



January 2, 2001 through January 29, 2002, inclusive (“the Class Period”), other than those people identified in ¶ 22, below. Plaintiff seeks to recover damages caused by defendants’ violations of the federal securities laws with regard to the preparation and dissemination to the investing public of materially false and misleading information about the Company’s business and financial results, which during the Class Period caused Elan’s ADRs to trade at artificially inflated levels.

2. During the Class Period, Elan’s misleading financial results caused the Company’s ADRs to trade as high as \$65.00 per share, in mid-June 2001. In late January 2002, the ADR prices began to fall amid rumors of accounting improprieties. On January 29, 2002, after the market closed, The Wall Street Journal issued a detailed exposé about Elan’s accounting practices. The report detailed instances of Elan creating revenue out of thin air by establishing an Elan-controlled entity for research and development purpose, funding the entity through a multi-million dollar “investment” and then immediately taking back the “investment” in the form of a “licensing fee”, which Elan then recorded as revenue. The Wall Street Journal quoted the SEC’s former chief accountant, who described the practice as a “charade” that is akin to “taking money out of one pocket and putting it into another.”

3. The Wall Street Journal also detailed instances where Elan sold off entire product lines and recorded the sale proceeds as “product revenue” rather than one-time gains. In some cases, Elan sold the product line to Elan-controlled entities, who paid for the purchase with loans from Elan. In other words, Elan turned its own money into “operating revenue”.

4. On January 30, 2002, following the release of The Wall Street Journal report, Elan’s ADR price fell nearly 17% in a single day, to trade at \$29.25 per ADR, some 34.7%

below the \$44.80 per ADR at which the ADRs had closed just days earlier, on January 17, 2002.

### **JURISDICTION AND VENUE**

5. The class claims alleged herein arise under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78j(b) and 78t, and Rule 10b-5, 17 C.F.R. §240.10b-5, promulgated thereunder.

6. This Court has jurisdiction over the subject matter of this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. §77v(a); Section 27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1331 (federal question jurisdiction).

7. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1391(b). Many of the acts alleged herein, including the dissemination to the investing public of the misleading statements at issue, occurred in this District. In addition, the Company maintains offices in this District.

8. In connection with the acts and conduct alleged herein, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to the United States mails and telephone communications and the facilities of national securities exchanges and markets.

### **THE PARTIES**

9. Plaintiff Harold Cohen, as set forth in the accompanying certification incorporated by reference herein, purchased the securities of Elan at prices that were inflated artificially by defendants’ misconduct, and has been damaged thereby.

10. Defendant Elan, an Irish pharmaceutical corporation, is the 20<sup>th</sup> largest drug company in the world, with a market value of \$11.4 billion. Elan maintains management offices in the United States at 345 Park Avenue, New York, New York, as well as manufacturing and marketing facilities and subsidiaries located throughout the United States.

(a) Elan is a speciality pharmaceutical company composed of two primary business units: Elan Pharmaceuticals, which is engaged in the discovery, development and marketing of products in the therapeutic areas of neurology, pain management, oncology, infectious diseases and dermatology and Elan Pharmaceutical Technologies, which is engaged in the development, licensing and marketing of drug delivery products, technologies and services to pharmaceutical industry clients.

(b) Elan's ADRs were and are actively traded on the New York Stock Exchange ("NYSE"), an efficient market, under the symbol ELN. As of September 30, 2001, Elan had 332.5 million ADRs outstanding.

11. Defendant Donal J. Geaney ("Geaney") is and has been, at all relevant times, Chairman of Elan's Board of Directors and Chief Executive Officer of the Company.

12. Defendant Thomas G. Lynch ("Lynch") is and has been, at all relevant times, Vice Chairman of Elan's Board of Directors.

13. Defendant Shane M. Cooke ("Cooke") is and has been, at all relevant times, Elan's Chief Financial Officer, Executive Vice President and a Director of the Company.

