deliberately disregarded were misleading in that they contained
7 misrepresentations and failed to disclose material facts necessary in order to make the statements
8 made, in light of the circumstances under which they were made, not misleading.

9 40. The Company and the Individual Defendants violated §10(b) of the 1934 Act and
10 Rule 10b-5 in that they:

- 11 • employed devices, schemes and artifices to defraud;
- 12 • made untrue statements of material facts or omitted to state material facts necessary
13 in order to make the statements made, in light of the circumstances under which they
14 were made, not misleading; or
- 15 • engaged in acts, practices and a course of business that operated as a fraud or deceit
16 upon plaintiff and others similarly situated in connection with their purchases of
17 Lion securities during the Class Period.

18 41. The Company and the Individual Defendants acted with scienter in that they knew
19 that the public documents and statements issued or disseminated in the name of the Company were
20 materially false and misleading; knew that such statements or documents would be issued or
21 disseminated to the investing public; and knowingly and substantially participated, or acquiesced in
22 the issuance or dissemination of such statements or documents as primary violations of the
23 securities laws. These defendants by virtue of their receipt of information reflecting the true facts of
24 the Company, their control over, and/or receipt and/or modification of the Company's allegedly
25 materially misleading statements, and/or their associations with the Company which made them
26 privy to confidential proprietary information concerning the Company, participated in the
27 fraudulent scheme alleged herein.

28

1 48. During the Class Period, the Individual Defendants participated in the operation and
2 management of the Company, and conducted and participated, directly and indirectly, in the
3 conduct of the Company's business affairs. Because of their senior positions, they knew the adverse
4 non-public information regarding the Company's business practices.

5 49. As officers and/or directors of a publicly owned company, the Individual Defendants
6 had a duty to disseminate accurate and truthful information with respect to the Company's financial
7 condition and results of operations, and to correct promptly any public statements issued by the
8 Company which had become materially false or misleading.

9 50. Because of their positions of control and authority as senior officers, the Individual
10 Defendants were able to, and did, control the contents of the various reports, press releases and
11 public filings which the Company disseminated in the marketplace during the Class Period.
12 Throughout the Class Period, the Individual Defendants exercised their power and authority to
13 cause the Company to engage in the wrongful acts complained of herein. The Individual Defendants
14 therefore, were "controlling persons" of the Company within the meaning of Section 20(a) of the
15 Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially
16 inflated the market price of Lion securities.

17 51. Each of the Individual Defendants, therefore, acted as a controlling person of the
18 Company. By reason of their senior management positions and/or being directors of the Company,
19 each of the Individual Defendants had the power to direct the actions of, and exercised the same to
20 cause, the Company to engage in the unlawful acts and conduct complained of herein. Each of the
21 Individual Defendants exercised control over the general operations of the Company and possessed
22 the power to control the specific activities which comprise the primary violations about which
23 Plaintiff and the other members of the Class complain.

24 52. By reason of the above conduct, the Individual Defendants are liable pursuant to
25 Section 20(a) of the Exchange Act for the violations committed by the Company.

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COUNT III
Violation of Section 9(a) and 9(f) Of The Exchange Act
Against the All Defendants

1
2
3 53. Plaintiffs repeat and reallege each and every allegation contained above as if fully set
4 forth herein.

5 54. During the Class Period, Defendants carried out a plan, scheme and course of
6 conduct which was intended to and, throughout the Class Period, did: (1) deceive the investing
7 public, including Plaintiffs and other Class members, as alleged herein; (2) engaged in a scheme to
8 inflate the price of Lion securities; and (3) mislead and caused Plaintiffs and other members of the
9 Class to purchase Lion securities at artificially inflated prices. In furtherance of this unlawful
10 scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth herein.

11 55. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue
12 statements of material fact and/or omitted to state material facts necessary to make the statements
13 not misleading; and (c) engaged in acts, practices, and a course of business that operated as a fraud
14 and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high
15 market prices for Lion securities in violation of Sections 9(a) and 9(f) of the Exchange Act. All
16 Defendants are sued either as primary participants in the wrongful and illegal conduct charged
17 herein or as controlling persons as alleged below.

18 56. By virtue of the foregoing, Defendants made statements which were at the time and
19 in the light of the circumstances under which they were made, false or misleading with respect to
20 the value of Lion securities, which Defendants knew or had reasonable ground to believe were false
21 or misleading.

22 57. Defendants, individually and in concert, directly and indirectly, by the use, means or
23 instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
24 continuous course of conduct to make said false or misleading statements with respect to the value
25 of Lion securities, which Defendants knew or had reasonable grounds to believe were false or
26 misleading.

27 58. Each of the Defendants' primary liability, and controlling person liability, arises
28 from the following facts: (1) Individual Defendants were high-level executives, directors, and/or

1 agents of the Company during the Class Period and members of the Company's management team
2 or had control thereof; (2) each of these Defendants, by virtue of his or her responsibilities and
3 activities as a senior officer and/or director of the Company, was privy to and participated in the
4 creation, development and reporting of the Company's financial condition; (3) each of these
5 defendants enjoyed significant personal contact and familiarity with the other defendants and was
6 advised of and had access to other members of the Company's management team, internal reports
7 and other data and information about the Company's finances, operations, and sales at all relevant
8 times; and (4) each of these defendants was aware of the Company's dissemination of information
9 to the investing public which they knew or recklessly disregarded was materially false and
10 misleading.

11 59. At the time of said misrepresentations and omissions, Plaintiffs and other members
12 of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiffs and the other
13 members of the Class and the marketplace known the truth regarding Lion's true value and
14 Defendants' price manipulation, which was not disclosed by Defendants, Plaintiffs and other
15 members of the Class would not have purchased or otherwise acquired Lion securities, or, if they
16 had acquired such securities during the Class Period, they would not have done so at the artificially
17 inflated prices that they paid.

18 60. By virtue of the foregoing, Defendants violated Section 9(a) and 9(f) of the
19 Exchange Act, 15 U.S.C. § 78i(a) and 78i(f).

20 61. As a direct and proximate result of Defendants' conduct as described herein,
21 Plaintiffs have suffered significant damages and are entitled to such damages from Defendants,
22 jointly and severally.

23 62. This action was filed within one year of discovery of the fraud and within three years
24 of each Plaintiffs' purchases of Lion securities giving rise to the cause of action

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

27 A. Determining that the instant action may be maintained as a class action under Rule
28 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;

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

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

5 D. Awarding such other and further relief as this Court may deem just and proper.

6 **DEMAND FOR TRIAL BY JURY**

7 Plaintiff hereby demands a trial by jury.

8
9 Dated: April 14, 2017

Respectfully submitted,

10 **THE ROSEN LAW FIRM, P.A.**

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