14. Defendants Geaney, Lynch and Cooke collectively, are referred to herein as the "Individual Defendants."

15. During the Class Period the Individual Defendants, as senior executives of Elan, were privy to confidential and proprietary information concerning Elan, its operations, finances, financial condition, present and future business prospects. Because of the Individual Defendants' positions with the Company, they had access to the adverse undisclosed information about its business, and operations, via access to internal corporate document, conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith. The Individual Defendants also had access to material adverse non-public information concerning Elan, as discussed in detail below. Because of their possession of such information, the Individual Defendants knew or recklessly disregarded the fact that adverse facts specified herein had not been disclosed to, and were being concealed from, the investing public.

16. Each of the Individual Defendants is liable as a direct participant in, and a co-conspirator with respect to the wrongs complained of herein. In addition, the Individual Defendants, by reason of their status as senior officers and/or directors were "controlling persons" within the meaning of Section 20 of the Exchange Act and had the power and influence to cause the Company to engage in the unlawful conduct complained of herein. Because of their positions of control, the Individual Defendants were able to and did, directly or indirectly, control the conduct of Elan's business.

17. The Individual Defendants, because of their positions with the Company, controlled and/or possessed the authority to control the contents of its reports, press releases and presentations to securities analysts and through them, to the investing public. The Individual

Defendants were provided with copies of the Company's reports and press releases alleged herein to be misleading, prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Thus, each of the defendants had the opportunity to commit the fraudulent acts alleged herein.

18. Elan and the Individual Defendants, as officers and directors of a publicly-traded company, had a duty to promptly disseminate truthful and accurate information with respect to Elan and to promptly correct any public statements issued by or on behalf of the Company which had become false or misleading.

**DEFENDANTS' MISREPRESENTATIONS PROXIMATELY CAUSED  
PLAINTIFF'S DAMAGES THROUGH A FRAUD ON THE MARKET**

19. Elan's ADRs met the requirements for listing, and were listed and actively traded, on the New York Stock Exchange, a highly developed and efficient market. During the Class Period, Elan ADRs were heavily traded, with volume averaging at least approximately 2.57 million shares daily. Elan filed periodic public reports with the SEC, and was followed by analysts from major brokerages, including Merrill Lynch, Morgan Stanley, U.S. Bancorp Piper Jaffray, Lehman Brothers and Prudential Securities. The reports of these analysts were redistributed to their customers and the public at large, and Elan regularly issued press releases, which were carried by national newswires. Thus, the analyst reports and Elan's press releases entered the public marketplace. As a result, the market for Elan securities promptly digested current information with respect to Elan from all publicly-available sources, and reflected such information in the price of Elan's ADRs. Plaintiff and other members of the class relied on the integrity of the market price of Elan's publicly traded securities.

20. As would be expected where a security is traded in an efficient market, material news concerning Elan's business and prospects had an immediate effect on the market price of Elan securities, as evidenced by the market price declines in the immediate aftermath of the publication of the Wall Street Journal article on January 30, 2002.

21. At the times they purchased or otherwise acquired the Company's securities, plaintiff and other members of the class were without knowledge of the facts concerning the wrongful conduct alleged herein and could not have reasonably discovered those facts.

### **CLASS ACTION ALLEGATIONS**

22. Plaintiff Harold Cohen brings this action as a class action pursuant to rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of a class consisting of all persons who purchased Elan ADRs during the period of January 2, 2001 through January 29, 2002, inclusive. Excluded from the class are Elan, its subsidiaries and affiliates, the Individual Defendants, members of the immediate families of each of the Individual Defendants, and any entities in which any of the defendants had a controlling interest, and the legal representatives, heirs, successors, predecessors in interest, affiliates or assigns of any of the defendants.

23. The members of the class are located in geographically diverse areas and are so numerous that joinder of all class members is impracticable. On information and belief, there were hundreds, if not thousands of purchasers of Elan ADRs during the Class Period. These purchasers were geographically dispersed in many different states and regions of the United States. As of September 30, 2001, there were at least 332.5 million of the Company's ADRs outstanding. Throughout the Class Period, Elan ADRs were actively traded on the NYSE. The average daily volume of trading in Elan ADRs during the Class Period was approximately 2.57

million shares. Therefore, millions of Elan ADRs were traded during the Class Period. Record owners and other members of the class may be identified from records maintained by Elan and/or its transfer agent(s) and may be notified of the pendency of this action by mail and publication using forms of notice similar to those customarily used in securities class actions.

24. Common questions of law and fact exist as to all members of the class and predominate over any questions affecting solely individual members of the class. Among the questions of law and fact common to the class are:

(a) Whether defendants engaged in acts or conduct in violation of the federal securities laws by making material misrepresentations or by omitting to state material facts necessary to render statements contained therein not misleading;

(b) Whether defendants had a duty to disclose certain information;

(c) Whether defendants acted knowingly or with reckless disregard for the truth in making materially misleading statements and omissions during the Class Period;

(d) Whether the market prices of the Company's ADRs during the Class Period were artificially inflated due to defendants' non-disclosures and/or misrepresentations complained of herein; and

1 (e) Whether the members of the class have sustained damages and, if  
2 so, the proper measure of damages. Plaintiff's claims are typical of the claims of the other  
3 members of the class, and plaintiff and all members of the class sustained damages as a result of  
4 defendants' wrongful conduct complained of herein.

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1. Plaintiff will fairly and adequately protect the interests of the members of the class.

Plaintiff have retained counsel competent and experienced in class action securities litigation.

Plaintiff have no interests antagonistic to, or in conflict with, the class plaintiff seeks to represent.

1. A class action is superior to other available methods of the fair and efficient

adjudication of the claims asserted herein, because joinder of all members is impracticable.

Furthermore, because the damages suffered by the individual class members may be relatively small in relation to the potential costs of a litigation of this complexity, the expense and burden of individual litigation make it impractical for the class members individually to redress the wrongs done to them.

2. The class will rely, in part, upon the presumption of reliance established by the

fraud-on-the-market doctrine in that:

- B. defendants misrepresented and failed to disclose material facts during the Class Period;
- C. the misrepresentations and omissions were material;
- D. the securities of the Company traded under the symbol ELN on the New York Stock Exchange, an efficient and open market, and the Company was followed by numerous analysts;
- E. the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities;

1 F. plaintiff and members of the class acquired their Elan ADRs between the  
2 time defendants failed to disclose material facts and the time the true facts  
3 were disclosed, without knowledge of the omitted facts.

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5 29. Based upon the foregoing, plaintiff and members of the class are entitled to a  
6 presumption of reliance upon the integrity of the market price for the Company's ADRs.

7 **SUBSTANTIVE ALLEGATIONS**

8 30. On January 30, 2001, it was revealed through an article by Jesse Eisinger in The  
9 Wall Street Journal that Elan's public filings and published financial reports throughout the class  
10 period had been beset with misleading accounting practices that distorted Elan's certain results.

11 1. The Wall Street Journal report detailed a series of accounting shenanigans by Elan  
12 including: (1) funding Elan-controlled joint ventures and recording the payments as "revenue",  
13 while keeping the venture's losses off Elan's books; and (2) recording one-time gains as operating  
14 revenues. These deceptive accounting practices caused the financial statements of Elan to distort  
15 the Company's true financial picture, and as a result damaged shareholders.

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17 **A. Improper Recording of Joint Venture "Investment" as "Revenue"**

18 32. The Wall Street Journal article raised numerous issues regarding the mechanisms  
19 by which Elan accounted for its investments in more than 55 joint ventures arrangements, so that  
20 Elan was able to avoid transparent accounting for its investments and their concomitant risks.

21 33. According to the Wall Street Journal, Elan established these joint ventures for  
22 research and development purposes. Typically, Elan has absolute veto power over the joint  
23 venture's activities, appoints 50% of the board members and has an option to increase its  
24 ownership share to 50%. In other words, Elan controls the joint ventures.  
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1           34.     The joint ventures are typically funded by Elan, which records the funding as an  
2     “investment”. The joint venture then immediately returns this investment to Elan in the form of a  
3     “licensing fee”, which Elan records as revenue. In other words, Elan takes money from its own  
4     pocket and magically reclassifies it as “revenue”. Commenting on the transaction in an interview  
5     for the article, Lynn Turner, a former chief accountant for the U.S. Securities and Exchange  
6     Commission asked, “What’s the real substance? . . . I’m taking money out of one pocket and  
7     putting it into another. That is a charade.”

8           35.     Furthermore, all of these joint ventures are money-losing entities, but those losses  
9     are kept off of Elan’s income statements.

10          36.     In January 2001, Elan entered into a joint venture with North Carolina-based  
11     Incara Pharmaceuticals Corporation, a biotechnology firm. In connection with that business  
12     arrangement, defendants invested \$2.985 million in a joint venture between the firms and  
13     purchased \$16.015 million in Incara stock and a warrant. Incara then invested \$12.015 million of  
14     the money it received from Elan, to fund the joint venture. The \$15 million in joint venture  
15     funding was then used to pay a \$15 million license fee to Elan.

16          37.     While SEC filings stated that Elan would pay the \$16.015 million with a wire  
17     transfer, according to the Wall Street Journal, no wire transfer ever was booked for Incara,  
18     showing the payment had been made. Elan claimed that the “cash was transferred by way of a  
19     cross receipt” which it calls a “legal mechanism under which amounts owing under different  
20     contracts are amalgamated with the resulting amount being settled by wire transfer.” This is also  
21     known as “round-trip revenue”. A review of the two companies’ SEC filings showed that Elan  
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1 booked the \$15 million license sale as revenue even though no cash appears to have changed  
2 hands when the venture was set up.

3 38. Also in 2001, a separate joint venture brought revenue to Elan one year before the  
4 partes had even mapped out a research program or selected a product. Elan participated in a joint  
5 venture with Toronto-based Generex Biotechnology Corporation. According to Generex's CEO,  
6 Anna Gluskin, the joint venture paid Elan a \$15 million license fee for drug-delivery technology.  
7 Yet, according to the Wall Street Journal article, the partners to the joint venture did not know  
8 which chemical compound they intended to develop or even which disease they would target. In  
9 an SEC filing at the time, Generex said that "parties intend to select at least one pharmaceutical  
10 product for research and development under the joint venture within one year's time." It was not  
11 until January 2002, that the joint venture determined that the joint venture's product would be  
12 formulating morphine to be absorbed through the inside of the cheeks. The parties have not  
13 determined that such formulation is possible, let alone whether it is marketable and able to pass  
14 Food and Drug Administration testing.

15 39. Purely on the "assumption" that some product would be developed, Elan  
16 determined, 12 months in advance of any product decision, that the medical technology was worth  
17 \$15 million, the full amount of funding for the joint venture. Elan justified the transaction  
18 claiming the price of its licenses is based on what the technology is worth, not on the use of it.  
19 According to Ms. Gluskin, "It's all assumption," says Ms. Gluskin. "Any [product] that sells over  
20 \$500 million would justify the payment of \$15 million for the license."

21 40. This determination was pure fantasy. Elan has never had a \$500 million product –  
22 the largest-selling drug Elan has ever had, Zanaflex, sold only a little over \$150 million annually.

1 Thus, labeling the transaction as a “sale” and booking the sale as “revenue” was knowingly and  
2 materially misleading.

3 41. In 1998 and 1999, Elan had booked full license fees from joint ventures as revenue  
4 at the time of the investment. But, in 1999, the SEC ruled that companies should not immediately  
5 book revenue from agreements in which they have continuing involvement, but should book it  
6 over the life of the agreement. In response, in 2000, Elan announced a \$344 million retroactive  
7 charge against earnings. The Generex transaction was nothing more than a variation of the  
8 previously forbidden accounting practice.

9 42. According to The Wall Street Journal, Elan admits that if a company has significant  
10 influence over the investment, is ought to use the “equity” method of accounting and record its  
11 share of the losses from the venture on its P&L statements, reducing its earnings. In Elan’s typical  
12 joint ventures, it has veto power over research, 50% board representation and a right to raise its  
13 financial stake to 50%. Yet Elan’s P&L statements do not break out any losses from the ventures.

14 43. Elan says it uses the equity method “where appropriate.” It adds a written  
15 statement that it “expenses its share of the operating losses of all business ventures regardless of  
16 whether the equity method or cost method is used. Such amounts are included, in full, in net  
17 interest expense.”

18 44. “Why in the world would they put this in interest expense? That doesn’t make any  
19 sense at all,” says J. Edward Ketz, an associate professor of accounting at Penn State, when  
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1 told of Elan’s statement. “What they are doing is not consistent with either cost-method or equity-  
2 method accounting. I don’t see how, under U.S. GAAP, that would be.” Elan’s SEC filings did  
3 not reflect such losses.

#### 4 **B. Recording One-Time Gains as Revenue**

5 45. The Wall Street Journal article described the method by which Elan accounted for  
6 the shedding of its smaller product lines, a process the Company referred to as “product  
7 rationalization”. Elan would sell off the entire product line, but recorded the sale proceeds as  
8 “product revenue”, rather than one-time gains. “That’s wrong,” says Lynn Turner, the former  
9 SEC chief accountant. “This is not the ongoing sales of pharmaceuticals – this is a sale of an  
10 asset,” he says. According to the SEC, gains or losses from asset sales should be reported as  
11 “other general expenses.” Elan’s accounting, says Mr. Turner, “appears to be an attempt to inflate  
12 revenue and give a picture to investors that in reality doesn’t exist.” Furthermore, these sales are  
13 often made to entities controlled by Elan, who depend on “loans” or “investments” from Elan to  
14 pay the purchase price.

15 46. In the third quarter of 2001, Elan sold a Parkinson’s disease drug called Permax to  
16 a small London company called Amarin Corporation. Amarin paid Elan about \$46.5 million in  
17 2001, is paying a royalty to Elan and has an option to make another payment before mid-May to  
18 extend its rights. Elan booked the cash from Amarin not as a one-time gain but as product  
19 revenue.

20 47. With this particular sale, there are other reasons that listing the proceeds as product  
21 revenue gave investors an exaggerated impression of Elan’s sales. An Elan affiliate lent \$45  
22 million to the buyer, Amarin. Secondly, Elan has extensive ties to Amarin. It owns about 43% of

1 the buyer, on a fully diluted basis. Amarin’s CFO, Nigel Bell, maintained an e-mail address  
2 featuring an Elancorp.com suffix until several weeks ago. Five Amarin directors or executives are  
3 current or former Elan employees. Amarin’s chairman is defendant Lynch, the Elan executive  
4 vice chairman, who says he engineered a rescue of Amarin in 1998.

5 48. In June 2001, Elan entered into a financial transaction with San Diego-based  
6 Women First Healthcare Inc. Elan sold Midrin, a headache drug, to Women First for \$15 million.  
7 In the same transaction, Elan invested \$4 million in Woman First shares and \$11 million in  
8 promissory notes. In other words, Elan paid the money that it later recorded as “revenue” from the  
9 Midrin sale.

10 49. Elan entered into a similar transaction with Xcel Pharmaceuticals Inc., also of San  
11 Diego. Xcel bought two epilepsy product lines from Elan. Xcel’s filing for an IPO says the net  
12 price was \$150 million, \$99 million of which it borrowed from Elan, while Elan also put \$15  
13 million into the equity of Xcel. Xcel had no operations before it bought the Elan product lines.  
14 Xcel’s board also includes one current Elan executive and one former one.

15 Market reaction in response to the disclosure of each of these accounting transactions, was  
16 swift and devastating. In the hours following the publication of the Wall Street Journal article  
17 detailing the transactions, the price of Elan’s ADRs nose-dived 36% at its worst point during the  
18 day, falling to a low of \$22.50.

19 Each of the misrepresentations detailed above were repeated in the Company’s SEC filings  
20 and other public statements concerning its financial results. Each of these financial reports  
21 materially distorted the financial results of the Company by improperly removing from its  
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1 50. books, research and development costs that would eat into earnings, and improperly  
2 booking as revenue non-existent earnings.

3  
4 **COUNT I**

5  
6 **VIOLATION OF § 10(b) OF THE 1934 ACT**  
7 **AND RULE 10b-5 PROMULGATED THEREUNDER**  
8 **ON BEHALF OF THE ENTIRE CLASS AGAINST ALL DEFENDANTS**

9 53. Plaintiff repeats and realleges each and every allegation contained in the above  
10 paragraphs, as if fully set forth herein. This claim is asserted against all defendants, and each of  
11 them.

12 54. During the Class Period, defendants, and each of them, carried out a plan, scheme  
13 and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive  
14 the investing public, including plaintiff and the class; (ii) artificially inflate and maintain the  
15 market price of Elan's ADRs; and (iii) cause plaintiff and the class to purchase or otherwise  
16 acquire Elan's ADRs at inflated prices. In furtherance of this unlawful scheme, plan and course of  
17 conduct, defendants took the actions set forth herein.

18 55. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made  
19 untrue statements of material fact and/or omitted to state material facts necessary to make the  
20 statements made not misleading; and/or (c) engaged in acts, practices, and a course of business  
21 which operated as a fraud and deceit upon the purchasers and/or acquirers of the Company's ADRs  
22 in an effort to maintain artificially high market prices for Elan's ADRs in violation of § 10(b) of  
23 the 1934 Act, 15 U.S.C. 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. 240.10b-5.

1 Defendants are sued either as primary participants in the wrongful and illegal conduct charged  
2 herein or as controlling persons as alleged below.

3 56. In addition to the duties of full disclosure imposed on defendants as a result of their  
4 making of affirmative statements and reports, or participation in the making of affirmative  
5 statements and reports to the investing public, they had a duty to promptly disseminate truthful  
6 information that would be material to investors, in compliance with the integrated disclosure  
7 provisions of the SEC as embodied in SEC Regulations S-X (17 C.F.R. § 210.01 et seq.) and S-K  
8 (17 C.F.R. § 229.10 et seq.) and other SEC regulations, including truthful, complete and accurate  
9 information with respect to the Company's operations and performance so that the market prices of  
10 the Company's publicly traded securities would be based on truthful, complete and accurate  
11 information.

12 57. Defendants, individually and in concert, directly and indirectly, by the use of means  
13 and instrumentalities of interstate commerce and/or of the mails, engaged and participated in a  
14 continuous course of conduct to conceal adverse material information about the Company's  
15 financial results, businesses, operations, and future outlook as specified herein. Defendants  
16 employed devices, schemes, and artifices to defraud, while in possession of material adverse non-  
17 public information, and engaged in acts, practices, and a course of conduct as alleged herein, in an  
18 effort to assure investors of Elan's management, value and performance, which included the  
19 making of, or the participation in the making of, untrue statements of material facts and omitting  
20 to state material facts necessary in order to make the statements made about the Company's  
21 financial and business operations in the light of the circumstances under which they were made,  
22 not misleading, as set forth more particularly herein, and engaged in transactions, practices, and a

1 course of business which operated as a fraud and deceit upon the purchasers and/or acquirers of  
2 Elan's ADRs during the Class Period.

3 58. The Individual Defendants' primary liability and controlling person liability arise  
4 from the following facts: (i) they were high-level executives of the Company during the Class  
5 Period and were members of the Company's management team; (ii) by virtue of their  
6 responsibilities and activities as senior officers of the Company, they were privy to and  
7 participated in the drafting, reviewing, and/or approving the misleading statements, releases,  
8 reports, and other public representations of and about Elan, and/or signed the Company's public  
9 filings with the SEC, which public filings contained the allegedly materially misleading  
10 statements; (iii) they knew or had access to the material adverse non-public information about the  
11 financial results, business, operations, and future outlook, of Elan which were not disclosed; and  
12 (iv) they were aware of the Company's dissemination of information to the investing public which  
13 they knew or recklessly disregarded was materially false and misleading.

14 59. Each of the defendants had actual knowledge of the misrepresentations and  
15 omissions of material facts set forth herein, or acted with reckless disregard for the truth in that  
16 they failed to ascertain and to disclose such facts, even though such facts were available to them.  
17 Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and  
18 for the purpose and effect of concealing Elan's operations and business affairs, from the investing  
19 public and supporting the artificially inflated price of its ADRs. As demonstrated by defendants'  
20 statements throughout the Class Period, if they did not have actual knowledge of the  
21 misrepresentations and omissions alleged, they were reckless in failing to obtain such knowledge

1 by deliberately refraining from taking those steps necessary to discover whether those statements  
2 were false or misleading.

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1           60.     As a result of the dissemination of the materially false and misleading information  
2     and/or failure to disclose material facts, as set forth herein, the market price of Elan ADRs was  
3     artificially inflated during the Class Period. In ignorance of the fact that market price of Elan's  
4     publicly-traded ADRs was artificially inflated, and relying directly or indirectly on the false and  
5     misleading statements made by defendants, or upon the integrity of the market in which the ADRs  
6     trade, and the truth of any representations made to appropriate agencies as to the investing public,  
7     at the times at which any statements were made, and/or on the absence of material adverse  
8     information that was known to or recklessly disregarded by defendants but not disclosed in public  
9     statements by such defendants during the Class Period, plaintiff and the class purchased or  
10    otherwise acquired for value Elan's ADRs during the Class Period at artificially high prices and  
11    were damaged thereby.

12           61.     At the time of such misstatements and omissions, plaintiff and the class were  
13    ignorant of their falsity, and believed them to be true. Had plaintiff and the class and the  
14    marketplace known of the true financial condition of the Company, a truth not disclosed by  
15    defendants, plaintiff and the class would not have purchased or otherwise acquired their Elan  
16    ADRs during the Class Period, or, if they had purchased or otherwise acquired such ADRs during  
17    the Class Period, they would not have done so at the artificially inflated prices which they had  
18    paid.

19           62.     By virtue of the foregoing, defendants have violated § 10(b) of the 1934 Act, and  
20    Rule 10b-5 promulgated thereunder.

21           63.     As a direct and proximate result of defendants' wrongful conduct, plaintiff and the  
22    class suffered damages.  
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1 **COUNT II**  
2 **VIOLATION OF § 20(a) OF THE 1934 ACT**  
3 **ON BEHALF OF THE ENTIRE CLASS AGAINST THE INDIVIDUAL DEFENDANTS**  
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5 64. Plaintiff repeats and realleges each and every allegation contained in the above  
6 paragraphs, as if fully set forth herein. This claim is asserted against the Individual Defendants,  
7 and each of them.

8 65. The Individual Defendants and each of them acted as a controlling person of Elan  
9 within the meaning of § 20(a) of the 1934 Act, as alleged herein. By virtue of their executive  
10 positions, each had the power to influence and control and did influence and control, directly or  
11 indirectly, the decision-making of the Company, including the content and dissemination of the  
12 various statements which plaintiff contends are false and misleading. The Individual Defendants  
13 were provided with or had unlimited access to copies of the Company's internal reports, press  
14 releases, public filings, and other statements alleged by plaintiff to be misleading prior to and/or  
15 shortly after these statements were issued and had the ability to prevent the issuance of the  
16 statements or cause the statements to be corrected.

17 66. In particular, each of the Individual Defendants had direct involvement in the day-  
18 to-day operations of the Company and therefore, are presumed to have had the power to control or  
19 influence the particular transactions giving rise to the securities violations as alleged herein,  
20 especially by virtue of their senior positions, and exercised the same.

21 67. As set forth above, the Individual Defendants violated § 10(b) and Rule 10b-5 by  
22 their acts and omissions as alleged herein. By virtue of their positions as controlling persons of  
23 Elan, each of the Individual Defendants is liable pursuant to § 20(a) of the 1934 Act. As a direct

1 and proximate result of the Individual Defendants' wrongful conduct, plaintiff and the class  
2 suffered damages.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, plaintiff demands judgment:

5 A. determining that the instant action is a proper class action maintainable  
6  
7 under Rule 23 of the Federal Rules of Civil Procedure;

8 B. awarding compensatory damages and/or rescission as appropriate against the  
9 defendants and each of them, in favor of plaintiff and all members of the class for damages  
10 sustained as a result of the defendants' wrongdoing;

11 C. awarding plaintiff and all members of the class the costs and disbursements  
12 of this suit, including reasonable attorneys', accountants' and experts' fees; and

13 D. awarding such other and further relief as may be just and proper.

14  
15 **JURY DEMAND**

16  
17 Plaintiff hereby demands a trial by jury.

18  
19 Dated: February 5, 2002

20 Respectfully submitted,

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22 ABBEY GARDY, LLP

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